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on January 27, 2023

Canadian Pacific Acquisition of Kansas City Southern

FINAL ENVIRONMENTAL IMPACT STATEMENT

Docket No. FD 36500
Volume III: Appendix S



LEAD AGENCY
Surface Transportation Board
Office of Environmental Analysis



APPLICANTS
Canadian Pacific Railway
Kansas City Southern Railway

Decision ID No. 51566

Response to Comments on the Draft EIS

S.1 Introduction

This appendix responds to the comments that OEA received on the Draft EIS and describes how and where those comments may have led to changes in the Draft EIS. OEA’s responses to comments explain the analyses on the issue raised in the comment on the Draft EIS, clarify or correct information in the Draft EIS, direct commenters to the most current information on the issue in the Final EIS, explain and communicate government policy or regulations, or answer technical questions.

Table S.1-1, at the end of the appendix, provides an index that allows readers to find excerpts or summaries of comments and the associated responses. The table provides an index in numerical order by comment number and divided into categories based on commenter type—such as Federal Agencies, State Agencies, Local Agencies, Tribes, Organizations, and Individuals. Each comment document excerpt is assigned a comment number, which is comprised of the comment document number and excerpt number separated by a dash (such as 42-3).

Table S.1-2 provides the same information but is in alphabetical order by commenter first name. To find a comment document excerpt and OEA’s response, find the commenter’s name or organization and note the comment number. Then go to the appropriate section number of this appendix (also identified in **Table S.1-2**) to find the comment number and its associated comment and response text. Substantive changes in this Final EIS made in response to comments or the results of further analysis are indicated by change bars in the left-hand margin of each chapter and appendix.

S.2 Approach

OEA responded to substantive comments individually or in groups in accordance with the Council on Environmental Quality (CEQ) requirements at 40 C.F.R. § 1503.4, Response to comments. OEA prepared the responses to comments in accordance with CEQ guidance in the *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* (CEQ 1986), which states “an agency is not under an obligation to issue a lengthy reiteration of its methodology for any portion of an EIS if the only comment addressing the methodology is a simple complaint that the EIS methodology is inadequate. But agencies must respond to comments, however brief, that are specific in their criticism of agency methodology.”

The CEQ guidance goes on to state that “if a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Comments may be summarized if they are especially voluminous.”

The following paragraphs describe the approach OEA used to capture, track, and respond to comments on the Draft EIS:

- OEA read all comment documents and their attachments to identify and extract comments. Comment documents included letters, comments typed into the form on the project website or the Board's website, and transcripts from the public meetings on the Draft EIS. As a part of this process, OEA reviewed technical attachments (for example, reports) for potential applicability. After comment identification, OEA grouped individual comments by categories and assigned each comment to a subject matter expert in the appropriate discipline to prepare a response. OEA’s subject matter experts reviewed each response to ensure technical and scientific accuracy, clarity, and consistency, and to ensure that the response adequately addressed the comment. As appropriate, OEA also reviewed and addressed environmental issues that parties raised outside of the NEPA process, including in formal filings submitted to the Board and in statements made before the Board during the Board’s public hearings on the transportation merits of the Proposed Acquisition.
- Frequently, commenters submitted identical or similar comments. OEA grouped such similar comments together and for each issue, either provided a summary of the comment or a series of verbatim comments to illustrate the commenters’ concerns.¹ If OEA summarized comments, this appendix presents the summary as a “Summary Comment.” If OEA extracted a comment or comments taken verbatim, this appendix presents it as a “Comment.” OEA’s response follows each summary comment, verbatim comment, or group of verbatim comments. If the comment resulted in a change to the Draft EIS, OEA’s response describes the change.
- To the extent practicable, OEA presented the comments in this document by topic. Each comment-response pair, individual or summary, consists of three parts: (1) the comment, (2) the assigned comment identification number, and (3) the response by OEA.
- OEA used the following definitions for the different types of comments:
 - EI: environmental comment
 - Filing ID: formal filing comment
- In some cases, OEA paraphrased individual comments to capture their meaning if they were general in nature (for example, the commenter supports or opposes an activity or action), if they indicated that an analysis was incomplete or insufficient but did not provide specific examples (for example, “cumulative impacts are inadequate”), or if they raised general concerns (for example, safety concerns related to the transportation of hazardous materials) but provided no specific information. Summarized comments are,

¹ All comments that OEA received on the Draft EIS are available in full on the Board’s website by conducting a search for Docket No. FD 36500 and selecting the tab for Environmental Comments.

of necessity, paraphrased, but OEA made every effort to capture the essence of every comment received.

- OEA did not modify transcripts of public meetings prepared by court reports. However, some transcripts contained obvious errors (misspelled names or words). For this appendix, OEA corrected such errors where appropriate in the comments extracted from the transcripts. Similarly, OEA deleted extraneous material (such as introductions, repeated words) from comments extracted from the transcripts whenever such a deletion would not alter the meaning of the comment.
- If the meaning of a comment was not clear, OEA made a reasonable attempt to interpret the comment and to respond based on that interpretation.
- When a comment resulted in a revision (addition, deletion, correction, etc.) to the Draft EIS text, the response states that OEA made a change and directs the reader to the location of the edited text in this Final EIS. Substantive changes in text from the Draft EIS in this Final EIS are indicated by change bars in the left-hand margin of each chapter and appendix; substantive changes made to the text of the Draft EIS appear in red and blue in the Final EIS (track changes indicate the language deleted in red and new language added appears in blue).

The approach described herein enabled OEA to efficiently consider, individually and collectively, all comments it received on the Draft EIS and to respond to those comments. The remainder of this appendix is organized so that each section corresponds to the associated Draft EIS appendix. The exception to that organizational structure is the section on Environmental Review, which addresses comments on the requirements of the CEQ regulations.

S.3 Environmental Review

Comment 310-1: Written Comment from Reginald Arkell (EI-32254)

My remarks pertain to northeastern Illinois, the counties of Cook, DuPage, Kane, specifically the portions within the current Chicago urbanized area (UA) west of Chicago city.

Two things that should be emphasized further in the analysis are the history of train traffic on the subject line and the extent of surrounding urbanization. First, according to Table 2.2-1. of the DEIS, the number of freight trains between Bensenville Metra and Randall Road will increase from about 3.2 to 11.4. While this is an increase of about 250 percent, when considering the 40 daily weekday Metra trains, it is only about a 19 percent increase. Further, the Chicago Metropolitan Area for Planning (CMAP) reported a range of 7-12 freight trains daily on the segment (CMAP, 2018). Thus, the increase in trains could be considered negligible. Canadian Pacific has stated that the proposal will result in less freight trains than historic peaks (Putzger, 2022). To substantiate this, the DEIS could be improved by comparatively quantifying data for train miles per track mile and car miles per track mile for the historic peak against the proposed action. Such data could be added by segment to Table 2.2-1 of the DEIS. Insight on the amount of railroad traffic issue is provided by the following comparative data. Table 3.1-2. in the DEIS reports total main track train-miles for

CP and KCS of about 18 million. The combined companies have about 21,400 miles of track. This is about 841 train miles per track mile (18M train miles/21,400 track miles). The Milwaukee Road operated the subject line for most of the 20th Century. A 1950 Milwaukee Road annual report (p. 32) reported respective total systemwide train miles and road miles of 26.5 million and 10,671. Assuming road miles and track miles are equivalent, this computes to 2,483 train miles per track mile (26.5M train miles/10,671 track miles). Thus, recent train traffic is about one-third that of a period when train traffic was likely at or near its peak. The second point concerns mitigation. Most if not all Chicago UA railroad lines have been in existence for more than 100 years. Some of these currently accommodate far more freight trains than numbers projected for the subject line (CMAP, 2018). In 1900, similar to all of the Chicago area railroads, very little of the subject line west of Chicago city was in the present UA (less than about 10 percent). By 1950, more than 50 percent was in the UA. By 2000, this increased to 100 percent (Encyclopedia of Chicago, 2000).

The precipitous urbanization surrounding the subject line and all railroads in the Chicago UA was a collective decision by the public through their elected officials. The resulting conflicts were not created by the railroads. Further, suburbanization in the Chicago UA imposes exorbitant social costs on the region such as excessive roadway travel demand, congestion, traffic accidents, deaths and injuries (e.g., Arkell, 2021); poor health (e.g., Douglas et al., 2011); biodiversity losses (e.g., Simkin et al., 2022); global warming (Bart, 2010); and inner city violent crime (e.g., Skogan, 1977; Stafford and Gibbs, 1980; Farley and Hansel, 1981). Consequently, it would be irrational for CP to substantively mitigate impacts caused by entities choosing to reside and work near the subject line while disproportionately contributing to much larger problems.

40 CFR § 1502.22 articulates the option to conduct a cost-benefit analysis as part of the environmental review. A social cost-benefit analysis is recommended to quantify all conventional and social costs or externalities and benefits resulting from the merger. Such an evaluation would provide further clarity on the impacts.

In summary, the following main points are provided by DEIS section regarding impacts of the CP-KCS merger to the Chicago UA west of Chicago city:

- Proposed Action and Alternatives: The increase in number of trains appears negligible compared to historic peak traffic on the subject line and all area railroads. For clarity, the DEIS could more precisely document past and current train miles per track mile and car miles per track mile.

For improved transparency, the DEIS could include a social cost-benefit analysis to monetarily quantify value of the undertaking to society.

- Mitigation: Since the subject railroad line preceded area urbanization, it is not incumbent upon CP to mitigate the majority of perceived or real impacts. It is recommended that the DEIS mitigation section emphasize this point and underlying justification to improve accountability by the local communities for self-imposed impacts.

OEA Response

Comment noted. As the commenter states, the rail lines on which rail traffic would increase as a result of the Proposed Acquisition have been in operation for many years. Indeed, many of the communities along the CP and KCS rail lines developed in the 1800s and early 1900s as a direct result of the railroad's presence. For example, Metra's Milwaukee District West (MD-W) rail line, on which CP freight trains operate, was originally constructed in the 1870s by the Atlantic & Pacific Railroad (later the Chicago & Pacific Railroad). The rail line preceded and supported the later development of towns in the Chicago area and has been used continuously for both freight and passenger rail transportation with varying levels of traffic for nearly 150 years. The passenger service on the MD-W rail line attracted residential development in the 1950s as suburbanization of the Chicago area increased. CP has operated freight trains on the MD-W rail line since the 1990s and historically ran as many as 12 freight trains per day, which is more than the Applicants expect would operate on this rail line if the Board authorizes the Proposed Acquisition.

OEA is not conducting a cost-benefit analysis of the Proposed Acquisition in the EIS because NEPA does not require such an analysis. Regarding mitigation, OEA notes that *Chapter 4, Mitigation* states that any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board, that OEA's consistent practice has been to recommend mitigation only for those impacts that would result directly from a proposed transaction, and that the Board does not require mitigation for pre-existing environmental conditions, such as the effects of existing rail operation. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 33-1: Written Comment from Carl Van Dyke for Canadian National Railway Company (EI-32161)

The Draft EIS offers little in terms of reasonable alternatives to the Proposed Action, despite CN formally proposing one in a Responsive Application. The agency's NEPA regulations state that the EIS must include a description of "any reasonable alternatives to the proposed action." 49 C.F.R. § 1105.7(e)(1). Indeed, the primary purpose of the EIS is to ensure agencies and the public alike are aware of environmental impacts of a proposed action, including a "full and fair discussion of significant environmental impacts" and informing "the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1

OEA Response

NEPA requires that agencies consider reasonable and feasible alternatives. This EIS reasonably considered two alternatives—the Proposed Acquisition of KCS by CP and the No-Action Alternative, which would occur if the Board denies the Applicants' application. In suggesting that OEA's consideration of alternatives was too limited, the comment references an amended "responsive" application filed by Canadian National Railway Company (CN) and its United States rail carrier affiliate, Illinois Central Railroad Company (ICCR) (collectively, CN), on June 9, 2022, in Docket No. FD 36500 (Sub-No.1). In that application, CN requests that the Board order the sale of a KCS rail line between Kansas

City, Missouri and Springfield and East St. Louis, Illinois to CN (Proposed Divestiture). OEA is conducting an environmental review of the Proposed Divestiture separately from, but concurrently with, the environmental review of the Proposed Acquisition. This approach is appropriate and necessary for several reasons.

First and foremost, CN's Proposed Divestiture is not a reasonable alternative to the Proposed Acquisition because it would not meet the purpose and need of the Proposed Acquisition. As discussed in *Chapter 1, Purpose and Need*, the Proposed Acquisition is not a federal government proposed or sponsored project. Thus, the project's purpose and need should be informed by both the Applicants' goals and the Board's enabling statute, the Interstate Commerce Act, as amended by the Interstate Commerce Commission (ICC) Termination Act (ICCTA), Pub. L. No. 104-188, 109 Stat. 803 (1996). See Alaska Survival v. STB, 705 F.3d 1073, 1084-85 (9th Cir., 2013). The Applicants' purpose and goal include providing more reliable and economical rail transportation options serving important north-south trade flows. The Applicants' application indicates that these north-south trade flows include nationally important movements between the United States, Canada, and Mexico. CN's Proposed Divestiture has a different purpose and goal. According to CN, the Proposed Divestiture is intended to offer new local and potentially regional transportation options, including movements between Chicago and Kansas City, between Michigan/Eastern Canada and Kansas City, and between Canada and the Midwest and East St. Louis. Because the Proposed Divestiture is intended to meet different transportation needs identified by a different applicant, it does not meet the purpose and need for the Proposed Acquisition and therefore cannot be considered a reasonable alternative to the Proposed Acquisition.

Second, CN's Proposed Divestiture would primarily affect a different geographic area compared to the Proposed Acquisition and would involve a different set of potential environmental impacts. The purpose of analyzing alternatives to a proposed action under NEPA is to allow the federal agency to compare environmental impacts between the reasonable and feasible alternatives for a particular proposal, and the CEQ implementing regulations at 40 C.F.R. § 1502.1 instruct agencies to "provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment." However, based on the information provided by CN, OEA believes that the Proposed Divestiture would not avoid or minimize any of the adverse environmental impacts of the Proposed Acquisition and could, in fact, result in additional adverse environmental impacts in a different geographical area. For example, the rail lines on which rail traffic would increase as a result of the Proposed Divestiture would experience no or very minimal increases in rail traffic as a result of the Proposed Acquisition alone. In addition, CN has indicated that it intends to make capital improvements along the KCS rail lines between Kansas City, Springfield, East St. Louis and at certain intermodal facilities and rail yards if the Board authorizes the Proposed Divestiture. These capital improvements, and the potential environmental impacts that could result, would not occur under the Proposed Acquisition. According to CN, the purpose of the Proposed Divestiture is to remedy potential competitive harms of the Proposed Acquisition, not to minimize or avoid adverse environmental impacts of the Proposed Acquisition.

OEA notes that the Board will appropriately consider the environmental record prior to issuing a final decision on whether to authorize the Proposed Acquisition and, if so, whether to also authorize the Proposed Divestiture. If the Board decides to authorize both the Proposed Acquisition and the Proposed Divestiture, OEA will first complete the environmental reviews for both proposals. Although the environmental reviews would have been completed in separate documents, the Board would consider the complete environmental record for both proposals together prior to issuing any decision authorizing both the Proposed Acquisition and Proposed Divestiture. OEA notes that the separate but concurrent environmental reviews that OEA is conducting for the Proposed Acquisition and the Proposed Divestiture each clearly reference the other environmental review to ensure that all interested parties and the public are aware of the separate but concurrent environmental review processes.

Although the Board could only authorize CN's Proposed Divestiture if it also approves the Applicants' Proposed Acquisition, it would be inappropriate and impractical for OEA to combine the environmental reviews of these two conflicting proposals submitted by two competing private railroad applicants. In conducting environmental reviews, OEA relies, in part, on project descriptions, projections, and other data provided by railroad applicants and the timely completion of environmental reviews depends on the willingness and ability of railroad applicants to respond expeditiously and fully to OEA's requests for information. In this proceeding, CN has indicated that it opposes the Applicants' Proposed Acquisition, while the Applicants have indicated that they oppose CN's Proposed Divestiture. Therefore, evaluating the Proposed Acquisition and the Proposed Divestiture in one environmental document could allow either railroad applicant to indefinitely delay the process by failing to fully respond to OEA's information requests in a timely manner. In conducting environmental analyses and preparing environmental documents, OEA also relies on the assistance of third-party contractors, who work under OEA's sole direction but are funded by the railroad applicant. As a practical matter, third-party contractors cannot work on conflicting proposals submitted by competing railroad applicants, as is the case here.

Finally, the Interstate Commerce Act, as amended, contains statutory deadlines for railroad acquisition proposals. As stated in *Chapter 1, Purpose and Need*, the statute setting forth the procedures for Board review of acquisitions at 49 U.S.C. § 11325 and the Board's implementing regulations at 49 C.F.R. § 1180.4 require that the Board complete its review of "major" transactions within approximately 15 months after the primary application is accepted. Attempting to incorporate the environmental review of the Proposed Divestiture into the ongoing EIS process for the Proposed Acquisition would have resulted in significant delay, contrary to Congress' intent that railroad acquisitions be decided as expeditiously as possible.

The fact that the Proposed Acquisition and the Proposed Divestiture are being proposed by different and competing private railroad applicants, involve different environmental issues, and were filed at different times would make combining the environmental reviews of these proposals impractical. Because OEA is conducting separate but concurrent environmental reviews of the proposals and because the Board would be able to consider the complete environmental record prior to issuing a decision authorizing both proposals, a combined environmental review is also unnecessary. Because the Proposed Divestiture is also not a

reasonable and feasible alternative to the Proposed Acquisition, for the reasons set forth above, no changes to the Draft EIS are warranted in response to this comment.

Comment 33-2: Written Comment from Carl Van Dyke for Canadian National Railway Company (EI-32161)

CN's proposed Springfield Line divestiture offers an alternative that would provide the STB greater flexibility in selecting an environmentally preferred option given the environmental benefits of diverting more than 80,000 long-haul trucks from the highways annually and converting them to rail transportation. The Draft EIS, however, analyzes only the "No-Action Alternative" and the "Proposed Action Alternative." It does not show the comparative benefits of CN's Responsive Application. As CN explained in its November 19, 2021 comments on scoping, in past mergers, the agency has typically analyzed at least three alternatives: (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction; and (3) approval of the proposed transaction with conditions.³ Consideration of alternatives is a necessary component of any EIS.⁴ "[F]ailure to examine a reasonable alternative renders an EIS inadequate."⁵ The OEA should make clear that it intends to analyze approval with conditions, including the proposed divestiture of the Springfield Line called for in CN's Responsive Application, as an alternative. Failure to do so could render the agency's environmental review incomplete and inadequate.

Although OEA noted in the Draft EIS that it would conduct a concurrent and independent environmental review of CN's RA, it did not indicate that CN's proposal was a reasonable alternative option to approval of the Proposed Action in full. This alternative would allow the Board, pursuant to its statutory authority, to order divestiture of parallel tracks as a condition of the Proposed Action that could potentially mitigate and diminish various environmental impacts resulting from the Proposed Action alone. CN requests, therefore, that the Board analyze and compare the impacts of the Proposed Action and its Responsive Application concurrently.

³See, e.g., Decision, *Canadian National Railway Company & Grand Trunk Corporation – Control – EJ&E West Company*, STB Docket No. FD 35087, at 6 (served Dec. 21, 2007) ("Reasonable or feasible alternatives that will be evaluated in the EIS are (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction in whole (No-Action alternative); or (3) approval of the proposed transaction with conditions, including environmental mitigation conditions."); Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Request for Comments on Proposed EIS Scope, *CSX Corporation & CSX Transportation, Inc., Norfolk Southern Corporation & Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail, Inc. and Consolidated Rail Corporation*, STB Docket No. FD 33388, at 7 (served July 3, 1997) ("Reasonable or feasible alternatives that will be evaluated in the EIS are (1) the proposed action, (2) the no-action alternative, and (3) the proposed action with conditions, including environmental mitigation conditions. Proposed modifications to the proposed transaction as requested by other parties in their inconsistent or responsive applications will also be addressed in the EIS.").

⁴40 C.F.R. § 1502.14; see also *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1087 (9th Cir. 2013) ("Consideration of alternatives is the heart of the [EIS]") (cleaned up);

Decision, *Dakota, Minnesota & Eastern Railroad Corporation Construction Into the Powder River Basin*, STB Docket No. FD 33407, at 14 n.33 (served Jan. 30, 2002) (“At the ‘heart’ of an EIS is the consideration of alternatives....”), *rev’d on other grounds*; *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 558 (8th Cir. 2003) (concurrency).

⁵*Alaska Survival*, 705 F.3d at 1087.

OEA Response

See response to Comment 33-1 above. The range of alternatives that OEA analyzed in the Draft EIS is reasonable and consistent with NEPA and environmental reviews of past railroad acquisition proposals, including those referenced by the commenter. In each of those past cases, OEA assessed two alternatives, including the proposed action and the no-action alternative. Although some environmental documents in previous railroad acquisition cases referred to “the proposed action with conditions, including environmental mitigation conditions” as another option available to the Board when making its final decision, OEA did not analyze a grant of authority with conditions as an alternative to authorizing the proposed action in those cases. Notably, the Board’s practice has been to always impose some sort of mitigation conditions in railroad acquisition cases. Disputes arise concerning exactly what mitigation is reasonable and appropriate, not whether the Board has the authority to impose mitigation conditions at all. In these circumstances, there is essentially no difference between approval of the proposed action and approval of the action with conditions. Accordingly, OEA properly streamlined the discussion (but not the analysis) of alternatives in this EIS by narrowing the range of alternatives to two: (1) the Proposed Action (encompassing the voluntary and OEA-recommended mitigation developed to minimize potential environmental impacts discovered during the environmental review) and (2) the No-Action alternative (what would occur if the Board were to deny the Proposed Action).

For example, the Draft EIS for the proposed acquisition of the EJ&E West Company (EJ&E) by CN in Docket No. FD 35087 states on page 2-41 that “an alternative to the Proposed Action is to approve the Proposed Action with conditions, including environmental mitigation measures designed to eliminate or minimize potential environmental effects. The Board has broad authority to impose conditions in railroad control transactions under 49 U.S.C. § 11324(c). However, the Board’s power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, and the condition imposed must be reasonable. The Board does not impose mitigation conditions to remedy pre-existing conditions.” This statement was clearly meant to describe the Board’s approach to environmental mitigation, not to suggest that responsive applications, of which there were none in that case, would be treated and evaluated as alternatives to CN’s acquisition of EJ&E. As shown throughout the Draft EIS and Final EIS in Docket No. FD 35087, OEA’s predecessor, the Section of Environmental Analysis, consistently compared only the proposed action to the no-action alternative in all of the quantitative and qualitative analyses of environmental impacts. The discussion of the “approval of the Proposed Action with conditions” alternative consistently focused only on available mitigation the Board could impose to eliminate or minimize the

potential impacts under the Proposed Action. The CEQ regulations do not require the analysis of mitigation as though it were an alternative. OEA cannot determine what mitigation to recommend to the Board until it has completed the impact analyses and the Board cannot determine whether to impose conditions related to competitive issues until the evidentiary record has closed.

The rail construction cases cited by the commenter are inapposite because construction proposals involve the construction of new track where there can be multiple alternative routes that would meet the Applicants' purpose and need, whereas railroad acquisitions involve the sale or acquisition of existing track. Thus, the range of alternatives in railroad acquisition cases is necessarily limited.

Although responsive or inconsistent applications are not alternatives to proposed acquisitions, proposed modifications to a proposed transaction as requested by other parties in their inconsistent or responsive applications can be addressed in the environmental review of the proposed action, where appropriate. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, FD 33388. For the reasons discussed above, OEA cannot practically combine the environmental review of the Applicants' Proposed Acquisition and CN's Proposed Divestiture. However, to comply with NEPA, OEA is conducting an environmental review of the Proposed Divestiture that is separate from, but concurrent with, the environmental review of the Proposed Acquisition. The Board will consider the transportation merits of the Proposed Divestiture at the appropriate time and, if the Board should decide to authorize both the Proposed Acquisition and the Proposed Divestiture, OEA will first complete the environmental reviews for both proposals. Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 518-1: Written Comment from Peter Whitfield for Canadian National Railway Company (EI-32613)

CN remains concerned about the Draft EIS's failure to analyze the divestiture of the KCS Springfield Line to CN as a reasonable alternative. The scope of the Draft EIS for the CP-KCS merger is legally deficient under NEPA in light of the proposed alternatives submitted to STB that are within the STB's authority to consider.¹³ The STB accepted CN's divestiture application on July 1, 2022.¹⁴ The Coalition to Stop CPKC has expressly recognized that divestiture of the Springfield Line to CN is an important alternative to the CP-KCS merger because divestiture could allow rail traffic to avoid congestion in Chicago.¹⁵ Where reasonable alternatives are presented to an agency, NEPA requires OEA to evaluate approval of the merger with conditions.¹⁶ Under both NEPA and STB's own regulations, it is insufficient for OEA to consider only the proposed action and the no action alternative when OEA has been presented—and is presently evaluating—a reasonable alternative.¹⁷

¹³ See 49 C.F.R. § 1105.7(e)(1).

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

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

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

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

OEA Response

See response to Comment 33-1 above, explaining why CN’s Proposed Divestiture is not an alternative to the Applicants’ Proposed Acquisition and that the scope of the analysis in the Draft EIS is reasonable and appropriate.

OEA notes that while the filing referenced by the commenter in footnote 15 supports the Proposed Divestiture, it does not specifically state that the Proposed Divestiture is an alternative to the Proposed Acquisition.

OEA also notes that footnote 13 in the comment does not support the sentence from which it is referenced. The sentence states that the Draft EIS is legally deficient under NEPA because it allegedly did not consider alternatives “that are within the STB’s authority to consider.” However, the footnote references 49 C.F.R. § 1105.7(e)(1), which states that environmental reports prepared by applicants and submitted to OEA shall “describe any reasonable alternatives to the proposed action.” The Proposed Divestiture is not viewed by Applicants as a reasonable alternative to the Proposed Acquisition, and the EIS is not an environmental report prepared by an applicant. Therefore this regulation does not apply here.

Comment 460-7: Written Comment from Metra (EI-32539)

Moreover, OEA failed to consider all reasonable alternatives as a result of its decision not to consider the potential impacts of the proposed CN application, which if approved will directly impact traffic volumes and thus the environmental impacts of this overall transaction on the Chicago region. As noted above, CEQ regulations, as part of an environmental analysis, require federal agencies to conduct a NEPA analysis of the direct, indirect, or impacts or effect of a major federal action. Additionally, OEA is required to include a description of “any reasonable alternatives to the proposed action.” 49 C.F.R. § 1105.7(e)(1). A “cumulative impact” is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. 40 C.F.R. § 1508.7. The scope of this review includes evaluating both federal and non-federal agencies’ undertakings to determine whether an individually minor impact of a single project could, when combined with other activities, result in a

significant impact. *Id.* The cumulative impact could result from a “direct effect,” which occurs at the same place or time as the implementation of a proposed action. 40 C.F.R. § 1508.8(a). These are effects that are typically easily identified in a NEPA analysis. Alternatively, the proposed action could result in an “indirect effect,” which are caused by the action, but occur later or are farther removed in distance from the proposed action, but still reasonably foreseeable. 40 C.F.R. § 1508.8(b).

To provide additional clarity on the issue, the courts have developed a four-factor test to determine whether improper segmentation has occurred. These factors include whether the proposed segment: (1) has logical termini; (2) has substantial independent utility; (3) does not foreclose the opportunity to consider alternatives; and (4) does not irretrievably commit federal funds for closely related projects. While all factors have a modest weight, the analysis of a project’s independent utility is the primary focus and the key factor in deciding most improper segmentation cases. *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981); *Swain v. Brinegar*, 542 F.2d 364 (7th Cir. 1976). Here, the conditions sought have no independent utility. They would not even be considered by the Board but for the existence of the proposed merger.

In this proceeding, CN has submitted a responsive application that includes the divestiture of the Springfield Line from KCS to CN, which could have significant beneficial impacts to the environment, including the diversion of 80,000 trucks to railroad. The potential impacts of the approval of the CN responsive application related to the Springfield line should have been studied as a reasonable alternative. It also constitutes a “cumulative impact” of the proposed merger. The transaction CN seeks is not a stand-alone transaction, that is, it would not be a potential occurrence but for the existence of the proposed merger which, as CN describes, requires the approval of the responsive application to ameliorate the adverse impacts of the transaction. By not considering those impacts together and determining whether the entire federal action – that is, the potential approval of the proposed merger along with the potential approval of the responsive applications – will engender impacts requiring mitigation, creates impermissible segmentation and undercuts the validity of the environmental review process.

OEA Response

Regarding the range of alternatives that OEA evaluated in the Draft EIS, see response to Comment 33-1 above. Regarding the commenter’s assertion of segmentation, OEA notes that the Board will appropriately consider the environmental record prior to issuing a final decision on whether to authorize the Proposed Acquisition and, if so, whether to also authorize the Proposed Divestiture. If the Board decides to authorize both the Proposed Acquisition and the Proposed Divestiture, OEA will first complete the environmental reviews for both proposals. Although the environmental reviews would have been completed in separate documents, the Board would consider the complete environmental record for both proposals together prior to issuing any decision authorizing both the Proposed Acquisition and Proposed Divestiture.

Although the Board could only authorize CN’s Proposed Divestiture if it also approves the Applicants’ Proposed Acquisition, it would be inappropriate and impractical for OEA to combine the environmental reviews of these two conflicting proposals submitted by two

competing private railroad applicants at different times. In conducting environmental reviews, OEA relies, in part, on project descriptions, projections, and other data provided by railroad applicants and the timely completion of environmental reviews depends on the willingness and ability of railroad applicants to respond expeditiously and fully to OEA's requests for information. In this proceeding, CN has indicated that it opposes the Applicants' Proposed Acquisition, while the Applicants have indicated that they oppose CN's Proposed Divestiture. Therefore, evaluating the Proposed Acquisition and the Proposed Divestiture in one environmental document could allow either railroad applicant to indefinitely delay the process by failing to fully respond to OEA's information requests in a timely manner. In conducting environmental analyses and preparing environmental documents, OEA also relies on the assistance of third-party contractors, who work under OEA's sole direction but are funded by the railroad applicant. As a practical matter, third-party contractors cannot work on conflicting proposals submitted by competing railroad applicants, as is the case here.

OEA also notes that the separate but concurrent environmental reviews that OEA is conducting for the Proposed Acquisition and the Proposed Divestiture each clearly reference the other environmental review to ensure that all interested parties and the public are aware of the separate but concurrent environmental review processes.

The fact that the Proposed Acquisition and the Proposed Divestiture are being proposed by different and competing private railroad applicants, involve different environmental issues, and were filed at different times would make combining the environmental reviews of these proposals impractical. Because OEA is conducting separate but concurrent environmental reviews of the proposals and because the Board would be able to consider the complete environmental record prior to issuing a decision authorizing both proposals, a combined environmental review is also unnecessary. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 613-2: Public Meeting Comment from City of Elgin, Illinois (EI-32756)

There are viable options for routing additional freight train traffic around the Chicago metropolitan area instead of imposing that burden on the region's existing commuter lines and fundamentally altering the character of municipalities like Elgin.

The STB must meaningfully consider those options as part of its analysis of the CP-KCS merger.

OEA Response

OEA notes that the proposed action before the Board is not the routing of freight train traffic in the Chicago metropolitan area, but the Proposed Acquisition of KCS by CP. If the Board were to authorize the Proposed Acquisition, CP and KCS would combine to form a single company to be known as CPKC. In that event, OEA expects that rail traffic would increase on certain existing rail lines where CP and KCS rail traffic already move. CP currently does not own any rail lines in the Chicago area and only has trackage rights over a limited number of rail lines in the area, including Metra's MD-W and Milwaukee District North (MD-N) lines. CPKC would also not own any rail lines in the Chicago area and would only

have trackage rights over a limited number of rail lines in the area. Therefore, CPKC would not have other available options available for the routing of trains around Chicago. Even if such other options did exist, they would not constitute alternatives to the Proposed Acquisition. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 518-1: Written Comment from Peter Whitfield for Canadian National Railway (EI-32613)

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

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

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

¹⁸ 40 C.F.R. § 1508.1(z) (defining "reasonable alternatives"); see 42 U.S.C. § 4332(C)(iii) (requiring a "detailed statement" on "alternatives to the proposed action"); 40 C.F.R. § 1502.14(a), (b) (setting forth all agencies' obligations to "[e]valuate reasonable alternatives to the proposed action" and "[d]iscuss each alternative considered in detail, including the

proposed action, so that reviewers may evaluate their comparative merits”); see also 40 C.F.R. § 1501.9(e)(2) (“To determine the scope of environmental impact statements, agencies shall consider . . . Alternatives, which include the no action alternative; other reasonable courses of action; and mitigation measures (not in the proposed action).”); 49 C.F.R. § 1105.7(e)(1) (STB regulations requiring environmental reports to “describe any reasonable alternatives to the proposed action”).

¹⁹ 40 C.F.R. § 1502.14(f).

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

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

²² *Id.* at 112 (citing *Theodore Roosevelt Conservation P’ship*, 661 F.3d at 72; *Friends of Cap. Crescent Trail v. Fed.*

Transit Admin., 877 F.3d 1051, 1063 (D.C. Cir. 2017)).

²³ See *id.*

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

²⁵ 49 U.S.C. § 11324(c).

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

OEA Response

See response to Comment 33-1 above. CN’s Proposed Divestiture is not a reasonable alternative to the Proposed Acquisition, but rather a possible condition that the Board could decide to impose should the Board decide to authorize the Proposed Acquisition. Although the Proposed Divestiture is not a reasonable alternative for the purposes of NEPA, that does not preclude OEA, through a concurrent and separate review, from analyzing the potential environmental impacts of the Proposed Divestiture or the Board from reaching a decision on the transportation merits of the Proposed Divestiture.

Comment 518-2: Written Comment from Peter Whitfield for Canadian National Railway (EI-32613)

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

OEA appears to work around its requirement to review CN’s Responsive Application as an alternative by offering to analyze it separately on its own. But this again ignores the interdependent nature of the two proposed actions. But for the Proposed Action, OEA would not have CN’s responsive application. This solution, though, only creates another NEPA

problem: unlawful segmentation. Unlawful segmentation occurs when an agency “divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.”²⁷ This is because NEPA requires agencies to consider as part of a single EIS all connected actions (i.e., actions that are closely related).²⁸ Actions are connected if they:

(i) “Automatically trigger other actions which may require environmental impact statements”;

(ii) “Cannot or will not proceed unless other actions are taken previously or simultaneously”; or

(iii) “Are interdependent parts of a larger action and depend on the larger action for their justification.”²⁹

Courts uphold this prohibition on segmentation where agencies attempt to “evade their responsibilities under NEPA” by arbitrarily separating connected actions.³⁰ The relevant analysis for improper segmentation focuses on the following three factors: (i) whether the action had an independent reason to exist or a life of its own (independent utility)³¹; (ii) whether the action has a logical termini³²; and (iii) whether the action forecloses the opportunity to consider alternatives or irretrievably commit federal funds for closely related projects.³³ In other words, agencies cannot segment an action that has “no independent justification, no life of its own, or is simply illogical when viewed in isolation.”³⁴

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

Regarding the first factor, FERC argued that the proposed project had an independent utility separate from the allegedly connected actions because the project could be “completed and in-service” and “meet[] customer demand” but the court rejected these arguments as “paint[ing] a false picture” where the projects were “inextricably intertwined” to act together as an upgrade to an entire leg of pipeline.³⁶ Regarding the second factor, FERC merely argued that its choice was not arbitrary and capricious because one terminus was no more logical than the other.³⁷ The court rejected this argument and noted that FERC’s line of reasoning would have allowed it to certify “pipeline construction in one-mile sections, or hundred-yard sections, or one-foot sections.”³⁸ The court determined the third factor was irrelevant to the facts but did separately conclude that the projects’ temporal relationship further demonstrated the projects lacked utility independent of each other.³⁹

In another case, Hawthorn Environmental Preservation Association v. Coleman,⁴⁰ plaintiffs moved for a preliminary injunction, challenging the Department of Transportation’s (DOT) failure to perform an EIS where DOT allegedly segmented a project into federal and nonfederal actions. The court determined the entire project was, in fact, subject to NEPA absent any persuasive evidence of each segment’s independent utility.⁴¹ And in Sierra Club v. United States, the court reached a similar conclusion regarding the segmented analysis of

an easement to access a mining site and the mine itself, reasoning that the two decisions were “connected actions because they are inextricably linked.”⁴² These decisions interpreting NEPA’s requirement to consider connected actions in the same NEPA analysis strongly suggest that OEA cannot exclude the environmental evaluation of CN’s Springfield Line responsive application to the CP-KCS merger in the Draft EIS of the Proposed Action. By definition, a responsive application to the Proposed Action would not exist but for the Proposed Action. Indeed, even in the abstract, it is difficult to imagine a responsive application with such independent utility that it could stand on its own pursuant to NEPA. Segmenting the analysis of such an action, as noted above, also prevents the OEA from considering a full range of reasonable alternatives as part of the CP-KCS Draft EIS.

²⁵ 49 U.S.C. § 11324(c).

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

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

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

regulation 40 C.F.R. § 1508.25(a)(1).

²⁹ 40 C.F.R. § 1501.9(e)(1)(i)–(iii).

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

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

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

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

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

³⁵ *Delaware Riverkeeper Network*, 753 F.3d at 1307.

³⁶ *Id.* at 1317.

³⁷ Id. at 1315.

³⁸ Id.

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

⁴⁰ 417 F. Supp. 1091 (N.D. Ga. 1976), aff’d, 551 F.2d 1055 (5th Cir. 1977).

⁴¹ Id. at 1101.

⁴² 255 F. Supp. 2d 1177, 1184 (D. Colo. 2002).

OEA Response

See responses to Comment 33-2 and Comment 460-7 above.

OEA Response Comment 460-2: Written Comment from Metra (EI-32539)

Moreover, environmental analysis under NEPA is intended to evaluate the entire scope of a single and complete project. If the STB approves any responsive applications in its approval of the transaction, all impacts of all additional changes approved by the agency are part of the whole picture that requires careful analysis. However, if this Board assesses the environmental impacts of each piece of the federal action that may comprise the approval of the proposed transaction and associated conditions individually, rather than as a whole, it is following a course referred to as “segmentation,” which is not permitted under NEPA.

OEA Response

See responses to Comment 33-1 and Comment 460-7 above.

Comment 33-3: Written Comment from Carl Van Dyke for Canadian National Railway Company (EI-32161)

Base Year Data: CP and KCS have conceded that the “base year” tonnages and train counts that they submitted to OEA were not based on actual 2019 data, but instead were the product of a “modeling” exercise.⁶ Prior filings have demonstrated that this “modeling” led to absurd and unreliable results, particularly at a line segment level. Yet the Draft EIS uncritically accepts CP’s and KCS’s submission and ignores well-documented concerns with the reliability of their data. The Draft EIS’s reliance on a May 13, 2022 CP-KCS environmental submission that is both not based on actual ordinary course 2019 density and trains per day and inconsistent with the “modeled” densities in the October 2021 original Operating Plan is a serious error. The agency is required under NEPA to use accurate data, and CP and KCS have plainly not provided such data to the agency. CP and KCS should be required to submit actual and reliable historic tonnage and train count data in order to permit a reliable assessment of the environmental effects of their proposed transaction. Without accurate and reliable data, OEA cannot determine whether—and where—relevant thresholds for significant environmental impacts may be triggered. Nor can OEA determine any

merger-related increases in trains per day and the effects of those increases on air quality, noise, traffic, and other environmental impacts.⁷ Indeed, NEPA regulations impose on federal agencies the obligation to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents” and to utilize “reliable existing data and resources” in advancing NEPA’s purpose to “ensure informed decision making by Federal agencies.

⁶ Specifically, CP and KCS “modeled” a 2019 base year using monthly snapshots of traffic from multiple years (October 2020 for manifest and scheduled intermodal traffic and, for unit trains, February-May 2021 for KCS and March-June 2021 for CP)—using no 2019 data as a traffic source.

⁷ 49 C.F.R. § 1105.7(e).

OEA Response

In this proceeding, as in all proceedings before the Board requiring environmental review, OEA based its analysis of potential environmental impacts, in part, on information provided by the private railroad applicants seeking Board authority. In this case, OEA had sufficient information regarding Applicants’ plans to allow for a thorough review of the potential environmental consequences of the Applicants’ proposal and the No-Action Alternative, the only reasonable and feasible alternative to the Proposed Acquisition.

OEA notes that railroad companies have the obligation to provide rail service upon reasonable request and the right to determine how to route their traffic in order to meet the needs of shippers while maintaining safe and efficient operations. Ultimately, the volume of rail traffic on a particular rail line depends on many factors, including global economic conditions; national, regional, and local markets; and the decisions of individual transportation companies and their customers. By their nature, projections of future rail traffic are estimates based on imperfect information about those factors. There are different approaches to predicting future rail traffic and reliance on modeled baseline data does not on its own invalidate the results of the Applicants’ projections.

Parties in the instant proceeding have questioned the methods used by the Applicants to make projections of future rail traffic levels as part of the Board’s review of the transportation merits of the Proposed Acquisition, which is separate from the environmental review process. The Board addressed issues related to the Applicants’ traffic projections in Decision No. 17, issued on April 27, 2022 and directed OEA to use the revised data submitted by CP in the environmental review for the Proposed Acquisition, which OEA did. The Board will further address this issue, as appropriate, in its final decision on the Proposed Acquisition.

OEA principally relies on Applicants’ projections on whether the 3 or 8 train-increase threshold in the Board’s environmental rules will be met to determine which rail line segments warrant environmental review in railroad acquisition cases. The analysis of potential impacts to air quality as a result of the Proposed Acquisition was the sole technical area that relied on gross ton-miles annually. OEA conducted a sensitivity analysis, the results of which are included in **Appendix K**, to determine what, if any discrepancies exist between the Applicants’ modeled baseline data and actual 2019 historical reported data

and whether that would change the results of the air quality analysis. The sensitivity analysis found that any differences between modeled and historical gross ton miles data did not change the conclusions of the air quality analysis.

Comment 518-4: Written Comment from Peter Whitfield for Canadian National Railway Company (EI-32613)

Second, there continue to be pervasive issues in the accuracy of CP's and KCS's traffic data that they submitted to the STB and these issues are reflected in the Draft EIS. Accurate data is vital to an adequate EIS. But the data keeps changing with almost every CP and KCS submission. This is not a reliable basis for the Board to assess the environmental impacts of the proposed merger. Proper base year data, for example, is important to understanding the environmental and operating impacts of a merger. Here, CP and KCS selected 2019 as the base year, but they did not use any actual 2019 data. Instead, they "modeled" a 2019 base year using monthly snapshots of traffic from 2020 and 2021. To make matters worse, the modeling produced numbers that are plainly inaccurate and that change from submission to submission. That is not a reliable approach for environmental analysis.

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

OEA Response

See response to Comment 33-3 above.

Comment 462-20: Written Comment from the Coalition to Stop CPKC (EI-32542)

B. The DEIS's Conclusions Are Based on a Flawed Operating Plan and Highly Disputed Data Submitted by Applicants

1. Freight Trains Per Day on the Coalition Line Post-Merger are Likely to be Considerably Higher than Applicants Represent

In their Application CP and KCS represented that the number of freight trains on the western end of the Elgin Subdivision and Coalition Line would increase by eight over the three years after merger approval. This would increase the number of freight trains per day from approximately three to 11. This increase alone will cause significant impacts on the Coalition communities.

However, the Coalition and Metra – and to some extent the Canadian National Railway ("CN") - have presented evidence to the Board demonstrating that Applicants have

significantly understated the actual number of freight trains that would traverse the line and the freight operations that would disrupt and impact the Coalition communities. The Applicants' filings also confirm that the eight trains a day is likely low. There are several reasons for this. First, the Applicants' statements that they plan to divert "6.0"⁶ freight trains from the Chicago area and the Coalition Line by transporting them instead over CP's Marquette Subdivision are highly suspect. In Metra's filings it has demonstrated that this diversion does not appear to be feasible for the indefinite future given the poor physical state of the Marquette Subdivision and the uncertain timing for the construction of the additional capacity necessary to accommodate the diversion. This means that some, or all, of the six freight trains will have to be routed over the Elgin Subdivision and the Coalition Line, since there would be no other route for the merged railroad to reach Kansas City using its tracks. As such, the new trains per day count will not be eight, but rather as high as 14.

⁶ In their original Operating Plan, the Applicants stated the number of diverted trains would be 6.6. They changed that number to 6.0 in their Amended Operating Plan.

OEA Response

See response to Comment 33-3 above.

Comment 567-1: Public Meeting Comment from Tom Wilcox for the Coalition to Stop CPKC (EI-32756)

In a nutshell, the eight coalition communities and DuPage County are stunned and disappointed that the draft EIS essentially concludes based on what appears to be an analysis that heavily relies on statistics, modeling and mathematical formulas, that the impact of the proposed merger on their communities will be "negligible, minor, and or temporary," as you've already heard, and you will hear numerous representatives of communities in the county are here tonight to express they believe that conclusion is wrong. The complete coalition believes OEA must take a much harder look at the environmental impacts of this merger on the coalition communities and actually observe and measure the potential impacts as opposed to estimating down from afar. There are ample grounds for OEA to conduct additional analysis of the mergers impacts on the Chicago area and issue a supplemental draft environmental impact statement for comment on that additional analysis and appropriate mitigation measures. As for just a few specific points supporting the opposition, the draft EIS wrongly accepts the truth as true, the applicant's traffic projections over the Elgin subdivision despite the fact that these projections are highly contested, and likely significantly understate the actual post merger freight training levels. The Draft Environmental Impact Statement accepts as true the applicants proposed operating plan. Despite the fact that the coalition or other parties, especially the Canadian National, and Metro have demonstrated it is severely flawed.

OEA Response

See response to Comment 33-3 above regarding data provided by the Applicants and the opportunity for potentially affected communities to raise their concerns with the Board. Regarding the commenter's request that OEA prepare and issue a Supplemental Draft EIS, see response to Comment 462-4 below.

Comment 462-16: Written Comment from the Coalition to Stop CPKC (EI-32542)

Finally, in their Amended Operating Plan submitted on May 13, 2022, the Applicants amended their prior statements that the eight additional trains on the Coalition Line would be longer by stating that “[i]n many lanes, such as CP’s Chicago and Elgin Subdivisions in Illinois, the expansion of the CPKC train network will lead to reductions in the average length of trains as the additional traffic is spread across more train starts and train length is managed to make efficient use of available siding locations.”⁸ In a subsequent filing on July 12, 2022, the Applicants added that any reduction in average train length would mean increasing the number of trains, which is yet another indicator that the eight trains per day on which many of the conclusions in the DEIS are based is incorrect, and therefore to utilize that number for baseline data from which to draw conclusions significantly understates the environmental impacts of the merger on the Coalition Line.

⁸ Amended Operating Plan at 75-76 (emphasis added).

OEA Response

See response to Comment 33-3 above. Also see responses to Comment 569-1 in *Section S.8, Grade Crossing Delay* and Comment 460-11 in *Section S.7, Grade Crossing Safety* in this appendix regarding projected average train length. The projected average freight train lengths that the Applicants provided OEA are consistent with the Applicants’ projected number of trains per day and projected gross ton-miles. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 462-4: Written Comment from the Coalition to Stop CPKC (EI-32542)

Given the substantial uncertainty over the actual number of trains that may traverse the Coalition Line post-merger, the conclusions drawn by OEA and set forth in the DEIS based solely on data supplied in the Application are not adequately supported or defensible. In order to more accurately assess the impacts to the Coalition communities in critical areas under OEA’s jurisdiction (crossing safety, crossing delays, noise, vibration, hazardous materials, etc.) the DEIS must be supplemented with an examination of the potential impacts from what could be as many as 14 or more new daily freight trains post-merger, some of which could be 15,000 feet long.

OEA Response

See response to Comment 33-3 above regarding OEA’s use of information and data, including projections of future rail traffic, provided by the Applicants. The Applicants project that rail traffic on the rail line referenced by the commenter would increase by eight trains per day, on average, not 14 or more trains per day as the commenter claims.

Regarding the commenter’s claim that the Proposed Acquisition would cause 15,000-foot trains to move on the rail line in the communities represented by the commenter, OEA notes that nothing in the record suggests that this would be the case. The Applicants estimate that the average length of freight trains on that rail line would decrease from 8,597.1 feet under the No-Action Alternative to 6,817.2 feet under the Proposed Acquisition.

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R. § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none.

Comment 462-17: Written Comment from the Coalition to Stop CPKC (EI-32542)

The DEIS is Deficient in Numerous Key Areas as to the Coalition Line

A. The DEIS is Deficient Because Its Conclusions are Largely not Based on Any Actual Data About the Coalition Line

The DEIS appears to have “analyzed” the impact of the proposed merger almost entirely by applying broad national statistical information to the combined system, and through desktop computer modeling utilizing the operating data Applicants submitted with their original merger application, which Coalition, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (“Metra”) and others have credibly asserted to be seriously flawed. According to the DEIS, OEA conducted no site visits to the Coalition communities to observe any of the rail operations along the Coalition Line. Nor did OEA perform any actual traffic or crossing studies along any portion of the Coalition Line or inquire of whether local officials and agencies had conducted such studies that could be factored into OEA’s analysis. Nor did OEA seek any actual data that had been collected by any Coalition communities on the potential impacts of noise and vibration. The lack of actual data or analysis of the specific circumstances of the Coalition communities simply does not meet NEPA’s fundamental requirement that the agency will have available, and carefully consider, detailed information concerning significant environmental impacts from a proposed action.

OEA Response

Contrary to the commenter's assertion that the Draft EIS analyzed impacts "almost entirely by applying broad national statistical information," the Draft EIS analyzed local impacts using data specific to those areas on every segment that met or exceeded the Board's environmental analysis thresholds. The Draft EIS contains substantial amounts of locationally specific information, including information about rail lines and grade crossings in the communities represented by the commenter in tables arranged geographically throughout the body of the Draft EIS and its appendices. OEA provided numerous opportunities during the EIS scoping process for local government agencies and the public to provide input on the scope of the environmental review. OEA staff conducted site visits to certain grade crossings in the Chicago area on September 12, 2022, and held an in-person meeting in Itasca, Illinois on the same date to receive comments on the Draft EIS and to learn about local concerns. In response to public comments on emergency vehicle delay,

OEA conducted additional site-specific analysis at 751 grade crossings to determine the implications of delay on the provision of emergency services. This analysis evaluated road networks throughout the study area to quantify potential impacts at each specific grade crossing in the analysis.

Regarding the commenter's statement about analysis in the Draft EIS that they, and others, state to be "credibly asserted to be seriously flawed," OEA disagrees. To the extent that the commenter substantiated their comments on specific analyses, OEA has responded in the relevant sections of this appendix.

By utilizing Federal Railroad Administration (FRA) data for roadway/rail at-grade crossings (grade crossings) and data from state and local transportation departments, OEA and its predecessor, Section of Environmental Analysis (SEA), have adequately analyzed grade crossing safety and delay across hundreds of thousands of miles of the country for mergers going back decades. This Draft EIS analyzed over one-thousand grade crossings spread across 1,724 miles. Conducting site-specific traffic studies would have been impractical and unnecessary. No state or local agency has provided pre-existing or new data for use in the grade crossing analyses with the exception of the Coalition to Stop CPKC (Coalition). See response to Comment 462-27 regarding the analysis methodology for assessing grade crossing delay, which used actual Annual Average Daily Traffic (AADT) data. In response to comments on the Draft EIS, OEA has revised *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay** to include additional information about the potential impacts of the Proposed Acquisition on delay at grade crossings, including grade crossings in communities represented by the Coalition. Specifically, OEA expanded its analysis to analyze the gate down time at all 1,365 grade crossings in the study area for particular types of freight and passenger trains. Gate down time represents the time it would take a train to pass through a grade crossing and thus represents a reasonable estimate of the delay at grade crossings with low vehicular traffic volumes. OEA also reduced the freight train speeds used for safety and delay analysis of grade crossings in Franklin Park. The train speeds at the grade crossings of 25th Avenue, Calwagner Street, Edginton Street, Ruby Street, and Scott Street were reduced from 40 mph (in the Draft EIS) to 25 mph (in the Final EIS). While this results in a general increase in estimated gate down time and estimated delay at these grade crossings, the average gate down time would decrease as a result of the Proposed Acquisition because the average length of freight trains would decrease. In fact, for the grade crossings at 25th Avenue and Edginton Street in Franklin Park, Illinois, the LOS would improve from LOS B to LOS A because trains moving through this crossing would become shorter, on average, as a result of the Proposed Acquisition and would therefore block the crossing for a shorter amount of time, on average, than under the No-Action Alternative.

In terms of inquiring whether local agencies had conducted studies "that could be factored into OEA's analysis," OEA distributed the Notice of Intent (NOI) on November 12, 2021, to initiate the scoping process. The NOI went to local agencies and elected officials, including those in the communities that comprise the Coalition. The NOI described OEA's proposed approach to the EIS and asked that agencies review and comment on the proposed approach as well as provide any information that may be relevant when considering impacts to environmental resources under their jurisdiction or purview. During and after the scoping

period, OEA did not receive any information from agencies or elected officials in the Coalition communities regarding studies that they had conducted or other information that OEA could have used in the Draft EIS. The Coalition waited until after OEA had issued the Draft EIS to submit a traffic study, which OEA responded to in *Section S.8, Grade Crossing Delay* of this appendix to the Final EIS.

The commenter states that OEA did not seek any actual data that had been collected by any Coalition communities on the potential impacts of noise and vibration. However, OEA did request that local governments, agencies, and officials provide relevant information during the EIS scoping process and provided numerous opportunities to do so.

Contrary to the commenter's assertion that the "lack of actual data or analysis of the specific circumstances of the Coalition communities simply does not meet NEPA's fundamental requirement," the EIS analyzed local impacts using data specific to those areas on every segment that exceeded the environmental analysis thresholds.

Comment 447-1: Written Comment from Chicago Metropolitan Agency for Planning (EI-32523)

CP has trackage rights and is expected to continue operations on Metra commuter-rail lines. The Milwaukee District West Line will be most affected by the CP-KCS merger, but the North Central Service (operating on CN's Waukesha Subdivision) and the Milwaukee District North Line will also be affected by increased activity resulting from the merger. Prior to the COVID-19 pandemic, the Milwaukee District West Line served more than 20,800 weekday boardings with 58 trains per weekday. Weekday ridership levels on the North Central Service and Milwaukee District North Line were 5,600 and 20,600, respectively.¹ While CP states that "no new trains" will operate east of the Bensenville Yard, that appears to only apply to new through trains. Hundreds of additional freight railcars brought to the Bensenville yard will be added to existing freight trains operating east and north of Bensenville together with block swaps, switching, and local trains, all adding to commuter delays.²

The operating plan submitted by CP to the STB was incomplete and did not accurately account for this anticipated increase in freight railcars. To maintain reliable service for Metra commuters in this challenging environment, we support Metra's request to assume dispatching responsibility on their properties from the CP as a mitigation for this transaction to protect the public interest. Metra's dispatchers would effectively make network-based decisions to serve all customers and assist the movement of freight trains during Metra's peak period.

¹https://metra.com/ridership-data#Weekday_Ridership_and_Service_Levels

²<https://www.youtube.com/watch?v=CbmzhM3S0Bc>

OEA Response

OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of a proposed action. An impact related to dispatching of freight and passenger trains would not be an effect on the environment. To

the extent that changes in freight rail operations resulting from the Proposed Acquisition could affect safety on passenger rail lines, including commuter rail lines, OEA evaluated those effects in *Section 3.1, Freight and Passenger Rail Safety* of the EIS. As appropriate, the Board will address issues related to rail line capacity and freight and passenger rail operations as part of its review of the transportation merits of the Proposed Acquisition in its final decision. Therefore, the environment analysis in the Draft EIS was adequate, and no changes to the Draft EIS are warranted in response to this comment. Please see response to Comment 33-3 above regarding data provided by the Applicants.

Comment 592-3: Public Meeting Comment from Metra (EI-32756)

It is vitally important that the boards environmental analysis conducted using accurate information in order to properly determine the level and extent of the impacts of the proposed merger, which requested the board take into consideration these points.

OEA Response

Regarding data provided by the Applicants, see response to Comment 33-3 above.

Comment 33-4: Written Comment from Carl Van Dyke for the Canadian National Railway Company (EI-32161)

Although the Draft EIS identifies 29 rail line segments that would cause a projected increase in rail traffic that would meet or exceed the Board's thresholds for environmental review, it appears that multiple rail line segments that exceed those thresholds are missing entirely from CP's and KCS's data submissions and from the Draft EIS analysis. DEIS, 2-5.

While Schiller Park Yard is included in the Draft EIS as exceeding the Board's merger-related thresholds for carload activity and trucks, CP has not disclosed any tonnage data or trains per day data for the line segment owned by CN between Tower B12 and Schiller Park Yard (as shown in Figure 4 below). In other words, CP's pre-transaction and post-transaction numbers do not include the 2.3 miles of CN-owned main line in Chicago between Tower B12 and Schiller Park for CP's trains to reach Schiller Park Yard, which is shared by CP and CN. CP included information showing increases in carloadings and truck activity at Schiller Park Yard as a result of the merger, which were high enough to exceed the Board's thresholds for environmental review for the yard because of the 2440% increase in yard activity. And CP provided information for Metra's track between Bensenville and Tower B12 showing a merger-related train per day increase of 6.43 trains in a non-attainment area of Chicago. Yet CP did not include any data whatsoever between Tower B12 and Schiller Park Yard. That CN-owned track between Tower B12 and Schiller Park does not appear anywhere in CP's Operating Plan, Amended Operating Plan, or data submitted to the STB's OEA.

The failure of CP and the Draft EIS to address or even acknowledge this important line segment in the Chicago terminal is a deficiency that must be remedied before a final EIS can be issued.

OEA Response

The Applicants provided OEA with information regarding projected future rail traffic for rail lines where the Proposed Acquisition would result in an increase in rail traffic exceeding the thresholds set forth in the Board's environmental rules at 49 C.F.R. § 1105.7(e).

Because the rail line referenced by the commenter is not owned by the Applicants nor would it experience an increase in rail traffic exceeding the environmental review thresholds, the Applicants were not required to provide rail traffic projections for that rail line and OEA did not assess environmental impacts along that rail line.

The commenter is correct that Table 6 in the Applicants' Amended Operating Plan shows a projected increase in activity of 2,440 percent at Schiller Park Yard in Schiller Park, Illinois by Year 3 following the Proposed Acquisition. However, the same table also shows that, when measured in cars processed per day instead of in percentage terms, the projected increase is only approximately 73.21 additional cars processed per day. As shown in **Table 2.2-2** in *Chapter 2, Proposed Action and Alternatives*, the projected increase in the number of cars processed per day at Schiller Yard is only 76.5 additional cars by Year 5 following the Proposed Acquisition, which is the analysis year for the environmental review. These projected increases are equivalent to one additional train per day, on average, or less and are therefore consistent with the Applicants' finding that the Proposed Acquisition would not cause an increase in rail traffic on the rail line between Tower B12 and Schiller Park Yard to exceed the thresholds for environmental review.

For comparison, based on a search of grade crossing reports obtained through FRA's Grade Crossing Inventory database, rail traffic on this rail line is currently between 8 and 15 trains per day. Because the commenter owns the rail line between Tower B12 and Schiller Park Yard, the commenter may have access to more precise rail traffic data available for this rail line that they could have provided OEA. However, the commenter did not provide any such data.

Finally, OEA notes that the Applicants have indicated that the role of Schiller Park Yard as an intermodal and automotive terminal will be curtailed following the planned reconfiguration of Bensenville Yard in Bensenville, Illinois. CP is undertaking this reconfiguration of Bensenville Yard independent of the Proposed Acquisition as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. OEA understands that the reconfiguration will involve lengthening the Bensenville Yard receiving tracks to allow switching and staging of longer trains within the yard, which should reduce the need for trains to stop on the mainline as long trains are broken into smaller blocks of cars. These plans support the conclusion that the Proposed Acquisition would not cause an increase in rail traffic on the rail line between Tower B12 and Schiller Park Yard that would meet or exceed the thresholds for environmental review. OEA has revised *Chapter 2, Proposed Action and Alternatives* to provide additional information regarding CP's planned reconfiguration of Bensenville Yard.

Comment 518-9: Written Comment from Peter Whitfield for the Canadian National Railway Company (EI-32613)

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

Other segments are missing from the Draft EIS between Bensenville, Illinois and Willard, Ohio, where CP failed to disclose the merger-related traffic increases on those line segments. Consequently, these segments were not analyzed in the Draft EIS, despite the fact that CP's Exhibit 14 of the Amended Operating Plan shows CP's merger-related increase in tons is expected to exceed the STB's applicable environmental threshold. According to CP's data, the merger will increase CP's tons by 191% between Bensenville, Illinois and Pine Junction, Indiana. The merger also will increase CP's tons by 148% between Pine Junction, Indiana and Willard, Ohio. Yet CP excluded these segments in information provided to the STB's environmental office. Even though these segments exceed the STB's applicable thresholds for triggering environmental review, none of these line segments is referenced in the Draft EIS.

OEA Response

See response to Comment 33-4 above and Comment 33-5 below.

Comment 594-1: Public Meeting Comment from Kari Harris for the Canadian National Railway Company (EI-32756)

I'm here on behalf of CN tonight to emphasize two points from Sam's comments that we submitted on September 6 on the draft EIS for the proposed merger. First, there continues to be pervasive issues in the accuracy of CP and KCS traffic data that they submitted to the STB. And these issues are reflected in the draft EIS. Accurate data is vital to an adequate EIS but the data keeps changing with almost every CP and KCS submission. This is not a reliable basis for the board to assess the environmental impacts of the proposed merger. Proper base year data for example, is important to understanding the environmental and operating impacts of a merger. Here, CP and KCS selected 2019 as the base year, but they did not use any actual 2019 data. Instead, they modeled to those 2019 base year using monthly snapshots of traffic from 2020 and 2021. The modelling produced numbers that are plainly inaccurate and that changed from submission to submission that is not a reliable approach for an environmental analysis. The STB recognized these problems in April and directed CP and KCS to provide amended operating plan data that were consistent with the data they gave to the STB's environmental office, the STB expected the date that the data

would be essentially the same. But in May, CP and KCS submitted yet another set of data and their amended operating plan. It is not essentially the same as the data used in the EIS and none of these different model sets of data represents actual traffic for the base year 2019. In its comments CN is given multiple examples of line segments where the CP and KCS numbers inaccurately reflect traffic on the line. Without accurate and reliable data, OEA cannot determine whether and where relevant thresholds for significant environmental impacts may be triggered and what the extent of those impacts will be. Second, there are missing line segments in the draft EIS. Specifically, the draft EIS does not include analysis of scenes line segment between Franklin Park and Schiller Park yard. CP uses CN's track to reach Schiller Park yard. CP disclosed that the merger will increase truck activity and carload activity that exceeds the STBs environmental threshold for Schiller Park yard. CP never disclosed any data for the line segment owned by CN between Franklin Park and Schiller Park yard. The line segment is absent from CPS operating plan, amended operating plan and environmental submissions. CN has no idea how much merger related increase and post mergers traffic CP projects to move overseas track. However, since CP's increase in activity, Schiller Park yard exceeds the thresholds. It seems likely that CP's traffic on the track to Schiller Park yard could also exceed the thresholds and that should be at least studied.

OEA Response

Regarding data provided by the Applicants, see response to Comment 33-3 above. Regarding the track segment between Tower B12 and Schiller Park yard, see response to Comment 33-4 above.

Comment 33-5: Written Comment from Carl Van Dyke for the Canadian National Railway Company (EI-32161)

CP's Appendix T from the Amended Operating Plan, which the Draft EIS incorporated, also fails to include line segments between Bensenville IMS, Illinois and Willard, Ohio, even though other information submitted by CP in the Amended Operating Plan plainly indicates those line segments will exceed the Board's threshold for merger-related increases in tonnages.

The Draft EIS does not analyze these line segments, likely because they were not included in CP-KCS's environmental data submission in Appendix T of the amended operating plan. DEIS, S-3; see also DEIS, Figure 2-1. But they are clearly within scope, and they should be addressed in the environmental process.

OEA Response

OEA notes that the rail line between Bensenville IMS, Illinois and Willard, Ohio referenced in the comment is not owned by CP and would not be owned by CPKC. CP currently has haulage rights over that rail line and CPKC would continue to have haulage rights. The commenter claims to demonstrate that the Proposed Acquisition would result in an increase in rail traffic in excess of 100 percent measured in gross ton-miles on the Bensenville IMS to Willard rail line. However, the commenter relies on a baseline estimate from the

Applicants' Amended Operating Plan that includes only CP traffic, which is a small amount of the total traffic that currently moves on this rail line.

For example, the baseline traffic that the commenter cites suggests that just 1.7 million gross tons of freight per year move on the rail line segment between Bensenville IMS, Illinois and Pine Junction, Indiana (see commenter letter EI-32161). However, a review of grade crossing inventory reports from the FRA's grade crossing inventory shows that approximately 39 trains per day move on this rail line segment. Such large train numbers are incompatible with the low gross ton figures cited by the commenter and demonstrate that the estimates in the Applicants' Amended Operating Plan refer only to CP traffic and do not include rail traffic from other carriers, including the owner of the rail line segment, which in the case of the Bensenville IMS to Pine Junction segment is CSX Transportation, Inc. Accordingly, OEA does not expect that the Proposed Acquisition would lead to an increase in rail traffic of 100 percent or more measured in gross ton-miles on the rail line between Bensenville IMS and Willard and appropriately did not assess impacts on that rail line in the Draft EIS. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 570-1: Public Meeting Comment from Rep. Raja Krishnamoorthi (EI-32756)

Good evening. My name is Congressman Raja Krishnamoorthi from the Eighth District of Illinois. I represent all the communities from Bensenville all the way to Elgin that are going to face quadruple their current volume of freight traffic under the proposed merger. I'm extremely concerned that the Draft Environmental Impact Statement does not adequately address data accuracy, or public safety concerns. And I'll take each of those two issues in turn. First, Metro, Canadian National and a coalition of communities in our district have all filed their concerns that the Canadian Pacific data with regard to train counts as well as the volume of freight that is proposed to flow through the communities under the merger are unreliable, inconsistent and flawed. For example, CP projects that the merger would increase freight traffic in our communities from three freight trains per day to 11 freight trains per day. Metra, and communities in my district, have projected that there could actually be closer to 18 freight trains per day. The draft EIS fails to reconcile these figures and without ensuring the reliability of CP data, the STB cannot accurately assess the impacts of the proposed merger.

OEA Response

Regarding data provided by the Applicants, see response to Comment 33-3 above. In this proceeding, as in all proceedings before the Board requiring environmental review, OEA based its analysis of potential environmental impacts on information provided by the private railroad applicants seeking Board authority, as well as other sources of data as described throughout the EIS. In this case, the Applicants provided OEA with sufficient information regarding their plans to implement the Proposed Acquisition and adequately detailed projections of potential future outcomes of the Proposed Acquisition to allow OEA to conduct a thorough review of the potential environmental consequences of the Applicants' proposal. Parties previously questioned the methods used by the Applicants to make projections of future rail traffic levels as part of the Board's review of the transportation

merits of the Proposed Acquisition, which is separate from the environmental review process. The Board addressed these issues in Decision No. 17, issued on April 27, 2022, and will further address additional issues raised by the parties, as appropriate, in its final decision on the Proposed Acquisition.

Comment 511-1: Written Comment from Rep. Raja Krishnamoorthi (EI-32630)

I continue to be concerned that the STB has not verified the data upon which the draft EIS is based. The draft EIS is solely based on CP's own projections and does not assess the accuracy of CP's train counts and tonnage, despite CP's data being heavily disputed. In fact, as of now, there is no certainty how many freight trains the proposed merger would add to the MDW line. While CP's filing projects that the merger would increase freight traffic in our communities from three trains per day to eleven,²¹ Metra and communities in my district have projected that there could actually be closer to 18.²² As recent as the September 28 STB hearing in Washington, D.C., Chairman Oberman asked CP whether there would be "an objection to a condition, which says that there will not be more than eight [additional] trains... at any time even during the transition period."²³ However, CP provided no direct response and broadly stated that "in the short interim,... [CP would] not oversubscribe the network."²⁴

As Chairman Oberman stated, "if you are Metra and these local towns, it is hard to plan if all of the information is what [CP has] said."²⁵ In fact, CP stated that there would likely be even more "organic growth" on the line and, "it would be irresponsible for [CP] to make" commitments regarding future train counts" without knowing how successful CP will be in winning business beyond the three year build out period.²⁶ As CP plans to also expand and grow in the medium to long term, the proposed merger's three year projection period is too short for Metra and the communities to reasonably plan for future freight traffic growth. The draft EIS fails to reconcile the fact that there is significant uncertainty in the data, and without ensuring the reliability of CP's data, the STB cannot accurately assess the impacts of the proposed merger.

STB Chairman Oberman recognizes that there is little "anticipation as to what to expect" regarding the number of train counts.²⁷ Given that the draft EIS is based on uncertain data of what communities can actually expect, the conclusions made within the current draft EIS are invalid. Eight additional freight trains on the MDW line would already have significant negative impacts on our communities—15 additional trains would dramatically harm them. I, therefore, urge the STB to fully review the claims regarding continuing inconsistencies in CP's data within Metra, Canadian National, and the Coalition to Stop CPKC's filings with the STB, and work to ensure that OEA analysis and conclusions are based on verified, accurate data.

²¹ OEA, Canadian Pacific Acquisition of Kansas City Southern: Draft Environmental Impact Statement, August 5, 2022, Appendix H2: Grade

Crossing Delay, Page H2-212.

²² Coalition to Stop CPKC STB filing, June 9, 2022, Page 8.; Metra STB filing, March 15, 2022, Page 62.

²³ STB Hearing Day 1, September 28, 2022.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

OEA Response

See response to Comment 570-1 above.

Comment 518-10: Written Comment from Peter Whitfield for the Canadian National Railway Company (EI-32613)

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

OEA Response

See response to Comment 462-4 above.

Comment 462-3: Written Comment from the Coalition to Stop CPKC (EI-32542)

Second, Metra retained rail economic and operations experts to conduct a comprehensive, detailed modeling analysis of the Operating Plan’s impact on Metra’s passenger rail operations utilizing the Rail Traffic Controller (“RTC”) modeling methodology that is recognized by the Board and utilized in its proceedings. The RTC modeling analysis revealed that, in addition to the issues with the planned diversion of six trains over the Marquette Subdivision, the Applicants’ Operating Plan undercounted traffic by excluding other freight rail operations on the line post merger, such as unit trains, operations by foreign railroads, and local switching operations, all of which utilize capacity on the line. Specifically, Metra’s analysis revealed “over 100 freight and passenger trains traverse Metra’s MD-W and MD-N daily and the volume causes both Metra and CP to incur multiple train delays daily. The pre-and post-merger train counts cited by Applicants represent only a small fraction of the trains that traverse those lines.”⁷

⁷ Id. at 56. Metra went a step further as to the Marquette Subdivision and stated that even if the planned capital improvements are made, regardless of the timing, “Metra’s modeling also shows that Applicants’ new North-South Corridor, and specifically the Marquette Subdivision, cannot handle expected new traffic on it, even with proposed capital improvements. As a result, Applicants will likely divert even more traffic to Metra’s lines.” Id. at 18.

OEA Response

See response to Comment 33-3 above.

It is the Board's role, not OEA's, to review the transportation merits data submitted in an application. The Board addressed issues related to the Applicants' methodologies used to develop traffic projections in Decision No. 17, issued on April 27, 2022. The Board's review of the transportation merits of the Proposed Acquisition is separate from the environmental review process. The Board will further address additional issues raised by the parties, as appropriate, in its final decision on the Proposed Acquisition.

OEA notes that CP committed in its final brief to “not implementing an ordinary course operating plan that directs CPKC through freight trains operating between Kansas City and St. Paul, MN over Metra's MD-W and MD-N lines, except in emergencies and other non-routine situations.”

Comment 462-5: Written Comment from the Coalition to Stop CPKC (EI-32542)

C. The Applicants' Stated Plans to Utilize the Bensenville and Schiller Park Yards are Flawed and Mask the Actual Environmental Impacts

The Coalition's Opening Comments and its Supplemental Opening Comments expressed the Coalition's concerns with the Applicants' plans to dramatically increase the usage of the tracks and roads surrounding the Bensenville Yard, already one of the busiest rail yards on CP's entire system. The post-merger plans are particularly problematic for the Village of Bensenville, whose boundaries extend east past the beginning of the western end of the Elgin Subdivision into the busier tracks utilizing the Bensenville Yard. Typical examples cited by Metra include (1) CP impermissibly stopping freight trains on the Metra main line for crew and locomotive changes instead of inside the yard; (2) two long CP trains arriving at the Bensenville Yard at the same time, again clogging the Metra main line; and (3) longer trains (10,000 plus feet) causing delays because there is insufficient track in the yard to accommodate the longer trains and their ends hang out onto the main line.⁹ These examples are consistent with the experience of the Village of Bensenville, whose residents and businesses suffer from such delays at road crossings as well as noise, vibrations, and locomotive emissions.

⁹ See e.g., Metra Comments and Requests for Conditions at 13, 40, 61.

OEA Response

Unrelated to the Proposed Acquisition, CP has planned improvements to the Bensenville Yard to accommodate longer length trains and address the issue of freight trains stopping on the main line. The use of roads in and out of Bensenville Yard has been evaluated as part of the projected intermodal growth from the Proposed Acquisition. As stated in *Section 3.5, Intermodal Facility Traffic*, the Proposed Acquisition would result in an increased number of trucks on roadways near the six intermodal facilities that OEA evaluated, including Bensenville Intermodal and Schiller Intermodal. However, the additional trucks would account for only a small proportion of total daily traffic on roadways near those facilities and the volume to capacity (V/C) ratios for those roadways would be largely unaffected. As a result, OEA concludes that localized increases in truck traffic resulting from the Proposed Acquisition would have a negligible effect on the roadway networks surrounding the intermodal facilities.

Comment 462-6: Written Comment from the Coalition to Stop CPKC (EI-32542)

As the Coalition has noted in its filings, according to the Applicants, post-merger the Bensenville Yard would “see an increase of 112 [railcars] for processing daily” and “face additional demand from anticipated growth in automotive and intermodal traffic,”¹⁰ which Metra and the Coalition both believe will cause even more delays. The DEIS also provides no analysis of the adverse impacts from the 163,000 trucks that the merger Applicants state will be added each year to the roads around the Bensenville and Schiller Park rail yards.¹¹ The Coalition reiterates that the OEA cannot overlook the additional harm to the Coalition communities that will be caused by nearly doubling current levels of daily truck traffic around the Bensenville Yard and the Bensenville community.¹² The DEIS must be supplemented with additional analysis of the impacts from this aspect of the proposed merger.

¹⁰ Coalition Comments at 11, note 31 (quoting Operating Plan).

¹¹ Additionally, CN has pointed out in its filings that CP can only reach the Schiller Park Yard via trackage rights over CN track, but that the 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 OEA.

¹² Coalition Comments at 12, citing OEA materials:
<https://www.arcgis.com/apps/dashboards/665e5f3b1412406ea49454f573aefd35>
(Bensenville Yard link)

OEA Response

See response to Comment 462-5 above.

Comment 518-5: Written Comment from Peter Whitfield for the Canadian National Railway Company (EI-32613)

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

OEA Response

During the public comment period for the Draft EIS, OEA provided many opportunities for members of the public to provide oral comments on the Draft EIS. These included three online public meetings at which members of the public from any location within the United States could participate. OEA also held several in-person public meetings in or near areas where OEA found that the Proposed Acquisition could result in environmental impacts, including in Itasca, Illinois. OEA notes that all attendees at the public meeting in Itasca who

wished to speak had the opportunity to do so. During the meeting, OEA first asked participants who had pre-registered to give oral comments, including Ms. Kari Harris, to speak. After all pre-registered participants had delivered their oral comments, OEA provided ample time for participants who did not pre-register to speak. OEA also allowed additional time for participants to expand upon their comments if they wished to do so. After repeatedly asking if anyone in the audience wished to provide comments, OEA concluded the public meeting in Itasca only when there were no more participants requesting to provide comments or expand upon their previous comments. The oral and written comments from Ms. Harris of CN are included in this appendix, and OEA has responded to them.

Comment 460-1: Written Comment from Metra (EI-32539)

The DEIS relies on unreliable and incomplete data submitted by the Applicants and fails to satisfy the requirement that the STB take a “hard look” at environmental consequences of its actions.

The Council on Environmental Quality’s NEPA regulations require federal agencies to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents” and to utilize “reliable existing data and resources.” 40 C.F.R. § 1502.23. It is also a legal mandate that the lead federal agency verify that the information received from a project proponent (here, the Applicants) is true and accurate. See 40 C.F.R. § 1506.5(b)(2).

NEPA decisions made by a lead agency are reviewed under the Administrative Procedure Act. 5 U.S.C. § 706. Subsections 706(2)(A) and (D) authorize a reviewing court to hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise contrary to the law; or without observance of procedure required by law. In NEPA cases, this standard of review incorporates a “rule of reason” whereby the court makes a “pragmatic judgment whether the EIS’s form, content and preparation foster both informed decision making and informed public participation.” *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 960 (9th Cir. 2005) (quoting *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982)). OEA’s failure to independently assess the validity of the data submitted by the Applicants means it has not taken the “‘hard look’ at the environmental consequences of the proposed action,” which would allow a reviewing court not to “second-guess the wisdom of the ultimate decision.” *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1163 (10th Cir. 2002); *Ctr. For Biological Diversity v. Dept. of Interior*, 623 F.3d 633, 641 (9th Cir. 2010) (reviewing court’s role is to “ensure that the agency has taken a “hard look” at the environmental consequences of its proposed action”).

OEA Response

Comment noted. See responses to Comment 33-3 and Comment 462-17 above, Summary Comment: Validity of Data, Methods, and Conclusions below and Summary Comment: Grade Crossing Delay below.

Comment 462-10: Written Comment from the Coalition to Stop CPKC (EI-32542)

E. OEA Conducted Insufficient Analysis of the Potential Harms from the Merger on this Unique Segment of the Merged System.

1. Actual Interaction with Relevant Officials and Community Leaders was Non-Existent

The DEIS contains a brief and general discussion about how OEA provided notice of the environmental review process and allegedly consulted with certain state and local agencies, and local governments both before and during the DEIS drafting process. Specifically, To consult with local government agencies, OEA sent letters to city and county agencies in jurisdictions that could experience environmental impacts as a result of the Proposed Acquisition. OEA also consulted with individual local governments upon request. Additional consultation activities, including online meetings, telephone calls, emails, and mailed letters, occurred throughout the development of this Draft EIS.¹⁵ However, the Coalition communities have no evidence of being contacted by representatives of OEA or consulted about any aspect of the DEIS. For example, no key member of the following agencies received any contact from OEA to discuss the impacts of the merger on their communities: DuPage County Division of Transportation, DuPage Sheriff's Office; DuPage Emergency Management Agency; Bensenville Fire District; Wood Dale Fire Protection District; Itasca Police Department, Itasca Fire Protection District, or the Village of Bartlett. Additionally, despite being listed in Appendix A, Table A.1-1 of the DEIS as "Community Leaders Notified," neither the Wood Dale Police Department, the Hanover Park Police Department, nor the Bensenville Police Department received any letters or other contact from OEA, and none were consulted about potential impacts to their communities. As additional evidence of no OEA outreach to key government agencies, the Coalition notes that the primary agency in the state of Illinois for rail safety, the Illinois Commerce Commission ("ICC"), stated in its comments on the DEIS submitted on October 13, 2022 that "this agency was not contacted" by OEA prior to the DEIS being issued.

¹⁵ DEIS at S-5.

OEA Response

Regarding the commenter's claim that the description of consultation and outreach in the Draft EIS is brief and general, OEA notes that **Appendix A, Public Involvement** and **Appendix B, Agency and Tribal Consultation** collectively include more than 550 additional pages of information that OEA was unable to include in the body of the Draft EIS. Those appendices describe the extensive outreach that OEA conducted to federal, state, local, and tribal agencies, and interested parties and members of the general public during the NEPA process and the many opportunities that OEA provided for public involvement.

During the scoping process for the EIS, OEA sent correspondence seeking input on the environmental review to over 100 federal and state agency offices, as well as more than 400 local governments in nine states, including the Village of Itasca, the City of Wood Dale, the Village of Bartlett, the Village of Hanover Park, the Village of Bensenville, and DuPage County in Illinois. OEA held eight state agency consultation meetings during the scoping period, including a call on December 2, 2021, to which Illinois state agencies were invited.

OEA also met by conference call with the representatives of the communities referenced in the comment on April 4, 2022, to discuss the environmental review process and held an in-person public meeting in the Village of Itasca on September 12, 2022, to hear comments from elected officials, government agencies, and members of the public.

OEA also notes that the Illinois Commerce Commission did participate in the NEPA process by providing written comments during scoping, which OEA considered during the preparation of the Draft EIS, as well as during the public comment period for the Draft EIS, which OEA has addressed in this appendix.

Comment 567-4: Public Meeting Comment from the Coalition to Stop CPKC (EI-32756)

And while OEA gave notice of the Draft Environmental Impact Statement to local communities, there's no evidence before today that OEA has actually engaged in a dialogue with any of the transportation officials or first responders. On that score, the coalition notes that in the EJ&E proceeding, OEA's predecessor held eight Open House public meetings in the Chicago area to assess the environmental impact of that more limited transaction.

OEA Response

See response to Comment 462-10 above.

OEA notes that the EIS for CN's acquisition of EJ&E and the EIS for CP's acquisition of KCS are not comparable. The CN/EJ&E merger affected only approximately 200 miles of rail lines, all of which are located in the Chicago area, while the Proposed Acquisition would result in an increase in rail traffic on more than 1,724 miles of rail lines throughout the United States. For the environmental review of the Proposed Acquisition, it would not have been practical for OEA to schedule multiple in-person meetings with hundreds of different local agencies representing the approximately 651 communities where rail traffic could increase. However, OEA did schedule and hold conference calls with local agencies as appropriate upon request. In addition, the projected increase in rail traffic resulting from CN's acquisition of EJ&E was much higher on affected rail lines in the Chicago area than the projected increase in rail traffic for the Proposed Acquisition. While the CN/EJ&E merger was projected to increase rail traffic in the Chicago area by between approximately 15 and approximately 24 trains per day, on average, the Proposed Acquisition is projected to increase rail traffic by eight trains per day or less in the Chicago area. Therefore, the potential impacts of the Proposed Acquisition in the Chicago area would be much smaller than those identified during the environmental review of the CN/EJ&E merger.

Comment 462-11: Written Comment from the Coalition to Stop CPKC (EI-32542)

OEA's decision to not proactively seek public input and data from the Coalition communities in the Chicago area stands in sharp contrast to its analysis of the environmental impacts of CN's acquisition of the EJ&E West Company ("EJ&E").¹⁶ In 2007, CN made a special presentation to the Chicago Metropolitan Agency for Planning ("CMAP") regarding its plans for EJ&E.¹⁷ Then, on January 18, 2008, OEA's predecessor held a special meeting facilitated by CMAP to gain input from municipalities.¹⁸ Moreover, in that proceeding,

OEA's predecessor held eight open house/public meetings in the Chicago area to assess the environmental impact of that more limited transaction.

¹⁶ STB Docket No. 35087, Canadian National Railway and Grand Trunk Corporation – Control – EJ&E West Company (December 24, 2008).

¹⁷ <https://www.cmap.illinois.gov/documents/10180/160510/CNpresentation11-2807.pdf/1408e1f2-7b87-4171-8838-399f76373121>

¹⁸ [http://kdot.countyofkane.org/KKCOM/Meeting%20Documents/TransSubcomm 2008 MtgMinutes.pdf](http://kdot.countyofkane.org/KKCOM/Meeting%20Documents/TransSubcomm%202008%20MtgMinutes.pdf) Page PDF 13

OEA Response

See response to Comment 462-10 above. Regarding the commenter's statement that CN made a presentation to CMAP about the CN/EJ&E merger, OEA notes that any consultation between railroad applicants and communities or agencies in previous railroad acquisition proceedings is not relevant to the Board's environmental review of the Proposed Acquisition of KCS by CP. Further, OEA understands that CP has met with representatives of the Coalition communities and many other communities to discuss their concerns and has reached negotiated settlement agreements with 10 communities where rail traffic would increase, including two communities in Illinois. In both the CN/EJ&E acquisition and the present case, meetings between railroad applicants and potentially affected communities take place outside of the Board's environmental review process.

OEA notes that the EIS for CN's acquisition of EJ&E and the EIS for CP's acquisition of KCS are not comparable. The CN/EJ&E merger affected only approximately 200 miles of rail lines, all of which are located in the Chicago area, while the Proposed Acquisition would result in an increase in rail traffic on more than 1,724 miles of rail lines throughout the United States. For the environmental review of the Proposed Acquisition, it would not have been practical for OEA to schedule multiple in-person meetings with hundreds of different local agencies representing the approximately 651 communities where rail traffic could increase. However, OEA did schedule and hold conference calls with local agencies as appropriate upon request. In addition, the projected increase in rail traffic resulting from CN's acquisition of EJ&E was much higher on affected rail lines in the Chicago area than the projected increase in rail traffic for the Proposed Acquisition. While the CN/EJ&E merger was projected to increase rail traffic in the Chicago area by between approximately 15 and approximately 24 trains per day, on average, the Proposed Acquisition is projected to increase rail traffic by eight trains per day or less in the Chicago area. Therefore, the potential impacts of the Proposed Acquisition in the Chicago area would be much smaller than those identified during the environmental review of the CN/EJ&E merger.

Further, contrary to the commenter's claims, OEA did provide ample opportunity for interested local agencies and the public to provide input during the environmental review process. During the scoping process for the EIS, OEA sent letters seeking input on the environmental review to over 100 federal and state agency offices, as well as more than 400 local governments in nine states, including agencies in the communities represented by the commenter. The scoping letters asked agencies to review and comment on the scope of the EIS and to provide any information relevant to environmental resources under their

jurisdiction or purview. The letters also contained contact information for OEA staff. Despite these outreach efforts, none of the agencies in the communities represented by the commenter contacted OEA during scoping.

OEA held eight state agency consultation meetings during the scoping period, including a call on December 2, 2021, to which Illinois state agencies were invited. No Illinois state agencies chose to join the December 2, 2021 consultation call. OEA also held six online public meetings during the scoping period at which officials, agency representatives, and members of the public could have participated from anywhere in the country. Based on OEA's records of the online meetings, one citizen from a community represented by the commenter spoke at an online public scoping meeting. Four citizens and one official from those communities registered to participate in one or more scoping meetings but did not speak.

During the preparation of Draft EIS, OEA met by conference call with the representatives of the communities represented in the comment on April 4, 2022, to discuss the environmental review process. After issuing the Draft EIS, OEA held three online public meetings at which officials, agency representatives, and members of the public could have participated from anywhere in the country. OEA also held four in-person public meetings during the comment period for the Draft EIS, including an in-person meeting in the Village of Itasca on September 12, 2022. In total, OEA held thirteen public meetings during the environmental review process, including ten public meetings at which members of the communities represented by the commenter could have participated without needing to travel outside of the Chicago area.

Also, during the comment period, OEA conducted site visits to observe current conditions in areas that could experience impacts as a result of the Proposed Acquisition, including Bensenville, Illinois; Itasca, Illinois; Elgin, Illinois and Wood Dale, Illinois (the site visits between Elgin and Bensenville included riding the Metra MD-W line).

Additional details on OEA's extensive efforts to raise awareness among agencies, elected officials, and the public are available in the EIS in *Section 1.4, NEPA Process*, which describes the scoping process. As detailed there, OEA advertised online meetings through the NOI letters (the dates, times, and log-in details for six online public scoping meetings). OEA also posted Google banner advertisements (banner ads) online focusing on areas with identified Environmental Justice (EJ) populations in the project area. The banner ads announced the project and encouraged viewers to click on the ad to visit the Board-sponsored project website for more information. The Board-sponsored project website provided information on the Proposed Acquisition including maps, the NOI, and dates and times for the public scoping meetings. In addition, OEA issued a press release to local media, including television stations, radio stations, and newspapers, along the proposed CPKC system. The press release announced OEA's intent to prepare an EIS and advertised the purpose, dates, and times for the public scoping meetings. After the close of the comment period on the scope of the EIS on January 3, 2022, OEA reviewed all comments received and issued a Final Scope of Study for the EIS on February 18, 2022, which responded to comments received during the scoping period and set forth the final issues to be examined in the EIS.

Comment 462-12: Written Comment from the Coalition to Stop CPKC (EI-32542)

Unlike that prior proceeding, there is little or no evidence that OEA conducted any public outreach to the leaders of the Coalition communities, or to the ICC for that matter, to discuss the environmental review process or seek information about the potential impacts of the merger on the Chicago area. Accordingly, the DEIS must be supplemented with analysis based on actual consultation of the leaders of the Coalition member communities and the ICC for their input and detailed information on the potential impacts to their communities in the critical areas of crossing safety, crossing delays, noise, vibration, and hazardous materials. The process should include a discussion of the feasibility and need for the Applicants to institute appropriate mitigation measures to alleviate potential harm. (462-12) (Reference #: EI- 32542)

OEA Response

See responses to Comments 462-4, 462-10, and 462-11 above.

Comment 460-3: Written Comment from Metra (EI-32539)

OEA's failure to independently assess the validity of the data submitted by Applicants means it has not taken the " 'hard look' at the environmental consequences of the proposed action." *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1163 (10th Cir. 2002); *Ctr. For Biological Diversity v. Dept. of Interior*, 623 F.3d 633, 641 (9th Cir. 2010) (reviewing court's role is to "ensure that the agency has taken a 'hard look' at the environmental consequences of its proposed action"). Because the DEIS published on August 5 does not take the requisite "hard look," OEA must prepare a Supplemental DEIS. The STB's regulations provide that an EIS may be supplemented where necessary and appropriate to address significant new and relevant information. 49 C.F.R. § 1105.10(a)(5). Moreover, the Supreme Court has held that an agency must take a hard look at possible new environmental effects and apply a rule of reason when it makes decisions regarding EIS supplementation. In *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989), the Court stated that:

Application of the rule of reason thus turns on the value of the new information to the still pending decision making process. In this respect the decision whether to prepare a supplemental EIS is similar to the decision whether to prepare an EIS in the first instance: If there remains 'major Federal action' to occur, and if the new information will 'affect the quality of the human environment' in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.

Id. at 374.

In reviewing the data and environmental study information from a project proponent when conducting a NEPA review, the lead agency must verify the accuracy of the information it receives and not just accept it outright. See 40 C.F.R. § 1506.5(b)(2). At this point, OEA has not lived up to that obligation. Metra and other parties in the ongoing proceeding before the Board have presented a substantial body of evidence that challenges the veracity of the information provided by the Applicants. This information, which directly undermines the validity and accuracy of Applicants' submissions, suggests that OEA has not met its

obligation to verify the data in the application, the data OEA used to conduct environmental analyses throughout the DEIS. As a result, the OEA should undertake a thorough review of the data Metra is supplying, conduct its own rigorous analysis, and prepare a Supplemental DEIS.

OEA Response

Regarding OEA's use of data provided by the Applicants about the Applicants' proposal, see responses to Comment 33-3 and Comment 462-17 above.

Regarding the commenter's request that OEA prepare and issue a Supplemental Draft EIS, see response to Comment 462-4 above.

Comment 460-4: Written Comment from Metra (EI-32539)

OEA relied on vague representations without reliable data to conclude that there would be little impact on Metra service, even though Applicants intend to nearly triple the number of excessively lengthy trains, consequently leading to increased intermodal and other activity on Metra lines and did not submit a thorough, industry-standard analysis of the potential impacts of traffic increases.

The information Applicants have supplied to OEA, both at the outset of the matter with the Application and after the Board required them to fix data accuracy and reliability identified by various parties, is seriously flawed. OEA's reliance on those data undercuts the validity of the DEIS.

Examples of the flawed nature of Applicants data include:

- a. Applicants conceded that the "base year" tonnages and train counts that they submitted to OEA were not based on actual 2019 data, but were the product of a "modeling" exercise that included monthly traffic from multiple years, although none of which were from 2019. Thus, Applicant's data begin with a manipulated, not actual pool of information upon which OEA can conduct its assessment.
- b. Applicants submitted traffic density data three times since their original Application. Each time, the data were different. On the face of the submitted information, numbers in Applicants' Amended Operating Plan were not "essentially the same as those submitted to OEA" as the Board expected in its April 27, 2022 Decision (Decision No. 16).

The absence of substantial discussion of the impacts of the proposed merger on Metra's operations underscores that OEA has not accurately assessed those impacts. In reviewing the Application, Metra was sufficiently concerned about the inaccuracy of Applicant's projected impacts that it engaged its own RTC modeling, using information provided by Applicants in discovery and following the guidance of the RTC manual to determine which inputs to use. The facts that Metra has presented to the Board belie Applicants' assertions and OEA's conclusion that there will be no impact on Metra's commuter operations that rise to the level of the Board's thresholds requiring corrective mitigation. Metra's comprehensive RTC modeling, which is the gold standard that provides information on rail traffic patterns and the abilities of trains to operate efficiently on the same line, demonstrates the impacts of the proposed transaction on Metra's operations. Applicants in this proceeding

did not submit such modeling, and the OEA did not conduct an independent assessment using RTC modeling, relying instead on self-serving and incomplete information provided by Applicants. Until the Applicants submitted, late in the proceeding, their response to Metra's modeling outputs, the only RTC modeling conducted supports Metra's concerns that the merger will undermine the safety and reliability of commuter service. This modeling demonstrates that Applicants' proposed Operating Plan will not work, and CP's freight traffic will increase Metra train delays per 100 train miles substantially on Metra's MD-W and MD-N, creating social, economic and safety impacts from the transaction in addition to the negative impacts on Metra's service. The EIS must assess all impacts, and that assessment is absent.

[...]

The insufficiency of the DEIS stemming from reliance on information provided by Applicants that was not verified by RTC modeling is not the end of the Applicants' misstatements upon which OEA relied. For example, traffic east of the Bensenville Yard is excluded in OEA's analysis because the data Applicants supplied do not take into account several types of rail traffic that currently, and will continue to, operate on the lines shared by CP and Metra. See Comments and Request for Conditions of the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra, Docket No. FD 36500, (Date Filed March 15, 2022) ("METR-7") at 52-54. Applicants asserted that there will be no new "trains" east of the Bensenville Yard, knowing that there is grave concern that any increase east of the Yard will degrade public transportation. Firstly, Metra's RTC modeling contradicts that conclusion finding that additional traffic will add to congestion on those lines even if not separate new "trains." Id. at 14 and 56. Thus, cars coming off "new trains" into Bensenville can be added to old trains leaving Bensenville, lengthening them and creating issues for rail operations and the health and safety of the surrounding population by virtue of that additional length, that will travel east of the Bensenville Yard. As a result of relying on Applicants' misrepresentation of the impact on the merger on lines east of the Bensenville Yard, the scope of OEA's analysis is incorrect because additional traffic not accounted for by Applicants in their Application will exceed the analysis threshold for several resource areas on Metra-owned line segments east of Bensenville.

For example, traffic east of Bensenville that is moving to the Indiana Harbor Belt ("IHB") and Belt Railway of Chicago ("BRC") must increase, as will traffic to and from the north with potential new shippers in places like Racine and Milwaukee taking advantage of a direct route to KCS points and beyond. Metra previously explained, in verified statements of Metra staff, including former CP employees with extensive experience of current interference caused by CP's operations, and using outputs by Metra's modeling, how Applicants' assertions ignore the actual operating environment in which Metra trains run. By playing games with semantics by asserting that there will be no "new trains," Applicants remain silent on other movements, such as an increase in interchange assignments, trains linked on existing schedules, transfers, and/or local assignments. Metra Reply to Applicants' July 13, 2022 Rebuttal, Docket No. FD 36500, Attachment A, V.S. Cork para. 4 (Filed August 1, 2022) ("METR-13") (Verified Statement of Steve M. Cork, submitted as part of METR-13 is attached to these Comments for OEA's ready reference as Exhibit 6). The train symbols may not operate east of the Bensenville Yard; however, the traffic will move under

different symbols. So, Applicants' use of the term "train movements" and their assertion that there will be no "trains" east of Bensenville excludes other types of movements that impact the Metra-owned lines east of the Bensenville Yard and will cause environmental impacts due to the increased traffic on these lines.

Applicants' fail to explain how a 267% increase in traffic west of Bensenville will disappear by being "handled in existing trains," or how, if potential longer trains rather than more, this will not result in the same impact or worse impacts, such as longer delays at crossings and more interference with passenger access at stations. OEA's analysis also does not address what happens to the increased traffic once it reaches Bensenville Yard. Applicants do not address, and the DEIS is silent on the effects of, longer trains, or the need for additional trains to handle traffic on Metra's lines east of Bensenville, or whether the additional traffic moving into Bensenville will move out by trucks. If the latter, a careful analysis of those impacts is wholly absent as well. OEA merely accepted Applicants' position that there would be no additional new "trains" east of Bensenville as dispositive and without scrutiny – the required "hard look" – at the answer to the question: Where will all the traffic coming in to Bensenville from the west go? Therefore, Metra requests that OEA supplement the DEIS with the verified data provided by Metra and by others who have assessed the operating impacts in the Chicago network pertaining to traffic east of Bensenville Yard on Metra's lines.²

² Metra is aware of the proposal presented by Senators Durbin and Duckworth and Congressman Krishnamoorthi, and supported by the Coalition to Stop CP/KCS, to build a new yard west of Elgin to handle intermodal and automobile traffic that Applicants assert would otherwise stop at the Bensenville Yard and not create additional congestion east of Elgin as Metra's modeling and Mr. Cork's testimony suggests this will happen. If this traffic from the west will not continue via rail past a new yard west of Elgin into the Bensenville Yard, then Metra wholeheartedly supports this proposal to require Applicants to construct a new yard. If, however, Metra's assessment that the increased traffic from west of Elgin will continue via rail to the east, then Metra's previous assertions of the need for mitigation due to that increased rail traffic is critical.

OEA Response

Regarding data submitted by the Applicants, see response to Comments 33-3 and 462-17 above. Regarding the "hard look," see response to Comment 460-1 above.

Regarding the commenter's concern that rail traffic could increase on rail lines east of the Bensenville Yard, OEA notes that the Applicants project that those rail lines would see an increase in rail traffic, measured in gross ton-miles, but that the projected increase is well below the thresholds for environmental review set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e).

Regarding the request that the Applicants relocate the Bensenville Yard to a point west of Elgin, Illinois, OEA notes that the Bensenville Yard has been in operation for many years and predates much of the residential development in the area. Therefore, the presence of the Bensenville Yard and of truck traffic on local roadways providing access to the yard is a pre-existing condition. The Applicants do anticipate that the Proposed Acquisition would result in an increase in activity at the Bensenville Yard, but the projected increase would be

relatively small at approximately 25.5 percent measured in rail cars processed per day. As discussed in detail in *Section 3.5, Intermodal Facility Traffic* and the corresponding **Appendix I, Truck to Rail Diversions & Intermodal Facility Traffic**, the minor impacts on local roadways resulting from the projected increase in truck traffic would not warrant mitigation.

Further, the costly construction of a new intermodal facility would likely result in additional environmental impacts, including adding a large number of additional trucks on I-20 between Chicago and the new facility.

Regarding the commenter's request that OEA prepare and issue a Supplemental Draft EIS, see response to Comment 462-4 above.

Comment 511-2: Written Comment from Rep. Raja Krishnamoorthi (EI-32630)

In addition, the proposed merger will have a substantial impact on commuters and Metra commuter rail operations in the Chicago metropolitan region. Advancing and expanding public transportation is a top federal priority, as demonstrated through the Infrastructure Investment and Jobs Act's (IIJA) historic investment of \$108 billion for public transportation;¹² however, this proposed merger works against these federal efforts by potentially decreasing public trust in the reliability of Metra and likely damaging Metra's finances.

CP's three freight trains that run on Metra's MDW and Milwaukee District-North lines already cause frequent Metra commuter train delays, and additional freight trains would significantly worsen these delays. According to Metra, CP, which has dispatching rights on Metra's lines, regularly violates its contractual obligation to allow Metra to operate during specified windows of time by giving preference to freight rail over Metra trains.¹³ These violations lead to Metra commuter delays of over 20 minutes even during peak periods.¹⁴ This proposed merger, Metra has suggested, would cause an almost 300% increase in delays, which would "break" its system.¹⁵ I am concerned these additional delays would encourage potentially hundreds of thousands of commuters to drive rather than take Metra trains, thus clogging our roads, harming the environment, and setting back public transit for decades.

The draft EIS, however, does not consider CP's track record in violating its operating agreement with Metra. In fact, the draft EIS concludes that "based on a review of the operating agreement between Metra and CP, OEA does not anticipate reasonably foreseeable changes to the Metra service in the study area by 2027."¹⁶ The draft EIS continues that "CP is obligated to protect these windows to avoid interfering with scheduled Metra trains."¹⁷ However, as Metra has stated, CP does not currently uphold its commitments and, without extreme intervention by the STB, there is little reason to believe that it would uphold these commitments should the merger be approved. Incorporating CP's current track record in violating its agreement with Metra into the STB's analysis would provide a better picture of the impact of this proposed merger, if CP's current track record continues.

In addition, CP's projected increase of additional trains would significantly harm Metra's finances by preventing an expansion of Metra service to support the recovery of pre-

pandemic ridership levels. Before the pandemic, Metra's MDW line had almost 6 million annual passenger trips.¹⁸ While the pandemic caused a dramatic dip in ridership in April 2020 to about 3% of 2019 levels,¹⁹ Metra ridership has steadily rebounded to 45% today and is projected to reach 80% by 2024.²⁰ With Metra expecting the eventual return of ridership towards pre-pandemic levels and budgeting accordingly, its finances would be devastated with increased delays discouraging Metra ridership and with additional freight traffic limiting Metra's ability to expand its service.

Therefore, I urge the Board to strongly consider these impacts on commuter transit in its review of the merger, and ensure that you provide strong, comprehensive mitigation and oversight measures, if the merger is approved.

¹² Federal Transit Administration, Bipartisan Infrastructure Law, June 7, 2022.
<https://www.transit.dot.gov/BIL>.

¹³ Metra STB filing, March 15, 2022, Pages 11-12.

¹⁴ State of Metra Operations, August 2022.

¹⁵ Metra STB filing, July 8, 2022, Attachment B.

¹⁶ OEA, Canadian Pacific Acquisition of Kansas City Southern: Draft Environmental Impact Statement, August 5, 2022, Chapter 3: Cumulative Impacts, Page 3.14-3.

¹⁷ Ibid.

¹⁸ OEA, Canadian Pacific Acquisition of Kansas City Southern: Draft Environmental Impact Statement, August 5, 2022, Chapter 3: Freight and Passenger Rail Safety, Page 3.1-28.

¹⁹ Metra, Ridership Trends: 2021 Annual Report, February 2022.
<https://metra.com/sites/default/files/inlinefiles/2021%20Annual%20Ridership%20Report%20v6.1.pdf>.

²⁰ Metra, 2022 Proposed Operating & Capital Program & Budget, 7, 58 (2021),
https://metra.com/sites/default/files/inlinefiles/Brochure_8.5x11_ProposedBudgetBookElectronic_2022_VFINAL.pdf.

OEA Response

See response to Comment 460-4 above.

To the extent that the commenter believes that the Proposed Acquisition would exacerbate existing perceived issues related to CP's dispatching of Metra trains, this would not be an environmental impact of the Proposed Acquisition under NEPA and is thus outside of OEA's environmental review. As appropriate, the Board will address issues related to rail line capacity and dispatching as part of its review of the transportation merits of the Proposed Acquisition in its final decision.

Comment 460-5: Written Comment from Metra (EI-32539)

Metra's concerns about CP's exercise of control over Metra's ability to provide needed services to the communities along its lines are well-founded in CP's past practices. In recent

years, CP has stymied Metra's efforts to expand service during off-peak hours. In 2019, for example, Metra pursued the addition of 4 non-peak, reverse commuter trains on the MD-N line (C&M Subdivision). As required under the Trackage Agreement, Metra sought CP's consent, which, according to this governing document, CP cannot unreasonably withhold. However, CP refused, although the requested time slots were empty, without explanation. Instead of allowing Metra to respond to its customers' requests, CP responded that if Metra wanted to grow its operations on the Metra-owned corridor, Metra had to use public funds to make millions of dollars in corridor improvements. CP further stated "[t]he issue is capacity" and that "[p]rotection of capacity is vital." See CP Letter 20190402 to Metra re: Reverse Commute Trains, previously submitted in the FD 36500 as METR-07, Exhibit 8, and attached hereto as Exhibit 9. In the current proceeding, of course, CP agreed to allow Amtrak to operate additional trains on the Metra-owned lines, without consultation with Metra, but has still not agreed to allow Metra to run the trains it has discussed previously. This represents CP's unsubstantiated belief that it has the ability to block Chicago-area residents' access to a critical urban transportation service to reach major employment centers in Lake Forest, Illinois. As the needs of the commuting public and the commuting patterns of Chicago residents evolve as the economy emerges from the impacts of the COVID pandemic, Metra needs a cooperative partner. However, despite the statements upon which OEA relied, CP's record of non-cooperation leads Metra to fear that the impacts of increased traffic will exacerbate an already tense situation, and harden CP's position that Illinois or federal tax money should subsidize its operations.

Capacity that was historically Metra's has been usurped by CP. In 2019, Metra wanted to reinstate four Saturday and two Sunday commuter trains that were eliminated in 2018 due to budgetary issues. Metra sought CP's consent (which cannot be unreasonably withheld, according to the Agreement between Metra and CP) to implement this change. CP refused, stating that there was limited or no capacity on the line, even though these slots were not being used for freight. As a result, Metra was barred from reinstating its previous service, depriving Chicagoans of an effective and efficient transportation option that they previously enjoyed. And yet, CP proposes to add trains on the lines. Again, CP had no issue with agreeing to allow Amtrak, to increase more than 4 trains on the same track, during the course of these proceedings.

OEA Response

See response to Comment 447-1 above. Regarding past or current disagreements between Metra and CP related to dispatching of passenger and freight trains on shared track, this is an existing condition that is not related to the Proposed Acquisition. OEA notes that CP committed in its final brief to the Board to engage with Metra in good faith to evaluate Metra operational changes outside peak windows including in the development of objective standards for the addition of such trains. As appropriate, the Board will address issues related to rail line capacity and freight and passenger rail operations as part of its review of the transportation merits of the Proposed Acquisition in its final decision.

Comment 591-1: Public Meeting Comment from Sarah Albrecht (EI-32756)

Can you ask them to relocate the Depo away from our communities somewhere in a non-residential area west of Elgin, what are the practical, innovative strategies that are being discussed? We don't know. I look forward to hearing that. And thank you once again, for everyone who has spoken out today.

It's also indicated that you're not having conversations and consultations with our community leaders, all of whom have spoken here tonight, every single one of my community leaders from the local to the county to the state, and federal have spoken out here tonight.

OEA Response

See response to Comments 460-4 and 462-12 above.

Comment 453-1: Written Comment from the Harris County Attorney's Office (EI-32532)

Harris County appreciates the Surface Transportation Board's (STB) efforts to provide language access in its public outreach efforts, such as providing Spanish-language interpretation at its public meetings. Harris County is committed to improving public participation in environmental matters, especially regarding language justice. Harris County requests that in the future the agency also include language services for Vietnamese and Chinese, which are the next two most frequently spoken languages in the County after Spanish.

OEA Response

Comment noted.

Comment 453-20: Written Comment from the Harris County Attorney's Office (EI-32532)

Harris County's new nonattainment designations and the increasing focus on environmental justice within the CAA scheme are significant new circumstances that have bearing on the impacts of the Proposed Acquisition that warrant the creation of a Supplement EIS for the County.⁴¹

Good faith discussions with the County and EJ populations within it regarding mitigation efforts are necessary to comply with the CEQ's guidance. These efforts should include scheduling an in-person hearing in the County. The public hearing should be tied to the Supplemental EIS if one is prepared.

⁴¹ National Environmental Policy Act Review Process, ENV'T. PRO. AGENCY, <https://www.epa.gov/nepa/national-environmental-policy-act-review-process> (last updated Oct. 5, 2022) (Stating that a supplement to a draft of final EIS is required when there "are significant new circumstances or information relevant to the environmental concerns that have bearing on the proposed action or its impacts").

OEA Response

OEA has revised *Section 3.7, Air Quality and Climate Change* to reflect the new classifications of ozone attainment status issued by the U.S. Environmental Protection Agency (EPA) and effective as of November 7, 2022. Under the new classification, the Houston-Galveston-Brazoria (HGB) Ozone Nonattainment Area will be reclassified as severe nonattainment under the 2008 Ozone standard. The reclassification does not have a substantial impact on the analysis or conclusions presented in the Draft EIS. Therefore, preparation of a Supplemental Draft EIS would not be necessary or appropriate. See also response to Comment 462-4 above regarding the commenter's request for a Supplemental Draft EIS.

Regarding the commenter's request for an in-person public meeting in Houston, OEA notes that OEA provided many opportunities for members of the public to provide comments on the Draft EIS. These included three online public meetings at which members of the public from any location within the United States could participate. OEA also held several in-person public meetings in or near areas where OEA found that the Proposed Acquisition could result in adverse environmental impacts, including Beaumont, Texas, which is located near areas in southeast Texas where adverse noise impacts could occur. Although OEA did not hold any in-person meetings in Houston because any impacts there would be minor, OEA did conduct a site visit to Houston to meet with local officials and hear their concerns. OEA also received comments from officials, agencies, and residents of Houston both in writing and orally during online public meetings.

OEA also notes that, following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to work with communities to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as blocked crossings. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using Computer Aided Dispatch (CAD) software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board's final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03).

Comment 448-1: Written Comment from Houston City Council Member Robert Gallegos (EI-32524)

The rail network is connected and interdependent; service problems in one area on one railroad can cascade throughout the system. We have seen and experienced congestion-related problems in the Houston network before, and the proposed CP-KCS merger will worsen the situation by adding to an already busy railroad complex. According to the STB's Draft Environmental Impact (EIS), the merger is expected to bring 8 to approximately 14.4 additional trains per day through the complex. The Houston Terminal is already seeing severe congestion issues with only a minor increase in its yearly average of trains. Even more troubling is the fact that CP-KCS have proposed no infrastructure or capacity expansion projects in Houston to mitigate impacts due to the merger, nor have they proposed any mitigation agreements with local authorities as they have done in other jurisdictions.

OEA Response

OEA notes that the projected increase in trains per day on rail lines in Houston is 7.57, not 8 to 14.4 as the commenter claims. OEA also notes that the Applicants do not own any rail lines in Houston. Therefore, capital improvements on rail lines in Houston would be made by the rail line owners, Union Pacific Railroad Company (UP) and BNSF Railway Company (BNSF).

OEA notes the commenter's concerns about existing conditions related to the capacity of rail lines in Houston. OEA did not analyze the potential effect of the Proposed Acquisition on rail line capacity in general because this would not be an environmental impact of the Proposed Acquisition. Further, as stated in *Chapter 4, Mitigation*, any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board. OEA's consistent practice has been to recommend mitigation only for those impacts that would result directly from a proposed transaction, such as the Proposed Acquisition of KCS by CP. The Board does not require mitigation for pre-existing environmental conditions, such as the effects of existing rail operations. As appropriate, the Board will address issues related to rail line capacity as part of its review of the transportation merits of the Proposed Acquisition in its final decision. Therefore, no changes to the Draft EIS are warranted in response to this comment.

See last paragraph of response to Comment 453-20 above regarding OEA's Final Recommended Mitigation in Houston.

Comment 448-2: Written Comment from Houston City Council Member Robert Gallegos (EI-32524)

This is likely because the applicants, to our knowledge, have not conducted any formal analysis of Houston's capacity to determine whether the existing infrastructure in the Houston complex can handle the increase in traffic. Of the 25 capital improvement projects proposed by CP-KCS, not a single project would take place in Houston or the state of Texas. This is unacceptable. The applicants should not be allowed to add to an already strained railroad complex without fully studying and analyzing the impacts they will cause in

Houston and without investing in mitigation. That is why we urge the STB to require the merging entities to jointly commission an independent engineering study to identify needed infrastructure improvements to alleviate regional congestion as part of a supplemental EIS, and to mandate that no additional trains be introduced into the Houston system until study recommendations are acted upon and financed by the applicants.

If the federal government allows this merger to proceed as proposed, with no mitigation investments in Houston by CP-KCS, then the federal government should be prepared to play a leading role in resolving ongoing issues and merger-related problems by investing in solutions and providing more oversight and enforcement. Whether preventing further environmental degradation or reducing blocked crossings and noise, the federal government and its regulating agencies must be responsible for protecting Houstonians from merger-related impacts.

OEA Response

See responses to Comment 448-1 above. OEA notes the commenter's concerns regarding existing conditions in Houston related to grade crossing delay. Following issuance of the Draft EIS, the Applicants notified OEA that they are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to work with communities to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as blocked crossings. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that 40 C.F.R. § 1502.9(d)(1) require agencies to prepare supplements only when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none.

Comment 448-3: Written Comment from Houston City Council Member Robert Gallegos (EI-32524)

Equally important is the need for CP-KCS to engage local stakeholders, including city and county leaders, emergency officials, environmental advocates, and the community on their plan to responsibly manage increased traffic through the Houston complex and the cascading effects on safety, mobility, and quality of life. We implore the STB to provide a

supplemental environmental impact statement that includes an independent capacity study of the Houston system, further analyze the concerns and issues outlined in the EIS, and require CP-KCS to work with City of Houston and Harris County officials to develop plans and mitigation agreements before taking any further action on this matter.

OEA Response

See responses to Comments 462-12, 448-1, and 448-2 above.

Comment 463-1: Written Comment from the Sierra Club Delta Chapter (EI-32545)

I think the greatest disappointment regarding this phase of the merger proposition was the lack of engagement with Louisiana residents. A public meeting within the State of Louisiana would have been truly appreciated. In terms of the draft EIS, we were unable to understand the vision for passenger rail within Louisiana in particular, and the role this merger would play in helping the State of Louisiana achieve its climate goals and improve the environmental well-being of residents and communities living in nonattainment areas, regardless of their identities, as well as potential for more robust improvements to our rail to help us achieve a strong passenger rail network, improvements like double track instead of just additional sidings. It is important to begin developing a transparent, accessible relationship with on-the-ground organizations and local officials and communities.

We also lift up the concerns expressed during the September 19th public hearings/KCS merger online meeting regarding the environmental impact and bad practices employed by the involved companies in the past, along with the increased risks, risks that were minimized, when materials that will be carried on these trains are hazardous, dangerous, or polluting to our surrounding communities. We support freight and passenger rail but ask that the STB and Amtrak consider the consequences of the merger and more transparently engage with those of us who will be impacted about it. We need to do this well, not just merge companies for the sake of merging and for the sake of profit at the expense of our communities. There are issues, existing issues present prior to the merger proposition and the United States needs to get serious about addressing in real-time the current issues that impact access to emergency services or that exacerbate environmental harms even if this merger itself does not dramatically, quantifiably shift what is already problematic. We must see this all comprehensively and cumulatively and not bifurcate this merger from the larger environmental concerns and risks that already exist. Even the minor, additional spills or accidents have real, tangible impacts. Beyond this, we uplift the concerns of consolidation that impact workforce environments.

