

306259

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Office of Proceedings
March 3, 2023
Part of
Public Record

Date: October 4, 2022

Case: Proposed CP/KCS Merger



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SURFACE TRANSPORTATION BOARD
HEARING ON THE PROPOSED CP/KCS MERGER

Docket No. FD36500

REMOTE PUBLIC HEARING

Volume V

Tuesday, October 4, 2022

9:30 a.m.

Surface Transportation Board

395 E Street S.W.

Washington, DC

The above-titled matter came on, pursuant to notice, at 9:30 a.m., Chairman Martin Oberman, presiding.

1 P R O C E E D I N G S

2 CHAIRMAN OBERMAN: All right. Good
3 morning everybody and welcome to day five of the
4 public hearings on the proposed merger between
5 Canadian Pacific and Kansas City Southern, docket
6 number 36500.

7 Before we begin this morning, Karen
8 Hedlund wanted to make a brief statement.

9 Karen, go ahead.

10 MEMBER HEDLUND: Thank you. This
11 morning I read a commentary in one of the
12 industry rags that suggested that these hearings
13 were taking too long and really weren't valuable,
14 given the thousands of pages of comments,
15 testimony, briefs, et cetera that have been filed
16 in this case. But I just wanted everyone to know
17 -- the participants, the witnesses and the
18 public -- that the Board Members find these
19 hearings enormously valuable. We get a lot out of
20 the ability to ask questions and engage in a
21 little give and take. And so I for one, and I
22 think I'm speaking for the other Board Members,

1 really do find these -- these hearings very
2 valuable and well worth the time.

3 Thank you.

4 CHAIRMAN OBERMAN: Thank you, Karen,
5 and I would just say you certainly spoke for me,
6 too. I saw that comment and I don't need to
7 reiterate. I thought it was -- your statement was
8 perfect, so thank you. And I am sure I speak for
9 all the other three Board Members, as well.

10 So, let us begin. Our first witness
11 this morning is David Fellon of Progressive Rail.

12 David.

13 MR. FELLON: Morning. First and
14 foremost I'd like to thank you, Chairman Oberman,
15 and your fellow Surface Transportation Board
16 Members for allowing Progressive Rail to comment
17 about the proposed CP/KC merger to be shared into
18 these proceedings.

19 Thank you as well for providing a
20 thoughtfully-organized venue that allows all of
21 the stakeholders, both big and small, that in some
22 shape or form would be involved within, directly

1 connected to the proposed CP/KC railway merger.

2 The mission is critically important for
3 the Surface Transportation Board. It's no small
4 task, which is why I appreciate your involvement
5 and the countless others at the STB to work
6 together to arrive at the right decision.

7 Yesterday's and the day's before and
8 the days' ahead of us testimonies are all
9 interesting to listen to and by the end of the
10 day, in my humble opinion, the facts will always
11 create a rock solid foundation to build anything
12 worthwhile upon.

13 In that train of thought there are
14 three categories of undisputed facts that I'd like
15 to share with the Surface Transportation Board as
16 they continue on with the critical, important
17 mission to advance a competitive and economically
18 viable surface transportation network that meets
19 the needs of its users.

20 At one time the rail industry had the
21 90% market share in handling merchandise of every
22 description. When you look at the AER's 40%

1 market share of long distance ton-miles that
2 separate the unit train book of business away from
3 that, the rail industry really only has a 7- to
4 9% market share of the merchandise category.
5 That's pretty low. The CP/KC merger is presenting
6 the Surface Transportation Board a
7 never-seen-before in the entire industry an
8 opportunity that will quantify or reverse that
9 downward trend.

10 You know, without meaningful
11 competition to interject in today's status quo, we
12 will ultimately further degrade the relevance of
13 the rail industry business with an ever-changing
14 business climate. On the other hand, once the
15 CP/KC merger is approved, the incredible
16 efficiency of a single customer-centric rail
17 carrier that connects Canada, the United States,
18 Mexico, all within one network, one railway, for
19 one trip plan, will in fact become precisely what
20 our industry needs to make meaningful market share
21 gains.

22 In the merchandise category, a

1 significant amount of the interchange business is
2 shifting with ever changing patterns, sourcing
3 changes and policies in America's energy
4 priorities. Meanwhile there is a staggering
5 amount of merchandise to convert off the highway
6 and onto the railways. CP/KC will be the ideal
7 partner making those long-overdue conversions and
8 significant box car volumes. It's not just box
9 cars but to me that's the big low-hanging fruit,
10 the merchandise that can once again get back on
11 the railroad.

12 Meanwhile numerous changes have washed
13 ashore in the rail industry over the past few
14 years, and some of those changes are
15 self-inflicted and others were ceded many years
16 ago, which have now presented a number of
17 realities that are fast becoming problematic. We
18 all know what they are and the good news is the
19 issues could be reversed, which is precisely why the
20 CP/KC Railway is laser focused on serving the
21 needs of the industry and the public.

22 Certain needs of the industry and the

1 public is really something that Progressive Rail
2 experiences from the Canadian Pacific Railway
3 every day. Highly reliable services emanating
4 from both St. Paul Yard in St. Paul Minnesota,
5 Bensenville Yard in Chicago, Illinois, consistent
6 rail car supply, their genuine interest to custom
7 design and launch innovative truck-to-rail
8 conversions, solid industrial development focus
9 and always being collaborative with both existing
10 and new-to-rail shippers accurately describes our
11 experiences with CP.

12 At BNA of CP, when combined with the
13 KCS' lifetime customer-comes-first strategy, it is
14 precisely what in my humble opinion the rail
15 industry needs now more than ever in our mutually
16 shared request to get a first mode of choice.

17 When you think about this, in many ways
18 big swaths of North America have experienced way
19 too many client closures, which is especially true
20 in the United States of America. In fact the USA
21 has never seen such a tremendous exodus of
22 manufacturing might that has permanantly moved

1 overseas, and in the vacuum of that comes the
2 decayed communities, the genuine concerns about our
3 future and the ripple effects of reduced commerce
4 ushering in so many unpleasant social realities.

5 Fortunately, with the successful launch
6 of the CP/KC Railway, Canada, Mexico and the
7 United States will have a better supply chain,
8 create better businesses and the local communities
9 in and around their rails will become only
10 stronger as they -- and this is interesting -- as
11 with the good rail network, they have better
12 greenfield, brownfield sites to offer. They have
13 a lot more to present to potential industrial
14 development opportunities. So they can add that
15 to their consideration since they're all on the
16 hunt for new business.

17 CP/KC is all about preserving existing
18 agreements plus the status quo in developing a
19 more (unintelligible) set of supply chain
20 solutions within America and our bordering towns,
21 countries and their own plans.

22 Bringing back heavy manufacturing in North

1 America and preserving and shifting reciprocal
2 agreements, opening up brand new gateways,
3 ushering in rail competition with at the ready
4 fresh new supply chains will be, by design, the
5 manufacturing that's going to anchor on the
6 foundation that is served by the CP/KC. In fact
7 it's set to succeed in the global arena.

8 So the mission at hand is to create
9 commerce, unleash new discovery opportunities,
10 reduce carbon and along the way fortify the entire
11 rail industry as a healthy and ever-growing book
12 of business, then now more than ever I urge the
13 Surface Transportation Board to approve the CP/KC
14 merger without any conditions at their earliest
15 possible opportunity. Today's Surface
16 Transportation Board's support of CP/KC is based
17 on the aforementioned facts that have
18 (unintelligible) in effect have assured a bright
19 future for our entire industry for generations to
20 come.

21 I also thought it was interesting to
22 hear some Amtrak and transit notes that have come

1 up throughout the conversations and, just on a
2 personal note I think it's worth mentioning this,
3 is that for years, way before there was talk of a
4 CP/KC merger, I would and I still do take my two kids on
5 to a few trips per year starting from St. Paul Union
6 Depot to Milwaukee and Amtrak -- and by Amtrak,
7 their builders -- has always been prioritized for
8 the Milwaukee rail main line with safety and
9 speed, and with each and every trip, to this day
10 the Canadian Pacific Railway, as a passenger, work
11 their magic to keep Amtrak's passenger trains and
12 freight proving they can coexist and to keep them
13 on plan.

14 It's a philosophical priority at the
15 top of the CP and, with their communities that
16 depend on rail and transportation for families and
17 freight, you can see that the two work together
18 and probably -- you can just see that happen and
19 it's nice to see the combination work well.

