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December 31, 2021

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

Submitted via e-filing

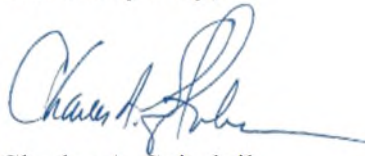
Re: STB Finance Docket No. 36500, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern et al.*

Dear Ms. Brown:

I am attaching for e-filing in the above-captioned proceedings the Commuter Rail Division of the Regional Transportation Authority's Motion to Compel Production of Documents from Canadian Pacific Railway Limited et al.

Please do not hesitate to contact me with any questions.

Yours very truly,



Charles A. Spitulnik
Counsel for the Commuter Rail Division of
the Regional Transportation Authority d/b/a/
Metra

Enclosure

Cc: All parties of record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36500

**CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD
CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. –
CONTROL – KANSASCITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY,
AND THE TEXAS MEXICAN RAILWAY COMPANY**

**COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM
CANADIAN PACIFIC RAILWAY LIMITED ET AL.**

Communications with respect to this pleading
should be addressed to:

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*Counsel for the Commuter Rail Division of the
Regional Transportation Authority d/b/a Metra*

Dated: December 31, 2021

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SURFACE TRANSPORTATION BOARD**

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**CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
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CONTROL – KANSASCITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY,
AND THE TEXAS MEXICAN RAILWAY COMPANY**

**COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM
CANADIAN PACIFIC RAILWAY LIMITED ET AL**

INTRODUCTION

The Commuter Rail Division of the Regional Transportation Authority, dba Metra (“Metra”) moves to compel production of documents from Canadian Pacific Railway Limited (“Canadian Pacific”), Canadian Pacific Railway Company (“CPRC”), and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway U.S. Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (“CP”), and Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company (“KCS”) (collectively, “Applicants”).

CP has failed to comply fully with Metra’s Request for Production of Documents and has provided documents that are not fully responsive to Metra’s reasonable and appropriate request. The documents that Metra has requested are necessary in order to evaluate whether the

requested merger with KCS will impact commuter operations in northeast Illinois. The documents and information that Metra has requested constitute standard information that CP uses and maintains in the normal course of business and should be easily retrievable. However, rather than adequately responding to Metra's requests, CP has omitted necessary documents, has tendered dated documents for which there are surely more current versions, and has provided most data in non-native/PDF format, making it impossible to evaluate CP's traffic and capacity analysis or to conduct an independent analysis using CP's inputs. CP has done this even after Metra has made detailed requests, has requested documents in usable (native) formats, has had its data experts meet with CP to discuss the requests, and has made clear to CP how it intends to use the data. CP's refusal to provide the documents Metra has requested seriously jeopardize Metra's ability to adequately review and respond to the impacts of the proposed transaction by the Board's deadline of February 28, 2022.

BACKGROUND

Metra conducts commuter rail operations in northeastern Illinois, with responsibility for day-to-day operations, fare and service levels, capital improvements and planning of one of the largest commuter rail systems in the country. The Metra system provides service to and from downtown Chicago with 242 stations, over 11 routes totaling nearly 500 route miles, and approximately 1,200 miles of track. Metra operates nearly 700 weekday trains, providing almost 290,000 passenger trips each weekday (pre-COVID). Metra serves as a fundamental part of the regional transportation network, providing efficient commuter rail service that enhances the economic and environmental health of northeast Illinois. Metra is owner and passenger commuter rail operator of the Milwaukee District-North Line ("MD-N Line") and Milwaukee District-West Line ("MD-W Line", over which CP operates as part of its C&M and Elgin

Subdivisions, respectively, and which will be impacted by the proposed transaction. As such, Metra is a critical stakeholder in these proceedings. *See* CP-33/KCS-21 at 13 (“Of course, Metra and Amtrak can speak for themselves if they have concerns about impacts on the passenger services they provide.”)

On March 22, 2021, Applicants filed a notice of intent to file an application seeking Board approval for merger approval (“Application”). On May 19, 2021, after the Board ruled that the Application is a “major” transaction, Metra filed a notice of intent to participate in these proceedings. On October 29, 2021, Applicants filed their application, and on November 23, 2021, the Board accepted the Application and set a procedural schedule for its consideration. The Application, by its own terms, will result in significant rail traffic increases on the Metra-owned MD-W Line and CP’s adjacent Bensenville Yard, and may also impact traffic on Metra’s MD-N Line. While Applicants state that there is “ample capacity” on the MD-W Line and that “Metra service will not be adversely affected” for either the MD-W Line or MD-N Line, Applicants’ Railroad Control Application, Docket No. 36500 (filed Oct. 29, 2021), App. Vol. 2, CP-25/KCS-13 at [Public Version] 313-314, 322, it is Metra’s duty to independently assess these assertions.

On November 24, 2021, Metra served its first request for production of documents (“Metra’s RFP”, attached as **Attachment A**) on Applicants in which Metra requested that Applicants produce the requested documents within 15 days, as permitted under Board regulations.

To date, Applicants have not fully responded, despite discussions between the parties’ counsel and a videoconference meeting held on December 14 to clarify the requests and to discuss Metra’s intended use of the documents to independently evaluate CP’s traffic and capacity modeling and to potentially conduct its own modeling. The written responses that CP provided to Metra’s RFP on December 9 (attached as modified as **Attachment B**) are not fully responsive.

In many cases CP has provided documents that are dated, incomplete, or unusable in the format produced, even though Metra has asked for these documents in a usable format that CP surely must possess. Specifically, Request No. 2 of Metra's RFP requested that Applicants:

Produce, in standard track chart format and in electronic database file format, documents containing all current track data for the Applicable Routes [defined in Metra's RFP], including but not limited to the following:

- a. The Track Charts for all routes to be modeled, including industry leads and spurs;
- b. Station names, valuation section numbers, and latitude/longitude data;
- c. Track elevation, curvature, and grade data;
- d. Speed limits (may be present in track charts or timetables);
- e. Detailed schematics of track intersections, vehicle road crossings and interchange locations;
- f. Rail weight, turnout sizes, switch and signaling data; and
- g. Detailed yard configurations for all yards to be modeled.

The track data requested above is used and maintained by CP in the normal course of business and is kept readily available in electronic database file format for their own operational purposes.

All but one of the 27 files provided by CP to Metra in response to Request No. 2 are PDF (hard copy) files, not electronic database format. Further, many of the provided files are PDFs of hand drawn track charts that are decades old and no longer used in the normal course of business, and likely not reflective of the track that exists today. Only one file was produced in spreadsheet format, and this document contained limited information (speed limits for two subdivisions—Marquette and C&M). This document contained no data for lat/long, curves, grade, turnout locations, main trains, sidings, or other information specifically requested in Metra's RFP.

These types of data would have been used by CP to conduct its own traffic and capacity modeling for the Application, and are necessary inputs for Metra to understand at any level beyond superficially whether CP has accurately determined and represented existing conditions and future impacts that the proposed transaction will have on line users, including users of lines owned, maintained, and operated by Metra in the Chicago metropolitan area. Without such information, Metra must simply take CP at its word with respect to impacts of the proposed transaction on Metra's service.

In Request No. 6, Metra requested that Applicants "Produce documents containing all modeling exercises performed by Applicants in developing the post-merger operating plan that Applicants submitted to the STB with their application on October 29, 2021, in STB Finance Docket 36500." Again, a recent complete set of this information should be readily retrievable from CP, and CP would understand that access to the complete set would be necessary for Metra to verify that CP's assessment of traffic and capacity is correct.

In response to Request No. 6, CP provided several documents related to modeling exercises in spreadsheet format but omitted additional spreadsheet files referenced in the produced documents. Without the complete set of documents used to conduct the modeling, it is impossible to evaluate CP's work. In addition, the documents provided by CP are dated and appear not to be the most recent evaluations made of the subject facilities that would have been performed by Applicants in developing the post-merger operating plan submitted to the Board in these proceedings.

