



SIDLEY AUSTIN LLP  
1501 K STREET, N.W.  
WASHINGTON, D.C. 20005  
+1 202 736 8000  
+1 202 736 8711 FAX

EI-32613

AMERICA • ASIA PACIFIC • EUROPE

October 14, 2022

**By E-Mail**

Joshua Wayland  
Surface Transportation Board  
Environmental Filing, Docket No. FD 36500  
c/o VHB  
940 Main Campus Drive Suite 500  
Raleigh, NC 27606

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

Dear Mr. Wayland,

On behalf of Canadian National Railway Company and its U.S. operating subsidiaries (CN), we respectfully submit for your consideration the following supplemental comments regarding the Draft Environmental Impact Statement (EIS) for the Canadian Pacific (CP) Acquisition of Kansas City Southern (KCS) (Proposed Action), published on August 5, 2022. CN previously submitted initial Comments on the Draft EIS on September 6, 2022 and as explained therein, believes that issuance of a Supplemental EIS is warranted.

CN's supplemental comments below address a number of issues pertaining to the Draft EIS. Part 1 explains why the Draft EIS's conclusion that the rail-to-rail diversions (as predicted by CP and KCS) should be excluded from the overall fuel consumption analysis is incorrect. Contrary to the Draft EIS's assumption, the Proposed Action will dramatically increase the unit miles traveled on a merged CPKC by those diverted cars and containers. In Part 2, CN identifies a potential inconsistency in how over-the-road trucks per day are counted in the CP and CN submissions. Part 3 presents the written remarks that CN employee Kari Harris was unable to give at the public hearing in Itasca, Illinois due to insufficient time.

In Part 4, CN explains why the Draft EIS must consider the divestiture of the KCS line between Kansas City, Missouri, and Springfield/East St. Louis, Illinois ("Springfield Line") as a reasonable alternative to approval of the CP-KCS merger without conditions. Finally, CN explains in Part 5 why it is improper for the Surface Transportation Board (STB) to segment the environmental analysis of the Proposed Action and CN's responsive application.

## CN'S SUPPLEMENTAL COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

### **1. The Draft EIS Incorrectly Concludes that CP-KCS Rail-To-Rail Diversions Will Cause No System-Wide Changes In Energy Consumption.**

The STB's National Environmental Policy Act (NEPA) regulations provide that the EIS must "[s]tate whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why." 49 C.F.R. § 1105.7(e)(4)(iii). In the Draft EIS, the OEA indicated that rail-to-rail diversions were not "include[d] in the overall fuel consumption analysis because the increase in fuel consumption on the CPKC rail lines would likely be offset by a decrease in fuel consumption on the rail lines of competing railroads."<sup>1</sup> This conclusion assumes that there is negligible or no difference in miles traveled by cars or containers when comparing alternate rail routes between the same origin and destination. But as Mr. Hunt demonstrates in his verified statement attached as Exhibit A, this is simply not the case.

Mr. Hunt analyzed Applicants' projected rail-to-rail diversions and concluded that the diverted containers and carloads "would travel over substantially longer routes" on a merged CPKC than on their current routes of other railroads.<sup>2</sup> Indeed, Applicants' witnesses acknowledge that CPKC routes for diverted traffic are 217 miles or 11.7% longer than routes on existing carriers because all diverted traffic must be funneled through CP and KCS's sole interchange point in Kansas City.<sup>3</sup> These increased distances result in tens of millions of additional revenue (cars and containers) and nonrevenue (empty) unit miles compared to existing routes on other carriers. Relying on assumptions and assertions from Applicants' witnesses and publicly available data from the Association of American Railroads, Mr. Hunt calculates that the CPKC combination will add at least 122.6 million additional unit miles on the railroad network annually if Applicants' rail-to-rail traffic diversions materialize as forecasted.<sup>4</sup> Applicants' representations and Mr. Hunt's analysis do not square with the Draft EIS's assumption that "diversions of traffic from other rail lines would be offset by a decrease in fuel consumption on the other rail lines from which the traffic was diverted" and "not cause system-wide changes in energy consumption."<sup>5</sup> As Mr. Hunt explains, the Draft EIS's erroneous assumption results in an understatement of impacts to the environment of the proposed CP-KCS merger.

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<sup>1</sup> Canadian Pacific Acquisition of Kansas City Southern, Draft Environmental Impact Statement, S.T.B. Docket No. FD 36500, at 3.8-5 (served Aug. 5, 2022).

<sup>2</sup> Exhibit A, Verified Statement of David T. Hunt ("Hunt V.S.") at 1.

<sup>3</sup> *Id.* at 3-4 (citing Verified Statement by Richard W. Brown and Nathan S. Zebrowski, *Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al.*, S.T.B. Docket No. FD 36500, Table 6 (filed Oct. 29, 2021)).

<sup>4</sup> *Id.* at 2, 5 & Table 2 (The container volume is annual once fully phased in at Year 3).

<sup>5</sup> Canadian Pacific Acquisition of Kansas City Southern, Draft Environmental Impact Statement, S.T.B. Docket No. FD 36500, at 3.8-4 (served Aug. 5, 2022).

## **2. The OEA Should Require CP-KCS to Verify or Resubmit Over-the-Road Trucks Per Day Data to Ensure Consistency with CN's Submission.**

CN seeks clarification as to whether OEA and all interested parties are using the same definition for the metric over-the-road trucks per day or “OTR Trucks Per Day.” CN is concerned that trucks operating at intermodal terminal facilities are counted differently for the CP-KCS merger and CN’s Springfield divestiture proposal, and that CP-KCS’s OTR Trucks Per Day data may be understated.

On November 21, 2021, OEA issued Information Request No. 2 to CP and sought a five-year projection of “Over the road trucks per day” for each intermodal facility that would experience an increase in truck traffic due to the Proposed Action.<sup>6</sup> Specifically, OEA was interested in CP’s OTR Trucks Per Day projections for any intermodal facility that would experience an increase of “50 trucks per day, 10 percent of the average number of trucks per day, or both.”<sup>7</sup> In its response, CP provided OTR Trucks Per Day data for six intermodal facilities that would experience the requisite increase in truck activity.<sup>8</sup> For example, in Bensenville Yard in Chicago, CP projected a merger-related increase of 315 trucks per day, in addition to the current 383 trucks per day, for a total of 693 trucks per day.<sup>9</sup> CP did not provide in its response a definition for how it counted OTR Trucks Per Day.

