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March 23, 2021

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VIA E-FILING

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

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

Errata to Notice of Intent

Dear Ms. Brown:

As you know, yesterday Applicants¹ notified the Surface Transportation Board of their intent to file an application seeking authority under 49 U.S.C. 11323-25 for the acquisition of control by Canadian Pacific of Kansas City Southern and its U.S. rail carrier subsidiaries (“Notice of Intent”).

Today, Applicants discovered several mistakes that need to be corrected in the Notice of Intent, including incorrect references to footnotes 2 and 3 to “Appendix A.” Applicants wish to clarify/correct for the record that there is no Appendix A. The interim steps are fully described in footnote 3. Also, the date for the Merger Agreement was incorrect in the version filed yesterday. To eliminate any confusion, Applicants respectfully request that the Board substitute

¹ Applicants are Canadian Pacific Railway Limited (“Canadian Pacific”), Canadian Pacific Railway Company (“CPRC”), and their U.S rail carrier subsidiaries Soo Line Railroad Company (“Soo Line”), Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively “CP”) and Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company (“KCSR”), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively “KCS”) (CP and KCS collectively, “Applicants”).

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The Honorable Cynthia T. Brown
March 23, 2021
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this revised Notice of Intent, which corrects the mistakes in the version previously filed. Applicants apologize for any inconvenience these mistakes may have caused. Any comments or questions regarding this errata should be addressed to me at 202-294-1399.

Thank you very much for your attention to this matter.

Respectfully submitted,

/s/ David L. Meyer

David L. Meyer

cc: William A. Mullins, Esq.
Parties of Record

BEFORE THE SURFACE TRANSPORTATION BOARD

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

**NOTICE OF INTENT TO FILE APPLICATION FOR APPROVAL OF
TRANSACTION SUBJECT TO 49 U.S.C. §§ 11323-25**

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March 22, 2021

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

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

**NOTICE OF INTENT TO FILE APPLICATION FOR APPROVAL OF
TRANSACTION SUBJECT TO 49 U.S.C. §§ 11323-25**

Pursuant to 49 C.F.R. § 1180.4(b), Canadian Pacific Railway Limited (“Canadian Pacific”), Canadian Pacific Railway Company (“CPRC”) and their U.S rail carrier subsidiaries Soo Line Railroad Company (“Soo Line”), Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively “CP”) and Kansas City Southern and its U.S. rail carrier subsidiaries The Kansas City Southern Railway Company (“KCSR”), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively “KCS”) (CP and KCS collectively, “Applicants”) notify the Surface Transportation Board of Applicants’ intent to file an application seeking authority under 49 U.S.C. 11323-25 for the acquisition of control by Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corporation, of Kansas City Southern, and through it of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of both its U.S. railroad subsidiaries and KCSR and its railroad affiliates. Applicants anticipate filing their Application on or shortly after June 28, 2021. They will use the year 2019 as the base year for purposes of the impact analyses to be included with the Application. Applicants will make available, as soon as practicable after the issuance of a

Protective Order in this proceeding and subject to such Order, their 100% traffic tapes upon the written request of a requesting party.¹

On March 21, 2021, Canadian Pacific (along with two of its wholly-owned subsidiaries, Cygnus Merger Sub 1 Corporation and Cygnus Merger Sub 2 Corp.) and Kansas City Southern entered into an Agreement and Plan of Merger (the “Merger Agreement”) under which Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corp., will acquire all of the capital stock of Kansas City Southern. Specifically, upon receipt of approval by the shareholders of Canadian Pacific and Kansas City Southern and the satisfaction of other customary closing conditions, Cygnus Merger Sub 2 Corp. will merge with and into Kansas City Southern (the “Merger”), with Kansas City Southern surviving the Merger. Upon completion of the Merger, holders of Kansas City Southern’s common stock will become entitled to receive a combination of Canadian Pacific common shares and cash in exchange for their common stock, and holders of Kansas City Southern’s preferred stock will become entitled to receive cash in exchange for their preferred shares. Immediately following completion of the Merger, Canadian Pacific will conduct a series of internal transactions that will result in its voting interest in the successor to Kansas City Southern² being placed into an independent voting trust (the “Voting Trust”) pending review and approval of the control transaction by the Board. The internal

¹ As contemplated by 49 C.F.R. § 1180.4(b)(4)(iii) (though not formally applicable to this transaction), if the requesting party is a railroad or represents a railroad (the “other railroad”), Applicants’ provision of access to their 100% traffic tapes will be conditioned upon the written agreement of the other railroad to provide reciprocal access to its 100% traffic tapes for use by Applicants in this proceeding (subject to the terms of the Protective Order).

