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December 29, 2023

BY E-FILING

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
December 29, 2023
Part of
Public Record

CN-5
PUBLIC VERSION

Re: *Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC – Acquisition and Operation – Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Miss. and Choctaw and Marengo Counties, Ala., Docket No. FD 36732*

Dear Ms. Brown:

Please find attached for filing on behalf Illinois Central Railroad Company (“CN”) in the above-referenced proceeding, CN’s Comments and Requests for Conditions on CPKC’s Acquisition of MNBR’s Western Line (“CN’s Comments”), filed pursuant to the Board’s Decision No. 4, dated December 15, 2023.

Included are copies of Public, Confidential, and Highly Confidential versions of CN’s Comments. The Public version is submitted for filing on the public docket, and the Confidential and Highly Confidential versions are submitted for filing under seal in accordance with the protective order in this proceeding.

Sincerely,

/s/ David A. Hirsh

David A. Hirsh

Counsel for Illinois Central Railroad Company

Enclosures

cc: All Parties of Record

PUBLIC VERSION—REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36732

CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION
– CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C., IN
LAUDERDALE COUNTY, MISS. AND CHOCTAW AND MARENGO
COUNTIES, ALA.

**ILLINOIS CENTRAL RAILROAD COMPANY'S
COMMENTS AND REQUESTS FOR CONDITIONS ON
CPKC'S ACQUISITION OF MNBR'S WESTERN LINE**

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Dated: December 29, 2023

PUBLIC VERSION—REDACTED

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LAUDERDALE COUNTY, MISS. AND CHOCTAW AND MARENGO
COUNTIES, ALA.

**ILLINOIS CENTRAL RAILROAD COMPANY’S
COMMENTS AND REQUESTS FOR CONDITIONS ON
CPKC’S ACQUISITION OF MNBR’S WESTERN LINE**

Illinois Central Railroad Company (“CN”) hereby comments on the application by Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company (together, “CPKC”) to acquire and operate the Western Line of Meridian & Bigbee Railroad, L.L.C. (“MNBR”) and respectfully requests that the Board (1) require CPKC to comply with Decision No. 1 and, (2) impose a reporting condition on any approval of this transaction.

CN’s interest in this proceeding is protecting the fluidity of its north-south main line running through Jackson, Mississippi. That line not only is the central CN freight route for traffic moving north-south between Chicago and the Gulf Coast, but also hosts Amtrak’s *City of New Orleans* service. And it serves as a key link in the middle of the Meridian Speedway, which runs from Meridian, Mississippi through Jackson to Shreveport, Louisiana. Just a year after Canadian Pacific Railway (“CP”) predicted a reduction in train traffic and only a slight increase

in gross tons to be moved on the Meridian Speedway as a result of the CP-KCS merger,¹ leading the Board to review that proposed acquisition without examining the effects of potential additional traffic on the Speedway,² CPKC has now developed detailed plans to add two (and possibly four) more trains per day to the Speedway. In Decision No. 1, the Board expressed concerns about the combined effects of CPKC's proposed acquisition of the Western Line of MNBR along with the proposed acquisition by CSX Transportation, Inc. ("CSXT") of MNBR's Eastern Line on other rail lines and ordered CPKC to detail and analyze those impacts. As discussed below, CPKC has not complied with that directive, leaving the impacts of the proposed transaction on CN's critical line through Jackson, Mississippi unexamined and thus future CN and Amtrak operations moving through Jackson exposed to risk.

In Part I, below, we discuss the rail lines at Jackson, Mississippi and the use of those lines for Meridian Speedway traffic. In Part II, we discuss CPKC's failure to follow the Board's directive and analyze the operational impacts of the MNBR transactions on Jackson. Finally, in Part III, CN respectfully requests that the Board (1) require CPKC to abide by Decision No. 1 and meaningfully analyze the potential impacts on freight and passenger operations in Jackson, and (2) condition any future approval of the proposed transaction on the reporting of future traffic volumes at Jackson.

¹ Applicants' Response to Comments and Requests for Conditions, Opposition to Responsive Applications, and Rebuttal in Support of the Application (CP-53/KCS-39), at 249-253, *Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500 (filed July 13, 2022); *id.*, Ex. H (Reply Verified Statement of Raymond A. Elphick and John F. Orr) at 78-79.

