

January 3, 2022

Via electronic submission (www.stb.gov)
Joshua Wayland
Office of Environmental Analysis
Surface Transportation Board, c/o VHB
940 Main Campus Dr., Suite 500
Raleigh, NC 27606

**Re: Docket No. FD 36500; 2021-24670; Notice of Environmental Scoping
Pursuant to the National Environmental Policy Act**

Dear Mr. Wayland:

Canadian National Railway Company and its rail operating subsidiaries (collectively, “CN”) respectfully submit this comment on the environmental scoping process that the Surface Transportation Board’s (“STB’s”) Office of Environmental Analysis (“OEA”) noticed in its decision published November 12, 2021 (“November 12 Decision”¹).

CN appreciates OEA’s recognition that the implications of the proposed CP-KCS merger² warrant preparation of an environmental impact statement (“EIS”) pursuant to the National Environmental Policy Act (“NEPA”). CN notes two issues with aspects of the EIS scoping process. First, OEA should extend the deadline for the scoping period so that any proposals set forth in any responsive applications can be considered within the scope of study and the reasonable range of alternatives analyzed in the EIS. Second, CN reiterates its concern that OEA failed to provide adequate notice regarding the scope of study for the proposed merger and urges OEA to release for comment a draft scope of study.

¹ 86 Fed. Reg. 62,862 (November 12, 2021)

² On October 29, 2021, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their US rail carrier subsidiaries Soo Line Railroad Company; Central Maine & Quebec Railway U.S. Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. (collectively, “CP”) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”) filed an application with the STB seeking the STB’s approval of the acquisition of control by CP of KCS.

I. OEA Should Extend the Deadline for Scoping Comments

The scoping process is a critical part of identifying the range of reasonable alternatives to be evaluated in an EIS. Though OEA extended the deadline for comments on the scoping process until January 3, 2022, the comment period closes before the deadlines for submitting descriptions of responsive applications (January 12, 2022) and related environmental information for responsive applications (February 22, 2022). Despite OEA's explicit acknowledgment that the scoping process is for "determining the range of issues that should be examined and assessed in the EIS,"³ OEA has set a commenting schedule that inherently limits its ability to consider, as well as stakeholder ability to comment on, the range of reasonable alternatives from responsive applications that are not due until after January 3. OEA should, therefore, extend the comment period on the scope of the EIS until a reasonable period of time after February 22, 2022. If OEA decides against an additional extension of the scoping period, Canadian National will assume that OEA will allow for responsive applications to be adequately considered as reasonable alternatives to the proposed action.

OEA should also delay issuance of a final scope of study until after review of any responsive applications. This would not substantially delay OEA's current anticipated schedule of issuing the final scope in early 2022.⁴ It would, however, ensure OEA has sufficient time to meaningfully consider the range of reasonable alternatives proposals by parties of record.

II. Scope of Study is Inadequate

On November 19, 2021, CN raised a concern with STB that it was departing from its normal practice of issuing for comment a draft scope of study for the proposed action and instead providing only a notice that the scoping period would commence and run until December 17, 2021.⁵ This approach fails to provide stakeholders with information sufficient to fully participate in the scoping process and truncates public review in a way that departs from STB precedent. Indeed, stakeholders and the public at large will have no access to a draft scope of the EIS on which to comment or discuss during the "virtual" scoping meetings. To reiterate previous comments, informed public participation is a critical component of OEA's NEPA obligations to take a "hard look at the potential environmental consequences of the proposed action."⁶

In response to CN's concerns, CP suggested that the website devoted to the CP-KCS merger provided the appropriate level of information and was equivalent to a draft scope of study. The website, however, depicts only projected traffic changes along some of the current rail lines

³ 86 Fed. Reg. 62,862, 62,864.

⁴ *Id.*

⁵ See STB Finance Docket No. 36500, EI-31317 (Nov. 19, 2021).

⁶ *Northern Plains Resource v. Tongue River R.R.*, (9th Cir. 2011).

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and does not indicate any other potential environmental impact that may result from the proposed merger. And CP has already admitted that the merger may have “localized impacts” that are still being evaluated but any details about these potential “localized impacts” or related proposed mitigation are absent from that website. It is unclear what other information is omitted from the website. This only further supports the need to publish a draft scope of study to provide stakeholders some guidance on the potential environmental impacts of a CP-KCS merger.

Absent a draft scope of study, communities and stakeholders are ill-positioned to assist in the development of reasonable alternatives and potential mitigation measures for the proposed merger.

For these reasons, CN urges OEA to take the aforementioned actions to ensure adequate and sufficient public engagement and environmental review consistent with NEPA.

* * *

CN appreciates the opportunity to submit these comments.

Best regards,

A handwritten signature in black ink, appearing to read 'Peter Whitfield', written in a cursive style.

Peter Whitfield

cc: Danielle Gosselin, Acting Director, Office of Environmental Analysis