20 So that's -- that's what I have. I'm
21 open to any questions.

22 And again we're a proud partner of CP

1 but all the other railroads too. I think it's
2 important to mention that, to me this isn't about
3 one railroad being more successful than the other.
4 It's about the entire industry being more
5 successful. I think there is so much traffic we know
6 what's out there. It can be done and I believe
7 that a better CP/KC and create a North America
8 railroad only raises the tide for us in the entire
9 industry to work harder to do what's important,
10 and not just trade traffic but go after brand new business.

11 Thank you.

12 CHAIRMAN OBERMAN: Thank you, David.

13 Are there any questions for Mr. Fellon?

14 MEMBER PRIMUS: I have one, Marty, if
15 you have a second.

16 CHAIRMAN OBERMAN: Yeah, go ahead,
17 Robert.

18 MEMBER PRIMUS: Dave, good morning.
19 Thank you for your testimony this morning. We
20 truly appreciate all that Progressive Rail is
21 doing.

22 I -- you mentioned one thing when you

1 were saying, you know, in your closing, you know,
2 said it should be approved without conditions.

3 Considering everything that's going on
4 within the network now, all the challenges that
5 are out there, do you -- do you really believe
6 that, you know, such a large transaction can be
7 accomplished without conditions?

8 CHAIRMAN OBERMAN: David, are you
9 there?

10 MEMBER PRIMUS: I think he's on mute.

11 MR. FELLON: Here we are. Thank you.

12 So I -- I do believe, you know, this is
13 a question that it can be done, and with the input
14 of the Surface Transportation Board and everyone
15 that's -- that's writing and testifying.

16 But again, back to my point is that
17 there is so much business out there that isn't being
18 handled. I mean, we're 7- to 9-, 10% per
19 merchandise, and I believe that a stronger
20 railroad that connects the three countries and
21 creates more opportunity just raises the bar for
22 everybody. I mean, more capital comes in, more

1 capacity comes in. The game is everyone is doing
2 more to create more.

3 It's just my thought that, you know, a
4 high tide raises all boats.

5 MEMBER PRIMUS: I get that. I just,
6 again, the reality is, you know, we're not in that
7 perfect world where, you know -- there are -- there
8 is plenty of business out there but the problems
9 are not, you know, sort of just solved by we need
10 a stronger railroad. I think it's -- it's the
11 network and -- and how the network operates and,
12 you know, my -- my -- just a little -- I just
13 wanted to get your understanding of how, with all
14 the challenges that we have now and all the issues
15 that are confronting the network, how something
16 solved without first trying to add conditions to
17 help, how we can be successful.

18 Again, I'm not saying whether it's
19 going to come out one way or another. I just
20 wanted to get your opinion on that.

21 MR. FELLON: No, I -- I do appreciate
22 that. And my thoughts are, if we stay focused on

1 the customer and what -- what the customers need,
2 that to me has got to be the guiding force as to
3 how do we grow the industry and how do we help
4 our customers become more prosperous. And if
5 doing that, if we stay focused on that, everybody
6 wins in a big way.

7 MEMBER PRIMUS: Okay, thanks.

8 MR. FELLON: Thank you.

9 CHAIRMAN OBERMAN: Thank you, David.

10 Any other questions?

11 (Hearing none.)

12 CHAIRMAN OBERMAN: All right. We
13 appreciate your thoughts, David, as always and
14 your contributions.

15 MR. FELLON: Thank you very much for
16 your hard work, everyone at the Surface
17 Transportation Board, and I appreciate the venue.
18 Thank you.

19 CHAIRMAN OBERMAN: Thank you.

20 All right, we will move on to Beau
21 Hepler, general manager of Ray-Carroll County
22 Grain Growers.

1 Mr. Hepler.

2 MR. HEPLER: Good morning. Thank you
3 for the opportunity to speak with you today
4 regarding the CP/KC transaction. My name is Beau
5 Hepler. I'm a general manager of Ray-Carroll
6 County Grain Growers. Ray-Carroll previously
7 submitted a letter in support of the CP/KCS
8 transaction in opposing Canadian National's
9 request for divestiture of the KCS line between
10 Kansas City and Springfield, Illinois.

11 I am here today to further voice our
12 support for the CP/KCS transaction and expand on
13 the importance of the Springfield line for the
14 more than 7,900 members that comprise Ray-Carroll
15 County Grain Growers in our local cooperative.
16 First I would like to briefly describe Ray-Carroll
17 County Grain Growers. Our roots go back to the
18 Great Depression when in 1931 farmers joined
19 together to create a local cooperative that would
20 enable them to economically secure production
21 inputs and create an outlet system for the
22 commodities in which they produced. Today we are

1 a full-service, farmer-owned cooperative with nine
2 locations throughout central Missouri providing a
3 wide range of services to our over 7,900 members.
4 Our services include purchasing, marketing,
5 drying, storage and shipping of grain including
6 corn, soybeans and wheat.

7 Two of Ray-Carroll's primary grain
8 handling facilities are in Corder, Missouri and
9 Slater, Missouri which are located on the KCS line
10 between Kansas City and Springfield, Illinois.
11 The CN's requested divestiture of this line would
12 be detrimental to our farmer owners who rely on
13 these facilities to market their grain.
14 Ray-Carroll primarily ships grain from these
15 facilities in this line to Mexico. In 2021 we
16 shipped nearly 6,500 cars of which 81% were
17 shipped to Mexico. The vast majority of the
18 remaining shipments were destined to the western
19 United States. Our farmer members rely heavily on
20 having access to both Mexico and the western
21 United States via the KCS and KCSM for competitive
22 markets. Therefore Ray-Carroll has invested in

1 excess of \$55M between these two facilities to
2 capitalize on the KCS' efficiencies as a
3 single-line service provider to Mexico and the
4 western United States.

5 The KCS has been a good partner by
6 making its own investments in the Springfield
7 line, investing in rail car service and providing
8 customer service that we can count on.

9 As a bulk commodities shipper,
10 efficient transportation options are very
11 important to the cooperative and our members. We
12 have found that the KCS/KCSM service to be the
13 most efficient option for us and therefore
14 investments have been made to capitalize on it.
15 We believe the CP/KCS transaction will enhance
16 that efficiency with new line service routes and
17 investment opportunities. This increased
18 efficiency is a reason we support the KCS/CP
19 transaction.

20 In regards to forcing the CP/KCS to
21 divest to the Springfield line to the CN, however,
22 would not only destroy the benefits that we have

1 otherwise received from the transaction, it would
2 also make our transportation operation
3 substantially less efficient than they are today.
4 In our experience, single-line service is
5 typically superior to other arrangements because
6 of its better coordinated and eliminates
7 inefficient interchanges.

8 Our Slater and Corder facilities have
9 single-line service to Mexico and parts of the
10 midwest via the KCS, but that single line service
11 necessarily starts on the Springfield line. CN's
12 ownership of the Springfield line would do away
13 with our existing single-line service in Mexico
14 and other points on the KCS line because those
15 trips would start on the CN. In the event the CN
16 were to be required to grant haulage rights back
17 to the CP, we would be left with the functional
18 equivalent of an interline relationship because CN
19 would have no interchange -- would have to
20 interchange with the CP/KC at Kansas City. That
21 interchange would introduce inefficiencies that do
22 not exist today. Those inefficiencies would be in

1 turn have a detrimental effect on our operations,
2 equating to disruptions from both a service and
3 financial standpoint for our farmer members.
4 Further, this new inefficiency would diminish the
5 value of improvement we have made to support our
6 members along the Springfield line and would
7 discourage further investments.

8 In simplest terms, the KC/CP
9 transaction will give Ray-Carroll more efficient
10 rail option than it has today and the forced sale of
11 the Springfield line will leave Ray-Carroll and
12 its member owners with less efficient rail options
13 than it has today, therefore we respectfully urge
14 the Board to approve CP's purchase of the KCS and
15 reject the CN's request to purchase the
16 Springfield line.

17 I want to thank you for your time
18 today. I want to thank you for putting in the
19 effort to hold these hearings and if there are any
20 questions, I'd be glad to answer them.

21 CHAIRMAN OBERMAN: Thank you, Mr.
22 Hepler.

1 Are there any questions for Mr. Hepler?

2 (Hearing none.)