² *Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500, Decision No. 35, slip op. at 132 (STB served Mar. 15, 2023).

I. THE PROPOSED TRANSACTION WILL ADD TRAFFIC TO CN'S CRITICAL AND ALREADY HEAVILY USED LINE THROUGH JACKSON, MISSISSIPPI.

The transactions proposed by CPKC and CSXT, taken together as the Applicants planned, would establish “a new east-west Class I freight rail corridor linking CPKC-served markets in Mexico and the Southwestern United States with CSXT-served markets in the Southeastern United States and beyond.”³ Traffic handled over the new CPKC-CSXT corridor to or from Dallas and points further south (including Mexico) would move via the Meridian Speedway, LLC (“Meridian Speedway”), which uses trackage rights over a 0.44-mile segment of CN’s double-track main line in Jackson, Mississippi.

CN’s line through Jackson is heavily used by CN, Amtrak, and existing Meridian Speedway traffic. The line forms part of CN’s principal north-south route between Chicago and the Gulf Coast, and is therefore a vital link in CN’s overall network. On average, 17 CN freight trains move through Jackson daily. Amtrak also has a heavily used passenger station in Jackson, which is served by Amtrak’s *City of New Orleans* service. That Amtrak passenger service adds two additional trains per day to the line. Significantly, the line is also traversed by all Meridian Speedway traffic, which, according to CPKC, adds a further 10 to 14 trains per day, with an average of 12 per day.⁴ Altogether, CN’s line in Jackson is presently used by approximately 31 freight and passenger trains per day.

³ Application for a Minor Transaction (refiled as CPKC-11) at 2 (filed Oct. 6, 2023; refiled Dec. 11, 2023); *see* FD 36727, CSXT Application (CSXT-1) at 13 (filed Oct. 6, 2023); {Letter from Keith Creel, President and CEO, CPKC, to Joseph R. Hinrichs, President and CEO, CSXT, June 26, 2023, at 1 (referring to the combined transactions as a singular “Growth Transaction”)} (attached as Exhibit A). Page citations to CPKC-11 are to the consecutively numbered pages assigned to the entire document rather than to page numbers for individual portions of the document.

⁴ CPKC’s Supplemental Information (CPKC-7) at 12-13 (filed Nov. 21, 2023).

That number is likely to increase in the future. CN expects to grow its freight traffic moving over the line. Further, Amtrak and CPKC are planning for the possible addition of two to four daily passenger trains in a new service between Dallas and Meridian that would traverse CN's line in Jackson.⁵ In addition, CPKC is now projecting that at least two (and possibly four) additional trains per day will move through Jackson via the Meridian Speedway as a result of the proposed MNBR line acquisitions.

CN's concerns regarding fluidity at Jackson are not only based on the critical role that line plays in the rail network (for CN, Amtrak, and Meridian Speedway traffic), but also because of the complexity of the movement of Meridian Speedway traffic as it crosses over multiple tracks in order to traverse the Jackson line. As can be seen from the map attached as Exhibit B, all existing Meridian Speedway traffic, and any of the new additional trains coming off of the MNBR Western Line, must use no fewer than six CN switches to cut across CN's main line tracks, and must do so within a relatively short distance. From the time these Meridian Speedway trains receive a signal to proceed on to the CN line until they have cleared all the tracks, all other freight and passenger traffic is blocked. Additional track time is consumed by the Meridian Speedway trains due to the heavy wear and tear they cause when traversing the multiple switches: as a result of these operations, each week CN must shut down the Jackson track (referred to as the Jackson "Switchtender Track") for a 4-hour maintenance work block. No freight or passenger traffic is able to use the Switchtender Track during this weekly 4-hour block.

Given the significance of CN's Jackson line and its existing heavy usage, it is important to examine and understand the potential impacts of the proposed transaction at this location. As

⁵ See CPKC-7 at 13; *id.* Ex. B (Amtrak-Canadian Pacific Agreement) § 5.

discussed below, the Board required CPKC to provide such an analysis, but CPKC has failed to do so.