On August 5, 2022, OEA issued Information Request No. 1 to CN and sought “anticipated changes in carloads and truckloads” for rail yards and intermodal facilities where the proposed divestiture of the Springfield Line would “result in an increase in activity exceeding the Board’s threshold for environmental review.”<sup>10</sup> CN provided this data for three intermodal facilities in the same format as CP (per OEA’s request), which included setting forth the number of OTR Trucks Per Day.<sup>11</sup> CN explained that the data it provided “counts each in-gate and out-gate at an intermodal facility as a separate OTR truck movement.”<sup>12</sup> In other words, a single truck moving to and from an intermodal terminal would be counted twice in the “OTR Trucks Per Day” data.

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<sup>6</sup> Information Request No. 2 to CP (EO-3604), *Canadian Pac. Ry., et al. – Control – Kansas City S. Ry., et al.*, S.T.B. Docket No. FD 36500, at 3 (filed Nov. 24, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> CP Response to Information Request No. 2 (EI-31587), *Canadian Pac. Ry., et al. – Control – Kansas City S. Ry., et al.*, S.T.B. Docket No. FD 36500, at 8 & Table 5 (filed Dec. 20, 2021).

<sup>9</sup> Canadian Pacific Acquisition of Kansas City Southern, Draft Environmental Impact Statement, S.T.B. Docket No. FD 36500, at 2-13, Table 2.2-3 (served Aug. 5, 2022).

<sup>10</sup> Information Request No. 1 to CN (EO-3706), *Canadian Pac. Ry., et al. – Control – Kansas City S. Ry., et al.*, S.T.B. Docket No. FD 36500, at 3 (Item J) (filed Aug. 5, 2022).

<sup>11</sup> CN Response to Information Request No. 1 (EO-32167), *Canadian Pac. Ry., et al. – Control – Kansas City S. Ry., et al.*, S.T.B. Docket No. FD 36500, at 8 & Attachment 4 (filed Aug. 5, 2022).

<sup>12</sup> *Id.* at 8.

The differences in OEA's requests to CP-KCS and CN concerning OTR Trucks Per Day creates uncertainty as to whether the metrics provided by CP-KCS and CN can be fairly compared to one another. It is unclear from the data provided by CP-KCS and the Draft EIS whether CP-KCS counted trucks in the same manner as OEA instructed CN during an August 29, 2022 teleconference. If CP-KCS is not using the approach OEA required of CN, then a review of CP-KCS's application would understate the OTR Trucks Per Day added because of the CP-KCS merger, and render any conclusions unreliable. CN respectfully requests that OEA require CP-KCS to verify that its data is responsive to the definition provided to CN, and if not, to resubmit conforming data for OEA and public stakeholder review.

### **3. Comments of Kari Harris Prepared for the Public Meeting in Itasca, Illinois.**

The STB scheduled a number of in-person, public meetings to afford all interested parties an opportunity to provide oral comments on the Draft EIS. Kari Harris, a Manager of Environmental Impact for CN's U.S. operating railroad subsidiaries, intended to participate in the public meeting in Itasca, Illinois scheduled for September 12, 2022. Unfortunately, the Itasca meeting concluded before all interested parties in attendance could make their complete oral remarks given the time constraints. CN respectfully requests that the STB consider the remarks Ms. Harris intended to give at the public meeting, which are attached to this letter as Exhibit B.

### **4. NEPA Requires the STB (and the OEA) to Consider Reasonable Alternatives to the Proposed Action, and Divestiture of the Springfield Line to CN is a Reasonable Alternative.**

CN remains concerned about the Draft EIS's failure to analyze the divestiture of the KCS Springfield Line to CN as a reasonable alternative. The scope of the Draft EIS for the CP-KCS merger is legally deficient under NEPA in light of the proposed alternatives submitted to STB that are within the STB's authority to consider.<sup>13</sup> The STB accepted CN's divestiture application on July 1, 2022.<sup>14</sup> The Coalition to Stop CPKC has expressly recognized that divestiture of the Springfield Line to CN is an important alternative to the CP-KCS merger because divestiture could allow rail traffic to avoid congestion in Chicago.<sup>15</sup> Where reasonable alternatives are presented to an agency, NEPA requires OEA to evaluate approval of the merger with conditions.<sup>16</sup> Under both NEPA and STB's own regulations, it is insufficient for OEA to consider only the proposed action

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<sup>13</sup> See 49 C.F.R. § 1105.7(e)(1).

<sup>14</sup> Decision No. 20, Notice of Acceptance of Responsive Applications, *Canadian Pac. Ry., et al. – Control – Kansas City S. Ry., et al.*, S.T.B. Docket No. FD 36500 (served July 1, 2022), slip op. at 5–7.

<sup>15</sup> See Opening Comments of the Village of Itasca, Illinois and the Coalition to Stop CPKC, *Canadian Pac. Ry., et al. – Control – Kansas City S. Ry., et al.*, S.T.B. Docket No. FD 36500 (filed Feb. 28, 2022), at 18–19.

<sup>16</sup> At the very least, NEPA requires OEA to discuss its reasoning for any elimination of such reasonable alternative from its environmental review. See 40 C.F.R. § 1502.14(a). The Draft EIS, however, fails to do more than describe the proposed action and the no-action alternative. *Canadian Pacific Acquisition of Kansas City Southern*, Draft Environmental Impact Statement, S.T.B. Docket No. FD 36500, at S.1.3 (served Aug. 5, 2022).

