

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

ITAS-4
304732

ENTERED
Office of Proceedings
June 9, 2022
Part of
Public Record

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAIN & QUEBEC
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION;
AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY
COMPANY

SUPPLEMENTAL OPENING COMMENTS AND REQUEST FOR CONDITIONS
OF THE COALITION TO STOP CPKC

Pursuant to the decision served by the Surface Transportation Board (“STB” or “Board”) in this proceeding on May 27, 2022, the Village of Itasca, Illinois, on behalf of itself and the Village of Bensenville, Illinois, City of Wood Dale, Illinois, Village of Roselle, Illinois, Village of Schaumburg, Illinois, Village of Hanover Park Illinois, Village of Bartlett, Illinois, City of Elgin, Illinois, and DuPage County, Illinois¹ (collectively called the Coalition to Stop CPKC

¹ DuPage County, Illinois formally joined the Coalition on March 8, 2022. DuPage County is the second largest county in the State of Illinois (926,000 residents). Six of the Coalition members (Bartlett, Wood Dale, Itasca, Hanover Park, Roselle, and Schaumburg) are located either entirely or partially within DuPage County. The DuPage County government serves all unincorporated areas of the county.

(“Coalition”)), hereby submit these Supplemental Opening Comments and Request for Conditions (“Supplemental Comments”) addressing certain aspects of the Amended Operating Plan submitted by the Applicants on May 13, 2022 as directed by the Board in its decision served in this proceeding on April 27, 2022 (“*April 27 Decision*”). In that decision, the Board required the Applicants “to amend their Operating Plan to include: (1) an explicit identification of the baseline traffic density values used in the Operating Plan calculations and to be used in the environmental review; (2) a comprehensive explanation of how those values were generated; and (3) a comprehensive explanation of the rationale underlying those methodological choices.”² The Board also stated that, “[g]iven the issues presented in the record to date, the Board will also require that Applicants support data claims in the Operating Plan with specific citations to relevant portions of any supporting workpapers.”³

The Board further held that “[p]arties that filed comments and/or responsive applications will be permitted to file amended comments and/or responsive applications that address the new information in the amended Application”⁴ Accordingly, these Supplemental Comments address the new traffic density information provided by the Applicants in their Amended Operating Plan and how it affects the facts and issues presented by the Coalition in their Opening Comments. Additionally, these Supplemental Comments address a significant change to the Applicants’ planned operations over the Elgin Subdivision post-merger that has been inserted into the Amended Operation Plan, and the Coalition members request that the Board hold the Applicants

A summary description of the other members of the Coalition was included in Attachment A to the Coalition’s Opening Comments and Request for Conditions.

² *April 27 Decision* at 6.

³ *Id.*

⁴ *Id.*

to their new representation concerning the reduction of average train sizes moving over the Elgin Subdivision if their proposed merger is approved.

I. Introduction

As explained in their Opening Comments, each member of the Coalition is located along a portion of line of railroad in the vicinity of Chicago, Illinois known as the Soo Line Railroad Company's ("CP") Elgin Subdivision. The Elgin Subdivision runs westward from Milepost ("MP") 0.0 at "Tower A5" in Chicago to MP 40.3 at Randall Road near Elgin, Illinois, where it connects to CP's Chicago Subdivision, which in turn connects with CP's Marquette Subdivision in Sabula, Iowa. Although CP conducts freight operations on the Elgin Subdivision, the tracks are owned by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra ("Metra"). Metra designates this part of its system the Milwaukee District West Line ("MD-W Line"), and the Coalition's Opening Comments summarize how Metra uses the MD-W Line to provide commuter rail line service to the approximately 325,000 residents who live in the Coalition's communities between downtown Chicago and Elgin, Illinois.

Despite its primary use as a commuter line, the Elgin Subdivision is also CP's current primary route to and from Kansas City, KS and downtown Chicago. Applicants contemplate the Elgin Subdivision will remain the primary means for the merged railroad to reach Kansas City from Chicago, and they intend to nearly quadruple the number of trains that run over it through the Coalition communities. Applicants' Operating Plan and their Amended Operating Plan reflect that freight rail operations differ over different segments of the Elgin Subdivision. CP currently conducts more rail operations between MP 0.0 and MP 17.3 of the line due to the presence of CP's Bensenville Yard, located between MP 12.7 and MP 17.3, which several rail lines feed into from the north and south. With the exception of the Village of Bensenville, whose corporate boundary

extends east of MP 17.3 to approximately MP 16,⁵ the Coalition communities are located between MP 17.3 and Milepost 36.6, over which CP states it presently operates approximately three 10,000 foot freight trains per day.⁶ The Coalition's section of the Elgin Subdivision generally coincides with the "Bensenville Metra Ill – Randall Road, IL" segment (Segment Code C-ELGI-01) CP has created in the Amended Operating Plan.⁷

In their Opening Comments the Coalition have demonstrated how the Original Operating Plan proposed by the Applicants would cause immeasurable, collective harm to all of the Coalition members because (1) Applicants stated they plan to more than triple the current level of freight rail trains on the Coalition's section of the Elgin Subdivision in three years - while also increasing the length of the trains, (2) the Original Operating Plan substantially understated the actual number of freight trains and other rail movements that currently traverse the line and would on this section post-merger; and (3) Applicants have essentially ignored or wished away the substantial harm that their proposed merger and planned operations will cause the Coalition communities.