3 CHAIRMAN OBERMAN: All right. Thank
4 you much.

5 We will move forward. Our next witness
6 is Brian Ritter, executive director of the Nahant
7 Marsh Education Center. I'm not sure I pronounced
8 that right, Mr. Ritter, but you correct me if you
9 can.

10 MR. RITTER: I sure will. Thank --
11 thank you. Good morning, Chairman Oberman and
12 Members of the Surface Transportation Board. I
13 appreciate the opportunity for us to share our
14 concerns about this proposed merger.

15 My name is Brian Ritter. I have the
16 pleasure to serve as the executive director of a
17 place called Nahant Marsh Education Center in
18 Davenport. We are the largest urban wetland on
19 the Upper Mississippi River. We have a vibrant
20 educational program and thriving wetlands and we
21 are also only within feet away of BP's rail yard
22 and tracks and the railroad actually dissects our

1 property here. Of all the areas impacted by this
2 potential merger, our communities in eastern Iowa
3 will likely be the most negatively impacted. The
4 draft EIS came to the same conclusion. For
5 hundreds of miles the railroad travels through the
6 Upper Mississippi River Valley, in some stretches
7 only feet away from the mighty Mississippi River,
8 and in some years the tracks are literally within
9 the Mississippi River. It is my opinion that the
10 draft EIS was flawed because it failed to look at
11 the potential hazard this merger poses to our
12 economy, to our health, to our connection with the
13 river, to the Upper Mississippi River ecosystems
14 and the thousands of species that call it home.

15 The river is the primary source of
16 drinking water for several hundred thousand people
17 in our community alone. The Upper Mississippi
18 River is one of the most important migratory
19 flyways in the world and it is a major economic
20 engine of our region. It is the lifeblood of our
21 nation.

22 Cording the Upper Mississippi River

1 drainage basin, the Upper Mississippi River
2 supports a \$55B tourism and recreation industry
3 built upon the serenity and adventure of the
4 river's landscape and abundant opportunities for
5 things like fishing and hunting. The U.S. Army
6 Corps of Engineers in 2012 stated that the
7 commercial fishing industry on the Upper
8 Mississippi River provides nearly 10M pounds of
9 fish at a value of nearly \$4M annually, and
10 according to the U.S. Coast Guard, the barge
11 industry on the Upper Miss creates \$673M in
12 revenue and over a thousand jobs.

13 The DIS does not sufficiently consider
14 the risk of flooding. In our region the tracks
15 are within feet of the Mississippi River and, as I
16 stated, ever increasingly are within the river in
17 some years. In several areas along the railroad
18 the tracks are well within the hundred year flood
19 plain. With the uncertainty of climate change and
20 the trend of increased flooding, we are concerned
21 about the potential impact of increased trains
22 carrying increased loads of hazardous materials,

1 including the crude oil from Alberta and North
2 Dakota.

3 If you consider, from just one period
4 of time from January 1st, 2010 to December 31st,
5 2019, our stretch of the river was at or above
6 flood stage for an unprecedented 355 days, or
7 nearly 10% of the time. This is nearly three-fold
8 the increase from the 1990s and the 2000s, which
9 had previously been the decades with most
10 flooding. A spill during flood conditions would
11 be nearly impossible to contain, like was the case
12 during the historic floods in 2019 when here at
13 Nahant, a fuel separation system at the
14 neighboring CP rail yard, was overwhelmed and
15 spilled an unknown amount of diesel into
16 neighboring properties, including our own
17 properties here.

18 Here in Davenport our community has
19 invested countless hours and millions of dollars
20 over the last 25 years to restore Nahant Marsh, a
21 former EPA Superfund site to a thriving ecosystem
22 that's now home to a documented 1,100 species of

1 plants and animals, including three federally
2 endangered species and 27 state listed species.
3 We provide both long and short-term education for
4 over 22,000 people a year and recreation for
5 another 30,000 people annually. We are located
6 just feet from CP's rail yard and, as I mentioned,
7 their tracks dissect our property.

8 The noise alone from the increased rail
9 traffic would be devastating to our educational
10 programming. It would essentially cut us off from
11 a third of our property. We are just one of
12 dozens of ecologically sensitive areas that will
13 be negatively impacted by this merger, and that
14 was largely overlooked by the draft EIS. The EIS
15 did not consider the Upper Mississippi River Wildlife
16 Refuge and the millions of migratory water fowl
17 that use this area each spring and fall. It
18 didn't consider the federally-endangered Higgins
19 eye mussel beds that lie between Bettendorf and
20 Clinton, Iowa. It didn't consider the Princeton
21 Marsh or Green Island, the Yellow River, Turkey
22 River, Maquoketa River or Lopsey (phon) River.

1 The train tracks are next to, above and sometimes
2 in all of these biologically rich and ecologically
3 sensitive areas.

4 I'm proud to be part of the largest
5 city on the Upper Mississippi River that has not
6 constructed permanent flood walls or levies but
7 has instead opted to leave our river front open
8 and accessible to the public for us to connect
9 with.

10 An increase of eight trains per day to
11 22.7 trains per day in our area goes from being a
12 nuisance to a semipermanent barrier that breaks
13 our connection with the river, threatens our
14 health, our safety, the economy in our area and
15 our quality of life and our precious Mississippi
16 River.

17 We would like the Surface
18 Transportation Board to strongly consider the
19 impact this merger would have on our impacts --
20 on the impact of our quality of life and on the
21 Mississippi River as a whole. At the very least
22 we hope the Surface Transportation Board will

1 require far greater mitigation for the noise, air
2 and the potential for hazardous spills and will
3 consider the devastating impact this merger will
4 have on our economy and our ability to connect
5 with the river.

6 We request that the Surface
7 Transportation Board strongly consider this and
8 the impact this merger will have on our region.
9 To do this properly, we hope that the Surface
10 Transportation Board will consider a pause and
11 reexamine the impact this merger will have on the
12 Mississippi River corridor. At the very least we
13 hope the Surface Transportation Board would
14 require far greater mitigation than the minimal
15 amount that CP has currently offered to our
16 communities. The merger will forever change our
17 river front and our connection to it.

18 I would like to thank you for allowing
19 me and all the other people to speak at this and
20 express our concerns.

21 CHAIRMAN OBERMAN: Thank you, Mr.
22 Ritter. I think I had the -- if memory serves

1 correctly, had the pleasure of seeing you at the
2 Davenport hearings.

3 MR. RITTER: That's correct.

4 CHAIRMAN OBERMAN: And I just would
5 again encourage you to make sure that these
6 comments in addition to what you've already filed
7 I think earlier comments are filed again with the
8 environmental docket in this case because we want
9 to make sure that that record is as complete as
10 possible.

11 But appreciate your taking time again
12 to come and speak to us. Thank you.

13 MR. RITTER: Thanks.

14 CHAIRMAN OBERMAN: If there are no
15 questions, we'll move on. Thank you, sir.

16 All right, our next witness --

17 MEMBER HEDLUND: Mr. Chairman, just one
18 comment.

19 CHAIRMAN OBERMAN: I'm sorry. Go
20 ahead, Karen.

21 MEMBER HEDLUND: Your -- your testimony
22 reminded me of the wonderful times when I was

1 living in Chicago, we used to go out on the
2 Mississippi River to a power plant north of
3 Dubuque in the dead of winter. It was usually the
4 coldest weekend, you know, in January to go eagle
5 watching, where the eagles all congregated where
6 the water was open due to the warm water coming
7 out of the power plant, and it is -- the
8 Mississippi River is certainly a jewel.

9 So thank you for your testimony.

10 MR. RITTER: Thank you.

11 CHAIRMAN OBERMAN: Okay. Anything
12 further for Mr. Ritter?

13 (Hearing none.)

14 CHAIRMAN OBERMAN: All right, next up
15 is Uffe Ostergaard -- I hope I got that right --
16 from Hapag-Lloyd.

17 Mr. Ostergaard.

18 MR. OSTERGAARD: Thank you very much,
19 Chairman. Good morning, ladies and gentlemen. I
20 would like to thank you all for the opportunity to
21 speak today in support of the CP/KCS combination.
22 I hope you can all hear me okay.

1 My name is Uffe Ostergaard. I'm the
2 president of Hapag-Lloyd, America. Hapag-Lloyd is
3 a leading global liner shipping company and has
4 been a long-standing customer of both CP and KCS.

