

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No.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

INDUSTRIAL MINERALS ASSOCIATION – NORTH AMERICA FINAL BRIEF

The Industrial Minerals Association – North America (“IMA”)¹ respectfully submits its Final Brief in the above-captioned proceeding. IMA respectfully requests that the Surface Transportation Board (“STB” or “Board”) impose certain conditions on this transaction in accordance with 49 U.S.C. § 11324(c). IMA seeks these conditions to eliminate the adverse impacts this transaction will have on essential minerals rail shippers that are some of the largest and most captive rail shippers in the United States.

¹ IMA recently changed its name to the Essential Minerals Association; however, for the purposes of this filing, it will use the IMA name for continuity.

IMA INTEREST IN TRANSACTION

IMA is a trade association that represents companies that mine, process, and sell industrial minerals throughout North America. IMA represents a diverse set of member companies engaged in mining and processing of ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, lithium, mica, perlite, potash, quartz, salt, soda ash, sodium bicarbonate, talc, and wollastonite, and other minerals across North America. The industrial minerals produced by IMA member companies are the raw material feedstock that are incorporated into a broad range of products, including among other things, container, food products, flat and specialty glasses, paint and coatings, ceramics, and a broad range of building products. Additionally, industrial minerals are used to make foundry molds and cores, which are in turn used to make metal shapes used to manufacture automobiles, SUVs and trucks, rail cars and almost all other items that have metal castings. The demand for many of these minerals from manufacturers is global, and the continued pressure member companies are feeling from the railroads in the form of unreliable service and higher rates is making it more difficult to compete in that global market.

Industrial minerals are low margin, high volume products. Member companies are heavily dependent upon a reliable and cost-effective transportation network, especially rail, and are major shippers with the rails. To help highlight that, in 2014, the nonmetallic minerals except fuels category, made up \$1.5 Billion in total freight rail premiums.

IMA member companies have been adversely impacted by the consolidation of the rail industry and their increasingly captive status in many locations. Further consolidation of the rail industry will only make this impact worse. As a result, IMA is seeking conditions here because this merger clearly will lessen rail competition and result in poorer service.

STB VIEW ON FURTHER MERGER ACTIVITY

The regulations applicable to this transaction as noted are 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). These merger regulations were adopted soon after passage of the Staggers Act of 1980. The Board has explained that “the widespread financial distress faced by our nation’s rail carriers in the period leading up to enactment of that statute, and the associated deteriorating service levels faced by their customers, were due in large measure to an overly restrictive regulatory system that unduly limited the ability of railroads to effectively rationalize what was at that time a significant degree of excess rail infrastructure.”² These merger regulations — aimed at encouraging railroads to formulate proposals that would help rationalize excess capacity so long as competition, access to essential service, and other public interest goals were not degraded — were in response to these serious problems affecting railroads and their customers at that time.³

As the Board explained, however:

The goals of that merger policy have largely been achieved. It does not appear that there are significant public interest benefits to be realized from further downsizing or rationalizing of rail route systems, as there is little of that activity left to do. Looking forward, the key problem faced by railroads — how to improve profitability through

² *Major Rail Consolidation Procedures*, EP 582 (Sub-No. 1), slip op. at 3 (STB served Mar. 31, 2000).

³ *Id.* See 49 CFR 1180.1(a) (The Surface Transportation Board encourages private industry initiative that leads to the rationalization of the nation’s rail facilities and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation).

enhancing the service provided to their customers — is linked to adding to insufficient infrastructure, not to eliminating excess capacity.⁴

Therefore, the Board noted that any additional rail mergers presently offer very little opportunity for additional efficiencies through elimination of excess capacity. And while extensions of single-line service as touted by Canadian Pacific here can offer benefits to railroads and their customers, the Board has expressed that these benefits could be better achieved, short of merger, through innovative joint marketing arrangements and other cooperative efforts, such as joint dispatching to more efficiently move trains through congested terminal areas.⁵ With respect to transactions like here, the Board advised that “[j]oint marketing arrangements, which enable railroads to offer joint-line service almost as seamless as single-line service, could be more practicable and more likely to be in the public interest when the carriers connect largely end-to-end, rather than competing over broad territories.”⁶ Further, the Board expressed concern that the integration of two large railroads is complicated and takes a significant amount of time, and has been associated with severe service disruptions.⁷

Additional service disruptions at the present time would be devastating to the U.S. supply chain. There are already major service issues on the U.S. rail network brought on by the pandemic and the widespread adoption of Precision Scheduled Railroading as the Board has noted and even held a major hearing regarding poor rail service and the massive rail job cuts in April.⁸

⁴ *Public Views on Major Rail Consolidation*, EP 582, slip op. at 6 (STB served Mar. 17, 2000).

