

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY;
SOO LINE RAILROAD COMPANY; CENTRAL MAIN & 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

COMMENTS OF THE NATIONAL CORN GROWERS ASSOCIATION

Founded in 1957, the National Corn Growers Association represents nearly 40,000 dues-paying corn growers and the interests of more than 300,000 farmers who contribute through corn checkoff programs in their states. NCGA and its 50 affiliated state associations and checkoff organizations work together to help protect and advance corn growers' interests. NCGA's membership relies on timely and cost effective shipping via rail. Any disruption to this practice could have a major impact on NCGA members and the rural economy.

As a general position, NCGA does not oppose the proposed merger of CP and KCS. A portion of NCGA's members see potential benefits from this combination for grain and agricultural shippers. However, the further consolidation of the rail industry resulting from this merger may lead to additional reductions in competition despite the transaction being considered "end-to-end,"

absent the oversight of the Board to implement commensurate conditions to promote and maintain competitive opportunities for agriculture producers and rail shippers alike. That is why NCGA would like to see the STB consider several conditions when making this ruling that would protect its membership.

NCGA recommends the Board impose conditions on its approval of the merger of CP and KCS to ensure that its benefits are not offset by reductions in competition and service levels. The STB should first encourage or direct the applicants to establish reasonable terms for the continued use of existing gateways post-merger. Additionally, they should ensure that rail shippers and other customers of the merged railroad can seek payment of money damages for service failures that result from the Applicants failing to adhere to their representations concerning service levels post-merger.

One of the biggest positive effects of the merger claimed by the Applicants is that the consolidation of their systems will result in expanded single line routings on the merged CPKC railroad. However, the creation of new single line CPKC routings could potentially eliminate many existing joint line routings between the KCS and other Class I railroads. This is because the merged CPKC will be incentivized to favor its single line routes that may result in existing gateways being closed or overwhelmed by traffic. Thereby negatively impacting shippers, agriculture producers and the national rail system as a whole.

However, and to their credit, in many places in their application, CP and KCS affirm that they will keep existing gateways open post-merger, both “operationally” and “commercially.” For example, they state that “routing options will be expanded and not reduced, as CPKC will keep all existing gateways open on commercially reasonable terms and create no new bottlenecks, as explained in the statement of Mr. John Brooks, CP’s Chief Marketing Officer.

NCGA appreciates CP and KCS for their commitments to keep existing gateways with other Class I railroads open, and NCGA recommends the Board to hold the Applicants to their commitments by providing appropriate oversight over the current gateways post-merger.

Historically, mergers of two Class I railroads have created, at least in the short term, service disruptions and rate hikes for rail customers. NCGA would like to see this merger produce a different and more positive result. This is particularly important in this moment where the current state of our national supply chain for agricultural commodities remains extremely vulnerable and susceptible to disruptions. NCGA wants Class I railroads to be profitable, but also wants the railways to fulfill their obligations as common carriers and invest in their infrastructure and prioritize service to their customers. Subsequently, NCGA encourages the Board to be an active overseer of the resources employed in the first years of the merger and to financially penalize the merged railroad in place if rail service is compromised.

In conclusion, NCGA does not oppose the merger of CP and KCS. However, steps must be taken by the board to ensure these conditions are met in order to protect American agriculture producers from the disruption of trade and any punitive costs set about by this changing landscape.

Respectfully submitted,

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Certificate of Service

I certify that I have, this 28th day of February 2022, served by email copies of the foregoing document on all parties of record in this proceeding and on the parties listed below, by first-class mail, postage-prepaid, or by email:

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