



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

February 5, 2016

The Honorable Johnny Isakson
131 Russell Senate Office Building
Washington, DC 20510

The Honorable David Perdue
383 Russell Senate Office Building
Washington, DC 20510

Dear Senator Isakson and Senator Perdue:

Thank you for your letter dated January 13, 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 Georgia’s economy, as well as the manufacturers, consumers and communities you represent.

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

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.

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.

Your letter expresses concern regarding potential use of a voting trust arrangement in which CP could prematurely control NS and circumvent the STB's merger review process. 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 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 your interest in this matter. We hope this information is helpful to you. Please do not hesitate to contact us if you have any questions.

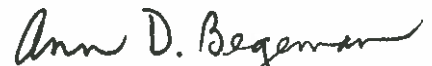


Daniel R. Elliot III
Chairman

Sincerely,



Deb Miller
Vice Chairman



Ann D. Begeman
Commissioner