ARGUMENT

A. Discovery Includes All Documents “Relevant to the Subject Matter Involved in a Proceeding” and Applicants Should Be Required to Produce Any Documents It Has That Are Related to Traffic Flow On and Around Metra’s Lines in the Formats Requested.

The Board’s discovery rules at 49 C.F.R. Part 1114 permit “discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding . . .” 49 C.F.R. § 1114.21(a)(1). The Board has interpreted its regulations around discovery broadly. See *Canadian Pac. Ry. Ltd. et al.*, FD 36500 (No. 7), slip op. at 4 (STB served Aug. 2, 2021) (acknowledging authority to seek material relevant to subject matter of proceeding under 49 C.F.R. § 1114.21 and interpreting scope of relevance in discovery “[b]roadly”); *Order of Administrative Law Judge Clarifying Prior Order on Motion to Compel Discovery Responses, Finch Paper LLC—Petition for Declaratory Order*, FD 35981, slip op. at 2 (STB served Jan. 18, 2017) (referring to STB discovery regulations as using “a very liberal standard” and describing “relevant” as “a broad standard”); *CSX Transportation, Inc. and Del. And Hudson Ry. Co., Inc.—Joint Use Agreement, Motion to Compel*, FD 35348, slip op. at 3 (STB served Aug. 16, 2010) (parties are entitled to discover regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding and relevance means that information might be able to affect the outcome of a proceeding) (citing 49 C.F.R. § 1114.21).

The Board’s discovery rules “follow generally those in the Federal Rules of Civil Procedure” and generally permit parties to “obtain discovery regarding any matter that is not privileged and that is relevant to the subject matter involved in a proceeding.” *PEPCO v. Consolidated Rail Corp., et al.*, STB Docket No. 41989, slip op. at 1 n.5 (Service Date May 27, 1997). Referencing Rule 26 of the Federal Rules of Civil Procedure (“FRCP”), the Board determined that discovery in STB proceedings covers “all documents, electronically stored

information, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses” *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub.-No. 1), slip op. at 69 (STB served Sept. 5, 2007).

The documents sought in Metra’s RFP relate to assessing Applicants’ claims that traffic growth from the proposed merger will not impact the lines on which Metra operates. *See, e.g.*, CP-25/KCS-13 at [Public Version] 313-314, 322 (alleging that growth will occur “without impact to the METRA passenger service windows” and “Metra service will not be adversely affected”). In order to properly assess these claims, Metra needs to understand and independently verify the inputs, modeling, and analysis that went into them. CP’s incomplete and inadequate response severely hampers Metra’s ability to conduct this review in light of the procedural schedule imposed by the Board for these proceedings.

The track data information in the format requested by Metra in Request No. 2 is used by CP in the normal course of business and is necessarily kept readily available in electronic database file format for their own operational purposes. CP also must necessarily keep up-to-date electronic information, rather than the decades-old, hand-drawn information, for its own operational and safety purposes. Whatever more recent data CP has, CP is not providing.

CP complains in its response to Metra’s RFP that it does not know the definition of “current” in Metra’s request for “documents containing all current track data.” The materials produced by CP is not current under any definition.¹ Moreover, they are not responsive in that they are not in the format requested, and therefore not duplicative of any documents that CP has produced.

¹ To remove doubt regarding the definition of current, Merriam-Webster defines it as follows: “current: happening or existing now: belonging to or existing in the present time”.

Applicants assert that they need not provide documents relating to Applicants’ operations “that do not pertain to territory within the scope of Metra’s operations.” Applicants’ Response, at 4– 6, 8, 12, 15 (General Objection and Responses to Request Nos. 1–3, 7, 12). However, under FRCP 26 and STB precedent, Metra has a right to request operational information on which Applicants intend to rely so that Metra may independently model and evaluate the capacity on lines outside of Metra’s system and whether those lines can sustain the traffic growth with no impact on Metra’s lines. See FRCP 26 (scope of discovery includes all documents and information in the “possession, custody, or control” of the disclosing party); *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub.-No. 1), slip op. at 69 (STB served Sept. 5, 2007) (discovery in STB proceedings covers documents “the disclosing party may use to support its claims or defenses”); *PEPCO v. Consolidated Rail Corp. et al.*, STB Docket No. 41989, slip op. at 1 n.5 (STB served May 27, 1997) (STB discovery regulations generally follow FRCP).

Applicants’ operational data for its lines—even those on which Metra does not operate—clearly fall within the Board’s discovery regulations, particularly given that Applicants may seek to use this information to impact the outcome of the proceeding. See *Canadian Pac. Ry. Ltd. et al.*, FD 36500 (No. 7), slip op. at 4 (STB served Aug. 2, 2021) (scope of relevance in discovery is broad); *Order of Administrative Law Judge Clarifying Prior Order on Motion to Compel Discovery Responses, Finch Paper LLC—Petition for Declaratory Order*, FD 35981, slip op. at 2 (STB served Jan. 18, 2017) (referring to STB discovery regulations as using “a very liberal standard” and describing relevance as “a broad standard”); *CSX Transportation, Inc. and Del. And Hudson Ry. Co., Inc.—Joint Use Agreement, Motion to Compel*, FD 35348, slip op. at 3 (STB served Aug. 16, 2010) (relevance means that information might be able to affect the outcome of the proceeding). In addition, if Applicants plan to rely on this operational data to

support their Application, Applicants cannot claim that producing those materials is too burdensome because they have them identified and ready to reference or have already used them as the basis for its prior assertions.

Applicants speculate that some documents Metra is requesting are already in Metra's possession. For instance, Applicants include in their Response a general objection to providing documents "already in Metra's possession, custody or control, or that are publicly available, or that are otherwise obtainable in a more convenient, less burdensome or less expensive manner than from the Applicants." Applicants' Response, at 3.

Whether or not Metra might have any of the documents in its possession is immaterial. A federal district court interpreted Rule 34 of the FRCP to conclude that alleged possession of documents by the requester is not a valid excuse from discovery. *See Ragan v. Jeffboat LLC*, 149 F. Supp. 2d (S.D. Ind. 2001) ("Jeffboat did not produce the document [requested by Mr. Ragan] during discovery and it now offers no plausible explanation for not having done so. The fact that Mr. Ragan originally produced the document to Jeffboat is irrelevant.").

In addition, numerous district courts in other jurisdictions have reached similar holdings interpreting Rules 26, 34, and 45 of the FRCP. *See Strobel v. Rusch*, No. 18-656 RB/JFR, 2020 U.S. Dist. LEXIS 248004, at *5, *14-15 (D.N.M. Jan. 23, 2020) ("The fact that Plaintiffs may already have some of the documents they are seeking does not relieve Defendants of their discovery obligations [under FRCP 26].") (citations omitted); *Certain Underwriters at Lloyd's v. Amtrak*, No. 16-MC-2778 (FB), 2016 U.S. Dist. LEXIS 162783, at *13 (E.D.N.Y. Nov. 23, 2016) ("[C]onsistent with precedent from within this Circuit, RMI should not be excused from responding to the subpoena on the ground that Amtrak already has the documents sought.") (citations omitted); *P.R. Med. Emergency Grp., Inc. v. Iglesia Episcopal Puertorriquena, Inc.*,

318 F.R.D. 224, 230 (D.P.R. 2016) (“Courts have held that [under FRCP 34] a responding party is required to produce documents in its possession, custody, or control regardless of whether the requesting party is already in possession of the requested documents.”); *SSL, LLC v. Garcia-Chicoine Enters.*, Nos. 04-1017-JTM, 04-1189-JTM, 2005 U.S. Dist. LEXIS 48112, at *10 (D. Kansas Aug. 24, 2005) (“[T]he fact that G-C may already have these bids in its possession is not a proper objection to disclosure [under FRCP 26].”); *Walt Disney Co. v. DeFabiis*, 168 F.R.D. 281, 284 (C.D. Cal. 1996) (“[Under FRCP 26,] defendant DeFabiis is required to produce documents he has in his possession, custody or control, regardless of whether he believes plaintiff already has those documents.”); *Fort Wash. Resources v. Tannen*, 153 F.R.D. 78, 79 (E.D. Pa. 1994) (“[I]t is not a bar to the discovery of relevant material [under FRCP 26] that the same material may be in the possession of the requesting party or obtainable from another source.”).

