

BEFORE THE SURFACE TRANSPORTATION BOARD

Finance Docket No. 36514

CANADIAN NATIONAL RAILWAY COMPANY, ET AL. – CONTROL –
KANSAS CITY SOUTHERN, ET AL.

ENTERED
Office of Proceedings
June 21, 2021
Part of
Public Record

**CANADIAN PACIFIC’S SUBMISSION OF
ADDITIONAL STATEMENTS OPPOSING APPROVAL OF VOTING TRUST**

Canadian Pacific Railway Limited and its U.S. rail carrier subsidiaries¹ are submitting for the Board’s consideration an additional 81 statements of shippers and other stakeholders that express opposition to approval of Canadian National’s proposed voting trust, bringing the total to 212. For the Board’s convenience, we have provided an index of those statements below.

¹ Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company, Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. (collectively “Canadian Pacific” or “CP”).

Canadian Pacific appreciates the Board's attention to this matter.

Respectfully submitted,



David L. Meyer

LAW OFFICE OF DAVID L. MEYER

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Washington, D.C. 20009

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Jeffrey J. Ellis

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Telephone: (888) 333-6370

Attorneys for Canadian Pacific

June 21, 2021

INDEX OF STATEMENTS OPPOSING CN/KCS VOTING TRUST

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AG Processing Inc.
Allen Mauk
Beaver Freight Services, LLC
Berthold Farmers Elevator, LLC.
Bulk Logistic Inc.
BURNCO Rock Products Ltd.
CAD Railway Industries Ltd.
Caine Warehousing Ltd.
Canada Drayage Inc
Canoe Forest Products
Cecelia S. Johnson
CENIBRA Inc.
Choquette Grains Inc.
CHS Inc.
City of Clinton
City View Fuel, LLC.
Continental Cosmetics Ltd.
Crawford Oil Co. Inc.
Curbside Construction Ltd.
Dakota, Missouri Valley and Western Railroad
Data Communications Management Corp.
Dehn Oil Company
Edmonton Railway Contracting Ltd.
ENX Inc.
EuroChem North America Corp.
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G&B Fuels Inc.
GAF Inc.

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Entity

Galaxy Freightline Inc.
Gasaway Farms
GDI Integrated Facility Services
Global Furniture Group
Grain Densification International, LLC.
Great Sandhills Railway
Groenewegen Truck Brokers Inc.
Hansen's Releasing Company
Henry Bath
Homeward Bound Properties
Impact Construction Inc.
Industra Construction Corp.
IPD LLC
Jimmy Burland
Karan Pujji
Langley Oil Company LLC
MacCosham Inc.
Maddox Logistics Ltd.
Muscatine Chamber of Commerce
MX Solutions
NDGGA
New-Way Trucking Ltd.
Northern Plains Railroad
North West Terminal
Nulogx, Inc.
Ontario Southland Railway Inc.
ORR Safety
Panel Construction Ltd.
Pinnacle Polymers, LLC.
Pro Ag Farmers Co-Op
Produits Minera Inc.
Rhomberg Sersa North America
Rivers Edge Terminals
Saskatchewan Mining and Minerals Inc.
Simard Transport Ltd.

Witness

Johnny Gamboa
Chase Gasaway
Neil Crump
Barry Chypyha
Greg Roach
Perry Pellerin
Karl VanderMeulen
Russel Eddy
Jerome M. Hack
Ian Synott
Gerald Audit
Scot Brydon
Mark McKendry
Jimmy Burland
Karan Pujji
Jerry Langley
John Bonham
Todd Murray
Erik Reader
Gregory P. Galbraith
Tom Bernhardt
Randhir Brar
Jesse J. Chalich
Karen Philipation
Glenn Smith
Brad Jollife
Bob Johnson
Kellie Roberts
Deneice Bercegeay
Joel Fenger
Ghislain Hamel
Michael Match
Sean Owens
Brent Avery
Joe Vanneli

Entity

SMART Transportation Division General Committee
of Adjustments 261

SMART Transportation Division General Committee
of Adjustments 987

South Dakota Grain & Feed Association

State of Oklahoma Representative

State of Oklahoma Representatives

Teamsters Canada Rail Conference Maintenance
of Way Employees Division

Tepper Holdings Inc.

Terra Contracting Ltd.

Tony Doom Supply Company

Trendwood Ltd.

U.S. Industrial Machinery

Victoria Pulse Trading Corporation

Woodland Pulp

Witness

Gerald A. Wallace

K.J. Flashberg

Kathleen M. Zander

Rick West

Casey Murdock, Eddy Dempsey
& Rick West

Wade Phillips

Leonard Wyss

Ray Liang

Steve Veverka

Greg Sylvester

Preston B. Gordon

Tina Mobayen

Chuck Thompson

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Canadian Pacific's Submission of Additional Statements Opposing Approval of Voting Trust to be served electronically or by first class mail, postage pre- paid, on all parties of record in this proceeding.

/s/ *Freesia Ferrantino*

Freesia Ferrantino

June 21, 2021



HEADQUARTERS
1019 Route 519
Eighty Four, PA 15330

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Judge Brown:

My name is Mitchell J. Wagner and I am the Vice President of Purchasing for 84 Lumber Company ("84 Lumber") based in Pennsylvania.

84 Lumber is a building materials supply company, founded in 1956. 84 Lumber owns and operates over 250 stores in 31 states throughout the United States. It has more than 6,100 employees and achieved \$4.7 billion revenue in 2020. Today, it is the largest privately held supplier of building materials to the construction industry.

Specific to Finance Docket No. 36514, 84 Lumber owns and operates a facility in Baton Rouge LA. We are in favor of a healthy rail transportation network with maximum optionality for our organization and our suppliers. The risk of reduced competition is naturally unfavorable and, on behalf of 84 Lumber, it is respectfully requested that due diligence be performed in order to consider all potential ramifications of any proposed merger.

As with any transaction of this magnitude, 84 Lumber requests that appropriate consideration be provided to the interest of the public and the impact that this transaction could have on competition in the industry. Further, 84 Lumber requests that the proposed use of a voting trust be reviewed in detail in order to assure that this method meets all of the regulatory requirements and, again, serves the public interest.

Accordingly, we support a critical review by the Surface Transportation Board of the proposed transaction and the use of the voting trust, ensuring all of regulatory requirements and anti-competitive concerns are addressed prior to approval.

Respectfully submitted,

Mitchell J. Wagner

A handwritten signature in black ink, appearing to read "Mitchell J. Wagner", with a stylized flourish at the end.

cc: All Parties of Record



**1515 – 9th Ave SE
Calgary, AB T2G 0T6**

BY ELECTRONIC FILING

June 17, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express A & A Paving Ltd. / A & A Civil Contracting Ltd. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Yasir E. Assaf

Yasir E. Assaf

cc: All Parties of Record



BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Access Entry Systems

I am writing to express Access Entry Systems perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

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Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Kyle LeBlanc

Kyle LeBlanc

National Manager

Access Entry Systems

Telephone 905-564-8601

kyle@accessentry.ca

cc: All Parties of Record



AC LOGISTICS

301 Lindenwood Drive Suite 305
Malvern, Pennsylvania 19355

Phone: 610.662.9060
Fax: 484.913.1345

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

June 8, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

AC Logistics, Inc.

I am writing to express AC Logistics, Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not

cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

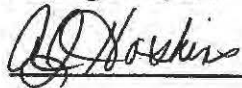
In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Annemarie J Haskins, President

AC Logistics, Inc.



cc: All Parties of Record

June 17, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

AdvantageVM Corp is a supplier of industrial herbicides into the railway industry, and I am writing to express AdvantageVM's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JD', is written over a horizontal line.

Julie Dixon – President AdvantageVM Corp.

cc: All Parties of Record



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

Dear Ms. Brown:

I am writing to express Ag Processing Inc's (AGP), perspective on the Canadian National Railroad's (CN) proposal to use a voting trust in conjunction with their proposed acquisition of Kansas City Southern (KCS). It is our understanding that the board will use a more deliberate approach to the voting trust under the 2001 Major Rail Consolidation Procedures to determine if the merger is in the public interest based on potential benefits. We are of the opinion that the only benefits received will be that of the KCS shareholders. We feel the use of the trust will not benefit the public interest as a whole and shippers in particular.

We are concerned that granting a trust pre-judges the merger itself. We also feel that establishing a voting trust prior to the acquisition approval brings undue pressure on the board because the trust exists, and the potential cost of "unscrambling the egg" if the approval is denied.

AGP publicly supported the Canadian Pacific's (CP) acquisition of the KCS but is opposed to the CN's acquisition for the following reasons:

- CP acquisition would enhance U.S. access to Mexico.
- CN acquisition would enhance Canadian access to Mexico.
- CN acquisition would likely set off chain reaction of further mergers within the U.S.

- Further mergers will diminish competition by reducing many origins to single rail served locations.
- Reduced competition will likely result in higher freight rates.

In summary, AGP opposes the CN merger with the KCS. We feel the winners will be the KCS shareholders and Canadian shippers. The losers will be U.S. shippers. As a U.S. shipper that competes in an international arena we respectfully request the board deny both the trust and the merger of the CN and KCS.

Respectfully submitted,



Greg Twist

Sr. VP Transportation

Ag Processing Inc

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, D.C. 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I wish to share my perspective on Canadian National's ("CN") request for a voting trust in its anticipated merger of Kansas City Southern ("KCS"). I applaud the Board's decision to take a cautious approach due to the size and impact of this proposed merger. We believe the use of a trust will not serve the public interest and urge the Surface Transportation Board to reject CN's motion.

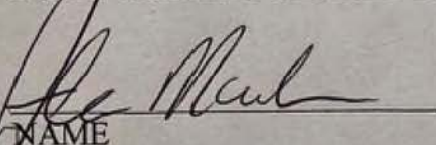
We were surprised by recent news that the KCS board decided to end its previous agreement to merge with Canadian Pacific (CP) in favor of entering into an agreement with CN instead. CN and KCS have many parallel lines and broad regions of overlap, and the loss of competition is worrisome. If a CN-KCS merger were to happen, the current alternatives for shipping routes could be narrowed, leading to less competition – rather than the standard of "enhanced" competition under the new merger rules.

Additionally, we must consider the financial impact of the "total fixed charges" and "financial integrity" of the rail carriers involved. A total of \$19 billion in new debt would be needed for CN to purchase KCS. An action with implications that large should be reviewed carefully.

We ask the Surface Transportation Board to reject CN's proposed voting trust with KCS. The most compelling reason for a CN-KCS merger is payout to shareholders – when, instead, the public's interest in a merger like this should take the highest priority.