II. CPKC FAILED TO COMPLY WITH THE BOARD’S ORDER THAT IT ASSESS THE FUTURE IMPACTS OF THE PROPOSED TRANSACTION ON OTHER RAIL LINES, INCLUDING CN’S LINE AT JACKSON.

In Decision No. 1, and in the corresponding decision in FD 36727, the Board expressed concern that CPKC’s application for the Western Line and CSXT’s application for the Eastern Line did “not include an analysis of the potential operational impacts to shippers or Amtrak passengers on rail segments outside the Eastern Line and Western Line.”⁶ Accordingly, the Board directed CPKC and CSXT “to detail any impacts anticipated on other rail operations.”⁷ The Board provided examples of impacts to be analyzed, including impacts to passenger operations crossing the Western and Eastern Lines and delays caused by increased traffic “due to route consolidations or traffic diversions.”⁸ These examples were not exclusive – both Applicants were required to analyze “any” impacts on other rail operations. CPKC, however, has clearly failed to do so in its Supplemental Information.

A. CPKC Did Not Perform a Credible Traffic Analysis, Which Is a Prerequisite for a Meaningful Study of Impacts on Other Lines.

A prerequisite for a reliable assessment of the operational impacts of CPKC’s proposed acquisition of MNBR, as the Board has ordered, is a credible study projecting future traffic volumes as a result of the proposed transaction. CPKC, however, has not presented such a study.

⁶ Decision No. 1 at 11 (STB served Nov. 3, 2023); FD 36727, Decision No. 1 at 11 (STB served Nov. 3, 2023) (“CSXT Decision No. 1”).

⁷ Decision No. 1 at 11; CSXT Decision No. 1 at 11.

⁸ Decision No. 1 at 11; CSXT Decision No. 1 at 11.

CPKC represents that it expects to add no more than two trains a day to the Western Line in five to ten years post-transaction (with a possible additional two daily trains beginning in year eight).⁹ That is also the number of additional trains that CPKC projects will move over the Meridian Speedway, and thus would traverse CN's line at Jackson, as a result of the transaction.¹⁰ As an initial matter, CPKC's volume projections appear disproportionate to the large investments CPKC has announced as part of the proposed transaction. CPKC has stated that it plans in the first year after its acquisition of the Western Line to invest approximately \$46 million in infrastructure improvements plus \$9 million on bridge repairs and improvements, as well as to undertake a "multi-year bridge rehabilitation program" costing over \$100 million.¹¹ CPKC does not explain how this \$155 million investment would be justified on the basis of CPKC's projection of two (perhaps eventually reaching four) additional trains per day.

The cursory and incomplete nature of the traffic information presented by CPKC further undermines confidence in CPKC's analysis of transaction-related growth. First, given the interconnected nature of CPKC's proposed acquisition of the Western Line and CSXT's proposed acquisition of the Eastern Line in FD 36727, a fact recognized by the Board,¹² CPKC and CSXT should have jointly analyzed their projected traffic. By failing to utilize the same

⁹ See Verified Statement of Raymond A. Elphick (Application, Ex. 15 (Operating Plan-Minor)) at 8, CPKC-11 at 235; Verified Statement of Jonathan Wahba (Application, App. 3) at 4, CPKC-11 at 266; CPKC-7 at 8.

¹⁰ CPKC-7 at 12-13 (current Meridian Speedway volumes "range between ten and fourteen trains daily"; "[t]ransaction-related traffic falls within the daily variability").

¹¹ CPKC-11 at 22-23.

¹² CSXT Decision No. 1 at 4 (declining to examine separately the proposed acquisitions of the Western Line and Eastern Line; recognizing that the acquisition of the Western Line "is specifically dependent" on CSXT's acquisition of the Eastern Line).

methodologies, and directly share insights about their own lines and customers, the Applicants significantly diminished the reliability of their two independent analyses.¹³

Second, the scope of CPKC’s traffic analysis, which was conducted by Jonathan Wahba,¹⁴ was too narrow, and its projections were incomplete. Mr. Wahba did not systematically review, as he should have, the universe of traffic that CPKC might attract to its “direct, efficient interchange with CSXT at Myrtlewood.”¹⁵ Instead of beginning his analysis with full sets of CSXT and CPKC traffic, he reviewed only a very limited subset.