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and the no action alternative when OEA has been presented—and is presently evaluating—a reasonable alternative.<sup>17</sup>

For all proposed actions, including STB’s approval of the Proposed Action, STB must evaluate a “reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action.”<sup>18</sup> While NEPA does not require a “minimum” number of alternatives, it does require a “reasonable” number of alternatives.<sup>19</sup> To determine whether an agency’s chosen alternatives are “reasonable,” a court first evaluates the reasonableness of the proposed action’s objectives.<sup>20</sup> “Objectives are ‘unreasonably narrow’ if they ‘compel[] the selection of a particular alternative.’”<sup>21</sup> This is because a proposed action is limited by its goals, not the universe of reasonable alternatives.<sup>22</sup> So long as objectives are reasonable, an agency is not required to consider alternatives that are unrealistic, infeasible, or wholly unable to support the goals of the proposed action.<sup>23</sup>

Pursuant to the Draft EIS, the objectives, or purpose and need, of the Proposed Action is “to build a more efficient and competitive rail network” and “address the need for expanded and more capable and efficient transportation infrastructure while simultaneously advancing the interests of current and future customers with more reliable and economical rail transportation options serving important north-south trade flows” and provide environmental benefits.<sup>24</sup> While this purpose may not be unreasonably narrow, STB’s inclusion of only a single action alternative (*i.e.*, approval without conditions) is unduly narrow under the circumstances here. This is particularly true where CN has proposed an alternative that would increase competition along a rail segment, advance customer interests, avoid congestion in Chicago, take 80,000 trucks off the highway annually, and produce additional environmental benefits.

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<sup>17</sup> See *Simmons v. U.S. Army Corps of Eng’rs*, 120 F.3d 664, 669 (7th Cir. 1997); *High Country Conservation Advocs. v. United States Forest Serv.*, 951 F.3d 1217, 1224–25 (10th Cir. 2020) (“Where the agency omits an alternative but fails to explain why that alternative is not reasonable, the EIS is inadequate.”).

<sup>18</sup> 40 C.F.R. § 1508.1(z) (defining “reasonable alternatives”); see 42 U.S.C. § 4332(C)(iii) (requiring a “detailed statement” on “alternatives to the proposed action”); 40 C.F.R. § 1502.14(a), (b) (setting forth all agencies’ obligations to “[e]valuate reasonable alternatives to the proposed action” and “[d]iscuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits”); see also 40 C.F.R. § 1501.9(e)(2) (“To determine the scope of environmental impact statements, agencies shall consider . . . Alternatives, which include the no action alternative; other reasonable courses of action; and mitigation measures (not in the proposed action).”); 49 C.F.R. § 1105.7(e)(1) (STB regulations requiring environmental reports to “describe any reasonable alternatives to the proposed action”).

<sup>19</sup> 40 C.F.R. § 1502.14(f).

<sup>20</sup> *Conservation L. Found. v. Ross*, 374 F. Supp. 3d 77, 111–12 (D.D.C. 2019).

<sup>21</sup> *Id.* (quoting *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011)).

<sup>22</sup> *Id.* at 112 (citing *Theodore Roosevelt Conservation P’ship*, 661 F.3d at 72; *Friends of Cap. Crescent Trail v. Fed. Transit Admin.*, 877 F.3d 1051, 1063 (D.C. Cir. 2017)).

<sup>23</sup> See *id.*

<sup>24</sup> Canadian Pacific Acquisition of Kansas City Southern, Draft Environmental Impact Statement, S.T.B. Docket No. FD 36500, at 1–1–2 (served Aug. 5, 2022).

STB has specific statutory authority under 49 U.S.C. § 11324(c) to condition any approval of the Proposed Action on the “divestiture of parallel tracks.”<sup>25</sup> Because the proposed alternative of divesting the Springfield Line is technically and economically practicable and feasible, supported by STB’s authority, and helps meet the purpose of the proposed action by providing an efficient rail network as well as providing environmental benefits, it easily falls within the regulatory definition of a reasonable alternative. In light of the Draft EIS’s inclusion of no other alternatives, OEA has little to no reason to reject this alternative proposal. OEA should, at the very least, examine *different* ways in which the Proposed Action could be “implemented compared against a baseline of no action.”<sup>26</sup> Here, that different way is a condition imposing CN’s Springfield divestiture proposal.

## **5. The Draft EIS’s Decision to Conduct Separate Environmental Reviews of the Proposed Action and CN’s Springfield Line Responsive Application May Constitute Improper Segmentation under Federal Law.**

OEA appears to work around its requirement to review CN’s Responsive Application as an alternative by offering to analyze it separately on its own. But this again ignores the interdependent nature of the two proposed actions. But for the Proposed Action, OEA would not have CN’s responsive application. This solution, though, only creates another NEPA problem: unlawful segmentation. Unlawful segmentation occurs when an agency “divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”<sup>27</sup> This is because NEPA requires agencies to consider as part of a single EIS all connected actions (*i.e.*, actions that are closely related).<sup>28</sup> Actions are connected if they:

- (i) “Automatically trigger other actions which may require environmental impact statements”;
- (ii) “Cannot or will not proceed unless other actions are taken previously or simultaneously”; or
- (iii) “Are interdependent parts of a larger action and depend on the larger action for their justification.”<sup>29</sup>

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<sup>25</sup> 49 U.S.C. § 11324(c).

<sup>26</sup> *Theodore Roosevelt Conservation P’ship v. Salazar*, 744 F. Supp. 2d 151, 161 (D.D.C. 2010), *aff’d*, 661 F.3d 66 (D.C. Cir. 2011) (finding agency’s inclusion of range of alternatives between proposed action and baseline of no action reasonable in light of its purpose); *see also Theodore Roosevelt Conservation P’ship*, 661 F.3d at 74 (same).

<sup>27</sup> *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).

<sup>28</sup> 40 C.F.R. §§ 1501.9(e)(1); 1502.4(a). Note that 40 C.F.R. § 1501.9(e)(1) is the same language as that in former regulation 40 C.F.R. § 1508.25(a)(1).

<sup>29</sup> 40 C.F.R. § 1501.9(e)(1)(i)–(iii).

