

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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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**

CN'S RESPONSE TO COMMENTS ON APPLICATION

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INTRODUCTION

CN respectfully submits this Response to the first round of comments that have been filed in response to the CP-KCS Application, including comments submitted on February 28 and amended/supplemental comments submitted on June 9. While the commenters represent a wide range of perspectives and interests, the comments themselves reflect common themes. One such theme is that the Applicants have quantified relatively few public benefits flowing from the largest Class I merger in over twenty years. Most alleged benefits of the proposed transaction are plainly private benefits accruing to the Applicants, not public benefits. Indeed, Applicants' exhibit showing "quantified public benefits" is literally a balance sheet purporting to show the combined railroad's additional earnings.¹ And even those private benefits are substantially exaggerated; they are predicted on illogical assumptions that the merger will immediately generate massive traffic diversions, despite the absence of meaningful rate reductions or significant capital investments that could attract such traffic. These plainly unrealistic projections create real questions about how Applicants actually plan to recoup the extraordinary premium that CP paid to acquire KCS. Commenters are right that the minimal public benefits and exaggerated private benefits in the Application raise "a series of red flags," and that Applicants' only path to realizing their claimed

¹ Railroad Control Application, *Canadian Pacific Railway Limited, et al.*—*Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, Vol. 1 at 10 (filed Oct. 29, 2021) ("Application") (claiming that "quantified public benefits would be more than \$880 million annually in 2019 dollars"); *id.*, Vol. 1 at 74 (Appendix B "Summary of Benefits" exhibit alleging \$888.4 million in increased profits to merged CPKC).

synergies “would be to restrain competition and divert traffic without competing on the merits.”²

The comments’ second common theme is that the merger would result in harms which the Applicants thus far have dismissed or ignored. Many commenters explain that Applicants have an obvious and strong incentive to foreclose competition to CP-KCS traffic, and urge the Board to put conditions in place to protect against such anti-competitive actions. CN has shown that divestiture of the KCS Springfield Line to CN and more detailed gateway commitments would mitigate that harm and provide substantial public benefits, from improving competitive options, to taking more long-haul trucks off the road than the entire proposed CP-KCS merger, to providing a competitive route for intermodal and automotive traffic that avoids exacerbating Chicago congestion.

Third, many commenters express concern about Applicants’ limited or non-existent planning for the substantial traffic changes that they claim their merger will cause, and about Applicants’ related failure to account for the impacts of that growth. Applicants’ sketchy Operating Plan provides little confidence that they have planned adequately for the impact of the transaction on CP and KCS.³ Neither Applicant would base their real-world operating planning on “modeled,”

² Union Pacific Railroad Company’s Comments and Request for Conditions, *Canadian Pacific Railway Limited, at al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 7–8 (filed Feb. 28, 2022) (“UP Comments”).

³ CN’s Comments on Application and Request for Conditions, *Canadian Pacific Railway Limited, at al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 16–33 (filed Feb. 28, 2022) (“CN Comments”).

inconsistent, unreliable, and error ridden data rather than actual data, but they are asking this Board to use such contrived data to approve the first major merger in nearly a quarter-century. And, Applicants have made little effort to measure or mitigate the impact of their transaction on others—whether it is the host railroads over which Applicants plan to operate in locations like Chicago (Metra; Indiana Harbor Belt Railroad (“IHB”); Belt Railway Company of Chicago (“BRC”); Norfolk Southern Railway (“NS”); and CN) or in Houston (Union Pacific Railroad Company (“UP”)) or the local communities that could be harmed by their merger.

In short, the consistent themes from commenters reflect deep concern about Applicants’ push for an essentially unconditioned merger, and their extraordinary demand that the Board grant such approval based on an unreliable set of “modeled” traffic data and no public plan for preventing the service disruptions that will inevitably result from this inadequate planning and modeling. The comments thus reinforce the need for robust conditions to protect the public interest, including divestiture of the parallel KCS Springfield Line to CN, a concrete and enforceable gateway commitment, a service assurance plan, and significant Board oversight and monitoring.

In Part I of this Response to Comments on Application, CN highlights comments that recognize significant shortcomings in the Application, most notably Applicants’ failure to demonstrate that the proposed merger will offer meaningful public benefits.

Part II discusses key conditions that CN has proposed to address the competitive concerns the transaction raises and the comments that relate to those conditions. Part II.A describes commenters' concerns about the risks of anti-competitive horizontal foreclosure posed by Applicants' merger. Part II.B discusses the Springfield Line divestiture to CN and explains why it is a vital remedy to address the merger's effect on parallel lines, particularly in light of Applicants' lack of incentive or intent to develop the Springfield Line into a competitive alternative. Part II.B also responds to questions raised in the comments about the Springfield divestiture, such as whether CN is committed to keeping gateways open (it is) and how divestiture would affect service to shippers whose facilities are located on the Springfield Line (it would improve it). Specifically, CN confirms that it would keep the Kansas City, Springfield, and East St. Louis gateways on the Springfield Line physically and commercially open, and that it will agree to the same gateway commitments that the Board imposes for the overall transaction. CN also confirms that customers on the Springfield Line who currently ship products to the KCS network will receive equal or better service than they have today, with the ability to access single-line haulage service from a merged CP-KCS. Plus, those customers would *also* gain the competitive benefit of a second railroad option and the negotiating leverage of access to an additional railroad and different geographic markets. Critical stakeholders like ADM have recognized the plain benefit to

shippers on the Line of both additional competition and an owner committed to investing in the Line to improve service and track speed.⁴

Part II.C responds to comments related to anti-competitive vertical foreclosure concerns and recognizes the need for a more concrete and enforceable gateway commitment. Applicants will have substantial incentives to favor single-line CP-KCS movements over participation in joint-line movements with other railroads. But such single-line routes would not offer faster or more efficient single-line routes to shippers, or meaningful cost savings. Despite that, and as explained in CN's Comments, a merged CP-KCS would be under enormous financial pressure to divert traffic from other carriers by raising rates for joint-line movements and degrading the quality of service for such movements. In this context, vague promises of commercially reasonable rates are inadequate. Part II.D. addresses comments about the appropriate remedies for the transaction's vertical foreclosure, including concrete gateway conditions, Rule 11 rates, and arbitration.

Parts III and IV respond to comments expressing well-grounded concerns in numerous contexts about Applicants' lack of operational planning for the impact of their merger on others. While many specific concerns have been raised as to

⁴ See Exhibit 3, ADM Support Letter. Exhibit 3 includes additional letters that CN received after Feb. 28, 2022, in support of its requested divestiture of the Springfield Line. *Cf.* Responsive Application of Illinois Central Railroad Company, *Illinois Central Railroad Co.—Acquisition of a Line of Railroad Between Kansas City, MO, and Springfield and East St. Louis, IL—Kansas City Southern Railway Co.*, STB Docket No. 36500 (Sub-No. 1), et al., Appendix B (filed Feb. 28, 2022) (“CN Responsive Application”) (compiling 71 statements supporting a Springfield Line divestiture to CN).

particular parts of the network, most of the concerns flow from Applicants' failure to provide a detailed analysis of the impact of their merger on stakeholders and a plan for assuring service and mitigating inevitable merger-related disruptions. CN's proposal that Applicants be required to prepare a service assurance plan has been echoed by other commenters, like the U.S. Department of Agriculture, and the Board should require Applicants to supply the service assurance plan equivalent that they promised but failed to deliver in their Application.

The Board should likewise impose commenters' proposed conditions that ask the Board to monitor the transaction if it is approved. In recent years, Board monitoring has been a standard condition in major mergers, and it is essential for the Board to carefully monitor the implementation of any merger that it approves. Indeed, the fact that Applicants did not volunteer for monitoring in their Application should raise serious concerns about their commitment to transparency and public scrutiny.

The comments fully support the imposition of substantial conditions on the proposed transaction.

RESPONSE TO COMMENTS

I. Commenters Correctly Observe that the Merger's Public Interest Benefits Are Unsupported and Substantially Exaggerated.

As CN explained in its Comments, the "single and essential standard of approval" in this proceeding is a Board finding that the transaction is "consistent

with the public interest.”⁵ Such a finding requires evidence that the transaction would result in tangible benefits to the public that outweigh any public harms—not merely private profits.⁶ Applicants have failed to provide such evidence. Instead, Applicants significantly overestimate the purported public benefits and underestimate the serious public harms posed by the transaction.⁷ In this section, CN highlights the chorus of voices that caution the Board that Applicants have substantially exaggerated the public benefits of the transaction. The limited public benefits of the merger make it all the more critical for the Board to ensure that any approval of the proposed merger is accompanied by conditions that promote and protect the public interest, including CN’s requested divestiture of the Springfield Line.⁸

There is wide recognition among commenters that the purported “public” benefits of the proposed transaction are substantially exaggerated and meager at best. For example, CSX Transportation, Inc.’s (“CSX”) experts, Professor Julie M. Carey and Dr. Albert W. Bremser of National Economic Research Associates, Inc., showed that “[m]ost of Applicants’ asserted transaction-related public benefits are not public benefits, but private benefits that will accrue solely to CPKC ... and are

⁵ CN Comments at 33 & n.83 (quoting Decision No. 37, *Canadian National Ry. Co., et al.—Control—Illinois Central Corp., et al.*, STB Docket No. FD 33556, slip op. at 19 (STB served May 25, 1999) (“CN-IC”).

⁶ *Id.* at 33.

⁷ *Id.* at 33–37.

⁸ *See generally* CN Responsive Application.

not the product of efficiency gains that create lower costs and service improvements”; and “Applicants’ supported public benefits are much lower than the total claimed ... and much smaller as a proportion of transaction costs than demonstrated in prior large transactions.”⁹

As Professor Carey and Dr. Bremser demonstrate, the vast majority (81%) of “Applicants’ asserted transaction-related public benefits ... are predominantly associated with traffic diversions [from other railroads] to routes where CPKC has longer and disadvantaged routes and to routes where these diversions could be secured without the Transaction.”¹⁰ These are not public benefits.¹¹ Plus, Applicants’ calculated private benefits “are an unusually high share (81%) of

⁹ CSX Transportation, Inc.’s Comments and Request for Conditions, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, Docket No. FD 36500, at 5, n.13 (filed Feb. 28, 2022) (“CSX Comments”); *see id.*, Verified Statement of Professor Julie M. Carey and Dr. Albert W. Bremser of National Economic Research Associates, Inc., at 25–27 (“NERA V.S.”).