⁵ *Major Rail Consolidation Procedures*, EP. 582, slip op. at 3.

⁶ *Id.* at 3, note 10.

⁷ *Id.* at 3.

⁸ *See, e.g., First-Mile/Last-Mile Service*, EP 767 (STB served Sept. 2, 2021); *Urgent Issues in Freight Rail Service*, EP 770 (STB served Apr. 7, 2022).

The prospect of reducing the already small number of major Class I railroads even further is deeply concerning. As a result of the intense merger activity that took place in the 80s and 90s, the number of overall railroad companies has been reduced dramatically, and the size of the remaining carriers has increased correspondingly. This consolidation has resulted in less competition, higher rates, and poorer service over the last twenty years.⁹

IMA REQUEST FOR CONDITIONS

Under 49 U.S.C. § 11324, the Board must consider the public interest in addressing rail mergers, considering, at a minimum, **adequacy of transportation to the public**; including other rail carriers in the area involved; **competitive effects**; financial impacts on the involved carriers; and impacts on employees. “The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities.” *Id.* at (c). In addition, the rail transportation policy set out in 49 U.S.C. § 10101 directs the Board, among other things, to

⁹ See, e.g., Escalation Consultants, “*Economic Analysis: Consolidation and Increasing Freight Rail Rates*,” June 2021, <https://www.freightrailreform.com/new-report-finds-rail-customers-paying-a-steep-price-for-consolidation-and-dwindling-competition/>; Rate Reform Task Force, Report to the Surface Transportation Board, at 11, Apr. 25, 2019, <https://prod.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf>; U.S. Senate Committee on Commerce, Science, and Transportation, *The Current State of the Class I Freight Rail Industry*, at 9-10 (Sept. 15, 2010) (describing increased “pricing power” and higher margins for Class I railroads); U.S. Gov’t Accountability Office, *Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should be Addressed*, at 13-16 (Oct. 6, 2006) (documenting rate increases from 2000 to 2004, and explaining “the rail industry has continued to consolidate, potentially increasing the market power of the largest railroads. ...[A]ccording to freight railroad officials, shippers, and financial analysts, since 2004, rates have continued to increase as the demand for freight rail service has increased, and rail capacity has not kept pace with demand.”).

promote safety, efficiency, good working conditions, an economically sound and competitive rail transportation system, and the needs of the public and the national defense.

IMA's biggest concerns are further loss of competition and poorer service as a result of this transaction. As the U.S. Department of Justice ("DOJ") explained in its comments¹⁰ filed earlier in this proceeding:

Although on its face this transaction may raise fewer competitive problems than other possible combinations of Class I railroads, the Board should carefully consider the competition implications posed by this transaction. As the Board has recognized, a railroad merger can harm competition even if the parties do not compete head to head to provide single-line service between the same origin and destination pairs. As one example, railroads can also compete through "source competition"—that is, the ability of shippers to choose between railroads that can carry their goods to (or receive goods from) different endpoints.¹¹ As the Board has explained:

[S]ignificant losses in geographic competition could occur even where carriers truly are "end-to-end," because there are many commodities (such as phosphate and soda ash) that have a limited number of sources. Similarly, a

¹⁰ Comment of the U.S. Dept. of Justice, Apr. 12, 2021, at 9-10.

