

August 8, 2023

Jay C. Johnson
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Via email

Danielle Gosselin
Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, NW
Washington, DC 20423

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

Dear Ms. Gosselin:

As you know, CPKC filed its first quarterly report with your office on July 14. That report reflects CPKC's hard work to comply with the dozens of environmental mitigation measures that were imposed as conditions of its acquisition of control of KCS. In light of these efforts, CPKC was surprised by both the timing and the contents of the letter and attached comments that you received from the Coalition to Stop CPKC (the "Coalition") on August 3. I am writing to provide CPKC's perspective on certain points made in that letter.

The Coalition's comments start by acknowledging CPKC's "good faith" and agreeing that CPKC's meetings with the Coalition and Coalition communities have been "productive." CPKC agrees. It has engaged with the Coalition and Coalition communities in good faith and will continue to do so.

The balance of the Coalition's comments, however, strike a different tone.

CPKC was particularly disappointed to read the Coalition's comments about the emergency response training that CPKC has offered. Those comments, unfortunately, do not reflect an accurate understanding of the facts. CPKC has gone above and beyond the obligations imposed by its merger commitments. Contrary to the impression created by the Coalition's comments, CPKC has not withheld training from the Coalition communities. Rather, the appropriate training at the Security and Emergency Response Training Center ("SERTC") in Pueblo is not available to anyone this year because the Center is moving to new facilities.

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When the Coalition told CPKC that it wanted training sooner than 2024, CPKC arranged and paid for the development of a special course at the Illinois Fire Service Institute. Sensitive to the Coalition's urgency, CPKC scheduled the first training session to take place in mid-August, with others to follow as late as October. These sessions will provide Coalition communities with additional advantages: they are open to a broader cross-section of first responders than the training at SERTC, they entail less travel and time away from home for personnel based in Illinois, and they provide hazmat training that applies in contexts beyond rail. Once the rail industry's world-class SERTC training is ready, CPKC will also fund attendance there for Coalition-community firefighters as originally planned. The Coalition's dissatisfaction with CPKC's efforts in this area thus ignores these facts; the additional training sessions that CPKC has arranged in Illinois illustrate well CPKC's commitment to engage cooperatively and in good faith,

The Coalition also falsely implies that CPKC has refused to support the Village of Bensenville's efforts to fund a grade separation at York Road. CPKC has committed to support Coalition communities with their requests to state and federal agencies for funding assistance, and CPKC will do so. In this instance, however, neither the Coalition nor the Village of Bensenville has presented any plan to CPKC for a York Road grade separation, let alone asked CPKC to provide a letter of support for any funding application. If Bensenville asks for support in securing funding, in conjunction with the appropriate agencies, CPKC will provide it.

The Coalition also mischaracterizes CPKC's efforts and obligations with respect to the specific grade crossing mitigation imposed by the Board's conditions. First, the Coalition misreads the requirements of the General Code of Operating Rules, which applies to blockages "longer than 10 minutes" resulting from "standing" trains. Most of the Coalition's comments relate to its apparent disagreement that this should be the rule. Similarly, notwithstanding the Coalition's rhetoric regarding asserted "communication gaps" about stopped trains that "may be unable to move for a significant period of time," it does not (and in light of the facts, cannot) point to any situation created by the CP/KCS combination in which CPKC failed to notify a Coalition community of any such train.

Second, regarding the investments that CPKC has committed to support to mitigate grade crossing impacts (VM-Community-3), CPKC's quarterly report described two meetings and two scheduled follow-ups. The report also says that CPKC "outlined a roadmap for implementation" of the technology described in the mitigation measure. But the Coalition criticizes CPKC for not consulting with the

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Coalition in “developing the scope, timeline, or sourcing of the contemplated technologies.” In this, the Coalition seems to have misunderstood what CPKC told it during these meetings. The “roadmap” CPKC described was not some form of formal written document, but an explanation of the steps needed to implement this condition. The Coalition and its communities are fully aware of the roadmap that CPKC outlined at these meetings.

One of the steps in CPKC’s roadmap may be the issuance of an RFP, but the Coalition is wrong to suggest that an RFP has been issued without the input of the Coalition. In fact, CPKC made clear to the Coalition that an RFP has not yet been issued, and that among the necessary steps in doing so is technical consultation with Metra, which owns the track, as well as the PTC and crossing infrastructure. CPKC has reached out to Metra multiples times since mid-May 2023 to set up an initial technical meeting to review the mitigation measures and a path to implementation. By the end of July, Metra had offered dates for such a meeting. A meeting is now scheduled for mid-August to review the mitigation measures, identify challenges, and outline a path forward.

Separately, it is important to note that during the June 8 meeting with the Coalition, CPKC provided an outline of the rail corridor that passes through the Coalition communities (i.e., CPKC’s Elgin subdivision and Metra’s MD-W line) and asked the Coalition to validate the information and fill in any gaps. As of the date of this letter, the Coalition has not followed up with the requested information.

The balance of the Coalition’s comments does not dispute that CPKC’s quarterly report reflects compliance with the Board’s mitigation measures. CPKC is well aware that the Coalition was not fully satisfied by those measures, as evidenced by the Coalition’s petition for judicial review of the Board’s decision. However, CPKC is committed to complying with the measures the Board required and will continue to engage in good faith with the Coalition, despite that organization’s self-avowed purpose “to Stop CPKC.”

If you have any questions about anything in this letter, or anything in the Coalition’s comments that I have not addressed, please do not hesitate to contact me.

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Sincerely,

A handwritten signature in blue ink, appearing to read "Jay C. Johnson", is positioned above the printed name.

Jay C. Johnson

cc: Elizabeth Webster
Thomas W. Wilcox