- For manifest traffic, there is no indication that Mr. Wahba examined potential diversions to the new efficient Myrtlewood route of traffic currently interchanged by CPKC with carriers other than CSXT.¹⁶ He provides no justification for that limited scope of review.
- Moreover, even with respect to existing joint CPKC-CSXT manifest traffic, Mr. Wahba examined only traffic currently interchanged at New Orleans, Brookwood, and East St. Louis and excluded all other points, including, for example, Chicago.¹⁷ Again, he provides no justification for that limited scope of review.

¹³ For example, CSXT quantified traffic from new automotive facilities in Mexico and the Southeastern United States that it and CPKC could potentially attract to the new Myrtlewood routing (FD 36727, CSXT’s Supplemental Information (CSXT-9) at 19-20 (filed Nov. 21, 2023)), while CPKC disclaimed any ability to estimate potential gains of the new automotive traffic, stating only that the two acquisitions together would “put us in a strong position to compete for, and win, any such traffic” (V.S. Wahba at 8, CPKC-11 at 270).

¹⁴ V.S. Wahba at 3-4, CPKC-11 at 265-66.

¹⁵ CPKC-11 at 12.

¹⁶ See V.S. Wahba at 4-5, CPKC-11 at 266-67.

¹⁷ *Id.*; see also CPKC-7 at 7-8; *id.* Ex. A, Tbls. 1-3.

- For diversions of existing intermodal traffic, Mr. Wahba states only that he relied on “conversations with certain motor carriers” to determine that “some intermodal traffic that currently moves on other railroads” would shift to the Western Line.¹⁸ But he evidently did not examine the full base of intermodal traffic, and he does not even identify the motor carriers with which he had conversations, the nature of those conversations, how those carriers were chosen, or even what percentage of total intermodal traffic they carry.
- For truck diversions, rather than reviewing a truck movement database, he relied on the same conversations with unidentified motor carriers and on that basis projected total truck diversions of only “{{[REDACTED]}} refrigerated cars annually.”¹⁹ Beyond that, Mr. Wahba says nothing about potential truck diversions.
- For automotive traffic, Mr. Wahba disclaimed any ability to estimate potential traffic gains from new automotive plants in the Southeastern United States – yet CSXT was able to do so.²⁰

CPKC should be required to analyze the complete traffic bases for possible additional traffic that may move through the new Myrtlewood interchange and over the Meridian Speedway, and thus over CN’s line through Jackson.

Third, CPKC should be required to explain and justify Mr. Wahba’s diversion determinations. Remarkably, CPKC claimed to have no workpapers supporting Mr. Wahba’s

¹⁸ V.S. Wahba at 9, CPKC-11 at 271.

¹⁹ *Id.*

²⁰ *See supra* note 13.

traffic analysis.²¹ And in Mr. Wahba's statement and in CPKC's supplemental filing, there is no meaningful explanation or justification for Mr. Wahba's diversion decisions or volumes.²²

CPKC also made it difficult or impossible for CN's in-house personnel to opine as to the reasonableness of Mr. Wahba's diversion judgments, because it designated virtually all diversion numbers other than grand totals as Highly Confidential. The Board should require more than Mr. Wahba's unexplained projections.

Due to the limited scope of CPKC's traffic analysis, and its failure to provide any reasonable explanation of how it arrived at its conclusions, the Board lacks a reliable record of projected future traffic over the Western Line, and thus over the Meridian Speedway route passing through Jackson. CPKC should be required to correct these deficiencies and provide a robust traffic study, evaluating the full universe of current traffic plausibly divertible to the new Myrtlewood route, as well as new business potentially drawn to that "new highly attractive option."²³

B. CPKC Also Failed to Provide the Required Analysis of Operational Impacts at Jackson.

With respect to CN's line in Jackson, CPKC failed to follow the Board's directive in Decision No. 1 that it analyze the impacts of the combined transactions on other rail lines. Despite acknowledging that the combined impact of the two MNBR transactions will at a

²¹ CPKC's Response to Norfolk Southern's Document Request No. 11 (attached hereto as Exhibit C).