OEA Response

Comment noted. Regarding public outreach during the NEPA process, see responses to Comment 462-10 and Comment 462-12 above. Given the broad geographic scope of the Proposed Acquisition, it would not have been possible for OEA to hold public meetings in every state, though OEA's online public meetings during scoping and following issuance of the Draft EIS were open to all interested parties in the United States. Regarding impacts related to air quality and climate change, please refer to *Section 3.7, Air Quality and Climate Change*. Regarding impacts related to passenger rail and hazardous materials transportation,

please refer to *Section 3.1, Freight and Passenger Rail Safety*. No changes to the Draft EIS are warranted in response to this comment.

Comment 526-1: Written Comment from Harris County Commissioner Rodney Ellis (EI-32556)

"General Complaints about EIS process"

Before getting into specifics of the draft Environmental Impact Statement (EIS), I want to unpack the quality of the community engagement process. On three occasions my office requested, in writing, a site visit or public hearing in Harris County so that Surface Transportation Board staff and board members could understand the impacts of the merger on our 4.68 million residents. My office did not receive a formal response and a visit was only arranged after my appearance before the board at a hearing on the transportation merits of the merger. Black residents of Harris County, Texas have born a unique and terrible burden of pollution and contamination from freight corporations and while I appreciate the board moving the only public hearing in Texas from Vidor, a sundown town, to Beaumont, the 180-mile round trip from Houston on a weekday evening was simply not realistic or accessible for my constituents and can hardly be called "the fair treatment and meaningful involvement".

OEA Response

Regarding public outreach during the NEPA process, see responses to Comment 462-10 and Comment 462-12 above.

As detailed in **Appendix A, Public Involvement**, OEA provided numerous opportunities for public participation in the NEPA process. During the scoping process, OEA held six online public meetings at which members of the public could participate via computer or phone from anywhere in the United States. OEA also requested and accepted written public comments on the scope of the EIS through the Board-sponsored project website and the Board's website.

As detailed in **Appendix B, Agency and Tribal Consultation**, OEA also conducted extensive outreach to federal, state, local, and tribal agencies with potential interest in the environmental review of the Proposed Acquisition. OEA staff responded to the commenter's correspondence by email, by phone calls with the commenter's staff, and in person with the commenter's staff during an in-person public meeting in Beaumont, Texas and during a site visit to Harris County and Houston.

During the public comment period for the Draft EIS, OEA held three online public meetings at which members of the public from any location within the United States could participate. OEA also held several in-person public meetings in or near areas throughout the United States where OEA found that the Proposed Acquisition could result in environmental impacts, including Beaumont, Texas, which is located near areas in southeast Texas where adverse noise impacts could occur. OEA does not anticipate that the Proposed Acquisition would result in any high and adverse impacts in Harris County. Although OEA did not hold any in-person meetings in Harris County, OEA did conduct a site visit to Harris County to meeting with local officials and hear their concerns. OEA also received comments from

officials, agencies, and residents of Harris County both in writing and orally during online public meetings.

Comment 443-1: Public Meeting Comment from Zoe Middleton for Harris County Commissioner Rodney Ellis (EI-32760)

Good evening. My name is Zoe Middleton, and I am speaking on behalf of Harris County Commissioner, Rodney Ellis, who represents the 1 million residents in Harris County Precinct One. Many of those residents live in environmental justice communities for whom the environmental impacts of this merger will not be negligible, minor, or temporary as the DEIS contends. Last week our Commissioner's passed a resolution affirming its commitment to seeking equitable and proportionable mitigation should the Board approve this merger. Before I get into the specifics of the document, I want to touch on the environmental review process so far. On three occasions our office requested in writing a site visit or public hearing in Harris County so the STB could understand the impacts of the proposed merger on our 4.68 million residents, but our office did not receive a formal response agreeing to or declining our request. Black and Hispanic residents of Harris County have worn a unique and terrible burden of pollution and contamination from freight corporations. So while we appreciate the Board moving the only public hearing in Texas from Vidor, the sundown town, to Beaumont, a 180-mile round-trip on a school night was not accessible, and it cannot be considered what the EPA calls fair treatment or meaningful involvement.

OEA Response

See response to Comment 526-1 above.

Comment 632-1: Public Meeting Comment from Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association (EI-32759)

The Environmental Protection Agency classified nearly all the communities that will have 14 more trains in their backyards as disadvantaged communities. Also, the Harris County region is one of only two non-attainment areas along the project pathway across the United States and Mexico. Houston families already dealing with the life and death consequences of railway merger where the safety of our community was an afterthought. We deserve a chance to voice our concerns about the merger's impacts on our family's health, safety, and well-being. We support the Commissioner Ellis's efforts for a public hearing in the City of Houston. I think it's sad that they want to take away voices of the citizens who are going to have to bear the brunt of these railroads going right through their communities. I think they should be given an opportunity to speak, and that you should be able to hear directly from the people who are going to have to deal with this for probably the rest of their lives.

OEA Response

See response to Comment 526-1 above.

Comment 526-6: Written Comment from Harris County Commissioner Rodney Ellis (EI-32556)

"Traffic Levels"

Throughout the consideration of this merger concerns have been raised about the capacity of the freight rail network in the Harris County region to accommodate an increase in traffic. Without a capacity study to consider alongside the projections submitted to the board it is difficult to determine the reasonableness of various mitigation efforts. I urge the board to 1) require the merging entities to jointly commission an engineering study to identify needed infrastructure improvements to alleviate regional congestion as part of a supplemental EIS and 2) mandate that no additional trains should be introduced into Houston system until study recommendations are acted upon and financed by the rails.

OEA Response

See responses to Comment 448-1 and Comment 462-17 above. OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of a proposed action. Issues related to current or future capacity of rail lines over which the Applicants have trackage rights are not environmental effects that would result from the Proposed Acquisition. Therefore, OEA appropriately did not assess rail line capacity as part of the environmental review, and no changes to the Draft EIS are warranted in response to this comment. As appropriate, the Board will address issues related to rail line capacity as part of its review of the transportation merits of the Proposed Acquisition in its final decision.

Comment 631-1: Public Meeting Comment from Roy L. Malveaux, Director of People Against Contaminated Environment (EI-32759)

The EPA has classified nearly all of the communities that will have more trains in their backyard as a disadvantaged community. That means me. And that will have an effect on me. And therefore, I'm here tonight because we deserve to voice our concerns about the merger's impact on our family scale, our safety, and our well-being. And I support all those who oppose this merger, this acquisition. And here's some of my concern. At least seven to 11 trains per day are running through the City of Beaumont, some at all hours of the night. Beaumont's added rail crossing will add to the safety risk and increased delays of emergency responses. The merger will increase railway noise upon the Jefferson County Courthouse, the Beaumont Police Department, Family Violence Department Building, and the Saint Anthony Cathedral Church. This also includes low-income populations, and two limited English speaking population. But I have some other concerns. There was no engagement with this community nor with Southeast Texas during the drafting process. And you even engaged or tried to go around the entire City of Beaumont to get it done. And that concerns me.

OEA Response

See response to Comment 526-1 above regarding public outreach and agency and tribal consultation.

Comment 689-1: Public Meeting Comment from Ariana Akbari (EI-32759)

My name is Ariana Akbari, but I go by Ari for short. And I forgot my personal intro. I was born and raised here, technically in Nederland, Texas, or between the city limits actually between Nederland and Beaumont, Texas. My family has lived and worked in Port Arthur, Port Neches, Nederland, Bridge City, Beaumont, and all of these surrounding Southeast Texas areas. I'm a member of the Golden Triangle Sierra Club, the Big Thicket Natural Heritage Trust, the Big Thicket Biosphere Reserve, and I also work with the Port Arthur Community Action Network. I found out about this meeting this morning by an email from Ellen Buchanan, who is the president of the Sierra Club locally. And I was very surprised to have not heard about this prior to this morning, because I am extremely plugged into local environmental happenings, as well as general local community happenings. And yeah, so I think one of my big issues with that is that there just was not enough outreach. There wasn't nearly enough adequate outreach for this event. You have two incredible Spanish translators here. There's nobody in the Spanish speaking community here. There's almost nobody from my community here. And my community does really care about our communities. So the fact that there is no one here means that someone on your end really messed up. And I think you guys should do a do-over for this meeting, actually, and try to reach more people. The virtual one I don't think will be enough. You mentioned that there's going to be 14.4 -- what did you say, how many -- how many more trains -- 14.4 more trains per day along this rail line. So I live right next to the rail line. And a couple of years ago, my neighborhood was destroyed to make way for new pipelines by Energy Transfer Partners. And this isn't common reoccurrence here. Like neighborhoods and communities in Southeast Texas are frequently destroyed for new pipelines. And we also are all next to the rail lines which transport petroleum products I assume to the refineries. So ever since that -- ever since my neighborhood was destroyed for this pipeline, the sound of the rail line is so strong because it echoes like through an echo chamber of the space. And so now I sleep with earplugs in. I can't sleep through the night without ear plugs. If you're saying there's going to be 14.4 more trains per day, I mean, that's insane. Like we're already way past the limit of what should be acceptable, and that increase is just outrageous.

OEA Response

See response to Comment 526-1 regarding public outreach and agency and tribal consultation.

The Applicants project that rail traffic on the rail lines in the Beaumont area referenced by the commenter would increase by between 3.66 and 10.97 trains per day, on average, not 14.4 more trains per day as the commenter claims.

Comments 149-1, 151-1: Written Comments from Texas State Representative Ron Reynolds (EI-32443) and Texas State Senator Carol Alvarado (EI-32486)

Dear Chairman Oberman,

We write in support of Harris County Commissioner Rodney Ellis, who represents 1.1 million residents living within the City of Houston and unincorporated Harris County communities.

Commissioner Ellis has submitted several letters to the Surface Board of Transportation regarding the proposed merger of Kansas City Southern and Canadian Pacific railroads. The letters voice his and his constituents' concerns regarding the merger's impact on local air quality, traffic flows, and emergency response. In his letter dated December 7, 2021, Commissioner Ellis submitted recommendations to

mitigate the merger's health, safety, and traffic impacts. As of the time of the submission of this letter, Commissioner Ellis's office has not been contacted by Kansas City Southern or Canadian Pacific representatives to discuss how to mitigate the increased risk to Harris County residents.

Residents of Harris County – both the largest population center along the pathway of the proposed merger and one of two non-attainment areas that will be impacted should the merger be approved – deserve a Houston-based public meeting that is near and accessible to the communities that will be most affected by the merger.

As Commissioner Ellis stated in his letter submitted to the STB on June 23, 2022: “To allow our concerns to remain unaddressed as evaluation of this proposed merger continues would constitute a serious regulatory oversight. As such, I request a site visit by staff and members of the Surface Transportation Board and a local public hearing on the impacts of the proposed merger.”

We fully agree with the commissioner's cautionary assessment and support his call for greater responsiveness, transparency, and direct engagement with Harris County residents and with him as their representative. The recent extension of the comment period from September 26 to October 14 offers the Board nearly three additional weeks to seek input on the draft EIS from the millions in Harris County who will be impacted by the merger. We urge the Board to use this extension wisely and schedule an in-person public hearing in Houston. Thank you for your consideration.

OEA Response

See response to Comment 526-1 above.

See last paragraph of response to Comment 453-20 above regarding OEA's Final Recommended Mitigation in Houston.

Comment 526-7: Written Comment from Harris County Commissioner Rodney Ellis (EI-32556)

“Closing”

A supplemental EIS is necessary to fully account for and develop a proportional and equitable mitigation plan around the impacts of the proposed merger on Harris County environmental justice communities. The complexity of possible mitigation (multi-party negotiation, track ownership in the Houston complex etc.) cannot be considered an appropriate reason not to study, mandate, and develop meaningful mitigation across this proposed merger's many impacts.

OEA Response

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R. § 1502.9(d)(1) require agencies to prepare supplements only when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information to relevant environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none.

Regarding Environmental Justice impacts, please refer to EIS *Section 3.13, Environmental Justice*. As discussed in that section, OEA found that the only high and adverse impacts of the Proposed Acquisition would be noise impacts from increased rail traffic. Because there would be no adverse noise impacts in Harris County, OEA reasonably concluded that the Proposed Acquisition would not result in any disproportionately high and adverse impacts on minority or low-income populations in Harris County.

Regarding the commenter's request for mitigation, OEA notes that any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board. OEA's consistent practice has been to recommend mitigation only for those impacts that would result directly from a proposed transaction, such as the Proposed Acquisition of KCS by CP. The Board does not require mitigation for pre-existing environmental conditions, such as the effects of existing rail operations in Harris County.

Following issuance of the Draft EIS, the Applicants notified OEA that they are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to work with communities to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as blocked crossings. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

Comment 455-9: Written Comment from the Office of Harris County Judge Lina Hidalgo (EI-32534)

The Harris County Judge's Office supports and appreciates the efforts of the Surface Transportation Board's Office of Environmental Analysis to analyze the impacts of this proposed merger. We ask for Harris County to receive appropriate consideration by the OEA in its assessment of the environmental impacts and transportation merits of the

proposed merger on Harris County's 4.681 million residents. Some adverse effects may not be significant for the entire proposed acquisition area between Canada and Mexico, but they may very well be significant within the Harris County area. We ask that the OEA publish a supplemental EIS to publicize the unique and significant environmental impacts on Harris County's environmental justice communities, including potential changes in the County's nonattainment status that have not been sufficiently evaluated in the EIS. Should this merger be approved by the federal government, we request proportional and equitable mitigation.

OEA Response

See responses to Comment 526-7 and Comment 453-20 above.

Comment 452-13: Written Comment from the Eastwood Civic Association (EI-32531)

To conclude, the Eastwood Civic Association implores federal regulators to reconsider this proposal and to push CP and KCS railroads to seek an alternative path and engage with local stakeholders to develop adequate mitigation plans and agreements before any further action is taken. Beyond this merger, we beseech that regulators perform a comprehensive investigation of the state of rail operators in the Houston complex – the reality of current operations is deplorable and no one is being held accountable.

OEA Response

See response to Comment 448-1 above. OEA notes the commenter's concerns regarding existing conditions in Houston. OEA does not expect that the Proposed Acquisition would result in an increase in rail traffic on rail lines in the Eastwood or East End neighborhoods of Houston. Therefore, the Proposed Acquisition would not result in impacts to those neighborhoods. OEA also notes that issues related to rail line capacity in general are not environmental issues related to the Proposed Acquisition and are therefore outside of the scope of OEA's environmental review. As appropriate, the Board will address issues related to the capacity of rail lines in Houston and elsewhere as part of its review of the transportation merits of the Proposed Acquisition in its final decision. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 125-1: Written Comment from Veronica Chapa Gorenzyski (EI-32450)

The nationwide route takes the KCS/CP trains through some of the most impacted parts of the country, already battling blocked crossing impacts. On a local level, the KCS/CP Railroads' predicted travel is through the northside of Houston that is believed to have infrastructure to maintain adequate train velocity. However, this assumption is misleading, train "fluidity" may be steady in one part of Houston, but "bleed over" from additional trains is causing gridlock in other parts. Even more concerning is that any solutions to reduce the congestion are only long-term planning efforts and offer little to no immediate relief to our neighborhoods.

If there is going to be an increase of trains in already congested neighborhoods experiencing a decline in quality of life due to this activity, then there must be an effort to implement quick solutions to give the public relief that not only reduces rail corridor congestion but

assists in navigating around areas of increased train traffic. Current operating practices are unacceptable and causing cascading events with known increases in safety complaints from rail crews, delays to city emergency response, and a trend of unsafe motorist behavior trying to divert around the congested corridors.

The East End District implores federal regulators to reconsider this proposal, and to push CP and KSC railroads to engage local stakeholders, including state and local leaders, emergency officials, and environmental advocates, to develop mitigation plans and agreements before taking any further action on the merger.

OEA Response

See response to Comment 452-13 above.

Comment 252-1: Written Comment from Dave Willis (EI-32418)

I urge the current EIS be rejected immediately as I don't believe any human inspectors site visited most areas of concern that have been brought to your attention through meetings, e-mails, etc. Physically visit areas with local county, city, Representatives to create new EIS. Also, existing and to be built pipelines are much more safe than RR's. Pipelines are constantly monitored for leaks, etc. These new mile long, hazardous material containing trains are not being monitored for leaks during their long travels thru the heart of USA from Canada and to Mexico. There is no caboose, no train staff at the rear of the trains to notice trails of leaking materials and how many rail cars are leaking on each train. Unlike semi rigs who must stop for fuel and drivers rest, the drivers walk around their rigs to inspect for leaks, tire conditions, lights. I don't believe the new long, hazardous trains are scheduled to periodically stop and the train staff get outside and walk both sides of these mile long trains inspecting and looking for leaks, bad wheels, brakes, etc. My biggest fear of this merger, aside of my part of Camanche being blocked by the length and number of trains, is no Emergency Services can reach my family when needed. My home burning, no Emergency medical help. My biggest fear that I don't believe is being investigated is the large scale movement of fentanyl and possibly human trafficking. After all, the USA has an open border at Mexico where most, if not all fentanyl, other drugs and human trafficking is currently taking place. Please DENY this merger and consider other methods, such as pipelines. Another alternative if the merger is considered is to direct trains North out of Kansas City to the West side of Iowa and join the present rail lines going thru the middle of Iowa, avoiding our town being devastated by this super highway rail line carrying fentanyl, hazardous materials and preventing Emergency services to care for us. Thank you.

OEA Response

During the preparation of the Draft EIS, OEA conducted site visits and fieldwork to various locations where the Proposed Acquisition would result in environmental impacts, including the location of the planned capital improvement at Camanche, Iowa, as detailed in the appropriate sections of *Chapter 3, Affected Environment and Environmental Consequences* and the corresponding appendices. OEA staff also visited several grade crossings along the CP rail line in Camanche on September 13, 2022 prior to the in-person public meeting in Davenport, Iowa on the same day.

Regarding impacts related to hazardous materials transportation and grade crossing delay, see *Section 3.1, Freight and Passenger Rail Safety* and *Section 3.3, Grade Crossing Delay*, respectively. In response to public comments on the Draft EIS, OEA has revised *Section 3.3, Grade Crossing Delay* and the corresponding **Appendix H, Grade Crossing Safety and Delay** to include additional information regarding the potential effects of the Proposed Acquisition on grade crossing delay and the implications of that delay on the provision of emergency services. As discussed in the section and appendix, OEA found that the Proposed Acquisition would have minor impacts on grade crossing delay.

Regarding the commenter's concerns about human trafficking and the movement of illegal drugs across international borders, OEA notes that these are not environmental issues related to the potential effects of the Proposed Acquisition and are therefore outside of the scope of the environmental review.

Comment 566-1: Public Meeting Comment from the Coalition to Stop CPKC (EI-32756)

I'm here with the Coalition to Stop CPKC I am the Community and Economic Development Director for the Village of Bensenville. I'm also an urban planner, and my topic tonight is essentially talking about the Chicago metropolitan agency for planning and all the work they've done in our communities. I have been an urban planner for about two decades. In my time in Chicago, I've worked extensively with CMF. I sat on the Economic Development Committee at CMAP from 2014 to 2018. I'm very familiar with their work, and unfortunately, they couldn't be here tonight to speak on their own behalf. So, the Chicago Metropolitan Agency for Planning is our region's comprehensive planning organization. They are the region's federally mandated MPO, they are essentially the pass through for the federal dollars to get spent in our area. So, the agency and its partners developed and are now implementing its long range plan for the metropolitan area. And it focuses on implementing strategies that address transportation, housing, economic development, open space, the environment and other quality of life issues. So CMAP has created this local technical assistance program. And the local technical assistance program is essentially what they do to pass through a lot of these federal dollars to local communities. It's free technical assistance for these communities. And so many of the communities along this proposed merger line have gone through the local technical assistance program. So, they have done planning for their downtowns, for their corridors, for their neighborhoods along this stretch of line. The community center coalition CMF has worked on LTA projects, DuPage County, Bartlett, Elgin, Hanover Park, and Roselle. And they had relationships with other communities in some form or another of the projects in the communities. Many involve transit-oriented development. Essentially, many of our downtowns are located along this transit line. And you're essentially going to, with this merger, essentially cut off downtowns for many of the communities. So, most of the downtowns are essentially split in half, meaning any increase in train traffic or an increase in train length to address it, expect somehow those downtowns to operate. The proposed merger could potentially waste hundreds of thousands of federal dollars already spent on planning the development projects in these downtowns. Each affected community may need to revisit and revise their plans at significant costs. CMF has already expressed the agency's concerns to the STB in terms of transit services, blockages of rail grade crossings, air quality considerations, noise and vibration and the STB oversight period. CMAP map is also preparing their own

environmental impact statement. One of the coalition's major concerns with the draft EIS is that our communities and the Chicago region were not given proper consideration. This section of line is just different and it deserves special attention. Perhaps it would behoove the STB to work with CMAP on Chicago specific concerns.

OEA Response

OEA notes the commenter's concerns. OEA analyzed impacts of the Proposed Acquisition on passenger rail safety, grade crossing delay, air quality, and noise and vibration as discussed in detail in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.2, Grade Crossing Safety*; *Section 3.3, Grade Crossing Delay*; *Section 3.7, Air Quality and Climate Change*; and *Section 3.6, Noise and Vibration*, respectively. OEA notes that the proposed action before the Board is the Proposed Acquisition of KCS by CP, not the construction of a new line of railroad. The rail lines on which rail traffic would increase as a result of the Proposed Acquisition were constructed many years ago and have been in operation for many years. The rail line referenced by the commenter is Metra's MD-W rail line, which was constructed by the Atlantic & Pacific Railroad (later the Chicago & Pacific Railroad) in the 1870s. The rail line preceded and supported the later development of towns in the Chicago area and has been used continuously for freight and passenger rail transportation with varying levels of traffic for approximately 150 years. Local land use planning in the communities that grew up along the rail line has taken and should continue to take into account the presence of the rail line and of freight and passenger rail traffic on the rail line. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 588-1: Public Meeting Comment from Village of Hanover Park Community and Economic Development Director Shubhra Govind (EI-32756)

My name is Shubhra Govind. I'm the Director of Community and Economic Development for the Village of Hanover Park. I'm here speaking on behalf of Juliana Ababa. The Village of Hanover Park and she has been strategically working on creating a downtown at the local historic core of our community, and it has always been around our train station. There has been ongoing effort for the past 20 or so years to encourage development all around our train station, using transit-oriented development principles. And in order to create a vibrant downtown, the village has taken several proactive steps. Since 2001, we created a village center, TIF district 2010 and 2012, comprehensive plans specifically adopted for the village center to encourage residential and commercial developments. In 2018, we started a streetscape project. We have invested about \$7 million already proactively to induce private sector development. We now have an RFP that will be out on the streets to encourage development at south Camelia. In 2020 we expanded our TIF district again to include our commuter lot to see more development in 2022. We just finished adopting major changes to our zoning code, again to see development around our village center. We currently have low income housing. We have an elementary school, we have a satellite campus for a community college, we have a healthcare facility, all adjacent to the railroad tracks which are all going to be impacted by an additional level of freight trains passing through our downtown. And the addition of all of these freight trains will have a significant detrimental impact to all of our past efforts that I just mentioned, because it'll impact the quality of life making level living next to a train station undesirable

OEA Response

See response to Comment 566-1 above. OEA notes the commenter's concerns. *Chapter 3, Affected Environment and Environmental Consequences* discusses the potential impact of increased rail traffic resulting from the Proposed Acquisition, including impacts related to noise, air quality, safety, and grade crossing delay. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 600-1: Formal Filing from the Village of Glenview President Michael Jenny (Filing ID 305525)

The Village of Glenview, Illinois strongly opposes any condition on the above-referenced merger that would require “construction of a new connection at A-20 to allow parallel moves to new extended connecting tracks.” Such tracks on the Milwaukee District North (MD-N) line in Chicago’s northern suburbs – commonly referred to as the “Glenview Holding Track” – was requested by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra in testimony to the Surface Transportation Board (STB) on Wednesday, September 28, 2022. A condition requiring the construction of the Glenview Holding Track would adversely impact the community and is objectionable for the following reasons:

1. Strong Local Opposition – The Glenview Holding Track was carefully studied, widely opposed, and roundly dismissed after over four years of efforts by WisDOT and IDOT between late 2014 and May 2019 to consider expansion of Amtrak Hiawatha service between Chicago and Milwaukee. It was ultimately determined by the State of Illinois that the Glenview Holding Track is not a viable solution for regional rail, but rather a short-term band-aid with significant environmental and local health and safety impacts. Attached to this filing is ample evidence of the opposition (also found at www.glenview.il.us/pages/hiawatha.aspx) including:
 - Tab A – IDOT opposition under the current and past Governors;
 - Tab B – Elected official and other local opposition; and,
 - Tab C – Widespread media coverage of the highly controversial and objectionable nature of the Glenview Holding Track.
2. Not Needed – The draft EIS released by the STB on August 5, 2022, regarding the potential merger found no impacts on the MD-N line due to the merger. With no local impacts, no conditions on the MD-N line are necessary particularly one as roundly opposed as the Glenview Holding Track. Please contact me or Village staff with any questions. (600-1) (Reference #: F-305525) (Village of Glenview)

OEA Response

OEA notes this comment, which references CN’s Proposed Divestiture in Docket No. FD 36500 (Sub-No. 1). OEA does not expect that the Proposed Acquisition would result in an increase in rail traffic on Metra’s MD-N rail line and therefore, the Applicants do not plan to add new holding tracks along that rail line if the Board authorizes the Proposed Acquisition. Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 344-2: Written Comment from Daniel Bennett (EI-32332)

There will also be a substantial devaluation of the properties affected in this area. Many of these homes, ours included, that have been in families for nearly a century will certainly lose monetary value and also lower the daily quality of life for us. The increased value of this property over the years will, no doubt, go down in value substantially if the merger goes through. This would cause many families to lose the wealth that has been generated over the many years of ownership. This could certainly cause some families to lose their properties. Please consider the fact that the diesel smoke, extra noise and vibration from the train traffic (our house shakes when trains go by) will also violate the pristine nature of this beautiful stretch of the mighty Mississippi river.

OEA Response

Regarding potential impacts of the Proposed Acquisition on water resources and natural areas, please refer to *Section 3.11, Biological Resources* and *Section 3.12, Water Resources*. As discussed in *Section 3.6, Noise and Vibration*, OEA did not identify any buildings that would be affected by vibration damage due to trains. Regarding the commenter's concerns about property values, OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of its proposed action. A potential change in property values would not be an effect on the environment. Therefore, OEA appropriately did not assess potential effects on property values as part of the environmental review, and no changes to the Draft EIS are warranted in response to this comment.

Comment 387-3: Public Meeting Comment from Lori O'Dell McCollum (EI-32757)

Of course, I'm also concerned about the economic impact on our community. We have just established river cruises that dock here that are on the other side of the track. And if these people had to sit and wait to get to their buses to go on all of their established tours when they arrive, I think they're going to be canceling all their contracts with our community. And they bring in millions of dollars.

OEA Response

OEA found that the Proposed Acquisition would have minor impacts on grade crossing delay, as concluded in *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**. OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of its proposed action. A potential perceived impact on a specific business would not be an effect on the environment. Therefore, OEA appropriately did not assess such effects as part of the environmental review and no changes to the Draft EIS are warranted in response to this comment.

Comment 561-1: Formal Filing from the Prospect Park Association (Filing ID 305478)

You have received testimony and comment letters from both Rep. Ilhan Omar, who represents Minneapolis, and also Rep. Betty McCollum, who represents Saint Paul—just to

the east of our neighborhood in Minneapolis. These Congresswomen also shared a letter from many local elected officials from the Twin Cities area.

We concur with the points made in those three letters, and we specifically implore you to push Canadian Pacific (CP) to agree to a reasonable shared use agreement or easement which would allow for a bicycle and pedestrian path to be constructed on the Short Line Bridge L5733 over the Mississippi River. This bridge links our Prospect Park neighborhood with the majority of Minneapolis located on the west side of the Mississippi, so we are painfully familiar with the missed opportunity for connectivity it embodies.

That bridge was originally constructed for two sets of railroad tracks, but only one set of tracks still exists today. There is ample room for a walking and bicycling trail on the bridge's vacated track alignment. We know this project has been studied and found feasible by the engineers hired by the Midtown Greenway Coalition.

We are told that CP claims it is getting "adequate use" out of the bridge. But you will see in two attached photos the missed opportunity of this vacant right of way. In the first photo you can see the approach (looking westward) towards the bridge, where CP fenced off access roughly 15 years ago. A second set of tracks once existed on the left side of the photo, but that set is long gone. In the second photo (which was taken through the holes in the fence), you can clearly see there is plenty of space on the bridge itself (more space than on many other bike trails) where the original tracks have been removed. What you can also see in these photos is that pedestrians and bicyclists can be accommodated with no impact on CP's ability to serve its customers.

In the distance of these photos lies the west bank of the Mississippi and the Midtown Greenway, the most popular bike/ped path in our State of Minnesota. If that alternative transportation amenity could be connected over the Mississippi to our neighborhood in Minneapolis, and to all the neighborhoods in Saint Paul, it would provide a crucial zero-pollution transportation linkage, increase low-cost access to jobs, help combat climate change and deliver huge benefits to public health.

Please help us overcome intransigence and let Minnesota seize this rare opportunity.

OEA Response

OEA notes that railroads sometimes reach private agreements with other parties allowing for the creation of a trail within a rail right-of-way when the railroad has appropriate property rights under state law, but that the Board has no role in such agreements. Railroad rights-of-way can also be converted into trails through the interim trail use or railbanking process under Section 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). The Trails Act sets forth a process by which railroads can preserve corridors for potential future reactivation of rail service while allowing the right-of-way to be transferred to a sponsor for interim use as a trail on lines that otherwise would be abandoned. A railbanked line remains part of the national rail network and subject to the Board's jurisdiction. The Board's role under the Trails Act is ministerial, and a railroad must voluntarily agree to railbank a rail line and work directly with the trail sponsor.

Because railbanking is a voluntary agreement between a railroad and a trail sponsor, OEA cannot recommend, and the Board cannot impose, railbanking of railroad lines as a form of environmental mitigation. Moreover, conversion of a rail line in Minnesota into a bicycle and pedestrian path, as the commenter requests, would not avoid, minimize, or compensate for the environmental impacts of the Proposed Acquisition and would not have a nexus to those impacts. Pursuant to the NEPA implementing regulations at 40 C.F.R. § 1508.1, mitigation refers to measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 556-1: Formal Filing from the Saint Paul Bicycle Coalition (Filing ID 305465)

The Saint Paul Bicycle Coalition works to make Minnesota's capital city safer and more accessible for cyclists and pedestrians. We have a particular focus on creating safer, more accessible infrastructure-- separated multi-use paths, bike lanes, and crossing aids like signals, medians and other measures at intersections. Creating active transportation space for people helps to confront the climate crisis, builds stronger neighborhoods and communities, improves public health, and saves lives.

The Saint Paul Bicycle Coalition strongly supports the letter you received from our U.S. Congress Representative Betty McCollum (attached), which includes a letter signed by Saint Paul City Councilmembers, and Minnesota State Senators and Representatives from Saint Paul. The Canadian Pacific/Kansas City Southern merger will hurt the Twin Cities. To offset this harm, the Saint Paul Bicycle Coalition strongly urges the STB to demand that CP offer a reasonable agreement to share ample, unused right-of-way on their Short Line Bridge # L5733 over the Mississippi River in Minneapolis and east into Saint Paul for the purpose of creating a Midtown Greenway Extension. Obtaining an easement on a small portion of CP's largely unused property would create a safe and tremendously valuable connection for cyclists and pedestrians to go back and forth between Minneapolis and Saint Paul. It would also enable the Twin Cities to obtain federal funding for corridor safety and infrastructure upgrades.

We also ask that CP work with public agencies to allow a bicycle/pedestrian corridor on the Highland Spur. Like a Greenway Extension, the Highland Spur offers a safe, valuable corridor for pedestrians and cyclists that currently doesn't exist and is incapable of being duplicated-- one that connects thousands of people in the West 7th and Highland Park neighborhoods, particularly those who will be living at the new Ford Site development. This spur is completely abandoned so granting an easement for a bicycle and pedestrian trail or turning the corridor over to the city or Ramsey County would have no impact on CP Rail's operations.

OEA Response

See response to Comment 561-1 above.

Comment 560-1: Formal Filing from Move Minnesota (Filing ID 305483)

Move Minnesota is a St. Paul, Minnesota, based non-profit that leads the movement for an equitable and sustainable transportation system that puts people first. Move Minnesota works to connect communities, end the climate crisis, expand access to jobs and resources, and improve daily life for Minnesotans of all ages, races, incomes, and abilities.

I write today to express Move Minnesota's support for U.S. Representative Betty McCollum and U.S. Representative Ilhan Omar's request that Canadian Pacific convey use or ownership rights to four under- or unused rail spurs to local public entities for use as bicycle, walking, or transit corridors. As both representatives articulated: "Conveying idle or under-utilized corridors to public entities would be one way to help offset the harm that CP will cause by ... lost jobs [in the Twin Cities region]. Converting former railroad right-of-way to bicycle and pedestrian use is proven to generate economic development, provide greater opportunity, improve public health, and address climate change. Preserving these corridors for public use will ensure that future generations of Minnesotans will be able to benefit from these assets."

Representative McCollum's and Representative Omar's letters both referenced and included a letter jointly signed by twenty-two local and state elected representatives. That letter—which Move Minnesota supports—articulates detailed requests around four specific spurs.

Thank you for your consideration. We look forward to supporting the development of people-focused transportation options along under- and unused Canadian Pacific spurs in the Twin Cities.

OEA Response

See response to Comment 561-1 above.

Comment 558-1: Formal Filing from the Sierra Club (Filing ID 305475)

"The best example of CP's reflexive obstructionism is the huge missed opportunity to connect the incredibly popular Midtown Greenway over the Mississippi River, so this amenity can serve residents of Minneapolis, Saint Paul and beyond. The river bridge in question (Short Line Bridge L5733) was built for two sets of tracks, but the second set of tracks was removed many years ago. The bridge has been studied and it has been confirmed by respected engineering firm Kimley-Horn and Associates, Inc. that the downstream half of the bridge could easily accommodate a bicycle/pedestrian facility without disrupting the one train a day on the upstream half of the bridge. There is no physical impediment to making this crucial connection over the Mississippi River, and CP has never claimed otherwise. Funding is not the impediment to progress either. Local officials in Minneapolis and Saint Paul have a proven record of raising funds needed to build well-loved and award-winning rails-to-trails facilities, including support from Federal partners. But they cannot finally start moving forward until they have a reasonable easement or other shared use agreement with CP. When CP was last willing to talk with Hennepin County officials regarding the river bridge (over a decade ago), CP sought to shift the cost and/or liability for their own activities onto the public taxpayers. CP expected Hennepin County to buy the bridge (which CP would continue to use for rail operations) while accepting a liability agreement that no

public sector attorney could recommend to an elected official. CP's demands were so unreasonable that Hennepin County explored building its own new bicycle/pedestrian bridge over the Mississippi River which would run adjacent to the existing CP bridge. We have no reason to believe that CP's behavior will change unless pushed by a federal entity like the STB. Just last week in its communications with Congresswoman Omar, CP dismissed our shared concerns by claiming that CP is getting "adequate use" of their three segments of right of way in Hennepin County including the river bridge. This claim is suspect in all cases and demonstrably false in the case of the river bridge. Nobody, including CP, is getting any use out of the downstream half of the river bridge.

We urge you to require CP to be a good neighbor and help bring a long desired clean transportation corridor to the Twin Cities. This can be accomplished without any negative impact on CP's ability to serve its customers."

OEA Response

See response to Comment 561-1 above.

Comment 553-1: Formal Filing from the Midtown Greenway Coalition (Filing ID 305441)

In order to get support for their merger from Minnesota and the STB, CP must be asked to mitigate the harm their merger will cause to our state. This mitigation should include public ownership (or shared ownership) of the following idle or under-producing CP rights-of-way:

- The Midtown Greenway Extension Spur, a 2.6-mile east-west pathway connecting the Midtown Greenway trail over the Mississippi river to Saint Paul, via CP's Short Line Bridge. This Midtown Greenway Extension would be the key link in a transformative trail/transit network and become the best inter-city bikeway in the nation. THIS SPUR COULD BE SHARED with CP. The bridge only has one track on it- the other side of the bridge has been vacant and unused for years. A new bike/ped trail could be placed on the vacant side of the bridge, and the one train per day could continue to operate on the other side. (We have a study showing how the bridge could be rehabbed safely for this purpose.)
- The Highland Park Spur, an idle 3.5-mile right of way in St. Paul's West End and Highland Park districts that served the Ford assembly plant. It has significant public utility due to its neighborhood connectivity and proximity to MSP airport and the Mississippi River. This spur has enough space for both a bike trail AND a streetcar line and should be preserved immediately for such public use. The Hiawatha Industrial Spur, a 2.6-mile freight corridor running near Hiawatha Avenue between Lake Street and Minnehaha Falls Park in Minneapolis. Rail traffic has dwindled to just one train per day, as trackside flour mills and grain elevators give way to high density residential redevelopment.
- The Paynesville Subdivision/14th St Spur, a rail spur that stretches from the Camden neighborhood in North Minneapolis to the North Loop neighborhood near downtown Minneapolis. In the interest of Minnesota, our economy, and our commitment to

increasing green transportation to fight climate change, the STB should make its approval of the CP-KCS merger contingent upon:

- Public ownership and control of the CP rights-of-way listed above.
- A joint rail-with-trail usage arrangement over the Short Line Bridge, plus an easement eastward into St. Paul at least to Cleveland Avenue.

OEA Response

See response to Comment 561-1 above.

Comment 644-2: Formal Filing from the Coalition to Stop CPKC (Filing ID 305526)

The Board's consideration of proposed mergers of Class I railroads is also subject to the requirements of NEPA, which requires the agency to prepare "a detailed statement" on the environmental impact of any federal actions "significantly affecting the quality of the human environment."³⁴ The agency's responsibility is to "take [] a 'hard look' at the potential environmental consequences of the proposed action,"³⁵ and "judicial review of agency decision-making under NEPA is limited to the question of whether the agency took a 'hard look' at the proposed action as required by a strict reading of NEPA's procedural requirements."³⁶ Such judicial review is governed by the Administrative Procedure Act.³⁷ Under subsection 706(2)(A) a reviewing court may hold unlawful and set aside an agency's action if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Finally, the Board's NEPA processes and compliance should be consistent with applicable agency and judicial precedent.³⁸

³⁴ 42 U.S.C. §4332(C).

³⁵ Northern Plains Resource Council, Inc. v. Surface Transportation Board, 668 F.3d 1067, 1075 (9th Cir. 2011)(citations omitted).

³⁶ Id. (citations omitted).

³⁷ 5 U.S.C. § 706.

³⁸ See, e.g. Village of Barrington v. Surface Transportation Board, 636 F.3d 650 (D.C. Cir. 2011)(where OEA and STB prepared an environmental impact statement evaluation the impact of CN's purchase of the EJ&E Railway Company in Docket No. FD 35087, which included evaluating the impact of the transactions on road crossings in the Chicago area).

OEA Response

See response to Comment 460-1 above regarding the "hard look."

Comment 644-3: Formal Filing from the Coalition to Stop CPKC (Filing ID 305526)

Applicants have significantly downplayed, if not ignored, the 325,000 residents of the Coalition communities the Elgin Subdivision runs through, the existence and scope of commuter rail service provided by Metra over its MD-W line, the extraordinarily large number of rail crossings and related safety issues associated with this section of the rail line, and the significant environmental and economic harms that will be caused to these

communities by the Applicants' proposal to vastly increase freight operations over this piece of their combined system.

OEA Response

See response to Comment 462-17 regarding analysis of local impacts in the Draft EIS.

Comment 644-8: Formal Filing from the Coalition to Stop CPKC (Filing ID 305526)

Finally, the Coalition reiterates that the Board's consideration of the merger Application entails compliance with the requirements and policies of NEPA, which require agencies to take a "hard look" at the potential social and environmental impacts of the merger. The Coalition maintains that to date, this has not occurred. On this point, the Coalition has contrasted the DEIS process in this proceeding with that conducted by OEA's predecessor in EJ&E, where, prior to issuance of the DEIS, OEA's predecessor (Section of Environmental Analysis ("SEA")) examined the impact of that transaction on Chicago communities by: "engag[ing] in extensive public outreach, which included . . . twenty-two public meetings attended by over 7200 people, consulting with local, state, and federal officials," and holding a 60-day comment period on the draft environmental impact statement.⁷⁵ Then, SEA held an additional eight public meetings on the DEIS.⁷⁶ Further, as part of its evaluation of impacts on communities SEA identified emergency responders in the Chicago area that would be "substantially affected" by the transaction.⁷⁷ Finally, between issuance of the DEIS and the Final EIS, "the Board commissioned an additional traffic study" that examined congestion and crossing delays in certain areas of controversy.⁷⁸ Virtually none of these actions were taken prior to issuance of the DEIS in this proceeding. The Coalition is hopeful that OEA will cure the deficiencies of the current DEIS through a supplemental DEIS as discussed in the Coalition's comments on the DEIS, and that the final EIS will comply with NEPA's requirements.

⁷⁵ Village of Barrington v. STB, 636 F.3d 650, 653 (D.C. Cir. 2011).

⁷⁶ Id. at 668.

⁷⁷ Id. at 669.

⁷⁸ Id. at 672.

OEA Response

See response to Comments 460-1 and 462-11 above.

Comment 651-3: Transportation Merit Hearing Comment from Mike Laroque

The other thing that I would like to talk a little bit about is CP or Kansas never reached out to our constituents and never reached out to anybody about this merger coming through and the increased traffic coming through our reservation. We had to find out about it from our Honor the Earth partners that are going to be testifying here today.

OEA Response

Outreach and coordination with Tribal leaders and/or representatives was conducted as detailed in **Appendix B, Agency and Tribal Consultation** and **Appendix J, Cultural Resources**. See response to Comment 90-1 in *S.5, Hazardous Materials Transportation* of this appendix regarding OEA's coordination specific to the White Earth Band of Ojibwe in Minnesota.

Comment 657-1: Transportation Merit Hearing Comment from Eugene Tibbetts

Not once have I heard in anybody's testimony today a mention of tribal nations, not once, and it's kind of saddening to hear that, you know, especially when that train is running directly through our territory here.

OEA Response

See response to Comment 651-3 above.

Comment 661-1: Transportation Merit Hearing Comment from Harris County Commissioner Rodney Ellis

The transportation merits, or demerits of this merger, are necessarily interwoven with the environmental and public health impacts that it will have if it's approved. It would be irresponsible in my judgment to discuss the impact of adding more railcars without mentioning the attending delays, the increase in emissions, and the risk of a crude oil spill.

OEA Response

See EIS *Section 3.3, Grade Crossing Delay*, as well as Comment 453-5 in *S.12, Air Quality and Climate Change*, and Comment 453-2 in *S.5, Hazardous Materials Transportation* of this appendix regarding the requested analyses for Harris County.

Comment 661-3: Transportation Merit Hearing Comment from Harris County Commissioner Rodney Ellis

I find it troubling that the applicants have not extended themselves to study the impacts of that merger, or the impacts it will have on 4.68 million residents, on proposed capital improvements to the Houston complex. I expect, and hope that as regulators, the Board will mandate such a study, and condition any approval of the merger on equitable, and proportionate mitigation for impacted communities.

OEA Response

See response to Comment 526-7 above regarding mitigation.

Comment 662-1: Transportation Merit Hearing Comment from Houston City Council Member Robert Gallegos

Of the 25 capital improvement projects proposed, not a single project -- let me repeat that. Not a single project would take place in Houston or Harris County. And by the way, even

these projects would only be as needed. This is unacceptable. The applicants should not be allowed to add to an already strained railroad complex without fully studying and analyzing the impacts they will cause in Houston, and without investing in mitigation.

OEA Response

See response to Comment 448-2 above regarding mitigation.

Comment 663-1: Transportation Merit Hearing Comment from Rob Reilly for the Canadian National Railway Company

CP and KCS projects sizable increases in carload and truck activity at Schiller Park. They disclosed no tonnage data, or trains per day data, in either their operating plan, or amended operating plan for the 2.3 mile line segment owned by CN that a merged CP/KCS must traverse to reach Schiller Park Yard.

OEA Response

See response to Comment 33-4 above.

Comment 663-2: Transportation Merit Hearing Comment from Rob Reilly for the Canadian National Railway Company

To get to Schiller Park from Bensenville Yard, CP moves over Metra's tracks, and then performs a reverse shove move to come on the CN track to reach Schiller Park Yard. This missing data is needed for the Board and interested stakeholders to analyze the impacts of the proposed merger.

OEA Response

See response to Comments 33-4 and 518-9 above regarding the Applicants' data for the track segment in question.

Comment 664-1: Transportation Merit Hearing Comment from Kathy Gainey for the Canadian National Railway Company

We do not know whether the segment does, or does not trip the threshold, because the segment was not included in any of the operating plan tables, or the information that was provided to the environmental office. So that includes the Appendix T of the amended operating plan. And so the base data was not provided, the projected train traffic increases, merger related, were not provided, and thus the post merger traffic increases, both for GTMs, and trains per day are not included in the record from applicants.

OEA Response

In reference to the track segment between Tower B12 and Schiller Park yard, see response to Comments 33-4 and 518-9 above.

Comment 665-1: Transportation Merit Hearing Comment from Matt Warren for the Canadian National Railway Company

And the second reason we're concerned is that the data at the foundation of the operating plan is just not reliable. Again, we've detailed these concerns in the verified statements of Carl Van Dyke, and I just want to summarize the major issues here. So the first column of numbers here is the original density numbers in the application, Exhibit 14, which we understand are the numbers that CP and KCS maintained at the ordinary course of business, so that's Column A. So Column B are the modeled numbers that they gave the environmental office last October. They are obviously different. And as we've explained, and as I'll get to in a moment, those actually that's supposedly 2019 data, but it's actually not based on 2019 data. Most of it is modeled based on a single month in 2020, which they combined with some data from 2021. Now after this issue came to light earlier this year, CP and KCS re-submitted those numbers in March, and said you know actually we apologize for you know, for our original Exhibit 14. These are the right numbers. These are the OEA numbers are the right Exhibit 14 numbers. But after you ordered them to resubmit their operating plan, we've got a brand new set of modeled numbers to their remitted operating plan. And that's Column C.

OEA Response

See response to Comments 33-3 and 594-1 regarding the Applicants' operating data.

Comment 665-3: Transportation Merit Hearing Comment from Matt Warren for the Canadian National Railway Company

But the broader point is that while they explained why they think they had to use the model, at no point have the applicants given the Board any coherent explanation for why the May outputs in Column C are different from the March outputs in Column B. And I would point out that the Board's April 27 decision contemplated that the numbers in the amended operating plan would be essentially the same as those provided to OEA, and they plainly are not.

OEA Response

See response to Comments 33-3 and 594-1 regarding the Applicants' operating data.

Comment 668-4: Transportation Merit Hearing Comment from former Majority Leader of the Minnesota State Senate Amy Koch

There are 35 segments in the U.S. network where this transaction would result in traffic levels that would exceed their own -- the STB's Office of Environmental Analysis own safe threshold and are 26 locations that require construction. All this rail through populated communities would generate more traffic, more delays and more opportunities for accidents.

OEA Response

See response to Comment 462-17 regarding analysis thresholds.

Comment 668-5: Transportation Merit Hearing Comment from former Majority Leader of the Minnesota State Senate Amy Koch

CP pledged as part of this merger that they would run shorter trains to cause less delay and promised no trains longer than 7,100 feet. But the reality is that their trains are significantly longer on average. In the third quarter of 2021 CP's average train length was 8,285 feet, or 1.5 miles long, and railroad regularly ran trains that reached or exceeded 12,000 feet, or over 2.25 miles. There are many adverse impacts to rail site communities that have yet to be acknowledged to date and are still unclear even after the release of the draft EIS. There also appears to be minimal potential benefits for the community members. This merger will not bring more affordable oil, it will not benefit Midwest farmers that rely on trains for transporting their product, and it will certainly not benefit the families that will breathe in more pollutants from increased rail traffic or deal with oil spills in the community. It will slow down emergency response times and will create traffic and as a result wear and tear on the roadways.

OEA Response

Regarding the commenter's concern about train length, the Applicants project that train lengths would decrease on most rail segments that were evaluated. Refer to *Section 3.3, Grade Crossing Delay* and **Appendix H** for detailed information regarding train length. Additionally, of the 277 grade crossings that were evaluated, only 62 are expected to experience an increase in train length by an average of 350 feet. These crossings are all located in the Dallas-Fort Worth Metro area.

The Board's review of the transportation merits of the Proposed Acquisition is separate from the environmental review process. The Board will further address additional issues raised by the parties, as appropriate, in its final decision on the Proposed Acquisition

Comment 679-1: Written Comment from Paulette Taylor (EI-32677)

I am writing regarding the proposed merger of the Canadian Pacific and Kansas City Southern Railroad Lines which gravely affects the Quad Cities, specifically Davenport, Iowa. Having lived in Davenport for 45 years, I have enjoyed the many amenities the community located on the banks of the Mississippi River has to offer. I fear the proposed merger of the CP and KCS will drastically impact my enjoyment of life for the following reasons:

- 1: I walk/bike on the Mississippi River Trail almost daily and I have to cross the tracks to reach the trail. Once I'm across the tracks there is currently a train that goes by- with the merger multiply the noise by 3- if I can even get to the trail!
- 2: I make frequent trips to the Davenport Compost Facility which is already a challenge because of train traffic blocking access across both entrances/exits. Multiply that problem X3.
- 3: I like to attend Quad City River Bandits baseball games. Parking is on city- side of the tracks, stadium on the riverside. Crossing the tracks with all the trains becomes a hazard.

4: I attend concerts and events in LeClaire Park again parking on city-side of the tracks and event's on the riverside. Additional noise distracts from enjoyment of events along with congestion and delays arriving and leaving.

Think about it - Davenport has invested millions of dollars building a wonderful riverfront trail, developing the best minor league baseball stadium in the country, maintaining an historic riverfront park for public events, including the Mississippi River Trail, Modem Woodman Park, LeClaire Park, Marquette Landing boat dock, the Veterans Memorial and the compost facility. Think about what this merger will do to diminish the quality of life for the residents of Davenport with noise constantly in town and congestion getting to and from all the amenities that our tax dollars already paid for: Our tax dollars paid to build all these amenities that make Davenport special to its residents. Don't waste our money by allowing this merger that is good for the railroad, but not for the community!

OEA Response

See response to Comment 18-1 in *Section S.11, Noise and Vibration* in this appendix regarding the interrelated relationship between railroads and land use.

Comment 685-1: Written Comment from U.S. Representative Betty MCCollum (EI-32683)

The proposed merger between the Canadian Pacific (CP) Railway and Kansas City Southern has generated concern in the State of Minnesota over the potential negative economic impacts on our community. Attached is a letter from elected officials in Saint Paul and Minneapolis articulating these issues and highlighting the desire to preserve for public use four CP rail corridors that are currently idle or under-utilized.

As proposed, the merger will move the CP headquarters from Minneapolis, Minnesota to Kansas City, Missouri. As a result, 207 jobs and an estimated \$15 million in wages will be lost or transferred out of our state. I urge the Surface Transportation Board (STB) to strongly consider the concerns outlined by these officials, and the impact on the affected employees and out community in its review of this merger application.

Conveying idle or under-utilized corridors to public entities would be one way to help offset the harm that CP will cause by these lost jobs. Converting former railroad right-of-way to bicycle and pedestrian use is proven to generate economic development, provide greater opportunity, improve public health, and address climate change. Preserving these corridors for public use will ensure that future generations of Minnesotans will be able to benefit from these assets.

Thank you for your attention to this important issue. I look forward to continued dialogue with the STB on behalf of my constituents.

OEA Response

See response to Comment 561-1 above.

Comment 592-1: Public Meeting Comment from Metra (EI-32756)

Metra is a commuter rail provider for the Northeast Illinois-Chicago area. We are one of the largest public railroads in the country, serving a population of almost 8 million people. We thank the Surface Transportation Board for the opportunity to comment on the Draft Environmental Impact Statement for the proposed merger. As you know, rail service in the Chicagoland area is one of the most complex in the nation. Currently, six of the seven Class I railroads compete with shortline railroads, Amtrak, each other, and Metra, for time and space on Metra tracks. This proposed merger stands to conservatively bind commuter rail service to the additional merger-related traffic on the Metra-owned Milwaukee District lines. In their original application, applicants failed to present industry-standard RTC modeling to show the impact of the merger to our region. Instead, Metra conducted this model which shows that applicants significantly understated the increase in traffic, a degradation of Metra's lines. This was not considered in the Draft Environmental Impact Statement, which only reviewed the applicants' subjective traffic increases and impacts. Metra urges the Board to consider the impact indicated by Metra's rail traffic modeling which Metra submitted to the Board. Further, the Draft Environmental Impact Statement does not address serious safety concerns raised by Metra and the Chicago area communities regarding the impact of the merger on the many grade crossings and passenger rail stations on the Milwaukee District lines. And to earlier comments to the Board, Metra demonstrated that the Canadian Pacific's current dispatching operational practices create unsafe conditions at Metra stations. This is because the Canadian Pacific at times blocks the Metra's lines or dispatches freight and passenger trains on the tracks in a manner that forces passengers to cross tracks unnecessarily, dodging oncoming freight trains, or circumventing idling freight trains at Metra stations. The Environmental Impact Statement does not sufficiently address increased safety risks caused by this practice. In light of the additional traffic, the delays from Metra's modeling shows it will result from the merger, it is vitally important that the Board force environmental analysis conducted using accurate information in order to properly determine the level and extent of the impact of the proposed merger. Metra requests that the Board take into considering these points. Thanks to the Board again for the opportunity to speak. Metra will also be submitting written comments on the Draft Environmental Impact Statement by the deadline.

OEA Response

See response to Comment 462-20 above regarding the use of the Applicants' data.

It is the Board's role, not OEA's, to review the transportation merits data submitted in an application. The Board addressed issues related to the Applicants' methodologies used to develop traffic projections in Decision No. 17, issued on April 27, 2022. The Board's review of the transportation merits of the Proposed Acquisition is separate from the environmental review process. The Board will further address additional issues raised by the parties, as appropriate, in its final decision on the Proposed Acquisition.

Regarding the "serious safety concerns raised by Metra and the Chicago," please see response to Comment 462-24 in *Section S.7.2, Pedestrian Safety* in this appendix.

Additionally, refer to EIS *Section 3.2.1* and **Appendix H** for a discussion of the national average crashes per public, at-grade crossing per year. OEA quantified the safety performance of at-grade crossings using the predictive method from the 2019 FRA *GradeDec.Net Reference Manual*.

Comment 99-1: Written Comment from Minnesota State Representative Paul Anderson (EI-32461)

As a member of the Minnesota House of Representatives, it is my duty to represent the concerns of my constituents to the best of my ability. Many of those I represent live in small towns or rural areas, and agriculture is a crucial part of our economy and way of life.

As such, I write to you today to ask that you carefully consider all angles of the proposed merger between Canadian Pacific Railway and Kansas City Southern Railway. While there are certainly potential benefits to agriculture that may result from this merger, I ask that the possible downsides receive additional analysis and investigation.

Specifically, in February of this year the United States Department of Agriculture (USDA) submitted a letter to the Surface Transportation Board (STB) to raise awareness about how the merger might impact competition in the rail industry. The agency stressed the importance of market-based solutions, as they are the most likely to result in reasonable shipping rates and terms of service.

For example, farmers rely on fertilizer to produce sufficient yields and sustain their operations. The Fertilizer Institute has estimated that over half of all fertilizer in the U.S. moves by rail. Unfortunately, in recent years there have been significant disruptions in rail service. This has played a role in exploding fertilizer prices, which have forced farmers to suffer financially and raised costs for consumers.

Given that the proposed merger is between two large railroads, it may reduce competition in the railroad industry. Reduced competition would give the railroad industry increased leverage over the shipment of goods such as fertilizer, which could allow them to raise shipping rates and cause further pain for farmers.

In addition, the USDA's letter discusses the negative impact previous rail mergers have had on rail service continuity. Unfortunately, the STB is currently considering the CP – KCS merger under old merger rules. These rules did not require the merging parties to put a Service Assurance Plan (SAP) in place to guarantee consistent service. As I mentioned previously, recent disruptions have already caused tremendous financial difficulties for farmers. If the STB does not require CP – KCS to develop an SAP, the situation could get even worse.

In conclusion, I respectfully request that the members of the board ensure this merger maintains continued competition in the railroad industry and reliable rail service. To do otherwise could be disastrous for agriculture in Minnesota and consumers across the country.

OEA Response

The Board's review of the transportation merits of the Proposed Acquisition is separate from the environmental review process. The Board will further address additional issues raised by the parties, as appropriate, in its final decision on the Proposed Acquisition.

S.4 Freight Rail Safety

Comment 74-1: Written Comment from Richard Clewell (EI-32251)

OEA expects that the Proposed Acquisition would result in only minor adverse impacts on freight rail safety. Impacts are defined as hitting vehicles/people on tracks, derailments, spills, fires, etc. In Section S.3.1 of the DEIS, OEA projects that the greatest increase in the number of incidents would occur on the rail line segment between Muscatine, Iowa, and Ottumwa, Iowa. On that segment, OEA projects that the number of incidents would increase by approximately 0.32 incidents per year from approximately 0.11 incidents per year under the No-Action Alternative to approximately 0.43 incidents per year under the Proposed Acquisition. While CP has a positive record of reportable incidents, the DEIS indicates that KCS has a substantially higher incident rate than CP, which cannot be averaged away. While it could be argued that since rail transport is safer than truck transport that there will be fewer reportable incidents under the Proposed Action. However, given the predominant location of rail lines near sensitive environmental ecosystems the total number of incidents is inadequate to address the severity of incidents. I contend that although the total number of projected incidents is small, it is still quadrupled which is not insignificant given the potential spillage of toxic chemicals. I believe the DEIS contention that the Proposed Acquisition will result in only minor adverse impacts to safety and environmental security does not take into account the serious nature of quadrupling the possible number of catastrophic incidents.

OEA Response

The rail line segment referenced by the commenter is Segment C-OTTU-02 from Muscatine, Iowa to Ottumwa, Iowa. This segment is owned and operated by CP and OEA does not expect that the KCS safety performance would affect safety along this segment in any way under either the No-Action Alternative or the Proposed Acquisition. In conducting the freight rail safety analysis, OEA concluded that the five-year average incident rate for CP is the most appropriate estimate for the future incident rate on the combined CPKC system. This is appropriate because CP is seeking to acquire KCS and would implement CP's safety procedures across the network, as discussed in detail in the Safety Integration Plan (SIP) that the Applicants prepared in consultation with FRA. The SIP is appended to this Final EIS as **Appendix G, Safety Integration Plan**. OEA's approach is conservative because incident rates on both railroads have been declining in recent years.

As discussed in *Section 3.1, Freight and Passenger Rail Safety*, the probability of an incident occurring on any given rail line segment would remain small if the Board authorizes the Proposed Acquisition. For the 82.5-mile Segment C-OTTU-02, OEA projects that an incident of any size would occur once every approximately 2.34 years based on CP's

mainline incident rate. Further, most rail-related incidents are minor and do not result in injuries, fatalities, or releases of hazardous materials with the potential to affect people or the environment. Of the 180 derailments that occurred across the CP and KCS systems during the years 2015 through 2019, only five caused any amount of hazardous material release. As set forth in *Chapter 4, Mitigation*, the Applicants have proposed voluntary mitigation measures that would minimize the risks associated with freight rail safety. Because the probability of a catastrophic incident occurring is and would remain extremely small, OEA is not recommending additional mitigation measures to address freight rail safety beyond the Applicants' proposed voluntary mitigation measures. Additionally, an OEA recommended condition requiring completion of the SIP process and compliance with the SIP per FRA and Board requirements (49 C.F.R. Part 1106) would reduce the probability of incidents occurring (VM-Rail-02).

In response to public comments, however, OEA has added further information in *Section 3.1, Freight and Passenger Rail Safety*, about the types of incidents that have occurred on the CP and KCS systems during the study period. OEA expects that the types of incidents that could occur in the future would be similar to those that have occurred previously. In response to public comments, OEA has also added discussion to *Chapter 3, Affected Environment and Environmental Consequences* regarding the potential impacts that could occur in the unlikely event of a release of hazardous materials, including in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*.

Comment 398-1: Public Meeting Comment from Richard Clewell (EI-32757)

The first issue I'd like to talk about is with global citizen nature and that's about safety. -- Office of Environmental Analysis, OEA, expects that the proposed acquisition would result in only minor adverse impacts -- Section S31 of the DEIS, the OEA projects that the greatest increase in the number of incidents that occur on the rail line between Muscatine and -- on that segment, OEA projects that the number of incidents would increase from approximately 0.11 incidents per year to approximately 0.43 incidents per year -- proposed acquisition. While CP has a positive record of reportable incidents, the environmental impact statement - - case that KCS has a substantially higher incident rate than CP, which cannot be really -- while it could be argued that since rail transport is safer than truck transport, that there will be fewer reportable incidents over under the proposed action; however, given the predominate location of rail lines near sensitive environmental ecosystems, the total number of incidents is really -- addressed the severity -- I contend that although their total number of projected incidents is small, it is still quadrupled, which is not insignificant, given that the potential spillage of toxic chemicals with a potential catastrophic results.

OEA Response

See response to Comment 74-1 above.

Comment 461-1: Written Comment from the Environmental Defense Fund (EI-32540)

The EIS uses a five-year analysis period of 2015-2019, citing that 2020 was an outlier year due to the pandemic. On page 3.1-5, OEA stated that "overall, both railroads trended

downward for the five-year analysis period." EDF recommends the final EIS include analysis with data through year-to-date 2022. Using data from the Federal Railroad Administration, EDF's initial analysis indicates that accident/incident rates on the KCS line are trending upward from 2015-2021.

[Chart: US Class I Accident/Incident Rates per million train miles]

If data can be extrapolated from January-July 2022 incident rates to suggest what 2022 end of year numbers will be, (multiply January-July incident rate number by two), safety trends for both railroads are more worrisome.

[Chart: US Class I Accident/Incident Rates per million train miles]

Including data from 2015 through 2022 (extrapolated from January-July), the combined incident rate is 2.51, which is trending upward from the stated combined incident rate of 2.39 from 2015-2019 and closer to the U.S. Class I railroad average of 2.66 (page 3.1-5).

OEA Response

The commenter may be referring to incorrect data obtained from the FRA's safetydata.fra.dot.gov website. That website currently erroneously reports the accident/incident rates for KCS when a user searches for 2022 data. A search that includes the year 2022 falsely reports 2020/21 incident rates for KCS as 4.07 and 3.33, respectively. However, the actual rates for 2020/21 for KCS as officially reported by FRA are 3.20 and 3.08. This can be found by querying years 2020 and 2021 individually, or by analyzing the raw data provided by FRA from at data.transportation.gov. If OEA had included incident data for the years 2020 and 2021, the trend would show a continued decrease in accident/incident rates for both railroads.

OEA's analysis of freight rail safety took place in 2021 and 2022. Therefore, it was not possible to include the full dataset for those years in the analysis. Extrapolating incomplete data for the years 2021 and 2022 could introduce inconsistencies and would not be appropriate. OEA instead used the most recent complete datasets for the years 2015 through 2019 and excluded the outlier year 2020. Using pre-pandemic data to estimate incident rates for CP and KCS is appropriate and conservative because, as stated above, the incident rates for both railroads have trended downward in recent years. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 461-2: Written Comment from the Environmental Defense Fund (EI-32540)

On page 3.1-6 OEA stated that "Of the 272 reportable incidents over the five-year review period, there were zero lay person injuries or fatalities reported by either railroad. There were zero reported crew fatalities and only nine reported crew injuries among seven incidents. This means that less than 0.03 percent of incidents produced any injury to any person at all."

Continuing, "of the 14,842 railcars and 537 locomotives involved in trains in reportable incidents, only 903 (0.06 percent) railcars and 54 (0.10 percent) locomotives derailed." Could OEA please clarify the source and whether this is for just CP and KCS lines or for total rail. EDF requests a more detailed analysis of fatalities and derailments, including the

contents of rail cars that derailed, and if there were any environmental mitigation measures that were taken, including a timeline of events.

OEA Response

The source data was the data provided publicly by FRA's Office of Safety Analysis through data.transportation.gov and is inclusive of both railroads over the study period. This dataset includes 159 data fields per incident, including a descriptive narrative of the incident. A timeline of events is not recorded in Form 54 data unless the author includes it in their narrative, which is not explicitly required under FRA rules. During the study period, there were no passenger or employee fatalities on either railroad. There were nine reported employee injuries across seven incidents, and no reported passenger injuries. Of the 272 reportable incidents, there were 180 derailments, only 31 percent of which occurred on the main line. Of all these incidents, 113 of them involved a loaded freight car.

In response to public comments, OEA has added further information in *Section 3.1, Freight and Passenger Rail Safety*, about the types of incidents that have occurred on the CP and KCS systems during the study period.

Comment 461-3: Written Comment the Environmental Defense Fund (EI-32540)

On page 3.1-7 OEA stated that "CPKC would have a projected annual incident rate of 2.39 incidents per million train-miles across all types of track. As described in Section 3.1.1.1, Approach (also see Appendix F), OEA used the CP incident rates received from FRA for 2015 to 2019 to represent the average annual incident rate for 2027 under the Proposed Acquisition." However the table refers to a systemwide incident rate of 1.44. EDF requests clarification and reiterates its request to incorporate more recent incident rate data. When new data is incorporated, it should project the systemwide incident rates based on the combined incident rate of the two railroads, not just CP's incident rates. We suggest the same calculation for the mainline incident rates analysis.

OEA Response

The use of the incident rate of 2.39 in the language of the section was erroneous. The analysis does correctly use the incident rate of 1.44. OEA used the five-year average of the CP incident rate for the Proposed Acquisition, as described in **Appendix F** of the Draft EIS. This approach is consistent with the Applicants' application and the SIP, which both state that the Proposed Acquisition would bring CP's safety protocols to the KCS network. Using the average rate of both railroads would imply that the Proposed Acquisition would make all of CP's current lines less safe, not because rail traffic would increase, but simply because KCS would be part of the system. OEA is unaware of any reason to assume that the Proposed Acquisition would change the per train-mile incident rate on CP's current rail lines and commenters have identified none.

The text in the section that references a rate of 2.39 has been corrected to reflect the appropriate incident rate of 1.44 under the Proposed Acquisition as referenced in **Table 3.1-3** of the Draft EIS. **Appendix F** uses the correct incident rate of 1.44 for the impact analysis.

Also, see responses to Comments 461-1 and 461-2 above.

Comment 461-4: Written Comment from the Environmental Defense Fund (EI-32540)

On page 3.1-8 OEA stated that "incident rates on the CP and KCS systems have declined in recent years at least likely in part due to the implementation of PTC and other industry-wide improvements in safety." As demonstrated above, incident rates have not declined in recent years if data from 2020-2022 is incorporated, therefore, it is incorrect to conclude that the implementation of PTC and other industry-wide improvements have had any effect, and as such, more stringent safety mitigation measures should be taken by the Applicants.

OEA Response

See responses to Comments 461-1 and 461-2 above. OEA did not identify any adverse effects related to freight and passenger rail safety that would warrant mitigation. Therefore, OEA does not recommend additional mitigation beyond what is voluntarily proposed by the Applicants, and no changes to the Draft EIS are warranted in response to this comment.

Comment 455-5: Written Comment from The Office of Harris County Judge Lina Hidalgo (EI-32534)

In terms of transportation safety, the Accident Analysis and Prevention Journal asserts that train derailments can cause damage to infrastructure, rolling stock and lading, disrupt service, and have the potential to cause casualties, and harm the environment.⁸ It should first be noted that in Section 3.1 of the Draft EIS, Freight and Rail Safety, Canadian Pacific's history of derailments has gone unaddressed. Canadian Pacific has had four derailments this year alone: one in Victoria, one in Alberta, one in British Columbia, and one in Minnesota.

⁸ Liu, X., Rapik Saat, M., & Barkan, C. P. L. (2017). Freight-train derailment rates for railroad safety and risk analysis. *Accident Analysis & Prevention*, 98, 1–9. <https://doi.org/10.1016/j.aap.2016.09.012>

OEA Response

As discussed in *Section 3.1, Freight and Passenger Rail Safety*, OEA analyzed all derailments between 2015 and 2019 on all of the rail lines owned by the Applicants within the United States. Three of the incidents referenced by the commenter occurred in Canada, not in the United States. Because the Board does not have jurisdiction in Canada, OEA appropriately limited its environmental review to rail lines within the United States. In response to public comments, OEA has provided additional information in *Section 3.1, Freight and Passenger Rail Safety*, regarding incidents that occurred along rail lines in the CP and KCS systems within the United States during the study period.

Comment 455-6: Written Comment from the Office of Harris County Judge Lina Hidalgo (EI-32534)

In Section 2.3 of the Draft EIS, Agency Consultation, the OEA states that "the projected increase in rail traffic that would occur as a result of the Proposed Acquisition would increase the predicted risk of an incident (such as a derailment or other accident) occurring

on certain rail lines in the combined CPKC system.” CPKC plans to mitigate higher traffic with 25 capital improvements across the entire route of CPKC track, but none of these are in Texas, and CPKC is under no obligation to do so unless the OEA imposes these mitigation measures. The derailment mitigation proposed in the Draft EIS is not sufficient to protect the high-density and EJ populations residing in Harris County. We would like to see some calculation of Harris County’s derailment rate (the number of derailments normalized by traffic exposure used to estimate the likelihood of derailment) given the approval of this merger, and given no-action.”

OEA Response

As explained in *Section 3.1, Freight and Passenger Rail Safety*, OEA assessed impacts on rail line segments where the projected increase in rail traffic would meet or exceed OEA’s thresholds for environmental review, as established by the Board’s environmental regulations at 49 C.F.R. § 1105.7(e) and by past practice in previous railroad acquisition proceedings. The threshold for assessing freight rail safety impacts is an increase in rail traffic of eight or more trains per day. Rail lines in Harris County, Texas do not meet this threshold. The projected increase in rail traffic on rail lines in Harris County is up to 7.57 trains per day, on average. Therefore, OEA did not assess freight rail safety for rail lines in Harris County in the Draft EIS. In response to public comments, however, OEA has revised *Section 3.1, Freight and Passenger Rail Safety* and **Appendix F, Freight and Passenger Rail Safety** to include the results of a quantitative analysis of freight rail safety impacts in Harris County. Based on that analysis, OEA found that impacts on freight rail safety would be minor and would be minimized by the voluntary mitigation measures proposed by the Applicants. Therefore, additional mitigation measures related to freight rail safety in Harris County are unnecessary.

Comment 555-1: Formal filing from Daniel Bennett (Filing ID 305469)

"Per the environmental impact statement, Table 3.1-5. "Incident Rates on CP and KCS Segments", there is a likelihood of an increase of incidents per year, possibly up to three times the current rates, if this merger goes through as planned.

Per the chart:

	No action	Proposed Alternative acquisition
Sabula Drawbridge, IA to Lake, IA	864.49	374.77
Davis Jct. IL. To Sabula Drawbridge, IA	9.18	4.14
Randall Rd, IL to Davis Junction, IL	30.42	8.59
Bensonville Metra, IL to Randall Rd., IL	47.21	14.11
Sabula Drawbridge, IA to Clinton, IA.	19.73	8.42
Clinton, IA - Clinton, IA Water Works	13.49	4.92
Water Works, IA Nahant, IA	100.16	36.51
Nahant, IA to Muscatine, IA	23.60	7.24

Muscatine, IA to Ottumwa, IA 9.35 2.34

Starting at the Sabula draw bridge in Iowa, the route that the railroad company will likely be using to haul crude oil will be traveling at least 150 miles, either right next to, or very close to the Mississippi river.

The railroad track beds they will be using are frequently inundated by high flood waters and are likely to deteriorate much quicker with the dramatic increase in train traffic. "

OEA Response

For each of the rail line segments identified by the commenter, the projected number of incidents would be well below one per year, as shown in **Table S.1-1** below, reproduced from **Table 3-1.5** in *Section 3.1, Freight and Passenger Rail Safety*. For example, based on CP’s mainline incident rates, OEA projects that the 0.7-mile segment from the Sabula Drawbridge to Lake, Iowa (C-CHIC-01) would experience an incident only once every approximately 375 years if the Board authorizes the Proposed Acquisition. Further, as explained in *Section 3.1, Freight and Passenger Rail Safety*, most rail-related incidents are minor and do not result in injuries, fatality, or releases of hazardous materials with the potential to affect people or the environment.

OEA notes that, out of the 56 reported derailments that occurred on CP and KCS mainlines during the study period, only two were caused by washout, and of the 180 derailments system-wide, only five caused any amount of hazardous material release. No train incidents were reported due to flood waters in the five-year study period. Both CP and KCS currently employ trackside High-Water Detectors that alert the train crew and dispatch center in the event of flooding on the tracks. As set forth in *Chapter 4, Mitigation*, the Applicants have proposed voluntary mitigation measures that would minimize the risks associated with freight rail safety. Because incidents caused by flooding or washout are extremely rare events, OEA is not recommending mitigation measures beyond the Applicants’ proposed voluntary mitigation measures.

Table S.1-1. Incident Rates on CP and KCS Segments

Rail Line Segments				Incidents per Year			Years between Incidents	
Between	And	Segment Code	Segment Length	No-Action Alternative	Proposed Acquisition	Anticipated Change	No-Action Alternative	Proposed Acquisition
Sabula Drawbridge, IA	Lake, IA	C-CHIC-01	0.7	0.00	0.00	0.00	864.49	374.77
Davis Jct, IL	Sabula Drawbridge, IA	C-CHIC-02	61.5	0.11	0.24	0.13	9.18	4.14
Randall Road, IL	Davis Jct, IL	C-CHIC-03	38.7	0.03	0.12	0.08	30.42	8.59

Table S.1-1. Incident Rates on CP and KCS Segments

Rail Line Segments				Incidents per Year			Years between Incidents	
Between	And	Segment Code	Segment Length	No-Action Alternative	Proposed Acquisition	Anticipated Change	No-Action Alternative	Proposed Acquisition
Bensenville Metra, IL	Randall Road, IL	C-ELGI-01	23.0	0.02	0.07	0.05	47.21	14.11
Sabula Drawbridge, IA	Clinton, IA	C-DAVE-01	17.5	0.05	0.12	0.07	19.73	8.42
Clinton, IA	Water Works, IA	C-DAVE-02	33.2	0.07	0.20	0.13	13.49	4.92
Water Works, IA	Nahant, IA	C-DAVE-03	4.5	0.01	0.03	0.02	100.16	36.51
Nahant, IA	Muscatine, IA	C-OTTU-01	24.6	0.04	0.14	0.10	23.60	7.24
Muscatine, IA	Ottumwa, IA	C-OTTU-02	82.5	0.11	0.43	0.32	9.35	2.34

In response to public comments, OEA has added additional discussion to *Chapter 3, Affected Environment and Environmental Consequences* regarding the potential impacts that could occur in the unlikely event of a release of hazardous materials, including in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*.

Comment 453-21: Written Comment from the Harris County Attorney’s Office (EI-32532)

The County would like clarification as to why our rail segment was not included in the Freight Rail Safety scope of analysis. The OEA states they identified 29 rail segments that exceeded the threshold for environmental review, “as shown in Figure 2-1.”⁴² Table 2.2-1 in Chapter 2 entitled “Segments that Meet or Exceed Thresholds for Environmental Analysis” includes Segment 149 from Beaumont to Rosenberg, which runs through Harris County. However, this segment is not listed as part of the study area in the paragraphs at the bottom of page 3.1-1 and top of page 3.1-2. Our segment is also not listed in Table 3.1-5 “Incident Rates on CP and KCS Segments.” Any clarification the OEA could provide would be appreciated.

OEA Response

See response to Comment 455-6 above.

Comment 636-3: Written Comment from Susan W. Leuthauser (EI-32629)

Brake failure seems to be a frequent occurrence with CP trains; sending a train with faulty brakes on its way seems to be a common practice. This caused the death of three CP employees in 2019 <https://www.cbc.ca/news/canada/calgary/cp-rail-lawsuits-victims-fatal-derailment-1.5991122>. When failed brakes and mechanical defects are identified but not

corrected, any safety plan like the Safety Integration Plan (SIP) becomes meaningless. Statistics tells us that when the train frequency is increased by 2.75 folds, the risk of having an unplanned incident will also go up by 2.75 folds. With this acquisition, we can expect a 2.75 X increase in incidents.

OEA Response

The probability of future incidents is not solely correlated with an increase in rail traffic. This is because rail transportation safety has tended to improve over time and will likely continue to do so in the future due to the implementation of new safety measures, such as Positive Train Control (PTC). Therefore, OEA expects to see some increase in the probability of an incident due to increased rail traffic, but at a decreasing rate.

S.5 Hazardous Materials Transportation

Summary Comment

Commenters raised concerns that increased transportation of hazardous materials on certain rail lines would increase the risk of releases that could adversely affect human health and the environment. Additionally, commentors raised concerns about the possibility of catastrophic events associated with hazardous materials transport.

OEA Response

As discussed in *Section 3.1, Freight and Passenger Rail Safety*, the potential for a hazardous material release exists today and would continue regardless of whether the Board authorizes the Proposed Acquisition. If the Proposed Acquisition is authorized and implemented, OEA expects that the probability of a hazardous material release occurring would remain very low. Over the five-year study period, only five derailments that resulted in a release of hazardous material occurred across all CP and KCS rail lines. Of these, only one involved a spill of more than 50 gallons.

As explained in *Section 3.1, Freight and Passenger Rail Safety*, OEA expects that any spills that could occur would most likely be small. OEA estimated that a release of hazardous materials into the environment as a result of a rail incident would generally lead to a relatively short duration of exposure. The duration and severity of a release would be limited by the volume of hazardous materials in the railcar or railcars, as well as the effectiveness of local and railroad emergency response plans² to contain any releases in a relatively short amount of time. Good emergency response plans minimize the potential for groundwater contamination, limit the extent of any soil contamination, and allow for the proper management of surface water contamination, potentially affecting biological resources. For surface water, appropriate management actions depend on the material and the resources affected, and might include, but is not limited to, cleaning up the spill and

²As required by 49 C.F.R. Parts 172 and 174.

temporarily restricting the use of the water body. Thus, the potential for longer-term impacts through unrecognized soil or water contamination would be minimized.

Based on the low probability of a release under the No-Action Alternative and the Proposed Acquisition, as analyzed in *Section 3.1, Freight and Passenger Rail Safety*, extensive FRA regulations, the SIP, and the Applicants' voluntary mitigation measures, OEA has not recommended additional mitigation beyond what is currently proposed by the Applicants. Additionally, a condition requiring completion of the SIP process and compliance with the SIP per FRA and Board requirements (49 C.F.R. Part 1106) would reduce the probability of incidents occurring (VM-Rail-02). In response to public comments, OEA has added additional discussion to *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources* of the Final EIS regarding consequences. Also, *Section 3.1, Freight and Passenger Rail Safety* describes the extensive hazardous materials regulations that FRA, EPA, and Occupational Safety and Health Administration (OSHA) apply to railroads.

Comment 462-21: Written Comment from the Coalition to Stop CPKC (EI-32542)

OEA should also recommend that the Applicants be directed to establish a fund for the purpose of helping Coalition communities to purchase necessary hazmat equipment for regional use and for training, as necessary. If the proposed increase in freight train traffic is approved, each of the communities would require substantial increases in hazardous material training, vehicles, and equipment. Currently, fire service personnel in Illinois are trained at the Hazardous Materials Operations and Hazardous Materials Technician levels and certified through the Office of the State Fire Marshal (“OSFM”). The Applicants have proposed to provide safety training, but that training is already required.³⁴

³⁴The Coalition communities operate within four (4) different MABAS Divisions (1, 2, 10, and 12) and span an area of approximately 33 miles from Elgin to Bensenville. Therefore, four (4) regional teams that are appropriately equipped and trained for a hazardous material response need to be built to ensure adequate resource availability. Building these teams as regional response teams is the most cost-effective way of providing the necessary and appropriate response capabilities. These regional teams, if appropriately trained and equipped, would be able to provide immediate and initial scene assessment and recognition and take initial actions to begin containment of the event. Additionally, each regional team would be able to provide mutual aid assistance to the other represented communities building a comprehensive hazardous materials response.

OEA Response

As documented in **Table F.2-2** and **Table F.2-5**, under the Proposed Acquisition, the chance of any hazardous material release remains low. For the rail line segment along which the communities represented by the commenter are located, the Applicants project that the transportation of hazardous materials would increase by approximately 10,977 carloads per year, or around 18 percent. OEA estimates that this would increase the probability of a release occurring in any given year by approximately 0.00658. This is the same as saying that OEA predicts the Proposed Acquisition would result in one additional release every approximately 152 years on this rail line segment.

As set forth in *Chapter 4, Mitigation*, the Applicants have proposed voluntary mitigation measures that would minimize the risks associated with hazardous materials transportation. Under VM-Rail-04, the Applicants would be required to fund the participation in railroad focused emergency response training at the Association of American Railroads' (AAR) Security and Emergency Response Training Center in Pueblo, Colorado, for two qualified firefighters providing service within each of the potentially affected communities. The Applicants also commit to notify appropriate federal, state, and local agencies in the event of a reportable hazardous materials release (VM-Rail-02) and to conduct training workshops for emergency responders in communities through which dangerous goods are transported (VM-Rail-03).

The Applicants have also committed to complying with the SIP that the Applicants prepared pursuant to 49 C.F.R. Part 1106 of the Board's regulations and FRA's regulations at 49 C.F.R. Part 244 (VM-Rail-02). The SIP describes the Applicants' process and timeline for merging the operations of CP and KCS, as well as the safety implications of merging these operations. During the preparation of the SIP, the Applicants met with FRA to review drafts of the proposed SIP and related materials, respond to questions, and accept recommendations. Pursuant to 49 C.F.R. §§ 1106.4(b)(1) and 244.17, the Applicants submitted their proposed SIP to the Board on December 28, 2021, and, by letter dated February 28, 2022, FRA submitted comments to the Board stating that FRA is satisfied that the proposed SIP provides a reasonable assurance of safety for the proposed transaction, consistent with governing regulations. OEA also has reviewed the proposed SIP and appended it to the Draft EIS as **Appendix G, Safety Integration Plan**. OEA requested agency and public comment on the SIP but received none. If the Board authorizes the Proposed Acquisition and adopts the SIP, the Board will require compliance with the SIP as a condition to its authorization (49 C.F.R. § 1106.4(b)(4)). The Applicants then would coordinate with FRA in implementing the approved SIP, including any amendments thereto. FRA would provide the Board with updates as appropriate during the acquisition implementation period and advise the Board when, in FRA's view, the integration of the Applicants' operations had been safely completed. The final SIP is appended to this Final EIS as **Appendix G, Safety Integration Plan**.

Comment 690-1: Written Comment from Patrick Bosold (EI-32749)

This is a public comment on the Canadian Pacific and Kansas City Southern railroad merger:

I live in Jefferson County, southeast Iowa, and have followed stories about this merger and meetings held about it nearby. NOT ONCE in the coverage I've seen was mention made of how this merger will enable the shipment of Tar Sands crude oil from Canada to Mexico. "Transport of hazardous materials" is as close as anything I've seen about this, and even that was barely mentioned. The emphasis was mostly on the increase in train traffic and the 'minor inconveniences' to be caused by that traffic.

This merger should be stopped for that reason alone. The public HAS NOT been adequately informed about what these trains will be carrying if this merger is approved. The record of derailments and other accidents involving trains transporting crude oil should be more than enough to prevent this merger from happening. The massive oil spills, fires and explosions,

etc. coming from accidents involving these trains is a public safety and environmental hazard. Why would any government agency approve such a scheme, just so more Tar Sands crude can be moved from Canada to Mexico?

I urge you to deny permission for this merger. It's a disaster waiting to happen and a bomb waiting to go off if it gets approved.

OEA Response

For the rail line segment in Jefferson County, the Applicants project that the transportation of hazardous materials would increase by approximately 43,857 carloads per year, or around 162 percent. OEA estimates that this would increase the probability of a release occurring in any given year by approximately 0.09427. This is the same as saying that OEA predicts the Proposed Acquisition would result in one additional release every approximately 11 years on this rail line segment. Also, see response to Comment 462-21 for information on the SIP process.

Additionally, see third paragraph of response to Comment 461-6 below specific to the commenter's concerns regarding the shipment of Tar Sands crude oil.

Comment 459-1: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

Finally, the DEIS fails to address impacts in the County from Acquisition-related increases in the number of rail cars carrying hazardous materials. Applicants forecast that the Acquisition will result in approximately 40,000 annual additional rail cars with a hazardous classification on the Paynesville Subdivision by the year 2027.⁶³ However, these projections were based on current volumes, which are currently depressed from peak levels that were reached in prior years, before the COVID-19 pandemic.⁶⁴ Oil and gas shipments originating in the Bakken and other formations throughout the northern U.S. and Canada are currently depressed from peak levels that were reached in past years.⁶⁵ Shipment volumes are driven by many factors not directly controlled by Applicants such as availability of pipeline capacity, seasonality, and commodity prices. If market conditions result in an increased shipping volume from the Bakken area, it would likely result in higher freight traffic volumes than Applicants projected.⁶⁶

⁶³ OEA Draft EIS, Appendix F, Table F.2-2 at F-13.

⁶⁴ Exhibit A-Attachment A, V.S. Amfahr (Feb. 28, 2022) at ¶¶ 28-29.

⁶⁵ Id. at ¶ 29.

⁶⁶ Id

OEA Response

As shown in **Table F.2-1 in Appendix F, Freight and Passenger Rail Safety**, OEA projected future levels of hazardous materials transportation using pre-pandemic baseline numbers, not on current volumes as the commenter states. Therefore, the projections are not

understated as the commenter claims, and no changes to the Draft EIS are warranted in response to this comment.

Comment 459-2: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

In 2021, 22 rail cars on a CP train, some containing hazardous materials, derailed in the County.⁶⁷ Fortunately, the derailment occurred in a relatively isolated area, rather than a heavily urban area. However, the incident illustrates the danger of increased hazardous materials to our residents, rivers, and parks in the County.⁶⁸

⁶⁷ Id. at ¶ 26.

⁶⁸ Id.

OEA Response

Please see response to the Summary Comment above. For context, the largest projected increase in hazardous material transportation among rail lines in Hennepin County is an increase of 43,571 carloads per year for segment B-TWIN-01 between St. Paul Yard and Northtown. Due to this increase, OEA estimates that the Proposed Acquisition would increase the annual probability of a release of hazardous materials of any size on this segment by 0.020. This corresponds to one additional projected release every approximately 50 years.

Comment 453-2: Written Comment from the Harris County Attorney's Office (EI-32532)

The OEA has concluded the risk of release on any specific rail segment would be low. Even if this is the case, the County urges the OEA to take into consideration that Harris County is comprised of wetlands and bayous and is prone to major flooding. Thus, any spill has the potential to infiltrate waterways (that feed into the Gulf of Mexico) and travel. In the event of flooding, any spill can potentially interact with residents and their homes and seriously effect human health. The County thus asks that a chemical safety and disaster preparedness plan be put in place for the County as a mitigation effort.

OEA Response

See response to the Summary Comment above. In response to public comments, OEA has added information to *Section 3.12, Water Resources* regarding the potential impacts on water resources, such as wetlands, waterways, and floodplains, that could occur in the unlikely event of a spill of hazardous materials.

Section 3.1, Freight and Passenger Rail Safety, describes FRA, EPA, and OSHA regulations that apply to railroads. The Applicants would be required to comply with all applicable laws and regulations governing the safe transport of hazardous materials. U.S. Department of Transportation (USDOT) regulations include requirements for shipping and packaging containers for hazardous materials, emergency response information, and training. FRA enforces USDOT regulations that require shippers to transport hazardous materials in rail cars specifically designed for safety of transport (49 C.F.R. Parts 171 through 180). These

include the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.), which applies to the transportation of hazardous materials in commerce, including interstate and intrastate rail carriers. The Applicants would also be required to comply with FRA regulations governing track safety standards, freight car standards, and operating rules and practices, which all reduce the potential for hazardous material releases.

Regarding a disaster preparedness plan, the SIP describes the Applicants' Integrated Contingency Plan (the "ICP" or the "Plan"), which "is CP's all-encompassing emergency response plan for managing any emergency situation. The Plan applies to all operations involving CP property or employees and covers accidents and/or incidents that may present a potential hazard to people, property, or the environment. The ICP is CP's primary response tool for any emergency on its network. The Plan was broadly constructed to allow CP operations to address a wide range of risks. Despite its breadth, the ICP is able to address each incident in a manner tailored to the specific needs of the event. Additionally, each major facility on CP's network has developed a written Emergency Action Plan to provide CP with a single guidance document for each applicable fixed facility operation." (SIP, page 82). CP maintains policies and processes governing the inspection and maintenance of track assets that meet or exceed FRA regulations, in addition to having standard protocols for additional special inspections in times of extreme temperatures, flooding, or severe weather.

For the rail line segment in Harris County, the Applicants project that the transportation of hazardous materials would increase by approximately 5,374 carloads per year, or around 53 percent. OEA estimates that this would increase the probability of a release occurring in any given year by approximately 0.01536. This is the same as saying that OEA predicts the Proposed Acquisition would result in one additional release every approximately 65 years on this rail line segment.

The Applicants have also proposed voluntary mitigation measures that would address impacts related to hazardous materials transportation. As set forth in *Chapter 4, Mitigation*, these measures include commitments to conduct Transportation Community Awareness and Emergency Response Program (TRANSCAER) workshops (training for communities through which dangerous goods are transported) in potentially affected communities that request this training and to send two emergency responders from affected communities to AAR's Emergency Response Training Center in Pueblo, Colorado (VM-Rail-03 and VM-Rail-04). See response to Comment 462-21 for additional information on the SIP process. To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board's final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03).

OEA also notes that, following issuance of the Draft EIS, the Applicants notified OEA that they are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to

work with communities to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as accidents. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments (VM-Grade Crossing-07).

Comment 459-3: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

The FEIS must, therefore, address these concerns and require Applicants to implement conditions to mitigate those risks. The County proposes that OEA include the following conditions in the FEIS:

1. Installation of additional defect detectors along the corridor, possibly including dragging equipment, acoustic, thermal, and wheel impact detectors.
2. An increase in frequency of visual inspection by track supervisors.
3. An increase in frequency of rail defect testing along the corridor.
4. An assurance that no trains will be operated until track and structures can be inspected following unusually heavy rain in the area.
5. A speed restriction through portions of the metro area not already restricted (only applying to trains handling loaded hazardous materials shipments).⁶⁹

These common sense conditions will reduce the likelihood of a derailment of rail cars containing hazardous materials, protecting County's residents and natural resources.

The Board has previously imposed mitigation measures to protect urban areas from the impact of increased traffic due to railroad mergers. See Union Pac. R.R. Co. and Mo. Pac. R.R. Co. at 223 (imposing limitations on freight and passenger traffic through the Cities of Reno and Wichita in order to mitigate adverse impacts relating to pollution, air and water quality, and increased potential for pedestrian accidents). The Board should do the same here.

⁶⁹ Id. At ¶ 27.

OEA Response

See response to the Summary Comment above. Regarding the commenter's request for additional mitigations measures, OEA found that impacts related to hazardous materials transportation would be minor and would not warrant mitigation beyond the measures voluntarily proposed by the Applicants and set forth in *Chapter 4, Mitigation*. Wayside detectors are generally outside the authority of the Board; track inspection and testing fall under FRA Track Safety Standards outlined in 49 C.F.R. Part 213. The Applicants have protocols in place that require visual inspections after extreme weather events and have a

commitment to comply with FRA and Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations applicable to hazardous materials transportation (VM-Rail-01). As discussed in *Section 3.1, Freight and Passenger Rail Safety*, FRA regulations specify safety requirements for rail lines, including inspection frequencies, signaling and safety equipment, and allowable train speeds. Lastly, imposing specific speed restrictions are generally outside of the Board's authority. OEA did not identify potential impacts that would warrant deviating from FRA regulatory requirements in this proceeding and commenters have identified none.

Should the Board authorize the Proposed Acquisition, the Applicants would be required to comply with the SIP, which discusses the Applicants' current and planned investments in safety equipment, such as wayside detectors. Both CP and KCS currently employ hot bearing detectors, high water detectors, and dragging equipment detectors along their respective rights-of-way and CPKC would continue to do so. The SIP also addresses track inspection frequency and train speed which is governed by FRA regulations. The SIP states that "CP maintains policies and processes governing the inspection and maintenance of track assets in a manner that meets or exceeds FRA regulations, as detailed in CP's Engineering Red Book. Visual Track inspection frequencies meet or exceed all required regulations." (SIP, page 73). OEA appended the SIP to the Draft EIS as **Appendix G, Safety Integration Plan** and requested comments but received none.

Regarding the commenter's request that the Board impose limitations on freight and passenger traffic through Hennepin County, Minnesota to mitigate impacts relating to pollution, air and water quality, and increased potential for pedestrian accidents, OEA notes that the projected increase in rail traffic through Hennepin County is below the thresholds for environmental review set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(5). Thus, OEA does not expect that increased rail traffic would have the potential to result in significant environmental impacts in Hennepin County. Further, OEA notes that railroad companies have the obligation to provide rail service upon reasonable request and the right to determine how to route their traffic in order to meet the needs of shippers while maintaining safe and efficient operations. OEA cannot recommend that the Board place limits on rail traffic as a form of environmental mitigation and the Board could not impose such mitigation. The limitations referenced by the commenter in the acquisition of Southern Pacific Railway by UP in Docket No. FD 32760 were imposed temporarily in order to allow sufficient time for the environmental review to be completed.

Comment 461-6: Written Comment from the Environmental Defense Fund (EI-32540)

Chemical security is a serious concern for the Houston area. Canadian Pacific has had four derailments in 2022 alone. Given the fact that one railcar associated with this merger can haul up to 27,000 gallons of crude oil CP's recent derailment history is a major cause for concern. As OEA acknowledges, among the energy commodities to be transported along the CPKC system is, bitumen, or crude oil extracted from tar sands. If a freight train carrying bitumen were to derail, the consequences would be devastating and more difficult and more costly to clean and further exacerbate ongoing environmental concerns regarding creosote contamination of the Englewood UP site, the site adjacent to two known cancer clusters. Such a spill would result in the release of benzene, a dangerous carcinogen. Tar

sands oil sinks to the bottom of rivers and lakes, suffocating wildlife and polluting the water, and hardens in the sun on land. EDF recommends the final freight safety analysis include increased risk inherent with hauling more hazardous materials.

OEA Response

The Draft EIS included a thorough analysis of changes in probability of release inherent with the movement of more hazardous materials; see *Section 3.1.2, Hazardous Materials Transportation*. That analysis shows that, if the Proposed Acquisition is authorized and implemented, the probability of a release of hazardous materials is low. See also response to the Summary Comment above.

In response to public comments, OEA has added additional discussion to *Chapter 3, Affected Environment and Environmental Consequences* regarding the potential impacts that could occur in the unlikely event of a release of hazardous materials, including in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*. This language explains that, although a large release of hazardous materials would be very unlikely to occur, such a release could impact vegetation, wildlife, or aquatic ecosystems in the event that it would occur in any area immediately adjacent to sensitive habitat areas. Predicting specifically where and how much hazardous materials would be discharged into the environment under the Proposed Acquisition or No Action Alternative is not possible; therefore, it is not known where potential resource impacts from spills would occur and what those impacts would be.

Specific to the commenter's concerns about bitumen, the Applicants stated that the Proposed Acquisition would allow for an increased percentage of energy commodities to be shipped in the form of non-hazardous and non-flammable DRUbit (a form of bitumen from which the diluent has been removed), which does not exhibit any of the characteristics listed in any of the nine classes of hazardous materials defined by USDOT Hazardous Material Regulations (USD Partners 2021). DRUbit has a specific gravity of 0.997 (997 kg/m³) compared to bitumen (as dilbit [diluted bitumen]) which has a specific gravity of 0.92 (920 kg/m³). Specific gravity determines whether the oil would sink or float upon release to a waterbody. Water has a specific gravity of 1.0, so anything less than 1.0 would float, while anything greater than 1.0 would sink. Therefore, bitumen, whether in the form of dilbit or DRUbit would likely initially float if spilled into water. However, DRUbit is heavier and more viscous than dilbit, which means that it would not spread as quickly in the event of a release. While bitumen would be a decreasing proportion of energy commodities shipped, should any spill in or near sensitive habitats, potential impacts could include physical and toxicological effects. Physical impacts typically consist of the coating of soils, sediments, plants, and animals. Toxicological effects could include direct mortality or interference with metabolic, biochemical, and genetic processes.

Additionally, the Draft EIS did not state that bitumen was a commodity "to be transported." The Draft EIS indicated that the Applicants currently move bitumen to the Gulf Coast. The Applicants anticipate moving more crude oil by diverting it from other railroads onto the combined CPKC system and shipping it as non-hazardous DRUbit. To the extent that bitumen might still move on CPKC, releases are not likely to have toxic effects on the general public because the depth and distance that the bitumen would migrate would likely

be limited. In addition, there are many restrictions that federal, state, and local agencies impose to contain environmental exposure after a release.

The probability of an already extremely rare event (hazardous material release) happening at a specific location such as the Englewood yard, is even more improbable. In any event, however, the Applicants have committed to prompt emergency response and clean-up as discussed above in the response to the Summary Comment.

Comment 631-2: Public Meeting Comment from Roy L. Malveaux, Director of People Against Contaminated Environment (EI-32759)

But my most concern is the transportation of bitumen. One of my concerns with it is potential spills. Canadian Pacific has had four derailments this year alone. And that concerns me greatly. And with the fact that hearing was being diverted around Beaumont, I'm deeply concerned about. I don't want to appear that I'm operating on emotion alone. So let me tell you what I know briefly about bitumen. I know it's used for construction, roofing, waterproofing. But in the long term, what concerns me is that it's toxic, highly toxic. Exposure can cause lung cancer, stomach cancer, changes in skin pigmentation, bronchitis, emphysema, damage to the liver, kidneys, and the nervous system. It releases hydrogen sulfide gas, and it releases it into the air. And even death may occur. Breathing it can irritate the nose, the throat, and the lungs, causing acute coughing, wheezing, and shortness of breath. Now, I've done just a little research, and I don't know everything. I'm not a chemist, and I'm not a doctor. But I'm somewhat concerned because I comprehend what this proposal or this merger might mean to us. Now is your chance to do a little research. And when you do, you'll discover that PACE often responds litigiously to threats on our health, our welfare, our life, liberty, and pursuit of happiness, which includes clean air and clean water, and the right to have it. Now, please, as I close, don't take this as a threat. Please understand, we have a right to exercise our right. And we are standing here in opposition to this merger or this acquisition.

OEA Response

See third paragraph of response to Comment 461-6 above specific to the commenter's concerns about bitumen.

To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board's final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03). 526-3: Written Comment from Harris County Commissioner Rodney Ellis (EI-32556)

Canadian Pacific has had four derailments this year alone. A single railcar can carry up to 27,000 gallons of crude oil. I am particularly concerned about the potential for a spill of

crude oil extracted from tar sands which is widely regarded to be the most difficult oil to clean up. A derailment of a Kansas City Southern train several years ago resulted in a weeks-long cleanup of corn, which was delayed due to difficulty contacting Kansas City Southern operators. The results of a derailment in Harris County would not be negligible, minor, and/or temporary.

OEA Response

See response to the Summary Comment above. Although the probability of a spill of hazardous material on rail lines in Harris County would be very low, OEA has added information to *Chapter 3, Affected Environment and Environmental Consequences* regarding the potential impacts that could occur in the unlikely event of a spill, including in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*.

As described in the SIP in **Appendix G, Safety Integration Plan**, railroad emergency contact information is available on the AskRail application. VM-Rail-03 in *Chapter 4, Mitigation* outlines the Applicants' plans to train first responders in the use of this application. OEA also notes that the Applicants have committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to work with communities to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as accidents. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

Comment 90-1: Written Comment from Manilan Houle (EI-32223)

The proposed merger between Canadian Pacific and Kansas City Southern railroads would create a direct pipeline for oil that cuts right through White Earth reservation and goes all along the Mississippi River watershed. As an enrolled member of Fond du Lac Band of Lake Superior Chippewa, I am highly concerned about the potential environmental impact of the increased rail traffic and increase of potentially harmful materials being freighted throughout Minnesota alongside our most precious clean water resources. Through many parts of Minnesota, the railroad runs through ceded territory. Endangering such land is irresponsible and a violation of the 1854 Treaty. By routing oil, in any amount, along these lines, it directly threatens ceded territories and land that should be protected. Furthermore, an increase in localized emission, runoff, leaks, still poses a threat to our precious land and waterways. The report minimizes the impacts to wetlands and streams by accounting for site work and construction as minimal by projected cumulative measurements. But it fails to consider any damages that occur regularly by an increase in railroad usage or future site work and construction for additional maintenance. I request that the STB reevaluate and

reconsider this proposed merger and the EIS report to account for a more in-depth analysis and consult with the appropriate tribal leaders.

OEA Response

See responses to the Summary Comment, Comment 461-6, and Comment 453-2 above. In response to public comments, OEA has added additional information to *Chapter 3, Affected Environment and Environmental Consequences* regarding the potential impacts that could occur in the unlikely event of a release of hazardous materials, including in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*.

Regarding consultation with tribal leadership, OEA conducted extensive outreach to tribes throughout the EIS process, as described in **Appendix B, Agency and Tribal Consultation**. By letters dated November 12, 2021, OEA invited the White Earth Nation to participate in government-to-government consultation, Section 106 consultation, or both. The White Earth Nation did not accept OEA's invitation. OEA conducted additional outreach to the White Earth Nation by phone on February 3, 2022. On August 31, 2022, which was during the comment period on the Draft EIS, the White Earth Nation requested consultation with OEA through the project website. OEA responded by email on September 8, 2022, but did not receive a response. OEA notes that the CP rail line that passes through the White Earth Reservation would experience a projected 2.58 train per day increase in rail traffic as a result of the Proposed Acquisition, which is well below the Board's threshold for environmental review of eight trains per day. Therefore, as shown in **Table F.2-2 in Appendix F, Freight and Passenger Rail Safety**, the Proposed Acquisition would not substantially increase the likelihood of a spill occurring on the White Earth Reservation compared to the No-Action Alternative.

Comment 162-1: Public Meeting Comment from Winona LaDuke (EI-32756)

Hello. My name is Winona LaDuke. Hello, Aniin. Hello, my relatives. I am from the White Earth Reservation in Northern Minnesota. I'm an Anishinaabe, and I'm here to say that I'm deeply concerned about the proposed train merger. Our Reservation is in the remote area of Northwestern Minnesota, and there are five villages that the Sioux Line, which is what is a part of this merger, goes through. And it goes through all of those villages on the western portion of the Reservation already with a significant amount of dangerous rail material that travels through those villages. We did have one explosion a few years ago, and we see that, what we refer to as the "bomb" trains, which are the tar sands trains that come out of Canada, with great frequency. This proposal would, from my understanding, increase two or three times the amount of "bomb" trains traveling through our Reservation. We are not prepared for this.

OEA Response

See response to Comment 90-1 above.

Comment 455-7: Written Comment from the Office of Harris County Judge Lina Hidalgo (EI-32534)

Lastly, CPKC trains would carry hazardous materials associated with the extraction of tar sands through our region. According to a Canadian Pacific spokesperson, one railcar would carry up to 27,000 gallons of crude oil extracted from tar sands. Crude oil extracted from tar sands is incredibly difficult, and expensive, to clean up. For example, the cleanup of a 2010 crude oil pipeline spill in Michigan's Kalamazoo River took several years and cost \$1 billion to clean over 1 million gallons.⁹ In 2018, roughly 230,000 gallons of crude oil spilled into floodwaters after a train derailment in northwestern Iowa. Almost half of the 32 derailed tank cars leaked crude oil into the water, despite the fact that the model of tank cars was specifically developed to make oil safer to transport by rail.¹⁰ Train tracks in North America often follow waterways like rivers, so hazardous materials spills can easily contaminate water and damage vital ecosystems.¹¹ This merger would increase rail traffic and therefore the risk of crude oil spill in Harris County, which is already home to a significant amount of rail-related pollution impacting residents' health.¹² The Draft EIS does not include sufficient analysis or mitigation of hazardous material releases in Harris County specifically.

⁹ Kalamazoo River Oil Spill. Sabin Center for Climate Change Law at Columbia University. (2015, May 19). Retrieved October 12, 2022, from

<https://climate.law.columbia.edu/content/kalamazoo-river-oil-spill>

¹⁰Press, A. (2019, July 14). Crews scramble to clean up Iowa Oil Spill. MPR News.

Retrieved October 14, 2022, from <https://www.mprnews.org/story/2018/06/23/crews-scramble-to-clean-up-oil-spill-after-nw-iowa-train-derailment>

¹¹ Margolis, J. (2015, February). Runaway Risks. The Center for Biological Diversity. Retrieved from

https://www.biologicaldiversity.org/campaigns/oil_trains/pdfs/runaway_risks_web.pdf

¹² Douglas, E. (2019, December 6). Cancer cluster identified in Houston neighborhood near Union Pacific railyard's creosote contamination. Houston Chronicle. Retrieved from <https://www.houstonchronicle.com/business/article/Cancer-cluster-identified-in-Houston-neighborhood-14885972.php>.

OEA Response

See responses to the Summary Comment, Comment 461-6, and Comment 453-2 above. In response to public comments, OEA has added additional discussion to *Chapter 3, Affected Environment and Environmental Consequences* regarding the potential impacts that could occur in the unlikely event of a release of hazardous materials, including in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*.

Comment 280-1: Written Comment from Gerri Songer (EI-32481)

I'm writing to voice concern for public safety resulting from a lack of emergency preparedness for threats posed by transporting hazardous substances near schools and other public locations. An estimated 14,800 schools and 5.7M students are located within an Oil Train Blast Zone. Chicago, with 77,000 kids at school in this zone, is one of the top 5 cities

having school children at risk from derailments, emissions, and explosions. A coordinator from McHenry County's LEPC estimates it would take 8 paid staff 2 years to identify all at-risk schools that could be negatively impacted by any of nearly 400 hazardous substances transported by rail, and to then identify a 4-corner safety zone plan for each school since determining where to move students will literally depend upon which way the wind is blowing. McHenry County's LEPC has 4 paid staff, Lake County only 3! We're also concerned about the industry's use of private police with full criminal law powers. Although these unique powers date back to the 19th century, the cargo transported by rail has dramatically changed. Trains are heavier and longer, and cargo is increasingly more toxic and volatile. Trains now have the potential to decimate entire city centers, as demonstrated by the Lac-Megantic catastrophe. Allowing CP to extend police powers in the US by acquiring KCS's American police force through a private, commercial, cross-border transaction raises considerable concern for our sovereignty, national security, privacy rights, civil rights, and constitutional rights. Enabling an industry that historically thumbs its nose at railway safety and regulation to police itself is a ridiculous conflict of interest. We ask for a full STB investigation of CP Railway's use of private police and its impact on American interests BEFORE the CP-KCS merger is approved, and that a merger not be approved until emergency response plans are in place to protect residential areas, schools, and other public locations.

OEA Response

The chance of a catastrophic explosion resulting from the Proposed Acquisition caused by transporting hazardous materials is exceedingly small. Because no such incidents occurred on CP or KCS rail lines during the study period, OEA cannot quantify the probability of an explosion occurring systemwide or on any individual rail line segment. As described in the response to Comment 453-2 above, the Applicants have committed to providing additional training to emergency responders and the SIP developed by the Applicants in accordance with Board and FRA regulations contains provisions for emergency planning. See responses to the Summary Comment and Comment 459-2 above.

Regarding the commenter's concern about CP's use of private police, OEA notes that Railroad Police Officers in the United States operate under Section 1704 of the U.S. Crime Control Act of 1990³. Because policing is not an environmental impact of the Proposed Acquisition, this issue is outside the scope of the EIS.

³ SEC. 1704. RAILROAD POLICE OFFICERS. A railroad police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of any State shall, in accordance with regulations issued by the Secretary of Transportation, be authorized to enforce the laws of any jurisdiction in which the rail carrier owns property, for the purpose of protecting— (1) the employees, passengers, or patrons of the rail carrier; (2) the property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier; (3) property moving in interstate or foreign commerce in the possession of the rail carrier; and (4) personnel, equipment, and materials moving via railroad that are vital to the national defense, to the extent of the authority of a police officer properly certified or commissioned under the laws of that jurisdiction.

Comment 583-1: Public Meeting Comment from William Gabrenya (EI-32756)

All right. Good evening. My name is William Gabrenya, Fire Chief of the Bartlett Fire Protection District. I stand alongside the image of a very dangerous situation that happened in our community not once, but twice. Bartlett has experienced two derailments in the last 10 years, one on the same tracks in our downtown that the Canadian Pacific and Kansas City Southern intend to use. One derailment required 100 firefighters over three days to control the fire and hazardous materials mitigation. We know all too well that these accidents happen. It's only a matter of time. Currently, freight trains carry various hazardous materials throughout the communities posing a substantial possibility of a hazardous materials release. A proposed merger will present a 32 percent increase in greater potential exposure to hazardous materials incidents. The impact of additional freight train traffic on public safety agencies and community members cannot be underestimated. The more commodities and materials, hazardous or not, transported through densely populated areas, the greater the chance for significant incidents to occur. Regardless of reassurances from the railroads about their safety record, there are no guarantees. If the proposed increase in freight train traffic is approved, each of these communities represented by this coalition would require substantial increases in hazardous materials training vehicles and equipment. Currently, fire service personnel in Illinois are trained in the hazardous materials operations at the hazardous materials technician levels and certified through the Office of the State Fire Marshal. The railroads proposed to provide safety training, but that training is already a requirement. They need to increase their commitment as they are increasing the threat of hazardous materials incidents for our first responders and our residence. The communities represented in this coalition operate within four different MABAS divisions and expand area of approximate 33 miles from Elgin to Bensenville; therefore, four regional teams that are appropriately equipped and trained for hazardous materials response needs to be built to ensure adequate resource availability. Building these teams as regional response teams are the most cost-effective way of providing the necessary and appropriate response capabilities. These regional teams, if appropriately trained and equipped, would be able to provide immediate and initial scene assessment and recognition and take initial actions to begin containments of the event. Additionally, each regional team would be able to provide mutual aid assistance to the other represented communities building a comprehensive hazardous materials response. Stipulates, the railroad provide specialized training and equipment required for hazardous mitigation response. Through this merger, the company stands to make millions in profits. They can afford to make this investment in our communities, but they will only do it if you require them to do so. These expenditures should not be borne by the communities, but by the railroad companies creating this need. We ask that you do everything you can to help keep our communities safe. Thank you.

OEA Response

See response to the Summary Comment and Comment 453-2 above. Regarding the commenter's request for additional mitigation, OEA found that impacts related to hazardous materials transportation would be minor and would not warrant mitigation beyond the measures voluntarily proposed by the Applicants and set forth in *Chapter 4, Mitigation*. The measures in VM-Rail-04 would send two emergency responders from affected communities to AAR's Emergency Response Training Center in Pueblo, Colorado.

Comment 554-4: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

Trains on an almost daily basis travel through Camanche carrying hazardous materials that can be recognized by reading their hazardous materials placards. Frequently carried hazardous or toxic substances through Camanche include ammonia, ethanol, and highly explosive light petroleum products. On any given day, one can observe on the railroad tracks running through the residential areas in Camanche broken or missing fish plate bolts, railroad spikes missing from tie plates, sleepers that have heaved out of position, and contaminated ballast that allows excessive vertical movement of the steel rail when trains pass over them. The suspect overall condition of the railroad tracks throughout Camanche in combination with higher train counts of trains carrying hazardous or toxic substances increases risks of a catastrophic event to unacceptable levels.

OEA Response

See responses to the Summary Comment and Comment 453-2 above. As shown in **Table F.2-2 in Appendix F, Freight and Passenger Rail Safety**, OEA expects that the rail line segment in Camanche, Iowa would increase by 44,466 carloads per year. OEA estimates that this would increase the probability of a release occurring in any given year by approximately 0.0385. This is the same as saying that OEA predicts the Proposed Acquisition would result in one additional release every approximately 26 years on this rail line segment. As discussed in *Section 3.1, Freight and Passenger Rail Safety*, most releases are small and do not result in impacts to human health or the environment. Because impacts related to hazardous materials transportation would be minor, OEA is not recommending additional mitigation beyond the measures voluntarily proposed by the Applicants and set forth in *Chapter 4, Mitigation*.

Comment 93-2: Public Meeting Comment from Austin Pruett, Mayor, Camanche, Iowa (EI-32757)

These trains will be hauling by two -- oil. If and when there is a derailment, it will affect the marshlands in our area. It will also be right next to the Mississippi River. And it'll affect all the houses along the railway. The amount of contamination that would happen would cause a very large-scale problem. The CP has been very quiet about what these railcars will be containing. I don't think they should be leaving all of the communities and everybody else in the dark on what will be carried on these railcars.

OEA Response

See response to Comment 554-4 above.

Comment 453-3: Written Comment from the Harris County Attorney's Office (EI-32532)

The County is also concerned about the lack of established lines of communications between UP, KC, and Harris County Pollution Control in the event of a hazardous spill or chemical emergency. In 2021, KCS received a violation notice from Harris County Pollution Control Services for violations under the Texas Commission on Environmental Quality Air Regulations and Environmental Quality Municipal Solid Waste Regulations in relation to a

corn spill discharge into local waterways. This spill took weeks to clean up, affected local wildlife, and emitted a strong unpleasant odor that distressed residents. Clean-up efforts were delayed in part because of the difficulty the County had in reaching KCS. The County would like to avoid future confusion by establishing a plan regarding which entity, UP or CPKC, is responsible for communication, clean up, and emergency response.

OEA Response

See responses to the Summary Comment and Comment 453-2 above. OEA notes that the Applicants have committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to work with communities and other railroads that operate in the area, including UP, to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as accidents. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board's final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03).

Comment 450-1: Written Comment from the Harris County Pollution Control Services (EI-32529)

On August 10, 2021, four Kansas City Southern railcars filled with deer corn derailed off a Union Pacific line at 0 Highway 90 in Crosby, Texas. Some of the spill was removed immediately, but the remaining waste was not removed for over a month, resulting in the decomposition of said corn and nuisance odor complaints for which Violation Notice was issued by PCS on January 4th, 2022. The concern in the delay is that proper contacts were not available for the rail line and subsequent response was not timely. In the event of a hazardous material spill a similar delay would cause devastating results potentially exposing residents and the environment.

