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STB APPROVES CP/KCS MERGER WITH CONDITIONS AND EXTENDED OVERSIGHT PERIOD

The Surface Transportation Board today issued its decision approving the acquisition of Kansas City Southern Railway Company (KCS) by Canadian Pacific Railway Limited (CP), with conditions. The decision includes an unprecedented seven-year oversight period and contains many conditions designed to mitigate environmental impacts, preserve competition, protect railroad workers, and promote efficient passenger rail. The Board also anticipates the merger will result in improvements in safety and the reduction of carbon emissions.

On October 29, 2021, CP and KCS filed their merger application with the Board. Since that time, the Board has received nearly 2,000 comments and other filings and held a seven-day public hearing. In addition, the Board's Office of Environmental Analysis held seven public meetings, all of which were attended by at least one Board member, and conducted a rigorous analysis, producing a comprehensive Final Environmental Impact Statement (FEIS) of more than 5,000 pages including appendices.

The Board has carefully considered the full record, weighed the public benefits against potentially harmful impacts, and imposed appropriate conditions to mitigate those impacts in its approval of the merger. All of the mitigation recommendations from the FEIS have been imposed, with modifications to match the Board's seven-year oversight period, and the Board adds several key additional conditions to protect the public interest. Specific concerns raised in filings are addressed in detail in the Board's decision.

The Board expects the merger and imposed conditions to result in an overall public benefit.

Competition – The combination of the two railroads, to be known as Canadian Pacific Kansas City (CPKC), will create the first railroad providing single-line service spanning Canada, the United States, and Mexico. Yet, CPKC will continue to be the smallest Class I railroad, with a network that is a few thousand route miles shorter than the next smallest Class I and half the size of the Western railroads.

The transaction is end-to-end, meaning there are little to no track redundancies or overlapping routes between the railroads; they connect only in Kansas City.

The transaction will reduce travel time for traffic moving over the single-line service; it should result in increased incentives for investment; and it will eliminate the need for the two now-separate CP and KCS systems to interchange traffic moving from one system to the other. This will enhance efficiency, which in turn will enable the new CPKC system to better compete for traffic with the other larger Class I carriers. There is substantial (though not unanimous) shipper support for this transaction—the Board has received more than 450 support letters. And the other Class I railroads, in opposing the transaction, are simply seeking conditions and other remedies that appear aimed at protecting their own traffic from competition with CPKC and at limiting the ability of the combined CPKC to meet its potential. Consistent with the Board's policy to protect competition and not competitors, the Board is denying those requests while also ensuring that existing competitive gateway options are preserved.

Nevertheless, the Board recognizes that even end-to-end transactions such as this one may pose some anticompetitive risks. To mitigate those risks, the Board is imposing numerous conditions to preserve existing rail service options at affected "gateways"—interchange points between CPKC and other railroads—on commercially reasonable terms, which should ensure competitive options are not reduced for shippers served by CP or KCS. This condition applies equally to existing and new service. In particular, if CPKC increases its rates to an affected gateway by more than inflation, the Board is providing shippers with an unprecedented right to require CPKC to provide the shipper with written justification for the increase so that shippers can evaluate whether the increased rates are challengeable. The shipper may bring challenges to the commercial reasonableness of CPKC rates or service at affected gateways directly to the Board in a streamlined process, or in arbitration.

The decision also restricts CPKC from terminating reciprocal switching access for shipper facilities served by CP or KCS that have such access today.

Safety and the Environment – Growth in rail traffic resulting from the merger will be safer, more efficient, and will have fewer emissions than the truckloads that it will remove from North American roads. It is anticipated that CPKC will be able to attract 64,000 truckloads from the roads to rail each year, helping to reduce congestion on the Nation's roads.

The Board is well cognizant of the recent elevated level of public concern stemming from the derailment in East Palestine, Ohio, and as always, the Board has carefully analyzed the proposed merger from a safety perspective. It is important to underscore that rail is by far the safest means of transporting any freight, including hazardous materials. Moving 64,000 truckloads off the highways and onto rail will result in a decrease in CO^2 emissions of 127,113 tons per year. It will also reduce—not increase—the risk of dangerous hazardous material spills. According to the Bureau of Transportation Statistics, in 2022, trucks experienced 94% of all hazardous materials incidents while in the same year, railroads experienced a little more than 1% of all hazardous materials incidents.

In the last 15 years, CP has had the best safety record of any Class I railroad. Based on information in the FEIS, on average, for CP and KCS, there has been only one hazardous material release for every 37.8 million miles that a car carrying hazardous materials traveled—

a rate of 0.0261 hazardous material releases per million hazardous material car miles on mainline tracks. At that rate, for example, the eight additional trains the merger is expected to bring through the Chicago metropolitan area are statistically projected to increase the number of hazardous releases by only .008 per year—that amounts to one additional release every 125 years. In actual experience, during the years 2015-2019, the period analyzed for the FEIS, CP, which annually carried 11.9 million car miles of hazardous materials freight through the Chicago area, caused exactly one hazardous material release on mainline tracks—a locomotive which one time leaked 10 gallons of diesel fuel in 2016. That is a record which cannot be matched by trucks or, in fact, any other railroad. Thus, any rail traffic diverted to CPKC from other railroads will mean traffic likely moving to a railroad with a better safety record.

The Board also requires compliance with a Safety Integration Plan (SIP) developed in coordination with the Federal Railroad Administration (FRA). FRA will oversee the implementation of the SIP, which addresses such issues as: training; operating practices (including operating rules, alcohol and drug use policies, qualification and certification of locomotive engineers, and hours of service laws); signal and train control; track safety standards and bridge structures; hazardous materials; dispatching operations; highway-rail grade crossing systems; personnel staffing; capital investment; and information systems compatibility.