¹⁰ NERA V.S. at 3. The expert witnesses also highlight how Applicants have failed to “identif[y] the potential public benefits to accrue to the U.S. as compared to Mexico or Canada, which should be required in the context of a U.S. public interest determination” *Id.* at 25–26. This is significant because “any quantifiable analysis would observe a large benefit reduction if the Applicants were to only present the U.S. portion of the Total Benefits.” *Id.* at 30.

¹¹ *Id.* at 28 (“Traffic increases due to a transaction are simply shifting revenue from one industry railroad carrier to another. They may or may not reflect any cost savings from reduced overhead costs, or reduced rates, or service improvements to shippers associated with the diverted traffic, and which would flow directly to the customer and therefore are not themselves a public benefit. Accordingly, Applicants’ incremental profit estimates from diverted traffic are private benefits to the combined railroad and not public benefits.” (internal footnotes omitted)).

potential claimed total benefits,” whereas in prior large railroad transactions, that share of private benefits has “ranged between 16% and 38%.”¹²

With regard to Applicants’ purported public benefit of single-line service in particular, UP highlighted how single-line service should not automatically be considered a public benefit because it could in reality “allow the combined entity to increase its profits at the expense of shippers.”¹³ NS likewise pointed out that Applicants’ plan to “divert[] traffic to single-line service” would “result [in] ... longer, less efficient routes that generate significantly more environmental harm,” a result that would ultimately “harm shippers” and the public.¹⁴ As UP noted, these are just some of the multiple reasons federal antitrust agencies recognize that vertical mergers cannot and should not be presumed to be procompetitive or neutral.¹⁵ UP also echoes CN’s concerns with Applicants’ failure to prove that their proposed merger is in the public interest, noting that “the Board cannot find the transaction to be in the public interest because it cannot accurately evaluate the transaction’s net benefits without considering the cost of achieving the projected benefits.”¹⁶

¹² *Id.*

¹³ UP Comments at 29.

¹⁴ Comments of Norfolk Southern Railway Company and Request for Conditions, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 67 (filed Feb. 28, 2022) (“NS Comments”).

¹⁵ *Id.* at 33–34.

¹⁶ UP Comments at 67.

Shipper commenters have also recognized problems with Applicants’ public benefits analysis. For example, the North Dakota Wheat Commission (“NDWC”) questioned whether the purported benefits—and in particular, single-line service—“could be better achieved, short of merger, through innovative joint marketing arrangements and other cooperative efforts, such as joint dispatching.”¹⁷ The National Corn Growers Association (“NCGA”) recognized UP’s point above—that single-line service is not necessarily a public benefit, particularly here, where a combined CPKC’s ability to provide single-line service would result in CPKC being “incentivized to favor its single line routes that may result in existing gateways being closed or overwhelmed by traffic”¹⁸

As many commenters have made clear, the proposed merger offers primarily non-public benefits, and even the purported public benefits are either not proven or could actively harm shippers and the public. In light of this, the Board should ensure that any approval of the proposed merger is accompanied by robust conditions that protect and promote the public interest—particularly conditions

¹⁷ North Dakota Wheat Commission Request for Conditions, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 10 (filed Feb. 28, 2022) (“NDWC Comments”). Indeed, the fact that Applicants have recently publicized their “successful launch” of KCS-CP intermodal service between Mexico and Chicago only emphasizes their current ability to work cooperatively offer interline service. See “CP Debuts Interline Service From Lazaro Cardenas to Chicago,” (Mar. 8, 2022 press release), *available at* <https://futureforfreight.com/cp-debuts-interline-service-from-lazaro-cardenas-to-chicago/> (last visited July 11, 2022).

¹⁸ Comments of the National Corn Growers Association, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 2 (filed Feb. 28, 2022) (“NCGA Comments”).

that would prevent competitive harm in a way that gives shippers more competitive options, lower rates, and improved service. CN's requested divestiture of the Springfield Line is one condition that would do just that. To ensure public benefits flow from the proposed merger, and to counteract the harms posed (discussed next), the Board should grant CN's requested conditions if it decides to approve the transaction.

II. The Comments Reflect Wide Recognition that This Merger Poses Specific Risks to Competition and Other Public Interests that Applicants Have Not Effectively Mitigated.

A. Many Commenters Urge the Board to Impose Conditions to Address Competitive Harms.

A wide spectrum of commenters—shippers, affected communities, and railroads alike—recognize that even mergers that are largely end-to-end may result in competitive harms that can and should be mitigated for a transaction to serve the public interest. Such harms include vertical foreclosure, diminished geographic competition, and injuries to potential competition such as buildout opportunities. While the comments reveal a broad consensus that the CP-KCS merger will lead to competitive harm, the commenters propose a range of conditions to alleviate that harm. For example, some commenters have proposed sweeping conditions, such as

systemwide reciprocal switching.¹⁹ Several commenters opposed the transaction as inconsistent with the public interest.²⁰

CN supports narrowly tailored remedies to address specific, identified competitive harms. First, as explained in CN's Comments, KCS's Springfield Line is currently a direct competitive alternative to CP's route between Kansas City and Chicago, and beyond to Detroit and Eastern Canada. CN requests that the Board remedy the competitive harm caused by CP's acquisition of KCS's Springfield Line by requiring its divestiture to CN.²¹ Second, CN has shown that the merger will sharply reduce Applicants' existing incentives to interchange traffic with other railroads on commercially reasonable terms, resulting in a significant threat to competition. Thus, as CN demonstrated, the Board should impose rigorous gateway conditions as a condition of approving the merger, as well as a defined arbitration remedy for any gateway-related disputes.²²

¹⁹ See, e.g., Letter of National Association of Wheat Growers, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 1 (filed Mar. 3, 2022) (requesting that the Board require that captive shippers of CPKC have open access to reciprocal switching); NDWC Comments at 16–17 (same); IMA-NA Request for Conditions, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 12–13 (filed Feb. 28, 2022) (same); PRFBA Request for Condition, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 12–13 (filed Feb. 28, 2022) (“PRFBA Comments”).

²⁰ See, e.g., U.S. Wheat Associates Comments and Request for Conditions, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 1 (filed Feb. 28, 2022).

²¹ See CN Comments at 39–44.

²² See *id.* at 45–53.

B. Consolidating Control of KCS's Springfield Line with the Parallel CP Line Creates a Horizontal Competition Problem that Is Remedied by Divestiture to CN.

As CN explained in its Comments, KCS's Springfield Line is parallel to CP's north-south mainline running between Kansas City and Chicago. The Board recognized in *CN-IC* that the Springfield Line's connection to CN was a viable competitive route,²³ and in the past, KCS touted this line as a potential "Kansas City Speedway," competing for traffic with routes including the CP line.²⁴ However, Applicants fail to propose any conditions to remedy the loss of horizontal competition. They have abandoned KCS's prior plans to invest in the Springfield Line to improve track speed in order to better compete with trucks, and they propose no merger-related capital investment in it. Instead, Applicants' investments and projected growth are all focused on the parallel CP line.

Thus, if the Board approves the merger without conditions addressing this harm, the combination will permanently eliminate the Springfield Line as a competitive alternative. CN is the only party to propose a remedy by offering to purchase the line. It has committed to preserve and upgrade the route to a high speed, efficient alternative that benefits customers, not only between Kansas City and Chicago, but beyond to Detroit and Eastern Canada. Moreover, CN has designed its remedy to ensure that it will preserve all existing routing options for

²³ See *CN-IC*, 4 S.T.B. 122, 175 (1999).

²⁴ See, e.g., CN Comments, Exhibit 14, June 3, 2021, CN-KCS Presentation Slides, Bernstein's 37th Annual Strategic Decisions Conference, at 5.

shippers and create new options, that it would not detract from CP-KCS merger synergies (such as they are), and that it will avoid additional rail congestion in Chicago and its surrounding communities. Indeed, CN proposes to grant haulage so that KCS retains access to its customers on the Springfield Line and will even be able to access new customers on the Line in the future. Every customer will not only retain the ability to access their existing service but also gain access to CN's network and service offerings. And regardless of whether a shipper uses their existing service or a competitive option, all will benefit from CN's investments in the Line. An upgraded Springfield Line would offer a Kansas City Speedway and provide significant public interest benefits—preserving and renewing the route, creating a more attractive option for moving freight between Kansas City and Chicago than CP's more circuitous route, and, CN projects, removing more than 80,000 trucks from the road annually—a greater environmental benefit than the entire CP-KCS merger would provide.²⁵

CN looks forward to addressing the comments on its Responsive Application in its August 11, 2022, rebuttal filing. Here, CN responds to the few comments already made about its proposed condition of divestiture.

First, a coalition of Chicago-area communities (the “Coalition”) has indicated that it may support divestiture of the Springfield Line because it has the potential to ameliorate those communities' deep concerns about the effect of the merger on

²⁵ See CN Comments at 10–11, 37–44, 64–67.

Chicago and its surrounding neighborhoods.²⁶ The Coalition notes that the proposed condition could help alleviate the congestion and service disruption that the merged railroad would otherwise cause in the Chicago area. *Id.* at 24.

The Coalition is correct about the positive impact that the divestiture could have on service disruptions in the Chicago area. The enclosed Verified Statement of Derek Taylor discusses the efficiency of Springfield Line movements for intermodal and automotive movements between Kansas City and Detroit and Eastern Canada, and the benefit of moving such shipments on CN's route *around Chicago*, while CP's route for such traffic moves through the City's heart.²⁷

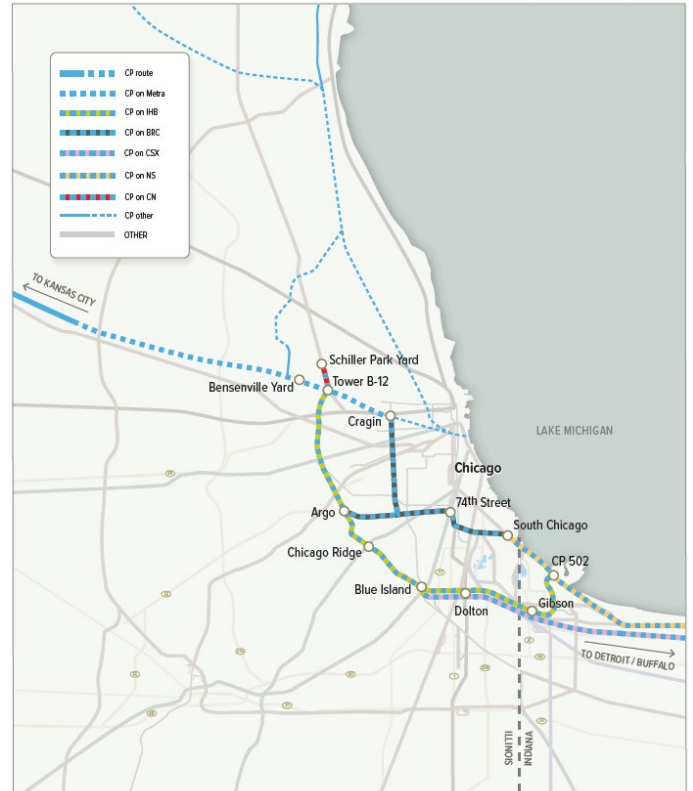
²⁶ Opening Comments and Request for Conditions of the Coalition to Stop CPKC, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 18–19 (filed Feb. 28, 2022) (“Comments of the Coalition to Stop CPKC”).

