

Before the  
SURFACE TRANSPORTATION BOARD

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240450

CANADIAN PACIFIC RAILWAY Ltd.  
– PETITION for a DECLARATORY ORDER –  
FD 36004

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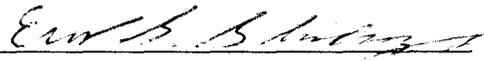
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April 8, 2016  
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Public Record

Reply of  
  
CNJ RAIL CORPORATION  
and  
ERIC S. STROHMEYER  
(Jointly and individually)

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Filed on behalf of CNJ Rail Corporation

Respectfully Submitted,



Eric S. Strohmeyer  
Vice President, COO  
CNJ Rail Corporation  
81 Century Lane  
Watchung, NJ 07069  
Tel: (908) 361 – 2435 Direct Line  
Email: E.Strohmeyer@CNJRail.com

Dated: April 8<sup>th</sup>, 2016

Canadian Pacific Railway Ltd.  
– Petition for a Declaratory Order –  
FD 36004

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**I. Introduction**

Now comes CNJ Rail Corporation (“CNJ”), a New Jersey domestic corporation, and Mr. Eric S. Strohmeyer, a resident of the State of New Jersey and an officer and shareholder in the aforementioned CNJ, herein after referred to jointly as the “CNJ Parties”, respectfully submits their reply to the petition of the Canadian Pacific Railway, Ltd (“CPR”) in the above captioned proceeding.

*Notice of Intent to Participate as Parties of Record*

The CNJ Parties herein serve notice of their intent to participate as Parties of Record in the above captioned proceeding. Both CNJ Rail, and Mr. Strohmeyer individually, request to be added to the Board’s official service list. Copies of all pleadings should be served upon the CNJ Parties at the following address:

Eric S. Strohmeyer  
CNJ Rail Corporation  
81 Century Lane  
Watchung, New Jersey 07069

The CNJ Parties will gladly accept<sup>1</sup> service of pleadings from all Parties of Record via electronic transmission at the following email address:

Email: [E.Strohmeyer@CNJRail.com](mailto:E.Strohmeyer@CNJRail.com)

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<sup>1</sup> The CNJ Parties prefer service of all pleadings via electronic transmission. CNJ has no objection to any Party **timely** transmitting pleadings to the CNJ Parties solely via electronic means.

## II. Comments

The CNJ Parties herein respectfully submit these brief comments to the Board for its consideration of CPR's Petition. For the reasons set forth herein below, the CNJ Parties request that the Board decline to grant CPR's petition at this time.

In its instant petition, CPR is seeking a declaratory order to resolve what it acknowledges are two hypothetical controversies which it claims the Board should provide "guidance" in order to resolve. CNJ is simply at a loss for words to describe our disbelief over the actions that CPR has taken prior to, and in conjunction with, the initiation of this current proceeding. Given the litigation stemming from CPR's recent sale of a portion of its vast network to Norfolk Southern Railway ("NSR"), why CPR would chose at this time to commence this proceeding is truly dumbfounding.

Without overwhelming these comments with a tortuous retelling of all the events leading up to this proceeding, CNJ briefly highlights the following related cases:

In *Norfolk Southern Railway – Acquisition – D&H South Lines* FD 35873, STB served May 15<sup>th</sup> 2015, NSR sought, and obtained permission to acquire 282 miles of railroad from CPR's whole owned subsidiary, the Delaware and Hudson Railway ("D&H").

In *Delaware & Hudson Railway – Discontinuance ...* STB Docket # AB 156 (Sub No. 27)X, the D&H was seeking to discontinue service over 600 miles of rail lines located in the States of NJ, PA, NY, MD, DC and VA. The vast majority of the lines encumbered by the D&H's rights are owned and operated by NSR.

Those two vigorously contested proceedings have now spawned two additional controversial proceedings. They are:

*RJ Corman Railroad Company / Allentown Lines LLC – Abandonment Exemption – in Lehigh County, PA Docket # AB 550 (Sub No.# 3)X.*

*Consolidated Rail Corporation – Abandonment – In Lehigh County, PA Docket # AB 167 (Sub No.# 623)N*

Both of the new proceedings turned out to be directly impacted by the D&H proceeding, and where not disclosed to the public in the NSR proceeding. All four of the above mentioned proceedings have been vigorously contested.