With respect,

Allen Mauk
Former Consultant Oklahoma Department of Transportation



NAME

Cc: All Parties of Record



BEAVER FREIGHT SERVICES, LLC
3835 NE Hancock St. Suite 203
Portland, OR 97212
Phone: 800.800.2066 / 503.281.4645
Fax: 503.281.4773
www.beaverfreight.com

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Beaver Freight Services, LLC

I am writing to express Beaver Freight Services perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of



BEAVER FREIGHT SERVICES, LLC

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the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Timothy J Miller

cc: All Parties of Record



JUNE 11, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Berthold Farmers Elevator's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

There are a few reasons we feel this way, but the biggest reason is that if placed in a voting trust, that would eliminate the ability of the CP to acquire the KCS. In our opinion, a merger of the CN and KCS provides little value, no increase in efficiency and has a negative impact on competition. If the CN and KCS do merge with the help of the trust, the precedent set could allow of more consolidation in an already consolidated industry.

We ask that the STB reject CN's motion to approve its proposed voting trust. The CN should have to prove the merger would benefit the shippers and customers, without the use of the voting trust.

Respectfully submitted,

Dan Mostad

A handwritten signature in blue ink, appearing to read "Dan Mostad", is written over the printed name.

General Manager, Berthold Farmers Elevator, LLC



Date: June 1st, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Bulk Logistics Inc. specializes in rail-truck transloading services for bulk commodities. Our main transload facility is in Milwaukee, WI.

For many customers, we handle all of their transportation requirements from taking the order, through delivery, to billing the customer.

I am writing to express Bulk Logistics Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

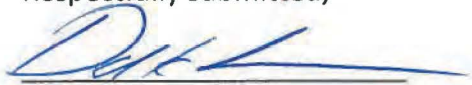


BULK LOGISTICS INC.
Subsidiary of Tankstar USA, Inc.
a Chemical Manufacturers Association
Responsible Care® Partner Company

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



David Leibham
Treasurer
Bulk Logistics Inc.

cc: All Parties of Record



BURNCO Rock Products Ltd
Main Floor, 155 Glendear Circle SE
Box 1480, Station T
Calgary, AB, Canada T2H 2P9

burnco.com
Phone: 403 255 2600

June 16th, 2021

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

Delivered Via Electronic Filing

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown,

My name is Norm Kuntz and I am the General Manager, Calgary Ready Mix at BURNCO Rock Products Ltd. BURNCO is an aggregate construction materials company with over sixty locations in Alberta, British Columbia, Saskatchewan, Colorado and Texas. BURNCO produces high quality aggregates, paving asphalt and ready mix concrete. We utilize rail for inbound cement.

I am writing to express BURNCO Rock Products Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

OVER A CENTURY OF QUALITY AND SERVICE

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Sincerely,

BURNCO Rock Products Ltd



Norm Kuntz

General Manager, Calgary Ready Mix
BURNCO Rock Products Ltd.

cc: All Parties of Record



BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

I am writing to express Cad Railway Industries perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Bergeron', is written over a horizontal line.

Jean-Guy Bergeron
VP Sales & Marketing and COO

cc: All Parties of Record

Caine Warehousing Ltd.

Dry and Cold Storage, Handling and Distribution

P.O. Box 275 300 Commerce Dr. Reeseville, WI 53579

Phone: 920-927-3881 Fax: 920-927-3803 www.cainewarehousing.com

June 7, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

My name is Jeff Caine and I am the President of Caine Warehousing based in Reeseville WI. We are a proud US based family business. Our unique location in rural Southcentral Wisconsin grants us access to major highways as well as the US Class 1 rail networks, which we rely on heavily to attract and manage our business. In fact, this access is critical in being able to offer competitive solutions for our customers, who use our facilities for a variety of commodities including consumer goods and industrial products, which ship to and from Canada, the US, and Mexico. This is why we take such a keen interest in the recent events around the CN's proposed acquisition of the KCS rail network. Southcentral Wisconsin has quietly benefited from the CP line that runs through our area. While the CN/KCS deal would bring with it fears of less competition and more market control for CN, the CP offer would bring greater access to foreign markets for our area.

Therefore, I am writing to express Caine Warehousing's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a

voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Jeff Caine, President
Caine Warehousing

A handwritten signature in dark ink, appearing to read "Jeff Caine", is written over a horizontal line.

cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

I am writing to express Canada Drayage Inc perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

MONTREAL OFFICE:

4415 rue Fairway, Lachine, QC H8T 1B5
Tel: (514) 639-7747 | Fax: (514) 639-9070

CALGARY OFFICE:

11440-54th Street S.E., Calgary, AB T2C 4Y6
Tel: (403) 264-1687 | Fax: (403) 266-8690

HALIFAX OFFICE:

133 John Savage Ave., Dartmouth, NS B3B 0A8
Tel: (902) 468-7175 | Fax: (902) 468-7174

VANCOUVER OFFICE:

1375 Kingsway Avenue, Port Coquitlam, BC V3C 4W1
Tel: (604) 464-2327 | Fax: (604) 464-2329



RUN SMARTER...



HEAD OFFICE:
9701 Highway 50, Woodbridge, ON L4H 2G4
Tel: (905) 856-4500 | Fax: (905) 856-4520

 **CDItrucks.com**

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Kevin Hankinson

A handwritten signature in black ink, appearing to read 'Kevin Hankinson', written over a horizontal line.

cc: All Parties of Record

MONTREAL OFFICE:

4415 rue Fairway, Lachine, QC H8T 1B5
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VANCOUVER OFFICE:

1375 Kingsway Avenue, Port Coquitlam, BC V3C 4W1
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RUN SMARTER...

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Canoe Forest Products

I am writing to Canoe Forest Products perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the

Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Aaron Canron

cc: All Parties of Record

Cecilia S. Johnson
3609 Brooklyn Ave
Kansas City, MO 64109

JUNE 7, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to share my concerns regarding the Canadian National (CN) attempt to use a voting trust to complete its acquisition of Kansas City Southern (KCS). For the reasons listed below, I believe a voting trust will be detrimental to the public interest and pose a serious conflict with this Board's 2001 Major Merger rules.

Competition will be stymied in some regions of the U.S. if CN is given the green light to use a voting trust to secure KCS. A merger between these two lines will result in the third largest Class 1 railroad in the nation and reduce the number of independent routing options from four to three. Moreover, head-to-head competition along many points of the KCS line will be eliminated. The Department of Justice has already observed that "threats to competition would be present immediately after the CN voting trust is consummated".

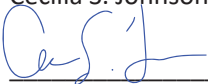
The CN acquisition attempt will destroy any opportunity for Canadian Pacific (CP) to merge with KCS. This is more than a little concerning, particularly since a CP/KCS agreement would increase competition, stimulate investment, and lead to better services. The CN acquisition and efforts to use a voting trust present the first tests to the 2001 Major Merger rules. If CN is given its way, a dangerous precedent will be set for future merger attempts.

I believe a voting trust will ultimately lead to a decrease in the financial integrity of the rail carriers involved. A voting trust is essentially a "buy first, defend later" strategy. CN is planning to finance this move with \$19 billion in new debt. If, as I suspect, the Board ultimately denies the transaction, CN will be forced to divest KCS at some point in 2023. Considering the super-premium CN plans to pay KCS, it is highly unlikely they will be able to find another railroad willing to pay the same price. This, unfortunately, will undoubtedly lead to decreased investment, sub-par service, and higher rates as CN attempts to dig itself out of debt.

If the CN merger were truly in the best interest of the public, there wouldn't be such a rush to fast-track an agreement. Therefore, I recommend the STB deny the CN motion for a voting trust.

Respectfully submitted,

Cecilia S. Johnson



Cc: All Parties of Record



1251 Avenue of the Americas,
New York, NY 10020 U.S.A.

BY ELECTRONIC FILING

MAY 28, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

CENIBRA Inc. is one subsidiary of CENIBRA, a large forest-based company who produce and ship pulp and paper using American ports and its Class 1 rail networks. We have therefore followed the activities related the CN's acquisition of the KCS, and the CP's attempt prior to that. We have not taken a position publically on the matter but we do feel compelled to encourage the STB to act with extreme caution in these matters, as the outcomes are irreversible and important to the larger shipper community.

While our intention is not to speak of specific operators, the fact is that the request before you in this case is from the Canadian National (CN) and Kansas City Southern (KCS). Our comments are not to be construed as in defiance of either party by any means but they are intended to address the process that we feel any merger of this magnitude and impact should follow. As such, we do not feel it is appropriate for the Board to allow a voting trust in these cases. There is competitive overlap and there seems to be many more very likely competitive impacts and an inevitable loss of choice for shippers should the deal be consummated as is, so without doubt, many elements need to be fully understood prior to, and not before, allowing any Class 1 to acquire another in advance of such important elements being addressed. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." This very much aligns with our position that the use of a trust in this proceeding would not be in the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber



stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. This is a large reason for our comments. We are not in opposition to CN or KCS per se but rather feel that it is important that full due diligence is undertaken for any Class 1 merger where these new, untested rules are being applied. If the parties can illustrate that they can merge the companies without impacting our competitive choices by taking the appropriate actions throughout a review, then so be it. But those actions should be clear, understood, and acceptable to all shippers in all such cases, and not before money exchanges hands. CP's case was different in that they have no competitive overlap with the KCS and in fact, their proposal seemed to offer an increase in competitive options. As an example, the CN has a single line haul option already from Canada via Chicago to the Gulf Coast. If CN buys the KCS, it gives them a second, redundant parallel single line haul option while terminating the opportunity for CP (KCS) to deliver a second, competitive single line haul option on the same route etc. Perhaps the STB can overcome this element in the process review and determine or enforce remedies but that may be unlikely or will take significant time and effort at best.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used should not mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior and truly in the public's best interest.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust and instead, let all the questions and risks be addressed through the regulatory process first.

Respectfully submitted,

On behalf of Cenibra Inc.
Adermo Oscar Costa
Commercial and Logistics Manager – CENIBRA



Adermo Oscar Costa
Celulose Nipo-Brasileira S/A
Commercial Manager

cc: All Parties of Record

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am the Operations Manager for Choquette Grains Inc. We work extensively with both CP and CN rail. I feel this letter is essential for our business going forward.

I am writing to express Choquette Grains Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the

consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Paul Choquette



cc: All Parties of Record



5500 Cenex Drive
Inver Grove Heights, MN 55077-1721

302492

Creating connections to
empower agriculture

ENTERED
Office of Proceedings
June 10, 2021
Part of
Public Record

June 7, 2021

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

Re: STB application of rules for handling proposed mergers with the Kansas City
Southern railroad
Finance Docket No. 36500

Dear Ms. Brown:

As a farmer-owned cooperative, CHS Inc. ("CHS") opposes granting the Canadian National Railway a voting trust in the matter of the Kansas City Southern railroad merger, as it would not be in the best interest of U.S. farmers.