Metra fears that Applicants’ proposed transaction will seriously impact commuter rail service and freight and passenger rail service within Chicago, one of the country’s most vital rail service hubs. CP’s failure to fully comply with Metra’s requests severely hampers Metra’s ability to assess critical aspects of Applicants’ proposed transaction in time to provide comments within the Board’s procedural schedule. Given the time provided for stakeholders to comment on this transaction, further delay will jeopardize Metra’s ability to fully assess and respond to this important matter.

CONCLUSION

Wherefore, Metra requests that the Board grant Metra’s motion compel Applicants (and CP in particular) to fully comply with Metra’s RFP, including specifically providing fully responsive documents to Request Nos. 2 and 6 in the requested format as outlined above, within

three business days and for such other relief as is appropriate in the circumstances to permit Metra to have sufficient time to assess the impact of the proposed transaction on Metra's operations.

Respectfully submitted,



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Dated: December 31, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have on the 31th day of December 2021, caused to be served a copy of the foregoing MOTION TO COMPEL, upon all parties of record in this proceeding.



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Dated: December 31, 2021

Exhibit A

First Metra Request for Production of Documents

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36500

**CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD
CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. –
CONTROL – KANSASCITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY,
AND THE TEXAS MEXICAN RAILWAY COMPANY**

**FIRST REQUEST BY COMMUTER RAIL DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY D/B/A METRA FOR PRODUCTION OF
DOCUMENTS**

Pursuant to the Surface Transportation Board’s (“STB”) rules governing discovery, 49 C.F.R. Part 1114, and in accordance with the definitions and instructions set forth herein, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”), by its undersigned counsel, propounds the following First Request for Production of Documents to be produced by you the Applicants, as that term is defined below. Pursuant to 49 C.F.R. § 1114.30(b), Metra requests that these documents be produced within 15 days after the date of service hereof to undersigned counsel for Metra.

DEFINITIONS

As used herein, the terms listed below have the following meanings ascribed to them:

1. “All” or “any” shall mean “any and all” and shall be inclusive.
2. “Applicable Routes” means the land, track, bridges, buildings, facilities and other appurtenances owned or utilized by the Applicants that constitute the following lines of railroad:
 - a. CP’s Elgin subdivision;

- b. CP's Marquette subdivision;
 - c. CP's Fox Lake subdivision;
 - d. CP's C&M subdivision;
 - e. All rail lines owned by UP over which CP operates;
 - f. All rail lines owned by BRC over which CP operates, including, to the extent available, all locations where CP traffic is interchanged with rail carriers serving territory east of the Chicago Metropolitan Area; and
 - g. All rail lines owned by IHB over which CP operates, including, to the extent available, all locations where traffic is interchanged with rail carriers serving territory east of the Chicago Metropolitan Area.
3. "Applicants" means CP and KCS.
4. "Applicants' Service" means all existing rail operations and services provided by the Applicants on the Applicable Routes.
5. "BRC" means the Belt Railway Company of Chicago, including all affiliate and subsidiary entities.
6. "Chicago Metropolitan Area" means the Chicago-Naperville-Elgin Metropolitan Statistical Area as delineated by the United States Census Bureau.
7. "CP" means the Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway U.S. Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.
8. "Document(s)" means all written, electronic, or printed matter of any kind, including the originals and all nonidentical copies, whether different from the originals by reason of

any notation made on such copies or otherwise, including, without limitation, correspondence, memoranda, emails, text messages, notes, diaries, statistics, letters, telegraphs, minutes, agenda, contracts, reports, studies, checks, statements, receipts, returns, summaries, transcripts, pamphlets, books, prospectuses, inter-office and intra-office communications, offers, notations of any type of conversation (including, without limitation, telephone conversations or meetings), bulletins, computer printouts, teletypes, data compilations, statistical analyses, telefaxes, invoices, work sheets, graphic or manual records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, records and motion pictures), and electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, records and computerized data stored in any manner), and all drafts, alterations, modifications, changes and amendments of any of the foregoing.

9. “IHB” means the Indiana Harbor Belt Railroad, including all affiliate and subsidiary entities.

10. “KCS” means Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company.

11. “Metra” means the Commuter Rail Division of the Regional Transportation Authority, and its present and former parents, subsidiaries, and affiliates, predecessors and successors, and present and former officers, directors, employees, partners, agents, representatives and other persons acting or purporting to act on its behalf.

12. “Person” means the plural as well as the singular, and shall include, without limitation, any individual, firm, corporation, joint venture, company, association, partnership,

business, public agency, department, bureau, board or any other form of public, private or legal entity.

13. “Related” means referring, relating, reflecting, containing, pertaining, indicating, showing, evidencing, describing, discussing, mentioning, computing, constituting, defining, embodying, stating, explaining, providing any information on, detailing, discussing or in any way dealing with.

14. “STB” means the Surface Transportation Board.

15. “Track Chart” shall have the standard meaning given to it in the railroad industry and shall include the following information:

- a. Milepost Prefix + Milepost
- b. Track Number
- c. Feet Between Mileposts
- d. Division
- e. Subdivision
- f. State Name
- g. Station Names
- h. Val Sec #
- i. Latitude Data by MP Prefix and MP
- j. Longitude Data by MP Prefix and MP
- k. Elevation Data in Feet above Sea level, Elevations by MP Prefix and MP
- l. Curve Data
 - i. Milepost Prefix
 - ii. Beginning Milepost
 - iii. Ending Milepost
 - iv. Degree of Curve
- m. Grade Data
 - i. Milepost Prefix
 - ii. Beginning Milepost
 - iii. Ending Milepost
 - iv. Percent of Grade
- n. Speed Limit Data
 - i. Passenger Trains Speed Limit (in MPH)
 - ii. Freight Trains Speed Limit (in MPH)
- o. Road Crossing Data

- i. Road Crossing Location by MP Prefix and MP
 - ii. Name of Road
 - iii. Width of Road Crossing
 - iv. Type of Protection at Crossing (Gates, Stop Signs etc)
 - v. Type of train detection at Crossing (DC, AFO, etc)
 - p. Signal Control Data
 - i. Signal Location by MP Prefix and MP
 - ii. Start of Signal Block by MP Prefix and MP and track #
 - iii. End of Signal Block by MP Prefix and MP and track #
 - iv. Signal Control Type
 - v. Signal Direction
 - q. Switch Data
 - i. Switch Location and Type by MP Prefix and MP and Track Number
 - r. Yard Track Data
 - i. MP Prefix and Begin MP and track #
 - ii. MP Prefix and End MP and track #
 - iii. Track type (Yard Track, Set Out Track, Other Track, etc)
 - iv. Yard Name.
16. “UP” means Union Pacific Railroad Company, including all affiliate and subsidiary entities.
17. “You” and “your” means the Applicants and their present and former parents, subsidiaries, and affiliates, predecessors and successors, and present and former officers, directors, employees, partners, agents, representatives and other persons acting or purporting to act on its behalf.
18. All railroad-related terms shall be interpreted to retain their standard rail industry meaning.

INSTRUCTIONS

1. If any Request for Production herein cannot be responded to or complied with in full, it shall be responded to or complied with to the extent possible with an explanation as to why full compliance is not possible.

2. Each paragraph and subparagraph of a Request for Production shall be construed independently and no other paragraph or subparagraph shall be referred to or relied on for the purpose of limiting its scope.

3. In answering these Requests for Production, you are required to furnish under oath all information in your possession, custody or control, even if the information is in the possession of third parties.