It should be noted that Petitions for Reconsideration, and Petitions to Revoke remain pending before the Board in two of the proceedings. Judicial reviews of certain Board decisions have already been sought by parties in opposition in two of the four proceedings. A number of these proceedings are not yet, and far from, administratively final decisions.

So, with all the currently active and pending litigation ongoing, what does CPR elect to do? For reasons unknown, prior to the Board completing its adjudication of the previous transactions, CPR elects to begin a new proceeding which is clearly a precursor to a transaction which would essentially result in CPR once again acquiring all the rail lines it either just sold to NSR, or just discontinued service over.

### **III. Canadian Pacific's petition places the Board in a difficult situation**

CPR's petition creates significant problems for the Board. The downwind effects on pending litigation may likely be significant. It does not matter what the Board's final decision in

this proceeding will be. The problem for the Board is not the decision itself. The problem is the subject matter of this proceeding, and the fact CPR is asking the Board to make a decision at all in this proceeding.

In simple terms, the Board is being asked to weigh in on two points CPR claims are a controversy that need resolving. One alleged controversy involves a novel and unprecedented attempt to use the Board's voting trusts to mask premature control. But make no mistake, this proceeding is about consolidation. Not just a minor transaction, but one that will clearly qualify as a major transaction under the Board's rules.

What makes this matter so egregious is the audacious manner in which CPR began this process. According to published reports in well respected news sources, word began to leak out about a possible merger talks between CPR and NSR in the first weeks of November of 2015. It should be noted that D&H had just consummated its line sale to NSR on September 18<sup>th</sup>, 2015.

The fact that CPR began to take actions in public to reacquire what it just sold to NSR less than 60 days after closing should not be lost upon this Board. If the media reports are credible, it would appear that CPR may have begun making overtures to NSR as early as 45 days after closing on the D&H sale.

It stretches the imagination to think that CPR could have just developed this business idea of a merger with NSR in well less than 60 days after it just sold a critical asset it claimed to this Board was no longer viable within its system tests the basic concept of believability to the extreme. Business environments can changed, but in the world of railroad consolidations, in today's regulatory environment, they don't change that fast. CPR's decision was clearly not made on an impulse.

#### IV. Conclusions

From the onset of the NS Proceeding, the CNJ Parties have been vigorously advocating that the prior NSR and D&H proceedings were presented to the Board improperly. In the D&H proceeding, the failure of CPR's D&H subsidiary to follow the Board's regulations in simple minor transaction should serve as a warning to the Board that careful scrutiny of CPR's proposal is fully warranted. As a result of CPR/D&H's errors, the Board is now facing a likely significant challenge to any decision that the Board may promulgate. To the CNJ Parties, the very essence of this proceeding is yet another way for CPR to circumvent adequate Board review of CPR's consolidation plans.

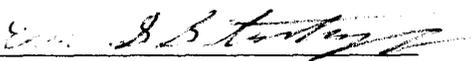
This Board should exercise its broad discretion, and decline to grant CPR's request. However, the Board should strongly consider issuing an order which finds that:

The CPR/D&H have failed to follow proper procedures in previous proceedings,

Certain decisions in prior related transactions need to be revisited,

And provides for any additional relief the Board may feel is just and equitable.

Respectfully Submitted,

  
Eric S. Strohmeyer  
Vice President, COO  
CNJ Rail Corporation

Monday, November 09, 2015

# CP + NS is in play: Reports

Written by William C. Vantuono, Editor-in-Chief

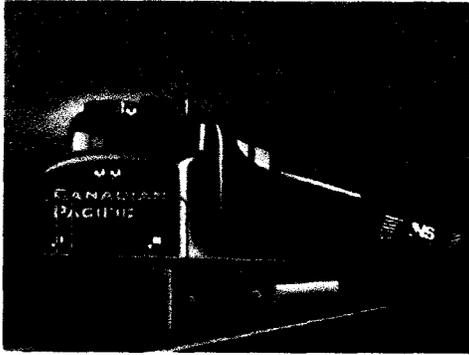


Image courtesy Business Etc.