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Courts uphold this prohibition on segmentation where agencies attempt to “evade their responsibilities under NEPA” by arbitrarily separating connected actions.<sup>30</sup> The relevant analysis for improper segmentation focuses on the following three factors: (i) whether the action had an independent reason to exist or a life of its own (independent utility)<sup>31</sup>; (ii) whether the action has a logical termini<sup>32</sup>; and (iii) whether the action forecloses the opportunity to consider alternatives or irretrievably commit federal funds for closely related projects.<sup>33</sup> In other words, agencies cannot segment an action that has “no independent justification, no life of its own, or is simply illogical when viewed in isolation.”<sup>34</sup>

In *Delaware Riverkeeper Network*, for example, plaintiffs filed suit against the Federal Energy Regulatory Commission (FERC) alleging that FERC unlawfully segmented its environmental review of a pipeline approval for the Northeast Upgrade Project where it failed to consider the Northeast Upgrade Project in conjunction with three other connected, contemporaneous, closely related, and interdependent gas pipeline projects that existed along the same leg of pipeline.<sup>35</sup> The court, applying these three factors, agreed.

Regarding the first factor, FERC argued that the proposed project had an independent utility separate from the allegedly connected actions because the project could be “completed and in-service” and “meet[ ] customer demand” but the court rejected these arguments as “paint[ing] a false picture” where the projects were “inextricably intertwined” to act together as an upgrade to an entire leg of pipeline.<sup>36</sup> Regarding the second factor, FERC merely argued that its choice was not arbitrary and capricious because one terminus was no more logical than the other.<sup>37</sup> The court rejected this argument and noted that FERC’s line of reasoning would have allowed it to certify “pipeline construction in one-mile sections, or hundred-yard sections, or one-foot sections.”<sup>38</sup> The

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<sup>30</sup> *Jackson Cnty., N.C. v. FERC*, 589 F.3d 1284, 1290 (D.C. Cir. 2009) (“Agencies may not evade their responsibilities under NEPA by artificially dividing a major federal action into smaller components, each without significant impact.” (citation omitted)); *see, e.g., Hammond v. Norton*, 370 F. Supp. 2d 226, 244 (D.D.C. 2005) (concluding agency violated NEPA by improperly segmenting its analysis by dividing a pipeline project into two separate pipelines); *see also Save Barton Creek Ass’n v. Fed. Highway Admin.*, 950 F.2d 1129, 1139 (5th Cir. 1992) (“Segmentation cases consider only whether a federal project has been improperly segmented to avoid compliance with NEPA.”).

<sup>31</sup> *Save Barton Creek Ass’n*, 950 F.2d at 1140; *Vill. of Los Ranchos de Albuquerque v. Barnhart*, 906 F.2d 1477, 1483 (10th Cir. 1990); *Delaware Riverkeeper Network*, 753 F.3d at 1315.

<sup>32</sup> *See Conservation Law Found. v. Fed. Highway Admin.*, 24 F.3d 1465, 1472 (1st Cir. 1994); *Delaware Riverkeeper Network*, 753 F.3d at 1315.

<sup>33</sup> *See O’Reilly v. United States Army Corps of Engineers*, 477 F.3d 225, 236–38 (5th Cir. 2007); *Delaware Riverkeeper Network*, 753 F.3d at 1315.

<sup>34</sup> *Macht v. Skinner*, 715 F. Supp. 1131, 1135 (D.D.C. 1989) (emphasis in original), *aff’d*, 889 F.2d 291 (D.C. Cir. 1989).

<sup>35</sup> *Delaware Riverkeeper Network*, 753 F.3d at 1307.

<sup>36</sup> *Id.* at 1317.

<sup>37</sup> *Id.* at 1315.

<sup>38</sup> *Id.*

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court determined the third factor was irrelevant to the facts but did separately conclude that the projects' temporal relationship further demonstrated the projects lacked utility independent of each other.<sup>39</sup>

In another case, *Hawthorn Environmental Preservation Association v. Coleman*,<sup>40</sup> plaintiffs moved for a preliminary injunction, challenging the Department of Transportation's (DOT) failure to perform an EIS where DOT allegedly segmented a project into federal and nonfederal actions. The court determined the *entire* project was, in fact, subject to NEPA absent any persuasive evidence of each segment's independent utility.<sup>41</sup> And in *Sierra Club v. United States*, the court reached a similar conclusion regarding the segmented analysis of an easement to access a mining site and the mine itself, reasoning that the two decisions were "connected actions because they are inextricably linked."<sup>42</sup>

These decisions interpreting NEPA's requirement to consider connected actions in the same NEPA analysis strongly suggest that OEA *cannot* exclude the environmental evaluation of CN's Springfield Line responsive application to the CP-KCS merger in the Draft EIS of the Proposed Action. By definition, a responsive application to the Proposed Action would not exist but for the Proposed Action. Indeed, even in the abstract, it is difficult to imagine a responsive application with such independent utility that it could stand on its own pursuant to NEPA. Segmenting the analysis of such an action, as noted above, also prevents the OEA from considering a full range of reasonable alternatives as part of the CP-KCS Draft EIS.

\* \* \*

Please let us know if you have additional questions.

Sincerely,



Peter Whitfield

Attachments (2)

cc: Kathryn J. Gainey, CN

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<sup>39</sup> *Id.* at 1318 ("Here, however, the timing does not support the independence of the projects; rather, we are left with the fact that financially and functionally interdependent pipeline improvements were considered separately even though there was no apparent logic to where one project began and the other ended.").

<sup>40</sup> 417 F. Supp. 1091 (N.D. Ga. 1976), *aff'd*, 551 F.2d 1055 (5th Cir. 1977).

<sup>41</sup> *Id.* at 1101.

<sup>42</sup> 255 F. Supp. 2d 1177, 1184 (D. Colo. 2002).