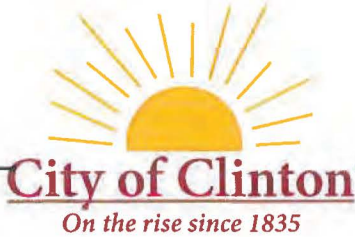
U.S. farmers appreciate the regulation and oversight of fair, competitive transportation systems to facilitate shipping grain from their farms to global buyers. CHS and other companies are investing heavily in assets and infrastructure in strategic U.S. crop production regions, to further expand farmers' market access and meet growing global demand.

Allowing the Canadian National a voting trust denies U.S. farmers and thousands of rural businesses serving them the benefits of competitive access, and a once in a lifetime opportunity to act on their behalf to create transformative, broad-reaching rail capacity and service.

Respectfully,

John Griffith
CHS Executive Vice President, Global Grain & Processing and CHS Hedging

cc: all parties of record



June 7, 2021

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

RE: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

On behalf of the City of Clinton, which is located along Canadian National (CN) Railway's line in Illinois, I'm writing to express my view on CN's proposed Voting Trust Agreement in connection with its proposed acquisition of Kansas City Southern (KCS). I am concerned about the burdens that CN's increased freight rail traffic will have on Clinton because of rail network congestion and am writing to express our community's view that CN's proposed use of a voting trust would not be in the public interest.

Illinois has some of the most congested choke points for train traffic in North America. Congestion makes life worse for our residents by threatening public safety by delaying ambulances, fire trucks, school buses and general traffic flow on local streets and highways at grade level. If a merger between CN and KCS is now permitted, we expect it will make the congestion problems in our community substantially worse. In addition, a CN/KCS transaction would cause increases in noise level for residents living near the tracks, and increased environmental impacts on local communities for years to come. Undoubtedly, these many harms to the public interest raise serious questions about whether a CN/KCS transaction could pass muster under the 2001 Major Merger Rules.

The Board will have to study the matter very carefully. In the meantime, though, it would be bad policy to let CN complete its acquisition before that review takes place. Accordingly, we urge the Board to reject CN's proposed voting trust and decline to put ownership of KCS shares in the hands of CN during what is bound to be a lengthy and serious review process. Allowing CN to close KCS into trust would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the new merger rules. Simply put, the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's voting trust and let CN convince the Board that the proposed transaction succeeds on the merits.

June 4, 2021

Page 2

Respectfully submitted,

Sincerely,

A handwritten signature in black ink that reads "Roger Cyrulik" followed by a stylized flourish.

Roger Cyrulik
Mayor

CITY VIEW FUEL, LLC

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express CITY VIEW FUEL, LLC perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

CITY VIEW FUEL, LLC

Respectfully submitted,

Dwight Fraedrich

A handwritten signature in dark ink, appearing to read "Dwight Fraedrich", is written over a horizontal line. The signature is stylized with a large initial "D" and a cursive "Fraedrich".

cc: All Parties of Record



Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Continental Cosmetics perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is

Continental Cosmetics LTD.

info@continentalcosmetics.com / www.continentalcosmetics.com

390 Millway Avenue Concord, Ontario, L4K 3V8 / Tel: (905) 660-0622 / (800) 268-1293
5597 Rue Paré, Mont-Royal, Quebec, H4P 1P7 / Tel: (514) 341-3643 / (800) 361-8709

Page 2



cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

cc: All Parties of Record

Continental Cosmetics LTD.

info@continentalcosmetics.com / www.continentalcosmetics.com

390 Millway Avenue Concord, Ontario, L4K 3V8 / Tel: (905) 660-0622 / (800)268-1293
5597 Rue Paré, Mont-Royal, Quebec, H4P 1P7 / Tel: (514) 341-3643 / (800) 361-8709

Page 3





6/2/2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

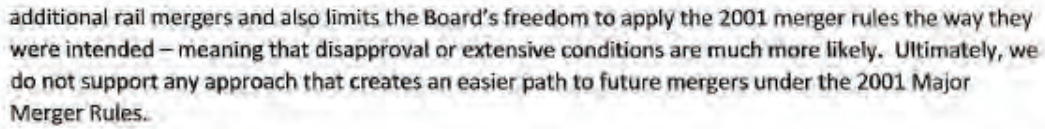
My name is Jon Crawford, President of Crawford Oil Co., Inc in Portage, WI, USA.

I am writing to express Crawford Oil Co., Inc's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages



Respectfully submitted,

cc: All Parties of Record

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Curbside Construction Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

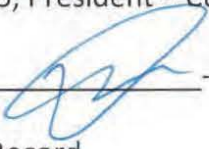
In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a

precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Lawrence Di Pietro, President – Curbside Construction Ltd.



cc: All Parties of Record



TELEPHONE 701-223-9282
FAX NUMBER 701-223-4147

3501 E ROSSER AVE
BISMARCK, ND 58501

6/01/2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Dakota, Missouri Valley and Western's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN?

Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN's proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

Mark Trottier -

Cc: All Parties of Record



June 6, 2021

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

**DATA COMMUNICATIONS
MANAGEMENT CORP.**

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#110, 10 Smed Lane SE
Calgary, AB T2C 4T5

6380 W Howard St
Niles, Illinois 60714

Dear Ms. Brown;

RE: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

I am writing to express DCM's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden(s) on merger applicants to show a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 20021 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Phil Hammond
Chief Revenue Officer
403-207-6646

Cc: All Parties of Record



6735 141st Ave N.W.
Ramsey, MN 55303-5727

Phone: (763) 421-5571
1-877-769-8077
Fax: (763) 421-8236
www.dehnoil.com

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Dehn Oil Company's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.



6735 141st Ave N.W.
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Fax: (763) 421-8236
www.dehnoil.com

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

John Dehn

Dehn Oil Company

A handwritten signature in dark ink, appearing to read "John Dehn", is written over a horizontal line.

cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Edmonton Railway Contracting Ltd. – Contractor

I am writing to express Edmonton Railway Contracting Ltd. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a

precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



_____ -

cc: All Parties of Record



Date: May 28th, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is James McPherson and I am the Logistics Manager at ENX Inc. ENX Inc. is a cement and fly ash supplier distributing our products across North America. Our facility is CN served, but we are able to use CP through Canadian Transportation Agency zone switching.

I am writing to express ENX Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Jm', with a long, wavy horizontal line extending to the right.

James McPherson
Logistics Manager
ENX Inc.

cc: All Parties of Record



EuroChem North America Corp.
3227 E 31st St.
Tulsa, OK 74105
+1 (918) 496-5115
www.eurochemgroup.com

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

EuroChem North America Corp.

I am writing to express EuroChem's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing



EuroChem North America Corp.
3227 E 31st St.
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so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Hill", written over a light blue horizontal line.

Commercial Director



EuroChem North America

cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Executive Tree Service Inc's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Carrie Briscoe

Carrie Briscoe -

cc: All Parties of Record



Farmers Coop Elevator
PO Box 16
Rosholt SD 57260
Phone 605-537-4236
Fax 605-537-4336
Jordan Krump, Grain Merchandiser

To:

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.

Washington, DC 20423

Dear Ms. Brown:

I am writing to express Farmers Coop Elevator of Rosholt's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.*

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as “geographically competitive” options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the “total fixed charges” and the “financial integrity” of the rail carriers involved***. The Board specifically noted cause for concern relating to CN's proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

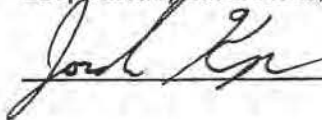
We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

 - Grain Merchandiser

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

G&B Fuels Inc

I am writing to express G&B Fuels Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Chris Neyrinck

Chris Neyrinck
General Manager of G&B Fuels Inc Group of Companies

cc: All Parties of Record



We protect what matters most[®]

June 7, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Michael Donoghue, Manager, National Rail Services at GAF Inc. Our corporate office is located at 1 Campus Drive Parsippany, NJ 07054. I am responsible for all rail matters including pricing, operations, and rail fleet management for both the US and Canada.

GAF is the largest roofing manufacturer in North America. We have major plant production locations in many key areas of the US. Rail is an intricate part of our supply chain network for both raw materials and finished goods. GAF ships on all Class 1 railroads and many Class 2 and Class 3 short lines.

I am writing to express GAF's perspective on CN's proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest or that of most shippers.

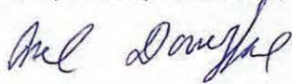
We have not formed a definitive view regarding both shippers' and public interest's consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place significant proof on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

GAF encourages the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael Donoghue", written in a cursive style.

Michael Donoghue

GAF



GALAXY FREIGHTLINE INC.

1580 Britannia Road East
Mississauga, ON, L4W 1J2
Ph: 416-644-8881
Fax: 416-644-8882

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Galaxy Freightline Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review

under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Johnny Gamboa, Senior Accounts Manager

A handwritten signature in dark ink, appearing to read 'J. Gamboa', is written over a horizontal line.

cc: All Parties of Record

June 8, 2021

By Electronic Filing

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

On behalf of Gasaway Farms, I am writing to encourage the members of the STB to reject Canadian National's (CN) attempt to use a voting trust to take over Kansas City Southern (KCS). It is our belief that a merger between CN and KCS violates the Board's 2001 Major Merger rules as well as Decision No. 3 which states that the rules place "heavier burdens on merger applicants to show that a major rail consolidation is consistent with the public interest".

A CN acquisition of KCS via voting trust will limit competition, and this violates public interest. American farmers are already experiencing increased prices on essential goods and consistently declining incomes. CN and KCS have a number of overlapping lines in key markets, and a merger would leave shippers with fewer options for service. CN and KCS serve large numbers of shippers in western Iowa and eastern Nebraska, at Jackson, Mississippi, East St. Louis, Illinois, Springfield, Illinois, and both reach the port of Mobile, Alabama. By combining these two lines, shippers will suffer from a lack of price and service competition in all of these locations.

In addition to our concerns over diminished competition, Gasaway Farms also worries about future merger prospects. Years of low commodity prices have already pushed many of us in the agriculture sector to the brink of financial distress and we believe limiting competition will have a significant financial impact on our local economies. Allowing CN to use a voting trust to acquire KCS will make it impossible for Canadian Pacific (CP) to merge with KCS. This represents a significant loss. A CP-KCS union would provide single-line service between Mexico, the United States, and Canada. Additionally, a CP-KCS line would contribute to competition between the major lines and shippers would benefit from lower rates and better services as a result.

