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The Honorable Cynthia T. Brown
Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

**RE: FD 36514, Canadian National Ry. – Control – Kansas City Southern
FD 36500, Canadian Pacific Ry. – Control – Kansas City Southern**

Dear Ms. Brown:

On behalf of the Village of Barrington, Illinois (VOB) these comments address the April 26, 2021 Canadian National Railway Company (CN) Motion for Approval of Voting Trust Agreement in the above-referenced control dockets. Based on the potential for severe negative impacts on the Village and other Chicagoland communities that are already struggling to cope with massive rail freight volumes in the most congested rail chokepoint in the nation, it is imperative that the Board carefully assess the CN merger before greenlighting it for KCS shareholders with premature Trust approval.

**A POTENTIAL CN-KCS MERGER IS A TRAFFIC CONGESTION NIGHTMARE
FOR THE PEOPLE OF THE GREATER CHICAGOLAND AREA**

Unlike the CP/KCS Voting Trust Agreement that the Board has approved, a CN/KCS Voting Trust Agreement, which would facilitate a CN-KCS merger – on its face – creates a harmful potential to increase rail congestion in the region – especially for those communities along the EJ&E rail line, which was purchased by CN in 2009. It is difficult to understand how the Board would ever determine that CN’s control of the Kansas City Southern could be “consistent with the public interest” until it thoroughly considers the potential

impact on communities in Chicagoland, shippers, and the future of rail competition in North America.

As the Board well knows, the greater Chicagoland area is the busiest railroad hub in the United States. One in every four freight trains in the nation pass through Chicagoland every day. With six of seven Class I railroads (all except KCS) operating through the Chicago region, it is imperative for the Board to recognize that the CN-KCS merger will drive more rail freight volumes through the Chicago region, while the CP-KCS merger holds the promise of competing vigorously with CN on shipments between the Gulf Coast and Canada as it keeps its synergistic growth out of the region by diverting trains further west of the Mississippi River.

A CN merger with KCS that would bring more freight rail traffic to the region would be untenable. In addition to the reality that Chicagoland is a bottleneck in the national rail freight network, the Board must keep in mind that the entirety of the region's transportation network is held hostage to freight rail induced vehicular traffic congestion that local communities are not able to control because of federal interstate commerce preemption. Therefore, the Board must consider the impact of a CN/KCS merger on the people and communities of the region in terms of public transit. Metra -- the regional rail transit system is *"comprised of 11 separate lines radiating out from Chicago's Loop, and serves more than 100 communities at 242 rail stations"* over 487.5 routes miles encompassing 1,155 track miles. Pre-COVID, this system served an average of 281,100 weekday passengers on 692 weekday trains.¹ Many of these Metra trains cross or use the CN/EJ&E lines or would otherwise be impacted by additional traffic from a CN-KCS merger. Given this, Barrington strongly urges the Board to proceed cautiously on approving a CN Trust given the merger's potential for further burdening the travel flow in a metropolitan area with a population of 9.46 million.²

Despite the founding of the CREATE program in 2003 that was meant to decrease rail freight congestion in the region, not enough has been accomplished:

¹ July 2018-2019 METRA data at <https://metrarail.com/about-metra/reports-documents/operations-ridership-data>

² <https://www.statista.com/statistics/815172/chicago-metro-area-population/>

Seventeen years later the consortium called the Chicago Region Environmental and Transportation Efficiency Program, or CREATE, has completed less than half of the 70 projects, which include signal improvements, track repairs and additions, flyovers that bridge track over a different line, and rail-highway grade separations.

To be sure, the 30 completed projects have gone far to smooth the worst bottlenecks. Before CREATE was launched, it would take an east-west train two days to clear the Chicago area. That's down to 42 hours for trains consisting of tank and box cars. Intermodal trains, which carry containers that can be transferred to and from a truck or ship, average 26 hours, according to AAR.³

THE CURRENT SITUATION IN BARRINGTON, IL

Adding to the rail congestion in the region that drove the establishment of the CREATE program, the Board in 2008 approved Canadian National's acquisition of the EJ&E rail line that bifurcates the Village of Barrington and circles broadly around the core Chicagoland area on 198 miles of track. While the Board required CN to pay a majority of the cost share of two grade separations along the acquired line in Aurora, IL and Lynwood, IL, it left all of the other EJ&E towns struggling to cope with unprecedented levels of rail traffic while CN reaped tremendous financial benefits from its ability to avoid downtown Chicago.