²⁷ See Exhibit 1, Verified Statement of Derek Taylor at 2–11 (“Taylor V.S.”).

Figure 1: CN Route in the Chicago Vicinity for Moves Between Kansas City and Detroit



Figure 2: CP Route in the Chicago Vicinity for Moves Between Kansas City and Detroit



As Figures 1 and 2 above vividly illustrate, CN’s route would move via Springfield, Illinois, to CN’s existing track to yards near Matteson, Illinois, which is well south of Chicago, while CP’s route not only intrudes on the city, but also requires operations over numerous other railroads (Metra, IHB, BRC, NS, and CN) within its boundaries. Equally to the point, Applicants project conflicting increases in merger-related activity at the Schiller Park Yard—ranging from a 103.4% increase in cars processed per day to a 2,440% increase in yard activity for “Schiller

Park Auto.”²⁸ The Amended Operating Plan does not disclose the merger-related increase in projected truck traffic at Schiller Park Yard, but Applicants previously projected a 70% increase in merger-related growth in trucks per day for “Schiller East IMS”—an additional 134 trucks per day for a total of 324 trucks per day.²⁹ Despite the fact that CP can reach that Yard only via trackage rights over CN track, Applicants have provided incomplete data on either train count increases on that line or the impact of such increases in any filing with the Board or any data provided to the Board’s environmental office. This omission is emblematic of Applicants’ pervasive failure to acknowledge or address the consequences of their Operating Plan for other railroads’ operations and facilities. *See infra* § III.

Second, CSXT has requested that, if the Board conditions its approval of the merger on divestiture of the Springfield Line to CN, then the Board require CN “to maintain commercially reasonable rates and provide service at or above current service levels commensurate with shipper demand to maintain CSXT’s opportunity to compete effectively....”³⁰ CN consents to this proposal, and hereby commits to

²⁸ Compare Amended Operating Plan (Exhibit 13), *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, Appendix T at 13 (filed May 13, 2022) (“Amended Operating Plan”) (103.4% increase in merger-related growth percentage in “cars processed per day”), with Amended Operating Plan at 72 (2,440% increase in cars for “Schiller Park Auto” comparing optimized plan to growth plan).

²⁹ Canadian Pacific Response to Information Request No. 2 (EI-31587), *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed Dec. 20, 2021).

³⁰ See CSX Comments at 23.

comply with the gateway conditions that the Board imposes on interchanges affected by the proposed merger on the Springfield Line. CN has already committed to provide Applicants with haulage for all current and future customers on the Springfield Line, including haulage for unit trains and haulage to interchange points with other railroads. CN's further commitment to comply with gateway conditions on the Springfield Line is consistent with the pro-competitive purpose of the requested divestiture condition.

Third, Bartlett Grain, a grain shipper located on the Springfield Line, has raised questions about the implications of CN's divestiture proposal for its unit grain shipments to destinations in Mexico.³¹ The service currently provided to Bartlett would not change in any meaningful way if the Springfield Line is divested to CN. As explained above, under CN's proposed divestiture condition, Applicants would have haulage to access unit train moves for Bartlett and other existing (or new) customers on the Springfield Line.³² The haulage trains would remain connected to KCS locomotives, and CN and merged CPKC crews would exercise a "step-on, step-off" change in Kansas City, thus preventing any interchange delays.³³ Indeed, KCS currently does such a "step-on, step-off" change in Kansas City between KCS crews and Gateway Western crews. Thus, a shipper like Bartlett

³¹ See Verified Statement of Mr. Bob Knief, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 2–3 (filed June 22, 2022) ("Bartlett V.S.").

³² See CN Responsive Application at 4, 16–17, 24.

³³ See Taylor V.S. at 12–13.

Grain would have dedicated and seamless unit train service to destinations in Mexico if the Springfield Line is divested to CN. None of the “extra handling” or “potential interchange delays” Bartlett fears would occur.³⁴

Moreover, Bartlett’s situation would be improved by the existence of CN as a competitor to Applicants’ merged railroad, both as to price and geography. Bartlett and other customers on the Springfield Line will gain additional access to markets served by CN and a second rail option. Thus, even if Bartlett chooses to continue to ship via merged CPKC haulage, CN’s presence will give Bartlett and similarly situated customers optionality and valuable leverage that they currently lack. And CN’s capital investments in the Line would benefit Bartlett and all shippers on the Line regardless of which rail carrier they use. Indeed, Bartlett previously has recognized the advantage to its business of having access to railroads with an “expand[ed] . . . collective reach” and “new, sustainable transportation solutions.”³⁵

Other key customers like ADM have recognized the inherent benefit to their businesses from having access to multiple railroads and from having a Springfield Line owner committed to investing in the Line. As ADM’s President, Christopher Boerm, recognizes in the letter attached in Exhibit 3, a Springfield divestiture would “be particularly beneficial to agricultural customers and producers across the Midwest,” who would have access to new CN service without losing any options, “as

³⁴ Bartlett V.S. at 2, ¶ 10.

³⁵ See Exhibit 2, Bartlett Grain Statement at 1 (May 26, 2021).

KCS will retain access to the divested lines via haulage agreement with CN.”³⁶ Mr. Boerm also notes the benefits of CN’s commitments to invest in the Line to improve transit times and upgrade track speeds, and concludes that “[g]iven the current challenges in the rail freight industry, it makes sense to support change that increases velocity and creates competitive alternatives.”³⁷

In sum, comments generally support CN’s demonstration that the proposed merger creates a serious threat of horizontal foreclosure and that CN’s proposed Springfield Line divestiture condition will effectively address and mitigate that risk and enhance competition.

C. Commenters Confirm that the Merger Creates Risks of Anti-Competitive Vertical Foreclosure.

Commenters who addressed vertical foreclosure unanimously agreed that a merged CP-KCS would have both strong incentives to engage in anti-competitive conduct and the power to act on those incentives at numerous important gateways throughout the merged railroad system, harming shippers and other railroads.³⁸

³⁶ Exhibit 3, ADM Support Letter, at 1 (July 11, 2022).

³⁷ *Id.*

³⁸ See, e.g., UP Comments at 3; Comments and Request for Conditions of Texas International Terminals Ltd, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 4–6 (filed Feb. 28, 2022) (“Texas International Comments”); NS Comments at 28–36; Opening Comments of the National Grain and Feed Association, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. 36500, at 5–6 (filed Feb. 28, 2022) (“NGFA Comments”); CSX Comments at 2, 23–25; Comments of BNSF Railway Company, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, 32–36 (filed Feb. 28, 2022) (“BNSF Comments”); Comments and Request for the Conditions of The American Chemistry Council, The Fertilizer Institute, and The National Industrial Transportation

Therefore, many commenters appropriately ask the Board to impose robust conditions to protect gateways if the merger is otherwise approved.

In its Comments, CN shows that the pre-merger KCS provides little single line service, and that 87% of its traffic is interchanged with other railroads.³⁹ Thus, today KCS is strongly incentivized to cooperate with other carriers. But after the merger, the combined CPKC will have a strong incentive to favor single-line routings to the detriment of other efficient joint-line routes. Working with CN and other carriers would simply divert traffic from CP, reducing the merged company's revenues.⁴⁰ The United States Department of Justice and the Board (and the Interstate Commerce Commission before it) have recognized this problem, noting this concern about gateways served by the merged carriers.⁴¹

League, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 7–9 (filed Feb. 28, 2022) (“ACC Comments”).

³⁹ CN Comments at 45.

⁴⁰ *Id.* at 45–46.

⁴¹ See, e.g., Comments of the United States Department of Justice, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 9 (filed Apr. 12, 2021) (“As the Board has recognized, a railroad merger can harm competition even if the parties do not compete head to head to provide single-line service between the same origin and destination pairs.” (citing *Major Rail Consolidation Procedures*, STB Docket No. EP 582 (Sub-No. 1), slip op. at 19 (STB served June 11, 2001) (“significant losses in geographic competition could occur even where carriers truly are ‘end-to-end,’ ...”)); *Union Pac. Corp., et al.—Control—Mo. Pac. Corp. and Mo. Pac. R.R. Co.*, 366 I.C.C. 462, 514 (1982) (“A vertical effect can occur if one of the consolidating carriers formerly interchanged traffic with both its consolidation partner and other carriers in providing joint line services over a particular gateway. The transaction then may result in the foreclosure of the nonincluded carrier from competing in the markets it formerly served.”); Decision No. 44, *Union Pac. Corp., et al.—Control and Merger—Southern Pac. Rail Corp., et al.*, 1 S.T.B. 233, 365 (1996) (recognizing that “[v]ertical effects

Numerous shippers reinforce these concerns. Many, including the National Grain and Feed Association (“NGFA”),⁴² the American Chemistry Council, the Fertilizer Institute and the National Industrial Transportation League (collectively, “ACC”), the Chlorine Institute, Texas International Terminals, Ltd. (“Texas International”), NCGA, Evergy Metro, Inc. (“Evergy”), and the Occidental Chemical Corporation and Oxy Vinyls, LP (collectively, “OCC”), stress the importance that gateways remain open on commercially reasonable terms.⁴³ They agree that the

[may] occur where the merging parties connect end-to-end”); *Norfolk S. Corp.—Control—Norfolk & W. Ry. Co. and S. Ry. Co.*, 366 I.C.C. 173, 216 (1982) (“An end-to-end consolidation ... may allow the system to divert traffic from remaining competitors and hence foreclose their opportunity to compete in the marketplace. ... Such diversions can have anticompetitive effects.”); *Guilford Transp. Indus., Inc.—Control—Bost. & Me. Corp.*, 366 I.C.C. 294, 341 (1982) (“We have previously found that end-to-end rail consolidations can directly reduce competitive alternatives ... for shippers located at common points on the consolidating systems.”); *see also Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295, 319 (D.C. Cir. 1983) (quoting *Union Pac. Corp., et al.—Control—Mo. Pac. Corp. and Mo. Pac. R.R. Co.*, 366 I.C.C. 462, 529 (1982) (recognizing that “vertical foreclosure” may occur when “one of the end-to-end consolidation partners formerly interchanged traffic with both its consolidation partner and other carriers in providing joint line services over a particular gateway,” resulting in “the foreclosure of the nonincluded carrier from competing in the markets it formerly served”)).