The Opening Comments further explain how the Coalition members conducted a preliminary review and analysis of the measures that would have to be taken to even contemplate accommodating the Applicant's proposed Original Operating Plan as applied to their portion of Elgin Subdivision. The Coalition concluded these measures would number in the hundreds, and the aggregate total of the preliminary estimates of the costs to implement them range between \$5.5

⁵ The City of Bensenville's boundaries extend to approximately the location where the tracks of Union Pacific Railroad Company cross the Elgin Subdivision.

⁶ See Opening Comments at 5; Amended Operating Plan, Appendix A, page 4 (showing "Base Plan Train Count" of 3.2)

⁷ See Amended Operating Plan, Appendix A, page 4. The Original Operating Plan did not divide the Elgin Subdivision into separate segments, which among other things obscured the dramatic increase in trains per day planned for the western end of the line which runs through the Coalition communities.

and \$9.5 *billion*. Because the costs to try to mitigate the harms to the Coalition communities easily dwarf any potential benefits of the proposed merger, the Coalition have requested in their Opening Comments that any approval of the merger by the Board must be conditioned on the following:

1. The Board's imposition of the mitigation measures identified by each Coalition community in Attachment A to the Opening Comments;
2. Applicants' modification of their operating plan to eliminate any additional freight rail traffic from traversing the western end of the Elgin Subdivision post-merger and to find other routings for such traffic.
3. The Board's establishment of limits on the length of trains that can traverse the western end of the Elgin Subdivision post-merger.
4. The Board's establishment of a public process whereby, if the merged railroad wants to add traffic to this line post-merger, it must first demonstrate it is operationally feasible and safe and agree to be subject to any and all appropriate mitigation measures.
5. The Board's adoption of a vigorous and pro-active oversight period of the merger for not less than five years, which subjects the merged CPKC to strict reporting requirements and penalties for non-compliance.

II. Supplemental Comments on Density Data in Amended Operating Plan

As stated, per the Board's instructions, these Supplemental Comments address the updated traffic density data submitted by the Applicants pursuant to the *April 27 Decision*. The Coalition notes that the Amended Operating Plan still retains all of the flaws of the original Operating Plan pointed out by the Coalition and other parties in their respective opening comments, and the additional density information does nothing to diminish those flaws. Indeed, the Amended Operating Plan confirms that the Applicants have understated the harm that their proposed operations would cause to the Coalition communities and raises additional doubts about the efficacy of the Applicants' projections and support for such projections.

A. The Number of Trains Per Day Over the Elgin Subdivision

In October 2021 Applicants provided materials to the STB's Office of Environmental Analysis ("OEA") indicating that they expected the number of trains that would traverse the western end of the Elgin Subdivision would increase by 8.0 trains per day over a period of three years, for a total of approximately 11 freight trains traversing this densely populated urban area each day.⁸ The average length of a train currently is 10,000 feet, and some trains are as long as 12,000 feet. Either length is enough to simultaneously block all the crossings in some Coalition members' communities, and the Coalition in aggregate has 54 crossings, some of which already experience delays and disruptions from freight trains.⁹ On October 29, 2021 the Applicants submitted their Application and Original Operating Plan, which without any explanation reduced the number of additional trains per day that would traverse the western section of the Elgin Subdivision from 8.0 to "7.1."¹⁰ Based on the Original Operating Plan's representations of a 7.1 train increase, the Coalition's Opening Comments address the substantial harm that would be caused by permitting the current number of trains to be increased by 7.1 trains over the next three years after the merger was approved.

In their Amended Operating Plan submitted at the direction of the Board, the Applicants have modified it to state, again without any explanation and without reference to any workpapers, that the daily train count will indeed increase by 8.0 trains per day over the tracks running through the Coalition communities. As with their now discarded representation that there would be an

⁸ See Document EI 31352, attached to "CP-KCS Response to Info Request No. 1," submitted to OEA on October 28, 2021 at pp. 2-3. Some of the Coalition members submitted scoping letters to OEA which commented on the issues presented by the purported eight trains per day increase.