²² Tables 1 through 3 of Exhibit A of CPKC's Supplemental Information provide a breakdown, by 2-digit Standard Transportation Commodity Code and corridor, of volumes interchanged between CPKC and CSXT at New Orleans, Brookwood, and East St. Louis, and of the amounts CPKC projected would be diverted, but it does not explain the bases for CPKC's diversion percentages.

²³ CPKC-11 at 20.

minimum add two (and possibly four) additional trains per day to the Meridian Speedway, CPKC’s initial application did not discuss potential impacts outside of the MNBR Western Line. That, of course, led to the Board requiring CPKC to do so in Decision No. 1. In its Supplemental Information filed November 21, 2023, CPKC provides a cursory, two-paragraph discussion of future operations on the Meridian Speedway generally. But that short discussion focuses on the Meridian Speedway LLC portion of the route (which is jointly owned by Norfolk Southern Railway Company and CPKC). It does not focus on the CN-owned section in Jackson.²⁴ And when CPKC eventually does offer a limited discussion on impacts in Jackson, it focuses entirely on Amtrak’s passenger service and ignores the impacts of its transaction on freight traffic at Jackson.²⁵

Moreover, as CPKC acknowledges, adequate infrastructure is a “primary consideration” in assuring the integration and fluidity of passenger and freight rail operations.²⁶ However, CPKC has provided no analysis or plan for infrastructure improvements at Jackson or any other

²⁴ CPKC-7 at 12-13.

²⁵ *Id.* at 14-15. CPKC provides a superficial discussion of potential impacts on Amtrak’s long-distance *City of New Orleans* service (*id.*), which includes one northbound and one southbound train per day serving Amtrak’s downtown Jackson station. See map at Exhibit B (showing the Amtrak station in Jackson). CPKC merely states that its additional trains will “avoid[] the slots used by the City of New Orleans” and dismisses any possible impact on passenger operations by referencing Amtrak’s right to preference. *Id.* at 14. But CPKC fails to discuss the potential that its new trains may result in tightening the windows for existing freight traffic to remain clear for Amtrak arrivals (northbound train #58) at Jackson station and departures (southbound train #59) from that station. Further, CPKC fail to acknowledge that, given the reality of operations, Amtrak’s *City of New Orleans* service frequently runs out of slot at Jackson, heightening the potential for freight interference. Based on Amtrak data for the first 11 months of 2023, Amtrak’s northbound train #58 arrived late (i.e., behind schedule time) to Jackson station 24% of the time. During that same period, Amtrak’s train #59, which cannot proceed southbound from Jackson station if Meridian Speedway traffic is occupying the Switchtender Track, departed late 55% of the time, and its departure was over 60 minutes late 18% of the time.

²⁶ CPKC-7 at 13.

locations off the MNBR Western Line.²⁷ Indeed, without having conducted an adequate analysis of impacts to other rail operations, CPKC simply does not know what additional infrastructure may be needed.

In sum, CPKC has failed to discharge its responsibility under Decision No. 1 to analyze the impacts of its proposed new traffic that will traverse the complex, heavily used CN line at Jackson. CPKC should be ordered to provide that analysis, including the degree to which its added traffic may cause additional freight or passenger delays and whether additional or enhanced infrastructure to improve fluidity or add capacity is or will likely be necessary over the next five years.

III. TO PROTECT FUTURE FREIGHT AND PASSENGER SERVICE AT JACKSON, MISSISSIPPI, THE BOARD SHOULD ORDER CPKC TO PROVIDE THE ANALYSIS THAT WAS REQUIRED BY DECISION NO. 1 AND SHOULD IMPOSE A REPORTING CONDITION.

Because the proposed transactions could pose a risk to CN's and Amtrak's operations through Jackson, and because CPKC has failed to provide meaningful evidence that those operations will not be impaired, the Board should, in the exercise of its conditioning authority under 49 U.S.C. § 11324(c), ensure that the fluidity of the CN line is not compromised as a result of the proposed Transactions.