⁴² NGFA states that its Comments are supported by the North American Millers Association, the Agricultural Retailers Association (“ARA”), and the National Oilseed Processors Association (“NOPA”). *See* NGFA Comments at 2.

⁴³ NGFA Comments at 5–6; ACC Comments at 9; Comments of The Chlorine Institute, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 3 (filed Feb. 28, 2022); Texas International Comments at 5; NCGA Comments at 2–3; Opening Comments of Evergy Metro, Inc., *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 17 (filed Feb. 28, 2022) (“Evergy Comments”); Comments of Occidental Chemical Corporation and Oxy Vinyls, LP, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 2 (filed Feb. 28, 2022) (“OCC Comments”).

merged firm “will be incentivized to favor its single line routes [and] that may result in existing gateways being closed or overwhelmed by traffic.”⁴⁴ As Texas International noted, CP-KCS can suppress competition by restricting shipper service routing and interchange options, and seeking to redirect traffic and potentially close gateways essential to their competition.⁴⁵

In its Comments, CN illustrates this concern with the interchange at Jackson, Mississippi—a critical link for CN and its customers to connect origins and destinations in Texas and Mexico with CN’s network in the upper Midwest United States and Canada, as KCS has recognized.⁴⁶ But joint-line KCS-CN traffic through the Jackson plainly competes with the KCS-CP traffic that Applicants hope to move through Kansas City. The CP-KCS Application underscores the validity of CN’s concern: It projected a significant decrease in KCS’s interchange traffic with CN and other railroads at Jackson, and an increase in traffic and capital improvements on the competing CP-KCS route over the Kansas City gateway.⁴⁷

CN’s Comments also explain that CP’s incentive to engage in anti-competitive behavior at gateways will be heightened because Applicants have

⁴⁴ NCGA Comments at 2.

⁴⁵ Texas International Comments at 5.

⁴⁶ *See, e.g.,* Joint Motion for Approval of Voting Trust Agreement, *Canadian National Railway Co., et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36514 (filed May 26, 2021), Verified Statement of Patrick J. Ottensmeyer, at 8–9.

⁴⁷ *See* CN Comments at 49–50.

substantially overstated the financial benefits that the merged company can achieve. For example, CP anticipates that, even though it will not lower prices, shippers will switch in substantial numbers to its much longer single-line routes, rather than remaining with shorter, more efficient joint-line routes.⁴⁸ And the Application does not plan or provide for the significant investments that will be required to allow the routes and facilities that will bear the load of the predicted traffic increases.⁴⁹ Moreover, when the anticipated revenue growth does not occur, the merged CP-KCS will have a strong motive to raise prices for shippers and discriminate against joint-line railroads by raising their rates and degrading their service.⁵⁰

UP also persuasively supports the need for concrete gateway protections. It uses circumstances at the Laredo Gateway to demonstrate CP-KCS's incentives and power to engage in vertical foreclosure at important gateways. It shows that the merged railroad will control KCSM, the only railroad serving the Mexican side of the Laredo Gateway, which occupies “a position of separate and surpassing economic significance’ to U.S.-Mexico rail transportation.”⁵¹ Then, UP demonstrates that CP-KCS would have the ability “to force inferior rate and service terms on a

⁴⁸ *See id.* at 18–19.

⁴⁹ *See id.* at 28–30.

⁵⁰ *See id.* at 13.

⁵¹ UP Comments at 2; *see id.* (the Port of Laredo is the leading U.S.-international freight gateway).

significant number of shippers who depend on rail service via the Laredo Gateway,” because those shippers lack viable alternatives to rail service via Laredo.⁵² Indeed, UP witnesses show that Applicants “could cause KCSM to increase its rates as much as necessary to assure that UP is effectively disabled from competing, while offsetting any increase in the single-line rates it offers shippers.”⁵³

UP also demonstrates that CP-KCS would have a strong incentive to engage in this conduct. It explains why Applicants’ witness Dr. Majure’s “one-lump theory”—which presumes that KCS already collects the full measure of monopoly returns from its shippers, and thus has no incentive to raise prices or degrade service—simply does not apply to the Laredo gateway.⁵⁴ Instead, where, as here, the upstream monopolist [KCS] lacked full information about the prices or costs of the downstream rivals [UP and CP], the monopolist was unable to charge prices to extract in “one-lump” its monopoly profits; as a result, shippers benefited and retained the surplus. Once KCS and CP merge, however, CP-KCS will have full

⁵² *See id.* at 3–4, 26–27, 47–48. UP witnesses show how CP-KCS could make other carriers less attractive: It could raise rate factors for shippers who would prefer to use other carriers north of Laredo, or limit KCSM cooperation with other carriers on operational and service matters at the Laredo gateway or in Mexico. *See id.* at 4.

⁵³ *See id.* BNSF and UP make the same argument about the Laredo gateway. *See* Comments of BNSF Railway Company, *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. 36500, at 38 (filed at Feb. 28, 2022); UP Comments at 26–29.

⁵⁴ *See* UP Comments at 5.

information and the merged railroad will be able to engage in anticompetitive conduct to charge prices to take the full monopoly profits (the “one-lump”).⁵⁵

And UP explains that CP-KCS will be strongly incentivized to foreclose rivals using the Laredo Gateway because the combined railroad can capture a larger share of the proceeds from foreclosure than KCS alone could ever gain.⁵⁶ This is because Applicants are projecting that CP-KCS will gain significant cross-border traffic from UP post-merger—projections CP-KCS must realize to meet the revenue goals of the transaction.⁵⁷ UP shows, moreover, that CP-KCS’s benefit projections rely on “aggressive assumptions” that the combined railroad will divert substantial existing U.S.-Mexico traffic to its single-line routes *and* grow that traffic using UP-owned lines in the Houston area that are already at capacity.⁵⁸ Further, UP shows that the CP-KCS Laredo route to Chicago will in fact be far less efficient than the current joint-line routes of KCS-UP and KCS-BNSF, and “offer no reason customers would willingly chose longer [CP-KCS] routes over existing interline routes.”⁵⁹ Thus,

⁵⁵ *Id.*; *see also* ACC Comments at 13–21 (explaining why the “one lump” presumption is not applicable here and, in any event, that it is incomplete because foreclosure can still occur through non-price mechanisms that it does not take into account).

⁵⁶ *See* UP Comments at 5.

⁵⁷ *See id.* at 7.

⁵⁸ *See id.* *Compare id.*, with CN Comments at 17–23 (demonstrating that Applicants’ traffic projectionss are unrealistic).

⁵⁹ *See* UP Comments at 7–8, 25.

Applicants' sole path to achieving their revenue projections is "to restrain competition and divert traffic without competing on the merits."⁶⁰

BNSF concurs that "[t]o meet the steep volume expectations, revenue projections and other claims made to investors and to the Board, the combined CP-KCS will be incentivized to divert its traffic through rate manipulations away from competitive routings on BNSF and other railroads."⁶¹ Based on analysis congruent with CN's and UP's, BNSF shows that "absent imposition of the conditions requested by BNSF, current and future U.S. shippers could be harmed through a lessening of competitive options."⁶²

In short, commenting shippers and carriers agree that "Applicants' equivocal commitment to maintaining open gateways is inadequate to protect against CPKC's incentives and capability to close commercially both cross-border and domestic U.S. gateways."⁶³

⁶⁰ *See id.* at 8, 26. Norfolk Southern expresses similar concerns about vertical foreclosure, but it focuses on the CP-KCS gateways on the line between Meridian, Mississippi, and Shreveport, Louisiana, owned by the Meridian Speedway, LLC, and on the line between Meridian and the Wylie Intermodal Terminal in Wylie, Texas. NS Comments at 4–5; *see also id.* at 24–25.

⁶¹ BNSF Comments at 2.

⁶² *See id.*

⁶³ CSX Comments at 4.

D. Commenters Propose a Number of Sensible Remedies to Address Vertical Foreclosure that the Board Should Impose.

Many commenters concur with CN’s view that the Board should impose additional conditions on the merger to address potential vertical foreclosure at gateways. These commenters support conditions like reporting requirements (*e.g.*, tracking whether joint-line traffic falls post-merger) and Board monitoring to guard against vertical foreclosure.⁶⁴ In its Comments, NS observed that “Applicants are not even willing to provide the same level of gateway protection that CP demanded—and received—in the proceeding involving the acquisition of Pan Am Systems by CSX Transportation.”⁶⁵ And UP noted, “[c]ommerciably reasonable’ is not a concrete, enforceable standard for establishing rates.”⁶⁶

Shippers strongly support the requirement that CP-KCS be required to quote a separate and transparent Rule 11 rate.⁶⁷ Relatedly, shippers request that the Board clarify the rules for challenging the reasonableness of Rule 11 rates.⁶⁸

⁶⁴ See, *e.g.*, NGFA Comments at 11; Comments of the Coalition to Stop CPKC at 4; NCGA Comments at 3; Everygy Comments at 17–18; BNSF Comments at 49; NS Comments at 8; Comments and Request for Conditions of Hennepin County, MN, and the Hennepin County Regional Railroad Authority, *Canadian Pacific Railway Limited, et al.,—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 3, 6 (filed Feb. 28, 2022) (“Hennepin County Comments”); Texas International Comments at 8–9.

⁶⁵ See NS Comments at 31.

⁶⁶ See UP Comments at 69.

