

Board of Trustees  
**CINCINNATI SOUTHERN RAILWAY**

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April 7, 2016

Ms. Cynthia T. Brown, Section Chief  
Section of Administration  
Surface Transportation Board  
395 E Street, SW, Room 1034  
Washington, DC 20423

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Office of Proceedings  
April 8, 2016  
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c/o Office of City Solicitor  
City of Cincinnati

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Cincinnati, Ohio 45202  
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Thomas C. Kilcoyne  
*President*

**Re: *Finance Docket No. 36004- Canadian Pacific Railway Limited – Petition for Expedited Declaratory Order***

Dear Ms. Brown:

By this letter, Cincinnati Southern Railway (“CSR”) replies to the Petition for Expedited Declaratory Order (“Petition”) submitted by Canadian Pacific Railway Limited (“CP”) regarding the proposed use of a voting trust in connection with its plan to acquire Norfolk Southern Railway Company (“NS”).

*CSR’s Interest.* CSR is owned by the Trustees of the CSR for the benefit of the City of Cincinnati, Ohio, and is a 337-mile line of railroad from Cincinnati to Chattanooga, Tennessee. The CSR line is leased to a subsidiary of NS (the Cincinnati, New Orleans & Texas Pacific Railway Company) and forms a vital part of NS’s rail network. As NS’s lessor, CSR is acutely concerned with the long term health of NS and its ability to continue providing high-quality transportation services to the shipping public, which redounds to the economic benefit of Cincinnati and the region of which it is a part.

CSR is opposed to CP’s proposed use of the voting trust described in the Petition for the reasons explained below.

*CP Selection of CP and NS Management.* CP plans to create a new holding company and place the railroad’s stock into a voting trust to be managed by CP’s current president, Keith Creel. *See CP Investor Call, Tr. at 4 (Dec. 16, 2015).*<sup>1</sup> Meanwhile, the holding company would acquire a controlling share of NS, and a group of CP’s current executive team, including CP CEO Hunter Harrison, would manage NS. *See id.* at 5-6. In other words, the CP executives that have worked to orchestrate the combination of CP and NS would be divided into two groups: one group would manage CP while the other would manage NS. *It is inconceivable that the two teams would not*

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<sup>1</sup> Available at <http://www.cpr.ca/en/investors-site/Documents/CP-Conference-Call-Transcript-12-15-2015.pdf>.

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*manage the railroads with all eyes of both teams on the proposed combination.* Any transaction that results in two or more rail carriers being managed in a common interest, “regardless of how that result is reached,” must have STB authorization before it is implemented. *See* 49 U.S.C. §11323. One of the hallmarks of control is the power to choose a company’s management. *See Reliance Group Holdings, Inc., Petition for Declaratory Order*, 366 I.C.C. 446, 454-55 (1982).

*CP Immediate & Significant Operational Changes at NS.* CP plans to implement sweeping changes to NS’s operations as soon as it acquires control of NS. *See CP Investor Call*, Tr. at 10 (Dec. 8, 2015)<sup>2</sup> (remarks of Bill Ackman) (“[T]he substantial majority of [synergies] are created by improving Norfolk Southern Railroad. Those will be achieved regardless as to whether or not the ultimate merger is approved...”). CP has estimated that 72% of the benefits ultimately stemming from a CP-NS merger would be due to the changes made to NS at the outset. *Presentation, CP Addresses Investors* (Dec. 16, 2015) at 6.<sup>3</sup> In public statements, Hunter Harrison has suggested that these changes could include massive reductions in NS’s car fleet, *see CP at UBS Industrials and Transportation Conference*, Tr. at 12 (Nov. 19, 2015),<sup>4</sup> 35% to 40% cuts to its locomotive fleet, *see id.*, and reductions in its labor force, *see Canadian Pacific CEO on Proposed Norfolk Southern Deal, Bloomberg* (Nov. 20, 2015).<sup>5</sup> If the STB ultimately approves the combination, conditions of approval could require the un-doing of some or all of the significant operational changes at NS; if the STB ultimately disapproves the combination, NS might be compelled to un-do some or all the operational changes. Either way, the potential for serious disruption of the NS network (including the CSR line) and, more broadly, the railroad network of the United States is significant.

CP’s voting trust is expressly designed to allow CP to (1) choose who will run *both CP and NS* and (2) make significant changes in NS operations before any of the hundreds of stakeholders have an opportunity to comment on, or the STB approves or disapproves, the proposed CP-NS combination. The STB should not allow CP to put the cart before the horse. CSR therefore respectfully requests that the STB rule on CP’s Petition for Declaratory Order and find that the proposed voting trust structure would violate the prohibition against premature common control, per 49 U.S.C. §11323, and thus would not be consistent with the public interest.

Respectfully submitted,



Thomas C. Kilcoyne,  
President, Trustees of the Cincinnati Southern Railway

<sup>2</sup> Available at <http://www.cpr.ca/en/investors-site/Documents/CP-Transcript-2015-12-08.pdf>.

<sup>3</sup> Available at <http://www.cpr.ca/en/investors-site/Documents/CP-Investor-Presentation-dec-16-2015.pdf>.

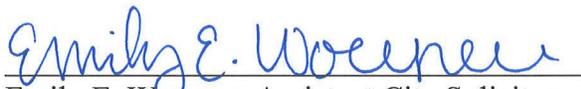
<sup>4</sup> Available at [http://s1.q4cdn.com/231238688/files/doc\\_presentations/2015/1119UBS/Transcript.PDF](http://s1.q4cdn.com/231238688/files/doc_presentations/2015/1119UBS/Transcript.PDF).

<sup>5</sup> Available at <http://www.bloomberg.com/news/videos/2015-11-20/canadian-pacific-ceo-on-proposed-norfolk-southern-deal>.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 7, 2016, I served a copy of the foregoing upon Canadian Pacific Railway Corporation and the other parties on the service list in Finance Docket No. 36004.



Emily E. Woerner, Assistant City Solicitor  
Clerk to the Board of Trustees of the  
Cincinnati Southern Railway