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June 28, 2021  
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Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 36514

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CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION,  
AND CN'S RAIL OPERATING SUBSIDIARIES

- CONTROL -

KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY  
COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS  
MEXICAN RAILWAY COMPANY

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**NATIONAL RAILROAD PASSENGER CORPORATION'S  
OPPOSITION TO THE JOINT MOTION FOR APPROVAL OF  
VOTING TRUST AGREEMENT**

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OPPOSITION TO THE JOINT MOTION FOR APPROVAL OF  
VOTING TRUST AGREEMENT**

The National Railroad Passenger Corporation ("Amtrak") submits the following comments in opposition to the Joint Motion for Approval of Voting Trust Agreement ("Voting Trust Motion") on the terms proposed and as filed on May 26 with the Surface Transportation Board ("the Board") by Canadian National Railway ("CN") and Kansas City Southern Railway ("KCS") in the above-captioned proceeding.

Unlike the proposed acquisition of KCS by the Canadian Pacific Railway, CN's proposed acquisition of control of KCS ("CN Acquisition") would not be a purely end-to-end merger. Many parties to this proceeding have identified the 80-mile rail corridor between New Orleans and Baton Rouge, along which CN and KCS have closely parallel rail lines, as the area of greatest concern with respect to rail freight service competition.

How the CN Acquisition would affect the KCS line that links New Orleans with Baton Rouge ("KCS Baton Rouge Line") is one of the many concerns that Amtrak also has about the CN Acquisition. Because CN's plans for that line, described in the Voting

Trust Motion, are one of CN’s principal arguments for approval of the voting trust, we discuss below how CN’s plans would impact Amtrak and why they are untenable.

Passenger train service between New Orleans and Baton Rouge was discontinued in 1969, a year before Amtrak was created. The devastation of New Orleans by Hurricane Katrina in 2005, however, led state and local governmental agencies and the Southern Rail Commission (“SRC”), an interstate compact created by Louisiana, Mississippi and Alabama, to recognize the necessity of restoring intercity passenger rail service between New Orleans, Louisiana’s largest city, and Baton Rouge, Louisiana’s capital and second largest city. Louisiana’s recently updated State Rail Plan identifies the New Orleans-to-Baton Rouge Corridor as “Louisiana’s highest priority passenger rail route.” These governmental entities and other stakeholders recognize the vital role that rail passenger service could play in supporting economic recovery and growth, facilitating mobility and access to jobs, and in providing life-saving evacuation capacity in the event of future major weather events.<sup>1</sup>

The effort to restore New Orleans-to-Baton Rouge passenger rail service has been supported by Amtrak and the Federal Railroad Administration (FRA), which has awarded funding to SRC for the design of the planned stations along the route.<sup>2</sup> Restoration of this service has extraordinarily high public support: 85% of respondents to a 2019 SRC

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<sup>1</sup>Louisiana Department of Transportation (DOT), Louisiana State Rail Plan, August 25, 2020 ([wwwsp.dotd.la.gov/Inside\\_LaDOTD/Divisions/Multimodal/Marine\\_Rail/Misc Documents/2020 Louisiana Rail Plan.pdf](http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Multimodal/Marine_Rail/Misc_Documents/2020_Louisiana_Rail_Plan.pdf)), p. 117. See also letter of Louisiana Governor John Bel Edwards to Board Chairman Martin J. Oberman, May 25, 2021 (appended to CN-19/KCS-2), and SRC, Connecting Baton Rouge and New Orleans by Intercity Passenger Rail, September 2015 ([https://static1.squarespace.com/static/5302778ee4b07a6f640874ef/t/5609444ae4b0aafe751b34be/1443447882218/SRC\\_GBB\\_web\\_final.pdf](https://static1.squarespace.com/static/5302778ee4b07a6f640874ef/t/5609444ae4b0aafe751b34be/1443447882218/SRC_GBB_web_final.pdf)).

<sup>2</sup>SRC, FRA Grant Awards: Station Area Planning (<https://www.southernrailcommission.org/fra-station-grants/>)

poll said having such service was important or very important, and an astounding 63% said they would use it.<sup>3</sup>

The major impediment to restoration of New Orleans-to-Baton Rouge passenger rail service has been the lack of federal funding for expansion of intercity passenger rail service. That problem may soon be addressed. The Biden Administration’s infrastructure investment proposals, and the surface transportation reauthorization bills recently approved by the Senate Commerce Committee and the House Transportation and Infrastructure Committee, would provide significant, multi-year funding for expansion of intercity passenger rail service for the first time in Amtrak’s 50-year history. Amtrak’s recently released “Amtrak Connects US” vision to bring new and expanded Amtrak service to underserved regions like the South, large cities with minimal Amtrak service such as New Orleans, and cities like Baton Rouge that have no Amtrak service at all, includes new Amtrak service - initially two daily round trips - between New Orleans and Baton Rouge via the KCS Baton Rouge Line.<sup>4</sup>

However, CN’s plan for addressing competitive issues raised by its proposed voting trust and the CN Acquisition, described in the Voting Trust Motion, creates a major new impediment to giving the 2.2 million residents along the New Orleans-to-Baton Rouge corridor the Amtrak service they deserve and have long needed. In addition to making restoration of reliable passenger rail service much more difficult, it raises a multitude of other operational and public interest concerns – and in fact the proposed mitigation proposed by CN has previously been rejected by the Board.