In addition, the Board paid particular attention to community concerns about train lengths. The data shows that the projected average train length is expected to decrease on most CPKC line segments as a result of the merger. Across the entire system, the Applicants project that average train length would decrease from approximately 9,551 feet if there was no merger to 7,726 feet after the merger. At the grade crossings with projected increases in train lengths, the greatest increase is only 349 feet. Included in the environmental conditions is a requirement that, under the General Code of Operating Rules, trains must avoid blocking public crossings longer than ten minutes.

Moreover, because the STB is charged with protecting the interests of the entire Nation, it must be noted that, in many cases, the potential issues caused by any increased rail traffic on the CPKC system will be offset by the decrease in traffic on other railroads and the highways or mitigated by other conditions imposed by the Board.

In addition, the Board's environmental conditions reasonably address the expected environmental impacts of the merger, including impacts on freight and passenger safety, noise and environmental justice, and local concerns. The Board also requires CPKC to establish community liaisons in both Chicago and Houston to consult with community leaders, to be available for public meetings, and to conduct periodic outreach to mayors and local officials. The community liaison role may be extended beyond the initial seven-year period if circumstances warrant.

Passenger Rail – CP has one of the best Amtrak on-time performance records in the industry and has won Amtrak's support for this merger. CPKC has committed to supporting Amtrak's expansion plans, and to funding infrastructure improvements. As a result of the merger, CPKC will allow Amtrak to add new passenger service over the KCS-owned lines between New

Orleans and Baton Rouge and the CP-owned lines through the Detroit River Tunnel between Detroit, Mich. and Windsor, Ontario. The Board recognizes the agreements between CP and Amtrak and imposes them as a condition for merger approval.

The Board also requires CPKC to adhere to the numerous commitments made regarding Metra and the surrounding Chicago communities, including: Installing and funding Positive Train Control wireless technology tie-ins at crossings located adjacent to Metra platforms; not permitting CPKC freight trains running between Kansas City, Missouri, and St. Paul, Minnesota, to operate over certain Metra Lines, except in emergency or other non-routine situations or when agreed upon; installing and funding Intelligent Transportation Systems Interconnect for Advanced Warning Signs and a predictive mobility system to deliver advanced notice of blocked crossings; and working with Metra to enhance communication about dispatching decisions to avoid delay to Metra's scheduled trains. The decision also establishes a dispute resolution mechanism to ensure that any service issues between Metra and CPKC are handled in a timely and cooperative manner.

Service – CPKC will be the first railroad with single-line service through Canada, the United States, and Mexico. Shipping of grain, automotive parts and vehicles, and intermodal goods will improve with new single-line options, and shippers will have opportunities to expand their market reach. Imposed conditions will ensure shippers' options are not reduced. The Board also requires CPKC to adhere to the terms of the CPKC Service Promise to address any post-transaction service disruptions, including developing and reporting customized "Service Action Plans" to address specific issues when certain thresholds are triggered.

Employment – The Board expects the merger to increase employment, adding 800 new union-represented operating positions in the United States. Conditions set by the Board will protect employees affected by the merger and will hold CPKC to labor protective agreements. The Board is imposing <u>New York Dock</u> labor protective conditions, which provide both substantive benefits for affected employees (up to six years of full wages, moving allowances, preferential hiring, and other benefits) and procedures for resolving disputes regarding implementation of the transaction (negotiation or, if necessary, arbitration). The Board also requires adherence to the "Cramdown Agreement" that was entered into by certain unions and carriers in 2001 to, among other things, address issues that may arise when work subject to consolidation is covered by two or more collective bargaining agreements.

Oversight – The Board's extensive oversight of merger operations will be for seven years, which is designed to cover the three-year implementation phase and four years following full implementation. Complex operations, such as lines shared with other rail carriers or commuter trains, warrant close monitoring for the completion of operating improvements and capital investments for new traffic. The Board's oversight will include specific reporting requirements on numerous service, operational, competition-related, and other metrics, as well as data retention requirements. For example, the Board will be collecting data not routinely required including metrics on train lengths so that the agency can monitor community concerns about blocked crossings. The Board may extend its oversight period if conditions warrant.

To address concerns about the merger voiced by stakeholders and to protect against potential transaction-related harms, the Board imposes conditions and a lengthy oversight period. The Board explicitly holds that if problems arise as a result of the merger—for example—if CPKC's traffic increases prove to be understated and unduly impact communities or other railroads—the Board stands ready to modify the required environmental mitigation measures and to issue supplemental orders addressing capacity and maintaining fluidity in Houston, Chicago, and other congested areas, and specifically remedying problems with Metra's service, if the facts warrant.

In sum, the Board concludes that this transaction, with the imposed conditions, will result in a net improvement in the performance of the rail industry that will benefit the country as a whole.

This decision is effective on April 14, 2023. Petitions for reconsideration of this decision must be filed by April 4, 2023. Requests for stay must be filed by March 27, 2023. Within 60 days of today, CPKC will participate in a technical conference with Board staff to discuss compliance with reporting requirements.

Chairman Martin Oberman will be holding a press conference to discuss the Board's decision today at 11:00AM ET. The press conference will be available for public viewing on the Board's YouTube page. For details regarding today's Board decision, please refer directly to the decision itself. The Board's decision in 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, Docket No. FD 36500, may be viewed and downloaded here.

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