A CN voting trust does not benefit anyone other than KCS shareholders. If the CN proposal can pass muster on its own merits, there should be no reason to push for a voting trust. Therefore, Gasaway Farms encourages the STB to deny the CN bid for a voting trust.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Chase Gasaway", is positioned above a horizontal line.

Chase Gasaway, Owner and Operator Gasaway Farms
Arkansas Advisory Board Member, Farmers and Families First

Cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Re: GDI Integrated Facility Services

I am writing to express GDI Integrated Facility Services perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Neil Crump



Neil Crump | *Regional General Manager - Manitoba & Saskatchewan*

GDI Services (Canada) LP

155B Fort St Winnipeg, MB R3C 1C8

T: [204.237.6227](tel:204.237.6227) | C: [204.612.7551](tel:204.612.7551) | F: [204.237.6589](tel:204.237.6589)

neil.crump@gdi.com | www.gdi.com | [TWITTER](#) | [LINKEDIN](#)

cc: All Parties of Record



Monday May 31, 2021

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Global Furniture Group

I am writing to express Global Furniture Group perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and

global
furniture
group



also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Barry Chypyha", with a long horizontal flourish extending to the right.

Barry Chypyha

Director of Operations

Global Upholstery Co. Inc.

cc: All Parties of Record



1350 W 4th Street
Granite City, IL 62040

BY ELECTRONIC FILING

June 9, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Grain Densification International, LLC / Greg Roach

I am writing to express Grain Densification International, LLC perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.



1350 W 4th Street
Granite City, IL 62040

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Greg Roach", is written over a horizontal line.

Greg Roach
Grain Densification International, LLC
President / CEO

cc: All Parties of Record



June 11, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Great Sandhills Railway's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to



worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Perry Pellerin", written over a horizontal line.

Great Sandhills Railway Ltd
Perry Pellerin
CEO

cc: All Parties of Record

Groenewegen

TRUCK BROKERS INC.
*Specializing in the transportation of
perishable commodities*

June 9, 2021.

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

I am writing to express Groenewegen Truck Brokers Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending

5254 Brada Crescent, Burlington, Ontario L7L 7J2
(905) 332-7035 Fax: (905) 332-7505

tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Karl VanderMeulen

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Hansen's Releasing Company's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

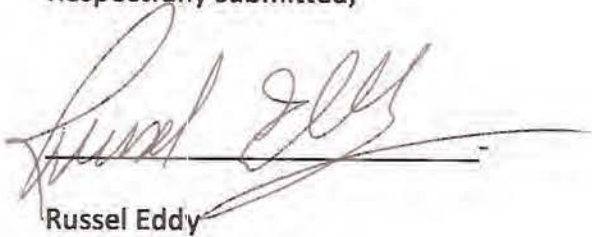
We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Russel Eddy", is written over a horizontal line. The signature is fluid and cursive.

Russel Eddy

General Manager

Hansen's Releasing Company

cc: All Parties of Record



Henry Bath, LLC
6725 Daly Road #250662
West Bloomfield MI 48325-0662 USA

BY ELECTRONIC FILING

Tel/Fax: +1 (248) 707-2500
<http://www.henrybath.com>

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Henry Bath represents a plethora of rail users in North America. Activities include both eastern and western rails as well as both Canadian rail entities currently operating in the US. We support efforts of the railroad industry to create operational efficiencies and remove unnecessary cost in the provision of railroad services. We support a free market perspective on acquisitions of such scale where the greater good of the public can be met without harm to competitiveness and with a minimum of regulatory hurdles. However, the subject-matter involves much more than free market and competition.

I am writing to express Henry Bath's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest, nor in the best interest of KCS shareholders.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN the use of a voting trust to

complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board’s evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board’s freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS’s shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. From our perspective, a voting trust will only serve to benefit CN, as the prospective acquirer, placing shareholders of KCS into a risky circumstance where the outcome could severely harm the going concern.

The costs of allowing a voting trust here are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board’s first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS’s service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm, thereby leaving railroad customer's unnecessarily harmed in the process. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.*

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and buildouts, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises. This point is of particular concern since the market will have 18 months to adjust to new profit motives on the part of CN. Such a period of time for 'review' under such an arrangement will leave consumers with an inability to effectively plan beyond that point in time, a potentially costly period for bread-and-butter rail users who more so plan their logistics strategies over lengthy periods of time.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved***. The Board specifically noted cause for concern relating to CN's proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it must divest KCS. No matter what showing CN can make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

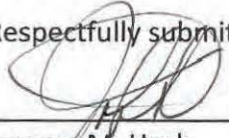
No matter how strong CN's balance sheet might be, the huge price premium it is paying, and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It will not be able to do that with any of the merger "synergies" it plans for several years, so it will provide incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether CN ends up having to divest KCS, or not.

In addition, CN is allowed to use a voting trust and the Board denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more to overcome these burdens.

We are not qualified to speak to the benefits of a CN/KCS merger vs. CP/KCS. But, while the government takes the appropriate time to fully investigate the anti-trust and competitiveness impacts of the proposed merger, the only solution remains to allow KCS to operate as it does today while allowing CN to make its case to regulators. Clearly, the governments due-diligence will not be affected by KCS remaining an independent railroad in the process.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Jerome M. Hack
General Manager

Cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

My name is Ian Synott, and I am the owner of a property rental and development company in Nova Scotia, Canada. I am currently working on a significant new housing development that requires a substantial amount of supplies including but not limited to lumber, roofing shingles, and drywall. These are all commodities that my suppliers rely heavily on CN to deliver to our Eastern province, and much of this supply originates in the US marketplace. As such, I have been following the developments on the KCS purchase by the CN and felt compelled to write.

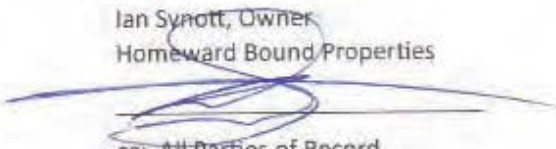
My view is that the use of a trust in this proceeding would not be in the public interest. In fact, I am adamantly opposed to the use of a voting trust. I fear the impacts on the transportation costs to my business in the future. CN is putting itself in a very dangerous and precarious position by risking billions of dollars on this deal. What's worst is that they seem to think that the STB owes them the right to a voting trust. CN knows obtaining the voting trust eliminates the possibility of their main competitor getting the KCS and they are heaping pressure on the Board to make the decision for them. These tactics should not be overlooked nor endorsed.

If you approve the trust, it will lead to one of two outcomes. One, CN and KCS cannot consummate the deal after the STB review meaning they will be forced to sell the asset at a massive loss. This will riddle them with debt as no other railway, and certainly not private equity would be willing to pay anywhere close to what they are spending. The second outcome may be worst, which is that they do consummate the deal and the CN and KCS integrate their organizations. In this case, a precedence is set and further consolidation within the rail business will be inevitable. Both are terrible for shippers and the public interest. CP's deal by contrast did not have any of these concerns and offered shippers more competition. This seems to have motivated CN to make an offer to kill that opportunity.

How can the CN be allowed to own the KCS when they have recognized that they are competitors? The CN has said it will divest of track in Louisiana because of this situation already. So during a trust period, how is it possible for them to care about competition when the money all ends up in the same account? It's not just in that area either as the competitive concerns are many including but not limited to cutting off a potential for competitive single line rail option from Chicago to the Gulf Coast. This should not be about money for the few (KCS Shareholders). It should be about our North American economy and the greater good. I am urging the STB to protect me, my suppliers, and all shippers and businesses in North America who desire robust competition, by firmly and swiftly rejecting the CN's request for a voting trust.

Respectfully submitted,

Ian Synott, Owner
Homeward Bound Properties


cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Impact Constructions perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald A. O'Leary". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

President

Impact Construction Inc

cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Industria Construction Corp.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a

precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Industra Construction Corp.

A handwritten signature in blue ink, appearing to read "Scot Brydon", with a stylized flourish at the end.

Scot Brydon, President & CEO

cc: All Parties of Record



BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express IPD LLC's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s]" on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive

conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to carefully consider CN's motion to approve its proposed voting trust, and the potential desire for other class 1's to attempt a merger should the application be approved.

Respectfully submitted,

Mark McKendry
VP, NFI IPD, LLC

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

cc: All Parties of Record



James S. Burland, J.D.

The upcoming railroad merger between Kansas City Southern ("KCS") and one of two competitors is starting to receive more attention as various groups begin to recognize the importance of having a competitive rail system in Louisiana.

Many of Louisiana's most important industries--ports, oil and gas, agriculture and others--rely on freight rail to transport their products across the country. Having competitive options is a critical component in the price, not only for producers, but consumers as well. In fact, the final prices of virtually all consumer purchases are, to some degree, dependent on transportation costs.

A merger between KCS and Canadian Pacific Railroad ("CP") would open up new markets to Louisiana businesses by creating the first single-line rail network linking the U.S., Mexico, and Canada. As our economy becomes more and more global in nature, the most successful businesses will be those taking best advantage the opportunities in both Mexico and Canada. Louisiana businesses have always been aware of, and competitive in, these neighboring markets. The most recent numbers show that our businesses sold nearly \$13 billion in exports to Canada and Mexico.

Louisiana businesses, and its business leadership, should strongly consider a CP-KCS merger. The other competitor, Canadian National Railroad ("CN"), has made an unsolicited offer to purchase KCS, but that would combine two competitive lines to just one line in a critical part of Louisiana's transportation infrastructure. As I stated earlier, producers and consumers both need competitive options, and unlike a CN-KCS merger, competition will thrive with a third-party merger offered by CP.

Louisiana businesses need a rail line that is dependable and gets their products to market quickly and at a low cost to them. The CN-KCS deal is not the best offer for Louisiana and will lead to increased prices and less competition.

I ask the Surface Transportation Board to keep this in mind and instead approve the CP-KCS merger.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Burland".

Jimmy Burland, J.D.
Burland & Associates, Inc.

Karan Pujji
11317 Fairways Dr.
Creve Coeur, MO 63141

JUNE 1, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I write to you today to offer my position on Canadian National's ("CN's") proposed voting trust in connection with its acquisition of Kansas City Southern ("KCS").

As I'm sure you are aware, a CN-KCS merger would create the third-largest Class 1 railroad in the United States and many CN lines run parallel to KCS. This would lead to a decrease in competition where the lines currently compete and make this proposed merger troubling for shippers and the railroad industry as a whole. For the sake of the public's best interest, I urge the Board to reject CN's proposal.

Under the new merger rules in which the STB will consider CN's proposal, competition should be enhanced rather than reduced. By attempting to acquire KCS, CN's proposal directly challenges this rule. If this merger is allowed to move forward, competition between railroads will suffer as fewer options became available for customers.

