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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.**

Docket No. FD 36727

**CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE
OF MERIDIAN & BIGBEE RAILROAD, L.L.C.**

**MERIDIAN & BIGBEE RAILROAD, L.L.C.’S RESPONSE TO THE NORFOLK
SOUTHERN COMMENTS AND REQUESTS FOR CONDITIONS**

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L.L.C.*

Dated: January 26, 2024

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Meridian & Bigbee Railroad, L.L.C. (“MNBR”) files this Response to the Comments and Requests for Conditions of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively “Norfolk Southern”)(“NS Comments”) in accordance with the amended

¹ Decision No.1 in Docket No. FD 36732 (the “CPKC Application proceeding”) also embraced the following related dockets: *CSX Transportation, Inc. – Discontinuance of Trackage Rights Exemption – in Marengo and Choctaw Counties, Ala. & Lauderdale County, Miss.*, Docket No. AB 55 (Sub-No. 814X); *Alabama & Gulf Coast Railway LLC – Trackage Rights Exemption – Kansas City Southern Railway d/b/a Canadian Pacific Kansas City*, Docket No. FD 36731; and *CSX Transportation, Inc. – Trackage Rights Exemption – Kansas City Southern Railway*, Docket No. FD 36730.

² Decision No.1 in Docket No. FD 38727 (the “CSXT Application proceeding”) also embraced the following related dockets: *Alabama & Gulf Coast Railway LLC – Trackage Rights Exemption – CSX Transportation, Inc.*, FD 36724; *Meridian & Bigbee Railroad, L.L.C. – Discontinuance of Incidental Overhead Trackage Rights – In Lowndes and Montgomery Counties, Ala.*, AB 1335X.

procedural schedule issued by the Board in Decision No. 4 and served December 15, 2023 in both the CPKC Application and CSXT Application proceedings. In the NS Comments, Norfolk Southern requests conditions involving significant infrastructure projects and changes in operating practices, and offers as an alternative proposal to its requested conditions Board-sponsored mediation amongst Norfolk Southern, the Applicants CPKC and CSX Transportation, Inc. (“CSXT”), and Genesee & Wyoming Inc. (“G&W”) (which Norfolk Southern defines to include G&W subsidiaries MNBR and Alabama & Gulf Coast Railway LLC (“AGR”)). Whether the Board interprets the Norfolk Southern mediation proposal as a requested condition, or as an alternative to other conditions, it is inappropriate for Norfolk Southern to suggest that non-parties such as MNBR, AGR (or their parent G&W) be a participant in any such mediation.

BACKGROUND

On December 29, 2023, Norfolk Southern submitted its comments and request for conditions in the CPKC Application for CPKC to acquire from MNBR a line of railroad known as the Western Line and in the CSXT Application to acquire from MNBR a line of railroad known as the Eastern Line.

As MNBR has previously stated in MNBR-1 and as acknowledged by Norfolk Southern,³ MNBR is not a party in either the CPKC or the CSXT Applications. MNBR is a party in its discontinuance proceeding related to the CSXT Application and AGR is party in its two trackage rights proceedings one of which is related to the CSXT Application proceeding and one of which is related to the CPKC Application proceeding. Despite Norfolk Southern’s lengthy explanation of why it references G&W instead of MNBR and AGR⁴, Norfolk Southern does not argue, nor

³ NS Comments at 4. n.12.

⁴ NS Comments at 4, n.11 and at 6, n.16.

can it, that G&W is any more of a party in either the CPKC Application proceeding or the CSXT Application proceeding than MNBR or AGR.

In its comments, Norfolk Southern argues that as a result of the transactions contemplated by the CPKC and CSXT Applications “congestion and delays” will likely impact Norfolk Southern traffic in the vicinity of Meridian, thereby diminishing service reliability and harming shippers that currently use or have the option to use Norfolk Southern in competition with CPKC and/or CSXT.”⁵ Norfolk Southern argues that CPKC should implement various mitigation measures including significant infrastructure and operational changes to blunt the impacts that Norfolk Southern is concerned will occur as a result of the CPKC and CSXT Applications.⁶ However, Norfolk Southern provides as an alternative to the infrastructure and operational mitigation conditions it is proposing, that NS, CPKC, G&W, and CSXT enter into Board-sponsored mediation “to allow for a consensus on the infrastructure projects to be constructed, the cost allocation of that construction, and operational improvements in and through Meridian to the benefit of shippers.”⁷

ARGUMENT

Under 49 U.S.C. §11324(c), the Board has “broad authority to impose conditions” on a transaction subject to 49 U.S.C. §11324(d) to ameliorate competitive harm that would result from the transactions.⁸

⁵ NS Comments at 4.