Canadian Pacific Railway has held early-stage merger talks with Norfolk Southern and is raising financing for an acquisition, according to Nov. 9, 2015 news reports citing confidential sources at both carriers. NS stock jumped 11%, the most since 2008, to \$88.62 at the close of the New York Stock Exchange, while CP's 5.7% rally to C\$188.79 on the Toronto Stock Exchange was its biggest gain since 2013.

CP's bid for NS is viewed as CP's revived attempt to form a North American transcontinental Class I after fruitless merger talks with CSX in 2014. In floating the possibility of a merger with CSX, CP CEO Hunter Harrison challenged the long-held industry view that it was pointless to even discuss another merger because federal regulators would not allow it.

That view could be changing. Another megamerger—leading to a final round of consolidations—could be possible, though gaining regulatory approval would be a lengthy process, industry observers say. Harrison, *Railway Age's* 2015 Railroader of the Year, has said that a final round of mergers "is not a question of if, but

when."

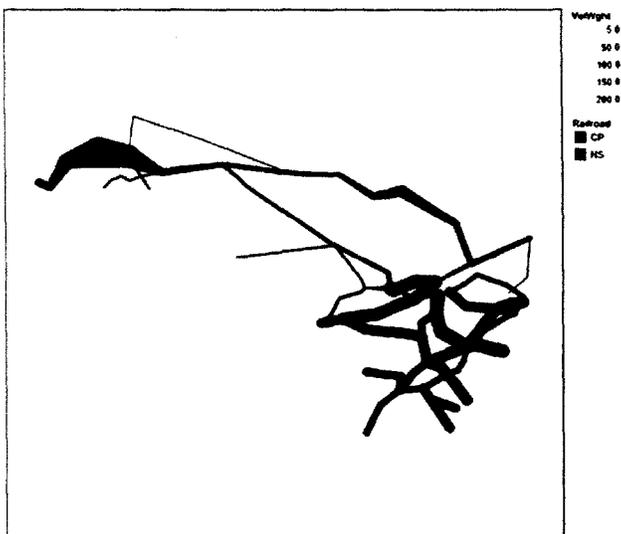
Norfolk Southern, which is currently valued at about \$24 billion, as expected declined comment on the matter. Canadian Pacific, whose market value is around C\$27 billion (US\$20 billion), issued a statement saying, "There is no material news pending at this time. CP does not comment on market rumor and speculation." CP cited a request from the Investment Industry Regulatory Organization of Canada that it respond to the day's stock trading.

Norfolk Southern operates about 20,000 route-miles of railroad in 22 eastern U.S. states, and serves each of the region's major container ports. Its connections with western railroads are at Chicago and Kansas City, both of which Canadian Pacific serves. CP's network spans southern Canada from Montreal to Vancouver, and turns south to cut across the Dakotas, Minnesota and Wisconsin before entering Chicago. The railroads' markets are complementary. Intermodal comprises about 22% of NS revenues, followed by coal at 21%. Automotive is about 9%. CP derives the largest chunk of its revenues, about 28%, from industrial and consumer products. Both railroads' stocks had been falling this year amid declining shipping volumes, due in part to dips in coal and crude oil. CP fell 20%

this year through Nov. 6; NS, 27% during that time span.

"A merger proposal would face less of an uphill battle today than a year ago, when CP unsuccessfully went after CSX," said Cowen and Company Managing Director and *Railway Age* Wall Street Contributing Editor Jason Seidl. "Indeed, the fall of 2014 was not the ideal time for such an effort to be launched, primarily because shippers and regulators were disenchanted with the rail industry due to severe service and capacity issues that emerged late in 2013 and did not start abating in any material sense until 2015. CP's reported move to join forces with NS will likely still trigger service concerns with shippers who will recall service challenges associated with past transactions, including those encountered by CSX in 1997 when it integrated parts of Conrail into its network after a fight over the acquisition of the company with NS. But such concerns will likely be much less pronounced today than a year ago. According to our 3Q15 Rail Shipper Survey, 58% of shippers are opposed to another Class I merger, a material drop from the 70% recorded in both our 2Q15 and 3Q14 surveys."