4. If in answering these Requests for Production, you claim any ambiguity in interpreting the Request for Production, or a definition or instruction applicable thereto, such claim shall not be a basis for refusing to respond, but there shall be set forth as part of the response the language deemed to be ambiguous and the interpretation chosen or used in responding to the Request for Production.

5. Estimates or approximations should be given when precise data cannot be supplied. Any estimates or approximations should be designated as such and a statement made as to why precise data cannot be supplied.

6. These Requests for Production are continuing in nature. Any information obtained subsequent to the service of answers to these Requests for Production that would have been included in the answers had the information had been known shall promptly be supplied by supplemental answers whenever you find, locate, acquire or become aware of such information. Supplemental answers are to be served as soon as reasonably possible after receipt of such information.

7. If a claim of privilege (including, but not limited to, the work-product privilege) is asserted in objecting to any means of discovery or disclosure, you shall comply with the

requirements of 49 C.F.R. Part 1114, and identify with respect to the information: (i) the general nature of the information withheld; and (ii) the specific privilege claimed.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all current timetable documents for the Applicants' Service in their original format and in PDF format, in color (and not black-and-white copies of color documents).
2. Produce, in standard track chart format and in electronic database file format, documents containing all current track data for the Applicable Routes, including but not limited to the following:
 - a. The Track Charts for all routes to be modeled, including industry leads and spurs;
 - b. Station names, valuation section numbers, and latitude/longitude data;
 - c. Track elevation, curvature, and grade data;
 - d. Speed limits (may be present in track charts or timetables);
 - e. Detailed schematics of track intersections, vehicle road crossings and interchange locations;
 - f. Rail weight, turnout sizes, switch and signaling data; and
 - g. Detailed yard configurations for all yards to be modeled.
3. Produce documents containing all train data for the Applicants' Service as it currently exists and for projected growth of Applicants' Service, including but not limited to the following:
 - a. Train type (passenger, intermodal, manifest, unit, local, work, etc.);
 - b. Train priority;
 - c. Train origin;
 - d. Train point of entry into modeled line segments (on junction;

- e. Train departure time from origin;
 - f. Stops and dwell times along the train route, including but not limited to the following:
 - i. Identification of locations where cars are set out or picked up, and the number of cars switched in/out of the train; and
 - ii. Identification of crew change, fueling, and inspection activities by location;
 - g. Train point of exit from modeled line segments (off junction);
 - h. Train destination;
 - i. Number and type of locomotives;
 - j. Number and type of helper locomotives (if any);
 - k. Number and type of loaded and empty rail cars;
 - l. Train weight; and
 - m. Trailing length.
4. Produce documents containing all operational data for the Applicants' Service as it currently exists and for projected growth of Applicants' Service, including but not limited to the following:
- a. Loading and unloading locations (passenger stations, intermodal and other freight yards, industrial loops or leads, etc.)
 - b. Loading and unloading dwell times by location and commodity type
 - c. Delivery windows by location (e.g., gate hours)
 - d. Maintenance windows (actual and/or scheduled)
 - e. Other time restrictions (rush hour transit windows, curfews, etc.)

- f. Detailed description of typical daily switching activities
 - g. Historical delay data including weather-related delay data
 - h. Historical delay data including weather-related delay data
5. Produce the following work paper documents, which are identified in the Applicants' work paper document entitled "FD36500 – Work Paper – Work Papers Summary.xlsx":
- a. "FTI traffic mix working paper.doc"
 - b. "Waybill data for Traffic File Generation.doc"
 - c. "Traffic File - Methodology.doc"
 - d. "Cars Per Day - Methodology - 2610.doc"
 - e. "Gross Ton Miles, Train Miles, Train Weights and MGT - Methodology - Formatted.doc"
 - f. "Trains Per Day - Methodology - Formatted - 2610.doc"
 - g. "Cars per day by Yard.doc"
 - h. "Methodology for Creating CP 2019 & 2020 Density Chart and Map.doc"
 - i. "Methodology for Creating KCS 2019 & 2020 Density Chart and Map.doc"
 - j. "Methodology for Creating KCSM 2019 Density Chart and Map.doc"
 - k. "Methodology for Creating KCSM 2020 Density Chart and Map.doc"
 - l. "Methodology for Creating Y3 Density Charts and Maps for CP, KCS, KCSM.doc"
 - m. "System Model - Methodology.doc"
 - n. "Methodology Section 7.1-Locomotives.doc"
 - o. "Methodology Section 7.2 - Rolling Stock.doc"
 - p. "Methodology for Creating Base Insets for KCS & KCSM Train Miles.doc"

- q. "Methodology for Creating Optimized Insets for KCS & KCSM Train Miles.doc"
- r. "Methodology for Creating Growth Insets for KCS & KCSM Train Miles.doc"
- s. "Methodology for Section 7.3 Maintenance of Way Practices & Equipment Update Oct 14 2021.doc"
- t. "Major Interchange Locations CP.doc"
- u. "Major Interchange Locations KCS & KCSM.doc"
- v. "Methodology for Train and Engine Employee Labor Impacts.doc"
- w. "Mechanical FTE Work Paper.doc"
- x. "Methodology for Labour Impact Statement - Engineering Updated Oct 14 2021.doc"
- y. "Methodology for Creating KCS Metrics console - 90 day data.doc"
- z. "Intermodal Terminal Analysis - Methodology.doc"
- aa. "Methodology for Section 7.5 Deferred Maintenance or Delayed Capital Spend Update Oct 14 2021.doc"
- bb. "Capacity - Methodology.doc"
- cc. "Traffic file Script"
- dd. "Density 2020 New Proecess.accdb"
- ee. "Train_Routes_presentation_BASE_MREE.pptx"
- ff. "OP_Train_Routes_presentation.pptx"
- gg. "CP Structures MYP Summary KC to Chicago.pdf"
- hh. "OP Train_Routes_Presentation Year 3 GROWTH MREE.pdf"

6. Produce documents containing all modeling exercises performed by the Applicants in developing the post-merger operating plan that the Applicants submitted to the STB with their application on October 29, 2021 in STB Finance Docket 36500.
7. Produce all agreement documents (with amendments) between CP and other railroads related to the Applicants' Service and Applicable Routes located within in the Chicago Metropolitan Area.
8. Produce all documents related to denying Metra its request to CP in 2019 to operate two more commuter trains for reverse commute on a segment of CP's C&M Subdivision (Metra's Milwaukee North Line) during non-peak hours, as discussed in the correspondence between Metra and CP attached as **Attachment A**.
9. Produce all documents related to the potential or actual used and unused capacity available for crew changes, currently and for the past five years, at all of the Applicants' rail yards, side track, and other non-mainline track within the Chicago Metropolitan Area.
10. Produce all documents from the past ten years documenting, justifying or otherwise related to CP's past refusal to agree to use trackage in CP's Bensenville Yard or any other yard, side track, or other non-mainline track in the Chicago Metropolitan Area for conducting crew changes in order to avoid occupying mainline track used by Metra.
11. Produce all documents related to each occasion in the past five years in which CP trains have operated on the segments of the C&M Subdivision and Elgin Subdivision over which Metra owns or operates during "peak periods" as that term is used in Metra's current trackage rights agreement with CP, and produce all documents indicating the reason for such operations during Metra's rush hour.

12. Produce all documents not otherwise requested that indicate the number of freight and passenger trains and their scheduling for the past five years on the Applicable Routes.
13. Produce all documents not otherwise requested that indicate the number of freight and passenger trains and their scheduling that is projected for the next five years on the Applicable Routes.

Respectfully Submitted,

COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY D/B/A/ METRA
By Counsel



Charles A. Spitulnik
Christian L. Alexander
Kaplan Kirsch & Rockwell, LLP
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Washington, DC 20006
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cspitulnik@kaplankirsch.com
calexander@kaplankirsch.com

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of November 2021, I caused the foregoing Request by Metra for Production of Documents to be served on the following parties and upon all parties of record in this proceeding.