⁶⁷ See, *e.g.*, NGFA Comments at 7–9 (proposing that the Board clarify rules for challenging Rule 11 rates); ACC Comments at 9–10.

⁶⁸ See, *e.g.*, NGFA Comments at 7–9.

Further, several shippers endorse a requirement that Applicants be required to arbitrate the Rule 11 rate in the event of disagreement.⁶⁹ CN agrees with these proposed conditions which are in harmony with its own.⁷⁰

Going beyond the proposals that the Board require Applicants to quote Rule 11 rates along with an enforcement mechanism, UP and BNSF propose that the Board adopt a substantive and “enforceable” standard for Rule 11 rates—specifically, that whenever CP-KCS is asked to quote rates for former CP, former KCS, and former KCSM portions of routes *and* CP-KCS service on a single-line route, CP-KCS’s rates for those former portions of routes reflect a “mileage-based prorate” of the CP-KCS single-line rate.⁷¹ UP explains that this puts control over the proceeding in the hands of the shippers whom the condition is intended to protect.⁷²

BNSF likewise proposes that the Board require “CP-KCS to execute and comply with a ‘proportional rate’ agreement like the one developed and adopted as a condition in the UP/SP merger for interline traffic over the Portland gateway.”⁷³ It explains that such a rate “can be effective in maintaining access and preserving

⁶⁹ *See, e.g.*, ACC Comments at 10.

⁷⁰ *See* CN Comments at 71–76.

⁷¹ *See* UP Comments at 9, 71–72.

⁷² *See id.* at 72.

⁷³ BNSF Comments at 44.

market-based pricing.”⁷⁴ BNSF notes that one virtue of such a system is that it would “operate[] without STB involvement or oversight”⁷⁵

CN does not take a position on UP’s and BNSF’s similar proposals but notes that they are thoughtful attempts to create a more concrete gateway commitment. CN believes that it is difficult to adopt a formula that would provide for “commercially reasonable” rates in all circumstances. For example, where a competing route does not overlap with the single-line route in whole or in part, the proposed UP-BNSF formulas do not provide a clear solution.

CN continues to believe that an efficient arbitration process will be the best way to ensure compliance with a gateway commitment and commercially reasonable rates. CN, however, agrees with UP and BNSF that the relationship between a single-line rate and the Rule 11 rate in question would certainly be a highly relevant factor for any arbitrator to consider in determining an appropriate rate.

In CN’s view, initiating arbitrations alleging violations of the gateway commitment should be available to any party—not just the individual shipper. Individual carload shippers may have limited knowledge of gateway conditions

⁷⁴ *Id.* at 44.

⁷⁵ *Id.* at 46. BNSF also highlights that “[b]y allowing Applicants to adjust their rates to reflect post-merger efficiencies, a proportional rate mechanism would avoid the issues associated with the anti-competitive ‘rate equalization’ conditions imposed by the ICC on mergers after its decision in *Detroit, Toledo & Ironton R.R. et al. Control, Etc.*, 275 I.C.C. 455 (1950).” *Id.* at 47. This is because a “proportional rate mechanism ... does not constrain the pricing flexibility of the merged rail carriers, but fully allows market-based pricing.” *Id.* at 47–48.

imposed by the Board or limited incentives to bring an arbitration for an individual quoted rate. Connecting carriers may have broader knowledge of patterns of behavior and may be better positioned to enforce violations of the letter or spirit of any gateway conditions the Board imposes.

III. Commenters Share CN's Concerns About Service-Related Disruptions and the Conditions Required to Address Them.

Many stakeholders, including shippers, railroads, and communities, also raised concerns about the risk of service disruptions posed by the proposed CP-KCS merger. There were several related themes in these comments.

First, many commenters—including OCC, the Private Railcar Food and Beverage Association (“PRFBA”), NGFA, NCGA, and Evergy—noted that mergers historically have contributed to service disruptions and predict that this merger will be no exception.⁷⁶ A number of these commenters thus request that the Board require Applicants to provide a Service Assurance Plan.⁷⁷ Others ask the Board to provide shippers with rights to arbitration to resolve claims for damages resulting

⁷⁶ See, e.g., NCGA Comments 2–3; NGFA Comments at 10–11; PRFBA Comments at 12; Evergy Comments, at 9–18; OCC Comments at 2.

⁷⁷ See, e.g., Comments of the United States Department of Agriculture (USDA), *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 2 (filed Feb. 28, 2022).

from service-related disruption,⁷⁸ or to establish a mechanism to impose monetary penalties on Applicants in the event of post-merger service disruptions.⁷⁹

More concretely, several commenters observe that Applicants project significant increases in traffic density on a number of lines where the lines themselves and related facilities are already overcommitted and congested. Commenters note that Applicants have entirely failed to address, let alone plan for these increases. The inevitable consequence will be that service will be substantially degraded with serious consequences for shippers, their customers, and other railroads whose tracks are used by a merged CP-KCS. These commenters ask the Board to monitor post-merger service disruptions and to investigate and provide appropriate remedies, including damages, for such disruption.

Relatedly, numerous commenters showed that Applicants have failed to study capacity or propose necessary investment in the lines and facilities *of other railroads* to handle the projected new loads, and that it is unfair and contrary to the public interest to require third-party railroads to bear the costs of Applicants' merger. Thus, these commenters agree that Applicants should not be permitted to implement their new single-line service and add to the existing traffic on those other lines until they plan, pay for and implement the changes required to handle the projected traffic increases. CN generally supports these proposals.

⁷⁸ See, e.g., ACC Comments at 23–24.

⁷⁹ See, e.g., NGFA Comments at 10; ACC Comments at 23 (proposing the processing of claims for service-related damages under 49 C.F.R. Part 1005).

Shippers' comments about service degradation are illustrated by those of Everyg. It is focused on the impact of increased traffic density south of Kansas City on unit train coal movements to its facilities that generate power for consumers throughout western Missouri and eastern Kansas. Everyg explains that reliable KCS deliveries of coal are essential to its ability to provide energy to consumers, and that there is no viable alternative to rail deliveries. Everyg observes that the Application makes clear that the merged railroad will prioritize intermodal and other competitive traffic, and that Applicants have made "no specific commitments or plans to protect existing coal and other bulk commodity shippers from a degradation of service over the lines from Kansas City south, as a result of the expected significant increase in traffic density on those lines."⁸⁰

Lyondell Chemical and other chemical companies have made similar observations about Applicants' Operating Plan and its effect along the Gulf Coast. They note that the Application projects substantial increases in traffic levels along this corridor, without proposing the infrastructure investment to support it and express concern about the resulting service disruptions.⁸¹

The Village of Itasca and a number of other Chicago communities raise identical concerns about Applicants' plans to triple the number of freight trains on

⁸⁰ Everyg Comments at 13.

⁸¹ Opening Comments and Request for Conditions of LyondellBasell, *Canadian Pacific Railway Limited, et al.,—Control—Kansas City Southern, et al.*, STB Docket No. FD 36500, at 2, 4–6 (filed Feb. 28, 2022).

the Elgin subdivision, which is an important commuter line into Chicago.⁸²

Applicants' response has been to take the extraordinary and inappropriate step of publicly publishing settlement communications as evidence that the communities are supposedly not "serious."⁸³

Similarly, Hennepin County, Minnesota has highlighted the effect of Applicant's projected increased traffic on the County and its rail network. It too emphasizes that Applicants must study and address these consequences in the County at their expense—expenses the County estimates are significant.⁸⁴

UP and other carriers highlight Applicants' failure to address the impact of their transaction on infrastructure that the merged railroad will use that belongs to other railroads. Like CN, UP demonstrates that Applicants' projected traffic, accompanied by its failure to provide for the additional capacity necessary to implement their transaction in specific locations, "would harm the many shippers whose traffic moves over the shared lines and in the shared terminals."⁸⁵ UP focuses on CP-KCS's plans in four locations:

- the plan to operate 8-12 additional trains per day on UP tracks between Robstown and Beaumont, Texas, including through the already-strained Houston terminal;

⁸² Comments of the Coalition to Stop CPKC at 18–19.

⁸³ Reply of Canadian Pacific Railway Limited, *Canadian Pacific Railway Limited, et al.*,—*Control—Kansas City Southern, et al.*, STB Docket No. FD 36500 (filed May 25, 2022).

⁸⁴ Hennepin County Comments at 3, 6, 10.

⁸⁵ UP Comments at 51.

- the plan to add 14 trains per day to the 42-mile joint facility that UP and CP use to access Kansas City between Polo and Birmingham, Missouri;
- the plan to add significant traffic over the Neches River Bridge, a chokepoint for traffic moving between Houston and New Orleans; and
- the plan to substantially increase traffic through St. Paul, Minnesota.⁸⁶

Tellingly, UP observes, “Applicants identified \$279 million in investments on lines they would use exclusively to accommodate their planned traffic growth, but they identified no investments needed on lines owned by others or shared with others.”⁸⁷ Plainly, allowing the merger to be implemented without providing for the necessary planning and investment would inevitably lead to massive service disruptions and unfairly compromise the service offerings of other railroads.

UP contends that “Applicants should not make others subsidize investments needed to implement their transaction” and requests that if the Board approves the transaction, it should not allow Applicants to increase their operations above pre-merger levels without first entering into agreements with affected carriers that “identify and provide for funding of investments in new capacity necessary to accommodate their planned traffic growth.”⁸⁸ UP also proposes that the Board

⁸⁶ *Id.* at 11, 53–66.

⁸⁷ *Id.* at 53.

⁸⁸ *Id.* at 11.

would remain available to resolve any disputes between the parties concerning the planning process and the decisions about investment and its funding that follow.⁸⁹

NS similarly observes that “Applicants’ stated plan is to increase traffic significantly over certain segments of the Meridian-Wylie route without investing in needed capacity, while at the same time stifling traffic growth elsewhere on the route.”⁹⁰ NS explains that “overloading some portions while choking growth on others ... may result in less reliable service, and, as a result, reduce competition for rail and drive more intermodal shipments to the highway.”⁹¹ Relatedly, NS points out that Applicants plan no investment in the Wylie Intermodal Terminal to increase its capacity even though the operating plan forecasts growth far beyond its capacity to handle.⁹² NS comments that the logical implication of this is that CP-KCS will prefer its own intermodal shipments, adversely affecting NS and its intermodal shippers.⁹³

BNSF likewise has pointed out that Applicants’ plans ignore the service issues created by their traffic projections, highlighting the example of the overcrowded Houston complex. BNSF notes that it and UP can access Laredo without

⁸⁹ *Id.* at 76.