5 CP's network presently offers direct
6 connections for our shipments moving to and from
7 Canadian ports of Vancouver, Montreal and St. John
8 and inland markets in both Canada and the United
9 States midwest.

10 KCS' network offers direct connections
11 for our shipments moving to and from Mexican ports
12 and inland markets in Mexico to the United States.

13 Hapag-Lloyd supports approval of the
14 CP/KCS combination as it would offer significant
15 benefits that we are excited to see realized and
16 that would not happen without this transaction.

17 This transaction will unlock new
18 routes, new options and new competition for
19 Hapag-Lloyd and our customers. The CP/KCS
20 combination will improve our access to markets
21 along the west and Gulf Coast and, thanks to the
22 CP/KC single-line access to key U.S. midwest

1 markets, we will be able to access important
2 destinations like Chicago and Minneapolis via
3 ports such as Lazaro Cardenas and New Orleans.

4 A CP/KCS combination will expand our
5 access to ports, particularly the Port of Lazaro
6 Cardenas, and the additional access will produce
7 resiliency in the global container supply chain.
8 For example, the combined CP/KCS network will
9 create efficient, single-line service from Lazaro
10 Cardenas to those US and Canadian population
11 centers making Lazaro a valuable relief route and
12 offer customers yet another entry point through
13 the North American market.

14 While the combined rail water distance
15 from some Asian ports to the key midwestern
16 Canadian destination markets via the Port of
17 Lazaro is further than that for other U.S. west
18 coast ports, the extra distance is not a major
19 handicap in providing reliable rail service to
20 reach inland markets and consumers.

21 The key is really reliability and
22 efficiency and the CP/KC single rail line service

1 will offer a very attractive alternative for
2 companies like ourselves and our many intermodal
3 customers.

4 With the capacity available now and
5 with customers seeking multiple options to route
6 their cargo into and out of North America, the
7 Port of Lazaro Cardenas is also able to support
8 container shippers who will benefit from the
9 single-line reach.

10 With this potential opportunity in
11 mind, Hapag-Lloyd America is currently working
12 with several large customers to develop this
13 service. We are currently moving trial shipments
14 with key U.S.-based importers and exporters. We
15 have received positive feedback and we are already
16 seeing the first containers moving.

17 We anticipate that once single-line
18 service is established, we will have a weekly
19 service that offers customers the ability to route
20 shipments to and from Chicago, Houston,
21 Minneapolis, Toronto and Kansas City, and Dallas
22 using the Port of Lazaro and the CP/KC

1 combination.

2 So in short, Hapag-Lloyd America
3 supports the combination because it will extend
4 service into new markets which we currently do not
5 reach today to better meet the needs of U.S.
6 consumers. We therefore respectfully urge the
7 Board to approve the combination, and I would like
8 to thank you all again for the opportunity to
9 speak with you all today in support of this
10 combination.

11 Thank you very much.

12 CHAIRMAN OBERMAN: Thank you, Mr.
13 Ostergaard.

14 Are there any questions?

15 MEMBER FUCHS: I have one.

16 CHAIRMAN OBERMAN: Go right ahead,
17 Patrick.

18 MEMBER FUCHS: Thank you for being
19 here. I am wondering if you could first clarify,
20 the single-line service you're describing, that
21 will go over the Laredo Gateway, correct?

22 MR. OSTERGAARD: Correct.

1 MEMBER FUCHS: Is it your view that the
2 traffic that might be routed over the Laredo
3 Gateway and at the port is -- CP/KC would be in a
4 highly competitive environment for that traffic?

5 MR. OSTERGAARD: For traffic through
6 the west coast of Canada into the midwest, yes.

7 MEMBER FUCHS: And what about through
8 the Laredo Gateway?

9 MR. OSTERGAARD: That I cannot --

10 MEMBER FUCHS: Would that -- would that
11 be a highly competitive lane for CP/KC in
12 competing with say trucks and other carriers?

13 MR. OSTERGAARD: I cannot argue that
14 case. Certainly I don't have the statistics to
15 show how -- how big a concentration of cargo
16 movement. But I would insist that it would be a
17 fairly small percentage of cargo moving in that
18 corridor that would be controlled by this
19 combination, compared to trucking for instance. But
20 I -- I don't have the data to show that to be
21 clear.

22 MEMBER FUCHS: Got it. Thank you.

1 CHAIRMAN OBERMAN: All right. Any
2 other questions?

3 (Hearing none.)

4 CHAIRMAN OBERMAN: Thank you, Mr.
5 Ostergaard.

6 MR. OSTERGAARD: Thank you.

7 CHAIRMAN OBERMAN: Thank you for making
8 the effort to testify.

9 Our next witness is Mathew Moore of
10 Americold.

11 MR. MOORE: Hey, guys. Can you hear me
12 okay?

13 CHAIRMAN OBERMAN: Yes.

14 MR. MOORE: Great. Well, thank you
15 very much for the opportunity to speak to you
16 today in support of the CP/KCS combination. My
17 name's Matthew Moore, vice president of global
18 market strategy at Americold Logistics. We're
19 based in Atlanta. Americold, for those of you that
20 are not familiar with our business, we're one of
21 the largest providers of temperature-controlled
22 storage in the world. Headquartered in Atlanta we

1 have operated for nearly 120 years. Our
2 temperature-controlled storage and distribution
3 network includes 250 facilities across the world
4 including 190 facilities in the U.S.

5 Although Americold is not a direct
6 customer of CP or KCS, because we do not manage
7 freight directly, our customers use their services
8 and we are very excited for the opportunity to
9 create a three-country, temperature-controlled
10 network underpinned by the single-line networks
11 that can really only exist with the CP/KCS
12 combination.

13 Because of this Americold supports the
14 approval of the CP/KCS combination. We support
15 this due to the benefits of a single-line service
16 linking Canada, the U.S. and Mexico that can only
17 be achieved with the STB's approval for this
18 combination.

19 Benefits can be broken down from our
20 perspective as follows...

21 One, a reduction in carbon emission
22 supported by the conversion of truck to rail.

1 Today the majority of temperature-controlled food,
2 which is our business, moves by truck. In the
3 future the CP/KCS combination will support the
4 movement of some of these goods by rail and
5 intermodal containers. The investments that CP/KC
6 will make as a result of the combination will
7 allow for this.

8 Second, more competitive landscape for
9 shippers, which are our customers. Thanks to the
10 introduction of end-to-end signal-line intermodal
11 service, shippers will be able to -- or we will
12 be able to have more competitive choices to move
13 their goods between Mexico, the U.S. and Canada.
14 Since the majority of these goods are food
15 products, it is important to note that increased
16 competition should ultimately benefit consumers
17 who today have been subjected to rapidly
18 increasing cost of living.

19 Third the ability to create a
20 temperature-controlled ecosystem driven by rail
21 service. If the CP/KCS combination is approved,
22 we have an opportunity to create a North American

1 ecosystem built on rail service to and from North
2 America's key food production and consumption
3 areas. The CP/KC network will serve key
4 protein-producing and agriculture centers while
5 also having access to large population centers.
6 This combination, along with our existing
7 extensive network promises to deliver customers
8 more choice and competitive transportation
9 alternatives to what exists today, which will only
10 benefit the lives of American, Mexican and
11 Canadian households.

12 So in summary, Americold supports this
13 combination due to access to markets our customers
14 cannot reach today on rail. The benefits that a
15 single-line CP/KC network will provide North
16 American consumers in the investment we believe
17 CP/KC will unlock in the temperature-controlled
18 supply chain.

19 With that being said, I therefore
20 respectfully urge the Board -- respectfully urge
21 the Board to approve this combination.

22 CHAIRMAN OBERMAN: Thank you, Mr.

1 Moore.

2 Do we have any questions for Mr. Moore?

3 (Hearing none.)

4 CHAIRMAN OBERMAN: All right, sir.

5 Thank you much for your time. Appreciate it.

6 All right, we will move right along to
7 what is listed as the next panel. John Spain from
8 the Baton Rouge Area Foundation.

9 Mr. Spain.

10 MR. SPAIN: Good morning, everyone.

11 Thank you for the opportunity to speak to you this
12 morning. Thank you again.

13 Mr. Chairman and Members of the
14 Commission, my name is John Spain. I'm the
15 executive vice president for the Baton Rouge Area
16 Foundation. I also serve as the vice chairman of
17 the Southern Rail Commission. We appreciate the
18 opportunity to speak in favor of the proposed
19 KCS/CP merger.