Thanks to federal and State of Illinois funding, Barrington, which has four CN at-grade crossings within a 5,918 feet span in the middle of the Village, has been able to secure the majority of the funds for an underpass at one of four Barrington grade crossings in the Village. The U.S. Highway 14 underpass project will cost taxpayers nearly \$79 million. With a construction start date of late 2022/early 2023, Barrington will hopefully secure partial, but still insufficient, mitigation from CN freight traffic by 2025 – far too long after CN began severely disrupting traffic flow through the area.

The impact in Barrington and other communities along the EJ&E has been severe. In 2008, CN told the Board and EJ&E communities that its trains would average 6,800 feet in length and operate at 39 mph. Those assumptions

³ November 20, 2020, <https://www.chicagobusiness.com/crains-forum-freight/crains-forum-freight> . After \$1.6 billion in investment, CREATE projects have reduced east-west shipping transit times by only 6 hours from 48 hours to 42 hours.

fell short of CN’s actual operating impacts, and thus created a greater level of community harm than the Board envisioned in the environmental review process. Barrington used CN’s oversight data to the STB (which concluded in Jan. 2017) to develop the following more realistic data of CN freight impacts on the EJ&E:

YEAR	AVERAGE NUMBER OF DAILY TRAINS	AVERAGE LENGTH OF TRAINS	AVERAGE SPEED OF TRAINS
2009	6.4 trains daily	unknown	unknown
2010	8.5 trains daily	unknown	unknown
2011	7.9 trains daily	5,800 ft.	32 mph
2012	13.9 trains daily	unknown	unknown
2013	16.5 trains daily	unknown	unknown
2014	17.6 trains daily	unknown	unknown
2015	19.6 trains daily	7,700 ft.	28 mph
2016	18.1 trains daily	7,800 ft.	28 mph

Observational camera-generated data collected by Barrington in 2016 showed the following train lengths operating through Barrington during the following periods of time:

TIME PERIOD	AVG. TRAIN LENGTH	NUMBER & PERCENTAGE OF TRAINS GREATER THAN 6,800 FEET	PERCENTAGE OF TRAINS GREATER THAN 10,000 FEET
May 12 to June 15, 2011	5,800	87 (41%)	3%
October 2015	7,700	380 (69%)	13%
March 2016	7,700	336 (71%)	16%
April 2016	8,000	384 (75%)	19%
May 2016	7,700	330 (71%)	16%

EJ&E communities have now been left coping with longer and slower trains, which would only increase yet again with the proposed CN-KCS merger. In addition, the merger has the potential to burden anew those 2008 “winner” Chicagoland communities on the other five CN rail lines that run through the

Chicago core, as they are likely to experience additional rail freight traffic if CN were to merge with KCS.

Astoundingly, in a May 5 piece in **Crain's Chicago Business**, Rob Reilly, the Executive Vice President and Chief Operating Officer of CN seems to believe that the EJ&E is not located in the Chicagoland metropolitan region or that rail on the EJ&E does not affect Chicago's freight rail or transit system.

It is disappointing that Canadian Pacific would suggest in Crain's Chicago Business that the proposed combination between Canadian National and Kansas City Southern would increase traffic in Chicago. I have worked in the area for a large portion of my 32-year railroad career, and I can assure you that the truth is the opposite.

