

51420
DO

SERVICE DATE – SEPTEMBER 21, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500¹

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—

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

Decision No. 25

Decided: September 21, 2022

By notice served on July 22, 2022, the Board announced that it will hold a public hearing in these dockets on September 28, 29, and 30, 2022. The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001, and virtually via Zoom. The hearing will begin at 9:30 a.m. EDT on September 28 and 30 and at 9:00 a.m. EDT on September 29. Each day the hearing will end no later than 6:00 p.m. EDT. The schedule of appearances and the time provided for each speaker are set forth in the Appendix to this decision. The hearing will be available for public viewing on YouTube, as explained below. Persons interested in viewing the hearing are encouraged to access the hearing on YouTube, as there is limited seating in the Hearing Room.

Instructions for Attendance at Hearing

All persons attending the hearing in person must use the main entrance to the Board's headquarters, located at 395 E Street, S.W. There will be no reserved seating. The building will

¹ This decision embraces: Docket No. FD 36500 (Sub-No. 1), Illinois Central Railroad—Acquisition of a Line of Railroad Between Kansas City, Mo., & Springfield & East St. Louis, Ill.—Kansas City Southern Railway; Docket No. FD 36500 (Sub-No. 2), Illinois Central Railroad—Trackage Rights Between Airline Junction, Mo., & Grandview, Mo.—Kansas City Southern Railway; Docket No. FD 36500 (Sub-No. 3), Canadian National Railway—Control—Gateway Eastern Railway; Docket No. FD 36500 (Sub-No. 4), Illinois Central Railroad—Assignment of KCS Trackage Rights Between Rock Creek Junction, Mo., & Airline Junction, Mo.—Union Pacific Railroad; and Docket No. FD 36500 (Sub-No. 5), Norfolk Southern Railway—Trackage Rights—Kansas City Southern.

be open to the public at 8:00 a.m. There is public parking in the building. The two closest Metro stops are Federal Center S.W. (3rd and D Streets, S.W., serving the Blue, Orange, and Silver Lines) and L'Enfant Plaza (6th and D Streets, S.W., serving the Yellow, Green, Blue, Orange, and Silver Lines). Upon arrival, check in at the security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or federal government identification); sign in at the security desk; submit to an inspection of all briefcases, handbags, etc.; and pass through a metal detector. Persons who exit the building during the hearing will be subject to these security procedures again if they choose to re-enter the building. Speakers must check in with the clerk at the front of the Hearing Room.

Panelists attending the hearing virtually must ensure that their email addresses have been provided to the Board. Any panelist listed in the schedule of appearances who intends to speak at the hearing via Zoom but has not yet provided a necessary email address must submit it to **Hearings@stb.gov** by 12:00 p.m. EDT on September 22, 2022. No later than 10:00 a.m. EDT on September 23, 2022, persons scheduled to speak at the hearing via Zoom will receive an email from the Board via **Hearings@stb.gov** titled "Panelist" that includes a link and instructions for how to enter the Zoom meeting. Panelist links are speaker-specific and should not be forwarded or used by individuals that are observing the hearing.

To allow the Board sufficient time to engage with each panel, the Board cannot provide specific times for when each panel will be called. Accordingly, panelists will be responsible for monitoring the progress of the hearing and ensuring they are available when it is time for their panel. Panelists attending virtually may enter the Zoom meeting before their panel is called but, if they do so, they must mute their microphones and turn off their cameras until their panel is called.

Any panelist who wishes to make a visual presentation at the hearing should email a copy of the presentation to the Board at **Hearings@stb.gov** no later than September 26, 2022. The presentations will be loaded onto a Board laptop for use at the in-person hearing.² For panelists attending the hearing virtually, Board staff will conduct a technology practice session on September 23, 2022, from 10:30 to 11:30 a.m. EDT for panelists to test their Zoom access and ability to share slides. Virtual panelists making visual presentations are encouraged to attend at least part of the practice session. Panelists who would like to participate in the practice session should use the "Panelist" email invitation allowing them access to the Zoom hearing, which will be sent by 10:00 a.m. EDT on September 23, 2022, as explained above.

