



Office of the Chairman

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

March 15, 2016

The Honorable John J. Duncan, Jr.  
2207 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable Scott DesJarlais  
413 Cannon House Office Bldg.  
Washington, DC 20515

The Honorable Steve Cohen  
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The Honorable Phil Roe, M.D.  
407 Cannon House Office Bldg.  
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The Honorable Chuck Fleischmann  
230 Cannon House Office Bldg.  
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The Honorable Stephen Fincher  
2452 Rayburn House Office Bldg.  
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The Honorable Diane Black  
1131 Longworth House Office Bldg.  
Washington, DC 20515

The Honorable Marsha Blackburn  
2266 Rayburn House Office Bldg.  
Washington, DC 20515

Dear Members of the Tennessee Congressional Delegation:

Thank you for your letter dated February 9, 2016, regarding a potential merger of Canadian Pacific Railway (“CP”) and Norfolk Southern Corporation (“NS”). We appreciate knowing your concerns regarding the impact of this potential merger on the State of Tennessee and elsewhere throughout the United States.

CP filed a petition for declaratory order with the Surface Transportation Board (“STB” or “Board”) on March 2, 2016, regarding a hypothetical voting trust structure. Replies to CP’s request are due by April 8, 2016, and CP’s rebuttal must be filed by April 13, 2016. CP’s declaratory order petition is not part of the formal application process under our rules governing major railroad consolidations, and there is no proceeding before the Board seeking approval of a proposed merger. Nevertheless, we must exercise caution in this response to avoid prejudging issues that could arise if a merger application were submitted.

In the event that a merger application is presented to the Board, it will be subject to rigorous regulatory review. The Board adopted its current merger rules in 2001. Among other things, those rules instruct major merger applicants<sup>1</sup> 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 service disruptions and harm that

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<sup>1</sup> 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.

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 (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"), the applicants must 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 Safety Integration Plan and 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, because the Board stated in the *Merger Rules* that it would "take a much more cautious approach" with regard to the use of voting trusts in proposed major mergers, the Board would conduct a more formal review of such voting trusts, including 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 the *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, in addressing a CP 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 sharing your views. We hope this information is helpful to you. Please do not hesitate to contact us if you have any questions.

Sincerely,

Daniel R. Elliott III  
Chairman

Deb Miller  
Vice Chairman

Ann D. Begeman  
Commissioner