20 This link in particular if approved
21 would provide first-time passenger rail service
22 between Louisiana's largest economies, the City of

1 New Orleans and Baton Rouge, and also offer the
2 opportunity for passenger rail across the northern
3 part of our state on the I-20 corridor and
4 ultimately that track also continues from
5 Shreveport to Baton Rouge, giving the state a
6 north-south connection that it has sought for many
7 years.

8 I'd like to use my moment here in time
9 just to first offer our thoughts and prayers to
10 the people of Florida, which bring to mind one of
11 the unique opportunities we see with the approval
12 of this agreement...

13 Seventeen years New Orleans saw
14 Hurricane Katrina devastate the city. For weeks
15 and literally years after, the city has continued
16 to recover. But in those immediate hours of
17 Katrina hitting New Orleans, we put thousands of
18 people in the Superdome. Ultimately the roof
19 leaked, people died, people struggled, and when
20 the water rose, we had very little opportunity to
21 bring new resources to people in the Superdome.

22 We have long sought the ability to use

1 these passenger trains as part of the state's
2 emergency response program to be able to bring
3 people out of harm's way from the lower parts of
4 Louisiana, particularly the City of New Orleans,
5 to the City of Baton Rouge and further areas north
6 in order to get them out of harm's way.

7 In hurricanes we generally have several
8 days' notice of where they might go, and had we
9 had trains available to us back in Katrina, we
10 would have been able to take those people, not to
11 the dome, but to other locations and get them out
12 of the way of the storm. An extraordinarily large
13 number of the citizens of New Orleans did not have
14 automobiles.

15 In the Baton Rouge area, the first
16 really high land north of New Orleans, we have
17 created a health district and in that health
18 district will be a train station that will allow
19 hospitals and nursing homes to evacuate out of New
20 Orleans and bring them into our health care
21 facilities in Baton Rouge should that be necessary
22 in a future storm.

1 So as we look at the devastation, our
2 neighbors and fellow citizens who are fighting in
3 Florida, for those of us that lived through
4 Katrina in Louisiana, it is a reminder of planning
5 ahead, creating new ways to deal with emergencies
6 and catastrophes that we did not have the tools to
7 use back in 2005.

8 Our support of this passenger railroad
9 between our two cities is critical, not only for
10 normal economic development, because we have
11 significant numbers of people who live in each
12 city and drive between each city each day, and
13 this could very well become a worker's train where
14 people from each city who are unemployed or
15 underemployed can use this as a vehicle should
16 they not have an automobile to go to work in the
17 petrochemical plant complexes located between
18 our cities.

19 So we see this opportunity with
20 cooperation of the merger between KCS and CP as a
21 boon to our economy, a vehicle for moving people
22 who otherwise could not get to jobs between our two

1 cities, and the development of passenger service
2 across the northern part of the state.

3 But as we sit in the days following the
4 hurricanes in Florida, it reminds us that these
5 tools, these trains could be critical in terms of
6 our bringing our citizens out of harm's way in the
7 future. So we would ask you to give serious to --
8 consideration of this merger. We support it and
9 we thank you for the opportunity to speak on
10 behalf of the State of Louisiana and its citizens.

11 CHAIRMAN OBERMAN: Thank you, Mr.
12 Spain.

13 Do we have any questions for Mr. Spain?

14 MEMBER PRIMUS: Marty, I don't have
15 a -- I don't have a question. I do have a
16 comment.

17 Mr. Spain, thank you for coming before
18 us this morning and for your testimony. I will
19 say that I was on Capitol Hill at the time of
20 Katrina and there was discussion about train
21 service and emergency service and moving
22 individuals out of the city and how there wasn't

1 an ability to evacuate those either in hospitals
2 or those who were not able to, who were working
3 class and poor who did not have the access.

4 So what you're saying now was echoed,
5 you know, 17 years ago and is something that --
6 that was on our minds for -- for many of us in
7 Congress at that time. So, you know I appreciate
8 bringing that back to -- to our attention. So
9 thank you.

10 MR. SPAIN: I thank you for your
11 comments and you're absolutely correct, there were
12 conversations at the time but it just couldn't get
13 done, and so we hope that we'll have that
14 opportunity to use rail for evacuation in the
15 future. We pray we won't need to but we want to
16 be able have that as part of our planning. I
17 thank you for your comments. Thank you, sir.

18 CHAIRMAN OBERMAN: Any other questions
19 for Mr. Spain?

20 (Hearing none.)

21 CHAIRMAN OBERMAN: All right, thank
22 you, sir. Appreciate it.

1 MR. SPAIN: Thank you.

2 CHAIRMAN OBERMAN: Next witness, Martha
3 Miller, executive director of the California
4 Association of Port Authorities.

5 Ms. Miller. Are you here?

6 (No response.)

7 MEMBER PRIMUS: I don't think I see
8 her, Marty.

9 CHAIRMAN OBERMAN: Apparently Ms.
10 Miller is not on Zoom. If she is able to join us
11 later, we will -- we will hear from her.

12 Then let's go to Gerardo Magno of
13 Mastronardi Produce Limited.

14 Mr. Magno.

15 MR. MAGNO: Good morning, Mr. Chairman.
16 How are you? And good morning Surface
17 Transportation Board. Thank you for the
18 opportunity to speak to you today on support of
19 the CP/KCS combination.

20 My name is Gerardo Magno and I'm the
21 vice president of logistics for Mastronardi
22 Produce Limited. We're a fourth-generation,

1 family-owned produce company and pioneered
2 commercial greenhouses going to North America.
3 Our routes date back to the 1940s with a vision to
4 provide people with incredible tasting, fresh
5 greenhouse-grown fruits and vegetables.
6 Mastronardi Produce prides itself on producing
7 consistently flavorful gourmet tomatoes, peppers,
8 cucumbers and berries which it distributes from
9 seven company-owned depots (phon) and several
10 other third-party distribution centers across
11 Canada, and the United States and Mexico.

12 Currently our produce ships from many
13 locations including locations in approximately 12
14 Mexican states and Laredo, Texas to our
15 distribution centers and customers throughout the
16 United States and Canada.

17 Mastronardi moved several loads in 2022
18 with KCS and CP independently to prove the concept
19 of intermodal service for our products. The
20 CP/KCS combination is exciting for us because it
21 opens up transportation options that did not exist
22 today. While the test has proven there is a

1 concept, removing the issues associated with
2 interline service and making this a single-line
3 service will make it even more attractive. The
4 CP/KCS combination will extend CP's reliable
5 service to new single-line operations to the US
6 and specifically routes from Mexico and Laredo,
7 Texas to Livonia, Michigan and across Canada will
8 be served more efficiently versus truck.

9 We're a strategic industry in the
10 controlled-environment, agricultural space and
11 having a single-line service with cool, protected
12 and efficient transportation reduces both risk of
13 contamination of food while further
14 enhancing food security.

15 Mastronardi moves almost about 7,000 annual
16 truckloads from Mexico to the U.S. and Canada. We
17 look forward to rail options that can compete with
18 trucks and will ship shipments to rail. The new
19 single-line service will also service will also
20 create additional capacity, service and cargo and
21 emissions savings that are important and exciting
22 to Mastronardi, our employees, partners and

1 customers.

2 I'm advised that movement via CP/KC
3 will generate approximately 7,815 metric tons, or 64%
4 in less GHG emissions than transporting the same
5 goods via long-haul trucking. This is
6 equivalent to approximately 1,680 gasoline cars
7 taken off the road per year or 985 homes' energy
8 use for a year.

9 In short, Mastronardi Produce supports
10 the CP/KCS combination because it will extend
11 service by an already trusted rail partner to
12 destinations that we cannot efficiently reach
13 today, creating new possibilities for us and for
14 the fresh produce customers and markets that we
15 serve. We therefore respectfully urge the Board
16 to approve the combination.

17 I thank you again for the opportunity
18 to speak on the support of the CP/KCS combination
19 today. If there is any question, I'll be more
20 than happy to answer.

21 CHAIRMAN OBERMAN: Thank you, Mr.
22 Magno.

1 Does anyone have any questions for Mr.

2 Magno?

3 (Hearing none.)

