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April 29, 2021

ATTENTION: Surface Transportation Board

RE: STB Finance Docket No. 36514
Objection to KCS Waiver in CN/KCS Merger Proposal

The North Dakota Grain Dealers Association (NDGDA) submits this letter to encourage the STB to use the updated merger rules adopted in July 2001 to review the CN bid to acquire KCS.

We agree with the STB's decision to apply the KCS waiver in the CP/KCS combination proposal. In that decision it was determined that the CP/KCS proposal would:

- Still result in the smallest Class I railroad based on operating revenues
- Appear to result in the fewest overlapping routes when compared to a merger with any other Class I carrier
- Result in a network that appears to be end-to-end in nature, which likely raises fewer competitive concerns
- Fall neatly into the Board's rationale for adopting the waiver in the first instance

In using the same rationale to make a waiver determination in the CN/KCS proposal, we submit that there are striking differences in the CN/KCS proposal including:

- CN/KCS combination would not be the smallest Class I railroad causing an imbalance in Class I rail carriers
- CN & KCS appear to have multiple points of overlap and are currently in direct competition throughout much of their networks
- CN/KCS combination would not result in a linear end-to-end network
- CN/KCS merger appears to be the type of transaction the STB envisioned when deciding to update its rail consolidation regulations in 2001.

While both proposals include the use of a voting trust, comparison of the two shows obvious differences that should be taken in to account when deciding how they should be scrutinized. Our concern is that a CN/KCS merger would create a network that decreases competition and would eventually result in a rail industry imbalance spurring more mergers and consolidation which is the reason the for 2001 rule overhaul. That same concern does not appear evident in the CP/KCS combination.

For these reasons we object to the application of the KCS waiver to any part of the proposed CN/KCS transaction, including the review of a voting trust.

Respectfully submitted,

Stu Letcher
Executive Vice President
North Dakota Grain Dealers Association
CC: All Parties of Record