



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

February 5, 2016

The Honorable Henry C. Johnson
Ranking Member
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
2240 Rayburn House Office Bldg.
Washington, DC 20515

Dear Ranking Member Johnson:

Thank you for your letter regarding a potential merger of Canadian Pacific Railway (“CP”) and Norfolk Southern Corporation (“NS”). We appreciate hearing your views.

At present, there are no proceedings before the Surface Transportation Board (“STB” or “Board”) related to a potential CP/NS merger. However, please understand that we must nevertheless exercise caution and avoid prejudging issues that could arise if a merger application were submitted to this agency.

In the event that a merger application comes before the Board, it will be subject to rigorous review under our major merger rules, which the Board adopted in 2001. Among other things, as you note, those rules instruct major merger applicants¹ to show that a proposed merger is in the public interest by demonstrating that public benefits, such as improved service and enhanced competition, will outweigh potential negative effects, such as 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 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 consolidations), transnational issues and national defense implications, and impacts on railroad workers. As part of this showing, applicants must submit detailed financial data and market analyses.

Because the merger review process would also trigger the requirements of the National Environmental Policy Act (“NEPA”), applicants must also address the environmental impact of

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.

any merger, and the Board may impose mitigation measures if it approves a transaction. Applicants must also submit a Service Assurance Plan to address potential adverse service effects during merger implementation. Finally, as part of any major merger, applicants would be subject to formal STB oversight for at least five years following the merger.

Again, thank you for contacting us. We hope this information is helpful to you. Please do not hesitate to contact us if you have any questions.

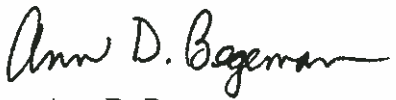
Sincerely,



Daniel R. Elliot III
Chairman



Deb Miller
Vice Chairman



Ann D. Begeman
Commissioner