Specific to derailments and the required emergency response; the railroad report broadly discusses the system of emergency management and emergency response that will be in place. However, no copy of that plan is available for review. Additionally, there are no specifics regarding how the emergency response would be facilitated in Houston or Harris County. PCS recommends that Canadian Pacific produce a plan specific to Harris County and provide a contact that local regulators and responders can utilize in the event of a spill.

OEA Response

See responses to the Summary Comment, Comment 453-2, and Comment 453-3 above.

Comment 336-1: Written Comment from the Woodside Homeowners Association (EI-32316)

On behalf of the 85 homes and hundreds of residents of the Woodside HOA in Wood Dale, I respectfully submit our strong opposition to this merger. The draft EIS states, “Increased rail traffic has the potential to result in environmental impacts related to noise and vibration, air quality, freight and passenger rail safety, grade crossing safety and delay, passenger rail transportation, and hazardous material transportation.” We couldn’t agree more! Woodside Subdivision is immediately west of Route 83. In Wood Dale, there are 3 grade level crossings (Front Street, Wood Dale Road & Prospect Ave.) all 3 have been identified as being directly impacted by delays and safety. The Bensenville Intermodal Yard will see a 25% daily increase in cars, from 1439 to 1807. This increase will also result in 10,977 additional carloads of hazardous material per year. That’s 30 carloads of hazardous materials PER DAY. We are already seeing an increase in truck traffic in this area due to the eventual western access to O’Hare. The truck traffic at the Bensenville yard will increase 82% from 383 to 698. The Franklin Park Intermodal Yard will see a 103% daily increase in cars from 74 to 150 and a 70% increase in truck traffic from 190 to 324. OEA has concluded that, apart from train noise, which could result in adverse impacts at some locations, the potential adverse impacts of the Proposed Acquisition would be negligible, minor, and/or temporary. We strongly disagree with any impact assessment characterized as negligible.

OEA Response

Comment noted.

OEA’s analysis of impacts related to safety at roadway/rail at-grade crossings (grade crossing), grade crossing delay, and truck traffic near intermodal facilities are discussed in *Section 3.2, Grade Crossing Safety*; *Section 3.3, Grade Crossing Delay*; and *Section 3.5, Intermodal Facility Traffic*, respectively. *Section 3.1, Freight and Passenger Rail Safety* explains why OEA concluded that impacts related to hazardous materials transportation would be minor.

Comment 455-8: Written Comment from the Office of Harris County Judge Lina Hidalgo (EI-32534)

It should also be noted that in 2021, Kansas City Southern received a violation notice from Harris County Pollution Control Services. A corn spill that discharged into local waterways took a significant amount of time to clean, emitted a strong and unpleasant odor in the area, and affected local wildlife. The spill not only had harmful effects on Harris County’s environment, but also violated the TCEQ’s Air Regulations and Environmental Quality Municipal Solid Waste Regulations. The Draft EIS does not address this incident, nor does it offer sufficient mitigation strategies to address future hazardous material spills in our region.

OEA Response

The Draft EIS properly assessed whether the available historical information on all incidents over the study period raised serious concerns about hazardous materials transport by the Applicants on the affected lines and found no reason for concern. OEA notes that KCS did receive one violation notice from Harris County Pollution Control Services but concludes that one isolated incident does not cast doubt on the analysis and conclusions in the Draft EIS. Additionally, refer to response to Comment 462-21 regarding mitigation.

Comment 461-5: Written Comment from the Environmental Defense Fund (EI-32540)

Table 3.1-6 on page 3.1-14 only includes Hazardous Materials Incidents data through 2019. EDF requests the final EIS include data through year-to-date 2022.

OEA Response

OEA's analysis of hazardous materials took place in 2021 and 2022 and was based on data provided by the Applicants and obtained from publicly available datasets in 2021. Therefore, it was not possible to include the full dataset for those years in the analysis. Extrapolating incomplete data for the years 2021 and 2022 could introduce inconsistencies and would not accurately inform the analysis or decision makers. OEA instead used the most recent complete datasets for the years 2015 through 2019 and excluded the outlier year 2020. OEA's approach was reasonable. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 426-3: Public Meeting Comment from Ann Geiger (EI-32760)

I'm speaking as the Secretary of the Iowa Mississippi River Parkway Commission, which is in charge of the Great River Road in all ten states bordering the Mississippi River. You cannot talk about the road without talking about the river. The Commission, Iowa Commission, has interpretive centers all along the Great River Road, and Iowa has the most, 18. International travelers, as well as US Citizens, visit these annually. The river is our responsibility and according to all the reports in Canada, CP has burned up towns, killed citizens, burned cropland, and totally disregarded their employees. As you have already heard in June, CP Rail dumped five carloads of coal into the Mississippi near Lansing, Iowa where we have an interpretive center. They tried to cover it up, but the media found it. You have also heard of the fuel dump into Nahant Marsh, an education center, where, again, they tried to cover it up. They did not notify the owners, Scott Community College, or the manager, and trespassed by digging up the Marsh and putting possibly inappropriate soil into the marsh. This is also one of our interpretive centers. Because of the relationship between the road and the river, there are families and businesses within 50 to 150 feet of both. I personally live between the road, the rail, and the river. With the river being about 60 feet in front of my door, and the road and the rail about a football field away.

OEA Response

See response to Comment 462-21. As discussed in that response and in *Section 3.1, Freight and Passenger Rail Safety*, OEA concludes that the risks associated with hazardous

materials transportation would be very low. *Chapter 4, Mitigation* sets forth mitigation measures that would address impacts related to hazardous materials transportation. In response to public comments, OEA has added additional discussion to *Chapter 3, Affected Environment and Environmental Consequences* regarding the potential impacts that could occur in the unlikely event of a release of hazardous materials, including in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*.

Comment 645-3: Formal Filing from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (Filing ID 305524)

Given the increased rail traffic and increased volumes of hazardous materials shipments in the County, additional precautions are needed to protect County residents. The Applicants noted that this merger is expected to add 40,000 cars with a hazardous classification annually to the Paynesville Subdivision by year 2027.²⁶ The Paynesville Subdivision is CP's primary route into the Twin Cities from the west and is expected to handle the vast majority of the hazardous materials from Alberta oil/gas fields to Mexico and other destinations throughout the south.²⁷ The 40,000 additional hazardous-classified cars that would move in that corridor would represent a 17.5% increase over the base-case hazardous materials volume of 228,000 cars annually.²⁸ More significantly, nearly 1 in 4 cars moving over the Paynesville Subdivision is expected to be a car with a hazardous materials classification.²⁹ These increases proportionately increase the risk of a catastrophic incident resulting from a derailment or other accident. This Board should, therefore, require mitigation measures to reduce the chances for a release of hazardous materials, fire, or related outcomes.

²⁶ CP-KCS Response to Info Request #1 Maps by segment book, Docket No. FD 36500 at 255-258 (Date Filed, Oct. 28, 2021).

²⁷ Hennepin Cnty. DEIS Comments, Exhibit B, V.S. Amfahr re: DEIS at ¶ 24.

²⁸ Id.

²⁹ Id

OEA Response

The potential for a hazardous material release exists today and would continue regardless of whether or not the Board authorizes the Proposed Acquisition. OEA expects that the change in probability of release on the Paynesville Subdivision (segments C-PAYN-01 through -04) would range from no change to 0.1 as outlined in **Table F.2-2**. These impacts related to hazardous materials transportation would be minor and would not warrant mitigation beyond the measures voluntarily proposed by the Applicants and set forth in *Chapter 4, Mitigation*.

See also the responses to the Summary Comment, and Comment 459-1 above.

Comment 636-1: Written Comment from Susan W. Leuthauser (EI-32629)

Without a doubt, rail transportation saves lives, reduces the use of petroleum fuels and benefits the environment; additionally, the lower transportation cost of goods can be passed

on to the consumers. I'm in favor of improving the existing railroad system so it can better support the transport of goods and passengers. However, when hazardous materials are being transported, safety along the route should be one of the main concerns. If approved, CP will bring F22 crude oil trains from Canada to Mexico each day; part of the route will be through Scott County, Iowa along the bank of the Mississippi River.

OEA Response

The 22 crude oil trains referenced by the commentor is incorrect. The Applicants expect to see increase of 14 trains per day through Scott County for a total of 22 trains per day, of all types of freight. OEA expects the amount of DRUbit to be around 44 carloads per day through this area.

Comment 650-2: Transportation Merit Hearing Comment from Ben Schweigert

Third, this Board should require Applicants to undertake specific reasonable measures to protect Hennepin County residents from increases in hazardous materials cargoes. Applicants project that this proposed merger would result in 40,000 additional rail cars with a hazardous classification traveling through Hennepin County. In 2021, 22 Canadian Pacific railcars, some with hazardous materials, derailed in Hennepin County. While we were fortunate that this derailment occurred in a relatively isolated area, it illustrates the danger increased hazardous materials pose to our residents, rivers and parks.

OEA Response

OEA found that impacts related to hazardous materials transportation would be minor and would not warrant mitigation beyond the measures voluntarily proposed by the Applicants and set forth in *Chapter 4, Mitigation*. Additionally, as outlined in the Applicants SIP (Section F.1), the Applicants maintain policies and processes governing the inspection and maintenance of track assets in a manner that meets or exceeds FRA regulations.

Comment 653-2: Transportation Merit Hearing Comment from James Burke

The increase in operations will undoubtedly add to the amount of hazardous materials. That's been pointed out by several of our previous speakers. The more hazardous material transported the greater the risk. We all know that. Ironically, one of the towns represented in the coalition has had two incidents in the last ten years, the town of Bartlett. One of those incidents happened on this very rail. That incident required 100 firefighters over the span of three days to help mitigate that incident.

OEA Response

The potential for a hazardous material release exists today and would continue regardless of whether the Board authorizes the Proposed Acquisition. OEA expects no change in probability of release on this segment (C-ELGI-01) between the Proposed Acquisition and the No-Action Alternative as outlined in **Table F.2-2**.

See also responses to the Summary Comment and Comment 462-21.

Comment 659-3: Transportation Merit Hearing Comment from Brian Ritter

With the uncertainty of climate change and the trend of increased flooding, we are concerned about the potential impact of increased trains carrying increased loads of hazardous materials, including the crude oil from Alberta and North Dakota.

OEA Response

As outlined in the SIP, Section F.1, the Applicants have standard protocols for additional special inspections in times of extreme weather events such as flooding. See also responses to the Summary Comment, Comment 459-3, and Comment 455-7 above regarding environmental consequences.

Comment 651-2: Transportation Merit Hearing Comment from Mike Laroque

Potential for train derailment. On that same railway in the last ten years we've probably had three or four derailments. I believe two or three of them were in the city of Mahanomen, and the next one went down to the city of Callaway on our southern border, and we had to evacuate the entire city of Callaway on the one train derailment. So, in my eyes, if there's increased traffic coming through there will be an increase in future derailments. And we know they're going to happen. And also with the oil coming through, we would like to basically keep our members safe, keep our communities safe, keep our environment safe, our lands and our waters and everything safe from potential derailments.

OEA Response

OEA's threshold for freight safety is eight or more trains per day; the segment the commenter identifies, C-DELA-02 (Detroit Lakes, Minnesota to Plummer, Minnesota), is forecasted to fall below this threshold. Projected releases per year would not grow on this segment as a result of the Proposed Acquisition according to **Table F.2-2**. The chance of any incident type happening in any given year would remain well below a single incident under both the No-Action Alternative and the Proposed Acquisition.

For the rail line segment in Callaway, the Applicants project that the transportation of hazardous materials would increase by approximately 720 carloads per year, or around 2 percent. OEA estimates that this would increase the probability of a release occurring in any given year by approximately 0.00144. This is the same as saying that OEA predicts the Proposed Acquisition would result in one additional release every approximately 692 years on this rail line segment.

Comment 139-2: Public Meeting Comment from Mike Laroque (EI-32760)

The other reasons why is the crude oil that's going to be running through the trains through the Reservation also. And with the increased traffic, of, I've heard, 300 percent of railroad going down our tracks, 300 percent higher is going to -- you know, the railroad in my opinion doesn't have a very good track record for derailments. In the city of Mahanomen and the city of Waubun, there's been derailments, and there's been a really large derailment in Callaway, city of Callaway, which sits within the borders of our Nation, and stuff like that. So I just don't think it's very good for this to happen, this merger.

OEA Response

See response to Comment 651-2 above.

Comment 81-1: Written Comment from Marty Lancton, President, Houston Professional Fire Fighters Association Local 341 (EI-32251)

Currently, two to six million gallons of Bakken oil flows through Houston on a weekly basis. By certain estimates if the merger is approved there will be up to a 32% increase in the flow of rail traffic through Houston's rail terminal. We are concerned that there will be a capacity issue that will create congestion and increase the risk of derailments or other accidents.

OEA Response

See responses to the Summary Comment and Comment 461-6 above.

Comment 107-1: Written Comment from Demetris Alfred, President, Missouri State Council of Fire Fighters (EI-32576)

There are two fundamental issues which directly impact communities and the safety of our members and the citizens we proudly serve. The most crucial is the threat of derailment and catastrophic spillage and fire. The tragic 2013 derailment and fire which killed 47 people in Lac-Megantic, Quebec, and the derailment in Weyauwega, WI, which caused over 3,000 people to be evacuated from their homes for several weeks, serve as graphic examples.

OEA Response

See response to the Summary Comment above.

Comment 124-1: Written Comment from Mahlon Mitchell, President, Professional Fire Fighters of Wisconsin, Inc. (EI-32555)

There are two fundamental issues which directly impact communities and safety of our members and the citizens we proudly serve. The first and most obvious is the threat of derailment and catastrophic spillage and fire. The tragic 2013 derailment and fire which killed 47 people in Lac Megantic, Quebec is testimony to risks associated with this mode of transporting petroleum products. As a native of Wisconsin, I well remember the Weyauwega derailment in 1996. Thankfully, no lives were lost, but 3, 000 were evacuated from their homes for several weeks.

OEA Response

See response to the Summary Comment above.

S.6 Passenger Rail Safety

Comment 460-8: Written Comment from Metra (EI-32539)

For OEA to satisfy the “hard look” standard, the study of passenger rail safety should not be restricted to simply studying the frequency of passenger-freight train collisions. Metra riders experience dangerous conditions caused by CP’s dispatching on a frighteningly regular basis. Passengers are often required to cross tracks and/or dodge freight trains at Metra stations on the MD-N and MD-W lines due to CP’s dispatching decisions. Verified Statement of Richard P. Oppenheim, originally submitted in this proceeding as METR-07, Exhibit B, and attached to these Comments for OEA’s ready reference as Exhibit 7, at para. 39-42. Phenomena like this are part of passenger rail safety, especially in the current case, that need to be studied. The acknowledged result of this transaction will be more freight traffic on Metra’s lines. If the current situation leads to unacceptable occurrences like those experienced by Metra’s passengers at stations, then adding more freight trains and/or allowing CP to continue poorly dispatching will only exacerbate this type of dangerous situation, which will significantly effect passenger safety.

OEA Response

As shown in **Table F.3-2** in **Appendix F**, the Applicants project that the Proposed Acquisition would not result in any change in rail traffic on the rail line segments (C-CM-04, C-CM-05 and C-CM-06) that comprise the portion of Metra’s MD-N line. Therefore, OEA expects that the Proposed Acquisition would not result in any environmental impacts, including to passenger rail safety, along the MD-N line.

Regarding Metra's MD-W line, OEA notes that freight and passenger trains have shared tracks on this line for nearly 150 years, since it was constructed in the 1870s by the Chicago & Pacific (C&P) railroad (Metra 2022). The necessity for passengers to regularly cross tracks at one end of their commute or the other has existed since the inception of passenger service, based on the design of stations on the line. This condition existed under former passenger train operators (C&P and later the Chicago, Milwaukee and St. Paul Railroad), and since Metra took over control of the MD-W Line in 1982. Historically, CP ran as many as 12 freight trains per day on the MD-W line, which is more than the total number of freight trains that would use the line under the Proposed Acquisition.

OEA notes that FRA has published guidance for passenger train operators for creating a safe environment for pedestrian crossing in the absence of grade-separated walkways.⁴ There are no grade-separated pedestrian crossings at the 12 Metra stations on the MD-W line between and including Franklin Park Station and Big Timber Road Station. Each of those 12 stations has one to three pedestrian-only at-grade crossings that connect inbound and outbound platforms. These crossings are catalogued in *Section H.1.3.1* of **Appendix H**. A total of 22

⁴ Guidance on Pedestrian Crossing Safety at or Near Passenger Stations (USDOT 2012)

pedestrian-only grade crossings along the MD-W line are within the Passenger Rail Safety study area.

In addition, OEA notes that the 2021 Infrastructure Investment and Jobs Act (IIJA)/Bipartisan Infrastructure Law (BIL) provides an opportunity for local agencies to apply for funding that could be used to make improvements such as a pedestrian overpasses or underpasses.

The approach OEA employed to analyze the Proposed Acquisition's effect (if any) on the rate of passenger train collisions relied on current and historical data from the FRA database. The approach followed the passenger rail safety analysis precedents established in previous railroad mergers. As part of its analysis, OEA reviewed incident logs and associated emails submitted by Metra and found that the majority of "alternate track" events have taken place on portions of the MD-W line where no Acquisition-related freight train traffic increase would occur, such as Tower B12, which is east of Bensenville Yard. Other incidents occurred at locations on the MD-N line, such as Deerfield, where there similarly would be no Acquisition-related freight train traffic increase. While OEA agrees with Metra's assertions regarding the potential adverse effects of "alternate track" events, Metra's basis for its concerns about the lines at issue here are primarily anecdotal - whether CP's dispatcher made an error in routing in each situation is not known. Therefore, no changes to the Draft EIS are warranted in response to this comment. In addition, applicable operating rules generally can keep other trains out of stations when passenger trains are arriving on alternate tracks. General Code of Operating Rules (GCOR) rule 6.30, which CP and Metra follow, provides for instructions on approaching train movements when passenger trains are not on a platform track. A similar operating rule could be applied to reduce risks in the rare occurrence when Metra trains are on an alternate track and passengers are expected to cross. Further, non-Acquisition related upgrades to Bensenville Yard would alleviate many of the conditions that can lead to alternate track events.

To the extent that the commenter believes that the Proposed Acquisition would exacerbate existing perceived issues related to CP's dispatching of Metra trains, this would not be an environmental impact of the Proposed Acquisition under NEPA and is thus outside of OEA's environmental review. As appropriate, the Board will address issues related to rail line capacity and dispatching as part of its review of the transportation merits of the Proposed Acquisition in its final decision.

Comment 460-10: Written Comment from Metra (EI-32539)

For Metra, safety is a primary concern. The information presented in the DEIS on the Trackage Agreement does not reflect the unsafe conditions created by CP's dispatching when CP trains block passengers' access to Metra trains. CP's dispatching decisions too often require passengers to cross tracks unnecessarily, dodge oncoming freight trains, or circumnavigate idling freight trains at Metra stations. The many instances of trains being directed to "the wrong platform" forcing passengers to make unsafe decisions to catch their Metra train, as detailed in the Verified Statement Richard P. Oppenheim, see Exhibit 7 to these Comments, underscores the importance of OEA's undertaking a careful analysis of the current situation with an eye towards assessing how the increased traffic that Metra's RTC

modeling projects will move over the Metra-owned lines will increase the frequency of these unsafe occurrences.

OEA Response

See the response to Comment 460-8 above.

Comment 460-09: Written Comment from Metra (EI-32539)

OEA did not examine the terms and conditions of the agreement between CP's predecessor in interest and Metra's predecessor in interest that govern the relationship on Metra-owned territories and the history of the parties' experience in implementation of that agreement. Accepting Applicants' promises without investigating creates another circumstance where the failure to take a "hard look" at the realities on the ground now and the projected changes due to the proposed merger require attention and mitigation to address the adverse impact on communities and commuters from that transaction.

There are misstatements made in the DEIS referring to the "Operating Agreement" between CP and Metra (referred to in Metra's filings as "Trackage Agreement"). First, CP controls all dispatching on Metra-owned lines all times of day. Moreover, contrary to its statement that CP gives Metra "complete operational autonomy" during commuter peak hours while CP enjoys the same during off-peak hours, CP, as dispatcher, often interferes with Metra trains during peak hours and ignores Metra's protests, violating the Trackage Agreement regularly. Verified Statements of Richard P. Oppenheim and Greg Godfrey, submitted in the docket in this proceeding and attached to this Comment for OEA's ready reference as Exhibits 7 and 8, detail the issues created by CP's exercise of that control to Metra's detriment. Metra's testimony in this proceeding details the extent to which the increased freight traffic on the lines will adversely affect Metra's already extensive operating issues due to CP's dispatching decisions. OEA's "hard look" at the impacts of the proposed transaction must focus on the impact on both Metra's operations and on the safety of the communities along the Metra-owned lines.

OEA Response

NEPA and its implementing regulations require federal agencies to consider the environmental impacts of their actions in their decision-making processes (40 C.F.R. § 1500.1(a)). To the extent that the commenter believes that the Proposed Acquisition would exacerbate existing perceived issues related to CP's dispatching of Metra trains, this would not be an environmental impact of the Proposed Acquisition under NEPA and is thus outside of OEA's environmental review. As appropriate, the Board will address issues related to rail line capacity and dispatching as part of its review of the transportation merits of the Proposed Acquisition in its final decision. See the response to Comment 460-8 above.

S.7 Grade Crossing Safety

S.7.1 Vehicle Safety

Comment 126-1: Written Comment from Gale Francione (EI-32458)

Regarding Safety, on p. H1-128, the Davenport Ripley Street crossing data indicates: No-Action .0232, Predicted Total Crashes Proposed Acquisition .0312.

While mathematically, the averages look miniscule, I wonder what they really mean. In practical terms, are the differences very significant? When the difference is .01, is that very critical? What differences would be significant enough to pose a red flag?

No-Action: 43 Years Between Crashes, Proposed Acquisition: 32. Will we not have an accident in 43 years without the merger, but with one it will be 11 years sooner?

No-Action: .0010/.0072 Predicted Fatal/Casualty Crashes, Proposed Acquisition: .0014/.0096. Are these numbers typical? Acceptable? Comparable to other crossings? I need help interpreting these numbers.

OEA Response

As discussed in *Section 3.2, Grade Crossing Safety*, OEA concludes that the Proposed Acquisition would result in only minor impacts on grade crossing safety. OEA quantified the safety performance of grade crossings using the predictive method from FRA's 2019 *GradeDec.Net Reference Manual*. There is no federal regulation or industry standard for what constitutes "safe" (acceptable) or "unsafe" (unacceptable) levels of grade crossing safety. As shown in **Appendix H, Grade Crossing Safety and Delay**, OEA estimates that the Proposed Acquisition would increase the number of crashes at the Ripley Street grade crossing in Davenport, Iowa by approximately 0.008 crashes per year, on average. This is the same as saying that the Proposed Acquisition would result in one additional crash every approximately 125 years. *Section 3.2, Grade Crossing Safety* and **Appendix H, Grade Crossing Safety and Delay** report the predicted number of crashes at each grade crossing in the study area under the Proposed Acquisition and the No-Action Alternative for comparison. No changes to the Draft EIS are warranted in response to this comment.

Comment 462-1: Written Comment from the Coalition to Stop CPKC (EI-32542)

In short, the DEIS's broad conclusion that the merger would have only minor impact on road crossing safety is not correct for the Wood Dale Road and Irving Park Road crossings of the Coalition Line. They are considered hazardous and unsafe now, with only three freight trains operating over the line each day. Raising that daily amount to eight, and perhaps as many as 14 trains (or more) per day will only increase the hazard level and chances for accidents between trains and automobiles and pedestrians. As discussed in section IV below, the Coalition and City of Wood Dale strongly urge OEA to recommend to the Board that a grade-separated crossing should be installed at the Wood Dale Road and Irving Park Road crossings of the Coalition Line.

OEA Response

As discussed in *Section 3.2, Grade Crossing Safety*, OEA concludes that the Proposed Acquisition would have minor impacts on grade crossing safety. There is no federal regulation or industry standard for what constitutes unsafe or hazardous levels of grade crossing safety. OEA quantified the safety performance of grade crossings using the predictive method from FRA's 2019 *GradeDec.Net Reference Manual*. OEA notes that the grade crossings at Wood Dale Road and Irving Park Road are both protected by gates and flashers, including overhead cantilevered flashing lights (see **Appendix H, Grade Crossing Safety and Delay**). Such active warning devices are the most effective measures for reducing the probability of accidents occurring at grade crossings. OEA also notes that the Applicants project that rail traffic through the Wood Dale Road and Irving Park Road grade crossings would increase by an average of eight additional trains per day if the Board authorizes the Proposed Acquisition. OEA found that this change would increase the accident rate at those crossings by only 0.0014 crashes per year.

Further, the Applicants have committed to implementing voluntary mitigation measures that would minimize the risk of accidents at grade crossings, including at the Wood Dale Road and Irving Park Road grade crossings, as set forth in *Chapter 4, Mitigation*. These measures include commitments to work with communities in support of securing funding for mitigation projects where they may be appropriate to increase the safety of existing grade crossings (VM-Grade Crossing-01), to consult with communities to improve visibility at grade crossings by clearing vegetation where practicable (VM-Grade Crossing-03), and to make Operation Lifesaver programs available to affected communities, including schools and other organizations (VM-EJ-02).

Following issuance of the Draft EIS, the Applicants informed OEA that the Applicants are committed to implementing additional voluntary mitigation measures in certain communities in the Chicago area with which they have been unable to reach negotiated settlement agreements. Those communities are DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg. For those communities, the Applicants have committed to installing and funding a predictive mobility system interconnected with existing railroad crossing signals that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others; installing ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions; and installing PTC wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates. OEA has revised *Chapter 4, Mitigation* to reflect the additional voluntary commitments made by the Applicants following issuance of the Draft EIS.

As discussed in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would have minor impacts on grade crossing safety, and OEA did not identify any specific grade crossings where the potential impacts would warrant grade separation mitigation or other additional mitigation beyond the measures that the Applicants have proposed.

Comment 462-22: Written Comment from the Coalition to Stop CPKC (EI-32542)

2. The DEIS Substantially Understates the Grade Crossing Safety Impacts of the Merger on the Coalition Communities

The OEA evaluated the Grade Crossing Safety impact of the Proposed Acquisition in Section 3.2 of the DEIS and concluded that, as a whole, it would result “in minor impacts on safety performance.” However, as with the remainder of the DEIS, this conclusion was based on the unreliable train count and other baseline data supplied by the Applicants, combined with general statistical data that has little or no relevance to the Coalition Line. It therefore likely understates the actual impacts that will occur post-merger, particularly in densely populated areas such as Chicago. Nevertheless, this conclusion is still alarming because OEA predicts a total increase in train-vehicular crashes of more than 30% and a total increase in train-pedestrian crashes of more than 29%. Every crash is a potential fatality. Crashes between trains and vehicles/pedestrians frequently result in catastrophic consequences for motorists and/or pedestrians. The recognition that the proposed merger will result in a predicted increase in the potential of 30% more motorist and pedestrian fatalities alone should result in OEA and the STB concluding that the proposed merger should not be approved as proposed. No public improvement in the Coalition communities that would result in such a predicted increase in the potential loss of life would ever be approved or funded. Private investments shall be held to the same standard of prioritizing safety over private commercial gain.

OEA Response

In this proceeding, as in all proceedings before the Board requiring environmental review, OEA based its analysis of potential environmental impacts on information provided by the private railroad applicants seeking Board authority, as well as other sources of data as described throughout the EIS. In this case, the Applicants provided OEA with sufficient information regarding their plans to implement the Proposed Acquisition and adequately detailed projections of potential future outcomes of the Proposed Acquisition to allow OEA to conduct a thorough review of the potential environmental consequences of the Applicants’ proposal. Parties previously questioned the methods used by the Applicants to make projections of future rail traffic levels as part of the Board’s review of the transportation merits of the Proposed Acquisition, which is separate from the environmental review process. The Board addressed these issues in Decision No. 17, issued on April 27, 2022, and will further address additional issues raised by the parties, as appropriate, in its final decision on the Proposed Acquisition.

OEA notes that railroad companies have the obligation to provide rail service upon reasonable request and the right to determine how to route their traffic in order to meet the needs of shippers while maintaining safe and efficient operations. Ultimately, the volume of rail traffic on a specific rail line can vary and depends on many factors, including global economic conditions; national, regional, and local markets; and the decisions of individual transportation companies and their customers. By their nature, projections of future rail traffic are estimates based on imperfect information about the factors that can influence how much train traffic actually moves on a specific line. There are different approaches to

predicting future rail traffic and reliance on modeled baseline data does not on its own invalidate the results of the Applicants' projections.

Regarding the comment that OEA relied on "general statistical data that has little or no relevance to the Coalition Line," OEA notes that OEA quantified safety impacts at grade crossings using data specific to each grade crossing obtained from FRA, state departments of transportation, local governments, and the Applicants, as discussed in detail in *Section 3.2, Grade Crossing Safety and Delay* and **Appendix H, Grade Crossing Safety and Delay**.

Across all 1,134 roadway/rail at-grade crossings (grade crossings) in the study area, OEA projects that approximately 24.9 crashes involving trains and motor vehicles would occur under the Proposed Acquisition per year, compared to 19.1 crashes per year under the No-Action Alternative. The projected increase of approximately 5.8 additional vehicle crashes per year would be offset by a decreased number of crashes at grade crossings on rail lines outside of the combined CPKC network due to the diversion of rail traffic from those rail lines to CPKC. Across all 1,134 grade crossings in the study area, the total predicted number of train-pedestrian collisions would be 2.2 per year under the Proposed Acquisition, compared to 1.7 per year under the No-Action Alternative, which is a difference of 0.5 collisions per year.

For example, across the 31 grade crossings located in communities represented by the commenter, OEA found that the probability of a vehicle crash would increase by less than 6 percent, on average, due to increased rail traffic resulting from the Proposed Acquisition, which is a smaller increase than would occur at grade crossings on most other rail lines in the study area. Although the commenter is correct that every collision is a potential fatality, the vast majority of collisions do not result in fatalities, as shown in **Table H.1-4 in Appendix H, Grade Crossing Safety and Delay**. Across the 31 grade crossings located in communities represented by the commenter, OEA estimates that increased rail traffic resulting from the Proposed Acquisition would increase the number of fatal collisions between trains and motor vehicles by approximately 0.1216 per year.

In short, as discussed in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would have minor impacts on grade crossing safety, and OEA did not identify any specific grade crossings where the potential impacts would warrant additional mitigation beyond the measures that the Applicants have proposed. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 462-13: Written Comment from the Coalition to Stop CPKC (EI-32542)

But in any event, the DEIS's conclusion that there will be "minor" impacts to grade crossing safety over the entire 19,000-mile merged system cannot be reasonably applied to the 30 public road crossings on the Coalition Line, which are compressed within a 23-mile segment of the Applicants' combined system located in a highly populated area heavily utilized by commuters, commercial truck carriers, and residents. As such, this area of the DEIS falls well short of the required "hard look" based on detailed evidence required to meet NEPA's goals, and it must be supplemented with further analysis based on actual data of crossing safety impacts to this segment.

An example of this deficiency in the DEIS is exemplified by the City of Wood Dale, which has two at-grade road crossings along the Coalition which nearly intersect—just 100 feet away from each other—Wood Dale Road and Irving Park Road.¹⁹ This unique configuration means the community is bisected north and south by the Coalition Line but is also divided east and west by the two roads. Regardless, this unique configuration of railroad tracks and roads is the geographic center point of the City of Wood Dale and is well traversed by vehicular and pedestrian traffic every day. These two road crossings have historically been a major life-safety concern for the City of Wood Dale, the ICC and the FRA. According to the Illinois Department of Transportation, on a scale from A—free flowing, to F—gridlock, the intersection operated at a level of service “F” in the morning rush hour and “E” in the afternoon rush hour. Levels below “D” are “failing” operations.

¹⁹ See Exhibit D, for an overhead view of these crossings.

OEA Response

See response to Comment 126-1 above. As discussed in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would result in only minor impacts on grade crossing safety. There is no federal regulation or industry standard for what constitutes “safe” (acceptable) or “unsafe” (unacceptable) levels of grade crossing safety. OEA quantified the safety performance of at-grade crossings using the predictive method from the 2019 FRA *GradeDec.Net Reference Manual*. The predictive method established by FRA is based on factors such as number of vehicles per day, number of trains per day, train speed, number of tracks, number of roadway lanes, road surface type, and crossing protection; the distance between crossings does not factor into the predicted crashes.

The commenter notes that “These two road crossings have historically been a major life-safety concern for the City of Wood Dale, the ICC and the FRA” and that “According to the Illinois Department of Transportation, . . . , the intersection operated at a level of service “F” in the morning rush hour and “E” in the afternoon rush hour.” This comment relates to the “intersection” of the two roads, not the grade crossings, which are the focus of the grade crossing delay analysis. **Appendix H** of the EIS reflects the Level of Service (LOS) for the Wooddale Road and Irving Park Road grade crossings, indicating that both would be LOS A under the No-Action Alternative in 2027 and LOS A under the Proposed Acquisition in 2027. The current LOS at the roadway-roadway intersection of Wooddale Road and Irving Park Road is a pre-existing condition and does not represent impacts that would result from the Proposed Acquisition. Poor LOS at this intersection would exist regardless of the Proposed Acquisition.

Regarding the commenter’s request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R. § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to

environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none.

Comment 462-23: Written Comment from the Coalition to Stop CPKC (EI-32542)

Additionally, intersection accident rate and frequency are currently 1.82 ACC/MVEI (Accidents per Million Vehicles Entering Intersection), well above the average number of 1.62 for accidents in northeastern Illinois. The west approach to the intersection is also considered a High Accident Segment by the Illinois Department of Transportation. The accident rate and frequency are 5.93 ACC/MVEI and 56.0, which exceeds the critical rate and frequency for accidents in northeastern Illinois are 3.85 and 40.6.

These statistics mean there is currently an 11% chance of a train/vehicle crash on Irvin Park Road in any given year, and there is currently a 5% chance of a train/vehicle crash on Wood Dale Road in any given year. Indeed, since 1955, there have been 46 accidents involving a train and an automobile at the at-grade crossing along Irving Park Road (with thankfully only one fatality resulting). There have been 128 accidents within the intersection over the recent three-year period.

OEA Response

OEA quantified the safety performance of at-grade crossings using the predictive method from the 2019 FRA *GradeDec.Net Reference Manual*. This method does consider the observed crash history at each grade crossing but limits the crash history to the most recent five years to minimize the impact of other temporal changes on the results. The intersection “accident rate and frequency” for vehicle-vehicle crashes has no relation to the predicted or observed train-vehicle crashes at grade crossings. Further, the train-vehicle crashes since 1955 are largely irrelevant today given the many changes in train, vehicle, road user, and roadway characteristics, including grade crossing protections, that have been implemented since 1955. At Irving Park Road, the crossing protection was upgraded in 2004, switching from four masts with flashing lights to two cantilevered flashing light structures over the travel lanes plus two masts with flashing lights and a second warning bell. At Wood Dale Road, the crossing protection was upgraded in 2003 and 2004. Improvements made at that time included adding a roadway gate arm, four pedestrian gate arms, and a bell. According to the FRA database, there have been 25 crashes at Irving Park Road and eight crashes at Wood Dale Road since 1977. Only one crash has occurred at either location since the changes in crossing protection, and it was at the Irving Park Road intersection in 2015.

Comment 615-1: Public Meeting Comment from Wood Dale, Illinois Mayor Nunzio Pulice (EI-32756)

Of the three, two are intersecting almost at one point just 100 feet away from each other along Wood Dale Road and Irving Park. This unique configuration not only bisects the community in half north and south, but also east and west. This area is a geographic centerpoint of Wood Dale and is well transversed by vehicular traffic and pedestrian traffic every day. These two crossings have historically been a major life safety concern for the City of Wood Dale, the Illinois Commerce Commission, and the Federal Railroad Administration.

According to Illinois Department of Transportation, on a scale from A, free-flowing, to F, gridlock, the intersection operated at a level of service F in the morning rush hour and E in the afternoon rush hour. Levels below D are failing operations. How did we achieve this critical rating? There is an accident rate and frequency rate for a million vehicles entering an intersection. The intersection was rated 1.82. The critical rate and frequency for accidents should be just 1.262 in Northeastern Illinois. The intersection was considered a high accident location. The west approach to the intersection is considered a high accident segment. The accident rate and frequency are 5.93 accidents per million vehicles entering, and 56 -- 56 for the western approach to the intersection. The critical rate and frequency for accidents in Northeastern Illinois are 3.85 and 40.6, according to IDOT. Trains stopped at the Metra station or just passing through the intersection cause over 100,000 hours of vehicle delays per year. There is an 11 percent chance of train-vehicle crashes on Irving Park Road in any given year. There is a 5 percent chance of a train-vehicle crash on Wood Dale Road in any given year. 46 train versus auto crashes occurred at at-grade crossings along Irving Park Road since 1955 with one fatality. 128 crashes occurred within the intersection over the recent three-year period. In early 2000, Wood Dale took on a large capital expense to reconstruct the intersection of Wood Dale and Irving Park Road. The project took almost 10 years to finally be completed. While the grade separation was considered, the cost and disruption made it unfeasible at that time. Instead, we focused on the smaller scale safety improvements for roughly \$15. Wood Dale daily was able to bring the intersection from an F rating by governing the agencies to a D.

OEA Response

See responses to Comment 126-1 and 426-13 above. OEA notes that the commenter appears to be referring to the LOS for a roadway intersection, not a grade crossing. Roadway intersections are not subject to Board jurisdiction and are outside of the scope of OEA's environmental review of the Proposed Acquisition, with the exception of roadways near intermodal facilities that could be affected by increased truck traffic, as discussed in *Section 3.5, Intermodal Facility Traffic*.

Comment 461-7: Written Comment from the Environmental Defense Fund (EI-32540)

On page 3.2-1 OEA stated "In 2020, FRA published a report that includes statistics on the safety performance of more than 105,000 public grade crossings in the U.S. that are not closed and not grade-separated (FRA 2020). During the five-year period from 2014 to 2018, there were 8,467 crashes at those grade crossings, representing an average of 0.016 crashes per grade crossing per year." On page 3.2-4 OEA stated that "Adding together all potential crashes at the 1,134 crossings resulted in a total of 24.9 predicted crashes per year, as compared to the No-Action Alternative of 19.1 total crashes per year." This means under the No-Action Alternative, the system averages 0.017 crashes per gate and under the proposed merger, the system averages 0.022 crashes per crossing. Both numbers are higher than the industry average. EDF requests the final EIS incorporate the most recent crash data, including extrapolating the full year 2022 from year-to-date crash information. EDF reiterates the need for more voluntary mitigation measures to protect safety since the proposed CPKC network safety data includes incident rates that are trending upward and are higher than the overall industry average.

OEA Response

OEA notes that the probability of an accident occurring at a grade crossing is determined largely by the volume of train traffic moving on the rail line and the volume of vehicular traffic on the roadway, although other considerations, such as the presence of warning devices at the grade crossing, are also important. Therefore, a comparison of the number of accidents per grade crossing on the Applicants' rail networks to a national average number of accidents per grade crossing does not provide useful information that could inform conclusions regarding grade crossing safety or whether mitigation at a particular grade crossing is warranted.

Regarding the commenter's request that OEA extrapolate incomplete data from 2022, OEA reasonably quantified the safety performance of at-grade crossings using the predictive method from the 2019 FRA *GradeDec.Net Reference Manual*, which includes the latest complete five years of crash data. It would not be appropriate to include partial years or extrapolate using a partial year of data.

Regarding the need for more voluntary mitigation measures, the Board does not dictate voluntary mitigation measures to the Applicants. Further, the comment references "incident rates" with respect to the need for safety improvements. Incident rates refer to the rates of rail accidents, such as derailments, and do not correlate with the observed or predicted number of grade crossing crashes. Therefore, those incident rates, which have generally declined in recent years across all railroads, cannot be used to evaluate the potential grade crossing safety impacts of the Proposed Acquisition.

OEA's approach to assessing grade crossing safety impacts was reasonable and consistent with past practice in railroad acquisition cases. OEA's analysis showed that the impacts of the Proposed Acquisition on grade crossing safety would be minor and would be minimized by the voluntary mitigation measures proposed by the Applicants. Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 461-8: Written Comment from the Environmental Defense Fund (EI-32540)

According to table F.1-5 on page F-8, OEA omitted analysis of the Beaumont to Rosenberg rail segment from its analysis of Grade Crossing Safety because the segment does not meet the seemingly arbitrary threshold of 8+ trains per day in order to be included. However, since the connecting 537.4 miles of rail segment on either side of the U-BEAU-01 segment does meet the threshold and was analyzed, EDF recommends analysis of the U-BEAU-01 segment also be included in the final EIS.

OEA Response

The Board's regulations at 49 C.F.R. § 1105.7(e) establish thresholds for environmental review. The threshold for analysis of potential noise and air quality impacts is generally an increase of at least eight trains per day. Based on its experience applying the thresholds for air and noise on freight rail construction and operation projects, OEA has determined that these thresholds should also apply to grade crossing safety and has used those thresholds for railroad mergers across several decades. Therefore, OEA reasonably analyzed safety impacts at public grade crossings that tripped the environmental analysis threshold. OEA

defined the study area for grade crossing safety to include all rail lines where the Proposed Acquisition would result in an increase in rail traffic of eight or more trains per day, on average. OEA then analyzed the 1,134 public, at-grade vehicle crossings in the study area that have a projected increase of eight or more trains per day under the Proposed Acquisition.

Because the Proposed Acquisition would not cause an increase in rail traffic on rail line segment U-BEAU-01 that would meet or exceed the thresholds for environmental analysis, OEA did not assess safety at grade crossings along this rail line segment. Nevertheless, in response to public comments, OEA has revised *Section 3.2, Grade Crossing Safety* to include information about safety impacts at grade crossings along rail line segment U-BEAU-01. OEA found that the Proposed Acquisition would result in minor impacts on grade crossing safety on this rail line segment.

For the purposes of its environmental analysis of the Proposed Acquisition, OEA assumed that all new freight trains would move on rail line segment U-BEAU-01. OEA understands that, because UP and BNSF own most of the rail lines in Houston, CPKC could not control the dispatching of trains on those rail lines. Based on information submitted to the Board by UP, BNSF, and others, OEA understands that trains through Houston are typically dispatched directionally, with westbound traffic using UP's Houston Subdivision and eastbound traffic using UP's Beaumont Subdivision. To the extent that some trains may be dispatched on rail line segments other than U-BEAU-01, then the increase in rail traffic on that segment resulting from the Proposed Acquisition is likely to be less than the 7.57 trains per day that the Applicants have projected. Therefore, the results reported in this section in the Final EIS may overstate the potential noise and vibration impacts of the Proposed Acquisition in the Houston area.

Comment 344-1: Written Comment from Daniel Bennett (EI-32332)

My family lived along the Mississippi river between LeClaire, IA and Princeton, IA for 25 years. We lived in a narrow stretch of land between the railroad tracks and the river. This area has a substantial number of houses, sixty I would guess, between the tracks and river. All of the residents that live in the houses are required to use the private crossings that are maintained by the railroad companies in order to reach US highway 67. In the years that our family owned river front property there have been at least three incidences of train/car crashes, that i know of personally, in less than a one mile stretch of track. In those crashes two people were killed and one injured to the point that they were in a vegetative state until their death. The curve of the tracks near 23005 great river road and the 45 MPH speed limit certainly played a role in the crashes. The area just north of our house is similar in that the homes on the river, between the river and the tracks are required to use private crossings. If this proposed merger goes through and there are three times more trains rolling by there will CERTAINLY be more deaths in this area.

OEA Response

See response to Comment 461-8 above. OEA analyzed safety impacts at public, at-grade crossings with AADT greater than 2,500. The study area does not include private crossings because the AADT is well below 2,500 at those crossings and FRA, state, and local

governments do not collect traffic data for them. In response to public comments, OEA has revised *Section 3.2, Grade Crossing Safety*, to include language explaining that the probability of accidents at private grade crossings would likely increase along rail line segments where the Proposed Acquisition would result in increases in rail traffic. Due to the lack of data on current and future vehicular traffic at private crossings, however, it is not possible to quantify this impact.

Comment 79-1: Written Comment from Griffin Hahn (EI-32253)

I write to you today to comment on the draft EIS of the CP-KCS merger and the impact it will have on my business and community. I am Vice President of a small Ready Mixed-concrete operation based in Davenport, IA. We are a sixth-generation family business with deep roots in the community and the eastern Iowa region.

As a family member in a family business I have an obligation to foster a safe workplace for our employees. One of the aspects of that obligation is to identify potential hazards and do what can be done to mitigate them. This railway merger is an extreme hazard for our operation at our East River Drive plant in Davenport. See the below image for understanding of how the railway bisects our operation on that site.

Our tractor-trailers, hauling sand and stone, cross these tracks on average about 55 times a day to supply our aggregate piles. Our wheel loader crosses the tracks about 30 times a day to go back and forth from the aggregate piles and to our scale house. Ready mix concrete trucks cross the tracks about 40 times a day to use our washout pit on the river side of the tracks. Sand yard customers, in dump trucks and pickups, cross the tracks about 25 times a day picking up aggregates. That works out to approximately 150 crossings a day from Hahn Ready Mix employees or our customers. The increased train traffic significantly increases the chance of a collision between any of these heavy trucks and a train. This elevated risk is unacceptable.

In the STB public meeting on September 13th in Davenport, IA, it was brought up that the highest risk from a safety perspective, and highest impact to rail crossings in the whole CP-KCS system was the stretch between Mound and Marquette streets in Davenport. I fear that the highest likelihood of a catastrophic accident in that window, is on our property where there are no crossing safety apparatus or alternate route for us to access our river-side yard. My nightmares involve a collision between a train and a loader with an accompanying derailment right along a busy bike path and multiple parks.

OEA Response

See response to Comment 461-8 above.

S.7.2 Pedestrian Safety

Comment 462-24: Written Comment from the Coalition to Stop CPKC (EI-32542)

The DEIS includes an evaluation of train-pedestrian “crashes.” This analysis notes that after the merger, train-pedestrian crashes at road crossings would increase from 1.7 crashes per

year to 2.2 crashes per year. The DEIS notes that all 1,134 roadway/rail at grade crossings the proposed merged system were analyzed. Critically, however, the DEIS states it “did not estimate safety performance at private and pedestrian-only grade crossings because of very low traffic volumes.” Similarly, “OEA did not estimate delay at private and pedestrian only crossings because of very low traffic volumes.” As written, therefore, the DEIS does not include any analysis of the potential impacts of the merger on the 11 at-grade pedestrian crossings at Metra commuter rail stations located in the Coalition communities along the Coalition Line. This is another deficiency of the DEIS that requires it to be supplemented to comply with applicable NEPA standards. These 11 rail stations serve almost 18,000 commuters each day. Most of these stations provide multiple at-grade pedestrian crossings so that commuters can cross the railroad tracks to access parking, train stations, boarding platforms, and bus stops.²⁶ Far from having “very low traffic volumes,” – and there is no evidence in the DEIS that OEA conducted any analysis to support this broad conclusion - these 11 locations will have some of the highest volume of pedestrian crossings on the combined CPKC railroad system. It was therefore error for OEA to exclude any analysis whatsoever in the DEIS of the potential impacts on pedestrian traffic from the increased freight train operations post-merger and to consider potential mitigation measures.

Although some of these crossings are equipped with passive devices such as signage, lights, and bells to notify pedestrians when a train is approaching, adding between eight and 14 more 10,000-foot freight trains running through these commuter stations will greatly heighten the risk and potential impact on pedestrian safety and delays. Moreover, this segment of the Coalition Line is double tracked, which literally doubles the safety risk to pedestrians. Often, when a commuter or freight train is operating on one of the tracks, the second track can be blocked from view by commuter and freight trains on the first track which gives pedestrians a false sense of security that it is safe to cross. Increasing the number of freight trains operating on this rail line will increase these incidents.

²⁶ For example, at the Schaumburg Commuter Rail Station, three at-grade pedestrian crossings provide access to the station platforms that serve inbound and outbound trains, a station building on the south side of the tracks that provides ticket sales, restrooms, and shelter for waiting passengers, and parking lots located on either side of the tracks.

OEA Response

OEA reasonably decided not to analyze pedestrian-only crossings in the Draft EIS. While these crossings exist in the FRA database, there is limited information to support any type of predictive safety or delay analysis. OEA quantified the safety performance of at-grade highway crossings using the predictive method from the 2019 FRA *GradeDec.Net Reference Manual*. This method applies specifically to roadway/rail grade crossings and does not apply to pedestrian-only at-grade crossings. In response to public comments on the Draft EIS, however, OEA has revised *Section 3.2, Grade Crossing Safety* to include additional information regarding the 31 pedestrian-only grade crossings in the study area as well as the type of protection and historical safety performance at each crossing.

OEA notes that freight and passenger trains have shared tracks on the MD-W Line and its predecessor lines for nearly 150 years, since it was constructed in the 1870s by the Chicago & Pacific (C&P) railroad (Metra 2022). The necessity for passengers to regularly cross

tracks at one end of their commute or the other has existed since the inception of passenger service based on the design of stations on the line. Neither the former passenger train operators (C&P and later the Chicago, Milwaukee and St. Paul Railroad), nor Metra, since it took over control of the MD-W Line in 1982, made any changes to alleviate this condition. Infrastructure such as overpasses or underpasses to remove the need for passengers to regularly cross active rail tracks have not been added, for example. CP has run as many as 12 freight trains per day on the MD-W line, one more than would operate on average with the Proposed Acquisition. However, no overpasses or underpasses have been constructed. Moreover, robust FRA guidance for passenger train operators exists for creating a safe environment for pedestrian crossings in the absence of grade-separated walkways. If Metra followed that guidance, it would alleviate risks that result from its current infrastructure and operating practices.⁵

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that 40 C.F.R. § 1502.9(d)(1) only requires agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none.

Comment 94-2: Public Meeting Comment from Dave Kaptain, Mayor, Elgin, Illinois (EI-32756)

Elgin has just suffered the death of a pedestrian on the railroad tracks in the City of Elgin on Monday. It has brought up here many times that safety is a priority for us. Every mayor that serves here swears that safety is the number one purpose in our lives and our goal in the City of Elgin and the other cities. Please do not trade for the lives of our residents and the well-being of our residents to the railroads for the benefit of business and -- their business, their futures, and they're looking -- they're looking at this as just a tradeoff of people as part of doing business, a process of doing business, and I don't want to look at our residents and these fine people sitting here as collateral damage.

OEA Response

See response to Comment 462-24 above.

Comment 462-26: Written Comment from the Coalition to Stop CPKC (EI-32542)

The Coalition therefore asserts that OEA must conduct a supplemental analysis of the potential impacts of the merger on the pedestrian crossings along the Coalition Line, and it must consider including in the Final EIS document several recommended measures

⁵ *Guidance on Pedestrian Crossing Safety at or Near Passenger Stations* (USDOT 2012)

summarized below in Section IV to mitigate the harm to pedestrian crossings along the Coalition Line that will be caused by the increased freight train operations post-merger.

OEA Response

See response to Comment 462-24 above. As set forth in *Chapter 4, Mitigation*, the Applicants have proposed voluntary mitigation measures to address grade crossing safety, including pedestrian safety. These measures include a commitment to making Operation Lifesaver programs available to affected communities, including schools and other organizations (VM-EJ-02). Operation Lifesaver is a non-profit education and awareness program that helps increase the public's awareness of the dangers around rail lines.

In addition, OEA notes that FRA conducts outreach efforts and publishes information on pedestrian safety. For instance, FRA partners with railroads, state governments, and other organizations to conduct outreach efforts to raise awareness about the inherent dangers and consequences of trespassing. FRA also publishes information such as *Railroad Crossing Safety for Pedestrians*, which helps to raise awareness of pedestrian responsibilities at pedestrian crossings.

Comment 462-25: Written Comment from the Coalition to Stop CPKC (EI-32542)

Despite the increased risks of adverse impacts on pedestrian crossing safety and delay, the Applicants have committed to only one voluntary measure that would potentially mitigate impacts to pedestrian safety at these railroad crossings, and this measure falls well short of what is required for the pedestrian crossings in the Coalition communities. Specifically, in VM-Grade Crossing-01 the Applicants have only offered to “commit” to work in support of communities while they try to secure funding for crossing mitigation projects. Applicants themselves have not committed to take any actions or to pay for any mitigation measures. This undefined “commitment” unfairly leaves the burden of identifying, funding, and implementing safety improvements on the impacted communities rather than on Applicants.

OEA Response

The comment indicates that “this measure falls well short of what is required for the pedestrian crossings.” However, beyond train horns, there are no specific federal or state requirements or requirements for warning devices to protect pedestrian-only grade crossings. While the FRA regulation at 49 C.F.R. § 222.21 requires trains to sound the horn when approaching and entering public roadway/rail grade crossings, horn sounding upon approach to pedestrian-only crossings at or near rail passenger stations is generally governed by state law. Further, the *FHWA Highway Rail Crossing Handbook (Third Edition)*, under the section titled “Pedestrian Treatments,” states that “it has been noted that new treatments installed to mitigate some types of risky pedestrian behavior result in new forms of risky behavior; for example, pedestrians may pull open a swing gate intended for emergency egress and evade a lowered pedestrian gate.” FRA recommends that “passenger rail operators should perform their own risk-based hazard analyses and identify methods that they can use to make their operations safer, especially for pedestrians in or near stations.” (USDOT 2019)

According to the FRA document titled *Guidance on Pedestrian Crossing Safety at or Near Passenger Stations* (USDOT 2012), "horn sounding at passenger stations is usually performed in accordance with a railroad-issued instruction or operating rule." It then states that "...some railroads also require sounding of the locomotive bell on approach and while moving through passenger stations." In the FRA document, FRA recommends that:

- Railroads adopt a horn sounding practice, whether or not the train will service the station.
- Trains illuminate locomotive alerting lights, displayed in a triangular pattern, while trains approach and enter passenger stations. Note that any lead locomotive that traverses a grade crossing at a speed in excess of 20 mph is already required by FRA regulation to be equipped with these alerting lights.
- Audible and visual warnings should be used at or near passenger stations, where appropriate, to guide pedestrians to proper crossing points, and also to indicate when it is appropriate to cross the tracks in order to get to the correct station platform to board the desired train.
- Audible announcements should be supplemented by a display of the text of the announcement on a changeable message sign using a light-emitting diode display or other high-legibility technology that meets or exceeds the standards for Communication Elements and Features provided in Chapter 7 of the Architectural and Transportation Barriers Compliance Board's (Access Board) Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADAAG).
- Railroads (including Amtrak) should work with the State and local agencies that are responsible for establishing or operating commuter rail service to implement a system of audible warning of the approach of a train to pedestrians at or near rail passenger stations, where appropriate.
- Passenger railroads with station platforms in multiple-track territory should work cooperatively to develop a standardized system to clearly and accurately communicate to passengers in station areas and on platforms that a second train (in addition to any train currently occupying or approaching any station track) is approaching the station and that its arrival may be obscured by the train in the station. Such a system should have both an audio and visual component, and its messages should be distinctive enough to attract attention in what may be a very busy and noisy environment. This system should be able to indicate tracks occupied, direction of travel, and whether any approaching train will stop at the station.

These FRA recommendations focus heavily on passenger railroads and their stations. The vast majority of existing pedestrian crossings along the study area are at or near passenger rail stations and the risk of accidents involving pedestrians and trains would continue to exist at these grade crossings whether or not the Board authorizes the Proposed Acquisition.

As set forth in *Chapter 4, Mitigation*, the Applicants have committed to implementing voluntary mitigation measures that would address grade crossing safety, including pedestrian safety. These measures include commitments to work with communities in support of securing funding for mitigation projects where they may be appropriate to increase the safety of existing grade crossings, including passenger crossings (VM-Grade

Crossing-01), to consult with communities to improve visibility at grade crossings by clearing vegetation where practicable (VM-Grade Crossing-03), and to make Operation Lifesaver programs available to affected communities, including schools and other organizations (VM-EJ-02).

Following issuance of the Draft EIS, the Applicants informed OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures in certain communities in the Chicago area with which they have been unable to reach negotiated settlement agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). These measures include commitments to installing a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others; installing ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions; and installing PTC wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates. OEA has revised *Chapter 4, Mitigation* to reflect the additional voluntary commitments made by the Applicants following issuance of the Draft EIS and recommends that the Board impose conditions requiring compliance with all of the Applicants' negotiated settlement agreements.

As discussed in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would have minor impacts on grade crossing safety and did not identify any specific grade crossings where the potential impacts would warrant additional mitigation beyond the measures that the Applicants have proposed. Given all these circumstances, OEA's analysis of grade crossing safety, including safety at pedestrian-only crossings, was reasonable and appropriate.

***Comment 572-1: Public Meeting Comment from the Village of Schaumburg, Illinois
Director of Transportation Karen Robles (EI-32756)***

Good evening.... I am the Director of Transportation for the Village of Schaumburg, and I am also with the Coalition to Stop CPKC and speak on behalf of them as well. The Draft Environmental Impact Statement for the proposed merger includes an evaluation of the impacts of the proposed merger on the CP of at-grade railroad crossings, including an evaluation of train/pedestrian crashes. The Draft EIS notes that all 1,134 roadway rail at-grade crossings in the study area were analyzed, but the Draft EIS fails to account for the at-grade pedestrian crossings that are located throughout the study area, including the 11 commuter railroad stations located in the Stop CPKC Coalition communities. I want to point out something very important. OEA overlooked the fact that these at-grade crossings represent some of the highest volume pedestrian crossings in the study area, the potential safety issues associated with the increased freight traffic, and the mitigation that we need due to the proposed increase in the number of freight trains. Our rail stations serve almost 18,000 commuters each day. Every day commuters must cross the railroad tracks in order to assess parking, bus stations, and boarding platforms. Although these crossings often have lights and bells to notify pedestrians when a train is approaching, this segment of the rail line

is double tracked, which means the additional freight trains running through these stations bring additional risk and potential impact on pedestrian safety. When a commuter or freight train is operating on one of the tracks, the second track can be blocked from view by the train on the first track. This gives pedestrians a false sense of security that it's safe to cross. The failure to account for these at-grade pedestrian crossings as part of the DEIS analysis means that the risk to pedestrian safety as a result of the merger is underestimated. Further, the DEIS only includes one voluntary mitigation measure in which CP says that they will work with communities in support of those communities securing funding for crossing mitigation projects. This proposed merger should ensure pedestrian safety and should require CP to fund mitigation measures that will increase pedestrian safety, such as adding pedestrian gates at these crossings to minimize train/pedestrian accidents. According to the DuPage Rail Safety Council, pedestrian gate installations are effective mitigation measures that can have a direct impact on reducing pedestrian injuries and fatalities at at-grade crossings. On behalf of the Stop CPKC Coalition, I am requested that the Final EIS include an analysis of pedestrian safety at all at-grade pedestrian crossings located in the study area and that the Final EIS include additional mitigation that will require CP to fund pedestrian safety improvements such as pedestrian gates. The safety of our pedestrians at these crossings is too important to ignore. Thank you.

OEA Response

See response to Comment 462-25 above. OEA did not identify impacts at pedestrian-only grade crossings that would warrant additional mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 460-11: Written Comment from Metra (EI-32539)

Grade crossing safety is of considerable concern to Metra as well, due to the increased traffic that will occur from the transaction. Comments from Chicago-area communities raise the same concerns. For example, a coalition of local governments representing communities served by Metra's MD-W service commented that the new 10,000+ foot trains will block crossings and increase danger by blocking emergency vehicles from traversing grade crossings.

40 C.F.R. § 1502.21(d) defines a "reasonably foreseeable" impact as one that "includes impacts that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on conjecture, and is within the rule of reason." Considering the information concerning the dangers to Metra's riders from CP's ill-advised dispatching decisions discussed in the Verified Statement of Greg Godfrey, originally filed in FD 36500 on March 15, 2022, METR-07, and attached to these Comments for OEA's ready reference as Exhibit 8, it is clear that there are reasonably foreseeable impacts to safety that are not addressed in the DEIS.

OEA Response

Section 3.1, Freight and Passenger Rail Safety describes the trackage rights agreement between Metra and CP. Metra's trackage rights agreement with CP over Metra-owned

tracks provides full operating rights to Metra during a.m. and p.m. peak period operating windows, in addition to several scheduled trips outside the peak periods. Metra uses all tracks on the corridor to provide local and zone-express commuter service to and from Chicago Union Station. CP is required to protect these operating windows to avoid interfering with scheduled Metra trains. All freight traffic growth resulting from the Proposed Acquisition would need to adhere to the established agreement with Metra and be scheduled around the agreed-upon operating times.

Regarding the comment about dangers to Metra riders, it is OEA's understanding that many of the concerns raised are related to CP's movements into and out of Bensenville Yard, including CP trains that are too long to enter the yard, blocking the mainline tracks. CP has indicated that there is an ongoing reconfiguration of Bensenville Yard (a non-Acquisition related project being undertaken as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project). This reconfiguration will lengthen the Bensenville Yard receiving tracks to accommodate longer trains, which will alleviate congestion on the main line near Bensenville. Specifically, longer yard tracks will allow switching and staging within the yard, reducing the need to stop on the mainline as long trains are broken into smaller size blocks. Finally, concerns related to dispatching of trains are not environmental impacts of the Proposed Acquisition and will be addressed, as appropriate, in the Board's final decision in these proceedings.

Comment 616-1: Public Meeting Comment from Hanover Park, Illinois President Rodney Craig (EI-32756)

I have had the honor of being the Mayor of the Village of Hanover Park, and since 2014, I have had the privilege of serving on Metra's Board of Directors and the DuPage Railroad Safety Council.

Please take a look at the image beside me. In the circle are children under the crossing gates. In my tenure on Metra's Board, I cannot tell you how many times I have been briefed on incidents similar to this, many of them not ending well. This is a concern that affects every one of us in this room: gates can be down too long, children going under a gate, and then are hit by a train they can't see. With an increase of 8 to as many as 14 trains a day, freight trains, odds greatly increase that children and others will be tempted to go around the gate. This cannot happen.

CP has a well-documented history of prioritizing movements of its freight trains over movement of scheduled passenger trains. Safety factors intervene when CP will optimize freight movements. Often it allows freight traffic to operate on the tracks normally occupied by scheduled passenger trains at the time of those trains are scheduled diverting the Metra trains to the opposite track. This requires passengers waiting for those trains crossing the regular platform to the opposite platform crossing both tracks on crosswalks at the same time that the freight may be bearing down on them.

I support strongly the dispatch and the operations with Metra. As you have heard earlier from Shubhra Govind, our Economic Development Director, the Hanover Park Metra station connects pedestrians with our Village Center, which is currently under development. Pedestrians and cyclist traffic will be using the station as an access point to the new Village

Center and its future amenities. The Metra station is used to connect the Cook County bike path system to the proposed DuPage County bike path currently being funded. This amounts to many more pedestrians and cyclists with crossing the railroad tracks. This means that many more people will be tempted to go around safety devices at the surface crossings.

OEA Response

Please see response to Comment 460-11 above.

Comment 460-12: Written Comment from Metra (EI-32542)

The Final EIS should recommend that Applicants provide funding to communities with at-grade pedestrian crossings for crossing safety improvements. Both active and passive devices at railroad crossings, and pedestrian gates, can help influence pedestrian behavior and reduce the risk for pedestrians using these at-grade crossings.

The DuPage County Railroad Safety Council identifies pedestrian gate installations as an effective mitigation measure that can have a direct impact on reducing pedestrian injuries and fatalities at at-grade crossings.

OEA Response

See response to Comment 462-25 above. As set forth in *Chapter 4, Mitigation*, the Applicants have committed to implementing voluntary mitigation measures that would address grade crossing safety, including pedestrian safety. These measures include commitments to work with communities in support of securing funding for mitigation projects where they may be appropriate to increase the safety of existing grade crossings (VM-Grade Crossing-01), to consult with communities to improve visibility at grade crossings by clearing vegetation where practicable (VM-Grade Crossing-03), and to make Operation Lifesaver programs available to affected communities, including schools and other organizations (VM-EJ-02).

Following issuance of the Draft EIS, the Applicants informed OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures in certain communities in the Chicago area with which they have been unable to reach negotiated settlement agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). These measures include commitments to installing a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others; installing ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions; and installing PTC wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates. OEA has revised *Chapter 4, Mitigation* to reflect the additional voluntary commitments made by the Applicants following issuance of the Draft EIS.

As discussed in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would have minor impacts on grade crossing safety, and OEA did not identify any specific grade crossings where the potential impacts would warrant additional mitigation, such as providing funding for improvements at specific pedestrian-only crossings, beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 460-13: Written Comment from Metra (EI-32542)

As stated above, the Applicants should be directed to support and fund the continuation of existing Quiet Zones at all crossings in all communities, including funding the safety measures required by FRA's Quiet Zone regulations. The Coalition also maintains the Applicants should be required to commit to support the establishment of new Quiet Zones along the Coalition Line.

OEA Response

As set forth in *Chapter 4, Mitigation*, the Applicants have voluntarily proposed mitigation that would require the Applicants to fund the improvements necessary to allow any potentially affected community with an existing Quiet Zone to maintain that designation should the increase in Acquisition-related train traffic cause that community to fall out of compliance with FRA regulations.

In addition, following issuance of the Draft EIS, the Applicants informed OEA that the Applicants are committed to implementing and funding additional voluntary mitigation in certain communities in the Chicago area with which they have not been able to reach agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). Those measures include a commitment to work with the communities to create a Quiet Zone, subject to necessary approvals, practicality, and the cooperation of Metra as the owner of the rail line. OEA has revised *Chapter 4, Mitigation* to reflect the additional voluntary commitments made by the Applicants following issuance of the Draft EIS.

OEA notes that the Board does not have the authority to require Quiet Zones. Local governments have to initiate that process with FRA.

Comment 460-14: Written Comment from Metra (EI-32542)

There are three at-grade pedestrian crossings of the Coalition Line at the Roselle Metra Train Station, which has about 1500 commuters board Metra trains each day. Most commuters arrive via vehicle and must cross the tracks from a commuter parking lot located north of the double tracks to reach the inbound boarding platform that is located on the southside of the tracks. Also on the north side of the tracks is dense multifamily housing, and the residents walk to and from the train station by crossing the tracks to reach the boarding platform. The existing pedestrian crossings lack audible warnings of approaching trains and any improvements, such as gates, that prohibit pedestrians from crossing the tracks when Metra trains and freight trains are approaching the train station. This

arrangement particularly becomes unsafe when commuters must move from one platform to another to meet their Metra train when its track assignment has changed.

A more thorough analysis of the impacts of the proposed merger should be accompanied by an evaluation of the need for merger approval to be conditioned upon the Applicants funding (1) a pedestrian underpass that crosses below the railroad adjacent to the train station; and (2) a pedestrian overpass to connect the train station to Roselle's nearby downtown area.

OEA Response

In response to public comments on the Draft EIS, OEA has revised *Section 3.2, Grade Crossing Safety* and **Appendix H, Grade Crossing Safety and Delay** to include additional information regarding pedestrian-only grade crossings in the study area, including the two pedestrian-only grade crossings at the Hanover Park Metra Station. Because the two pedestrian-only grade crossings at the Hanover Park Metra Station have existed for many years, pedestrians using those crossings are accustomed to the crossings occasionally being blocked by trains. The current volume of train traffic at these grade crossing is approximately 60.41 trains per day, on average, including approximately 57 passenger trains and approximately 3.41 freight trains. The Applicants expect that the number of trains per day moving through those grade crossings would increase by approximately eight trains per day, or approximately 13.2 percent. OEA does not expect that this increase would substantially affect safety or the movement of pedestrians at these crossings.

As set forth in *Chapter 4, Mitigation*, the Applicants have proposed mitigation measures that would address impacts related to grade crossing safety, including pedestrian safety. These measures include commitments to work with communities in support of securing funding for mitigation projects where they may be appropriate to increase the safety of existing grade crossings (VM-Grade Crossing-01), to consult with communities to improve visibility at grade crossings by clearing vegetation where practicable (VM-Grade Crossing-03), and to make Operation Lifesaver programs available to affected communities, including schools and other organizations (VM-EJ-02).

Following issuance of the Draft EIS, the Applicants informed OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures in certain communities in the Chicago area with which they have been unable to reach negotiated settlement agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). These measures include commitments to installing a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others; installing ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions; and installing PTC wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates. OEA has revised *Chapter 4, Mitigation* to reflect the additional voluntary commitments made by the Applicants following issuance of the Draft EIS and recommends that the Board impose these commitments in any final decision authorizing the Proposed Acquisition.

As discussed in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would have minor impacts on grade crossing safety, and OEA did not identify any specific grade crossings where the potential impacts would warrant additional mitigation beyond the measures that the Applicants have proposed.

Comment 460-15: Written Comment from Metra (EI-32542)

The Village of Hanover Park has developed the area around its Metra station into a vibrant downtown area. That development has included converting overhead utility lines to underground, building a brand-new park and plaza with an emphasis on creating a pedestrian friendly environment, and updating the zoning code to create a Village Center zoning district. The goals of developing the Village Center are to (1) create a focal point and community gathering place for all residents and visitors; (2) significantly expand economic development opportunities in the Village, especially around transportation centers; and (3) increase transportation options for all residents.

Achieving these goals revolve around pedestrians moving safely and without delay across the Coalition Line that runs through the Village, and so the proposed increase in frequency and length of freight trains will be extremely detrimental to achieving these goals. Currently, the only convenient pedestrian crossings of the Coalition Line are two at-grade pedestrian crossings at the Metra station. These at grade crossings will see more passing trains and be blocked for longer periods of time, which will hinder pedestrian movement and harm economic development. Moreover, extended delays will result in people taking greater risks to cross the tracks on foot.

In order to effectively mitigate the merger impacts, protect pedestrians, and provide safe and efficient access to both sides of the tracks, OEA should recommend that any approval of the merger should be conditioned upon the Applicants funding the construction of a pedestrian underpass at the Hanover Park Metra Station.

OEA Response

In response to public comments on the Draft EIS, OEA has revised *Section 3.2, Grade Crossing Safety* and **Appendix H, Grade Crossing Safety and Delay** to include additional information regarding pedestrian-only grade crossings in the study area, including the two pedestrian-only grade crossings at the Hanover Park Metra Station. Because the two pedestrian-only grade crossings at the Hanover Park Metra Station have existed for many years, pedestrians using those crossings are accustomed to the crossings occasionally being blocked by trains. The current volume of train traffic at these grade crossing is approximately 60.41 trains per day, on average, including approximately 57 passenger trains and approximately 3.41 freight trains. The Applicants expect that the number of trains per day moving through those grade crossings would increase by approximately eight trains per day, or approximately 13.2 percent. OEA does not expect that this increase would substantially affect safety or the movement of pedestrians at these crossings.

As set forth in *Chapter 4, Mitigation*, the Applicants have proposed mitigation measures that would address impacts related to grade crossing safety, including pedestrian safety. These measures include commitments to work with communities in support of securing funding for

mitigation projects where they may be appropriate to increase the safety of existing grade crossings (VM-Grade Crossing-01), to consult with communities to improve visibility at grade crossings by clearing vegetation where practicable (VM-Grade Crossing-03), and to make Operation Lifesaver programs available to affected communities, including schools and other organizations (VM-EJ-02).

Following issuance of the Draft EIS, the Applicants informed OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures in certain communities in the Chicago area with which they have been able to reach negotiated settlement agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). These measures include commitments to installing a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others; installing ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions; and installing PTC wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates. OEA has revised *Chapter 4, Mitigation* to reflect the additional voluntary commitments made by the Applicants following issuance of the Draft EIS.

In addition, OEA notes that the 2021 Infrastructure Investment and Jobs Act (IIJA)/Bipartisan Infrastructure Law (BIL) provides an opportunity for local agencies to apply for funding that could be used to make improvements such as a pedestrian overpasses or underpasses.

Comment 523-1: Written Comment from the Illinois Commerce Commission (EI-32527)

The DEIS does not include the Village of Franklin Park in the safety analysis because it is assumed all impacts will be west of the Village of Bensenville. With eight or more additional trains coming into Bensenville, a detailed analysis should be identified or conducted for transfers or other impacts to Franklin Park.

OEA Response

OEA did not analyze the safety performance of grade crossings in Franklin Park, Illinois because OEA does not expect that the Proposed Acquisition would cause rail traffic on rail lines in Franklin Park to exceed the threshold for grade crossing safety analysis, which is eight or more trains per day, as discussed in *Section 3.2, Grade Crossing Safety*. The Applicants anticipate that the rail line in Franklin Park would experience an increase in rail traffic of approximately 6.43 trains per day, which is less than the environmental review threshold of eight trains per day. Therefore, OEA concludes that the Proposed Acquisition would not have the potential to result in substantial impacts on grade crossing safety in Franklin Park.

Comment 532-2: Written Comment from the Illinois Commerce Commission (EI-32527)

The DEIS identifies an additional 6 vehicle collisions will occur across all 1,134 public highway-rail crossings (19.1 up to 24.9 = 5.8 increase). In addition, pedestrian collisions are anticipated to go from 1.7 collisions per year up to 2.2 collisions. The DEIS notes this increase will be offset by general off-network reductions instead of seeking a mitigation that would reduce the anticipated increase at the same set of 1,134 crossings analyzed.

a. ICC Staff requests that STB impose a mitigation to directly reduce the additional anticipated risk at the same set of 1,134 crossings instead of relying on the general assumption that off-network improvements will reduce risk.

OEA Response

As set forth in *Chapter 4, Mitigation*, the Applicants have proposed mitigation measures that would address impacts related to grade crossings, including a commitment to work with potentially affected communities in support of securing funding, in conjunction with appropriate state agencies, for crossing mitigation projects where they may be appropriate under criteria established by relevant state transportation departments to increase the safety of existing at-grade crossings (VM-Grade Crossing-01) and to consult with potentially affected communities to improve visibility at roadway/rail at-grade crossings by clearing vegetation where practicable (VM-Grade Crossing-03).

Following issuance of the Draft EIS, the Applicants informed OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures in certain communities in Illinois with which they have been unable to reach negotiated settlement agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). These measures include commitments to installing a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others; installing ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions; and installing PTC wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates. As discussed in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would have minor impacts on grade crossing safety, and OEA did not identify any specific grade crossings in Illinois or elsewhere where the potential impacts would warrant additional mitigation beyond the measures that the Applicants have proposed. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 523-3: Written Comment from the Illinois Commerce Commission (EI-32527)

ICC Staff also requests that the language in Section 3.2.3.1 be revised to mirror what is used in the Summary, instead of noting one additional crash every 200 years for vehicles or 2000 years for a pedestrian. This is misleading after identifying there will be an additional 6 vehicle collisions per year, and 1 pedestrian collision every 2-years.

OEA Response

The results reported in *Section 3.2, Grade Crossing Safety* are consistent with those summarized in the Summary. The Draft EIS reports the projected number of vehicle and pedestrian collisions resulting from the Proposed Acquisition both in terms of the total number of collisions across all 1,134 grade crossings in the study area, which extends from the western side of Chicago to the Mexican border, and in terms of the average number of collisions at each grade crossing in the study area. OEA projects that the Proposed Acquisition would result in approximately 5.8 additional vehicle collisions per year and one additional pedestrian collision every approximately two years, on average, added across all 1,134 grade crossings in the study area. There are 1,134 grade crossings in the study area, so this is equivalent to one additional vehicle collision every approximately 200 years and one additional pedestrian collision every approximately 2,000 years for the average grade crossing. No changes to the Draft EIS are warranted in response to this comment.

Comment 523-4: Written Comment from the Illinois Commerce Commission (EI-32527)

The DEIS did not address trespassing or suicide prevention or quantify current numbers of trespass and suicide along the line segments. We request the DEIS consider trespass and suicide incidents during the past 5 years and estimate potential increases in risk to trespass and suicide incidents and recommend appropriate mitigation measures.

OEA Response

Regarding trespassing, it is illegal for the general public to access private railroad property anywhere other than a designated pedestrian or roadway crossing. While trespassers are at risk of injury when trespassing, they are engaging in an illegal activity. As such, trespassing is a public safety and enforcement issue. In response to public comments on the Draft EIS, OEA has revised *Section 3.2, Grade Crossing Safety* and **Appendix H, Grade Crossing Safety and Delay** to include additional pedestrian safety analysis of pedestrian-only grade crossings within the study area, including suicides and trespassing.

As shown in **Table S.7-1** and **Figure S.7-1** below, national statistics show a negative correlation between train-miles and trespassing-related fatalities, which suggests that increased train traffic does not tend to increase the number of trespassing related fatalities.

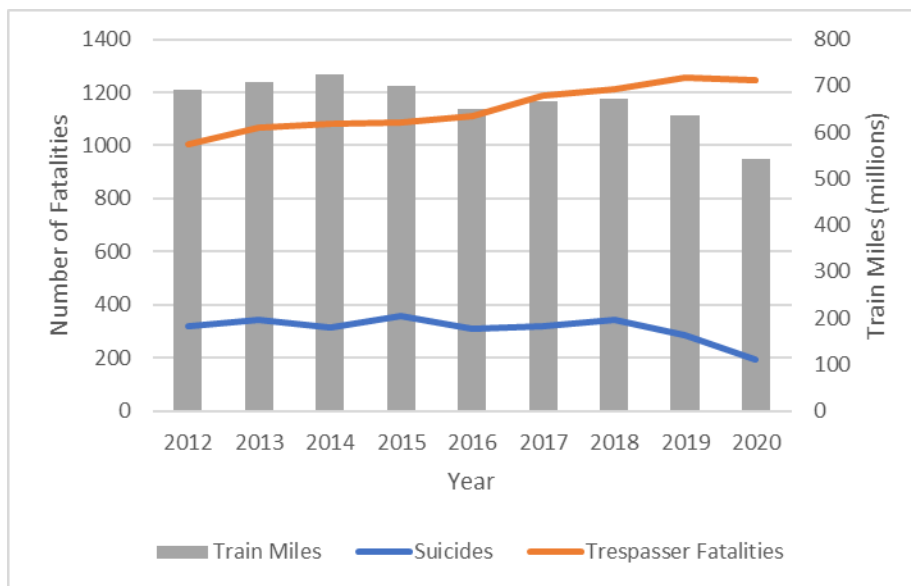
Table S.7-1. Relation Between Train-Miles and Trespassing-Related Fatalities

Year	Suicides	Trespasser Fatalities	Train Miles (millions)	Suicides/Million Train Miles	Trespasser Fatalities/Million Train Miles
2012	321	1003	691	0.46	1.45
2013	341	1066	707	0.48	1.51
2014	315	1084	725	0.43	1.49
2015	358	1085	698	0.51	1.55
2016	309	1111	650	0.48	1.71
2017	318	1190	666	0.48	1.79

Table S.7-1. Relation Between Train-Miles and Trespassing-Related Fatalities

Year	Suicides	Trespasser Fatalities	Train Miles (millions)	Suicides/Million Train Miles	Trespasser Fatalities/Million Train Miles
2018	342	1210	671	0.51	1.80
2019	287	1257	637	0.45	1.97
2020	195	1248	541	0.36	2.30

Figure S.7-1 Relation Between Train-Miles and Trespassing-Related Fatalities



Regarding the commenter’s concern that increased rail traffic could increase the rate of suicide, OEA is unaware of any evidence indicating that the incidence of suicide by train is correlated to the volume of freight train traffic on a line of railroad. National statistics shown in **Table S.7-1** and chart above suggest that rail-related suicides have remained relatively constant over time despite variable train-miles. An Australian study by Too et al. (2017, 328-333) of clusters of rail-related suicides found that individuals living in areas with high frequency train service were more likely to be within clusters of rail-related suicides (odds ratio = 1.11, which indicates an 11% increase in the probability of being in a cluster), but this study focused on areas with high levels of passenger train service and did not evaluate the effect of changing rail traffic on suicide rates. Moreover, the study found that hospitalization for mental illness was a much stronger predictor of being within a rail-related suicide cluster (odds ratio = 1.80, which indicates an 80% increase in the odds) (Too et al. 2017, 328-333). High frequency passenger train service is an existing condition in communities in Illinois such as Elgin, Bartlett, Schaumburg, Roselle, Medinah, Itasca, Wood Dale, Bensenville, and Franklin Park, all of which have more than 50 commuter trains per day. Because there is no reason to conclude that increased rail traffic resulting from the Proposed Acquisition would affect the incidence of either trespassing-related fatalities or

rail-related suicide, OEA is not recommending that the Board impose mitigation related to these issues.

The Applicants have volunteered mitigation measures, including Operation Lifesaver, which is a non-profit education and awareness program that helps increase the public's awareness of the dangers around rail lines. In addition, FRA conducts outreach efforts and publishes information on pedestrian safety and the dangers of trespassing. For instance, FRA partners with railroads, state governments, and other organizations to conduct outreach efforts in order to raise awareness about the inherent dangers and consequences of trespassing. FRA also publishes information such as *Railroad Crossing Safety for Pedestrians*, which helps to raise awareness of pedestrian responsibilities at pedestrian crossings. For all of these reasons, no changes to the Draft EIS are warranted in response to this comment.

Comment 523-5: Written Comment from the Illinois Commerce Commission (EI-32527)

The voluntary mitigation identified in the DEIS should not include areas required by federal or state law.

OEA Response

OEA encourages railroad applicants to propose voluntary mitigation measures to address the potential environmental impacts of their proposals. Should the Board decide to authorize the Proposed Acquisition and impose the Applicants' proposed voluntary mitigation measures, those measures would become binding conditions of the Board's decision. The Board's practice is to leave it to railroad applicants to develop appropriate voluntary mitigation. Thus, OEA will not delete from the Applicants' voluntary mitigation language requiring compliance with federal or state law. Moreover, in the unlikely event that the requirements of a federal, state, or local law differ from or conflicts with the Interstate Commerce Commission (ICC) Termination Act, as amended, those laws could be preempted under 49 U.S.C. § 10501. Therefore, it is OEA's longstanding practice to recommend that the Board impose appropriate federal and state environmental regulatory requirements as mitigation measures. Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 523-6: Written Comment from the Illinois Commerce Commission (EI-32527)

Of the 111 public highway-rail crossings in Illinois, not all are equipped with remote monitors, ICC Staff believes all crossings in the corridor must be equipped with remote monitors.

OEA Response

It is unclear if the commenter is referring to the type of "remote monitors" that provide information on train movements and gate activations or the type of "remote monitors" that are designed to diagnose malfunctions in equipment. If these public highway-rail crossings in Illinois are not currently equipped with remote monitors, and there is a state requirement that these crossings must be so equipped, then this is a pre-existing condition that is not related to the Proposed Acquisition and should be addressed by ICC and other appropriate

state agencies. As stated in *Chapter 4, Mitigation*, any mitigation measures the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board. OEA does not recommend, and the Board does not impose, mitigation for pre-existing conditions. As stated in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would result in only minor impacts on grade crossing safety and did not identify any impacts that would warrant mitigation beyond those measures that the Applicants voluntarily proposed as set forth in *Chapter 4, Mitigation*. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 523-7: Written Comment from the Illinois Commerce Commission (EI-32527)

All passive and flasher only public highway-rail crossings (24) shall be upgraded with gates, Constant Warning Time circuitry, and remote monitors.

OEA Response

As stated in *Section 3.2, Grade Crossing Safety*, OEA found that the Proposed Acquisition would result in only minor impacts on grade crossing safety and did not identify any impacts that would warrant mitigation beyond the measures set forth in *Chapter 4, Mitigation*. In this Final EIS, those measures include additional voluntary mitigation measures that the Applicants proposed following issuance of the Draft EIS to address certain communities in Illinois with which they have been unable to reach negotiated settlement agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). These measures include commitments to installing and funding a predictive mobility system, interconnected with existing railroad crossing signals, that will deliver advanced notice of blocked crossings to citizens, police, fire, and rescue operations, and others; installing and funding ITS Interconnect for Advanced Warning Signs at strategic locations to give drivers information about occupied crossings, allowing them to make better on-the-spot decisions; and installing and funding PTC wireless technology tie-ins at crossings adjacent to Metra platforms, which will minimize the activation of crossing lights and gates.

Comment 523-8: Written Comment from Illinois Commerce Commission (EI-32527)

All pedestrian depot crossings without train activated warning should be equipped with a minimum of flashing light signals with bell (14 out of 23 depot crossings).

OEA Response

See response to Comment 523-7 above.

Comment 523-9: Written Comment from the Illinois Commerce Commission (EI-32527)

ICC Staff recommends monitoring for a 5-year period, similar to STB FD 35522, CSX lease transaction. Data should be provided by the CP's PTC system, and/or remote monitors at the crossings:

- a. Total number of all trains at each crossing (or sampled set of crossings)
- b. Number of passenger trains
- c. Number of hazmat trains
- d. Number of HHFT Key Trains
- e. Average length of freight trains
- f. Length of single longest train
- g. Train ID of single longest train
- h. Date of single longest train
- i. Number of freight trains over 7,000'
- j. Number of freight trains over 11,000'
- k. Number of freight trains over 15,000'
- l. Warning device activations
- m. Number of false activations
- n. Response time to fix false activations or other issue in minutes
- o. Average response time in minutes
- p. Number of blockages over 10 minutes
- q. Percent of all activations with a blockage
- r. Total duration of all blockages in minutes
- s. Average duration of a blockage in minutes

OEA Response

As set forth in *Chapter 4, Mitigation*, OEA is recommending that the Board impose mitigation requiring the Applicants to submit quarterly reports to OEA on the progress of, implementation of, and compliance with all Board-imposed environmental mitigation measures. Per MM-Grade Crossing-01, the Applicants shall consult with the Illinois Commerce Commission prior to making Proposed Acquisition related modifications of grade crossings in Illinois. OEA did not find that the specific reporting requirements recommended by the commenter would be warranted by the generally minor impacts of the Proposed Acquisition. The commenter did not identify a specific deficiency in OEA's analysis or a specific impact that would require additional monitoring and reporting beyond that recommended by OEA.

Comment 523-10: Written Comment from the Illinois Commerce Commission (EI-32527)

STB requirement for Risk Analysis and Future Mitigation over 5 years is requested. At the end of each quarter, the CP, would provide to the STB an evaluation of monthly delay,

collisions, and near miss data for STB to consider further mitigation needs not contemplated in the DEIS.

OEA Response

See response to Comment 523-9 above.

Comment 661-2: Transportation Merit Hearing Comment from Harris County Commissioner Rodney Ellis

At several locations in my precinct, children traveling from school on foot, race across tracks when they see a train approaching, and hop in between stalled cars to reach their destination. Oftentimes the destination is school. Train traffic in one such residential neighborhood will increase to 51 trains a day if this merger is approved, turning a burdensome reality into an untenable situation.

OEA Response

The number of freight trains per day would increase by 7.57 through Harris County as a result of the Proposed Acquisition for a total of 16.82 CPKC trains per day under the Proposed Acquisition. According to UP and the Houston-Beaumont Region Freight Study (September 2021), in the future, approximately 33 total freight trains (UP, BNSF, and CPKC) would operate over the double-track segments where KCS has trackage rights with the Proposed Acquisition, up from approximately 25 today (Texas DOT 2021). However, see response to Comment 461-8 for an explanation of how the 7.57 trains per day would be divided between two subdivisions for most of the trip through Houston.

Additionally, see the first paragraph of the response to Comment 462-24 above regarding the analysis of pedestrian-only crossings in the EIS.

Comment 443-4: Public Meeting Comment from Zoe Middleton for Harris County Commissioner Rodney Ellis (EI-32760)

There are 897 at-grade crossings in Harris County, and many of them are in poor condition. Already daily commutes, essential public services, like, waste removal and emergency response, are complicated sometimes for hours by stopped trains. At one location in our precinct, children already climb between stalled rail cars to make their way between school and home. And the number of trains at that crossing would increase to 53 a day if this merger is approved.

OEA Response

See response to Comment 661-2 above.

S.8 Grade Crossing Delay

Summary Comment: Grade Crossing Delay

Many commenters expressed concern that increased rail traffic resulting from the Proposed Acquisition would adversely affect the delay at roadway/rail at-grade crossings (grade crossings). Commenters stated that trains passing through grade crossings would disrupt the daily life of residents along affected rail lines and cause extended commutes. Commenters also expressed concern that increased rail traffic resulting from the Proposed Acquisition would adversely affect emergency services. Commenters stated that emergency response vehicles, such as ambulances, fire trucks, or police vehicles, could be delayed by trains passing through grade crossings and that this could result in slower response times to emergencies. Some commenters raised concerns related to blocked grade crossings. These include stopped trains that block one or more crossings, as well as moving trains that could block multiple crossings simultaneously. Blocked grade crossings can become an issue when there are no alternative routes or when the alternative routes are also blocked by a train. Some commenters argued that OEA's analysis of grade crossing delay in the Draft EIS did not sufficiently address these potential impacts. Some commenters also argued that the Draft EIS did not address delay impacts, including impacts on emergency response, at grade crossings in rural areas with low annual average daily traffic (AADT). Some commenters requested additional mitigation measures to address impacts on grade crossings, including separation of specific grade crossings (i.e., the construction of an overpass or underpass), the installation of new safety or monitoring equipment at grade crossings, and support for training, staffing, and equipment for emergency service providers, among others.

OEA Response

OEA notes the commenters' concerns regarding increased grade crossing delay. As discussed in detail in *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**, OEA conducted a thorough analysis of grade crossing delay, including delay on emergency service vehicles. OEA defined a study area for grade crossing delay that includes all rail line segments where the Proposed Acquisition would result in a projected increase in rail traffic that would meet or exceed the thresholds for environmental review set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e) (generally an increase of 3 or 8 trains per day). The study area includes Metra and CP rail lines extending west from the Chicago suburbs to Sabula, Iowa; CP rail lines extending from Sabula south to Kansas City, Missouri; KCS rail lines extending from Kansas City south to Beaumont, Texas; UP rail lines from Beaumont to Rosenberg, Texas on which KCS has trackage rights; and KCS rail lines extending from Rosenberg to Laredo, Texas. OEA did not assess grade crossing delay impacts at grade crossings on rail lines outside of the study area, including CP rail lines in Minnesota, Wisconsin, and in other states where the projected increase in rail traffic is below the environmental review thresholds. OEA identified every public grade crossing in the study area and provided information about the impacts of the Proposed Acquisition on each of these grade crossings in **Appendix H, Grade Crossing Safety and Delay**, as well as summary information in *Section 3.3, Grade Crossing Delay*.

Appendix H, Grade Crossing Safety and Delay provides information on all 1,365 public grade crossings in the study area, including grade crossing location, AADT, train length under the No-Action Alternative, train length under the Proposed Acquisition, estimated number of trains per day under the No-Action Alternative, estimated number of trains per day under the Proposed Acquisition, average gate down time per train under the No-Action Alternative, and average gate down time per train under the Proposed Acquisition. Average gate down time represents the time it would take the average train to pass through a grade crossing, which represents a reasonable estimate of the delay that vehicles, including emergency response vehicles, would experience at grade crossings with low AADT. For many grade crossings in the study area, average gate down time would decrease as a result of the Proposed Acquisition because the average length of freight trains would decrease.

For grade crossings with an AADT of 2,500 or higher, vehicles, including emergency response vehicles, could experience longer delays because vehicles would form a queue while waiting for a train to pass through the grade crossing. Therefore, for such grade crossings, **Appendix H, Grade Crossing Safety and Delay** also reports the estimated number of stopped vehicles per day under the No-Action Alternative, the number of stopped vehicles per day under the Proposed Acquisition, the average delay per day under the No-Action Alternative, the average delay per day under the Proposed Acquisition, the total delay per day under the No-Action Alternative, the total delay per day under the Proposed Acquisition, the maximum queue length under the No-Action Alternative, the maximum queue length under the Proposed Acquisition, the Level of Service (LOS) of the grade crossing under the No-Action Alternative, and the LOS under the Proposed Acquisition.

In addition to providing information on every public grade crossing in the study area in the Draft EIS, OEA focused on grade crossings within the study area that are designated as “Emergency Vehicle Routes” in the FRA database. Information on “Emergency Vehicle Routes” is reported to FRA by state agencies. State agencies can identify a grade crossing as an emergency vehicle route if the grade crossing is routinely used by highway vehicles to obtain access to facilities that provide emergency services, such as hospitals and police and fire stations. For the 28 grade crossings designated as “Emergency Vehicle Routes” in the FRA database, *Section 3.3, Grade Crossing Delay* in the Draft EIS reported information about the alternative route that an emergency vehicle could take in the event that a train were to block the grade crossing, including the length of the alternative route.

Taken together, therefore, the metrics reported in the Draft EIS provide substantial detailed information regarding the potential effects of the Proposed Acquisition on grade crossing delay, including impacts on emergency vehicles. Nevertheless, in response to public comments on the Draft EIS, OEA has revised *Section 3.2, Grade Crossing Safety* and **Appendix H, Grade Crossing Safety and Delay** to include additional information regarding grade crossing delay and the implications of such delay for emergency service vehicles. Specifically, **Appendix H, Grade Crossing Safety and Delay** in the Final EIS includes additional information about gate down time for particular types of freight and passenger trains at all 1,365 public grade crossings in the study area. OEA has also revised the appendix to include the Proposed Acquisition-related change in total delay per day and the Proposed Acquisition-related change in average delay per delayed vehicle for the 277 grade crossings in the study area with an AADT of 2,500 or higher.

In addition, OEA has revised **Appendix H, Grade Crossing Safety and Delay** to include maps showing the locations of emergency service facilities, such as hospitals, fire stations, and police stations, in relation to grade crossings and grade separated crossings throughout the study area. OEA also calculated the length of an alternative route that vehicles, including emergency vehicles, could take to reach the other side of the grade crossing in the event that grade crossing were to become blocked by a train for a subset of grade crossings in the study area most likely to be affected by blockages. Specifically, **Appendix H, Grade Crossing Safety and Delay** in the Final EIS provides this information for each grade crossing in the study area with an AADT of 2,500 or higher, as well as for “isolated” grade crossings with AADT below 2,500 (i.e., the grade crossing is more than two miles from a grade-separated crossing and more than two miles from a grade crossing with an AADT of 2,500 or higher). Because the dispatching of emergency services vehicles is determined at a local level and depends on emergency-specific conditions, there is no way for OEA to know which individual grade crossings emergency vehicles would use during a particular emergency or what the best alternative route would be for an emergency vehicle to reach its destination. However, OEA assumed that emergency vehicles would tend to use larger roadways (i.e., with an AADT of 2,500 or higher) and grade separated crossings where they are available.

Under normal conditions, trains are moving. Railroads utilize operational procedures to minimize the frequency of blocked crossings, including (AAR 2021):

- Planning train schedules, inbound and outbound yard movements, and crew work schedules that result in minimizing the time a train occupies a grade crossing.
- Modifying railcar-switching practices and operations such as stopping a train clear of a crossing to conduct legally required mechanical inspections.
- Extending sidings and constructing new ones where trains can be stationed, resulting in fewer blocking crossings.
- Holding trains outside of crossings where vehicular traffic is substantial.
- Seeking to park trains outside of crossings when the crews have worked the maximum hours permitted.
- Considering the potential for blocked crossings on sidings when trains are meeting.
- Training dispatchers to optimize the utilization of sidings, meeting and passing opportunities, and stopping points, resulting in fewer blocked crossings.
- Issuing orders across all Class I railroads that require train crews to minimize the occurrence of blocked crossings and to cut crossings where appropriate.
- Requiring crews to alert dispatchers when crossings are blocked and giving the dispatchers the authority to address the blocked crossing.
- Testing notification systems at crossings that notify dispatchers when crossings are blocked.

Additionally, Rule 6.32.6 in the General Code of Operating Rules (GCOR 2020) that both CP and KCS have adopted, requires that “if possible, a standing train or switching movement must avoid blocking a public crossing longer than 10 minutes.” Although grade crossings can sometimes become blocked by stopped trains, OEA understands that this is

inconsistent with standard operating procedures. It is also unlikely, given the operating practices listed above, that a train would become stopped for a long period of time in a position where it would simultaneously block all the grade crossings providing access to a community. In addition, as set forth in *Chapter 4, Mitigation*, and consistent with GCOR, the Applicants have committed to operate trains to not block public grade crossings for longer than 10 minutes unless it cannot be avoided (see VM-Grade Crossing-02). The Applicants have also committed to investigating, where practicable, the potential to create alternative access for properties whose sole access would be blocked more than once per week by a train stationary for longer than 10 minutes at a single location (VM-Grade Crossing-04).

In the event of a blocked crossing, there would be opportunities to report issues to the Applicants and FRA. These options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. On rail lines currently owned by CP this toll-free number is located on blue signs attached to grade crossing signals as required by FRA regulations. The Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software.

In December 2019, FRA established a webpage (www.fra.dot.gov/blockedcrossings) to report blocked highway-rail grade crossings. FRA encourages the use of this database by the public and emergency responders to report blocked grade crossings. FRA uses the data to identify where chronic problems exist and to better assess the underlying causes and overall impacts of blocked grade crossings. While FRA collects data on blocked grade crossings, this dataset is not appropriate for an analysis of blocked grade crossings because FRA does not confirm the accuracy of the reports and because the dataset is not designed to provide a representative sample or create generalizable statistics.

In response to public comments requesting separation of specific grade crossings, OEA has revised *Section 3.3, Grade Crossing Delay*, to include a discussion of criteria developed by the Federal Highway Administration (FHWA) for identifying grade crossings where grade crossing separation should be considered, as well as other criteria used by OEA in past railroad acquisition proceedings for identifying grade crossings where requiring the railroad applicants to pay more than their typical share of the cost of grade separation could be appropriate as environmental mitigation. The FHWA criteria are not federal requirements and most of the criteria would not be met by the Proposed Acquisition. The two FHWA criteria that are potentially relevant to OEA's analysis indicate that grade crossing separation should be considered when (1) freight trains average 30 or more trains per day or (2) vehicle delay exceeds 30 vehicle hours per day. OEA identified 24 grade crossings where the Proposed Acquisition would cause one of these two FHWA criteria to be exceeded when compared to the No-Action Alternative. However, for all 24 of those grade crossings, the Proposed Acquisition would not cause an increase in average delay per delayed vehicle, an increase in average queue length, or a decrease in the LOS. In addition, each of the 24 grade crossings where one of the two FHWA criteria noted above would be exceeded have a viable alternate route that could be used by emergency service vehicles or other vehicles to cross the rail line in the unlikely event that the grade crossing were blocked for a substantial amount of time. Therefore, OEA concludes that mitigation regarding separation of these

grade crossings is not warranted to address the environmental impacts of the Proposed Acquisition.

The additional information that OEA is providing in the Final EIS does not change OEA's overall conclusion that the Proposed Acquisition would result in minor impacts on grade crossing delay. Averaged across all 1,365 grade crossings in the study area, the Proposed Acquisition would increase the total gate down time per day by only approximately 23.3 minutes. Across all 277 grade crossings in the study area with an AADT of 2,500 or higher, the Proposed Acquisition would result in an average increase in delay of only approximately 0.7 seconds per vehicle. The Proposed Acquisition would result in a decrease in the LOS at only five grade crossings, and all five of those crossings would decrease from LOS A (free-flow traffic) to LOS B (stable flow). For most grade crossings in the study area, the average gate down time per train, average delay per delayed vehicle, and maximum queue length would decrease as a result of the Proposed Acquisition because average train length would decrease on many rail lines in the study area. OEA's conclusion that these impacts are minor is based on an analysis of the entire study area, and specific locations may experience more or less delay, as detailed in **Appendix H, Grade Crossing Safety and Delay**.

Because the Proposed Acquisition would result in only minor impacts on grade crossing delay, OEA is not recommending that the Board require the Applicants to fund or partially fund grade separations as mitigation to address the environmental impacts of the Proposed Acquisition. OEA is recommending that the Board impose the mitigation measures that the Applicants voluntarily proposed to address grade crossing delay, as set forth in *Chapter 4, Mitigation*. Those measures include a commitment to abide by an operating rule, originating from the General Code of Operating Rules, to not block public crossings for longer than 10 minutes unless it cannot be avoided (see VM-Grade Crossing-02) and to investigate the potential to create alternative access for properties whose sole access would be blocked more than once a week by a train stationary for longer than 10 minutes at a single location, where practical (VM-Grade Crossing-04). OEA is also recommending that the Board impose additional mitigation measures that would address grade crossing delay, as set forth in *Chapter 4, Mitigation*. These include a measure requiring the Applicants to consult with appropriate state Departments of Transportation and other appropriate agencies prior to constructing, relocating, upgrading, or modifying grade crossings, including grade crossing warning devices, and to abide by those agencies' reasonable requirements for the design of grade crossings and associated warning devices (MM-Grade Crossing-01). OEA believes that the Applicants' voluntary mitigation measures and OEA's additional recommended mitigation measures would minimize the impact of the Proposed Acquisition on grade crossing delay.

Summary Comment: Validity of Data, Methods, and Conclusions

Multiple commenters challenged the validity of the data and methods OEA used to analyze grade crossing delay as well as OEA's conclusions based on this analysis. In many instances, the commenters used inaccurate characterizations of the Proposed Acquisition, including the number of trains per day and train length. Some commenters collected and referenced, or suggested using, short-term observational data at specific locations.

In particular, several commenters referenced a report commissioned by the Village of Itasca, Illinois; the Village of Bensenville, Illinois; the City of Wood Dale, Illinois; the Village of Roselle, Illinois; the Village of Schaumburg, Illinois; the Village of Hanover Park Illinois; the Village of Bartlett, Illinois; the City of Elgin, Illinois; and DuPage County, Illinois (collectively, the Coalition to Stop CPKC or Coalition). The report shows the results of an analysis that the Coalition conducted in 2022 purporting to show that the impacts on grade crossing delay in Coalition communities would be greater than reported in the Draft EIS. The Coalition provided OEA with a copy of the report during the public comment period for the Draft EIS.

OEA Response

In this proceeding, as in all proceedings before the Board requiring environmental review, OEA relies on information provided by the private railroad applicants seeking Board authority. In this case, the Applicants provided OEA with sufficient information regarding their plans for implementing the Proposed Acquisition and adequately detailed projections of potential future outcomes of the Proposed Acquisition in their 2027 projections to allow OEA to conduct a thorough review of the potential environmental consequences of the Applicants' proposal and the No-Action Alternative.

OEA notes that railroad companies have the obligation to provide rail service upon reasonable request and the right to determine how to route their traffic in order to meet the needs of shippers while maintaining safe and efficient operations. Ultimately, the volume of rail traffic on a particular rail line depends on many factors, including global economic conditions; national, regional, and local markets; and the decisions of individual transportation companies and their customers. By their nature, projections of future rail traffic are estimates based on imperfect information about actual future circumstances. There are different approaches to predicting future rail traffic and the Applicants' reliance on modeled baseline data does not on its own invalidate the results of the Applicants' projections.

Parties in the instant proceeding have questioned the methods used by the Applicants to make projections of future rail traffic levels in their filings on the transportation merits of the Proposed Acquisition, which is separate from the environmental review process. The Board addressed certain issues related to concerns about the Applicants' traffic projections in Decision No. 17, issued on April 27, 2022. The Board also directed OEA to use the revised data submitted by CP in response to Decision No. 17 for the environmental review of the Proposed Acquisition, which OEA has done. The Board will further address issues involving the reasonableness of Applicants' methodology, as appropriate, in its final decision on the Proposed Acquisition.

In addition to the traffic projections provided by the Applicants, OEA also used reliable publicly available information about the grade crossings in the study area to conduct its analysis. The information that OEA used included traffic volume data for each crossing that was available from state or local departments of transportation, maximum train speed data from timetables, passenger train volumes obtained from service providers, and data from the FRA's grade crossing inventory. OEA's approach was reasonable and consistent with past precedent and industry standard transportation analysis. Unlike the widely used and verified

datasets that OEA relied on, anecdotal data and field observations collected at specific locations over a short period of time (one or several days) would be subject to bias from very small sample sizes and would not provide reliable estimates on which to base the analysis.

In preparing the Final EIS, OEA carefully reviewed the report commissioned by the Coalition and identified a number of methodological problems with the analysis described in the report that would tend to overstate the projected delay at grade crossings. These problems include, but are not limited to, the following:

- The Coalition’s report assumes that the Proposed Acquisition would result in an increase in rail traffic of up to 14 trains per day on rail line segments in the Chicago area. This is substantially higher than the projected rail traffic increase for these rail line segments described in the Applicants’ application, which is eight trains per day. The assumption that rail traffic would increase by much more than the Applicants have projected means that the results of the Coalition’s analysis overstates the potential impact of the Proposed Acquisition on grade crossing delay.
- The Coalition’s report does not consider the number of passenger trains per day, which represent approximately 60 to 80 percent of total trains per day at related crossings with the Proposed Acquisition. Passenger trains are a substantial contributor to the total grade crossing delay per day at these particular crossings. OEA’s analysis is based on the actual and projected train volumes provided by the Applicant as well as passenger train volumes obtained from service providers. The Coalition’s report assumes that the average length of freight trains would be 10,000 feet regardless of whether or not the Board authorizes the Proposed Acquisition. This is substantially higher than the projected average freight train lengths provided by the Applicants, which is approximately 8,597 feet under the No-Action Alternative and approximately 6,817 feet under the Proposed Acquisition. As train length is one of the primary inputs for computing delay, using a length of 10,000 feet artificially inflates the delay estimates by 16 percent for the No-Action Alternative and 47 percent for the Proposed Acquisition.
- As a basis for computing train delays, the Coalition’s analysis “utilized train traffic data obtained in 2022 by DuDOT personnel in the field.” Specifically, the Coalition’s analysis appears to be based on data collected over just two days for eight grade crossings and four days for one grade crossing. The observations took place only on weekdays and in different weeks and months for the different grade crossings that were observed. Baseline rail traffic for other crossings discussed in the report was extrapolated from the observations. The reliance on such a limited sample size is problematic because it increases the chance of outlying observations that can skew the results. Moreover, the analysis did not account for organic growth that would occur in the absence of the Proposed Acquisition and therefore does not accurately estimate future conditions in 2027, which is the future analysis year that OEA used in this EIS, consistent with prior cases.
- The traffic count data (AADT) used in the Coalition’s delay analysis are vastly different for many of the grade crossings compared to what is shown in publicly accessible data from transportation agencies. As noted above, the Coalition’s values also do not account for organic growth to the future analysis year of 2027, and it is not clear if the traffic

volumes are normalized to the same base year or if the volumes represent raw traffic count data from 2016, 2017, and 2018 based on the availability of data.

- The Coalition’s report indicates that “to fully conduct the evaluation, hourly data is required for each at-grade crossing.” This is incorrect. Hourly data are not required; reliable traffic volume data are required. The traffic volume, whether collected annually, daily, hourly, etc. can then be used in the applicable equations by converting to the appropriate unit of measure.
- The Coalition’s report uses a gate down time of 30 seconds before arrival plus 15 seconds after departure (a total of 0.75 minutes). OEA’s analysis uses a total gate down time of 0.6 minutes per train at each grade crossing over the entire study corridor, which is consistent with the GradeDecNET 2019 Reference Manual. Further, per the FHWA *Highway-Rail Crossing Handbook - Third Edition*, “When the train clears the crossing, and no other train is approaching, the gate arm should ascend to its upright position normally in no more than 12 seconds.” The use of 15 seconds in the study commissioned by the Coalition is excessive.
- The Coalition’s report indicates that “GHA identified a similar roadway within the corridor” to estimate hourly distributions. This is a questionable approach and may skew the results if the hourly distributions are not reflective of the actual study locations.
- The Coalition’s analysis uses a single discharge rate of 950 passenger cars per hour per lane (pcphpl) for all crossings. The Highway Capacity Manual (Transportation Research Board 2016) provides the following discharge rates by functional class (in vehicles/hour/lane): 1800 pcphpl for highways, 1398 for arterials, 900 for collectors, and 702 for local roads. Given that nearly half of the locations in the report are arterials, and that these tend to be the busier roads, this general assumption of 950 pcphpl artificially inflates the delay estimates.
- Using the values and assumptions from the Coalition’s report, along with the equation for gate down time (i.e., lead time + [train length / (train speed * 88)]), does not result in the same values reported in Table 1 of the report.
- The “Assumed Schedule for 14 new freight trains” under Table 6 only lists 12 trains. Again, the Applicants estimate 8 new freight trains per day, not 14.
- The analysis described in the Coalition’s report did not account for delay caused by passenger trains, which make up the vast majority (more than 90 percent) of trains that pass through the grade crossings in the Coalition communities and are therefore an important contributor to total delay at those crossings.

In addition to the methodological problems listed above, OEA also identified the following concerns related to the presentation and interpretation of results in the Coalition’s report:

- The Coalition’s report uses terms such as “significant impact” without stating the level of significance and the statistical tests used to determine statistical significance. When dealing with quantitative information, the term “significant” is typically reserved for use with statistical tests and the results should be stated with a level of confidence or level of significance.
- The Coalition’s report aggregates results across 30 grade crossings, but that is not how delay typically is measured and reported. The Highway Capacity Manual defines

operational performance by LOS, which is based on average delay per vehicle at a specific grade crossing. The average delay and LOS are industry standards to help grade the operational performance and determine if mitigation measures are appropriate for a given location. It is not appropriate to combine results across a rail line or rail line segment as a whole because mitigation measures can differ by location and are applicable to specific grade crossings, not the entire corridor.

- The Coalition’s report indicates “an increase in gate down times along the corridor of 20.5 to 36 hours each day.” At 20 hours across the 30 crossings, this works out to less than 1 hour of total additional gate down time per day under the Proposed Acquisition compared to the No-Action Alternative for each crossing. Averaging this time over the average daily traffic and using the projected 2027 AADT values from the Draft EIS for the 30 grade crossings, this represents an average increase of 0.27 seconds per vehicle. Characterizing these results as “significant” as the Coalition attempts to do is questionable. In general, presenting results that have been summed up across many grade crossings misrepresents the impact to any particular crossing because even a small increase in delay of less than one second per vehicle corresponds to many hours when summed up across hundreds of thousands of vehicles at dozens of different grade crossings.
- The Coalition’s report states that the “compounding effect of delay occurring during the discharge period has a significant impact on the number of blocked drivers and their overall delay, particularly at locations with multiple lanes...” This is incorrect as the presence of multiple lanes helps to mitigate delay by dissipating vehicles in tandem rather than single file.
- The Coalition’s report categorizes delayed vehicles as “blocked,” which is an inaccurate representation. “Stopped” is a more accurate term here because the delay is estimated based on a moving train and not a stopped train that is blocking the grade crossing.
- The Coalition’s report states that “delay is reported using the standard format.” There are many performance measures for operational performance in the Highway Capacity Manual; however, the “standard format” is to report the delay-related measures by grade crossing (not summed up along an entire rail line or rail line segment). Standard delay-related measures include LOS (one of the measures used by OEA), which is based on the average delay per vehicle at a given crossing or intersection, not along an entire rail line.
- The Coalition’s report states that OEA reported delay in terms of “vehicle-hours or vehicle-days of delay” and that “this represents the combined delay of all the drivers during the specified time period.” For example, one (1) vehicle hour of delay could be experienced by one (1) vehicle delayed for 60 minutes, or by 30 vehicles delayed for two (2) minutes each, or by any combination of vehicles totaling 60 minutes of delay.” However, OEA did not report only total delay in the EIS, as the Coalition’s report suggests. OEA’s primary measure for assessing grade crossing delay is average delay per vehicle, which is the typical performance measure for operations because it is less ambiguous. And because there are different ways to measure delay, the Final EIS also reports the average number of trains per day, average train length, estimated train speed, total delay per day, total number of vehicles delayed per day, average gate down time, gate down time for different types of trains, maximum queue length, and LOS for grade crossings in the study area.

For all of these reasons, OEA’s reliance on information submitted by the Applicants and on publicly available datasets was reasonable and appropriate. In response to public comments, and as discussed above, OEA has revised *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**, to provide additional information about the impacts of the Proposed Acquisition on grade crossing delay and *Chapter 4, Mitigation* to include additional voluntary mitigation measures to minimize potential environmental impacts that the Applicants submitted to OEA following issuance of the Draft EIS.

Comment 27-1: Written Comment from Scott County, Iowa (EI-32163)

An increase in the number of trains will increase the likelihood of public safety issues such as pedestrian/vehicle accidents, tank car leaks, or even a derailment like the one in LeClaire in January 2020. For those homes and businesses located between the tracks and the river, how are persons to reach safety or obtain assistance after a derailment or other cause of a train stoppage? The river has been known to flood or freeze over in spots during winter; what are the safety precautions being taken to address these concerns and increased costs to residents and emergency providers? Although CP indicates trains can be moved or separated to accommodate an emergency, how long will that take when minutes could make a difference in a person's survival?

Because of these concerns, we strongly urge the STB to prioritize public safety, livability, the impact on personal properties, damage to properties, impact on businesses and tourism, and environmental health of residents and businesses along the current tracks throughout our county. For these reasons, we cannot support the merger of the Kansas City Southern (KCS) and the Canadian Pacific Railway Limited. (CP)

OEA Response

Comment noted. Regarding concerns about derailments and spills, see *Section 3.1, Freight and Passenger Rail Safety*. Regarding concerns related to blocked grade crossings, including impacts on emergency vehicles, see response to Summary Comment: Grade Crossing Delay above.

A blocked crossing from a derailment would take longer to clear than crossings blocked from the day-to-day operation of trains. However, as shown in the maps in **Appendix H, Grade Crossing Safety and Delay**, many of the homes and businesses on the riverside of the track in eastern Iowa have access to roads running parallel to the track. In the event of a derailment, those roads could provide access to a crossing that is unobstructed.

Comment 548-1: Written Comment from Dave Bowman (EI-32241)

We have 7 crossings in 1 mile of track. It’s quite plausible to have all crossings blocked by a train. How do we evacuate 1200 people if they are all blocked? We can’t use the river in the winter.

OEA Response

See response to Summary Comment: Grade Crossing Delay above.

Comment 75-1: Written Comment from Melissa Suzik (EI-32252)

As a Metra passenger over 20 years, I have seen delays due to medical emergencies time and time again on late night trains and commuter routes. Paramedics will be delayed causing chaos on a late-night train or commuter route. Whatever time of the day time is of the essence due to lives being at stake. According to a TV station in Kentucky, a fire truck was dispatched to a nursing home in Lyden was delayed responding to a medical event at a local nursing home. The trip took 10 minutes as opposed to 3 to 4 minutes (Charlton, 2002)¹. This needs to be considered and is unacceptable in any community.

OEA Response

OEA notes the commenter's concerns about existing conditions related to grade crossing delay. OEA thoroughly analyzed delay impacts at grade crossings, as summarized in *Section 3.3, Grade Crossing Delay*. Regarding emergency vehicles, see response to Summary Comment: Grade Crossing Delay above.

Comment 126-2: Written Comment from Gale Francione (EI-32458)

Regarding Delays, on p. H2-214, the Davenport Ripley Street crossing data indicates: No-Action: 353.2 Stopped Vehicles Delayed per Day Proposed Acquisition: 826.7.

No-Action: 7.3 Avg. Delay per Vehicle in 24-hr Period (seconds), Proposed Acquisition: 14.6. I find this very unhelpful. How can the "average" delay in a day be 7.3 seconds? And what does it mean when that number doubles with the merger?