North American RR Route Density Map



"We believe NS management is less likely to quickly rebuff CP's offer in today's environment than in the case of CSX's management last year, when coal, however weak then, was still not as bad as today," noted Seidl. "Additionally, rail demand has fallen in many other carload groups, limiting operations-driven earnings power, and subsequently stock price upside. If NS management does attempt to rebuff the offer, we would not be surprised, given the tenacity of CP's management, if the company resorts to other means for making the deal happen. Still, a merger between the two carriers would likely face hurdles, not the least of which will be the Surface Transportation Board, which has been listening intently to shippers' service and rail pricing concerns."

"A CP-NS merger could be beneficial for the two carriers in the long term, and while a big rail transaction typically involves a tough integration phase, shareholders may view this one as a rare opportunity to maximize their value in an otherwise weak market," said Seidl. "Shippers may be less vehemently opposed to a merger today than they were a year ago when service was much worse."

*Railway Age* Capitol Hill Contributing Editor Frank Wilner believes "there may be nothing to these merger rumors," which have been attributed to leaks by staff people at CP, NS or both railroads:

"Securities and Exchange Commission regulations impose strong penalties for leaks. Very rarely has a rail merger been leaked, and almost always the

announcement catches everyone by surprise.

"The STB, following its 2000 merger moratorium, put new merger rules in place that impose significant pro-competitive hurdles that have yet to be tested.

"The lone Republican STB member, Ann Begeman, has not indicated if she wants reappointment, meaning there is uncertainty as to the Republican who would vote on a merger application. And if she does stay, she has been proving herself an independent voice that does not necessarily walk in lock-step with railroads.

"There is no certainty the next President will name Dan Elliott STB chairman. Even a Democrat President could choose a different chairman, and there is strong support for Deb Miller to be chairman down the road. Miller is another independent voice, and as with Begeman, has strong ties to merger-opposing agriculture. Moreover, Deb Miller said publicly earlier this year—in June in Chicago at *Railway Age's* Rail Insights Conference—that the Board is *not* interested in seeing a merger application. To me, that's a signal that she would not look fondly on such an application.

"Senate Commerce Committee Chairman John Thune has proposed legislation to increase STB size to 5. It is not known if that provision could pass next year. If it does, there is the uncertainty of who the other 2 STB members will be. And not knowing if a Republican or Democrat will occupy the White House creates further uncertainty as to political control of the STB.

"Finally, Hunter Harrison is on record saying that he would gladly trade merger approval for open access. No other railroad in the U.S. wants open access. That in itself would obviate other railroads working against a Harrison-initiated merger.

"With all those uncertainties, rational boards of directors would not take such a chance—or shouldn't, in my opinion. And maybe the rumors are mischief intended to help identify enough early opposition to quash Hunter Harrison's legacy intentions."

*Editor's note: Frank Wilner is the author of **Railroad Mergers: History, Analysis, Insight**, published by Simmons-Boardman Books. Click [HERE](#) to purchase a copy.*