¹¹ See Statement of Interest for the United States, *In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL Docket No. 1869, at 12-13 (July 13, 2020), <https://www.justice.gov/atr/casedocument/file/1294246/download> (explaining that two hypothetical railroads that interline to serve a move from San Francisco to New York, with one carrying the traffic from San Francisco to Chicago, the other from Chicago to New York, could still compete with one another for the business of a shipper in Chicago: "Thus, if a Chicago-based shipper disliked western carriers' rates to San Francisco, it could shop for a lower price and send its product instead to New York on an eastern carrier if a market for its product existed in both cities. Western and eastern carriers are rivals in this scenario – they are not competitively neutral and they are certainly not partners."); Russell Pittman, *Options For Restructuring The State Owned Monopoly Railway*, Railroad Economics 182 (2007).

merger between BNSF and a Canadian carrier, even if largely end-to-end, could raise potential competitive concerns in western export wheat markets. End-to-end carriers that compete with each other geographically would stand to gain market power if we were to approve their merger without imposing effective conditions, which, as discussed above, could be difficult.¹²

Railroads can also compete by serving portions of longer multi-carrier or multi-modal shipping routes. For instance, CP and KCS might each provide part of competing multi-modal routes between Asia and the eastern United States, or might compete to serve north-south routes by each partnering with other rail lines. A merger could reduce this type of competition by depriving current or future interchange partners of CP or KCS of a means to compete for this traffic, and thus reduce choices for shippers and ultimately raise prices.

Class I railroads that do not compete on a day-to-day basis for current shippers may compete in broader ways that are socially important, for example in seeking to attract new shippers to locate on their lines and in the adoption of technological and productivity enhancing innovations; or, correspondingly, they may coordinate tacitly or explicitly in anticompetitive actions.¹³ The Board has rightly been attentive to such

¹² *Major Rail Consolidation Procedures*, EP 582, slip op. at 16 (STB served June 11, 2001).

¹³ See Comment of The Freight Rail Customer Alliance et al., Apr. 1, 2021, at 3 (expressing concern that “the reduction in Class I railroads from seven to six, even if unaccompanied by further consolidation, will facilitate further rate and practice coordination in what is already a highly concentrated and coordinated industry.”).

concerns,¹⁴ and should carefully consider these issues when evaluating this transaction or other potential rail mergers.

Thus, before permitting additional consolidation, the Board should thoroughly examine the competition concerns raised by commenters and ensure that this transaction would not exacerbate these trends. As the Board recognized in adopting the 2001 major rail consolidation procedures, the consolidation that has already occurred in this industry means “There is little margin for error as we proceed ahead.”¹⁵

For example, with respect to conditions that could help ameliorate the anticompetitive effects of a major transaction in the post-2001 era, in a quite similar situation, Canadian Pacific announced a proposal to acquire Norfolk Southern in November 2015. Canadian Pacific stated repeatedly that it believed its proposal to acquire Norfolk Southern would have a significantly pro-competitive outcome, emphasizing there is minimal overlap between the track networks of the two companies, and instead the merger would be a market-extension creating an end-to-end transcontinental solution for customers in large parts of the US and Canada.¹⁶ **In making this proposal, CP offered to include as a part of the transaction modified terminal access which would have allowed another carrier to operate over CP+NS lines to serve a customer if the**

¹⁴ See, e.g., *Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, EP 711, slip op. at 9 (STB served July 27, 2016) (“[T]he consolidation of class I carriers ... could lead to reduced competitive options for some shippers and thus should be considered.”); Rate Reform Task Force, Report to the Surface Transportation Board, at 11, Apr. 25, 2019, <https://prod.stb.gov/wp-content/uploads/Rate-Reform-TaskForce-Report-April-2019.pdf> (“As a result of mergers, there are now only seven class I railroads, and they have rationalized their routings and increased rates.”).

¹⁵ *Major Rail Consolidation Procedures*, slip op. at 66.

