



United States Department of Agriculture

Office of the Secretary
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February 28, 2022

Hon. Martin Oberman
Chairman
Surface Transportation Board

Hon. Michelle Schultz
Vice Chairman
Surface Transportation Board

Hon. Patrick Fuchs
Member
Surface Transportation Board

Hon. Robert Primus
Member
Surface Transportation Board

Hon. Karen Hedlund
Member
Surface Transportation Board

RE: STB Docket No. FD 36500, 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

Dear Chairman Oberman, Vice Chairman Schultz, and Members Fuchs, Primus, and Hedlund:

The U.S. Department of Agriculture (USDA) appreciates the Surface Transportation Board's (Board) careful consideration of the proposed merger between the two Class I railroads, Canadian Pacific Railway (CP) and Kansas City Southern Railway (KCS). At this time, USDA does not take a final position on the merits of the proposal, or whether the Board should approve the railroads' application. As it reviews the proposal, USDA encourages the Board to be attentive to competitive and service impacts. To examine these potential impacts and explore proactive solutions, USDA presents here several points for your consideration.

First, President Biden's July 9, 2021, executive order—"Promoting Competition in the American Economy"—underscored the importance of "robust competition" to the economic health of the Nation. Indeed, competition contributes to the public interest through better service and lower rates. Favoring an environment of healthy competition also empowers *market-based* solutions over *regulatory* ones to ensure reasonable rates and service terms—a direction USDA has long supported. USDA urges the Board to fully examine the competitive effects of the proposed merger.

Second, the Transportation Research Board's 2015 study, *Modernizing Freight Rail Regulation*, documents service disruptions experienced in past mergers. For example, following the merger between Union Pacific Railroad and Southern Pacific Railroad, the TRB study authors wrote, "western rail shippers experienced extraordinary service delays as congestion at certain terminals spread into a systemwide problem." Of course, no merger is the same, but there is potential for detrimental service impacts from any merger. USDA encourages the Board to require the applicants to submit a Service Assurance Plan (SAP), as required under the new merger rules.

USDA understands the Board's reasoning in considering the merger under the old merger rules. However, USDA believes the merger's effects on service could still be significant and worth closer inspection, per the new merger rules. USDA has specific concerns about both potential *transitional* service impacts and permanent impacts from increased volumes. Having a SAP would help alleviate these concerns by requiring the applicants to address any transitional service issues that might arise. Within the SAP, the applicants would have to proactively allocate locomotives, labor, and equipment to potential pain points. Applicants would also be required to identify potentially congested infrastructure over the longer term and to invest at those points to relieve the congestion. Multiple railroads have raised congestion concerns, and the SAP requirement could pose an effective alternative solution to their concerns.

Finally, also, a SAP would provide benchmarking measures to assess service after the merger. In many cases, relying on the existing CP and KCS service metrics would hinder analysts' ability to compare pre- and post-merger levels of service. A SAP would not only fill that data gap, but would also provide additional useful data regarding corridor performance.

USDA appreciates the Board's consideration of these points, as well as the Board's careful review of the issues presented in the merger application. USDA may provide additional views at a later stage of the proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Moffitt". The signature is fluid and cursive, with the first name "Jennifer" being more prominent than the last name "Moffitt".

Jennifer Moffitt
Under Secretary
Marketing and Regulatory Programs

CERTIFICATE OF SERVICE

I, Adam Sparger, certify that on this 28th day of February, 2022, a copy of the foregoing document has been electronically filed via the STB's e-filing system and served by electronic mail on all parties of record in STB Docket Number FD 36500.

A handwritten signature in black ink, appearing to read "Adam Sparger", is positioned above a horizontal line.

Adam Sparger
Director
Transportation Services Division
U.S. Department of Agriculture
Washington, D.C. 20250