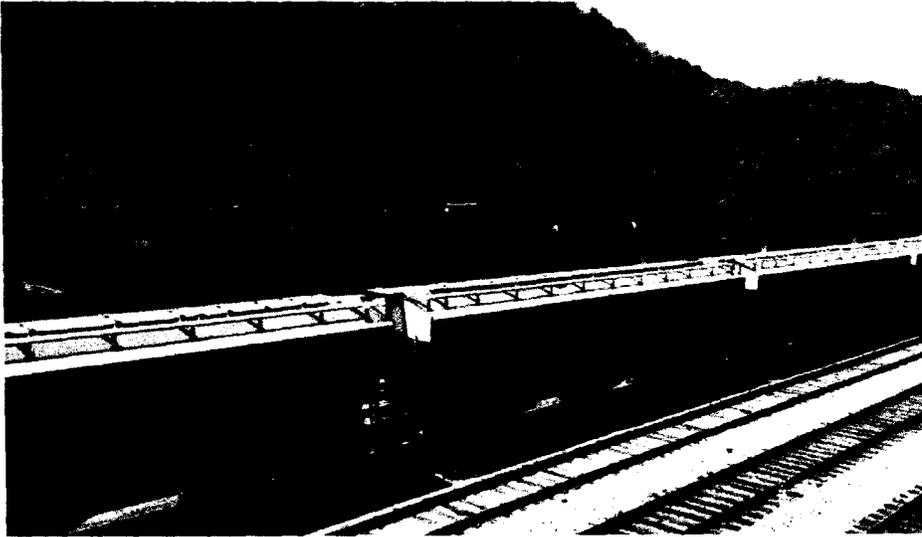


Business | Mon Nov 9, 2015 5:22pm EST

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# Canadian Pacific explores Norfolk Southern takeover

NEW YORK | BY GREG ROUMELIOTIS



Associated Press file



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TOP NEWS (GMT+08:00) 11/9/15

Coal trains approach Norfolk Southern's Williamson rail yard in Williamson, West Virginia at the border of Pike County, Kentucky May 13, 2015.  
REUTERS/VALERIE VOLCOVICI

1 of 2

Canadian Pacific Railway Ltd (CP.TO) is exploring a potential acquisition of U.S. peer Norfolk Southern Corp (NSC.N), a person familiar with the matter said on Monday.

The two rail companies have held preliminary merger talks, but there is no certainty that negotiations will advance, the person added, asking not to be identified because the talks are confidential.

The discussions mark the Canadian railroad operator's second major consolidation play in little over a year, as it once again seeks to gain control of a railroad network that would give it access to the U.S. eastern seaboard and rail hubs like Chicago.

Norfolk Southern declined to comment. CP Rail in a release said it has "no material news pending at this time." The company added that it does not comment on market rumor and speculation.

Bloomberg, citing two people familiar with the matter, said earlier on Monday that Canada's No. 2 rail operator CP Rail is trying to raise financing to buy Norfolk Southern in a deal that would be worth over \$24 billion. (bloom.bg/1ScVTK4)

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CP Rail's Chief Executive Hunter Harrison has long contended that a creating a new transcontinental rail network could help improve congestion around Chicago, where east- and west-based railways meet and hand off cargo, a process that can take days.

The Canadian company's talks with CSX Corp CSX.N, which also owns a large network across the Eastern U.S. failed last year.

Investors cheered news of a potential tie-up, sending shares of Norfolk Southern up 11 percent to \$88.62 on the NYSE, while CP Rail's stock closed up 5.7 percent at C\$188.79 on the TSX.

"I think it would be great, there's little overlap in terms of footprint," said John Stephenson, president of Stephenson & Co Capital Management. "I think it's potentially an attractive deal."

As in the case of the CSX deal, analysts warned there could be some hurdles around any deal with Norfolk Southern.

"All in a transaction may make quite a bit of operational and financial sense, but there are two major uncertainties," said RBC analyst John Barnes in a note to clients.

Barnes noted U.S. regulators would have to sign off on a foreign company owning a strategic asset, like a railroad and that CP would also need to win approval from the U.S. Surface Transportation Board that reviews such deals.

He said despite minimal geographic overlap, shippers would likely oppose any deal due to concerns over service and pricing.

(Additional reporting by Euan Rocha in Toronto and Manish Parashar in Bengaluru; Editing by Sriraj Kalluvila, Anil D'Silva and Bernard Orr)

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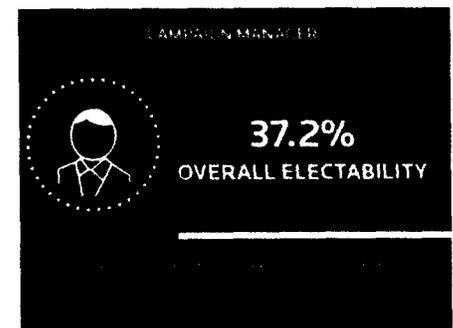
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# Canadian Pacific

Ed Hammond Jeffrey McCracken  
JCMcCracken  
November 9, 2015 — 1:52 PM EST  
Updated on November 9, 2015 — 4:47 PM EST

- ▶ Railroads said to have held talks
- ▶ Analyst sees deal value, says

Canadian Pacific Railway Ltd., the second-biggest railroad in Canada, is exploring a takeover of U.S. carrier Norfolk Southern Corp. in a fresh attempt to consolidate the North American industry, according to people familiar with the matter. The shares surged on the news.