No-Action: 23.7 Total Delay in 24-hour Period (hours), Proposed Acquisition: 47.4 How can the total delay be 23.7 hours and with the merger, 47.2 hours, more than a day?

No-Action: 62 Vehicles Maximum Queue, Proposed Acquisition: 53. What I really want to understand is what will the average delay be for each of those 826.7 drivers sitting at the railroad crossing? How often will those drivers be stopped during the day? I am concerned because that seems to be 40% more cars waiting for 36% more trains, even if the queue is 15% shorter. CP and KCS would have us believe this is so slight that we won't even notice. This doesn't seem like common sense. Can you give me a commonsense interpretation?

OEA Response

See response to Summary Comment: Validity of Data, Methods, and Conclusions above.

For the grade crossing in question, the gate down time is presented on page H1-28, indicating 5.3 minutes of average gate down time under the No-Action Alternative and 4.5 minutes of average gate down time under the Proposed Acquisition. The average stopped vehicle would experience half of this delay (2.7 minutes under the No-Action Alternative and 2.3 minutes under the Proposed Acquisition) as some drivers will arrive at the beginning of the gate down time and others will arrive at the end of the gate down time.

OEA's calculations of the "average delay" in a day reflects the fact that only some vehicles, not all vehicles during the course of a day, encounter a passing train. So the average delay over the course of the day is more representative of the impacts to all drivers. In this case,

OEA expects that the average number of trains per day would increase under the Proposed Acquisition, so more drivers would encounter a passing train each day. Another measure of the grade crossing delay is average delay per stopped driver, which is calculated as the total delay time per day divided by the number of cars stopped by passing trains. The Proposed Acquisition would cause this measure to decrease for most grade crossings in the study area because the average length of trains would decrease on many rail line segments.

Regarding OEA's calculation of the total delay in a 24-hour period, this reflects vehicle-hours of delay and not the number of hours that are blocked over a 24-hour period. The vehicle-hours of delay in a 24-hour period is simply the average delay per vehicle multiplied by the average number of vehicles per day.

The Final EIS includes an additional column of data (average delay per stopped vehicle) for both the No-Action Alternative and Proposed Acquisition to further address these comments. The results of OEA's analysis of grade crossing delay are reported in *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**.

Comment 79-2: Written Comment from Griffin Hahn (EI-32253)

Beyond the safety concerns, this acquisition will have a significant financial impact to our operation. Not only will our trucks crossing at the East Davenport plant be often held up by trains but we'll have to cross the tracks again to reach our suppliers Holcim Cement and Riverstone Group, both in Bettendorf, IA along the same tracks. We'll also be affected reaching Continental Cement in Buffalo, IA. Furthermore, our ready mix plant in Muscatine, IA could also have additional delays as we are adjacent to the CP main track line there as well. Overall, we estimate that the additional wait time could damage us in excess of \$250,000/year. While this is peanuts to an outfit like CP, it puts tremendous strain on a small business like ourselves.

OEA Response

OEA understands the commenter to be referring, in part, to delay at private grade crossings. OEA could not conduct a quantitative analysis of delay at private grade crossings because the vehicular traffic data that would be needed to support such an analysis do not exist. In response to public comments, however, OEA has revised *Section 3.3, Grade Crossing Delay*, to explain that increased traffic resulting from the Proposed Acquisition would likely increase delay at private grade crossings, in addition to public grade crossings.

Regarding the commenter's concerns regarding the potential financial effect of the Proposed Acquisition on small businesses, OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of a proposed action. A potential financial effect on small businesses would not be an environmental impact, and therefore OEA did not assess such effects as part of its environmental review. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 635-2: Written Comment from Pastor Larry and Tina Greathouse, Community of Hope Church (EI-32308)

We just completed a \$30,000 historical church building renovation improving our church structure and repairing visible damage caused. Adding new train traffic to the current train traffic will cause deterioration of the repairs just completed over a quicker time frame creating a need for additional funds to repair. It will place a financial burden on the church and decrease the value of the property.

OEA Response

See second paragraph of response to Comment 79-2 above.

Comment 462-7: Written Comment from the Coalition to Stop CPKC (EI-32542)

D. The DEIS Wrongly Includes Zero Analysis of the Adverse Effects of the Merger on First Responders and Emergency Routings

There are eight communities in the Coalition, and each contains multiple separate police, fire departments and emergency responder entities. These first responders must navigate over 30 public road crossings along the 23-mile stretch of the Coalition Line. In most of the communities a single 10,000-foot freight train can simultaneously block all the at-grade crossings in the community.¹³ Moreover, in some communities the railroad crossings are the only way to reach parts of the community, meaning there are no alternatives – delay means no first responder response. And yet, OEA conducted no analysis of the impact of the merger on any of the routes utilized by emergency first responders in the Coalition communities or the extent to which post merger operations will prevent any Coalition member police, ambulances, or other first responders from performing their jobs for their communities. This lack of analysis was because OEA chose to limit its review of this impact from the merger by looking solely at the 28 at-grade crossings on roadways along the 19,000-mile combined rail systems that are designated as emergency routes in the Federal Railroad Administration (“FRA”) grade crossing database. Having narrowly restricted its analysis in this manner (and by also relying on the Applicants faulty train count data), OEA concludes in the DEIS that grade crossing delay caused by the proposed merger would have a minor impact on the provision of emergency services in every community the merged railroad runs through, without exception. The Coalition submits that this analysis and the conclusion derived from it are both arbitrary and in no way constitute the required “hard look” at a critical potential merger impact to the Coalition Line utilizing detailed data.

¹³ Indeed, on the morning of October 14, 2022, a CP train was stopped for 84 minutes in the Village of Itasca, simultaneously blocking the at-grade road crossings at Rohlwing, Catalpa, and Walnut Streets, causing traffic to back up and first responders to be diverted to other roads to cross the Coalition Line.

OEA Response

See responses to Summary Comment: Validity of Data, Methods, and Conclusions above and Summary Comment: Grade Crossing Delay above. The results of OEA’s analysis of

grade crossing delay are reported in *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**.

Comment 462-8: Written Comment from the Coalition to Stop CPKC (EI-32542)

As numerous first responders from the Coalition communities testified on September 12, 2022 in Itasca, Illinois, the compounding impact of more and longer freight trains each day along the Coalition Line will result in multiple crossings and entire communities and emergency responders being paralyzed from north-south travel each time a train passes. The written versions of that testimony are included as Exhibit C to these comments for OEA's convenience.¹⁴ The impact of the merger on the routes used by Coalition's first responders is directly related to the crossing delay and crossing safety comments below.

¹⁴ Copies of the posterboards accompanying the testimony of some first responders were supplied to OEA separately on October 3, 2022

OEA Response

See response to Summary Comment: Grade Crossing Delay above.

Regarding the commenter's concern that the length of trains would increase as a result of the Proposed Acquisition, OEA notes that the projected average freight train length would decrease on most rail line segments under the Proposed Acquisition compared to the No-Action Alternative, including on the rail line segment in the Village of Itasca, Illinois (see **Appendix H, Grade Crossing Safety and Delay**).

In Itasca, there were two grade crossings that met the Board's thresholds for delay analysis (Rohlwing Road and Prospect Avenue).

- For Rohlwing Road (ID 372184D): The average delay per blocked vehicle would be 45.1 seconds for the No-Action Alternative and 52.1 seconds for the Proposed Acquisition. The average delay for all vehicles would be 1.9 seconds for the No-Action Alternative and 2.9 seconds for the Proposed Acquisition. The corresponding level of service would be A for the No-Action Alternative and A for the Proposed Acquisition.
- For Prospect Avenue (ID 372179G): The average delay per blocked vehicle would be 34.8 seconds for the No-Action Alternative and 40.1 seconds for the Proposed Acquisition. The average delay for all vehicles would be 1.5 seconds for the No-Action Alternative and 2.2 seconds for the Proposed Acquisition. The corresponding level of service would be A for the No-Action Alternative and A for the Proposed Acquisition.

The Draft EIS presented an appropriate analysis of delay at grade crossings that would result from the Proposed Acquisition, including the effects of delay on emergency services. Nevertheless, OEA has revised *Section 3.2, Grade Crossing Safety* and in response to public comments to include additional information regarding delay at grade crossings and the implications of such delay for the provision of emergency services. The additional information that OEA is providing in the Final EIS does not change OEA's overall conclusion that the Proposed Acquisition would result in minor impacts on grade crossing delay.

Comment 462-9: Written Comment from the Coalition to Stop CPKC (EI-32542)

Accordingly, the DEIS must be supplemented with an analysis – based on detailed information specific to the Coalition communities - of the impact of the proposed merger on the routes utilized by first responders in the Coalition communities. This analysis should be based on actual time delay data collected at key crossings, and by interviewing and collecting data from key Coalition officials and first responders. The Coalition is confident that a more robust analysis of the impacts utilizing such actual data will reveal that the OEA’s conclusion that the merger will have no significant impact on first responders is simply wrong and that some or all of the mitigation measures discussed in Section IV of these Comments must be implemented to alleviate that harm.

OEA Response

Regarding the data, see response to Summary Comment: Validity of Data, Methods, and Conclusions above.

Regarding routes utilized by first responders in the Coalition communities, see response to Summary Comment: Grade Crossing Delay above.

Regarding the commenter’s request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none. In response to public comments, OEA has revised *Section 3.3, Grade Crossing Delay*, to include additional information about impacts of the Proposed Acquisition on emergency services, but as OEA found in the Draft EIS, and as confirmed by the additional analysis presented in the Final EIS, these impacts would be minor. Therefore, the additional information that OEA provided in the Final EIS does not warrant being issued as a Supplemental Draft EIS.

Comments 462-27, 462-1, 462-15: Written Comment from the Coalition to Stop CPKC (EI-32542)

Similar to its deficient grade crossing safety analysis, the DEIS’s broad conclusion in section 3.3 - “Grade Crossing Delay,” that “[a]lthough the Proposed Acquisition has the potential to cause increased delay at grade crossings due to the projected increase in rail traffic, OEA expects that this impact would be minor”²⁰ over the entire merged system is flatly wrong as to the Coalition Line, and again unsupported by any actual specific data applicable to the Coalition Line.

While the DEIS appropriately recognized that an increase in the number of freight trains will result in an increase in vehicle delays at grade crossings (although once again this conclusion was based on faulty baseline data that understates the real number of freight

trains post-merger), OEA did not conduct any analysis of crossing delays specific to the Coalition Line, where, as stated previously, a single freight train can block multiple crossings simultaneously. As summarized below, an analysis conducted for the Coalition concluded that the merger will have a significant local impact, causing additional blockages of approximately 4,000,000 to 6,000,000 vehicles each year.

The OEA reached its conclusion of minor crossing delay impact by applying FHWA Highway Capacity Manual Level of Service (LOS) principles when assessing the impact of the merger on motorists' delays. LOS is a familiar measure when assessing intersection delays for public improvements. It assesses the change in LOS between the no-action scenario and proposed action. The measure was developed to demonstrate the benefit (reduced delays) of a proposed action and investment of public funds. A LOS analysis looks at a very limited time duration (typically the most congested 15 minutes of the morning/afternoon rush hour). The OEA's application of LOS demonstrates a worsening in LOS (increase in delay) with the proposed merger. However, the DEIS then improperly marginalizes the increase by incorrectly spreading it over the estimated average daily (24-hour) traffic volume instead of the times of day and the vehicles actually blocked by a passing freight train. This generic analysis substantially misrepresents the actual impact of the merger on crossings along the Coalition Line.

The DEIS's deficiency on this key point is demonstrated by the time delay study commissioned by the Coalition which was presented to OEA at the Public Meeting it held in Itasca, Illinois on September 12th, 2022. Another copy of that document is included with these Comments as Exhibit E. The study was assisted by a traffic engineering firm and included actual field observations of freight train gate down times at representative public crossings along the Coalition Line. The study recorded daily freight trains observed on multiple days and available average daily traffic data at grade crossings, and then projected the impact of the increased trains per day resulting from the proposed merger using a fundamental traffic engineering delay model. The model determines the minutes of delay due to an isolated blockage, e.g., a freight train passing, taking into consideration the cumulative effect of vehicle arrivals as the gates go down and departures as the gate go up.

As was summarized at the Public Meeting, the time delay study demonstrates that the increase in freight trains of eight to 14 each day over the Coalition Line will result in the following cumulative impacts along the 30 public road crossings:

- (1) freight train gate down times increasing by 20.5 to 36 hours each day;
- (2) the number of vehicles blocked by freight trains at crossings increasing by 15,000 to 23,000 each day;
- (3) vehicle delays increasing from 862 to 1,285 hours each day;
- (4) for crossings near the Bensenville Yard (Primarily York Road, a dedicated commercial truck routing), the impact of 8 to 14 new freight trains per day will be magnified due to the freight trains having to slow, and often stop, outside of the Bensenville Yard as the train is broken up, such that delays to commercial trucks and cars from blockages will increase from 11 hours of vehicle delay per day to 213 hours of vehicle delay per day; and

(5) an increase in trains blocking the two road crossings in Wood Dale discussed above from nearly 14 hours of vehicle delay to nearly 211 hours of vehicle delay per day.

The time delay study conducted for the Coalition demonstrates that the DEIS's broad based conclusion that there will be "minor" crossing delays at the 30 public crossings on the Coalition Line is simply wrong. Considering the critical importance of this issue, and the tremendous potential impact to the citizens, businesses and first responders of the Coalition communities, OEA must supplement its analysis of this issue by, at a minimum, utilizing the data collected by the Coalition and presented to OEA, and by also conducting additional analysis, including seeking input from appropriate Coalition officials and community leaders on the potential delays and potential mitigation measures.

²⁰ DEIS at 3.3-19.

OEA Response

See response to Summary Comment: Grade Crossing Delay above. OEA analyzed delay impacts at 277 grade crossings using detailed data for each location, including 22 grade crossings in Elgin, Bartlett, Schaumburg, Roselle, Medinah, Itasca, Wood Dale, Bensenville, and Franklin Park.

Regarding the Applicants' data and the report commissioned by the Coalition and provided to OEA at the in-person public meeting that OEA held in Itasca, Illinois, see response to Summary Comment: Validity of Data, Methods, and Conclusions above.

Regarding methodological problems with the analysis described in the Coalition's report, including the underlying data, analysis methods, and presentation and interpretation of results, see response to Summary Comment: Validity of Data, Methods, and Conclusions above.

Regarding the commenter's claim that OEA's analysis misrepresents the actual impact of the Proposed Acquisition on grade crossings in communities represented by the commenter, see response to Summary Comment: Validity of Data, Methods, and Conclusions above. The delay results for each specific grade crossing are presented in **Appendix H Grade Crossing Safety and Delay**.

Regarding the commenter's claim that the Draft EIS "marginalizes the increase by incorrectly spreading it over the estimated average daily (24-hour) traffic volume instead of the times of day and the vehicles actually blocked by a passing freight train," OEA used methods applied in past mergers to estimate several performance measures related to grade crossing delay. For maximum queue estimates, OEA adjusted AADT to account for peak traffic. Specifically, OEA applied a factor of 0.1 to convert AADT (in vehicles per day) to peak-hour traffic (in vehicles per hour) and a factor of 0.6 to convert two-way traffic to peak direction traffic, assuming a 60/40 directional split during the peak hour. For average delay estimates, OEA estimated the average delay per vehicle and average delay per delayed vehicle over the entire day. This is appropriate because train traffic does not necessarily coincide with peak vehicle traffic. Instead, train traffic is spread throughout the day. As such, it is appropriate to average the delay over the 24-hour period to more accurately reflect average vehicle delay at grade crossings.

The comment notes that the time delay study commissioned by the Coalition considers “the cumulative effect of vehicle arrivals as the gates go down and departures as the gate go up.” The method employed by OEA also accounts for vehicle arrival rates as the gates are down as well as dispersal rates when the gates go up. Further details are provided below (and in **Appendix H, Grade Crossing Safety and Delay**) about OEA's use of departure rates based on the roadway functional classification. The study commissioned by the Coalition simply uses a single discharge rate of 950 passenger cars per hour per lane (pcphpl) for all crossings, which artificially inflates the delay estimates.

OEA notes the commenter’s concerns regarding current train operations near Bensenville Yard and the existing effects of those operations on nearby grade crossings. This is an existing condition that is not related to the Proposed Acquisition. Also unrelated to the Proposed Acquisition, Bensenville Yard is currently being reconfigured as part of the development of the Illinois Tollway’s Elgin O’Hare Western Access Project. This reconfiguration will include lengthening the Bensenville Yard receiving tracks to accommodate longer trains. The longer receiving tracks will allow for switching and staging to occur within the yard and will reduce the need for trains to stop on the mainline to be broken into shorter blocks. OEA expects that the reconfiguration of Bensenville Yard will be completed before 2027, which is the analysis year that OEA used for this EIS. Because the results reported in *Section 3.3, Grade Crossing Delay* for the No-Action Alternative and the Proposed Acquisition are for the analysis year 2027, the reconfiguration of the Bensenville Yard has been accounted for in those results.

Comment 570-2: Public Meeting Comment from Congressman Raja Krishnamoorthi (EI-32756)

Now, let me address the public safety concerns. The draft EIS does not adequately address the mergers negative public safety impact, namely from emergency vehicle delays caused by blocked crossings. The draft EIS emergency response analysis only evaluates 28 crossings across the country, none of which none of which are in Illinois, even though Chicago is by far the largest metropolis affected by this merger. Here in our communities, local responders must cross train tracks frequently to respond to emergencies. Indeed, the density of crossings in our communities, I would wager to say is far above average across the entire set of tracks covered by the merger. There are 54 crossings over approximately 20 miles of track. As Itasca has already informed the board through the mayor and others freight trains traveling this route, often averaging 10,000 feet in length, or long enough to block all the crossings in some communities simultaneously, including the four in Itasca, as you will hear shortly. These blockages delay our emergency responders in Itasca 60 percent of the nearly 13,000 emergency calls that Itasca police received in the last two years came from the other side of the tracks from which the police department was located. Responders of Itasca already experienced delays with a mere three freight trains coursing through the community each day. But as Metro and others have noted, there could be almost 15 more freight trains per day totaling 18 over the course of a day. That means more blockages and more delays for everyone, including ambulances and police. In the Final EIS, the STB must consider emergency vehicle delays at the crossings in our communities. And it must consult the local responders in our communities in order to assess the mergers, full safety impacts. And that has not happened. Let me just repeat it has not happened. You have not consulted with our

folks and our local responders. Thank you. I look forward to following up with a written comment. And thank you for visiting my congressional district to hear our concerns tonight. Thank you.

OEA Response

Regarding emergency response, see response to Summary Comment: Emergency Response above. Although the Draft EIS presented a thorough analysis of grade crossing delay that would result from the Proposed Acquisition, OEA has undertaken additional analysis and revised *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay** in the Final EIS in response to public comments. As revised, the appendix now provides additional details regarding the length of time that each grade crossing would be blocked as a passenger or freight train passes through, depending on the type and length of train. In addition, the appendix now presents information on the alternative route that an emergency vehicle could take in the event that a train were to block a grade crossing. The results of OEA’s analysis of grade crossing delay are reported in *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**.

Regarding consultation, OEA notes that OEA conducted extensive outreach to federal, state, local, and tribal agencies, and with the public, throughout the NEPA process. **Appendix A, Public Involvement** and **Appendix B, Agency and Tribal Consultation** collectively include more than 550 additional pages of information that OEA was unable to include in the body of the Draft EIS. Those appendices describe the outreach that OEA conducted to federal, state, local, and tribal agencies, and interested parties and members of the general public during the NEPA process and the many opportunities that OEA provided for public involvement. During the scoping process for the EIS, OEA sent correspondence seeking input on the environmental review to over 100 federal and state agency offices, as well as more than 400 local governments in 9 states, including the Village of Itasca, the City of Wood Dale, the Village of Bartlett, the Village of Hanover Park, the Village of Bensenville, and DuPage County in Illinois. OEA held eight state agency consultation meetings during the scoping period, including a call on December 2, 2021, to which Illinois state agencies were invited. OEA also met by conference call with the representatives of the communities referenced in the comment on April 4, 2022, to discuss the environmental review process and held an in-person public meeting in the Village of Itasca on September 12, 2022, to hear comments from elected officials, government agencies, and members of the public.

Comment 511-3: Written Comment from Rep. Raja Krishnamoorthi (EI-32630)

First, the draft EIS does not adequately assess the merger’s impact on public safety and on emergency vehicle delays from blocked crossings. Currently, the three freight trains traveling the MDW line already cause delays for emergency vehicles because freight trains—which average 10,000 feet in length—are long enough to block all the crossings in some communities simultaneously, including each of the four crossings in Itasca.³ Forcing responders to take lengthy alternate routes, these blockages prevent emergency responders from reaching emergencies in a timely fashion. According to Wood Dale’s Fire Chief, freight trains cause delays to “double, and in some cases triple, both response times and travel distances to the farthest points in any response area.”⁴ And, according to Itasca’s Fire

Chief, if a freight train blocks the crossings in Itasca, a response that normally takes 1 minute and 15 seconds would take 14 minutes.⁵ These drastic delays put people’s lives and homes at risk. Furthermore, emergency responders frequently need to cross the train tracks to reach emergencies. In fact, 60% of the nearly 13,000 emergency calls to the Itasca Police over the last two years were from the opposite side of the tracks from where the department is located.⁶ Increasing the freight traffic going through these communities by at least eight additional daily trains will dramatically increase the frequency of delays that our emergency responders currently face to an intolerable level.

However, in addressing emergency vehicle delays, the draft EIS only specifically considered the impact of increased delay on emergency vehicles on designated emergency routes as identified in the Federal Railroad Administration (FRA) database.⁷ The draft EIS only considered 28 such grade crossings across the entire country, none of which are in Illinois.⁸ Emergency responders in Illinois do not just use federally designated emergency routes—they use the route that that is fastest to reach a crisis. Between Elgin and Bensenville alone, there are 54 crossings over approximately 20 miles of track,⁹ which emergency responders frequently use to reach emergencies. The absence of any analysis of impact on emergency response vehicles at these crossings makes the OEA’s analysis of emergency vehicles delays incomplete.

In addition, the draft EIS does not consider CP’s checkered track record in adhering to federal rules that prohibit blocking crossings for over 10 minutes. The draft EIS states that CP has committed to “abide by federal rules requiring railroads to not block public crossings for longer than 10 minutes unless it cannot be avoided;”¹⁰ however CP freight trains frequently block public crossings for more than 10 minutes—and sometimes even up to 40 minutes—according to the Coalition to Stop CPKC and Metra employees.¹¹ In order to thoroughly assess at-crossing delays, the STB should analyze the current reality of how often CP exceeds this federal rule and the potential impact on our communities if CP continues its practices.

Therefore, I respectfully request that the STB work with our local police, fire, and other emergency departments to consider the impacts of the merger on delaying first responders in our communities. In addition, I request that the STB fully analyze CP’s current track in blocking crossings to assess CP’s credibility in being able to uphold its commitment to abide by federal rules for blocked crossings.

³ Coalition to Stop CPKC STB filing, June 9, 2022, Page 10.

⁴ Wood Dale Fire Chief James Burke, STB Hearing on CPKC Merger, September 28, 2022.

⁵ Itasca Fire Chief Jack Schneidwind, Press Briefing in Schaumburg, October 4, 2022.

⁶ Itasca Police Chief Robert O’Connor, STB Public Meeting in Itasca, September 12, 2022.

⁷ OEA, Canadian Pacific Acquisition of Kansas City Southern: Draft Environmental Impact Statement, August 5, 2022, Chapter 3: Grade

Crossing Delay, Page 3.3-6.

⁸ Ibid. Pages 3.3-8 – 3.3-12.

⁹ Coalition to Stop CPKC STB filing, June 9, 2022, Page 10.

¹⁰ OEA, Canadian Pacific Acquisition of Kansas City Southern: Draft Environmental Impact Statement, August 5, 2022, Summary, Page S-10.

¹¹ Coalition to Stop CPKC, June 9, 2022; Metra STB filing, March 15, 2022.

OEA Response

See response to Comment 570-2 above.

Comment 511-4: Written Comment from Rep. Raja Krishnamoorthi (EI-32630)

In order to fully assess the impact of the additional freight train traffic on train lengths and delays, the STB should also include the freight specific data in its OEA analysis. The draft EIS currently analyzes Metra trains and freight trains together. However, freight trains, which can consistently reach 12,000 feet in length, are much longer than Metra trains (with are typically under 1,000 feet) and also travel slower. The draft EIS averages Metra and freight data, and because there are significantly more Metra trains than freight trains (58 Metra trains daily),²⁸ the averages may suppress the impact of the increased number of freight trains on at-grade crossing delays. Therefore, I request that the STB includes a freight-specific analysis to provide a better understanding on the freight specific impacts on delays.

²⁸ OEA, Canadian Pacific Acquisition of Kansas City Southern: Draft Environmental Impact Statement, August 5, 2022, Chapter 3: Freight and Passenger Rail Safety, Page 3.1-28.

OEA Response

See response to Summary Comment: Validity of Data, Methods, and Conclusions regarding freight train length on the MD-W Line and inclusion of Metra trains in the grade crossing delay analysis.

Comment 462-28: Written Comment from Tom Wilcox, The Coalition to Stop CPKC (EI-32542)

The increased freight train operations planned by the Applicants will severely hamper the ability of police, emergency medical technicians, and other first responders to serve the public interest. As stated below, at three road crossings these impacts can only be effectively mitigated by the construction of a grade-separated road crossing. However, the Coalition believes that the installation of train tracking technology along the Coalition Line that will notify first responders when freight trains are headed toward their area and will be blocking crossings would provide a cost-effective means for the Coalition communities to attempt to anticipate and mitigate the adverse impact of crossing blockages by freight trains. This technology would greatly reduce emergency response delays and allow access for emergency personnel to have real-time information to know when railroad crossings are blocked.

OEA Response

See response to Summary Comment: Grade Crossing Delay above. OEA notes that, following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures to address potential impacts in communities in the Chicago area with which the Applicants have been unable to reach agreements, including DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg. Those commitments include the commitment to work with those communities and Metra, the rail line owner, to install a predictive mobility system to deliver advanced notice of blocked grade crossings to citizens and emergency service providers, install advanced warning signs at strategic locations to give drivers information about occupied crossings, and install PTC wireless technology tie-ins at grade crossings adjacent to Metra rail platforms. The Applicants have clarified that the Applicants would be responsible for funding these measures, which would be subject to approval by Metra, as the owner of the track. OEA has revised *Chapter 4, Mitigation*, to reflect these additional voluntary mitigation commitments. As discussed in *Section 3.3, Grade Crossing Delay*, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant grade separation or other site-specific mitigation.

Comment 462-29: Written Comment from the Coalition to Stop CPKC (EI-32542)

York Road and Church Road are Bensenville’s two most heavily travelled north/south arterial roadways in the Village. Church Road carries almost exclusively passenger and light truck traffic while York Road is a major dedicated truck route carrying intermodal freight through Bensenville. Extended blockage of either these crossings stops all traffic through Bensenville and causes major delays and backups on our east/west arterials. The Coalition’s time delay study found the York Road grade crossing currently experiences a 23 minutes of downed gates per day. Upon completion of the merger, that delay is expected to increase eight-fold to nearly three hours per day of downed gates.

The DEIS characterizes the current York Road at grade crossing as the only crossing “along a truck route and associated with a projected increase in truck traffic; approximately another 200 trucks per day under the Proposed Acquisition compared to the No-Action Alternative.”³⁵ However, this “analysis,” which was based solely upon Applicants’ statements, substantially understates the current truck volumes and the extent to which they will increase post-merger. As such, the DEIS substantially understates the impact the merger will have on this critical road crossing. The blockage of this major state truck route, directly adjacent to O’Hare airport, will have untold financial costs for businesses in Bensenville. Also, the York Road grade crossing sits at the eastern edge of downtown Bensenville, directly adjacent to the Bensenville Metra station. The increased numbers of freight trains post-merger will result in blockages that will cut off Metra riders attempting to catch trains. It will cut off residents from a neighborhood grocery store and services, which sit on either side of the tracks. It will cut off residents and businesses from Village Hall, which is located on the south side of the tracks adjacent to the Metra station.

The York Road crossing is also the major north/south route for emergency services. The Bensenville Police Station is just south and east of the crossing. The only way to cross the tracks to the north is by IL Route 83 to the west, which requires one to drive south before entering onto this major State route. An emergency call to the residential neighborhood just north of the tracks, normally a three minute response time, would add an additional 10-15 minutes of travel time. That number is even greater if trying to serve the northern industrial district. The same can be said for the Fire Protection District, whose main station is located south of the crossing on York Rd.

Accordingly, the Coalition implores OEA to conduct a supplemental analysis of the impacts of the merger on the York Road crossing, and to include in the Final EIS a recommendation to the Board that its approval of the merger should be conditioned upon requiring the Applicants to fund the construction of a vehicular grade separation at York Road, pursuant to plans to be jointly developed by the Applicants and the Village of Bensenville.

³⁵ DEIS at 3.3-18

OEA Response

OEA notes the commenter's concerns regarding current train operations near Bensenville Yard and the existing effects of those operations on nearby grade crossings. This is an existing condition that is not related to the Proposed Acquisition. Also unrelated to the Proposed Acquisition, Bensenville Yard is currently being reconfigured as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. This reconfiguration will include lengthening the Bensenville Yard receiving tracks to accommodate longer trains. The longer receiving tracks will allow for switching and staging to occur within the yard and will reduce the need for trains to stop on the mainline to be broken into shorter blocks. OEA expects that the reconfiguration of Bensenville Yard will be completed before 2027, which is the analysis year that OEA used for this EIS. Because the results reported in *Section 3.3, Grade Crossing Delay* for the No-Action Alternative and the Proposed Acquisition are for the analysis year 2027, the reconfiguration of the Bensenville Yard has been accounted for in those results.

Regarding the commenter's claim that total gate down time at the York Road grade crossing would increase "eight-fold" as a result of the Proposed Acquisition, OEA notes that this conclusion is based on an assumption that rail traffic would increase by 14 additional freight trains per day. However, the Applicants project that rail traffic through this grade crossing would increase by eight trains per day as a result of the Proposed Acquisition. Further, there are numerous methodological problems with the analysis conducted on behalf of the commenter, as detailed in the response to Summary Comment: Validity of Data, Methods, and Conclusions above. OEA's analysis found that total gate down time at the York Road grade crossing would increase from 60.41 minutes per day, on average, under the No-Action Alternative to 82.09 minutes per day, on average, under the Proposed Acquisition, which is an approximately 36 percent increase. The majority of delay at this grade crossing is and would continue to be caused by passenger trains.

Regarding the comment that the DEIS "substantially understates the current truck volumes and the extent to which they will increase post-merger", see the response to Summary

Comment: Validity of Data, Methods, and Conclusions above. Further, the comment does not offer any substantiation or any quantitative numbers to replace the current values used in the analysis.

The comment argues that “the increased numbers of freight trains post-merger will result in blockages that will cut off Metra riders attempting to catch trains. It will cut off residents from a neighborhood grocery store and services, which sit on either side of the tracks. It will cut off residents and businesses from Village Hall, which is located on the south side of the tracks adjacent to the Metra station.” The phrase “cut off” is questionable here; the impacts are better characterized as “delays” or “temporary blockages.” Further, the existing delay for these crossings is already high due to the large volume of passenger trains (57 trains per day), which is not reflected in the Coalition's study. This is presented in **Appendix H, Grade Crossing Safety and Delay**, which show the total delay in a 24-hour period for the No-Action Alternative is 3.1 hours for Church Street and 7.6 hours for York Road.

Regarding the commenter’s concern about impacts on emergency service vehicles, see response to Summary Comment: Grade Crossing Delay.

Regarding the commenter’s request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none. In response to public comments, OEA has revised *Section 3.3, Grade Crossing Delay*, to include additional information about impacts of the Proposed Acquisition on emergency services, but as OEA found in the Draft EIS, and as confirmed by the additional analysis presented in the Final EIS, these impacts would be minor. Therefore, the additional information that OEA provided in the Final EIS does not warrant being issued as a Supplemental Draft EIS.

Comment 462-30: Written Comment from the Coalition to Stop CPKC (EI-32542)

For the reasons discussed in Section III.E.2, the Coalition and City of Wood Dale strongly urge OEA to recommend to the Board that a grade-separated crossing should be installed at the Wood Dale Road and Irving Park Road crossings of the Coalition Line.

OEA Response

See response to Summary Comment: Grade Crossing Delay above. As discussed in that response, OEA has revised *Section 3.3, Grade Crossing Delay* in the Final EIS to include a discussion of criteria developed by FHWA for identifying grade crossings where grade separation should be considered.

For the grade crossing at Wood Dale Road, none of FHWA’s criteria would be met under the Proposed Acquisition or the No-Action Alternative. As reported in **Appendix H, Grade Crossing Safety and Delay**, OEA does not expect that the LOS for the Wood Dale Road crossing would be adversely affected by the Proposed Acquisition and the increase in average delay would be minor. Therefore, OEA is not recommending additional specific mitigation for the grade crossing at Wood Dale Road beyond the measures set forth in *Chapter 4, Mitigation*.

For the grade crossing at Irving Park Road, none of OEA’s previously used thresholds would be met. Two of FHWA’s criteria related to crossing exposure are currently met at this crossing and would continue to be under either the Proposed Acquisition or the No-Action Alternative. Specifically, for this crossing, the product of the total number of trains per day and the AADT exceeds the 1,000,000 criterion for urban areas and the product of the number of passenger trains per day and the AADT exceeds the 800,000 criterion for urban areas. However, this is an existing condition for this crossing that is primarily the result of the large number of passenger trains that pass through the grade crossing each day. OEA’s consistent practice has been to recommend mitigation only for those impacts that would result directly from a proposed transaction, such as the Proposed Acquisition of KCS by CP. Further, as reported in **Appendix H, Grade Crossing Safety and Delay**, OEA’s analysis found that the Proposed Acquisition would not adversely affect the LOS for the grade crossing at Irving Park Road and that the increase in average delay would be minor. Accordingly, OEA is not recommending additional specific mitigation for the grade crossing at Irving Park Road beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 462-31: Written Comment from the Coalition to Stop CPKC (EI-32542)

Located approximately 2.5 miles west of Canadian Pacific’s Bensenville Yard, Itasca is ideally positioned in the western O’Hare Industrial Corridor with I-290, I-355, I-390 running through the Village. Both Itasca’s Fire and Police Stations are located within Itasca’s Municipal Complex just south of the Coalition Line at-grade crossing at Catalpa Avenue, while a majority of Itasca’s 10,000 residents and businesses reside north of the tracks. Over 20,000 people are present in Itasca during work days.

Currently, none of Itasca’s four grade crossings are separated. The distance between the eastern most rail crossing (Prospect Avenue) and the western most rail crossing (IL-53) is 9,250 feet. As a result, a typical 10,000-foot freight train can block all four crossing simultaneously. According to the Coalition’s time delay study, an additional 14 freight trains will result in an average 1,509% increase in vehicles blocked and an average 3,274% increase in delay time. The next closest at-grade crossing east or west would require first responders to travel more than a mile either way, which would increase response times from under two minutes to 15 minutes or more for several parts of the town.

Supplemental collection and analysis by OEA of actual data bearing on the potential impacts of the merger would reveal such information as: Itasca police average more than 6,000 calls annually, 60 percent of which are north of the tracks, including one grade school, one middle school, three hotels, and a 26-story office building. Averaging the past two years, officers have noted more than 60 times annually when a train delayed their response to an incident.³⁶ Using this baseline data, Itasca conservatively forecasts that an additional 14

trains per day would result in 840 calls for police service being delayed, and that first responders would be delayed on one of every seven calls for emergency service. A large percentage of the Itasca Fire Department's 1,700 calls annually are for medical services. Delays reaching victims of heart attacks, strokes, overdoses, car accidents and respiratory distress will lead to longer recovery times and increased fatalities. Finally, increased response delays to fires will also have dire consequences for Itasca's residents and businesses.

As stated, the Coalition maintains that the supplemental DEIS prepared by OEA should include a more detailed analysis of the impacts of the merger on crossing delays and safety along the Coalition Line. This analysis should include the consideration of the need for a grade-separated crossing at Prospect Street in Itasca. Itasca believes the only feasible location for a separated crossing would be Prospect Avenue, however, Village Officials believe that a grade separation at Catalpa Avenue or a slip ramp adjacent to I-290 should also be explored as they would result in the least response time delays for the community.

³⁶ Officers are not asked to note this information, so it is likely that this number is underreported.

OEA Response

Regarding the commenter's concern that a 10,000 foot train could block all four crossings in the Village of Itasca simultaneously, OEA notes that the average freight train length would be approximately 6,817 feet long under the Proposed Acquisition, compared to 8,597 feet under the No-Action Alternative. Although OEA expects that trains up to 10,000 feet long would continue to operate on the rail line through Itasca, OEA believes it would be unlikely that a train would become stopped for a long period of time in a position where it would simultaneously block multiple grade crossings for an extended period of time, because this is inconsistent with standard operating practices. For further details on blocked grade crossings and mitigation, see the response to Summary Comment: Grade Crossing Delay above.

Regarding the commenter's claim that analysis conducted on behalf of the commenter found that the Proposed Acquisition would result in a 1,509 percent increase in the number of delayed vehicles and a 3,274 percent increase in delay time, OEA notes that there are numerous methodological problems with the analysis conducted on behalf of the commenter that make the results unreliable, as detailed in the response to Summary Comment: Validity of Data, Methods, and Conclusions above. These problems include the assumption that the Proposed Acquisition would result in an increase in freight train traffic of 14 trains per day instead of the Applicants' projected increase of 8.0 trains per day and the assumption that the average freight train length would be 10,000 feet rather than the projected average length of 6,817 feet. These and other assumptions by the commenter result in a substantial overestimate of the impacts of the Proposed Acquisition on grade crossing delay. As reported in **Appendix H, Grade Crossing Safety and Delay**, OEA properly found that the Proposed Acquisition would increase the number of delayed vehicles by approximately 31 percent and total delay by approximately 51 percent across grade crossings in the Village of Itasca.

Regarding the commenter's claim that increased rail traffic could have significant adverse effects on emergency response time, see response to Summary Comment: Grade Crossing Delay above.

OEA notes that traffic on the rail line through Itasca is projected to increase by 8.0 trains per day, not 14 trains per day as the commenter claims, and that the vast majority of trains that move on the rail line are passenger trains. Based on the commenter's estimate that 60 police calls are currently delayed by trains each year and assuming a linear relationship between the number of trains per day and the number of delayed police cars, the projected 13 percent increase in train traffic on the rail line through the Village of Itasca as a result of the Proposed Acquisition would increase the number of delayed police calls from 60 per year to 68 per year, not to 840 per year as the commenter states.

The Applicants have notified OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures to address potential impacts in communities in the Chicago area with which the Applicants have been unable to reach agreements, including the Village of Itasca. These commitments include measures that, if approved by Metra as the owner of the rail line through Itasca, would address concerns regarding emergency response delay by, for example, installing a predictive mobility system to deliver advanced notice of blocked grade crossings to citizens, police, fire, and rescue operations, and others. The Applicants have clarified that the Applicants would be responsible for funding these measures, which would be subject to approval by Metra, as the owner of the track. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary mitigation commitments.

Regarding the request for a grade-separated crossing, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant separation or other site-specific mitigation beyond the measures proposed by the Applicants. For the four grade crossings in Itasca (Prospect Avenue, Walnut Street, Catalpa Avenue, and Rohlwing Road), none of OEA's previously used thresholds and none of FHWA's criteria would be met under the Proposed Acquisition or the No-Action Alternative. As reported in **Appendix H, Grade Crossing Safety and Delay**, OEA does not expect that the LOS for the Itasca crossings would be adversely affected by the Proposed Acquisition. Moreover, the increase in average delay would be minor. Therefore, OEA is not recommending additional mitigation for the grade crossings in Itasca beyond the measures set forth in *Chapter 4, Mitigation*.

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R. § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none. In response to public comments, OEA has revised *Section 3.3, Grade Crossing Delay*, to include additional information about impacts of the Proposed Acquisition on emergency services, but as OEA found in the Draft EIS, and as

confirmed by the additional analysis presented in the Final EIS, these impacts would be minor. Therefore, the additional information that OEA provided in the Final EIS does not warrant being issued as a Supplemental Draft EIS.

Comment 462-32: Written Comment from the Coalition to Stop CPKC (EI-32542)

There are two at-grade crossings utilized by Metra commuters, school children, and pedestrians for the downtown train station, and a third at grade crossing between the train station and Hanover Park that could be blocked by a single 10,000-foot freight train. Since 1986, the Village has seen investment in the tens of millions of dollars spread out between the Village itself, partners in the development community, planners, consultants, civic groups, businesses and residents. The addition of eight or more freight trains over two miles long on top of Metra commuter trains will wreak havoc on this decades of investment. For these reasons, OEA should supplement the DEIS with additional analysis of the impacts of the merger on the Village of Bartlett and recommend in the Final EIS that the Applicants fund a pedestrian underpass or overpass in the Village to mitigate the crossing delays and crossing safety issues posed by the merger.

OEA Response

Regarding the commenter's concern that a 10,000 foot train could block all three crossings in the Village of Bartlett, Illinois simultaneously, OEA notes that the average freight train length would be approximately 6,817 feet long under the Proposed Acquisition, compared to 8,597 feet under the No-Action Alternative. Although OEA expects that trains up to 10,000 feet long would continue operate on the rail line through Bartlett, OEA believes it would be unlikely that a train would become stopped for a long period of time in a position where it would simultaneously block multiple grade crossings for an extended period of time, because this is inconsistent with standard operating practices. For further details on blocked grade crossings and mitigation, see the response to Summary Comment: Grade Crossing Delay above.

Similarly, the commenter is concerned that the "addition of eight or more freight trains over two miles long on top of Metra commuter trains will wreak havoc on this decades of investment." But the train length of "over two miles long" is an inaccurate characterization of the Proposed Acquisition. Indeed, the Applicants project that the average length of freight trains would decrease on many rail line segments as a result of the Proposed Acquisition, although the number of trains per day would increase.

Regarding the need to mitigate crossing delays and crossing safety issues, OEA estimated the average delay per vehicle for four grade crossings in the Village of Bartlett (Gifford Road, Naperville Road, Oak Avenue, and Prospect Avenue). These four crossings were selected based on past practices in other acquisition proceedings and thresholds set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(5). The delay results for each specific crossing are presented in **Appendix H, Grade Crossing Safety and Delay**. OEA also computed the average gate down time for all crossings, including those in Bartlett, which is presented in **Appendix H, Grade Crossing Safety and Delay**.

Regarding pedestrian safety, see responses to Comment 462-24 and Comment 462-25 in *Section 5.7, Grade Crossing Safety* in this appendix. In response to comments on the Draft EIS, OEA included additional information in the Final EIS on the 31 pedestrian-only grade crossings in the study area, including the 19 pedestrian-only grade crossings in the Chicago area. For each pedestrian-only grade crossing, the Final EIS reports the type of protection and historical safety performance at each crossing. For additional information on pedestrian safety at grade crossings, refer to the responses to Comment 462-24 and Comment 462-25 in *Section 5.7, Grade Crossing Safety* of this appendix. For additional information on how OEA defined the study area, see the response to Summary Comment: Grade Crossing Delay above.

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R. § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none. In response to public comments, OEA has revised *Section 3.3, Grade Crossing Delay*, to include additional information about impacts of the Proposed Acquisition on emergency services, but as OEA found in the Draft EIS, and as confirmed by the additional analysis presented in the Final EIS, these impacts would be minor. Therefore, the additional information that OEA provided in the Final EIS does not warrant being issued as a Supplemental Draft EIS.

Comment 459-4: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Authority (EI-32538)

The DEIS also fails to address the impact that longer and more frequent trains, as proposed by Applicants, will have on grade crossings in the County. Applicants represented in their environmental filing that train volume in the area around Humboldt Yard (Camden-MNS segment) will increase from an average of 20.0/day to 23.6.⁵² However, Applicants' forecast may be conservative for certain product categories.⁵³ For example, the County anticipates that additional shipments of Bakken oil and gas, many of which are hazardous, and grain traffic, could material yadd to CP's carload volume and to daily train traffic on the Paynesville Subdivision, with the potential to further increase delays at crossings, disrupt emergency responders, and aggravate traffic congestion in the area.⁵⁴ The FEIS should address these concerns and propose conditions to mitigate these impacts.

⁵² Exhibit A-Attachment A, V.S. Amfahr (Feb. 28, 2022) at ¶ 34.

⁵³ Exhibit A-Attachment A, V.S. Amfahr (Feb. 28, 2022) at ¶ 35.

⁵⁴ Id. at ¶¶ 35-36.

OEA Response

Regarding the analysis of emergency response delay, see response to Summary Comment: Grade Crossing Delay above.

Regarding the Applicants' forecasts, see responses to Summary Comment: Validity of Data, Methods, and Conclusions above and Comment 33-3 in the Environmental Review Process section. Regarding impacts related to the transportation of hazardous materials, please refer to *Section 3.1, Freight and Passenger Rail Safety*.

Comment 459-5: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Authority (EI-32538)

The County has identified a total of 32 crossings along CP mainlines in the County that would be directly and materially impacted by merger-related traffic increases.⁵⁵ Of those, the following fourteen crossings are of the greatest concern since they support the highest volumes of vehicle traffic:

- (a) N.E. Central Avenue;
- (b) Humboldt Avenue N;
- (c) West Broadway Avenue;
- (d) Douglas Drive;
- (e) Winnetka Avenue;
- (f) Boone Avenue;
- (g) Zachary Lane;
- (h) Peony Lane;
- (i) County Road 101;
- (j) Pinto Drive;
- (k) Arrowhead Drive;
- (l) County Road 19;
- (m) County Road 92; and
- (n) County Road 50.⁵⁶

Among these crossings, the crossing at Humboldt Ave. N. (County Road 52)⁵⁷ presents the greatest concern. This crossing is just east of CP's Humboldt Yard in north Minneapolis, a heavily urbanized area.⁵⁸ This crossing is frequently blocked by activities in the Humboldt Yard, and changes in those activities, such as the increased storage of cars, increased work events by trains (block swapping, etc.), or other operational changes could result in significant increases in delays at this crossing.⁵⁹ This crossing is important for emergency access. A fire station on North Humboldt Avenue, immediately north of the CP crossing, serves neighborhoods south of the crossing.⁶⁰ When the crossing is blocked, response times for certain emergency services are adversely impacted.⁶¹ The Acquisition will exacerbate

this problem as activities at Humboldt Yard increase and CP runs longer and more frequent trains, further hampering the ability to provide emergency services to its residents.⁶²

⁵⁵ Id. at ¶ 32.

⁵⁶ Id.

⁵⁷ Id at ¶ 33.

⁵⁸ Id.

⁵⁹ Id. at ¶¶ 37-38.

⁶⁰ Id. at ¶ 39.

⁶¹ Id.

⁶² Surface Transportation Board, STB Hearing - CP/KCS, FD 36500 -September 28th - 30th 2022 (Day 1), YOUTUBE at 5:49:33.

OEA Response

See response to Summary Comment: Grade Crossing Delay above. OEA did not assess grade crossing delay impacts at grade crossings in Hennepin County, Minnesota because the Proposed Acquisition would not cause an increase in rail traffic on rail lines in Hennepin County that would meet or exceed the thresholds for environmental review set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(5). The threshold for the analysis of grade crossing delay impacts is generally an increase of eight or more trains per day or a 100 percent increase in traffic (measured in gross ton-miles). The grade crossings that the commenter identified would experience an increase of less than five trains per day, on average, as a result of the Proposed Acquisition.

Comment 459-6: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Authority (EI-32538)

To mitigate these harms, the County respectfully requests that impacts to the County's grade crossings be included in the five-year formal oversight period requested by the County in Section IV(A) herein. Similar to the truck traffic study, the County and its state and local government partners would annually conduct a detailed study of traffic volumes and delay times at grade crossings in the County, all at Applicants' sole cost and expense. The study would include an analysis of any operational changes or physical improvements that could ameliorate these harms, and the FEIS should require Applicants to fund any identified changes or improvements that mitigate these impacts to Hennepin County. See Can. Nat'l Ry. Co, et al at 38-39 (requiring applicants construct grade separations and implement other changes that were intended to redress the adverse impacts on grade crossings).

OEA Response

See responses to Summary Comment: Grade Crossing Delay and Comment 459-5 above. The projected increase in rail traffic in Hennepin County, Minnesota would not exceed the thresholds for environmental review that OEA used to define the study area for grade

crossing delay. Because increases in rail traffic in Hennepin County would be low, grade crossings in the county would not experience impacts on grade crossings that would warrant mitigation or reporting during any oversight period that the Board might impose.

Comments 364-1, 448-5: Written Comments from Amy Dinn (EI-32449) and Houston City Council Member Robert Gallegos (EI-32524)

Over the last few years, our East End community has had to deal with the impacts of heavily congested tracks. We have experienced more trains (and longer-length trains) occupying railroad tracks, blocking major thoroughfares, and limiting access to local destinations and businesses. Most concerning, as these trains idle in the middle of our community (sometimes for hours at a time) they're emitting fuel exhaust that degrades the air quality and generating noise and vibrations that are harmful and disruptive.

These blockages don't only pose an environmental risk, they also leave us stranded, prompts unsafe pedestrian behavior, and too frequently forces emergency responders to scramble to find alternate, longer routes. Each year, the Houston Fire Department reports hundreds of incidents in which emergency responders have had to reroute or were delayed by trains occupying critical crossings. This is extremely concerning to us and heighten the importance of not adding to an already strained railroad complex without providing for solutions or mitigation.

We implore federal regulators to reconsider this proposal, and to push CP and KSC railroads to engage local stakeholders, including state and local leaders, emergency officials, and environmental advocates, to develop mitigation agreements and plans before taking any further action on the merger.

Thank you for consideration of these ongoing concerns.

OEA Response

The comment is focused on the East End community of Houston. OEA notes the commenter's concerns about existing conditions related to rail traffic in this area. OEA did not assess grade crossing delay impacts at grade crossings in the East End because OEA does not expect that the Proposed Acquisition would cause an increase in rail traffic on rail lines in that community. The Applicants do not own any rail lines in Houston, and OEA understands that rail lines in the East End community primarily support UP traffic. The Applicants expect that the Proposed Acquisition would increase rail traffic on some rail lines elsewhere in Houston, and OEA assessed potential grade crossing delay along those rail lines. For more information on how OEA defined the study area for the grade crossing delay analysis and impacts on emergency vehicles, see response to Summary Comment: Grade Crossing Delay above and *Section 3.3, Grade Crossing Delay*.

Comment 448-5: Written Comment from Houston City Council Member Robert Gallegos (EI-32524)

Prolonged blockages and associated disruptions are no longer rare, isolated occurrences. In fact, through a new smart camera pilot program the City of Houston launched, we have documented multiple instances in which major thoroughfares, specifically those vital to

Houston Emergency Response, have been blocked for hours at a time. As of late, a more common occurrence is what is known as a “double blockage”, two trains on a double track blocking the same crossing. This leaves motorists stranded, prompting unsafe motorist and pedestrian behavior, and too frequently forces emergency responders to scramble to find alternate, longer routes. Emergency Service Units respond to multiple neighborhoods in need and a single blocked crossing not only affects those residents in proximity but can cut off services to other communities, causing an impact to life safety. Across the city, the Houston Fire Department reported 905 incidents in 2019 in which first responders had to reroute or were delayed by trains occupying critical crossings. That number grew to 974 in 2020 and surged to nearly 1,400 reports in 2021. That trend has remained consistent year to date, with almost 900 incidents reported as of September 27, 2022. The number of impacts to emergency response coupled with unsafe motorist behavior has elevated events caused by trains to threaten public safety. This concern and our requests for assistance and solutions have been made to the railroad companies and the Federal Railroad Administration.

OEA Response

OEA notes the commenter’s concerns regarding existing conditions in Houston related to grade crossing delay and blocked grade crossings. Following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing additional voluntary mitigation measures to address issues in communities in the Houston area. See responses to Summary Comment: Grade Crossing Delay above.

Comment 81-2: Written Comment from Marty Lancton, President, Houston Professional Fire Fighters Association Local 341 (EI-32251)

These trains are projected to be over 10,000 feet in length. A train of this size may take over thirty minutes to pass by an at-grade train crossing. Responding emergency and law enforcement vehicles will be seriously delayed imperiling the safety of those needing our services.

OEA Response

See response to Comment 448-5 above.

Comment 523-11: Written Comment from Illinois Commerce Commissioner Brian Vercruysse (EI-32527)

With the DEIS averaging delay, crashes, or other impacts along the entire Proposed Acquisition, the statistical analysis does not capture smaller corridors or point specific conditions and impacts. We believe this is especially true with the corridor from the Village of Franklin Park west to the City of Elgin. This area includes O’Hare International Airport, major rail yards within the overall Chicago Terminal, the 3rd largest population center in the country, and commuter rail service with over 20,000 riders per day (pre-COVID 19). When assessing highway-rail crossings this becomes even more critical as every crossing is unique and cannot be fully understood or used in comparison with statistics alone.

OEA Response

See response to Summary Comment: Grade Crossing Delay above. OEA did analyze and provide information on each of the individual grade crossings in the study area, including grade crossings in Franklin Park. Due to EIS page limitations specified in the NEPA implementing regulations, OEA provided information for most of the individual grade crossings in **Appendix H, Grade Crossing Safety and Delay**.

Comment 523-12: Written Comment from Illinois Commerce Commissioner Brian Vercruyse (EI-32527)

The DEIS does not contemplate any impacts in the overall Chicago Terminal as the CP has indicated all traffic will be handled at the newly reconfigured Bensenville Terminal. If there are going to be 8 or more additional daily trains where there are now only 3 or 4, the additional traffic is likely to require much longer train length for transfers or additional trains. We request the DEIS evaluate Chicago Terminal impacts, as small changes can have ripple effects.

OEA Response

OEA did evaluate impacts on rail lines and at rail yards in the Chicago Terminal where the thresholds for environmental review set forth at 49 CFR § 1105.7(e) would be met. *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay** report the results of OEA's analysis. OEA notes that there is an ongoing reconfiguration of Bensenville Yard unrelated to the Proposed Acquisition being undertaken as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. No changes to the Draft EIS are warranted in response to this comment.

Comment 523-13: Written Comment from Illinois Commerce Commissioner Brian Vercruyse (EI-32527)

Within Metra commuter territory, by averaging train lengths and using a 24-hour analysis, the Level of Service assessment does not provide an accurate picture or identify if impacts are felt during peak hours. This holds especially true with York Road in Bensenville as 200 additional trucks per day are identified in the DEIS with the Proposed Acquisition. The DEIS should include peak hour considerations, impact to nearby intersections, and account for the proposed freight train lengths in the Franklin Park to Elgin corridor.

OEA Response

Regarding how OEA's grade crossing delay analysis accounted for peak traffic, see the responses to Summary Comment: Validity of Data, Methods, and Conclusions and Comment 462-27 above. The methodology employed by OEA includes factors to account for the peak traffic. Specifically, it incorporates a factor of 0.1 to convert AADT (in vehicles per day) to peak-hour traffic (in vehicles per hour), and then a factor of 0.6 to convert two-way traffic to peak direction traffic, assuming traffic is split 60/40 during the peak hour. The Draft EIS also includes the 200 additional trucks per day at York Road in

Bensenville as part of the delay analysis for the Proposed Acquisition. The impact to nearby intersections is discussed in *Section 3.5, Intermodal Facility Traffic*.

Regarding train lengths, OEA notes that, according to information provided by the Applicants, average freight train length would decrease on most rail line segments that OEA evaluated, including the Metra rail line that passes through Bensenville, Franklin Park, and Elgin in Illinois. In response to public comments on the Draft EIS, OEA has revised *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay** in the Final EIS to include additional information about gate down time for particular types of freight and passenger trains.

Comment 523-14: Written Comment from Illinois Commerce Commissioner Brian Verbruggen (EI-32527)

Relative to blocked grade crossings, the DEIS identifies “federal rules requiring railroads to not block public crossings for longer than 10 minutes unless it cannot be avoided.” (pg. 3.3-20). There are no such federal rules or statutes, and state laws on the matter have consistently been preempted. A railroad’s own operating rule may identify not to block a crossing, but if it happens there is little to no recourse. No crossing should be blocked over 10 minutes by a stationary train. This should be enforced by the STB.

OEA Response

OEA notes the commenter’s concerns regarding blocked grade crossings. See response to Summary Comment: Grade Crossing Delay above.

The Summary in the Draft EIS incorrectly described the Applicants’ commitment to not block grade crossings for longer than 10 minutes unless it can be avoided, which is set forth in *Chapter 4, Mitigation* as mitigation measure VM-Grade Crossing-02. The Summary stated that “the Applicants have voluntarily proposed mitigation that would minimize impacts on grade crossing delay, including a commitment to abide by federal rules that prohibit railroads from blocking public grade crossings for more than 10 minutes unless it cannot be avoided.” The rule stating that railroads should not block grade crossings for longer than 10 minutes unless it can be avoided is not a federal rule, but an operating rule originating from the General Code of Operating Rules, which has been adopted by many railroad companies. OEA has corrected the Summary in the Final EIS accordingly. Should the Board decide to authorize the Proposed Acquisition and impose mitigation measure VM-Grade Crossing-02, then the Applicants would have to comply with this rule.

Comment 523-15: Written Comment from Illinois Commerce Commissioner Brian Verbruggen (EI-32527)

Emergency route analysis should not be limited to only those routes provided with designation in the FRA’s database. FRA’s inventory does not accurately reflect Emergency Service Routes (FRA 6180.71 Part V Item 10). In lieu of using this data field, ICC suggests using the State Highway data field (Item 3) in addition to broaden the scope. Maximum train lengths should also be analyzed on these routes.

OEA Response

See response to Summary Comment: Grade Crossing Delay above. The comment also asserts that “FRA’s inventory does not accurately reflect Emergency Service Routes” without substantiation. The FRA database is the national database for analyzing such extensive study areas. It would not be appropriate to estimate average delay by using maximum train length because this would greatly overstate delay impacts. OEA appropriately used average train length to estimate average delay. However, in response to public comments, OEA has revised **Appendix H, Grade Crossing Safety and Delay** to include additional information about gate down time for different freight train lengths.

Comment 461-9: Written Comment from the Environmental Defense Fund (EI- 32540)

On page 3.3-1 OEA stated “long delays can also occur when a train stops unexpectedly due to a crash or breakdown while traversing a crossing, but such events are relatively rare.” EDF requests further data analysis on whether this is true for the Harris County region. At a crossing with Lawndale Street, where KCS has trackage rights, the City of Houston found “the street was blocked 107 times for one hour or more over 26 days, with one delay lasting nearly 15 hours. Of the stoppages, 32 lasted for more than three hours, according to an initial analysis by the Mayor's Office of Innovation.” EDF requests that the final EIS include full grade crossing delay analysis, inclusive of areas where the merger will have trackage rights.

OEA Response

OEA analyzed delay impacts at public grade crossings within the study area, including grade crossings in Harris County. For further information on how OEA defined the study area and on impacts related to blocked grade crossings, see the response to Summary Comment: Grade Crossing Delay above.

The Final EIS also includes additional information about a large number of crossings. In response to public comments on the Draft EIS, OEA has revised **Appendix H, Grade Crossing Safety and Delay** to also include estimated gate down time for specific types of trains and average delay per stopped vehicle.

Comment 461-10: Written Comment from the Environmental Defense Fund (EI- 32540)

On page 3.3-5 OEA stated that “across all 277 grade crossings in the study area with an AADT of 2,500 or more vehicles per day, the Proposed Acquisition would result in an average increase in delay of approximately 0.7 seconds per vehicle. Average delay would be approximately 4.7 seconds per vehicle under the Proposed Acquisition, compared to 4.0 seconds per vehicle under the No-Action Alternative.” EDF requests that the final EIS calculate average delay in terms of total minutes per train per day versus seconds per vehicle. It is difficult for readers to understand delay in seconds per vehicle since the time spent delayed by a train is experienced equally by all the delayed vehicles and not divided among them. EDF analysis finds that even if total delay is reduced from 4.0 minutes to 3.6 minutes per train due to shorter train length, because the number of trains per day is going to increase, total delay overall will increase. EDF questions the assumption that train length will remain shortened and requests further analysis to include projections on expected train

length in future years and provide justification for any assumption that train lengths will remain shorter.

OEA Response

Regarding the validity of data used for OEA's delay analysis, see response to Summary Comment: Validity of Data, Methods, and Conclusions above.

As shown in **Appendix H, Grade Crossing Safety and Delay**, OEA reported delay at individual grade crossings in the study area using several different methods, including total delay per day, average gate down time per train, number of delayed vehicles per day, and average delay per vehicle per day. To the extent that the commenter is interested in the amount of time that an average train would block a grade crossing, this is represented by average gate down time. In response to public comments on the Draft EIS, OEA has revised **Appendix H, Grade Crossing Safety and Delay** to also include estimated gate down time for specific types of trains and average delay per stopped vehicle. As the commenter notes, average delay per delayed vehicle would decrease for most crossings under the Proposed Acquisition compared to the No-Action Alternative because average train length would decrease.

The comment "questions the assumption that train length will remain shortened and requests further analysis to include projections on expected train length in future years and provide justification for any assumption that train lengths will remain shorter." The Applicants provided estimates of average train lengths under the Proposed Acquisition and the No-Action Alternative based on projections consistent with their application and operating plan. Consistent with past practices in other acquisition proceedings, the analysis year is 2027, which is five years after the date of the anticipated year of the issuance of a final decision from the Board. OEA considered reasonably foreseeable projects and actions that could occur by 2027. OEA's analysis incorporates projections for traffic volume, train volume, train lengths, and other variables used in the delay analysis for the year 2027.

Comment 461-11: Written Comment from the Environmental Defense Fund (EI-32540)

On page 3.3-5 OEA stated "however, if train speed were to increase as a result of the Proposed Acquisition, then average delay at grade crossings would be lower." EDF requests further analysis to support a claim that train speed may increase. As stated in Section 3.7, "best practice for rail operations is typically to reduce speeds when ambient temperatures exceed the limits for that particular track, resulting in decreased efficiency." EDF requests further analysis on delays that factors in average and rising temperatures in Houston, Harris County.

OEA Response

OEA did not assume or claim that train speeds would increase as a result of the Proposed Acquisition. The delay analysis reflects the maximum train speeds set forth in the CP and KCS system timetables. As stated on page 3.1-2 in *Section 3.1, Freight and Passenger Rail Safety*, railroads are required to maintain track segments according to FRA standards for specific classes of track corresponding with desired train speeds. The statement on page

3.3-5 in *Section 3.3, Grade Crossing Delay* refers to track improvements that could be implemented in the future if higher maximum speeds are desired. If there are improvements to specific sections of the Applicants' lines, assuming Board approval of the Proposed Acquisition, then it might affect the maximum allowable train speed in the CP and KCS system timetables for particular rail line segments. Regarding the effects of rising temperatures resulting from climate change, please refer to *Section 3.7, Air Quality and Climate Change*.

Comment 449-1: Written Comment from the Iowa Professional Firefighters (EI-32522)

The Iowa Professional Fire Fighters is an organization made up of over 30 Locals with close to 1,700 members across the State of Iowa. Our objective is to serve the interests of professional fire fighters and professional EMS personnel in our state and to make sure that fire fighters and EMS workers in Iowa can safely and efficiently serve their communities.

The proposed mega-merger between Canadian Pacific and Kansas City Southern has created quite a bit of concern. Among the first responder community in Iowa, there is fear the merger will put people at risk by increasing the response time to emergencies and community members in need.

Both the length and frequency of trains are of concern, as both increases noted in CP's filings will create a bevy of issues in the case of an emergency within the community. The length of trains is predicted to nearly double in most communities. The average freight train length has already been growing, increasing by about 25% since 2008. This increase will make the average 10-minute wait at at-grade crossings turn into a 40-minute wait. It goes without saying that in the case of an emergency, an extra 30 minutes can certainly be the difference between life and death. First responders cannot afford to wait at these at-grade crossings, and in many cases, might be the only route to the emergency. Just a few months ago, a home in Lockland, Ohio – just 400 feet from the tracks – sat in flames for eight times longer due to a train blocking the crossing the fire department needing to get through. A one-minute response turned into a 15 minute response, according to the Fire Chief.

In many small towns in Iowa, fire stations and emergency service providers are located near at-grade crossings and their route of response naturally requires responders to utilize the at-grade crossing. In many towns, there is no alternative route.

While we do not oppose the merger, we feel that safeguards need to be instituted. For the reasons previously stated, we feel that the rail roads should provide funding to train fire fighters (career and volunteer) along the proposed route, purchase necessary equipment, apparatus, and PPE for first responders.

In certain Iowa cities direct money from the railroads has already been provided. As the organization representing fire fighters and other first responders in Iowa, we encourage the Surface Transportation Board to direct that these funds **MUST** be used to enhance emergency response, training and fire fighter safety and not diverted to other uses.

Thank you for your consideration.

OEA Response

OEA notes the commenter's concerns regarding existing conditions related to grade crossing delay, including blocked crossings. Regarding impacts on grade crossing delay related to the Proposed Acquisition, see response to Summary Comment: Grade Crossing Delay above.

Regarding the commenter's statement that the length of trains would nearly double in most communities, OEA notes, to the contrary, that the projected average train length is expected to decrease on most rail line segments as a result of the Proposed Acquisition. Across the entire study area, the Applicants project that average train length would decrease from approximately 9,551 feet under the No-Action Alternative to 7,726 feet under the Proposed Acquisition. At the grade crossings with projected increases in train lengths, the greatest increase is 349 feet (5,645 under the No-Action Alternative compared to 5,994 under the Proposed Acquisition).

Regarding mitigation to "provide funding to train fire fighters (career and volunteer) along the proposed route, purchase necessary equipment, apparatus, and PPE for first responders," OEA notes that the Applicants have voluntarily committed to offer to fund the participation in railroad focused emergency response training at the Association of American Railroads' Security and Emergency Response Training Center in Pueblo, Colorado, of two qualified firefighters providing service within each of the potentially affected communities (see VM-Rail-04 in *Chapter 4, Mitigation*). As discussed in *Section 3.3, Grade Crossing Delay*, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 447-2: Written Comment from the Chicago Metropolitan Agency for Planning (EI-32523)

The Draft EIS grade-crossing analysis and approach to mitigation needs to be corrected and validated with field data. CP's voluntary mitigation "commitment to abide by federal rules that prohibit railroads from blocking public grade crossings for more than 10 minutes unless it cannot be avoided"³ is problematic. CMAP has measured grade-crossing gate-down times in Franklin Park, Cook County, on the Milwaukee District West Line, east of the Bensenville Yard, at 25th Avenue. Average gate-down times for freight trains at this crossing are already greater than 10 minutes. The analysis of grade-crossing delay in Appendix H of the Draft EIS⁴, Table H.1-1 is misleading. Freight trains are not traveling at 40 mph. While Metra trains indeed clear crossings in a minute or two, field measurements show that freight trains are traveling slowly, and take an average of 10 minutes to clear the crossing. Showing grade-crossing gate-down times that mostly reflect Metra trains is misleading. As we noted during our response to STB's request for scoping comments early in the EIS process, data collected during the STB's monitoring period for the CN acquisition of the Elgin Joliet & Eastern Railway (EJE) showed the potential extent of such blockages after an acquisition.⁵ Blockages greater than 10 minutes in length totaled 74,754 over a 53-month period, with 1,756 of those blockages lasting more than an hour in duration. Twenty-four crossings had more than 1,000 blockages longer than 10 minutes. Such long-duration blockages make the region's crossings less safe and should be mitigated against when considering any proposed merger. The STB should consider field-data collection of actual

gate-down times, rather than using an inaccurate modeling system that does not comport with the situation on the ground. Field data collected by CMAP at dozens of crossings, across many railroads, indicates that the gate-down times for freight trains average 6 minutes, 41 seconds. Gate-down times for freight trains in Franklin Park, east of the CP Bensenville Yard, were more than 10 minutes.

³ STB Office of Environmental Analysis. Canadian Pacific Acquisition of Kansas City Southern. Draft Environmental Impact Statement. August, 2022. Posted at <https://www.cp-kcsmergereis.com/draft-eis.htm>.

⁴ Ibid, Appendix H.

⁵ Monthly CN/EJE operational reports are on the Internet Archive, <https://web.archive.org/web/20161025113852/http://stbfinancedocket35087.com/html/monthlyreports.html>. A summary of this data is available from CMAP.

OEA Response

Regarding OEA's use of long-term datasets rather than anecdotal or short-term observational data to conduct the quantitative analysis of grade crossing delay, see responses to Summary Comment: Validity of Data, Methods, and Conclusions above.

OEA notes the commenter's concerns regarding current train operations near Bensenville Yard and the existing effects of those operations on nearby grade crossings. This is an existing condition that is not related to the Proposed Acquisition. Also unrelated to the Proposed Acquisition, Bensenville Yard is currently being reconfigured as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. This reconfiguration will include lengthening the Bensenville Yard receiving tracks to accommodate longer trains. The longer receiving tracks will allow for switching and staging to occur within the yard and will reduce the need for trains to stop on the mainline to be broken into shorter blocks. OEA expects that the reconfiguration of Bensenville Yard will be completed before 2027, which is the analysis year that OEA used for this EIS. Because the results reported in *Section 3.3, Grade Crossing Delay* for the No-Action Alternative and the Proposed Acquisition are for the analysis year 2027, the reconfiguration of the Bensenville Yard has been accounted for in those results.

The comment asserts that "freight trains are not traveling at 40 mph" but does not provide any substantiation or offer values to replace the train speeds used in OEA's analysis. OEA properly used the train speeds from the CP and KCS system timetables, which reflect the maximum allowable speeds over each section of track at issue.

The comment also states that "showing grade-crossing gate-down times that mostly reflect Metra trains is misleading." To address this and other public comments on the Draft EIS, OEA has revised **Appendix H, Grade Crossing Safety and Delay** to report separate estimates of gate down time for passenger trains, bulk freight trains, and intermodal/automotive/manifest freight trains, using the estimated length of each type.

Comment 447-3: Written Comment from the Chicago Metropolitan Agency for Planning (EI-32523)

The Draft EIS should reflect a Rail Traffic Controller (RTC)-based operating plan with 10-minute maximum gate-down times for CP-KCS trains while providing an enforcement mechanism in an extended oversight period. The “voluntary commitment” to limit gate closures to 10 minutes is problematic, given CP’s existing performance along the corridor. A new operating plan should alleviate operating challenges and improve performance. However, during the recent public hearings regarding the draft EIS, we learned that CP’s operating plan was initially modeled and submitted without regard to rail capacity. Additionally, when the operating plan was later modeled through RTC software to reflect rail capacity, the operating plan assumed up to a maximum 30-day grade crossing occupancy time. We request that the STB update the draft EIS, or consider a supplemental EIS for the Chicago rail terminal, to reflect a CP-KCS operating plan, modeled through RTC software, that protects the public interest by limiting public grade-crossing gate-down times for CPKC trains to 10 minutes. We further request that this modified operating plan be enforced by the STB during an oversight period of appropriate duration, unless CP-KCS demonstrates to the STB through RTC modelling that a modification in the plan will not block public at-grade crossings more than 10 minutes. To ensure CPKCS is complying with 10-minute maximum gate-down time limits and not disrupting Metra service, we support Metra’s request for a 10-year oversight period to protect the public interest.

OEA Response

Regarding the Applicants’ operating plan, see response to Comment 33-3 in the Environmental Review Process section.

It is the Board's role, not OEA’s, to review the transportation merits data submitted in an application under 49 U.S.C. §§ 11321-26 seeking Board authority for a proposed acquisition. Moreover, the Applicants committed to “not implementing an ordinary course operating plan that directs CPKC through freight trains operating between Kansas City and St. Paul, MN over Metra's MD-W and MD-N lines, except in emergencies and other non-routine situations”. Therefore, in the EIS OEA properly used the Applicants’ forecast of eight trains in the EIS, not 14, over MD-W.

Regarding the commenter’s request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none. In response to public comments, OEA has revised *Section 3.3, Grade Crossing Delay*, to include additional information about impacts of the Proposed Acquisition on emergency services, but as OEA found in the Draft EIS, and as confirmed by the additional analysis presented in the Final EIS, these impacts would be

minor. Therefore, the additional information that OEA provided in the Final EIS does not warrant being issued as a Supplemental Draft EIS.

Regarding voluntary mitigation measures, OEA notes that compliance with all mitigation measures imposed by the Board (including both Applicants' final voluntary mitigation measures and all Board-imposed environmental mitigation) would be a mandatory condition of the Applicants' acquisition authority should the Board decide to authorize the Proposed Acquisition.

It is the Board's role, not OEA's, to set the appropriate duration of any oversight period. OEA is recommending that the Board require the Applicants to submit quarterly reports to OEA on the progress of, implementation of, and compliance with all Board-imposed environmental mitigation measures beginning on the date of the Board's final decision and continuing for five years, or one year after the Applicants have completed capital improvements related to the Proposed Acquisition, whichever is longer.

Comment 447-4: Written Comment from the Chicago Metropolitan Agency for Planning (EI-32523)

Require infrastructure, equipment, and personnel sufficient to eliminate long-duration gate-down times. It is important to note we are requesting that an exception to gate-down time limits not be approved. The practice of increasing train counts and train lengths, then finding that long-duration crossing blockages "cannot be avoided" makes crossings less safe, is not in the public interest, and must be averted. CP-KCS, if approved, must provide infrastructure (additional grade separations, additional track, additional control points, etc.), equipment, and personnel sufficient to operate the number and length of its trains without blocking crossings for more than 10 minutes.

OEA Response

Regarding the commenter's statement that the length of trains would increase as a result of the Proposed Acquisition, OEA notes that, as the EIS explains, the projected average train length would decrease on most rail line segments under the Proposed Acquisition compared to the No-Action Alternative.

The comment states that the Applicant "must provide infrastructure (additional grade separations, additional track, additional control points, etc.), equipment, and personnel sufficient to operate the number and length of its trains without blocking crossings for more than 10 minutes." Regarding grade separations and mitigation, see the response to Summary Comment: Grade Crossing Delay above. As set forth in *Chapter 4, Mitigation*, the Applicants have committed to not block grade crossings for longer than 10 minutes unless it cannot be avoided (see mitigation measure VM-Grade Crossing-02). Should the Board authorize the Proposed Acquisition and impose mitigation measure VM-Grade Crossing-02, the Applicants would be required to abide by this condition.

Comment 231-1: Written Comment from Jennifer Crowley (EI-32371)

The substantial increase in rail traffic will disrupt daily life of residents along the rail lines and cause extended commutes, delayed emergency response and prolonged bus rides to/from school for our children

OEA Response

OEA notes the commenter's concerns regarding increased grade crossing delay. The delay results for each specific crossing are presented in **Appendix H, Grade Crossing Safety and Delay**. See response to Summary Comment: Grade Crossing Delay above.

Comment 173-1: Written Comment from Shveta Yarosh (EI-32279)

I do not think the Office of Environmental Analysis did a thorough enough job when creating their study. They studied only 277 crossings and crossings with more than 2,500 cars per day. This does not represent many of the smaller towns along the route. I do not believe this study was created without bias. It's clearly in the best interest of the OEA to have this merger succeed, their favoritism shows throughout the report.

OEA Response

OEA defined the study area for the grade crossing delay analysis to be consistent with past practice in other acquisition proceedings and the thresholds set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e). For further details, see the response to Summary Comment: Grade Crossing Delay above. As discussed in that comment response, OEA provided information on over 1,300 grade crossings in the Draft EIS and has provided additional information on those grade crossings in the Final EIS. OEA notes that the Board, not OEA, will decide whether or not to authorize the Proposed Acquisition after the environmental review process is complete.

Comment 135-1: Written Comment from Mike Stanley (EI-32256)

On behalf of the Wisconsin State Fire Chiefs Association, we are committed to our mission of supporting all service leaders and enhancing the communities we serve. The proposed Canadian Pacific-Kansas City Southern railway merger appears contrary to our mission for a safer Wisconsin. We urge the Surface Transportation Board to take more time to look into every single community that will be affected, in order to mitigate any outcomes that will endanger public health and community safety.

Too many fire departments across the state are struggling with personnel and budgetary decreases, while calls for services continue to rise. We are under a great deal of pressure, and cannot afford to have any additional strains on our departments.

Further, several fire departments and emergency service stations throughout the state reside near railroads, or require crossing tracks to access emergencies. With this merger inevitably resulting in increased train length and traffic, it could create a nightmare scenario where emergency responders are unable to access or depart the station or cross the tracks to assist

those needing emergency response. Both full-time and volunteer departments need every single second when responding to either fire or EMS related calls.

We understand that freight and passenger trains are essential to our economy and necessary for many industries. Unfortunately, rail transport also brings concerning consequences. Even putting those aside, the harm that could come from disregarding public safety is severe. Longer response times are unacceptable. Not being able to serve our community members is unacceptable. We need to acknowledge increased rail traffic frequency and length resulting from this potential merger while ensuring it does not adversely affect emergency response.

Please consider looking deeper into at-grade crossings and impacts to emergency response times.

Fire departments along these lines need more data so they can be better prepared to serve their communities if this merger is approved. We will remain committed to keeping our communities safe, but would appreciate your help.

Thank you for your consideration.

OEA Response

See the response to Summary Comment: General Delay above. OEA notes that, based on information provided by the Applicants, the Proposed Acquisition would not result in increased rail traffic on rail lines in Wisconsin that would meet or exceed the thresholds for environmental review set forth in the Board's environmental regulations at 49 CFR § 1105.7(e). Therefore, OEA did not analyze grade crossing delay at grade crossings in Wisconsin.

Regarding the commenter's statement that the length of trains would increase as a result of the Proposed Acquisition, OEA notes that, as explained in the EIS, the projected average train length would decrease on most rail line segments under the Proposed Acquisition compared to the No-Action Alternative.

Regarding emergency response, see response to Summary Comment: Emergency Response above. No changes to the Draft EIS are warranted in response to this comment.

Comment 91-1: Written Comment from Fire Chief, Marinette Fire Department, Marinette, Wisconsin (EI-32255)

First responders are acutely aware of the risks posed by railroad crossings. At-grade crossings, in particular, deserve the highest possible degree of scrutiny given both the potential for traffic incidents at the crossing itself and the possibility that lengthy delays as trains pass through could interfere with the ability to respond to other, unrelated incidents. I can speak to this first hand as I have a rail line that cuts through the center of my city and has resulted in both delayed emergency responses, numerous crossings being blocked, and snarled traffic situations. For first responders, speed at crossings can determine whether or not an emergency can be reached quickly and resolved. For me, and likely every other public safety professional in communities like mine, the prospect of trading public safety for railroad profits is inconceivable.

Members of Wisconsin communities don't question the need for or value of freight railroad. But we need to know more about this project's true impact on public safety. The Surface Transportation Board needs to address this and review and analyze public safety in the environmental impact statement before it makes a final decision on the merger. Thank you for considering my comments.

OEA Response

See response to Comment 135-1 above.

Comment 124-2: Written Comment from Mahlon Mitchell, President, Professional Fire Fighters of Wisconsin, Inc. (EI-32555)

A less dramatic threat will be the increasing number and size of these trains. Certain estimates suggest that there will be several dozen additional trains traversing the rails from Canada to the Gulf of Mexico on a daily basis. Canadian Pacific routinely operates trains that are 1.7 to 2.3 miles in length. As trains of this size pass through small communities, the time it takes to pass an at-grade rail crossing can exceed thirty minutes. In the event of a fire, medical emergency or other response, delays of this duration can prove deadly.

OEA Response

See response to Comment 135-1 above.

Comment 503-1: Public Meeting Comment from Aaron Lipski, Fire Chief, City of Milwaukee, Wisconsin (EI-32755)

I'm extremely concerned that there's not a single mention of safety or impact on public safety in the DEIS that was provided. So what do I mean by this? I mean certainly additional routes from Chicago to Milwaukee, there's no way around it, that's going to increase a noticeable or create a noticeable increase in rail traffic, as well as a potential for railway accidents and definitely at crossings longer trains, more frequent trains means emergency vehicles are just going to be stuck waiting. Worse, the people on the other end of the 911 call are going to be stuck waiting.

OEA Response

See response to Comment 135-1.

Comment 481-1: Written Comment from Scott Vadnais, President, Minnesota Professional Fire Fighters (EI-32553)

Because of their length, these mega-trains will cause delays as they pass in-grade crossings in small towns throughout Minnesota. A two-mile long train may take greater than thirty minutes to clear a crossing causing delays for emergency responders which will compromise response times and endanger the public.

OEA Response

See Summary Comment: Grade Crossing Delay.

The Applicants project that the average train length would decrease, not increase, on many rail lines in the study area, including the rail line that passes through Camanche, as a result of the Proposed Acquisition.

Comment 118-1: Written Comment from Dustin Henslee (EI-32228)

My comment is not really and environmental issues, but currently, we have issues with rails cars blocking one of our roadways for most of and sometimes all day (Richmond Rd, Texarkana). This mentioned increased rail cars daily so what impact will this have on Richmond Rd here in Texarkana.

OEA Response

OEA notes the commenter's concerns about pre-existing conditions in Texarkana. Regarding stopped trains, see the response to Summary Comment: Blocked Grade Crossings above.

As indicated in **Appendix H, Grade Crossing Safety and Delay**, the projected number and length of trains at the Richmond Road grade crossing in 2027 is 13.49 trains at an average length of 9,651 feet for the No-Action Alternative and 25.89 trains at an average length of 8,128 feet for the Proposed Acquisition. This equates to an average gate down time of 2.6 minutes for the No-Action Alternative and 2.3 minutes for the Proposed Acquisition. The average delay per vehicle is less than four seconds per vehicle in both the No-Action Alternative and the Proposed Acquisition, which equates to a LOS of A. No changes to the Draft EIS are warranted in response to this comment.

Comment 115-1: Written Comment by Jeff Skalberg (EI-32237)

Regarding crossing IDs 375779U (Ottumwa), 375761J & 375759H (Lerado). There is significant blocking of these intersections. adding more trains will not reduce the blocking when currently atleast 4 times a day they are blocked for more than 20 minutes from just 1 train. yes the "average" time down will reduce only because you will be blocking it more by running more trains thru here but the total time of blockage will only go up. Your crack pot analysis of these intersections is junk and does not tell the real story. My deputies cant even find operators to ticket them per Iowa code as they all run and hide when the law shows up. The railroad company should be responsible for constructing and management of a bridge over the 375779U (Ottumwa) crossing. also share your data that you are minupliating to show that you will do better. Or just move your train persons swap and rail yard west of ccrossing 375779U (Ottumwa) where there is more room and you are not blocking first responders. Also, shorting up the trains from 2 miles to 1.5 miles does not do [expletive]. as the it still will block 2 of the 3 crossings.

OEA Response

OEA notes the commenter's concerns regarding pre-existing conditions and impacts on grade crossing delay from the Proposed Acquisition. See the response to Summary Comment: Blocked Grade Crossings above. In addition to the average gate down time and average delay for all vehicles that are reported in the Draft EIS, the Final EIS includes information for total gate down time and average delay per stopped vehicle.

The commenter challenges OEA's analysis but does not provide recommendations for alternative methods of analysis or sources of data. See the response to Summary Comment: Validity of Data, Methods, and Conclusions above. OEA notes that the methods and data sources for OEA's analysis are set forth in detail in **Appendix H, Grade Crossing Safety and Delay**.

The comment asks that OEA "share your data that you are minupliating." The delay results for each specific crossing, along with the data used in these calculations, are presented in **Appendix H, Grade Crossing Safety and Delay**.

Regarding the appropriateness of site-specific mitigation measures to address grade crossing delay, see the response to Summary Comment: Grade Crossing Delay above.

For the grade crossing at 375779U (Ottumwa), the Proposed Acquisition would not cause the thresholds used by OEA in previous railroad acquisition proceedings or the criteria used by FHWA to be met. As discussed in *Section 3.3, Grade Crossing Delay*, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 692-1: Written Comment from Trisha Rea (EI-32579)

Crossing RRX DOT #375779U in Ottumwa, IA has been a huge problem for the motorists and businesses for many years and it's about to get much bigger with the merger of CP & KCS. As concerned citizens and business owners we have been working with local leaders for a solution. The only long term sustainable and viable solution we can agree on is an overpass. The upcoming merger will connect railways coast to coast in Canada with the southern parts of Mexico. Ottumwa RR track is on the main artery connecting these lines. It is not uncommon for trains to block this crossing for 30-45 minutes. There is an average of 4.2 trains per day this is expected to increase to 18.4 trains per day with the merger. If the RR could reduce the delays to 15 minutes average x 18.4 trains = 4.6 hours per day the crossing will be blocked. Emergency vehicles will be delayed also. We will not be able to function with this situation.

OEA Response

See response to Comment 115-1 above regarding grade crossings in Ottumwa.

Comment 85-1: Written Comment from Claudia Baxley (EI-32220)

The increase in train traffic in Excelsior Springs will adversely affect the health and well-being of citizens of Excelsior Springs. In particular, i am greatly concerned about the street-level intersection of the railroad crossing at Tracy Avenue/Miller Avenue/Dunbar street,

East of US Hwy 69. Rail traffic blocks access by ambulance and fire fighters . Headquarters for both of these vital Public Health and Infrastructure services are located west of this street-level RR crossing. The town of Excelsior Springs provides a significant home base for employees at the Ford Claycomo auto plant. It is the home of a JobCorps training provider. Public Schools and students who will be the basis for the town’s future are impacted by the street-level crossing. It is my understanding that rail traffic through Excelsior Springs will increase significantly (reportedly 18 more trains each day, for starters). Concomitant risk of derailment is incalculably great. If my concerns are categorized as being “other” than “environmental,” please consider that this town of roughly 11,000 citizens is a significant microcosm, if you will, of Clay County and a significant contributor to the future of Missouri. The continued existence of Excelsior Springs would be helped by substituting a Railroad Overpass at this vital intersection. I want to thank you for your time and attention to this concern, which reflects the opinion of my family. Sincerely, Claudia Baxley

OEA Response

The comment raises concerns about a particular intersection, and the Proposed Acquisition in general, but it does not challenge any of the related analysis or results.

The comment states that “18 more trains each day” would operate number of trains under the in Excelsior Springs as a result of the Proposed Acquisition. The expected increase under the Proposed Acquisition is 14.41 freight trains per day in Excelsior Springs, not 18.

Regarding emergency response and the appropriateness of site-specific mitigation measures to address grade crossing delay, see response to Summary Comment: Grade Crossing Delay above.

For the grade crossing at Dunbar Street (375439H), none of the thresholds used by OEA or the criteria used by FHWA would be met. As discussed in *Section 3.3, Grade Crossing Delay*, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 452-1: Written Comment from the Eastwood Civic Association (EI-32531)

Eastwood’s Current Reality

Our community is surrounded by two main lines and a heavily trafficked branch line – Houston East Belt Subdivision, Houston West Belt Subdivision and the Galveston Subdivision. We are frequently referenced as being in a “Train Triangle” because these three lines intersect to block in our community (see attached Exhibit A for a map of our community and the rail crossings). You’ll note only two grade-separated crossings on non-interstate roadways. This severely hampers our community’s ability to navigate around blocked crossings, especially those road users who walk, bike or roll.

For years, our community has faced unrelenting mobility challenges and quality of life concerns as trains park on these three lines daily, for hours at a time. To highlight the frequency and length of these blockages, our neighbor set up a camera on her property and began meticulously documenting every train that passed through the at-grade crossing on the

Galveston Subdivision at Eastwood Street (#859522Y). This data shows that over a period of 11 months, this crossing saw an average of 161 trains per month, with an average of 58 trains coming to a complete stop and blocking the crossing for >10 minutes (36% of all trains). Of those that stop, the average length of stoppage is 68 minutes. A monthly summary of this data is provided above and Exhibit B offers the complete set of data documenting 11-months of train throughput and blockages.

As a volunteer organization, we don't have the capacity to place cameras and monitor blockages at every intersection in our neighborhood. However, we can unequivocally state that when a train is blocking this intersection it is blocking several of the 10 at-grade crossings on the approximately 10,000' of track on this line (see Exhibit A for crossing numbers) in our neighborhood. Train length evaluated in the EIS shows a length between 8,800' and 9,000' through the Houston complex, which would easily result in simultaneous blockage of 9 of these 10 crossings.

The City of Houston, through its Smart Railroad Crossing Monitor Pilot is currently installing sensors to measure the frequency and duration of blockage at several key intersections in our community but at this time they have not released the blockage data. We fully expect that data to paint a similar picture for a broader swath of the community. Anecdotally, the neighborhood's experience is that stoppage frequency and length of stoppage is higher on the East Belt near intersections at Telephone Road (288051H), Lawndale Street (288050B) and Polk Street (288048A) where the track is doubled. Similarly, on the West Belt we believe volumes to be more, stoppage frequency to be higher but shorter in duration at Cullen Boulevard (288221A), Leeland Street (288224V), Sampson Street (288227R) and York Street (288228X). We also experience simultaneous blockages of multiple lines, creating even fewer ways to navigate through the area. You'll note that this level of blockage is significantly higher than what is reported through the FRA Blocked Crossing summaries. This is because of a fundamental flaw with how regulators evaluate blocked crossings - they rely on residents or business owners to self-report when a blockage occurs, resulting in chronic under-reporting and clearly incomplete data that fails to encompass the scope of the problems we observe firsthand.

Overall, our neighborhood is disillusioned by the reality that our streets are used as parking lots by rail operators. After years of our concerns going unanswered, our community lacks faith that their efforts to document the chronic blockages will yield any change. We are deeply concerned about the impact these blockages alongside a lack of grade-separated infrastructure has on our community's mobility, while also frustrated by the impact on our quality of life in terms of noise and air quality."

OEA Response

The comment is focused on pre-existing conditions on two main lines and a branch line that includes the Houston East Belt Subdivision, Houston West Belt Subdivision, and the Galveston Subdivision. UP and BNSF can dispatch trains over several routes through Houston. None of the aforementioned routes are the primary routes for KCS, which would be the same primary routes for CPKC.

The comment raising concerns about train lengths between 8,800 feet and 9,000 feet through Houston is not accurate in its predictions of likely train lengths through Houston under the Proposed Acquisition. As the EIS explains, the average train length under the No-Action Alternative indeed ranges from 8,803 feet to 8,934 feet; however, the average train length with the Proposed Acquisition only ranges from 7,954 feet to 8,026 feet.

The comment also references specific grade crossings, none of which are within the study area for the Proposed Acquisition. Therefore, OEA did not analyze grade crossing delay at those grade crossings.

Comment 452-2: Written Comment from the Eastwood Civic Association (EI-32531)

“Concerns about the Environmental Impact Study. We share this information to highlight a blind spot in the OEA’s approach to measuring the impact of additional train volume. Since OEA calculates blocked crossing time as a factor of average train length and average train speed, the methodology does not take into consideration that trains often come to a complete stop for several hours. Given that our data and experience suggests that 36% of trains are coming to a complete stop for an average of 68 minutes, this gap in the methodology results in a significant undercount of the impact on grade crossing delays. We would urge the OEA to identify a way to adequately measure the impact of additional volumes taking into account the current use case within the Houston Complex which is producing a substantial number of idling and stopped trains in our residential neighborhoods. We expect these changes would increase the environmental impacts noted in the sections on grade crossing delays, noise, air quality, environmental justice and cumulative impacts.”

OEA Response

OEA notes the commenter’s concerns about existing conditions related to grade crossing delay and stopped trains in Houston. OEA notes that the Applicants do not own any rail lines in Houston and would not control dispatching of trains in Houston under the Proposed Acquisition. As discussed in the responses to Summary Comment: Grade Crossing Delay and Summary Comment: Validity of Data, Methods, and Conclusions above, OEA conducted an analysis of grade crossing delay based on widely used methods, publicly available data on vehicular traffic, and information provided by the Applicants about the Applicants’ Proposed Acquisition.

Following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. This includes providing community leaders with options for reporting issues, such as blocked grade crossings. The Applicants state that these options would include CP’s “Community Connect” webpage and CP’s Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be

available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board's final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03).

Comment 452-3: Written Comment from the Eastwood Civic Association (EI-32531)

“In addition, we've noted that when the Applicants speak about their planned route through Houston they highlight a route coming through on either the Beaumont Subdivision or Houston Subdivision to the east, and exiting the Houston Complex on the Glidden Subdivision to the west. As such, this is the route and crossings that were considered by the OEA within the scope of the EIS. However, in an area as complicated as Houston, where Union Pacific would be directing any CP-KCS trains through the complex, evaluating a single pathway is insufficient to reflect the totality of the impacts within an already strained complex. We urge the OEA to review additional routes through the Houston Complex that could be used and the associated impact.”

OEA Response

OEA's analysis of impacts in Houston was based on routing information provided by the Applicants. OEA understands that dispatching of trains in Houston is and would continue to be determined, in part, by UP and BNSF, as the owners of most of the track in the Houston Terminal. For the purposes of its environmental analysis, OEA assumed that all new CPKC freight trains would move on rail line segment U-BEAU-01 comprised of the UP Houston and UP Glidden subdivisions. The results reported in the Draft EIS and Final EIS regarding impacts in Houston are based on a projected increase of 7.57 trains per day on rail line segment U-BEAU-01. To the extent that CPKC trains could be dispatched over alternate routes in Houston, rail traffic resulting from the Proposed Acquisition would be dispersed and fewer trains would move on U-BEAU-01. In that case, impacts reported in **Appendix H, Grade Crossing Safety and Delay** for grade crossings along U-BEAU-01 would be lower than reported in the Draft EIS and Final EIS because fewer than 7.57 additional trains per day would move on rail line segment U-BEAU-01. The results of OEA's air quality analysis are accurate regardless of where trains could be dispatched in Houston because all emissions resulting from increased rail traffic would occur within the HGB Ozone Nonattainment Area.

Comment 452-4: Written Comment from the Eastwood Civic Association (EI-32531)

“We recognize that the threshold for environmental analysis is 8 cars per day and the expected impact on the segment that includes Houston (Segment #149 - U-BEAU-01) does not meet that threshold at 7.57 trains per day. However, we question how this number was identified and what scrutiny it faced. If it was presented by the Applicants, we fear that it has been understated to avoid a more comprehensive review of the impacts in this area.”

OEA Response

See response to Summary Comment: Validity of Data, Methods, and Conclusions above.

Comment 452-5: Written Comment from the Eastwood Civic Association (EI-32531)

“Overall, as you move to the next stage of the environmental assessment we would request and urge the OEA to complete a supplementary EIS for the entirety of the Houston Complex and update your methodology to consider the impact of a high rate of stopped trains.”

OEA Response

Regarding stopped trains, see the response to Summary Comment: Grade Crossing Delay above.

Regarding the commenter’s request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R § 1502.9(d)(1) require agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none. In response to public comments, OEA has revised *Section 3.3, Grade Crossing Delay*, to include additional information about impacts of the Proposed Acquisition on emergency services, but as OEA found in the Draft EIS, and as confirmed by the additional analysis presented in the Final EIS, these impacts would be minor. Therefore, the additional information that OEA provided in the Final EIS does not warrant being issued as a Supplemental Draft EIS.

Comment 452-6: Written Comment from the Eastwood Civic Association (EI-32531)

“Canadian Pacific provides a letter of support and commits at least 5% of the project costs to support the City of Houston’s application to the FRA’s Railroad Crossing Elimination Grant for projects at Sampson/York (288229E, 288228X, 859516V and 859517C) on the West Belt/Galveston Sub and West Belt at Commerce (288129A).”

OEA Response

The commenter requests that the Applicants support and partially fund a proposed grade crossing separation project at Sampson Street and York Street and another proposed grade crossing separation project at Commerce Street as mitigation to address the impacts of the Proposed Acquisition. However, the Proposed Acquisition would not result in any increase in rail traffic at these crossings, and there would therefore be no Proposed Acquisition-related impacts at these crossings. As stated in the response to Summary Comment: Grade Crossing Delay above, OEA’s recommended mitigation measures must be related to the proposal before the Board. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 452-7: Written Comment from the Eastwood Civic Association (EI-32531)

“Canadian Pacific provides a portion of the project funding an underpassed required to create the grade separation necessary for a upcoming METRO Bus Rapid Transit (BRT) project to create grade-separation at Lockwood Drive and the Galveston Sub (#859523F).”

OEA Response

OEA understands that the commenter is requesting that the Applicants partially fund a proposed grade crossing separation project at Lockwood Drive as mitigation to address the impacts of the Proposed Acquisition. However, the Proposed Acquisition would not result in any increase in rail traffic at this crossing and therefore there would be no impacts at this crossing must be related to the proposal before the Board. Therefore, no additional recommended mitigation or changes to the Draft EIS are warranted in response to this comment.

Comment 452-8: Written Comment from the Eastwood Civic Association (EI-32531)

“As a condition of the trackage use through the Houston Complex, no trains longer than the minimum length accommodated in Englewood yard should be allowed to enter Houston to avoid the need to break trains within the complex.”

OEA Response

OEA notes that Englewood Yard is owned by UP. It is OEA’s understanding that KCS trains do not use Englewood Yard and that CPKC trains would also not use Englewood Yard. Therefore, requiring CPKC to limit train lengths through Houston as the commenter requests would not mitigate any impacts of the Proposed Acquisition. Further, such a requirement would not be within the Board’s authority to impose. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 452-9: Written Comment from the Eastwood Civic Association (EI-32531)

“Canadian Pacific should provide funding to a local entity, such as the Gulf Coast Rail District, to complete a study of the East Belt with the goal of eliminating at-grade crossings and associated blockages along the East Belt between I-45 and Tower 87. As part of the study, a review of the area where the East Belt and Galveston Sub meet should identify solutions that eliminate the excessive blockages occurring where both these lines meet.”

OEA Response

The commenter requests that the Applicants fund a study to identify grade crossings along the East Belt Subdivision and Galveston Subdivision as mitigation to address the impacts of the Proposed Acquisition. However, OEA does not expect that the Proposed Acquisition would result in an increase in rail traffic on rail lines in the East Belt Subdivision or Galveston Subdivision. Therefore, the Proposed Acquisition would not result in any impacts along rail lines in those subdivisions that would warrant mitigation. Therefore, no changes to the Draft EIS are necessary in response to this comment.

Comment 452-10: Written Comment from the Eastwood Civic Association (EI-32531)

“Canadian Pacific provides a portion of the project funding required for the grade separations identified as a part of the West Belt Improvement Study completed by the Gulf Coast Rail District in 2012 (see Exhibit C).”

OEA Response

The commenter requests that the Applicants partially fund grade crossing separations on rail lines in the West Belt Subdivision as mitigation to address the impacts of the Proposed Acquisition. However, OEA does not expect that the Proposed Acquisition would result in an increase in rail traffic on rail lines in the West Belt Subdivision. Therefore, the Proposed Acquisition would not result in any impacts along rail lines in that subdivision that would warrant mitigation. As stated in the response to Summary Comment: Grade Crossing Delay above, OEA’s recommended mitigation measures must be related to the proposal before the Board. Therefore, no changes to the Draft EIS or additional recommended mitigation are necessary or appropriate in response to this comment.

Comment 440-1: Public Meeting Comment from the Hennepin County Chair of the Board of Commissioners Marion Greene (EI-32760)

“Good evening. My name is Marion Greene. Good evening, and thank you for the opportunity to comment on this merger. My name is Marion Greene, and I'm the Chair of the Board of Commissioners of Hennepin County in Minnesota. Approximately 1.3 million people live in our county including in the city of Minneapolis. Canadian Pacific owns 76 miles of track in our county; the largest share of any railroad, as well as two large rail yards. Canadian Pacific has been an important member of our community and a good partner to Hennepin County. However, this proposed merger will exacerbate problems our residents already experience from Canadian Pacific's activities. Specifically, increased traffic on our local roadways, blocking crossings, increasing environmental threats to our residents, and adding noise to an already congested urban area. We believe that the data that OEA used to calculate the effects of the transaction in Hennepin County are flawed. Most importantly, the DEIS does not adequately account for the significant local impacts caused by increased truck traffic from CP's intermodal facility in Northeast Minneapolis. The city streets immediately surrounding this intermodal facility include active commercial corridors in racially diverse, densely populated neighborhoods full of pedestrians, cyclists, shoppers, and drivers. Already these streets are burdened by significant truck traffic in and out of the yard, including large volumes of ancillary vehicle movements. The merger will cause a material increase in this traffic blocking intersections, creating noise and pollution, and threatening the health and safety of residents, pedestrians, bicyclists, and drivers in these already busy corridors. These harms must be mitigated. However, Hennepin County has identified a total of 32 crossings along CP main lines in the county that would be directly and materially impacted by merger-related traffic increases with potential adverse impacts on emergency response times.

The DEIS does not address any of these crossings or the impact longer and more frequent trains will have on local communities in the county. The DEIS must address these concerns and include appropriate mitigation measures to protect our county. Finally, the CP-KCS

transaction will increase the volume of hazardous materials' traffic moving through Hennepin County including densely populated, urban areas. The likelihood of an incident and the risk of a serious outcome can be reduced through a variety of common-sense measures, mitigation measures that we request that these measures also be included in the final EIS and the record of decision. Thank you for your attention to these important concerns. Additional comments and details are forthcoming from Hennepin County and will be sent to your office in writing by October 14, 2022. Thank you.”

OEA Response

See responses to Summary Comment: Grade Crossing Delay, Summary Comment: Validity of Data, Methods, and Conclusions, and Comment 459-5 above. Regarding impacts related to increased truck traffic near intermodal facilities, please refer to *Section 3.5, Intermodal Facility Traffic*. OEA notes that the projected increase in rail traffic on rail lines in Hennepin County would not meet the environmental review thresholds for grade crossing delay.

Comment 526-6: Written Comment from Harris County Precinct 1 Commissioner Rodney Ellis (EI-32556)

Stalled Trains

There are 897 at-grade crossings in Harris County, many of them in poor condition. Already daily commutes, essential public services like waste removal and emergency response are complicated – sometimes for hours – by stopped trains. At one location in my Precinct where children already climb between stalled railcars to make their way home from school, the number of trains crossing through a residential area will increase to 51 a day if this merger is approved. At another location a little over a mile away, fire trucks have had to reroute three times in the last month at a critical crossing because of a stalled train. Over the last three years, the City of Houston has recorded over 3,000 such delays and re-routes of emergency vehicles – the inability to conduct emergency response constitutes a serious threat to public health. Disappointingly, the applicants have not voluntarily suggested any capital improvements projects to reduce these delays and reroutes.

OEA Response

OEA notes the commenter’s concerns regarding pre-existing conditions in Harris County. Regarding concerns related to emergency response and blocked grade crossings, see response to Summary Comment: Grade Crossing Delay above.

Comment 4-1: Written Comment from Sabrina Chan (EI-32131)

The merger of these 2 companies will negatively impact the area of Bartlett that I reside in by adding additional train and traffic delays. The increase in freight train traffic is already substantially adding congestion. There are limited routes in and out of my neighborhood which already restrict access of critical emergency vehicles. I am legitimately concerned about the repercussions of adding an additional 8 trains running through our town.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 8-1: Written Comment from Michael Pajeau (EI-32136)

I have serious concerns about the increase in train traffic that this merger is likely to cause. I live on the western edge of Bartlett. One of the rail lines that will see increased traffic is across the main east-west roads that were needed to use to reach the rest of Bartlett. It already makes it inconvenient for us to shop in our own community due to the likelihood of needing to wait for a freight train that has stopped across those roads. In addition, the rail line is between several large neighborhoods (including mine) and the nearest fire station. This poses a risk to everyone in those neighborhoods who may have to wait longer for first responders in an emergency. Please prevent this merger. Thank you for your attention.

OEA Response

Comment noted. See response to Summary Comment: Grade Crossing Delay above.

Comment 19-1: Written Comment from Dave Willis (EI-32143)

I am submitting my opposition to the “Authorization of the Proposed Acquisition of the Canadian Pacific/Kansas City Southern Railroad merger” currently being considered and reviewed by the Surface Transportation Board (STB). This proposed merger would create a 26,000 mile, single-line rail system connecting Mexico to USA to Canada. This proposed merger would also allow longer trains, up to a mile long, traveling through our local small city of Camanche, Iowa, from 8 trains per day to 22 trains per day, which includes much more noise, longer delays at rail crossings and delaying local Police, Fire and Emergency Services to serve residents on the South side of the railroad tracks that literally bisect our city into two sections. Police, Fire, and Emergency Services are staffed and housed on the North side of the tracks. With the increased length of trains, this will close all city rail crossings until train has cleared town. I strongly feel the Environmental Impact Statement (EIS) created by the Office of Environmental Analysis (OEA) grossly understates many vulnerable environmental areas in our area. Let’s not forget or overlook the vast numbers of waterfowl, wild life, and fish that is plentiful along these river banks along the shoreline of Camanche. I am requesting someone from your office physically come to our area to personally review these areas of concern. I would gladly walk/drive anyone who will come to better understand that there is a vast difference between looking info. up on computers and maps vs. physically experience what I am discussing. Plus, PLEASE closely review the EIS. What really sticks out to me in 3.12-6, Impact Camanche, the Draft states “No Impact to Camanche”. How many other locations in Iowa and all other involved locations were grossly overlooked ?? I retired 9 years ago from the University of IOWA, Facilities Management Department, Environmental Services as a trained and Certified HAZWOPPER, Asbestos Inspector & Supervisor.

OEA Response

OEA notes the commenter's concerns. OEA also notes that **Table 3.12-6** in *Section 3.12, Water Resources* refers specifically to potential impacts related to the filling of wetlands from adding new passing sidings and extending existing passing siding as a result of the Proposed Acquisition. Because extending the existing siding near Camanche, Iowa would not result in the placement of fill material in any wetlands, the table properly reports no impact. However, OEA did identify other impacts from the Proposed Acquisition in Camanche. Although the AADT for grade crossings in Camanche does not meet the threshold for detailed delay analysis, OEA provided information on the projected number of trains per day and estimated gate down time for those crossings in **Appendix H, Grade Crossing Safety and Delay**. *Section 3.11, Biological Resources* and *Section 3.12, Water Resources*, respectively, provide information on potential impacts on biological resources, such as wildlife, fish, and plants, and water resources, such as rivers, streams, wetlands, and floodplains. Those sections and the corresponding appendices also discuss the fieldwork that OEA undertook as part of its environmental review, including fieldwork in Camanche.

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 22-1: Written Comment from Dave Shutte (EI-32150)

As the individual directly responsible for the health and safety of our team members and the community we serve, I am extremely concerned with the recent US Surface Transportation Board's (STB) review and analysis of the Canadian Pacific-Kansas City Southern merger. It should be noted that the impact study on crossing delays only included 277 crossings and only crossings with more than 2,500 cars per day were studied. This means smaller cities like ours and many others were not included or considered. It would appear that the study was done to support the merger and not to truly show the overall impact to all of the cities and town along the entire route. Given the initial analysis indicated the train lengths potentially doubling, and train travel frequency increasing to three times greater than the current schedule, I am choosing to submit comments requesting the STB further investigate and analyze the potential hazards and delay that would adversely affect the CFD and the community members we serve that will be negatively impacted by these changes. Our city is divided by the Canadian Pacific Railroad Tracks and over 400 residences and 100% of our boat ramps to access the river are temporarily isolated from emergency services everytime a CP train passes through our city. In the past year alone, we recorded more than 100 emergency calls to these areas. I believe this merger would compromise the critical effectiveness of our Paramedics, EMTs and firefighters, and the health and livelihood of those who need timely response. This merger will significantly increase the frequency and duration of these periods of isolation from emergency services for this area of our city. For these reasons, the CFD is requesting that the STB require more data, analysis and transparency as it relates to the Canadian Pacific-Kansas City Southern merger. For the health and safety of our department, and the Citizens of Camanche, we believe this is a reasonable request.

OEA Response

The comment incorrectly states that “smaller cities like ours and many others were not included or considered.” While the traffic volumes at most of the grade crossings in the study area did not meet the Board’s thresholds for quantifying vehicular delay, **Appendix H, Grade Crossing Safety and Delay**, provides information for all grade crossings in the study area, including grade crossings in Camanche, Iowa. For further information on the delay threshold, see the response to Summary Comment: Grade Crossing Delay above.

Regarding emergency response, also see response to Summary Comment: Grade Crossing Delay above.

The comment regarding “train lengths potentially doubling, and train travel frequency increasing to three times greater than the current schedule” is an inaccurate characterization of the Proposed Acquisition. The average freight train lengths in Comanche, Iowa would be 10,241.4 feet for the No-Action Alternative and 8,544.3 feet for the Proposed Acquisition.

Comment 38-1: Written Comment from Jacquelyn Servaty (EI-32166)

One of the impacts stated for Houston, TX is increased delays at 30 crossings. This is very worrisome as the East End and Fifth Ward communities are already greatly impacted by stopped trains blocking crossings on major corridors. Our communities have been trying to fight this problem for years and are finally getting attention from the FRA. I worry that this merger will only magnify the issue of stopped trains/blocked railroad crossings in my community.

OEA Response

OEA notes the commenter’s concerns about existing conditions related to grade crossing delay in Houston. The delay results for each specific crossing, along with the data used in these calculations, are presented in **Appendix H, Grade Crossing Safety and Delay**. The Board will take these into account as appropriate when making its final decision on the Proposed Acquisition.

OEA notes that the Applicants have proposed additional voluntary mitigation following issuance of the Draft EIS that would address grade crossing delay impacts in the Houston area. This includes providing community leaders with options for reporting issues, such as blocked grade crossings. The Applicants state that these options would include CP’s “Community Connect” webpage and CP’s Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation*, to reflect these additional voluntary commitments.

Regarding stopped trains, see the response to Summary Comment: Grade Crossing Delay above.

Comment 632-3: Public Meeting Comment from Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association (EI-32759)

1968, Port Arthur, Texas, a young lady was pregnant. The train, the Kansas City Southern Rail train was on the track stretching all the way from the Port of Port Arthur into the -- the Texaco gate just sitting there. She's bearing a child, she's trying to hold on. But she lost that baby because she couldn't get to the hospital in time. This is what the people of the Fifth Ward are going to have to deal with. The trains are going to be longer. The trains are going to be moving backwards and forward through the day and the night.

OEA Response

See response to Comment 38-1 above regarding blocked crossings in the Fifth Ward.

Comment 632-4: Written Comment from Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association (EI-32759)

I think that there will be a serious increase in rail incidents in that community. I think there's going to be a serious impact on the flow of traffic in that community. And the flow of people, pedestrians walking, trying to go to and from school, the grocery store, their lives will be hindered because of the extension of those railroads merging together, and the long passage of those trains. Incidents will increase at the crossroads where the cars have to cross over because of the impatience. I think we definitely owe it to that community, the Fifth Ward, to hear the voices of the people, because they are the ones that will suffer because of the increased rail. The kids will suffer because they can't get to school in time or can't get home in time. We are putting people lives in danger by increasing the length of the train and the amount of time they could sit on the tracks. And not to mention the emissions that are going to come from these -- these diesel engines and what have you. So I urge you, let's hear the voices of the Houston people in the Fifth Ward.

OEA Response

See response to Comment 38-1 above regarding grade crossing delay and safety in the Fifth Ward.

Comment 564-1: Public Meeting Comment from Illinois State Senator Seth Lewis (EI-32756)

Hi there. Good evening, everyone. I'm Seth Lewis, State Representative 45th district, which represents five communities here that are going to be affected by this potential merger. On behalf of Illinois and the communities we represent, we want you to know that Illinois is a welcoming state. We want commerce. We know that railroads come to Chicago, we understand how important it is that we keep a vital infrastructure that we have commerce, and we employ people such as the railroad does and the ancillary jobs. However, this merger with what you're asking the residents to do, to volunteer to contribute to the greater good of the nation seems to be a little bit unjust. We have billions of dollars between these two companies. We have hundreds of millions and profit. Yet, the residents, I think that the current offer is \$10 million for mitigation. That is unjust, it's unfair. And we need the

Surface Transportation Board to look at what is fair to our communities. If you're going to approve this merger. Cars cannot sit for our for 15 to 20 minutes. As we know these trains will come in at 20 miles an hour into the yard. Our first responders will have to find alternate routes, which is unfair to those who need their help immediately. So I asked once again, if you're going to consider approving this merger, please think of the sacrifices that the residents in these communities have to wonder and least try and make adjust. Thank you very much.

OEA Response

Regarding concerns related to emergency response and blocked grade crossings, see response to Summary Comment: Grade Crossing Delay above. OEA notes the comment about the development of a negotiated settlement agreement between the Applicants and the City of Davenport, Iowa. Although OEA encourages railroad applicants to work with potentially affected communities to address potential impacts, the Board has no role in developing or approving settlement agreements.

Comment 565-1: Public Meeting Comment from Illinois State Senator Diane Pappas (EI-32756)

Good evening. My name is Diane Pappas. I'm an Illinois state senator for the 23rd district, which represents Wood Dale, Itasca, Medina, Roselle, Hanover, Park, and Bartlett, all of which are along the railroad line and is being considered as part of the merger. In addition to everything that my colleague just said, all of which I agree with, during the presentation, I heard a lot about averages along the entire system. But what we have here is just a very, very small part of the system.

OEA Response

Comment noted. Regarding OEA's analysis methods, see responses to Summary Comment: Validity of Data, Methods, and Conclusions above. See also response to Comment 564-1 above.

Comment 554-1: Filing Comment from the City of Camanche City, Iowa Administrator Iowa Andrew S. Kida (Filing ID 305446)

The increase in train traffic without constructing new overpasses will severely impact the response of ambulance, fire, and police services. Blockages of crossings delay access of emergency services to over 400 households and over 1,200 residents on the easterly side of the tracks. There are frequent blockages when ambulances attempt to answer a call in this area of the City. Delays in response to emergency needs are life and death. Camanche is a population of 4,572. This represents 25% of our citizenry who will have limited access to such services when the crossings are blocked. In the case where all crossings are blocked, these citizens would have no means of egress from the area except for the Mississippi River. This leaves the citizens with no viable option to evacuate or obtain emergency services. In addition, the City of Camanche provides river rescue response to neighboring areas. The typical blockage of tracks and an inability to provide services due to blockages will only

lead to more delays of vital emergency needs. These are compounded by the same issues noted under our Transportation portion above.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 554-2: Filing Comment from the City of Camanche City, Iowa Administrator Andrew S. Kida (Filing ID 305446)

The City has previously closed crossings at 6th Avenue and 8th Avenue. The remaining crossings are vital for Camanche residents to have ease of access to traverse to and from their place of residence to their place of employment. Camanche is a bedroom community. More than 60% of those residents are employed outside of Camanche. Nearly all of the residents on the easterly side of the tracks who are employed travel across the tracks to get to work. The City of Camanche has invested over \$1.5M in the last 4 years for street improvements in this area of the community in order to accommodate the travel needs of these residents. Also crossing the tracks at 4th avenue, as well as 3rd Street, is the Mississippi River Trail. This recreational trail designation is an attraction for Camanche. Increased train volume will negatively impact this alternative transportation and recreational route.

