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VIA EMAIL

Ms. Danielle Gosselin
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

RE: STB Finance Docket No. 36500, *Canadian Pacific Ry., et al. – Control*
– *Kansas City Southern, et al.*

Dear Ms. Gosselin:

On October 13, 2023, CPKC railroad submitted its second “Quarterly Environmental Mitigation Measure Compliance Report.” The Coalition to Stop CPKC hereby submits the attached comments on the report’s discussion of some of the mitigation measures that affect the Coalition’s communities, for OEA’s consideration and further action.

Please don’t hesitate to call or email me if you have any questions or wish to discuss.

Sincerely,

Attorney for the Coalition to Stop CPKC

Cc: Mr. Joshua Wayland
David L. Meyer, Esquire
Jay C. Johnson, Esquire

COALITION TO STOP CPKC RESPONSES TO SECOND QUARTERLY REPORT TO OEA

(The Absence of a Comment on a Mitigation Measure Listed in the Quarterly Report Should not be construed as Concurrence with CPKC's Statement)

A. Overview

The Coalition to Stop CPKC (the Coalition) has carefully reviewed CPKC's Second Quarterly Mitigation Measures Report (Second Report), and we appreciate the opportunity to share our response with the Office of Environmental Analysis (OEA).

The Coalition acknowledges CPKC's efforts to engage with us on multiple occasions. However, we feel compelled to express our concerns regarding the accuracy and completeness of CPKC's representations regarding the progress it has made toward fulfilling required mitigation measures. While we stop short of labeling any information in the Second Report as false, we believe that certain statements are misleading and do not accurately portray the current situation.

Our response aims to assist the OEA in effectively implementing, monitoring, and regulating the merger of CPKC, considering the significant impact it has had, and will increasingly have, on our communities. We would like to draw attention to the following specific points within CPKC's report that merit careful consideration:

B. General Mitigation Measures

VM-General-01. *The Applicants will continue to engage in good faith with potentially affected communities along the combined network, listen to their input related to the proposed merger and strive to reach negotiated agreements to address merger-related impacts.*

CPKC accurately reports the dates on which its representatives met with Coalition community representatives. However, other than helping to organize localized trainings for Coalition firefighters, little has changed in the candor of these meetings since the Coalition initially stated in our first response, namely that, “CPKC’s representatives seem to disclose only the absolute minimum information CPKC has determined the mitigations require them to disclose.”

Mitigation VM-General-01 directs CPKC to “listen to their input related to the proposed merger.” The Coalition contends that CPKC interacts solely from a position of opposition and opacity. For example, when the Coalition asked if it would be possible for CPKC to share their train schedule for the MD-W Line with the Coalition communities’ Police and Fire Chiefs, CPKC flatly refused, stating that “nowhere in the country does a Class 1 share that information.” While this may be true, it has been over twenty years since two class one railroads merged. Unprecedented mergers should be met with unprecedented transparency.

As for the last part of the mitigation, CPKC during the time period covered by the Second Report made no attempts to propose, let alone negotiate an agreement to address merger-related impacts on the Coalition communities.

MM-General-02. *The Applicants shall submit quarterly reports to OEA on the progress of, implementation of, and compliance with all Board-imposed environmental mitigation measures.*

The reporting period for these quarterly reports shall begin on the date of the Board's final decision authorizing the acquisition and continue for seven years, or one year after the Applicants have completed capital improvements related to the acquisition, whichever is longer. The Applicants shall submit copies of the quarterly reports within 30 days following the end of each quarterly reporting period and distribute the reports to appropriate federal and state agencies, as specified by OEA.

To reiterate the Coalition's statement from its response to CPKC's first quarterly filing, we ask the OEA to take a critical view of CPKC's filing. The Coalition finds that the most recent quarterly report lacks sufficient detail for OEA to effectively monitor this merger. Furthermore, CPKC has not offered the Coalition any specific timeline for the capital improvements they are required to make. Without OEA and the Board's intervention, the Coalition fears that CPKC may wait years to implement the required mitigations.