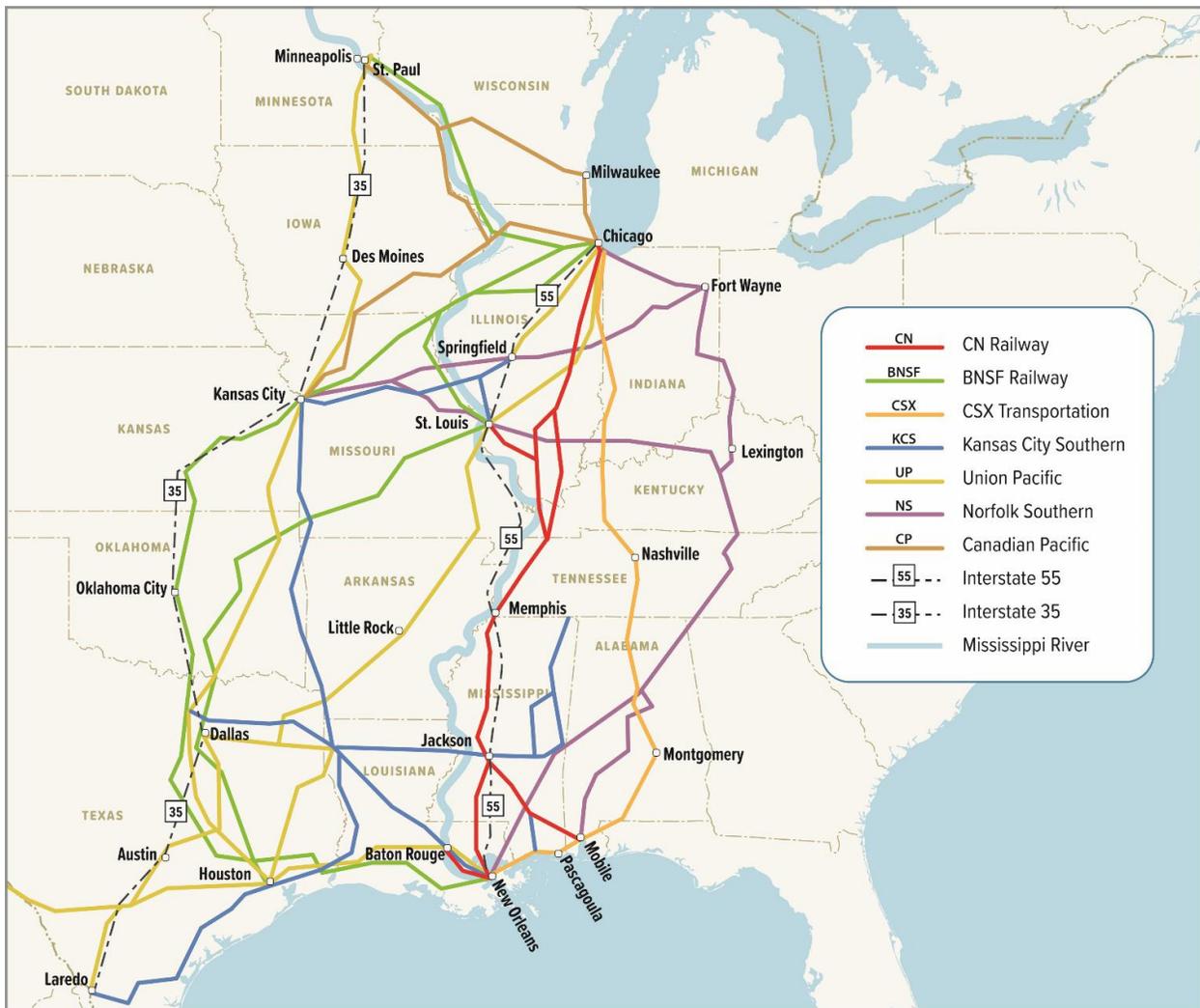
Canadian National uses a simple strategy to solve Chicago's longstanding rail congestion problem: We go around the core of the city. Canadian National's line bypasses downtown Chicago by about 30 miles to the south, looping through Matteson and then heading east towards Indiana.