Now, if CN were allowed to acquire KCS's stock, hold it in a voting trust, and reap the benefits of owning KCS while it is still operated by KCS's management (including dividends from KCS's profits), I can only imagine the damage done to competition between the two railroads. In this position, CN can knowingly receive business despite higher rates and less than standard service. This same factor is the exact reason I remain against the voting trust and merger as a whole.

I encourage the Board to reject CN's proposed voting trust. It has become clear that this deal is not suited to benefit the public and robust business practices. It instead serves KCS's shareholders, who will benefit from the \$33.6 billion transaction.

Respectfully submitted,

Karan Pujji



Cc: All Parties of Record

June 7, 2021

By Electronic Filing

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

In March of this year, Canadian Pacific (CP) and Kansas City Southern (KCS) announced a merger agreement. The potential union of the two lines was embraced by more than 400 shippers and other interested parties due to the competitive advantages it would bring in various parts of the nation. Because CP and KCN lines do not overlap, the combined line would seamlessly link Canada, the United States, and Mexico and provide an important counterpoint to existing UP, BNSF, and CN single-line routes.

Last month, Canadian National (CN) made an unsolicited bid for KCS and the CP-KCS merger agreement was ultimately dissolved. CN plans to finance the staggering 45 percent price premium with \$19 billion in new debt. Furthermore, CN is hoping to fast-track its acquisition with the use of a voting trust. This is both dangerous and unnecessary, and Langley Oil Company encourages the STB to reject the CN voting trust.

International developments have highlighted the need to responsibly develop infrastructure to supply the country with important resources and generate sustainable economic growth at home. Allowing CN to take over KCS with a voting trust will limit competition in key railroad markets and ultimately offer shippers fewer choices and diminished service. Moreover, a CN voting trust will close the door on a CP-KCS merger, and with it, all opportunity to enhance competition in key markets.

The Board has gone on record in the past to state that CN and KCS “compete aggressively for traffic” and its own Decision No. 3 makes it clear that all potential mergers must align with the public interest. At the end of the day, a CN-KCS merger does not support the public interest and this is why there is such a push to close this deal via a voting trust. The STB has the authority to block the voting trust and Langley Oil Company hopes the members of the Board agree this is the safest course of action.

Respectfully submitted,



Jerry Langley, Owner and Operator, Langley Oil Company LLC
Arkansas Oil and Gas Commissioner

Cc: All Parties of Record

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express MacCosham Inc.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is caused to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to

rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



John Bonham
President, MacCosham Inc.

cc: All Parties of Record



Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Maddox Logistics Limited

I am writing to express Maddox Logistic's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the

first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

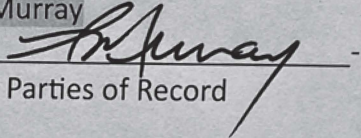
In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Todd Murray


cc: All Parties of Record



CHAMBER OF COMMERCE
ECONOMIC DEVELOPMENT
TOURISM

JUNE 3, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

I write to you today on behalf of the Muscatine Chamber of Commerce. Our intention with this letter is to express our support for Canadian Pacific (“CP”) in its bid for the Kansas City Southern (“KCS”) railroad.

Though Canadian National (“CN”), through an unsolicited bid, offered a higher monetary amount, it remains clear that CP’s offer is better for businesses in Iowa, and in particular, Muscatine.

Iowa’s two largest trade partners are Canada and Mexico. We would like our farmers and manufacturers to be able to benefit fully from trade deals such as the United States-Mexico-Canada Agreement (USMCA). A CP-KCS network will create the first U.S.-Mexico-Canada railroad network capable of doing this by delivering products across the continent much faster and with more efficiency.

A CP-KCS merger will also create competition between other railroads, allowing each network to hold the other accountable for superb service and fair pricing. Even after CP and KCS merge, they will remain the smallest Class 1 railroad by revenue. Shippers, farmers, and manufacturers in Iowa deserve to have options that allow them to prosper.

We ask the Surface Transportation Board (STB) to consider these facts as they weigh whether or not to approve a CN-KCS voting trust. CP has offered a better deal for Iowa, the Midwest, and the overall public interest. We kindly urge the board to concur.

Erik Reader, President & CEO

Cc: All Parties of Record

WWW.MUSCATINE.COM

GREATER MUSCATINE CHAMBER OF COMMERCE & INDUSTRY

100 W 2ND ST | MUSCATINE, IA 52761 | (563) 263-8895

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express MX Solutions' perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

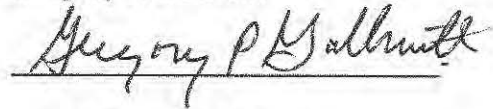
In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or

extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Gregory P. Galbraith

A handwritten signature in cursive script, reading "Gregory P. Galbraith", is written over a horizontal line.

cc: All Parties of Record



June 8, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I write on behalf of the North Dakota Grain Growers Association to express our perspective regarding the Canadian National's (CN) proposal to use a voting trust in connection with its proposed acquisition of the Kansas City Southern (KCS) railroad. The North Dakota Grain Growers Association, through our contracts with the North Dakota Wheat Commission and North Dakota Barley Council, engages in domestic policy issues on the federal and state levels on behalf of North Dakota wheat and barley farmers.

In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose

"You Raise; We Represent"

Phone: 701-282-9361 | Fax: 701-404-5187 | 1002 Main Ave W. #3 West Fargo, N.D. 58078

extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south-central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are

not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of

competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as “geographically competitive” options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the “total fixed charges” and the “financial integrity” of the rail carriers involved***. The Board specifically noted cause for concern relating to CN’s proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN’s balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won’t be able to do that with any of the merger “synergies” it plans for several years, so it will have incentives to do it through higher prices for CN’s current customers or less investment on CN’s network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN’s application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster,

what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Tom Bernhardt
President
North Dakota Grain Growers Association

CC: All Parties of Record



BY ELECTRONIC FILING

May 31, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express New-Way Trucking Ltd's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended –



meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randhir Brar", is positioned above the printed name.

Randhir Brar
CFO

cc: All Parties of Record



Northern Plains Railroad

Jesse J. Chalich
President

jesse_chalich@nprail.com

Ph. (701) 229-3444

Cell (701) 741-2771

May 27, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Northern Plains Railroad (“NPR”) operates a regional railroad network in North Dakota, of which over 300 route miles are leased from Canadian Pacific Railway (“CP”). We have previously supported CP’s acquisition of the Kansas City Southern (“KCS”) given the strong public interest benefits that this proposed merger would provide to shippers on our line and in fact within the greater upper Midwest region of the United States.

I am writing to express a perspective on Canadian National’s (“CN’s”) and KCS’s submission to use a voting trust in connection with its proposed acquisition of KCS. In Decision No. 3, the Board explained that it will adopt a “more cautious approach” to CN’s proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the “potential benefits and costs of such use.” We are writing to support the Board’s position in this respect accordingly.

We have not formed a definitive view regarding the public interest consequences of CN’s proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board’s 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place “heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest” and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here, when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

From our perspective which we believe is echoed by many North Dakota grain shippers, the ability for CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, improved single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN already reaches the Gulf of Mexico. CN has a high-capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have additional incentives to invest in this route via Kansas City, opening up new competition.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would end this opportunity for enhanced competition. We would respectfully request the Board consider this fact in its deliberations.

Respectfully submitted,

NORTHERN PLAINS RAILROAD INC.

A handwritten signature in dark ink, appearing to read "Jesse J. Chalich", written in a cursive style.

Jesse J. Chalich, President



BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express North West Terminal's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.



In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

North West Terminal

cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Nulogx, Inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

 VP Managed Transportation, Nulogx, Inc.

cc: All Parties of Record

Ontario Southland Railway Inc.

June 2, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Our company is the Ontario Southland Railway, Inc. (OSR) and our address is 47-101 Southgate Parkway, St. Thomas, ON, N5R 6L5. I am Executive Vice-President of OSR and I am responsible for the overall management of the company.

I am writing to express OSR's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of

review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board’s evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board’s freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS’s shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS’s shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board’s first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the *adverse impact that would have on existing competition between KCS and CN*.

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated." Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.*

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would

have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as “geographically competitive” options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason *not to let CN use a voting trust*, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential *financial impact of a transaction on the “total fixed charges” and the “financial integrity” of the rail carriers involved*. The Board specifically noted cause for concern relating to CN's proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our

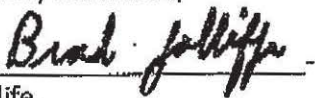
view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,



Brad Jolliffe,
Executive Vice-President
Ontario Southland Railway
Cc: All Parties of Record

June 2, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

My name is Bob Johnson, the Vice President – Rail Transportation for ORR Safety, a division of NSI/Wurth Group.

I am writing to express ORR Safety's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a

precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bob Johnson", with a long, sweeping horizontal stroke extending to the right.

Bob Johnson

VP Rail Transportation

ORR Safety – Riverside, MO

cc: All Parties of Record



PANEL CONSTRUCTION LTD.

60 DEERMEADE RD. SE
CALGARY, AB T2J 5Z5

GENERAL CONTRACTOR - INTERIOR CONSTRUCTION & SERVICES

June 17th 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown

Chief, Section of Administration, Office of Proceedings

Surface Transportation Board

395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Kellie Roberts – General Manager/Owner

I am writing to express Panel Construction Ltd's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Kellie Roberts – General Manager/Owner

A handwritten signature in black ink, appearing to read 'K. Roberts', with a large, sweeping horizontal stroke underneath.

cc: All Parties of Record



P. O. Drawer E
One Pinnacle Ave.
Garyville, LA 70051
Tel: (985) 535-2000
Fax: (985) 535-1369

June 16, 2021

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

Re: CN/KCS - Finance Docket No. 36514

Dear Chief Brown:

As President of Pinnacle Polymers, LLC, ("Pinnacle") I write to express our strong opposition to Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. By way of background, Pinnacle is a major producer of plastic polymers which we ship directly to our customers via railcar throughout North America. We are a significant consumer of rail services and will be detrimentally impacted by a loss of competition in rail services in the region. As such, we are closely monitoring this issue and ardently believe that the use of a trust for any merger under the 2001 Major Merger Rules would not be in our interest, much less the public interest.

We express no opinion at this time regarding the potential consequences of CN's proposed control of KCS, but we are pleased that the Surface Transportation Board ("Board") has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board has acknowledged, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest. See Decision No. 3. It is our understanding that the Board has indicated a "more cautious approach" to the proposed voting trust process and, specifically, will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use."

We believe the Board cannot, and should not, pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest. Furthermore, we believe that a full analysis of the impacts of the proposed transaction on both railroads, as well as any future competitors, is appropriate and warranted prior to determining whether the proposed trust would cause substantial financial harm to one or both.