A handwritten signature in blue ink, appearing to read "Charles A. Spitulnik", written in a cursive style.

Charles A. Spitulnik

ATTACHMENT A

**2019 Correspondence Between Metra and CP Regarding
Additional Reverse Commute Trains**

Attachment A

Memorandum

February 4, 2019

TO: Distribution

FROM: R. P. Oppenheim, Assistant Superintendent

SUBJECT: **Addition of Proposed Off-Peak Metra Trains for Lake County Partners Pilot Program**

This has reference to Metra's proposal to add 4 additional trains to the current Metra Milwaukee North Schedule. 2 of the 4 trains operate in the Metra "Peak Period" and 2, 2191 and 2193, operate outside the Peak Period. The addition of non-peak period trains to the existing schedule is addressed in Section 8.16 of the Metra-CP Operating Agreement:

"Metra may not change the schedule on Attachment 6 without CP's prior written consent, which may not be unreasonably withheld; providing that such change shall not materially interfere with freight operations."

Metra contends that neither the proposed schedule of Train 2191 nor the proposed schedule of Train 2193 will materially interfere with freight operations. Under current operations, existing windows between scheduled Metra and Amtrak trains in which freight trains may operate without delaying scheduled trains are well defined. As shown below, the addition of neither 2191 nor 2193 will materially change any of the existing freight windows:

2191:

Proposed schedule has 2191 departing CUS 0535, by Tower A5 0547, by Tower A20 0610 arriving Rondout 0627. Currently freight windows for that time of the morning are structured around the schedule of Amtrak 329 who leaves CUS at 0610, passes Tower A5 at 0619, Tower A20 0637 and Rondout 0648. Westward freight traffic operating via Tower A5 typically must clear Tower A5 by 0535 in order to stay ahead of Amtrak 329. If this window is missed, Westward freight still has time to leave A5 behind Amtrak 329 during the 25 minute gap between Amtrak 329 and Metra 2101. With 2191 due Tower A5 0547 and making local stops through Edgebrook, a Westward freight could still operate out of Tower A5 prior to 0535 and stay ahead of 2191 to Rondout. If this window were missed, the existing window between Amtrak 329 and Metra 2101 would remain unchanged and available for Westward freight use.

Similarly, between Tower A20 and Rondout, early morning windows would still be available ahead of Amtrak 329 as they are now, either ahead of or behind 2191. The larger window between Amtrak 329 and Metra 2101 (from 0637 to 0710) would not change in any way.

2193:

2193 was purposely scheduled to depart Chicago at 1520, 5 minutes behind Amtrak 337. Westward freight traffic that shows up at Tower A5 at this time of the afternoon is handled in one of two ways:

1. If freight is at A5 in time to follow Metra 2121 at 1447 and early enough to clear inbound Metra 2138 at 1510 it operates out of A5 directly behind 2121. In this window, freight typically stays ahead of Amtrak 337 past Rondout.
2. If freight cannot clear inbound 2138 at Tower A5, the normal move is to bring the Westward freight out of Tower A5 on #2 Main Track to Mayfair. At Mayfair, freight then normally is held for Amtrak 337 to pass at 1528 and UP 623 at 1540. Freight then crosses to #1 Main Track and continues on to Rondout behind 337. With 2193 scheduled out of Chicago at 1520 and due Mayfair at 1539, the same window would still be available at Mayfair behind 2193 and UP 623.

For Tower A20 to Rondout, current existing windows at this time of day are:

- Following Amtrak 337. Sufficient time would still be there to move a Westward freight out of Tower A20 behind Amtrak 337 and ahead of 2193 without delaying 2193 who makes stops at Morton Grove, Glenview, and North Glenview, or there would still be opportunity to move freight behind 2193 and ahead of 2123.
- There are still two more current windows for moving Westward freight out of Tower A20 which would not in any way be affected by 2193's schedule: Behind 2144 and ahead of 2127 at 1640, and behind 2129 and ahead of 2131 at 1710.

In summary, the addition of proposed trains 2191 and 2193 to the current Metra Milwaukee North Line schedule would not significantly reduce any of the existing freight windows, and would therefore not interfere materially with CP freight operations.

Distribution: B. Marcheschi, J. Milano, J. Bauer, R. Bear



547 W. Jackson Blvd. Chicago, Illinois 60661 Telephone: 312-322-6777

March 5, 2019

Robert A. Johnson
Executive Vice President – Operations
Canadian Pacific
Bldg 1, 7550 Ogden Dale Road
Calgary, AB T2C 4X9

Re: Proposed Changes to the CP/Metra Trackage Agreement

Dear Mr. Johnson:

As recently discussed, Metra desires to pursue a pilot program of new reverse commuting operations between Chicago and Lake Forest, Illinois. This new commuter operation is an experimental solution to a problem of providing an alternate method of transportation to those people residing in the City of Chicago, but with job opportunities in the northern suburbs. These suburbs, Lake County, Pace Bus and others feel strongly enough about this issue to step forward and work together to show others a method to tackle regional issues through a coordinated team effort.

Lake County and Metra have partnered in this pilot program and we feel this new Metra service is one solution to a prevailing issue in the congested Chicago region.

Metra also understands that CP has its own operational capacity issues in the Chicago region. In an effort to reach resolution with CP, Metra is now proposing a change to the Metra Peak Periods as shown and defined on the attached replacement page 14 from the May 27, 1993, Supplemental Agreement between our organizations. Metra feels this revision allows Metra to add new service to its Peak Periods and in turn offers CP new windows for its train operation.

Metra remains ready to meet with you personally, hopefully in the next 30 days, to discuss this solution and others to help both parties address their current operational needs and the infrastructure needs for the future.

Please signify your acceptance and receipt of this proposed change by signing both original counterparts of this letter and returning one to my office.

Sincerely,

James M. Derwinski
CEO/Executive Director

Acknowledged and Accepted by CP:

By: _____

Title: _____

Date: _____

CUS to B-12 & Big Timber Road - - westbound

5:15 a.m. - 8:30 a.m.

4:00 p.m. - 6:15 p.m.

Rondout to CUS - - southbound

6:00 a.m. - 7:50 a.m.

4:20 p.m. - 6:00 p.m.

CUS to A-20 - - northbound

~~6:25 a.m. - 8:45 a.m.~~ 5:35 a.m. - 7:55 a.m.

~~4:15 p.m. - 6:10 p.m.~~ 3:20 p.m. - 5:15 p.m.

A-20 to Rondout - - northbound

~~7:00 a.m. - 8:15 a.m.~~ 6:05 a.m. - 7:20 a.m.

~~4:30 p.m. - 6:20 p.m.~~ 3:55 p.m. - 5:45 p.m.

Fox Lake to Rondout - - southbound

5:00 a.m. - 8:30 a.m.

Rondout to Fox Lake - - northbound

4:30 p.m. - 6:45 p.m.

Except as required by an emergency, CP shall not interfere or permit any third party to interfere with peak period trains. CP shall not object to Metra's operations of peak period trains on the grounds that those operations unreasonably interfere with CP's or third parties' ability to provide efficient freight or intercity



Robert A Johnson
Executive Vice-President
Operations

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March 12, 2019

Mr. James M. Derwinski
CEO/Executive Director
Metra
547 W. Jackson Boulevard
Chicago, IL 60661

Re: Metra's Proposed Changes to CP/Metra Trackage Rights Agreement

Dear Mr. Derwinski:

I am writing regarding Metra's request to amend the May 27, 1993 Supplemental Trackage Rights Agreement (the existing Agreement) per your letter of March 5, 2019 and the proposed timetable changes we received from Rich Oppenheim on March 8, 2019 implementing same by adding additional trains in each direction in the Rondout/Chicago Union Station corridor.

First, let me say we understand Metra's desire to explore the addition of reverse commute operations between downtown Chicago and Lake Forest. We live and work in the metropolitan area too and appreciate the transportation challenge that poses. We also appreciate and understand our obligation to serve our current and future customers, and our commitment to keeping the Chicago Rail Terminal fluid.

