

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

303516

FINANCE DOCKET NO. 36500

ENTERED
Office of Proceedings
January 12, 2022
Part of
Public Record

**CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
- CONTROL -
KANSAS CITY SOUTHERN, ET AL.**

**DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION BY
NORFOLK SOUTHERN RAILWAY COMPANY**

**Thomas E. Zoeller
Hanna M. Chouest
Norfolk Southern Corporation
650 W Peachtree St NW
Atlanta GA 30308
Tel: (470) 463-6314**

**Steven Newborn
Brianne Kucerik
Christopher Abbott
Weil, Gotshal & Manges LLP
2001 M Street NW
Suite 600
Washington, DC 20036
Tel: (202) 682-7000**

**Attorneys for Norfolk Southern Railway
Company**

January 12, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36500

**CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
- CONTROL –
KANSAS CITY SOUTHERN, ET AL.**

**DESCRIPTION OF ANTICIPATED RESPONSIVE APPLICATION BY
NORFOLK SOUTHERN RAILWAY COMPANY**

In accordance with the Board's Decision No. 11 served in this proceeding on November 23, 2021, Norfolk Southern Railway Company ("NS")¹ submits this Description of Anticipated Responsive Application.

Background

The proposed acquisition of the Kansas City Southern ("KCS")² by the Canadian Pacific Railway ("CP") (jointly, "the Applicants") raises public interest issues of exceptional importance, which potentially affect both NS and the availability of efficient and competitive rail service options for shippers.

NS operates approximately 19,300 route miles in 22 primarily Eastern and Southern states and the District of Columbia. It serves every major container port in the Eastern United States and provides shippers with efficient and competitive routings on its lines and in interchange with other rail carriers, including both KCS and CP, for movements beyond NS lines.

¹ References herein to NS shall include The Alabama Great Southern Railroad Company ("AGS"), the subsidiary of NS that is the official member of the Meridian Speedway, LLC.

² References herein to KCS shall include The Kansas City Southern Railway Company ("KCSR").

Also, NS, together with KCS, are the sole members of Meridian Speedway, LLC (“MSLLC”). MSLLC owns the Meridian Speedway, a critical rail line connecting Meridian, Mississippi and Shreveport, Louisiana. The Meridian Speedway is a significant component of NS’s commercial and operational offerings to customers, and preserving NS’s ability to meet its customers’ needs with competitive rates and services over that line will be a primary focus for NS throughout this proceeding. Since 2006, when NS and KCS formed the joint venture, the Meridian Speedway, true to its name, has provided shippers with the most efficient route between the Northeastern United States and Dallas, Texas, and locations beyond Dallas in the Southwestern United States.

NS currently relies on The Kansas City Southern Railway (“KCSR”), a subsidiary of KCS, as operator of the MSLLC, to achieve these benefits for shippers. Rights that NS anticipates seeking in this proceeding will ensure that shippers continue to benefit from the efficient and competitive routing over the Meridian Speedway following CP’s proposed acquisition of KCS.

In addition, and related to the MSLLC transaction, NS intermodal shippers using the Meridian Speedway have had the benefit of services provided at the Dallas Intermodal Terminal. NS traffic makes up the vast majority of the intermodal traffic moving to and from the Dallas Intermodal Terminal. NS has a keen interest in assuring that shippers retain the availability of such service options.

For those reasons, among others, NS will be seeking conditions and other relief in this proceeding in its filing on February 28, 2022 in furtherance of the public interest to: (1) monitor and ensure that efficient gateways and routings involving NS will continue to be commercially and operationally competitive options for shippers consistent with the Applicants’

representations in their Application; and (2) ensure that NS agreements with KCS to improve capacity and service to shippers, especially at the Dallas Intermodal Terminal and across the Meridian Speedway, are not adversely affected to the detriment of NS and its customers.

Specifically, NS anticipates filing responsive applications in this proceeding for trackage rights relating to the Meridian Speedway as described below.

Anticipated Meridian Speedway/KCS Trackage Rights

Relevant transactional documents relating to the formation of the MSLLC were filed with the STB in 2006 by NS and KCS in connection with the Notices of Exemption for those elements of the transaction requiring Board authorization.³

NS will be seeking, as conditions if the proposed acquisition of KCS by CP is approved, modifications to certain of those agreements, including the Norfolk Southern Railway Company – The Kansas City Southern Railway Company Western Haulage Agreement, the Norfolk Southern Railway Company – Meridian Speedway LLC Joint Use Agreement (“NSR Joint Use Agreement”), and the Dallas Terminal Marketing Agreement.