## **Exhibit A**

### **Verified Statement of David T. Hunt**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB FINANCE DOCKET NO. 36500**

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**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**

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**Verified Statement of David T. Hunt**

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# 1. Qualifications

My name is David T. Hunt. I am a Vice President with Oliver Wyman, a global general management consulting firm with more than 60 offices in 31 countries. My office address is 1 University Square, Suite 100, Princeton, NJ 08540. My qualifications are included in the Verified Statement that I submitted as part of CN's February 28, 2022 comments on the primary application.<sup>1</sup>

# 2. Assignment and Summary of Findings

I have been asked to review and comment on the conclusion of the Draft Environmental Impact Statement ("DEIS") prepared by the STB's Office of Environmental Analysis ("OEA") on the proposed CP-KCS merger that OEA did not need to "include rail-to-rail diversions in the overall fuel consumption analysis because the increase in fuel consumption on the CPKC rail lines would likely be offset by a decrease in fuel consumption on the rail lines of competing railroads."<sup>2</sup> The DEIS's conclusion is clearly incorrect because, *as Applicants' own witnesses testified, the proposed rail-to-rail diversions would travel over substantially longer routes.* Accordingly, these diversions would substantially increase the car and container miles (collectively, unit miles) incurred on transporting that traffic on a merged CPKC. For purposes of this analysis, I assumed that the Applicants would realize the proposed rail-to-rail diversions projected in their application submitted on October 29, 2021, specifically the statements of

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<sup>1</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – CN's Comments on Application and Request for Conditions, Verified Statement by David Hunt, February 28, 2022.

<sup>2</sup> Canadian Pacific Acquisition of Kansas City Southern, Draft Environmental Impact Statement, at 3.8-5 (Aug. 5, 2022).

Applicants' witnesses Richard W. Brown and Nathan S. Zebrowski, and Jonathan Wahba and Michael J. Naatz.<sup>3</sup> Based on their assumed diversions, I found the following:

- The estimated diversion of 130,000 containers to move through the Port of Lazaro Cardenas, México for distribution to/from the inland locations of Toronto, Montreal, Texas, Kansas City, and Detroit would add annually 52.8 million unit miles above the unit miles if the traffic remains on the current rail routes via the Ports of Long Beach and Los Angeles, California.<sup>4</sup>
- The estimated rail-to-rail diversion of another 216,000 carloads and containers to a CPKC route would add annually 47.0 million unit miles above the unit miles if the traffic moved over the current railroad.<sup>5</sup>
- Empty repositioning of nonrevenue railcars and containers would add annually 22.8 million additional unit miles.<sup>6</sup>
- In total, if Applicants were to achieve their proposed diversions of traffic from current railroad routings to CPKC routings, they would add at least 122.6 million additional unit miles on the railroad network every year, and thus would increase the aggregate environmental impacts of that traffic, such as fuel consumption, noise, and grade crossing blockages.<sup>7</sup>

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<sup>3</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, October 29, 2021.

<sup>4</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Jonathan Wahba and Michael J. Naatz, October 29, 2021, ¶¶ 62 and 64.

<sup>5</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Richard W. Brown and Nathan S. Zebrowski, October 29, 2021, Table 28.

<sup>6</sup> The empty/loaded ratios that I used in preparing this statement are based on data from the Association of American Railroads' "Analysis of Class I Railroads" 2019 report for U.S. total. Empty/loaded ratios for Canada and Mexico are assumed to be consistent with U.S. values. Calculations are contained in the Appendices.

<sup>7</sup> The total increase in unit miles is likely greater since Wahba and Naatz do not provide sufficient information on existing routes to allow calculation of unit mile changes for many of their proposed diversions.

### 3. The proposed CP-KCS merger would significantly increase car and container miles, adding inefficiencies in crew, equipment, and fuel utilization

The bulk of diversion synergies identified by CP and KCS in their application are rail-to-rail diversions, *i.e.*, instances where CP and KCS believe that traffic currently moving on other railroads would divert to a merged CPKC. CP and KCS’s application claims 346,000 units (carloads and containers) of rail-to-rail diversions,<sup>8</sup> but just 64,000 units of truck-to-rail diversions.<sup>9</sup> Because CP and KCS connect only at a single interchange location (Kansas City), all their merger diversions must funnel through Kansas City. Forcing diverted traffic through Kansas City adds significant route miles, as demonstrated by selected Origin – Destination pairs in Table 1.

**Table 1: Comparison of CP-KCS mileages in selected lanes<sup>10</sup>**

| Origin – Destination          | Railroad / Mileage | CP-KCS Mileage | Pct Increase |
|-------------------------------|--------------------|----------------|--------------|
| Chicago, IL – Dallas, TX      | UP / 1,013 miles   | 1,265 miles    | 24.9%        |
| Chicago, IL – Laredo, TX      | UP / 1,438 miles   | 1,724 miles    | 19.9%        |
| Toronto, ON – New Orleans, LA | CN / 1,411 miles   | 1,884 miles    | 33.5%        |

<sup>8</sup> See STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Richard W. Brown and Nathan S. Zebrowski, October 29, 2021, Table 26 (reflecting 216,675 units of diverted rail traffic) and Verified Statement by Jonathan Wahba and Michael J. Naatz, October 29, 2021, ¶ 64 (predicting that “a combined CP-KCS system could attract nearly 130,000 intermodal containers moving between Lazaro Cardenas to U.S. destinations”). The 346,000 total excludes consideration of certain other rail-to-rail diversions claimed by witnesses Wahba and Naatz, such as the diversion of 3,630 carloads of soybeans from routes involving a combination of UP, BNSF, KCSM, and FEX to a CP-KCS route (¶ 27). This diversion of soybeans to CP-KCS will add additional railcar miles over the current rail route, but the lack of specificity by witnesses Wahba and Naatz in their verified statement and workpapers does not permit the exact calculation to be included in my analysis. Other rail-to-rail diversions claimed by witnesses Wahba and Naatz that I did not consider due to lack of specific origin, destination, and current route information include dried distillers grains or DDGs (¶ 29), liquefied petroleum gas or LPG (¶ 82), and lumber and pulp (¶ 100).

<sup>9</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Glen Wilson, October 29, 2021, ¶ 21.

<sup>10</sup> PC\*Miler[Rail, version 28.

