

November 29, 2021

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VIA E-FILING

Danielle Gosselin
Acting Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Docket No. FD 36500, *Canadian Pacific Railway Company, et al.—Control—Kansas City Southern, et al.*

Dear Ms. Brown:

On behalf of Canadian Pacific Railway Limited, I am writing to respond to Canadian National Railway Company's November 19 letter, which "urges" the Office of Environmental Analysis to amend its recent notice of intent by adding a third alternative and publishing a draft scope of study. Neither change is appropriate.

CN first claims that OEA's notice of intent fails to "contemplate" a third alternative: approval with conditions. But to the extent CN is talking about environmental mitigation conditions, the notice already specifies that any recommended conditions will be part of the EIS. And if CN wants clarity about other conditions that may appear in responsive applications, it can look to the Board's procedural schedule, which gives OEA time to study such future filings.

CN next cites a federal appellate court decision to argue that publishing a "draft scope of study" is a "critical part" of OEA's environmental review. In fact, nothing in that decision even mentions a draft scope of study, much less suggests that one is critical. *See N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067 (9th Cir. 2011). It is true that past notices have sometimes included a longer list of potential impacts, but the notice here properly identifies all potential environmental issues by category. And OEA went even further here by publishing an interactive website that provides detailed information about rail segments that

Danielle Gosselin
November 29, 2021
Page 2

exceed environmental review thresholds. Because the public can use that information to comment on the scope of the EIS, the website does everything that a “draft scope of study” would do and more.

CN is free to comment on the scope of the EIS. But its November 19 letter also seeks delays to address issues already within the proposed scope. Because OEA need not devote more time to those issues, its environmental review should proceed as planned.

Sincerely,



Kathryn K. Floyd

*Counsel for Canadian Pacific Railway
Company, et al.*

cc: Sean Cline
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