⁹⁰ NS Comments at 7.

⁹¹ *Id.* at 7; *see also id.* at 36 (“Increasing traffic over the Meridian Speedway with no corresponding investment in capacity threatens to slow down traffic and lead to less consistent intermodal service.”).

⁹² *Id.* at 23.

⁹³ *Id.* at 24–25.

traversing Houston, giving them an efficiency advantage particularly for intermodal traffic. In contrast:

[n]otwithstanding the risk of congestion in the Houston area, Applicants anticipate that their merger would result in the addition of approximately eight new CP-KCS trains per day to the rail lines traversing Houston. Much of this additional traffic would result from the diversion of traffic to CP-KCS from BNSF and UP, whose lines do not need to traverse Houston to reach the Mexico border. Yet Applicants have not identified a single dollar for new capacity that they propose to add in the Houston area to accommodate this substantial increase in traffic.⁹⁴

Similar to UP, BNSF opines that “BNSF and its shippers should not be expected to pay for capacity that Applicants need to implement their merger,” labeling this a “classic example of anticompetitive conduct.”⁹⁵

Metra similarly has noted Applicants’ failure to analyze the impacts of its merger on Metra’s lines and service. As Metra observes, Applicants’ analysis fails to consider local traffic to and from Bensenville or the impact of their merger on the Chicago rail network east of Bensenville.⁹⁶ And Applicants completely excluded

⁹⁴ BNSF Comments at 5.

⁹⁵ *Id.*

⁹⁶ See Comments and Request for Conditions of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra, *Canadian Pacific Railway Limited, et al.*,—Control—Kansas City Southern, *et al.*, STB Docket No. FD 36500, Vol. 1, at 53, Vol. 2, Ex. B at 22, and Vol. 3, Ex. C at 32–33 (filed Mar. 15, 2022) (“Metra Opening Comments”); Supplemental Comments of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra in Response to Revised Operating Plan Data Submitted by Applicants, *Canadian Pacific Railway Limited, et al.*,—Control—Kansas City Southern, *et al.*, STB Docket No. FD 36500, Attachment A at 10–12 (filed June 9, 2022) (“Metra Supplemental Comments”).

Metra and Amtrak trains from their capacity analyses, even over lines with over 90 Metra trains per day.⁹⁷

All of these comments support CN's demonstration that the merger is likely to create massive service disruptions. Applicants have failed to plan for the projected changes in service in its Application or take into account the investments necessary to address the changes in rail traffic it projects and to prevent the resulting service disruptions. In these circumstances, it is particularly important for the Board to *require* Applicants to take concrete steps to prevent service disruptions. Indeed, in connection with mergers presenting far fewer evident threats to service, the merging parties have voluntarily adopted a Service Assurance Plan to assuage concerns.⁹⁸ CN supports imposition of all the following conditions to prevent service disruption:

- Require Applicants to provide a Service Assurance Plan;
- Require the Board to conduct five years of post-merger monitoring;
- Impose a Board procedure for investigating and addressing post-merger service complaints, including appropriate remedies; and
- Require Applicants to plan for, fund and implement measures to prevent service disruptions that will result from Applicants' projected traffic changes *before* Applicants can alter operations post-merger.

⁹⁷ See Metra Opening Comments at 58–59; Metra Supplemental Comments at 7–8.

⁹⁸ See, e.g., Decision No. 10, *Canadian National Railway Co., et al.—Control—Wisconsin Central Transportation Corp.*, STB Docket No. FD 34000, slip op. at 20 (STB served Sept. 7, 2001).

IV. Numerous Commenters Support Post-Merger Monitoring.

Finally, numerous shippers and carriers echo CN's request that the Board require post-merger monitoring as it virtually always does.⁹⁹ To facilitate such monitoring, they also request that the Board require CP-KCS to provide traffic diversion information at regular intervals. And if such monitoring were to reveal either anticompetitive conduct or non-compliance with conditions, commenters request that the Board investigate and impose penalties. For example, NGFA proposes post-merger monitoring of traffic to determine whether traffic levels to rival railroads fall as well as a Board process for the investigation of gateway-related misconduct.¹⁰⁰ NS and NGFA request that the Board establish an oversight period of five years to monitor Applicants' compliance with their own representations and conditions imposed by the Board.¹⁰¹ CN agrees with these recommendations.

CONCLUSION

The comments in this proceeding have demonstrated that the Board should impose significant conditions on any approval of the Application to prevent the serious risks of harm to competition and service disruptions the Application poses, given Applicants' failure to prove the proposed merger is in the public interest (and heaps of evidence to the contrary). In light of these serious concerns, CN urges the

⁹⁹ CN Comments at 76–77; *see, e.g., supra*, note 64.

¹⁰⁰ NGFA Comments at 6.

¹⁰¹ NS Comments at 8; NGFA Comments at 11.

Board to impose each of the conditions it has requested if it decides to nevertheless approve the proposed merger.

Respectfully submitted,

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CN's Rail Operating Subsidiaries*

Dated: July 12, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2022, a copy of the foregoing Response to Comments on Application was served by first class mail or email on the service list for Finance Docket No. 36500.

/s/ Matthew J. Warren

Matthew J. Warren

EXHIBIT 1

Verified Statement of Derek Taylor

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36500

**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**

CN'S RESPONSE TO COMMENTS ON APPLICATION

VERIFIED STATEMENT OF DEREK TAYLOR

My name is Derek Taylor. I am Vice-President, Transportation, Southern Region, for CN and the co-sponsor of CN's Operating Plan included with CN's Responsive Application in this proceeding seeking divestiture of KCS's Springfield Line.¹ I am submitting this statement in response to some of the comments filed in this proceeding. In particular, I will address commenters' questions regarding the implications of CN's proposal to acquire the Springfield Line.

¹ At the time the Operating Plan was submitted, I was CN's Vice-President, Operational Excellence.

I. The Springfield Divestiture Will Foster a Competitive Route that Will Avoid Chicago Congestion.

Communities in the Chicago suburbs have expressed their belief that the proposed Springfield Line divestiture would relieve congestion in Chicago that the proposed CP-KCS combination will create. In particular, the Coalition to Stop CPKC explained in their comments (on page 19) that “the CN responsive application will provide an additional opportunity for the Board to address the severe issues faced by the Coalition” and “to alleviate congestion and service disruptions on the merged railroad’s [*i.e.*, CPKC’s] system in Chicago,” and indicated that “the Coalition finds the CN’s proposal to be an intriguing potential condition for the Board to consider.” These communities are correct—divesting the Springfield Line to CN will provide a competitive routing alternative to a merged CPKC that would avoid additional congestion in Chicago and its suburbs.

CN’s existing route for traffic between Springfield and Detroit/Eastern Canada largely avoids the Chicago terminal altogether, and thus has minimal impact on congestion within that terminal, particularly as compared to CP’s route. Divesting the Springfield Line to CN would permit freight to be transported between Kansas City and Detroit/Eastern Canada in competition with CP’s parallel line and avoid the more congested CP routing in and around the Chicago area. Intermodal and automotive freight between Kansas City and points in Michigan, such as Detroit, and beyond in Eastern Canada would move over the Springfield Line to CN’s existing line at Springfield, Illinois and then to yards near Matteson, Illinois, which is well south of Chicago. There, as shown in Figure 1, traffic would

move to or from the east via Matteson onto CN's line through Indiana and into Michigan. This route bypasses the City of Chicago, avoids its most congested rail lines, does not require the use of intermediate switching railroads, and does not compete for operating slots with any Metra commuter train operations.

FIGURE 1: CN Route in the Chicago Vicinity for Moves Between Kansas City and Detroit



By contrast, Applicants project no transaction-related traffic increases on the Springfield Line, and their plan to concentrate traffic on CP's existing parallel route would direct increased traffic into the Chicago terminal and run significantly more trains through the Chicago suburban communities located on CP's Elgin Subdivision that have expressed concern about the impacts of the proposed CP-KCS transaction. According to Applicants' Operating Plan (at ¶ 153), an additional 7.1 trains per day will run over the Elgin Subdivision.² I understand that affected communities and Metra believe that CP has understated its projected merger-related train increases in Chicago, and as discussed further below, I believe that Applicants failed to fully account for train increases east of CP's Bensenville Yard in their operating plan. Such under-projections would be a serious problem in light of Applicants' failure to plan any capital improvements or other mitigating action necessary to address the costs and added congestion of an increase in trains.

CP's track ownership terminates west and north of Chicago, and it does not own lines in Chicago. Instead, CP operates over lines owned by Metra and on track owned by other freight railroads (the Indiana Harbor Belt Railroad ("IHB"), the Belt Railway of Chicago ("BRC"), Norfolk Southern Railway ("NS"), and CN). CP's interchanges with other Class I railroads in the Chicago terminal area require

² See Amended Operating Plan (Exhibit 13), *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern, et al.* STB Docket No. FD 36500, at ¶ 153 (filed May 13, 2022).

movement over multiple railroads in and through the Chicago area.³ This is significant because Applicants' Operating Plan indicates (at ¶ 27) that more than 75% of CP carloads passing through Chicago either originate or terminate on another railroad, most of which have yards south of downtown Chicago. All of this traffic is required to traverse the heart of the Chicagoland area, a situation that will be exacerbated by the proposed CPKC merger.