We also note that this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. We caution the Board against the hasty use of a voting trust here when doing so could create a



P. O. Drawer E
One Pinnacle Ave.
Garyville, LA 70051
Tel: (985) 535-2000
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precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules in line with their intent.

Please let the Board know we respectfully ask for a careful and thoughtful review of the proposal and hope that the Board ultimately rejects CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in cursive script, reading 'Deneice Bercegeay'.

Deneice Bercegeay

President, Pinnacle Polymers, LLC

cc: All Parties of Record



5-26-2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Pro Ag Farmers Cooperative in Hoffman Minnesota has a vaunted interest in the merger between the Canadian Pacific and KCS. This merger would enhance more opportunity for various destinations and competitive rates. To help improve our margins on outgoing product. There are some concerns we have with the possible KCS/CN merger. This letter will spell out some of them.

I am writing to express Pro Ag's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation

of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control

transaction under the new merger rules, which emphasize “enhanced” rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS’s stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS’s profits – even though KCS’s management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we agree with the U.S. Department of Justice’s observation that “threats to competition would be present immediately after the CN voting trust is consummated.”

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for ***KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.***

A CP/KCS transaction promises to create new, better single-line routes from America’s Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP’s only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS’s stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America’s rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS’s system, much of which is broadly parallel to CN’s existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as “geographically competitive” options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason ***not to let CN use a voting trust***, so that there is no pre-judgment

of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential ***financial impact of a transaction on the “total fixed charges” and the “financial integrity” of the rail carriers involved.*** The Board specifically noted cause for concern relating to CN’s proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN’s balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won’t be able to do that with any of the merger “synergies” it plans for several years, so it will have incentives to do it through higher prices for CN’s current customers or less investment on CN’s network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN’s application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN’s motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can

deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Fenger', written over a horizontal line.

Joel Fenger

- Title: Grain Division Manager

Grain Division Manager

Cc: All Parties of Record



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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Produits Minéra inc. perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

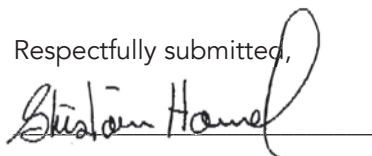
In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's

proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, reading "Ghislain Hamel", written over a horizontal line.

Ghislain Hamel, eng. MBA
CEO
Produits Minéra inc.
200, rue St-André
Saint-Flavien, QC
G0S 2M0, CANADA

cc: All Parties of Record

May 31, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Rhomberg Sersa North America is a supplier of specialized track maintenance machinery to both CN and CPR.

I am writing to express Rhomberg Sersa North America's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully Submitted,



Michael Match
Chief Executive Officer
Rhombberg Sersa North America
CC: All Parties of Record

400, 2 Court House Avenue, Brockville Ontario K6V 4T1 Canada
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Phone: 618.452.8990
Fax: 618.452.8995
www.riversedgeterminals.com

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Hello, My name is Sean Owens, and I am the Operations Manager at Rivers Edge Terminals in Granite City, IL. I am responsible for oversight of company activities including rail freight to and from the facility.

I am writing to express Rivers Edge Terminals perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a

better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean Owens", written over a circular stamp.

Sean Owens-

cc: All Parties of Record



BY ELECTRONIC FILING

June 01, 2021

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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

Saskatchewan Mining and Minerals Inc. is a manufacturer of Anhydrous Sodium Sulphate, with a CP served facility located in Chaplin, SK.

I am writing to express SMMI's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

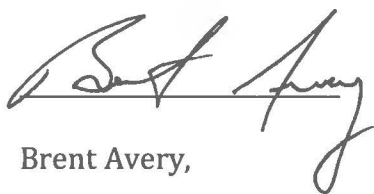


In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,



Brent Avery,

General Manager
Saskatchewan Mining and Minerals Inc

cc: All Parties of Record

RE : Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

RE: SIMARD LOGISTICS (SIMARD TRANSPORT LTD) – SHIPPER

I am writing to express SIMARD TRANSPORT LTD perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.



In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

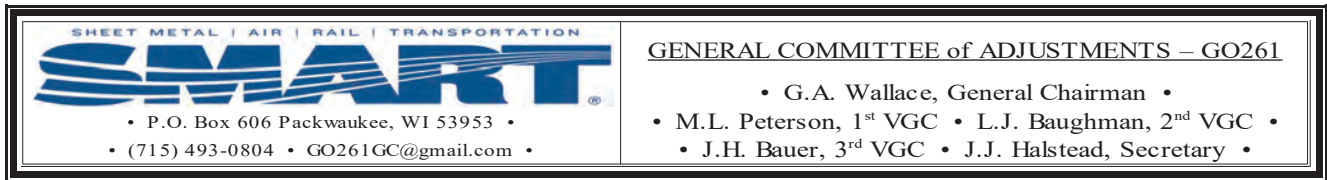
Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

JOE VANNELI.

VICE PRESIDENT SIMARD TRANSPORT LTD

cc: All Parties of Record



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

By Electronic Filing

Re: *STB Docket No. FD 36514 – Canadian National Railway – Control – Kansas City Southern*

Dear Madam:

I am the General Chairman of the SMART Transportation Division General Committee of Adjustments 261. We represent approximately five hundred (500) employees of the craft or class of mostly Trainmen and some Engineers on the SOO Line Railroad Company (Canadian Pacific Railway (CPR). This letter to share my view and the reasons why the Surface Transportation Board (Board) should reject the submitted Canadian National Railway (CN) proposal to use a voting trust in connection with its proffered acquisition of Kansas City Southern (KCS).

In Decision No. 3, the Board explained that it will adopt a; “more cautious approach” to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the; “potential benefits and costs of such use.”. I am writing to express my view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the best public interest or the best interest of our Organization. As the Board acknowledged in Decision No. 3, those rules place; “heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest” and allows the Board a much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

Permitting the CN to use a voting trust to complete its acquisition of KCS would have adverse effects on my membership through the loss of rail traffic, and the railway industry as a whole, as it would eliminate the opportunity for KCS to be acquired by CPR and the strong competitive benefits that a CPR/KCS transaction would generate.

Furthermore, CN already has a high-capacity mainline route from Chicago, IL straight to New Orleans, LA, so with CN acquiring KCS there would be no need for the KCS parallel lines. CPR, by comparison, has a route that extends south only as far as Kansas City, MO; this is CPR's only connection with the KCS. The CN/KCS transaction is just the opposite and would be anti-competitive due to the overlap of existing rail lines. On the other hand, CPR/KCS transaction promises to create new, better single-line routes from Canada through the central United States, and on to the Gulf of Mexico. If CPR and KCS are allowed to incorporate, CPR would have a rational motive to invest in this route, opening up new competition against CN, BNSF, and Union Pacific.

The danger of approving the CN voting trust proposal has the real possibility of harming employees of both KCS and CN due to the amount of debt CN will carry; and the real possibility that the CN transaction would fail the regulatory test in the end.

There is no dispute a CN/KCS transaction is the exact opposite of an end-to-end merger and will also be anti-competitive due to the overlap of existing rail lines/affected customers. If this proposed merger were granted approval of a voting trust, we fully expect job loss on either CN or KCS because it is likely the STB would require further sale or abandonment of competing rail lines, in addition to what has been recently announced by CN concerning New Orleans to Baton Rouge. The consequences for members represented by SMART and all other Union Brothers and Sisters will be uncertain, but likely adverse and severe, and certainly contrary to the public interest;

Allowing the CN to acquire all of KCS's stock as part of a voting trust transaction would greatly diminish, if not eliminate, this opportunity for enhanced competition. We ask that you consider the historic competition between CPR and CN and how that will be impacted with the voting trust and ultimately on the merits of the merger being reviewed. Moreover, the CN network within the United States would be three (3) times the size of CPR. This kind of competitive imbalance is bad for the United States rail network and most importantly, their customers, the consumer, and railway employees.

Accordingly, for the reasons described above and others, we urge the STB to carefully consider the implications on this proposed transaction and those that will follow, both short-term and long-term.

Therefore, on behalf of the members of the SMART Transportation Division, I urge the Board to reject CN's motion to approve its proposed voting trust.

Respectfully Submitted,



Gerald A. Wallace
General Chairman – GO261
SMART – Transportation Division
email: GO261GC@gmail.com
cell: 715-493-0804

KENNETH J. FLASHBERGER
General Chairman

EDWARD A. ANGLEMYER
Vice General Chairman

CHRISTOPHER J. TASSONE
Secretary



General Committee of Adjustment #987
1221 Delanglade Street
Kaukauna, Wisconsin 54130
Phone: (920) 759-9010
Fax: (920) 759-9014

302533

WISCONSIN CENTRAL LTD.
(Former DWP, DM&IR and EJ&E)

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Office of Proceedings
June 16, 2021
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Public Record

June 12, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Sent Via Electronic Filing

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

I am the General Chairman of SMART Transportation Division General Committee of Adjustment 987 (SMART-TD GO-987). Our Committee represents approximately 800 employees working as Conductors on the Wisconsin Central Ltd./Canadian National Railway Company.

Central to Canadian National's bid for Kansas City Southern is the establishment of a voting trust that benefits Kansas City Southern shareholders. SMART-TD GO-987 unequivocally supports approval of Canadian National's voting trust. Canadian National proposes to use the same voting trust structure as Canadian Pacific Railway, which the Board approved with a modification. For the reasons the STB provided in making its decision, we believe Canadian National's voting trust should also receive approval. The approval of Canadian National's voting trust will allow Kansas City Southern shareholders to make a fully informed decision when placing their votes to approve the transaction, and upon approval, to receive the full value of their shares while the STB considers Canadian National's case for a combined, end-to-end rail network.

The Kansas City Southern-Canadian National voting trust—as well as their request that the STB review their voting trust with a period for public comment—demonstrates clearly the stakeholder-focused approach to business that Canadian National has demonstrated during our relationship. We look forward to seeing Canadian National's commitment to fairness and efficiency reflected in the STB's review of the voting trust.

Sincerely,

A handwritten signature in blue ink that reads "K. J. Flashberger".

K. J. Flashberger
General Chairman GO-987

cc: Parties of Record



South Dakota Grain & Feed Association

BY ELECTRONIC FILING

June 11, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

On behalf of the South Dakota Grain & Feed Association, I am writing to express our members perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so – and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it

decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs, St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would, of course, do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up in the same place: with CN? Ultimately, we

agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield*.

