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

Re: Finance Docket No. 36514, *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing on behalf of the Canadian Pacific¹ in response to the “Motion to Adopt Procedural Schedule for Renewed Motion for Approval of Voting Trust Agreement” (CN-15) filed by Canadian National (“CN”) this morning.

CN’s proposed “three business day” period for public comment on a “Renewed Motion” it has not yet prepared or filed is not constructive,² and is based on the false premise that members of the public were under an obligation to respond yesterday (*i.e.*, were “only a few hours from the deadline to do so”) to CN’s previous motion for voting trust approval. The Board should not be cowed by CN’s gamesmanship and aggressive tactics.

CN is well aware that there was no filing deadline yesterday on CN’s now-denied “Motion for Approval.” CN was not subject to the 2001 merger rules until yesterday, despite its invitation to have them applied to a CN/KCS transaction. By finding that the KCS waiver from the 2001 rules does not apply to a CN/KCS transaction, the Board’s decision yesterday is what

¹ Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries 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”).

² CN proposes to file its motion at an unspecified time this coming Friday, and require that any interested member of the public file a response by next Wednesday, giving them Monday and Tuesday to prepare that response, and a third business day to get it on file.

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invoked the requirement for formal approval of CN's proposed voting trust. Under those regulations (and as noted in the Board's decision, at 7), once the 2001 rules are applicable the next step is for the Board to establish a "comment period." *See* 49 C.F.R. § 1180.4(b)(4)(iv). The Board has not established any such comment period, and thus there cannot have been any "deadline" for such comments, CN's Kafka-esque claims to the contrary notwithstanding.

CN's proposal for a three-business day comment period is not serious. CN has already had four weeks to prepare a submission addressing the Board's public interest standard, but instead chose to stand pat on its "misplaced" view of the governing legal standards. CN now chooses to give itself four business days to prepare a "Renewed Motion," which in fact will be an entirely new motion that somehow "follow[s] the guidance that the Board provided in the May 17 Decision." CN-15 at 3. But then it proposes that interested parties have a mere three business days to respond. This proposal is grotesquely unfair and inadequate on its face (particularly as to the interested parties who may be less fully immersed in this proceeding than counsel for CN and CP).

CN is of course free to file its Renewed Motion whenever it desires. If the Board wishes to decide in advance to establish a comment period – before assessing whether CN's Renewed Motion even presents a *prima facie* case supporting approval of a voting trust under the 2001 rules – it should consider interested parties at least 20 days to respond (*cf.* 49 C.F.R. § 1104.13(a) ("A party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Board, unless otherwise provided."), and certainly at a minimum 10 days. A period of this duration is appropriate given the importance of this matter, the unknown content of CN's forthcoming Renewed Motion, and the fact that many parties with an interest in this matter have undoubtedly been awaiting the Board's establishment of a schedule before investing the time and effort necessary to prepare comments. CN has pointed to no compelling exigency that requires a more expedited schedule; its proposed Merger Agreement allows a nine-month period in which to obtain "STB Voting Trust Approval." *See* Agreement, Section 7.1.³

³ Section 7.1 provides that the Agreement may be terminated if closing conditions – including the requirement to obtain "STB Voting Trust Approval" (as set forth in Section 6.1(e)) – prevent a closing on or before the "nine-month anniversary of date of this Agreement."

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CP appreciates the Board's attention to this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David L. Meyer", with a long horizontal flourish extending to the left.

David L. Meyer

*Attorney for Canadian Pacific Railway
Limited*

cc: All Parties of Record