² As a result of the internal transactions, Kansas City Southern will legally be merged with and into Cygnus Merger Sub 1 Corp., with Cygnus Merger Sub 1 Corp. surviving. However, the successor holding company of Kansas City Southern will continue to own Kansas City Southern’s railroad and other affiliates, and will maintain the same name, governance structure and other corporate-level attributes of Kansas City Southern. For convenience, all references in this letter to Kansas City Southern following the Merger are to its successor holding company.

transactions involve a series of steps designed to address matters relating to tax and corporate law, and all such steps, including the placement of the Canadian Pacific's interest in Kansas City Southern into the Voting Trust, will be completed within moments of the completion of the Merger and for practical purposes contemporaneously.³ The Voting Trust will comply in all respects with the Board's guidelines at 49 C.F.R. Part 1013, and will ensure that the day-to-day management and operation of KCSR and its railroad affiliates will not be controlled by Canadian Pacific or anyone affiliated with Canadian Pacific.⁴ If and when the Board takes final and favorable action on the Application, the Voting Trust will be terminated and Canadian Pacific will assume control of Cygnus Merger Sub 2 Corp. and, through it, of Kansas City Southern and its railroad affiliates.

This is a major transaction, as defined at 49 C.F.R. § 1180.2(a), as it is a control transaction involving two or more Class I railroads. Canadian Pacific presently controls Soo Line, a Class I railroad, and, under the proposed transaction, proposes to acquire common control of KCSR, also a Class I railroad. The Application is subject to the regulations set forth at 49 CFR Part 1180 (2000), pursuant to the waiver granted by the Board for transactions involving

³ Specifically, (a) Kansas City Southern will merge with and into Cygnus Merger Sub 1 Corp., a direct, wholly-owned subsidiary of Canadian Pacific, with Cygnus Merger Sub 1 Corp. surviving; (b) Canadian Pacific will contribute its shares in Cygnus Merger Sub 1 Corp. to CPRC, a direct, wholly-owned subsidiary of Canadian Pacific; (c) CPRC will contribute its shares in Cygnus Merger Sub 1 Corp. to Cygnus Holding Corp., an indirect, wholly-owned subsidiary of Canadian Pacific; and (d) CPRC will transfer its shares in Cygnus Holding Corp. to Canadian Holdco, an indirect, wholly-owned subsidiary of Canadian Pacific; and (e) Canadian Pacific will cause Cygnus Holding Corp. to contribute its entire interest in Cygnus Merger Sub 1 Corp., and thus in KCSR and its railroad and other affiliates, to the Voting Trust.

⁴ In particular, no member of the management or board of Canadian Pacific or any of its railroad affiliates will play any role in the management of Kansas City Southern or its railroad affiliates while Canadian Pacific's shares of Kansas City Southern are held in trust.

KCSR.⁵ Applicants are simultaneously filing a Motion for Protective Order (CP-2/KCS-2) and a Petition to Establish Procedural Schedule (CP-3/KCS-3).

The transaction, if approved and consummated, will generate substantial public benefits by combining the Nation's two smallest Class I railroads. It will join two railroads whose networks are a perfect and natural fit. The CP and KCS networks are entirely end-to-end, with no overlapping routes, corridors, or territories. The number of independent railroads currently serving particular shippers will not be reduced at any location. Instead, competition will be strongly enhanced, against both the larger Class I railroads whose lines surround those of Applicants, as well as trucking competitors.

The combination will create the first rail network connecting the U.S., Canada, and Mexico. Joining at Kansas City, in America's Heartland, CP and KCS together will connect customers via single-network transportation offerings between points on CP's system throughout Canada, the U.S. Midwest, and the U.S. Northeast and points on KCS's system throughout the South Central United States and Mexico. The combined network's new single-line offerings will deliver dramatically expanded market reach, provide new and better competitive options for shippers which today may be using trucks or other major railroads to move their goods, and support economic growth across the entire North American continent.

CP's track record of operational excellence as a Precision Scheduled Railroading pioneer, coupled with the hand-in-glove fit of the two networks, will ensure a smooth and efficient combination of the two railroads without service disruption. And CP will bring its safety-first

⁵ 49 CFR § 1180.0(b); Ex Parte No. 582 (Sub-No. 1), *Major Rail Consolidation Procedures* (STB served June 11, 2001), at 16 ("for a merger proposal involving KCS and another Class I railroad, we will waive application of the new rules and apply the rules previously in effect").

culture – as North America’s safest large railroad for 15 consecutive years⁶ – and extend it to the entire combined network.

Applicants look forward to demonstrating these and the many other public benefits resulting from the proposed transaction when they file their Application.

Respectfully submitted,

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⁶ Canadian Pacific Annual Report 2020, at 20 (citing FRA Reportable Train Accident Frequency Data), [https://s21.q4cdn.com/736796105/files/doc_financials/2020/ar/CP_2020_AnnualReport_SECURED_lorez-\(1\).pdf](https://s21.q4cdn.com/736796105/files/doc_financials/2020/ar/CP_2020_AnnualReport_SECURED_lorez-(1).pdf).