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction entirely. But that is a reason *not to let CN use a voting trust*, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, in its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential *financial impact of a transaction on the "total fixed charges" and the "financial integrity" of the rail carriers involved*. The Board specifically noted cause for concern relating to CN's proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

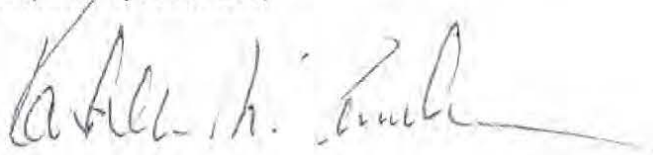
We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN's balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won't be able to do that with any of the merger "synergies" it plans for several years, so it will have incentives to do it through higher prices for CN's current customers or less investment on CN's network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board ultimately denies CN's application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or jack up rates even more in order to overcome the burdens it took on.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Kathleen M. Zander", with a long horizontal flourish extending to the right.

Kathleen M. Zander
Executive Director

Cc: All Parties of Record

**Representative
Rick West**

340.1 State Capitol
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105
(405) 557-7413
rick.west@okhouse.gov



HOUSE of REPRESENTATIVES

State of Oklahoma

**House District 3
LeFlore County**

Committees:
Agriculture & Rural Development
County & Municipal Government,
Co-Chairman
Wildlife
A&B Public Safety Subcommittee

May 26, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, D.C. 20423

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

This letter is to share my perspective on Canadian National's ("CN") request for a voting trust in its anticipated merger of Kansas City Southern ("KCS"). The Board's decision to take a cautious approach due to the size and impact of this proposed merger is to be applauded. The use of a trust will not serve the public interest and I urge the Surface Transportation Board to reject CN's motion.

The recent news that the KCS board decided to end its previous agreement to merge with Canadian Pacific (CP) in favor of entering into an agreement with CN instead was surprising to me. CN and KCS have many parallel lines and broad regions of overlap, and the loss of competition is worrisome. Should a CN-KCS merger happen, the current alternatives for shipping routes could be narrowed, leading to less competition – rather than the standard of "enhanced" competition under the new merger rules.

Additionally, we must consider the financial impact of the "total fixed charges" and "financial integrity" of the rail carriers involved. A total of \$19 billion in new debt would be needed for CN to purchase KCS. An action with implications so great should be carefully reviewed.

I respectfully ask that the Surface Transportation Board reject CN's proposed voting trust with KCS. The most compelling reason for a CN-KCS merger is payout to shareholders – when, instead, the public's interest in a merger like this should take the highest priority.

Most sincerely,

A handwritten signature in black ink, appearing to read "Rick West", written over a horizontal line.

Rick West
State Representative
Oklahoma House District 3

Sen. Casey Murdock
Oklahoma State Capitol
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105

Rep. Eddy Dempsey
Oklahoma State Capitol
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105



Rep. Rick West
Oklahoma State Capitol
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105

State of Oklahoma

June 10, 2021

BY ELECTRONIC FILING

The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E. Street S.W.
Washington, D.C. 20423

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

We wish to share our perspective as elected officials in Oklahoma’s state legislature on Canadian National’s (“CN”) request for a voting trust in its anticipated merger of Kansas City Southern (“KCS”). I applaud the Board’s decision to take a cautious approach due to the size and impact of this proposed merger. We believe the use of a trust will not serve the public interest and urge the Surface Transportation Board to reject CN’s motion.

We were surprised by recent news that the KCS board decided to end its previous agreement to merge with Canadian Pacific (CP) in favor of entering into an agreement with CN instead. CN and KCS have many parallel lines and broad regions of overlap, and the loss of competition is worrisome. If a CN-KCS merger were to happen, the current alternatives for shipping routes could be narrowed, leading to less competition – rather than the standard of “enhanced” competition under the new merger rules.

Additionally, we must consider the financial impact of the “total fixed charges” and “financial integrity” of the rail carriers involved. A total of \$19 billion in new debt would be needed for CN to purchase KCS. An action with implications that large should be reviewed carefully.

We ask the Surface Transportation Board to reject CN's proposed voting trust with KCS. The most compelling reason for a CN-KCS merger is payout to shareholders – when, instead, the public's interest in a merger like this should take the highest priority.

With respect,



Sen. Casey Murdock
State Senator | District 27
Chairman; Oklahoma State Senate Committee on Agriculture



Rep. Eddy Dempsey
State Representative | District 1



Rep. Rick West
State Representative | District 3

Cc: All Parties of Record

TEAMSTERS CANADA RAIL CONFERENCE MAINTENANCE OF WAY EMPLOYEES DIVISION

Affiliated with the International Brotherhood of Teamsters

President
Wade Phillips
Vice-President
Gary Doherty
Secretary-Treasurer
Anthony Della Porta



2775 Lancaster Road
Ottawa ON K1B 4V8
Telephone: 613-733-4456
Facsimile: 613-526-5149
Toll Free: 800-567-0571

Re STB Docket No. FD 36514 – *Canadian National Ry. – Control – Kansas City Southern*

To Whom it May Concern,

May 28, 2021

I am the President of the Teamsters Canada Rail Conference Maintenance of Way Employees Division. We represent approximately 2600 members in the Maintenance of Way service on Canadian Pacific Railway. I am writing to share our views and the reasons we urge the STB to reject the proposed CN voting trust;

In our view, the approval of the CN voting trust by the STB would be risky for the railway industry and transportation sector and destructive for our members and the recent announcement that CN will divest of the track between New Orleans and Baton Rouge is just the start of negatively affecting union positions in the railway industry.

The danger of approving the CN voting trust proposal has the real possibility of harming employees of both KCS and CN due to the amount of debt CN will carry; and the real possibility that the CN transaction would fail the regulatory test in the end.

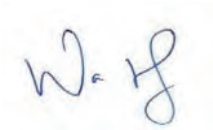
There is no dispute a CN/KCS transaction is the exact opposite of an end-to-end merger and will also be anti-competitive due to the overlap of existing rail lines/affected customers. If this proposed merger were granted approval of a voting trust, we fully expect job loss on either CN or KCS because it is likely the STB would require further sale or abandonment of competing rail lines over and above what CN recently announced.

In addition to the issues raised above, it is our position that this merger and the approval of the voting trust will severely disadvantage our members at Canadian Pacific in limiting future growth potential and stagnating opportunities which could otherwise be realized.

The consequences for our members and Union Brothers and Sisters will be uncertain, adverse and severe, and certainly contrary to the public interest;

Speaking on behalf of the members of the Teamsters Canada Rail Conference Maintenance of Way Employees Division I urge the Board to deny the CN trust.

Warm Regards,

A handwritten signature in blue ink, appearing to read "W. H. Phillips". The signature is written in a cursive style with a large "W" and a stylized "H".

President

TCRC MWED

Toll Free 1(800)567-0571

Cellular 1(613)922-4162

Fax 1(613)526-5149

wphillips@tcrmwed.ca

May 21, 2021

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Tepper Holdings Inc. is the owner of the Fastfrate Group of Companies that are premier North American logistics companies that ships and delivers goods to businesses and consumers across Canada and the United States. Our company relies on a North American rail network that promotes service, commercial competitiveness and safety. I am writing to you today to express our opinion on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." I am writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new merger rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could

ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

We think that the costs of allowing a voting trust far outweigh the benefits. We see no real benefits, other than allowing KCS's shareholders to collect billions of dollars without having to bear the burdens and risks of CN and KCS trying to persuade the Board that their deal is in the public interest. That does not seem to be a public benefit at all. Without prejudging how that assessment will turn out, if CN is right that its proposal is great for competition and all stakeholders, there ought not be such a great risk for KCS's shareholders either, and no need for a voting trust.

The costs of allowing a voting trust here, however, are quite significant. In addition to the concern about establishing a precedent for other mergers and constraining the Board's first-ever application of the new merger rules, we see a number of realistic concerns that arise immediately if CN were allowed to use a trust.

First, from our perspective, the most significant cost associated with allowing CN to use a voting trust to complete its acquisition of KCS is the ***adverse impact that would have on existing competition between KCS and CN.***

We are familiar with the rail service offerings of CN and KCS, which are broadly parallel across much of KCS's service territory on the south central United States. Our experience in rail transportation markets confirms that competition between two railroads serving the same points, corridors and regions manifests itself not just where they serve the same specific shipper facilities. Competing railroads like CN and KCS also provide alternative solutions for shipments of the same commodities in the same geographic areas, thereby disciplining one another even where they are not head-to-head alternatives for the same shipper. For example, they serve alternative transloads, alternative grain terminals, alternative receivers or shippers of the same commodity across the regions they both serve, like much of Mississippi, much of Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois.

CN's proposed control of KCS would of course do away with all of this competition completely. It may be possible to remedy some of it with targeted access for other rail carriers, but without

an independent KCS it would be impossible to remedy all of the harm. Under these circumstances, we would imagine that the Board would not approve CN's proposed control transaction under the new merger rules, which emphasize "enhanced" rather than reduced competition.

But some of the harm would come immediately if CN were allowed to acquire KCS's stock and hold it in a voting trust. As we understand how voting trusts work, CN would receive all of the benefits of owning KCS – including dividends from KCS's profits – even though KCS's management continued to direct the day-to-day functions of that railroad. As a market participant, we cannot imagine that competition between CN and KCS would remain robust if CN knew it would earn profits when KCS was able to win business despite charging higher rates or offering worse service. Why would either of them sharpen their pencils against one another if the profits ended up the same place: with CN? Ultimately, we agree with the U.S. Department of Justice's observation that "threats to competition would be present immediately after the CN voting trust is consummated."

Second, allowing CN to use a voting trust to complete its acquisition of KCS would eliminate the opportunity for *KCS to be acquired by Canadian Pacific and the strong competitive benefits such a transaction would yield.*

A CP/KCS transaction promises to create new, better single-line routes from America's Heartland and Canada to the Gulf of Mexico. CN (via its 1998 acquisition of Illinois Central) already reaches the Gulf of Mexico. CN has a high capacity mainline route straight from Chicago to New Orleans. CP, by contrast, has an underutilized route line that only goes as far as Kansas City. CP's only friendly connection at Kansas City is with KCS. Were CP and KCS allowed to combine, CP would have incentives to invest in this route via Kansas City, opening up new competition against CN, BNSF and Union Pacific.

Allowing CN to acquire all of KCS's stock as part of a voting trust transaction would kill this opportunity for enhanced competition. Not only that, it will leave CP and its U.S. network a shadow of a CN/KCS network. CN in the U.S. would be three times the size of CP in the U.S. This kind of competitive imbalance is bad for America's rail network, and we worry in particular about its implications for potential further consolidation.