4 CHAIRMAN OBERMAN: All right.

5 Appreciate it.

6 MR. MAGNO: Thank you, sir.

7 CHAIRMAN OBERMAN: Our next witness is

8 Mark McKendry from NFI Industries.

9 Mr. McKendry.

10 MR. MCKENDRY: Good morning. I'm

11 trying to get video working. Can you see me?

12 CHAIRMAN OBERMAN: We can.

13 MR. MCKENDRY: All right.

14 Okay, good morning. Thank you for the

15 opportunity to speak to you today in support of

16 the CP/KCS combination. My name is Mark McKendry

17 and I'm the senior vice president of NFI

18 Industry's intermodals division.

19 NFI is a leading third-party logistics

20 provider based out of Camden, New Jersey which

21 offers award-winning domestic and international

22 supply chain solutions to customers from various

1 industries including manufacturing, retail, food,
2 CPG and electronics. NFI is a family-owned and
3 operated \$4B organization and is a strategic
4 partner of CP in both Canada and the United
5 States. Our domestic intermodal product truly
6 does span all North American Class 1's, meaning we
7 have a relationship and understanding of their
8 operating principals, their customer service,
9 train service, original strengths and weaknesses a
10 well.

11 Further, NFI has significant operations
12 in the regions served by both the Kansas City
13 Southern and the Canadian Pacific Railway.

14 NFI has 16,000 employees across the
15 continent, operates approximately 70M square feet
16 of distribution space. We own 5,500 tractors and
17 we work with thousands more partner carriers. We
18 have also over 13,000 trailers and, in summary, we
19 have a really deep understanding of the North
20 American supply chain, its dependencies, its
21 strengths and its weaknesses. Through this lens
22 it's important to note that long-haul intermodal

1 constitutes a very small percentage of overall
2 movements in the United States. The latest data
3 available suggests that intermodal share of the
4 long-haul transportation market is under seven
5 percent, with the balance moving entirely on
6 trucks, trucks, which my organization really
7 struggles to procure and certainly to seek with
8 qualified drivers. And while it is our belief
9 that truck will continue to be a dominant mode of
10 transportation in the near term, trucks current
11 share of market is simply unsustainable. The
12 condition of the nation's interstate system and
13 corresponding increasing carbon emissions from
14 continued growth of truck relative to rail is also
15 cause for concern.

16 One of the reasons intermodal fails to
17 capture market share from truck is the complexity
18 of interline movements, and while railroads
19 endeavor to execute seamless interchanges, they
20 operate sensitive networks and it's often at these
21 interchange points where the biggest bottlenecks
22 occur. This erodes customer experience and the

1 reputation of intermodal more broadly. With new
2 showing efforts and the incremental growth of the
3 Mexican industrial segment, it necessitates an
4 enhanced intermodal offering into and out of
5 Mexico. We believe the new CP/KC single-line
6 routes will help serve that market, better balance
7 share of market between truck and rail and for
8 minor customers with access to premier ports in
9 the U.S. Gulf, the Atlantic and the Pacific coast.

10 From a competitive perspective, NFI
11 does not view this combination as a risk to our
12 customers' intermodal shipping rights. If the
13 railroad does not achieve the appropriate balance
14 of price and service, today's dynamic shippers
15 would quickly abandon intermodal in favor of more
16 truck, and as a consumer and provider of both rail
17 and truck transportation, NFI supports the
18 combination of two trusted rail partners and we
19 therefore respectfully urge the Board to approve
20 the combination.

21 Thank you again for this opportunity to
22 speak in support of the CP/KCS combination.

1 (Brief pause.)

2 MEMBER PRIMUS: Hey, Mark, this is
3 Robert Primus.

4 I think Marty may be tied up. So I'll
5 sort of take it from here 'till he comes back.

6 I want to thank you for coming before
7 us to testify. I want to see, is there any other
8 Board member -- does anybody have any questions
9 for the witness?

10 MEMBER FUCHS: None from me. Thanks,
11 Robert.

12 MEMBER PRIMUS: Okay, hearing none,
13 Mark, once again, thank you for your testimony and
14 we appreciate your presence here today.

15 MR. MCKENDRY: Thank you for the
16 opportunity.

17 MEMBER PRIMUS: All right. I'm not
18 going to take -- take over for Marty. I'm going
19 to give him a second to see hopefully he can jump
20 back on. If not, we'll -- you know, we'll
21 continue to process. So we'll give -- we'll give
22 him a couple of seconds. I'm not going to sing

1 for you because then I'll chase everybody off the
2 screen, so.

3 (Brief pause.)

4 CHAIRMAN OBERMAN: Hi, everybody. I'm
5 sorry I had to dash off there for a moment but I
6 am back.

7 I think that Mr. Hecht is not
8 available. If he is, Michael Hecht is the next
9 person on our list.

10 MR. WAGGONER: Hi, this is -- my name
11 is Peter Waggoner with a written statement for
12 Michael Hecht to the panelists for the Southeast
13 Louisiana Super Region.

14 CHAIRMAN OBERMAN: All right, proceed,
15 Mr. Waggoner.

16 MR. WAGGONER: On behalf of the
17 Southeast Louisiana, SoLa, Super Region, a
18 partnership between the Baton Rouge Area Chamber,
19 Greater North, Inc., and the South Louisiana
20 Economic Council we appreciate the opportunity to
21 comment today in support of the proposed merger
22 between Canadian Pacific Railway, CP, and Kansas

1 City Southern Railway Company, KCS.

2 We recognize the physical
3 infrastructure of the track currently owned by KCS
4 terminating in New Orleans and extending northwest
5 to Baton Rouge as a major asset to the Super
6 Region, to the domestic supply chain and to
7 international trade. This track connects
8 Louisiana's two largest cities and major ports
9 spanning the Mississippi River. We trust that CP
10 will be a good neighbor within our communities and
11 a responsible steward of this asset, ushering in
12 logistical excellence and empowering economic
13 growth, both for our region and for all customers
14 to rely on the region for commerce and product
15 delivery.

16 In addition to servicing significant
17 freight traffic, this track is on the verge to
18 become a renewed node in the nation's intercity
19 passenger rail network. The proposed New Orleans
20 to Baton Rouge service has been long identified by
21 SoLa as a Super Regional priority and by Amtrak in
22 their long-term vision plan. According to past

1 studies, 85% of our regional residents are in
2 favor of passenger rail service between New
3 Orleans and Baton Rouge which is predicted to
4 carry 200,000 riders annually.

5 In December 2021, at a SoLa meeting, CP
6 committed to opening capacity for passenger rail
7 service between Baton Rouge and New Orleans. In
8 February 2022 Amtrak filed an agreement with CP
9 which articulates a process for initiating a first
10 and second daily round trip. In April 2022
11 Louisiana Governor John Bel Edwards, Secretary of
12 Transportation John Wilson, Amtrak's president and
13 CEO and CP's president and CEO successfully
14 conducted an inspection train. Now the state is
15 progressing with an updated feasibility study to
16 finalize the product -- project.

17 Implementation of passenger rail
18 service between New Orleans and Baton Rouge would
19 economically and culturally connect over two
20 million residents throughout SoLa. It would
21 benefit workforce mobility, job access and quality
22 of life on a household level while improving

1 overall regional economic and health outcomes.
2 Furthermore, passenger rail strengthens resilience
3 by establishing an additional evacuation route
4 allowing for safe and efficient egress in the face
5 of hurricanes and other emergencies.

6 In conclusion, the SoLa Super Region
7 supports STB's approval of its merger application
8 and we acknowledge the agreement between CP and
9 Amtrak to initiate New Orleans to Baton Rouge
10 passenger rail service.

11 Thank you.

12 CHAIRMAN OBERMAN: Thank you, Mr.
13 Waggoner. I appreciate you standing in.

14 And I now understand that Martha Miller
15 is available.

16 Ms. Miller, if you are available would
17 you like to deliver your statement now?

18 MS. MILLER: Yes, please. Thank you,
19 sir. I was having technical difficulty getting
20 in, so appreciate it.

21 CHAIRMAN OBERMAN: No problem. I
22 was -- I was too.

1 MS. MILLER: Well, there you go. That
2 makes two of us.

3 CHAIRMAN OBERMAN: Yeah, go ahead.

4 MS. MILLER: My name is Martha Miller.
5 I'm the executive director of the California
6 Association of Port Authorities. We represent the
7 eleven public ports in California from Humboldt
8 down to San Diego and including our three largest,
9 container ports, the ports of Los Angeles, Long
10 Beach and Oakland. CABA ports account for
11 approximately 40% of the imports that come into
12 the United States.