Under the NSR Joint Use Agreement, which was entered into between NS and KCS in conjunction with the formation of the MSLLC, NS has haulage rights on the Meridian Speedway for overhead intermodal traffic moving between Meridian, Mississippi and Shreveport, Louisiana that (1) originates or terminates in the United States West of Dallas, Texas, and (2) does not originate or terminate on any station of the KCSR or Texas Mexican Railway Company (“Tex-Mex”) (collectively “NS Traffic”). NS also has corresponding contingent trackage rights for NS

³ *Norfolk Southern Railway Company – Trackage Rights Exemption – Meridian Speedway LLC – Between Meridian, MS and Shreveport, LA*, STB Docket No. FD 34821 (served February 22, 2006); *Kansas City Southern, The Kansas City Southern Railway Company, and Meridian Speedway LLC – Exemption for Transactions Within a Corporate Family*, STB Docket No. FD 34822 (served February 22, 2006); *Kansas City Southern Railway Company – Trackage Rights Exemption – Meridian Speedway, LLC*, STB Docket No. FD 34823 (served February 22, 2006).

Traffic in the event of a significant service disruption or asset transfer by MSLLC. These contingent trackage rights were approved by the Board in FD 34821.⁴ NS intends to seek to expand the definition of “NS Traffic” in the NSR Joint Use Agreement (and related Meridian Speedway transactional documents) to include: (1) premium boxcar and automotive traffic and (2) any such intermodal, automotive, or premium boxcar traffic originating or terminating West of Shreveport, Louisiana instead of Dallas, Texas.

Further, in some cases, KCSR or the Tex-Mex cannot serve the traffic even though the traffic technically originates or terminates in a station served by KCSR or the Tex-Mex. NS intends to seek to expand the definition of “NS Traffic” to enable NS to move traffic that would meet the expanded definition as described above, but which, in addition, is (1) traffic originating or terminating in a station served by KCSR or the Tex-Mex, but otherwise not able to be moved by KCSR or the Tex-Mex or (2) traffic that—after the proposed acquisition of KCS by CP—if moved in single line CP/KCS service would result in a significantly longer transit time, resulting in a material delay to shippers, as compared to an NS routing over the Meridian Speedway.

To fully preserve and protect the competitive options that are currently available to shippers over the Meridian Speedway, NS anticipates that it may seek trackage rights for this expanded definition of NS Traffic over the lines of railroad of MSLLC between Meridian, Mississippi and Shreveport, Louisiana and of KCS between Shreveport, Louisiana and Dallas, Texas, all as described in the NSR Joint Use Agreement and the Western Haulage Agreement to be effective upon a Board approved CP/KCS merger. As with the current contingent trackage rights that NS has over the MSLLC, the compensation for these additional trackage rights shall

⁴ See footnote 3.

be typical in the industry for trackage rights and consistent with Board decisions providing for determining such compensation.

NS also anticipates that it may seek (i) any trackage rights that may be necessary over the four-tenths of a mile section of track owned by Canadian National Railway Company in Jackson, Mississippi (the “Jackson Section”), to move the additional NS Traffic described above and (ii) contingent trackage rights without any commodity or volume restrictions over the continuous line (a) on the Meridian Speedway between Meridian, Mississippi and Shreveport, Louisiana (including the Jackson Section) and (b) on the KCS line between Shreveport, Louisiana and locations at Dallas, Texas consistent with the locations described in the current Western Haulage Agreement, exercisable at the option of NS in the event of a Major Transaction involving CP, KCS, or NS to preserve the Meridian Speedway as an efficient and competitive alternative.⁵

As the record in this proceeding develops, NS may seek additional relief as conditions in connection with CP’s proposed acquisition of KCS, whether or not requiring a Responsive Application, in its comments scheduled to be filed on or before February 28, 2022.

⁵ Major Transactions are defined in 49 CFR § 1180.2 as a control or merger involving two or more Class I railroads.

Respectfully submitted,

/s/ Steven Newborn

Thomas E. Zoeller
Hanna M. Chouest
Norfolk Southern Corporation
650 W Peachtree St NW
Atlanta GA 30308
Tel: (470) 463-6314

Steven Newborn
Brianne Kucerik
Christopher Abbott
Weil, Gotshal & Manges LLP
2001 M Street NW
Suite 600
Washington, DC 20036
Tel: (202) 682-7000

Attorneys for Norfolk Southern Railway
Company

January 12, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2022 the above Description of Anticipated Responsive Application has been e-filed via the STB's e-filing system and served via email or regular postage pre-paid mail on all parties of record in this proceeding.

/s/ Daniel Baquet

Daniel Baquet

January 12, 2022