OEA Response

The traffic volumes at the grade crossings in Camanche, Iowa did not meet the Board's thresholds for detailed delay analysis; however, **Appendix H** presents basic data on delay and gate down time for all grade crossings in the study area, including the grade crossings in Camanche. For further information on the delay threshold, see the response to Summary Comment: Grade Crossing Delay above. OEA notes the commenter's concern regarding the Mississippi River Trail. Because this trail has been located near an operational rail line for many years, OEA does not expect that the Proposed Acquisition would adversely affect recreational use of the trail. Further, pedestrians and cyclists do not queue at trail crossings the same way motor vehicles queue at grade crossings. As such, the average gate down time measures, which are shown in the EIS for adjacent vehicle grade crossings, are not appropriate for estimating delay for these trail crossings. The average number of trains per day would increase under the Proposed Acquisition, increasing the chance that trail users would encounter a passing train each day. However, the average train length would decrease under the Proposed Acquisition, which would reduce the delay (wait time) for a trail user if they do encounter a train.

Comment 554-3: Filing Comment from the City of Camanche City, Iowa Administrator Andrew S. Kida (Filing ID 305446)

In addition, Camanche is in a unique locations where the Canadian Pacific line travels north to Clinton where it intersects with the Union Pacific rail line. The UP line establishes dominance over traffic causing CP to stop in Camanche and block crossings. The 4th Avenue crossing in Camanche is frequently blocked by trains of current length. Increasing

those train lengths will block more crossings in the city. Compounding the situation is the rotating bridge on the UP line which may restrict UP traffic due to barge traffic on the Mississippi River. All of these circumstances lead to regular traffic delays which will only worsen with higher volume and longer trains. The study does not adequately address these unique circumstances in Camanche. See attached image for details.

OEA Response

The traffic volumes at the grade crossings in Camanche, Iowa did not meet the Board's thresholds for detailed delay analysis; however, **Appendix H** presents basic data on delay and gate down time, for all grade crossings in the study area, including crossings in Camanche. For further information on the delay threshold, see the response to Summary Comment: Grade Crossing Delay above. Regarding the commenter's concern about train lengths, OEA has revised *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay** to include additional information about gate down time associated with different types of freight trains, including shorter bulk freight trains and longer intermodal, automotive, and manifest freight trains. The Applicants project that the average train length would decrease, not increase, on many rail lines in the study area, including the rail line that passes through Camanche, as a result of the Proposed Acquisition.

Regarding stopped trains, also see the response to Summary Comment: Grade Crossing Delay above.

Comment 93-1: Public Meeting Comment from Austin Pruett, Mayor, Camanche, Iowa

Good evening. My name is Austin Pruett. I am here on behalf of the City of Camanche. I am the mayor. As of a town of approximately 4600 people, we have 1200 residents that are going to be impacted by this merger. There's 409 houses on that side of the railroad tracks, with their only point of egress being the Mississippi. Sorry. We will not be able to provide adequate emergency services to our residents and we have a very elder community. So this is a large concern.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 567-2: Public Meeting Comment from the Coalition to Stop CPKC (EI-32756)

STB conducted no analysis of the adverse impacts of the proposed merger on the ability of first responders and emergency vehicles to serve the coalition communities.

OEA Response

See response to Summary Comment: Grade Crossing Delay above.

Comment 568-1: Public Meeting Comment from Itasca, Illinois' Village Administrator Carie Anne Ergo (EI-32756)

Carie Anne Ergo. Good evening, and welcome to Itasca My name is Carie Anne Ergo I serve as village administrator in Itasca and as chairperson of the Coalition to Stop CP KC, representing the communities of Bartlett Bensenville Elgin Itasca, Hanover Park, Roselle Schaumburg Wood Dale in DuPage County, all of whom are here tonight. Our Communities total 300,000 plus residents, but because of our proximity to Chicago and O'Hare International Airport, we have millions of commuters who traverse our roadways. Our communities are full of schools, small and large businesses, community centers, hospitals and senior centers. And when we first heard that Canadian Pacific was looking at increasing freight and metros commuter track for our communities, we were worried and when we learned that it was part of a \$31 billion dollar merger that would create the only continuous rail system linking Mexico to Canada. We united. This line cuts right through downtowns. Most days our communities see only two freight trains. If approved, we could see 14 freight trains daily running through our communities in just three years. What will they do to ambulance runs? Police rushing to service calls, parents taking their children to school or businesses making deliveries? You don't know because nobody at the STB bother to visit our towns or consult a thing single local authority. We are communities which exist on small taxpayer funded budgets facing Class I railroads. And I can't help but feel we are being railroaded. We do not have big corporate dollars to hire dozens of lobbyists and paid for expert testimony, like the big for profit railroads, for our residents. We are doing everything we can to point out the actual impact the merger would have in measurable harm to our communities and this region. Today, we will present facts from our own railroad crossing delay analysis that shows that CPE what they're proposing will have life altering and life threatening impacts in our communities. Up to 23,000 additional vehicles could be blocked daily, including cars, buses, trucks, and yes, emergency vehicles. This is not negligible, minor or temporary. As you indicated in your draft EIS. We stand here with the backing of the Illinois federal delegation, Senators Durbin Duckworth and Congressman Krishna Murthy, who share our concern about this merger. We stand here United when we say the draft EIS did not do its due diligence and considering our community's concern. So, in closing, I respectfully submit this railroad crossing delay analysis for your review, ask that you hear our concerns and conduct additional analysis of the environmental impacts on our area before any further action is taken.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

The comment states that “most days our communities see only Two freight trains. If approved, we could see 14 freight trains daily running through our communities in just three years.” This is an inaccurate characterization of the Proposed Acquisition. The average number of freight trains per day currently is 3.2. In five years (not three), the expected number of freight trains per day under the Proposed Acquisition is 11.2 (not 14).

The comment states that “up to 23,000 additional vehicles could be blocked daily, including cars, buses, trucks, and yes, emergency vehicles. This is not negligible, minor or

temporary.” The unit of analysis (e.g., intersection, community, coalition area, entire study area) is not clear in this comment and the 23,000 does not match any of the values in the Draft EIS or Final EIS. Based on the delay analysis in the Draft EIS, and using DuPage County as the unit of analysis, the total delayed vehicles per day at grade crossings that exceed the Board's threshold for would be 5,010 under the No-Action Alternative and 6,546 under the Proposed Acquisition.

Regarding the railroad crossing delay analysis submitted by Carrie Anne Ergo, refer to the response to Summary Comment: Validity of Data, Methods, and Conclusions above.

Regarding consultation, OEA notes that OEA conducted extensive outreach to federal, state, local, and tribal agencies, and with the public, throughout the NEPA process. **Appendix A, Public Involvement** and **Appendix B, Agency and Tribal Consultation** collectively include more than 550 additional pages of information that OEA was unable to include in the body of the Draft EIS. Those appendices describe the outreach that OEA conducted to federal, state, local, and tribal agencies, and interested parties and members of the general public during the NEPA process and the many opportunities that OEA provided for public involvement. During the scoping process for the EIS, OEA sent correspondence seeking input on the environmental review to over 100 federal and state agency offices, as well as more than 400 local governments in 9 states, including the Village of Itasca, the City of Wood Dale, the Village of Bartlett, the Village of Hanover Park, the Village of Bensenville, and DuPage County in Illinois. OEA held eight state agency consultation meetings during the scoping period, including a call on December 2, 2021, to which Illinois state agencies were invited. OEA also met by conference call with the commenter on April 4, 2022, to discuss the environmental review process and held an in-person public meeting in the Village of Itasca on September 12, 2022, to hear comments from elected officials, government agencies, and members of the public.

Comment 569-1: Public Meeting Comment from Itasca, Illinois' Mayor Jeff Pruyn (EI-32756)

Good evening. My name is Jeff Pruyn, and I have the privilege of being the mayor of Itasca. Thank you all for coming here. When a mayor takes its oath of office we recite in part, I will equally fairly and impartially, to the best of my ability and skill exercised the trust reposed in me. Now those words, exercise the trust presupposed in me, mean that those who have voted us as mayors into office, trust us to do what is best for them. As a father, a husband, uncle, friend, and Mayor, the number one thing for me is safety, safety for those I love, care about and put their trust in me. And as the mayor, my number one concern for my community is safety. When we first heard about this potential merger, all I could think about was the dangerous jeopardy we would all be in with all these additional freight trains. In Itasca we have four at-grade crossings. Our police and fire station is on the south end of the tracks. But the majority of our community is on the north side of the tracks. Under the proposal, freight trains could be more than two miles long. And it's reported that the frequency could increase from three times a day to eight and to as many as 14 times a day. And in Itasca, one of these longer freight trains could block all four of our at-grade crossings at the same time. In a few minutes, you will hear from our communities, police chiefs and fire chiefs who will provide testimony on safety. Still, I have one important thing in this

draft EIS, you completely ignored and looking at the safety of our communities, and how this first of its kind merger would harm our community and others. Tonight, you will hear testimony from our communities on why you shouldn't have ignored our communities. I speak for our residents, business owners and community leaders and Itasca when I say I strongly oppose this merger as proposed because of safety concerns.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

The comment states that “under the proposal, freight trains could be more than two miles long. And it's reported that the frequency could increase from three times a day to eight and to as many as 14 times a day.” This is an inaccurate characterization of the Proposed Acquisition. The average freight train lengths in Itasca would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition. The average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition.

Regarding the comment that “longer freight trains could block all four of our EC grade crossings at the same time,” this is a pre-existing condition as 10,000-foot freight trains are currently using the tracks and could block all 4 crossings. Under the Proposed Acquisition, the average train length would decrease, reducing the chance that all 4 crossings would be blocked at the same time.

Regarding the comment that OEA “completely ignored and looking at the safety of our communities,” please refer to the discussion in *Section 3.2, Grade Crossing Safety*, and **Appendix H** where OEA quantified the safety performance of grade crossings using the predictive method from the 2019 FRA *GradeDec.Net Reference Manual*.

Comment 571-1: Public Meeting Comment from Dupage County Director of Transportation and County Engineer Christopher Snyder (EI-32756)

Thank you. Good evening, everyone. My name is Christopher Schneider and I'm the Director of Transportation and county engineer for DuPage County and have been doing that for the last 10 years. Before we receive the draft EIS the coalition initiating a time delay study hiring a reputable traffic engineering firm with specialized expertise in this area. The time delay study relied on upon actual field observations of freight train down gate times, noting that on multiple occasions, only two freight trains were observed on any given day. We looked at average daily traffic volumes at grade crossings, and we projected the impact of the proposed merger using a fundamental traffic engineering delay model. The model determines the minutes of delay due to an isolate blockage, a train passing, taking into account the cumulative effect of vehicle arrivals, as well as departures on delay. We're here to present evidence from this time delay study to prove the draft EIS is a mischaracterization of what will be the actual impact for the hundreds of 1000s of vehicles that crossed these tracks every day between Elgin and Bensenville. The actual impacts are astounding. Our study evaluated familiar measures to all of us, the time gates are down the increase the number of blocked vehicles, and finally the increase in blocked vehicle delays aggregating

the results of each of the 30 crossings. The proposed merger will result in the following impacts an increase in gate downtimes of 20 and a half to 36 hours each day. An additional 15,000 to 23,000 vehicles blocked each day, including cars, trucks, school buses and emergency responders. An additional 162 to 1285 hours waiting a great crossing each day, not being at home with your family tardy for the kids soccer practice missing a doctor's appointment, and most critical delayed emergency responders. The draft EIS conclusion that the proposed merger would have only a minor impact on increased delay x rayed crossings is flat out wrong. Our study results clearly indicate quite the opposite. If approved, the merger will have a significant impact blocking an additional four to 6 million vehicles each year.

OEA Response

Regarding the delay study commissioned by the Coalition, refer to the response to Summary Comment: Validity of Data, Methods, and Conclusions above. As discussed in that response, OEA identified numerous methodological issues with the Coalition's study. The results of OEA's analysis of grade crossing delay, which was based on widely used methods, publicly available traffic data, and information provided by the Applicants about the Applicants' Proposed Acquisition, are reported in *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**.

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 573-1: Public Meeting Comment from City of Wood Dale, Illinois' Police Chief Greg Vesta (EI-32756)

Good evening. My name is Greg Vesta. I am currently the Police Chief for the City of Wood Dale, Illinois. Thank you for allowing me to speak tonight regarding the impact the proposed merger would have on our public safety. Similar impacts would not only be felt in Wood Dale, but across the entire corridor. So a .7 second delay for the average car doesn't seem very reasonable for a resident, commuter, or a public safety professional to be concerned about. Right? But for the 24,500 vehicles that are crossing our railroad tracks on Irving Park Road and Wood Dale every single day, that's the same as 285 minutes, or almost 5 hours delay, that are experienced at our current rail levels. For the thousands of cars that pass when there are no trains crossing the tracks, they might not feel the impact that our residents will feel with the significant increase in freight traffic, but tonight I'm not seeking about the average car. My concern is our police cars. My concern is the ability of our first responders to be able to respond to life-threatening emergencies that our residents experience on a regular basis. My concern is the safety of our officers who may be left to fend for themselves while their backup officer is sitting waiting for a tanker or a cargo container to cross the crossing in their town so they can resume their route to assist their officers. I don't have to go far back in the memory banks for many examples of this. Just in February of 2022, our officers were given emergency dispatch tones to respond to a resident on the south side of the tracks. It was for a gun threat. The cars on the north side of the tracks and the supervisor were delayed by a freight train for 4 minutes and 26 seconds while an officer was alone with a reportedly armed subject. Once the backup officer arrived 1

minute later, the officers that were north of the tracks were still outnumbered by suspects until they cleared the freight train over 3 minutes later. And then just a couple of weeks ago, in August of 2022, our officers responded to a report of several subjects fleeing a local gas station wearing full face masks and believed to be committing a robbery or a burglary in the area. The officers that were responding had cleared the building after finding some of the suspects. They were stopped at a train crossing for over 7 minutes and 15 seconds when two freight trains failed to clear the intersection. So in addition to these specific incidents, a review of our 2021 train delays that were documented includes delays for multiple minutes for domestic batteries, burglaries, mental health crises, accidents, suspicious persons, fights, and many other incidents; so when precious seconds count in saving a life or confronting a threat to our residents, the minutes waiting for the trains to pass feel like hours for our officer. A significant increase in train traffic is only going to result in many more of these incidents that may not be resolved safely due to the inability of responding in a timely manner. So, while the railroad stated in a recent opinion article in the newspaper that the merger would result in less populated and improved safety on the roads for everyone, for the residents that live in these communities, delayed emergency response will not become safer. So with that, I urge you to think -- not think about the average commuter or the average responder, but consider what would be the real life delays for our residents and the communities if this is allowed to proceed.

OEA Response

OEA notes the commenter's concerns about existing conditions related to grade crossing delay in the City of Wood Dale, Illinois. Regarding the potential impacts of the Proposed Acquisition on grade crossing delay, including impacts on emergency response, see response to Summary Comment: Grade Crossing Delay above.

OEA notes that, following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures to address potential impacts, including grade crossing delay impacts, in communities in the Chicago area with which the Applicants have been unable to reach agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). Those commitments include the commitment to work with those communities and Metra, the rail line owner, to install a predictive mobility system to deliver advanced notice of blocked grade crossings to citizens and emergency service providers, install advanced warning signs at strategic locations to give drivers information about occupied crossings, and install PTC wireless technology tie-ins at grade crossings adjacent to Metra rail platforms. The Applicants have clarified that the Applicants would be responsible for funding these measures, which would be subject to approval by Metra, as the owner of the track. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary mitigation commitments.

To facilitate compliance with VM-Community-03, the Applicants shall establish a Community Liaison to consult with leaders of Chicago area communities referenced in that mitigation measure (the Village of Itasca, the Village of Bensenville, the City of Wood Dale, the Village of Roselle, the Village of Schaumburg, the Village of Hanover Park, the Village

of Bartlett, the City of Elgin, and DuPage County). The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the approval of the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to mayors and other appropriate local officials in each community listed above (MM-Community-04).

Comment 574-1: Public Meeting Comment from Village of Roselle, Illinois' Police Chief Steve Herron (EI-32756)

My name is Steve Herron. I am the Chief of Police with the Roselle Police Department. I thank you this evening for allowing me an opportunity to speak. I know you're going to talk -- we're going to hear a lot about testimony about congestion at the crossings and of the trains. I am here to talk about something a little bit differently, is what happens when the road is blocked, what do cars do. We have seen it routinely. What they do is they find the path of least resistance, and what I mean by that is that they're going to try to find the way around the blockage through our side streets and, in a way, to find a path, again, to the road that they were going on. As you can see from our map, most of where we go is Roselle Road, Roselle Road north or south, and Irving Park Road east and west. When a car comes north on Roselle Road and is blocked by the train, they're going to find one of the side streets. They're going to find Main Street, Central Avenue, Maple. When they're coming down Irving Park, they're going to wind up looking for Maple Avenue because that's a natural route back over to Roselle Road. Well, what does -- where does that take them? That takes them directly into our residential neighborhoods. That takes us into our library parking, our baseball fields, our skate parks, the places where our kids play, the places where our families walk their dogs, walk their families, they take an evening stroll, they go out on bike rides with their kids. So, what we're going to wind up seeing is we're going to see maybe a frustrated driver -- because I've been there myself -- a frustrated driver waiting for a train, finding an avenue to get around the train because I'm late or because of another reason, I'm going to be in a hurry, I'm not going to know the area, which is just a disaster waiting to happen.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

OEA notes the commenter's concerns regarding the potential for delays to lead to drivers seeking alternate routes. Based on the delay analysis presented in the Final EIS for Roselle Road, the average delay per stopped vehicle is 0.6 minutes under the No-Action Alternative and 0.6 minutes under the Proposed Acquisition. Both conditions reflect the same level of delay per stopped vehicle, so any diversions due to a blocked or delayed crossing would likely be similar under both the No-Action Alternative and Proposed Acquisition.

Comment 575-1: Public Meeting Comment from the Village of Itasca, Illinois' Director of Police Robert O'Connor (EI-32756)

Good evening. My name is Robert O'Connor, and I am the Director of Police for the Village of Itasca. I want you to imagine a square box, and near the bottom of the quarter of that box, there is a line that cuts through it. Below that line is our one police station. Above that line are our schools, the majority of the residents, and the bulk of vehicular traffic within the municipality. Imagine our village is bifurcated with what could be as long as three and a half minutes by one freight train. Now, take that delay and multiply it by at least 8, if not 14, trains per day. This is a police responder's nightmare. This side of our village does not represent the large amount of calls for service we take. In a two-year time period from August 30th, 2020, to August 30th of 2022, the Itasca Police Department had nearly 13,000 calls for service. Of those, nearly 60 percent were north of that rail line. There were hundreds of times when those calls for service were delayed by Metra and freight trains, and that's just for two freight trains per day. Imagine if we have up to 14 and then nearly 3 miles long. As Mayor Pruyn stated earlier, we have four at-grade crossings in Itasca. One of these new freight trains could cover all four at-grade crossings at once. When you consider this railroad merger, please think safety first.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

The comments that a grade crossing could be blocked by “three and a half minutes by one freight train” and “if we have up to 14 [trains] and then nearly 3 miles long” are inaccurate characterizations of the Proposed Acquisition. The average freight train lengths in Itasca would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition, which equates to a gate down time of 1.0 minute for the No-Action Alternative and 1.2 minutes for the Proposed Acquisition. Further, the increase in the number of freight trains per day would be 8 (not 14) under the Proposed Acquisition. The longest freight trains are approximately 10,000 feet, which is less than 2 miles long, and these trains would move through the area under both the No-Action Alternative and Proposed Acquisition. Only the 10,000-foot freight trains would have the potential to block all four grade crossings in Itasca at the same time and, as noted above, this is a pre-existing condition because trains of this length are already running through these communities.

Comment 576-1: Public Meeting Comment from Village of Bensenville, Illinois' Police Chief Dan Schulze (EI-32756)

Hi. My name is a Dan Schulze. I am the Chief of Police for the Village of Bensenville. Currently, we have about three trains that come through our town each day. Like most towns in the Midwest, our town is a small town. It's about 5.5 square miles and about 18,000 people. The railroad track cuts our town right in half in which the police station is on one side of the tracks, just like Itasca. Currently, when a train does pull into the yard, it sits for a moment, probably exchanges some paperwork and clears some tracks. The traffic will back up about four blocks down York Road and onto Green Street and right past my office. I notice the backup quite often, and that's only three trains a day. We're going to currently go

up to about 14. You can see the chart behind has got it bifurcating the town and cutting it almost in half, so those trains when they pull in, they stop us. The Village of Bensenville has four at-grade crossing, just like Itasca. They're about a block apart, and one of them is about two blocks. In preparing to speak to you today, I looked at the GAO's report from 2017 to find out what the average train in America is and found out it was about 5500 feet long. 5,280 feet in a mile, so that puts it at just over a mile. It would easily block all of our grade crossings and probably bleed over into a good deal in Itasca as well. Those trains would be going to 14 or 18 a day as Chief O'Connor has said. It would block all of our crossings and keep the police department on one side and half of our population on the other. I would encourage you to take that into consideration because there is only one other way for us to get around. We'd have to go all of the way to the edge of our town and go over the Route 83 overpass, but there is only one exit and one entrance. I'm on -- of course, it's the opposite end of the police -- that the police department is located on. Thank you for your time today.

OEA Response

OEA notes the commenter's concerns regarding current train operations near Bensenville Yard and the existing effects of those operations on nearby grade crossings. This is an existing condition that is not related to the Proposed Acquisition. Also unrelated to the Proposed Acquisition, Bensenville Yard is currently being reconfigured as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. This reconfiguration will include lengthening the Bensenville Yard receiving tracks to accommodate longer trains. The longer receiving tracks will allow for switching and staging to occur within the yard and will reduce the need for trains to stop on the mainline to be broken into shorter blocks. OEA expects that the reconfiguration of Bensenville Yard will be completed before 2027, which is the analysis year that OEA used for this EIS. Because the results reported in *Section 3.3, Grade Crossing Delay* for the No-Action Alternative and the Proposed Acquisition are for the analysis year 2027, the reconfiguration of the Bensenville Yard has been accounted for in those results.

The comments that trains will "go up to about 14" and "trains would be going to 14 or 18 a day" are inaccurate characterizations of the Proposed Acquisition. The average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition.

Regarding emergency response, refer to the response to Summary Comment: Grade Crossing Delay above.

Comment 577-1: Public Meeting Comment from Elgin, Illinois' Police Chief Ana Lalley (EI-32756)

My name is Ana Lalley, and I am the Police Chief for the City of Elgin. Thank you for allowing me to provide a perspective regarding police services specifically as it relates to the City of Elgin. The Elgin Police Department serves and protects nearly 115,000 residents in the city covering 38 square miles. While the issues I will be describing are Elgin specific, the other Coalition municipalities share similar concerns, although the specific impacts in their respective communities may be different.

A police officer's timely and safe response is paramount. Seconds, not minutes, can make a difference in the outcome. The Elgin Police Department's concerns can be predicted with reasonable certainty. There may be many other unintended consequences or concerns that will arise that cannot be anticipated. Predictable concerns allow the Elgin Police Department to create mitigation strategies when there are known variables, such as the speed of the train or the times in which the trains will be passing throughout the city. But even with this information, there is no guarantee these strategies will mitigate delay responding to a call for help when a 2-mile freight train is blocking four of the city's six river crossings that link the east and west sides of the Elgin. This line goes right through high-traffic, high-density commercial areas. Delays in vehicle and possible pedestrian traffic will occur as a 2-mile long freight train simultaneously will block four of the six bridge crossings linking the Elgin's east and west sides of the Fox River. The downtown city streets are not designed for significant backups that will be regularly occurring at all four crossings in the downtown area. The presence of such freight trains will not only generate high traffic density negatively impacting vehicles and pedestrians, but also public safety vehicles needing to travel to either the east or west side of Elgin responding to calls for service. The safety of both community members and first responders will be placed in an uncertain position by the elongated freight trains simultaneously blocking the city's river crossings. Although not every call for police service warrants an immediate response, it is impossible to anticipate when and where the time sensitive or high priority calls will occur. This can result in responding police units being delayed by crossing trains, thereby increasing response times and needed assistance or service. While police officers rely on support from other police officers located throughout the city for backup, during significant high priority calls, an entire shift of police officers can be depleted when responding to an incident. In situations requiring additional assistance and resources, this delay in providing an adequate police response because of a freight train blocking the river crossings places both officers and community members in precarious situations. Elgin responds to approximately 150 calls for service per day on the average. Some of these calls require multiple officers and resources to resolve. Having four train tracks crossing and blocked multiple times throughout a 24-hour period will have a significant impact on the officers' safety. The police department's headquarters on the city's east side of the Fox River is the central location's resources, such as an armored vehicle, specialized equipment, and other specialized vehicle responses. More than half of Elgin's population is now located west of the Fox River. Delays caused by these long freight trains will impact the immediate response of the resources being deployed into an incident that can cause serious consequences. As the nature of police and fire services is not predictable, any efforts to eliminate potential risks should be taken. Thank you.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

The comment asserts that “downtown city streets are not designed for significant backups that will be regularly occurring at all four crossings in the downtown area” without substantiation. Delays and queues are directly correlated with gate down times, which are computed based on train lengths and train speeds. The average freight train lengths in Elgin would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed

Acquisition. Assuming train speeds remain the same under the No-Action Alternative and Proposed Acquisition, the gate down time per train would decrease under the Proposed Acquisition, which would reduce the amount of delay and queue length per train.

The comment states that “safety of both community members and first responders will be placed in an uncertain position by the elongated freight trains simultaneously blocking the city's river crossings.” This is an inaccurate characterization of the effects of the Proposed Acquisition. As noted above, the average freight train lengths in Elgin would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition.

Comment 94-1: Public Meeting Comment from Dave Kaptain, Mayor, Elgin, Illinois (EI-32756)

Hello. I'm David Kaptain, Mayor of the City of Elgin, Illinois.

Elgin is a river city of 115,000 people divided by the east and west by the Fox River. All 50,000 people live on the east side; 68,500 people live on the west side. We have six bridges, and four of those river crossings are located within the heart of our city and our historic downtown. These four crossings are within one mile. The concentration of river crossings within a small geographic area predictively generates a great amount of vehicular traffic by residents, businesses, and visitors seeking to access Elgin's east and west sides. With the Milwaukee West line running parallel to the river on the west bank, traffic at these bridges is completely halted when a freight train or a Metra train passes through our city. The proposed CP-KCS merger and its plan to have openly commonplace freight trains of 2 miles or longer in length and up to 8 to 14 trains a day will entirely prevent east-west vehicular movement at Elgin's four crossings.

OEA Response

See response to Comment 577-1 above.

Comment 578-1: Public Meeting Comment from Village of Bartlett, Illinois' Police Chief Geoffrey Pretkelis (EI-32756)

Hi. Good evening. My name is Geoffrey Pretkelis, and I serve as the Chief of Police for the Village of Bartlett. Thank you for this opportunity. The proposed Canadian Pacific acquisition of Kansas City Southern would have a major impact on public safety within the Village of Bartlett. The public safety's first priority is and should always be to protect the interests and the needs of our residents and businesses. Increased rail traffic and average freight train lengths would dramatically, if not fatally, impact emergency response if multiple and at-grade railroad crossings were to be simultaneously blocked during normal and routine daily train operations.

There are several at-grade railroad crossings within the Village of Bartlett. It is estimated that the daily freight rail traffic would increase by 18 to 14 freight trains on the Milwaukee District West Metra line. It is also estimated that the average freight train lengths would increase anywhere from approximately 2 to 3 miles long. There is a great potential for some or all of our at-grade railroad crossings to be blocked at the same time creating delays of approximately a minute and 47 to a minute and 48 seconds due to new freight rail traffic.

This will increase hazardous bottleneck choke points for police and fire personnel responding to emergency situations at Bartlett Elementary School, Independence Center for Early Learning, Eastview Middle School, 3,180 affected residential units, and several businesses located north of the railroad tracks -- During at-grade railroad crossing blockage, do emergency personnel wait for the train to pass, or do they attempt to drive further down to use another railroad crossing and hope that the train is not blocking that location as well? When time is of the essence, you can't afford to gamble on our emergency response. Let's take the guessing out of it. If the merger is approved, as part of mitigation efforts, the Village of Bartlett and Fire Protection District are requesting Canadian Pacific to provide train track and technology to track the movement of freight trains. This technology would greatly reduce emergency response delays and allow assess for emergency personnel to have realtime information to know when the railroad crossings are being blocked. Thank you.

OEA Response

Comment noted. The following comments are inaccurate characterizations of the Proposed Acquisition:

- “Increased rail traffic and average freight train lengths.”
- “daily freight rail traffic would increase by 18 to 14 freight trains.”
- “average freight train lengths would increase anywhere from approximately 2 to 3 miles long.”

The average freight train lengths in Bartlett would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition. The average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition, which is an increase of eight freight trains per day (not 18 to 14).

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above. Regarding the request for technology to assist emergency responders, OEA notes that the Applicants voluntarily proposed additional mitigation measures following issuance of the Draft EIS to address potential impacts in communities in the Chicago area with which the Applicants have been unable to reach agreements (DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg). Those commitments include the commitment to work with those communities and Metra, the rail line owner, to install a predictive mobility system to deliver advanced notice of blocked grade crossings to citizens and emergency service providers, install advanced warning signs at strategic locations to give drivers information about occupied crossings, and install PTC wireless technology tie-ins at grade crossings adjacent to Metra rail platforms. The Applicants have clarified that the Applicants would be responsible for funding these measures, which would be subject to approval by Metra, as the owner of the track. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary mitigation commitments.

Comment 579-1: Public Meeting Comment from Wood Dale, Illinois' Fire Chief James Burke (EI-32756)

Good evening. My name is James Burke. I am the Fire Chief of the Wood Dale Fire Protection District. I am here to explain why the District is against the proposed merger and to try and explain why the Draft EIS report completely ignores Wood Dale's critical EMS and fire needs. The most critical and most often used at-grade crossing in Wood Dale is located at Wood Dale Road and Irving Park Road. This crossing is unique in that it -- the tracks cross both Irving Park and Wood Dale Road on an angle within a hundred feet of each other. So the crossing lies in the center of our District. We have one fire station on the north that houses our single paramedic unit and one fire station on the south that houses our single engine company. On average, we run about 2700 calls a year. Both the engine company and paramedic unit respond to all calls together throughout the District. What that means to us is that of the approximately 2700 calls annually, one piece of equipment needs to cross the tracks on every single call. The EIS study does not address an additional 8 to 14 freight trains and the increase of length of trains up to 9,000 feet or longer and its impact on emergency response. A single 9,000 foot train is long enough to block all three at-grade crossings we have in Wood Dale at the same time. Instead of addressing emergency response times as they relate to emergency services, the EIS study talks about the average delay per vehicle, which is meaningless for a first responder. With the additional freight trains of some stated up to 14 in number, the gates will be down for an additional 90 minutes a day it is estimated. The National Fire Protection Agency standard for a response is 5 minutes or less for EMS calls and 5 minutes 20 second for non-EMS calls. The DEIS study states that the impact on emergency vehicle response times is -- and I quote -- minimal given the fact that there are alternate routes that can be used. Currently, the closest overpass for use by first responders that we have available to us is located on Illinois Route 83, which is on the far east side of the District's border. Utilizing this overpass is not realistic is that it more than doubles, and in some case triples, both response times and travel distances to the farthest points north and south of the District. To suggest that these delays are minimal is simply untrue. As was mentioned earlier, the EIS committee listed 28 emergency grade crossings in their study. It does not list Wood Dale Road and Irving Park Road crossing as an emergency vehicle crossing or recommend any mitigations for this intersection even though it has the highest car volume in the county and given the fact that the Wood Dale Fire District crosses those tracks over 2700 times annually on emergency responses. Mutual aid from neighboring towns has been mentioned as a possible way to provide needed coverage to our residents in the event of train noise. Let me start by explaining what mutual aid is and what mutual aid is not. Mutual aid is designed to help neighboring towns during a large scale emergency event such as a fire, weather event, or a mass casualty incident that exceeds the normal day-to-day ability of fire department resources. Mutual aid is not designed to address problems such as train delays by sending our neighboring fire department staff and resources into our community in lieu of or in addition to our own staff and equipment. It is incumbent upon us as the District to address the issue of train delays and solve the problem without overburdening our neighbors as the taxpayers in those communities are the ones paying for the service. Realistically, the fire service has two options for mitigation to ensure that crews can reach those in need in a timely manner. Replace the grade crossing at Wood Dale Road or provide us with the funding to duplicate

equipment at both of our stations, including staffing and equipment. Timely response to EMS calls, structure fires, hazardous materials, technical rescues, and the patients trapped in vehicles are paramount to a successful outcome. Without some sort of mitigation, the proposed merger is going to ultimately cause slides by delaying our response to critical 911 calls. Thank you for your time.

OEA Response

The commenter states that the “EIS study does not address an additional 8 to 14 freight trains and the increase of length of trains up to 9,000 feet or longer and its impact on emergency response.” Regarding the “additional 8 to 14 freight trains,” the EIS explains that the average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition, which is an increase of 8 freight trains per day, not 14 trains per day, as the commenter claims.

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

In addition to the average delay per vehicle, the Draft EIS and Final EIS provide the average gate down time, which approximates the total potential delay for an emergency vehicle that can bypass a queue at the grade crossing. The average length of the emergency response alternative routes (as defined by the parameters described in *Section 3.3* of the EIS) for the two public grade crossings analyzed in Wood Dale is 3.15 miles; both alternative routes utilize existing grade separated crossings.

Regarding a grade crossing at Wood Dale Road and funding to duplicate equipment at fire stations, including staffing and equipment, see the response to Comment 462-30 above.

Comment 580-1: Public Meeting Comment from Village of Roselle, Illinois’ Fire Chief Mark Bozik (EI-32756)

Good evening. My name is Mark Bozik. I am the Fire Chief and Emergency Manager for the Village of Roselle. Two of the primary functions of my position is to manage risk and mitigate incidents. Years ago, Roselle had a fire station on both side of the tracks. A decision was made to consolidate stations to one central location to better serve the needs of the public. It was realized that if there was a potential delay on crossing the tracks, of which minimal freight traffic and commuter trains blocking the grade crossing for less than a minute, the risk was minimal. If there was an extended blockage of a grade crossing, emergency vehicles could detour and use the Irving Park Road underpass. At one point, we even had a light in the station that indicated when crossing at Roselle Road was blocked. During crossing upgrades, the light was disconnected by the railroad and never reconnected despite multiple requests. Today, the two at-grade crossing we routinely utilize, Roselle Road and Medinah Road, are blocked anywhere from two to three minutes a couple of times a day with freight trains. The approval of the merger would increase freight train activity by an estimated 14 trains per day with the at-grade crossings of both Roselle Road and Medinah Road being blocked an average of 3 minutes and 35 second per train. If emergency units are at the Roselle Road grade crossing, they must go around utilizing the Irving Park Road underpass that adds three minutes to the response. If emergency units are notified prior to

leaving the station and utilize the Irving Park Road underpass, it still adds 2 minutes and 20 second to a response. What does a 3 minute delay to emergency services caused by freight trains mean to the Village of Roselle? It means that a house fire that doubles in size ever eight minutes or every minute will be eight times bigger because of the delay. It means that a person having a stroke will spend an additional three weeks in rehabilitation because of the delay. It means that a witnessed cardiac arrest patient will have a 27 to 30 percent less chance of surviving the event. It means that our pediatric trauma patient would have waited three additional minutes for an ambulance potentially changing the outcome. From a risk management standpoint, the easiest way to avoid these additional risks is not to increase the train traffic by not -- denying the merger. If it is the intent of the Surface Transportation Board to recommend approval of the merger, then the appropriate level of funding must be provided to the Village to mitigate the increased risks with the merger. The Village should not have to endure the additional costs brought on by the railroad merger to provide the same level of protection that our residents currently receive. Thank you for your time.

OEA Response

The commenter states that “the merger would increase freight train activity by an estimated 14 trains per day.” This is an inaccurate characterization of the Proposed Acquisition. As the EIS explains, the average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition, which is an increase of 8 freight trains per day (not 14).

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Regarding specific delays at Roselle Road, the delay analysis presented in the Final EIS includes the average delay per stopped vehicle, which is 0.6 minutes under the No-Action Alternative and 0.6 minutes under the Proposed Acquisition. For Medinah Road, the average delay per stopped vehicle is 0.5 minutes under the No-Action Alternative and 0.6 minutes under the Proposed Acquisition. Under the Proposed Acquisition, the average train length would decrease, reducing the average time for a single gate down time. Regarding gate down time and delay, see the response to Summary Comment: Grade Crossing Delay above.

OEA notes the commenter’s concerns regarding pre-existing conditions. As the commenter notes, there was a decision made by the community to consolidate stations to one central location, in place of stations on both sides of the track. Pre-existing conditions like this, however, are not something OEA could develop mitigation to address. Further, as the commenter notes, in the event of an extended blockage of a grade crossing, emergency vehicles could detour and use the Irving Park Road underpass.

Regarding the commenter’s request to “mitigate the increased risks with the merger,” OEA is recommending that the Board impose a number of mitigation measures related to grade crossing delay, as set forth in *Chapter 4, Mitigation*, including voluntary mitigation measures specific to communities in the Chicago area that the Applicants proposed following issuance of the Draft EIS. OEA notes that the Board does not impose

environmental mitigation for pre-existing conditions, such as impacts related to existing rail operations.

To facilitate compliance with VM-Community-03, the Applicants shall establish a Community Liaison to consult with leaders of Chicago area communities referenced in that mitigation measure (the Village of Itasca, the Village of Bensenville, the City of Wood Dale, the Village of Roselle, the Village of Schaumburg, the Village of Hanover Park, the Village of Bartlett, the City of Elgin, and DuPage County). The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the approval of the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to mayors and other appropriate local officials in each community listed above (MM-Community-04).

Comment 581-1: Public Meeting Comment from Village of Itasca, Illinois' Fire Chief John Schneidwind (EI-32756)

Good evening. My name is John Schneidwind. I am proudly the Chief of the Itasca Fire Protection District. 13 minutes, that's how long it will take our fire department to respond to a house on the north side of town if had a nearly 3 mile freight train crossing all of our at-grade railroad crossings at once. 13 minutes can destroy a house by fire. More importantly, 13 minutes can literally put somebody's life in jeopardy if they call 911 for a life-saving situation. Why 13 minutes? Please look at the map. As Mayor Pruyn describes, the train literally cuts through the middle of our town. Our only fire house is on the south side of the tracks. The home located at 563 Center Street is north of the tracks, and when no trains are present, it takes a total travel time of 1 minute and 15 second from our station. If a train were to block all of our crossings, the alternate route would take 13 minutes. This is clearly not an acceptable time -- response time. Industry standards are 5 minutes or less, which we abide by. Equally important, the northern end of our town is home to two of our three schools, several high-rise buildings, business parks, and into our daily population of nearly 20,000 people. A merger that increases our response time will be an unfair burden to our community. We staff one fire engine, one ambulance, and one battalion chief. We respond to approximately 1700 calls per year in town. The call volume is split almost in half with 48 percent of the calls being north of the tracks. A large percentage of our calls are for medical services, and a delay reaching victims with heart attacks, strokes, overdoses, or respiratory distress will greatly impact the survival and recovery of those people we serve. I would be remiss if I did not address the fact that fire doubles every minute, and responses that leads to a fire will have dire consequences. The health and safety of our community members are at the utmost concern to our District. One long-term mitigation if this merger goes through would be an overpass at Prospect Avenue. An overpass in town would allow us to serve the entire population of Itasca regardless of when a train approaches. I strongly encourage the consideration of allocating funds immediately for the construction of an overpass at Prospect Avenue. However, this mitigation process will take years, so the need for a new fire station north of the tracks will need to be considered. The long-term cost of a new fire station will undoubtedly be a heavy burden for the taxpayers. The sentiment I have heard from our

community repeatedly is we should not be burdened by a for-profit merger. I am against the merger. Thank you.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

The comment regarding a “3 mile freight train” is an inaccurate characterization of the Proposed Acquisition. As the Draft EIS explains, the average freight train lengths would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition. The longest freight trains in the area are approximately 10,000 feet, which is less than 2 miles long, and train movements of that length would occur under both the No-Action Alternative and Proposed Acquisition.

Regarding the request for a new fire station and the appropriateness of site-specific mitigation measures to address grade crossing delay, such as separation of the grade crossing at Prospect Avenue, please refer to *Section 3.3, Grade Crossing Delay*. As discussed in that section, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant grade separation or other site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 582-1: Public Meeting Comment from Village of Hanover Park, Illinois’ Fire Chief Eric Fors (EI-32756)

Good evening. My name is Eric Fors, and I am the Fire Chief of Hanover Park. I have been serving my community as a firefighter and paramedic for 25 years. As you have heard from those before me and you will continue to hear from the group that is speaking after, response times will dramatically affect this -- if this merger is allowed to continue. The Illinois Department of Public Health maintains records on pre-hospital emergency care. These are reports that our paramedics complete for each EMS request. In 2019, an IDPH report on response times found that in DuPage County, 57,900 incidents revealed an immediate response time of 5 minutes. In Cook, roughly over 504,000 responses also noted an immediate response time of 5 minutes. This is the level of service provided, which is not only necessary, but is what comes expected. Either making these extra trains use an alternate route or separating grade crossings to allow travel over or under the tracks are the only realistic ways to ensure that emergency responders can reach those in need in a timely manner. Each fire department understands and monitors this critical time frame and will be closely watching changes if the merger is allowed to continue its proposals. According to the Journal of the American Heart Association, the survival to 30 days after a witnessed out-of-hospital cardiac arrest is worse as the ambulance response times increase. This correlation is seen independently of initial heart rhythm or whether or not CPR has been done before EMS arrival, thus increasing the EMS response times is directly linked to increasing survival in these critical patients. Additional to cardiac arrest, the stroke patient is extremely time sensitive. The American Heart Association again has public research that shows 1.9 million brain cells die every minute that that brain is deprived of blood flow. Longer trains and more frequent trains will only increase this critical response minutes and will certainly decrease the positive outcomes of these patients. As expected, response times will have a dramatic

effect when responding to a structure fire. Two key components are the rate that the fire grows and the type of materials that burn. You have heard prior to, fire grows at great speed. In certain conditions fire can nearly double in size every minute. The speed of fire is in combination with the fact that today, we all fill our homes with mostly synthetic goods. 30 years ago, using the majority of natural materials such as cotton, wood, and wool, you can have as much as 15 to 20 minutes to escape your home if it was on fire. Today, due to plastics and our use of synthetic fabrics, this time is decreased to only 5 minutes. This also decreases the amount of time before a floor collapses or the structure becomes too dangerous for us to even enter. You can now see that the mere delay of 1 to 2 minutes can have very dire consequences. Besides these EMS calls and structure fires, hazardous materials incidents, technical rescues, and patients trapped in vehicles are all critical calls where emergency response time is integral to a successful outcome. Thank you again for allowing me briefly to speak tonight on only a few of the obstacles that would affect emergency services if you allow the merger to move forward.

OEA Response

Comment noted. Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

The comment asserts that “longer trains and more frequent trains will only increase this critical response minutes and will certainly decrease the positive outcomes of these patients.” The “longer trains” comment is an inaccurate characterization of the Proposed Acquisition. As explained in the EIS, the average freight train lengths would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition. The longest freight trains that travel through the area are approximately 10,000 feet, which is less than 2 miles long, and these trains would operate under both the No-Action Alternative and Proposed Acquisition. Under the Proposed Acquisition, the average train length would decrease, reducing the average time for a single gate down time. For further details on gate down time and delay, refer to the response to Comment 126-2.

Regarding grade separations, as discussed in *Section 3.3, Grade Crossing Delay*, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant grade separation or other site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

For the grade crossings in the vicinity of Hanover Park, there are existing grade-separated crossings at both Lake Street and County Farm Road. For the grade crossings in Du Page County, only Rohlwing Road, Irving Park Road, and York Road meet one or more of the FHWA criteria for considering grade separation; however, the conditions at all three of the crossings are pre-existing.

- For the grade crossing at Rohlwing Road, the two FHWA criteria that are met are related to crossing exposure. The product of the number of trains per day and AADT exceeds 1,000,000 for urban areas. Also, the product of the number of passenger trains per day and AADT exceeds 800,000 for urban areas. However, these are pre-existing conditions. The grade crossing exposure (total number of trains per day times AADT) is 1,351,897 under the No-Action Alternative and 1,530,926 under the Proposed

Acquisition. The passenger train crossing exposure (number of passenger trains per day times AADT) is 1,275,586 under both the No-Action Alternative and Proposed Acquisition.

- For the grade crossing at Irving Park Road, the two criteria met are related to crossing exposure. The product of the number of trains per day and AADT exceeds 1,000,000 for urban areas. Also, the product of the number of passenger trains per day and AADT exceeds 800,000 for urban areas. However, these are pre-existing conditions. The grade crossing exposure (total number of trains per day times AADT) is 1,762,421 under the No-Action Alternative and 1,995,815 under the Proposed Acquisition. The passenger train crossing exposure (number of passenger trains per day times AADT) is 1,662,936 under both the No-Action Alternative and Proposed Acquisition.
- For the grade crossing at York Road, the two criteria met are related to crossing exposure. The product of the number of trains per day and AADT exceeds 1,000,000 for urban areas. Also, the product of the number of passenger trains per day and AADT exceeds 800,000 for urban areas. However, these are pre-existing conditions. The grade crossing exposure (total number of trains per day times AADT) is 1,129,425 under the No-Action Alternative and 1,278,993 under the Proposed Acquisition. The passenger train crossing exposure (number of passenger trains per day times AADT) is 1,065,672 under both the No-Action Alternative and Proposed Acquisition.

OEA notes the commenter's concerns regarding existing conditions. OEA notes that the Board does not impose environmental mitigation for pre-existing conditions, such as impacts related to existing rail operations. OEA also notes that railroad companies have the obligation to provide rail service upon reasonable request and the right to determine how to route their traffic in order to meet the needs of shippers while maintaining safe and efficient operations. OEA cannot recommend that the Board place limits on rail traffic on specific rail lines as a form of environmental mitigation and the Board could not impose such mitigation. As discussed in *Section 3.3, Grade Crossing Delay*, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant grade separation or other site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 584-1: Public Meeting Comment from Elgin, Illinois' Fire Chief Robb Cagann (EI-32756)

Good evening. My name is Robb Cagann. I am the City of Elgin's Fire Chief. The communities represented here tonight share issues and concerns about the negative impacts that will occur under the proposed railroad merger. The unique make up of each community, including geographical impediments and long-established strategic decision and policy making, will be made with recognition of the rail lines running through the hearts of these cities, thus the negative impacts of this proposed rail merger are far reaching. The Elgin Fire Department provides in all hazards an emergency service delivery system to just under 115,000 residents. There are numerous impacts and proposed increases in freight train traffic we'll have in Elgin, but I will be focusing on three critical areas. First, the City of Elgin is a progressive municipal organization that has strategically deployed a network of seven fire stations to guarantee efficient and effective emergency response in a city

geographically divided on the east and west by the Fox River. This fire station network has been designed to provide an internal mutual aid, while also meeting nationally recognized industry standards for the arrival of an effective firefighting force. In Elgin, the Milwaukee District West rail line – railroad lines parallels the Fox River on its west bank. Elgin operate two fires stations on the east side of railroad tracks and five on the west side where the population is slightly greater and where the city’s road continues. Elgin’s fire station network design has been effectively functioning because the fire department’s emergency vehicles can readily traverse the city relatively unimpeded despite having to endure delays caused by up to 19 Metra trains per day, plus freight trains. The need directly to deploy fire suppression resources to enact a fire and contain the damage is simply a matter of physics. In other words, the longer it takes for a fire department to arrive at the scene of an active fire, the greater the likelihood of greater damage from that fire occurring. Introducing 2-mile long freight trains that will be simultaneously blocking four of Elgin’s six railroad – river crossings will only increase the probability of delay in fire suppression response that it can lead to greater damage or even the loss of life. Secondly, Elgin’s two hospitals are both located on the west side of the city. Both hospitals are Level 2 trauma centers and critical not only to Elgin residents, but those communities surrounding Elgin who rely on rapid and efficient transport to these facilities. The need to get critically ill or injured people to definitive care is sole based on the issue of biology. Simply saying the ambulance will only be delayed by X minutes will not inhibit brain or cardiac cell death. The Elgin Fire Department already confronts these delays from 19 Metra trains per weekday plus multiple freight trains. Adding 2-mile long freight trains that are longer and slower than a Metra commuter train will absolutely have a negative impact on the health and welfare of Elgin’s residents. While the City lives with this threat every day with the existing train traffic, the significant increase of 8, 11, or 14 more freight trains per day significantly increases the potential threat to this critical waterway. Thank you.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above. As discussed in that response, OEA has revised *Section 3.3, Grade Crossing Delay* and **Appendix H, Grade Crossing Safety and Delay**, to include additional information related to impacts on emergency vehicles, including information about alternative routes that emergency vehicles could take if a grade crossing were to become blocked by a train.

Regarding the comment that “the significant increase of 8, 11, or 14 more freight trains per day significantly increases the potential threat” is an inaccurate characterization of the effects of the Proposed Acquisition. The average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition, which is an increase of 8 freight trains per day (not 11 or 14).

Comment 590-1: Public Meeting Comment on Bensenville, Illinois’ Mayor Frank DeSimone (EI-32756)

Good evening. My name is Frank DeSimone. I am the Mayor of the Village of Bensenville. In addition to my responsibilities as a mayor, I have served the past 23 years as a police officer in the nearby community of Schiller Park. With these two simultaneous carriers, I

believe that I can offer a unique prospective to the Surface Transportation Board on the Draft EIS being discussed this evening. Simply put, the Draft EIS failed to accurately represent, model, or analyze the impact that this merger will have on public safety. In my community of Bensenville, the Milwaukee District West line cuts our community in nearly equal halves and what are uniquely located adjacent to the Bensenville yard. As a result, the impact of 8 to 14 freight trains per day traversing the rail line will have a disproportionate amount of impact on our crossings due to the freight trains having to slow and often stop outside of the Bensenville yard as a train is broken up. Currently as illustrated by the board behind me, Bensenville railroad crossings experience one and a half hours of down gates per day. At 8 additional trains per day, the number grows by 458 percent. At 14 trains per day, that number grows by 800 percent. In real time, my community is facing a total of 11.25 hours per day of blocked rail crossings. Just how does the Surface Transportation Board or the Canadian Pacific expect my community to provide police and fire services to my residents when 11.25 hours a day are spent with those crossing gates down? Bensenville is home to some of the finest EPS police officers in this country. Unfortunately, however, no amount of training or tactics can overcome a freight train blocking all possible emergency routes during a call. I could tell you from personal experience it is absolutely gut-wrenching to hear a police officer call for backup over the radio and they're being -- as they're being battered or otherwise risking their lives while you, as the responding officer, are forced to sit and wait for a freight train to start moving again. We can only expect that these types of calls would grow substantially due to this merger. The Draft EIS should have -- should have identified response times for communities, and the STP -- STB should have laced mitigations on the merger to ensure that current response times for both police and fire should be maintained at premerger levels. I implore the STB to consider the impact that this merger will have on the public safety and include appropriate mitigations in the Final EIS. That concludes my testimony. Thank you for your time.

OEA Response

OEA notes the commenter's concerns regarding current train operations near Bensenville Yard and the existing effects of those operations on nearby grade crossings. This is an existing condition that is not related to the Proposed Acquisition. Also unrelated to the Proposed Acquisition, Bensenville Yard is currently being reconfigured as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. This reconfiguration will include lengthening the Bensenville Yard receiving tracks to accommodate longer trains. The longer receiving tracks will allow for switching and staging to occur within the yard and will reduce the need for trains to stop on the mainline to be broken into shorter blocks. OEA expects that the reconfiguration of Bensenville Yard will be completed before 2027, which is the analysis year that OEA used for this EIS. Because the results reported in *Section 3.3, Grade Crossing Delay* for the No-Action Alternative and the Proposed Acquisition are for the analysis year 2027, the reconfiguration of the Bensenville Yard has been accounted for in those results. The comment about "8 to 14 freight trains per day" is an inaccurate characterization of the Proposed Acquisition. The average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition.

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Regarding gate down time, **Appendix H, Grade Crossing Safety and Delay** reports gate down time for all grade crossings in the study area. Delays and queues are directly correlated with gate down times, which are computed based on train lengths and train speeds. The average freight train lengths in Bensenville would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition. Assuming train speeds remain the same under the No-Action Alternative and Proposed Acquisition, the gate down time per train would decrease under the Proposed Acquisition, which would reduce the amount of delay and queue length per train. Moreover, with the planned improvements to the Bensenville Yard, train speeds may even increase outside of the yard, further reducing gate down times.

For discussion of concerns related to the study presented by the Coalition, refer to the response to Summary Comment: Validity of Data, Methods, and Conclusions above.

OEA notes the commenter's concerns regarding existing conditions. See the response to Summary Comment: Grade Crossing Delay above.

Comment 593-1: Public Meeting Comment from Village of Bensenville, Illinois' Fire Chief Douglas Halverson (EI-32756)

Good evening. My name is Douglas Halverson, and I have the privilege of being the Chief for the Bensenville Fire Protection District. I want to take everyone back to the late 1970s. Two crucial fires had a significant impact due to profuse delays by trains. The loss of the Montgomery Ward's building and the Watrous fire resulted in a total loss, and it affected several businesses that surrounded them. All taxing bodies in Bensenville lost tax revenues and sales revenue as neither business rebuilt after the fire. Mentioning these fire is significant because the impact to the local taxpaying community felt compelled to build another station on the north side of our tracks. I am here to advocate for the Bensenville Fire Protection District, the City of Bensenville, its taxpaying community, and the men and women who protect it. This merger will cause a burden and, once again, fall on the taxpayers, as history has proven. This merger directly affects the local residents due to constraints on the staffing and apparatus to maintain reasonable response times and the shared resources that we offer. Our fire district is already short-staffed and uses both the north and south stations to supplement each other to provide the best service possible. This merger is projected to create 50 percent more train traffic by adding trains as well as the expansive train cars and extra time prohibiting us – prohibiting us to do – effectively do our job. Bensenville is the first town bordering the west and directly connects to the Canadian Pacific yard which immediately impacts the traffic and directly delays response to emergency calls, specifically when trains sit at the crossings waiting for authority to move forward or restrictive block signals that require reduced speed before passing. This will also have a significant impact on the insurance rates with the commercial and industrial building seeing the biggest increase. Fire service ISO ratings are heavily impacted by response times, and with the projected 50 percent increase in train traffic, our ISO ratings will inevitably elevate cost in our community once again. We operate from two stations, one on each side of the tracks, full staffed 24/7/365. Station 108 is located on the north side and staffed with a

squad company only able to carry out initial EMS services, and it only consists of three personnel. We have a battalion chief and a jump company on the south side. Our district is 6.4 square miles and do respond to an average of 3900 calls a year. Given our limited staffing, a vehicle from both stations that do on the majority of responses is causing our crews to cross the tracks multiple times daily to supplement each station. If crews are delayed by trains, that leaves the north side of the district without an available medic, even a delay in the paramedic's care and transport to the hospital. Ultimately, we need an underpass on York Road, and at a minimum, we would require six additional personnel, two a day to staff in a central needed ambulance on the north side, the lack of funds to do so. This is what our fire district requires to run unimpaired, and these funds should not derive from the local taxpaying community. This impact was created by CP and should be resolved by CP at their expense which they – in good faith in repairing previous askings for damages to the entire community. This merger is the largest of its kind, and the ramification will be felt by the community for millenniums to come and should not come at the expense of our taxpayers who have paid not only in revenues, but quality of life. As the railway is the only establishment that stands to profit significantly, the railway, they should render the capital and make the appropriate changes for a safer Bensenville. We have a strong saying in the fire service: The first 5 minutes dictates the next 5 hours. This can be a difference between a rescue of a victim versus recovery or an offensive attack versus a defensive. We cannot wait behind a freight train and watch entire businesses go up in flames literally. Thank you.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

OEA notes the commenter's concerns regarding existing conditions. Regarding existing conditions near Bensenville Yard, OEA notes that the yard is currently being reconfigured as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. This reconfiguration will include lengthening the Bensenville Yard receiving tracks to accommodate longer trains. The longer receiving tracks will allow for switching and staging to occur within the yard and will reduce the need for trains to stop on the mainline to be broken into shorter blocks. OEA expects that the reconfiguration of Bensenville Yard will be completed before 2027, which is the analysis year that OEA used for this EIS. Because the results reported in *Section 3.3, Grade Crossing Delay* for the No-Action Alternative and the Proposed Acquisition are for the analysis year 2027, the reconfiguration of the Bensenville Yard has been accounted for in those results. Regarding the request for a grade separation on York Road, see the response to Comment 582-1 above. Regarding the commenter's belief that additional personnel is needed to properly staff the ambulance on the north side, the additional information provided in the Final EIS indicates no change in the level of service under the Proposed Acquisition as compared to the No-Action Alternative (in both cases, the projected level of service is A for the grade crossings at Church Road and at York Road). Accordingly, OEA has concluded that that level of impact on Bensenville that would result from the Proposed Acquisition does not warrant mitigation.

Comment 597-1: Public Meeting Comment from Michael Wolfe (EI-32756)

Good evening. Michael Wolfe, a long-time resident of Itasca. Let me begin by saying, A, that the draft impact study is underwhelming. No credible evaluation depends on averages to characterize data. Your analysis is irresponsible and ignores the reality nurturing tonight. As one who lives apparently on the wrong side of the tracks in Itasca, I shudder to imagine traffic when multiple crossings are down at the same time. If you have driven in that area, you would see why. At two of the crossings at Walnut and Catalpa the crossings are just a few car length off of Irving Park Road, a major thoroughfare through the area; so when the crossings are down, you can't turn off of Irving to clear traffic. If the crossing gates are down for an extended period of time, you would block Irving entirely in both directions. Think beyond the numbers. How long will it take an emergency vehicle in Itasca to get across the tracks when the vehicle can't even get out of the station on Irving Park Road? How long will it take them to get around the traffic if a driver has unwittingly blocked the shoulder trying to get out of the way of traffic on Irving? This plan demands significant mitigation to deal with these issues, and it should be by CP at their expense, not mine. Thank you.

OEA Response

Comment noted. Regarding the comment that “no credible evaluation depends on averages to characterize data,” OEA has revised **Appendix H, Grade Crossing Safety and Delay** in the Final EIS to include additional information regarding gate down time associated with specific types of freight trains, in addition to the average gate down time reported in the Draft EIS.

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Regarding queue lengths, refer to **Appendix H, Grade Crossing Safety and Delay**, which reports queue lengths at grade crossings for the No-Action Alternative and the Proposed Acquisition.

OEA Response Comment 613-1: Public Meeting Comment from City of Elgin, Illinois City Manager Richard Kozal (EI-32756)

Thank you for providing the opportunity to provide information to CP. I am Rick Kozal, K-O-Z-A-L, Elgin's City Manager.

Earlier this evening, you have heard from Elgin's Fire Chief, Robb Cagann, and its Police Chief, Ana Lalley, each who made their respective concerns about how the added daily presence of 8 to 14 2-mile long freight trains in addition to the existing 19 weekday and 12 weekend Metra commuter trains crossing through the city will negatively impact Elgin's economic vitality and effectiveness of its fire and police first responders. In a moment, you will hear from Elgin's mayor expressing similar concerns.

Their observations on the negative impacts that will be occurring from the pervasive presence of 2-mile long freight trains simultaneously blocking four of Elgin's six river crossings are not subjected. This is objectively compiled information with traffic data backing their resurgence.

Right now, Elgin's railroad crossing gates to collective drop down for a freight train is about one and a quarter hours a day. With the proposed merger's plan to initially add 8 freight trains daily, the collective gate crossing's down time increases 340 percent to four and a quarter hours a day.

At 14 daily freight trains contemplated under this merger, Elgin's crossing gates collectively will be lowered for seven and a half hours a day, a 600 percent increase of the current freight train traffic today.

The daily freight train traffic for blocked vehicles is currently about 937 vehicles a day under that one and a quarter hour combined crossing grade down time. With 8 additional trains, 300 -- 3,249 vehicles will now be delayed for a time period of four and a quarter hours a day, an almost 350 percent increase from the number of vehicles stopped now. 5,000 vehicles will suffer delays when 14 additional freight trains pass through Elgin and throughout the crossing gates for a collective time of seven and a half hours, a 525 percent increase. Today, freight train vehicle delay passing through Elgin collectively generates 34 hours of delay. Adding 8 trains, bumps this to 97 hours, and with 14 more trains, it goes to 147 hours, a 432 percent increase from today. The impacts on a dense and popular city like Elgin are immense.

OEA Response

The comment that “8 to 14 2-mile long freight trains” is an inaccurate characterization of the Proposed Acquisition. The average number of freight trains per day would be 3.4 for the No-Action Alternative and 11.4 for the Proposed Acquisition.

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Regarding “2-mile long freight trains,” this is not an accurate characterization of the effects of the Proposed Acquisition. As the EIS explains, the average freight train lengths would be 8,597.1 feet for the No-Action Alternative and 6,817.2 feet for the Proposed Acquisition. The longest freight trains would be approximately 10,000 feet, which is less than 2.0 miles long, and trains of this length would operate under both the No-Action Alternative and Proposed Acquisition. In addition, under the Proposed Acquisition, the average train length would decrease, reducing the average time for a single gate down time. For further details on gate down time and delay, refer to the response to Comment 126-2.

OEA believes the results quoted from the Coalition's traffic delay study are inadequately supported and questionable, including in particular conclusions showing “down time increases 340 percent” and “350 percent increase from the number of vehicles stopped now.” For discussion of concerns related to the study presented by the Coalition, refer to the response to Summary Comment: Validity of Data, Methods, and Conclusions above.

Comment 440-1: Public Meeting Comment from Hennepin County, Minnesota Chair of the Board of Commissioners Marion Greene (EI-32760)

“Good evening. My name is Marion Greene. Good evening, and thank you for the opportunity to comment on this merger. My name is Marion Greene, and I'm the Chair of

the Board of Commissioners of Hennepin County in Minnesota. Approximately 1.3 million people live in our county including in the city of Minneapolis. Canadian Pacific owns 76 miles of track in our county; the largest share of any railroad, as well as two large rail yards. Canadian Pacific has been an important member of our community and a good partner to Hennepin County. However, this proposed merger will exacerbate problems our residents already experience from Canadian Pacific's activities. Specifically, increased traffic on our local roadways, blocking crossings, increasing environmental threats to our residents, and adding noise to an already congested urban area. We believe that the data that OEA used to calculate the effects of the Transaction in Hennepin County are flawed. Most importantly, the DEIS does not adequately account for the significant local impacts caused by increased truck traffic from CP's intermodal facility in Northeast Minneapolis. The city streets immediately surrounding this intermodal facility include active commercial corridors in racially diverse, densely populated neighborhoods full of pedestrians, cyclists, shoppers, and drivers. Already these streets are burdened by significant truck traffic in and out of the yard, including large volumes of ancillary vehicle movements. The merger will cause a material increase in this traffic blocking intersections, creating noise and pollution, and threatening the health and safety of residents, pedestrians, bicyclists, and drivers in these already busy corridors. These harms must be mitigated. However, Hennepin County has identified a total of 32 crossings along CP main lines in the county that would be directly and materially impacted by merger-related traffic increases with potential adverse impacts on emergency response times.

The DEIS does not address any of these crossings or the impact longer and more frequent trains will have on local communities in the county. The DEIS must address these concerns and include appropriate mitigation measures to protect our county. Finally, the CP-KCS transaction will increase the volume of hazardous materials' traffic moving through Hennepin County including densely populated, urban areas. The likelihood of an incident and the risk of a serious outcome can be reduced through a variety of common-sense measures, mitigation measures that we request that these measures also be included in the final EIS and the record of decision. Thank you for your attention to these important concerns. Additional comments and details are forthcoming from Hennepin County and will be sent to your office in writing by October 14, 2022. Thank you.”

OEA Response

OEA notes the commenter's concerns related to existing conditions in Hennepin County. Regarding impacts on grade crossing delay, see responses to Summary Comment: Grade Crossing Delay and Comment 459-5 above. Regarding impacts related to truck traffic at intermodal facilities, please refer to *Section 3.5, Intermodal Facility Traffic* and the responses to Comment 459-9, Comment 459-10, and Comment 459-11 in *S.10, Intermodal Facility Traffic*.

Comment 265-1: Written Comment from Sun Prairie, Wisconsin Fire Department Chris Garison (EI-32453)

The proposed Canadian Pacific/Kansas City Southern merger presents serious concerns, and I fear that it creates a significant degree of additional risk for both first responders and the

public. Reporting surrounding the proposed merger makes it clear that, if approved, existing railroad lines running through Wisconsin communities will see more trains daily. Those trains will also be longer – up to 2.25 miles long. In communities with at-grade railroad crossings, a 2.25-mile-long train means a delay of several minutes for automobile traffic, not to mention risk for foot traffic, nearby businesses, and other innocent bystanders.

Such a delay at a railroad crossing will also affect the ability of fire departments and other first responders to make their way to and from emergencies. Each individual instance of delayed response brings huge implications for those directly involved – both emergency personnel and victims. Taken together, the prospect for ongoing, daily delays only adds to the pressures faced by already-strained fire departments like mine.

OEA Response

The grade crossings in Wisconsin do not meet the Board’s thresholds for delay or safety analysis. OEA analyzed safety and delay impacts at grade crossings based on past practices in other acquisition proceedings and the thresholds set forth in the Board’s environmental regulations at 49 C.F.R. § 1105.7(e)(5). For further information, see the response to Summary Comment: Grade Crossing Delay above.

Comment 152-1: Public Meeting Comment from Campbell, Wisconsin Fire Department Chief Nathaniel Melby (EI-32760)

Thank you. I am Chief Nate Melby from the Town of Campbell Fire Department. As a First Responder from outside of La Crosse, Wisconsin, I’m calling in to voice my concern regarding this proposed merger. It recently came to our attention that there could be an increase in Amtrak trains going through our service area should this merger pass. I want to express my serious concern. Specifically, regarding a lack of data with respect to train increases, if this merger and subsequent Amtrak deals would go through. Dozens of communities throughout Wisconsin would experience an increase in train traffic, but no proper notification or funding to mitigate adverse effects. Worse yet, there was no mention about this or the potential dangers in the Draft EIS. There is simply no way to say there are no potential risks other than noise when trains will, at the very least, double in these rail-side towns. As a Fire Chief and First-Responder, I respectfully request that the STB acknowledge the true danger of this merger and to work with First Responders to ensure that safety is a priority, including gathering more information to assess what is best for all parties. Thank you.

OEA Response

See response to Comment 265-1 above.

Comment 153-1: Public Meeting Comment from Shelby, Wisconsin Fire Department Chief Tony Holinka (EI-32760)

Good evening. My name is Tony Holinka; I’m the Fire Chief for the Town of Shelby Fire Department in Shelby, Wisconsin. Our department is comprised of 31 volunteer fire fighters, EMS personnel, and myself. Our main station sits within near feet of a railroad track. And at

many times we've had to cross those tracks to respond to an emergency. Half of our jurisdiction requires us to cross railroad tracks, and/or adding an additional four minutes to our response. And increase in train traffic that will come with this merger adds a serious risk to our response time. If we cannot get over those tracks, valuable minutes tick away when our community members are in need. We all know that in an emergency seconds can be the difference. We do not have minutes to spare. I urge the Surface Transportation Board to properly study rural towns like mine with volunteer fire fighters and fire departments that risk not being able to access emergencies because of blocked crossings. We must ensure other routes are created to avoid any horrible scenario where we cannot access someone in their need of help. Please consider these very real, very serious concerns as you continue to review the implications of the CP-KCS merger. Thank you.

OEA Response

See response to Comment 265-1 above.

Comment 161-1: Public Meeting Comment from Wauwatosa, Wisconsin Fire Department Chief Jim Case (EI-32760)

Good evening and thank you. My name is Jim Case, and I'm the Fire Chief for the Wauwatosa Fire Department in Wisconsin; I'm near Milwaukee. Thank you for taking the time tonight to hear our feedback. As a group of fire chiefs from my community, I'm worried about this potential merger and what it may do to our response times. I'm further concerned that the Draft EIS statement does not mention anything more serious than noise as a potential, severe impact to this merger. We have a very active CP Line that runs through our busy downtown in an urban setting. This Line has already resulted in numerous fatal, train- related accidents over the last few years, and I'm very concerned that this merger will increase that traffic, and unfortunately, probably increase the number of fatalities that we see. We are also concerned that the increase for potential at-grade accidents and creating additional barriers for emergency response if a train is stalled at these crossings. I urge the STB to conduct a further review of the merger and how subsequent deals with Amtrak in the future could impact the communities as well. Emergency responders need to be assured that we would be able to continue serving our communities to the best of our abilities and appreciate your consideration. We completely understand the importance and the value of the railways. We just ask you to take a closer look as how it relates to emergency responders and any impact it may have on us. Thank you.

OEA Response

See response to Comment 265-1 above.

Comment 542-1: Written Comment from Kyle Rogers (EI-32549)

Docket No. FD 36500 I'd like to address my disapproval for the CP-KCS merger. The East End of Houston, 2nd Ward, Greater Eastwood as well as NE Houston's 5th Ward area have been a parking lot for Union Pacific as well as BNSF for decades. Adding an estimated 8 to 14 trains per day through the Houston complex will only exacerbate this. I would like to add that there are zero assurances that those numbers will not grow. CP-KCS primarily wants to

utilize a line in West Houston, but their documents also show an alternate route right through East Houston, an area certain to be used as Houston rail management is terrible. This area is already plagued by trains parked on at-grade street crossings frequently for hours, occasionally for a literal day plus (my civic association has proof of this). These parked trains cause innumerable problems for my community, from children crawling under to reach school on time, to cars speeding through residential streets to bypass a crossing, and emergency vehicles being rerouted during time-critical events. I blame almost all of these issues on rail operators and their poor rail management. However, I am forced to agree with Union Pacific and BNSF that adding any additional traffic to these lines will make things worse for residents in every possible ways. For these reasons I would like the STB to deny this merger. I'd also implore the STB to deeply study the Houston complex, as well as how poorly local operators manage their train loads before allowing more trains through an already hectic and slapdash rail system. Specifically I'd like a critical eye focused on crossings: 859516 V, 859517 C, 859518 J, 859519 R, 859521 S, 859522 Y, 859523 F, 859524 M, 859527 H, 859529 W, 859530 R, 859533 L, 859538 V, 288051 H, 288050 B, 288048 A, 288046 L, 288039 B, 288034 S, 440828 R, 288024 L, 288011 K, 920030 G, 288035 Y, 288221 A, 288224 V, 288226 J, 288227 R, 288228 X, & 288229 E Thank you for your attention to community concerns.

OEA Response

Commenter's concerns about existing conditions in Houston and opposition to the Proposed Acquisition noted. The commenter's concerns primarily relate to the Applicants' proposal to "utilize a line in West Houston," namely the UP Beaumont to Rosenberg Subdivision. As such, the grade crossings in the East End of Houston, 2nd Ward, and Greater Eastwood were not part of OEA's study area because they are not on Applicants' rail lines and would not experience an increase in rail traffic that would meet the thresholds for environmental review. OEA provided information on every crossing in the study area and properly analyzed safety and delay impacts at grade crossings based on past practices in other acquisition proceedings and the thresholds set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(5). For further information, see the response to Summary Comment: Grade Crossing Delay above.

Regarding the request for further analysis of specific grade crossings, the following crossing IDs are not within the study area: 288051H, 288050B, 288048A, 288046L, 288039B, 288034S, 440828R, 288024L, 288011K, 920030G, 288035Y. The following crossing IDs are along a segment with CP trackage rights, but do not meet or exceed the Board's threshold for safety or delay analysis: 859516V, 859517C, 859518J, 859519R, 859521S, 859522Y, 859523F, 859524M, 859527H, 859529W, 859530R, 859533L, 859538V, 288221A, 288224V, 288226J, 288227R, 288228X, 288229E.

Comment 525-1: Written Comment from Jacob Angelo (EI-32541)

I oppose the merger of KC Railroad with Canadian because of the disaster it will ring to the community of Houston, Texas. The Houston area is already suffering from the terrible conditions at the Englewood Rail Yard in 5th Ward. All over the city we have to deal with train stalls that last over an hour. Medica, fire, and police personnel are continuously

delayed in their response because of the railroads that already exist here. This merger will make the quality of life exponentially worse! The pollution will get worse and the traffic delays will get worse. We, as a community, don't want railroads here. Union Pacific has already poisoned 5th ward with creosote and many community members have been killed by the cancer caused by this deadly chemical. Even the State has declared this area a “cancer cluster”. We don't want another rail road company merger.

OEA Response

Comment noted. Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above. Following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area, including grade crossing delay impacts. These includes providing community leaders with options for reporting issues, such as blocked grade crossings. The Applicants state that these options would include CP’s “Community Connect” webpage and CP’s Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board’s final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials.

Comment 644-5: Filing Comment from the Coalition to Stop CPKC (Filing ID 305526)

The Coalition believes that three grade separated crossings are necessary to mitigate the crossing delays and crossing safety issues that will be created by the addition of eight or more trains to the Elgin Subdivision post-merger:

a. York Road in the Village of Bensenville

Immediately adjacent to the Bensenville Yard, York Road is a major dedicated truck route carrying intermodal freight through Bensenville. The York Road crossing is also the major north/south route for emergency services. Extended blockage of this crossing stops all traffic through Bensenville and causes major delays and backups. Frequent blockage of this major state truck route, directly adjacent to O’Hare airport, will also have immeasurable financial costs for businesses in Bensenville. Also, the York Road grade crossing sits at the eastern edge of downtown Bensenville, directly adjacent to the Bensenville Metra station. The increased numbers of freight trains post-merger will result in blockages that will cut off Metra riders attempting to catch trains. It will cut off residents from a neighborhood grocery store and services, which sit on either side of the tracks. It will cut off residents and businesses from Village Hall, which is located on the south side of the tracks adjacent to the Metra station.

OEA Response

OEA notes the commenter's concerns regarding current train operations near Bensenville Yard and the existing effects of those operations on nearby grade crossings. This is an existing condition that is not related to the Proposed Acquisition. Also unrelated to the Proposed Acquisition, Bensenville Yard is currently being reconfigured as part of the development of the Illinois Tollway's Elgin O'Hare Western Access Project. This reconfiguration will include lengthening the Bensenville Yard receiving tracks to accommodate longer trains. The longer receiving tracks will allow for switching and staging to occur within the yard and will reduce the need for trains to stop on the mainline to be broken into shorter blocks. OEA expects that the reconfiguration of Bensenville Yard will be completed before 2027, which is the analysis year that OEA used for this EIS. Because the results reported in *Section 3.3, Grade Crossing Delay* for the No-Action Alternative and the Proposed Acquisition are for the analysis year 2027, the reconfiguration of the Bensenville Yard has been accounted for in those results. As discussed in the section, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant grade separation or other site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

Comment 644-6: Filing Comment from the Coalition to Stop CPKC (Filing ID 305526)

b. Wood Dale and Irving Park Roads (one project) in the City of Wood Dale

The City of Wood Dale has two at-grade road crossings along the Coalition Line which nearly intersect—just 100 feet away from each other—Wood Dale Road and Irving Park Road. This unique configuration means the community is bisected north and south by the Coalition Line but is also divided east and west by the two roads. These two road crossings have historically been a major life-safety concern for the City of Wood Dale, the Illinois Commerce Commission, and the Federal Railroad Administration. Since 1955 there have been 46 accidents involving a train and an automobile at the at-grade crossing along Irving Park Road, and 128 accidents within the intersection over the recent three-year period.

OEA Response

See responses to Summary Comment: Grade Crossing Delay and Comment 462-30 above.

Comment 644-7: Filing Comment from the Coalition to Stop CPKC (Filing ID 305526)

c. Prospect Avenue in Itasca

The Coalition also maintains approval of the merger that permits eight or more new freight trains to run on the Elgin Subdivision daily must be conditioned upon the construction of a grade-separated crossing at Prospect Avenue in Itasca.⁶³ Itasca's fire and police stations are located south of the Coalition Line at-grade crossing at Catalpa Avenue, but a majority of Itasca's 10,000 residents and businesses reside north of the tracks. Over 20,000 people are present in Itasca during workdays. The distance between Prospect Avenue and the western most rail crossing (IL-53) is 9,250 feet. As a result, a 10,000-foot freight train can block all four road crossings in Itasca simultaneously. The next closest at-grade crossing east or west would require first responders to travel more than a mile either way, which would increase

response times from under two minutes to 15 minutes or more for several parts of the town. Itasca police average more than 6,000 calls annually, 60 percent of which are north of the tracks, including one grade school, one middle school, three hotels, and a 26-story office building. A large percentage of the Itasca Fire Department's 1,700 calls annually are for medical services. Delays reaching victims of heart attacks, strokes, overdoses, car accidents and respiratory distress will lead to longer recovery times and increased fatalities. Finally, increased response delays to fires will also have dire consequences for Itasca's residents and businesses.

⁶³ In the alternative, a grade separation at Catalpa Avenue or a slip ramp adjacent to I-290 should also be explored as they would result in the least response time delays for the community.

OEA Response

See response to Comment 570-2 above regarding emergency response and the extent to which crossings in the Coalition area were analyzed in the EIS. As discussed in *Section 3.3, Grade Crossing Delay*, OEA did not identify any grade crossings where the impacts of the Proposed Acquisition would warrant grade separation or other site-specific mitigation beyond the measures set forth in *Chapter 4, Mitigation*. Specific to Catalpa Avenue, as reported in **Appendix H, Grade Crossing Safety and Delay**, the increase in average delay per delayed vehicle is 4.9 seconds for the Proposed Acquisition when compared to the No-Action Alternative. OEA does not expect that the LOS for the Itasca crossings would be adversely affected by the Proposed Acquisition.

Comment 645-2: Filing Comment from Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority (Filing ID 305524)

Approval of the proposed transaction will also exacerbate concerns regarding blocked grade crossings and resulting problems with emergency access. In its filings, the County identified fourteen crossings, many of which are in heavily urbanized areas, that support the highest volumes of vehicle traffic and would be materially impacted by the Acquisition. The impact of the Acquisition on public safety and traffic operations at Humboldt Avenue North / County Highway 57 presents the most concerns.¹⁸ This roadway crosses CP's trackage just east of CP's Humboldt Yard in North Minneapolis, and it is already frequently blocked by trains and by other activities in Humboldt Yard.¹⁹ The daily train counts cited by CP in its Application predict that train volume in the area around Humboldt Yard (Camden-MNS segment) will increase from an average of 20.0/day to 23.6/day.²⁰ This increase in traffic and any increased activities in Humboldt Yard such as increased storage of cars, increased work events by train, or other operational changes could result in significant increases in delays at this crossing. This crossing is important for emergency access. A fire station on Humboldt Avenue North, immediately north of the CP crossing, serves neighborhoods south of the crossing.²¹ When the crossing is blocked, response times for certain emergency services are adversely impacted.²² The Acquisition will exacerbate this problem as activities at Humboldt Yard increase and CP runs longer and more frequent trains, further hampering the ability to provide emergency services to its residents. Neither Applicants nor the Board have reviewed the effects the Acquisition would have on Humboldt Avenue North

and the other crossings in the County, including preventing emergency responders from reaching parts of the community, delaying trips by ambulances or other access to emergency medical facilities, preventing residents from getting to or from work or childcare facilities, and otherwise impeding the day-to-day flow of business and daily life in the County. These public harms caused by the proposed transaction in the County outweigh the benefits of the merger unless conditions are imposed to address the County's concerns. Ordering relief to ameliorate these impacts is consistent with prior actions of this Board. In *Union Pacific R.R. Co.* at 279, the Board found that separated grade crossings and pedestrian overpasses were required to address safety concerns resulting from that merger. Similarly, here the Board must require the Applicants to conduct a study to specify the necessary improvements, assess public comments and identify funding sources to construct any new infrastructure needed. *Id.* Likewise, in *Canadian Nat'l Ry. Co.* at 3, the Board ordered mitigation measures that required the applicants there to construct grade separations and implement other changes that were intended to redress the adverse impacts on grade crossings from the increased traffic

18 Comments and Request for Conditions of Hennepin Cnty. in *Can. Pac. Ry. Ltd., et al. – Control – Kan. City S. et al.*, Docket No. FD 36500, (Date Filed Feb. 28, 2022) Exhibit A, Hennepin Cnty. Comments (Feb. 28, 2022), Attachment A, Verified Statement of Mark Amfahr at ¶ 33 (“Comments and Request for Conditions of Hennepin Cnty (Feb. 28, 2022) Exhibit A-Attachment A, V.S. Amfahr”)

¹⁹ *Id.* at ¶¶ 33-38.

²⁰ *Id.* at ¶ 34.

²¹ *Id.* at ¶ 39.

²² *Id.*

OEA Response

See responses to Summary Comment: Grade Crossing Delay and Comment 459-5 above regarding traffic in the area around Humboldt Yard.

Comment 621-1: Public Meeting Comment from Sandra Falco (EI-32756)

My name is Sandra Falco and my statement is we live near Ash Drive and Irving Park Road. Heavy freight traffic will cause traffic to back up both down residential streets off of Ash and around the corner on Irving Park Road because Ash Drive from the grade crossing to Irving Park Road is less than a full block. The traffic is going to be horrible, the road rage is going to increase, and there will be cars backed all of the way down the residential streets in our neighborhoods. There is a street, that would be Potter, and if people are having to wait for a train, traffic will be backed on Potter either way and into the residential neighborhoods. Potter is the first street south of that crossing. Ash Drive is the only crossing to go south of the railroad tracks between Wood Dale Road and Route 83. I appreciate you taking my statement.

OEA Response

See responses to Summary Comment: Grade Crossing Delay and Comment 462-30 above.

Comment 650-1: Transportation Merit Hearing Comment from Ben Schweigert

Second, this Board should require applicants to fund study and implementation of measures to address adverse impacts associated with blocked grade crossings in Hennepin County. The additional freight rail traffic will adversely impact approximately 32 grade crossings in the county. Humboldt Avenue North is most problematic. It lies just to the east of CP's Humboldt Yard, a crossing that is frequently blocked not just by CP's traffic but also by activities in Humboldt Yard. A fire station on Humboldt Avenue immediately north of the crossing serves neighborhoods south of the crossing, and when that crossing is blocked response times for emergency services are adversely impacted. These problems will get worse as activities in Humboldt Yard increase and CP runs longer and more frequent trains.

OEA Response

See responses to Summary Comment: Grade Crossing Delay and Comment 459-5 above regarding traffic in the area around Humboldt Yard.

Comment 139-1: Public Meeting Comment from Mike Laroque (EI-32760)

Bon Jour. Mike LaRoque. I'm the Secretary of Treasurer for the White Earth Nation. I guess I would like to speak about this merger with Canadian Pacific and the Kansas railroad. Our White Earth Nation is against this merger because the train tracks run right through our Reservation. And they run through some crucial towns that have -- they have east-and-west property on each side of the railroad tracks. And one of the things about it is when it runs through our city of Mahnomen, once one of our largest cities on the Reservation, we have a large Native community that's to the west of Mahnomen; we have a large community on the east side, and the tracks run directly through. And what's happening is we -- if it increases the train tracks, if it increases, what will happen is public safety and EMS and everybody else, it will be very detrimental to them trying to get to the emergency room, trying to service one side of the tracks, and stuff like that. And that's one of the reason why.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 651-1: Transportation Merit Hearing Comment from Mike Laroque

One of the things that I would like to address is some safety concerns that are happening in the city of Mahnomen, our Mahnomen community. Like the guy before me that talked about IS personnel trying to get across the tracks, we have a very large community to the east of the tracks, and our health center is to the west of the tracks. With increased traffic coming through on railroad cars we would have limited services that could get over to the eastern side of our communities. I'll give you a story. One story that I want to mention is that a few years back, even with the traffic that there is right now, there was a medical emergency

on the eastern side of the tracks where a pregnant mother had been -- she was basically -- she had been in a car accident and they needed to get her to the health center. Well, the train was on the tracks and it was stopping them from getting over to the health center, so they had to reroute to another hospital probably about another 40 minutes away. Everything turned out to be okay with this, but it's not always going to be like that. EMS, our fire department in our city of Mahanomen, our EMS, our police and our fire department all sit on the western side of the tracks with no overpass or no underpass to get over there in medical emergencies.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 162-2: Public Meeting Comment from Winona LaDuke (EI-32760)

There is no -- for instance, the trains already separate the emergency services from the community. There's no underpass or overpass for people to access across the train tracks, particularly, to the Village of Mahanomen, which has the hospital.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 653-1: Transportation Merit Hearing Comment from James Burke

Providing timely fire, police and EMS response to 911 calls is critical, critical to the safety and wellbeing of the citizens in our community. This proposed merger would create serious problems for public safety and create detrimental issues for the safety of our residents. Whether responding to the 1 report of a structure fire, a heart attack, assault in progress, response time is the critical, critical factor in these situations if they're to have any kind of a positive outcome. As you have, our communities are unique for many reasons, one of which is that the rail line runs right through the center of all of our communities all down the line. This creates some unique challenges for us in the first responder world in the sense that most of our stations or headquarters are located on one side of the tracks or the other. The addition of 8 to 14 more freight trains a day is going to operationally block us from responding to these calls that we need to get to in a 911 fashion. The DEIS study virtually ignored emergency response times, saying that they were minimal at best. I can tell you the alternate routes they suggest add two to three times the response time and distance to those 911 calls at the furthest point in our districts. To suggest they're minimal is preposterous. Our concern is hampering the ability of our 1 first responders to be able to arrive on the scene of lifesaving emergencies in a timely fashion. Our concern is for that officer caught up in a situation where he or she needs backup help and it's delayed by a freight train. Our concern is the survivability of a citizen that stops breathing and collapses because the ambulance is delayed by a freight train. Keep in mind brain death starts in four minutes. Given the fact that fire doubles in size every minute, our concern is for the life and safety of a family whose house is on fire and the closest fire equipment is delayed by a freight train.

13 While the railroad states the proposed merger will result in less pollution and road traffic, delayed emergency response will not make our residents safer.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above. As discussed in that response, OEA has revised *Section 3.3, Grade Crossing Delay* to include additional information about the impact of the Proposed Acquisition on grade crossing delay and emergency vehicles.

Comment 660-2: Transportation Merit Hearing Comment from Texas State Representative Ron Reynolds

I am also concerned about the impacts of increased train traffic through our communities. STB analysis projects an additional eight trains per day as a result of the merger. That's nearly 3,000 additional trains per year running through 890 at grade crossings in Harris County. Despite Canadian Pacific's promises to run shorter trains, the average length of their freighters in late 2021 was 1.5 miles long, more miles long means more traffic, which impacts everything from a worker's daily commute to response times in emergency situations. First responders up and down the proposed line have voiced their concerns about the impact on emergency response. The Board's impact study minimizes three concerns, but first responders have stated that even a split second delay could mean the difference between life and death. I have yet to hear a satisfactory response to these concerns from the railways or the Board.

OEA Response

Regarding emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 667-1: Transportation Merit Hearing Comment from Jon Gabriel for BNSF

The applicants project that the rail merger will result in 8 to 11 new CP/KCS trains running through the Texas Gulf Coast and Houston. That's three to 4,000 trains per year. This is a doubling of KCS's current volume on four of the five subdivisions in the Houston complex. This slide shows the annual additional trains that will be added to the already busy Houston complex as a result of this merger. Take for example tower 26 in Houston, where BNSF and KCS cross each other at an at grade intersection where they'll also be at a local aggregated road crossing, adding 8 CP/KCS trains per day throughout this intersection will almost certainly delay BNSF local trains, as well as motorists, causing the cascading effect through Houston and the National Rail Network.

OEA Response

Comment noted. The delay results for each specific crossing, along with the data used in these calculations, are presented in **Appendix H, Grade Crossing Safety and Delay**. The Board will take these results into account, as appropriate, when making its final decision.

Regarding mitigation to address delays in the Houston area, see the response to Summary Comment: Grade Crossing Delay above.

Comment 668-3: Transportation Merit Hearing Comment from former Majority Leader of the Minnesota State Senate Amy Koch

Last week this Board heard from Hennepin County and the City of Mahanomen in Minnesota, but in a Minnesota town like Winona where train crossing wait times are already a problem with 40-minute delays in some cases, the 50% increase in train traffic this community is expected to see would be disastrous. The real-life devastating consequences of such delays were recently on display in Lockland, Ohio, where a home, just 300 feet from the rails, sat in flames for eight times longer than it should have due to a train that was blocking firefighters from getting to the scene. A 59-second response time became eight minutes with flames doubling with each passing minute.

OEA Response

OEA notes the commenter's concerns about existing conditions in Hennepin County. Regarding concerns related to grade crossing delay and emergency response, see response to Summary Comment: Grade Crossing Delay above.

Comment 688-1: Written Comment from Public Works Department, City of Kansas City, Missouri (EI-32707)

At-grade crossings of concern

According to the maps included with FD 36500 and information available at in the Draft EIS | CPKCS Environmental Impact Statement (cp-kcsmergereis.com), the proposed KCS Divestiture Line subject to this NEPA review includes several at-grade crossings of concern. Table H.1-1 from the Draft EIS, included below, identifies two crossings of major concern to us:

- 329762T – 12th Street
- 329764G – 17th Street

These two grade crossings bisect the eastern section of the Blue River Valley Industrial Area (BRVIA), which is Kansas City's largest industrial district. Due to a successful US Army Corps (USAC) flood control investment, the industrial area has experienced significant growth in the recent years. The BRVIA is additionally bisected on its western section by two Union Pacific (UP) at-grade crossings on 12th St and 17th St which are located 1,150-feet and 530-feet from the KCS crossings respectively. The Union Pacific and the KCS at-grade crossings are not synchronized, and as a result, vehicular traffic on 12th and 17th Street is often unable to enter and/or exit the BRVIA.

It is concerning that a number of existing at-grade crossings within Kansas City subject to review were not listed within Table H.1-1 (see following page). The locations of the omitted at-grade crossings include but are not limited to North Olive Street, North Kansas Avenue and North Lydia Avenue. North Olive Street near East Front Street is a main arterial within the Kansas City's very busy Northeast Industrial District. Lengthy unit trains

coming to and from Knoche Yard often block vehicular traffic from East Front Street crossing south using North Olive, exacerbating detrimental air quality conditions, and creating long delays and substantial life/safety concerns. This multi-track grade crossing also impedes economic growth in this important district of Kansas City which has been the subject of enormous local and federal investment, including, among other things, millions expended for substantial environmental remediation made at Berkley Park, a fast-growing residential and commercial district along the Missouri River. The City, coupled with state and federal dollars, has prioritized an investment of millions at Berkley Park – dollars needed to install infrastructure and other improvements required to support the construction of a large new soccer sports facility which will add vehicular traffic to the North Lydia Avenue crossing.

OEA Response

The two grade crossings of 12th Street (329762T) and 17th Street (329764G) would experience a reduction in the average gate down time as a result of the Proposed Acquisition due primarily to the projected reduction in average freight train length on the Pittsburg Subdivision where they are located. The average train length would be reduced by an average of 924-feet from 8,899-feet in the No-Action Alternative to 7,975-feet with the Proposed Acquisition. The 12th Street grade crossing has an AADT below the 2,500 AADT analysis threshold. The LOS for 17th Street would not change as a result of the Proposed Acquisition. Therefore, OEA is not recommending site-specific mitigation to address grade crossing delay impacts at these grade crossings.

The grade crossings that the commenter is referring to at North Olive Street, North Kansas Avenue and North Lydia Avenue and North Olive Street near East Front Street are outside of the affected environment of the EIS. There would be no Proposed Acquisition-related growth on the rail line that these streets cross and therefore outside of the scope of analysis of the effects of the Proposed Acquisition.

Comment 688-2: Written Comment from Public Works Department, City of Kansas City, Missouri (EI-32707)

At-Grade Crossing Safety and Delay

The expected Trains per Day (TPD) traveling through the two identified at-grade crossings will increase from 17.57 TPD to 30.41 TPD according to the draft EIS (see Table H.1-1 below). This means number of trains will almost double in 2027 as a consequence of the merger. This will negatively impact the 12th St and 17th Street at-grade crossings at the BRVIA. Table H.1-1 of the draft EIS states that the overall length of the trains will be 124-feet less which decreases the gate-down time from 3.1 minutes to 2.9 minutes, however the number of trains per day (TPD) almost doubles so the overall gate-down time per day will increase from 54.5 minutes/day to 88.16 minutes/day. The overall increase in gate-down time will negatively impact the economic activity at the BRVIA. When taken in conjunction with the Union Pacific crossings located just to the west, the overall access to the BRVIA will be very difficult for industry, employees and emergency services.

OEA Response

See first paragraph of response to Comment 688-1 above regarding average train lengths and their relation to gate down time.

According to the results of the Emergency Vehicle Delay Analysis conducted in the Final EIS in response to comments on the Draft EIS as reported in **Appendix H, Grade Crossing Delay and Safety, Table H.2-2**, while total delay would increase at these two crossings, the average delay per delayed vehicle would decrease.

A potential financial effect on the business expenditures of small businesses would not be an environmental impact, and therefore OEA did not assess such effects as part of its environmental review.

Comment 107-2: Written Comment from Demetris Alfred, President, Missouri State Council of Fire Fighters (EI-32576)

The second concern of our organization has to do with the increasing number and size of these trains. Certain estimates suggest that there will be several dozen additional trains traversing the rails from Canada to the Gulf of Mexico on a daily basis. Canadian Pacific routinely operates trains that are 1.7 to 2.3 miles in length. As trains of this size pass through small communities, the time it takes to pass an at-grade rail crossing can exceed thirty minutes. In the event of a fire, medical emergency or other response, delays of this duration can prove deadly.

OEA Response

See response to Summary Comment: Grade Crossing Delay above.

The average train length on the CP and KCS subdivisions in Missouri are projected to decrease as a result of the proposed Acquisition. Relevant subdivisions and average train lengths are listed below for the No-Action Alternative and the Proposed Acquisition:

- Laredo Subdivision (CP)
 - No-Action Alternative: 12,126.8 feet
 - Proposed Acquisition: 7,209.8 feet
- Kansas City
 - No-Action Alternative: 12,445.2 feet
 - Proposed Acquisition: 7,044.6 feet
- Pittsburg
 - No-Action Alternative: 8,898.7 feet
 - Proposed Acquisition: 7,074.9 feet
- Heavener
 - No-Action Alternative: 8,508.0 feet
 - Proposed Acquisition: 7,385.4 feet

Comment 138-2: Public Meeting Comment from Ken Croken, Member, Board of Supervisors, Scott County, Iowa (EI-32757)

I'll also add that you probably do not know that Davenport is also known as our beloved river city. You're going to take away our river. We will no longer have access to our river. And in the interest of full and fair disclosure, I should also add that I am a part owner of the local baseball team. And I don't believe there's much of a future for that baseball team if no one can get into the park or leave the park or when they have a heart attack in the park, the current plan is we will send a boat from Rock Island across the Mississippi, transport them back to Rock Island to take them to another -- another hospital in Illinois. That's not a good plan. So, I too would urge you to back this train up quite a bit and let's -- let's look at some of these more adverse effects that you're going to be visiting upon this community and -- and I thank you for your consideration.

OEA Response

OEA notes this comment from the Scott County Board of Supervisors and has addressed Grade Crossing Delay in *Section 3.3* of the Final EIS.

Comment 471-1: Written Comment from Chad Major, President, Professional Fire Fighters Association of Louisiana (EI-32521)

The proposed mega-merger between Canadian Pacific and Kansas City Southern is alarming because of several safety concerns. Among the first responder community, there is fear the merger jeopardize safety by increasing the amount of time it takes fire fighters, EMS, and law enforcement to respond to emergencies.

Both the length and frequency of trains are of problematic.

The length of trains is predicted to double in most communities. The average freight train length has already been growing, increasing by about 25% since 2008. These mega-trains carrying Canadian oil are projected to be over two miles long. This increase will make the average 10-minute wait at at-grade crossings turn into a 40-minute delay. First responders cannot afford to wait at these at-grade crossings which in many cases especially in rural communities may be the only route. Just a few months ago, a home in Lockland, Ohio near the train tracks burned unabated while fire apparatus was blocked at a railroad crossing.

In many small towns in northwest Louisiana along the train route, fire stations and emergency service providers are located near at-grade crossings and their route of response requires responders to traverse the at-grade crossing.

These concerns regarding the merger magnified by increased call volume, decreased availability of personnel—career and volunteer---and lack of training in HAZMAT response in most communities.

OEA Response

See response to Summary Comment: Grade Crossing Delay above.

The average train length on the CP and KCS subdivisions in the study area in Louisiana are projected to decrease as a result of the Proposed Acquisition. Relevant subdivisions and average train lengths are listed below for the No-Action Alternative and the Proposed Acquisition:

- Shreveport
 - No-Action Alternative: 9,650.9 feet
 - Proposed Acquisition: 8,128.3 feet
- Shreveport Terminal
 - No-Action Alternative: 10,143.8 feet
 - Proposed Acquisition: 9,412.1 feet
- Beaumont
 - No-Action Alternative: 9,120.8 feet
 - Proposed Acquisition: 8,162.3 feet

S.9 Truck-to-Rail Diversions

Comment 87-1: Written Comment from Danielle Freeman (EI-32221)

I do not support the Proposed CP KCS rail merger. Can you please provide information regarding method, process or equation used to determine how much weight semitruck freight would be switched to rail freight? This issue needs to be evaluated because moving freight by rail is not cost efficient in terms of reliability in load date and delivery time. The company I work for avoids rail because of this fact.

OEA Response

The Applicants project that the Proposed Acquisition would reduce truck transportation on certain highways in the United States because some freight that currently moves by truck would move by rail instead. The approach that the Applicants used to make these projections is detailed in the Applicants' application. *Section 3.4, Truck-to-Rail Diversions* and **Appendix I, Truck to Rail Diversion and Intermodal Facility Traffic** provide details regarding OEA's independent analysis of truck-to-rail diversions. As explained in the section and the appendix, OEA identified highways on which truck traffic could decrease based on the origins and destinations for truck traffic described in the Applicants' application. OEA conducted a capacity evaluation and performance assessment using industry standard capacity evaluation procedures and highway network data derived from the Freight Analysis Framework and the Highway Performance Monitoring System.

OEA acknowledges that the competitive dynamics between trucking and rail transportation are complex. In general, rail transportation tends to be a more competitive option for moving freight over long distances, whereas truck transportation is more competitive locally. Ultimately, however, the extent of truck-to-rail diversions would depend on many factors, including general economic conditions; global, national, and regional markets for specific commodities; and the decisions of individual transportation companies and their

customers. If fewer truck-to-rail diversions were to occur than the Applicants have projected, then increases in rail traffic on the combined CPKC network would be lower than projected and the potential impacts associated with increased rail traffic would be less than reported in the Draft EIS. No changes to the Draft EIS are warranted in response to this comment.

Comment 461-25: Written Comment from Environmental Defense Fund (EI-32540)

OEA stated on page 3.4-1 that "the truck-to-rail diversion study area includes highways on which truck traffic would decline as a result of the Proposed Acquisition." EDF questions the scope of the study area. All highways with truck traffic that may be impacted by the proposed merger should be included in the study area to understand the net effect on truck traffic. The draft EIS does not make any claims regarding how truck traffic in the Houston area will be impacted, as seen on the map on page 3.4-4. OEA acknowledges that the CPKC system will be moving energy commodities including liquefied petroleum gas from Alberta, Canada, and other production areas, chemical products from the chemical plants along the Gulf Coast, and bitumen and crude oil from Alberta. Houston is the Energy Capital of the world, with the highest concentration of refineries, and one of the busiest ports by tonnage. Because Houston and the Gulf Coast will likely be handling these energy products, EDF requests the final EIS include more in-depth truck diversion analysis for the Houston, Harris County and Gulf Coast region.

OEA Response

The study area for truck-to-rail diversions is based on information provided by the Applicants and OEA's independent analysis. As explained in *Section 3.4, Truck-to-Rail Diversions*, the Applicants, and subsequently OEA, identified plausible routes between geographic areas (known as "Business Economic Areas") based on highway capacity and traffic data. OEA acknowledges that there are multiple routes that trucks may take between any given origin and destination. It would not be possible, however, to predict and analyze every potential trucking route in detail as part of the environmental review of the Proposed Acquisition. Instead, OEA focused on the most plausible routes (i.e., the shortest path in most cases) to avoid overly complex network models and to avoid overstating the potential benefits of truck-to-rail diversions by including substantially longer possible routes in the analysis. The map in **Figure 3.4-1** on page 3.4-4 shows the origin destinations of freight that could be diverted from truck transportation to rail.

Neither the data provided by the Applicants nor OEA's analysis suggest that truck traffic on roadways in the Houston area would change as a result of the Proposed Acquisition. OEA does not expect that the Proposed Acquisition would result in a reduction in long-haul truck traffic through the Houston area because Houston is not located along one of the major highway routes from which trucks would likely be diverted. OEA also does not expect that local truck traffic would increase in the Houston area because the trackage rights agreement that CPKC would operate under would permit CPKC traffic to pass through Houston on UP rail lines but would likely not allow CPKC to serve customers in Houston. Therefore, freight would not be transferred from trucks onto trains or from trains onto trucks in the Houston area. The Applicants do expect that the Proposed Acquisition would divert the

transportation of energy commodities, including bitumen in the form of non-hazardous DRUbit, from other rail lines onto the CPKC system. However, OEA expects that DRUbit would primarily move from Alberta, Canada to Port Arthur, Texas on CPKC rail lines and would not originate, pass through, or terminate in Houston. Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 461-26: Written Comment from Environmental Defense Fund (EI-32540)

However, EDF also questions the fundamental assumption that just because rail capacity is increased companies will switch their shipping method from truck to rail. Trucking allows for faster delivery times than railroads. Shipping by truck also has more flexible service options, such as drop offs or pick-ups in the middle of a shipment's route and less cargo restrictions due to size and weight constraints. EDF requests further analysis to support the claim that truck diversion is feasible. In a study done by the Washington State Department of Transportation, they conclude that "even if there was a targeted effort to use railroads more frequently [than trucks], the goods would need to travel by truck on regional roads and freeways to arrive at rail terminals. In fact, most of the goods produced or received from the rail system must dray those goods by truck to or from the rail lines; and, increased rail service would likely lead to greater use of truck for this very reason...Shippers and customers are aware of the region's rail service and use it where appropriate and advantageous to their needs. As with all business matters, shipping practices are based on market conditions including service, cost, and schedule conditions."

OEA Response

See response to Comment 87-1 above. OEA acknowledges that the competitive dynamics between trucking and rail transportation are complex. The projections of truck-to-rail diversions are informed not only by an increase in railroad capacity, but by considerations of marketing, economics, and long-term benefits to shippers. Based on their analysis, the Applicants concluded that only a small fraction of eligible goods would be diverted from truck to rail and that the vast majority of increased rail traffic on CPKC rail lines would be the result of rail-to-rail diversions, not truck-to-rail diversions. OEA concludes that truck-to-rail diversion is feasible at the regional, national, and continental levels; at the local level, OEA expects that truck traffic would increase on certain roadways that serve intermodal facilities where CPKC trains would be loaded and unloaded. See *Section 3.5, Intermodal Facility Traffic* for the analysis of localized impact due to the Proposed Acquisition.

OEA notes that, if fewer truck-to-rail diversions were to ultimately occur than the Applicants have projected, then increases in rail traffic on the combined CPKC network would be lower than projected and the potential impacts associated with increased rail traffic would be less than reported in this Final EIS.

S.10 Intermodal Facility Traffic

Comment 518-6: Written Comment from Canadian National Railway Company (EI-32613)

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

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

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

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

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

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

⁷ Id.

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

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

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

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

¹² Id. at 8.

OEA Response

For the environmental review of the Proposed Acquisition, OEA analyzed impacts associated with increased truck traffic on roadways near intermodal facilities using projections provided by the Applicants. The projections that the Applicants provided to OEA represent truck units, not individual truck trips. The identified truck increase at each intermodal facility was a unit projection provided by the Applicants to OEA. OEA converted the truck unit projections to vehicle trips and applied it to the network. OEA assumed that each truck unit would generate two total trips, one trip per entering and exiting from each intermodal facility. Therefore, the approach that OEA used is consistent with past environmental reviews in railroad acquisition proceedings and with the separate environmental review that OEA is conducting for CN's Proposed Divestiture in Docket No. FD 36500 (Sub-No. 1). Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 459-7: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

However, OEA significantly miscalculated the amount of truck traffic entering and exiting the IMS. Using the Applicants' data, OEA found that, in 2019, there were 221 truck trips per day in 2019, with that number risking to 279 trucks per day in 2027 without the merger and 332 trucks per day with the merger, a 19% increase over projected 2027 counts without the Acquisition,¹⁷ or a 50% increase over 2019 levels¹⁸. Yet, in 2019, when CP was seeking permission to open a new exit from Shoreham Yard onto Central Avenue, it commissioned a traffic study by Stantec Consulting Services, as part of the CP Rail Shoreham Expansion Travel Demand Management Plan, attached as Exhibit C (“Exhibit C, CP Traffic Study”).¹⁹ This study showed a count of 640 heavy vehicles per day in 2019, nearly triple the truck traffic identified by CP in the DEIS.²⁰ Similarly, the study projected a daily heavy vehicle count of 762 in 2022,²¹ yet the DEIS estimates a truck number that is less than half this amount in 2027²². The figures in the DEIS therefore directly contradict CP's own numbers and are unreliable.

¹⁷ OEA Draft EIS, Appendix I, Table I.2-1 at I-14.

¹⁸ $(332-221)/221 = 0.457$

¹⁹ Exhibit C, CP Traffic Study Table 1 at 6.

²⁰ Id.

²¹ See OEA Draft EIS, Appendix I, Table I.2-1 at I-14 (showing a projection of 279 under the “No-Action” alternative).

²² OEA Draft EIS, Appendix I, Table I.2-1 at I-14.

OEA Response

See response to Comment 518-6 above. OEA appropriately accounted for multiple truck trips associated with each truck that would serve the Minneapolis Intermodal Management System (IMS) facility. The Stantec study referenced by the commenter identified in the Trip Generation and Distribution section of the Travel Demand Management Plan study stated that, “an average weekday was shown to have an entering/exiting volume of 472 heavy vehicles (HV). On the day of data collection, the entering/exiting volume was 640 HV.” Therefore, the average weekday volume estimate of 472 and the single-day count of 640 heavy vehicles reported in the Stantec study are not individual truck units, but the trips associated with their movement. Table 1 in the study also indicates that the single day count of 640 refers to truck trips, not individual truck units.

The Applicants provided projected truck unit numbers that were used in the Draft EIS. The trips were calculated by converting the associated projected truck unit numbers into truck trips to account for the entering/exiting of each truck. OEA calculated that each truck would generate two total trips, one trip per entering and exiting from each intermodal facility. According to the Applicants, 221 trucks entered and exited the facility each day, on average, in 2019. This corresponds to 442 truck trips each day (one trip into the facility and one trip out), which is very similar to the 472 average truck trips reported in the Stantec study for 2019.

Comment 459-8: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

Moreover, this same study also stated that CP’s data showed a growth rate of six percent per year over the prior ten years.²³ The study assumed that the six percent growth rate per year was reasonable until the facility reached double the 2019 traffic volumes.²⁴ CP achieved this six percent growth rate without the Acquisition²⁵, yet the DEIS numbers show a growth rate much less than six percent even in the post-Acquisition scenario, again directly contradicting CP’s own prior statements. OEA should therefore re-examine CP’s contradictory data and determine actual truck traffic counts near the IMS and the resulting impacts to the County following the Acquisition.

²³ Exhibit C, CP Traffic Study at 6 (“Data provided by CP Rail shows that in the last ten years they experienced an average annual traffic growth rate of 6%.”).

²⁴ Id.

²⁵ Id.

OEA Response

The Applicants provided the truck estimates for the analysis year of 2027 under the Proposed Acquisition and the No-Action Alternative, as detailed in their application and supplemental information provided to OEA. The data provided by the Applicants for intermodal facilities traffic accounted for projected organic growth that would occur independent of the Proposed Acquisition, consistent with projections of future rail traffic on rail lines. The Stantec study referenced by the commenter does not include the raw data from which the assumed 6 percent growth rate was derived. Therefore, OEA cannot assess the reliability of that assumed growth rate compared to the organic growth estimates that the Applicants provided and which OEA used for its analysis. Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 459-9: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

The truck traffic figures in the DEIS also directly contradict actual observations of traffic at Shoreham Yard. County staff seeking to test CP's data monitored actual traffic in and out of the IMS and identified traffic volumes far in excess of Applicants' 2019 and 2027 projections in the DEIS. On four representative days in March of 2022, County traffic engineers counted 1,271 daily truck movements on Thursday, March 17, 2022; 77 on Saturday, March 19, 2022; 17 on Sunday, March 20, 2022; and 1,484 on Tuesday, March 22, 2022.²⁶ These daily truck movements did not include passenger automobiles or single unit trucks but did count truck traffic repositioning empty containers, moving containers to temporary storage, moving without containers, and other ancillary movements.²⁷ On those four days, 1,177 trucks, or 41% of all container-related truck movements, were observed by County traffic engineers entering or leaving on the University Avenue side of the IMS while 1,672, or 59% of all truck movements, were observed moving via Central Avenue, east of the IMS.²⁸ Using these data, County traffic engineers estimated that the average daily truck traffic associated with the IMS is actually 976, far above the 221, 279, and 332 respective numbers listed in the DEIS.²⁹

²⁶ See Exhibit B, V.S. Amfahr re: DEIS, Attachment A (“Exhibit B-Attachment A, Traffic Counts”) at Summary.

²⁷ Exhibit B, V.S. Amfahr re: DEIS at ¶ 7.

²⁸ Id. at ¶ 9.

²⁹ Id. at ¶ 15.

OEA Response

The baseline 2019 volumes were calculated by using published Average Annual Daily Traffic (AADT) volumes from the Minnesota Department of Transportation for the area roadways, as shown in the Draft EIS **Table I.2-4** in **Appendix I**. The AADT volumes are based on collected traffic volumes for a one-year duration and include daily captured truck

traffic, including ancillary movements, along a specified roadway. The AADT includes the volume travelling in both directions unless the roadway is one-way. The extended period of data collection provides a better representation of typical conditions present on area roadways and reduces the risk of skewed results due to outlier observations due to a larger sample size. The 2019 volume of 221, the 2027 without merger volume of 279, and the 2027 with merger volume of 332 were the unit projections provided by the Applicants. The approach used in the Draft EIS converts the unit projections into truck trips by assuming one entering and one exiting trip per each unit. Therefore, the estimated number of truck trips per day was 442 in 2019, 558 in 2027 under the No-Action Alternative, and 664 in 2027 under the Proposed Acquisition. OEA's reliance on publicly available AADT data and information provided by the Applicants regarding projected future truck traffic is reasonable and consistent with past environmental reviews. Accordingly, no changes to the Draft EIS are warranted in response to this comment.

Comment 459-10: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

OEA must investigate this discrepancy and use accurate numbers in its assessment of the environmental impact of the Acquisition and the determination of appropriate mitigations. Potentially, the DEIS failed to account for ancillary truck movements. However, ancillary movements add significantly to daily truck traffic on roadways around the IMS.³⁰ In one case, for example, a truck exited Shoreham Yard at 29th Avenue, traveled south on Central Avenue then reentered the IMS at 28th Avenue.³¹ Presumably, that truck repositioned a container within the IMS, but it used Central Avenue to do so.³² OEA should conduct a further review of traffic data and forecasts to resolve this discrepancy and study the harm resulting from the increase in truck movements to the County and its residents, address the effects of the significant truck movements on air quality, vibrations, noise, safety, and traffic in the County, and propose conditions to mitigate those effects.³³ The FEIS must account for these concerns.

Taken together, these discrepancies show how significantly the DEIS may be understating the increase in truck traffic that could result from the Acquisition. If the County's estimated average daily truck traffic count is correct, and the 2019 CP study's estimate of annual growth is correct, then truck traffic in 2027 without the merger will be 1,306³⁴, not 279, as shown in the DEIS. Using the proportionate increase calculation in the DEIS, the truck traffic in 2027 after the Acquisition will be 1,554³⁵, nearly five times the estimate in the DEIS. A discrepancy of this magnitude must be resolved and addressed in the FEIS.

³⁰ Id. at ¶¶ 11-14.

³¹ Id. at ¶ 12.

³² Id.

³³ Id. at ¶ 16.

³⁴ $976(1.06^5) = 1306.11$

³⁵ $1306.11 * 1.19 = 1554.27$

OEA Response

Regarding the commenter’s concern that the Draft EIS may have understated current and future truck traffic due to OEA’s reliance on publicly available AADT data and projections provided by the Applicants, see response to Comment 459-9 above. In the response to Comment 459-9 above, OEA stated that its reliance on publicly available AADT data and information provided by the Applicants regarding projected future truck traffic is reasonable and consistent with past environmental reviews. Nevertheless, OEA conducted a theoretical sensitivity test for the Minneapolis IMS to show the potential impacts even if there were higher truck traffic levels. The test was conducted to assess the impact of associated truck trips on the analyzed network segments if the 2027 Proposed Acquisition truck unit projections were increased by a factor of 4, 8, and 12 intended to address the ancillary traffic identified in the comment. **Table S.10-2** below shows the results of the sensitivity test in comparison to the original truck unit projection (53 units) submitted by the Applicants. The approach from the Draft EIS was used to calculate the truck trips associated with the increase in truck unit projections and there were no changes to the distribution of the truck trips along the network segments. The results show that while the average V/C per mile increases proportionally with the increased number of truck trips, the average V/C remains well below 1.0. Additionally, no new segments moved from under capacity to over capacity with the inclusion of the additional tested truck traffic.

Table S.10-2. Results of Sensitivity Test

Terminal	Description	2022 Base Year	2027 Without Proposed Acquisition	2027 With Proposed Acquisition
Minneapolis IMS Original Projection (53 Units)	Total Approach Segments	14	14	14
	Number of Segments V/C ≥ 1.0	1	1	1
	Average V/C per Mile	0.497	0.604	0.605
Minneapolis IMS 4x Projection (200 Units)	Total Approach Segments	14	14	14
	Number of Segments V/C ≥ 1.0	1	1	1
	Average V/C per Mile	0.497	0.604	0.608
Minneapolis IMS 8x Projection (400 Units)	Total Approach Segments	14	14	14
	Number of Segments V/C ≥ 1.0	1	1	1
	Average V/C per Mile	0.497	0.604	0.611
Minneapolis IMS 12x Projection (600 Units)	Total Approach Segments	14	14	14
	Number of Segments V/C ≥ 1.0	1	1	1

Table S.10-2. Results of Sensitivity Test

Terminal	Description	2022 Base Year	2027 Without Proposed Acquisition	2027 With Proposed Acquisition
	Average V/C per Mile	0.497	0.604	0.615

The Central Ave intersection analyses documented in the Stantec report along with the projected V/C ratio conclude that operations are below capacity with modest levels of intersection delay.