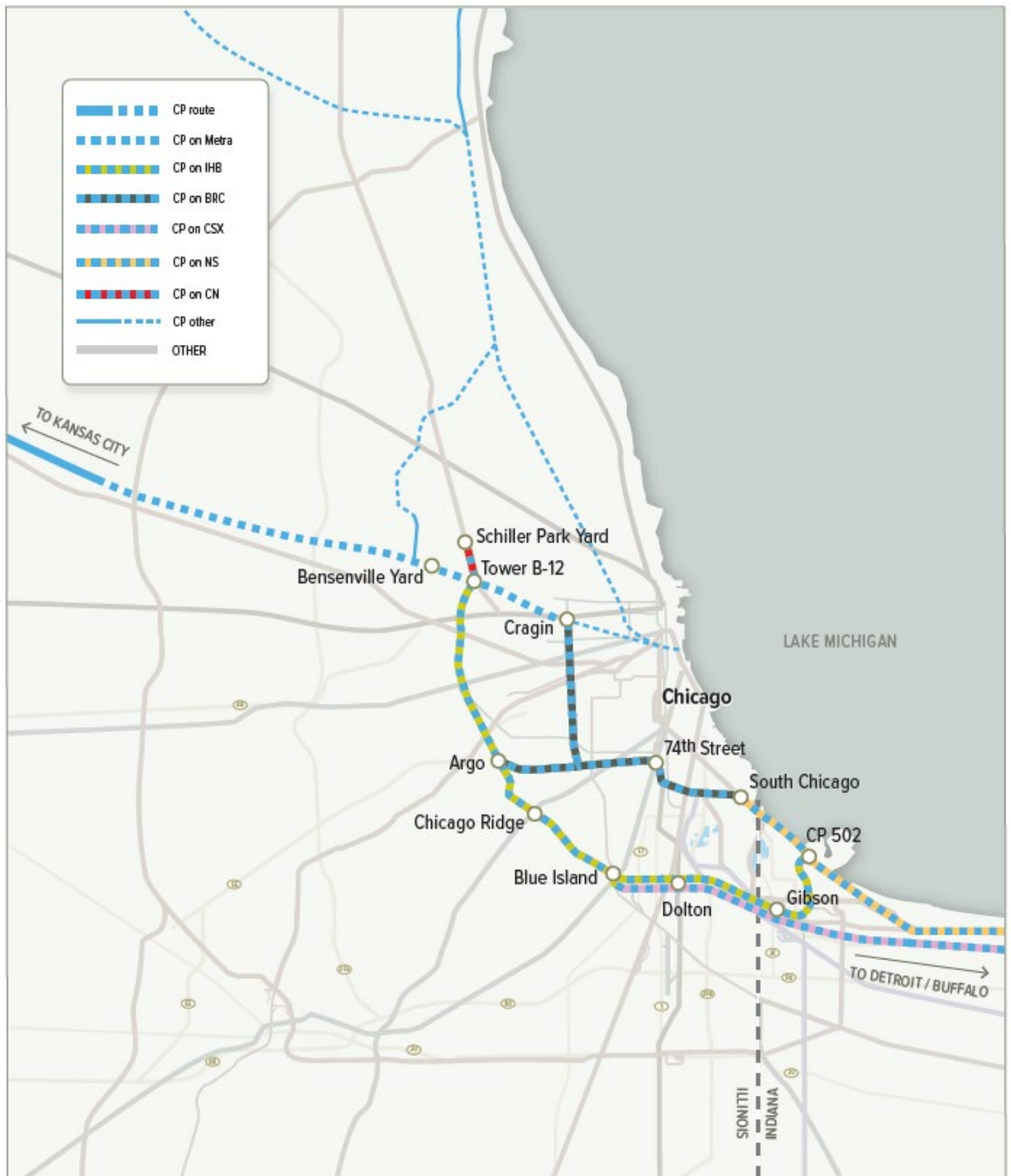
In particular, CP builds interchange traffic at its Bensenville Yard (CP's primary classification yard in the Chicago region northwest of the city) and CP's nearby Schiller Park Yard (a shared CN and CP yard on a CN line northeast of Bensenville, and CP uses its portion of the yard primarily as an intermodal yard but recently expanded to also be an automotive facility). As Applicants' Operating Plan explains, CP's interchange traffic from these two locations moves through the Chicago terminal via the two major Chicago intermediate switching carriers, the BRC and IHB, which interchange CP traffic with CN, BNSF, CSX, NS, and UP via BRC's Clearing Yard, BRC's Rockwell Street Yard, NS's Calumet Yard, UP's Proviso Yard via IHB, and IHB's Gibson and Blue Island Yards over IHB tracks.

CP's own traffic to Detroit and Eastern Canada must move over the same complex routings via the BRC and IHB through the City of Chicago to reach CP's trackage rights over NS to Detroit and CP's haulage rights over CSX to Buffalo, New York. Applicants assert in their Amended Operating Plan on page 91 that

³ Applicants assume the CP and CN interchange will remain at BRC's Clearing Yard. *See id.* ¶ 27.

significantly increased volumes of traffic—particularly intermodal and automotive traffic—will move via these routings as a result of the proposed CP-KCS transaction. Figure 2 shows these routes for moves between Kansas City and eastern Canada via Chicago, which traverse some of the most complex and congested areas of the Chicago rail terminal.

FIGURE 2: CP Route in the Chicago Vicinity for Moves Between Kansas City and Detroit

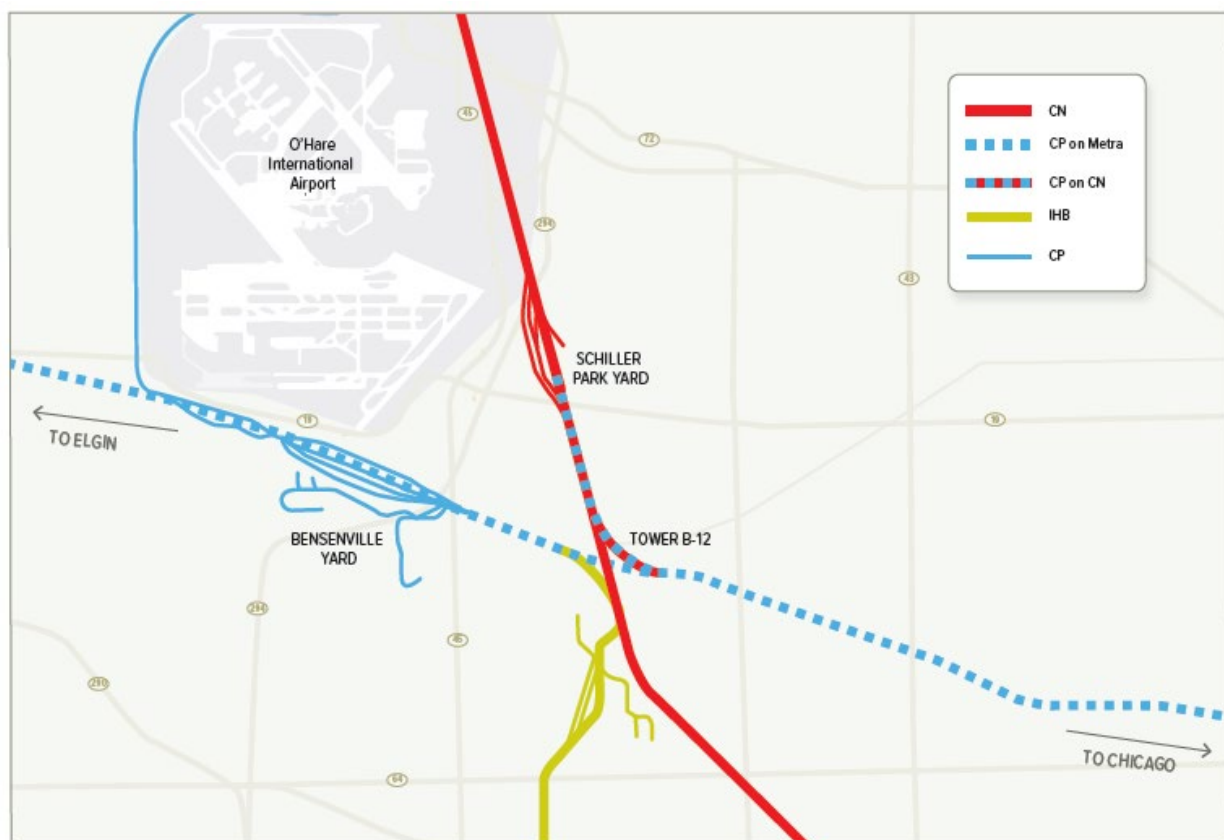


I particularly note the deficiencies in Applicants' information regarding their intended operations to and from Schiller Park Yard. According to Applicants' Amended Operating Plan (Appendix T, page 13), because of the merger, CP's yard activity at Schiller Park Yard will increase by at least 103.4%, and there is a projected increase in truck activity of 70%. Other parts of the Amended Operating Plan highlight the extensive amount of traffic that will be transferred between Schiller Park Yard and Bensenville Yard. In describing the merged CPKC's planned new Train 170 between Lazaro Cardenas, Mexico and Toronto, Ontario, Canada, for example (on page 3 of Appendix I of the Operating Plan), Applicants explain that "[a]t Bensenville, Detroit IMS and St. John IMS [traffic blocks] are transferred to Schiller Park for connection to [Train] 142." Indeed, Applicants describe Bensenville Yard and Schiller Park Yard as a "single integrated facility" that can be "operated in tandem" (Amended Operating Plan ¶¶ 303, 305).

Schiller Park Yard is located on CN's Waukesha Subdivision several miles north of Tower B12 in Franklin Park, Illinois, near O'Hare International Airport. Tower B12, in turn, is located several miles east of CP's Bensenville Yard, on the Metra-owned Elgin Subdivision. CP traffic between Bensenville Yard and Schiller Park Yard must first move east via CP trackage rights on Metra's main line to Tower B12 and then north via CP trackage rights over CN's line to Schiller Park Yard. As shown in Figure 3, however, there is no connecting track in the northwest quadrant at Tower B12 that would allow a direct, head-in CP movement from Bensenville Yard to Schiller Park Yard. Instead, those CP trains must pull past

Tower B12, stop on the Metra main line, and then perform a reverse shove movement back up CN's line to reach Schiller Park Yard. Such an operation is cumbersome at best and will increase delays on Metra's and CN's lines if the Applicants increase the number of trains between Bensenville and Schiller Park Yard.

FIGURE 3: CP Route on Metra and CN Lines Between Bensenville Yard and Schiller Park Yard



Particularly given this operational complexity, Applicants' plans to significantly increase their traffic as a result of the merger between Bensenville Yard and Schiller Park Yard obviously has significant potential consequences for both CN and Metra. Despite this, Applicants have provided no data on expected

train count increases on CN's line over which CP operates on trackage rights, nor have they presented any assessment of the impact of those increased traffic levels in their original Operating Plan, Amended Operating Plan, or the data they submitted to the STB's environmental office. Based on my experience, it seems certain that the substantial increases in Schiller Park Yard activity will require significant train increases over CN's Waukesha Subdivision between Tower B12 and Schiller Park that CP must use to reach Schiller Park Yard. But Applicants have excluded that segment from their merger analysis, making it impossible to assess the impact on CN's or Metra's operations in that area of Chicago.

