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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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CANADIAN PACIFIC RAILWAY LIMITED

TRANSPORTATION TRADES DEPARTMENT, AFL-CIO REPLY TO  
CANADIAN PACIFIC RAILWAY LIMITED'S PETITION FOR EXPEDITED  
DECLARATORY ORDER

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write in response to Canadian Pacific Railway Limited's (CPRL) Petition to the Surface Transportation Board (STB) for an Expedited Declaratory Order (Petition) on a hypothetical voting trust structure and changes in management. In addition to TTD's reply, our affiliated rail unions filed detailed replies to CPRL's petition, and we endorse each of those filings.

By way of background, TTD consists of 32 affiliated unions that represent workers in every mode of transportation, including those employed in the railroad industry who would be impacted by the potential Canadian Pacific (CP) – Norfolk Southern (NS) merger. TTD and these member unions have experienced firsthand the wave of mega-mergers in the 1980s and 1990s that consolidated the rail industry into just seven Class I freight railroads. Having lived through those mergers, we are well aware of the devastating impacts such transactions have on workers, freight service, and safety. It is with this knowledge and firsthand experience that we approach the potential CP-NS merger with the greatest degree of skepticism. As explained below, TTD encourages STB to deny CPRL's proposal.

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In its March 2, 2016 filing, CPRL requests the STB to provide a declaratory order on whether it would be potentially permissible for CPRL to hold its own subsidiaries in trust while it acquires ownership and control of NS and seeks regulatory approval of a CP-NS merger. CPRL has not submitted an actual voting trust proposal for STB's review but rather requests the agency's opinion on a theoretical trust. CPRL's petition also requests a ruling on whether it would be permissible for CP's chief executive officer (CEO) to divest from CP and assume a comparable position at NS where he would implement various substantial operational and structural changes.

Given the information provided in CPRL's petition, the hypothetical voting trust is not only unprecedented, it would also result in CP's unlawful control of NS. All previously approved voting trusts have placed the to-be-acquired company (NS) in a trust intended to prevent the acquiring company (CP) from assuming control of its target until regulators have approved plans for the carriers' consolidation. Under CPRL's novel scheme, it would actually place its currently owned subsidiaries (CP) in a trust and then install CP's CEO in a comparable position at NS. From this post, the CP-turned-NS CEO would "facilitat[e] the full scale adoption and implementation" of a business model that he instituted at CP and other carriers. Petition at 8. CPRL's petition and public statements make it clear that applying this model at NS would result in major changes to the carrier.

In other words, the hypothetical voting trust would facilitate a pre-merger takeover in which CP already has de facto control of NS before it has obtained STB's approval of a merger. As such, the trust would violate federal standards that prohibit carriers from obtaining common control prior to STB completing its review and granting the applicants approval of their plans.

While CPRL acknowledges, and we agree, that its proposal is “atypical,” we also believe it is improper given it would provide CP unlawful control of NS. Petition at 8.

Additionally, the proposed voting trust and the potential merger that it could lead to would not be in the public interest. STB’s 2001 Major Rail Consolidation Procedures final rule reinforced and expanded on the concept that the public interest must be ensured before STB approves proposed transactions. Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1) (served June 11, 2001) Despite the voting trust proposal being hypothetical, the consequences of previous mergers and CPRL’s obvious plans for NS make it clear that the company’s plans would run counter to the public interest standard.