⁹ Opening Comments at 5.

¹⁰ Operating Plan (Exhibit 13), pages 57 and 66.

increase of 7.1 trains per day, the Applicants have taken the position that adding 8.0 trains per day to the western end of the Elgin Subdivision will have no impact on the Coalition communities or Metra's operations. This is plainly evident from the fact that Applicants simply replaced "7.1" with "8.0" in the relevant text of the Original Operating Plan and have added no additional text addressing the change or its potential. More troubling however, is that one reason for the Applicants' silence on the change or its impact is that the Amended Operating Plan asserts, wrongly, that the Original Operating Plan was also based on an increase of 8.0 trains per day.¹¹ Proceeding from that erroneous premise, the Applicants reach the wrong conclusion that the change in train count between the two operating plans is "0.0."¹² Thus, by wrongly stating that the train count increase all along was 8.0 Applicants relieve themselves of the need to explain why the increase from 7.1 to 8.0 trains occurred and to address its potential impacts. The Coalition submits that the additional freight train per day under the Amended Operating Plan is a significant incremental increase under all the circumstances and will cause additional harm to their communities that further justifies the relief they have sought in their Opening Comments.

Moreover, the Coalition pointed out - and Metra confirmed -¹³ that Applicants significantly have understated the actual number of freight trains that the merged railroad would transport over the western end of the Elgin Subdivision post-merger in their Original Operating Plan. As

¹¹ See Amended Operating Plan, Appendix U, page 5, Column 2 (showing "Oct. 2021 Op. Plan Train Count Increases" to be 8.0 instead of 7.1.); see Letter from Applicants' counsel filed May 25, 2022 in Docket No. FD 36500, which also refers to "eight additional trains" as if that was the number in the Original Operating plan, and that, therefore the Amended Operating Plan "reflects no changes whatsoever to the Transactional-related impacts on rail traffic in the Chicago area"

¹² *Id.* at Column 3.

¹³ The Coalition intends to submit a response to Metra's Opening Comments and to the opening comments of certain other parties on July 12, 2022 pursuant to the procedural schedule established in the May 27 Decision.

explained by the Coalition, it is highly likely that the 6.6 trains per day to and from Kansas City that Applicants claim they will divert from the Chicago area by routing them over the Marquette Subdivision¹⁴ will in fact instead be routed over the Elgin Subdivision until the infrastructure required to accommodate the diversion is constructed, as there is no other route available. Applicants have provided no timetable for such construction. Adding these 6.6 trains to the 8.0 Applicants now state will be added over the next three years would mean the total number of freight trains running over the western end of the Elgin Subdivision could reach *nearly 18 trains per day* where currently there are only around 3.¹⁵ This cannot be accomplished absent severe harm and disruption to the Coalition communities, and indeed it might not be operationally feasible in any event. However, Metra in its Opening Comments has asserted that the number of trains on the Elgin Subdivision could be even *higher* due to the Operating Plan's exclusion of certain other traffic.¹⁶ Applicants should be directed to clarify the updated density data as to the Elgin Subdivision to inform the Board and other interested parties as to why the additional train was excluded from the Original Operating Plan, and provide details about train size, the expected commodities, and the Applicant's rationale for why nearly quadrupling the number of trains over this segment in a span of only three years will result in no adverse impacts on the Coalition communities.

¹⁴ See Operating Plan at 57 ("CP anticipates an incremental 6.6 trains per day over the Marquette Subdivision following the combination with KCS – volumes which will be routed around Chicago as opposed to through it.").

¹⁵ Base Plan of 3.2 + 8.0 stated increase + 6.6 = 17.8 total trains per day.

¹⁶ Metra Opening Comments at 56-60.

B. Density and Impacts on Communities Near the Bensenville Yard

In the Amended Operating Plan, the Applicants have updated their discussion about the Bensenville Yard by breaking out the expected train counts and density data for the segment of the Elgin Subdivision that Applicants say encompasses the yard, which they indicate is MP 17 to MP 12.¹⁷ According to the Amended Operating Plan the Applicants estimate that an additional 6.43 trains per day will traverse this section of line post-merger.¹⁸ As stated above, the corporate boundaries of the Village of Bensenville extend east of MP 17, and so it is impacted by both the increased traffic from that point west and the current and planned increased use of the Bensenville Yard and tracks between MP 12 and MP 17. The Bensenville Yard is currently CP's major classification yard and its intermodal terminal.¹⁹ At present the Bensenville Yard's longest siding is 6,000 feet, which means that the average train length of 10,000 feet cannot fit in the yard intact, which causes delays and disruptions due to freight trains occupying the main line and blocked road crossings.

