

February 28, 2022

Hon. Martin Oberman
Chairman
Surface Transportation Board

Hon. Michelle Schultz
Vice Chairman
Surface Transportation Board

Hon. Patrick Fuchs
Member
Surface Transportation Board

Hon. Robert Primus
Member
Surface Transportation Board

Hon. Karen Hedlund
Member
Surface Transportation Board

ENTERED
Office of Proceedings
February 28, 2022
Part of
Public Record

RE: STB Finance Docket No. 36500, Canadian Pacific Railway – Control – Kansas City Southern

Dear Chairman Oberman, Vice Chairman Schultz, and Board Members Fuchs, Primus and Hedlund:

Occidental Chemical Corporation and Oxy Vinyls, LP (together, “Oxy”) respectfully submit these comments on the application of Canadian Pacific Railway Company (“CP”) to acquire Kansas City Southern Railway Company (“KCS”) (collectively “Applicants”).¹ Additionally, Oxy joins the Comments and Request for Conditions submitted separately by The American Chemistry Council (“ACC”), The Fertilizer Institute (“TFI”), and The National Industrial Transportation League (“NITL”) (together, the “Joint Associations”), as well as The Chlorine Institute (“CI”).

Oxy is a top tier producer, both domestically and globally, of all the chemicals that we manufacture and market, including chlor-alkali and vinyl products like chlorine, caustic soda, hydrochloric acid, polyvinyl chloride (PVC) and vinyl chloride monomer (VCM). Our products help ensure safe drinking water, strengthen food security, and enable critical technologies and construction products that further prosperity and energy efficiency.

As the STB is well aware, the rail industry today is vastly different than the industry of the 1980s and there are far fewer competitive options for shippers. As a chemical shipper, it has been our experience that, despite their common carrier obligation, some rail carriers do not wish to carry certain of our products and, to that end, impose what we view as unreasonable terms and conditions (including price) on such movements. Against that backdrop, we submit these comments regarding CP’s proposed acquisition of KCS, and request that the STB place certain conditions on the acquisition, as set forth herein, if the STB is inclined to approve it.

¹ All references to “CP” also include Canadian Pacific Railway Limited; Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota Minnesota & Eastern Railroad Corp; and Delaware & Hudson Railway Company, Inc. All references to “KCS” also include Kansas City Southern Corporation; Gateway Eastern Railway Company; and The Texas Mexican Railway Company.

First, CP has published one of the most burdensome tariff provisions covering the transportation of toxic-by-inhalation (“TIH”) materials among the Class I railroads, whereas KCS has not published any tariff item specific to TIH, but instead has addressed TIH materials in a manner that is applicable to hazardous materials generally.² More specifically, CP’s Tariff 8 contains extensive indemnification and insurance requirements for TIH shipments. While CP accepts liability for its own negligent or willful misconduct, it assigns the shipper liability for everything else, which includes third party liability and Acts of God. Further, CP is not required to seek recovery from a responsible third party before seeking indemnity from shippers. In addition, TIH shippers must indemnify CP for those third-party liabilities and must procure not less than \$100 million of insurance to cover indemnity obligations – a significant level of insurance not imposed by any other Class I carrier for these types of shipments. CP imposes these obligations (and associated costs) upon TIH shippers above and beyond exceedingly high transportation rates for TIH shipments.

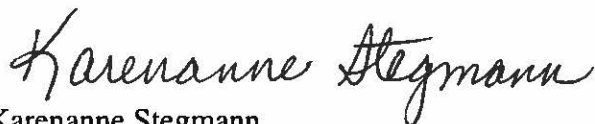
Oxy ships to and from locations that are captive to one railroad (including KCS), and we have a very real concern that CP will extend its Tariff 8 to cover all TIH shipments moving on the combined CP/KCS network where Oxy originates and terminates shipments, thereby imposing significant obligations and costs on Oxy. The ultimate result will be to reduce or completely foreclose our rail transportation options to and from certain locations. For these reasons, Oxy strongly supports and joins in the Joint Associations’ and CI’s request for conditions to protect TIH shippers against the extension of the CP tariff on TIH shipments to movements over KCS resulting from the merger.

Second, absent certain conditions ensuring the existing service levels will not be harmed, Oxy has concerns about service degradation that is likely to result from CP’s acquisition of KCS, as occurred following a series of mergers that began with the BN/SF merger and grew exponentially after the UP/SP and Conrail mergers, and following the implementation of precision scheduled railroading by most of the Class I railroads. Shippers like Oxy need CP’s express commitment and assurances that it will respond timely to service concerns and work to resolve them effectively. For these reasons, Oxy strongly supports and joins in the Joint Associations’ and CI’s request for conditions to mitigate merger-related service disruptions.

Third, Oxy has concerns that CP’s acquisition of KCS will impact overall rail freight competitiveness which, as noted above, is already lacking. Proper conditions are needed to protect existing routing options by preserving all pre-merger interchanges both physically *and commercially*, and Oxy strongly supports and joins in the Joint Associations’ and CI’s request for such a condition.

We appreciate the STB’s consideration of these comments.

Respectfully submitted,



Karenanne Stegmann
Vice President Supply Chain

² See CP Tariff 8, Items 53-54, available at <https://www.cpr.ca/en/customer-resources-site/Documents/tariff-8-hazardous-commodities-jan-01-2022.pdf>.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2022, I caused a copy of the foregoing document to be served by email or first-class mail, postage prepaid, on all parties of record on the service list for Finance Docket No. 36500.

/s/ Suzanne Wellen