Comment 459-11: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

The increase in traffic is particularly injurious because of the arteries and communities through which it travels. All truck access into and out of the IMS is on two busy urban streets: University Avenue on the west, and Central Avenue to the east.³⁶ This is a densely populated, diverse area.³⁷ Central Avenue, where CP recently built new facilities to increase truck traffic, is a busy commercial corridor.³⁸ From Central Avenue, trucks travel to various other neighborhood arteries, all of which are heavily residential and commercial streets.³⁹ Although the existing street design off Central Avenue is intended to prevent truck traffic exiting the IMS from using 29th Avenue to the east, neighborhood complaints of trucks diverting to 29th Avenue rather than using the intended truck route along Central Avenue continue.⁴⁰ Based on current traffic patterns and existing conditions, the County anticipates that most of the additional truck traffic resulting from the Acquisition will be using the Central Avenue route and the connecting residential streets, leading to elevated concerns for those already busy corridors.⁴¹ Even under current conditions, the City of Minneapolis identified University and Central Avenues as “high injury streets” due to the above average incidence of injuries and fatalities on those streets, many involving large trucks.⁴² The proposed Acquisition would expose these residents and businesses to significant increases in safety, traffic, noise, pollution, and infrastructure damage, all of which must be addressed by OEA in the FEIS.⁴³

³⁶ See Exhibit B, V.S. Amfahr re: DEIS at ¶ 17.

³⁷ Id. at ¶ 18.

³⁸ Id. at ¶ 19.

³⁹ Id..

⁴⁰ Marla Khan-Schwartz, Audubon neighborhood continues push for 29th Avenue reconstruction, NORTHEASTER NEWSPAPER, September 6, 2022, (“[T]he neighborhood group and residents expressed concern about the increase of freight traffic over the past three years ... ‘Stop the semis,’ yelled a passerby out of their vehicle window.”).

⁴¹ See Exhibit B, V.S. Amfahr re: DEIS at ¶¶ 26-27 .

⁴² See Exhibit B, V.S. Amfahr re: DEIS, Attachment B, Vision Zero (“Exhibit B-Attachment B, Vision Zero”).

⁴³ See Exhibit B, V.S. Amfahr re: DEIS at ¶ 20.

OEA Response

OEA properly assessed the potential effects of projected increases in truck traffic near intermodal facilities, including the Minneapolis IMS. The Applicants provided the truck unit projections for this analysis as detailed in their application and supplemental information provided to OEA. The truck projections provided by the Applicants predict that the Proposed Acquisition would increase truck traffic at the Minneapolis IMS facility by fifty-three truck units per day by 2027. As discussed in *Section 3.5, Intermodal Facility Traffic* and **Appendix I, Truck to Rail Diversions & Intermodal Facility Traffic**, OEA assessed impacts of the Proposed Acquisition on roadways by determining whether traffic would exceed available capacity of roadways near intermodal facilities if the Board authorizes the Proposed Acquisition. *Section 3.2, Grade Crossing Safety; Section 3.6, Noise and Vibration; and Section 3.7, Air Quality and Climate Change* discuss the impacts of increased activities at intermodal facilities (including increased truck traffic) on grade crossing safety, noise, and air quality, respectively.

OEA found that increased truck traffic resulting from the Proposed Acquisition would not cause roadways in the vicinity of the Minneapolis IMS facility to exceed available capacity. An additional sensitivity test was conducted to address the comment assertion of ancillary traffic along the surrounding roadway network in Comment 459-10 and the results of that supplemental testing are shown in **Table S.10-2, Results of Sensitivity Test**. OEA agrees with the commenter that most trucks entering and leaving the Minneapolis IMS facility would continue to use Central Avenue. Central Avenue is wider for truck movements and the Central Avenue and 29th Avenue NE intersection design denotes eastbound left-turn or right-turn movement only out of the site to help minimize truck traffic travelling across to 29th Avenue NE. OEA further found that the AADT of Central Avenue would increase by less than 0.01 percent as a result of the Proposed Acquisition. Therefore, although Central Avenue already exceeds capacity, the effect of the Proposed Acquisition would be minor.

OEA notes that the study conducted by the Minnesota Department of Transportation referenced by the commenter did not evaluate the Minneapolis IMS facility. The study identified the project area as Hwy 47 (University Ave) and Hwy 56 (Central Ave) from 37th Ave (southern terminus) to US 10 (northern terminus). The intermodal facility location is south of the 37th Avenue study terminus and thus is outside of the study area. No changes to the Draft EIS are warranted in response to this comment.

Comment 459-12: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

Moreover, planning is already underway to expand transit service on Central Avenue. Metro Transit, the regional transit provider, is currently planning a new arterial bus rapid transit project for Central Avenue called the “F Line.”⁴⁴ This project, expected to cost \$75-85 million, including federal funds, intends to provide service with ten minute headways running 20% faster than the current Route 10 local bus that serves the same corridor.⁴⁵ Although the specific improvements related to the “F Line” are not yet determined, other arterial bus rapid transit projects in the County are considering dedicated bus lanes as a way

to achieve transit service goals.⁴⁶ OEA should consider the impact that large increases in truck traffic on Central Avenue will have on transit service in the corridor, and the negative environmental harms resulting from such an injury to transit service.

⁴⁴ F Line Project, METRO TRANSIT (March 2022), <https://www.metrotransit.org/f-line-project>.

⁴⁵ F Line FAQs, METRO TRANSIT (March 2022), <https://www.metrotransit.org/f-line-FAQs>.

⁴⁶ E.g., Lake Street improvements – Bus Rapid Transit is coming to Lake Street, HENNEPIN COUNTY MINNESOTA, <https://www.hennepin.us/lake-street-improvements> (last visited Oct. 14, 2022).

OEA Response

OEA conducted the intermodal facility impact assessment to determine if the increase in truck traffic would exceed the available capacity of the area roadways. The capacities of the roadways in the Draft EIS were calculated based on the number of lanes identified in the initial review of the facilities. Based on further review of the F-Line Bus Rapid Transit Corridor Study, the number of lanes along Central Avenue were reduced from four lanes to two lanes to reflect the incorporation of a potential future bus-only lane along this facility. This change is reflected in **Appendix I**. The segment remains operating below the 1.0 V/C threshold.

Comment 459-13: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

Using USDOT’s Benefit-Cost Analysis Guidance, the County calculated that truck traffic associated with Shoreham Yard in 2027 will result in \$2.5 million in total annual social costs to area residents, including roadway maintenance costs, truck collision costs, and health impacts from truck emissions.⁴⁷ Using this methodology, at current levels of 356,240 annual truck trips, the County estimates that costs amount to \$4.4 million per year.⁴⁸ An increase of 53 truck trips per day, as projected by the DEIS, would increase these costs by \$476,976 per year.⁴⁹ If truck traffic increases by more than projected by the DEIS, as seems likely given the DEIS’s significant undercount of current traffic levels, that the social costs would likewise be proportionately higher. The FEIS must account for these social costs and propose appropriate conditions to mitigate the harms.

⁴⁷ See Exhibit B, V.S. Amfahr re: DEIS, Attachment C, Social Impacts of Trucks (“Exhibit B-Attachment C, Social Impacts of Trucks”).

⁴⁸ Id.

⁴⁹ Id.

OEA Response

OEA’s intermodal facility assessment properly analyzed the impact of the increase in truck traffic that would result from the Proposed Acquisition on the capacity of the roadways.

OEA did not conduct a cost-benefit analysis as part of its environmental review, and NEPA does not require such an analysis. The results reported in *Section 3.5, Intermodal Facility Traffic* and in **Appendix I, Truck to Rail Diversions & Intermodal Facility Traffic** show that the Proposed Acquisition would increase vehicular traffic on roadways near the Minneapolis IMS facility by much less than 1 percent on any given roadway and would not cause any roadway to exceed available capacity. Therefore, OEA concludes that the Proposed Acquisition would have a negligible effect on roadways near intermodal facilities, and no changes to the Draft EIS are warranted in response to this comment.

Comment 461-27: Written Comment from Environmental Defense Fund (EI-32540)

There was no analysis of Houston, Harris County for intermodal traffic. Again, Houston is the Energy Capital of the world, with the highest concentration of refineries, and one of the busiest ports by tonnage. Because Houston and the Gulf Coast will likely be handling these energy products, EDF requests the final EIS include more in-depth analysis on intermodal facility traffic to include Houston, Harris County.

OEA Response

The Applicants' Operating Plan did not predict a material impact on intermodal facilities or truck traffic in the Houston area. Neither CP nor KCS have intermodal facilities in the Houston area. Moreover, OEA understands that KCS generally does not have the right to serve customers in Houston under the terms of the trackage rights agreement that allows KCS to operate trains through Houston on UP rail lines. CPKC would operate under the same trackage rights agreement if the Board authorizes the Proposed Acquisition. Therefore, OEA expects that the Proposed Acquisition would not result in increases in activity at intermodal facilities in the Houston area or an increase in truck traffic on roadways serving intermodal facilities. Accordingly, no further analysis on intermodal facility traffic in Houston or changes to the analysis in the Draft EIS are necessary or warranted.

Comment 567-3: Public Meeting Comment from the Coalition to Stop CPKC (EI-32756)

And on the one hand, the Environmental Impact Statement bases its conclusions of note that impacts on, as Josh mentioned, on the saying 64,000 trucks will be removed from North America's highways on the fly, but on the other hand, it adversely ignored the adverse of impacts from the 163,000 trucks that would be added each year to the roads around Bensenville and the Schiller Park yards.

OEA Response

OEA properly assessed the impact of additional trucks on roadways near intermodal facilities. The results of this analysis are reported in *Section 3.5, Intermodal Facility Traffic* and **Appendix I, Truck to Rail Diversions & Intermodal Facility Traffic**. As shown in **Table I.2-2, Intermodal Facility V/C Summary Table** in the appendix, the roadways near the Bensenville and Schiller Park yards currently operate below capacity and would continue to operate below capacity if the Board authorizes the Proposed Acquisition. Therefore, OEA concludes that the Proposed Acquisition would have a negligible effect on

roadways near intermodal facilities, and no changes to the Draft EIS are warranted in response to this comment.

Comment 644-1: Formal Filing from the Coalition to Stop CPKC (Filing ID 305526)

The expansion of intermodal operations will also require the increase in truck traffic in and out of the yards and the Bensenville community. In fact, based on materials published by OEA, the number of trucks running in and out of the Bensenville Yard each day is expected to nearly double by 2027, from 383 (presumed growth without the merger) to 698 (merger related increase).²⁵ Despite such projected growth, which the Coalition believes is understated, the Application contains no analysis of whether the area roadway network is adequate to support the increased commercial truck traffic.

²⁵ <https://www.arcgis.com/apps/dashboards/665e5f3b1412406ea49454f573aefd35> (Bensenville Yard link).

OEA Response

See response to Comment 518-6 and to Comment 567-3 above.

Comment 645-1: Formal Filing Comment from Hennepin County and the Hennepin County Regional Railroad Authority (Filing ID 305524)

The information on these matters provided to this Board by the Applicants is inconsistent with Applicants' own prior estimates, as well as actual traffic data presented by the County in its comments on the Draft Environmental Impact Statement ("DEIS") in this proceeding.² These other sources of data show traffic impacts far in excess of Applicants' predictions. Given these errors and inconsistencies in Applicants' data, action by this Board is appropriate and needed. In their filings, the Applicants state that, in 2019, there were 221 truck trips per day at the IMS. They also state that they expect a total of 279 trucks per day in 2027, without the Acquisition, and 332 trucks per day in 2027 should this Board approve the Acquisition, a 19% increase as a result of the merger.³ However, these projections contradict CP's own previous estimates of daily truck traffic at the IMS. As part of a study commissioned by CP in 2019, CP reported 640 heavy vehicles per day in 2019, nearly triple the truck traffic identified by CP in its Application before the Board.⁴ The study projected a daily heavy vehicle count of 762 in 2022,⁵ yet CP only reported a 2027 estimate of less than half this amount to the Board.⁶ Similarly, this 2019 study showed a growth rate of six percent per year over the prior ten years and concluded that this growth rate was reasonable until the facility reached double its 2019 traffic volumes⁷. CP achieved this six percent growth rate without the Acquisition⁸, yet the data CP provided to the Board shows a growth rate much less than six percent even in the post-Acquisition scenario, again directly contradicting CP's own prior statements.

Actual observations of traffic from the IMS likewise show that Applicants' estimates dramatically undercount truck traffic volumes. On four representative days in March of 2022, County staff monitored actual traffic in and out of the IMS and identified traffic volumes that are already far in excess of CP's 2027 projections.⁹ Based on this data, County traffic engineers estimated that the average daily truck traffic associated with the IMS is

actually 976, and not the far lower numbers reported by CP in its Application.¹⁰ This data demonstrates that CP's reported truck counts as part of the Acquisition are incorrect and that, in reality, the increased truck traffic as a result of the Acquisition poses the possibility of significant harm to the County. As the County presented in its filings, truck traffic surrounding the IMS already presents concerns for safety, traffic, noise, and pollution. Minnesota's Department of Transportation has identified the two busy corridors surrounding Shoreham Yard, University and Central Avenues, as "high injury streets" due to the above average incidence of injuries and fatalities on those streets, many involving large trucks.¹¹ The proposed Acquisition would expose these residents and businesses to significant new safety concerns, traffic, noise, pollution, and infrastructure damage, all of which must be addressed by the Board.¹² The social costs to metro area residents are also significant and, according to the County's data, could increase to over \$4.4 million per year.¹³

² The County filed Comments on the Draft EIS in this proceeding on October 14, 2022.

³ Response to Information Request No. 2, Docket No. FD-36500 at 8 (Date Filed, Dec. 20, 2021) ("CP Response to Info Request #2").

⁴ Comments of Hennepin Cnty., et al. on Draft Environmental Impact Statement, Docket No. FD 36500 at Exhibit C, CP Traffic Study at Table 1 at 6 (Date filed, Oct. 14, 2022), ("Hennepin Cnty. DEIS Comments, Exhibit C, CP Traffic Study").

⁵ Id.

⁶ CP Response to Info Request #2, at 8.

⁷ Hennepin Cnty. DEIS Comments, Exhibit C, CP Traffic Study at 6 ("Data provided by CP Rail shows that in the last ten years they experienced an average annual traffic growth rate of 6%.").

⁸ Id.

⁹ Comments of Hennepin Cnty., et al. on Draft Environmental Impact Statement, Docket No. FD 36500 at Exhibit B, V.S. Amfahr re: DEIS, Attachment A, Traffic Counts at ¶ 15 (Date filed, Oct. 14, 2022) ("Hennepin Cnty. DEIS Comments, Exhibit B-Attachment A, Traffic Counts").

¹⁰ Id.

¹¹ Comments of Hennepin Cnty., et al. on Draft Environmental Impact Statement, Docket No. FD 36500 at Exhibit B, V.S. Amfahr re: DEIS, Attachment B, Vision Zero (Date filed, Oct. 14, 2022) ("Hennepin Cnty. DEIS Comments, Exhibit B-Attachment B, Vision Zero").

¹² Comments of Hennepin Cnty., et al. on Draft Environmental Impact Statement, Docket No. FD 36500 at Exhibit B, V.S. Amfahr re: DEIS at ¶ 20 (Date filed, Oct. 14, 2022) ("Hennepin Cnty. DEIS Comments, Exhibit B, .S. Amfahr re: DEIS").

¹³ Comments of Hennepin Cnty., et al. on Draft Environmental Impact Statement, Docket No. FD 36500 at Exhibit B, V.S. Amfahr re: DEIS at ¶ 23 (Date filed, Oct. 14, 2022) ("Hennepin Cnty. DEIS Comments, Exhibit B, V.S. Amfahr re: DEIS").

OEA Response

See response to Comment 459-7 and Comment 459-13 above.

S.11 Noise and Vibration

Comment 18-1: Written Comment from Brian Trentz (EI-32144)

Hello, I have lived in my present residence for 21 years. At times, train horns are inaudible and at other times the trains sound like they are roaring right down our street (depending on atmospheric conditions). The noise pollution is most alarming at night while trying to sleep. After being woken by loud train horns, it is difficult to get back to sleep. I contacted our city council and mayor years ago only to be shut down by the city administrator telling me to stop bothering the city council with this concern and that it was too expensive to set-up quiet zones. My reaction was to ask, what is the city council in existence to do other than to address constituent concerns. Now we are looking at the possibility of tripling the number of trains passing through our Iowa Quad Cities every day. Riverfront music festivals will be interrupted every time a train passes. Based on the map, it appears the Quad Cities will be affected by this acquisition more than any other community in the United States, Canada and Mexico. It is not right that our lives will be interrupted by this additional pollution and danger. Please reject this proposed acquisition.

OEA Response

OEA notes the commenter's concerns about existing conditions related to noise from trains in the Quad Cities area. Noise sensitive receptors (noise receptors), such as residences, schools, hospitals, nursing homes, and houses of worship along these rail lines have been exposed to varying levels of train noise for many years, depending on when they were constructed. The history and variability of the number of trains per day, the number of locomotives, types of locomotives, and train lengths has fluctuated over more than a century on the rail lines involved in the Proposed Acquisition. The fluctuations have been driven by many factors, including changing commodity markets, weather, global trade flows, trade agreements, wars, recessions, federal legislation and regulation, management approaches, labor disputes, labor shortages, and two pandemics.

As stated in *Chapter 4, Mitigation*, any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board. In developing environmental mitigation conditions, the Board has consistently focused on the environmental impacts that result directly from the proposed merger or acquisition such as anticipated increases in rail traffic on existing rail lines. The Board, like its predecessor, the Interstate Commerce Commission (ICC), is without authority to mitigate environmental or other effects resulting from pre-existing conditions, such as existing railroad operations or land development in the vicinity of the railroads. Also, absent a licensing proceeding before the Board, an existing railroad can increase its level of operations and make improvements to its rail lines without needing permission from the Board.

As discussed in *Section 3.6, Noise and Vibration*, OEA's analysis found that the Proposed Acquisition would result in adverse noise impacts on a total of 6,307 receptors, including many receptors along the CP rail line in eastern Iowa. In Scott County, Iowa, OEA found that the Proposed Acquisition would adversely affect 1,016 receptors, which is more than in any other county in the study area. In Clinton County, Muscatine County, and Louisa County, OEA found that the Proposed Acquisition would adversely affect 590, 675, and 180 receptors, respectively.

Chapter 4, Mitigation sets forth the mitigation measures that the Applicants have proposed to address noise impacts, as well as OEA's additional recommended mitigation measures. If the Board imposes these measures, the Applicants would be required to maintain rail and rail beds according to American Railway Engineering and Maintenance-of-Way Association standards (MM-Noise-01), comply with FRA regulations establishing decibel limits for train operations (MM-Noise-02), consider lubricating curves where doing so would be a safe and effective means of reducing noise (MM-Noise-03), employ other safe and efficient operating procedures that would reduce noise (MM-Noise-04), and to promptly respond to community inquiries concerning the establishment of quiet zones and assist communities in identifying measures, methods, or technologies that may enable those communities to establish quiet zones (MM-Noise-05). Even if the Board imposes these mitigation measures, however, OEA expects that the Proposed Acquisition would result in unavoidable adverse noise impacts.

Quiet zones are one way to reduce potential adverse noise impacts. Quiet zones are areas in which engineers do not have to sound horns as long as certain FRA safety requirements are met. Generally, railroads and communities work together to establish quiet zones and fund the installation and maintenance of the necessary grade crossing protection measures. The Board has no substantive role in the establishment of quiet zones.

OEA notes that the commenter's reference to "65 decibels" in the Draft EIS is actually referring to 65 day-night average sound level (Ldn). Ldn is the industry standard noise metric for evaluating human annoyance to noise. This type of cumulative noise metric is necessary to adequately assess the effect of multiple train noise events over the course of a day (and night) - rather than one noise event.

Comment 405-1: Public Meeting Comment from Rebecca Howe (EI-32757)

Hi, my name is Rebecca Howe. And I'm with the Merrill Hotel in Muscatine, Iowa. About five years ago, Muscatine made a plan, and we invested over \$100 million in the Muscatine river front and the downtown. Compare that to the 3 million that they got from the railroads. I think there's a significant difference. We turned that industrialized downtown into a thriving work/play and have fun community where everyone can come down and enjoy the downtown. With the railroads coming through, and -- increasing threefold, possibly more, we're going to re-industrialize the downtown and people are not going to want to be spending time downtown. For example, one of our fundraisers right now is we are attempting to put in a state-of-the-art amphitheater on the river front, approximately 45 feet from the railroad tracks. That probably won't happen if this goes through. My hotel is 80 feet off of the railroad tracks. And I am considered one of the quietest hotels in the United States because we spent a lot of time doing sound studies on the railroad. And I'll tell you

what, 65 decibels that they're stating is not what we got from our qualified sound studies using corporations. We were -- ranges of 100 when the horns hit and going down into the 90s as they were rolling through.

So, there's really two frequencies that we need to remember on these train tracks. You have the track train and then you have the actual horn train. And the two frequencies that we had to be closed down at once. They have to be done separately. My hotel, for example, the windows that we spent money on takes out the sound for the train track but not for the horns. In order to do that, we invested \$1.5 million into a quiet zone. And that's two quad tracks or two quad gates so to speak that allowed you to do that. In addition, we're -- the city is looking to do a lot of renovations and a lot of -- to the south side, which is our lower income community. For example, we have a merger project, which is an apartment building going up. It's one phase. They're going to decide if they're going to do more phases. That apartment building isn't on the river. They probably won't do anymore phases. We -- factory -- corporations purchase. It's a historical building if I'm not mistaken. It's right on the river track. I'm not sure how you're going to be able to mitigate the sounds and actually do business there. I think, you know, from our standpoint, we just want to say that we don't feel that we got heard by our city council. It was rushed through. There was no community input. We would like to see more community input and understanding in this project. Thank you.

OEA Response

See response to Comment 18-1 above. OEA notes the commenter's concerns regarding existing conditions related to noise from passing trains. OEA also notes that the relationship between railroads and land use is complex. Historically, many of the communities along CP and KCS rail lines developed in the 19th century to take advantage of the newly constructed railroads. Rural towns near the railroads experienced economic booms due to the transport of passengers, crops, and lumber, much of which was directed to major ports. Some communities developed into industrial and manufacturing centers. Thus, while noise would increase if additional trains were to operate on these lines as a result of the Proposed Acquisition, receptors along these rail lines have been exposed to varying levels of existing train noise during the previous decades depending on when the receptors were constructed.

The commenter referred to "65 decibels" in the Draft EIS, which actually refers to a 65 day-night average sound level (Ldn). Ldn is the industry standard noise metric for evaluating human annoyance to noise. This type of cumulative noise metric is necessary to adequately assess the effect of multiple train noise events over the course of a day and night, not just one noise event. As stated in *Section 3.6, Noise and Vibration*, OEA used well established reference noise levels including the sound exposure level (SEL) at 100 feet from a single locomotive at 40 mph of 95 A-weighted decibels (dBA), the energy-average sound level (Leq) at 100 feet from railcars at 40 mph of 82 dBA, and the SEL from train horns within one eighth mile of a crossing of 110 dBA.

OEA notes the commenter's concern about public involvement during the development of negotiated settlement agreements between CP and communities in Iowa. OEA encourages railroad applicants to work with potentially affected communities to address potential impacts but has no role in developing or approving settlement agreements. *Chapter 4,*

Mitigation sets forth the mitigation measures that the Applicants have proposed to address noise impacts, as well as OEA's additional recommended mitigation measures. If the Board imposes these measures, the Applicants would be required to maintain rail and rail beds according to American Railway Engineering and Maintenance-of-Way Association standards (MM-Noise-01), comply with FRA regulations establishing decibel limits for train operations (MM-Noise-02), consider lubricating curves where doing so would be a safe and effective means of reducing noise (MM-Noise-03), employ other safe and efficient operating procedures that would reduce noise (MM-Noise-04), and to promptly respond to community inquiries concerning the establishment of quiet zones and assist communities in identifying measures, methods, or technologies that may enable those communities to establish quiet zones (MM-Noise-05). Even if the Board imposes these mitigation measures, however, OEA expects that the Proposed Acquisition would result in unavoidable adverse noise impacts.

Comment 529-1: Written Comment from Ray Allen (EI-32577)

This merger will increase noise pollution. Each train may make the same noise as the train before it but that is not the measure of the cumulative effect of the noise of each of train. People say you get used to it, it isn't a cuckoo clock. I have lived across Highway 67 from the tracks 30 years and have never kept windows open because of train noise. The EIS fails to identify relevant receptors here. Currently, there may be one or two trains during any one event on the levee. People can cover their ears once or twice, but triple the number of trains and it will ruin all festivals and activities on the riverfront.

OEA Response

See response to Comment 18-1 above. OEA notes the commenter's concerns regarding existing conditions related to noise from passing trains. It would not be appropriate for OEA to treat existing rail-related noise as a direct or indirect impact of the Proposed Acquisition because such noise would not be caused by the Proposed Acquisition. Similarly, OEA cannot recommend, and the Board cannot impose, mitigation to address existing noise conditions that would not be related the Proposed Acquisition.

OEA's analysis of noise impacts explicitly accounted for the projected increase in rail traffic resulting from the Proposed Acquisition. Although OEA does not expect that the Proposed Acquisition would cause individual trains to become louder, the increased frequency of rail-related noise would cause the Ldn to increase in many locations along affected rail line segments. OEA identified a total of 6,307 receptors that would be adversely affected by noise as a result of the Proposed Acquisition. Although OEA is recommending that the Board the mitigation measures set forth in *Chapter 4, Mitigation*, OEA expects that the Proposed Acquisition would result in unavoidable adverse noise impacts.

No changes to the Draft EIS are warranted in response to this comment.

Comment 461-12: Written Comment from the Environmental Defense Fund (EI-32540)

EDF finds this line of thinking about the communities "already experiencing intermittent train noise" misguided and dismisses both the existing conditions for residents living next to

rail yards and rail lines, as well as the large body of scientific literature documenting the impacts of noise pollution on health and well-being. It demonstrates a disregard to the existing conditions among communities dealing with noise impacts from rail by ignoring the potential cumulative or additive impacts of this acquisition on community health and well-being. By stating that communities adjacent to rail yards and rail lines have been living with train noise for many years, this highlights the difficulties these communities have had to obtain mitigation of the impacts of noise on their daily life. EDF recommends further analysis on existing impacts as well as any potential future impacts. While a series of proposed mitigation measures are included in the acquisition, OEA acknowledges that "even if the Board imposes these mitigation measures, however, OEA expects that the Proposed Acquisition would result in unavoidable adverse noise impacts."

OEA Response

See response to Comment 18-1 above. OEA properly took existing conditions into account in its analysis of noise impacts in the Draft EIS. In *Section 3.6, Noise and Vibration*, existing conditions are discussed in detail in *Section 3.6.2, Affected Environment*. Further, the noise models that OEA used to predict train noise resulting from the Proposed Acquisition explicitly account for existing rail traffic and associated rail-related noise. However, it would not be appropriate for OEA to treat existing rail-related noise as a direct or indirect impact of the Proposed Acquisition because such noise would not be caused by the Proposed Acquisition. Similarly, OEA cannot recommend, and the Board cannot impose, mitigation to address existing noise conditions that would not be related the Proposed Acquisition.

OEA's analysis identified a total of 6,307 receptors that would be adversely affected by noise as a result of the Proposed Acquisition. The voluntary mitigation proposed by the Applicants and the additional mitigation measures recommended by OEA would minimize the adverse noise impacts to these 6,307 receptors, but OEA believes that, even if the Board imposes those measures, adverse noise impacts would be unavoidable. No changes to the Draft EIS are warranted in response to this comment.

Comment 461-15: Written Comment from the Environmental Defense Fund (EI-32540)

In addition to health impacts, according to an Old Dominion University study in 2016, a residential property's consistent exposure to 65 decibels or greater of railroad noise pollution reduces property value between 14% and 18%. Freight trains emit on average between 81-95 dBA when they pass by (see results from testing in Figure M.1-1 [Appendix M of the Draft EIS] below).

Locomotives generated sound levels from 85 to 100 dBA (SEL), with an average of 92 dBA (SEL) depending on train speed. Horns typically ranged from 106 to 116 dBA (SEL) with an average of 108 dBA (SEL) at locations between ¼-mile and 1/8-mile from grade-crossings and 111 dBA (SEL) at the grade-crossing.

OEA Response

See responses to Comments 18-1 and 405-1 above. Regarding the commenter's concerns about property values, OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of its proposed action. A potential change in property values would not be an effect on the environment. Therefore, the noise analysis in the Draft EIS was adequate, and no changes to the Draft EIS are warranted in response to this comment.

Comment 462-33: Written Comment from the Coalition to Stop CPKC (EI-32542)

3.6 - Noise and Vibration - Even if the Board imposes these mitigation measures, however, OEA expects that the Proposed Acquisition would result in unavoidable adverse noise impacts.

The Noise Control Act of 1972 establishes a national policy to promote an environment for all Americans free from noise that jeopardizes their health and welfare. This Act recognized the stress that can be placed upon humans and wildlife alike by excessive noise pollution. The analysis of noise and vibration in the draft EIS does not give adequate treatment to the additive, compounding and cumulative effects of a near tripling of train traffic along urban, residential and wildlife areas. The impacts from an occasional train can be absorbed by the surrounding community, but continuous repetition of train traffic will lead to increased stress, anxiety, and reduced quality of life. In the case of wildlife, habitat abandonment may take place. The proposed mitigation will not significantly reduce the noise, vibrations, and blocked access from increased train traffic.

OEA Response

OEA's noise analysis explicitly accounted for the additive effect of rail-related noise that could result from the Proposed Acquisition. By definition, the Ldn measure that OEA used to quantify noise impacts accounts for the compounding and cumulative effects of increasing train operations. The Draft EIS noise analysis is based on the Ldn noise metric which is the industry standard for taking into account an increase in train noise events. The Noise Control Act of 1972 enables the U.S. Environmental Protection Agency (EPA) and FRA to regulate noise from vehicles, such as trains, at the source. As set forth in *Chapter 4, Mitigation*, OEA recommends that the Board impose mitigation requiring the Applicants to abide by FRA regulations establishing decibel limits for train operations (see MM-Noise-02).

Regarding potential impacts from rail-related noise on wildlife, OEA notes that the rail lines on which rail traffic would increase as a result of the Proposed Acquisition have been in operation for many years, in most cases more than 100 years, during which time average rail traffic has increased and decreased in response to market conditions. Therefore, animals living in the vicinity of those rail lines will have already become habituated to train noise over many years of regular exposure to such noise. OEA recognizes that certain species of wildlife may not become habituated to train noise; however, to the extent that such species may have once lived in the areas where the existing CP and KCS rail lines are located, those

animals will have relocated long ago in response to train noise. See *Section 3.11, Biological Resources* for the analysis of noise impact due to the Proposed Acquisition.

OEA does not expect that the Proposed Acquisition would cause individual trains on CPKC rail lines to become substantially louder or audible in places where they are not currently. FRA employs the Sound Exposure Level (SEL) value of 100 A-weighted decibels (dBA) to evaluate noise effects on wildlife. Train noise levels typically drop below this value within a few hundred feet of the tracks. It is also important to note that while some species do not habituate to noise, others do. Therefore, if wildlife species have already habituated to existing train noise, based on the FRA single event threshold, it is logical that the species would continue to be habituated.

Comment 14-1: Written Comment from William Allen Grunder (EI-32148)

Contrary to the popular belief of weekend motorcycle enthusiasts and railroad engineers louder tailpipes and locomotive horns do not save lives they simply damage the environment in which they are deployed. High decibel locomotive horns do not stop at grade collisions they stop conversations, pause television programs, end telephone calls, disturb sleep patterns and denigrate the lives of people who live near rail lines. Noise negatively impacts the quality of and life expectancy of humans. I am not opposed to the merger of CP and KCS the result will be the more efficient transportation of commodities between the nations of North America. In my small Iowa town we have three gated at grade crossings within less than a mile. The KCS tracks run parallel between the Mississippi River and Hwy 67. Two of the three crossings have limited sight lines for west bound vehicular traffic trying to cross the tracks. All three crossings have nowhere for vehicles turning east to wait for rail traffic other than to block a travel lane on Hwy 67. Despite these hazardous conditions the only fatality in the past 20 years has been a pedestrian who was hit by a railroad service vehicle between the marked street crossings. Every train that passes through Princeton no matter the time of day begins blowing their earsplitting pointless air horns on one end of town and does not stop until they reach the other. This noise is an environmental hazard. To protect the citizens and the environment the STB should close the two crossings with limited sight lines which also cannot be crossed by a semitrailer without risk of high centering on the tracks. A waiting lane along Hwy 67 at the Lost Grove road crossing should be installed and the railroad should be made to construct a 4' fence on both sides of their tracks to prevent negative pedestrian / train interactions. These modifications will eliminate the need for locomotive air horns thus remove an environmental hazard from my community.

OEA Response

With limited exceptions, FRA's final Train Horn Rule at 49 C.F.R. Part 222 requires that locomotive engineers sound the horn as a train approaches any public roadway/rail at-grade crossing (grade crossing). Generally, the rule requires engineers to sound two long blasts, one short blast, and one long blast at each crossing location and to repeat or prolong this pattern until the locomotive is within the crossing. 49 C.F.R. § 222.21(a). While the Board does not have the authority to close grade crossings as a form of mitigation to address noise impacts, FRA's regulations provide a safe and effective way to reduce locomotive horn noise. That is because the rule allows for the creation of quiet zones, which are areas where

engineers do not have to sound horns if certain FRA safety requirements are met. In some cases, completely sealing off the rail corridor via four quadrant gates is needed to comply with the quiet zone requirements.

Communities interested in creating a quiet zone can use FRA's quiet zone calculator to calculate the Quiet Zone Risk Index factor for particular grade crossings. The calculator takes into account cross street traffic volume, train speed, and number of trains per day. FRA considers it safe not to sound the horn at a particular grade crossing if the Quiet Zone Risk Index is below the Nationwide Significant Risk Threshold set by FRA. Generally, railroads and communities work together to establish quiet zones and fund the installation and maintenance of the necessary grade crossing protection measures. Establishment of a quiet zone also requires coordination with FRA to identify appropriate supplementary safety measures or alternative safety measures, identification of potential funding sources, preparation of funding applications and grant requests, and coordination with representatives of potential funding organizations. Additionally, the Applicants volunteered to fund the improvements necessary to allow any potentially affected community with an existing Quiet Zone to maintain that designation should the increase in merger related train traffic cause that community to fall out of compliance with FRA regulations (VM-Noise-01).

Regarding the commenter's concern that noise could affect human health, OEA notes that, while some studies have been performed to attempt to correlate health effects associated with noise, there is no consensus amongst physicians. Here, however, the cumulative noise levels (i.e., Ldn) analyzed in the Draft EIS are in the relatively low-level range associated with "human annoyance" as designated by the scientific community. As set forth in *Chapter 4, Mitigation*, the Applicants have proposed voluntary mitigation measures related to noise and OEA is also recommending additional mitigation measures to address noise impacts. As discussed in *Section 3.6, Noise and Vibration*, however, even if the Board imposes those mitigation measures, OEA expects that the Proposed Acquisition would result in unavoidable adverse noise impacts.

Comment 308-1: Written Comment from Debra R. Freedland (EI-32171)

A lesser but still important issue is the disruption of beautiful music at Hemmens Auditorium by train whistles. The Elgin Symphony Orchestra has for years tolerated the ruin of delicate moments in music which is created only after hours and days of work, but could be laughed off. The additional frequency proposed will ruin many beautiful works of art.

OEA Response

The Hemmens Cultural Center in Elgin, Illinois is located across the Fox River from a rail line on which rail traffic is projected to increase as a result of the Proposed Acquisition. However, trains have operated on this line since the 1800s and Hemmens Cultural Center was built in 1969. As stated in *Section 3.6, Noise and Vibration*, OEA does not expect that the Proposed Acquisition would cause individual freight trains to become louder than they are currently or have been historically. Concert halls, particularly those built for symphonic orchestras, are designed with not only interior acoustic design considerations, but also to achieve an appropriate building envelope Sound Transmission Loss (TL). The design TL is based on environmental noise monitoring and surveys and typically account for the effects

of aircraft noise, railroad noise, and other noise in the area. To the extent that the design of the auditorium does not properly account for noise from rail operations, this is an existing condition that is unrelated to the Proposed Acquisition. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 96-1: Written Comment from Beth Anne Halsey (EI-32225)

There is an eagle sanctuary one block to the south of the tracks on Arconics land. The constant high pitch sound will interfere with their migration patterns and nesting. The sound levels are deplorable. The horn of the train and wheels range between 96 and 110 decibels. Hearing loss begins at 70 decibels. 86 decibels increases it rapidly, and 120 is complete hearing loss. There is another rail line that can be used and if anything happens will not affect a lot of people. Run the train through Muscatine to Dubuque. It will travel through lower populated areas. To finish, if this merger goes through, people will die from it and become deaf. We have been here for 40 years and we both experience decreased hearing from the train horn and wheels.

OEA Response

Regarding the commenter's concern that noise could affect eagles, see response to Comment 462-33 above.

OSHA has established an average of 85 dBA over an 8-hour time period in workplaces for hearing conservation programs. There are no residential receptors in Riverdale or elsewhere exposed to average noise levels that high. The time frame of cumulative noise exposure is an important factor. In addition, intermittent environmental noise versus continuous high noise levels, and substantial building envelope noise reduction indicate that hearing damage is highly unlikely.

OEA notes that the rail line where OEA expects that rail traffic would increase as a result of the Proposed Acquisition is the existing CP mainline between Muscatine and Dubuque.

Comment 691-1: Written Comment from Morgan Kinch (EI-32334)

Trains have caused constant hindrances to my quality of life while living in the Quad Cities. While working, taking phone calls, or trying to sleep, passing trains blow their horns and shake entire buildings. The merger between Canadian Pacific and Kansas City Southern would advance these interruptions by 300% with 14 more trains than what currently exists. The draft Environmental Impact Statement cited noise as the main impact of the train merger but fails to mention that trains typically reach sound levels of 96-110 decibels when 70 decibels is what is safe for human ears. Anything above 85 decibels can cause hearing loss. Please consider the impact of increased noise levels that would be brought on by 14 more trains a day in the final Environmental Impact Statement and reject this merger.

OEA Response

See second paragraph of response to Comment 96-1 above. See *Section 3.6, Noise and Vibration* of the Final EIS for OEA's evaluation of noise impacts.

Comment 462-5: Written Comment from the Coalition to Stop CPKC (EI-32542)

In 3.6.1.3 Noise and Vibration Measurements, OEA states that it collected vibration measurements from passing trains at seven locations in the study area. OEA notes that these locations offer a variety of soil and rail conditions. However, these measurements do not account for winter conditions. The Coalition communities are located in the Upper Midwest and, during the winter, the ground is known to freeze solid for months on end. OEA's analysis does not appear to have considered how frozen soil transfers vibrations over distance. As such, the DEIS understates the impact of noise and vibration.

OEA Response

In conducting the analysis for potential vibration impacts, OEA relied on a variety of data sources, including industry-standard data from FRA and the Federal Transit Administration (FTA). OEA also conducted vibration measurements to validate the FRA/FTA data, which OEA used as the basis of its modeling effort. Many freight railroad vibration studies were used to establish the FRA/FTA vibration "source" levels, and they represent the upper end of the range of vibration from trains over a wide variety of soil conditions. Regardless, an increase in rail traffic on existing rail lines that have been in operation for many years would not affect soil conditions near those rail lines. Because the Proposed Acquisition would not affect soil conditions along those existing rail lines, it would not also affect how vibrations move through the soil. The Proposed Acquisition would only affect how frequently vibration from passing trains would occur, not the strength of the vibrations from the trains.

As discussed in the Draft EIS in *Section 3.6, Noise and Vibration*, the Proposed Acquisition would not affect how strong vibrations from passing trains would be, only the frequency with which people would feel those vibrations. Accordingly, OEA's analysis of vibration was adequate, and no changes to the Draft EIS are warranted in response to this comment.

Comment 461-13: Written Comment from the Environmental Defense Fund (EI-32540)

On page 3.6-7, OEA describes noise sampling conducted at 10 locations in the study area, however, no noise samples were collected in the City of Houston, the most populated city in Texas, and a city inundated with rail impacts (See: "Blocked crossings continue to vex Houston leaders, railroads and residents, with few options for fast relief" and "Trains Block Communities and Create Safety Hazards"). EDF recommends further noise sampling and analysis, particularly in EJ communities, in the Houston Harris County area.

OEA Response

OEA's noise and vibration analysis was not based on the sampling conducted at the 10 locations identified in *Section 3.6, Noise and Vibration*. Rather, the noise contours as well as vibration calculations for OEA's analysis were done using robust source data from past environmental reviews conducted by OEA, as well as FRA/FTA methods. OEA used those data to model existing noise levels along the rail lines in the study area based on current rail traffic levels. OEA conducted sound level measurements of freight train operations as a way to check the accuracy of the model results, not as way to characterize existing noise levels for use in the analysis. See **Appendix M, Noise and Vibration** for a detailed discussion.

OEA did not model noise levels in the Houston area because the Proposed Acquisition would not cause rail traffic to meet or exceed OEA's thresholds for noise analysis at 49 C.F.R. § 1105.7(e) on any rail lines in the Houston area. In response to public comments, however, OEA has revised *Section 3.6, Noise and Vibration* to include the results of noise modeling in the Houston area. Because the projected increase in rail traffic on rail lines in the Houston area is low relative to existing rail traffic, OEA's analysis found that the Proposed Acquisition would not result in any adverse noise impacts on receptors in the Houston area. Thus, OEA's approach to analyzing noise was adequate and appropriate.

Comment 462-36: Written Comment from the Coalition to Stop CPKC (EI-32542)

In 3.6.1.4 Passenger Train Noise, OEA assumes passenger train volume levels on the Metra train schedule dated July 12, 2021. However, prominently displayed at the top of that schedule is caveat which reads, "Due to the COVID-19 pandemic, unless otherwise specified, the following schedules are temporarily in effect. On WEEKDAYS, the below Alternate Schedule is temporarily in effect. Metra will announce schedule changes on metra.com and through social media outlets." This note is important because, by Metra's own admission, this schedule is temporary in nature. OEA should have consulted with Metra to determine its plans to return to a post-COVID-19 pandemic schedule, which would have provided a more accurate estimate of noise levels. Instead, the noise levels are again understated.

OEA Response

OEA did consult with Metra regarding their operating schedule in December 2021. OEA is aware that Metra intends to increase service in the future but intentionally used the July 12, 2021, schedule to provide a more conservative noise analysis. See **Appendix M, Noise and Vibration** for a discussion of the schedule. Assuming a lower baseline traffic level is conservative because it corresponds to a lower predicted baseline noise level. Increases in noise level are more noticeable to human beings when the baseline noise level is lower and noise models, such as the model that OEA used in preparing the Draft EIS, are more likely to identify an adverse noise impact when baseline noise levels are low, due to the logarithmic decibel scale used to measure noise. In other words, OEA's use of Metra service levels during the pandemic in the noise modeling may tend to overstate, not understate, the potential adverse noise impacts of the Proposed Acquisition. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 587-1: Public Meeting Comment from Evan Summers (EI-32756)

Through our review of the Draft EIS, I would like to draw the Board's attention to four key areas of the OEA's methodologies which may be flawed. In Section 3.6.1.3, Noise and Vibration Measurements, OEA states that vibration measurements from passing trains were taken at 7 locations in the study area. OEA notes that these locations offer a variety of soil and ground conditions. What these sites do not account for is winter conditions. The coalition communities are located in the Midwest, and during the winter, the ground is known to freeze solid for months on end. OEA's analysis does not appear to have considered how frozen soil transfer vibration over distance. Secondly, in Section 3.6.1.4,

Passenger Train Noise, OEA assumes passenger train volume levels on Metra's train schedule dated July 12th, 2021. What OEA fails to note in the D-EIS, very prominently displayed at the top of the schedule is Metra includes the caveat which reads, "Due to COVID-19 Pandemic, unless otherwise specified, the following schedules are temporarily in effect." This is noted as important because by Metra's own admission, this schedule is temporary in nature. OEA should consult with Metra to determine their plans to return to a post-COVID-19 Pandemic schedule. Number three, in Section 3.6.1.4, Freight Train Noise, it does not appear that a 10 decibel noise penalty was properly attributed to trains operating at nighttime. The day-night average logarithmic sound level, DNL metric, applies a 10 decibel penalty to noise occurring in the nighttime hours as considered 10 p.m. to 7 a.m. Given that the applicant did not submit a sufficient operating plan, it is impossible to know when the increase of trains will be operating and, therefore, impossible for OEA to apply the noise model that accurately models the impact. DNL is the measure at which OEA determined which areas will be significantly impacted throughout the studying area. To inaccurately apply the 10 decibel penalty to the DNL analysis is to completely defeat the purpose of measuring sound. I ask the OEA to rerun the model and with precise times on the trains in order to correctly apply the nighttime standard. Subsequently, I ask that actual sound measurements be taken due to industry standards throughout the observation period to ensure the modeling was correct.

OEA Response

See responses to Comment 462-35 and Comment 462-36 above. OEA did apply the 10 dBA nighttime noise penalty for trains that were modeled during nighttime hours. Because hourly schedules for projected future rail traffic are not available, OEA assumed a random distribution of trains over the course of twenty-four hours. Accordingly, OEA's analysis was reasonable and appropriate, and no changes to the Draft EIS are warranted in response to this comment.

Comment 462-37: Written Comment from the Coalition to Stop CPKC (EI-32542)

3. In 3.6.1.4 Freight Train Noise, it does not appear that a 10-decibel penalty was properly attributed to trains operating at nighttime. The Day Night Average Sound Level (DNL) metric applies a 10-decibel penalty to noise occurring during the nighttime hours (10 pm-7am). Given that the Applicant did not submit an operating plan that informed OEA when freight trains would occupy the Coalition Line, it is impossible to know when the increase in these trains would be operating and therefore impossible for OEA to apply a noise model that accurately models the impact. Nevertheless, not applying a 10-decibel penalty to any of the train movements again understates the actual noise levels post-merger. In conclusion, OEA must supplement the DEIS with better data and a more thorough analysis of the noise and vibration impacts of the merger on the Coalition communities.

OEA Response

See response to Comment 587-1 above. OEA did account for a 10-decibel penalty, which was properly attributed to trains operating at nighttime. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 462-38: Written Comment from the Coalition to Stop CPKC (EI-32542)

The DEIS states that the proposed merger would result in the removal of Quiet Zone designations for four grade crossings in the Village of Bartlett: Prospect Avenue, South Oak Avenue, South Western Avenue, and Naperville Road. These Quiet Zones were established between 2006 and 2012. Removal of Quiet Zone status will mean that trains passing over these road crossings will be required to sound their horns unless additional safety facilities are constructed at these crossings in accordance with FRA rules.

OEA Response

As set forth in the Draft EIS in *Chapter 4, Mitigation*, the Applicants have committed to fund the improvements necessary to allow any potentially affected community with an existing Quiet Zone to maintain that designation should the increase in merger related train traffic cause that community to fall out of compliance with FRA regulations. This voluntary mitigation would, if imposed by the Board, address impacts associated with the potential closure of the quiet zone identified by the commenter.

In addition, following issuance of the Draft EIS, the Applicants notified OEA that they are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Chicago area with which they have been unable to reach agreements, including DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg. Those commitments include the commitment to work with those communities to create a Quiet Zone, subject to practicability and the approval of Metra, as the rail line owner. The Applicants have clarified that the Applicants would be responsible for funding these measures, which would be subject to approval by Metra, as the owner of the track. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary mitigation commitments and believes its final recommended mitigation in the Final EIS is reasonable and appropriate.

Comment 462-39: Written Comment from the Coalition to Stop CPKC (EI-32542)

The OEA must not allow any Quiet Zones along the Coalition Line to lose that status. As an initial matter, no one in the Village of Bartlett government or DuPage County was notified or consulted about this potential action prior to being informed of this development in the DEIS. These crossings are in the heart of Bartlett's Downtown Transit Oriented Development area, which is focused on new residential development in close proximity to public transportation. Freight trains run through Bartlett's downtown as close as 50 feet from existing buildings and as close as 580 feet to Spring Lake Estates, a mobile home park located in the western portion of the Village. Since 2006, Bartlett has expended a great deal of time, energy and money to establish Quiet Zones in its community, which has added immensely to the quality of life of its residents.³⁰

The removal of the Quiet Zones is based on the DEIS's conclusion that the number of trains proposed in the merger will make the crossings no longer eligible for Quiet Zone status unless additional safety measures are taken, and facilities installed at each of the crossings pursuant to FRA regulations. The Coalition submits that neither Bartlett nor any other

Coalition community should have to fund the measures required to maintain an existing Quiet Zone's status. Accordingly, OEA must recommend that a condition of the Board's approval of the merger should be for the Applicants to fund the installation of any and all measures that are required by FRA regulations to maintain an existing Quiet Zone's status for any applicable crossing along the Coalition Line.

OEA Response

See response to Comment 462-38 above.

Comment 614-1: Public Meeting Comment from Paula Schumacher (EI-32756)

Hi. I'm Paula Schumacher. I am the Village Administrator for the Village of Bartlett. Since 2006, Bartlett has been working to establish quiet zones throughout our community. The last quiet zone was established just this past December. We know the value of these designations to add to the quality of life of our residents. The EIS states that the proposed merger would result in the removal of quiet zone designations at four at-grade crossings in Bartlett. These crossings are in the heart of our downtown transit-oriented development area which focuses on new residential development in close proximity to public transportation. The merger will make our existing quiet zones invalid and negate decades of work to create these zones for our residents just as the daily increase in train traffic jumps up dramatically. Many of the communities along this line of quiet zones they wish to preserve. We have struggled for many years and made significant financial investments to create them.

The increase in train traffic and related noise may lead to the need for the establishment of new quiet zones or costly safety measures to be installed to maintain existing quiet zones. The merger is causing this negative change, and you should require that the railroad completely fund mitigation improvements necessary to reestablish or create quiet zones our residence have demanded and deserve. Do not put this burden on our communities. It should be placed squarely upon the company causing the hardship, the railroads. We listened when our residents told us of train horns waking you them up each night or preventing them from opening their window on a summer day. We need you to listen now. I have a recording from a daily monitor that was sent to us before our quiet zones were established. It illustrates better than the posters or the words the importance of these quiet zones for our families. (Whereupon, a recording was played of a train siren sounding and then a baby crying.) Thank you.

OEA Response

See response to Comment 462-38 above.

Comment 586-1: Public Meeting Comment from Roselle Mayor David Pileski (EI-32756)

And Jason Bielawski kindly yielded at this time to myself for his response; so my name is David Pileski. I am the Mayor of Roselle. I am here tonight on behalf of my community's approximately 3,000 residents. According to the Draft EIS report, adverse noise impacts from the proposed merger are unavoidable, yet it is the lack of identified migration to address the negative noise impact that is most concerning. Should this merger go forward,

Canada Pacific should be mandated upon these mitigations. The failure of the Draft EIS to mandate quiet zones is an injustice to Roselle residents. There are five at-grade crossings that impact Roselle. One is a federal railroad administrative approved 24 hour quiet zone. Another has no quiet. And then three crossings in our downtown have a quiet zone between midnight and 5 a.m. Our attempt to attain a 24 hour quiet zone in downtown Roselle, an area that is home to a greater concentration of residents and restaurants that rely on outdoor seating has been unsuccessful. The thought of an additional 8 to 14 daily freight trains sounding their horns throughout all hours of our entire downtown is beyond an annoyance as noted in the Draft EIS. The noise will destroy our community's ongoing outgrowth for greater residential density with transit-oriented development and investments for enhancing the vitality of our downtown businesses, some which are just less than 50 feet away from the railroad tracks. To complicate matters, the FRA's train horn rules does not apply to certain Chicago regions, highway-rail grade crossings, which are found to be -- and I quote -- a puzzling anomaly. Roselle's three downtown crossings are not subject to FRA rules and are deferred to the Illinois Commerce Commission. In 2021, CP refused to comply with an ICC request that it stop sounding its horns that the village ordered installed in necessary safety measures that would otherwise qualify for an FRA quiet zone. The STB must impose clear mandates upon CP to fund and fully cooperate with communities as it relates to quiet zones and other improvements to mitigate the avoidable increase in sound and vibration. In the case of Roselle, they must be ordered to work with the village and the ICC on establishing a 24-hour quiet zone in our downtown area, and mitigating the noise for the residential areas near the Rodenburg and Medinah Road crossings. As Mayor, I can tell you that the most common complaints I receive from residents is the negative impact from train horns that sound 19 hours of the day in our downtown. I share residents' frustration, particularly when I know that Canadian Pacific has been unwilling to work with the Village on establishing 24-hour quiet zones. The Draft EIS includes additional mitigation measures, such as requiring that CP promptly respond to communities interested in establishing quiet zones. In the case of Roselle, they promptly responded no. Now, I am asking for the STB to impose noise mitigation of far greater significance than is included in the Draft EIS and ensure that a \$30 billion company has accountabilities to STB and the residents of Roselle.

OEA Response

The Board does not have the authority to require Quiet Zones. However, FRA's final Train Horn Rule at 49 C.F.R. Part 222 provides a safe and effective way to reduce locomotive horn noise. Quiet zones are areas in which horns do not have to be sounded as long as certain FRA safety requirements are met. In some cases, completely sealing off the rail corridor via four quadrant gates is needed to comply with the rule.

FRA's quiet zone calculator calculates a Quiet Zone Risk Index factor for highway/rail at-grade crossing. Input to the calculation includes cross street traffic volume, train speed, and number of trains per day. FRA considers it safe not to sound the horn at a particular grade crossing if the Quiet Zone Risk Index is below the Nationwide Significant Risk Threshold.

The railroad is not required to pay for the installation or maintenance of grade-crossing protection measures needed to establish quiet zones. Quiet zones have been established by railroads and communities working together. Establishment of a quiet zones requires

coordination with FRA to identify appropriate supplementary safety measures or alternative safety measures, identification of potential funding sources, preparation of funding applications and grant requests, and coordination with representatives of potential funding organizations.

OEA notes the commenter's concerns regarding existing conditions as related to noise from trains on the CP rail line in Roselle, Illinois. In developing environmental mitigation conditions, the Board has consistently focused on the environmental impacts that result directly from the proposed merger or acquisition such as anticipated increases in rail traffic on existing rail lines. The Board, like its predecessor, the ICC, is without authority to mitigate environmental or other effects resulting from pre-existing conditions such as existing railroad operations or land development in the vicinity of the railroads. Also, absent a licensing proceeding before the Board, an existing railroad can increase its level of operations and make improvements to its rail lines without permission from the Board and without limitation. Accordingly, if the Applicants had not filed their application with the Board, each of the railroads could have increased on its own the number of trains on its rail lines to any level it considered appropriate.

As discussed in **Appendix M, Noise and Vibration**, OEA identified 20 receptors in Roselle that would experience an adverse noise impact as a result of the Proposed Acquisition. Following issuance of the Draft EIS, the Applicants proposed additional voluntary mitigation measures, including measures that would address noise impacts in Roselle and other communities in the Chicago area. These measures have been added to *Chapter 4, Mitigation* of the Final EIS and include a commitment to work with any willing communities to create FRA-approved quiet zones subject to necessary approvals and practicability.

Comment 462-40: Written Comment from the Coalition to Stop CPKC (EI-32542)

The Coalitions maintains that OEA should also recommend in the Final EIS that the merged railroad be required to implement the following additional noise and vibration abatement measures:³²

1. Install rail dampeners in any areas along the Coalition Line which experience a Noise Impact (65 Ldn and 3 dBA Increase) as indicated in Appendix M – Attachment 1.
2. Work with local communities to identify structures and infrastructure that may be particularly susceptible to vibration damage (3.6-6).
3. Require the Applicants to install power switches at the Bensenville Yard in order to reduce the noise and vibration impact of slowed, idled, or stopped trains outside of the yard.
4. For capital improvement projects along the Coalition Line, require Applicants to abide by all applicable local construction noise ordinances rather than simply the proposed 9pm-7am commitment (3.6-27).
5. Commit to install buffers of evergreen landscaping where plantings can be safely maintained.

OEA Response

The Applicants have proposed additional voluntary mitigation measures that would address noise impacts in communities in the Chicago area, all of which are presented in the Final EIS. These measures include a commitment to work with affected communities to establish and fund quiet zones pursuant to FRA requirements.

Regarding the specific measures requested by the commenter, OEA is providing the following responses:

1. “Rail dampeners” is not an industry standard term. If the comment refers to resilient rail fasteners, that is a ground-borne vibration mitigation method which would not affect a Ldn 65+ 3 dBA condition.
2. The Draft EIS did not identify any buildings that would be affected by vibration damage due to trains. As stated in the Draft EIS in *Section 3.6, Noise and Vibration*, vibration from passing trains is rarely strong enough to cause damage to buildings or other structures outside of the rail right-of-way. Because there would be no impacts from vibration resulting from the Proposed Acquisition, mitigation related to damage from vibration would not be appropriate.
3. As discussed in *Section 3.6, Noise and Vibration*, OEA did not identify any noise or vibration impacts in the area of the Bensenville yard that would warrant mitigation.
4. The Applicants do not plan to make any capital improvements in communities represented by the Coalition as a result of the Proposed Acquisition. Therefore, specific mitigation for those communities related to capital improvements would not be appropriate.
5. OEA does not consider the planting of evergreen vegetative buffers to be an effective noise mitigation measure. In order to achieve a 5 dBA decrease in noise, a vegetative buffer composed of tall trees would generally need to extend out at least one hundred feet from the noise source. This depth of vegetation would not be feasible within the existing rail right-of-way. Further, it would take many years for the trees to grow.

No changes to the Draft EIS are warranted in response to this comment.

Comment 635-1: Written Comment from Pastor Larry and Tiny Greathouse, Community of Hope Church (EI-32308)

The subject property referred to is across the street from the Hanover Park Metra Train Station and impacted by the CPKC merger. As both a resident of an older home and Pastor of a church located on subject property, I feel an obligation to express the views of myself and my church congregation. We are in a historical area with both a residential and a church building structure, roughly 145 years old, located on the property. There are several other historical buildings and businesses in this area located just steps away from the tracks. With that being said, any derailments would be disastrous. The current train traffic that we have learned to deal with already presents issues with earthquake type tremors causing visible cracks in the building foundations. The loud train horns wake us as residents and disrupts our church worship services as a church congregation.

OEA Response

As discussed in the second numbered point in the response to Comment 462-40 above, the Draft EIS did not identify any buildings that would be affected by vibration damage due to trains.

Further, see response to Comment 18-1 regarding the intertwined relationship between railroads and land use.

Comment 461-14: Written Comment from the Environmental Defense Fund (EI-32540)

Noise pollution defined as "unwanted sound" is a threat to public health. Recent studies have demonstrated the connection between the noise and vibration of freight rail traffic on sleep disturbances, cardio vascular disease mortality, risk of myocardial infarction (heart attack), decreased cognitive functioning (resulting from increased levels of adrenaline and noradrenaline), hearing impacts (especially among children or at levels above 85dB). A 2022 Harvard report reviewing the health effects of noise stated, "[N]oise pollution not only drives hearing loss, tinnitus, and hypersensitivity to sound, but can cause or exacerbate cardiovascular disease; type 2 diabetes; sleep disturbances; stress; mental health and cognition problems, including memory impairment and attention deficits; childhood learning delays; and low birth weight."

OEA Response

While some studies have been performed to attempt to correlate health effects associated with noise, there is no consensus amongst physicians as to whether unwanted sound is a threat to public health. As discussed in *Section 3.6, Noise and Vibration*, moreover, the cumulative noise levels (i.e., Ldn) are in the relatively low-level range associated with "human annoyance" as designated by the scientific community with the high level associated with hearing damage. With respect to hearing impacts, see response to Comment 96-1 above.

Comment 436-2: Public Meeting Comment from the Iowa Mississippi River Parkway Commission (EI-32760)

Raising the tracks has caused vibration to damage some of my house. The increased level of the horns, 120 decibels, in clear violation of OSHA and EPA standards, has become a concern regarding my health and the health of our community.

OEA Response

See responses to Comment 462-40 and Comment 461-14 above.

Comment 462-1: Written Comment from Coalition to Stop CPKC (EI-32542)

The Coalition submits that OEA should also recommend to the Board that its merger oversight procedures should include monitoring and assessing the actual - rather than modeled - impact of vibration and noise at 5- and 10-year intervals and adjust mitigation measures as necessary and appropriate.

OEA Response

Comment about adjusting mitigation measures is noted. Noise modeling is preferred over noise monitoring since its accuracy – both spatially and temporally – is greater. Many train noise events at one specific location need to be measured to obtain reasonable statistical confidence, whereas accurate modeling can accomplish that over large geographic areas. Moreover, OEA considers a five-year forecast as reasonably foreseeable. Changes in rail traffic beyond five years may not be attributable to the Proposed Acquisition.

Comment 450-3: Written Comment from the Harris County Pollution Control Services (EI-32529)

The EIS notes that noise studies were performed (in Capital Improvement areas) but not in all major cities. With the potential of up to eight additional trains per day through Harris County, PCS requests the county be included in noise studies.

OEA Response

OEA analyzed noise impacts on all rail line segments that met the Board's threshold for environmental review at 49 C.F.R. § 1105.7(e)(5)(i). The threshold for noise analysis is an increase of eight or more trains per day or an increase in rail traffic of at least 100 percent (measured in gross ton-miles annually). OEA did not model noise levels in the Houston area for the Draft EIS because the Proposed Acquisition would not cause rail traffic to meet or exceed OEA's threshold for noise analysis on any rail lines in the Houston area. In response to public comments, however, OEA has revised *Section 3.6, Noise and Vibration* in the Final EIS to include the results of noise modeling in the Houston area. OEA's analysis shows that the Proposed Acquisition would not result in any adverse noise impacts on receptors in the Houston area.

Comment 632-5: Public Meeting Comment from Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association (EI-32759)

The noise pollution is going to be probably at an all-time high, and definitely increased by about 50 percent. How much is too much for one community?

OEA Response

See response to Comment 450-3, which states that OEA's analysis shows that the Proposed Acquisition would not result in any adverse noise impacts on receptors in the Houston area. Further, see response to Comment 96-1 regarding the effects of noise on hearing.

Comment 534-1: Written Comment from the Iowa Mississippi River Parkway Commission (EI-32526)

The 1990 Clean Air Act; Title IV - Noise Pollution shows the railroad clearly is in violation of this act. The traditional definition of noise is "unwanted or disturbing sound." Sound becomes unwanted when it either interferes with normal activities such as sleeping, conversation, or disrupts or diminishes one's quality of life. The train horns resonate at

120dbL (rock-concert level), and the wheels at 85dbL with 65dbL being the safe level for humans on an ongoing basis. Noise pollution adversely affects the lives of millions of people. Studies have shown that there are direct links between noise and health. Problems related to noise include stress-related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity. Noise-induced hearing loss is the most common and often discussed health effect, but research has shown that exposure to constant noise promises a lower overall quality of life in several ways.

OEA Response

See response to Comment 461-14 above.

Comment 452-11: Written Comment from the Eastwood Civic Association (EI-32531)

The following mitigation could help the community: "Canadian Pacific funds and constructs three long awaited Quiet Zones (including necessary FRA and railroad work sign offs) in the east end. These include East End 2 (Sampson to Cullen on West Belt), East End 3 (Sampson to Hughes on Galveston Sub) and East End 1- Part 2 (Hughes to Navigation on East Belt)."

OEA Response

Based on information provided by the Applicants and OEA's independent analysis, OEA does not anticipate that CPKC trains would move on the rail lines identified by the commenter or that rail traffic would change on those rail lines as a result of the Proposed Acquisition. As stated in *Chapter 4, Mitigation*, any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board. OEA's consistent practice has been to recommend mitigation only for those impacts that would result directly from a proposed transaction, such as the Proposed Acquisition of KCS by CP. The Board does not require mitigation for pre-existing environmental conditions, such as the effects of existing rail operations. Therefore, it would not be appropriate for OEA to recommend mitigation addressing rail-related noise along the rail lines that the commenter identified, and no changes to the Draft EIS are warranted in response to this comment.

Comment 591-2: Public Meeting Comment from Sarah Albrecht (EI-32756)

My front door is roughly 70 feet away from the train tracks. I live on Main Street, Roselle, above storefronts. There is an apartment building next to me. Another one over here. There is another condo building in development. And that's just one block that I am describing of the entirety of our communities. The trains that go past my front door are 92 decibels, which I measured on a sound meter that I downloaded on my phone. Also, for some reason, the modeling that you show on the computer for the noise itself shows my address, which is 117 Main Street, to be no change in sound, which makes absolutely no sense to me and defies the laws of physics; so that shows me that your analysis is untrustworthy and to not to be taken for granted. Can you ask them to relocate the depot away from our communities somewhere in a non-residential area west of Elgin?

OEA Response

The commenter is correct that the modelled 65 Ldn noise contours at the referenced address are the same under the Proposed Acquisition as under the No-Action Alternative. This is because of building shielding, which occurs when large buildings serve as a noise barrier. This effect occurs frequently in urban areas with densely packed buildings. The computer noise modeling program that OEA used accounts for building shielding and other various sound propagation effects. OEA notes that the model indicates that commenter's address would not experience an incremental increase in noise of 3 dBA or more or an increase to a noise level of 65 Ldn or greater. Therefore, the commenter's residence would not experience an adverse noise impact, and no changes to the Draft EIS are warranted in response to this comment.

Comment 601-2: Written Comment from the Arkansas Department of Parks, Heritage and Tourism (EI-32633)

Based on review of the noise contour maps associated with the rail segments located within the State of Arkansas, it appears that approximately seven (7) grant funded outdoor recreation sites fall within the area affected by the No Action and Proposed Acquisition contours representing 65 Ldn noise level. Of these sites, three (3) are already located completely within the No-Action and the Proposed Acquisition contours for 65 Ldn noise level. The remaining four (4) sites are located partly within the existing 65 Ldn contour. With the proposed acquisition, a larger portion of each of these four (4) sites would be contained within the 65 Ldn contour.

The EIS indicates that "Applying the (Surface Transportation) Board's thresholds, the Proposed Acquisition would result in an adverse noise impact for receptors where noise levels from rail operations meet or exceed 65 Ldn and increase by at least 3 dBA Ldn, compared to the No-Action Alternative. Based on review of the draft environmental impact statement for this project, it appears that none of the above referenced outdoor recreation sites would experience noise levels that meet or exceed 65 Ldn and would experience at least a 3BA increase in noise level.

Given the above, the increased rail traffic associated with the proposed acquisition of KCS by CP should not conflict with any of the public outdoor recreation sites located within the area affected by the Arkansas segments of the proposed merger of the KCS and CP railroads.

OEA Response

Comment noted.

Comment 398-2: Public Meeting Comment from Richard Clewell (EI-32757)

In 1974, EPA concluded that "An Ldn level of 55 decibels is an outdoor level compatible with protection of public health -- the level of 55 decibels is identified as the maximum level compatible with adequate speech -- with respect to the complaints and long-term annoyance, this level is clearly a maximum satisfying a large majority of the population." Figure M1 illustrates freight train pass by sounds. Over three minutes, sound begins at a base level of

50 dB; jumps to 90 dB as the locomotive passes and settles at 82 dB as the brake cars pass and then dropping down to base levels returning -- as the impact statement notes, most receptors have become accustomed to those noise levels over time. The proposed action would not make any change in noise levels. However, it does note that the projected tripling of -- trains will have an effect based on frequency. Table M1-2 shows that Davenport currently has 7 receptors within the 65 Ldn ratio. The total number of receptors with adverse noise impacts under the proposed acquisition -- since my house is 120 yards from the center of the railroad, I suspect that that I and my neighbors -- the 59 additional receptors impacted by the proposed acquisition. OEA has concluded that the train noise could result in adverse effects but that the potential adverse impacts would be negligible. I believe that the numbers in the DEIS indicate otherwise. On a personal basis, the impact will increase rattling windows and inability to communicate in a normal speaking voice -- consider quality of life issues. Hard to attribute -- however, the reduced resale value of my home can be readily measured.

These are not negligible impacts -- myself or my neighbors. Thanks for your time. I appreciate your consideration.

OEA Response

As stated in *Section 3.6, Noise and Vibration*, OEA determined that noise impacts would be adverse rather than negligible. The section explains that "an adverse noise impact occurs when the noise level at a receptor increases by 3 dBA or more and reaches or exceeds a Ldn of 65 dBA when combined with the existing background noise. Research indicates that both of these conditions must be met or exceeded to cause an adverse noise impact from rail operations (Surface Transportation Board 1998; Coate 1999)." In total, OEA identified 6,307 receptors that would experience adverse noise impacts as a result of the Proposed Acquisition, including many receptors in eastern Iowa. The Applicants have proposed voluntary mitigation measures to address noise impacts and OEA is recommending additional mitigation measures, as set forth in *Chapter 4, Mitigation*. Even if the Board imposes these mitigation measures, however, OEA expects that the Proposed Acquisition would result in unavoidable adverse noise impacts.

Regarding the commenter's concerns about property values, OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of its proposed action. A potential change in property values would not be an effect on the environment. Therefore, OEA appropriately did not assess potential effects on property values as part of the environmental review, and no changes to the Draft EIS are warranted in response to this comment.

Comment 74-2: Written Comment from Richard Clewell (EI-32251)

Figure M.1-1. of the DEIS illustrates Freight Train Pass-By Sounds Level Time History. Over 3 minutes the sounds begins at a base level of 50db, jumps to 90db as the locomotive passes, settles to 82db as the freight cars pass, then dropping down to the base level as the train passes. As the DEIS notes, most receptors have become accustomed to these noise levels over time and the Proposed Action would not make a change in noise levels. It does note that the projected tripling in the number of trains will have an affect based on

frequency. Table M.1-2 presents Noise Assessments by Cities and Towns. The table shows that Davenport currently has 7 receptors within 65Ldn. The total number of receptors with Adverse Noise Impacts (65db Ldn and 3db increased) is 66. Since my house is 120 yards from the center of the railbed I suspect I am one of the 59 additional receptors impacted by the Proposed Action. OEA has concluded that train noise could result in adverse impacts but that the potential adverse impacts would be negligible. I believe that the numbers in the DEIS indicate otherwise.)

OEA Response

The Draft EIS did not characterize the noise impacts as negligible. See responses to Comment 398-1 and Comment 74-1 above.

Comment 644-4: Formal Filing from the Coalition to Stop CPKC (Filing ID 305526)

The Applicants must implement noise and vibration abatement measures 62 such as the installation of rail dampeners; working with local communities to identify structures and infrastructure that may be particularly susceptible to vibration damage; installing power switches at the Bensenville Yard; complying with local construction noise ordinances when installing capital projects; and installing buffers of evergreen landscaping where it can be safely maintained. These measures would be separate and apart from the noise mitigation measures already taken in Bensenville for O'Hare International Airport (City of Chicago's Residential Sound Insulation Program).

OEA Response

See response to Comment 462-40 above.

Comment 649-1: Transportation Merit Hearing Comment from William Gluba

Fourth, Davenport is an old city incorporated in 1836. Davenport's an old city with many historic buildings along the right-of-way, and CP has shown complete lack of sensitivity to them. The Proposed CP/KCS Merger extra vibrations caused by this increased traffic will destroy them.

OEA Response

The Draft EIS did not identify any buildings that would be affected by vibration damage due to trains.

Comment 659-4: Transportation Merit Hearing Comment from the Nahant Marsh Education Center

The noise alone from the increased rail traffic would be devastating to our educational programming.

OEA Response

See response to Comment 18-1 above.

Comment 687-1: Written Comment from Ann Geiger (EI-32697)

As you can see from the above I live in Iowa between the Mississippi River and the railroad tracks which run next to the Great River Road (Hwy 67). For the past two years the railroad has been working on the tracks, raising them so they make more noise, and parking their cars behind my house with their klieg lights on all night long. The corner one-half a block from my house has sounded like a rail yard.

I am writing you with a request to deny the merger between Canadian Pacific and Kansas City Southern, docket number 36500. Much to my dismay, the railroad is destroying my house.

My house was built in 2016 with full-cut boards and plaster and lathe. I have lived here for 45 years. Last winter the porta cachere started to pop and snap. I thought insects had gotten into it, but after calling the pest control people, that was not the case.

Everyone said it was "settling". I had my doubts, since this was not new construction.

This summer I noticed one of the top sashes of my porch window had dropped. I looked again a couple of weeks ago, and two more of them have dropped. These sashes have been attached to the frame since I moved here 45 years ago. My only conclusion is the vibration of the railroad which is shipping heavier and longer trains (2 miles most of the time) every day. To increase the number of trains would surely damage my house further, not to mention those homes and businesses along the route.

If you do the math, each gallon of crude oil weighs 7.21 pounds. Take that times the 27,000 gallons per car, and you have 19,467 pounds per car, and multiply that by the additional trains suggested to be added -104- and you have 20,245,568 pounds of moving material running down the road. That is going to set up major vibrations. It is impossible, in my opinion, to mitigate that damage.

I have included a picture of my house and pictures of the dropped sashes. The tracks are about an acre away, and there is a large stand of trees between the house and the tracks which SHOULD absorb some of the vibration. However, it is too much for the buildings to withstand. I have no idea what other damage has been, or will be done to my home.

OEA Response

The Draft EIS did not identify any buildings that would be affected by vibration damage due to trains.

Comment 636-2: Written Comment from Susan W. Leuthauser (EI-32629)

The Mississippi is the second longest river in North America, many buildings are less than 100 feet from the railroad track; some of them are 100+ years old, they are homes to families, businesses, and industries. The OEA recognized that the increase in rail-related noise can be annoying, however, the draft EIS went on to say that "people may be able to feel vibration from passing trains and that vibration could cause annoyance, but damage to buildings or other structure would not occur". Repeated exposure to vibration from the passage of heavy trains over time can cause damage to the foundation of these old buildings.

Many of these buildings sit on the flood plain, they are already on unstable ground. Vibration can also affect precision of equipment used by business and industries located next to the railroad track.

OEA Response

See response to Comment 687-1 above.

Comment 686-1: Written Comment from Ann Schwickerath (EI-32696)

I am writing to oppose the merger of the Canadian Pacific and Kansas City Southern railroads. There are a multitude of problems and concerns of this merger that will be a negative impact to my community, Davenport, IA, and many other communities where this railroad track is located.

I am a lifelong bicyclist and value the environmental amenities provided in our Davenport, IA community. I experience and see firsthand the impact tourism brings to our community through our Mississippi Riverfront.

I am also a resident who lives in a home approximately 50 feet from a railroad track. I fully understand the detrimental impact on the environment the merger will create by the increased train traffic. Our sturdy brick and mortar home requires regular maintenance to repair cracks in our ceiling, walls and foundation that comes from the speeding, lengthy trains that pass by us and cause our house to shake. Our community cannot handle more of this decay caused by increased railroad traffic.

If this merger takes place, the family friendly tourism that the Mississippi Riverfront attracts will decrease. Creating this barricade due to the merger will decay the financial impact on our community. Our inner-city neighborhoods already face challenges and are overcoming years of disinvestment. Now, with this impending merger, those who already have suffered the brunt of these obstacles will have yet another undesirable consequence imposed on them by the Canadian Pacific and Kansas City Southern merger.

OEA Response

As discussed in the Draft EIS in Section 3.6, *Noise and Vibration*, the Proposed Acquisition would not affect how strong vibrations from passing trains would be, only the frequency with which people would feel those vibrations. Accordingly, OEA's analysis of vibration was adequate, and no changes to the Draft EIS are warranted in response to this comment.

See response to Comment 18-1 in *Section S.11, Noise and Vibration* in this appendix regarding the intertwined relationship between railroads and land use.

Comment 688-3: Written Comment from Public Works Department, City of Kansas City, Missouri (EI-32707)

At-Grade Noise

Due to FRA safety regulations, train crews are required to blow their horn when approaching an at grade crossing for the protection and safety of motorists and pedestrians

regardless of whether crossings with gates and lights are present. These train horns are very disruptive to residents, specially at night. The train horns can be heard for a very long distance and negatively affect the sleep of residents which is a major health concern.

Kansas City has recently been working with our railroad partners to enact ‘quiet-zones’ to mitigate the train horn issue. However, quiet-zones are not eligible to be funded from the at-grade crossing safety funds and the city is often required to pay for all of the engineering, RR review fees, and project costs which surpass \$125,000 per location.

The increased Trains per Day (TDP) from 17.57 TPD to 30.41 TPD due to the proposed acquisition will significantly increase the number of train horns sounding at night which will negatively impact the sleep and health of neighboring residents.

OEA Response

Quiet zones are one way to reduce potential adverse noise impacts. Quiet zones are areas in which engineers do not have to sound horns as long as certain FRA safety requirements are met. Generally, railroads and communities work together to establish quiet zones and fund the installation and maintenance of the necessary grade crossing protection measures. The Board has no substantive role in the establishment of quiet zones.

S.12 Air Quality and Climate Change

Summary Comment 12-1

Numerous commenters expressed concern about increased air emissions from the Proposed Acquisition. Several commenters suggested that the Proposed Acquisition could lead to an increase in the amount of oil moved by rail and therefore an increase in greenhouse gases (GHGs).

OEA Response

As explained in *Section 3.8, Energy*, OEA does not expect that the Proposed Acquisition would result in an overall increase in the transportation of energy resources, including oil. According to the Applicants’ application, because the volume of oil shipments from source to refinery is determined by macroeconomic forces that would not be affected by the Proposed Acquisition, the Proposed Acquisition would not cause more crude oil to be shipped by rail (Wahba and Naatz 2021). The Applicants anticipate that the Proposed Acquisition would allow shipments of oil from Canada to the United States that are already occurring to be handled more safely and efficiently on new single-line routes. Further, by improving the transportation options for delivering crude oil extracted in Canada to refineries in the Gulf Coast area, the Applicants believe that the Proposed Acquisition would support a transition away from moving crude oil in the form of dilbit, which includes volatile and flammable diluent products, to non-hazardous DRUbit, which is a form of bitumen from which the diluent has been removed. No commenters have provided information that suggests that the Proposed Acquisition would result in an overall increase

in crude oil production or the transportation of crude oil by rail. Therefore, no changes to the Draft EIS are warranted in response to these comments.

Comment 24-1: Written Comment from Kane County, Illinois (EI-32152)

While the EIS notes that additional generation of NO_x will be reduced by -231.2 tons/year, as a result of the Acquisition will be addressed under the State Implementation Plan balanced by an overall reduced rate of trucking due to the Acquisition. But, for the residents of Kane County who have demonstrated a strong commitment to Climate Action and health and wellness of its residents, the level of proposed NO_x increase is unreasonable. Mitigation measures specific to Kane County should be included in the EIS.

Grade separations or other infrastructure improvements need to be identified to help mitigate the increased levels of NO_x, VOC, Particulate Matter and other air pollutants resulting from the Acquisition. Kane County further requests that these be listed and prioritized in terms of their effectiveness as part of the EIS document. These priorities would serve as a basis for the railroad to work with local communities in Kane County to improve the quality of life for impacted residents of the corridor.

OEA Response

The Draft EIS presents an Air Quality analysis consistent with current U.S. Environmental Protection Agency (EPA) guidance and federal regulations. Expected emissions and air quality effects in Kane County, Illinois are described in *Section 3.7, Air Quality and Climate Change*, and the results show that the projected increase in nitrogen oxides (NO_x) emissions in the Chicago Ozone Nonattainment Area would be above EPA's *de minimis* thresholds but would be less than 1 percent of the current emissions budget for the nonattainment area (see **Table 3.7-7**). As required by the Clean Air Act (CAA), EPA-designated nonattainment areas for ozone must adopt State Implementation Plans that ensure that the National Ambient Air Quality Standards (NAAQS) are met and sustained for those areas. The NAAQS are based on human health criteria to protect public health (primary standards), on environmental criteria to prevent environmental and property damage, and to protect public welfare (secondary standards). Emissions increases within the set emissions budgets are allowed as long as they comply with the overall targeted reductions from the baseline emissions inventory to reach NAAQS attainment. As described in *Section 3.7, Air Quality and Climate Change*, the projected increase in emissions resulting from the Proposed Acquisition is less than 1 percent of the set budget limit and thus the new emissions would be within the budget and would comply with the overall targeted reductions set to achieve attainment of the NAAQS in the Chicago Ozone Nonattainment Area.

Comment 24-2: Written Comment from Kane County, Illinois (EI-32152)

Kane County is one of several Counties in Illinois that is a nonattainment area where NO_x is of particular concern due to the resulting ground level ozone. Kane County is rated as Serious. The Acquisition-related Emissions (tons/yr) of NO_x in Kane County is 45.5, third highest in the listing of all nonattainment Counties in the EIS with similarly high levels of VOC and Particulate Matter. While noted as being less than one percent of the overall

emissions budget for the nonattainment area, one percent is statistically significant in an area already rated as Serious.

As you are aware, people with asthma, children, older adults and people who are active outdoors, including outdoor workers, are most at risk of breathing air containing ozone. Ozone can cause the muscles of the airways to constrict, trapping air in the alveoli leading to difficulty breathing deeply, inflamed and damage to airways, making lungs more susceptible to infection, aggravating lung diseases and increasing the frequency of asthma attacks. Long term exposure to ozone is also linked to aggravation of asthma and asthma development as well as elevated deaths from respiratory causes (source: <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>).

Kane County is invested in the health and wellness of our residents and the County's impact on the environment. On August 9, 2022, the Kane County Board approved a contract with paleBLUEdot LLC to develop a Climate Action Implementation Plan that will provide adaptation goals, targets and objectives based upon the Metropolitan Mayors Caucus Climate Action Plan and Greenest Region Compact to provide strategies that are environmentally, economically and socially equitable.

OEA Response

Please see response to Comment 24-1 above.

Comment 436-1: Public Meeting Comment from the Iowa Mississippi River Parkway Commission (EI-32760)

In addition, using your EIS report, an average freight semitruck emits about 3 million grams of CO₂ per year. That equates to 3 metric tons of CO₂ per year. The STB says the merger will take 60,000 trucks off the road, that equates to 180 metric tons of CO₂ saved per year. However, the train traffic from the merger will create 423,083 metro tons of CO₂ per year. This far outweighs the saved CO₂ emissions from trucks, not to mention the loss of US jobs. These numbers or not mitigatable, negligible, minor, and/or temporary. These numbers will go on for years. This is for a company which is shipping product which is not from the US, for the US, or to the US, and is highly volatile and a danger to our citizens.

OEA Response

As discussed in *Section 3.7, Air Quality and Climate Change*, OEA expects that the Proposed Acquisition would not result in an overall net increase in GHG emissions. If the Board authorizes the Proposed Acquisition, OEA expects that rail traffic would increase on certain rail lines because freight that currently moves on other rail lines would move on CPKC rail lines instead. Therefore, GHG emissions associated with the Proposed Acquisition would be mostly offset by decreased rail-related emissions elsewhere, including decreased locomotive emissions on rail lines outside of the CPKC network, decreased emissions from vehicles delayed at roadway/rail at-grade crossings along rail lines outside of the CPKC network, and decreased emissions from rail yards and intermodal facilities outside of the study area. In addition, OEA expects that the Proposed Acquisition would divert freight from truck transportation to rail. Because rail transportation is more efficient

than trucks, decreased truck emissions from truck-to-rail diversions would more than offset any increased locomotive emissions.

Regarding the commenter's concern about the potential loss of jobs in the United States, OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of its proposed action. A potential loss of jobs would not be an effect on the environment. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 453-5: Written Comment from Harris County Attorney's Office (EI-32532)

Ozone pollution is of particular concern for the County. The HGB area has never met any of the ozone standards at the time of their initial implementation. Based on the best available science, the four ozone standards, established in 1979, 1997, 2008, and 2015, have set progressively lower permissible ozone levels. The EPA recently reclassified our area as a Moderate nonattainment area for the 2015 ozone national ambient air quality standards (NAAQS)¹ and as a Severe nonattainment area for the 2008 ozone NAAQS². The EPA notably denied Texas's request for a 1-year extension of the attainment date for the HGB Ozone Nonattainment Area, in part because the EPA's consideration of air quality trends in the area indicated it would fail to timely attain by the extended date.

¹ Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards, 87 Fed. Reg. 60,987 (2022).

² Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards, 87 Fed. Reg. 60,926 (2022).

OEA Response

OEA has updated *Section 3.7, Air Quality and Climate Change* to reflect the new classifications of ozone attainment status issued by EPA and effective as of November 7, 2022. Under the new classification, the HGB Ozone Nonattainment Area will be reclassified as severe nonattainment under the 2008 Ozone standard. This would lower the corresponding *de minimis* threshold for this nonattainment area to 25 tons per year of the NO_x and volatile organic compounds (VOCs).

The reclassification does not have a substantial impact on the analysis or conclusions presented in the Draft EIS related to the HGB Ozone Nonattainment Area. The estimated NO_x emissions resulting from the Proposed Acquisition would still be above the updated *de minimis* thresholds and VOC emissions below the updated *de minimis* thresholds. The estimated NO_x emissions resulting from the Proposed Acquisition would still be less than 1 percent of the current emissions budget for mobile sources set forth in the applicable State Implementation Plan in Texas. Because the proposed revisions to the State Implementation Plan in light of the reclassification are not yet available, OEA is unable to compare the estimated emissions resulting from the Proposed Acquisition to any revised emissions budgets that might be developed in connection with those revisions. However, OEA expects that emissions resulting from the Proposed Acquisition would be a small percentage of any

revised emissions budget for mobile sources and that emissions associated with the Proposed Acquisition would not adversely affect implementation or enforcement of the State Implementation Plan.

The reclassification of the HGB Ozone Nonattainment Area to severe nonattainment will likely result in new requirements for major stationary sources of emissions, which are regulated differently than mobile sources such as trains. The transition to a classification of severe nonattainment will likely require a new updated emissions inventory to meet the requirements of the CAA, transportation control measures to offset vehicle miles traveled growth, and the use of low VOC reformulated gas. Sources include (but are not limited to) human-caused stationary sources and on-road and non-road mobile sources, which include aircrafts, commercial marines, and locomotives. The anticipated increases in emissions due to rail activity in the nonattainment area should be accounted for in future State Implementation Plan inventories, which could involve offsets in emissions budgets in order to achieve the required reductions in emissions from the base year inventories. Ozone nonattainment areas that are moderate or above must present Rate of Progress and Reasonable Further Progress plans to ensure that states are making progress in achieving attainment for nonattainment areas and are decreasing in NO_x and VOC emissions from the baseline inventory year. The State Implementation Plans define specific reduction targets for the emissions inventories that must be met within certain timeframes. States in nonattainment for ozone must reevaluate their emissions inventory every three years.

Comment 453-6: Written Comment from Harris County Attorney's Office (EI-32532)

The OEA should more thoroughly address the adverse effects of the Proposed Acquisition on air quality in Harris County in light of the new nonattainment designations.

The OEA concludes the HGB Ozone Nonattainment Area is one of only three nonattainment areas in the affected regions where the Proposed Acquisition would affect air quality.³ The OEA estimates the increase in NO_x emissions would be less than one percent of the applicable emissions budget for mobile sources in each nonattainment area and “therefore should not adversely affect enforcement of applicable State Implementation Plans (SIP) for the nonattainment areas.”⁴

The information the OEA relied on to make these conclusions is now outdated. The relevant SIP for the HGB Ozone Nonattainment Area will soon need to be revised, and the County will face more stringent CAA requirements to reach attainment.⁵ These new designations represent a material change to the circumstances the OEA relied on when analyzing air quality which the OEA needs to account for in the EIS.

³ OFFICE OF ENVIRONMENTAL ANALYSIS, SURFACE TRANSPORTATION BOARD, Canadian Pacific Acquisition of Kansas City Southern Draft Environmental Impact Statement, 3.7-32. (2022) [hereinafter D-EIS].

⁴ Id. at S-11.

⁵ Final Determinations of Attainment by the Attainment Date, Extension of the Attainment Date, and Reclassification of Several Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards, ENV'T. PRO. AGENCY 1 (2022)

https://www.epa.gov/system/files/documents/2022-09/Fact%20Sheet%20NFRM%202008%20Ozone%20Determinations%20final_1.pdf.

OEA Response

See response to Comment 453-5 above.

Comment 450-3: Written Comment from Harris County Pollution Control Services (EI-32529)

The EIS mentions Harris County, Texas, as being designated Serious Non-Attainment for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) and compared the emissions to that designation with the applicable thresholds. PCS is concerned that the EIS did not consider the fact that Harris and surrounding counties are slated to be redesignated as Severe Non-Attainment, which will lower permitting thresholds, among other measures designed to improve air quality. Therefore, PCS requests further calculations be performed using the thresholds applicable to the Severe Non-Attainment designation.

OEA Response

See response to Comment 453-5 above.

Comment 461-19: Written Comment from Environmental Defense Fund (EI-32540)

NO_x plays a major role in the production of ozone, and the Houston area has been recently reclassified to severe nonattainment for ozone. Ozone pollution in Houston has been trending upward. Since Sept 6, 2022 the TCEQ has issued 19 Ozone Action Days for the Houston area. While NO_x emissions in Houston have been trending downwards overall, the increase in 30 tons of NO_x emissions from these added trains is a 2.91 percent increase in ozone precursors and would be concentrated in the areas adjacent to the railyards. These communities - Fifth Ward, Kashmere, Settegast - contain large EJ populations. EDF recommends the final EIS include updated NO_x and VOC emissions assessment with new severe nonattainment de minimis standard.

OEA Response

See response to Comment 453-5 above. Based on information provided by the Applicants and other parties in this proceeding, OEA expects that increased emissions in NO_x would be spread out along several different rail lines in the Houston area. Based on information provided by the Applicants and other parties in this proceeding, as well as OEA's independent research, OEA expects that CPKC rail traffic would pass through Houston and would not utilize rail yards in Houston, as these facilities are owned by competing railroad companies. Therefore, NO_x emissions from CPKC traffic would likely not be concentrated near rail yards. As discussed in *Section 3.13, Environmental Justice*, the Proposed Acquisition would not result in high and adverse air quality impacts. Therefore, the Proposed Acquisition would not result in disproportionately high and adverse air quality impacts on low-income or minority populations and no changes to the Draft EIS are warranted.

Comment 453-4: Written Comment from Harris County Attorney's Office (EI-32532)

I. Appendix K.6: County Level Emissions

It is unclear if the column on page K.16 is meant to represent carbon dioxide equivalent or carbon monoxide equivalent. It is described as carbon monoxide equivalent in the caption on K-12 but listed as CO₂e in the table.

OEA Response

The text on page K-12 was mislabeled in the Draft EIS and should read "Carbon Dioxide equivalents." OEA has corrected the error. "CO" values in **Table K.6-1** represent carbon monoxide emissions and "CO₂e" values represent carbon dioxide equivalent.

Comment 461-16: Written Comment from Environmental Defense Fund (EI-32540)

Because EDF questions the assumption that truck-diversion is feasible, it rejects the conclusion, as stated by OEA on page 3.7-1, that there will not be a net increase of air pollution or greenhouse gas emissions.

OEA Response

OEA expects that the Proposed Acquisition would not result in an overall net increase in emissions of air pollutants or GHGs when measured at the national level. As discussed in *Chapter 2, Proposed Action and Alternatives*, the Applicants project that the Proposed Acquisition would increase rail traffic on the combined CPKC system as a result of the diversion of rail traffic from other competing rail lines and the diversion of freight from truck transportation to rail. OEA expects that increased emissions associated with rail-to-rail diversions would be offset by decreased emissions along the competing rail lines from which traffic would be diverted. It is also possible that efficiencies resulting from single-line service may reduce emissions compared to the No-Action Alternative. Freight shipments that currently must stop in rail yards to change carriers would be handled as a single, long-haul movement on the combined network. Stopping, idling, and switching are less fuel efficient and cause increased GHG emissions. Therefore, OEA expects that emissions related to projected increases in rail traffic on rail lines and projected increases in activities at rail yards and intermodal facilities would be offset by decreased emissions elsewhere.

In addition, OEA expects that the Proposed Acquisition would allow some freight that currently moves by truck to move by rail instead. Because rail transportation is much more fuel efficient than trucking, these truck-to-rail diversions would result in an overall decrease in transportation emissions measured at the systemwide or national scale. The projections of truck-to-rail diversions are based on data from the Applicants' application and freight flow forecast modeling, which account for how the changing dynamics of freight carriers with the proposed merger would affect commodity flow via different transportation modes. OEA expects that the diversion of trucks to rail would reduce long-haul truck miles in the United States by 80 million miles annually. Although OEA expects that local truck traffic on roadways near some intermodal facilities would increase, the scales would be much smaller compared to decreases of long-haul truck miles. As a result, OEA concludes that the

Proposed Acquisition would result in a net reduction of annual truck miles in the United States.

OEA notes that its analysis of air pollutant emissions, including GHGs, is based on projections of future rail traffic provided by the Applicants. Actual future rail traffic would depend on many factors, including general economic conditions; global, national, and regional markets for specific commodities; and the decisions of individual transportation companies and their customers. If fewer truck-to-rail diversions were to occur than the Applicants have projected, then increases in rail traffic on the combined CPKC network would be lower than projected and the potential impacts associated with increased rail traffic would be less than reported in the Draft EIS. No changes to the Draft EIS are warranted in response to this comment.

Comment 461-20: Written Comment from Environmental Defense Fund (EI-32540)

Because EDF questions the assumption that truck-diversion is feasible, it rejects the conclusion, as stated by OEA on page 3. 7-11, that emissions will be offset. OEA requests further in-depth analysis of any claims of potential emissions reductions due to truck diversions be done at the county level for Harris County. As previously stated, EDF believes truck diversions will not be achieved in Harris County. As stated on page 3. 7-12, "OEA did not consider the emissions benefits of truck-to-rail diversions at the county level because truck traffic would likely decrease on many different highways in many different counties throughout North America, so the benefits from truck-to-rail diversions would be diffuse and the truck traffic reductions would not necessarily align with the counties experiencing increases in rail-related emissions." Even if it were true that truck-to-rail diversions occurred and created net emissions reductions, it redistributes the health impacts of such emissions. EDF requests further analysis of where any claimed emissions reductions will be achieved, where they will be increased and the corresponding health impacts.

OEA Response

See response to Comments 461-16 and 453-5 above. As discussed in *Section 3.7, Air Quality and Climate Change*, OEA acknowledges that, while the Proposed Acquisition may not result in an overall net increase in emissions of air pollutants or GHGs when measured at the national level, localized emissions of air pollutants from locomotives would increase along certain rail line segments, including within nonattainment areas.

Although it is not possible to identify the specific roads on which truck traffic would decrease as a result of the Proposed Acquisition because this would depend on many unknown factors, such as the decisions of individual trucking companies and their customers, OEA did identify the general highway corridors that truck-to-rail diversions would be most likely to affect. This information is presented in *Section 3.4, Truck-to-Rail Diversions* and **Appendix I, Truck to Rail Diversion and Intermodal Facility Traffic**.

For the local emissions analysis, OEA conservatively assumed that no truck-to-rail or rail-to-rail diversions would occur in counties and nonattainment areas where rail traffic would increase on CPKC rail lines as a result of the Proposed Acquisition. This approach may tend

to overstate the potential adverse impacts of the Proposed Acquisition on air quality because, to the extent that freight traffic could be diverted from roadways or competing rail lines in the same counties or nonattainment areas where CPKC traffic would increase, the net emissions could be lower than those reported in the Draft EIS.

As discussed in Section 3.7, Air Quality and Climate Change, OEA estimates that NOX emissions within the HGB Ozone Nonattainment Area would be above de minimis thresholds but less than one percent of the current emissions budget for the respective nonattainment area (see **Table 3.7-7**). As required by the CAA, EPA-designated nonattainment areas for ozone must adopt State Implementation Plans that ensure that the NAAQS are met and sustained for those areas. NAAQS are based on human health criteria to protect public health (primary standards), and on environmental criteria to prevent environmental and property damage and to protect public welfare (secondary standards). State Implementation Plans set budgets for emissions from mobile sources, such as locomotives and emissions increases within the set budgets are allowed so long as they comply with the overall targeted reductions from the baseline emissions inventory. As described in *Section 3.7, Air Quality and Climate Change*, OEA found that the Proposed Acquisition would increase emissions within the HGB Ozone Nonattainment Area by less than one percent of the set budget limit. Therefore, the emissions increase would be within the budget and would comply with the overall targeted reductions for achieving compliance with the NAAQS.

Comment 461-17: Written Comment from Environmental Defense Fund (EI-32540)

EDF recommends analysis of all segments as opposed to using the Board Threshold described on page 3.7-2 (where rail traffic increases 100 percent or 8+ trains per day, or yard activity 100 percent or increased truck traffic more than 10 percent of AADT). Transportation emissions are the largest source of GHG emissions and all increases should be analyzed and counted in attainment and nonattainment areas.

OEA Response

OEA's air quality analysis was not limited to rail lines that would experience an increase in rail traffic of 100 percent or more (measured in gross ton-miles) or eight or more trains per day, as the commenter suggests. As explained in *Section 3.7, Air Quality and Climate Change*, OEA applied the thresholds for air quality analysis set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(5) to define the study area for air quality. Pursuant to those regulations, OEA evaluated air quality impacts along rail lines in nonattainment areas, such as the HGB Ozone Nonattainment Area, if rail traffic would increase by three or more trains per day or by 50 percent or more (measured in gross ton-miles). OEA disagrees with EDF's recommendation to analyze air quality impacts along all rail line segments in the combined CPKC network rather than applying the regulatory thresholds for air quality analysis. Based on OEA's experience in conducting environmental reviews of proposed railroad acquisitions, OEA has found that these long-established thresholds are appropriate and adequate for identifying areas where potential increases in rail traffic have the potential to result in adverse impacts on air quality. The thresholds establish guidelines for meeting CEQ's frequently stated charge to screen out minor impacts

and focus the NEPA review on impacts of potential consequence. OEA did not find any basis to depart from the regulatory thresholds in this proceeding and commenters have identified none. Regarding GHG emissions, OEA notes that the Proposed Acquisition would likely not result in an increase in overall GHG emissions and could result in an overall decrease in GHG emissions. This is because the projected increase in rail traffic on CPKC rail lines would be the result of the diversion of trains that already currently move on other rail lines, as well as the diversion of freight from truck transportation to rail.

Comment 461-18: Written Comment from Environmental Defense Fund (EI-32540)

On page 3.7-4 OEA stated they did not evaluate the short-term emissions associated with implementation of the planned capital improvements since they are temporary. EDF requests the final analysis include even temporary emissions of GHGs since the effects of GHGs are not temporary.

The table included on page 3.7-9 shows emissions from increased rail traffic; emissions from increased vehicular delay at at-grade roadway/rail crossings (grade crossings); and emissions from trucks, cranes, and other equipment related to increased activities at rail yards and intermodal facilities that would occur under the Proposed Acquisition. OEA acknowledges that "NO_x is the air pollutant of greatest concern from locomotive emissions, and OEA estimates that increased rail traffic on rail lines in the study area would result in the emission of approximately 5,703 tons of NO_x each year. OEA expects that these NO_x emissions could be offset by lower NO_x emissions on other rail lines outside of the CPKC network." Increasing NO_x emissions in one area creates corresponding negative health effects in that area, even if net emissions are achieved system wide. EDF requests an analysis on where the negative health effects will be distributed on a county level.

OEA Response

As stated in *Section 3.7, Air Quality and Greenhouse Gases*, OEA thoroughly evaluated the short-term emissions associated with the 25 planned capital improvements. This assessment, including GHG emissions, is included in **Table 3.7-9** and **Table K.12-1** in **Appendix K, Air Quality and Climate Change**. The reference on page 3.7-9 of the Draft EIS refers to impacts on air quality related values (AQRVs) of Class I areas. OEA has revised the sentence on page 3.9-9 in the Final EIS for clarity.

Comment 461-21: Written Comment from Environmental Defense Fund (EI-32540)

On page 3.7-13 OEA notes that "the anticipated increases in emissions due to rail activity in these nonattainment areas should be accounted for in future State Implementation Plan inventories, sometimes requiring offsets in emissions budgets in order to achieve the required reductions in emissions from the base year inventories." Harris County is an area of serious nonattainment for ozone and should the NAAQS for PM 2.5 be revised to be more stringent, as is currently under consideration, the county will likely reach nonattainment within three years. Without any mitigation efforts on the part of the Applicants, it shifts the burden to the state to make up the difference to come into attainment. EDF requests further analysis in Harris County on how increased NO_x and PM emissions will affect our attainment status and recommends OEA work with the Texas Commission on

Environmental Quality to determine specifically how those emissions will affect the SIP and the region's ability to achieve compliance with ozone and PM 2.5 under scenarios where the NAAQS for PM is revised or not.

OEA Response

The Draft EIS presents an Air Quality analysis that is consistent with current EPA guidance and federal regulations. Expected emissions and air quality effects in Harris County are described in *Section 3.7, Air Quality and Climate Change*. OEA has updated *Section 3.7, Air Quality and Climate Change* in the Final EIS to reflect the new classifications of ozone attainment status issued by EPA and effective as of November 7, 2022. See response to Comment 453-5 above. OEA expects that NO_x emissions from increased rail traffic in the HGB Ozone Nonattainment Area would be above de minimis thresholds but would be less than one percent of the current emissions budget for the respective nonattainment area (see **Table 3.7-7**). As required by the CAA, EPA-designated nonattainment areas for ozone must adopt State Implementation Plans that ensure that the NAAQS are met and sustained for those areas. NAAQS standards are based on human health criteria to protect public health (primary standards), on environmental criteria to prevent environmental and property damage, and to protect public welfare (secondary standards). Emissions increases within the set budgets are allowed so long as they comply with the overall targeted reductions from the baseline emissions inventory.

Potential revisions to the NAAQS for particulate matter (PM_{2.5}) are under consideration, but have not yet been proposed, unlike the changes to the ozone classifications, which have a scheduled effective date. The exact language of a new PM_{2.5} NAAQS or even if it will be updated is unknown. Should a new PM_{2.5} standard be implemented, and the area is found to be in nonattainment, appropriate measures to reduce potential emissions will be required through the State Implementation Plan process. Furthermore, OEA found that PM_{2.5} emissions increases associated with the Proposed Acquisition would be relatively small at 0.8 tons per year, which likely is far less than any de minimis thresholds that may become applicable should a new NAAQS be established and implemented.

Regarding agency consultation, OEA requested comments from EPA and the Texas Commission on Environmental Quality throughout the EIS process. These agencies did not express concerns regarding OEA's analysis or the conclusions reported in the Draft EIS.

Comment 461-22: Written Comment from Environmental Defense Fund (EI-32540)

OEA stated on page 3.7-26 that "average annual precipitation projections indicate small changes overall, but that projected climate change impacts could include more intense and frequent events of extreme heat, drought, flooding, and severe storms (USGCRP 2018)." EDF requests the final EIS include analysis at the County level (versus) region. Houston has experienced several 100+ year flooding events in recent years. As OEA acknowledges on page 3.7-29, "flooding causes a serious risk to railroad infrastructure, and under the Proposed Acquisition, there would potentially be impacts to bridges, tracks, ties, and ballast." EDF recommends incorporating data on flooding in Houston, Harris County in the final EIS.

OEA Response

OEA conducted its climate change analysis at a regional level in order to address the total project area consistently and to provide a level of information sufficient for the Board to understand potential climate change issues when making a decision on the Proposed Acquisition and the environmental issues related to it. Furthermore, the depth and quality of information available at the county level across the project area varies widely and would thus not enable a consistent analysis across all counties in the project area. Finally, OEA presented possible climate change impacts, such as flooding, to capture the types of physical impacts expected as a result of global climate change and the effect it could have on rail infrastructure. OEA recognizes that the occurrence of each impact type will vary widely by county/locality based on local conditions but reasonably decided to present the suite of possible impacts on a regional scale to demonstrate how these impacts could affect rail infrastructure.

Comment 443-2: Public Meeting Comment from Zoe Middleton (EI-32760)

Climate-change analysis is super important, but in that climate-change section, there's not an analysis on climate disasters. And we have a really high number of climate disasters in Harris County, as we're on the forefront of the crisis experience with hurricanes and floods and even, what we call, smaller rain events that don't reach the threshold of tropical storm, but that still cause enormous flooding and delays in our transportation system. The final EIS could account for those would be much appreciated.

OEA Response

See response to Comment 461-22 above.

Comment 461-23: Written Comment from Environmental Defense Fund (EI-32540)

On page 3. 7-30 OEA stated that "electrical equipment is susceptible to overheating and malfunction, particularly at ambient air temperatures of 90 degrees Fahrenheit or greater (OFCM 2002). Overheating may lead to electronics melting or temporary shutdown in cases for which temperature thresholds result in an automatic shutdown. The possibility of malfunction within track and signal sensors also increases with higher air temperatures." EDF recommends incorporating data on heat island effects in its final EIS analysis and to provide information on how such shutdowns and malfunctions will impact delay.

OEA Response

OEA focused its analysis on regional impacts, which is a sufficient and reasonable level of information for the Board to make its decision on the Proposed Acquisition. In response to comments, OEA incorporated information about urban heat island effects in the Final EIS, to provide additional context about the intensification of heat in urban centers. According to the Fourth National Climate Assessment [NCA4], "the rate of temperature rise will be especially large within urban centers due to the possible intensification of the urban heat island effect," though the degree of heating will vary by city and is difficult to quantify. Because climate change is associated with all alternatives analyzed in the EIS, analyzing

temperature thresholds at the local level would not demonstrate a difference in impacts between the No-Action Alternative and the Proposed Acquisition any more than the current regional-level analysis does. Furthermore, as described on page 3.7-28 in *Section 3.7, Air Quality and Climate Change*, CP is invested in addressing climate change and incorporating adaptation measures into its business planning processes, which is further detailed in the CP Climate Strategy. CP intentionally utilizes scenario analysis to evaluate how climate change could amplify network resiliency risks at critical points along its ROW. CP's proactive approach to climate change impacts may help reduce the frequency of such malfunctions and delays.

Comment 461-24: Written Comment from Environmental Defense Fund (EI-32540)

OEA goes on to further describe how temperatures of 110 degrees Fahrenheit are more likely to buckle and how heat index values at or above 105 increase the risk of derailment. EDF requests the Final EIS include data on how many days in Houston Harris County currently reach these thresholds, and how many more days will reach these thresholds in the future. The analysis should include how these temperatures and their related infrastructure impacts will affect delay since, as previously noted, it is best practice to reduce speeds when temperatures are higher. Analysis should be done seasonally and not on average.

OEA Response

See response to comment 461-23 above.

In response to comments on the Draft EIS, OEA has revised *Section 3.7, Air Quality and Climate Change*, to include additional information regarding the frequency of high temperature events in the Southern Great Plains region. Generally, the Fourth National Climate Assessment (NCA4) projects that the region will experience 30-60 additional days per year above 100 degrees Fahrenheit by the late 21st century if no emissions reductions occur. Regarding the commenter's suggestion that OEA should analyze the effect of higher temperatures in the future on vehicular delay at grade crossings, OEA notes that the grade crossing delay analysis described in *Section 3.3, Grade Crossing Delay* is based on an analysis year of 2027, which is well before the NCA4's projections are predicted to occur.

As indicated in *Section 3.7, Air Quality and Climate Change*, the CP Climate Strategy outlines CP's approach to address climate change and willingness to incorporate appropriate adaptation measures into CP's business planning processes. In addition, the American Railway Engineering and Maintenance-of-Way Association, which sets industry standards and publishes recommended practices for railway infrastructure design, construction, and maintenance, provides guidance for rail network resiliency in response to climate change. The implementation of these measures over the coming decades and other measures yet to be developed should address the extent to which trains would be delayed by higher temperatures in the future.

Comment 455-1: Written Comment from The Office of Harris County Judge Lina Hidalgo (EI-32534)

The air quality impacts of a CPKC merger on Harris County residents was not adequately addressed in the Draft EIS. CPKC would bring an additional eight trains through Harris County daily, adding 31.5 tons of nitrogen oxides (NO_x) emissions to our air annually.¹ Both short- and long-term exposure to NO_x is known to cause increased and aggravated respiratory conditions.² In Section 3.7 of the Draft EIS, the OEA determined that the annual NO_x emissions associated with the Proposed Acquisition would exceed the EPA's de minimis thresholds within the Houston-Galveston-Brazoria Area. And although this increase is identified as "less than 1 percent of the total applicable emissions budget for mobile sources" in Harris County (page 2022 of the Draft EIS), such an increase would still greatly impact the air quality and health of county residents. The Houston-Galveston-Brazoria area is currently in serious nonattainment for NAAQS clean air standards due to its ozone levels, meaning the region does not meet national air quality standards.³ Our region is on the verge of nonattainment for fine inhalable particles at the PM_{2.5} threshold, a concentration that has been linked to premature mortality, increased hospital admissions for heart or lung causes, acute and chronic bronchitis, and asthma attacks in the short term, and premature death, particularly in people who have chronic heart or lung diseases, and reduced lung function growth in children in the long term.⁴ The interaction of ozone and other fine inhalable particles with increased rail emissions could have devastating impacts on what are already extremely delicate air quality conditions in our region. Although the Draft EIS categorizes this NO_x increase as small, any increase in emissions in a serious nonattainment area, particularly one with numerous EJ populations such as Harris County, merits thorough analysis that takes into consideration the cumulative effect of the Proposed Acquisition and the new designations.

¹ Foxhall, E. (2022, October 12). Houston could get 8 more trains a day after rail merger, bringing traffic and pollution concerns. Houston Chronicle. Retrieved October 12, 2022, from <https://www.houstonchronicle.com/news/houston-texas/environment/article/more-Houston-trains-rail-merger-traffic-pollution-17492243.php>

² United States Environmental Protection Agency. (n.d.). Basic Information about NO₂. EPA. Retrieved October 11, 2022, from <https://www.epa.gov/no2-pollution/basic-information-about-no2>

³ United States Environmental Protection Agency. (2022, September 30). Texas Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants. EPA. Retrieved October 12, 2022, from https://www3.epa.gov/airquality/greenbook/anayo_tx.html

⁴ California Environmental Protection Agency. (n.d.). Inhalable Particulate Matter and Health (PM_{2.5} and PM₁₀). California Air Resources Board. Retrieved October 12, 2022, from <https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health>

OEA Response

Please see responses to Comment 453-5 and Comment 461-21 above.

Comment 589-1: Public Meeting Comment from Kevin Wallace (EI-32756)

I would like to know -- a lot of these signs have shown us hundreds -- or thousands and thousands of hours of sitting and waiting at these gates. Have we thought about how that's going to balance out, the 60,000 trucks that are going to be on the roads, because they're going to be sitting there idling for tens of thousands of hours. I'm not sure how we're figuring that out, but there is going to be more pollution flowing up from every time they're sitting there for tens of thousands of hours, so you might want to consider that as well.

OEA Response

The Draft EIS presents an Air Quality analysis consistent with current EPA guidance and federal regulations. Expected grade-crossing emissions and air quality effects on segments that exceed the Board's thresholds for environmental analysis were carefully studied, as described in *Section 3.7, Air Quality and Climate Change*. The air quality analysis conducted for the Draft EIS included an estimate of emissions from both locomotives and vehicles at grade crossings. As presented in **Table K.6-1 of Appendix K, Air Quality and Climate Change**, grade crossing emissions associated with the Proposed Acquisition would generally be minor.

Comment 595-1: Public Meeting Comment from David Webb (EI-32756)

Good evening, I'm David Webb and I'm the Deputy village manager for the village of Hanover Park. As proposed the quality of the air we breathe and the impact on human lives is \$31 billion merger by giving one freight railroad access to Mexico, United States and Canada and all stops along the way is nonnegotiable. For some cities that already endure a lot of air pollution, it will mean even more resulting in serious health risks, particularly for people with heart and lung diseases. The vast increases in rail and truck traffic will increase the burden of pollutants in areas of concentrated rail activities such as intermodal terminals. Air quality analysis should be required at rail yards, grade crossings and junctions. The potential impact on low income and minority communities along the Milwaukee district West line must be mitigated appropriately by environmental justice requirements. The impact on these communities must be clear. Because according to the Environmental Protection Agency, exposure to diesel exhaust can lead to severe health conditions like asthma and respiratory illnesses and can worsen existing heart conditions lung disease, especially in children in the elderly. These conditions can result in increased emergency room visits, hospital admissions, absences from work in school and premature deaths. Further the environmental impact on low income and minority communities from diesel engine emissions contributes to the production of ground level ozone which damaged his crops, trees and other vegetation. Also created as acid rain which affects soil lakes and streams and enters the human food chain via water produce meat and fish. These emissions also contribute to property damage and reduced visibility. The merger cannot come through our communities risking human life in the environment, particularly when the most significant price will impact our low income and minority populations. You cannot overlook our most vulnerable residents thank you for your time.

OEA Response

The Draft EIS presents an Air Quality analysis consistent with current EPA guidance and federal regulations. OEA carefully studied expected emissions and air quality effects in Cook/DuPage County, as described in *Section 3.7, Air Quality and Climate Change*. OEA's analyses show that NO_x emissions in the Chicago Ozone Nonattainment Area are expected to be above de minimis thresholds but are projected to be less than 1 percent of the current emissions budget for the respective nonattainment area (see **Table 3.7-7** of the Draft EIS). As required by the CAA, EPA-designated nonattainment areas for ozone must adopt State Implementation Plans that ensure that the NAAQS are met and sustained for those areas. NAAQS standards are based on human health criteria to protect public health (primary standards), and on environmental criteria to prevent environmental and property damage, and to protect public welfare (secondary standards). Emissions increases within the set budgets are allowed so long as they comply with the overall targeted reductions from the baseline emissions inventory to reach NAAQS attainment. As the Draft EIS indicated in *Section 3.13, Environmental Justice*, the Proposed Acquisition would not cause any high and adverse air quality impacts. Therefore, the Draft EIS properly concluded that the Proposed Acquisition would not result in disproportionately high and adverse air quality impacts on low-income or minority populations.

Comment 461-39: Written Comment from Environmental Defense Fund (EI-32540)

EDF recommends after health impacts related to emissions are analyzed at the county level that the Applicants consult with community members on how to best mitigate health impacts and fund interventions.

OEA Response

See response to Comment 461-34 in *Section S.18, Mitigation* of this appendix regarding meeting with community members.

S.13 Energy

Comment 518-7: Written Comment from Canadian National Railway Company (EI-32613)

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

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

But as Mr. Hunt demonstrates in his verified statement attached as Exhibit A, this is simply not the case.

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

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

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

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

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

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

OEA Response

See response to Comment 518-8 below.

Comment 518-8: Written Comment from Canadian National Railway Company (EI-32613)

I have been asked to review and comment on the conclusion of the Draft Environmental Impact Statement ("DEIS") prepared by the STB's Office of Environmental Analysis ("OEA") on the proposed CP-KCS merger that OEA did not need to "include rail-to-rail diversions in the overall fuel consumption analysis because the increase in fuel consumption on the CPKC rail lines would likely be offset by a decrease in fuel consumption on the rail lines of competing railroads."² The DEIS's conclusion is clearly incorrect because, as Applicants' own witnesses testified, the proposed rail-to-rail diversions would travel over substantially longer routes. Accordingly, these diversions would substantially increase the

car and container miles (collectively, unit miles) incurred on transporting that traffic on a merged CPKC. For purposes of this analysis, I assumed that the Applicants would realize the proposed rail-to-rail diversions projected in their application submitted on October 29, 2021, specifically the statements of:

Applicants' witnesses Richard W. Brown and Nathan S. Zebrowski, and Jonathan Wahba and Michael J. Naatz.³

Based on their assumed diversions, I found the following:

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

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

The bulk of diversion synergies identified by CP and KCS in their application are rail-to-rail diversions, i.e., instances where CP and KCS believe that traffic currently moving on other railroads would divert to a merged CPKC. CP and KCS's application claims 346,000 units (carloads and containers) of rail-to-rail diversions,⁸ but just 64,000 units of truck-to-rail diversions.⁹ Because CP and KCS connect only at a single interchange location (Kansas City), all their merger diversions must funnel through Kansas City. Forcing diverted traffic through Kansas City adds significant route miles, as demonstrated by selected Origin – Destination pairs in **Table S.13-1**.

