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June 16, 2021

Members of the Board
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: **CN/KCS Merger – Docket Number FD 36514**
Opposition to Acquisition of Kansas City Southern Railway by CN Rail

To the Members of the Surface Transportation Board:

I am writing to you today on behalf of several clients on the subject of the proposed CN Rail (“CN”) acquisition of Kansas City Southern Railway (“KSR”). I am writing to urge the Board to prohibit this transaction on a number of critically important grounds.

I. **Unequal treatment by Canada of American Railways.**

Canadian railways have been making increasingly large investments in American railways and will increasingly be able to dictate terms and pricing to a vast number of American manufacturers, distributors, farmers and ultimately American consumers.

Allowing a foreign national to have control over a monopoly in the United States has inherent risks on its own, but in this particular case, it is a one-way risk. While the STB is considering this proposal to allow a foreign national to acquire 100% of a vital American infrastructure asset (KSR) – it would be illegal for an American company to acquire either of Canada’s two largest railways. Americans cannot own more than 25% of a Canadian railway. How is this an equitable arrangement? It seems clear that allowing a Canadian company the privilege of buying a monopoly in the United States would require, at the very least, a reciprocal arrangement with Canada. If Canada does not amend legislation to allow Americans to buy Canadian railways, the United States should utilize the same standard. For this reason alone, there would be ample grounds to prohibit this transaction.

II. **Direct threat to national and economic security of the United States.**

As we have seen above, Canada views its own railways as vital to its economic interests and, as such, bans Americans from owning its railways. This proposed transaction would transfer the economic benefits of KSR to foreign nationals whose loyalty rests with another nation, and it would transfer all decision-making authority to a company headquartered in Montreal. Regardless of any corporate governance arrangements and any commitments to the contrary, CN will be loyal to Canada first and foremost. This is a direct threat to American economic and military sovereignty. Why would the United States allow a foreign company to have monopoly or quasi-monopoly shipping status from St. Louis to Dallas and its vital ports from Corpus Christie and Houston, to New Orleans and Mobile,

all the way to Kansas City? If a matter of national importance splits Canadian interests from American interests, where do you think the loyalty of CN Rail will lie?

III. **CN is headquartered in a province which violates basic human and civil rights.**

CN is headquartered in Montreal, Quebec. The Province of Quebec violates basic civil and human rights, and has enshrined these violations into their laws. Quebec persecutes linguistic minorities (primarily English speakers) and persecutes religious minorities. These violations of basic human rights would not be legal or tolerated in the United States and, in fact, are illegal in Canada, but because of an abomination in the Canadian Constitution known as the “Notwithstanding Clause”, governments can override court decisions. This is precisely what Quebec has done. It is illegal in Quebec to send a child to an English school (unless his or her parents were educated in Canada in English), so any American transferred to Quebec as part of this proposed transaction would be prohibited from sending their child to an English school, thus making it all but impossible for Americans to ever take an important role at the combined company. It is illegal to post English signs in Quebec (with a few exceptions where an English sign can be posted but it can only be ½ the size of its French counterpart). Quebec recently enacted legislation restricting the wearing of religious symbols. All contracts in Quebec need to be drafted exclusively in French and professional orders (doctors, lawyers, etc.) can suspend any member who is deemed not be adequately French. This list is only a very small part of the routine and legalized persecution of minorities that take place in Quebec. Why would the STB allow such a vital American asset to be controlled by a company in a jurisdiction that so flagrantly violates human rights?

Along with the persecutions, the Notwithstanding Clause makes a mockery of the rule of law and gives the Quebec Government unchecked power. Quebec inspectors can enter any premises and seize any computer, files, documents, etc., without a warrant, and this cannot even be challenged in court. So sensitive information held by CN Rail about its American operations would be open to inspection by a foreign government, one that routinely violates international human rights standards. This information could be economically sensitive or even militarily sensitive yet Quebec has the right to inspect any work product under the guise of protecting the French language.

IV. **The Quebec Government has been infiltrating an increasing number of vitally-important American infrastructure assets.**

Unlike most investors whose primary interest is making money, Quebec uses its pension plan, government owned businesses and government owned banks to further its economic and political interests, and manipulate free markets. One need only look at the number of vital American infrastructure investments that Quebec has gained control of over the past several years to see that this is not by chance. Quebec has taken control of virtually 100% of the regulated electric and gas markets in Vermont, and supplies electricity to Maine, Massachusetts, Rhode Island, New York, New Hampshire and others. In many instances, it is the sole supplier or core supplier of electricity to major US cities, military bases and industries. It acquired Green Mountain Power and Central Vermont Public Service, is the largest shareholder in Entergy in New Hampshire and is a major investor in the Colonial Pipeline amongst others. Quebec is slowly gaining energy hegemony over the entire Northeast United States and is expanding beyond the Northeast. While Americans cannot own Canadian railways,

Surface Transportation Board
June 16, 2021
Page 3

Americans also cannot own regulated utilities in Canada, and in Quebec, the only utilities are owned by the Quebec Government and are being used to further its political objectives.

Please consider the information I have provided, fully-investigate the proposed acquisition prior to entering any decision, and prohibit the acquisition of KSR by CN Rail. Clearly, the acquisition is not in the best interests of our nation. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'Michael Bender', written over a horizontal line.

Michael Bender, Esq.,
On Behalf of Several Clients
MB/mj
cc: All Parties of Record