Given the accommodations and changes we have made to Metra already—which impact our capacity and ability to serve our customers—we are not in a position to accept Metra's proposed changes and cannot agree to them. Allow me to explain.

Under our existing Agreement, CP is limited to non-Peak periods to handle and move its traffic over the CP/Metra Joint Lines in the Chicago Terminal, and even then must share the capacity with Metra giving commuter trains priority. Peak periods are reserved exclusively for commuter trains to the exclusion of all others. The proposed changes would add three Non-Peak trains in the Rondout/Chicago Union Station corridor, a corridor vital to connecting our customer's traffic to Chicago and the national network.

Section 8.16 of the existing Agreement allows for the possibility, subject to CP's consent, of adding two Non-Peak period trains in each direction between Fox Lake and Chicago Union Station (the Rondout/Chicago Union Station corridor). We have done that already. In 1997, CP agreed to add six new reverse commute weekday trains (three in each direction, one Peak and two Non-Peak) as well as two additional Saturday trains and four additional Sunday trains in this corridor.

Since 1997, we have agreed to add other Non-Peak trains on multiple occasions: in 2002 six additional Non-Peak trains on the West Line (equally vital to CP as the north/south Rondout line), in 2006 four additional Peak trains on the West Line, and in 2008 four additional Non-Peak Saturday trains and two Non-Peak Sunday trains in the Rondout/Union Station corridor. Taken as a whole, these

James M. Derwinski
March 12, 2019
Page 2

accommodations have negatively impacted our operating capacity, all the more so currently when rail traffic is increasing and expected to continue to increase.

We believe it is now time for Metra to add capacity to meet this and future service expansions—additional capacity from Union Station north to Rondout, and west from Tower A-5 to Tower B-17 and points beyond. This solution would serve Metra's and the metropolitan area's transportation needs, while serving the needs of the national rail network and economy as well.

We certainly intend to continue to abide by the Peak period provisions of the existing Agreement. If Metra can make its proposed changes work within the existing Peak Period windows that may also be an option.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Johnson". The signature is fluid and cursive, with the first name "Robert" being more prominent.

Robert A. Johnson,
Executive Vice President, Operations

cc: Tony Marquis

Office of the CEO/Executive Director

March 26, 2019

Mr. Robert A. Johnson
Executive Vice President, Operations
Canadian Pacific Railroad
7550 Ogden Dale Road SE
Calgary Alberta
Canada T2C 4X9

Re: Metra Request to Add Reverse Commuter Trains on Milwaukee North Line

Dear Mr. Johnson:

Thank you for your letter of March 12, 2019, indicating that CP is not in a position to consent to amending Metra's commuter schedule to add two additional reverse commuter trains on the Milwaukee North Line during non-peak hours. While CP has consented to four new trains within the peak period, Metra would like to request CP reconsider Metra's request to shift two of those new trains to the non-peak period.

Since Metra acquired the Joint Lines in 1987, subject to CP's trackage rights, the train schedule has been adjusted many times to accommodate the ebbs and flows of freight and commuter traffic. CP has in the past consented to adding commuter trains, as set out in your letter, but please recall that Metra also made capital improvements at CP's request so that CP's traffic would not be impacted.

More recently, in February, 2018, Metra eliminated two daily weekday peak period North Central Service trains on the Milwaukee West Line and six weekend Milwaukee North non-peak trains. Please note that several times a week CP does run a train during Metra's peak period, so eliminating peak period trains does provide operational benefit to CP. Even more recently, on March 16, 2019, CP began running an additional ten daily freight trains on both Milwaukee North and West lines due to Midwest bridge outages. The point is that traffic evolves with short and long term freight and commuter needs, and those traffic changes have benefited each railroad.

We would like to emphasize that the proposed new trains are part of Metra's response to recent demand from the local businesses and communities for reverse commuter service. These new trains serve employees from major local employers such as AbbVie, Verizon, Tenneco and Grainger. The initial feed back we have received from our local partners on the peak period trains that have been introduced has been very positive. To support the new service, Metra has a public private-partnership agreement in place which, after a two-year pilot period, will provide for 100% of the funding for new universal crossovers just north of the Lake Forest station. This infrastructure improvement will benefit CP, Amtrak and Metra.

The funding of operating and capital investment in partnership with Metra to the benefit of CP and Amtrak by the business community, County of Lake, City of Lake Forest and Village of Deerfield is testimony to just how important this service is to the citizens of Northeast Illinois. There has been

positive local and national press coverage of this service. Further, this service has come to the attention of local, state and federal elected officials who have expressed a positive view of this service.

Metra is very conscious of the impact of additional commuter trains on CP's traffic and does not make this request without having given the matter much thought. Please reference a Metra internal analysis of the impact of the new service on CP's traffic dated February 4, 2019, previously delivered to CP and attached for your convenience. It is a detailed discussion of Metra's understanding of the impact of the new reverse commute trains on CP traffic. The analysis is buttressed by CP's addition of ten daily freight trains without impacting Metra's schedule.

Given the importance of the new service to our local community partners and elected officials, if CP elects to not consent, Metra would appreciate, in return, an analysis in the same degree of detail so that all parties can understand how the mere adding of two trains has resulted in CP's decision. If CP does not consent, Metra is in an awkward position with our local partners and elected officials if we have no explanation beyond a blanket CP refusal.

Metra would like to propose a way forward. First, we would ask that CP agree to permit the additional trains on a pilot basis for one year, effective immediately. At the end of that year, we can assess the true demand and the actual traffic impacts. Again, given that CP has scheduled ten temporary daily additional freight trains without impacting Metra's schedule, there appears to be ample excess capacity on both the Milwaukee North and West lines.

Second, during the pilot period Metra, at Metra's expense, will arrange to have RTC modeling performed on the Milwaukee North and West lines. The modeling will allow us to have future fact based capacity discussions based on minutes of delay per 100 train miles and would be the basis for future capacity and capital improvement discussions. Metra would only ask that CP provide the appropriate train scheduling, movement data and growth assumptions to input into the model. Since CP dispatches the line, this information is not otherwise available to Metra.

Thank you in advance for CP's reconsideration of Metra's requests.

Sincerely:



James M. Derwinski
CEO/Executive Director



Robert A Johnson
Executive Vice-President
Operations

7550 Ogden Dale Road SE
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Canada T2C 4X9

T 403 319 3600
C 612 760 1533
E Robert_Johnson@cpr.ca

April 2, 2019

Mr. James M. Derwinski
CEO/Executive Director
Metra
547 W. Jackson Boulevard
Chicago, IL 60661

Re: Metra's Proposed Changes to CP/Metra Trackage Rights Agreement to Add
Reverse Commuter Trains

Dear Mr. Derwinski:

I am writing with reference to your letter of March 26.

We understand Metra's desire to add additional reverse commuter trains and have offered a way to realize that goal. Under our existing Agreement, which has worked well for decades, Metra enjoys exclusive use of the Joint Lines during the Peak Periods. We have no objection to Metra slotting the additional reverse commuter trains in the Peak Period windows. If that proves difficult, we have indicated a willingness to move the times of the Peak Periods to accommodate the additional trains, but not at the expense of slipping Peak trains into the Non-Peak periods.

The issue is capacity. We have to protect our Non-Peak capacity because CP is limited to the Non-Peak periods to handle and move its traffic, and even then must share Non-Peak capacity with Metra giving commuter trains priority. Protection of capacity is vital. Without it we cannot serve our customers today or in the future. It's important to note too that our business is not static. By all accounts freight rail traffic is growing and will continue to grow especially in the Chicago Terminal, the heart of the national network. Yes, we were able to add ten additional trains recently due to flood related washouts throughout the Midwest. That goes to the point capacity is not an issue confined to today's business and tomorrow's growth. Surge capacity is also necessary to deal with weather related and other challenges we cannot predict or control, but which occur.