13 Thank you for the opportunity to
14 testify today on the proposed merger between
15 Canadian Pacific and Kansas City Southern
16 Railroads. Our organization is opposed to the
17 merger because it will result in the shift of
18 cargo, shipping capacity and export opportunities
19 from regions served by U.S. west coast ports to
20 Canada and Mexico and would cause economic harm to
21 our regional and national economies.

22 The merger would greatly expand the

1 trade corridors that connect non-US ports to
2 inland regions within the U.S. It would be a
3 significant milestone in a series of steps taken
4 by public and private entities in Canada that has
5 resulted in increased cargo flows and shipping
6 services through Canada at the expense of U.S.
7 gateways and the workers and economies that depend
8 on them.

9 An approval of the merger would be
10 another example of the U.S. government not taking
11 seriously enough the competitive threat to U.S.
12 ports and what the loss of cargo, ship calls and
13 ultimately the loss of key trade routes would mean
14 to the national and local economies.

15 Over the last fifteen years Canada has
16 made it a top national priority to make
17 significant coordinated investments in its west
18 coast ports and the multimodal infrastructure that
19 supports them. These investments have supported
20 the capture of cargo market share from U.S. ports.
21 When U.S. ports lose cargo, we also lose the jobs
22 involved in handling that cargo.

1 Cargo diversion from our ports to those
2 in Canada has also reduced ocean carrier calls and
3 importantly the supply of returning empty
4 containers that exporters depend on. This in turn
5 increases shipping costs and erodes or eliminates
6 the competitiveness of exports from states that
7 depend on west coast ports as their primary
8 international trade gateway.

9 At CAPA we're proud of our strong
10 record serving as the gateway for U.S. exports to
11 the world and the global flow of goods to our
12 local communities. US ports are the backbone of
13 our trade network and the proposed merger places
14 them at a greater risk of congestion and
15 efficiency as carriers, containers and other vital
16 infrastructure assets would move on to Canada and
17 Mexican ports.

18 Canadian and Mexican ports are not
19 viable alternatives for exporters in Idaho,
20 Montana, Oregon, Washington and many other parts
21 of the country. These shippers have little
22 recourse when ocean carriers reduce service to the

1 west coast ports.

2 The investments that the Canadian
3 government has made to support the growth of
4 Canadian ports and rail networks are commendable
5 and serve as an example for the United States.
6 The concern we have is that the U.S. Federal
7 Government has not responded to some of the
8 efforts and investments to build more competitive
9 trade routes and capture market share.

10 Ultimately a decision to approve this merger
11 would result in American job losses and other
12 economic harm we believe and it is on these
13 grounds that we urge the Surface Transportation
14 Board to reject the merger.

15 Thank you.

16 CHAIRMAN OBERMAN: Thank you, Ms.
17 Miller, and I'm glad we were able to get you
18 included in the -- in the hearing.

19 We will now move on to the Dead River
20 Company. There are two witness: Alan Dorr and
21 Sandy Brown.

22 MR. DORR: Good morning, Mr. Chairman and

1 the rest of the Board, and thank you for the
2 opportunity to speak at today's public hearing.

3 My name is Alan Dorr and I am the vice
4 president of wholesale and procurement at Dead
5 River Company. I would have preferred to not have
6 to come to the STB to speak at this hearing but
7 circumstances have warranted us sharing a story.
8 I would like to preface my comments by saying that
9 we are neither in support nor opposition of this
10 merger.

11 Dead River Company was founded in 1909
12 as the largest supplier of propane in the state of
13 Maine and has a 50-plus-year record of safe
14 operations in the State of Maine. Propane is a
15 vital component of Maine's and New England's
16 energy portfolio. It is used commercially in
17 manufacturing, for business and residential
18 cooking and, most importantly, it's used to supply
19 over 270,000 homes in the State of Maine for
20 heating and cooking.

21 Due to Maine's geographic location the
22 vast majority of propane arrives at various

1 terminals throughout the state and throughout the
2 region via rail car. We do not have local access
3 to pipelines or refiners in this region.

4 Accordingly, we greatly value our rail
5 relationships tremendously as rail is vital to the
6 energy security of the State of Maine and the
7 entire region.

8 Dead River operates seven rail
9 terminals that receive propane from various
10 sources in Canada and the United States to
11 distribute to Maine and other New England states.

12 One of these terminals is located in Hampden,
13 Maine in the Bangor area and is captive to the CP
14 as a result of the CMQ, the Central Maine and
15 Quebec Railway transaction. Dead River is merely
16 a consignee of shipments delivered in Hampden.

17 Dead River does not have the relevant rail
18 transportation contract; in fact, Dead River does
19 not own any track in Hampden. All propane
20 shipments are unloaded from the CP siding adjacent
21 the Hampden facility. Until CP was permitted to
22 acquire the CMQ, we had a strong mutually

1 beneficial relationship with all of our rail
2 partners but now we have been unable to reach
3 reasonable agreements with CP for this
4 long-standing service and it threatens to cause
5 uncertainty or disrupt the supply of propane to
6 Maine as we head into the winter.

7 Dead River also recently acquired Maine
8 Energy, Incorporated which also has a terminal
9 that's cpative to the CP in the Bangor area.
10 Collectively these two terminals are vital to the
11 supply of propane heating fuel for central and
12 northern Maine.

13 CP has been seeking to impose terms
14 never required before in the shipment of propane
15 to Maine that are inconsistent with promises being
16 made to the STB to support the KP/KCS -- CP/KCS
17 merger and which are also similar to what the CP
18 claimed in the CMQ transaction.

19 As just a quick example in the short
20 amount of time that I have, I note that the CP/KCS
21 application states that all of the benefits will
22 be achieved without any adverse impacts on any

1 stakeholders and that the transaction will enhance
2 competition, improve the quality and capacity of
3 rail transportation service, improve the
4 environment, benefit shippers and to do so without
5 any adverse impacts.

6 CP's actions are not consistent with
7 these promises and are also anticompetitive.
8 Again, in the interest of time, I will focus on
9 only two of the terms that CP is attempting to
10 force Dead River that are inconsistent with these
11 promises as well as being anticompetitive...

12 OT55: CP is attempting to contractually
13 impose a set of guidelines called AAR OT55 on
14 their existing terminals that seem aimed at
15 requiring the terminals to move or close by this
16 November. CP's business team has verbally assured
17 us numerous times that this is not the case but
18 the proposed contract language continues to get
19 worse.

20 Dead River is committed to safety but
21 using a track use agreement as leverage against
22 Dead River to force a move or closure of these

1 terminals is inconsistent with what CP has told
2 the STB in these transactions.

3 Additionally CP has imposed sourcing
4 restrictions. Once CP acquired CP -- the CMQ, CP
5 has imposed restrictions on inbound propane to be
6 limited to origins that are on CP lines. Dead
7 River is not the shipper of transportation of
8 propane to the terminals, but even if it was,
9 forcing the tying of service to the terminal and
10 the accompanying short-term storage needed for
11 that service to any requirement that the source of
12 propane must originate on CP limits the supply of
13 propane and is anticompetitive. Such a
14 requirement would limit supply and increase cost
15 of the crucial propane supplies that keep northern
16 Maine homes warm in the cold winters. Many
17 residents, businesses and institutions in northern
18 Maine are struggling economically and can ill
19 afford to absorb the increased cost likely with
20 such supply restrictions. None of these
21 restrictions being imposed by CP exist at the
22 other five rail terminals that we operate

1 throughout the region that are on lines other than
2 CP.

3 The Dead River is asking the Board to
4 protect the vital energy supply for the State of
5 Maine. Dead River recognizes that the STB cannot
6 deny a larger transaction because of an
7 applicant's actions in one state. However the STB
8 should admonish the tactics of railroads that come
9 to the STB for transaction approval from using
10 their newly-acquired lines to impose terms
11 inconsistent with their promises that are
12 anticompetitive and that disrupt transportation to
13 long-standing rail service facilities.

14 Thank you for your time and my
15 opportunity to share our story. I'm happy to any
16 -- answer any questions at this time.

