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VIA E-FILING

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

Re: STB Docket No. 36500, Canadian Pacific
Railway Ltd., Et Al. – Control – Kansas City Southern, Et Al.

Dear Ms. Brown:

Evergy Metro, Inc. (“Evergy”), a party of record in the referenced proceeding, submits this reply in support of the April 4, 2023 request filed by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”) for clarification of and certain modifications to the oversight conditions imposed by the Board in its March 15, 2023 Decision (“Decision No. 35”) approving the merger of Canadian Pacific Railway Limited (“CP”) and Kansas City Southern (“KCS”) (collectively “CPKC”). Evergy also endorses the reply to Metra’s request filed on April 19, 2023 by BNSF Railway Company (“BNSF”) insofar as it relates to (a) the Board making available to interested parties the data that CPKC is required to report pursuant to Appendix B of Decision No. 35, and (b) the Board permitting third party participation in the CPKC oversight process.

In its Comments and Final Brief in this proceeding, Evergy raised concerns over the impact of the merger of CP and KCS on the quality of bulk commodity rail service over the KCS Pittsburg Subdivision south of Kansas City, including coal delivery service to Evergy’s La Cygne Generating Station, and requested the imposition of conditions to safeguard against any post-merger deterioration of that service as a result of anticipated increases in traffic density over the Subdivision. *See, e.g., Evergy Opening Comments* at 9-11, 14-18. In response to Evergy’s arguments, CP and KCS pointed to the “CPKC Service Promise” and their commitment to add infrastructure to the lines south of

Kansas City to accommodate expected increases in traffic as reasons why the conditions sought by Evergy were not necessary. *See Applicants' Response to Comments and Requests for Conditions*, July 21, 2022 at 15, 124-125 and R.V.S. Elphick/Orr at 56-58. In Decision No. 35, the Board accepted CP and KCS's commitments both to the CPKC Service Promise and to add capacity on the KCS lines south of Kansas City as a basis for not imposing additional conditions requested by Evergy "at this time," and incorporated them in the merger approval conditions. Decision No. 35 at 105. *See also, id.* at 89.

It cannot seriously be disputed that the effectiveness of Board-imposed conditions on a railroad merger heavily depends on those for whose benefit the conditions were designed having timely access to the information needed to evaluate the merged carriers' compliance, and rights before the Board to advocate for enforcement and/or additional conditions if and as necessary. As BNSF noted in its reply, third party participation is consistent with the oversight processes utilized in other major rail mergers, and timely access to relevant information is essential to effective participation. The direct linkage between CP's and KCS's service assurances and additional infrastructure commitments, and the Board's ruling on Evergy's proposed conditions, confirms the reasonableness of Metra's clarification request vis-à-vis interested parties' access to CPKC data reporting and rights to participate in the oversight process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kelvin J. Dowd", with a stylized flourish at the end.

Kelvin J. Dowd
Attorney for Evergy Metro, Inc.

cc: Parties of record