Witnesses Brown and Zebrowski acknowledge the increased distances on a merged CPKC, stating that the CP-KCS routes to which traffic would be diverted are, on average, 217 miles (11.7 percent) longer than the route on the existing carriers, and 323 miles (18.5 percent) longer than the shortest route in the market.<sup>11</sup> In my verified statement included with CN's comments on the primary application, I show, for example, that the diversion of traffic from the Ports of Los Angeles/Long Beach, California to the Port of Lazaro Cardenas, México projected by witnesses Wahba and Naatz, will add 455 additional rail miles for every container to Chicago, IL.<sup>12</sup>

Overall, this increased route circuitry adds at least an additional 100 million revenue unit (car and container) miles and an estimated 23 million nonrevenue empty unit miles compared to the unit miles on the existing carriers for the rail-to-rail traffic diversions estimated by witnesses Brown and Zebrowski, and Wahba and Naatz.<sup>13</sup> The total is likely greater since Wahba and Naatz do not provide sufficient information on existing routes to allow this type of calculation for many of their proposed diversions. To put the magnitude of this increase in context, in 2019 KCS had a total of 717.6 million loaded and empty car miles and the U.S. operations of CP generated a total of 807.8 million car miles.<sup>14</sup> Adding 122.6 million *more* unit miles to move rail traffic already being moved today on other rail carriers is a significant increase that has ramifications for the environment and shippers.

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<sup>11</sup> See STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Richard W. Brown and Nathan S. Zebrowski, October 29, 2021, Table 6.

<sup>12</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – CN's Comments on Application and Request for Conditions, Verified Statement by David Hunt, February 28, 2022, Exhibit 5-3.

<sup>13</sup> The STB Carload Waybill Sample and the CP and KCS waybill data used for diversions contains revenue movements, which includes loads and empties for which revenue was received.

<sup>14</sup> Association of American Railroads, "Analysis of Class I Railroads" 2019 report, "Total Frt Car Miles" Line 658.

**Table 2: Summary of increase in car/container miles  
for CP-KCS estimated traffic diversions<sup>15</sup>**

| Category                         | Unit Mile Increase | Traffic                                                                                                                                                                                |
|----------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Wahba & Naatz<br>Lazaro Cardenas | 52,759,200         | 130,000 Containers Diverted from the Port of LA/LB for Movement Between Lazaro Cardenas and U.S. locations                                                                             |
| Brown & Zebrowski                | 47,018,475         | 216,675 Rail-to-Rail Diverted Units                                                                                                                                                    |
| Estimated Empty<br>Miles         | 22,827,103         | Assumes 92.2% empty return of Brown and Zebrowski carload diversions and an 8.4% empty return of intermodal diversions for both Brown and Zebrowski and Wahba and Naatz. <sup>16</sup> |
| <b>Unit Mile Increase</b>        | <b>122,604,778</b> | <b>Revenue movements plus estimated nonrevenue empty movements.</b>                                                                                                                    |

The increase of approximately 122.6 million unit miles to move the same tonnage of traffic currently moving on other railroads will require a significant increase in resources, including crews, rolling stock, track capacity, and diesel fuel. This comes at a time when resource constraints in 2022, especially crews and locomotives, have caused severe service issues in the U.S. rail system. Furthermore, the diversion estimates of witnesses Brown and Zebrowski include crude oil and chemicals.<sup>17</sup> Increasing miles for such hazardous material shipments will increase the exposure risks of transporting these commodities.<sup>18</sup>

<sup>15</sup> Calculations and references for this table can be found in Appendix A and Appendix B.

<sup>16</sup> The empty/loaded ratios that I used in preparing this statement are based on data from the Association of American Railroads' "Analysis of Class I Railroads" 2019 report for U.S. total. Empty/loaded ratios for Canada and Mexico are assumed to be consistent with U.S. values. Calculations are contained in the Appendices.

<sup>17</sup> See STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Richard W. Brown and Nathan S. Zebrowski, October 29, 2021, Table 28.

<sup>18</sup> See STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Richard W. Brown and Nathan S. Zebrowski, October 29, 2021, Table 28. The Year 3 total diversions for Energy, Chemicals and Plastics are estimated at 21,143 cars. This includes crude oil and other hazardous materials, though witnesses Brown and Zebrowski do not specify the proportion that are hazardous.

An increase of unit miles, especially an increase as large as 122.6 million loaded and empty unit miles, is unprecedented in an approved Class I merger. By comparison, Table 3 shows that in the BN – ATSF merger application, the estimated diversions *decreased* revenue unit miles by 8.2 million, with every service type showing a decrease in revenue unit miles. Adding such a substantial number of unit miles will introduce inefficiencies to the railroad network and is not in the public interest.

**Table 3: Change in revenue unit miles estimated for BN and ATSF merger<sup>19</sup>**

| Service Type              | Old Unit Miles on Existing Railroad | New Unit Miles on BN-ATSF | Net Reduction in Unit Miles |
|---------------------------|-------------------------------------|---------------------------|-----------------------------|
| Merchandise               | -34.35 million                      | +32.56 million            | -1.79 million               |
| Intermodal                | -102.01 million                     | + 96.58 million           | -5.43 million               |
| Bulk                      | -5.23 million                       | +5.18 million             | -0.05 million               |
| Automotive                | -7.21 million                       | +6.26 million             | -0.95 million               |
| <b>Unit Mile Decrease</b> | <b>-148.80 million</b>              | <b>+140.58 million</b>    | <b>-8.22 million</b>        |

For these reasons, the DEIS’s assumption that Applicants’ projected rail-to-rail diversions would have no impact on overall fuel consumption and GHG emissions is clearly incorrect. Adding 122.6 million circuitous unit miles to the rail network in order to move the same volume of traffic currently being moved by other railroads will have negative environmental impacts that need to be balanced against any asserted environmental benefits of the CP-KCS merger.

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<sup>19</sup> BN and ATSF merger application, verified statement of Mark A. Hornung, ALK Associates, pages II 32-33.

