

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36004
CANADIAN PACIFIC RAILWAY LIMITED

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OPPOSITION TO REQUEST FOR EXTENDED COMMENT PERIOD

Petitioner, Canadian Pacific Railway Limited (“CPRL”), opposes the request of the Transportation Communications Union/IAM (“TCU”) for an extended (45-day) comment period to respond to CPRL’s “Petition for Expedited Declaratory Order” (filed March 2, 2016) in the captioned docket (“Petition”). TCU offers no valid reason why it cannot comment fully and adequately on the Petition within the requested 20-day period. Accordingly, TCU’s request should be denied, and the Surface Transportation Board (“STB” or “Board”) should grant CPRL’s request for a 20-day comment period followed by a 5-day reply period.

Despite CPRL’s clear indication that its Petition does *not* ask the Board to rule on “yet-to-be-submitted-for-approval actual voting trust agreement” or to rule on “whether the inchoate voting trust ‘would be consistent with the public interest,’” Petition at 11, TCU argues a “major merger – and an unprecedented voting trust structure such as this – merit a full debate.” Request at 2. But there is neither a merger nor an actual voting trust agreement to be debated at this time. If and when a merger and a trust agreement are submitted for STB approval, the regulations give all parties an opportunity to comment on a procedural schedule that would ensure a full debate. 49 C.F.R. § 1180.4(b)(4)(i). Even in those cases, however, the voting trust rule allows only “a brief period [for both] public comments and replies by applicants.” § 1180.4(b)(4)(iv). Thus, even if the Petition did involve an actual voting trust agreement (which it does not), TCU’s request for an extended comment period would be misplaced.

Not only is TCU's Request misplaced, but it also lacks support for why an extended comment period is needed. Other than arguing the Petition presents "unusual and unprecedented" questions,¹ TCU presents no grounds for its conclusory assertion that 45 days would be "the adequate time needed to provide a full and thoughtful reply." Request at 2. Nor is it apparent why full and thoughtful comments cannot be prepared in the 20-day period requested. As the Petition sets out, the proposed merger has been known publicly since November 2015 as has been the voting trust structure along with insistence that a declaratory order procedure be used. Petition at 3-5. It is beyond cavil that TCU and other "relevant stakeholders" had, well prior to the filing of the Petition, already "reviewed, discussed, and commented on" the proposal (Request at 2), as evidenced by the letters submitted to the Board by various stakeholders.

Putting aside the lack of any valid basis for an extended comment period, the 20-day period requested falls squarely within what can be considered a reasonably appropriate time frame in the circumstances. This period is the same time allowed for answers to complaints, even though the Petition addresses narrow legal questions, not fact-intensive questions that complaints typically involve. 49 C.F.R. § 1111.4(c). It is noteworthy also that the requested 20-day period matches well with the 27-day comment period set for responding to similar questions in *Illinois Central Corp. –Common Control*, Finance Docket No. 32556, slip op. at 7 (ICC Oct. 19, 1994) ("*IC*") (November 15, 1994 comment date). Moreover, while that case allowed a 10-day period to reply, *id.*, CPRL requests only a 5-day reply. Petition at 11.

In addition, *IC* did not present a situation where the existing management of the to-be-acquired railroad was using regulatory uncertainty as a shield against a proposed merger, but the instant case does so and thus requires expedited action. As explained (Petition at 10-11), a

¹ CPRL questions TCU's characterization; rather, the Petition can, at most, be said to address "a narrow legal issue of first impression under the new merger guidelines." Petition at 13.

declaratory order is needed prior to Norfolk Southern's ("NS") upcoming annual meeting to preserve a neutral setting in which shareholders are free to make their own decision on CPRL's proposed resolution asking that NS engage in good faith negotiations about a business combination. The federal policy of evenhandedness in such situations supports a Board ruling before the annual meeting. CPRL's proposal gives the Board several weeks before the expected date of NS's annual meeting to consider comments and issue a ruling. In contrast, TCU's extended comment date would leave the Board with only a week or so to make a timely ruling.

WHEREFORE, CPRL submits that the Board must deny TCU's request for an extended comment date.

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Respectfully submitted,

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Dated: March 7, 2016

CERTIFICATE OF SERVICE

I certify that I have this 7th day of March, 2016, served copies of the foregoing document upon all parties of record in this proceeding, by e-mail, as indicated below:

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