Panelists may not divulge confidential information at the public hearing. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 5 (STB served Apr. 2, 2021). Additionally, panelists should not discuss environmental and historic preservation issues. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 3 (STB served July 22, 2022) (explaining that environmental and historic preservation issues would be addressed by the

² Laptops and recorders may be used in the Hearing Room. Wi-Fi will be available, and a password will be available in the Hearing Room. Cell phones may be used quietly in the corridor outside the Hearing Room or in the building's main lobby.

ongoing environmental review process being conducted by the Board's Office of Environmental Analysis, and that those issues would not be addressed during this public hearing).

Members of the media should contact Michael Booth in the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-1760 if they plan to attend the hearing in person.

The Hearing Room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245 by 5 p.m. EDT on September 23, 2022.

The hearing will be available for public viewing at <https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live>. A link to the hearing can also be accessed through the Board's website at www.stb.gov, under "Quick Links" on the homepage, by clicking on "WATCH LIVE HEARINGS HERE." The hearing will be recorded, and the link to the recording will be available on the Board's website, under the tab "News & Communications," by clicking on "Meetings & Hearings." Additionally, a transcript will be created and will be made available as soon as possible on the Board's website, under the tab "News & Communications," by clicking on "Transcripts & Statements."

For further information regarding the hearing, contact Valerie Quinn at (202) 245-0381. Additional "Frequently Asked Questions" pertaining generally to participation in Zoom proceedings are posted on the Board's website, under the tab "News & Communications," by clicking on "Meetings & Hearings." Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

It is ordered:

1. A hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001, and online via Zoom on September 28, 29, and 30, 2022, beginning at 9:30 a.m. EDT on September 28 and 30 and at 9:00 a.m. EDT on September 29.
2. Any panelist listed in the schedule of appearances who intends to speak at the hearing via Zoom but has not yet provided an email address must submit an email address to **Hearings@stb.gov** by 12:00 p.m. EDT on September 22, 2022.
3. Visual presentations should be emailed to **Hearings@stb.gov** by September 26, 2022.
4. Time for presenting at the hearing is allotted as reflected in the Appendix to this decision.
5. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

APPENDIX
SCHEDULE OF APPEARANCES

<u>Party</u>	<u>Time Allotted</u>
---------------------	-----------------------------

Day 1 – September 28, 2022

Panel I

Honorable Raja Krishnamoorthi, United States House of Representatives

Panel II

Commissioner Carl W. Bentzel, Federal Maritime Commission

Panel III

Applicants	90 minutes ³
------------	-------------------------

- Keith Creel, President and CEO of Canadian Pacific Railway Company (Canadian Pacific Railway)
- Patrick J. Ottensmeyer, President and CEO of Kansas City Southern (KCS)
- John Brooks, Canadian Pacific Railway's Executive Vice President and Chief Marketing Officer
- James Clements, Canadian Pacific Railway's Senior Vice-President Strategic Planning and Technology Transformation
- Raymond A. Elphick, Canadian Pacific Railway's Assistant Vice President Service and Product Design
- John F. Orr, KCS's Executive Vice President, Operations
- W. Robert Majure, Vice President, Cornerstone Research
- David L. Meyer of the Law Office of David L. Meyer, counsel for Applicants
- William A. Mullins of Baker & Miller PLLC, counsel for Applicants

³ Applicants request 180 minutes but state that they anticipate dividing this time equally between their opening and closing presentations. Therefore, Applicants will be allotted 90 minutes for their opening presentation and 90 minutes for their closing statement.