¹⁶ *CP Asks U.S. Dept. of Justice to Review Recent Meeting of Some Class I Railroads to Oppose CP Acquisition of NS* (Jan. 19, 2016), <https://www.cpr.ca/en/investors/cp-asks-doj-to-review-recent-meetings>

customer is not receiving adequate service or is being charged an unreasonable rate. CP also offered to end the bottleneck pricing approach, allowing customers to obtain a separately challengeable rate to the customer's preferred interchange location. It noted that these proposals are consistent with the type of competitive enhancements that the STB has found would offset merger-related competitive harms.¹⁷ Also, in this proceeding, Applicants have already fully committed to keeping all existing gateways open both physically and commercially and ensuring that shippers' existing bottleneck rate regulatory options are not adversely affected by the transaction.¹⁸

The number of Class I railroads has remained the same since 2001 when the Board expressed its strong concerns over any further major mergers and adopted the new merger guidelines. Now, CP and KCS want to change the landscape to only six Class I railroads in the US. As noted, the effects of rail consolidation in the 80s and 90s after 2001 have led to higher rates, less competition, and poorer service. The statement by Chairman Morgan at that time that there is little margin for error when addressing the next major merger is even more true today as the railroads have clearly used their market power to their overwhelming advantage and to the disadvantage of their customers over the past two decades. Therefore, the Board should impose the three forms of statutory competitive access as conditions on this transaction for use by any shipper on the new CP/KCS system that is subject to market dominance or receives inadequate service.

¹⁷ *CP Responds to Norfolk Southern White Paper* (Dec. 15, 2015), <https://www.cpr.ca/en/investors/cp-responds-to-ns-white-paper>

¹⁸ Applicants' Reply to Objections to KCS Waiver from 2001 Major Merger Rules, Apr. 12, 2021, at 21.

Competitive access generally refers to the ability of a shipper or a competitor railroad to use the facilities or services of an incumbent railroad to extend the reach of the services provided by the competitor railroad. The provisions of 49 U.S.C. §§ 11102 and 10705 make three competitive access remedies available to shippers and carriers: the prescription of through routes, terminal trackage rights, and reciprocal switching.

These crucial conditions will help to alleviate the inevitable service issues that will occur when the two railroads begin to merge their operations. This outcome is one of the major reasons behind why the new merger guidelines were created and should not be taken lightly here.¹⁹ The US. rail network is already under tremendous strain at the present time due to the use of Precision Scheduled Railroading and the ongoing supply chain issues caused by the pandemic. Both KCS and CP are PSR railroads and could easily have crushing service issues from the implementation of this merger at a time when the country certainly does not need additional supply chain problems. As a result, by providing these captive or inadequately served shippers with access to competing railroads, the Board would be ensuring a better transition during the implementation of this merger and protecting the US from the mayhem brought on by the service issues that will occur from this transaction during a time when the national supply chain cannot afford any additional issues.

Moreover, as discussed, this further consolidation of an industry that is clearly overly consolidated and lacking competition in many instances will only result in less competition, higher rates, and poorer service on this new rail system. While an end-to-end merger will not result in the normal 2-1 railroad effects that the Board has remedied in the past to preserve

¹⁹ *Major Rail Consolidation Procedures*, EP 582, slip op. at 3.

competition, the effects of further consolidation of the Class I railroads will only decrease the options available to the shippers that are on these two rail systems as discussed herein. As a result, the time has come for the Board to remedy this loss of competition caused by this merger through these three competitive access remedies. The way to avoid deterioration in competition on this system is to introduce new competition. Otherwise, the new CP/KCS system will reap the benefits of this loss in competition at the sole expense of its shippers.

Finally, the Board should limit any rate increases to captive shippers for five years after the transaction is approved to 10% over that time. This limit will ensure that the merged railroad will gradually use its new pricing power from the decrease in competition as a result of the transaction. Otherwise, the affected captive shippers will be subjected to large rate increases shortly after the transaction.

APPLICANTS' REPLY TO CONDITIONS

Applicants argue in defense that IMA is using its comments in this proceeding to advance its longstanding efforts to have the Board order railroads to grant other railroads “reciprocal switching” access to on-line customers or other forms of competitive access. They argue this relief is untethered to any effect of this transaction and IMA offers no predicate evidence of a single shipper losing access to an existing rail option as a result of this transaction, or any evidence at all of any adverse impact on competition.

The Applicants claim these competitive access conditions IMA seeks are precisely the kind of broad industry restructuring that the Board’s precedents forbid. They also argue that conditions of this sort are especially inappropriate considering the Board’s conclusion that the pre-2001 rules should apply, under which the “competitive enhancements” IMA proposes are out

of place. Applicants conclude with the statement that conditions untethered to transaction impacts and with such unpredictable effects are not permitted under the Board's pre-2000 rules and precedents.