First, CPKC should be required to comply with the Board's Decision No. 1 and meaningfully analyze the anticipated impacts of its proposed transaction on freight and passenger traffic at Jackson. The Board should direct CPKC to address the inadequacies in its evidence and analysis, including those identified above, and to provide credible projections of potential

²⁷ CPKC has acknowledged that it has no plans for any infrastructure improvements on other lines feeding into and out of the MNBR Western Line, including the Meridian Speedway through Jackson, Mississippi. See CPKC Answer to Norfolk Southern's Interrogatory No. 4 (attached hereto as Exhibit D).

added traffic at Jackson. In addition, the Board should direct CPKC, once it has developed solid and reliable projections of traffic gains, to analyze the impact of traffic growth on affected rail lines, especially including CN's line in Jackson. The Board should require CPKC to conduct a systematic and thorough analysis of capacity of that and other affected lines and to report the results of that analysis.²⁸

Second, if the Board decides to approve the proposed CPKC transaction, it should impose a reporting condition to ensure that the Board and other parties receive timely information about increases in traffic on CN's line in Jackson, and if CPKC fails to take appropriate steps to mitigate resulting congestion, would allow the Board to consider issuing supplemental orders under 49 U.S.C. § 11327 requiring that CPKC take such steps, including, if appropriate, funding additional or enhanced infrastructure on the CN line.

Specifically, CN requests that the Board impose, as part of any approval, the following condition concerning operations on CN's line in Jackson, Mississippi:²⁹

²⁸ Both the traffic study and the operational impacts study should be backed up by workpapers, submitted by CPKC to the Board and other parties, so that they might evaluate the reliability of those studies.

Requiring submission of proper studies presents little risk of violating the statutory deadlines applicable to this proceeding. *See* 49 U.S.C. § 11325(d)(2). As the Federal Register notice regarding CPKC's application was published on November 9, 2023, evidentiary proceedings need not be concluded until February 22, 2024 (105 days after that publication), and a final decision would not be due until April 8, 2024 (the first business day following the 45th day after February 22, 2024).

²⁹ The Board conditioned its approval of the CPKC merger transaction on similar reporting regarding rail lines and bridges for which concerns had been raised regarding the adequacy of capacity to handle post-transaction traffic growth. *See Canadian Pac. Ry.—Control—Kansas City S.*, FD 36500, Decision No. 35, slip op. at 89-120, 197-99 (STB served Mar. 15, 2023). And as in that case, it is appropriate for the Board to reserve the right to impose supplemental orders requiring mitigation, notwithstanding the existence of an agreement between the users of the line providing for the sharing of costs of infrastructure necessitated by traffic growth. *See id.* at 91-92, 95, 86, 99-100 (requiring reporting even for track subject to contractual arrangements providing for sharing costs of needed infrastructure).

On a monthly basis, CPKC is required to report the following information regarding traffic moved via CPKC trains (whether for its own account or the account of others, and including all Meridian Speedway, LLC traffic), that traverses the CN line in Jackson, Mississippi:

- Average number of trains per day;
- Maximum number of trains per day;
- Average and maximum train length.

CONCLUSION

The Board should (1) require CPKC to supplement its application further so as to comply with Decision No.1, including providing a meaningful analysis of the potential impacts of its proposed transaction on freight and passenger operations in Jackson, and (2) condition any approval of the transaction on the reporting requirements detailed above.

Respectfully submitted,

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Counsel for Illinois Central Railroad Company

Dated: December 29, 2023

VERIFICATION

I, Rachel Klumpp, Assistant Manager, Contract Compliance - Passenger for Illinois Central Railroad Company ("CN"), declare under penalty of perjury that the factual representations in the foregoing regarding the City of New Orleans service of the National Railroad Passenger Corporation ("Amtrak") are true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verification on behalf of CN.

Executed on December 29, 2023.

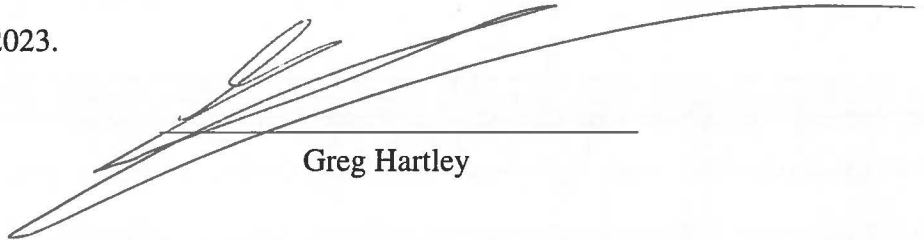


Rachel Klumpp

VERIFICATION

I, Greg Hartley, Director of Asset Planning & Quality for Canadian National Railway Company and its US operating subsidiaries, declare under penalty of perjury under the laws of the United States that the factual representations in the foregoing regarding Illinois Central Railroad Company ("CN") and existing operations on its lines through Jackson, Mississippi are true and correct to the best of my knowledge, information, and belief. Further, I certify that I am qualified and authorized to file this Verification on behalf of CN.