Panel IV

Southern Rail Commission	5 minutes
• Knox Ross, Chairman	
Progressive Rail Incorporated	5 minutes
• Dave Fellon, President	
Canpotex Limited	5 minutes
• Vidyadher Kachroo, Snr-VP Operations	
Supply Chain of SSAB Americas	5 minutes
• Sean Keenan, Vice President, Supply Chain	
Americold	5 minutes
• Mathew Moore, Vice President of Global Market Strategy	
Unifor	5 minutes
• Joel Kennedy, National Representative	

Panel V

City of Monroe, Louisiana	5 minutes
• Friday Ellis, Mayor	
William E. Gluba, former Mayor of the City of Davenport, Iowa	5 minutes
Hennepin County, Minn., and the Hennepin County Regional Railroad Authority	5 minutes
• Benedict J. Schweigert, Senior Assistant County Attorney	
Honor the Earth	5 minutes
• Cheryl Barnds, on behalf of Winona LaDuke	
Russell Group	5 minutes
• Michelle Solis Russell, Partner	

Panel VI

The Coalition to Stop CPKC 30 minutes

- Carie Anne Ergo, Village Administrator of the Village of Itasca, Ill.
- Rodney S. Craig, President of the Village of Hanover Park, Ill.
- Christopher C. Snyder, Director of Transportation/County Engineer, DuPage County, Ill.
- James Burke, Chief, Wood Dale Fire Protection District
- Thomas W. Wilcox of the Law Office of Thomas W. Wilcox, LLC, counsel
- Evan K. Summers, Village Manager for the Village of Bensenville, Ill.

The Commuter Rail Division of the Regional Transportation Authority d/b/a Metra 45 minutes

- Jim Derwinski, CEO
- W. Eric Pilsk of Kaplan Kirsch & Rockwell LLP
- Robert D. Mulholland of L.E. Peabody & Associates, Inc.
- Greg Godfrey, Director, Consolidated Control Center
- Steven Cork, Director, Interline Operations

Panel VII

Allied Rail Unions⁴ 15 minutes

- Richard S. Edelman of Mooney, Green, Saindon, Murphy & Welch, P.C., counsel

Joint Associations⁵ 10 minutes

- Jeff Moreno of Thompson Hine LLP, counsel

The Chlorine Institute 7 minutes

- Michael F. McBride of Van Ness Feldman LLP, counsel

⁴ The Allied Rail Unions include the Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU.

⁵ The Joint Associations include the American Chemistry Council, The Fertilizer Institute, and The National Industrial Transportation League.

Day 2 – September 29, 2022

Panel VIII

Rodney Ellis, Harris County Commissioner for Precinct One 5 minutes

Robert Gallegos, Council Member for Houston City Council District I 5 minutes

Panel IX

Canadian National Railway Company and its rail operating subsidiaries 90 minutes

- Robert Reilly, Executive Vice President and Chief Operating Officer
- Doug MacDonald, Chief Marketing Officer
- Daniel Bresolin, Vice President, Intermodal
- Derek Taylor, Vice President, Transportation, Southern Region
- Sarah Slazinski, Assistant Vice President, Automotive
- Kathryn Gainey, Deputy General Counsel
- Raymond Atkins of Sidley Austin LLP
- Matthew Warren of Sidley Austin LLP

Panel X

Baton Rouge Area Foundation 5 minutes

- John Spain, Executive Vice President

Pacific Northwest Waterways Association 5 minutes

- Heather Stebbings, Executive Director

California Association of Port Authorities 5 minutes

- Martha Miller, Executive Director

Panel XI

USD Group 5 minutes

- Dan Borgen, Chairman, President, and CEO

Hapag-Lloyd (America) LLC 5 minutes

- Uffe Ostergaard, President

J.D. Irving, Limited 5 minutes

- James D. Irving, Co-Chief Executive Officer

CHS Inc. 5 minutes

- Justin A. Cauley, Senior Director of Transportation

Panel XII

The North Dakota Grain Dealers Association (NDGDA) and Fessenden Co-op Association (FCA) 5 minutes

- Mark Hovland, NDGDA Immediate Past President and FCA General Manager

Ray-Carroll County Grain Growers, Inc. 5 minutes

- Beau Hepler, General Manager

Mastronardi Produce Limited 5 minutes

- Gerardo Magno, Vice President, Logistics

Canadian Forest Products Ltd. 5 minutes

- David Trent, SVP, Supply Chain and Digital

Richardson International Limited 5 minutes

- Jean-Marc Ruest, Senior Vice-President, Corporate Affairs and General Counsel
- Robert Bielik, Vice-President, Transportation

