

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36004

CANADIAN PACIFIC RAILWAY LIMITED

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REPLY OF NORTH CAROLINA RAILROAD COMPANY

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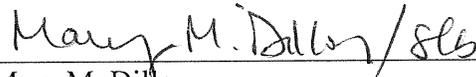
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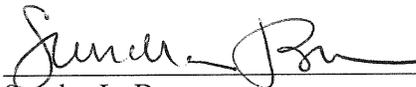
REPLY OF NORTH CAROLINA RAILROAD COMPANY

North Carolina Railroad Company ("NCR") files the attached letter in response to the Surface Transportation Board's ("STB") request for comments in the STB's March 10, 2016 Decision in this docket. Please add the undersigned to the service list as counsel of record for NCR in this matter.

Respectfully submitted,



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BY ELECTRONIC FILING

The Honorable Daniel R. Elliott, III, Chairman
The Honorable Deborah Miller, Vice Chairman
The Honorable Ann D. Begeman, Commissioner
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: NORTH CAROLINA RAILROAD COMPANY REPLY
Docket No. FD 36004, CANADIAN PACIFIC RAILWAY LIMITED –
PETITION FOR EXPEDITED DECLARATORY ORDER

Dear Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman:

The North Carolina Railroad Company (“NCRRC Company”) submits this brief reply to the Canadian Pacific Railway Limited (“CPRL”) petition for an expedited declaratory order filed on March 2, 2016 (“Petition”). The NCRRC Company is writing to express its concern regarding the advisory opinion sought by CPRL on a hypothetical voting trust proposal and the potential impact the proposed voting trust structure may have on the NCRRC Company before any merger approval. NCRRC’s comments at this time are limited to the voting trust structure proposed by CPRL and should not be construed as supporting or opposing an associated merger application that may or may not follow at a later date.

Background on the NCRRC Company

The NCRRC Company is a private corporation that owns and manages the 317-mile rail corridor stretching from Charlotte to the Morehead City Port Terminal. The Company’s stock is owned by the State of North Carolina, and its mission is to develop the unique NCRRC assets for

the good of the people of North Carolina, its single shareholder. Its vision is to improve our state by enabling freight to grow business, expanding rail to move people and investing in North Carolina.

The NCRR Company is a Class III, non-operating private railroad company. It has an exclusive trackage-rights agreement with Norfolk Southern Railway Company (NSR) to provide Class I rail service in 16 counties in North Carolina, directly serving more than 100 employers and three major military installations (Camp LeJeune, Seymour Johnson AFB, and Cherry Point MCAS) and connecting to branch lines across the state. Additionally, the NCRR Company successfully partners with NSR and other stakeholders on numerous projects that support economic development in our state. The NCRR Company line has been operated by NSR or its predecessors since 1871.

The NCRR Company and NSR jointly have invested substantially in major capital improvement projects in the NCRR corridor since 1999, with NSR sharing in many of the upgrading costs 50-50. These investments by NSR are separate and apart from NSR's responsibility under the trackage rights agreement to maintain the railroad tracks, yards, and facilities in the NCRR corridor. Additionally, the NCRR Company and NSR often partner in projects along the NCRR corridor that further new industrial development and job growth. The NCRR Company and NSR routinely collaborate with a variety of federal, state and local entities in public-private partnerships that enhance freight rail opportunities, promote economic development, improve passenger rail service, and advance safety. CPRL's petition and proposed voting trust structure create great uncertainty for the NCRR Company regarding NSR's operations on the NCRR corridor, NSR's commitments under the trackage rights agreements, its current investments and partnerships with NSR, and the status of any future commitments. The

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NCR Company is concerned about how a change in NSR's operational and management control prior to an actual proposed merger or merger approval could impact NSR's operations and business development on the NCR corridor and NSR's willingness to continue to partner on crucial projects.

CPRL's Request for an Advisory Opinion on its Proposed Hypothetical Voting Trust Structure is Unprecedented.

Under 5 U.S.C. §554(e), declaratory orders are intended to remove uncertainty or terminate a controversy. CPRL essentially concedes that there is no controversy and appears to ask the STB to provide guidance solely to remove uncertainty. Pet. at 9 (n. 11). Notably, the uncertainty that CPRL complains of was created only by CPRL. CPRL requests the STB to address two hypothetical issues: (1) whether a proposed structure of a voting trust *potentially could be used*; and (2) whether it *would be potentially permissible* for the chief executive officer of CP to move to NSR prior to merger review and approval. Pet. at 2. Such abstract questions are unlike any other the STB has seen for a declaratory order. CPRL seeks answers to hypothetical questions about novel ideas for a potential voting trust related to a potential merger that will be decided, if at all, under merger rules that have not been tested to date. CPRL concedes that its Petition raised "atypical" and novel questions. Pet. at 8. These atypical and novel questions raise concerns for the NCR Company.