APPLICANTS' POSITION ON COMPETITION COMES FROM A BYGONE ERA IN THE RAILROAD INDUSTRY

Just because the transaction is being reviewed under the older merger guidelines does not change history and the devastating impact rail mergers have had on rail competition. As a result of mergers, reclassifications, and bankruptcies, the number of Class I railroads has plummeted from 40 in 1980 to seven, its current level, in 1998 upon the Board's approval of the Conrail transaction.²⁰ In addition, the TRB Report noted that the UP-SP merger was approved by the STB in 1996 which was an extremely controversial decision due to the massive overlap between the networks of these two major railroads in the western half of the U.S. The TRB Report described the DOJ's serious concerns about this merger in detail, all of which have come to fruition. The DOJ explained that a such a significant reduction in rail competitors in the western half of the US from three to two would cause "overwhelming competitive harm" as the combined railroad would use its market power unilaterally and through coordinated behavior with the single remaining competitor (BNSF). In granting approval, the STB focused on the financial benefits of the merger, explaining that the financially weak SP would become part of a financially strong UP network that would be in a better position to compete aggressively with the newly merged BNSF, to the benefit of shippers in western markets. The STB accepted UP's proposals to counter competition losses by providing trackage rights agreements with BNSF. The DOJ raised concerns about how long these arrangements would be effective and whether they

²⁰ Transp. Research Bd. of the Nat'l Acad, Modernizing Freight Rail Regulation ("TRB Report"), 156-166 (2015)

would be enforceable. In addition, the DOJ was skeptical of the public benefits that the railroads claimed would result from mergers asserting they were overstated, not recognizable as public benefits, or achievable through other means. In general, DOJ's concerns were like past criticisms of the Interstate Commerce Commission as being too accepting of merger applicants' estimates of efficiencies, cost savings, and other claimed benefits from proposed mergers. In other words, past competitive review of major mergers had been flawed at best.

The TRB Report went on to explain that by the end of this merger frenzy in 1999, the STB had expressed that large railroads' excess capacity had been basically eliminated through line abandonments and prior mergers; therefore, the possibility of additional efficiencies from more mergers had been more or less eliminated.²¹ The STB became extremely concerned that another merger could result in a final round of mergers involving the remaining few Class I railroads.²² Furthermore, the BNSF-CN merger was proposed after the severe and prolonged service meltdown after UP's merger with SP. Consequently, the STB imposed a 15-month moratorium on further merger applications until it finished reviewing its merger evaluation criteria.²³

In June 2001, the STB issued its *Major Rail Consolidation Procedures* to address its concerns about further rail consolidation.²⁴ In that decision, it noted the statutory requirement to use a public interest standard but stated that applicants would have to meet a more stringent standard to demonstrate that anticipated public benefits would be "substantial and demonstrable", thereby outweighing any anticompetitive effects. It stated that

²¹ *Major Rail Consolidation Procedures*, (STB served April 7, 2000).

²² *Id.*

²³ *Id.*

²⁴ STB EP 582 (Sub-No. 1), June 7, 2001.

while further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation in the industry is also **likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately.**²⁵

It is a well-established principle in economics that a small number of competitors may be able to coordinate, either explicitly or tacitly, to charge higher prices than would arise in a competitive market.²⁶ The rail industry is particularly susceptible to this kind of coordination because there are often only two Class I railroads in a given region. As a result, railroads can easily monitor the actions of their competitors and “punish” competitors that make competitive offers to carry freight by competing aggressively for that railroad’s customers. Concerns about the effects of the rail industry concentration justify seeking new avenues by the STB to further competition in the industry. Obviously, the previous methods have not been successful.

Since the last wave of Class I mergers in the 90s, railroad markets are more concentrated, railroads have more pricing discretion, and railroad rates have more than doubled since 2002,

²⁵ *Id.* (emphasis added).