C. Freight and Passenger Rail Safety

***VM-Rail-04.** The Applicants will offer to fund the participation in railroad focused emergency response training at the Association of American Railroads' Security and Emergency Response Training Center in Pueblo, Colorado, of two qualified firefighters providing service within each of the potentially affected communities.*

The Coalition appreciates that CPKC paid the direct costs of 13 firefighters to be trained at the Illinois Fire Service Institute during this reporting period. However, the Coalition communities still await the opportunity to be trained at American Railroads' Security and Emergency Response Training Center in Pueblo, CO. We will not consider this mitigation fulfilled until that training has occurred.

In response to the first quarterly report, the Coalition informed OEA that a request was submitted in writing for CPKC to cover the true cost of the training mandated by this mitigation. Since that time, CPKC has responded to the Coalition's request and it denied our request to cover incidental expenses related to training, such as backfill, which is the cost of ensuring that the absence of the first responder being trained is filled by a qualified substitute, which typically entails paying overtime wages. In this current environment, where staffing public safety positions is exceedingly difficult, without backfill reimbursement, these training opportunities will have limited uptake because of the pressure they apply to our budgets and staffing levels. We do not believe the OEA intended for the training requirements to be a burden on the impacted communities. OEA should clarify that CPKC is responsible for reimbursing the full costs of the training required by this mitigation measure, which include backfill overtime.

***VM-Rail-05.** The Applicants will leverage CP's extensive emergency response equipment assets by reviewing coverage of those assets across CPKC. The Applicants will either redistribute existing assets or add new equipment assets to improve emergency response capabilities relating to the potentially affected communities on CPKC.*

As previously noted, on July 13, 2023, the Coalition asked CPKC what new emergency response equipment was being redistributed or added to the Chicago area. CPKC stated that no new equipment would be added or redistributed because they felt the Chicagoland area was "sufficiently covered." This response remains unacceptable to the Coalition and should be unacceptable to the OEA. VM-Rail-05 is not subjective to CPKC's desire, it is clearly written in

a way that mandates CPKC to expend capital dollars to move new or existing emergency response equipment into areas impacted by the merger, such as the Coalition communities.

D. Grade Crossing Safety and Delay

VM-Grade Crossing-02. *The Applicants will operate under the General Code of Operating Rules rule numbers 6.32.6 (Blocked Public Crossings) and 6.32.4 (Clear of Crossings and Signal Circuits), which provide that, when practical, a standing train or switching movement must avoid blocking a public crossing longer than 10 minutes and, when practical, cars, engines and other equipment should not be left standing closer than 250 feet from a road crossing when there is an adjacent track.*

CPKC has disclosed in its first two quarterly reports that it has no automated data collection system (or apparently any other system that involves reliable blocked crossing data) to verify whether the merged railroad is in compliance with these operating rules. Instead, CPKC “is replying (sic) on calls from the public to the Public Safety Communication Center/Community Connect line” (PSCC) reporting crossing blockages. However, CPKC has also disclosed it has no way to confirm the veracity of the reports it receives from “the public.” First Quarterly Report at 25-26; Second Quarterly Report at 5. By its own admission, therefore, CPKC has no way of demonstrating it is in compliance with the Operating Rules and this mitigation measure.

In its first Quarterly Report in July 2023, CPKC stated it was “exploring options for an automated system that would generate data to review blocked crossing complaints.” However, it provided no update of those alleged efforts in its Second Quarterly report.

CPKC also continues to exclude slow moving freight trains that block crossings for more than 10 minutes from its obligations under this mitigation measure, instead narrowly focusing only on trains that are completely stopped, and only those that are stopped more than 10 minutes.

The lack of reliable data from CPKC on blocked crossings has resulted in disputes between CPKC and the Coalition communities regarding the number and duration of blocked crossings caused by CPKC’s freight trains. In order to cope with CPKC’s claim that it does not have reliable data concerning blocked crossings, the Coalition has begun exploring ways to obtain this data, starting with monitoring grade crossings with low-cost digital cameras. However, the Coalition urges OEA to direct CPKC to immediately adopt whatever automated system is necessary to enable the railroad to demonstrate it is in compliance with this critically important mitigation measure that they volunteered to undertake, and to require CPKC to supply the data generated from this system to OEA, the Coalition, and other parties of record in the oversight proceeding.