We appreciate that the Amtrak Hiawatha project may bring universal crossovers to Lake Forest. This improvement, however, will not address the issues presented by an erosion of CP's Non-Peak capacity. We also appreciate Metra's suggestion regarding modeling of delay minutes per 100 train miles. Modeling is a snapshot in time typically based on past history. It does not capture the dynamics of the business, unpredictable challenges, or the judgment necessary to evaluate capacity. CP is committed to honoring its obligations under the existing Agreement, and has offered Metra a path forward under that Agreement. We also suggest that Metra consider seeking the capital necessary to add additional capacity. This solution would serve Metra's and the metropolitan area's transportation needs, while assisting the needs of the national rail network and economy as well.

James M. Derwinski

April 2, 2019

Page 2

We do not intend to engage in a letter writing battle. This is our position in the matter. It is not subject to negotiation or change outside the path forward we have outlined.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Johnson". The signature is fluid and cursive, with a large initial "R" and "J".

Robert A. Johnson,
Executive Vice President, Operations

cc: Tony Marquis

Exhibit B

2021 12 17 KCS and CP_s Amended Joint Responses and Objections to Metra_s First Set of Requests

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

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

**KANSAS CITY SOUTHERN AND CANADIAN PACIFIC’S AMENDED
JOINT RESPONSES AND OBJECTIONS TO METRA’S FIRST SET OF DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. Part 1114, Subpart B, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively, “Canadian Pacific” or “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”; together with CP, the “Applicants”) hereby respond and object as follows to the First Set of Requests for Production of Documents to Applicants served by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”) served on November 24, 2021 (“Metra Requests”) in connection with the above-captioned proceeding.

GENERAL OBJECTIONS

The following General Objections apply to each of the Metra Requests and shall have the same force and effect as if set forth in full in response to each individually numbered Metra Request.

1. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent they purport to impose upon the Applicants burdens or duties that are greater than, or otherwise conflict with, the requirements or the permissible scope of discovery under 49 C.F.R. Part 1114, Subpart B, or under other Surface Transportation Board (the “Board”) rules or precedents.

2. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek information and/or documents that are not relevant to the issues raised in the above-captioned proceeding.

3. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent that they seek information protected from discovery by the attorney-client privilege, attorney work product doctrine, common interest, or any other applicable privilege, protection, immunity, doctrine, statute, regulation, agreement, or protective order. Any disclosure of such information is inadvertent and should not be construed as a waiver. Applicants reserve all rights under applicable law to demand and/or require the return of all copies thereof and non-use by Metra, or by any other person or entity in this or any other proceeding.

4. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent that they seek the production of documents prepared in connection with, or information relating to, possible settlement or mediation of this or any other proceeding.

5. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent they call for information or documents that are confidential, proprietary, or commercially or competitively sensitive. Applicants will

make available information and documents subject to the Board's Protective Order issued in this proceeding on April 2, 2021, and all responses and documents should be treated in accordance with that Order.

6. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent that they purport to seek documents or information not in the Applicants' possession, custody or control.

7. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent that they are not proportional to the needs of the above-captioned proceeding and impose an undue burden on the Applicants.

8. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production of documents that are unreasonably cumulative or duplicative of documents already in Metra's possession, custody or control, or that are publicly available, or that are otherwise obtainable in a more convenient, less burdensome or less expensive manner than from the Applicants.

9. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production of documents that are unreasonably cumulative or duplicative of documents or information encompassed by (i) the Railroad Control Application that CP and KCS filed on October 29, 2021 in this proceeding (the "Application"), and/or by (ii) the accompanying workpapers that CP and KCS submitted to the Board in connection with their Application (the "Workpapers").

10. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein as unduly burdensome and oppressive to the extent that they purport to require the Applicants to conduct a special study or to undertake anything

more than a reasonable search for responsive information. In responding to the Metra Requests, the Applicants will conduct a reasonable search of those accessible files in its possession in which information responsive to the Metra Requests, as limited by the Applicants' Objections, is likely to be located.

11. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent that they are unduly burdensome in failing to allow for a reasonable time for compliance.

12. Applicants object to the Metra Requests and to each Definition, Instruction and Request contained therein to the extent they purport to seek the production of documents that do not pertain to territory within the scope of Metra's operations.

13. Applicants reserve the right to redact non-responsive material from any document provided in response to the Metra Requests.

14. Applicants reserve the right to provide responsive materials on a rolling basis.

15. Applicants reserve the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information requested in the Metra Requests and in any responses the Applicants may provide thereto, in any subsequent proceeding, or further proceedings in this matter. To the extent that the Applicants provide responsive information or documents, the Applicants do not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of the Applicants' objections to any of the Metra Requests.

16. Applicants' Responses and Objections are based upon information presently known to them. Applicants reserve the right to rely upon facts, documents, or other

evidence that they may develop or that may subsequently come to their attention; to assert additional objections; and to supplement or amend these responses at any time as this proceeding continues.

RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS

Request No. 1:

Produce all current timetable documents for the Applicants' Service in their original format and in PDF format, in color (and not black-and-white copies of color documents).

Response to Request No. 1:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous, including because it does not define the term "current." Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it purports to seek the production of documents that do not pertain to territory within the scope of Metra's operations.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will conduct a reasonable search for non-duplicative, non-privileged documents responsive to this Request.

Request No. 2:

Produce, in standard track chart format and in electronic database file format, documents containing all current track data for the Applicable Routes, including but not limited to the following:

- a. The Track Charts for all routes to be modeled, including industry leads and spurs;

- b. Station names, valuation section numbers, and latitude/longitude data;
- c. Track elevation, curvature, and grade data;
- d. Speed limits (may be present in track charts or timetables);
- e. Detailed schematics of track intersections, vehicle road crossings and interchange locations;
- f. Rail weight, turnout sizes, switch and signaling data; and
- g. Detailed yard configurations for all yards to be modeled.

Response to Request No. 2:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous, including because it requests “documents containing all current track data” without defining “current.” Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests “all” track data without a reasonable scope limitation. Applicants further object to this Request to the extent it purports to seek the production of documents that do not pertain to territory within the scope of Metra’s operations.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will conduct a reasonable search for non-duplicative, non-privileged documents responsive to this Request.

Request No. 3:

Produce documents containing all train data for the Applicants’ Service as it currently exists and for projected growth of Applicants’ Service, including but not limited to the following:

- a. Train type (passenger, intermodal, manifest, unit, local, work, etc.);

- b. Train priority;
- c. Train origin;
- d. Train point of entry into modeled line segments (on junction);
- e. Train departure time from origin;
- f. Stops and dwell times along the train route, including but not limited to the following:
 - i. Identification of locations where cars are set out or picked up, and the number of cars switched in/out of the train; and
 - ii. Identification of crew change, fueling, and inspection activities by location;
- g. Train point of exit from modeled line segments (off junction);
- h. Train destination;
- i. Number and type of locomotives;
- j. Number and type of helper locomotives (if any);
- k. Number and type of loaded and empty rail cars;
- l. Train weight; and
- m. Trailing length.

Response to Request No. 3:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests “all” train data without a reasonable scope limitation. Applicants further object to this Request on the grounds that it is cumulative because

responsive data is contained in the Application that Applicants previously made available to Metra. Applicants further object to this Request on the grounds that it would require a special study. Applicants further object to this Request to the extent it purports to seek the production of documents that do not pertain to territory within the scope of Metra's operations.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will conduct a reasonable search for non-duplicative, non-privileged documents responsive to this Request (to the extent any such documents exist).