Making matters worse, CN would get stronger by absorbing KCS's system, much of which is broadly parallel to CN's existing U.S. network. This implies rationalization of assets, not investment in new competitive routes. And it implies a loss of competitive options – both concrete multi-railroad access to individual shippers and more subtle benefits of having multiple railroads near one another to serve as "geographically competitive" options for transload shipments, grain moving to alternate elevators/terminals, build-ins and build-outs, and other means.

We are aware that the Board would consider a proposed CN/KCS under the new merger rules, and therefore could condition it to try to protect competition or disallow the transaction

entirely. But that is a reason *not to let CN use a voting trust*, so that there is no pre-judgment of the outcome of that first-ever new rules assessment, and no foreclosure of a potential CP/KCS transaction and all the competitive benefits it promises.

Third, In its Decision No. 3, the Board pointed to the fact that one aspect of the public interest it needed to consider was the potential *financial impact of a transaction on the “total fixed charges” and the “financial integrity” of the rail carriers involved*. The Board specifically noted cause for concern relating to CN’s proposal to issue over \$19 billion of new debt to finance its purchase of KCS, and the 45% price premium it was proposing to pay.

We share the concerns the Board noted, and believe these factors are compelling reasons why CN should not be able to use a voting trust to complete its purchase – spending all of this money and issuing all of this debt – unless and until the Board has completed its full assessment whether a CN/KCS transaction that would burden the railroad and its customers in this would be in the public interest.

We understand that CN has said it plans to try to demonstrate how its strong balance sheet and financial forecasts will allow it to earn a return on its investment in KCS, and to avoid financial hardship if it has to divest KCS. No matter what showing CN is able to make in this regard, in our view it cannot support a finding that it would be in the public interest to allow CN to buy KCS first and defend its acquisition later.

No matter how strong CN’s balance sheet might be, the huge price premium it is paying and massive debt burden will create immediate incentives for CN to extract more revenues from its existing customers. It won’t be able to do that with any of the merger “synergies” it plans for several years, so it will incentives to do it through higher prices for CNs current customers or less investment on CN’s network. These incentives arise whether or not CN ends up having to divest KCS.

In addition, if CN is allowed to use a voting trust and the Board denies CN’s application to control KCS, CN would have to divest KCS sometime in 2023. It is hard to imagine CN would be able to get a price for KCS anywhere close to what it agreed to pay. Its high premium seems designed to deny KCS to CP, and no other railroads would be willing (or able) to pay such a high price for KCS. In that scenario, CN would be saddled with massive amounts of debt and no merger synergies with which to recoup them. Even if CN could put forward an optimistic business plan that showed it could bear these burdens without financial disaster, what if the economic picture in 2023 were not so rosy? CN might have to sacrifice investment, downgrade service levels, or increase rates even more in order to overcome the burdens it took on.

* * *

Accordingly, we urge the STB to reject CN’s motion to approve its proposed voting trust. The fact is that the Board does not need to play Russian Roulette with the U.S. rail network. It can

deny CN's proposed voting trust and let CN proceed to convince the Board that its proposal offers compelling public benefits that cannot be achieved any other way, and that the super-premium CN is paying to KCS's shareholders is not contrary to the public interest. Only then should CN be allowed to spend so many billions to acquire KCS.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "L. Wyss.", is positioned above a horizontal line.

Leonard Wyss
Chief Financial Officer

Cc: All Parties of Record

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Terra Contracting Ltd.'s perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

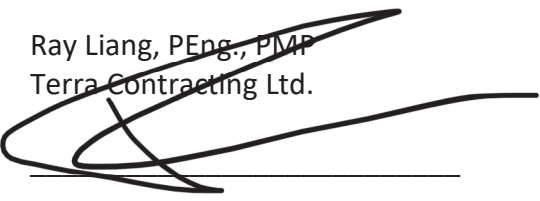
We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Ray Liang, PEng., PMP
Terra Contracting Ltd.



cc: All Parties of Record



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

Re: Finance Docket No. 36514 – Canadian National Ry. – Control – Kansas City Southern

Dear Ms. Brown:

As an owner of a small business in Southwest Minnesota, I write to you to give my perspective on Canadian National's ("CN's") proposal to use a voting trust for its proposed acquisition of Kansas City Southern. I understand that the Board has already decided it would take a more cautious approach to this voting trust due to its impact on the industry. This letter intends to express my view on the matter and why I believe allowing CN's voting trust will unnecessarily burden the public.

CN's acquisition of KCS will create the third-largest Class 1 railroad. CN and KCS already compete for traffic in many parts of the country – allowing them to merge into such an extensive rail network will hurt competition. CN and KCS serve much of Mississippi and Louisiana, Omaha/Council Bluffs; St. Louis, Springfield, and southwestern Illinois – if they were to merge, the two rail lines could no longer hold each other accountable and compete for competition.

A major loss of competitive options is implied with this merger, including both concrete multi-railroad access to individual shippers, along with more subtle benefits of having multiple railroad networks near each other that serve as competitive options for shipments. Additionally, there will be higher congestion in places like Louisiana and Illinois, which already struggle with immense rail traffic.

The Board should also take into account the financial impact this transaction may have on shippers. Almost immediately upon the purchase of KCS, CN will need to extract revenue from existing customers. The Board should realize that with less competition in many states, the need for revenue will impact those who have fewer options for shipping due to the merger.

Accordingly, I urge the STB to reject CN's motion to approve the voting trust. Instead, CN must make its case to the Board on why they believe this merger is in the public's best interest, despite the shared concerns highlighted in this letter. If CN is able to do so, only then should CN be able to spend billions to purchase KCS.

Most people don't realize how important railroads are to our way of life in our part of the world. Ensuring access at a reasonable cost should be a couple of guidelines that drive your decision.

Thank you,

A handwritten signature in black ink, appearing to read "Steve Veverka", written over a horizontal line.

Steve Veverka

Campaign supplies, Promotional items, Office furniture - In the market to get what you need!

Letter to STB commenting on CN Trust Proposal

BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Trendwood Ltd's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to

worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Greg Sylvester

Owner/Manager

Trendwood Limited



cc: All Parties of Record



June 18, 2021

I am writing to express my concern over the proposed merger of the Canadian National and Kansas City Southern (KCS) railroads. As a business leader who depends heavily on receiving parts and raw materials, as well as shipping large machinery over rail, having multiple logistic options is key to our business success.

I fear a merger of two of our largest railroads like Canadian National and Kansas City Southern would only lead to less competition, fewer choices, and higher prices for shippers. That is the last thing we need. I am looking for more options, not fewer - and especially in bringing in the parts and materials we need from the West Coast - as well as ensuring continued competition in the northern and southern routes.

If Canadian National is allowed to proceed with its plans to acquire KCS and close into a voting trust, this could also spur even more rail consolidation, leading to dramatic negative consequences for shippers and the U.S. economy.

I urge you to reject Canadian National's anti-competitive plan and their attempt to buy KCS through a voting trust that would only reduce capacity in the U.S. rail network.

A handwritten signature in blue ink that reads "Preston B. Gordon".

Preston B. Gordon

Vice President

U. S. Industrial Machinery

120 Webster Ave.

Memphis TN, 38134

www.usindustrial.com



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BY ELECTRONIC FILING

June 15th, 2021

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I am writing to express Victoria Pulse Trading's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to CN's proposed voting trust and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust in this proceeding would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether CN's proposed control transaction would ultimately be found consistent with the public interest after 18+ months of review under the new rules is exactly why the Board should not allow CN to use a voting trust to complete its acquisition first and have it reviewed later. CN would be spending tens of billions of dollars to buy KCS, and there is no way to be confident that it could ever recoup that investment were it required – more than a year and a half from now – to divest KCS. The unpredictable consequences of having to do so, and of leaving ownership of KCS shares in the hands of CN all that time – would inevitably encumber the Board's evaluation of the first-ever major merger to be reviewed under the 2001 rules. The Board should not have to



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worry about the consequences of KCS coming out of trust as it decides whether to allow CN to take control of KCS, or how extensive the conditions need to be for it to do so.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely.

The Board's mandate to consider the public interest when it decides whether to allow a voting trust to be used cannot mean that it must let the railroad with the most cash predetermine the outcome of the regulatory process. The extra billions of dollars CN has offered have given KCS's board of directors no choice but to switch sides and accept CN's offer, but the fact that KCS has required CN to use a voting trust in order to close its transaction shows that KCS understands the difficult regulatory issues that CN's proposal raises. In these circumstances we do not see any public interest benefit to the use of a trust – all it does is get KCS's shareholders consideration without regard to the regulatory risks being imposed on the public interest. Nothing would prevent KCS and its shareholders from deciding to pursue the proposed CN/KCS transaction without the need for CN to use a voting trust. Rejecting the proposed voting trust and allowing KCS to consider whether CN's proposed transaction could in fact be approved by the STB is a better way for KCS and its shareholders to participate in the decision about what path forward for this important railroad is superior.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Tina Mobayen
Victoria Pulse Trading Corp.

cc: All Parties of Record



BY ELECTRONIC FILING

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

Re: Finance Docket No. 36514 – *Canadian National Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

Chuck Thompson

Global Logistics and Customer Service manager

Woodland Pulp

I am writing to express Woodland Pulp's perspective on Canadian National's ("CN's") proposal to use a voting trust in connection with its proposed acquisition of Kansas City Southern. In Decision No. 3, the Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." We are writing to express our view that the use of a trust for any merger under the 2001 Major Merger Rules would not be in the public interest.

We have not formed a definitive view regarding the public interest consequences of CN's proposed acquisition of control of KCS, but we welcome the fact that the Board has confirmed its intention to consider whether that transaction is in the public interest under the Board's 2001 Major Merger rules. As the Board acknowledged in Decision No. 3, those rules place "heavier burden[s] on merger applicants to show that a major rail consolidation is consistent with the public interest" and give the Board much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest.

We think the fact that the Board cannot (and should not) pre-judge whether any proposed control transaction would ultimately be found consistent with the public interest and would not

cause substantial financial harm to one or both railroads is cause to conduct a full and thorough review of the transaction instead of allowing a trust.

In addition, this is the first time the Board will be applying the 2001 merger rules, both on the merits and in considering whether to allow a voting trust. It would not be consistent with the public interest to rubber stamp use of a voting trust here when doing so could create a precedent that both encourages additional rail mergers and also limits the Board's freedom to apply the 2001 merger rules the way they were intended – meaning that disapproval or extensive conditions are much more likely. Ultimately, we do not support any approach that creates an easier path to future mergers under the 2001 Major Merger Rules.

Accordingly, we urge the STB to reject CN's motion to approve its proposed voting trust.

Respectfully submitted,

Chuck Thompson

A handwritten signature in black ink, appearing to read 'CTH', is written over a horizontal line.

cc: All Parties of Record