## **Appendix A: Calculation of addition unit miles from Wahba & Naatz estimated Lazaro Cardenas diversions**

Witnesses Wahba and Naatz propose diversions from the Ports of Los Angeles/Long Beach to the Port of Lazaro Cardenas, adding significant rail distance to every single diverted container. The following table illustrates the difference in route miles between the existing and proposed routes and the resulting increase in revenue unit miles, but does not consider the 1,300 additional nautical miles to move containers between Asian ports and Lazaro Cardenas, compared to Los Angeles/Long Beach as the marine origin/destination point.<sup>20</sup> To estimate the rail distance increase by using Lazaro Cardenas rather than Los Angeles/Long Beach, the inland locations cited by witnesses Wahba and Naatz (Toronto, Montreal, Texas, Kansas City, and Detroit) were used for route distance comparisons.<sup>21</sup>

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<sup>20</sup> The 1,300 nautical miles that would be added by bypassing the Ports of Los Angeles/Long Beach and using the Port of Lazaro Cardenas is discussed in STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – CN’s Comments on Application and Request for Conditions, Verified Statement by David Hunt, February 28, 2022, Exhibit 5-3.

<sup>21</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Jonathan Wahba and Michael J. Naatz, October 29, 2021, ¶ 62.

**Table 4: Change in Revenue Unit Miles From Witnesses Wahba & Naatz Estimate of Diversions from the Port of Los Angeles / Long Beach to the Port of Lazaro Cardenas**

*Route miles based on PC\*Miler|Rail, version 28.*

| Inland Loc.                                                  | Port of LC | Port of LA/LB | Difference in Miles | Rail from LA   |
|--------------------------------------------------------------|------------|---------------|---------------------|----------------|
| <b>Toronto</b>                                               | 3157.9     | 2745.6        | 412.3               | BNSF-Chi-CN    |
| <b>Montreal</b>                                              | 3501.4     | 3060.9        | 440.5               | BNSF-Chi-CN    |
| <b>Texas (Dallas)</b>                                        | 1804.3     | 1452.8        | 351.5               | UP             |
| <b>Kansas City</b>                                           | 2144.8     | 1768.8        | 376.0               | BNSF           |
| <b>Detroit</b>                                               | 2929.1     | 2480.2        | 448.9               | BNSF-K City-NS |
| <b>Average Difference (miles)</b>                            |            |               | <b>405.84</b>       |                |
| <b>W&amp;N Estimated Diversion (containers)<sup>22</sup></b> |            |               | <b>130,000</b>      |                |
| <b>Unit-Mile Increase From W&amp;N Diversions</b>            |            |               | <b>52,759,200</b>   |                |

To estimate the empty miles associated with these moves, I calculated an average load/empty ratio of 8.4 percent for intermodal shipments.<sup>23</sup> Therefore, estimates of nonrevenue empty container moves are based on:

$$\begin{aligned}
 &52,613,726 \text{ revenue unit miles} \times 8.4404\% \text{ nonrevenue empty ratio} \\
 &= 4,453,088 \text{ empty unit miles}
 \end{aligned}$$

<sup>22</sup> STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Jonathan Wahba and Michael J. Naatz, October 29, 2021, ¶ 62 and Table 1. The estimated 130,000 containers are annual once fully phased in at Year 3.

<sup>23</sup> Association of American Railroads, “Analysis of Class I Railroads” 2019 report for U.S. total. Empty/loaded ratios for Canada and Mexico are assumed to be consistent with U.S. values. Intermodal empty/load ratio of 8.4% calculated from Empty Car Miles for Flat TOFC/COFC (Line 685) divided by Loaded Car Miles for Flat TOFC/COFC (Line 669).

## Appendix B: Calculation of additional unit miles from Brown & Zebrowski estimated rail-to-rail diversions

Witnesses Brown and Zebrowski acknowledged that the projected CP-KCS routes to which rail-to-rail traffic would be diverted are on average 217 miles (11.7 percent) longer than the average distance of the existing routes via which that traffic moves today.<sup>24</sup> This results in a net increase to unit miles caused by the proposed merger if the Brown and Zebrowski estimates are accurate.

**Table 5: Increase in Revenue Unit Miles from witnesses Brown and Zebrowski Diversion Estimates**

|                                   | Average Miles <sup>25</sup> | Diverted Units <sup>26</sup> | Unit Miles        |
|-----------------------------------|-----------------------------|------------------------------|-------------------|
| Existing Move                     | 1,853                       | (216,675)                    | (401,498,775)     |
| CPKC Move                         | 2,070                       | 216,675                      | 448,517,250       |
| <b>Revenue Unit Mile Increase</b> |                             |                              | <b>47,018,475</b> |

The estimated diversions by witnesses Brown and Zebrowski include 137,416 containers and 79,259 loaded cars.<sup>27</sup> Applying an 8.4 percentage of nonrevenue empty intermodal movements, plus a 92.2 percent empty return rate for carload traffic yields<sup>28</sup>:

$$(137,416 \text{ revenue container miles} \times 217 \text{ additional miles} \times 8.4404\%) + (79,259 \text{ revenue car miles} \times 217 \text{ additional miles} \times 92.197\%) = 18,374,015 \text{ nonrevenue empty unit miles}$$

<sup>24</sup> Brown and Zebrowski V.S., October 2021, Table 6.

<sup>25</sup> Brown and Zebrowski V.S., October 2021, Table 6.

<sup>26</sup> Brown and Zebrowski V.S., October 2021, Table 28, Year 3.

<sup>27</sup> Brown and Zebrowski V.S., October 2021, Table 28, Year 3.

<sup>28</sup> Association of American Railroads, "Analysis of Class I Railroads," 2019 report for U.S. total. Empty/loaded ratios for Canada and Mexico are assumed to be consistent with U.S. values. Intermodal empty/load ratio of 8.4% calculated from Empty Car Miles for Flat TOFC/COFC (Line 685) divided by Loaded Car Miles for Flat TOFC/COFC (Line 669). Carload empty/load ratio of 92.2% calculated from (Freight Car Miles for Empty (Line 656) minus Empty Car Miles for Flat TOFC/COFC (Line 685)) divided by (Freight Car Miles for Loaded (Line 655) minus Loaded Car Miles for Flat TOFC/COFC (Line 669)).