⁶ NS Comments at 4, 58-60.

⁷ NS Comments at 4. *See also* NS Comments, Condition 7 at 60-61.

⁸ *See Norfolk Southern Railway Co. – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, STB Docket No. FD 35873, slip op. at 22 (Decision No. 6) (served May 15, 2015) (*citing Genesee & Wyoming Inc. – Control – RailAmerica, Inc., et al*, STB Docket No. 35654, slip op. at 4 (Decision No. 5)(served December

Norfolk Southern has requested conditions to be imposed upon CPKC as part of the CPKC Application to acquire the Western Line. The conditions address issues with CPKC infrastructure and operations that currently exist west of the Western Line that CPKC is acquiring from MNBR. Because these conditions are directed at CPKC and not MNBR and because MNBR is not a party to the CPKC Application proceeding, MNBR will defer to CPKC as to the propriety of any of the requested conditions. Instead, MNBR will limit its response to the Norfolk Southern alternative mediation proposal and its suggestion that G&W (or MNBR or AGR) would be a proper participant.

MNBR understands the spirit in which Norfolk Southern is offering this alternative to its requested conditions. MNBR is replying here to clarify that NS appears to be offering this suggestion as an alternative to its requested conditions directed at CPKC and not as a condition to be incorporated into either the decision on the CPKC Application or the CSXT Application.⁹ As Norfolk Southern acknowledges, Board-sponsored mediation is not available under 49 C.F.R. §1109.1 to obtain the type of infrastructure and operating changes that Norfolk Southern seeks.¹⁰

If the Norfolk Southern alternative proposal is being requested as a proposed condition, MNBR is opposed because no basis exists to involve G&W, MNBR, or AGR in a mediation to discuss infrastructure projects to be constructed, the cost allocation of those railroad construction projects and operational improvements in and through Meridian, since MNBR is merely the seller in these transactions. Once the transactions are consummated, neither MNBR nor AGR (or

20, 2012); *Kan. City S.—Control—The Kan. City S. Ry.*, STB Docket No. FD 34342, slip op. at 16 (served Nov. 29, 2004)).

⁹ However, Norfolk Southern does include mediation (with CPKC) in its list of conditions. See NS Comments, Condition 7 at 60-61.

¹⁰ NS Comments at 60, n.168.

G&W) would own any infrastructure, let alone the CPKC existing infrastructure in Meridian, requiring improvements to mitigate the Norfolk Southern perceived harms, nor will they operate over any of the proposed improved infrastructure. As such, there would be no basis to include G&W, MNBR, or AGR in any such type of mediation with the express goals of discussing infrastructure improvements or allocating costs amongst the parties. To be clear, MNBR, AGR and G&W would not voluntarily agree to participate in any mediation regarding these issues.

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CONCLUSION

For the reasons stated above, MNBR is opposed to the Board imposing a condition on G&W, MNBR, or AGR that would require G&W or any of its subsidiary railroads to participate in Board-sponsored mediation as requested by Norfolk Southern especially given that MNBR is only a “seller” in the CPKC Application and CSXT Application proceedings, and none of MNBR, AGR or G&W are parties in those proceedings.

Respectfully submitted,



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*Counsel for Meridian & Bigbee Railroad,
L.L.C.*

Dated: January 26, 2024

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing “MERIDIAN & BIGBEE RAILROAD, L.L.C.’S RESPONSE TO THE NORFOLK SOUTHERN COMMENTS AND REQUESTS FOR CONDITIONS” by email or by first class mail, postage prepaid, on the Secretary of Transportation, the Attorney General of the United States, Honorable Judge McCarthy, and all parties of record in each of the following proceedings:

(1) 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.

and

(2 Docket No. FD 36727, CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.



Justin J. Marks

Dated: January 26, 2024