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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0012

Re: ***STB* Finance Docket No. 36036, *Petition for Declaratory Order Valero Refining Company - California***

Dear Ms. Brown:

Canadian National Railway Company, on behalf of its U.S. rail operating affiliates ("CN'), is writing in support of the petition by Valero Refining Company - California ("Valero") requesting the Board to institute a declaratory order proceeding.

49 U.S.C. § 10501(b) of the ICC Termination Act ("ICCTA") categorically pre-empts state and local actions regulating railroad transportation. The purpose of § 10501(b) is to prevent "a patchwork of local regulation from interfering with interstate commerce," *see e.g., Wichita Term. Ass'n – Pet for Declaratory Order,* STB Finance Docket No. 35765, slip op. at 5-6 (STB served June 23, 2015), and as the courts have consistently recognized, "[it is difficult to imagine a broader statement of Congress's intent to pre-empt" such regulation. *See e.g., CSX Transp., Inc. v. Ga. Publ. Serv. Comm'n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996).

That the city of Benecia's action in the matter here was not directed at its serving railroad but at Valero, the railroad's customer, should not make a difference on the pre-emptive scope of Section 10501(b). Section 10501(b) pre-empts indirect regulation that impacts a railroad's ability to conduct common carrier rail transportation.

It is important for the Board to resolve the issue presented here. The industry is facing increased local and state efforts to regulate railroad-related activities in ways akin to those involved here. CN respectfully urges the Board to grant Valero's petition

to initiate a declaratory order proceeding, establish a procedural schedule to receive comments, and provide needed guidance.

Sincerely,

Theodore K. Kalick

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Cc: Raymond Atkins, Sidley & Austin
Rachel Koss, Adams Broadwell Joseph & Cardozo
Jaclyn Prange, NRD Council
Kevin Sheys, Nossaman L.L.P.
Justin Marks, Nossaman L.L.P.
Peter Shudtz, CSX Transportation, Inc.