Request No. 4:

Produce documents containing all operational data for the Applicants' Service as it currently exists and for projected growth of Applicants' Service, including but not limited to the following:

- a. Loading and unloading locations (passenger stations, intermodal and other freight yards, industrial loops or leads, etc.)
- b. Loading and unloading dwell times by location and commodity type
- c. Delivery windows by location (e.g., gate hours)
- d. Maintenance windows (actual and/or scheduled)
- e. Other time restrictions (rush hour transit windows, curfews, etc.)
- f. Detailed description of typical daily switching activities
- g. Historical delay data including weather-related delay data
- h. Historical delay data including weather-related delay data

Response to Request No. 4:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous, including because it does not define "all

operational data,” “[l]oading and unloading locations,” “[l]oading and unloading dwell times,” “[d]elivery windows,” or “[m]aintenance windows”—all of which are reasonably susceptible to various meanings. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding, including because it requests “all” operational data without a reasonable scope limitation. Applicants further object to this Request on the grounds that it requests information irrelevant to this proceeding. Applicants further object to this Request on the grounds that it would require a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants are available to meet and confer with Metra regarding this Request.

Request No. 5:

Produce the following work paper documents, which are identified in the Applicants’ work paper document entitled “FD36500 – Work Paper – Work Papers Summary.xlsx”:

- a. “FTI traffic mix working paper.doc”
- b. “Waybill data for Traffic File Generation.doc”
- c. “Traffic File - Methodology.doc”
- d. “Cars Per Day - Methodology - 2610.doc”
- e. “Gross Ton Miles, Train Miles, Train Weights and MGT - Methodology - Formatted.doc”
- f. “Trains Per Day - Methodology - Formatted - 2610.doc”
- g. “Cars per day by Yard.doc”
- h. “Methodology for Creating CP 2019 & 2020 Density Chart and Map.doc”

- i. "Methodology for Creating KCS 2019 & 2020 Density Chart and Map.doc"
- j. "Methodology for Creating KCSM 2019 Density Chart and Map.doc"
- k. "Methodology for Creating KCSM 2020 Density Chart and Map.doc"
- l. "Methodology for Creating Y3 Density Charts and Maps for CP, KCS, KCSM.doc"
- m. "System Model - Methodology.doc"
- n. "Methodology Section 7.1-Locomotives.doc"
- o. "Methodology Section 7.2 - Rolling Stock.doc"
- p. "Methodology for Creating Base Insets for KCS & KCSM Train Miles.doc"
- q. "Methodology for Creating Optimized Insets for KCS & KCSM Train Miles.doc"
- r. "Methodology for Creating Growth Insets for KCS & KCSM Train Miles.doc"
- s. "Methodology for Section 7.3 Maintenance of Way Practices & Equipment Update Oct 14 2021.doc"
- t. "Major Interchange Locations CP.doc"
- u. "Major Interchange Locations KCS & KCSM.doc"
- v. "Methodology for Train and Engine Employee Labor Impacts.doc"
- w. "Mechanical FTE Work Paper.doc"
- x. "Methodology for Labour Impact Statement - Engineering Updated Oct 14 2021.doc"
- y. "Methodology for Creating KCS Metrics console - 90 day data.doc"
- z. "Intermodal Terminal Analysis - Methodology.doc"

- aa. “Methodology for Section 7.5 Deferred Maintenance or Delayed Capital Spend Update Oct 14 2021.doc”
- bb. “Capacity - Methodology.doc”
- cc. “Traffic file Script”
- dd. “Density 2020 New Proecess.accdb”
- ee. “Train_Routes_presentation_BASE_MREE.pptx”
- ff. “OP_Train_Routes_presentation.pptx”
- gg. “CP Structures MYP Summary KC to Chicago.pdf”
- hh. “OP Train_Routes_Presentation Year 3 GROWTH MREE.pdf”

Response to Request No. 5:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is cumulative, unduly burdensome and not proportional to the needs of this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that the documents Metra requests are included in the Workpapers that Applicants previously made available to Metra.

Request No. 6:

Produce documents containing all modeling exercises performed by the Applicants in developing the post-merger operating plan that the Applicants submitted to the STB with their application on October 29, 2021 in STB Finance Docket 36500.

Response to Request No. 6:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous, cumulative, unduly burdensome and not proportional to the needs of this proceeding.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that the documents Metra requests are included in the Application and accompanying Workpapers that Applicants previously made available to Metra.

Request No. 7:

Produce all agreement documents (with amendments) between CP and other railroads related to the Applicants' Service and Applicable Routes located within in the Chicago Metropolitan Area.

Response to Request No. 7:

In addition to the General Objections, Applicants object to this Request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and not proportional to the needs of this proceeding. Applicants further object to this Request to the extent it purports to seek the production of documents that do not pertain to territory within the scope of Metra's operations.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will conduct a reasonable search for non-duplicative, non-privileged documents responsive to this Request.

Request No. 8:

Produce all documents related to denying Metra its request to CP in 2019 to operate two more commuter trains for reverse commute on a segment of CP's C&M Subdivision

(Metra's Milwaukee North Line) during non-peak hours, as discussed in the correspondence between Metra and CP attached as **Attachment A**.

Response to Request No. 8:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests "all" documents without a reasonable scope limitation.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will provide non-privileged and non-duplicative documents responsive to this Request that they are able to locate after a reasonable search.

Request No. 9:

Produce all documents related to the potential or actual used and unused capacity available for crew changes, currently and for the past five years, at all of the Applicants' rail yards, side track, and other non-mainline track within the Chicago Metropolitan Area.

Response to Request No. 9:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding. Applicants further object to this Request on the grounds that it is vague and ambiguous, including because the phrase "used and unused capacity available for crew changes" is reasonably susceptible to various meanings, and because Metra does not provide a methodology clarifying how capacity would be calculated.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants are available to meet and confer with Metra regarding this Request.

Request No. 10:

Produce all documents from the past ten years documenting, justifying or otherwise related to CP's past refusal to agree to use trackage in CP's Bensenville Yard or any other yard, side track, or other non-mainline track in the Chicago Metropolitan Area for conducting crew changes in order to avoid occupying mainline track used by Metra.

Response to Request No. 10:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome and not proportional to the needs of this proceeding, including because it requests "all" documents without a reasonable scope limitation.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that Applicants have conducted a reasonable search and have not located any documents to produce in response to this Request.

Request No. 11:

Produce all documents related to each occasion in the past five years in which CP trains have operated on the segments of the C&M Subdivision and Elgin Subdivision over which Metra owns or operates during "peak periods" as that term is used in Metra's current trackage rights agreement with CP, and produce all documents indicating the reason for such operations during Metra's rush hour.

Response to Request No. 11:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding, including because it requests “all” documents without a reasonable scope limitation. Applicants further object to this Request on the grounds that it would require a special study.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will conduct a reasonable search for non-duplicative, non-privileged documents responsive to this Request.

Request No. 12:

Produce all documents not otherwise requested that indicate the number of freight and passenger trains and their scheduling for the past five years on the Applicable Routes.

Response to Request No. 12:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous. Applicants further object to this Request on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of this proceeding, including because it requests “all” documents without a reasonable scope limitation. Applicants further object to this Request to the extent it purports to seek the production of documents that do not pertain to territory within the scope of Metra’s operations. Applicants further object that this Request is cumulative because responsive data concerning passenger trains is already in Metra’s possession.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants will conduct a reasonable search for responsive, non-duplicative, non-privileged documents concerning freight trains.

Request No. 13:

Produce all documents not otherwise requested that indicate the number of freight and passenger trains and their scheduling that is projected for the next five years on the Applicable Routes.

Response to Request No. 13:

In addition to the General Objections set forth above, Applicants object to this Request on the grounds that it is vague and ambiguous, overly broad, unduly burdensome, and not proportional to the needs of this proceeding. Applicants further object that this Request is cumulative because responsive data is contained in the Workpapers that Applicants previously made available to Metra.

Subject to and without waiving the General Objections and the specific objections set forth above, Applicants respond that CP does not have any additional documents responsive to this Request.

Dated: December 17, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Amended Joint Responses and Objections to Metra's First Set of Requests for Production of Documents to Kansas City Southern and Canadian Pacific to be served electronically or by first-class mail, postage pre-paid, on all parties of record in these proceedings.

/s/ Brandon M. Stoffers
Brandon M. Stoffers

December 17, 2021