

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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ENTERED  
Office of Proceedings  
February 28, 2022  
Part of  
Public Record

**FINANCE DOCKET NO: 36500**

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CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY  
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC  
RAILWAY US INC., DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION;  
AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

– CONTROL –

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY;  
GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY  
COMPANY

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**SMART-TD AND ATDA'S COMMENTS**

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The Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART-TD") and the American Train Dispatchers Association ("ATDA") respectfully submit the following in response to the Application filed by Canadian Pacific Railway Company's ("CP") for the acquisition of control of Kansas City Southern ("KCS") in the above-captioned transaction.

**BACKGROUND**

On, March 22, 2021, in Finance Docket No. 36500, Canadian Pacific Railway Limited ("CP") and their U.S. rail subsidiaries, along with KCS and its U.S. rail subsidiaries, notified the Surface Transportation Board ("STB" or the Board") of their intent to file an application seeking authority under 49 U.S.C. §§ 11323-25 for the acquisition of control by CP of KCS. *CP – Control – KCS*, FD 36500 (STB served April 2, 2021). In that filing, CP and KCS informed the Board of their intent to file their Application on or before June 28, 2021. *Id.* By letter dated

March 22, 2021, CP requested an opinion pursuant to 49 C.F.R. § 1013.3(a), that a proposed voting trust agreement (Voting Trust Agreement or Agreement) and related arrangements described in the letter accompanying the submission would effectively insulate CP from any violation of Board policy against unauthorized acquisition of control of a regulated carrier. By decision served April 21, 2021, the Board found the Transaction to be a “major” transaction under 49 C.F.R. § 1180.2(a), as it is a control transaction involving two or more Class I railroads. *See Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 3), FD 36500, slip op. at 3 (STB served Apr. 21, 2021). By decision served April 23, 2021, following a public comment period, the Board found the proposed transaction to be subject to the regulations set forth at 49 C.F.R. part 1180, subpart A, in effect before July 11, 2001, pursuant to the waiver for a merger transaction involving KCS and another Class I railroad under 49 C.F.R. § 1180.0(b). *See Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 4), FD 36500, slip op. at 2-3 (STB served Apr. 23, 2021).

In the interim, Canadian National Railway Company (“CN”) offered KCS’ shareholders a competing bid, and on April 20, 2021, in Finance Docket No. 36514, notified the STB of their intent to file an Application seeking authority under 49 U.S.C. §§ 11323-25 for the acquisition of control by CN of KCS. *CN – Control – KCS*, FD 36514 (STB served April 28, 2021). A bidding war ensued, and on May 21, 2021, KCS terminated its merger agreement with CP in order to enter into an alternative agreement with CN. On April 26, 2021, CN filed a motion to approve a proposed voting trust agreement asserting that the voting trust is in the public interest, the voting trust would prevent unlawful control of KCS, ensuring that KCS would remain independently managed pending completion of the Board’s review of the proposed transaction, and argued against the DOJ’s opposition of the use of voting trusts. (CN Mot. 1, Apr. 26, 2021). However,

by decision dated August 31, 2021, the STB denied CN's proposed use of a voting trust, finding that it did not meet the standard under the current merger regulations. (STB Decision No. 5 Aug. 31, 2021). By letter dated September 16, 2021, CN informed the STB that it was withdrawing its Application.

On October 29, 2021, CP and KCS (collectively, the Applicants) filed an application with the Board under 49 U.S. Code (U.S.C.) §§ 11323-25 seeking the Board's approval of the Proposed Acquisition (hereinafter referred to as "the Application"). In accordance with 1180.6(a)(2)(v), Applicants included information regarding the proposed transaction's effect on employees. Applicants state, in pertinent part, that over 750 union-represented operating positions across its network in the United States will be added to accommodate the anticipated traffic growth generated by the Transaction. (Application at 17-18; Operating Plan (Exhibit 13) ¶ 187; Verified Statement of Myron Becker ¶ 12). Applicants note that they anticipate that the Transaction would be subject to the employee protective conditions adopted in *New York Dock – Control – Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979), and commit to honoring the obligations established in any protective agreements it has entered into with labor unions, including but not limited to the "cramdown" agreements reached in 2000 and 2001. (Application at 18; Verified Statement of Myron Becker ¶¶ 30-31). CP additionally states that intends to relocate its U.S. operating headquarters from Minneapolis, MN, to Kansas City following acquisition of control, which will impact 35 Dispatchers represented by ATDA, and that the relocation costs set forth in *New York Dock* will apply. (Verified Statement of Myron Becker ¶¶ 21, 28-30). CP further states that it does not anticipate making any further operational changes on KCS that would adversely effect KCS employees in the three-year period described in the Operating Plan. (*Id.* at ¶ 28).

In Decision No. 11, served November 23, 2021, and published in the Federal Register on November 26, 2021 (86 Fed. Reg. 67,571), the Board accepted for consideration the Application and established a procedural schedule for the proceeding, including a Comment deadline of February 25, 2022. *Canadian Pac. Ry.—Control—Kan. City S.*, FD 36500 (STB served Nov. 23, 2021).

### **SMART-TD AND ATDA’S Position**

KCS controls three U.S. rail operating subsidiaries: Kansas City Southern Railway Company (“KCSR”), Texas Mexican Railway (“Tex Mex”), and Gateway Eastern Railway Company (“GWER”). SMART-TD is the certified representative of the craft or class of train service employees, including Conductors, employed by KCSR. ATDA is the certified representative of the craft or class of Dispatchers employed by KCSR. SMART-TD and ATDA do not represent any employees on Tex Mex or GWER. CP employs employees represented by SMART-TD and ATDA on the following CP-controlled railroads: Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”); Soo Line Railroad Company; Delaware and Hudson Railway Company, Inc. (“D&H”); and Central Maine & Quebec Railway US Inc. (“CMQ”). SMART-TD is the certified representative of the craft or class of train service employees, including Conductors, employed by CP, Soo Line, DM&E North, D&H, and CMQ; whereas ATDA is the certified representative of the craft or class of Dispatchers employed by CP, Soo Line, D&H, and CMQ.

On April 13, 2022, SMART-TD and ATDA filed Notices of Intent to participate in the proceedings before the Board, and on June 7, 2021, submitted Comments stating in part that they took no position with regard to then-proposed mergers between CP/KCS and CN/KCS. As

indicated above, CN has withdrawn its Application, and the only transaction at issue now is the CP/KCS Application.

While the Applicants have anticipated that there will be gains in employment as a result of the proposed merger (Application at 17-18; Operating Plan (Exhibit 13) ¶ 187; Verified Statement of Myron Becker ¶ 12), they expressly acknowledge that any CP and KCS employees affected by the transaction are entitled to the standard labor protective conditions imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). SMART-TD and ATDA agree that the above-referenced employee protective conditions are the appropriate conditions mandated by law, and, as Applicants have acknowledged, that implementing agreements are required to be negotiated in connection with the proposed Transaction. In light of the foregoing, SMART-TD and ATDA do not object to the proposed transaction at this time, and respectfully request the Board impose such protections, along with any and all commitments made by the Applicants, as conditions for approval of the transaction.

Respectfully submitted,

/s/Erika A. Diehl-Gibbons  
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Counsel for SMART-TD and ATDA

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Notice of Intent to Participate has been e-filed this 28<sup>th</sup> day of February, 2022, via the STB's e-filing system, and served upon the parties of record by email.

/s/Erika A. Diehl-Gibbons  
Erika A. Diehl-Gibbons