

Office of the Chairman

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

January 13, 2016

The Honorable Tim Kaine
231 Russell Senate Office Building
Washington, DC 20510

The Honorable Scott Rigell
418 Cannon HOB
Washington, DC 20510

The Honorable Robert J. Wittman
2454 Rayburn House Office Building
Washington, DC 20515

The Honorable Gerry Connolly
2238 Rayburn HOB
Washington, DC 20515

The Honorable Robert C. Scott
1201 Longworth House Office Bldg.
Washington, DC 20515

The Honorable Robert Hunt
125 Cannon HOB
Washington, DC 20515

The Honorable Mark R. Warner
475 Russell Senate Office Building
Washington, DC 20510

The Honorable H. Morgan Griffith
1108 Longworth HOB
Washington, DC 20515

The Honorable Barbara Comstock
226 Cannon House Office Building
Washington, DC 20515

The Honorable Don Beyer
431 Cannon H.O.B.
Washington, DC 20515

The Honorable J. Randy Forbes
2135 Rayburn House Office Building
Washington, DC 20515

The Honorable Dave Brat
330 Cannon HOB
Washington, DC 20515

Dear Members of the Virginia Congressional Delegation:

Thank you for your letter dated December 16, 2015, concerning a potential merger of Canadian Pacific Railway (“CP”) and Norfolk Southern Railway (“NS”). We appreciate knowing your concerns regarding this potential merger and the effects it could have for Virginia’s economy, its citizens, its transportation network, and shippers located throughout the Commonwealth.

At present, there are no proceedings before the Surface Transportation Board (“STB” or “Board”) related to this potential merger. However, in reading our response to your letter, please understand that we must nevertheless exercise caution to 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 the 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 applicants¹ 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 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.

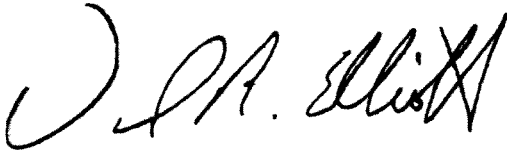
Because the merger review process would also trigger the requirements of the National Environmental Policy Act, carriers must also address the environmental impact of any merger, and the Board may impose mitigation measures if it approves a transaction. They are also required to submit a Service Assurance Plan to address potential adverse service 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 5 years following the merger.

Your letter also expresses concerns regarding a potential acquisition of unlawful pre-approval control. In *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 insulated 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 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 to the public interest.

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.

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.

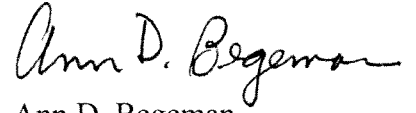
Sincerely,



Daniel R. Elliott III
Chairman



Deb Miller
Vice Chairman



Ann D. Begeman
Commissioner