²⁶ U.S. Dep’t of Justice and Fed. Trade Comm’n, Horizontal Merger Guidelines § 7 (2010) (describing a “range of conduct” that constitutes coordinated interaction and discussing how market consolidation can make such conduct easier and more likely). See also generally GEORGE STOCKING & MYRON WATKINS, CARTELS IN ACTION (1947); George Stigler, A Theory of Oligopoly, in STIGLER, THE ORGANIZATION OF INDUSTRY (1968); F.M. SCHERER & DAVID ROSS, INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE, 3rd ed. (1990), at ch. 8; Louis Kaplow & Carl Shapiro, Antitrust, in A. MITCHELL POLINSKY & STEVEN SHAVELL, HANDBOOK OF LAW AND ECONOMICS, vol. 2 (2007), at sec. 3.2.

rising twice as fast as general inflation.²⁷ As Chairman Oberman recently recognized, “since 2010, the [Class I railroads’] owners have taken home more than an astounding \$183 BB (\$196 BB in inflation adjusted dollars) in buybacks and dividends, far more than the \$138 BB (\$150 BB in inflation adjusted dollars) spent on the [railroads’] infrastructure.”²⁸ Injecting competition through competitive access here may require additional investment and may trim these profits, dividends, and stock buybacks, but it will hardly constitute a serious threat to the operation and financial health of the rail industry.

While Applicants claim that IMA’s request for competitive access here is untethered to this proposed transaction, they completely ignore the basic economic principle that consolidation of the rail industry from a meager seven Class I railroads to six will further lessen competition through tacit collusion. Moreover, Applicants only focus on 2-1 competition scenarios in response to IMA’s request and completely ignore the *per se* geographic and product competition effects that will result from this transaction.

In other words, this is a completely new era in the rail merger arena. Merger benefits are minimal because of the elimination of excess capacity in the past and predictably will involve CP imposing its more advanced Precision Scheduled Railroading (“PSR”) operating model on the KCS system. KCS has been known as the most customer responsive and pro-competitive railroad over the last 20 years. It did not slash its workforce like the other Class I railroads have done under the guise of PSR. Now, KCS will be swallowed into one of the original PSR

²⁷ See U.S. Bureau of Labor Statistics, Producer Price Index by Industry: Rail Transportation [PCU48214821], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU48214821>, February 8, 2022.

²⁸ Remarks of Chairman Martin J. Oberman to the North American Rail Shippers Association Annual Meeting (Sept. 8, 2021), at 1, 19 (emphasis in original), available at <https://www.stb.gov/wp-content/uploads/NARS-Speech9-8-21.pdf>

railroads and will be forced to behave accordingly with less emphasis on customer service and more on elimination of costs.

On top of the lessening of competition through the further consolidation of the industry, the merger of these railroads at this time when rail service has been teetering on the brink of collapse with hundreds of customers forced to shut down their facilities at great cost due to poor service will only cause greater problems and possibly create rail gridlock like after the UP/SP merger. The Board should take a page from Linda Morgan's playbook and slow things down because all the evidence points to greater damage to the rail industry and the service it supplies if this merger is approved without these conditions.

CONCLUSION

Based on the foregoing discussion, IMA respectfully asks the Board to impose these competitive access conditions on this merger to prevent the loss of competition, to improve service, and to protect U.S. industrial mineral shippers.

Respectfully submitted,

/s/ Daniel R. Elliott

Daniel R. Elliott
GKG Law, P.C.
1055 Thomas Jefferson St., NW
Suite 500
Washington, DC 20007
(202) 342-5248
delliott@gkglaw.com

Attorney for Industrial Minerals Association –
North America

Dated: October 21, 2022

Certificate of Service

I certify that I have, this 21st day of October 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:

The Honorable Peter Buttigieg
Secretary of the U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

The Attorney General of the United States
c/o The Assistant Attorney General, Antitrust
Division Room 3109
Department of Justice
Washington, DC 20530

David L. Meyer, Esq.
Law Office of David L. Meyer
1105 S Street, N.W.
Washington, DC 20009

William A. Mullins, Esq.
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W, Suite 300
Washington, DC 20037

Hon. Thomas McCarthy
1331 Pennsylvania Ave., N.W.
Washington, DC 20004-1710

zbyers@fmshrc.gov

ctolbert@fmshrc.gov

/s/ Daniel Elliott
Daniel R. Elliott