Combining the Brown and Zebrowski and Wahba and Naatz additional unit miles yields:

$$\begin{aligned} &47,018,475 \text{ Brown \& Zebrowski revenue unit miles} + 18,374,015 \text{ nonrevenue empty unit miles} + \\ &52,759,200 \text{ Wahba \& Naatz revenue unit miles} + 4,453,088 \text{ nonrevenue empty unit miles} \\ &= 122,604,778 \text{ total unit mile increase} \end{aligned}$$

## VERIFICATION

I, David Hunt, declare under penalty of perjury that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 14th day of October, 2022.

  
\_\_\_\_\_  
David Hunt

## **Exhibit B**

**Prepared Remarks of Kari Harris for  
Public Meeting in Itasca, Illinois on  
September 12, 2022**

## **Statement of Kari Harris, on behalf of CN**

**Itasca, Illinois (September 12, 2022)**

Good evening. Thank you to the Board staff, Chairman Oberman, and Vice Chairman Schultz for visiting us in Itasca and listening to our community's concerns regarding the impacts of the proposed merger.

My name is Kari Harris, and I am a Manager of Environmental Impact for the U.S. operating railroad subsidiaries of the Canadian National Railway Company, which do business as CN. I am based at CN's US headquarters in Homewood, Illinois, and I live in Kendall County. At CN, we take our role as a neighbor very seriously. With that role comes responsibilities that require us to be open, honest, and present in the communities we serve. To that end, I am here on behalf of CN tonight to emphasize three points from CN's comments that we submitted on September 6 on the Draft EIS for the proposed merger.

**First**, the Draft EIS considers only two alternatives: the STB approves the merger or it does not. The Draft EIS should consider a third alternative of STB approval of the merger with the divestiture to CN of the KCS Springfield Line between Springfield and East St. Louis, Illinois and Kansas City, Missouri.

Consideration of alternatives is required by the applicable environmental regulations. CN has proposed that KCS's line be sold to CN so that CP does not control two parallel lines between Chicago and Kansas City after the merger. If CN owned the Springfield Line, CN could move traffic between Detroit and Kansas City in a manner that would largely bypass the Chicago

Terminal and avoid the western Chicago suburbs near lines used by CP. And we'd note that several Chicago communities have indicated to the STB that they support CN's Springfield proposal because it would provide a potential safety valve to relieve congestion that would otherwise be caused by the merger. Adding divestiture of the Springfield Line to CN as a reasonable alternative in the EIS would allow the STB and public to understand the full range of environmental impacts resulting from the different proposals being considered by the STB. It would also provide the STB options to select the environmentally preferred alternative. Ownership of the Springfield Line would enable CN to take more than 80,000 long haul trucks off of the highway annually to move by rail. Not only would this lessen highway traffic impacts, but it would also reduce annual greenhouse gas emissions.

**Second**, there continue to be pervasive issues in the accuracy of CP's and KCS's traffic data that they submitted to the STB and these issues are reflected in the Draft EIS. Accurate data is vital to an adequate EIS. But the data keeps changing with almost every CP and KCS submission. This is not a reliable basis for the Board to assess the environmental impacts of the proposed merger.

Proper base year data, for example, is important to understanding the environmental and operating impacts of a merger.

Here, CP and KCS selected 2019 as the base year, but they did not use any actual 2019 data. Instead, they "modeled" a 2019 base year using monthly snapshots of traffic from 2020 and 2021. To make matters worse, the modeling produced numbers that are plainly inaccurate and that change from submission to submission. That is not a reliable approach for environmental analysis.

The STB recognized these problems in April, and directed CP and KCS to provide amended operating plan data that were consistent with the data they gave to the STB's environmental office. The STB expected that the data would be "essentially the same".

But in May, CP and KCS submitted yet another set of data in their amended operating plan. It is not "essentially the same" as the data used in the EIS. And none of these different modeled sets of data represents actual traffic for the base year of 2019. In its comments, CN has given multiple examples of line segments where the CP and KCS numbers inaccurately reflect traffic on the line. Without accurate and reliable data, OEA cannot determine whether—and where—relevant thresholds for significant environmental impacts may be triggered and what the extent of those impacts will be.

**Finally, there are missing line segments in the Draft EIS.** Specifically, the Draft EIS does not include analysis of CN's line segment between Franklin Park and Schiller Park Yard. CP uses CN's track to reach Schiller Park Yard. CP disclosed that the merger will increase in truck activity and carload activity that exceeds the STB's environmental thresholds at Schiller Park Yard. Yet CP has never disclosed any data for the line segment owned by CN between Franklin Park and Schiller Park Yard. The line segment is absent from CP's operating plan, amended operating plan, and environmental submissions. CN has no idea how much merger-related increase and post-merger traffic CP projects to move over CN's track. However, since CP's increase in activity at Schiller Park Yard exceeds the thresholds, it seems likely that CP's traffic on the track to Schiller Park Yard could also exceed the thresholds and thus should at least be studied.

Other segments are missing from the Draft EIS between Bensenville, Illinois and Willard, Ohio, where CP failed to disclose the merger-related traffic increases on those line segments. Consequently, these segments were not analyzed in the Draft EIS, despite the fact that CP's Exhibit 14 of the Amended Operating Plan shows CP's merger-related increase in tons is expected to exceed the STB's applicable environmental threshold.

According to CP's data, the merger will increase CP's tons by 191% between Bensenville, Illinois and Pine Junction, Indiana. The merger also will increase CP's tons by 148% between Pine Junction, Indiana and Willard, Ohio. Yet CP excluded these segments in information provided to the STB's environmental office. Even though these segments exceed the STB's applicable thresholds for triggering environmental review, none of these line segments is referenced in the Draft EIS.

\* \* \*

In conclusion, CN asks the STB's environmental staff to perform additional analysis in a supplemental EIS and allow for public comment on the full scope of potential actions before the STB. Thank you for your time.