As previously mentioned, the petition states that after placing CP in trust, its CEO would leave CP for NS where he would install the same “precision railroading model” he used at CP and other carriers. Petition at 8. According to the petition, this model requires operational, asset, and customer service changes, among others. We have every reason to believe CP would make such changes. In public statements, CP has estimated that the implementation of pre-merger “operational improvements” and post-merger “combination synergies” would produce \$1.8 billion in annual savings. *Transcript: CP Addresses the Financial Community* (Dec. 8, 2015), available at <http://www.cpr.ca/en/investors-site/Documents/CP-Transcript-2015-12-08.pdf>. Notably, CP states that more than 70% of these savings would be generated from operational improvements, including “workforce optimization.” *Transcript: CP Addresses the Financial Community* (Dec. 8, 2015), available at <http://www.cpr.ca/en/investors-site/Documents/CP-Transcript-2015-12-08.pdf> While the carrier suggests these reductions would be achieved through attrition, CP’s treatment of its own workforce foreshadows the job cuts to come at NS. Under the tenure of its current CEO, CP’s total average number of employees has shrunk by

nearly 15 percent. In 2015 alone, the carrier's workforce shrunk by an estimated 12 percent, and additional job reductions are expected in 2016. "Canadian Pacific Railway Profit, Revenue Fall – Update," *Morning Star*, January 21, 2016, available at [https://www.morningstar.com/news/dow-jones/TDJNDN\\_2016012111131/canadian-pacific-railway-profit-revenue-fall-update.html](https://www.morningstar.com/news/dow-jones/TDJNDN_2016012111131/canadian-pacific-railway-profit-revenue-fall-update.html).

In addition to workforce cuts, it is likely that CP would allow NS's infrastructure to deteriorate and fleet to stagnate. CP publicly stated that, with regard to selling physical assets for profit, it saw "no reason why we can't do there [NS] what we've done at CP." "CP Rail CEO Sees 'Huge Cash Flow' From Selling Norfolk Southern Land," *Calgary Herald*, November 23, 2015, available at <http://calgaryherald.com/business/local-business/cp-rail-ceo-sees-huge-cash-flow-from-selling-norfolk-southern-land>. Under control of the current CEO, CP has sold off a variety of terminals and rail yards and announced plans to reduce 2016 capital spending and extend its moratorium on purchasing locomotives. The carrier stated plans to take similar steps at NS by converting valuable infrastructure into real estate developments that can "generate huge cash flow..." "CP Rail CEO Sees 'Huge Cash Flow' From Selling Norfolk Southern Land," *Calgary Herald*, November 23, 2015, available at <http://calgaryherald.com/business/local-business/cp-rail-ceo-sees-huge-cash-flow-from-selling-norfolk-southern-land>. Facility and equipment sell-offs are usually irreversible.

We also know that during previous merger transactions, the promises made about alleged efficiencies and ease of integration rarely materialized upon completion of the merger. These disruptions to the freight rail sector reverberated through our economy. The assertions CPRL makes about transition and efficiency hearken the failed promises of past mergers. For these reasons, federal lawmakers from both sides of the aisle have voiced their opposition to a CP-NS merger, as have regulators, state elected officials, shippers, and others. We also share the view

expressed by some that if the CP-NS merger were completed, it would likely trigger a final round of consolidation in the railroad industry, an issue of substantial concern to the STB. Such consolidation would further reduce competition, jobs, safety, and service, which runs counter to public interest.

Putting aside the issues described above relating to the substantial substantive defects of the proposal, it is important to understand that CPRL's petition centers on a hypothetical proposal and "inchoate" plans. Petition at 12. The petition does not include the factual information required of applicants who file voting trust proposals with STB, despite CPRL's choice to pursue a formal decision from the Board. Thus, STB is being asked to issue a declaratory order on a speculative proposal that is void of conditions and facts.

Given the request is based on a hypothetical proposal that no parties have agreed to, and that the decision would be a matter of first impression, the Board should not be expected to even issue an order. However, if STB reviews the request and decides to issue a declaratory order, we believe that, in light of the critiques explained above related to the voting trust and management swap being improper and not in the public interest, STB should deny the proposal for its lack of merit.

This proceeding could have significant impacts on workers, the industry, and our economy, and we appreciate the opportunity to reply to CPRL's petition.

Respectfully submitted



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Dated: April 8, 2016

Certificate of Service

I certify that a copy of TTD's letter has been served this 8<sup>th</sup> day of April, 2016, via email upon the following:

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