

BEFORE THE SURFACE TRANSPORTATION BOARD

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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

NATIONAL ASSOCIATION OF WHEAT GROWERS FINAL BRIEF

The National Association of Wheat Growers (NAWG), through undersigned counsel, respectfully submits its Final Brief in the above-captioned proceeding. NAWG opposes this transaction as it is inconsistent with the public interest. Alternatively, if the Board approves this transaction, NAWG respectfully requests that certain conditions be imposed on this transaction in accordance with 49 U.S.C. § 11324(c). NAWG seeks these conditions to eliminate the adverse impacts this transaction will have on wheat shippers that are large rail shippers in the United States.

Established in 1950, NAWG is the primary representative in Washington, D.C. for wheat growers, representing 20 state wheat grower organizations. NAWG works to promote policy efforts that create an environment that is conducive to the success of wheat farming in the United States (US). NAWG submitted comments on February 28, 2022, outlining our opposition to the proposed merger and would like to restate that opposition here.

In 2001, the Surface Transportation Board (STB) released rules holding proposed rail mergers to a higher standard, requiring them to prove the merger would increase competition for rail customers. This rule effectively stopped further consolidation of Class I mergers which had begun to increase shipping costs. Since then, no Class I mergers have occurred, yet shipping rates have continued to rise. While the STB chose to hold the proposed merger of KCS and CP to the pre-2001 standard of proving the merger won't hurt competition, further consolidation of the rail market is still worrying. Coupled with differences in Canadian shipping policy that could lead to preferential Canadian shipper rates, NAWG believes that the proposed merger would further consolidate the rail market and lead to less competition in the marketplace – to the detriment of wheat producers.

Wheat is already heavily reliant on rail transportation to move across the US due to the amount of the commodity that is exported and where major growing regions are located. Distances from the central and northern plains, the largest growing areas, are too great a distance from ports, waterways, and end users to be trucked, making railroads a crucial link in the wheat transportation logistics chain, both domestically and internationally. NAWG has voiced concern over decreased rail-to-rail competition and has been supportive of the STB considering policies that would reduce rail rates. This merger would be the antithesis of that goal.

Another area of concern to NAWG is the potential for preferential rates for Canadian shippers due to differing domestic rail policies between the US and Canada. These differences include the Canadian maximum revenue entitlement, the Canadian arbitration system, and their more favorable rules on reciprocal switching. The Canadian maximum revenue entitlement (MRE) dates back to 2000 and aims to balance market power between the rail industry and grain shippers, especially in areas only serviced by one company. The MRE caps the amount of revenue a railroad

can earn reducing costs to shippers, a program popular with Canadian farmers. These policies keep Canadian rail rates lower compared to the US. It is important for the STB to weigh these issues carefully and consider implementing conditions that keep these concerns in mind.

The Canadian comparison is particularly telling as the two-spring wheat and durum growing regions are similarly positioned in the interior of each country, with near identical distances to traverse to export facilities in each country, with differing government rail policies being one of the only large differences in market position. However, despite the similarities, studies conducted by U.S. Wheat Associates (USW) have shown that similar origin to export point rail movements at the time in Canada were 30% below the US moves at the time. This leads to some concern about how the proposed CPKC will affect wheat shipments moving from Canada to the US and Mexico putting US wheat producers at a disadvantage. If these concerns come to fruition, the CPKC having a direct line into Mexico would put US wheat producers at a competitive disadvantage in their largest market.

REQUEST FOR CONDITIONS

NAWG has opposed this merger on multiple occasions and would like to further highlight multiple requests for conditions. NAWG supports the request for conditions filed by USW on February 28, 2022, and again in their Final Briefs. NAWG is fully supportive of all written comments filed and testimony provided during the public hearings by USW as it relates to the merger. Further, in comments filed by NAWG in April, NAWG supports the comments filed by Bayer CropScience LP; The Chlorine Institute; the American Chemistry Council, the Fertilizer Institute, and the National Industrial Transportation League; and the Occidental Chemical Corporation and Oxy Vinyls, LP regarding the transportation of toxic inhalation hazard (TIH) materials. We join them in urging the Board not to approve the CP-KCS merger unless it precludes

the adoption and extension of CP's tariff language concerning insurance, indemnification, and liability provisions for TIH materials. We further urge the Board condition the approval upon the adoption and extension of KCS' tariff language applicable to TIH shipments throughout the combined CP/KCS system.

CONCLUSION

NAWG opposes the proposed merger of the KCS and CP railroads as it does not meet the general public's best interest. NAWG feels that the merger would be detrimental to competition in the rail market and increase rail rates, and if approved, the STB should consider conditions for approval that would act as remedies to encourage rail competitiveness, increase service standards, and safeguard US wheat shippers.

Respectfully submitted,

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Dated: October 21, 2022

CERTIFICATE OF SERVICE

In accordance with Decision No. 11, I hereby certify that I have served, this 21st day of October 2022, a copy of the Final Brief of National Association of Wheat Growers by email on all persons on the service list for this proceeding, by email or by first-class mail.

Respectfully submitted,

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