Nevertheless, the success of Applicants' Original Operating Plan and Amended Operating Plan heavily relies upon a dramatic increase in the use of the Bensenville Yard. Among other things, Applicants predict increases of processed rail cars in the Bensenville Yard of 214% (and the nearby Schiller Yard of 2440%).²⁰ Applicants also intend to assemble 10,000 – 12,000-foot intermodal and automotive trains in the yard for transportation over the western end of the Elgin

¹⁷ Amended Operating Plan at 92.

¹⁸ Amended Operating Plan, Appendix A, page 4.

¹⁹ See Opening Comments, Verified Statement of Gary V. Hunter at

²⁰ 4. Amended Operating Plan at 75.

Subdivision.²¹ These plans will require major capital investment, which Applicants have indicated they intend to make but have not provided a timeline for.²²

III. Applicants Should be Held to Their New Assertion that Train Sizes Operating on the Elgin Subdivision Will be Reduced Post-Merger

In their Original Operating Plan, and in their Amended Operating Plan, the Applicants repeatedly assert that their merger would create efficiencies through the use of longer trains, and that these longer trains would be transported over the Elgin Subdivision through the Coalition communities. As stated above and explained in the Coalition's Opening Comments, the length of freight trains traversing the western end of the Elgin Subdivision is a major issue because there are 54 crossings over the approximately 20 miles of track that runs through the Coalition members' jurisdictions. This means that one 10,000-foot freight train can stretch across numerous crossings, in some cases four or more. The idea that average train size would be reduced by the Applicants voluntarily post-merger on the Elgin Subdivision, or anywhere else on the Applicants' combined system, appears nowhere in the Original Operating Plan. Nor has the certainty of average train length being reduced post-merger ever been conveyed to Coalition members by Applicants during their infrequent discussions about the Coalition's concerns with the merger. Consequently, the Coalition has requested in its Opening Comments that the Board condition any approval of the proposed merger on limiting the size of the trains that traverse the western end of the Elgin Subdivision.²³ The Coalition has also asked the Board to condition any approval of the proposed merger on a requirement that the Applicant's Operating Plan be amended to eliminate any

²¹ *Id.* at 73; *See also id.*, at 119

²² Amended Operating Plan at 127.

²³ The Coalition has requested the Board to place limitations on the timing, train sizes and frequency of new freight traffic on the Elgin Subdivision. Opening Comments at 14.

additional traffic over the Elgin Subdivision line post-merger in excess of current levels, which can also include capping train lengths.²⁴

Perhaps in response to the concerns of the Coalition and others concerning the Applicants' statements about relying on longer trains to achieve operating efficiencies, the Applicants have modified their Original Operating Plan to unequivocally assert that average train length will be reduced post-merger over the Elgin Subdivision. Specifically, the Amended Operating Plan now states that "[i]n many lanes, such as CP's Chicago and Elgin Subdivisions in Illinois, *the expansion of the CPKC train network will lead to reductions in the average length of trains* as the additional traffic is spread across more train starts and train length is managed to make efficient use of available siding locations."²⁵ Applicants did not accompany this assertion with any additional explanation, data, or workpapers. For example, the Applicants did not state that reducing train size wouldn't be accompanied by an increased number of trains per day over the Elgin Subdivision, which would reduce, if not negate entirely, the benefits from reducing train size. Nevertheless, the Applicant's representation in their Amended Operating Plan that the average length of trains operating over the Elgin Subdivision will be reduced post-merger is potentially significant, and the Coalition believes that the Board should impose an additional condition on any approval of the proposed merger that (1) holds Applicants to their statement that average train size will be reduced over the Elgin Subdivision and (2) requires that the reductions shall not be accompanied by an

²⁴ *Id.* at 16. *See also, Id.* at 21 ("The Board must therefore condition any approval of the proposed merger on a requirement that the Applicants revise their operating plan to eliminate any increase in the number and size of trains that currently operate over the western end of the Elgin Subdivision.").

²⁵ Amended Operating Plan at 75-76 (emphasis added).

increase in the number of trains. Moreover, this condition should be part of the monitoring, reporting and oversight process the Board must adopt if it approves the merger.²⁶

IV. Conclusion

In conclusion, the Amended Operating Plan reinforces the serious concerns that the Coalition has with the merger of CP and KCS as it is proposed. All of the major flaws of the Original Operating Plan remain, with the possible exception of the Applicants' new representation that average train size will decrease on the Elgin Subdivision post-merger, which Applicants should be required to fulfill.

Respectfully submitted,



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²⁶ Opening comments at 19-21.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2022 a copy of the foregoing Supplemental Opening Comments and Request for Condition was served on each Party of Record listed on the official Service List for this proceeding.

/ss/ Thomas W. Wilcox