



BYRON DORGAN

Washington, D.C.

U.S. Senate 1992-2011
U.S. House of Representatives 1981-1992

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The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 36500 – Reply to Objections to KCS Waiver

Dear Ms. Brown:

I write the Surface Transportation Board (“STB”) to urge that you reject the objections to the KCS waiver as it relates to the specific transaction before the STB between CP and KCS (a matter on which I have consulted with the parties). As you know, I have long been a skeptic of railroad mergers. During my U. S. Senate career, I repeatedly sponsored and introduced The Rail Shipper Protection Act, expressing concern about how additional concentration in the rail industry would affect shippers. However, the proposed CP-KCS transaction is the one unique transaction among large U.S. railroads that I believe is beneficial and that does not raise the concerns related to East-West transcontinental railroad mergers. As shippers in North Dakota and elsewhere have already pointed out, the transaction promises to improve shippers’ transportation service options and open new markets via new, more efficient single-line hauls. These new transportation options will provide addition opportunities for shippers, strengthen competition and foster economic growth across the North American continent.

I have participated in many reviews and oversight of the STB. In fact, I participated in the oversight hearing on June 28, 2001, on the topic of the STB’s adoption of New Merger Rules. Those new rules governed the evaluation of future mergers involving the largest (or Class I) railroads and were more stringent. During that hearing, I observed that it took great courage for the STB to do what it did by imposing a merger moratorium, opening a rulemaking to consider new merger rules, and adopting new merger rules and regulations. That moratorium was in the public interest. I was also a skeptic about benefits from further consolidation in the rail industry generally. I quipped at the hearing that “I think the phrase ‘benefits from further consolidation’ is an oxymoron.”

As a part of those new merger rules that we reviewed during that hearing, KCS was given a waiver from the new merger rules unless an objector could show why that waiver should not apply. That waiver was extensively discussed at the hearing, with Chairman Linda Morgan and Commissioners Wayne Burkes and William Clyburn responding to questions about it. It was clear from that discussion that the STB created a waiver from the new rules for KCS and that the STB could, but did not have to, revoke that waiver at a later date if circumstances warranted.

No party here has objected or raised a concern about the merits or ultimate public interest benefits of the specific transaction between CP and KCS, the two smallest railroads in the industry that would remain the smallest railroad even after their combination. This transaction would not reduce competition for any customer and it injects additional competition with new single-line services. So, in this case, there are clearly benefits to be extracted from this particular merger.

But I remain concerned about further consolidation in the railroad industry generally. The new merger rules adopted in 2001 - from which KCS is exempt - have held back the tide of harmful transcontinental mergers for two decades. I urge the Board not to crack that dam by applying those rules to the CP-KCS proposal, which is vastly different and beneficial. The STB should instead apply the pre-2001 rules to CP-KCS so that the new rules remain untested and their *uncertain implications will continue to deter further consolidation*. If the Board applies the 2001 rules to a beneficial transaction like CP-KCS that should garner approval, the outcome would create hope in the rail industry that other mergers could be approved under those rules too. That is an outcome that I fear, and that I hope you will not choose. The CP-KCS transaction will be helpful to shippers, but a new wave of mergers among the largest class 1 carriers will have the opposite impact

Thank you for the opportunity to comment on the objections to the KCS waiver. I urge you to reject those objections.

Sincerely,

A handwritten signature in dark ink, appearing to read "Byron Dorgan", written in a cursive, flowing style.

Byron Dorgan

cc: All Parties of Record