Executed on December 29, 2023.



Greg Hartley

Exhibit A

[CONFIDENTIAL EXHIBIT REDACTED]

Exhibit B

Exhibit C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FD 36732

**CPKC’S OBJECTIONS AND RESPONSES TO
NORFOLK SOUTHERN’S FIRST SET OF DOCUMENT REQUESTS**

Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC (collectively, “CPKC”), in accordance with 49 C.F.R. Part 1114, hereby responds and objects to Norfolk Southern Railway Company and Norfolk Southern Corporation’s (collectively, “Norfolk Southern”) First Set of Document Requests.

As a preliminary matter, CPKC objects to Norfolk Southern’s improper attempt to combine the CPKC application proceeding (FD 36732), the CSXT application proceeding (FD 36727) and all of the proceedings related to each of those separate applications into a single proceeding by propounding discovery in a combined proceeding that does not exist. The Board—in CSXT Decision No. 1, pp. 9-10, fn. 11 and CPKC Decision No. 1, pp. 7-8, fn. 11—denied Norfolk Southern’s request to consolidate the applications, to require a single combined application and to hold the proceeding in abeyance. Rather, the Board accepted each of the CSXT application and CPKC application as separate minor transactions. *See* CPKC Decision No. 1 and CSXT Decision No. 1. Accordingly, CPKC objects to Norfolk Southern’s attempt to combine the proceedings, as well as the propriety of directing the instant Requests in a fictional combined proceeding.

GENERAL RESPONSES

CPKC makes the following General Responses to the Document Requests and incorporates them into each and every Response, whether or not specifically stated in the individual response.

CPKC objects to this request as duplicative of Request Nos. 3, 4, 5, 6, and 8, which also ask for information about projected traffic.

Subject to and without waiving the foregoing objections, CPKC will produce any non-privileged documents responsive to this request that are identified through a reasonable search. CPKC also refers Norfolk Southern to the Supplemental Information that it filed with the Board on November 21, 2023.

Document Request No. 10. Provide a copy of any agreement (draft or executed) governing the utilization of run through power and described on page 10 of the Verified Statement of Raymond A. Elphick.

RESPONSE: CPKC objects to this request because it would require CPKC to produce documents that are protected by the attorney-client privilege and attorney work product doctrine.

Subject to and without waiving the foregoing objections, CPKC will produce any non-privileged executed agreements that are identified through a reasonable search.

Document Request No. 11. Produce workpapers in support of all filings encompassed in This Proceeding.

RESPONSE: CPKC objects to this request because it calls for the production of documents and/or information that are protected by the attorney-client privilege and attorney work-product doctrine. CPKC also objects to this request as vague and ambiguous because the term “workpapers” is not defined and CPKC cannot determine the nature of the information sought. CPKC interprets the term as it is ordinarily used in proceedings before the Surface Transportation Board, that is the workpapers that are generally filed with an Application, and states that it has no workpapers in its possession, custody or control that are responsive to this request.

Exhibit D

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FD 36732

**CPKC’S ANSWERS AND OBJECTIONS TO
NORFOLK SOUTHERN’S FIRST SET OF INTERROGATORIES**

Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC (“CPKC”), in accordance with 49 C.F.R. Part 1114, hereby provide the following answers and objections to Norfolk Southern Railway Company and Norfolk Southern Corporation’s (collectively, “Norfolk Southern”) First Set of Interrogatories (“Interrogatories”).