CPRL's Proposed Voting Trust Structure is Untested and Causes Great Uncertainty for the NCR Company and its ongoing Relationship with NSR.

The voting trust structure proposed by CPRL is unprecedented. According to the petition, the chief executive officer of the CPRL railroad subsidiaries, collectively referred to as the Canadian Pacific Railroad ("CP"), Hunter Harrison, would terminate his position at CP when CPRL placed CP in trust and then take control of NSR's management and operations assuming

the position of chief executive officer of NSR prior to CPRL and NSR receiving regulatory approval for any proposed merger transaction. Pet. at 2. CPRL further suggests that other yet-to-be-identified executives at CP also would terminate their positions at CP and assume comparable positions at NSR. *Id.* at n.3. It is this change in control prior to any merger approval and the uncertainty that it entails that causes the NCR Company great apprehension.

The NCR Company and its operating railroad NSR work closely together. Below are just a few examples of projects on which the NCR Company and NSR have collaborated or are collaborating currently:

- Replacing railroad trestle bridges over creeks in Lenoir and Craven counties to address settling piers and weight requirements.
- Adding three passing sidings and signals in Wake and Johnston counties.
- Reinforcing and rehabilitating the Trent River Bridge in New Bern, NC.
- Improving a railroad bridge in Goldsboro, NC, replacing a bridge in Newport, NC, and improving three culverts in Durham, Kinston and Cove City, NC.
- Partnering with the North Carolina Department of Transportation (NCDOT) on grade crossing protections on unsignaled or partially signalized grade crossings between Selma and Morehead City, NC (115 miles) (already 23 crossings have been improved as part of the first phase of the project).
- Partnering with the NCDOT in the Piedmont Improvement Program double-track projects funded in large part by American Recovery and Act of 2009 (ARRA) funding.
- Partnering with the City of Raleigh, the NCDOT and CSX on the construction of the new Raleigh Union Station.

- Partnering with the City of Charlotte and the NCDOT on the Sugar Creek Road Grade Separation.
- Partnering with Cambro Manufacturing and Samet Corporation for a new industrial lead track in Alamance County.

NSR invests annually in upgrades and maintenance on the entire NCRR railroad corridor under the NCRR-NSR trackage rights agreement.

The structure proposed by CPRL is untested. Never before has a voting trust structure been set up where the top executives from the acquiring entity take a direct management interest and control in the railroad itself prior to actual merger approval. Before the public and the Board have an opportunity to evaluate the merits and public benefits or risks of any proposed merger, NSR will be forced to assume a CEO and the NCRR Company will be forced to live with the unknown consequences.

At this time, the NCRR Company does not know whether Mr. Harrison's "precision railroading model"¹ as implemented in NSR will serve the public interest. The NCRR Company is concerned whether its ongoing relationship and commitments with NSR would stay the same or be negatively impacted under this CP railroading model. It is unclear what CP's "precision railroading model" will mean for NSR operations on and maintenance of the NCRR corridor, for NSR's ongoing commitments and future investments in the NCRR corridor, and for the State of North Carolina's interests in economic development through service to existing industries,

¹ In its Petition, CPRL states that, upon taking over operational and management control of NSR, Mr. Harrison intends "full scale adoption and implementation" of his "precision railroading model," which CPLR describes as "focus[ing] on improving customer service and asset utilization, controlling costs, increasing safety and valuing and rewarding employees." Pet. at 8. This implementation will occur before any actual merger has been proposed or approved. *Id.*

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attracting new manufacturers, serving agri-business, expanding intermodal service, ensuring continued service to the Morehead City Port, and providing rail service to military installations in North Carolina. Therefore, the uncertainty generated by this hypothetical voting trust structure proposed by CPRL gives the NCRRC Company great pause.

For the foregoing reasons, the NCRRC Company respectfully requests the Board to deny CPRL's Petition for an Expedited Declaratory Order and find that the hypothetical questions posited by CPRL raise strong indicia of control both in the proposed voting trust structure and in the proposed purchaser's management taking control over the target prior to a public interest review and merger approval.

Respectfully yours,



Scott M. Saylor
President

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 2016, I have served a copy of the foregoing
REPLY OF NORTH CAROLINA RAILROAD COMPANY via first-class mail and electronic
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