17 CHAIRMAN OBERMAN: Mr. Dorr, I'd like
18 to pursue this a little bit but where -- and
19 maybe you said it and I just couldn't follow it
20 without a map. Where is it -- this is one of your
21 terminals that is served by CP now?

22 MR. DORR: Yes, served by CP in the

1 State of Maine.

2 CHAIRMAN OBERMAN: Where? Where?

3 Where is it?

4 MR. DORR: In the Bangor region, in the
5 Bangor, Maine region.

6 CHAIRMAN OBERMAN: Is this a terminal
7 that was CMQ and now is taken over by CP?

8 MR. DORR: Correct. We've had this
9 terminal for well over 50 years.

10 CHAIRMAN OBERMAN: And what -- what is
11 the change that CP is imposing on you?

12 MR. DORR: Well, they're asking us to
13 be subject to OT55 regulations. They're imposing
14 additional insurance requirements. They're
15 imposing restrictions on where we get our supply
16 of propane, among -- among other things.

17 CHAIRMAN OBERMAN: You mean where the
18 supply originates from and then interchanges with
19 CP? What kind of a restriction is that?

20 MR. DORR: Well, a normal time it's not
21 a tackle but when -- in the case of propane, that
22 are times when propane gets tight in supply, so we

1 have to go out and source it from wherever we can
2 get it. So that would restrict our sourcing or
3 greatly economically disadvantage our sourcing if
4 we were to be required to give propane that is not
5 sourced on a CP line.

6 CHAIRMAN OBERMAN: So, are you saying
7 that CP has informed you that if you attempt to
8 obtain propane that initiates on another line and
9 interchanges with CP, they won't deliver it to
10 you?

11 MR. DORR: No, they will deliver. It's
12 just at a greater cost.

13 CHAIRMAN OBERMAN: I take it at a cost
14 that you regard as commercially prohibitive?

15 MR. DORR: Yes, it's prohibitive on the
16 storage side of propane. So, in the propane
17 world, we need to store cars locally. You can't
18 -- you can't run a just-in-time inventory based on
19 erratic weather demand. So -- so the cost would
20 come into the storage of cars.

21 CHAIRMAN OBERMAN: The storage of cars
22 on their line or --

1 MR. DORR: On their lines, yes.

2 CHAIRMAN OBERMAN: I see. And they
3 charge you more for storage for cars that
4 originate on another line than cars that originate
5 on CP? Is that what you mean?

6 MR. DORR: Correct.

7 CHAIRMAN OBERMAN: Could you give --
8 are you able to reveal the difference here or is
9 that something you don't want to discuss
10 publically?

11 MR. DORR: I'd rather not discuss
12 publicly but it's -- it's definitely more.

13 CHAIRMAN OBERMAN: Well, I'd like to
14 follow up on that and have you try to resolve this
15 with CP, and they're not budging?

16 MR. DORR: Yes. We're actively trying
17 to resolve this with CP and we're hoping to come
18 to a -- a reasonable conclusion shortly because
19 we're entering into the -- the heating season.

20 CHAIRMAN OBERMAN: How would this
21 merger, if it was approved, affect that situation?

22 MR. DORR: Well, this -- this

1 particularly wouldn't impact us. We're just
2 looking at this as -- based on this merger, our
3 experience with the latest merger of CP has been
4 -- has been relevant to what could happen in the
5 future.

6 CHAIRMAN OBERMAN: Oh, I -- I see what
7 you're saying. So you're not asking us to impose
8 a condition, I take it?

9 MR. DORR: I am not, no. Like I said,
10 neither oppose or support the -- this merger. We
11 don't -- we don't have a dog in the fight except
12 for what's going on currently is inconsistent with
13 the application.

14 CHAIRMAN OBERMAN: All right, are there
15 any other questions for Mr. Dorr?

16 MEMBER PRIMUS: Yeah, just one quick
17 one.

18 Mr. Dorr, thank you for appearing this
19 morning. How long has this -- has the issue gone
20 on? I don't know if you said that during your
21 testimony.

22 THE WITNESS: It's been pretty much

1 since the CP acquired the CMQ. So a couple years
2 now.

3 MEMBER PRIMUS: Okay, so it happened
4 over -- over the last winter season?

5 MR. DORR: Yes, and the season before
6 that. It seems to be getting -- the restrictions
7 seem to be getting progressively a bit tighter
8 over time.

9 MEMBER PRIMUS: Okay, and so, as you
10 say they're getting tighter. So in what way?

11 MR. DORR: Well, we had just a storage
12 agreement in the first year and then the second
13 year they're looking for additional agreements to
14 service our rail plan, so. And they're looking
15 for track access agreements and OT55
16 considerations.

17 MEMBER PRIMUS: Okay. Thank you.

18 CHAIRMAN OBERMAN: Do -- do they --
19 what -- what do they tell you is the justification
20 for charging a higher storage charge for cars that
21 originated on another railroad than cars that
22 originated on their railroad?

1 MR. DORR: I've never really heard a
2 justification. It's just that's the way it's been
3 presented to us.

4 CHAIRMAN OBERMAN: Okay.

5 MEMBER HEDLUND: I have a question.

6 CHAIRMAN OBERMAN: Go ahead, Karen.

7 MEMBER HEDLUND: About the insurance,
8 what is the percentage increase in the amount of
9 insurance and is it available on the market, and
10 is it comparable to what other railroads charge
11 for or require for shipping propane?

12 MR. DORR: So -- so initially the
13 insurance requirement was \$100M. They knocked
14 that back to \$50M. We're able to get that
15 insurance, so we can get that insurance and CP
16 does help with the cost of that insurance.
17 However, it is far greater than any of our other
18 terminals, the multiple is greater.

19 MEMBER HEDLUND: Thank you.

20 CHAIRMAN OBERMAN: All right. No
21 further questions for Mr. Dorr?

22 (Hearing none.)

1 CHAIRMAN OBERMAN: All right, we also
2 have Sandy Brown. Are you hear -- you're here
3 also with Dead River, Ms. Brown?

4 MS. BROWN: I am. Mr. Dorr was
5 providing the testimony.

6 CHAIRMAN OBERMAN: Oh, so you're just
7 observing. Do you want to -- do you wish to add
8 anything?

9 MS. BROWN: It's better that lawyers
10 don't speak.

11 CHAIRMAN OBERMAN: That's what people
12 say to me every day. Thank you.

13 MEMBER PRIMUS: This hearing would have
14 been done a few days ago if that would have
15 happened.

16 CHAIRMAN OBERMAN: All right. Well,
17 thank you both. If there are no -- not further
18 questions, we will move forward.

19 I think we're actually at our last
20 witness for today. The staff will correct me if
21 I'm wrong. Rob Ritchie from Ingredion, who
22 actually may not -- I have a note that he might

1 not be able to be here. Apparently he is not able
2 to join us.

3 I would say that I think he and Mayor
4 Ellis from Monroe, Louisiana were the two
5 witnesses who unfortunately could not apparently
6 reschedule to be with us. I would encourage them,
7 if they have access to communication, to submit
8 their statements to us in writing, if they still
9 choose, so we have -- have their views in the
10 record.

11 With that, unless there is any other
12 discussion from the Board Members, I think we can
13 recess until Thursday.

14 Is there anything else that any Board
15 Member wants to add or say at this point?

16 All right, we are scheduled -- we will
17 recess until this Thursday at 10:30 a.m. Eastern
18 and that hearing will be devoted entirely and
19 solely to the rebuttal presentation of CP/KCS.

20 So with that, thank you all and we'll
21 see you Thursday morning.

22 (Whereupon at 10:55 a.m. the hearing

1 stood in recess.)

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CERTIFICATE OF NOTARY PUBLIC

I, KIM M. BRANTLEY, C.S.R., the officer
before whom the foregoing hearing was taken, do
hereby, certify that the proceedings were taken by
me in stenotype and thereafter reduced to
typewriting under my direction; that said hearing
is a true record of the proceedings; that I am
neither counsel for, related to, nor employed by
any of the parties to the action in which this
hearing was taken; and, further, that I am not a
relative or employee of any counsel or attorney
employed by the parties hereto, nor financially or
otherwise interested in the outcome of this
action.

KIM M. BRANTLEY, C.S.R.
Notary Public in and for
the District of Columbia

My commission expires: October 31, 2024

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