As a preliminary matter, CPKC objects to Norfolk Southern’s improper attempt to combine the CPKC application proceeding (FD 36732), the CSXT application proceeding (FD 36727) and all of the proceedings related to each of those separate applications into a single proceeding by propounding discovery in a combined proceeding that does not exist. The Board—in CSXT Decision No. 1, pp.9-10, fn. 11 and CPKC Decision No. 1, pp. 7-8, fn. 11—denied Norfolk Southern’s request to consolidate the applications, to require a single combined application and to hold the proceeding in abeyance. Rather, the Board accepted each of the CSXT application and CPKC application as separate minor transactions. *See* CPKC Decision No. 1 and CSXT Decision No. 1. Accordingly, CPKC objects to Norfolk Southern’s attempt to combine the proceedings, as well as the propriety of directing the instant Interrogatories in a fictional combined proceeding.

GENERAL RESPONSES

CPKC makes the following General Responses to the Interrogatories and incorporates them into its responses to each and every Interrogatory, whether or not specifically stated in the

aware of any existing capacity limitations on the Shreveport Line that currently impact CPKC's operations over the Shreveport Line. However, as Norfolk Southern is aware, 18 of the 21 sidings on the connecting approximately 320-mile, single-track Meridian Speedway can accommodate maximum train lengths of 8,500 feet. This capacity limitation on the Meridian Speedway impacts the length of trains operating on the Shreveport Line. In accordance with 49 C.F.R. 1114.26(b), CPKC further answers this interrogatory by referring Norfolk Southern to the non-privileged, responsive documents CPKC will produce, from which information responsive to this interrogatory may be derived or ascertained, including but not limited to documents produced in response to Request Nos. 2 and 3 of Norfolk Southern's First Set of Document Requests.

Interrogatory No. 4. Describe in detail any planned infrastructure improvements to CPKC's Shreveport Line, the Meridian Speedway, Jackson, MS, the Meridian Interchange, and other lines feeding into and out of Western Line and Eastern Line resulting from the CPKC Transaction and the CSXT Transaction.

ANSWER: CPKC objects to part of this interrogatory as irrelevant to the subject matter of this proceeding because Norfolk Southern does not operate on the Shreveport Line and the proposed transaction, therefore, has no operational impact on Norfolk Southern with respect to the Shreveport Line. CPKC further objects to this interrogatory because it seeks information about rail lines that CPKC does not own, including the lines into and out of the Eastern Line. CPKC does not have such information in its possession, custody or control. Further, Norfolk Southern, as a co-owner of the MSLLC, is equally as aware as KCS of plans for infrastructure improvements on the Meridian Speedway and, indeed, has a voice in determining whether or not such improvements are made.

Subject to and without waiving the objections set forth above, CPKC states that it has no current plans to make any infrastructure improvements to CPKC's Shreveport Line, the Meridian Speedway, Jackson, MS, the Meridian Interchange, and other lines feeding into and out of Western Line and Eastern Line resulting from the CPKC Transaction and the CSXT Transaction.

Interrogatory No. 5. Describe any communications (including any draft or executed agreements and/or settlements) involving CPKC, Amtrak, CSXT, and/or MNBR concerning current or future Passenger service over the Meridian Speedway and/or the Western Line.

ANSWER: CPKC objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, the attorney work-product doctrine and/or is otherwise protected from disclosure. CPKC objects to this interrogatory as overbroad and unduly burdensome because it asks CPKC to provide detailed information about potentially numerous conversations that took place over a significant period of time, making precise details difficult, if not impossible, to recall. CPKC further objects to this interrogatory as overbroad, unduly burdensome, and not proportional to the needs of the proceeding because it potentially seeks information about communications that CPKC not participate in, meaning such information is not in CPKC's possession, custody or control.

Subject to and without waiving the objections set forth above, CPKC states that as Amtrak's only A-rated host, CPKC frequently engages in discussions with Amtrak on a variety of issues and, in 2021, entered into an agreement with Amtrak to participate in a joint study to establish Amtrak rail service that would operate over the Meridian Speedway. However, CPKC has not engaged in any discussions regarding future passenger rail service over the Western Line.

CERTIFICATE OF SERVICE

I hereby certify that I have, this 29th day of December, 2023, caused a copy of the preceding Illinois Central Railroad Company's Comments and Request for Conditions on CPKC's Acquisition of MNBR's Western Line (designated as CN-5) to be served by email on all Parties of Record.

/s/James M. Guinivan
James M. Guinivan