Table S.13-1. Comparison of CP-KCS mileages in selected lanes¹⁰

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

Witnesses Brown and Zebrowski acknowledge the increased distances on a merged CPKC, stating that the CP-KCS routes to which traffic would be diverted are, on average, 217 miles (11.7 percent) longer than the route on the existing carriers, and 323 miles (18.5 percent) longer than the shortest route in the market.¹¹ In my verified statement included with CN’s comments on the primary application, I show, for example, that the diversion of traffic from the Ports of Los Angeles/Long Beach, California to the Port of Lazaro Cardenas, México projected by witnesses Wahba and Naatz, will add 455 additional rail miles for every container to Chicago, IL¹²

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

Table S.13-2. Summary of increase in car/container miles for CP-KCS estimated traffic diversions¹⁵

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

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

An increase of unit miles, especially an increase as large as 122.6 million loaded and empty unit miles, is unprecedented in an approved Class I merger. By comparison, **Table S.13-3** shows that in the BN – ATSF merger application, the estimated diversions *decreased* revenue unit miles by 8.2 million, with every service type showing a decrease in revenue unit miles. Adding such a substantial number of unit miles will introduce inefficiencies to the railroad network and is not in the public interest.

Table S.13-3. Change in revenue unit miles estimated for BN and ATSF merger¹⁹

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

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

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

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

Table S.13-4. Change in Revenue Unit Miles From Witnesses Wahba & Naatz Estimate of Diversions from the Port of Los Angeles / Long Beach to the Port of Lazaro Cardenas Route miles based on PC*Miler/Rail, version 28.

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

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

52,613,726 revenue unit miles x 8.4404% nonrevenue empty ratio = 4,453,088 empty unit miles

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

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

Table S.13-5. Increase in Revenue Unit Miles from witnesses Brown and Zebrowski Diversion Estimates

	Average Miles²⁵	Diverted Units²⁶	Unit Miles
Existing Move	1,853	(216,675)	(401,498,775)
CPKC Move	2,070	216,675	448,517,250
Revenue Unit Mile Increase			47,018,475

The estimated diversions by witnesses Brown and Zebrowski include 137,416 containers and 79,259 loaded cars.²⁷ Applying an 8.4 percentage of nonrevenue empty intermodal movements, plus a 92.2 percent empty return rate for carload traffic yields²⁸:

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

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

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

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

⁵ STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. –

Railroad Control Application, Verified Statement by Richard W. Brown and Nathan S. Zebrowski, October 29, 2021, Table 28.

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

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

⁸ See STB Finance Docket 36500, Canadian Pacific Railway Limited, et al. – Control – Kansas City Southern, et al. – Railroad Control Application, Verified Statement by Richard W. Brown and Nathan S. Zebrowski, October 29, 2021, Table 26 (reflecting 216,675 units of diverted rail traffic) and Verified Statement by Jonathan Wahba and Michael J. Naatz, October 29, 2021, ¶ 64 (predicting that “a combined CP-KCS system could attract nearly 130,000 intermodal containers moving between Lazaro Cardenas to U.S. destinations”). The 346,000 total excludes consideration of certain other rail-to-rail diversions claimed by

witnesses Wahba and Naatz, such as the diversion of 3,630 carloads of soybeans from routes involving a combination of UP, BNSF, KCSM, and FXE to a CP-KCS route (§ 27). This diversion of soybeans to CP-KCS will add additional railcar miles over the current rail route, but the lack of specificity by witnesses Wahba and Naatz in their verified statement and workpapers does not permit the exact calculation to be included in my analysis. Other rail-to-rail diversions claimed by witnesses Wahba and Naatz that I did not consider due to lack of specific origin, destination, and current route information include dried distillers grains or DDGs (§ 29), liquefied petroleum gas or LPG (§ 82), and lumber and pulp (§ 100).

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

¹⁰ PC*Miler[Rail, version 28.

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

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

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

¹⁴ Association of American Railroads, “Analysis of Class I Railroads” 2019 report, “Total Frt Car Miles” Line 658.

¹⁵ Calculations and references for this table can be found in Appendix A and Appendix B.

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

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

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

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

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

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

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

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

²⁴ Brown and Zebrowski V.S., October 2021, Table 6.

²⁵ Brown and Zebrowski V.S., October 2021, Table 6.

²⁶ Brown and Zebrowski V.S., October 2021, Table 28, Year 3.

²⁷ Brown and Zebrowski V.S., October 2021, Table 28, Year 3.

²⁸ Association of American Railroads, “Analysis of Class I Railroads,” 2019 report for U.S. total. Empty/loaded ratios for Canada and Mexico are assumed to be consistent with U.S. values. Intermodal empty/load ratio of 8.4% calculated from Empty Car Miles for Flat TOFC/COFC (Line 685) divided by Loaded Car Miles for Flat TOFC/COFC (Line 669). Carload empty/load ratio of 92.2% calculated from (Freight Car Miles for Empty (Line 656) minus Empty Car Miles for Flat TOFC/COFC (Line 685)) divided by (Freight Car Miles for Loaded (Line 655) minus Loaded Car Miles for Flat TOFC/COFC (Line 669)). Combining the Brown and Zebrowski and Wahba and Naatz additional unit miles yields: 47,018,475 Brown & Zebrowski revenue unit miles + 18,374,015 nonrevenue empty unit miles + 52,759,200 Wahba & Naatz revenue unit miles + 4,453,088 nonrevenue empty unit miles = 122,604,778 total unit mile increase.

OEA Response

As discussed in *Section 3.8, Energy*, OEA concluded that increased fuel consumption on CPKC rail lines associated with the diversion of rail traffic from other rail lines (rail-to-rail diversions) resulting from the Proposed Acquisition would be offset by a decrease in fuel consumption on the other competing rail lines. This conclusion is reasonable and supported by the record and OEA’s independent analysis.

OEA reviewed the commenter’s analysis on rail-to-rail diversions and believes the change in unit miles due to rail-to-rail diversions is overstated for several reasons. First, while the potential diversion of shipments from the Ports of Los Angeles/Long Beach in California to

the Port of Lazaro Cardenas in Mexico may create a longer route for traffic originating or terminating at some West Coast ports, much of the route from Lazaro Cardenas is outside of the United States and is thus outside of the Board's jurisdiction and scope of this environmental review. The Draft EIS appropriately focused on route miles within the United States, so these diversions, which the commenter calculates as 130,000 containers at 405.84 miles each, would be significantly less for purposes of the environmental analysis of the Proposed Acquisition. Moreover, the straight-line distance between Lazaro Cardenas and Laredo, Texas is 679 miles. Therefore, diverting goods to Lazaro Cardenas rather than Los Angeles/Long Beach could result in a net reduction of unit miles within the borders of the United States.

Second, the distances provided by the Applicants in the Brown and Zebrowski verified statement and used by the commenter to predict mileage increases, are for all eligible diverted single line routes, not the subset of carloads that Brown and Zebrowski later forecast would be diverted to CPKC. The distance between the CPKC terminal for the subset of moves diverted and the final customer location is not included. In fact, the subset being diverted could include carloads where CPKC has a shorter route to the destination. Further, of the 216,675 carloads diverted to CPKC, 124,275 are existing interline moves of the carriers, where the distance traveled is likely comparable to current routings. Since CP and KCS are already operating part of these routes as independent carriers, there would be no increase in car miles on the portion corresponding to the converted interline move.

The unit-miles for non-revenue empty intermodal containers presented in the commenter's computations, which would generally require less fuel to transport than revenue cars, would decrease proportionally with adjustments made for the above considerations. Furthermore, the transport of empty intermodal containers on CPKC would be offset by the reduction of empty containers diverted from a competitor.

After adjusting the unit-miles added for the factors discussed above, there are several reasons why the energy usage for the remaining unit-miles would likely be offset. There is wide variation in train fuel consumption, which depends on several factors including train length and weight, grade, train speed, curvature, idle time, scheduled stops, delays and network congestion, the mix of commodities and equipment, and the number of interchanges and switching required along the route. Longer trains with fewer stops, as would be operated by CPKC, are typically more efficient. When a train stops, it loses all kinetic energy, so trains making fewer stops running at higher speeds and operating closer to the locomotive's rated power could offset a longer route. A longer single line route may improve efficiency because of eliminated switching moves, the use of switching locomotives, and reduced idle times. Finally, removing trains from other railroads and switching yards may reduce network congestion and improve efficiencies for other operators.

Even assuming that the commenter's conclusions regarding route distances are accurate, OEA's conclusion that rail-to-rail diversions would not increase overall fuel consumption is reasonable. Indeed, it is a conservative conclusion that may tend to understate the benefits of the Proposed Acquisition on energy efficiency. For context, OEA estimates that the total increase in diesel fuel consumption on the combined CPKC network would be approximately 36,909,385 gallons per year. Of that increase, approximately 7.3 percent or

2,698,787 gallons would be due to truck-to-rail diversions and the remaining approximately 92.7 percent or 34,210,597 gallons would be due to rail-to-rail diversions. Assuming that routes on the CPKC system would be approximately 11.7 percent longer than competing routes, as the commenter claims, and assuming comparable per-mile fuel usage across routes, this increased distance would correspond to an increase in fuel use of approximately 4,006,829 gallons per year. However, the Applicants estimate that the single-line efficiencies offered by the Proposed Acquisition would decrease GHG emissions by approximately 324,000 tons of carbon dioxide per year, which corresponds to a decrease in fuel consumption of approximately 28,788,241 gallons per year. This decrease in fuel consumption would more than offset any increase associated with longer routes. Further, OEA estimates that truck-to-rail diversions resulting from the Proposed Acquisition would cause a net decrease in fuel consumption of approximately 8,096,362 million gallons, which would also more than offset any increase associated with longer routes. Therefore, OEA's conclusion that the Proposed Acquisition would result in a net increase in overall energy efficiency is reasonable, and no changes to the Draft EIS are warranted in response to this comment.

Comment 5-1: Written Comment from Meg Thomas (EI-32130)

I am concerned about the additional oil traffic that will cross both lands in the White Earth reservation and areas ceded under an 1855 treaty, due to the proposed CP, KCS merger. That treaty, which allowed many of us who are not Ojibwe or Dakota to occupy land in Minnesota, promised to keep the ceded lands in good condition for hunting, fishing and harvesting wild rice. Increased oil traffic across reservation lands and ceded territory puts all of those things at risk. We must honor the treaties our ancestors signed. Resources dedicated to increased transportation of oil, rather than to developing renewable sources of energy also endanger all of us by contributing to global warming. I oppose the merger due to this potential for increasing the transportation of oil across vulnerable areas.

OEA Response

Appendix C, Rail Line Segments, Intermodal Facilities, and Rail Yards provides information on the projected increases in rail traffic on specific rail lines that could occur if the Board authorizes the Proposed Acquisition. As shown in that appendix, the Applicants project that rail traffic on the CP rail line that passes through the White Earth Reservation would increase by approximately 2.58 trains per day, on average. This projected increase is well below OEA's thresholds for environmental review at 49 U.S.C. § 1105.7(e). The projected increase in hazardous materials transportation is approximately 720 carloads per year, which is less than a 2 percent increase compared to the No-Action Alternative and corresponds to roughly seven additional trains per year.

Some of the additional trains that would use the CP rail line through the White Earth Reservation could transport DRUbit, which is a nonhazardous bitumen. According to the Applicants, the Proposed Acquisition could support a shift away from the transportation of hazardous crude oil and increase the transportation of the DRUbit alternative by an estimated 16,341 carloads per year. DRUbit is a tar-like substance that does not flow and would likely not harm the environment or nearby communities if inadvertently spilled in the

event of a derailment, thereby increasing the shipping safety compared to the original product. OEA expects that, although transportation of DRUbit would increase as a result of the Proposed Acquisition, the transportation of crude oil on competing rail lines would decrease and that the Proposed Acquisition would not change the overall volume of energy resources transported in the United States. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 7-1: Written Comment from Jean Ross (EI-32135)

This merger will allow more oil trains to pass through White Earth Reservation and the tribe's ceded territories of Minnesota. This is unjust as they were forced to have a new tar sands oil pipeline constructed through their territories last year. It was built on the premise that fewer oil trains would be needed. Many fought hard against the oil pipeline that threatens the water and wild rice Indigenous people rely on for survival. If oil were to spill from these oil trains it could damage their ability to exercise their rights to fully use and enjoy their ceded territories. I oppose this merger. However, if it is ultimately approved, then given the danger it poses to The Native people and their land, CP/KCS should pay some kind of fee or set aside funds to pay for any damage that their trains may cause.

OEA Response

Please see the response to Comment 5-1 above.

Comment 668-1: Transportation Merit Hearing Comment from former Majority Leader of the Minnesota State Senate Amy Koch

I'm here to express my concerns about the proposed merger between CP and KCS. Communities across my home state of Minnesota are already impacted by high costs, environmental factors and long waits for train crossings, and this mega-merger will unfortunately make things 1 worse. For starters, the increased rail traffic this merger would cause would bring more crude oil to Minneapolis state law for produced oil -- (background audio interference) for our state, especially as the Biden administration seeks to limit the number of new pipelines for oil and gas transport given the recently averted rail strike and the havoc this would have wrecked on energy supplies in the United States. If we're even more reliant on rail transportation for energy resources, this is unwise.

OEA Response

Please see the response to Comment 5-1 above.

Comment 668-2: Transportation Merit Hearing Comment from former Majority Leader of the Minnesota State Senate Amy Koch

CP is already the largest rail shipper of oil through Minnesota and now this merger will increase that yield with as many as 20 more trains hauling crude oil by our homes and near our schools each month. Additionally, the merger will result in increased train traffic of other items including hazardous chemicals. This drastic increase of train traffic carrying hazardous materials would result in more deadly accidents as evidenced by the study from

the Fraser Institute. They found that rail is 4.5 times more likely to experience an accident transporting fuels than pipelines. Another consideration is the negative impact this merger would have for Minnesota farmers. Increased demand for fuel shipments, which command higher shipping rates than farm goods, would displace "ag" products and make it more difficult to get food to market raising the already skyrocketing price of groceries. As the administration looks to reduce inflation, it would be unwise to introduce further uncertainty into that supply chain.

OEA Response

Please see the response to Comment 5-1 above with respect to oil shipments and hazardous materials. Please see response to Comment 447-1 above regarding economic impacts.

Comment 669-1: Transportation Merit Hearing Comment from US Development Group

Both CP and KCS as providers has been integral to the successful launch of DRUbit. USD supports approval of the CP/KCS merger. The transaction will provide benefits that we are eager to see realized. The combined CP/KC network with new single-line hauls and access to the premier ports on the U.S. Gulf Coast, Atlantic and Pacific coast as well as to key overseas markets will help us and our customers reach existing and new markets more efficiently. As just one example we believe the merger will provide improved rail efficiency and economics necessary to support further investment in our DBR network encouraging growth in the use of DRUbit and more sustainable, heavy Canadian crude oil product group previously mentioned. This should enable Canadian heavy crude currently shipped by pipeline and rail in diluted form to be converted to DRUbit: a nonhazardous, nonflammable product.

OEA Response

Comment noted.

S.14 Biological Resources

Summary Comment 14-1

Commenters expressed concern that increased rail traffic resulting from the Proposed Acquisition could increase the risk of a rail accident, such as a release or spill of hazardous materials, that could adversely affect vegetation, wildlife, or aquatic ecosystems. Commenters identified specific sensitive locations where they believe a large spill of hazardous materials could result in adverse impacts. Commenters identified species, including wild rice, mussels, and fish that they believe would be adversely affected by a spill of hazardous materials. Some commenters stated that the Draft EIS insufficiently addressed the potential impacts of a spill of hazardous materials on biological resources.

OEA Response

As discussed in *Section 3.1, Freight and Passenger Rail Safety*, the probability of rail accidents would increase on some rail lines as a result of the Proposed Acquisition because average rail traffic would increase. Where the volume of hazardous materials transported by rail would increase as a result of the Proposed Acquisition, the probability of a spill or release of hazardous materials would also increase. However, OEA expects that the likelihood of accidents, including releases of hazardous materials, would remain low on all affected rail line segments. The voluntary mitigation and SIP proposed by the Applicants would minimize the risk of an accident such as a spill occurring and would address the effects of any accidents that could occur. Further, because most hazardous materials spills are very small, it is very unlikely that a large spill would occur adjacent to sensitive habitat that would have the potential to affect biological resources.

In response to comments, however, OEA has added language to *Section 3.11, Biological Resources* explaining that, although a large release of hazardous materials would be very unlikely to occur, such a release could impact vegetation, wildlife, or aquatic ecosystems in the unlikely event that it would occur in any area immediately adjacent to sensitive habitat areas.

Summary Comment 14-2

Commenters expressed concern that increased rail traffic resulting from the Proposed Acquisition could result in increased levels of rail-related noise that could adversely affect wildlife. Some commenters identified specific locations or species, such as eagles or bats, that they believe would be particularly sensitive to changes in noise levels. Some commenters stated that the Draft EIS insufficiently addressed the potential impacts of rail-related noise on biological resources.

OEA Response

As explained in *Section 3.11, Biological Resources*, the rail lines on which rail traffic would increase as a result of the Proposed Acquisition have been in operation for many years, in most cases more than 100 years, during which time average rail traffic has increased and decreased in response to market conditions. Therefore, animals living in the vicinity of those rail lines will have already become habituated to train noise over many years of regular exposure to such noise. OEA recognizes that certain species of wildlife may not become habituated to train noise; however, to the extent that such species may have once lived in the areas where CP and KCS rail lines are located, those animals will have relocated long ago in response to train noise.

OEA does not expect that the Proposed Acquisition would cause individual trains on CPKC rail lines to become substantially louder or audible in places where they are not currently. FRA employs the Sound Exposure Level (SEL) value of 100 dBA to evaluate noise effects on wildlife. Train noise levels typically drop below this value within a few hundred feet of the tracks. In areas where the CP and KCS rail lines are located near sensitive habitat areas, sufficient habitat exists beyond this distance to support any wildlife species that may not

have become habituated to train noise. Therefore, no changes to the Draft EIS are warranted.

Comment 549-1: Written Comment from Sierra Club Eagle View Group (EI-32764)

The DEIS is deficient because it does not adequately evaluate the effects of potential spills on freshwater mussel resources which exist immediately adjacent to the rail line in several locations. In the past twenty years or so, there have been multiple train derailments along the Iowa shoreline that have impacted State and Federal endangered species, in particular, the Higgins pearly mussel (*Lampsilis higginsii*). The impact of doubling the train traffic does not appear to have been addressed with regard to multiple state and federally listed freshwater mussel species.

OEA Response

See response to Summary Comment 14-1 above. OEA does not consider accidental releases of hazardous materials into waterways to be a reasonably foreseeable outcome of the Proposed Acquisition. In response to comments, however, OEA has added language to *Section 3.11, Biological Resources*, explaining that, although a large release of hazardous materials into waterways is not reasonably foreseeable and would be very unlikely to occur, such a release could impact water resources and aquatic plants and animals.

During the preparation of the Draft EIS, OEA consulted with the U.S. Fish and Wildlife Service (USFWS) regarding the potential impacts of the Proposed Acquisition on federally listed threatened and endangered species, as required by Section 7 of the Endangered Species Act. USFWS has concurred with OEA's determination that the Proposed Acquisition *may affect, but is unlikely to adversely affect* federally listed threatened and endangered species.

Comment 174-2: Written Comment from Jody Miller (EI-32454)

The Mississippi River Flyway is one of the most important migratory bird corridors in the world. As Audubon's Christmas Bird Count and the Mid-Winter Bald Eagle surveys can attest, the Mississippi River in Iowa along the affected corridor explodes with waterfowl during migration. These birds are not habituated to train horns blaring and will flush from shoreline areas affected by such noise. Since they are migrating, they are in dire need of rest and food. Every flushing event takes away energy needed for migration and survival.

The same can be said for Bald Eagles along the affected Mississippi River Flyway. Thousands of Bald Eagles funnel into the open waters of the Mississippi River to feed and rest during migration. These eagles are not habituated to train horns blaring and will flush with a passing train. An occasional train allows eagles to re-perch and use those trees for resting and feeding. Continuous traffic and blasting of train horns would render the eagle perching habitat unusable for the entire affected Mississippi River corridor, from Muscatine to McGregor, Iowa – almost 200 miles of shoreline! Because of the scope of this impact, it is likely that increased traffic from the train merger will disturb bald eagles. The U.S Fish & Wildlife Service defines “disturb” as follows.

Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available,

(1) injury to an eagle,

(2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.

50 CFR 22.6 “Disturb”

OEA Response

See response to Summary Comment 14-2 above. As explained in *Section 3.11, Biological Resources*, animals living in the vicinity of those rail lines, including bald and golden eagles, will have already become habituated to train noise over many years of regular exposure to such noise. OEA recognizes that certain species of wildlife may not become habituated to train noise; however, to the extent that such species may have once lived in the areas where CP and KCS rail lines are located, those animals will have relocated long ago in response to train noise.

OEA does not expect that the Proposed Acquisition would cause individual trains on CPKC rail lines to become substantially louder or audible in places where they are not currently. Train noise levels typically drop below levels thought to disturb wildlife within a few hundred feet of the tracks and in areas where the CP and KCS rail lines are located near sensitive habitat areas, such as the Mississippi River Flyway, sufficient habitat exists beyond this distance to support any wildlife species that may not have become habituated to train noise.

OEA notes that, aside from CP rail lines, there are many other operational rail lines that cross or parallel the Mississippi River in eastern Iowa, including UP rail lines, CN rail lines, and BNSF rail lines. Although the average number of trains per day would increase on CP rail lines, train traffic and rail-related noise in the vicinity of the Mississippi River Flyway would continue to be variable and intermittent, as it is currently.

During the preparation of the Draft EIS, OEA consulted with USFWS and other appropriate agencies regarding the potential impact of the Proposed Acquisition on biological resources. Those agencies have not disagreed with OEA’s conclusions or raised additional concerns regarding impacts on bald or golden eagles. Further, OEA notes that the Applicants have committed to adhering to the Bald and Golden Eagle Protection Act and to following the USFWS National Bald Eagle Management Guidelines, as applicable, during the implementation of planned capital improvements (see VM-Biological-13 in *Chapter 4, Mitigation*). Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 423-1: Public Meeting Comment from Brian Ritter (EI-32757)

Good evening. I serve as the Executive Director of a place called Nahant Marsh in southwest Davenport. We're the largest urban wetland on the upper Mississippi River. We're home to 1100 different species of documented plants and animals, including three federally

endangered species; 27 state listed species; and a variety of other rare plants that should be listed. On top of that, we serve around 22,000 people a year at our education center, including about 11,000 children that come for field trips, day camps, etc. We have a variety of concerns. Number one, the CP railyard is right in our backyard, where our building is literally about 100 feet from the railyard. The railroad itself crosses the marsh at three different locations, the lower part of the marsh. And that entire area is in the 100-year flood plan. In 2019, almost the entire railyard was underwater. That was the 75-year flood event. Flooding on the upper Mississippi River is getting worse than ever before. On our stretch of the river, the last decade, we had 355 days where the Mississippi River was at flood stage. That pales in comparison -- any other decade pales in comparison. It's three times the number of flood days that we had in the 1990s. And I am very concerned that this environmental impact statement did not address the fact that the trains go through the Mississippi River flood plain and the incredible sensitive areas that the train travels through. Not just Nahant Marsh. There's Princeton Marsh to the north. There's the Upper Mississippi River Wildlife Refuge. There's Port Louisa that's nearby. So, I strongly urge you to consider reviewing and visiting these incredibly sensitive treasures that we have in the Quad City area before you make your final decision.

OEA Response

See response to Summary Comment 14-1, response to Comment 174-2, and response to Comment 549-1 above. Regarding potential impacts on Nahant Marsh specifically, see response to Comment 95-1 below. Railroad derailments due to washout caused by flooding are very rare events. As discussed in *Section 3.1, Freight and Passenger Rail Safety*, OEA reviewed the railroad accidents that have occurred on CP and KCS rail lines over the past five years. Of the 56 reported mainline derailments, only two were caused by washout. No train incidents were reported due to flood waters in the five-year study period. Both CP and KCS currently employ trackside High-Water Detectors that alert the train crew and dispatch center in the event of flooding on the tracks. OEA sent notifications to the Upper Mississippi River Wildlife Refuge to make them aware of the Proposed Acquisition during the scoping period and invite them to agency scoping meetings. The Refuge did not reply. No changes to the Draft EIS are warranted in response to this comment.

Comment 603-1: Written Comment from Scott Tunnicliff (EI-32765)

Final mention for me includes the Nahant Marsh, arguably the most important site along the rail lines, and the most at risk within Scott County. This 305-acre site has been transformed from a little-known switch yard and site of an old skeet-shooting club into a restored habitat for wildlife and plants indigenous to the area. Again, other more familiar that I with Nahant March will hopefully speak to its value as an education center for environmental study, a recreation center, and a monument to what can be accomplished to undo damage to a once pristine area. The impact of increased rail traffic to this area is painful for many to contemplate, not least because it is unnecessary. Without proper policies and dedication to timely remediation of damage done by derailments and spillage of harmful chemicals, this vital area would be ruined at the cost social, environmental and, yes, financial.

OEA Response

See response to Comment 423-1 above.

Comment 92-1: Public Meeting Comment from Colin Shirk (EI-32757)

But my main concerns are going to be the ecological concerns. So with sensitive species, with potential derailment and oil spills, stuff like that, and how that could impact Nahant Marsh, Nahant Marsh is a very big part of the Mississippi flyway for migratory birds. So, every spring and every fall, we have hundreds of thousands of birds that are migrating through and utilizing the marsh, and, you know, anything that goes wrong with the railroad could severely impact those migrating birds.

OEA Response

See response to Comment 423-1 above.

Comment 182-1: Written Comment from Scott Finnegan (EI-32341)

Simply because animals may have exposure to railways and passing trains does not mean they will not be affected by a significant increase in the frequency of passing trains. If you let someone use an easement on your property for their family to access a road, does that mean you won't feel the effect should the family allow 30 other people to use the easement as well? These natural habitats will be affected by the increase in frequency of train passage. Considering that the Indiana bat (an endangered species) may be adversely affected by this decision, it is irresponsible and unethical to approve this proposed acquisition.

OEA Response

See response to Summary Comment 14-2 above. USFWS has concurred with OEA's determination that the Applicants' voluntary mitigation measures would adequately protect the Indiana bat and other federally listed threatened and endangered species and that the Proposed Acquisition would not be likely to adversely affect that species. No changes to the Draft EIS are warranted in response to this comment.

Comment 95-1: Written Comment from Mary M Maher (EI-32227)

I am in opposition to the proposed CP and KCS merger. One of the reasons I am opposed, is the proposed route follows and or crosses many miles of the Mississippi River, Missouri river and the Arkansas river and multiple tributaries. Increased train traffic in the areas of these rivers and wetlands will adversely affect many birds, fish, other wild life and insects who live and migrate along these river basins. For instance, in the area by lock and dams #14 and #15 many bald eagles (our nation's bird) nest in trees close to the river in the winter because even during the coldest part of the year the water is open for them to catch fish for them and their hatchlings to eat. Increased traffic could disturb this hangout for the eagle who are protected under two Federal acts. Many pelicans now call the Mississippi River their home in the warmer months in the Quad City and surrounding areas and would be disturbed also. Nahant marsh home to many species is located near a train yard and would

be greatly affected. Many of the trains will be carrying hazardous chemicals and any spill will greatly affect wildlife and humans in close proximity, and possibly for many miles for years afterward. The city of Davenport, Iowa is doing amazing things with their waterfront to make it a wonderful place to live, run a business and recreate. If this merger is allowed to go through with the increased train traffic, no one will want to go down to the riverfront (our most valuable natural asset). Just like when a highway is built that goes around a town and the town dies, the opposite will happen and the increased train traffic and with it the loud and more frequent noise, and congestion for traffic caused by these trains will cause the death of the Davenport downtown and many areas along the route. Also, once this merger gets the go ahead, what is to stop the company from adding more and more trains to run along this route? Please do NOT allow this merger to go through.

OEA Response

See responses to Summary Comment 14-1, Summary Comment 14-2, Comment 174-2, and Comment 549-1 above. OEA does not consider a spill of hazardous materials with the potential to affect biological resources to be a reasonably foreseeable outcome of the Proposed Acquisition. OEA notes that it is not possible to predict the specific locations where accidents, such as spills of hazardous materials, could occur in the future. However, using the accident rates reported in *Section 3.1, Freight and Passenger Rail Safety*, it is possible to estimate the approximate likelihood of an accident occurring along a specific segment of track. For example, based on publicly available maps of Nahant Marsh, a CP rail line is located adjacent to or near the marsh for approximately 1.5 miles. Based on CP's mainline release rate and the Applicants' projection that 74,016 carloads of hazardous materials would move on the mainline near Nahant Marsh under the Proposed Acquisition, OEA estimates approximately 0.0029 releases per year would occur on the segment of rail line adjacent to or near Nahant Marsh. This means that a release of any size along this segment would be expected approximately once every 345 years. Further, most hazardous materials spills are small and do not have the potential to affect biological resources. Therefore, even if a release were to occur near Nahant Marsh, it would be unlikely to affect the marsh, because it would be small and unlikely to travel beyond the roadbed. If a large spill of hazardous materials were to occur immediately adjacent to the marsh or another sensitive area, biological resources would be affected; however, such an event would be very unlikely to occur and is not a reasonably foreseeable outcome of the Proposed Acquisition. In response to comments, however, OEA has added language to *Section 3.11, Biological Resources*, regarding the potential impacts on biological resources in the unlikely event of a release of hazardous materials.

OEA notes that railroads have the right to determine how to operate and route trains on their rail lines, as well as the obligation to provide rail service to shippers upon reasonable request. Therefore, CP could increase rail traffic in the future on any of their rail lines, including the rail line through Davenport, Iowa, without seeking Board approval regardless of whether or not the Proposed Acquisition is implemented.

Comment 387-2: Public Meeting Comment from Lori O'Dell McCollum (EI-32757)

Secondly, I'm concerned about a potential spill impacting particularly a native habitat that we have spent millions of dollars restoring, called Nahant Marsh. I was trying to review the environmental impact statement and I didn't see any mention of the fact that there are endangered species in that marsh and the railroad track runs right through it, right through the edge of it. And if there was an accident there, particularly an oil spill, it would have a very negative affect on plants, animals, and as I said, these endangered species.

OEA Response

See response to Comment 423-1 above regarding flooding.

Comment 659-1: Transportation Merit Hearing Comment from Brian Ritter

It is my opinion that the draft EIS was flawed because it failed to look at the potential hazard this merger poses to our economy, to our health, to our connection with the river, to the upper Mississippi River ecosystems and the thousands of species that call it home.

OEA Response

See response to Comment 95-1 above regarding effects on the Mississippi River.

Comment 659-2: Transportation Merit Hearing Comment from Brian Ritter

The DEIS does not sufficiently consider the risk of flooding.

OEA Response

See response to Comment 423-1 above regarding flooding.

Comment 627-1: Written Comment from the Office of Environmental Policy and Compliance, Department of the Interior (EI-32638)

Based on our review the Service recommends any "capital improvement" projects that "may affect" any listed species, be entered into IPaC (<https://ipac.ecosphere.fws.gov/>) for technical assistance and consultation purposes. Furthermore, we recommend that Special Protective Measures (SPMs see Attachment 1) and associated general karst Best Management Practices (BMPs see Attachment 2) be incorporated into the conservation measures for this action.

OEA Response

Comment noted. OEA has revised *Chapter 4, Mitigation* to include a mitigation measure requiring the Applicants to implement Special Protective Measures and karst Best Management Practices if the construction of the planned capital improvements occurs in areas with karst features in Benton County, Arkansas and McDonald County, Missouri, to avoid potentially affecting the endangered Benton County Cave Crayfish, Hell Creek Cave Crayfish, and Ozark Cavefish.

Comment 634-1: Public Meeting Comment from Eugene Tibbetts (EI-32755)

My name is Euguene Tibbetts. I am a member of the White Earth Band of Ojibew in northwestern Minnesota. I'm a former District Representative of the Tribal Council and a formal interim Tribal Council Chairman. I have a number of serious comments about the draft Environmental Impact Statement (EIS). The EIS claims it is unlikely a train will derail and spill hazardous materials into the ground of the surface waters. I disagree. At least four Canadian Pacific (CP) trains have derailed already this year. Two of those derailments happened in July alone. A derailed crude oil train poses a huge risk to water quality and, even more importantly, to the harvesting of our wild rice. Wild rice is a core part of my tribe's history and culture. Sadly, the Surface Transportation Board (STB) has failed to recognize this. In fact, the surface -- the phrase "wild rice" is not mentioned a single time in the draft EIS. I would ask the Board to reconsider their dismissive attitude towards the possibility of poisoning something so dear to our culture. However, dismissiveness towards Native Americans seems to be the name of the game in this merger. I have to attend this hearing virtually because the STB has refused to host an in-person meeting in Minnesota. In contrast, residents of Illinois, Iowa, Texas, and Missouri will have the chance to share their concerns about the merger and the EIS in person.

Even worse, not one representative from CP or Kansas City Southern (KCS) has spoken with our tribal government as far as I know, but maybe I shouldn't be surprised that the federal government and the large corporations once again putting Native Americans on the backburner. I thank the Board for your time. Miigwech.

OEA Response

See response to Summary Comment 14-1 above.

S.15 Water Resources

Comment 117-1: Written Comment from Brian Ritter (EI-32230)

I am a resident of Davenport and also serve as the Executive Director of Nahant Marsh Education Center, a non-profit nature preserve that owns land on both sides of the CP-owned railroad tracks. Over the years, the community has invested millions of dollars to restore this unique ecosystem, to connect people to it and the Mississippi River, and to provide education for over 20,000 people annually. Nahant Marsh is home to over 1,000 documented plant and animal species, including 3 federally listed species, and at least 21 state-listed species. We are greatly concerned about this merger's impacts on the marsh and river ecosystems, visitor impact, and our overall ability to manage and access all parts of the preserve. We have concerns about the potential for increased noise, air, and water pollution from the increase in train traffic. We are concerned about the agreement signed with the City of Davenport that would permanently close the crossing at Wapello Ave since this is our main link to 1/3 of our property and the Mississippi River. It is also the main link between Nahant Marsh and the Mississippi River Trail. We are greatly concerned about the overpass that would be constructed on South Concord Avenue because this could impact our recently-completed wetland mitigation bank and the rare species that live there. Furthermore, since a

major CP railyard is located immediately next to Nahant Marsh and is located within the Mississippi River floodplain, we are concerned about the impact of future floods on the railyard, the marsh, and the Mississippi River. For instance, during the record flooding in 2019, a large fuel separator located at the CP railyard was overwhelmed and spilled an unknown large quantity of diesel that ran into a parcel that had been recently acquired by Nahant Marsh.

OEA Response

OEA notes the commenter's concerns regarding existing conditions as related to flooding. For information on the potential impacts of the Proposed Acquisition related to noise, air quality, and water resources, including floodplains, see *Sections 3.6, Noise and Vibration; Section 3.7, Air Quality and Climate Change*, and *Section 3.12, Water Resources*, respectively. In response to public comments on the Draft EIS, OEA has revised *Section 3.12, Water Resources* and *Section 3.11, Biological Resources* to include additional information regarding the potential impacts that could occur in an unlikely event of a release of hazardous materials during rail operations under the Proposed Acquisition.

Regarding the commenter's concerns related to the negotiated settlement agreement between the Applicants and the City of Davenport, OEA notes that OEA encourages railroad applicants to develop negotiated agreements with communities because they can be more far reaching than mitigation the Board could unilaterally impose. However, OEA does not participate in those negotiations and has no role in determining the scope or content of agreements.

Specific to concerns about flooding impacts, railroad derailments due to washouts caused by flooding are very rare events. As discussed in *Section 3.1, Freight and Passenger Rail Safety*, OEA reviewed the railroad accidents that have occurred on CP and KCS rail lines over the past five years. Of the 56 reported mainline derailments, only two were caused by washout. No train incidents were reported due to flood waters in the five-year study period. Both CP and KCS currently employ trackside High-Water Detectors that alert the train crew and dispatch center in the event of flooding on the tracks. OEA sent notifications to the Upper Mississippi River Wildlife Refuge to make them aware of the Proposed Acquisition during the scoping period and invite them to agency scoping meetings. The Refuge did not reply. No changes to the Draft EIS are warranted in response to this comment.

As set forth in *Chapter 4, Mitigation*, the Applicants have proposed voluntary mitigation that, if imposed by the Board, would address potential impacts related to hazardous material releases during railroad operations. These include commitments to comply with FRA and PHMSA regulations applicable to the safe and secure transportation of hazardous materials (mitigation measure VM-Rail-01) and to comply with the SIP appended to this Final EIS (VM-Rail-02).

Comment 529-2: Written Comment from Ray Allen (EI-32577)

You have not given adequate consideration for environmental impacts. The highest increase in rail traffic due to this merger will be right by the Nahant marsh, the largest wetland on the upper Mississippi. One gallon of oil contaminates a million gallons of water. This is

nothing but a Keystone pipeline on wheels. They will transport 2.7 million gallons of oil at over 40 mph. What about the trains traveling through the flood plain? Please address this issue. These tracks have been under water 360 plus days in the past ten years. (529-2) (Reference #: EI-32577)

OEA Response

In response to public comments on the Draft EIS, OEA has revised *Section 3.11, Biological Resources* and *Section 3.12, Water Resources* to include additional information regarding the potential impacts that could result in the unlikely event of a hazardous material spill. OEA notes that it is not possible to predict the specific locations where accidents, such as releases of hazardous materials, could occur in the future. However, using the accident rates reported in *Section 3.1, Freight and Passenger Rail Safety*, it is possible to estimate the approximate likelihood of an accident occurring along a specific segment of track. For example, based on publicly available maps of Nahant Marsh, a CP rail line is located adjacent to or near the marsh for approximately 1.5 miles. Based on CP's mainline release rate and the Applicants' projection that 74,016 carloads of hazardous materials would move on the mainline near Nahant Marsh under the Proposed Acquisition, OEA estimates approximately 0.0029 releases per year could occur on the segment of rail line adjacent to or near Nahant Marsh. This means that a release of any size along this segment would be expected once every approximately 345 years.

Further, as discussed in *Section 3.1, Freight and Passenger Rail Safety*, most hazardous materials spills are small and do not have the potential to affect biological resources outside of the rail right-of-way. OEA estimated that a release of hazardous materials into the environment as a result of a rail accident would potentially lead to a relatively short duration of exposure. The duration and severity of a release is limited by the volume of the railcar, and the local and railroad emergency response plans as required by 49 C.F.R. Parts 172 and 174, which would contain any release in a relatively short amount of time. This would minimize the potential for groundwater contamination, limit the extent of any soil contamination, and allow for the proper management of surface water contamination. Therefore, even if a release were to occur near Nahant Marsh, it would be unlikely to affect the marsh. If a large spill of hazardous materials were to occur immediately adjacent to the marsh or another sensitive area, biological resources would be affected; however, such an event would be very unlikely to occur. For surface water, appropriate management actions depend on the material and the resources affected, and might include, but not be limited to, cleaning up the spill and temporarily restricting the use of the water body. Thus, the potential for longer-term impacts through unrecognized soil or water contamination would be minimized. OEA considered the potential impacts to biological and water resources in *Sections 3.11* and *3.12*, respectively.

Regarding flooding, of the 56 reported main-line derailments during the five-year study period, only two were caused by washout, and of the 180 derailments system-wide, only five caused any amount of hazardous material release. No train incidents were reported due to flood waters in the five-year study period. Both CP and KCS currently employ trackside High-Water Detectors that alert the train crew and dispatch center in the event of flooding on the tracks.

Comment 565-1: Written Comment from Madeline Kull (EI-32547)

I live on South Concord St. I went to one of the public forums that was offered and when I looked through the EIS, I was very concerned to see there was NO flood planning or flood risk assessment in the EIS. Flooding happens often at South Concord St. as the river is just yards away from the road. If the merger goes through the city of Davenport would close the crossing at Wapello Ave. This could be a death sentence for myself and the other residents of South Concord St. Wapello Ave is the highest road/access point when it floods. Where River Drive and Utah Ave. meet South Concord St. go under water at minor flood stage, because of this most of the residents of South Concord will park their cars at Wapello Ave and then boat to and from their homes. If we lose access to Wapello Ave myself and my neighbors will basically be stranded when it floods. Even during minor flooding we still park our cars on Wapello in case of any flash flooding or unpredictable waters. I understand that there may be an overpass built where River Drive meets South Concord, this is not necessarily a solution for residents of South Concord St. if we are not given accommodations or space to park our vehicles on the overpass. This is a huge safety risk for the approximately 100 residents of South Concord St. and cannot be ignored.

OEA Response

As discussed in *Section 3.12, Water Resources*, OEA analyzed the impacts of the 25 planned capital improvements on the floodplain because those improvements would involve the construction of track and roadbed that would result in physical impacts. Aside from the planned capital improvements, the Applicants do not intend to make changes to physical infrastructure as part of the Proposed Acquisition. Therefore, aside from the areas in which the planned capital improvements would be located, the Proposed Acquisition would not have the potential to cause or exacerbate impacts related to flooding.

Regarding flooding, see response to Comment 529-2 above. As discussed in *Section 3.7, Air Quality and Climate Change*, OEA did analyze the potential impacts on climate change, including flooding, on rail lines in the CPKC system.

To the extent that the commenter may be referring to provisions of a negotiated settlement agreement between the Applicants and the City of Davenport, OEA notes that, while OEA encourages applicants to develop negotiated agreements with communities because they can be more far reaching than mitigation the Board could unilaterally impose, OEA does not participate in those negotiations and has no role in determining the scope or content of agreements.

Comment 601-1: Written Comment from the Arkansas Department of Energy and Environment (EI-32633)

From an environmental compliance standpoint, based on the information provided, there are areas of concern. A Construction Stormwater General Permit ARR150000 is required if the project disturbs one (1) acre or more of land. The Construction Stormwater General Permit is required prior to the start of construction. Information on the permit and its requirements can be found on DEQ's website,

<https://www.adeq.state.ar.us/water/permits/npdes/stonmvater/>, or by contacting DEQ's Office of Water Quality (OWQ), Construction Stormwater Section, at 501.682.0620.

If you believe the construction of this project may be exempt from Construction Stormwater permitting requirements, please submit a written request to DEQ for the exemption. Supporting documentation providing basis for the exemption must be submitted along with the request. The Construction Stormwater General permit does not authorize any activity to be conducted in Waters of the State or Waters of the United States. Work in Waters of the State requires a short-term activity authorization (STAA) from DEQ prior to working in the wetted area of a stream or water body. A STAA is necessary for any in-stream activity that could cause an exceedance of applicable water quality standards, including, but not limited to: gravel removal, bridge or crossing repair/maintenance, bank stabilization, debris removal, culvert replacement, flood control projects, and stream relocation. Appropriate Best Management Practices should be used during construction to ensure the protection of the water quality and prevent future impacts or impairment of the receiving waters. For more information and forms, see DEQ's website, <https://www.adeq.state.ar.us/water/planning/instream/>, or call 501.682.0047.

The Division of Environmental Quality will provide feedback during the water quality certification stage of the formal permitting process, if necessary. For more information on 401 water quality certification, including how to apply, visit <https://www.adeq.state.ar.us/water/planning/instream>.

Additionally, if the project causes water utilities to be relocated, the project will require coverage under the Non-Stormwater Hydrostatic Testing General Permit ARG670000. All applicable State and Federal laws must be met before, during, and after the completion of the project. Any discharge of wastewater - whether domestic, industrial, process water or such related activities - must be authorized by obtaining the appropriate permits prior to the activities taking place.

This letter is issued in reliance upon the statements and representations made in the submittal. DEQ has no responsibility for the adequacy or proper functioning of the proposed project. Please contact the respective offices with any questions.

OEA Response

OEA notes this comment from the Arkansas Division of Environmental Quality with respect to permitting processes in Arkansas. Additionally, OEA has included MM-Water-03 in *Chapter 4, Mitigation* to address the Applicants' obligations during the NPDES permitting process. The Applicants would be responsible for obtaining permits if the Board approves the Proposed Acquisition.

Comment 514-1: Written Comment from Brian Ritter (EI-32547)

Of all the areas impacted by this potential merger, our eastern Iowa communities will likely be the most negatively impacted. For hundreds of miles, the railroad travels through the Upper Mississippi River valley, in some stretches only feet from the river. It is my opinion that the draft EIS was flawed because it failed to look at the potential hazard this merger poses to our economy, to our health, to our connection with the river, and to the Upper

Mississippi River ecosystem and the thousands of species that call it home. The river is the primary source of drinking water for several hundred thousand people in our community alone. The Upper Mississippi is one of the most important migratory flyways in the world and is a major economic engine for our region. According to the Upper Mississippi River Drainage Basin Association, “the Upper Mississippi supports a \$55 billion tourism and recreation industry.” The DEIS does not consider the risk of flooding. In our region, the tracks are next to, and sometimes, in the river. In several areas, the tracks are well within the 100 year floodplain. With the uncertainty of climate change and the trend of increased flooding, we are concerned about the potential impact of increased trains carrying increased loads of hazardous materials, including crude oil from Alberta and North Dakota. From the period from 2010 to 2019, our stretch of the river was at or above flood stage for an unprecedented 355 days or nearly 10 percent of the time, representing a three-fold increase from the 1990's and 2000's. The draft EIS also failed to assess all the ecologically-sensitive areas that will be impacted, including Nahant Marsh, which is feet from CP's railyard and is home to over 1,100 documented species of, including 3 federally listed and 27 state-listed species. We request that the STB strongly consider our concerns and the potential threat this merger poses to the ecological health and economic vitality of our region.

OEA Response

Please see response to Comment 117-1 and 529-2 above. OEA has analyzed impacts to water resources in *Section 3.10, Hazardous Material Release Sites*; *Section 3.11, Water Resources*; and *Section 3.12, Biological Resources*. In response to public comments on the Draft EIS, OEA has revised *Section 3.11, Biological Resources* and *Section 3.12, Water Resources* to include additional information regarding the potential impacts that could result in the unlikely event of a spill of hazardous material.

Comment 86-1: Written Comment from U.S. Army Corps of Engineers, Kansas City District (EI-32626)

This is in response to your notification requesting comments regarding the Draft Environmental Impact Statement, (DEIS), for the merger of the Canadian Pacific Railway and Kansas City Southern railroad companies. The proposed combined rail lines of these two companies span multiple U.S. Army, Corps of Engineers Districts, including the Kansas City District. The Corps of Engineers has jurisdiction over all waters of the United States. Discharges of dredged or fill material in waters of the United States, including wetlands, require prior authorization from the Corps under Section 404 of the Clean Water Act (33 USC 1344) and /or Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403). The location of planned work within our District includes the Blue Valley, Grandview/IFG, Laredo, MP-431-Dawn, and Newtown capital improvement areas. We have reviewed these locations and the associated planned facilities that may result in impacts to waters of the U.S. Based on the estimated impacts to wetlands and other surface waters described in the DEIS, an individual permit will likely be required. We will further evaluate any necessary permit considerations for the work when an application with more detailed descriptions of the work to be performed in waters of the United States has been submitted for our review.

Thank you for providing us the opportunity to comment on the DEIS for the project. If you have any questions concerning this matter, please feel free to write or contact Mr. Brian Donahue, Project Manager, at 816-389-3703 or by email at brian.t.donahue@usace.army.mil. Please reference Permit file number NWK-2021-00859 in all comments and/or inquiries relating to this project. This letter is only being provided to electronically through the project website at www.stb.gov.

OEA Response

OEA notes this comment from the US Army Corps of Engineers, Kansas City District with respect to the permitting process under Section 404 of the Clean Water Act (33 U.S.C. § 1344) and /or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). OEA also notes that Applicants would be responsible for obtaining permits if the Board approves the Proposed Acquisition.

S.16 Environmental Justice

Comment 1-1: Written Comment from the Michigan Environmental Council (EI-32133)

Air quality in this part of the state got worse without additional merger-related train traffic going through these towns. Not only will extra trains be harmful, but the additional trucks going to and from the Detroit Intermodal Terminal will be damaging as well. The CP-KCS merger will exacerbate environmental injustice by further harming already marginalized communities. According to Canadian Pacific's own data submitted to the Surface Transportation Board, they anticipate this merger would result in an estimated 87 more trucks per day moving in and out of the facility—a 62% increase—which will create traffic, accidents, and increase idling and overall diesel emissions.

The areas that are most heavily impacted by this merger also coincide with the neighborhoods that are already traffic-dense and trend towards lower socioeconomic status.

OEA Response

Table 3.7-6 in *Section 3.7, Air Quality and Climate Change*, presents the county-level estimates for Proposed Acquisition-related criteria pollutant emissions for counties within the study area that are in nonattainment under the Clean Air Act, including Wayne County, Michigan, where the Detroit Intermodal Terminal is located. Criteria air pollutant emissions in Wayne County would be well below the applicable *de minimis* thresholds. Accordingly, OEA properly determined that air quality impacts resulting from the Proposed Acquisition would not be "high and adverse," as they are not significant under NEPA nor above generally accepted norms. Therefore, OEA determined that there would be no disproportionately high and adverse air quality impacts on Environmental Justice (EJ) populations in Wayne County, Michigan. Regarding the commenter's concerns about vehicular traffic and safety impacts on roadways, *Section 3.5, Intermodal Facility Traffic*, provides information on the projected increase in truck traffic on roadways near intermodal facilities, including the Detroit Intermodal Terminal. As the Draft EIS explains, OEA found that the roadways near the Detroit Intermodal Terminal have sufficient available capacity to

handle the projected increase in truck traffic resulting from the Proposed Acquisition and that impacts related to such an increase would be negligible.

Comment 75-2: Written Comment from Melissa Suzik (EI-32252)

As a social worker, my other concern of this merger is the trains passing through areas of poverty. The noise and air pollution are one thing, but people need to be able to be in their apartment building peacefully. I fully expect that these properties be taken into consideration of this merger. The link between poverty and area of pollution are inextricably linked. More pollution from increased freight trains as a result of this potential merger are deadly.

OEA Response

As discussed in *Section 3.13, Environmental Justice*, based on the assessment of the potential environmental impacts of the Proposed Acquisition, OEA determined that noise from the projected increased rail traffic would be the only type of impact that could potentially result in high and adverse impacts on EJ populations. Although OEA found that the Proposed Acquisition would not disproportionately affect EJ populations, low-income and minority residents living near some rail lines in the study area would be adversely affected by increased train noise. To address those impacts, OEA is recommending mitigation that would require the Applicants to conduct proactive and targeted outreach to minority and low-income communities that would experience adverse noise impacts as a result of the Proposed Acquisition. The Applicants would also be required to assist interested EJ communities in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish Quiet Zones in accordance with FRA’s final rule on the “Use of Locomotive Horns at Highway-Rail Grade Crossings” (see mitigation measure MM-EJ-01 in *Chapter 4, Mitigation*). Therefore, no changes to the Draft EIS are warranted in response to this comment.

To facilitate compliance with VM-Community-03, the Applicants shall establish a Community Liaison to consult with leaders of Chicago area communities referenced in that mitigation measure (the Village of Itasca, the Village of Bensenville, the City of Wood Dale, the Village of Roselle, the Village of Schaumburg, the Village of Hanover Park, the Village of Bartlett, the City of Elgin, and DuPage County). The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the approval of the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to mayors and other appropriate local officials in each community listed above (MM-Community-04).

Comment 453-7: Written Comment from Harris County Attorney’s Office (EI-32532)

Many environmental justice communities live within Harris County. In addition to containing Houston, the fourth largest city in the U.S, Harris County is also home to a large concentration of industry, oil refineries, and a large port. Heavy commuter traffic,

heightened presence of industry, emissions events and chemical disasters, smog produced by the Port of Houston, and other factors all contribute to poor air quality. The County is also prone to hurricanes and flooding, which heightens the health and safety risks of potential discharges of hazardous material.

Houston is also the largest U.S city without zoning laws, and some EJ communities live within very close proximity to upwards of 15 industrial and toxic waste facilities.⁸ Fence line communities thus live with daily chronic exposure to high levels of pollution in their air, water, and soil.⁹

Areas like the Greater Fifth Ward and East End District, predominately Black and Latino communities that face a multitude of environmental justice issues, will be particularly impacted by the Proposed Acquisition. Both contain a high concentration of railyards and crossings. The East End, which is comprised of several neighborhoods, is known to have a high concentration of railroad tracks that disrupt their daily life. One such neighborhood is “surrounded on all sides by rails and the Ship Channel.”¹⁰ Residents have voiced concerns over the delays, specifically for emergency vehicles, and air pollution associated with the high concentration of railroad traffic for years.¹¹ Community members in the Fifth Ward, where a cancer cluster has been identified, have voiced concerns over creosote contamination from a Union Pacific railyard potentially being the cause of the high rates of cancer in the area. This community has engaged in high profile advocacy to push for cleanup efforts and improve their quality of life.¹²

⁸ UNION OF CONCERNED SCIENTISTS & TEXAS ENVIRONMENTAL JUSTICE ADVOCACY SERVICE, *Double Jeopardy in Houston: Acute and Chronic Chemical Exposures Pose Disproportionate Risks for Marginalized Communities*, 14 (2016) <https://www.ucsusa.org/sites/default/files/attach/2016/10/ucs-double-jeopardy-in-houston-full-report-2016.pdf>.

⁹ *Id.* at 3.

¹⁰ Lori Rodriguez, *Manchester civic leader’s dream on track*, HOUS. CHRON., (APR. 20, 2006) <https://www.chron.com/news/houston-texas/article/Manchester-civic-leader-s-dream-on-track-1488216.php>.

¹¹ See generally, *Id.*; Stephanie Thomas, *Trains Block Communities and Create Safety Hazards*, PUBLIC CITIZEN, (Feb. 2, 2022) <https://www.citizen.org/news/trains-block-communities-and-create-safety-hazards/>; David González, *Stopped trains in Houston create more than just delays*, KHOU, (Feb. 4, 2022) <https://www.khou.com/article/news/stopped-trains-houston/285-4a720b6e-87a7-436f-bb14-85b3d0b5e1d8>.

¹² Erica Simon, *Report shows contamination in Fifth Ward cancer cluster worse than anyone thought*, ABC13 <https://abc13.com/cancer-cluster-houstons-fifth-ward-kashmere-gardens-causing-chemical/12132010/>; Brandon Walker, *Fifth Ward residents still pleading for action on cancer cluster found in neighborhood*, KPRC, <https://www.click2houston.com/>.

OEA Response

OEA notes the commenter’s concerns regarding existing conditions in Harris County, Texas as they pertain to air quality, water quality, and existing rail traffic. As discussed in *Section*

3.7, Air Quality and Climate Change; Section 3.1, Freight and Passenger Rail Safety; and Section 3.3, Grade Crossing Delay, respectively, OEA assessed the impact of the Proposed Acquisition on air quality, hazardous materials transportation, and vehicular delay at roadway/rail at-grade crossings (grade crossings) in Harris County and found that those impacts would be minor. OEA did not specifically analyze impacts in Harris County related to noise, freight and passenger rail safety, and grade crossing safety in the Draft EIS because the projected increase in rail traffic from the Proposed Acquisition in Harris County would not meet the thresholds for environmental review set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e). However, in response to public comments on the Draft EIS, OEA has revised *Section 3.6, Noise and Vibration; Section 3.1, Freight and Passenger Rail Safety; and Section 3.2, Grade Crossing Safety* in the Final EIS to include information about potential impacts on Harris County related to noise, freight and passenger rail safety, and grade crossing safety. As discussed in those sections, OEA found that there would be no adverse noise impacts from increased rail traffic in Harris County from the Proposed Acquisition and that impacts related to freight rail, passenger rail, and grade crossing safety would be minor.

Section 3.13, Environmental Justice presents an EJ analysis that is consistent with Executive Order 12898. That executive order instructs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on EJ populations, including low-income and minority populations. As explained in *Section 3.13, Environmental Justice*, OEA found that the only high and adverse impacts of the Proposed Acquisition would be noise impacts from increased rail traffic. Because there would be no adverse noise impacts in Harris County resulting from the traffic increases projected to occur as a result of the Proposed Acquisition, OEA reasonably concluded that the Proposed Acquisition would not result in any disproportionately high and adverse impacts on EJ populations in Harris County.

OEA notes that the analysis of impacts in Harris County as reported in the Draft EIS and Final EIS was based on information provided by the Applicants. Because the Applicants do not and would not own any rail lines in Harris County, OEA understands that dispatching of trains in the county is and would continue to be determined, in part, by the track owner. For the purposes of its environmental analysis, OEA assumed that all new CPKC freight trains in Harris County would move on rail line segment U-BEAU-01 in the Houston subdivision. The results reported in the Draft EIS and Final EIS regarding impacts in Harris County are based on a projected increase of 7.57 trains per day on rail line segment U-BEAU-01. To the extent that the Applicants' trains could be dispatched over other rail lines in Harris County, rail traffic resulting from the Proposed Acquisition would be dispersed. In that case, there would be fewer impacts in Harris County than reported in the Draft EIS and Final EIS because fewer than 7.57 additional trains per day would move on rail line segment U-BEAU-01. Other rail lines in Harris County on which trains could be dispatched would not experience an increase in rail traffic from the Proposed Acquisition that would meet or exceed the threshold for environmental review set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(5)(i).

For the purposes of its environmental analysis of the Proposed Acquisition, OEA assumed that all new freight trains would move on rail line segment U-BEAU-01. OEA understands

that, because UP and BNSF own most of the rail lines in Houston, CPKC could not control the dispatching of trains on those rail lines. Based on information submitted to the Board by UP, BNSF, and others, OEA understands that trains through Houston are typically dispatched directionally, with westbound traffic using UP's Houston Subdivision and eastbound traffic using UP's Beaumont Subdivision. To the extent that some trains may be dispatched on rail line segments other than U-BEAU-01, then the increase in rail traffic on that segment resulting from the Proposed Acquisition is likely to be less than the 7.57 trains per day that the Applicants have projected. Therefore, the results reported in this section in the Final EIS may overstate the potential noise and vibration impacts of the Proposed Acquisition in the Houston area. Other rail lines in Harris County on which trains could be dispatched would not experience an increase in rail traffic from the Proposed Acquisition that would meet or exceed the threshold for environmental review set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(5)(i).

Comment 455-2: Written Comment from the Office of Harris County Judge Lina Hidalgo (EI-32534)

"Executive Order (EO) 12898 directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law.⁵ Despite being the largest community in the proposed pathway, Harris County was notably left out from the Draft EIS' Section 3.13, Environmental Justice. This lack of consideration is especially concerning given the presence of several Environmental Justice communities (low-income and/or minority communities) in our region.

⁵Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, Exec Order No. 12898, 32 CFR § 651.17(1994).
<https://www.govinfo.gov/link/cpd/executiveorder/12898>"

OEA Response

See response to Comment 453-7 above. OEA did not exclude Harris County from the EJ analysis described in *Section 3.13, Environmental Justice*. Rather, by conducting the EJ analysis, OEA found that the Proposed Acquisition would not result in any high and adverse impacts on EJ populations in Harris County. Therefore, OEA reasonably concluded that the Proposed Acquisition would not result in disproportionately high and adverse impacts on EJ populations in Harris County.

Comment 455-4: Written Comment from the Office of Harris County Judge Lina Hidalgo (EI-32534)

Federal regulation assigns the OEA the responsibility to provide full and fair discussion of significant environmental impacts and evidence that the agency has made the necessary environmental analysis of the potential effects of the merger.⁷ In excluding Harris County's environmental justice populations from discussion in the EIS, the OEA failed to meet these requirements. We would like to see Harris County's history, public health data, an demographics fully considered in a future draft or supplemental EIS published by the OEA. We would also like to see an in-person hearing hosted by the Surface Transportation Board

take place within Harris County to ensure that members of environmental justice populations can fully engage with changes that the CPKC network will bring to our region.

⁷National Environmental Policy Act, 40 C.F.R. § 1502.1 (1996).
[https://www.govinfo.gov/link/fr/85/43363.](https://www.govinfo.gov/link/fr/85/43363)"

OEA Response

See response to Comment 453-7 above. During the public comment period for the Draft EIS, OEA provided many opportunities for members of the public to provide comments on the Draft EIS. These included three online public meetings at which members of the public from any location within the United States could participate. OEA also held several in-person public meetings in or near areas throughout the United States where OEA found that the Proposed Acquisition could result in environmental impacts, including Beaumont, Texas, which is located near areas in southeast Texas where adverse noise impacts could occur. OEA does not anticipate that the Proposed Acquisition would result in any high and adverse impacts in Harris County. Although OEA did not hold any in-person meetings in Harris County, OEA did conduct a site visit to Harris County to meet with local officials and community and business representatives from EJ communities and hear their concerns. OEA also received comments from officials, agencies, and residents of Harris County both in writing and orally during online public meetings.

OEA also notes that, following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to work with communities to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as blocked crossings. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that 40 C.F.R § 1502.9(d)(1) requires agencies to prepare supplements when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none.

Comment 632-2: Public Meeting Comment from Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association

And at the very least, I think that we can give the -- have the dignity to give them the opportunity to speak and to hear their concerns. In 1996, Union Pacific merged with the Southern Pacific Railroad creating at that time the largest railroad in the country. As part of that merger, UP assumed ownership of a former industrial facility near the historic black and Hispanic community of the Fifth Ward. At that site prior to the merger, wooden railroad ties were treated with creosote, a chemical that likely causes cancer in people. Since taking responsibility for that site, claims that they have been addressing the groundwater and soil contamination all under the oversight and approval of the Texas Commission on Environmental Quality, TCEQ. Thousands of Houston residents sued UP in late 2001, arguing that the company did not adequately warn them about the soil and groundwater contamination. Who's to say that the truth is being told today about how traffic will flow easily. How it won't add that much detriment to the community. It won't disrupt that community as much. I beg to differ.

OEA Response

See response to Comment 453-7 above.

Comment 526-2: Written Comment from Harris County Commissioner Rodney Ellis (EI-32556)

"Insufficient Standards

The standards set forth in 49 CFR 1105.7e are inadequate and inconsistent with the current administration's stated commitment to environmental justice. These standards diminish our confidence in the conclusions reached in the draft EIS. Like many others, we disagree with the conclusion that noise will be the primary environmental impact. Harris County is home to many federally designated environmental justice communities, however, because of the conclusion that noise is the primary impact the full effect of the proposed merger on the American's third largest county is not accounted for in the draft EIS.

OEA Response

See response to Comment 453-7 above. OEA disagrees with the commenter that the Board's regulatory thresholds for environment review set forth at 49 C.F.R. § 1105.7(e) are inadequate. Based on OEA's experience in conducting environmental reviews of proposed railroad acquisitions, OEA has found that these long-established thresholds are appropriate and adequate for identifying areas where potential increases in rail traffic might result in adverse environmental impacts, including high and adverse impacts on EJ populations. Although the projected increase in rail traffic in Harris County would not meet the thresholds for noise analysis, OEA has updated *Section 3.6, Noise and Vibration* in response to public comments to include the results of noise modeling for portions of rail line segment U-BEAU-01 in Harris County on which rail traffic would increase. The modeling effort found that no adverse noise impacts would occur in Harris County as a result of the Proposed Acquisition. Aside from noise impacts related to the projected increase in rail

traffic, OEA found that the Proposed Acquisition would not result in adverse impacts in Harris County or elsewhere that would be significant under NEPA or above generally accepted norms, and commenters have identified none. Therefore, OEA concludes that the Proposed Acquisition would not cause disproportionately high and adverse impacts on EJ populations in Harris County.

Comment 443-3: Public Meeting Comment from Zoe Middleton for Harris County Commissioner Rodney Ellis (EI-32760)

The standards set forth by The Board that have formed the analysis under the EIS are inadequate, and they're inconsistent with the Biden-Harris' Administration's commitment to environmental justice. Those standards are what diminish our confidence in the rigor of the Draft EIS as a whole. Like many others, we disagree with the conclusion that noise will be the primary environmental impact. And that conclusion is especially dangerous for environmental justice communities in our region. As you've heard already in other hearings, Canadian Pacific has had four derailments this year alone. We are concerned about the potential for a spill of tar-sands-related material. Oil extracted from tar sands is widely regarded to be the most difficult oil to clean up. And the results of a derailment in Harris County would not be negligible, minor, or temporary. Twenty-four percent of black kids in Harris County live with asthma that is caused or made worse by air pollution. And our region has fought to improve air quality, but the fact of the matter is that we are currently not in attainment for ozone, and we are currently not in attainment for PM 2.5. Any increase in emissions must be considered cumulatively and mitigation must be mandated wherever possible. Our office expects through the impacts of this proposed merger on Harris County's environmental justice communities fully accounted for in the final EIS, and we expect that any approval of this merger will be contingent upon a mitigation agreement that addresses the substantial, cumulative, and long-lasting potential impacts that this merger might have in a way that honors the health and safety of millions of residents.

OEA Response

See response to Comment 526-2 above.

Comment 453-11: Written Comment from the Harris County Attorney's Office (EI-32532)

Any increase in rail traffic and delays will adversely impact Harris County's EJ communities given the current and historic poor quality of these aspects. An increase in 8 cars per day should warrant EJ review.

EJ communities in Harris County contain a large concentration of the rail infrastructure in the County and already see trains come to a full stop and block the road more than other parts of the Houston area.²⁴ This concentration effects the safety and quality of life of residents and business owners, who complain that delays cause frequent and notable adverse effects on their businesses. Costumers are deterred from coming in, are unable to leave due to train traffic, and employees are unable to get to work.²⁵ Increased traffic and delays will adversely and disproportionately effect the economy and wellbeing of EJ communities.

According to the Houston Fire Chief, trains cause delays to emergency crews about 900 times each year. In 2021, the city had over 1,300 instances in which their emergency crews had to reroute because they were being blocked by a stopped train²⁶.

The effects of stalled traffic due to crossing delays in Harris County EJ communities is already above generally acceptable norms and the impact of on average 8 more trains passing through and an increase in the number of vehicles delayed per day at each crossing in the County due to the Proposed Acquisition will make it worse. Thus, an EJ analysis is warranted under the OEA's definition.

²⁴ David González, Stopped trains in Houston create more than just delays, KHOU, (Feb. 4, 2022) <https://www.khou.com/article/news/stopped-trains-houston/285-4a720b6e-87a7-436f-bb14-85b3d0b5e1d8>.

²⁵ Id.

²⁶ Id.

OEA Response

See response to Comment 453-7 above. OEA notes the commenter's concerns regarding existing issues related to grade crossing delay in Harris County. As discussed in *Section 3.3, Grade Crossing Delay* and the corresponding **Appendix H, Grade Crossing Safety and Delay**, OEA found that the Proposed Acquisition would not result in high and adverse grade crossing delay impacts. Therefore, the Proposed Acquisition would not result in disproportionately high and adverse grade crossing delay impacts on EJ populations.

Comment 453-12: Written Comment from the Harris County Attorney's Office (EI-32532)

The effects of the Proposed Acquisition on the County's EJ populations are "significant" under both the current and former definition under NEPA and thus warrant analysis.

The CEQ EJ guidance the OEA relied on to make their "potentially high and adverse impacts" definition was published in 1997. The NEPA definition of significance in effect at that time states that "significantly as used in NEPA requires considerations of both context and intensity" and gives several factors to analyze those aspects.²⁷

"Context" indicates the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. "Intensity" refers to the intensity of the impact. Several factors are listed for consideration of "intensity," including the degree to which the proposed action affects public health and safety and the degree to which the effects on the quality of the human environment are likely to be highly controversial.²⁸

Within the context of the locality of Harris County, the effects of this action will be highly controversial due to the growing local advocacy efforts for clean air and solutions to current issues related to traffic and railways. The inherently controversial nature of any action increasing emissions, traffic due to crossing delays, and urban blight in this region makes this action "significant" under the former definition. While no longer in effect, this definition is relevant because CEQ relied on it in issuing their EJ guidance.

The 2020 updates to CEQ’s NEPA regulations offer more generalized guidance on considering whether an effect is “significant” and directs agencies to “analyze the potentially affected environment and degree of the effects of the action.” The rule notes that “significance varies with the setting of the proposed action.”²⁹ This language is also present in the old definition.³⁰ The current EJ section in the D-EIS does not address how the effects of the Proposed Acquisition would impact locales with multiple EJ populations facing a variety of environmental problems. The County is concerned that this omission indicates the OEA did not thoroughly analyze the affected environment in Harris County in making their “significance” determinations for threshold EJ analysis. Harris County especially warrants such analysis given its size, the presence of multiple EJ populations, and the combined effects of the hazards they face. The OEA will likely find the effects of the Proposed Acquisition to be significant within the totality of the cumulative effects of these and other factors.

²⁷ 40 C.F.R. § 1508.28 [repealed 2020].

²⁸ Id

²⁹ § 1501.3

³⁰ § 1508.28 [repealed 2020].

OEA Response

See response to Comment 453-7 above. As discussed in *Section 3.13, Environmental Justice* and *Section 3.14, Cumulative Impacts*, OEA found that the Proposed Acquisition would not result in direct, indirect, or cumulative impacts on EJ communities in Harris County that would be significant under NEPA or above generally accepted norms. Therefore, OEA concluded that the Proposed Acquisition would not result in disproportionately high and adverse impacts on EJ populations in Harris County.

Comment 453-13: Written Comment from the Harris County Attorney’s Office (EI-32532)

Other federal agencies have undergone EJ analysis when it was in their discretion to do so. Harris County requests that OEA do the same.

There has been a great push from this administration to encourage federal agencies to consider the EJ implications of their actions, and agencies are beginning to increase the level of their analysis.³¹

For example, in a recent Federal Register notice,³² the EPA proposes to disapprove certain planning requirements of the Serious nonattainment area SIP for the 2012 PM2.5 NAAQS for the San Joaquin Valley (SJV) in California. The EPA goes into a multi-page discussion of environmental justice considerations that explains their requirements under the three EJ related EO’s. The EPA describes their analysis to identify environmental burdens and susceptible populations in underserved communities using EJSCREEN in the SJV nonattainment area to gain a better understanding of its proposed action. EPA “acknowledges” that it has not issued any national guidance or rules regarding what might be required for purposes of implementing section 110(a)(2)(E) as it relates to consideration of Title VI and disparate impacts on the basis of race, color, or national origin in the context

of the SIP program, but that “[s]uch guidance is forthcoming.”³³ The EPA directed the relevant Californian agencies to existing EPA and DOJ Title VI resources and notes that the EPA’s External Civil Rights Compliance Office is available to provide technical assistance regarding Title VI compliance in their revised SIP for 2012 annual PM2.5 NAAQS.³⁴

The OEA predicts the adverse effect on air quality Harris County will experience from the Proposed Acquisition will be accounted for our SIP. The Texas SIP for the HGB Ozone Nonattainment Area will need to be revised because of the new nonattainment designations. The OEA should take into consideration the indication that the EPA might require this new SIP to address environmental justice considerations when assessing whether the adverse impacts of this merger on local air quality will be accounted for. However, the projected inclusion of the merger in a SIP should not be a substitute for OEA assessing the impacts of the air quality by the Proposed Acquisition on Harris County EJ populations.

While the OEA has discretion as to the depth and implementation of EJ analysis contained in the D-EIS, the County asks the OEA to consider the EJ impacts of this merger more deeply as the EPA has elected to do.

³¹ EO 13985 directs Federal Government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and EO 14008 directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities. Exec. Order No. 13,985, 86 FR 7009 (2021); Exec. Order No. 14,008, 86 FR 7619 (1994).

³² Clean Air Plans; 2012 Fine Particulate Matter Serious Nonattainment Area Requirements; San Joaquin Valley, California, 87 Fed. Reg. 60,494 (2022).

³³ Id. at 60,530

³⁴ Id.

OEA Response

See response to Comment 453-7 above. Regarding the commenter's concerns about air quality in Harris County, refer to *Section 3.7, Air Quality and Greenhouse Gases*, which presents an analysis that is consistent with current EPA guidance and federal regulations. OEA has revised the section to reflect the new classification status for the HGB Ozone Nonattainment Area issued by EPA and effective on November 7, 2022. Taking into account the new classification status of the nonattainment area, OEA’s analysis still shows that the Proposed Acquisition would result in only minor direct, indirect, and cumulative impacts on air quality in Harris County. Because the Proposed Acquisition would not result in any air quality impacts that would be significant under NEPA or above generally accepted norms, OEA concludes that the Proposed Acquisition would not result in disproportionately high and adverse impacts on low-income or minority populations, including low-income and minority populations in Harris County.

Comment 453-9: Written Comment from the Harris County Attorney's Office (EI-32532)

The OEA defined potentially high and adverse impacts as impacts that would be significant under NEPA or above generally accepted norms. This definition appears to utilize the language from “Factor A” that the CEQ has put forth for addressing “health effects” in EJ analysis but excludes the other two factors and all three factors under “environmental effects.”

Harris County’s EJ communities will suffer disproportionate and adverse effects from this acquisition and warrant EJ review when taking all six factors into all consideration “Factor C” is especially applicable, as the greatest health and environmental effects from this acquisition will be borne by populations already affected by “cumulative or multiple adverse exposures from environmental hazards,” detailed above. The County asks the OEA to consider all the relevant factors when making threshold EJ determinations.

However, even under the definition the OEA has currently set as the threshold for EJ analysis, Harris County warrants inclusion in the EJ analysis, as the effect of a notable increase in rail traffic,¹⁷ vehicle delay,¹⁸ and the accompanying increase in emissions on Harris County’s well documented EJ populations is both significant under NEPA and above generally acceptable norms.

¹⁷ SURFACE TRANSPORTATION BOARD, OFFICE OF ENVIRONMENTAL ANALYSIS, Canadian Pacific Acquisition of Kansas City Southern Draft Environmental Impact Statement Appendices, Table H.1-1 (2022).

¹⁸ Id. at Table H.2-2

OEA Response

See responses Comment 453-7, Comment 453-8, Comment 453-13 above.

Comment 453-14: Written Comment from the Harris County Attorney's Office (EI-32532)

The CEQ has recently affirmed the importance of the inclusion of a robust “cumulative effect” analysis in EIS’s that addresses how the incremental impacts of a proposed action contribute to cumulative environmental problems such as air pollution, water pollution, climate change, and environmental injustice.³⁵ In the Federal Register notice regarding revisions to CEQ NEPA regulations that reinstate certain repealed language, including the definition of “cumulative effects” that was taken out in 2020, the CEQ states that it “does not consider these harms to be inconsequential or irrelevant, but rather critical to sound agency decision making.”³⁶ The CEQ further states that restoring the phrase “cumulative effects” will make clear that agencies must fully analyze reasonably foreseeable cumulative effects before Federal decisions are made.³⁷ Thus, the OEA should include an EJ analysis of Harris County that addresses the cumulative effects of the Proposed Action and our current EJ issues to be in compliance with this rule.

³⁵ National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23,467 (2022).

³⁶ Id.

³⁷ Id.

OEA Response

See responses to Comment 453-7 and Comment 453-13 above. As detailed in *Section 3.14, Cumulative Impacts*, OEA found that the Proposed Acquisition would contribute to cumulative impacts on passenger rail safety, grade crossing safety, grade crossing delay, noise, air quality, biological resources, and water resources when considered along with other reasonably foreseeable actions and projects in the study area. However, these cumulative impacts would be minor and would be minimized by the Applicants' proposed voluntary mitigation measures and OEA's additional recommended mitigation measures, as set forth in *Chapter 4, Mitigation*. Therefore, OEA properly concluded that there would be no cumulative impacts with the potential to result in disproportionately high and adverse impacts on any EJ populations, including the EJ populations in Harris County.

Comment 453-8: Written Comment from the Harris County Attorney's Office (EI-32532)

The County asks the OEA to include Harris County communities in their EJ analysis, as is warranted under applicable law and policy.

In the D-EIS, the OEA determined only noise would have a high and adverse impact on EJ populations.¹³ Effects from other non-noise aspects (ex. Air Quality) were determined too minimal as a whole to potentially result in high and adverse impacts on EJ populations and thus were not analyzed.¹⁴ It is our understanding Harris County's EJ populations were excluded from the EJ section because it was determined our communities would not be disproportionately affected by noise related impacts.

This methodology is counterintuitive to achieving the EJ goals set forth for federal agencies. The Federal Interagency Working Group on Environmental Justice and NEPA Committee note in a report on "promising practices" for EJ analysis in NEPA reviews that "a finding of no significant impacts to the general population is insufficient (on its own) to base a determination that there are not disproportionately high and adverse impacts to minority populations and low-income populations."¹⁵ Such is the case here. Excluding Harris County from EJ analysis because the majority of the effects of the Proposed Acquisition on the entire acquisition area are minor goes against the spirit of NEPA and is insufficient for a project that spans the entirety of the country, border to border. While the adverse effects of aspects like air quality and traffic delay might not be significant when analyzed within the totality of the area, they are very likely to be significant within the Harris County area, especially to EJ communities.

EO 12898 instructs federal agencies to address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law, when preparing EIS's.¹⁶ CEQ guidance gives a list of 6 factors for agencies to consider when determining whether an EJ analysis is warranted.

When addressing health related effects, CEQ guidance directs agencies to consider the following summarized three factors:

- A. Whether the effects are significant under NEPA or above generally acceptable norms; and
- B. Whether the risk or rate of hazard exposure by a minority, low-income, or Indian tribe to an environmental hazard is significant under NEPA and appreciably exceeds or is likely to exceed the risk or rate to the general population; and
- C. Whether health effects occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

In determining environmental effects, agencies are to consider the following three summarized factors:

- A. Whether there is or will be an impact on the natural or physical environment that significantly and adversely affects a minority population, including health, economic, and social impacts; and
- B. Whether environmental effects are significant and are or may be having an adverse impact on a minority population that appreciably exceeds those of the general population; and
- C. Whether the environmental effects occur or would occur in a minority, low income, or American Indian population affected by cumulative or multiple adverse exposures from environmental hazards.

¹³ D-EIS, 3.13-11.

¹⁴ D-EIS, 3.3-1.

¹⁵ FEDERAL INTERAGENCY WORKING GROUP ON ENVIRONMENTAL JUSTICE & NEPA COMMITTEE, Promising Practices for EJ Methodologies in NEPA Reviews, 38 (2016)
https://www.epa.gov/sites/default/files/201608/documents/nepa_promising_practices_document_2016.pdf.

¹⁶ Exec. Order No. 12,898, 59 FR 7629 (1994).

OEA Response

See responses to Comment 453-7 and Comment 453-14 above.

Section 3.13, Environmental Justice, presents an analysis that is consistent with Executive Order 12898 and aligns with the CEQ Environmental Justice Guidance under NEPA. Executive Order 12898 instructs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on EJ populations. OEA found that the only high and adverse impacts of the Proposed Acquisition would be noise impacts from increased rail traffic. Aside from adverse noise impacts, OEA does not anticipate that the Proposed Acquisition would result in health or environmental effects on EJ populations that are significant or otherwise above generally acceptable norms, either on an individual or cumulative basis. Further, OEA found that adverse noise impacts of the Proposed Acquisition would not appreciably exceed the risk or rate to the general population.

OEA did not exclude Harris County from the EJ analysis described in *Section 3.13, Environmental Justice*, as the commenter claims. Rather, in conducting the EJ analysis, OEA found that the Proposed Acquisition would not result in any high and adverse impacts on EJ populations in Harris County. Therefore, OEA reasonably concluded that the Proposed Acquisition would not result in disproportionately high and adverse impacts on EJ populations in Harris County.

Based on the fact that the projected increase in rail traffic on rail lines in Harris County would be less than the Board's regulatory thresholds for noise analysis, OEA properly concluded that no adverse noise impacts would occur in Harris County and, therefore, that disproportionate high and adverse impacts on EJ populations would not occur in Harris County as a result of the Proposed Acquisition. In response to public comments, however, OEA has updated *Section 3.6, Noise and Vibration*, to include the results of noise modeling for rail lines in Harris County. The modeling effort found that no adverse noise impacts would occur in Harris County.

In order to ensure that impacts on EJ populations from the Proposed Acquisition are minimized, OEA is recommending that the Board impose mitigation requiring the Applicants to conduct proactive and targeted outreach to minority and low-income communities to provide information about the process for establishing Quiet Zones, as set forth in *Chapter 4, Mitigation* (see mitigation measure MM-EJ-01).

Comment 461-28: Written Comment from the Environmental Defense Fund (EI-32540)

EDF recommends that the final EIS alter the approach and that OEA use the Environmental Protection Agency's EJScreen tool to first identify EJ communities, as recommended by the EPA's Office of General Counsel Office of Policy and then see how all potential impacts of the Proposed Acquisition are situated in EJ communities. OEA should use the EJScreen EJIndexes. The EJ index highlights block groups with the highest intersection of low-income populations, people of color, and a given environmental indicator. As public health literature supports, any additional impact, not just high and adverse impacts, will disproportionately impact communities that are more severely burdened by environmental hazards before the impact, so it is important to identify those communities first, instead of high impact areas first.

In the screenshots below, for example, the Fifth Ward/Kashmere Gardens neighborhoods of Houston are identified by the EJIndex feature of EJScreen to contain block groups with the highest intersection (in the 95th percentile compared to the rest of the nation) of low-income and minority populations when considering exposure to particulate matter 2.5, diesel particulate matter and air toxics respiratory hazards. Every additional amount of emissions affects an already overburdened community disproportionately.

On page 3.13-2 OEA stated that "based on the assessment of the potential environmental impacts of the Proposed Acquisition, OEA determined that noise from the projected increased rail traffic would be the only type of impact that could potentially result in high and adverse impacts on EJ populations." EDF recommends further analysis on how and whether this implication affects the Biden Administration's stated goals to deal with historically disproportionate impacts through its Justice 40 initiative.

OEA Response

See responses to Comment 453-7 and Comment 453-13 above. OEA did not identify any impacts of the Proposed Acquisition in the Fifth Ward or Kashmere Gardens areas in Houston that would be significant or above generally accepted norms. Because the Proposed Acquisition would not result in any high and adverse impacts in the Fifth Ward or Kashmere Gardens, the Proposed Acquisition would not disproportionately affect EJ populations in those neighborhoods.

As noted in the response to Comment 453-7, *Section 3.13, Environmental Justice* presents a thorough EJ analysis that is consistent with Executive Order 12898. Regarding the commenter's recommendation to use EJScreen, EPA designed EJScreen as a preliminary step that allows users to access high-resolution environmental and demographic information for locations in the United States and compare their selected locations to the rest of the state, EPA region, or the nation. OEA's analysis achieved the same outcome as the EJScreen by identifying EJ populations at the U.S. Census block group level. Regarding the recommendation for further analysis to ensure consistency with Justice40, under Justice40, "the Federal Government has made it a goal that 40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution." The Board does not propose, fund, or sponsor rail projects. Therefore, Justice40 does not apply.

Comment 455-3: Written Comment from the Office of Harris County Judge Lina Hidalgo (EI-32534)

The Draft EIS states that proposed acquisition would result in notable increases in rail traffic, vehicle delay, and emissions. Each of these increases will again impact the presence of air pollutants in the area, which correlates to an increase in risks to public health. In discussion of any actions that will increase emissions, vehicle delay (Draft EIS, Appendices, Table H.2-2), rail traffic (Draft EIS, Appendices, Table H.1-1), and urban blight, the most vulnerable communities deserve to be the subject of mitigation analysis. This especially includes the communities of Harris County, who are already facing an amount of emissions beyond generally acceptable levels, and also already dealing with other severe health outcomes resulting from rail activity.⁶

⁶ Peters, X. (2021, August 26). 'A lifetime of damage' on a creosote plume in Houston's Fifth Ward. The Texas Observer. Retrieved October 9, 2022, from <https://www.texasobserver.org/a-lifetime-of-damage-on-a-creosote-plume-in-houstons-fifth-ward>

OEA Response

See response to Comment 453-7 above. OEA notes the commenter's concerns regarding existing conditions related to air quality in Harris County. The Proposed Acquisition would not result in substantial increases in rail traffic, vehicle delay and emissions in Harris County, as the commenter suggests. Accordingly, OEA is not recommending location-specific mitigation measures related to these issues. As stated in *Chapter 4, Mitigation*, any mitigation measure the Board imposes must relate directly to the transaction before the

Board, must be reasonable, and must be supported by the record before the Board. OEA's consistent practice has been to recommend mitigation only for those impacts that would result directly from a proposed transaction, such as the Proposed Acquisition of KCS by CP. The Board does not require mitigation for pre-existing environmental conditions, such as the effects of existing rail operations.

Section 3.14, Cumulative Impacts, presents OEA's cumulative impact analysis, which addresses past, present, and reasonably foreseeable impacts. The analysis did not identify any high and adverse cumulative impacts on EJ populations that could result from the Proposed Acquisition.

Following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing additional voluntary mitigation measures to address potential impacts in communities in the Houston area. These measures include a commitment to meet regularly with community representatives in the Houston area and to work with communities to address concerns related to impacts resulting from the Proposed Acquisition. The Applicants also commit to providing community leaders with options for reporting issues, such as blocked crossings. The Applicants state that these options would include CP's "Community Connect" webpage and CP's Public Safety Communication Centre, which can be reached toll-free at 1-800-716-9132. The Applicants state that the Public Safety Communications Centre is staffed 24 hours a day, 365 days a year with trained communication officers who track reported incidents using CAD software. OEA has revised *Chapter 4, Mitigation* to reflect these additional voluntary commitments.

Comment 453-10: Written Comment from the Harris County Attorney's Office (EI-32532)

Firstly, the new ozone nonattainment class designations for HGB indicate the area is already above the "generally acceptable norms" in terms of ozone emissions, and this agency action will push it further away from those norms.

There is evidence that our poor air quality disproportionately effects minority and low-income populations in Harris County. One study found that levels of NO₂, linked to higher rates of several health issues, were 32% higher for Houston's Latino residents, 19% higher for Black residents, and 15-28% higher for residents living below the poverty line.¹⁹ Another study found that Black children in Houston were twice as likely to suffer from asthma compared to white children of the same age, and Hispanic children had 22% higher odds of having asthma than white children.²⁰ In denying Texas's request for a 1-year extension of the attainment date for the HGB Ozone Nonattainment Area, the EPA in part based their decision on their "considerations of existing pollution burdens for some communities within the area."²¹ The EPA noted communities residing and working near violating ozone monitors in the Houston area and the Houston Ship Channel are exposed to a significant and disproportionate burden of ozone pollution and other sources of pollution (e.g., vehicle traffic and particulate matter emissions) compared to the greater Houston area and the U.S. as a whole.²²

The air quality in Harris County does not currently meet the generally acceptable norms or standards of the EPA, health professionals, or the community.²³ The poor air quality disproportionately effects the health and wellbeing of EJ populations. Thus, if this Proposed

Acquisition will adversely affect air quality here in any way, as the OEA has acknowledged, an EJ analysis on air quality is warranted under the OEA's own defined threshold.

¹⁹ Krystal Vasquez, Measuring Houston's environmental injustice from space, ENV'T HEALTH NEWS, (July 20, 2021) <https://www.ehn.org/environmental-justice-houston-2653843877.html>.

²⁰ Amy McCaig, Black Children in Houston at higher risk for asthma, RICE U., (Mar. 20, 2017) <https://news2.rice.edu/2017/03/20/black-children-in-houston-at-higher-risk-for-asthma/>.

²¹ Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards, 87 Fed. Reg. 60,926 (2022).

²² Id. at 60,928.

²³ Texas: Harris, AM. LUNG ASSOC., <https://www.lung.org/research/sota/city-rankings/states/texas/harris> (last visited Oct. 11, 2019) ("If you live in Harris County, the air you breathe may put your health at risk"); Allyn West, In Houston, the new normal should include more efforts to reduce air pollution, RICE U. KINDER INST. FOR URB. RSCH., (May 19, 2020) <https://kinder.rice.edu/urbanedge/houston-new-normal-should-include-more-efforts-reduce-air-pollution> ("In 2020, nearly 63% of survey respondents rated the control of air pollution "Fair" or "poor"").

OEA Response

See responses to Comment 453-7 and Comment 453-13 above. OEA notes the commenter's concerns regarding existing conditions related to air quality in Harris County. The air quality analysis described in *Section 3.7, Air Quality and Climate Change* and the cumulative impacts analysis described in *Section 3.14, Cumulative Impacts* account for existing air quality conditions, including the fact that the Houston area is in nonattainment for the NAAQS for ozone. As discussed in those sections, OEA found that the Proposed Acquisition would not result in high and adverse air quality impacts. Therefore, the Proposed Acquisition would not result in disproportionately high and adverse air quality impacts on EJ populations.

Comment 461-29: Written Comment from the Environmental Defense Fund (EI-32540)

EDF finds it problematic that OEA used the categories listed on 3.13-4 of "Black or African American alone," "American Indian and Alaska Native alone," "Asian alone," "Native Hawaiian and Other Pacific Islander alone," "Some Other Race alone" (non-white), and/or "Hispanic or Latino." when identifying EJ communities. Using the EPA EJScreen will eliminate this mistake.

Revising the approach may lead to the conclusion that more of the scoping comments made by EJ populations are relevant to the EJ analysis sections (pg. 3.13-8).

OEA Response

The Draft EIS presents an Environmental Justice analysis consistent with Executive Order 12898. EJScreen uses the term "People of Color," and EPA defines this term for the purpose of EJScreen as "the percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino." The use of American Community Survey data in the Draft EIS to identify EJ communities is consistent with this definition.

Comment 461-30: Written Comment from the Environmental Defense Fund (EI-32540)

OEA stated on page 3.13-8 that direct outreach to community leaders was made. EDF requests that the final EIS include a list to describe to whom OEA reached out. EDF recommends that if OEA did not make meaningful contact with local, county and regional planning organizations or environmental justice communities (as defined by EJScreen for pertinent environmental issues such as PM 2.5, diesel emissions and air toxics risks) in the Houston Harris County regions, they should do so and incorporate feedback from those leaders in their final EIS.

OEA Response

OEA contacted and consulted with numerous officials, agencies, and community leaders, including those in Houston and Harris County, during the EIS process, as detailed in **Appendix A, Public Involvement** and **Appendix B, Agency and Tribal Consultation**. OEA has revised *Chapter 4, Mitigation* to reflect the Applicants' commitment to meet regularly with community representatives in the Houston area and work cooperatively with them to address concerns regarding impacts related to the Proposed Acquisition.

EJScreen is an initial identification tool and does not provide guidance on next steps regarding outreach and engagement with local, county, and regional planning organizations or Environmental Justice communities. EJScreen does not provide definitions for these organizations except for the demographics that comprise Environmental Justice communities. OEA followed the Executive Order regarding demographic data.

Comment 461-31: Written Comment from the Environmental Defense Fund (EI-32540)

On page 3.13-10, OEA stated that "based on the distribution of adverse noise impacts throughout the study area, OEA concludes that adverse noise impacts would not be borne disproportionately by EJ populations. Most of the block groups in which adverse noise impacts would occur do not include EJ populations, and most of the receptors that would experience adverse noise impacts are in non -EJ block groups. Although the Proposed Acquisition would affect low-income populations and minority populations, including Native American tribes, impacts on those populations would be similar to or less than the impacts experienced by non-EJ populations." EDF finds this reasoning faulty. The concern of environmental justice advocates is not to achieve equal and proportionate impacts for environmental justice communities, but to have historical, systemic and institutionalized oppression of certain groups be factored into decisions so that equitable outcomes may be achieved. As stated above, any additional impact on an already vulnerable community

creates a disproportionate outcome, which again, is why OEA must reconsider their approach in identifying EJ communities and analyzing impacts.

OEA Response

See response to Comment 453-7 above. OEA notes that Executive Order 12898 directs federal agencies to “identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations.” The proposed action before the Board is the Proposed Acquisition of KCS by CP. OEA found that the direct, indirect, and cumulative impacts of the Proposed Acquisition would not result in disproportionately high and adverse human health or environmental effects on minority and low-income populations.

As set forth in *Chapter 4, Mitigation*, OEA recommends that the Board impose mitigation requiring the Applicants to conduct proactive and targeted outreach to minority and low-income communities that would experience adverse noise impacts as a result of the Proposed Acquisition, to provide information about the process for establishing Quiet Zones. Further, OEA recommends that the Applicants assist interested communities in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish Quiet Zones in accordance with FRA’s final rule on the “Use of Locomotive Horns at Highway-Rail Grade Crossings” (see mitigation measure MM-EJ-01).

To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board’s final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03).

Comment 454-1: Written Comment from Air Alliance Houston (EI-32533)

As proposed, the pending acquisition will have major impacts on the air quality, chemical security, and mobility of residents of Houston and Harris County, Texas. Much of these burdens will fall on our region’s environmental justice (EJ) communities. AAH is a non-profit advocacy organization dedicated to reducing the public health impacts of air pollution and advancing EJ. As such, we are deeply concerned about the proposed merger for the reasons described below.

Houston/Harris County is the largest and most diverse population center on the pathway of the proposed merger and one of only two ozone nonattainment areas to be impacted. According to Appendix P, EJ Analysis, it appears that direct outreach to community leaders was conducted in certain areas, but not in Houston/Harris County. This is despite the fact that Harris County is home to many large and diverse EJ communities, certainly in comparison to other communities along the pathway.

This merger is anticipated to bring an additional eight trains through Houston/Harris County daily, adding 31.5 tons of nitrogen oxide (NO_x) emissions to our air annually. NO_x plays a

major role in the production of ozone, and the Houston area has been recently reclassified to severe nonattainment for ozone. Ozone pollution in Houston has trended upwards every year except 2020. This year is no exception - the region has already had 23 high ozone days. Furthermore, in the last month alone (since September 6), the Texas Commission on Environmental Quality (TCEQ) has issued 19 Ozone Action Days for the Houston/Harris County area. Increasing NO_x emissions will inevitably increase ozone pollution in the Houston area as well - worsening all sorts of health outcomes and making it even harder to reach attainment levels. While NO_x emissions in Houston have been trending downwards overall, the increase in emissions from these added trains would be concentrated in the areas adjacent to the railyards. These communities - Fifth Ward, Kashmere Gardens, Near Northside, Settegast - are home to large EJ populations that are already overburdened with multiple sources of VOC pollution. We request you update the NO_x and VOC emissions assessment in the EIS with new severe nonattainment.

OEA Response

See response to Comment 453-7 above. The Draft EIS presents an air quality analysis that is consistent with current EPA guidance and federal regulations. Expected emissions and air quality effects in Harris County are properly described in *Section 3.7, Air Quality and Climate Change*. NO_x emissions contributing to ozone formation is a regional issue and would not directly impact localities immediately adjacent to the rail line, but instead contribute to regional ozone concentrations. *Section 3.7* has been updated to reflect the new classifications of ozone attainment status issued by EPA, effective November 7, 2022. OEA has estimated that NO_x emissions in the HGB Ozone Nonattainment Area are expected to be above *de minimis* thresholds but are projected to be less than 1 percent of the current emissions budget for the respective nonattainment area (see **Table 3.7-7** of the Draft EIS). As promulgated by the CAA, EPA-designated nonattainment areas for ozone must adopt State Implementation Plans that ensure that the NAAQS are met and sustained for those areas. NAAQS standards are based on human health criteria to protect public health (primary standards), on environmental criteria to prevent environmental and property damage, and to protect public welfare (secondary standards). Emissions increases within the set budgets are allowed as long as they comply with the overall targeted reductions from the baseline emissions inventory.

OEA contacted numerous community leaders in the Houston area, as was done in other localities, which is summarized in **Appendix A, Public Involvement**. Local officials were also contacted at various points throughout the EIS process.

Comment 387-1: Public Meeting Comment from Lori O'Dell McCollum (EI-327567)

Thank you. Well, I have several concerns at this merger. One of which is an environmental justice issue. The tracks are predominantly in the city of Davenport, passing through marginalized communities with mostly people of color. And I believe that the noise and potential air pollution or potential accidents would more adversely affect that than other people in our community.

And so this I think would also have a very negative affect on the community. So economics, environment, and environmental justice issues, I think all are things that I have not been

addressed in the environmental impact study, which I understand from someone I spoke with really was looking more at construction sites than at the full distance from -- As an aside, I would also say I don't quite understand why we are putting American lands at risk for a Canadian company that's going to ship oil to Mexico. And while I understand that there's going to be some jobs created, I don't think that that offsets the environmental risks. Thank you.

OEA Response

Based on OEA's analysis of the different types of potential adverse environmental impacts that could result from the Proposed Acquisition, OEA found that only noise impacts had the potential to be high and adverse. Though the Draft EIS concludes that those impacts would not be borne disproportionately by EJ populations, it recognizes the presence of high and adverse impacts within specific communities, including EJ block groups such as in Davenport, Iowa. For EJ populations experiencing adverse noise impacts, OEA is recommending that the Board impose mitigation requiring the Applicants to conduct proactive and targeted outreach to minority and low-income communities that would experience adverse noise impacts as a result of the Proposed Acquisition, to provide information about the process for establishing Quiet Zones. Further, OEA recommends that the Applicants assist interested communities in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish Quiet Zones in accordance with FRA's final rule on the "Use of Locomotive Horns at Highway-Rail Grade Crossings." (See *Chapter 4, Section 4.1.4.2, MM-EJ-01.*)

OEA notes that NEPA requires agencies to evaluate the "environmental impact" and any unavoidable adverse "environmental effects" of its proposed action. A potential perceived impact on economics would not be an effect on the environment. Therefore, OEA appropriately did not assess such effects as part of the environmental review and no changes to the Draft EIS are warranted in response to this comment. Regarding the adequacy of the EJ analysis, see response to Comment 453-7. Regarding the adequacy of the environmental review see response to Comment 462-17 above.

Comment 453-19: Written Comment from the Harris County Attorney's Office (EI-32532)

The County is concerned the D-EIS wholly excludes the County from their Environmental Justice (EJ) analysis and fails to properly consider the County's NAAQS nonattainment status. These omissions are contrary to the goals of the National Environmental Protection Act (NEPA), Executive Order (EO) 12898, and the Council of Environmental Quality's (CEQ) guidance and regulations. Additionally, the mitigation efforts proposed are not adequate to address the unique issues the County faces.

OEA Response

See response to Comment 453-7 above. OEA did not exclude Harris County from the EJ analysis described in *Section 3.13, Environmental Justice*. Rather, by conducting the EJ analysis, OEA found that the Proposed Acquisition would not result in any high and adverse impacts on EJ populations in Harris County. Therefore, OEA reasonably concluded that the

Proposed Acquisition would not result in disproportionately high and adverse impacts on EJ populations in Harris County. Regarding air quality in Harris County, see response to Comment 453-13 above.

Comment 138-1: Public Meeting Comment from Ken Croken, Member, Board of Supervisors, Scott County, Iowa (EI-32757)

My name is Ken Croken. I live in Davenport, and I am a member of the Scott County Board of Supervisors. And you've learned a lot about us tonight. But one thing you may not know about us is, we must look like the whitest town in America to you tonight. We're actually close to 15 to 20 percent of this community is people of color. And in the -- in the interest of economic justice, two or three of our lowest income census tracts are along this train line. They are not able to be here to express their concern cause of the complications that life has already hoisted upon them. I want you to also understand that there are people being adversely impacted by this who are unable to be here.

OEA Response

OEA addressed Environmental Justice impacts in *Section 3.13, Environmental Justice*. OEA's extensive EJ outreach and consultation efforts, including outreach to agencies, officials, and leaders in areas with EJ populations, are discussed in *Section 3.13, Environmental Justice*; **Appendix A, Public Involvement**; and **Appendix B, Agency and Tribal Consultation**.

S.17 Cumulative Impacts

Comment 461-32: Written Comment from Environmental Defense Fund (EI-32540)

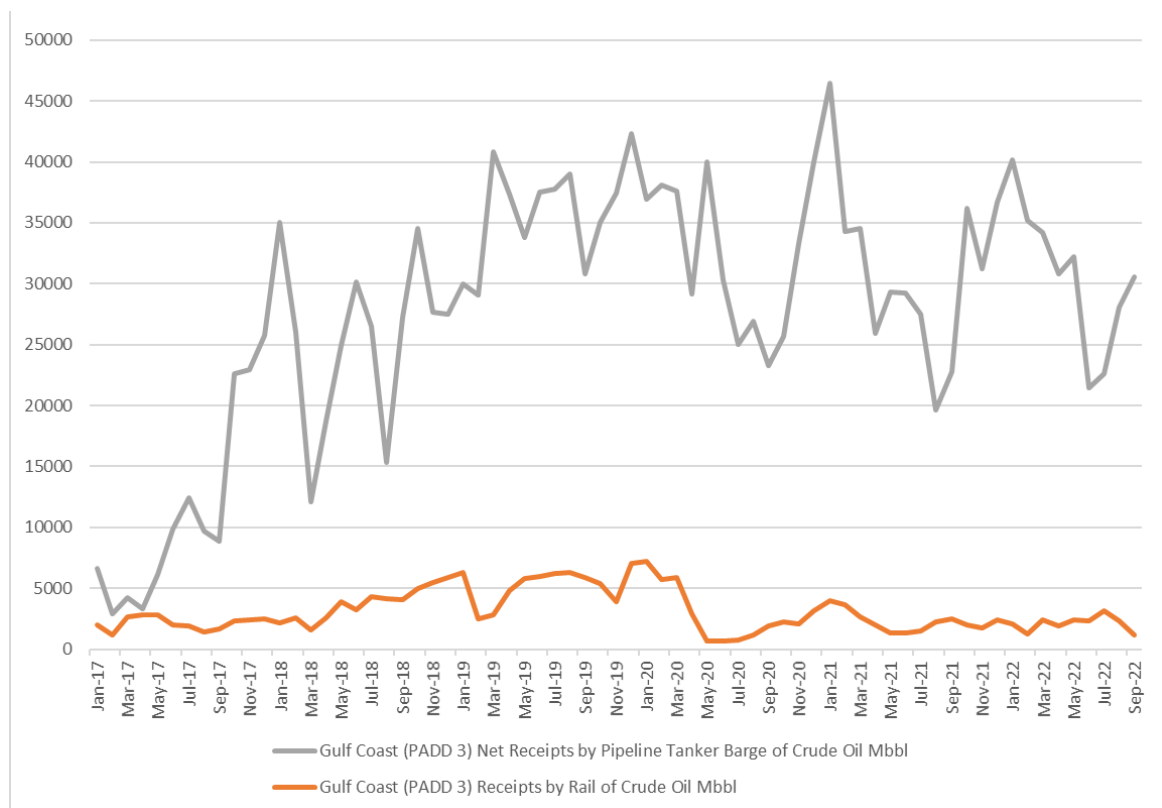
OEA described the "cumulative impacts of the Proposed Acquisition and other past, present, and reasonably foreseeable future projects and actions" (pg. 3.14-1). However, the draft EIS contains no analysis of the cumulative impacts to air quality that would result from the additional processing of energy commodities that will be transported by rail to the Gulf Coast and Houston, Harris County region by local refineries and chemical processing plants. EDF recommends these impacts be considered in the final EIS.

OEA Response

OEA did not address downstream or cumulative air quality impacts from the processing of energy commodities to the Gulf Coast region because the Proposed Acquisition would not increase the amount of refining occurring at those plants. More specifically, as explained in *Section 3.8, Energy*, OEA expects that, although transportation of DRUbit would increase as a result of the Proposed Acquisition, the transportation of crude oil on competing rail lines would decrease and that the Proposed Acquisition would not change the overall volume of energy resources transported in the United States, or the volume of oil processed in the Gulf region. Moreover, energy processing on the Gulf Coast utilizes a variety of inputs, both from multiple rail lines, but also from pipelines, trucks, and barges. Based on data from the U.S Energy Information Administration (EIA), crude oil shipments to the Gulf Coast by

pipeline, truck, and barge between 2017 and 2022 generally have ranged between 25,000 and 40,000 million barrels per day whereas shipments by rail have never exceeded 7,000 million barrels per day (see **Figure S.17-1** below). Additionally, the amount of Gulf Coast refining is driven by macro-economic market pressures (such as oil demand in Europe due to the Russian invasion of Ukraine) rather than the volume of supply from the Proposed Acquisition. Therefore, there is no direct correlation between the amount of energy commodities the CPKC lines would deliver and the volume of energy processing that would occur at Gulf Coast facilities. Accordingly, there is no direct or downstream impact to add to past, present, and reasonably foreseeable actions.

Figure S.17-1 Gulf Coast Crude Oil Receipts



Source: U.S. Energy Information Administration 2022a, 2022b

Comment 453-15: Written Comment from Harris County Attorney’s Office (EI-32532)

Even if the OEA has concluded the increase in NOx emissions attributable to the Proposed Acquisition will be minor, any indefinite increase in emissions in Harris County warrants in depth review that takes into consideration the cumulative effect of the Proposed Acquisition and the new designations. CEQ’s NEPA regulations note that cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.⁶ Failing to consider the cumulative effects of the proposed acquisition, the new NAAQ designations, and the multiple environmental hazards and sources of pollution Harris County residents face contradicts the intent of 40 C.F.R. § 1508.1.⁷ The OEA should consider all these factors when addressing the effect of the Proposed Acquisition on air quality

In addition to reevaluating the potential for adverse effects on air quality like SIP enforcement, the new designations indicate the need for further consideration of EJ analysis and mitigation efforts related to air quality, discussed below.

⁶ 40 C.F.R. § 1508.1

⁷ Id. (“cumulative effects, defined as effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non–Federal) or person undertakes such other actions, should be addressed in EIS’s”).

OEA Response

OEA conducted an air quality analysis that is consistent with current EPA guidance and federal regulations and a cumulative air quality impacts analysis that is consistent with applicable CEQ guidance. Expected emissions and air quality effects in Harris County are described in *Section 3.7, Air Quality and Climate Change*. OEA has revised both *Section 3.7, Air Quality and Climate Change* and *Section 3.14, Cumulative Impacts* to reflect the new classifications of ozone attainment status issued by EPA and effective as of November 7, 2022. Under the new classification, the HGB Ozone Nonattainment Area will be reclassified as severe nonattainment under the 2008 Ozone standard. This would lower the corresponding *de minimis* threshold for this nonattainment area to 25 tons per year of NO_x and volatile organic compounds (VOCs).

The reclassification does not have a substantial impact on the analysis or conclusions presented in the Draft EIS. The estimated NO_x emissions resulting from the Proposed Acquisition would still be above the updated *de minimis* thresholds and VOC emissions below the updated *de minimis* thresholds. The estimated NO_x emissions resulting from the Proposed Acquisition would still be less than 1 percent of the current emissions budget for mobile sources set forth in the applicable State Implementation Plan for the HGB Ozone Nonattainment Area. OEA also expects that emissions resulting from the Proposed Acquisition would be a small percentage of any revised emissions budget for mobile sources and that emissions associated with the Proposed Acquisition would not adversely affect implementation or enforcement of the applicable State Implementation Plan. Because NO_x emissions associated with increased rail traffic in the HGB Ozone Nonattainment Area would be well within the emissions budget for mobile sources developed as part of the plan to achieve attainment with the NAAQS, OEA concludes that the Proposed Acquisition would not contribute to significant air quality impacts when considered along with other past, present, and reasonably foreseeable future actions.

Comment 526-4: Written Comment from Harris County Commissioner Rodney Ellis (EI-32556)

The increase in freight traffic associated with the proposed merger will result in increased emissions that must be considered cumulatively and mitigated wherever possible. Through litigation and other interventions our region has fought to improve its air quality, however Harris County remains in non-attainment for clean air standards due to ozone levels. Our attainment status has been revised downward to Severe during the course of this comment

period, and a similar change in status related to PM_{2.5} may be forthcoming. This change in nonattainment status is a material change in circumstances which the OEA relied on that warrants the development of a supplemental Environmental Impact Statement.

OEA Response

See response to Comment 453-15 above. As required by the Clean Air Act (CAA), EPA-designated nonattainment areas for ozone must adopt State Implementation Plans that ensure that the NAAQS are met and sustained for those areas. NAAQS standards are based on human health criteria to protect public health (primary standards), and on environmental criteria to prevent environmental and property damage, and to protect public welfare (secondary standards). Emissions increases within the set budgets are allowed as long as they comply with the overall targeted reductions from the baseline emissions inventory. Because NO_x emissions associated with the Proposed Acquisition within the HGB Ozone Nonattainment Area would be well within the emissions budget for mobile sources developed as part of the plan to achieve attainment with the NAAQS, OEA concludes that the Proposed Acquisition would not contribute to significant air quality impacts when considered along with other past, present, and reasonably foreseeable future actions.

Potential revisions to the particulate matter (PM_{2.5}) NAAQS are under consideration, but have not yet been proposed, unlike the changes to the ozone classifications, which have been adopted and have a scheduled effective date. The exact language of a new PM_{2.5} NAAQS, or even if it actually will be updated, is unknown. Should a new PM_{2.5} standard be implemented, and the area is found to be in nonattainment, appropriate measures to reduce potential emissions will be required through the State Implementation Plan process. As discussed in *Section 3.7, Air Quality and Climate Change*, OEA found that PM_{2.5} emissions increases associated with the Proposed Acquisition, were relatively small at 0.8 tons per year, which is far less than any *de minimis* thresholds likely to become applicable should a new NAAQS be implemented. For comparison, the current *de minimis* thresholds for PM_{2.5} is 100 tons per year in moderate nonattainment areas and 70 tons per year in serious nonattainment areas.

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that the NEPA implementing regulations at 40 C.F.R. § 1502.9(d)(1) require agencies to prepare a supplement to a draft or final EIS when (1) the agency makes substantial changes to the proposed action that are relevant to environmental concerns or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply in this case. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none. As noted in the response to Comment 453-15 above, the recent reclassification of the HGB Ozone Nonattainment Area does not have a substantial impact on the analysis or conclusions presented in the Draft EIS. The estimated NO_x emissions resulting from the Proposed Acquisition would still be above the updated *de minimis* thresholds and VOC emissions below the updated *de minimis* thresholds. The estimated NO_x emissions resulting from the Proposed Acquisition would still be less than 1

percent of the current emissions budget for mobile sources set forth in the applicable State Implementation Plan. OEA also expects that emissions resulting from the Proposed Acquisition would be a small percentage of any revised emissions budget for mobile sources and that emissions associated with the Proposed Acquisition would not adversely affect implementation or enforcement of the State Implementation Plan.

Comment 462-34: Written Comment from Coalition to Stop CPKC (EI-32542)

Interestingly, OEA highlights several Coalition communities' proximity to O'Hare International Airport stating, "[t]hroughout most of the study area the predominant source of existing noise is the existing freight train activity, except near O'Hare International Airport and locations near interstate highways, where aviation and roadway sources also contribute to the existing noise environment."²⁹ O'Hare Airport and interstate highways are indeed significant noise producers. OEA should, however, not discount the Coalition communities' proximate to air and road travel options, but rather should pay special attention because these communities are already experiencing known noise and vibration issues. In these communities, mitigations from rail and vehicular traffic have never fully ameliorated the negative noise and vibration impacts from the airport and roadways. OEA should therefore consider the cumulative impacts of these negative externalities.

²⁹ DEIS at 3.6-12.

OEA Response

As discussed in *Section 3.14, Cumulative Impacts*, OEA properly considered cumulative noise impacts and did not discount the Coalition communities' proximity to O'Hare International Airport. OEA evaluated the contribution of the O'Hare 65 DNL contour relative to the Proposed Acquisition and did not find a substantive increase in noise effects. In fact, OEA's analysis is conservative because the 3 dBA increase noise contour does not include O'Hare airport related noise. If it did include it, the 3 dBA increase contour would be smaller for the areas affected by it. Depending on the exact location and proximity to the tracks, changes in the railroad DNL would have no appreciable effect on the overall DNL where aircraft noise dominates. As discussed in *Section 3.14, Cumulative Impacts*, all of the O'Hare affected receptors are within the sound insulation program and, therefore, no cumulative noise impacts are anticipated.

Comment 565-2: Public Meeting Comment from Illinois State Senator Diane Pappas (EI-32756)

We have major highways, and we have the airport. When you're considering the noise impact, you can't consider railroad noise in a vacuum. It's all cumulative. When you have an airplane going overhead and a train going by, those noises do not exist separately, they stack on top of each other. Similarly with fumes and exhaust, and air pollution, all of those different modes of transportation are cumulative. So, I would respectfully ask that in addition to the impact on our emergency services, and the wait times the increased traffic and the problems that that causes in the area, that you also consider the cumulative effects of both air and noise pollution.

OEA Response

As discussed in *Section 3.6, Noise and Vibration*, OEA employed the Ldn noise metric, which is a cumulative noise metric, to assess the noise impacts of the Proposed Acquisition. OEA evaluated the contribution of the O'Hare 65 DNL contour relative to the Proposed Acquisition and did not find substantive increase in noise effects. In fact, OEA's analysis is conservative because the 3 dBA increase noise contour does not include O'Hare airport related noise. If it did include it, the 3 dBA increase contour would be smaller for the areas affected by it. Depending on the exact location and proximity to the tracks, changes in the railroad DNL would have no appreciable effect on the overall DNL where aircraft or highway noise may dominate. In general, the railroad noise contours would cumulatively dominate other noise sources where the 65 Ldn contours are shown in the Draft EIS.

OEA analysis of air quality impacts as described in *Section 3.7, Air Quality and Climate Change* accounts for existing emissions related to O'Hare Airport and other existing transportation facilities and infrastructure. For rail lines located in nonattainment areas, OEA compared emissions from projected changes in rail traffic to EPA's *de minimis* thresholds and, as appropriate, to applicable emissions budgets for mobile sources established under the State Implementation Plans for the nonattainment areas. The emissions budget for the Chicago Ozone Nonattainment area accounts for existing sources of transportation-related emissions, including emissions from O'Hare Airport. OEA found that, with the exception of NO_x emissions, emissions from increased rail traffic related to the Proposed Acquisition would be below *de minimis* thresholds. In the Chicago Ozone Nonattainment area, OEA concluded that NO_x emissions would be less than 1 percent of the applicable emissions budget for mobile sources and therefore would not adversely affect air quality in that nonattainment area.

Comment 460-6: Written Comment from Metra (EI-32539)

As previously stated, the scope of OEA's analysis is flawed and does not meet the "hard look" standard due to its reliance on incorrect information and "data" on traffic increases submitted by Applicants, all of which should be included in the cumulative impacts analysis.

For example, traffic east of the Bensenville Yard is not included in the analysis because the data relied upon does not account for several types of rail traffic that operate on the lines shared by CP and Metra. Applicants erroneously claimed that there will be no new "trains" east of Bensenville, but Metra's RTC modeling concludes otherwise. See *Id.* at 14 and 56. Therefore, OEA's analysis is incorrect because reasonably foreseeable additional traffic not accounted for by Applicants may exceed the analysis threshold. METR-7 at 6.

