



March 23, 2016

BY ELECTRONIC FILING

Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Docket No. FD 36004, CANADIAN PACIFIC RAILWAY LIMITED –
PETITION FOR EXPEDITED DECLARATORY ORDER

Dear Ms. Brown:

The Freight Rail Customer Alliance (“FRCA”) is submitting this brief reply to the Canadian Pacific Railway Limited (“CP”) petition for an expedited declaratory order regarding some aspects of the structure of a hypothetical voting trust. FRCA reserves the right to submit additional comments at a later time.

FRCA has concerns about whether the Surface Transportation Board (“Board”) should entertain the petition under current circumstances.

First, issuance of declaratory orders is discretionary as a mechanism to terminate controversy or remove uncertainty. A decision by the Board granting this petition is unlikely to accomplish either. CP’s plan would be to submit an actual voting trust for approval at a later time. That petition may generate even greater controversy. In addition, dispute over what was approved previously on a “hypothetical” basis, or whether that previous guidance should be revisited in light of different circumstances is entirely possible, resulting in more uncertainty and controversy.

Second, the petition also requests expedited action, the need for which would have been avoided if the petitioner had acted more expeditiously itself. FRCA is concerned that review of the petition will also divert attention from other important matters that have been pending for years. In short, entertaining such a controversial petition is perhaps not the best use of the Board’s limited resources.

Third, the suggested voting trust structure is problematic. Voting trusts serve to maintain the status quo while a merger is pending, thus preventing the premature exercise of control and allowing the transaction to be unwound if the merger is not approved. Maintaining the status quo is especially important where an industry is already highly consolidated, a key factor in the adoption of the new merger rules put into place in 2001. Here, the status quo will not be preserved. The Petitioner plans to make substantive changes to the operation of its intended acquisition even before the merger application



is filed with the Board for its review and consideration. Moreover, the intended acquisition is not a failing firm, but has been the leader in the Board's annual revenue adequacy reviews.

Fourth, the railroad industry is, as noted above, already highly consolidated where today. Four of the Class I carriers carry 90% of the freight traffic in the U.S. With history and the statements of other carriers as a guide, further industry consolidation more than likely would lead to even less competition, increased rates, and more service glitches that can reverberate throughout the entire system and economy. Again, discretionary action to facilitate uncertainty and disruption would not appear consistent with the public interest.

FRCA asks that the Board take these considerations into account in deciding whether and how to proceed how on CP's petition for an expedited declaratory order.

Respectfully submitted,

Ann Warner
Executive Director