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

February 5, 2016

The Honorable Rodney Davis
1740 Longworth House Office Bldg.
Washington, DC 20515

The Honorable John Shimkus
2217 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Robert J. Dold
221 Cannon House Office Bldg.
Washington, DC 20515

The Honorable Darin LaHood
2464 Rayburn House Office Bldg.
Washington, DC 20515

The Honorable Mike Bost
1440 Longworth House Office Bldg.
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The Honorable Adam Kinzinger
1221 Longworth House Office Bldg.
Washington, DC 20515

The Honorable Randy Hultgren
427 Cannon House Office Bldg.
Washington, DC 20515

The Honorable Peter Roskam
2246 Rayburn House Office Bldg.
Washington, DC 20515

Dear Members of the Illinois Congressional Delegation:

Thank you for your letter dated January 15, 2016, regarding a potential merger of Canadian Pacific Railway ("CP") and Norfolk Southern Corporation ("NS"). We appreciate knowing your concerns regarding the potential merger and the effects it could have for Illinois' economy, and rail operations in and around Chicago.

At present, there are no proceedings before the Surface Transportation Board ("STB" or "Board") related to this potential 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. Accordingly, we will endeavor to be as responsive to your letter 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. 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

[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.

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 railway labor. As part of this showing, the applicant must submit specific financial data and market analyses.

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. Applicants are also required to submit a Service Assurance Plan to address potential adverse service effects 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.

Further, in the *Merger Rules*, the Board stated that it would "take a much more cautious approach" with regard to the use of voting trusts in proposed major mergers. The Board is now required to conduct a more formal review of such voting trusts, which includes a public comment period. In addition to its focus on whether a voting trust insulates the merger partners from unlawful pre-approval control, the Board announced in *Merger Rules* that it would also consider a new factor in assessing voting trusts in major mergers: whether the use of the trust would be consistent with the public interest. Therefore, should CP pursue a voting trust arrangement with NS in connection with a request for merger approval, the Board would consider issues related both to unlawful pre-approval control and the public interest.

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