In the same vein, Applicants' settlement agreement with Amtrak contemplates additional Amtrak trains running between Chicago and Milwaukee, but those additional trains are not factored into the amended operating plan (which was submitted months after the Amtrak agreement) or Applicants' environmental submission. Nor did Applicants do anything to assess impacts on CN's operations of their settlement agreement to explore Amtrak train service between New Orleans and Baton Rouge, Louisiana, even though such service would require operations over CN's tracks in the New Orleans area to reach Amtrak's New Orleans Union Passenger Terminal. In contrast, the operating plan that I co-sponsored for the Springfield Line considered impacts on all stakeholders and planned for sufficient capital investment to support the intermodal and automotive train services that CN would offer if the Board grants its responsive application.

II. Customers on the Springfield Line Will Have Improved Service and Additional Competitive Options.

I also understand that a question has been raised by a grain shipper, Bartlett Grain Co., LP (Bartlett), regarding the potential impact of the proposed Springfield Line divestiture on its shipments to points in Mexico. We intentionally designed the Springfield Line operating plan to provide *equal or better service and service options* for all existing shippers on the Springfield Line. For example, CN has agreed to give a merged CPKC haulage rights to reach all customers on the Line, including the right to run haulage unit trains and interchange with connecting railroads at East St. Louis. This commitment on CN's part would help protect the East St. Louis gateway—a critical gateway that the proposed transaction puts at competitive risk, as I understand CSX has pointed out.

For a customer such as Bartlett that wishes to ship unit trains to points in Mexico, CN would provide seamless operations—intact trains with KCS locomotives and cars would continue to cycle between Bartlett's Jacksonville, Illinois facility on the Springfield Line and destinations in Mexico. The only physical change would be a step-on, step-off crew change between CN and merged CPKC crews at Kansas City. This is consistent with today's operations where a KCS (formerly Gateway Western) crew operates west to Kansas City over the Springfield Line and a separate KCS crew operates south from Kansas City.

Ultimately, all existing and future shippers on the Springfield Line would be able to ship any product destined for the KCS network in virtually the same way they do today. Not only that, but the shippers would also gain the ability to move

their products to additional markets that are served by CN, and to benefit from price and geographic competition between a merged CPKC and CN. In addition, all shippers on the Springfield Line would benefit greatly from the more than \$250 million in investments CN has committed to make over three years to upgrade the Line into a safer and more efficient transportation option—*i.e.*, a modern rail speedway—particularly for intermodal and automotive traffic but also for any other shippers using the route. By contrast, Applicants do not plan any investment in the Springfield Line in connection with their proposed transaction.

VERIFICATION

I, Derek Taylor, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 12th day of July 2022.



Derek Taylor

EXHIBIT 2

**May 26, 2021, Bartlett Grain
Stratement**



4900 Main St #1200
Kansas City, MO 64112
816-753-6300
www.bartlettandco.com

May 26th, 2021

Attention: Surface Transportation Board

Our Company has had a longstanding partnership with KCS for many years. We have a large, geographically distributed network of operations served by KCS in the US and Mexico. We are supportive of the CN transaction. We believe this combination would expand the collective reach of both railroads and bring new, sustainable transportation solutions to our business. At the same time, we think a CN-KCS combination would result in more resources and expertise that should enable improved transit times and reliability.

In short, we believe the combination of KCS and CN will allow us to better serve our Customers and grow our business.

Finally, we were encouraged by the STB's decision to approve the voting trust for Canadian Pacific's proposed acquisition of KCS and urge the STB to promptly reach the same decision with respect to the identical voting trust put forward for Canadian National's proposed acquisition of Kansas City Southern. Approving their voting trust will allow KCS shareholders to make a fair and informed decision on combining with Canadian National. For the reasons outlined above, we strongly support CN's proposed combination with KCS and urge the Board to give the proposal every consideration.

I, Bob Knief, declare under penalty of perjury that the foregoing is true and correct, Further, I certify that I am qualified and authorized to submit this letter.

Executed on May 26th, 2021.

Bob Knief
President

EXHIBIT 3

**Additional Letters Received After
Feb. 28, 2022 in Support of CN's
Requested Divestiture of the
Springfield Line**



Christopher L. Boerm
President ADM Transportation
4666 Faries Parkway
Decatur, Illinois 62526
217.424.5200

July 11, 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: Finance Docket No. 36500, Sub-No. 1
Illinois Central R.R. Co. – Acquisition of a Line of R.R. Between Kansas City, MO, and
Springfield and East St. Louis, IL – Kansas City Southern Ry. Co., et al.

Dear Ms. Brown:

On behalf of ADM, I am writing to you today in support of CN's requested divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

In the event of a CP-KCS merger, CN's alternative would create a new competitive option: a single-line service to and from Kansas City – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost, as KCS will retain access to the divested lines via haulage agreement with CN. This new competitive option will be particularly beneficial to agricultural customers and producers across the Midwest.

If the divestiture condition is granted, CN has committed to invest \$250 million in the Kansas City to Springfield/East St. Louis line over three years to improve transit times over the line, upgrade the track speed between Roodhouse and Cockrell, adding a new siding near Cockrell, Illinois and a siding extension at Mexico, Missouri. After those investments are complete, CN has committed to move manifest traffic between Kansas City and East St. Louis six days per week with pick up and set off of cars at Mexico instead of Roodhouse. CN also plans to operate a local turn train between Roodhouse to Mexico, Missouri five days per week, serving points along the line including Mexico, MO. Given the current challenges in the rail freight industry, it makes sense to support change that increases velocity and creates competitive alternatives.





ADM works with farmers - supporting them with personalized services, innovative technologies, sustainable practices, crop transformation, and access to global markets. ADM processing and grain handling assets directly affected by the divestiture of KCS line from Kansas City – Springfield, IL and East St. Louis, IL include Decatur, IL, Cockrell, IL, and Mexico, MO. In addition, ADM conducts business with multiple customers along impacted rail lines.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated since the inception of our relationship. We hope the STB also will realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with ADM, CN, and all relevant parties to promote regional competition and customer choice.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Christopher L. Boerm". The signature is written in a cursive, flowing style.

Christopher L. Boerm
President, ADM Transportation

CC: Parties of Record





PARKER-MIGLIORINI INTERNATIONAL

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Parker-Migliorini International LLC, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Parker-Migliorini International LLC and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Parker-Migliorini International LLC asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divestiture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with PMI, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

A handwritten signature in blue ink that reads "Robert Humbert". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Humbert".

Robert Humbert
Freight Manager



PARKER-MIGLIORINI INTERNATIONAL

PARKER-MIGLIORINI
INTERNATIONAL, LLC
222 S. MAIN STREET #1500
SALT LAKE CITY, UTAH 84101
U.S.A.

Parker-Migliorini International, LLC

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PSA Halifax Limited Partnership
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www.globalpsa.com
Company Registration No: 82886 2128 RT0001

01 March 2022

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of PSA Halifax Limited Partnership, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have indicated they intend to focus their operations and plan for growth across CP's existing line connecting Kansas City to Chicago, which makes KCS's overlapping corridor between Kansas City to Springfield/East St. Louis appear redundant to their service offerings and rail operations after the merger. Without the proposed CN condition, PSA Halifax Limited Partnership is concerned that competitive options via this gateway, particularly for US shippers, may be reduced through the overlapping corridor to and from Kansas City markets.

PSA Halifax Limited Partnership asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divestiture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. We understand that CN's alternative creates a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. Further that no options will be lost as KCS would retain access to the divested lines. If the divestiture condition is granted, we understand CN commits to invest in the Kansas City to Springfield/East St. Louis line to improve transit times and to create a viable alternative to otherwise congested highways.

PSA Halifax Limited Partnership recognizes CN as having a customer-focused approach and has demonstrated its commitment to our gateway and many others, as a long-term service provider. We hope the STB will work closely with CN and all relevant parties to promote regional competition and customer choice.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jan van Mossevelde".

Jan van Mossevelde
Chief Executive Officer
PSA Halifax Limited Partnership

cc: Tracy Robinson, President and CEO, CN
Keith Reardon, Senior VP Consumer Product Supply Chain, CN
Lonny Kubas, Assistant VP, Supply Chain, CN
Dan Bresolin, VP, Intermodal Sales & Marketing, CN



11500 NW Ambassador Drive
Suite 500
Kansas City, MO 64153

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36500, Canadian Pacific Railway—Control—Kansas City Southern

Dear Ms. Brown:

On behalf of Smithfield Foods, I am writing to you today in support of CN's requested condition seeking divestiture of Kansas City Southern's (KCS) line from Kansas City, MO to Springfield, IL and East St. Louis, IL to CN should the Canadian Pacific (CP) merger with KCS be approved by the Surface Transportation Board.

CP and KCS have demonstrated they intend to focus their operations and plans for growth across CP's existing line connecting Kansas City to Chicago, making KCS's overlapping corridor between Kansas City to Springfield/East St. Louis redundant to their service offerings and rail operations after the merger. This will reduce the competitive shipping options for Smithfield Foods and other shippers like us that rely on this corridor to efficiently move goods to and from Kansas City markets. Without the proposed CN condition, we are concerned that our competitive options will be reduced over the overlapping corridor.

Smithfield Foods asks the Surface Transportation Board to condition any approval of the CP-KCS merger on CN's requested divestiture condition of the Kansas City to Springfield/East St. Louis line should the Board approve the CP-KCS merger. CN's alternative would create a new single-line service between Kansas City, Chicago, and Detroit – directly competing with the service that would be provided by CP-KCS. While new service will be available, no options will be lost as KCS will retain access to the divested lines. If the divestiture condition is granted, CN has committed to invest in the Kansas City to Springfield/East St. Louis line to improve transit times over the line. CN's plan will create a viable alternative to trucks, diverting an estimated many thousands of trucks per year from the congested highways.

CN's request that the Surface Transportation Board grant their divestiture conditions aligns with the customer-focused approach to business that CN has demonstrated as a long-term service provider. We hope the STB will also realize the customer-focused public interest benefits of CN's divestiture condition and will work closely with Smithfield Foods, CN and all relevant parties to promote regional competition and customer choice.

Sincerely,

Shelly Phalen
Smithfield Foods
Vice President, International Logistics and Finance

cc: Parties of Record