Canadian Pacific is raising financing and has held early-stage merger talks with Norfolk Southern, which is valued at about \$24 billion, said two of the people, who asked not to be identified because deliberations are private. Discussions are preliminary and talks may not progress or lead to a deal, they said. Representatives for Canadian Pacific and Norfolk declined to comment.

A move for Norfolk Southern, the second-biggest railroad in the eastern U.S., would revive Canadian Pacific's effort to build a transcontinental carrier after talks with CSX Corp. failed last year. In floating the idea of a CSX tie-up, Canadian Pacific Chief Executive Officer Hunter Harrison upended the long-held view in the industry that it was fruitless to even discuss another merger because regulators would object.

"We would view a potential transaction positively," Desjardins Capital Markets analyst Benoit Poirier said in a note to clients. The challenge, he said, would be winning regulators' blessing, which makes it "unlikely that a transaction can be completed in the short term."

## Industry Consolidation

Dealmaking since U.S. railroad deregulation in 1980 has shrunk the number of major U.S. carriers to four alongside Canadian Pacific and Canadian National Railway Co. But Harrison, 71, is a veteran of past rail mergers, and has led an operational turnaround at Canadian Pacific since being lured out retirement in 2012 by activist investor Bill Ackman, whose Pershing Square Capital Management is the biggest shareholder. The railroad's market value was about C\$27 billion (\$20 billion) as of Friday.

Harrison previously ran Canadian National, where he spearheaded the 2007 agreement to buy Elgin, Joliet & Eastern Railway Co. He was CEO of Illinois Central Corp. when Canadian National agreed to buy that carrier in 1998 in an acquisition valued at about \$3 billion.

Norfolk Southern jumped 11 percent, the most since 2008, to \$88.62 at the close in New York, while Canadian Pacific's 5.7 percent rally to C\$188.79 in Toronto marked the shares' biggest gain since 2013.

## Trading Statement

"There is no material news pending at this time," Canadian Pacific said in a statement, citing a request from the Investment Industry Regulatory Organization of Canada that it respond to the day's stock trading. "CP does not comment on market rumor and speculation."

North American railroads have focused on smaller acquisitions in recent years after BNSF Railway Co.'s effort to buy Canadian National fell apart in 2000 amid opposition from the U.S. Surface Transportation Board.

The last previous major deal involving major U.S. or Canadian carriers was the breakup of Conrail Inc., announced in 1996, with CSX Corp. paying \$4.3 billion for some of those assets and Norfolk Southern getting others for \$5.9 billion, according to data compiled by Bloomberg.

Norfolk Southern operates about 20,000 route miles (32,000 kilometers) of track snaking through 22 eastern states, and serves each of the region's major container ports. Its connections with western railroads include Chicago and Kansas City, Missouri -- two cities served by Canadian Pacific.

Canadian Pacific's network spans southern Canada from Montreal to Vancouver, and turns south to cut across the U.S. grain belt in the Dakotas, Minnesota and Wisconsin before connecting to the rail hub of Chicago.

The railroads' cargo markets are complementary. Intermodal shipments -- goods in containers that can be hauled by ship, rail and truck -- made up 22 percent of Norfolk Southern's \$11.6 billion of 2014 revenue, followed by coal with 21 percent. Autos and auto parts contributed about 9 percent.

Canadian Pacific's biggest shipping category by revenue was industrial and consumer products, at 28 percent of last year's C\$6.62 billion of revenue.

The stocks of both companies had been falling this year amid declining shipping volumes, due in part to drops in cargo such as coal and oil. Canadian Pacific fell 20 percent this year through Friday. Norfolk, Virginia-based Norfolk Southern declined 27 percent in that span.