Panel XIII

Savage 5 minutes

- Kirk Aubry, President and CEO

Bartlett, a Savage Company 5 minutes

- Bob Knief, President

Panel XIV

Runyowa Law [tentative] ⁶	5 minutes
• Tavengwa Runyowa	
The Sierra Club	5 minutes
• Katherine J. García, Director, Clean Transportation for All	
Nahant Marsh Education Center	5 minutes
• Brian Ritter, Executive Director	
Dead River Company, LLC (Dead River) ⁷	5 minutes
• Sandy Brown of Thompson Hine LLP, counsel	

Panel XV

Norfolk Southern Railway Company	60 minutes
• Claude E. “Ed” Elkins, Executive Vice President and Chief Marketing Officer	
• Michael R. McClellan, Senior Vice President and Chief Strategy Officer	
• John Mayo, Elsa Carlson McDonough Chair of Business Administration and Professor of Economics, Business and Public Policy at Georgetown University’s McDonough School of Business	
• Carrie C. Mahan, counsel	
BNSF Railway Company	60 minutes
• Roger P. Nober, Executive Vice President, Law and Corporate Affairs, Chief Legal Officer	
• Courtney B. Estes, Assistant Vice President and Associate General Counsel	
• Jon Gabriel, Vice President, Service Design and Performance	
• Paul Hirsch, Assistant Vice President of the Mexico Business Unit	
• Peter W. Denton of Steptoe & Johnson LLP, outside counsel	
• David Reishus, Executive Vice President at Compass Lexecon, outside consultant	

⁶ Applicants filed a response in objection to Runyowa Law’s notice of intent to participate at the hearing, which will be addressed in a future decision.

⁷ Applicants filed a response in objection to Dead River’s notice of intent to participate at the hearing. Because the Board announced that this hearing would be open to the public, Dead River will be permitted to participate.

Day 3 – September 30, 2022

Panel XVI

CSX Transportation, Inc. 90 minutes

- Paul A. Cunningham of Harkins Cunningham LLP, counsel
- Maryclare Kenney, Vice President of Intermodal Services
- Robert Girardot, Director of Rail Relations and Port Development
- Ryan C. Tisch of Crowell & Moring LLP, counsel
- Ramsey Shehadeh, Managing Director at NERA Economic Consulting
- Julie Carey, Managing Director at NERA Economic Consulting

Union Pacific Railroad Company 60 minutes

- John Turner, Senior Vice President of the Harriman Dispatch Center and Network Planning
- Michael L. Rosenthal of Covington & Burling LLP, counsel

Panel XVII

Kelly Misselwitz, Legislative Director for U.S. Representative Ilhan Omar

Panel XVIII

Archer Daniels Midland Company 5 minutes

- Christopher L. Boerm, President, Transportation

Ingredion Incorporated 5 minutes

- Rob Ritchie, Regional President—Mexico, U.S./Canada

NFI Industries 5 minutes

- Mark McKendry, Senior Vice President

Southeast Louisiana Super Region 3 minutes

- Michael Hecht, President and CEO of Greater New Orleans, Inc.

Panel XIX

Applicants

90 minutes

- Keith Creel, President and CEO of Canadian Pacific Railway Company (Canadian Pacific Railway)
- Patrick J. Ottensmeyer, President and CEO of Kansas City Southern (KCS)
- John Brooks, Canadian Pacific Railway's Executive Vice President and Chief Marketing Officer
- James Clements, Canadian Pacific Railway's Senior Vice-President Strategic Planning and Technology Transformation
- Raymond A. Elphick, Canadian Pacific Railway's Assistant Vice President Service and Product Design
- John F. Orr, KCS's Executive Vice President, Operations
- W. Robert Majure, Vice President, Cornerstone Research
- David L. Meyer of the Law Office of David L. Meyer, counsel for Applicants
- William A. Mullins of Baker & Miller PLLC, counsel for Applicants