VM-Grade Crossing-06. *The Applicants will notify Emergency Services Dispatching Centers for potentially affected communities of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time.*

In its Second Report CPKC states that “the CPKC Public Safety Communications Center routinely provided notice to local Emergency Services Dispatching Centers along the Chicago, IL to Laredo, TX corridor on those occasions when a train which was blocking a crossing and wouldn’t be able to move for a significant period of time.”

In the first place, the Coalition does not see how this statement can be reconciled with CPKC's admission under VM-Grade Crossing – 02 that it does not have an automated system to collect blocked crossing data, and that it instead relies on calls from "the public" to PSCC about extended crossing blockages, but that it has no way to verify the veracity of those reports. Accordingly, by CPKC's own admission it cannot provide reliable notices to emergency dispatch centers about extended blocked crossings in compliance with this mitigation measure.

This is confirmed by the Coalition's own experience. On the advice of the Chicagoland Liaison appointed by CPKC pursuant to mitigation MM-Community-04, Coalition communities have called PSCC to report trains blocking crossings for a significant amount of time – this includes slow-moving and stopped trains. In nearly every case, the PSCC was unaware of the blocked crossing, they admitted to not notifying local emergency dispatchers, and they often needed to contact CPKC operations to identify the issue.

This is not how this mitigation measure is written. It requires CPKC to be more proactive rather than reactive, and to automatically notify emergency dispatchers with accurate information. This is simply not occurring today.

To highlight the lack of compliance with this mitigation, the Coalition experienced a very concerning incident on August 30, 2023. The Village of Bensenville experienced a series of train movements that blocked York Road (372170V), Center Street (372171C), Addison Street (372172J), and Church Road (372174X) crossings for at least 17 minutes. The Center Street crossing (372171C) was blocked for 27 minutes. When Bensenville inquired and complained about this to CPKC, CPKC first denied that the train even existed. It was not until CPKC was confronted with a time-stamped security camera image of the train sitting at the crossing that CPKC admitted the train indeed existed and was blocking the crossing.

Finally, in its response to CPKC's first quarterly report, the Coalition asked OEA to define what a "significant period of time" is for a blocked crossing. The Coalition communities follow the National Fire Protection Association (NFPA) standard that the first responding fire engine should arrive on the scene within 320 seconds. We believe that CPKC is following a self-applied definition of a "significant period of time" that is substantially longer than this. The Coalition believes that actual public safety standards should be the level of accountability, not a self-applied standard of an arbitrary, round number. The Coalition continues to look to the OEA for clarification of this mitigation.

E. Air Quality and Climate Change

***VM-Air-03.** As part of the ongoing reconfiguration of Bensenville Yard (a non- merger related project being undertaken as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project), the Applicants commit to undertake studies to identify ways to reduce the GHG emissions (and by extension, also reduce other air emissions) at Bensenville Yard.*

The Coalition believes that CPKC's response to this mitigation should include more detail. By CPKC's own admission, the Bensenville Yard will see an increase of 300 trucks daily. This equates to 109,500 trucks per year concentrated at the Bensenville Yard; dwarfing the 60,000 trucks per year that CPKC expects the merger will take off the roads nationwide. This high influx in quantity and concentration will almost certainly increase local pollution near the Bensenville Yard. The Coalition desires to learn more about CPKC's quantifiable efforts to reduce greenhouse

gas emissions at the Bensenville Yard. It is hard to believe that a series of electric gantry cranes will mitigate the emissions of 109,500 diesel semitrucks.

F. Community Agreements and Coordination

VM-Community-03. The Applicants will work with certain Chicago area communities with which they have not been able to reach agreements—DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg—to mitigate potential acquisition-related environmental impacts. Specifically, they will work with them to accomplish:

- 1. Subject to necessary FRA approvals and practicability, funding efforts towards the creation and implementation of quiet zones, including the costs of installation.*
- 2. Installing and funding a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others.*
- 3. Installing and funding ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions.*
- 4. Installing and funding Positive Train Control wireless technology tie- ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates.*

There was no visible progress made on this mitigation measure over the period of time covered by the Second Report.

G. Conclusion

CPKC's summation of their quarterly activities may fit neatly into their chart but it lacks the details that OEA requires to successfully monitor and regulate this merger. Simply put, CPKC continues to do the absolute bare minimum to comply with the conditions it volunteered to undertake and that OEA and the Board imposed.