Before it's here, it's on the Bloomberg Terminal.

• Canadian Pacific Railway Ltd • Norfolk Southern Corp

Norfolk, Va. - Nov 17, 2015

Norfolk Southern Corporation (NYSE: NSC) (“the Company”) today confirmed that it has received an unsolicited, low-premium, non-binding, highly conditional indication of interest from Canadian Pacific (CPTO) to acquire the Company for \$46.72 in cash and a fixed exchange ratio of 0.348 Canadian Pacific shares per Norfolk Southern share, representing a premium of less than 10% based on closing prices today.

The Company’s board of directors, in consultation with its financial and legal advisors, will carefully evaluate and consider this indication of interest in the context of Norfolk Southern’s strategic plans, and its ongoing review of opportunities to enhance stockholder value through strategic, financial and operational measures and pursue the best interests of the Company and its stockholders. Notably, any consolidation among Class I railroads in North America would face significant regulatory hurdles. Norfolk Southern’s board of directors and management team are committed to enhancing value for all stockholders. The Company’s stockholders do not need to take any action at this time.

### **About Norfolk Southern**

Norfolk Southern Corporation (NYSE: NSC) is one of the nation’s premier transportation companies. Its Norfolk Southern Railway Company subsidiary operates approximately 20,000 route miles in 22 states and the District of Columbia, serves every major container port in the eastern United States, and provides efficient connections to other rail carriers. Norfolk Southern operates the most extensive intermodal network in the East and is a major transporter of coal, automotive, and industrial products.

### **Forward-Looking Statements**

Certain statements in this press release are “forward-looking statements” within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995, as amended, including but not limited to statements regarding a proposed offer or proposal by Canadian Pacific Railway Limited. These statements relate to future events or the Company’s future financial performance and involve known and unknown risks, uncertainties and other factors that may cause the actual results, levels of activity, performance or achievements of the Company or its industry to be materially different from those expressed or implied by any forward-looking statements. In some cases, forward-looking statements can be identified by terminology such as “may,” “will,” “could,” “would,” “should,” “expect,” “plan,” “anticipate,” “intend,” “believe,” “estimate,” “project,” “consider,” “predict,” “potential” or other comparable terminology. The Company has based these forward-looking statements on management’s current expectations, assumptions, estimates, beliefs and projections. While the Company believes these expectations, assumptions, estimates and projections are reasonable, such forward-looking statements are only predictions and involve known and unknown risks and uncertainties, many of which involve factors or circumstances that are beyond the Company’s control, including future actions that may be taken by Canadian Pacific Railway Limited in furtherance of its unsolicited proposal. These and other important factors, including those discussed under “Risk Factors” in the Company’s Form 10-K for the year ended December 31, 2014, as well as the Company’s subsequent filings with the Securities and Exchange Commission, may cause actual results, performance or achievements to differ materially from those expressed or implied by these forward-looking statements. The forward-looking statements in this press release are made only as of the date they were first issued, and unless otherwise required by applicable securities laws, the Company disclaims any intention or obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Copies of Norfolk Southern Corporation’s press releases and additional information about the Company are available at [www.norfolksouthern.com](http://www.norfolksouthern.com) or you can contact the Norfolk Southern Corporation Investor

Relations Department by calling 757-629-2861.

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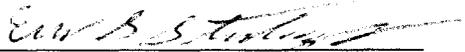
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## CERTIFICATE OF SERVICE

I hereby certify that on this 8<sup>th</sup> day of April, 2016, I have served<sup>1</sup> a copy<sup>2</sup> of the foregoing "Reply of CNJ Rail Corporation", filed herein STB Finance Docket No.36004, by first class mail, properly addressed with postage prepaid, or via a more expeditious means of delivery with consent of the receiving party, upon all parties of record in this proceeding.

  
Eric S. Strohmeyer

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<sup>1</sup> The form and style of this *Certificate of Service* complies precisely with the Board's regulations found at 49 C.F.R. § 1104.12(c)

<sup>2</sup> The accompanying document was properly served in full compliance with the Board's regulations. See: 49 C.F.R. § 1104.12(a)