OEA Response

See response to Comment 462-17 in *Section S.3, Environmental Review* in this appendix regarding the "hard look."

See response to Comments 33-3, 594-1, and 462-17 in *Section S.3, Environmental Review* in this appendix regarding the Applicants' operating data.

Comment 660-1: Transportation Merit Hearing Comment from Texas State Representative Ron Reynolds

While I understand that this hearing is intended to discuss the public interest, rather than the environmental effects, I would argue that the public interest in Southeast Texas cannot be separated from the tenants of environmental justice and health. Harris County already struggles with industrial air pollution, and its health consequences. The merger compounds existing pollution at a time when Southeast Texas needs to be improving air quality, not worsening it. Harris County is already a non-attainment area of ozone, and is nearing non-attainment status for PM 2.5, additional pollutants can lead to severe health risks. (660-1)

OEA Response

See response to Comment 453-15 above.

S.18 Mitigation

Comment 462-18: Written Comment from Coalition to Stop CPKC (EI-32542)

Other than certain minor measures to mitigation noise and vibration, the DEIS has not recommended any measures to mitigate any of the potential environmental impacts of the proposed merger other than the voluntary measures agreed to by the Applicants. While somewhat helpful, these measures are not sufficient to mitigate the harm to the Coalition communities.

OEA Response

As set forth in *Chapter 4, Mitigation*, OEA is recommending that the Board impose numerous mitigation measures that would avoid or minimize the potential environmental impacts of the Proposed Acquisition. In addition to the 60 mitigation measures that the Applicants voluntarily proposed prior to issuance of the Draft EIS, OEA also preliminarily recommended in the Draft EIS that the Board impose an additional 19 mitigation measures that would address impacts identified in *Chapter 3, Affected Environment and Environmental Consequences*.

Following issuance of the Draft EIS, the Applicants notified OEA that the Coalition has reached negotiated settlement agreements with communities in Iowa and Illinois that address those communities' concerns. OEA has revised *Chapter 4, Mitigation*, to reflect that the Applicants have executed negotiated settlement agreements with those communities.

Also following issuance of the Draft EIS, the Applicants notified OEA that the Applicants are committed to implementing and funding additional voluntary mitigation measures to address potential impacts in communities in the Chicago area with which the Applicants have been unable to reach agreements, including DuPage County, the Village of Bartlett, the Village of Bensenville, the City of Elgin, the Village of Itasca, the Village of Hanover Park, the Village of Roselle, the City of Wood Dale, and the Village of Schaumburg. Those commitments include the commitment to work with those communities and Metra, the rail line owner, to create a quiet zone, install a predictive mobility system to deliver advanced

notice of blocked roadway/rail at-grade crossings (grade crossings) to citizens and emergency service providers, install advanced warning signs at strategic locations to give drivers information about occupied grade crossings, and install PTC wireless technology tie-ins at grade crossings adjacent to Metra rail platforms. The Applicants have clarified that the Applicants would be responsible for funding these measures, which would be subject to approval by Metra, as the owner of the track. OEA has revised *Chapter 4, Mitigation*, to reflect these additional voluntary mitigation commitments and believes its final recommended mitigation in the Final EIS is reasonable and appropriate.

To facilitate compliance with voluntary mitigation measures the Applicants shall establish a Community Liaison to consult with leaders of Chicago area communities referenced in that mitigation measure (the Village of Itasca, the Village of Bensenville, the City of Wood Dale, the Village of Roselle, the Village of Schaumburg, the Village of Hanover Park, the Village of Bartlett, the City of Elgin, and DuPage County). The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the approval of the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to mayors and other appropriate local officials in each community listed above (MM-Community-04).

CommentThe Final EIS includes 64 mitigation measures that the Applicants voluntarily propose, and OEA also recommends that the Board impose an additional 21 mitigation measures that would address impacts identified in Chapter 3, Affected Environment and Environmental Consequences.462-19: Written Comment from Coalition to Stop CPKC (EI-32542)

The Coalition communities believe that additional analysis in a supplemental DEIS as described above will reveal that the DEIS has substantially understated the potential impacts of the merger on the Coalition communities, and that measures to mitigate that harm are appropriate and necessary. The Coalition believes the best way to attempt to mitigate the environmental harm from the proposed merger is for the Board to limit the number of freight trains that utilize the Coalition Line post-merger, through a combination of placing caps on the number and length of trains and by incentivizing the Applicants to utilize different routings to accomplish their commercial goals. The Coalition has also suggested that the post-merger impacts could potentially be mitigated by the construction of a new intermodal and automotive yard west of Elgin.³¹

³¹ See Coalition Opening Comments at 17-18 (Explaining how a yard could be an exclusive modern intermodal and auto facility that would be constructed in lieu of expanding the Bensenville and Schiller Park Yards in downtown Chicago. This would enable trains with intermodal products and automobiles destined to the Chicago area to be off loaded outside of the area, thereby alleviating traffic and congestion on the Elgin Subdivision and in and around the two existing rail yards).

OEA Response

See response to Comment 462-18 above. Regarding the commenter's concerns about existing conditions related to rail operations, OEA notes that it is OEA's longstanding practice to recommend mitigation only for those impacts that would result directly from a proposed transaction, such as the Proposed Acquisition of KCS by CP. As stated in *Chapter 4, Mitigation*, any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board.

The mitigation recommended by the commenter, including placing limits on the number or lengths of trains that can operate on specific rail lines, requiring or incentivizing alternative routes for trains, or constructing new rail yards or intermodal facilities would either be beyond the Board's authority to impose, unwarranted by the generally minor impacts of the Proposed Acquisition, or both. OEA notes that railroad companies have the obligation to provide rail service upon reasonable request and the right to determine how to route their traffic in order to meet the needs of shippers while maintaining safe and efficient operations. OEA cannot recommend that the Board place limits on rail traffic as a form of environmental mitigation and the Board could not impose such mitigation.

Regarding the commenter's request that OEA prepare a Supplemental Draft EIS, OEA notes that 40 C.F.R. § 1502.9(d)(1) require agencies to prepare supplements only when the agency makes substantial changes to the proposed action that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Neither of these conditions apply. Neither the Board nor the Applicants have made substantial changes to the Proposed Acquisition since the time the Draft EIS was issued. OEA is unaware of any significant new circumstances or information relevant to environmental concerns that bear on the Proposed Acquisition or its impacts, and commenters have identified none.

Comment 462-2: Written Comment from Coalition to Stop CPKC (EI-32542)

To the extent the Board permits the daily freight train count to exceed current levels over the Coalition Line, the Coalition submits that any increase must be preceded and/or accompanied by certain actions taken by the Applicants, at no expense to the Coalition communities. These measures should be a combination of generic actions that benefit all of the communities and their citizens and several specific measures in certain Coalition jurisdictions. The actions the Coalition requests OEA to consider recommending to the Board are summarized below.

OEA Response

See response to Comment 462-18.

Comment 459-14: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

The County, therefore, respectfully requests that OEA establish a five-year⁵⁰ formal oversight period during which the County and its state and local government partners would

annually conduct a detailed study of all traffic volumes related to the IMS/Shoreham Yard, at Applicant's sole cost and expense. This study should include any noise, environmental, traffic, safety, and infrastructure impacts of any truck traffic increases, and an analysis of any operational changes or physical improvements that could ameliorate these harms. The FEIS should also require Applicants to solely fund any changes or improvements recommended by the study to mitigate the impacts in the County.

⁵⁰ The County is aware that other Parties have requested a ten-year monitoring period. Should that the Board approve their request, the County desires a similar ten-year monitoring period rather than a five-year monitoring period.

OEA Response

As set forth in *Chapter 4, Mitigation*, OEA previously recommended in the Draft EIS that the Board impose mitigation measure MM-General-02, which would require the Applicants to submit quarterly reports to OEA on the progress of, implementation of, and compliance with all Board-imposed environmental mitigation measures. The reporting period for these quarterly reports shall begin on the date of the Board's final decision authorizing the project and continue for five years, or one year after the Applicants have completed capital improvements related to the Proposed Acquisition, whichever is longer. OEA continues to recommend this mitigation measure in the Final EIS to ensure that the impacts that OEA identified would be mitigated. Because the Applicants intend to implement operational changes and planned capital improvements within five years of authorization of the Proposed Acquisition, OEA determined that a five-year reporting period would ensure adequate monitoring of the Applicants' proposal. If the Board believes that the length of this reporting period is inappropriate, it could adopt a different time period.

OEA does not believe that the minor impacts related to increased truck traffic on roadways near intermodal facilities warrant further mitigation. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 459-15: Written Comment from Hennepin County, Minnesota and the Hennepin County Regional Railroad Authority (EI-32538)

This condition is consistent with prior actions of this Board. The Board has previously imposed five-year monitoring periods, including for the study of traffic control measures. Union Pac. R.R. Co. and Mo. Pac. R.R. Co.- Control and Merger- S. Pac. Rail Corp. et al, Decision No. 44, Docket No. FD 32760, at 580-81 (STB Served Aug. 6, 1996) (imposing a multi-year monitoring period to assess the effectiveness of traffic control measures); see Can. Nat'l Ry. Co., et al. – Control - EJ&E West Co., Decision No. 16, Docket No. FD 35087 at 84 (STB Served Dec. 24, 2008) (imposing a multi-year monitoring and oversight period during which Canadian National was required to study, report and remedy impacts from the transaction). The Board has similarly retained jurisdiction to impose additional conditions after approval of a merger application to address unforeseen adverse impacts of the transaction. See CSX Corp. and CSX Transp., Inc. et al - Control and Operating Leases/Agreements - Conrail Inc. and Consol. Rail Corp., Docket No. 33388, at 246 (STB Served July 20, 1998) (retaining jurisdiction for five years to impose additional conditions in the event existing conditions do not fully alleviate the harms caused by the merger

transaction). Indeed, CP has already said it would not object to a five-year monitoring period in regard to the Acquisition⁵¹, and this Board should include in that monitoring a requirement for study of truck traffic from Shoreham Yard, as requested by the County.

⁵¹ Surface Transportation Board, STB Hearing - CP/KCS, FD 36500 -September 28th - 30th 2022 (Day 1), YOUTUBE, at 1:01:16 (Sep. 28, 2022)
https://www.youtube.com/watch?v=CbmzhM3S0Bc&t=21011s&ab_channel=SurfaceTransportationBoard (Keith Creel, CP CEO and intended CEO of the combined CP-KCS entity, stated plainly that “We support up to five years of oversight by the Board.”).

OEA Response

See response to Comment 459-14 above.

Comment 453-16: Written Comment from Harris County Attorney’s Office (EI-32532)

The County would like to see the facilitation of a direct line of communication between the County/Pollution Control and CPKC to address spills and other issues. A chemical safety and disaster preparedness plan is also warranted. The County would also like funding for emergency response training for our Fire Marshal and Pollution Control to be considered. In terms of traffic management and the emergency route concerns addressed on page 7, the County asks that a Capital Improvement Project on Lyons Ave is considered to improve emergency access. The County would like the OEA to consider imposing overpass construction at certain crossings to eliminate blockage at heavily trafficked locations as a condition, as it has done in previous mergers.³⁹

³⁹ CONGRESSIONAL RESEARCH SERVICE, Locomotive Idling, Air Quality, and Blocked Crossings, Congressional Research Service, 2 (2022)
<https://sgp.fas.org/crs/misc/IF10978.pdf>.

OEA Response

Following issuance of the Draft EIS, the Applicants provided OEA with a list of additional voluntary mitigation commitments specific to the Harris County area. These included the commitment to meet regularly with community representatives, work with communities to address concerns related to the Proposed Acquisition, and to provide community leaders with ways to report issues. The Applicants note that CP maintains a Public Safety Communication Centre that operates 24 hours a day, 365 days a year with trained communication officers who can be reached toll-free at 1-800-716-9132. Should the Board authorize the Proposed Acquisition, this resource would be made available to communities in the Harris County. OEA has revised *Chapter 4, Mitigation*, to reflect these additional commitments and recommends that the Board impose all of Applicants’ final voluntary mitigation if the Board decides to authorize the Proposed Acquisition.

To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board’s final decision authorizing the acquisition. The

Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03).

Regarding the commenter's request that OEA recommend a grade crossing separation at Lyons Avenue as mitigation, OEA notes that the rail line that crosses Lyons Avenue is owned by UP and would not be owned by the Applicants if the Proposed Acquisition is authorized and implemented. Therefore, the Board cannot require that the Applicants install a grade crossing separation at this location. Further, OEA notes that, based on information provided by the Applicants, the projected increase in rail traffic through the grade crossing at Lyons Avenue is below the Board's threshold for environmental review at 49 C.F.R. § 1105.7(e)(5)(i)(A). Therefore, the increase in rail traffic, if any, resulting from the Proposed Acquisition does not warrant mitigation.

Comment 453-17: Written Comment from Harris County Attorney's Office (EI-32532)

The change in nonattainment status for the County is a material change in circumstances which the OEA relied on that warrants revision to the current proposed mitigations, per OEA's own recommended mitigation.⁴⁰ The OEA should also take note of the EPA's indication that SIPs will need to include EJ considerations in the future when analyzing the adverse impacts of the Proposed Acquisition our nonattainment area.

The County would like to see good faith communication efforts with the EJ populations and community leaders most adversely affected by the poor air quality in our area to determine what mitigations are appropriate to offset the disproportional burden they carry.

⁴⁰ D-EIS, 4-3

OEA Response

OEA has revised the air quality analysis in *Section 3.7, Air Quality and Climate Change*, of the Final EIS to reflect the change in nonattainment status. OEA concludes that this change does not substantively change OEA's conclusions regarding the potential impacts of the Proposed Acquisition or the need for mitigation. OEA's extensive EJ outreach and consultation efforts, including outreach to agencies, officials, and leaders in Harris County, are discussed in *Section 3.13, Environmental Justice*; **Appendix A, Public Involvement**; and **Appendix B, Agency and Tribal Consultation**.

Comment 461-33: Written Comment from Environmental Defense Fund (EI-32540)

Air Alliance Houston submitted written comments on October 14, 2022 regarding the draft EIS. EDF recommends OEA and the Applicants consider the results of the survey obtained through Air Alliance Houston's community engagement efforts. EDF recommends the Applicants incorporate Air Alliance Houston's method for community engagement with affected communities. EDF stands in solidarity with residents who oppose the merger and recommends The Board not approve it.

However, since the draft EIS contains mitigation efforts, EDF does have comments regarding what is proposed. EDF supports the voluntary and recommended mitigation efforts outlined in Chapter 4, Mitigation, but believes they do not go far enough to protect

the health and safety of the impacted residents of the Houston, Harris County region and provides some additional recommendations.

OEA Response

OEA has revised *Chapter 4, Mitigation* to indicate that following issuance of the Draft EIS, the Applicants provided OEA with additional voluntary mitigation commitments, including measures specific to Houston and Harris County. OEA recommends that the Board impose this voluntary mitigation on any decision authorizing the Proposed Acquisition. OEA has responded to comments from Air Alliance Houston in *Section S.12, Air Quality and Climate Change* in this appendix.

Comment 461-34: Written Comment from Environmental Defense Fund (EI-32540)

EDF invites the Applicants to visit Houston to continue good faith outreach efforts with impacted community members. EDF recommends the Applicants participate in a tabletop exercise with the City of Houston, Harris County, Port Houston Authority, and other local jurisdictions and emergency management teams to clarify roles and responsibilities, establish lines and means of communication and identify preparedness and response mitigations in the event of any accident or disaster related to the railroads.

OEA Response

See response to Comment 453-16 above. As described in the additional voluntary commitments that the Applicants provided following issuance of the Draft EIS, the Applicants state "that the new CPKC will meet regularly with community representatives in the Houston area. If those communities experience merger-related impacts, CPKC will work with them on ways to address their concerns. CPKC will also participate alongside other railroads serving Houston—notwithstanding that it will own no track there—to work cooperatively with communities to address the impacts of rail operations in the region."

To facilitate compliance with these measures, the Applicants shall establish a Community Liaison to consult with Houston area community leaders. The Community Liaison shall be available for public meetings and to conduct periodic outreach to mayors and appropriate local officials. The Applicants shall establish and staff the Community Liaison position for a period of five years following the Board's final decision authorizing the acquisition. The Applicants shall provide the name, telephone number, and email address of the Community Liaison to the Houston mayor and Harris County officials (MM-Community-03).

OEA understands that the Applicants visited Houston in November 2022 and have met with representatives of the City of Houston and Harris County to discuss concerns regarding the Proposed Acquisition. The Applicants have indicated that they will continue to coordinate with relevant leaders and agencies in the Houston area regarding non-Acquisition-related rail operations challenges in the region. OEA also conducted a site visit to Houston during the public comment period for the Draft EIS and met with local officials and heard their concerns. OEA also received comments from officials, agencies, and residents of Houston both in writing and orally during online public meetings.

Please see response to Comment 462-21 in *Section S.5, Hazardous Materials Transportation* in this appendix for a discussion of relevant voluntary and preliminary recommended mitigation measures regarding emergency response to hazardous materials incidents.

Comment 461-35: Written Comment from Environmental Defense Fund (EI-32540)

The Texas Department of Transportation released a Houston-Beaumont Region Freight Study in September 2021 (attached). It outlines several necessary improvements along the U-BEAU-01 rail segment. EDF recommends consulting with community members and TXDOT to see which projects are of the most concern and for The Applicants to fund the near-term and mid-range projects that are acceptable to the community in order to improve safety.

OEA Response

See response to Comment 448-1 in *Section S.3, Environmental Review Process* in this appendix.

OEA reviewed the Houston-Beaumont Region Freight Study during the preparation of the Draft EIS. The Applicants do not own rail line segment U-BEAU-01 and only operate along the segment with trackage rights. Therefore, the Board cannot impose mitigation requiring the Applicants to add new capital improvements on this segment as part of the Proposed Acquisition because any such improvements would need to be planned and constructed by the rail line owner.

To the extent that the commenter may be concerned about current capacity on rail lines in the Houston area, OEA notes that the Board cannot impose mitigation to address issues related to existing conditions that are unrelated to the Proposed Acquisition. As stated in *Chapter 4, Mitigation*, any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board.

Comment 461-36: Written Comment from Environmental Defense Fund (EI-32540)

EDF recommends consulting with community members and the City of Houston to identify key crossings where delays due to train traffic or stalled trains are a problem and for the Applicants to fund and install cameras and laser detectors to monitor train traffic. Further, EDF recommends the applicants develop an app or dashboard so residents can see in real-time when a train is stalled on the tracks and find an alternate route to avoid it.

OEA Response

See response to Comment 448-1 in *Section S.3, Environmental Review Process*, of this appendix. As set forth in *Chapter 4, Mitigation*, OEA is recommending that the Board require the Applicants to submit quarterly reports to OEA on the progress of, implementation of, and compliance with all Board-imposed environmental mitigation measures for a period lasting at least five years (see mitigation measure MM-General-02).

OEA has revised *Chapter 4, Mitigation* to indicate that following issuance of the Draft EIS, the Applicants provided OEA with additional voluntary mitigation commitments, including measures specific to Houston and Harris County. OEA recommends that the Board impose this voluntary mitigation on any decision authorizing the Proposed Acquisition.

To the extent that the commenter may be concerned about current capacity on rail lines in the Houston area, OEA notes that the Board cannot impose mitigation to address issues related to existing conditions that are unrelated to the Proposed Acquisition. As stated in *Chapter 4, Mitigation*, any mitigation measure the Board imposes must relate directly to the transaction before the Board, must be reasonable, and must be supported by the record before the Board.

Comment 461-37: Written Comment from Environmental Defense Fund (EI-32540)

EDF recommends the Applicants consult with community members to identify areas where noise pollution is greatest and that the Applicants fund and install noise monitors and noise barriers where necessary, if noise should consistently reach unacceptable levels.

OEA Response

OEA understands that the commenter is concerned about noise impacts in the Houston area specifically. The Proposed Acquisition would not result in an increase in rail traffic on rail lines in the Houston area that would exceed the thresholds for noise analysis set forth in the Board's environmental regulations at 49 C.F.R. § 1105.7(e)(6). Therefore, the Draft EIS did not include a noise analysis for those rail lines. In response to public comments, however, OEA has revised *Section 3.6, Noise and Vibration* and **Appendix M, Noise and Vibration**, to include the results of a noise analysis for rail lines in Houston. OEA found that the Proposed Acquisition would not result in any adverse noise impacts in the Houston area. Therefore, no mitigation related to noise, beyond the voluntary mitigation measures and additional mitigation measures set forth in *Chapter 4, Mitigation*, are warranted.

Comment 461-38: Written Comment from Environmental Defense Fund (EI-32540)

Regarding OEA recommendation MM-Noise-05, EDF recommends and volunteers to assist The Applicants to share with community members how they can inquire about the establishment of Quiet Zones and assist communities in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish Quiet Zones in accordance with FRA's final rule on the "Use of Locomotive Horns at Highway-Rail Grade Crossings." EDF also recommends the Applicants define "promptly" and the expected time line for when communities can receive assistance.

OEA Response

OEA notes the commenter's willingness to assist the Applicants in providing communities with information related to the establishment of Quiet Zones. OEA understands that the commenter is concerned about noise impacts in the Houston area specifically. Because the Applicants do not and would not own any rail lines in the Houston area, establishment of

Quiet Zone in the Houston area would need to be coordinated with the other rail line owners. Further, OEA notes that railroads and communities typically work together to establish Quiet zones and fund the installation and maintenance of the necessary grade crossing protection measures. The Board generally has no substantive role in the establishment of Quiet Zones.

Regarding instructions for contacting the Applicants for inquiries regarding the establishment of Quiet Zones, the Applicants will provide community leaders ways to report issues. CP has a “Community Connect” webpage that provides contact information, answers frequently asked questions, and offers other resources that will remain active for the new CPKC system. The Community Connect page is available at <https://www.cpr.ca/en/contact-us/community-connect>. CP also has a Public Safety Communication Centre that operates 24 hours a day, 365 days a year with trained communication officers who can be reached toll-free at 1-800-716-9132. Calls into that Centre, which includes the Community Connect line and CP’s emergency lines, are tracked using sophisticated CAD software. The communication officers in this Centre are trained to handle a range of issues, from a blocked crossing to a right-of-way trespasser, and they regularly coordinate the involvement of other railroads as required for any specific incident.

Comment 461-40: Written Comment from Environmental Defense Fund (EI-32540)

EDF recommends serious air quality mitigation measures be taken by the Applicants in Harris County (and everywhere along the system, regardless of attainment status) to prevent as many NO_x, PM and GHG emissions as possible.

OEA Response

Chapter 4, Mitigation, sets forth the mitigation measures that the Applicants voluntarily proposed to minimize air quality impacts in Harris County and elsewhere. These measures include a commitment to develop greenhouse gas (GHG) reduction targets for the combined CPKC network, undertaking a combined network in-depth climate scenario analysis to understand how a changing climate may impact CPKC, comply with EPA emissions standards for diesel-electric railroad locomotives when purchasing and rebuilding locomotives, and develop an anti-idling policy for use in potentially affected communities on the combined network. OEA did not identify major impacts related to air quality and climate change that would warrant additional mitigation beyond what the Applicants voluntarily proposed.

Comment 461-41: Written Comment from Environmental Defense Fund (EI-32540)

EDF recommends the Applicants consult with City of Houston, Harris County officials and recommends consultation with the community regarding infrastructure-hardening efforts and also recommends the Applicants to fund infrastructure-hardening to withstand impacts in Houston, Harris County from extreme weather.

OEA Response

See response to Comment 461-34 above. OEA notes that the Applicants do not own the rail infrastructure in Houston and Harris County. Therefore, the Board cannot impose mitigation requiring the Applicants to add new capital improvements in Houston and Harris County because any such improvements would need to be planned and constructed by the rail line owner. As described in *Section 3.7, Air Quality and Climate Change*, the CP Climate Strategy outlines the approach to addressing climate change impacts the Applicants' rail infrastructure could experience if the Board authorizes the Proposed Acquisition. See also responses to Comment 461-40 and Comment 453-16 above.

Comment 461-42: Written Comment from Environmental Defense Fund (EI-32540)

EDF requests and volunteers to help coordinate Transportation Community Awareness and Emergency Response Program (TRANSCAER) workshops (training for communities through which dangerous goods are transported) in potentially affected communities offered by the Applicants in English and Spanish.

OEA Response

Comment noted.

Comment 461-43: Written Comment from Environmental Defense Fund (EI-32540)

EDF recommends the Applicants set a target for Scope 3 greenhouse gas emissions reductions.

OEA Response

Comment noted. As set forth in *Chapter 4, Mitigation*, the Applicants have voluntarily committed to developing GHG targets for the combined network and requesting verification as appropriate from the Science Based Targets initiative (SBTi). OEA understands that CP's current SBTi approved target is a 38.3 percent reduction in well-to-wheels GHG emissions (on an intensity basis) from locomotive operations by 2030 compared to a 2019 base year and that CP has also committed to a 27.5 percent GHG reduction (on an absolute basis) by 2030 compared to a 2019 base year for non-locomotive Scope 1 and Scope 2 emissions. OEA understands that KCS has a SBTi target to reduce Scope 1 and 2 GHG emissions by 42 percent by 2034 (see mitigation measure VM-Air-01).

Comment 453-18: Written Comment from Harris County Attorney's Office (EI-32532)

The County is especially concerned that the current mitigation efforts contained in the D-EIS do not address the EJ concerns of the County and its residents. Mitigation efforts should address significant and adverse environmental impacts on EJ populations when feasible.³⁸ CEQ guidance indicates agencies should elicit the views of affected EJ populations on mitigation measures and those measures should reflect the needs and preferences of the EJ population to the extent practicable. Harris County is home to multiple EJ populations facing multiple issues, many of which are caused or exacerbated by

railroad activity. This reality justifies increased mitigation and communication efforts between the County, its communities, and the STB.

³⁸ Memorandum from the President to the Heads of Departments and Agencies (Comprehensive Presidential Documents No. 279. (Feb. 11, 1994) (“Mitigation measures identified as part of an EIS should, whenever feasible, address significant and adverse environmental effects of proposed federal actions on minority populations, low-income populations, and Indian tribes.”)

OEA Response

OEA’s extensive EJ outreach and consultation efforts, including outreach and consultation with agencies, officials, and leaders in Harris County, are discussed in *Section 3.13, Environmental Justice*; **Appendix A, Public Involvement**; and **Appendix B, Agency and Tribal Consultation**. As described in *Section 3.13, Environmental Justice*, OEA found that the Proposed Acquisition would not result in any high and adverse impacts on EJ populations in the Harris County. OEA has revised *Chapter 4, Mitigation*, to indicate that, following issuance of the Draft EIS, the Applicants provided OEA with additional voluntary mitigation commitments, including the commitment to meet regularly with community representatives in the Houston area and work with those communities to address concerns regarding the impacts of the Proposed Acquisition.

Comment 394-1: Public Meeting Comment from the City of Camanche, Iowa (EI-32757)

My name is Andrew Kida. I am the City Administrator for the City of Camanche, Iowa, and I am a resident of the City of Clinton in Clinton County, Iowa. I speak to you today not only as a representative of the City of Camanche but also as a resident of the area. This merger presents serious concerns to public safety, public health, and the environment. Camanche has seven crossings on the CP line within one mile. Three crossings of which currently have no arms that they have no plans to fund. There are more than 1800 households in Camanche. 409 of these households are isolated on the easterly side of the tracks. A blockage of these crossings, which happens frequently already results in delays of emergency services and resident's travel, increasing the volume will only increase the delays. In case of derailment, the only means of egress for these 1200 citizens would be via the Mississippi River. It is imperative that the STB require these issues in Camanche be mitigated. The environmental impact study lists hazardous material transportation, grade crossing delays, and water resources as low risk or minor adverse impacts. I am here to say that where these issues concern Camanche, they are major impacts high risk as it pertains to our citizens. The potential environmental impact to our city, our region and our country is indeed understated. This is primarily brought by two -- oil being transported along the Mississippi River. It is within a stone's throw of the river and our community. The rail travels along vital marshlands; the derailment with oil cars in our marshlands will make the Exxon Valdez cleanup look like a walk in the park. This plan is the Keystone Pipeline on wheels. Environmentally, STB should be opposed. Our community is a river town. Our marina -- public access boat ramps, which handle hundreds of recreational vehicles and boaters per day will be negatively impacted. The requests of Camanche are reasonable. Our requests should not require grant funding from federal and state government, which is what CP has

presented. The mitigation should be the sole responsibility of Canadian Pacific. It should not be the responsibility of the citizens of Camanche or the U.S. taxpayers. Canadian Pacific has used matching federal dollars as an incentive for Camanche to come to an agreement. As a taxpayer and a veteran, I find it disturbing that a foreign company uses our tax dollars to buy our silence. Their attorneys and representatives Mr. Cummings and Ms. Giordano have been intimidating and threatening. They say things like, "This is the best offer you're going to get. If you go nuclear, you will get nothing, and you won't get money from the STB." That is a quote from Ms. Giordano herself. It is -- if this is their behavior now, how many other cities have they undercut using this tactic? How will they be good neighbors? I urge the STB to reevaluate the impact to our communities like Camanche and the ecosystem of the Mississippi River before approving this merger. I urge the STB to visit Camanche before finalizing any decision. Thank you.

OEA Response

OEA did not identify any impacts resulting from the Proposed Acquisition in Camanche that would warrant mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

See *Section 3.3, Grade Crossing Delay*, for a discussion of the potential impacts of the Proposed Acquisition on delay at grade crossings, including the grade crossing providing access to the marina in Camanche, Iowa. In response to public comments on the Draft EIS, OEA has revised *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.11, Biological Resources*; and *Section 3.12, Water Resources*, to include additional information on the types of impacts that could occur in the unlikely event of a hazardous materials release.

For the rail line segment in Camanche, the Applicants project that the transportation of hazardous materials would increase by approximately 44,466 carloads per year, or around 150 percent. OEA estimates that this would increase the probability of a release occurring in any given year by approximately 0.03850. This is the same as saying that OEA predicts the Proposed Acquisition would result in one additional release every approximately 26 years on this rail line segment.

To the extent that the commenter may be referring to negotiations between the Applicants and Camanche, Iowa, OEA notes that, while OEA encourages railroad applicants to develop negotiated agreements with communities because they can be more far reaching than mitigation the Board could unilaterally impose, OEA does not participate in those negotiations.

Comment 140-1: Written Comment from Kelsey Brodt (EI-32266)

I oppose Canadian Pacific (CP) and Kansas City (KCS) Southern railroad merger! We cannot continue to repeat the patterns that have us in this mess of corporate power/greed & environmental destruction. This merger would nearly double the number of trains running through the White Earth Nation, as well as through the territory ceded in the 1855 Treaty. CP/KCS wants to use these trains to ship crude oil from Canada to Mexico. CP and KCS both generate billions of dollars in revenue each year and stand to earn even more as a result of increased efficiency from the merger. The communities impacted by the trains won't see a dime of that money even though they need to go through reservation territory, as well as the

1855 Treaty territory to ship their products. This is climate injustice! I oppose this merger! However, if it is ultimately approved, then given the danger it poses to native people and nature CP/KCS must set aside sufficient funds to pay for any damage that their trains may cause. Increased noise/pollution from these trains running through the territory & oil pipelines threaten the *nibi* and *manoomin* in ceded territories. If oil were to leak or spill, it could permanently erode the land & native's right to fully use and enjoy this territory.

OEA Response

Comment noted. **Appendix C, Rail Line Segments, Intermodal Facilities, and Rail Yards** provides information on the projected increases in rail traffic on specific rail lines that could occur if the Board authorizes the Proposed Acquisition. As shown in that appendix, the Applicants project that rail traffic on the CP rail line that passes through the White Earth Reservation would increase by approximately 2.58 trains per day, on average. This projected increase is well below OEA's thresholds for environmental review at 49 U.S.C. § 1105.7(e). The projected increase in hazardous materials transportation is approximately 720 carloads per year, which is less than two additional hazardous material carloads per day. That is less than a two percent increase compared to the No-Action Alternative and corresponds to roughly seven additional trains per year. These small volumes do not indicate that the Applicants plan to transport large volumes of oil. Moreover, CP has a mainline west of the reservation that would provide a more direct route from the oil fields in Alberta to the Gulf Coast.

Some of the additional trains that would use the CP rail line through the White Earth Reservation could transport DRUbit, which is a nonhazardous bitumen. According to the Applicants, the Proposed Acquisition could support a shift away from the transportation of hazardous crude oil and increase the transportation of the DRUbit alternative by an estimated 16,341 carloads per year. DRUbit is a tar-like substance that does not flow and would likely not harm the environment or nearby communities if inadvertently spilled in the event of a derailment, thereby increasing the shipping safety compared to the original product. OEA expects that, although transportation of DRUbit could increase as a result of the Proposed Acquisition, the transportation of crude oil on competing rail lines would decrease and that the Proposed Acquisition would not change the overall volume of energy resources transported in the United States. The impacts resulting from the Proposed Acquisition do not warrant mitigation beyond what is set forth in *Chapter 4, Mitigation*; therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 73-1: Written Comment from Connie Allen (EI-32216)

The noise when outside at my house (live above the highway) is unbearable. Increased traffic will decrease home value significantly. Please put a crossing in at green gables and stop the horn by my house. With high inflation, decrease 401k value due to current administration policies, my home is one main asset I have. Also super concerned about festivals on Leclair levy. I saw the trains derailed 1/5/20. If the levy was full, there would be significant death. Please slow speed up 35 in towns at least. I am pro-business but please put in sound and safety mitigations.

OEA Response

As set forth in *Chapter 4, Mitigation*, the Applicants have proposed a number of voluntary mitigation measures that, if imposed by the Board, would address impacts related to safety and noise, including safety and noise at grade crossings. Also as set forth in *Chapter 4, Mitigation*, OEA is recommending that the Board impose additional noise mitigation measures beyond those proposed by the Applicants. The Board does not have jurisdiction over train speeds on particular rail line segments, and OEA does not believe that reducing train speeds would be appropriate mitigation for the impacts identified in *Chapter 3, Affected Environment and Environmental Consequences*. Therefore, no changes to the Draft EIS are warranted in response to this comment. Regarding concerns about potential releases of hazardous materials, see the response to Comment 140-1 above. Regarding the commenter's concern about property values, OEA notes that a potential change in property values would not be an effect on the environment and that OEA therefore appropriately did not assess potential effects on property values as part of the environmental review.

Comment 61-1: Written Comment from Dennis R Torii, Sr. (EI-32207)

This proposal creates a dangerous delay in, safety, life, fire and police service to part of the Itasca community north of the RR tracks. Blocking access to the closest Alexian Brothers Hospital. It would require an additional underpass under the tracks or possibly create a ramp from Irving Park road to the expressway.

OEA Response

In response to public comments, OEA has revised *Section 3.3, Grade Crossing Delay* to include additional information regarding the potential impacts of the Proposed Acquisition on grade crossing delay. OEA found that impacts related to grade crossing delay on emergency vehicle response would be minor and that additional mitigation, beyond the Applicants' voluntary mitigation set forth in *Chapter 4, Mitigation*, is not warranted. Further, as discussed in *Section H.2.3* in **Appendix H**, OEA did not identify any grade crossings in Itasca that warrant grade separation or any other site-specific mitigation.

Comment 452-12: Written Comment from Eastwood Civic Association (EI-32531)

These six projects reflect what our volunteer group can identify as mitigation efforts for our segment of the Houston complex. We recognize that communities such as Fifth Ward and South Union may have additional requests that are merited. We'd urge regulators to bring all the local stakeholders together to identify a comprehensive list of mitigation conditions for the entirety of Houston. Our community is happy to participate further in the development of such a list with any entity, local or federal.

OEA Response

OEA did not identify any impacts resulting from the Proposed Acquisition in Houston that would warrant mitigation beyond the measures set forth in *Chapter 4, Mitigation*. OEA understands that the Applicants visited Houston in November 2022 and have met with representatives of the City of Houston and Harris County to discuss concerns regarding the

Proposed Acquisition. The Applicants have indicated that they will continue to coordinate with relevant leaders and agencies in the Houston area regarding non-Acquisition-related rail operations challenges in the region.

OEA understands the commenter to be referring to the Eastwood neighborhood of Houston. The two main lines and a branch line that pass through the Eastwood neighborhood of Houston include the Houston East Belt Subdivision, Houston West Belt Subdivision, and the Galveston Subdivision. UP and BNSF can dispatch trains over several routes through Houston. None of the aforementioned routes are the primary routes for KCS, which would be the same primary routes for CPKC.

Comment 554-5: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

To preserve the future integrity of critical regional infrastructure, recreational amenities, and residents' quality of life in Camanche, the City is only supportive of the proposed merger between the Canadian Pacific and Kansas City Southern Railroads under the following conditions:

Canadian Pacific funds and constructs at least one overpass and/or underpass within the City of Camanche to address emergency services needs and evacuation routes.

OEA Response

In response to public comments on the Draft EIS, OEA has revised *Section 3.3, Grade Crossing Delay* to include additional information regarding the potential impacts of the Proposed Acquisition on grade crossing delay. OEA found that impacts related to grade crossing delay on emergency vehicle response would be minor and that additional mitigation beyond the Applicants' voluntary mitigation set forth in *Chapter 4, Mitigation*, is not warranted. Further, as discussed in *Section H.2.3* in **Appendix H**, OEA did not identify any grade crossings in Camanche that warrant grade separation or any other site-specific mitigation.

Comment 554-6: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

Canadian Pacific funds the purchase of an ambulance with all equipment similar to that which the City of Camanche already maintains in order to provide an additional emergency vehicle to be used in case all crossings are blocked until said overpass or undress is completed in addition to the construction of a pedestrian overpass that is ADA compliant near where the emergency services equipment is housed.

OEA Response

See response to Comment 554-5 above.

Comment 554-7: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

Canadian Pacific funds and constructs a Quiet Zone throughout the community.

OEA Response

Quiet zones are one way to reduce potential adverse noise impacts. Quiet zones are areas in which engineers do not have to sound horns as long as certain FRA safety requirements are met. Generally, railroads and communities work together to establish quiet zones and fund the installation and maintenance of the necessary grade crossing protection measures. The Board generally has no substantive role in the establishment of quiet zones.

Comment 554-8: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

Canadian Pacific creates an impact barrier between the railroad tracks and the limits of railroad right-of-way to protect the neighboring properties from the negative impacts of the increased volume.

OEA Response

To the extent that the commenter is requesting that the Applicants be required to construct a noise barrier in Camanche, Iowa, OEA does not consider noise barriers to be an effective or reasonable mitigation strategy for addressing wayside and locomotive horn noise. Most of the regions where there are adversely affected receptors are rural with a relatively low density of receptors for the length of noise barrier that would be needed to provide benefit. The cost per benefited receptors in these rural communities would not be cost effective. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 15-1: Written Comment from Gary Ehrle (EI-32142)

For a small community of 600 we are anticipating major changes and challenges coming to our area and we are concerned about the effect it will have on our town and what if anything we can do in finding ways to improve the situation before hand. Concerns: 1. Traffic efficiency and safety at Trussell & J18 rail crossing for vehicles, Amish buggies, pedestrians and school children. 2. Alternative Emergency routes for Fire & Rescue 3. How to deal with increased train engine and horn noise. We are open to hearing any suggestions or ideas. Thank you.

OEA Response

OEA did not identify any impacts resulting from the Proposed Acquisition in Camanche that would warrant mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

See *Section 3.2, Grade Crossing Safety* for a discussion of the potential impacts of the Proposed Acquisition on grade crossing safety, including pedestrian safety.

In response to public comments on the Draft EIS, OEA has revised *Section 3.3, Grade Crossing Delay* to include additional information regarding the potential impacts of the Proposed Acquisition on grade crossing delay.

Comment 554-9: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

Canadian Pacific commits to installing Centralized Traffic Control (CTC) advanced technology to minimize the blocking of crossings.

OEA Response

According to the Applicants' amended Operating Plan (Page 122, Footnote 124), CP plans to implement CTC along a portion of the 96-mile rail line from Sabula to Davenport, which includes the rail line through Camanche, independent of the Proposed Acquisition. Therefore, implementation of CTC as mitigation for the Proposed Acquisition is unnecessary.

Comment 554-10: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

Canadian Pacific identifies a location outside of Camanche where it will stop and queue trains when there is a need to stop a train for anything other than an emergency situation, in order to minimize blocked train crossings in Camanche's urban area.

OEA Response

Comment noted. As discussed in *Section 3.3, Grade Crossing Delay*, OEA found that the Proposed Acquisition would have minor impacts on grade crossing delay and that the voluntary mitigation proposed by the Applicants and set forth in *Chapter 4, Mitigation* would minimize the potential impacts. Therefore, OEA is not recommending additional mitigation for grade crossing delay beyond the measures voluntarily proposed by the Applicants, and no changes to the Draft EIS are warranted in response to this comment.

Comment 554-11: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

Posted train speeds are lowered to 20 miles per hour throughout Camanche's urban area to mitigate ground vibrations.

OEA Response

Comment noted. As discussed in *Section 3.6, Noise and Vibration*, OEA found that the Proposed Acquisition would not result in adverse impacts related to vibration from passing trains. Additionally, the Board does not have jurisdiction over train speeds on particular rail line segments. Therefore, no changes to the Draft EIS are warranted in response to this comment.

Comment 554-12: Formal Filing from the City of Camanche, Iowa (Filing ID 305446)

The safety conditions of the railroad's infrastructure be examined and evaluated by the appropriate federal regulators, and the necessary corrective actions be imposed.

OEA Response

Comment noted. As discussed in *Section 3.1, Freight and Passenger Rail Safety*, OEA found that the Proposed Acquisition would have minor impacts related to rail operations safety and that the voluntary mitigation proposed by the Applicants and set forth in *Chapter 4, Mitigation* would minimize the potential impacts. Therefore, OEA is not recommending additional mitigation related to freight and passenger rail safety beyond the measures

voluntarily proposed by the Applicants and no changes to the Draft EIS are warranted in response to this comment.

Comment 649-2: Transportation Merit Hearing Comment from William Gluba

Davenport has accommodated the handful of freight trains, but to jump to 22 or more trains per day, many carrying flammable shale oil from Canada, will present a clear and present danger to thousands of people. When one of these trains derails while passing through one of these mega events it won't be 47 people killed like tragically happened in Canada. It will be hundreds of people. This is a disaster of monumental proportions just waiting to happen, and you have the power to prevent it. To eliminate this threat, what I am proposing is a bit like placing a surgical stent, a subterranean tunnel through this park area. State Highway 67 runs right next to this stretch, so a subway type tunnel could be constructed under this public roadway. If we can put a man on the moon, we can certainly figure out how to build a short subway tunnel to protect human life. CP has only agreed to spend \$10 million in Davenport, which will not fix the life-threatening issues this merger will cause. I ask the Board to work with CP to create a mitigation fund to the tune of \$3 billion, ten percent of the merger, that affected cities can tap into to create tunnels and other projects this merger will necessitate. This could truly save lives.

OEA Response

OEA did not identify any impacts resulting from the Proposed Acquisition in Davenport that would warrant mitigation beyond the measures set forth in *Chapter 4, Mitigation*.

For the rail line segment in Davenport, the Applicants project that the transportation of hazardous materials would increase by approximately 44,466 carloads per year, or around 150 percent. OEA estimates that this would increase the probability of a release occurring in any given year by approximately 0.00519. This is the same as saying that OEA predicts the Proposed Acquisition would result in one additional release every approximately 193 years on this rail line segment.

See response to Comment 462-21 in *Section S.5, Hazardous Materials Transportation* in this appendix for information on the SIP process.

Comment 655-1: Transportation Merit Hearing Comment from Itasca, Illinois' Village Administrator Carie Anne Ergo

To completely alleviate those potential harms the coalition initially estimated it would cost nearly \$9 billion dollars. However, the coalition has reviewed the feasibility of all the potential mitigation measures and prioritized those measures that are the absolute bare minimum in the near term to mitigate adverse impacts of the merger should you choose to allow it. The coalition prioritized measures that would benefit all communities as well as three critical roadway crossings and three critical pedestrian crossings. Our revised list which we have shared with the merger applicants and will include in our comments on the DEIS reduces that \$9 billion number to just under four \$400 million. This economic burden should not be shifted to local taxpayers, but should rightfully be funded by Canadian Pacific and Kansas City Southern, who stand to reap the benefits from the merger. \$400 million

represents just over one percent of the total value of the merger. CP can afford it. If they can't, they shouldn't be allowed to move forward.

OEA Response

Comment noted. As discussed in *Section 3.1, Freight and Passenger Rail Safety*; *Section 3.2, Grade Crossing Safety*; and *Section 3.3, Grade Crossing Delay*, OEA found that the Proposed Acquisition would have minor impacts related to rail operations safety and grade crossing safety and delay, respectively, and that the voluntary mitigation proposed by the Applicants and set forth in *Chapter 4, Mitigation* would minimize the potential impacts. Therefore, OEA is not recommending additional mitigation beyond the measures voluntarily proposed by the Applicants and no changes to the Draft EIS are warranted in response to this comment.

Comment 677-1: Written Comment from Camanche Public Library (EI-32675)

The Camanche Public Library has concerns regarding the merger of CP and KCP Railroads. Our library is located at 102 12th Avenue in Camanche, Iowa. This places us on the eastern side of the railroad tracks. The additional railroad traffic will adversely affect the operations of our library. #1. 75% of our population is located on the western side of the tracks. The total population of Camanche is 4,448. #2. The Circulation (number of items loaded + inter-library loans + online usage) is 4293 over the previous twelve months. #3. There are 2,837 registered active users of the library.

The increased train traffic will cause an adverse effect of the operation of the library. #1. Public Safety #2. Human services and historic services #3. Hazardous or toxic substance #4. Direct, indirect and cumulative effects

Our board of trustees asks the Surface Transportation Board to address the items of mitigation outlined in Mr. Kida's (City Administrator) letter of September 7, 2022.

OEA Response

See response to Comment 394-1 above.

Comment 688-4: Written Comment from Public Works Department, City of Kansas City, Missouri (EI-32707)

Request for Mitigation

Kansas City respectfully requests that mitigation measures be included in the NEPA record of decision to address the negative impacts as enumerated above. Mitigation measures should include:

1. Coordination between the railroad companies (Union Pacific, KC Terminal, KCS, CP, CN) regarding gate-down closures of 12th and 17th Street within the BRVIA;
2. Improvements to alternative access/egress routes for the BRVIA including replacement of the 12th Street Bridge over the Blue River and separation of the grade crossings;

3. Quiet-zone improvements at all at-grade crossings to decrease the frequency and volume of train horns (especially at night).
4. Grade separated crossings at North Olive Street and North Lydia Avenue.

OEA Response

Regarding points 1 and 2, as discussed in *Section H.2.3* in **Appendix H**, OEA did not identify any grade crossings in Kansas City, Missouri that warrant grade separation or any other site-specific mitigation. According to the results of the Grade Crossing Delay Analysis, the two grade crossings of 12th Street (329762T) and 17th Street (329764G) would experience a reduction in the average gate-down time as a result of the Proposed Acquisition due primarily to the reduction in average train length on the Pittsburg Subdivision where they are located. Further, the Board does not require mitigation for pre-existing environmental conditions, such as the effects of existing rail operations.

Under VM-General-01, the Applicants commit to continuing to engage in good faith with potentially affected communities along the combined network, listen to their input related to the Proposed Acquisition and strive to reach negotiated agreements to address merger-related impacts

3. Quiet zones are one way to reduce potential adverse noise impacts. Quiet zones are areas in which engineers do not have to sound horns as long as certain FRA safety requirements are met. Generally, railroads and communities work together to establish quiet zones and fund the installation and maintenance of the necessary grade crossing protection measures. The Board has no substantive role in the establishment of quiet zones.

4. There would be no Proposed Acquisition-related growth on the rail lines at the existing grade crossings of North Olive Street and North Lydia Avenue. Therefore, they do not warrant mitigation.

Comment 122-1: Written Comment from Osage Nation Historic Preservation Office (EI-32177)

The Osage Nation Historic Preservation Office has reviewed the cultural resources surveys conducted by VHB and the Draft EIS regarding the Canadian Pacific Railway Limited, et al. (CP) Acquisition of Kansas City Southern et al. (KCS).

The Osage Nation is in agreement with VHB and the Surface Transportation Board, Office of Environmental Analysis (OEA) that the proposed acquisition would not adversely affect any National Register-eligible above-ground resources.

The Osage Nation is further in agreement with VHB and the Surface Transportation Board OEA regarding the two National Register eligible archaeological sites, 34AD283 and 34AD286, located within the APE for the new passing siding located at MP 247 near Baron, Oklahoma. Sites 34AD283 and 34AD286 will not be adversely impacted per the Applicants added clarification that the planned capital improvements in the MP 247 area will be confined to the permanent footprint and all construction activities confined to the existing disturbed area (railroad berm and ballast) in locations adjacent to any National Register-eligible archaeological sites that OEA identified, specifically 34AD283 and 34AD286.

The Osage Nation is in agreement with the Surface Transportation Board OEA statement in the Draft EIS S.3.9 Cultural Resources pages S-12 through S-13, regarding requiring the Applicants to develop and implement a plan for archaeological monitoring during construction and addressing any unanticipated discoveries of archaeological sites or associated artifacts during construction following Chapter 4.10.2, MM-Cultural-01 of the Draft EIS following the incorporation of the highlighted additions added below:

4.10.2 OEA's Preliminary Recommended Mitigation

As discussion in Section 3.9, Cultural Resources, OEA concludes that the Proposed Acquisition would not adversely affect any historic properties listed in or eligible for listing in the National Register of Historic Places. OEA recommends the following additional mitigation measures to minimize impacts on cultural resources:

MM-Cultural-01. Prior to beginning any construction activities related to the 25 planned capital improvements, the Applicants shall prepare a construction monitoring plan that addresses the following:

- Training procedures to familiarize construction personnel with the identification and appropriate treatment of historic properties;
- Monitoring of construction activities by a qualified professional archaeologist;
- Provisions for monitoring and coordination for work within tribal reservation boundaries;
- Provisions for the unanticipated discovery of archaeological sites or associated artifacts during construction activities, including procedures for notifying OEA and the appropriate State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), pursuant to 36 C.F.R § 800.12(b) in the event of an unanticipated discovery; and
- Provisions for complying with the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001-3013) and other applicable federal, state, and local laws and regulations in the event of inadvertent discoveries of unmarked human remains during construction activities.

The Applicants shall provide the construction monitoring plan to OEA and THPOs for review no later than 30 days prior to the start of any construction activities related to the 25 planned capital improvements and shall abide by the provisions of the plan, including any revisions by OEA and THPOs, during construction activities.

The Osage Nation requests a copy of the training materials/guidance that will be provided to individuals before any construction activities related to the 25 planned capital improvements begin for review and comment before any training is started.

The Osage Nation requests all construction monitoring plans and daily monitoring reports be sent to both OEA and the Osage Nation Historic Preservation Office for review and comment no later than 30 days prior to the start of any construction activities related to the 25 planned capital improvements, especially in the areas of Sites 34AD283 and 34AD286.

OEA Response

OEA appreciates the participation of the Osage Nation Historic Preservation Office in the Section 106 process and its comments on the Draft EIS. In response to the Osage Nation's comments, OEA's MM-Cultural-01 in the Final EIS reflects the changes requested by the Osage Nation. If the Board approves the Proposed Acquisition, OEA will continue consultation with the Osage Nation. Moreover, the mitigation measure specifically provides that prior to construction, OEA will provide the requested training materials/guidance and construction monitoring plans to appropriate THPOs for review and comment. During construction, OEA will also provide the daily monitoring reports.

Comment 693-1: Written Comment from Osage Nation Historic Preservation Office (EI-32706)

Dear Mr. Tabachnick,

The Osage Nation Historic Preservation Office has evaluated your submission regarding the proposed STB, Docket No. FD 36500, Canadian Pacific Railway Limited, et al. - Control of - Kansas City Southern, et al., Multiple Counties, Multiple States and determined that the portions of the proposed project within Clayton, Clinton, Jackson, Louisa, Monroe, Wapello, and Washington counties in Iowa most likely will not adversely affect any sacred properties and/or properties of cultural significance to the Osage Nation. For direct effect, the finding of this NHPA Section 106 review is a determination of "No Properties" eligible or potentially eligible for the National Register of Historic Places for the portions of the proposed project within Clayton, Clinton, Jackson, Louisa, Monroe, Wapello, and Washington counties in Iowa.

In a letter sent on August 31, 2022, the Osage Nation Historic Preservation Office concurred with VHB and the Surface Transportation Board, Office of Environmental Analysis (OEA) that the proposed acquisition would not adversely affect any National Register-eligible above ground resources. The Osage Nation agreed further with VHB and the Surface Transportation Board OEA regarding the two National Register eligible archaeological sites 34AD283 and 34AD286 located within the APE for the new passing siding located at MP 247 near Baron, Oklahoma in that sites 34AD283 and 34AD286 will not be adversely impacted per the Applicants added clarification that the planned capital improvements in the MP 247 area will be confined to the permanent footprint and all construction activities confined to the existing disturbed area (railroad berm and ballast) in locations adjacent to any National Register-eligible archaeological sites that OEA identified, specifically 34AD283 and 34AD286. The Osage Nation remains in agreement the Surface Transportation Board OEA statement in the Draft EIS S.3.9 Cultural Resources pages S-12 through S-13, regarding requiring the Applicants to develop and implement a plan for archaeological monitoring during construction and addressing any unanticipated discoveries of archaeological sites or associated artifacts during construction following Chapter 4.10.2, MM-Cultural-01 of the Draft EIS per the highlighted additions being added as requested by the Osage Nation.

The Osage Nation's requests for a copy of the training materials/guidance that will be provided to individuals before construction activities related to the 25 planned capital

improvements begins for review and comment before any training is started and the Osage Nation's requests to receive all construction monitoring plans and daily monitoring reports be sent to both OEA the Osage Nation Historic Preservation Office for review and comment no later than 30 days prior to the state of any construction activities related to the 25 planned capital improvements, especially in the areas of Sites 34AD283 and 34AD286 still remain.

The Osage Nation has vital interests in protecting its historic and ancestral cultural resources. We do not anticipate that this project will adversely impact any cultural resources or human remains protected under the NHPA, NEPA, the Native American Graves Protection and Repatriation Act, or Osage law.

The Osage Nation looks forward to continue working with VHB and the Surface Transportation Board in regards to STB, Docket No. FD 36500, Canadian Pacific Railway Limited, et al. - Control of - Kansas City Southern, et al., Multiple Counties, Multiple States.

OEA Response

See response to Comment 122-1 above.

Index

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
<i>Elected Officials - Federal</i>			
Raja Krishnamoorthi, U.S. Representative (Illinois)	570-1	Environmental Review Process	S.3
Raja Krishnamoorthi, U.S. Representative (Illinois)	570-2	Grade Crossing Delay	S.8
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-1	Environmental Review	S.3
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-2	Environmental Review Process	S.3
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-3	Grade Crossing Delay	S.8
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-4	Grade Crossing Delay	S.8
Betty McCollum, U.S. Representative (Minnesota)	685-1	Environmental Review Process	S.3
<i>Elected Officials - State</i>			
Paul Anderson, Minnesota State Representative	99-1	Environmental Review Process	S.3
Ron Reynolds, Texas State Representative	149-1	Environmental Review Process	S.3
Carol Alvarado, Texas State Senator	151-1	Environmental Review Process	S.3
Seth Lewis, Illinois State Representative	564-1	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Diane Pappas, Illinois State Senator	565-1	Grade Crossing Delay	S.8
Diane Pappas, Illinois State Senator	565-2	Cumulative Impacts	S.17
Ron Reynolds, Texas State Representative	660-1	Cumulative Impacts	S.17
Ron Reynolds, Texas State Representative	660-2	Grade Crossing Delay	S.8
Amy Koch, former Majority Leader of the Minnesota State Senate	668-1	Energy	S.13
Amy Koch, former Majority Leader of the Minnesota State Senate	668-2	Energy	S.13
Amy Koch, former Majority Leader of the Minnesota State Senate	668-3	Grade Crossing Delay	S.8
Amy Koch, former Majority Leader of the Minnesota State Senate	668-4	Environmental Review Process	S.3
Amy Koch, former Majority Leader of the Minnesota State Senate	668-5	Environmental Review Process	S.3
<i>Elected Officials – Local</i>			
Austin Pruett, Mayor, Camanche Iowa	93-1	Grade Crossing Delay	S.8
Austin Pruett, Mayor, Camanche Iowa	93-2	Hazardous Materials Transport	S.5
Dave Kaptain, Mayor, Elgin, Illinois	94-1	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Dave Kaptain, Mayor, Elgin, Illinois	94-2	Grade Crossing Safety	S.9
Ken Croken, Member, Board of Supervisors, Scott County, Iowa	138-1	Environmental Justice	S.16
Ken Croken, Member, Board of Supervisors, Scott County, Iowa	138-2	Grade Crossing Delay	S.8
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-1	Environmental Review Process	S.3
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-2	Air Quality and Climate Change	S.12
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-3	Environmental Justice	S.16
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-4	Grade Crossing Safety	S.7
Robert Gallegos, Houston City Council, District 1	448-1	Environmental Review Process	S.3
Robert Gallegos, Houston City Council, District 1	448-2	Environmental Review Process	S.3
Robert Gallegos, Houston City Council, District 1	448-3	Environmental Review Process	S.3
Robert Gallegos, Houston City Council, District 1	448-5	Grade Crossing Delay	S.8
The Office of Harris County Judge Lina Hidalgo	455-1	Air Quality and Climate Change	S.12

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
The Office of Harris County Judge Lina Hidalgo	455-2	Environmental Justice	S.16
The Office of Harris County Judge Lina Hidalgo	455-3	Environmental Justice	S.16
The Office of Harris County Judge Lina Hidalgo	455-4	Environmental Justice	S.16
The Office of Harris County Judge Lina Hidalgo	455-5	Freight Rail Safety	S.4
The Office of Harris County Judge Lina Hidalgo	455-6	Freight Rail Safety	S.4
The Office of Harris County Judge Lina Hidalgo	455-7	Hazardous Materials Transportation	S.5
The Office of Harris County Judge Lina Hidalgo	455-8	Hazardous Materials Transportation	S.5
The Office of Harris County Judge Lina Hidalgo	455-9	Environmental Review	S.3
Jeff Pruyn, Mayor, Itasca, Illinois	569-1	Grade Crossing Delay	S.8
David Pileski, Mayor, Roselle, Illinois	586-1	Noise and Vibration	S.11
Frank DeSimone, Mayor, Bensenville, Illinois	590-1	Grade Crossing Delay	S.8
Rodney Ellis, Harris County Commissioner	526-1	Environmental Review	S.3
Rodney Ellis, Harris County Commissioner	526-2	Environmental Justice	S.16
Rodney Ellis, Harris County Commissioner	526-3	Hazardous Materials Transportation	S.5

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Rodney Ellis, Harris County Commissioner	526-4	Cumulative Impacts	S.17
Rodney Ellis, Harris County Commissioner	526-5	Grade Crossing Delay	S.8
Rodney Ellis, Harris County Commissioner	526-6	Environmental Review Process	S.3
Rodney Ellis, Harris County Commissioner	526-7	Environmental Review Process	S.3
Nunzio Pulice, Mayor, Wood Dale, Illinois	615-1	Grade Crossing Safety	S.7
Rodney Ellis, Harris County Commissioner	661-1	Environmental Review Process	S.3
Rodney Ellis, Harris County Commissioner	661-2	Grade Crossing Safety	S.7
Rodney Ellis, Harris County Commissioner	661-3	Environmental Review Process	S.3
Robert Gallegos, Houston City Council, District 1	662-1	Environmental Review Process	S.3
<i>Federal Agencies</i>			
U.S. Army Corps of Engineers, Kansas City District	86-1	Water Resources	S.15
Courtney Hoover, Regional Environmental Officer, Office of Environmental Policy and Compliance, Department of the Interior	627-1	Biological Resources	S.14
<i>State Agencies</i>			

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Brian Vercruysse, Illinois Commerce Commission	523-1	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-2	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-3	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-4	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-5	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-6	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-7	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-8	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-9	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-10	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-11	Grade Crossing Delay	S.8
Brian Vercruysse, Illinois Commerce Commission	523-12	Grade Crossing Delay	S.8
Brian Vercruysse, Illinois Commerce Commission	523-13	Grade Crossing Delay	S.8
Brian Vercruysse, Illinois Commerce Commission	523-14	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Brian Vercruyse, Illinois Commerce Commission	523-15	Grade Crossing Delay	S.8
Lucy Cross, Arkansas Division of Environmental Quality	601-1	Water Resources	S.15
Randy Roberson, Arkansas Department of Parks, Heritage and Tourism	601-2	Noise and Vibration	S.11
Local Agencies			
Kane County, Illinois Jodie Wollnik, Director of Water Resources, Kane County, Illinois	24-1	Air Quality and Climate Change	S.12
Kane County, Illinois Jodie Wollnik, Director of Water Resources, Kane County, Illinois	24-2	Air Quality and Climate Change	S.12
Ken Beck, Scott County, Iowa	27-1	Grade Crossing Delay	S.8
Fire Chief, Marinette Fire Department, Marinette, Wisconsin	91-1	Grade Crossing Delay	S.8
Chief Nathaniel Melby, Campbell Fire Department, Campbell, Wisconsin	152-1	Grade Crossing Delay	S.8
Chief Tony Holinka, Shelby Fire Department, Shelby, Wisconsin	153-1	Grade Crossing Delay	S.8
Chief Jim Case, Wauwatosa Fire Department, Wauwatosa, Wisconsin	161-1	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Chris Garison, Sun Prairie Fire Department, Sun Prairie, Wisconsin	265-1	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	394-1	Mitigation	S.18
Marion Greene, Chair of the Board of Commissioners, Hennepin County, Minnesota	440-1	Grade Crossing Delay	S.8
Erin Aleman, Chicago Metropolitan Agency for Planning	447-1	Environmental Review Process	S.3
Erin Aleman, Chicago Metropolitan Agency for Planning	447-2	Grade Crossing Delay	S.8
Erin Aleman, Chicago Metropolitan Agency for Planning	447-3	Grade Crossing Delay	S.8
Erin Aleman, Chicago Metropolitan Agency for Planning	447-4	Grade Crossing Delay	S.8
Ryan Hanghian, Iowa Professional Firefighters	449-1	Grade Crossing Delay	S.8
Herman Rogers, Harris County Pollution Control Services	450-1	Hazardous Materials Transportation	S.5
Herman Rogers, Harris County Pollution Control Services	450-2	Noise and Vibration	S.11
Herman Rogers, Harris County Pollution Control Services	450-3	Noise and Vibration	S.12
Sarah Jane Utley, Harris County Attorney's Office	453-1	Environmental Review	S.3

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Sarah Jane Utley, Harris County Attorney's Office	453-2	Hazardous Materials Transportation	S.5
Sarah Jane Utley, Harris County Attorney's Office	453-3	Hazardous Materials Transportation	S.5
Sarah Jane Utley, Harris County Attorney's Office	453-4	Noise and Vibration	S.11
Sarah Jane Utley, Harris County Attorney's Office	453-5	Air Quality and Climate Change	S.12
Sarah Jane Utley, Harris County Attorney's Office	453-6	Air Quality and Climate Change	S.12
Sarah Jane Utley, Harris County Attorney's Office	453-7	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-8	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-9	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-10	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-11	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-12	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-13	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-14	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-15	Cumulative Impacts	S.17

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Sarah Jane Utley, Harris County Attorney's Office	453-16	Mitigation	S.18
Sarah Jane Utley, Harris County Attorney's Office	453-17	Mitigation	S.18
Sarah Jane Utley, Harris County Attorney's Office	453-18	Mitigation	S.18
Sarah Jane Utley, Harris County Attorney's Office	453-19	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-20	Environmental Review Process	S.3
Sarah Jane Utley, Harris County Attorney's Office	453-21	Freight Rail Safety	S.4
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-1	Hazardous Materials Transportation	S.5
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-2	Hazardous Materials Transportation	S.5
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-3	Hazardous Materials Transportation	S.5
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-4	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-5	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-6	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-7	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-8	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-9	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-10	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota,	459-11	Intermodal Facility Traffic	S.10

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
and the Hennepin County Regional Railroad Authority			
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-12	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-13	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-14	Mitigation	S.18
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-15	Mitigation	S.18
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-1	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-2	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-3	Environmental Review	S.3

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-4	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-5	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-6	Cumulative Impacts	S.17
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-7	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-8	Passenger Rail Safety	S.6
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-9	Passenger Rail Safety	S.6
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-10	Passenger Rail Safety	S.6
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-11	Grade Crossing Safety	S.7
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-12	Grade Crossing Safety	S.7
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-13	Grade Crossing Safety	S.7

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-14	Grade Crossing Safety	S.7
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-15	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-1	Grade Crossing Delay	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-2	Mitigation	S.18
Tom Wilcox, The Coalition to Stop CPKC	462-3	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-4	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-5	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-6	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-7	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-8	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-9	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-10	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-11	Environmental Review	S.3

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Tom Wilcox, The Coalition to Stop CPKC	462-12	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-13	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-14	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-15	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-16	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-17	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-18	Mitigation	S.18
Tom Wilcox, The Coalition to Stop CPKC	462-19	Mitigation	S.18
Tom Wilcox, The Coalition to Stop CPKC	462-20	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-21	Hazardous Materials Transportation	S.5
Tom Wilcox, The Coalition to Stop CPKC	462-22	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-23	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-24	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-25	Grade Crossing Safety	S.7

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Tom Wilcox, The Coalition to Stop CPKC	462-26	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-27	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-28	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-29	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-30	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-31	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-32	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-33	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-34	Cumulative Impacts	S.17
Tom Wilcox, The Coalition to Stop CPKC	462-35	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-36	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-37	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-38	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-39	Noise and Vibration	S.11

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Tom Wilcox, The Coalition to Stop CPKC	462-40	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-41	Noise and Vibration	S.11
Aaron Lipski, Fire Chief, City of Milwaukee, Wisconsin	503-1	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-1	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-2	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-3	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-4	Hazardous Materials Transportation	S.5
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-5	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-6	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-7	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-8	Mitigation	S.18

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-9	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-10	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-11	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-12	Mitigation	S.18
Kurtis Potzgay, Coalition to Stop CPKC	566-1	Environmental Review	S.3
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-1	Environmental Review	S.3
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-2	Grade Crossing Delay	S.8
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-3	Intermodal Facility Traffic	S.10
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-4	Environmental Review	S.3
Carie Anne Ergo, Village Administrator, Itasca, Illinois	568-1	Grade Crossing Delay	S.8
Christopher Snyder, Director of Transportation and County Engineer for DuPage County	571-1	Grade Crossing Delay	S.8
Karen Robles, Director of Transportation, Village of Schaumburg, Illinois	572-1	Grade Crossing Safety	S.7

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Greg Vesta, Police Chief, City of Wood Dale, Illinois	573-1	Grade Crossing Delay	S.8
Steve Herron, Police Chief, Village of Roselle, Illinois	574-1	Grade Crossing Delay	S.8
Robert O'Connor, Director of Police for the Village of Itasca, Illinois	575-1	Grade Crossing Delay	S.8
Dan Schulze, Police Chief, Village of Bensenville, Illinois	576-1	Grade Crossing Delay	S.8
Ana Lalley, Police Chief, Elgin, Illinois	577-1	Grade Crossing Delay	S.8
Geoffrey Pretkelis, Police Chief, Village of Bartlett, Illinois	578-1	Grade Crossing Delay	S.8
James Burke, Fire Chief, Wood Dale, Illinois	579-1	Grade Crossing Delay	S.8
Mark Bozik, Fire Chief, Village of Roselle, Illinois	580-1	Grade Crossing Delay	S.8
John Schneidwind, Fire Chief, Village of Itasca, Illinois	581-1	Grade Crossing Delay	S.8
Eric Fors, Fire Chief, Village of Hanover Park, Illinois	582-1	Grade Crossing Delay	S.8
William Gabrenya, Fire Chief, Village of Bartlett, Illinois	583-1	Hazardous Materials Transportation	S.5
Robb Cagann, Fire Chief, Elgin, Illinois	584-1	Grade Crossing Delay	S.8
Evan Summers, Village Manager, Village of Bensenville, Illinois	587-1	Noise and Vibration	S.11

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Shubhra Govind, Director of Community and Economic Development, Village of Hanover Park, Illinois	588-1	Environmental Review	S.3
Kevin Wallace, Village President, Bartlett, Illinois	589-1	Air Quality and Climate Change	S.12
William Benz, Metra	592-1	Environmental Review Process	S.3
William Benz, Metra	592-3	Environmental Review Process	S.3
Douglas Halverson, Fire Chief, Village of Bensenville, Illinois	593-1	Grade Crossing Delay	S.8
David Webb, Deputy Village Manager, Village of Hanover Park, Illinois	595-1	Air Quality and Climate Change	S.12
Michael Jenny, Village President, Village of Glenview, Illinois	600-1	Passenger Rail Safety	S.6
Richard Kozal, City Manager, City of Elgin, Illinois	613-1	Grade Crossing Delay	S.8
Richard Kozal, City Manager, City of Elgin, Illinois	613-2	Environmental Review Process	S.3
Paula Schumacher, Village Administrator, Village of Bartlett, Illinois	614-1	Noise and Vibration	S.11
Rodney Craig, Village President, Hanover Park, Illinois; Metra Board of Directors	616-1	Grade Crossing Safety	S.7
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-1	Intermodal Facility Traffic	S.10

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-2	Environmental Review Process	S.3
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-3	Environmental Review Process	S.3
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-4	Noise and Vibration	S.11
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-5	Grade Crossing Delay	S.8
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-6	Grade Crossing Delay	S.8
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-7	Grade Crossing Delay	S.8
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-8	Environmental Review Process	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	645-1	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	645-2	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	645-3	Hazardous Materials Transport	S.5
Carie Anne Ergo, Village Administrator, Itasca, Illinois	655-1	Mitigation	S.18

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Public Works Department, City of Kansas City, Missouri	688-1	Grade Crossing Delay	S.8
Public Works Department, City of Kansas City, Missouri	688-2	Grade Crossing Delay	S.8
Public Works Department, City of Kansas City, Missouri	688-3	Noise and Vibration	S.11
Public Works Department, City of Kansas City, Missouri	688-4	Mitigation	S.18
<i>Tribes</i>			
Osage Nation Historic Preservation Office	122-1	Mitigation	S.18
Mike LaRoque	139-1	Grade Crossing Delay	S.8
Mike LaRoque	139-2	Hazardous Materials Transport	S.5
Mike LaRoque	651-1	Grade Crossing Delay	S.8
Mike LaRoque	651-2	Hazardous Materials Transportation	S.5
Mike LaRoque	651-3	Environmental Review Process	S.3
Osage Nation Historic Preservation Office	693-1	Mitigation	S.18
<i>Organizations</i>			
Michael Dorsey and Conan Smith, Michigan Environmental Council	1-1	Environmental Justice	S.16
Marty Lancton, President, Houston Professional Fire Fighters Association Local 341	81-1	Hazardous Materials Transport	S.5

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Marty Lancton, President, Houston Professional Fire Fighters Association Local 341	81-2	Grade Crossing Delay	S.8
Demetris Alfred, President, Missouri State Council of Fire Fighters	107-1	Hazardous Materials Transport	S.5
Demetris Alfred, President, Missouri State Council of Fire Fighters	107-2	Grade Crossing Delay	S.8
Mahlon Mitchell, President, Professional Fire Fighters of Wisconsin, Inc.	124-1	Hazardous Materials Transport	S.5
Mahlon Mitchell, President, Professional Fire Fighters of Wisconsin, Inc.	124-2	Grade Crossing Delay	S.8
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	436-1	Air Quality and Climate Change	S.12
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	436-2	Noise and Vibration	S.11
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	436-3	Hazardous Materials Transportation	S.5
Danielle Laperriere, Eastwood Civic Association	452-1	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-2	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-3	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Danielle Laperriere, Eastwood Civic Association	452-4	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-5	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-6	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-7	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-8	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-9	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-10	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-11	Noise and Vibration	S.11
Danielle Laperriere, Eastwood Civic Association	452-12	Mitigation	S.18
Danielle Laperriere, Eastwood Civic Association	452-13	Environmental Review Process	S.3
Jennifer Hadayia, Air Alliance Houston	454-1	Environmental Justice	S.16
Stephanie Coates, Environmental Defense Fund	461-1	Freight Rail Safety	S.4
Stephanie Coates, Environmental Defense Fund	461-2	Freight Rail Safety	S.4
Stephanie Coates, Environmental Defense Fund	461-3	Freight Rail Safety	S.4

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Stephanie Coates, Environmental Defense Fund	461-4	Freight Rail Safety	S.4
Stephanie Coates, Environmental Defense Fund	461-5	Hazardous Materials Transportation	S.5
Stephanie Coates, Environmental Defense Fund	461-6	Hazardous Materials Transportation	S.5
Stephanie Coates, Environmental Defense Fund	461-7	Grade Crossing Safety	S.7
Stephanie Coates, Environmental Defense Fund	461-8	Grade Crossing Safety	S.7
Stephanie Coates, Environmental Defense Fund	461-9	Grade Crossing Delay	S.8
Stephanie Coates, Environmental Defense Fund	461-10	Grade Crossing Delay	S.8
Stephanie Coates, Environmental Defense Fund	461-11	Grade Crossing Delay	S.8
Stephanie Coates, Environmental Defense Fund	461-12	Noise and Vibration	S.11
Stephanie Coates, Environmental Defense Fund	461-13	Noise and Vibration	S.11
Stephanie Coates, Environmental Defense Fund	461-14	Noise and Vibration	S.11
Stephanie Coates, Environmental Defense Fund	461-15	Noise and Vibration	S.11
Stephanie Coates, Environmental Defense Fund	461-16	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-17	Air Quality and Climate Change	S.12

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Stephanie Coates, Environmental Defense Fund	461-18	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-19	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-20	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-21	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-22	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-23	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-24	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-25	Truck to Rail Diversions	S.9
Stephanie Coates, Environmental Defense Fund	461-26	Truck to Rail Diversions	S.9
Stephanie Coates, Environmental Defense Fund	461-27	Intermodal Facility Traffic	S.10
Stephanie Coates, Environmental Defense Fund	461-28	Environmental Justice	S.16
Stephanie Coates, Environmental Defense Fund	461-29	Environmental Justice	S.16
Stephanie Coates, Environmental Defense Fund	461-30	Environmental Justice	S.16
Stephanie Coates, Environmental Defense Fund	461-31	Environmental Justice	S.16

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Stephanie Coates, Environmental Defense Fund	461-32	Cumulative Impacts	S.17
Stephanie Coates, Environmental Defense Fund	461-33	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-34	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-35	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-36	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-37	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-38	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-39	Air Quality	S.12
Stephanie Coates, Environmental Defense Fund	461-40	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-41	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-42	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-43	Mitigation	S.18
Sierra Club Delta Chapter	463-1	Environmental Review Process	S.3
Chad Major, President, Professional Fire Fighters Association of Louisiana	471-1	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Scott Vadnais, President, Minnesota Professional Fire Fighters	481-1	Grade Crossing Delay	S.8
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	534-1	Noise and Vibration	S.11
Sierra Club Eagle View Group	549-1	Biological Resources	S.14
Soren R. Jensen, Midtown Greenway Coalition	553-1	Environmental Review Process	S.3
Andy Singer, Co-Chair, Saint Paul Bicycle Coalition	556-1	Environmental Review Process	S.3
Katherine Garcia, Sierra Club	558-1	Environmental Review Process	S.3
Sam Rockwell, Executive Director, Move Minnesota	560-1	Environmental Review Process	S.3
Eric Amel, Chair of PPA Land Use Committee, Prospect Park Association	561-1	Environmental Review Process	S.3
Roy L. Malveaux, Director of People Against Contaminated Environment	631-1	Environmental Review Process	S.3
Roy L. Malveaux, Director of People Against Contaminated Environment	631-2	Hazardous Materials Transportation	S.5
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-1	Environmental Review Process	S.3
Hilton Kelley, Founder and Executive Director of	632-2	Environmental Justice	S.16

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Community In-Power and Development Association			
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-3	Grade Crossing Delay	S.8
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-4	Grade Crossing Delay	S.8
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-5	Noise and Vibration	S.11
Pastor Larry and Tina Greathouse, Community of Hope Church	635-1	Noise and Vibration	S.3
Pastor Larry and Tina Greathouse, Community of Hope Church	635-2	Environmental Review Process	S.11
Dan Borgen, US Development Group	669-1	Energy	S.13
J.L. Griswold - Camanche Public Library	677-1	Mitigation	S.18
<i>Class I Railroads</i>			
Carl Van Dyke, Sidley on behalf of CN	33-1	Environmental Review Process	S.3
Carl Van Dyke, Sidley on behalf of CN	33-2	Environmental Review Process	S.3
Carl Van Dyke, Sidley on behalf of CN	33-3	Environmental Review Process	S.3

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Carl Van Dyke, Sidley on behalf of CN	33-4	Environmental Review Process	S.3
Carl Van Dyke, Sidley on behalf of CN	33-5	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-1	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-2	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-3	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-4	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-5	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-6	Intermodal Facility Traffic	S.10
Peter Whitfield, Sidley on behalf of CN	518-7	Energy	S.13
Peter Whitfield, Sidley on behalf of CN	518-8	Energy	S.13
Peter Whitfield, Sidley on behalf of CN	518-9	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-10	Environmental Review Process	S.3
Kari Harris, Manager of Environmental Impact, Canadian National	594-1	Environmental Review Process	S.3
Rob Reilly, Canadian National	663-1	Environmental Review Process	S.3

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Rob Reilly, Canadian National	663-2	Environmental Review Process	S.3
Kathy Gainey, Canadian National	664-1	Environmental Review Process	S.3
Matt Warren, Canadian National	665-1	Environmental Review Process	S.3
Matt Warren, Canadian National	665-3	Environmental Review Process	S.3
Jon Gabriel, BNSF	667-1	Grade Crossing Delay	S.8
<i>Private Citizens</i>			
Sabrina Chan	4-1	Grade Crossing Delay	S.8
Meg Thomas	5-1	Energy	S.13
Jean Ross	7-1	Energy	S.13
Michael Pajeau	8-1	Grade Crossing Delay	S.8
William Allen Grunder	14-1	Noise and Vibration	S.11
Gary Ehrle	15-1	Mitigation	S.18
Brian Trentz	18-1	Noise and Vibration	S.11
Dave Willis	19-1	Grade Crossing Delay	S.8
Dave Shutte	22-1	Grade Crossing Delay	S.8
Jacquelyn Servaty	38-1	Grade Crossing Delay	S.8
Dennis R Torii, Sr.	61-1	Mitigation	S.18
Connie Allen	73-1	Mitigation	S.18
Richard Clewell	74-1	Freight Rail Safety	S.4
Richard Clewell	74-2	Noise and Vibration	S.11

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Melissa Suzik	75-1	Grade Crossing Delay	S.8
Melissa Suzik	75-2	Environmental Justice	S.16
Griffin Hahn	79-1	Grade Crossing Safety	S.7
Griffin Hahn	79-2	Grade Crossing Delay	S.8
Claudia Baxley	85-1	Grade Crossing Delay	S.8
Daniel Freedman	87-1	Truck to Rail Diversions	S.9
Manilan Houle, Member of Fond du Lac Band of Lake Superior Chippewa	90-1	Hazardous Materials Transportation	S.5
Colin Shirk	92-1	Biological Resources	S.14
Mary M Maher	95-1	Biological Resources	S.14
Beth Anne Halsey	96-1	Noise and Vibration	S.11
Jeff Skalberg	115-1	Grade Crossing Delay	S.8
Brian Ritter, Executive Director of Nahant Marsh	117-1	Water Resources	S.15
Dustin Henslee	118-1	Grade Crossing Delay	S.8
Veronica Chapa Gorenzynski	125-1	Environmental Review Process	S.3
Gale Francione	126-1	Grade Crossing Safety	S.7
Gale Francione	126-2	Grade Crossing Delay	S.8
Mike Stanley	135-1	Grade Crossing Delay	S.8
Kelsey Brodt	140-1	Mitigation	S.18
Winona LaDuke	162-1	Hazardous Materials Transportation	S.5
Winona LaDuke	162-2	Grade Crossing Delay	S.8

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Shveta Yarosh	173-1	Grade Crossing Delay	S.8
Jody Miller	174-1	Noise and Vibration	S.11
Jody Miller	174-2	Biological Resources	S.14
Scott Finnegan	182-1	Biological Resources	S.14
Jennifer Crowley	231-1	Grade Crossing Delay	S.8
Dave Willis	252-1	Environmental Review Process	S.3
Gerri Songer	280-1	Hazardous Materials Transportation	S.5
Debra R Freeland	308-1	Noise and Vibration	S.11
Reginald Arkell	310-1	Environmental Review Process	S.3
Tom Lindelof	336-1	Hazardous Materials Transportation	S.5
Daniel Bennett	344-1	Grade Crossing Safety	S.7
Daniel Bennett	344-2	Environmental Review Process	S.3
Amy Dinn	364-1	Grade Crossing Delay	S.8
Elizabeth F	366-1	Environmental Justice	S.16
Lori O'Dell McCollum	387-1	Environmental Justice	S.16
Lori O'Dell McCollum	387-2	Biological Resources	S.14
Lori O'Dell McCollum	387-3	Environmental Review Process	S.3
Richard Clewell	398-1	Freight Rail Safety	S.4
Richard Clewell	398-2	Noise and Vibration	S.11

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Rebecca Howe	405-1	Noise and Vibration	S.11
Brian Ritter, Executive Director of Nahant Marsh Education Center	423-1	Biological Resources	S.14
Madeline Kull	465-1	Water Resources	S.15
Brian Ritter, Executive Director of Nahant Marsh Education Center	514-1	Water Resources	S.15
Jacob Angelo	525-1	Grade Crossing Delay	S.8
Ray Allen	529-1	Noise and Vibration	S.11
Ray Allen	529-2	Water Resources	S.15
Kyle Rogers	542-1	Grade Crossing Delay	S.8
Dave Bowman	548-1	Grade Crossing Delay	S.8
Daniel Bennett	555-1	Freight Rail Safety	S.4
Sarah Albrecht	591-1	Environmental Review Process	S.3
Sarah Albrecht	591-2	Noise and Vibration	S.11
Michael Wolfe	597-1	Grade Crossing Delay	S.8
Scott Tunnichliff	603-1	Biological Resources	S.14
Sandra Falco	621-1	Grade Crossing Delay	S.8
Eugene Tibbetts, former District Representative and Chairman of the White Earth Band of Ojibwe, Minnesota	634-1	Biological Resources	S.14
Susan W. Leuthauser	636-1	Hazardous Materials Transportation	S.5

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Susan W. Leuthauser	636-2	Noise and Vibration	S.11
Susan W. Leuthauser	636-3	Freight Rail Safety	S. 4
William Gluba	649-1	Noise and Vibration	S.11
William Gluba	649-2	Mitigation	S.18
Ben Schweigert	650-1	Grade Crossing Delay	S.8
Ben Schweigert	650-2	Hazardous Materials Transportation	S.5
James Burke	653-1	Grade Crossing Delay	S.8
James Burke	653-2	Hazardous Materials Transportation	S.5
Eugene Tibbetts, former District Representative and Chairman of the White Earth Band of Ojibwe, Minnesota	657-1	Environmental Review Process	S.3
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-1	Water Resources	S.15
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-2	Water Resources	S.15
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-3	Hazardous Materials Transportation	S.5
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-4	Noise and Vibration	S.11
Paulette Taylor	679-1	Environmental Review Process	S.3
Ann Schwickerath	686-1	Noise and Vibration	S.11

Table S.1-1. Comment Index Organized by Comment Number

Commenter	Comment Number	Topic	Appendix Section
Ann Geiger	687-1	Noise and Vibration	S.11
Ariana Akbari	689-1	Environmental Review Process	S.3
Patrick Bosold	690-1	Hazardous Materials Transport	S.5
Morgan Kinch	691-1	Noise and Vibration	S.11
Trisha Rea	692-1	Grade Crossing Delay	S.8

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Aaron Lipski, Fire Chief, City of Milwaukee, Wisconsin	503-1	Grade Crossing Delay	S.8
Amy Dinn	364-1	Grade Crossing Delay	S.8
Amy Koch, former Majority Leader of the Minnesota State Senate	668-1	Energy	S.13
Amy Koch, former Majority Leader of the Minnesota State Senate	668-2	Energy	S.13
Amy Koch, former Majority Leader of the Minnesota State Senate	668-3	Grade Crossing Delay	S.8
Amy Koch, former Majority Leader of the Minnesota State Senate	668-4	Environmental Review Process	S.3
Amy Koch, former Majority Leader of the Minnesota State Senate	668-5	Environmental Review Process	S.3
Ana Lalley, Police Chief, Elgin, Illinois	577-1	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	394-1	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-1	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-2	Grade Crossing Delay	S.8

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-3	Grade Crossing Delay	S.8
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-4	Hazardous Materials Transportation	S.5
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-5	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-6	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-7	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-8	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-9	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-10	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-11	Mitigation	S.18
Andrew S. Kida, City Administrator, City of Camanche, Iowa	554-12	Mitigation	S.18

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Andy Singer, Co-Chair, Saint Paul Bicycle Coalition	556-1	Environmental Review Process	S.3
Ann Geiger	687-1	Noise and Vibration	S.11
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	436-1	Air Quality and Climate Change	S.12
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	436-2	Noise and Vibration	S.11
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	436-3	Hazardous Materials Transportation	S.5
Ann Geiger, Secretary, Iowa Mississippi River Parkway Commission	534-1	Noise and Vibration	S.11
Ann Schwickerath	686-1	Noise and Vibration	S.11
Ariana Akbari	689-1	Environmental Review Process	S.3
Austin Pruett, Mayor, Camanche Iowa	93-1	Grade Crossing Delay	S.8
Austin Pruett, Mayor, Camanche Iowa	93-2	Hazardous Materials Transport	S.5
Ben Schweigert	650-1	Grade Crossing Delay	S.8
Ben Schweigert	650-2	Hazardous Materials Transportation	S.5
Beth Anne Halsey	96-1	Noise and Vibration	S.11
Betty McCollum, U.S. Representative (Minnesota)	685-1	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Brian Ritter, Executive Director of Nahant Marsh	117-1	Water Resources	S.15
Brian Ritter, Executive Director of Nahant Marsh Education Center	423-1	Biological Resources	S.14
Brian Ritter, Executive Director of Nahant Marsh Education Center	514-1	Water Resources	S.15
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-1	Water Resources	S.15
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-2	Water Resources	S.15
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-3	Hazardous Materials Transportation	S.5
Brian Ritter, Executive Director of Nahant Marsh Education Center	659-4	Noise and Vibration	S.11
Brian Trentz	18-1	Noise and Vibration	S.11
Brian Vercruyse, Illinois Commerce Commission	523-1	Grade Crossing Safety	S.7
Brian Vercruyse, Illinois Commerce Commission	523-2	Grade Crossing Safety	S.7
Brian Vercruyse, Illinois Commerce Commission	523-3	Grade Crossing Safety	S.7
Brian Vercruyse, Illinois Commerce Commission	523-4	Grade Crossing Safety	S.7

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Brian Vercruysse, Illinois Commerce Commission	523-5	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-6	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-7	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-8	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-9	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-10	Grade Crossing Safety	S.7
Brian Vercruysse, Illinois Commerce Commission	523-11	Grade Crossing Delay	S.8
Brian Vercruysse, Illinois Commerce Commission	523-12	Grade Crossing Delay	S.8
Brian Vercruysse, Illinois Commerce Commission	523-13	Grade Crossing Delay	S.8
Brian Vercruysse, Illinois Commerce Commission	523-14	Grade Crossing Delay	S.8
Brian Vercruysse, Illinois Commerce Commission	523-15	Grade Crossing Delay	S.8
Carie Anne Ergo, Village Administrator, Itasca, Illinois	568-1	Grade Crossing Delay	S.8
Carie Anne Ergo, Village Administrator, Itasca, Illinois	655-1	Mitigation	S.18
Carl Van Dyke, Sidley on behalf of CN	33-1	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Carl Van Dyke, Sidley on behalf of CN	33-2	Environmental Review Process	S.3
Carl Van Dyke, Sidley on behalf of CN	33-3	Environmental Review Process	S.3
Carl Van Dyke, Sidley on behalf of CN	33-4	Environmental Review Process	S.3
Carl Van Dyke, Sidley on behalf of CN	33-5	Environmental Review Process	S.3
Carol Alvarado, Texas State Senator	151-1	Environmental Review Process	S.3
Chad Major, President, Professional Fire Fighters Association of Louisiana	471-1	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	645-1	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	645-2	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	645-3	Hazardous Materials Transport	S.5
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota,	459-1	Hazardous Materials Transportation	S.5

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
and the Hennepin County Regional Railroad Authority			
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-2	Hazardous Materials Transportation	S.5
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-3	Hazardous Materials Transportation	S.5
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-4	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-5	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-6	Grade Crossing Delay	S.8
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-7	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of	459-8	Intermodal Facility Traffic	S.10

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority			
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-9	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-10	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-11	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-12	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-13	Intermodal Facility Traffic	S.10
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-14	Mitigation	S.18

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Hennepin County, Minnesota, and the Hennepin County Regional Railroad Authority	459-15	Mitigation	S.18
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-1	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-2	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-3	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-4	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-5	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-6	Cumulative Impacts	S.17
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-7	Environmental Review	S.3
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-8	Passenger Rail Safety	S.6
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-9	Passenger Rail Safety	S.6

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-10	Passenger Rail Safety	S.6
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-11	Grade Crossing Safety	S.7
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-12	Grade Crossing Safety	S.7
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-13	Grade Crossing Safety	S.7
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-14	Grade Crossing Safety	S.7
Charles Spitulnik, Kaplan Kirsch Rockwell, on behalf of Metra	460-15	Grade Crossing Safety	S.7
Chief Jim Case, Wauwatosa Fire Department, Wauwatosa, Wisconsin	161-1	Grade Crossing Delay	S.8
Chief Nathaniel Melby, Campbell Fire Department, Campbell, Wisconsin	152-1	Grade Crossing Delay	S.8
Chief Tony Holinka, Shelby Fire Department, Shelby, Wisconsin	153-1	Grade Crossing Delay	S.8
Chris Garison, Sun Prairie Fire Department, Sun Prairie, Wisconsin	265-1	Grade Crossing Delay	S.8

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Christopher Snyder, Director of Transportation and County Engineer for DuPage County	571-1	Grade Crossing Delay	S.8
Claudia Baxley	85-1	Grade Crossing Delay	S.8
Colin Shirk	92-1	Biological Resources	S.14
Connie Allen	73-1	Mitigation	S.18
Courtney Hoover, Regional Environmental Officer, Office of Environmental Policy and Compliance, Department of the Interior	627-1	Biological Resources	S.14
Dan Borgen, US Development Group	669-1	Energy	S.13
Dan Schulze, Police Chief, Village of Bensenville, Illinois	576-1	Grade Crossing Delay	S.8
Daniel Bennett	344-1	Grade Crossing Safety	S.7
Daniel Bennett	344-2	Environmental Review Process	S.3
Daniel Bennett	555-1	Freight Rail Safety	S.4
Daniel Freedman	87-1	Truck to Rail Diversions	S.9
Danielle Laperriere, Eastwood Civic Association	452-1	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-2	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-3	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-4	Grade Crossing Delay	S.8

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Danielle Laperriere, Eastwood Civic Association	452-5	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-6	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-7	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-8	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-9	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-10	Grade Crossing Delay	S.8
Danielle Laperriere, Eastwood Civic Association	452-11	Noise and Vibration	S.11
Danielle Laperriere, Eastwood Civic Association	452-12	Mitigation	S.18
Danielle Laperriere, Eastwood Civic Association	452-13	Environmental Review Process	S.3
Dave Bowman	548-1	Grade Crossing Delay	S.8
Dave Kaptain, Mayor, Elgin, Illinois	94-1	Grade Crossing Delay	S.8
Dave Kaptain, Mayor, Elgin, Illinois	94-2	Grade Crossing Safety	S.9
Dave Shutte	22-1	Grade Crossing Delay	S.8
Dave Willis	19-1	Grade Crossing Delay	S.8
Dave Willis	252-1	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
David Pileski, Mayor, Roselle, Illinois	586-1	Noise and Vibration	S.11
David Webb, Deputy Village Manager, Village of Hanover Park, Illinois	595-1	Air Quality and Climate Change	S.12
Debra R Freeland	308-1	Noise and Vibration	S.11
Demetris Alfred, President, Missouri State Council of Fire Fighters	107-1	Hazardous Materials Transport	S.5
Demetris Alfred, President, Missouri State Council of Fire Fighters	107-2	Grade Crossing Delay	S.8
Dennis R Torii, Sr.	61-1	Mitigation	S.18
Diane Pappas, Illinois State Senator	565-1	Grade Crossing Delay	S.8
Diane Pappas, Illinois State Senator	565-2	Cumulative Impacts	S.17
Douglas Halverson, Fire Chief, Village of Bensenville, Illinois	593-1	Grade Crossing Delay	S.8
Dustin Henslee	118-1	Grade Crossing Delay	S.8
Elizabeth F	366-1	Environmental Justice	S.16
Eric Amel, Chair of PPA Land Use Committee, Prospect Park Association	561-1	Environmental Review Process	S.3
Eric Fors, Fire Chief, Village of Hanover Park, Illinois	582-1	Grade Crossing Delay	S.8
Erin Aleman, Chicago Metropolitan Agency for Planning	447-1	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Erin Aleman, Chicago Metropolitan Agency for Planning	447-2	Grade Crossing Delay	S.8
Erin Aleman, Chicago Metropolitan Agency for Planning	447-3	Grade Crossing Delay	S.8
Erin Aleman, Chicago Metropolitan Agency for Planning	447-4	Grade Crossing Delay	S.8
Eugene Tibbetts, former District Representative and Chairman of the White Earth Band of Ojibwe, Minnesota	634-1	Biological Resources	S.14
Eugene Tibbetts, former District Representative and Chairman of the White Earth Band of Ojibwe, Minnesota	657-1	Environmental Review Process	S.3
Evan Summers, Village Manager, Village of Bensenville, Illinois	587-1	Noise and Vibration	S.11
Fire Chief, Marinette Fire Department, Marinette, Wisconsin	91-1	Grade Crossing Delay	S.8
Frank DeSimone, Mayor, Bensenville, Illinois	590-1	Grade Crossing Delay	S.8
Gale Francione	126-1	Grade Crossing Safety	S.7
Gale Francione	126-2	Grade Crossing Delay	S.8
Gary Ehrle	15-1	Mitigation	S.18
Geoffrey Pretkelis, Police Chief, Village of Bartlett, Illinois	578-1	Grade Crossing Delay	S.8

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Gerri Songer	280-1	Hazardous Materials Transportation	S.5
Greg Vesta, Police Chief, City of Wood Dale, Illinois	573-1	Grade Crossing Delay	S.8
Griffin Hahn	79-1	Grade Crossing Safety	S.7
Griffin Hahn	79-2	Grade Crossing Delay	S.8
Herman Rogers, Harris County Pollution Control Services	450-1	Hazardous Materials Transportation	S.5
Herman Rogers, Harris County Pollution Control Services	450-2	Noise and Vibration	S.11
Herman Rogers, Harris County Pollution Control Services	450-3	Noise and Vibration	S.12
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-1	Environmental Review Process	S.3
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-2	Environmental Justice	S.16
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-3	Grade Crossing Delay	S.8
Hilton Kelley, Founder and Executive Director of Community In-Power and Development Association	632-4	Grade Crossing Delay	S.8
Hilton Kelley, Founder and Executive Director of	632-5	Noise and Vibration	S.11

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Community In-Power and Development Association			
J.L. Griswold - Camanche Public Library	677-1	Mitigation	S.18
Jacob Angelo	525-1	Grade Crossing Delay	S.8
Jacquelyn Servaty	38-1	Grade Crossing Delay	S.8
James Burke	653-1	Grade Crossing Delay	S.8
James Burke	653-2	Hazardous Materials Transportation	S.5
James Burke, Fire Chief, Wood Dale, Illinois	579-1	Grade Crossing Delay	S.8
Jean Ross	1-Jul	Energy	S.13
Jeff Pruyn, Mayor, Itasca, Illinois	569-1	Grade Crossing Delay	S.8
Jeff Skalberg	115-1	Grade Crossing Delay	S.8
Jennifer Crowley	231-1	Grade Crossing Delay	S.8
Jennifer Hadayia, Air Alliance Houston	454-1	Environmental Justice	S.16
Jody Miller	174-1	Noise and Vibration	S.11
Jody Miller	174-2	Biological Resources	S.14
John Schneidwind, Fire Chief, Village of Itasca, Illinois	581-1	Grade Crossing Delay	S.8
Jon Gabriel, BNSF	667-1	Grade Crossing Delay	S.8
Kane County, Illinois Jodie Wollnik, Director of Water Resources, Kane County, Illinois	24-1	Air Quality and Climate Change	S.12

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Kane County, Illinois Jodie Wollnik, Director of Water Resources, Kane County, Illinois	24-2	Air Quality and Climate Change	S.12
Karen Robles, Director of Transportation, Village of Schaumburg, Illinois	572-1	Grade Crossing Safety	S.7
Kari Harris, Manager of Environmental Impact, Canadian National	594-1	Environmental Review Process	S.3
Katherine Garcia, Sierra Club	558-1	Environmental Review Process	S.3
Kathy Gaaney, Canadian National	664-1	Environmental Review Process	S.3
Kelsey Brodt	140-1	Mitigation	S.18
Ken Beck, Scott County, Iowa	27-1	Grade Crossing Delay	S.8
Ken Croken, Member, Board of Supervisors, Scott County, Iowa	138-1	Environmental Justice	S.16
Ken Croken, Member, Board of Supervisors, Scott County, Iowa	138-2	Grade Crossing Delay	S.8
Kevin Wallace, Village President, Bartlett, Illinois	589-1	Air Quality and Climate Change	S.12
Kurtis Potzgay, Coalition to Stop CPKC	566-1	Environmental Review	S.3
Kyle Rogers	542-1	Grade Crossing Delay	S.8
Lori O'Dell McCollum	387-2	Biological Resources	S.14
Lori O'Dell McCollum	387-1	Environmental Justice	S.16

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Lori O'Dell McCollum	387-3	Environmental Review Process	S.3
Lucy Cross, Arkansas Division of Environmental Quality	601-1	Water Resources	S.15
Madeline Kull	465-1	Water Resources	S.15
Mahlon Mitchell, President, Professional Fire Fighters of Wisconsin, Inc.	124-1	Hazardous Materials Transport	S.5
Mahlon Mitchell, President, Professional Fire Fighters of Wisconsin, Inc.	124-2	Grade Crossing Delay	S.8
Manilan Houle, Member of Fond du Lac Band of Lake Superior Chippewa	90-1	Hazardous Materials Transportation	S.5
Marion Greene, Chair of the Board of Commissioners, Hennepin County, Minnesota	440-1	Grade Crossing Delay	S.8
Mark Bozik, Fire Chief, Village of Roselle, Illinois	580-1	Grade Crossing Delay	S.8
Marty Lancton, President, Houston Professional Fire Fighters Association Local 341	81-1	Hazardous Materials Transport	S.5
Marty Lancton, President, Houston Professional Fire Fighters Association Local 341	81-2	Grade Crossing Delay	S.8
Mary M Maher	95-1	Biological Resources	S.14
Matt Warren, Canadian National	665-1	Environmental Review Process	S.3
Matt Warren, Canadian National	665-3	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Meg Thomas	1-May	Energy	S.13
Melissa Suzik	75-1	Grade Crossing Delay	S.8
Melissa Suzik	75-2	Environmental Justice	S.16
Michael Dorsey and Conan Smith, Michigan Environmental Council	1-Jan	Environmental Justice	S.16
Michael Jenny, Village President, Village of Glenview, Illinois	600-1	Passenger Rail Safety	S.6
Michael Pajeau	1-Aug	Grade Crossing Delay	S.8
Michael Wolfe	597-1	Grade Crossing Delay	S.8
Mike LaRoque	139-1	Grade Crossing Delay	S.8
Mike LaRoque	139-2	Hazardous Materials Transport	S.5
Mike LaRoque	651-1	Grade Crossing Delay	S.8
Mike LaRoque	651-2	Hazardous Materials Transportation	S.5
Mike LaRoque	651-3	Environmental Review Process	S.3
Mike Stanley	135-1	Grade Crossing Delay	S.8
Morgan Kinch	691-1	Noise and Vibration	S.11
Nunzio Pulice, Mayor, Wood Dale, Illinois	615-1	Grade Crossing Safety	S.7
Osage Nation Historic Preservation Office	122-1	Mitigation	S.18

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Osage Nation Historic Preservation Office	693-1	Mitigation	S.18
Pastor Larry and Tina Greathouse, Community of Hope Church	635-1	Noise and Vibration	S.3
Pastor Larry and Tina Greathouse, Community of Hope Church	635-2	Environmental Review Process	S.11
Patrick Bosold	690-1	Hazardous Materials Transport	S.5
Paul Anderson, Minnesota State Representative	99-1	Environmental Review Process	S.3
Paula Schumacher, Village Administrator, Village of Bartlett, Illinois	614-1	Noise and Vibration	S.11
Paulette Taylor	679-1	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-1	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-2	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-3	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-4	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-5	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-6	Intermodal Facility Traffic	S.10

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Peter Whitfield, Sidley on behalf of CN	518-7	Energy	S.13
Peter Whitfield, Sidley on behalf of CN	518-8	Energy	S.13
Peter Whitfield, Sidley on behalf of CN	518-9	Environmental Review Process	S.3
Peter Whitfield, Sidley on behalf of CN	518-10	Environmental Review Process	S.3
Public Works Department, City of Kansas City, Missouri	688-1	Grade Crossing Delay	S.8
Public Works Department, City of Kansas City, Missouri	688-2	Grade Crossing Delay	S.8
Public Works Department, City of Kansas City, Missouri	688-3	Noise and Vibration	S.11
Public Works Department, City of Kansas City, Missouri	688-4	Mitigation	S.18
Raja Krishnamoorthi, U.S. Representative (Illinois)	570-1	Environmental Review Process	S.3
Raja Krishnamoorthi, U.S. Representative (Illinois)	570-2	Grade Crossing Delay	S.8
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-1	Environmental Review	S.3
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-2	Environmental Review Process	S.3
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-3	Grade Crossing Delay	S.8
Raja Krishnamoorthi, U.S. Representative (Illinois)	511-4	Grade Crossing Delay	S.8

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Randy Roberson, Arkansas Department of Parks, Heritage and Tourism	601-2	Noise and Vibration	S.11
Ray Allen	529-1	Noise and Vibration	S.11
Ray Allen	529-2	Water Resources	S.15
Rebecca Howe	405-1	Noise and Vibration	S.11
Reginald Arkell	310-1	Environmental Review Process	S.3
Richard Clewell	74-1	Freight Rail Safety	S.4
Richard Clewell	74-2	Noise and Vibration	S.11
Richard Clewell	398-1	Freight Rail Safety	S.4
Richard Clewell	398-2	Noise and Vibration	S.11
Richard Kozal, City Manager, City of Elgin, Illinois	613-1	Grade Crossing Delay	S.8
Richard Kozal, City Manager, City of Elgin, Illinois	613-2	Environmental Review Process	S.3
Rob Reilly, Canadian National	663-1	Environmental Review Process	S.3
Rob Reilly, Canadian National	663-2	Environmental Review Process	S.3
Robb Cagann, Fire Chief, Elgin, Illinois	584-1	Grade Crossing Delay	S.8
Robert Gallegos, Houston City Council, District 1	662-1	Environmental Review Process	S.3
Robert Gallegos, Houston City Council, District 1	448-1	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Robert Gallegos, Houston City Council, District 1	448-2	Environmental Review Process	S.3
Robert Gallegos, Houston City Council, District 1	448-3	Environmental Review Process	S.3
Robert Gallegos, Houston City Council, District 1	448-5	Grade Crossing Delay	S.8
Robert O'Connor, Director of Police for the Village of Itasca, Illinois	575-1	Grade Crossing Delay	S.8
Rodney Craig, Village President, Hanover Park, Illinois; Metra Board of Directors	616-1	Grade Crossing Safety	S.7
Rodney Ellis, Harris County Commissioner	526-1	Environmental Review	S.3
Rodney Ellis, Harris County Commissioner	526-2	Environmental Justice	S.16
Rodney Ellis, Harris County Commissioner	526-3	Hazardous Materials Transportation	S.5
Rodney Ellis, Harris County Commissioner	526-4	Cumulative Impacts	S.17
Rodney Ellis, Harris County Commissioner	526-5	Grade Crossing Delay	S.8
Rodney Ellis, Harris County Commissioner	526-6	Environmental Review Process	S.3
Rodney Ellis, Harris County Commissioner	526-7	Environmental Review Process	S.3
Rodney Ellis, Harris County Commissioner	661-1	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Rodney Ellis, Harris County Commissioner	661-2	Grade Crossing Safety	S.7
Rodney Ellis, Harris County Commissioner	661-3	Environmental Review Process	S.3
Ron Reynolds, Texas State Representative	149-1	Environmental Review Process	S.3
Ron Reynolds, Texas State Representative	660-1	Cumulative Impacts	S.17
Ron Reynolds, Texas State Representative	660-2	Grade Crossing Delay	S.8
Roy L. Malveaux, Director of People Against Contaminated Environment	631-1	Environmental Review Process	S.3
Roy L. Malveaux, Director of People Against Contaminated Environment	631-2	Hazardous Materials Transportation	S.5
Ryan Hanghian, Iowa Professional Firefighters	449-1	Grade Crossing Delay	S.8
Sabrina Chan	1-Apr	Grade Crossing Delay	S.8
Sam Rockwell, Executive Director, Move Minnesota	560-1	Environmental Review Process	S.3
Sandra Falco	621-1	Grade Crossing Delay	S.8
Sarah Albrecht	591-1	Environmental Review Process	S.3
Sarah Albrecht	591-2	Noise and Vibration	S.11
Sarah Jane Utley, Harris County Attorney's Office	453-1	Environmental Review	S.3
Sarah Jane Utley, Harris County Attorney's Office	453-2	Hazardous Materials Transportation	S.5

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Sarah Jane Utley, Harris County Attorney's Office	453-3	Hazardous Materials Transportation	S.5
Sarah Jane Utley, Harris County Attorney's Office	453-4	Noise and Vibration	S.11
Sarah Jane Utley, Harris County Attorney's Office	453-5	Air Quality and Climate Change	S.12
Sarah Jane Utley, Harris County Attorney's Office	453-6	Air Quality and Climate Change	S.12
Sarah Jane Utley, Harris County Attorney's Office	453-7	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-8	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-9	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-10	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-11	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-12	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-13	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-14	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-15	Cumulative Impacts	S.17
Sarah Jane Utley, Harris County Attorney's Office	453-16	Mitigation	S.18

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Sarah Jane Utley, Harris County Attorney's Office	453-17	Mitigation	S.18
Sarah Jane Utley, Harris County Attorney's Office	453-18	Mitigation	S.18
Sarah Jane Utley, Harris County Attorney's Office	453-19	Environmental Justice	S.16
Sarah Jane Utley, Harris County Attorney's Office	453-20	Environmental Review Process	S.3
Sarah Jane Utley, Harris County Attorney's Office	453-21	Freight Rail Safety	S.4
Scott Finnegan	182-1	Biological Resources	S.14
Scott Tunnicliff	603-1	Biological Resources	S.14
Scott Vadnais, President, Minnesota Professional Fire Fighters	481-1	Grade Crossing Delay	S.8
Seth Lewis, Illinois State Representative	564-1	Grade Crossing Delay	S.8
Shubhra Govind, Director of Community and Economic Development, Village of Hanover Park, Illinois	588-1	Environmental Review	S.3
Shveta Yarosh	173-1	Grade Crossing Delay	S.8
Sierra Club Delta Chapter	463-1	Environmental Review Process	S.3
Sierra Club Eagle View Group	549-1	Biological Resources	S.14
Soren R. Jensen, Midtown Greenway Coalition	553-1	Environmental Review Process	S.3
Stephanie Coates, Environmental Defense Fund	461-1	Freight Rail Safety	S.4

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Stephanie Coates, Environmental Defense Fund	461-2	Freight Rail Safety	S.4
Stephanie Coates, Environmental Defense Fund	461-3	Freight Rail Safety	S.4
Stephanie Coates, Environmental Defense Fund	461-4	Freight Rail Safety	S.4
Stephanie Coates, Environmental Defense Fund	461-5	Hazardous Materials Transportation	S.5
Stephanie Coates, Environmental Defense Fund	461-6	Hazardous Materials Transportation	S.5
Stephanie Coates, Environmental Defense Fund	461-7	Grade Crossing Safety	S.7
Stephanie Coates, Environmental Defense Fund	461-8	Grade Crossing Safety	S.7
Stephanie Coates, Environmental Defense Fund	461-9	Grade Crossing Delay	S.8
Stephanie Coates, Environmental Defense Fund	461-10	Grade Crossing Delay	S.8
Stephanie Coates, Environmental Defense Fund	461-11	Grade Crossing Delay	S.8
Stephanie Coates, Environmental Defense Fund	461-12	Noise and Vibration	S.11
Stephanie Coates, Environmental Defense Fund	461-13	Noise and Vibration	S.11
Stephanie Coates, Environmental Defense Fund	461-14	Noise and Vibration	S.11
Stephanie Coates, Environmental Defense Fund	461-15	Noise and Vibration	S.11

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Stephanie Coates, Environmental Defense Fund	461-16	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-17	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-18	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-19	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-20	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-21	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-22	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-23	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-24	Air Quality and Climate Change	S.12
Stephanie Coates, Environmental Defense Fund	461-25	Truck to Rail Diversions	S.9
Stephanie Coates, Environmental Defense Fund	461-26	Truck to Rail Diversions	S.9
Stephanie Coates, Environmental Defense Fund	461-27	Intermodal Facility Traffic	S.10
Stephanie Coates, Environmental Defense Fund	461-28	Environmental Justice	S.16
Stephanie Coates, Environmental Defense Fund	461-29	Environmental Justice	S.16

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Stephanie Coates, Environmental Defense Fund	461-30	Environmental Justice	S.16
Stephanie Coates, Environmental Defense Fund	461-31	Environmental Justice	S.16
Stephanie Coates, Environmental Defense Fund	461-32	Cumulative Impacts	S.17
Stephanie Coates, Environmental Defense Fund	461-33	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-34	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-35	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-36	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-37	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-38	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-39	Air Quality	S.12
Stephanie Coates, Environmental Defense Fund	461-40	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-41	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-42	Mitigation	S.18
Stephanie Coates, Environmental Defense Fund	461-43	Mitigation	S.18

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Steve Herron, Police Chief, Village of Roselle, Illinois	574-1	Grade Crossing Delay	S.8
Susan W. Leuthauser	636-1	Hazardous Materials Transportation	S.5
Susan W. Leuthauser	636-2	Noise and Vibration	S.11
Susan W. Leuthauser	636-3	Freight Rail Safety	S. 4
The Office of Harris County Judge Lina Hidalgo	455-1	Air Quality and Climate Change	S.12
The Office of Harris County Judge Lina Hidalgo	455-2	Environmental Justice	S.16
The Office of Harris County Judge Lina Hidalgo	455-3	Environmental Justice	S.16
The Office of Harris County Judge Lina Hidalgo	455-4	Environmental Justice	S.16
The Office of Harris County Judge Lina Hidalgo	455-5	Freight Rail Safety	S.4
The Office of Harris County Judge Lina Hidalgo	455-6	Freight Rail Safety	S.4
The Office of Harris County Judge Lina Hidalgo	455-7	Hazardous Materials Transportation	S.5
The Office of Harris County Judge Lina Hidalgo	455-8	Hazardous Materials Transportation	S.5
The Office of Harris County Judge Lina Hidalgo	455-9	Environmental Review	S.3
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-1	Intermodal Facility Traffic	S.10
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-2	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-3	Environmental Review Process	S.3
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-4	Noise and Vibration	S.11
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-5	Grade Crossing Delay	S.8
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-6	Grade Crossing Delay	S.8
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-7	Grade Crossing Delay	S.8
Thomas Wilcox, Attorney for the Coalition to Stop CPKC	644-8	Environmental Review Process	S.3
Tom Lindelof	336-1	Hazardous Materials Transportation	S.5
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-1	Environmental Review	S.3
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-2	Grade Crossing Delay	S.8
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-3	Intermodal Facility Traffic	S.10
Tom Wilcox, Counsel for the Coalition to Stop CPKC	567-4	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-1	Grade Crossing Delay	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-2	Mitigation	S.18
Tom Wilcox, The Coalition to Stop CPKC	462-3	Environmental Review	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Tom Wilcox, The Coalition to Stop CPKC	462-4	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-5	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-6	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-7	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-8	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-9	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-10	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-11	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-12	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-13	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-14	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-15	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-16	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-17	Environmental Review	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Tom Wilcox, The Coalition to Stop CPKC	462-18	Mitigation	S.18
Tom Wilcox, The Coalition to Stop CPKC	462-19	Mitigation	S.18
Tom Wilcox, The Coalition to Stop CPKC	462-20	Environmental Review	S.3
Tom Wilcox, The Coalition to Stop CPKC	462-21	Hazardous Materials Transportation	S.5
Tom Wilcox, The Coalition to Stop CPKC	462-22	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-23	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-24	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-25	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-26	Grade Crossing Safety	S.7
Tom Wilcox, The Coalition to Stop CPKC	462-27	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-28	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-29	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-30	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-31	Grade Crossing Delay	S.8

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
Tom Wilcox, The Coalition to Stop CPKC	462-32	Grade Crossing Delay	S.8
Tom Wilcox, The Coalition to Stop CPKC	462-33	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-34	Cumulative Impacts	S.17
Tom Wilcox, The Coalition to Stop CPKC	462-35	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-36	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-37	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-38	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-39	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-40	Noise and Vibration	S.11
Tom Wilcox, The Coalition to Stop CPKC	462-41	Noise and Vibration	S.11
Trisha Rea	692-1	Grade Crossing Delay	S.8
U.S. Army Corps of Engineers, Kansas City District	86-1	Water Resources	S.15
Veronica Chapa Gorenzynski	125-1	Environmental Review Process	S.3
William Allen Grunder	14-1	Noise and Vibration	S.11
William Benz, Metra	592-1	Environmental Review Process	S.3

Table S.1-2. Comment Index Organized by Commenter First Name

Commenter	Comment Number	Topic	Appendix Section
William Benz, Metra	592-3	Environmental Review Process	S.3
William Gabrenya, Fire Chief, Village of Bartlett, Illinois	583-1	Hazardous Materials Transportation	S.5
William Gluba	649-1	Noise and Vibration	S.11
William Gluba	649-2	Mitigation	S.18
Winona LaDuke	162-2	Grade Crossing Delay	S.8
Winona LaDuke	162-1	Hazardous Materials Transportation	S.5
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-1	Environmental Review Process	S.3
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-2	Air Quality and Climate Change	S.12
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-3	Environmental Justice	S.16
Zoe Middleton for Rodney Ellis, Harris County Commissioner	443-4	Grade Crossing Safety	S.7

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