Maps don't lie. This Elgin Joliet & Eastern Railway route, which you'll often hear us refer to as EJ&E, allows CN to move freight faster and more efficiently in all directions, thereby relieving congestion on the tracks and taking trucks off of your local roads. This benefits customers and commuters alike, and our proposal would not impact Amtrak or Metra services whatsoever.⁴

But maps can and do lie when they are presented in an incomplete way. In its April 29, 2021 filing to the Board, CN included the following map that would indicate that the CN rail network begins in Chicago and goes no further northwest or east. In addition, the existence of the EJ&E is missing entirely on this CN map.

⁴ <https://www.chicagobusiness.com/opinion/why-deal-will-make-chicagos-congestion-problem-worse>

MAP SUBMITTED TO THE STB BY CN ON APRIL 29, 2021



Barrington need not remind the Board that the EJ&E rail line is, in fact, very much a part of the Chicagoland region. While there has been staff and Board Member turn-over at the STB since Barrington last appealed to the Board in 2019 for grade separation mitigation in the Village, institutional memory would surely recognize that the CN acquisition of a mere 198 miles of track created more than a decade-long hornet's nest of regulatory and legal activity. That acquisition was nothing compared to the scope of what CN now contemplates in its effort to create an absolute and irreversible lock on tri-coastal rail freight service between Canada, the United States, and Mexico.

A BOARD DECISION ON CONTROL OF KCS SHOULD NOT BE A POPULARITY CONTEST, BUT SHOULD FOCUS ON THE PUBLIC INTEREST.

The Board has been receiving numerous letters from shippers in these dockets as if this merger should be viewed as little more than a “popularity contest.” Barrington cautions the Board that these docket communications may ultimately be highly misleading. Shipper reactions regarding a CN-KCS merger versus a CP-KCS merger are starkly different and need to be taken into account at this initial stage of the Board’s contemplation of CN’s request for Trust Approval. According to an April 23, 2021 piece in Railway Age:

A Cowen and Company “snap” railroad shipper survey conducted over a one-day period indicates that CN “is likely to have a more difficult time with shippers supporting its proposed acquisition of Kansas City Southern. This compares to a more favorable view by shippers of Canadian Pacific acquiring KCS in our most recent survey.”

“We asked participants if they have a positive or negative view of the CN merger transaction. 25% of participants have a positive view of the transaction, while 45% have a negative view. 30% have no opinion. We asked this same question in our most recent snap survey on the CP/KCS transaction, where 44% had a positive view, and just 18% had a negative view.”

“We asked the participants who had a negative opinion toward the transaction if they planned to take action with the Surface Transportation Board. 59% of participants that opposed the transaction do not plan to take action with the STB, while 5% do plan to take action. 36% have not yet decided if they will take action.”

Since CN initiated its efforts to purchase KCS, it has been ginning up and submitting shipper and other stakeholder letters to add to the docket. But it’s also important for the Board to hear from the oft-forgotten stakeholder in rail transactions – impacted communities – that may lack a clear understanding of how much a CN-KCS deal would impact Chicagoland.

Ultimately, the Board needs to act on the CN Trust Agreement with an eye towards the underlying transaction and whether it is in the **public interest**. C.F.R. Section 1180.4(b)(4)(iv) states:

*Applicants may also propose the use of a voting trust at this stage, or at a later stage, if that becomes necessary. In each proceeding involving a major transaction, applicants contemplating the use of a voting trust must explain how the trust would insulate them from an unlawful control violation and **why their proposed use of the trust, in the context of their impending control application, would be consistent with the public interest.** (emphasis added) Following a brief period of public comment and replies by applicants, the Board will issue a decision determining whether applicants may establish and use the trust.*

In conclusion, public interest writ large must include careful scrutiny of how this mega-merger will impact communities in Chicagoland. Without question, the proposed CN-KCS merger would have major implications for the region, impacted communities, and regional traffic flow. Because the approval of CN's Voting Trust motion may predetermine the outcome of the matter, the Board is urged not to make any premature decisions on this matter absent robust analysis that can truly gauge if this merger would survive public interest scrutiny

Respectfully Submitted,

/s/ Richard H. Streeter

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RHS:rs

cc: I certify that a true and correct copy of this letter has been served this 7th day of May 2021, on all parties of record. /s/Richard H. Streeter