Surface Transportation Board
Washington, D.C. 20423-0001

Office of the Chairman

February 2, 2016

The Honorable Tammy Baldwin
717 Hart Senate Office Building
Washington, DC 20510

Dear Senator Baldwin:

Thank you for your letter dated January 15, 2016, regarding a potential merger of Canadian Pacific Railway ("CP") and Norfolk Southern Railway ("NS"). I appreciate hearing your concerns about the potential merger and the effects that it could have on Wisconsin's rail shippers, including electric utilities, agricultural producers, manufacturers, and small businesses.

At present, there are no proceedings before the Surface Transportation Board ("STB" or "Board") related to this potential merger. However, please understand that I must nevertheless be cautious in responding to your letter in order to avoid prejudging issues that might arise if a merger application were submitted to this agency. Accordingly, I will endeavor to be as responsive as possible by providing general guidance about the Board's merger rules, as described below.

In the event that a merger application is presented to the Board, it will be subject to rigorous administrative review. As noted in your letter, the Board adopted its current merger rules in 2001. Among other things, those rules instruct major merger applicants[1] to show that a proposed merger is in the public interest by demonstrating that public benefits, such as improved service and enhanced competition, outweigh potential negative effects, such as potential service disruptions and harm that cannot be mitigated. They also require applicants to address whether claimed benefits can be achieved by means other than a merger. *See Major Rail Consolidation Procedures*, 5 STB 539, 546-51, 553-59 (2001) ("*Merger Rules*"). No major consolidation proposals have been submitted to the agency since the adoption of the *Merger Rules*.

The *Merger Rules* require applicants to address a number of factors including: public benefits, potential harms, cumulative impacts of the merger and crossover effects on the rail industry, downstream impacts (including additional railroad consolidations), transnational issues and National defense implications, and impacts on railway labor. As part of this showing, the applicant must submit specific financial data and market analyses.

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[1] A "major" transaction is a control or merger involving two or more Class I railroads. A Class I railroad is one whose annual operating revenue exceeded $475,754,803 in 2014.

Because the merger review process would also trigger the requirements of the National Environmental Policy Act ("NEPA"), carriers must also address the environmental impact of any merger, and the Board may impose mitigation measures if it approves a transaction. They are also required to submit a Service Assurance Plan to address potential adverse service consequences during merger implementation. The Service Assurance Plan must include information about proposed operational integration, training, information technology systems, customer service, freight and passenger operations coordination, yard and terminal operations management, service disruption contingency plans, and numerous other technical issues. Finally, as part of any major merger, applicants would be subject to formal STB oversight for at least five years following the merger.

Again, I thank you for sharing your views on the potential merger of CP and NS. I hope this information is helpful to you. Please do not hesitate to contact me if you have any questions.

Sincerely,

Daniel R. Elliot III
Chairman