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<sup>3</sup>Louisiana DOT, *id.*, p. 116.

<sup>4</sup>Amtrak, Amtrak Connects US, June 2021 ([https://www.amtrakconnectsus.com/wp-content/uploads/2021/06/Amtrak-2021-Corridor-Vision\\_2021-06-01\\_web-HR-maps-2.pdf](https://www.amtrakconnectsus.com/wp-content/uploads/2021/06/Amtrak-2021-Corridor-Vision_2021-06-01_web-HR-maps-2.pdf)), pp. 64, 66.

The Verified Statement of Jean-Jacques Ruest (“Ruest V.S.”) accompanying the Voting Trust Motion states that:

CN has concluded that the cleanest and most pro-competitive solution is to divest the KCS line between New Orleans and Baton Rouge . . .

(Ruest V.S., p. 2) However, as the verified statement goes on to make clear, the “divestiture” that CN plans is very different from the divestitures of rail lines on which the Board’s predecessor, the Interstate Commerce Commission, has conditioned past railroad mergers, and the divestitures that antitrust enforcers often require when competitors merge. CN is proposing that two freight railroads – CN and an unidentified railroad of CN’s choosing – each have the right to serve local shippers on the KCS Baton Rouge Line. CN would also retain the right, presumably along with the new “owner” of the line, to operate through train service. (Ruest V.S., id.)

CN’s “divestiture” proposal is the equivalent of a homeowner selling their house but reserving the right to continue to live in it. Amtrak will leave it to other parties to address whether it would preserve existing rail freight service competition, let alone “enhance competition” as the Board’s 2001 merger regulations require. But it is beyond dispute that the “divestiture” of the KCS Baton Rouge Line that CN expects the Board to accept would be extraordinarily harmful – not only to restoration of intercity passenger rail service between New Orleans and Baton Rouge, but also with respect to nearly all of the public interest considerations that the Board must weigh. See 49 USC § 11324 (c) (“The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest.”)

Contrary to what the verified statement claims, there is nothing “clean” about replacing a single freight rail operator on the KCS Baton Rouge Line with two railroads, each with the right to operate their own local trains. The resulting duplication of train services and switching operations would make all rail services less reliable, and unnecessarily consume track capacity that could otherwise be utilized for restoration of passenger rail service. Indeed, it would have a much more negative impact on the efficiency and reliability of train operations than “open access” proposals for reciprocal switching that CN and other freight railroads invariably oppose on operational feasibility grounds.

Giving two railroads the right to operate local trains on the KCS Baton Rouge Line would also increase emissions. Local train operations – the freight railroad equivalent of package delivery trucks – produce much higher emissions per freight ton mile than through train operations because of the stop-and-go nature of local switching; the backup moves required to place freight cars in and remove cars from shipper sidings; and local trains’ relatively high ratio of locomotives to freight cars.

From an operational, environmental and safety perspective, there could be few worse places on the 140,000-mile U.S. rail network to have two freight railroads begin providing local train operations than the KCS Baton Rouge Line. The line, which provides rail service to Louisiana’s “petrochemical corridor,”<sup>5</sup> has significant local freight traffic, much of which is comprised of chemicals and other hazardous materials. Indeed, the Line passes through the middle of a refinery where local trains use the main line track for switching. In addition, there are 157 grade crossings – an average of two

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<sup>5</sup>Louisiana Department of Transportation, *id.*, p. 103.

per mile – between New Orleans and Baton Rouge.<sup>6</sup> Unnecessarily increasing local freight train operations, as CN’s divestiture proposal contemplates, would increase grade crossing blockages and the risk of grade crossing collisions.

Increased diesel locomotive emissions from doubling the number of local freight train operators on the KCS Baton Rouge Line would also raise significant environmental and environmental justice issues. The Baton Rouge-to-New Orleans corridor, often referred to in media reports as “Cancer Alley,” is a majority Black region with some of the highest cancer rates in the United States. According to the Environmental Protection Agency, Reserve, one of the cities along the KCS Baton Rouge Line, has some of the most toxic air in the United States, and a cancer rate fifty times the national average.<sup>7</sup>

Finally, increasing the number of freight railroads and freight trains operating over the Line could hinder its use for an emergency evacuation of New Orleans. In 2006, the FRA worked with Amtrak “to pre-identify trains, routes, and stations ahead of landfall in the event passenger rail is needed for evacuations”,<sup>8</sup> and in this pre-identification process identified the KCS Baton Rouge Line as the preferred route for evacuation trains.

This is not the first time that operation by a second rail carrier over KCS Baton Rouge Line has been proposed to the Board. In 1999, when CN acquired the Illinois Central Railroad Company (“IC”) and its New Orleans-to-Baton Rouge line, some parties

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<sup>6</sup>Id., p. 118.

<sup>7</sup>CBS, “High cancer risk plagues Louisiana town near chemical plants,” June 24, 2019 (<https://www.cbsnews.com/news/cancer-alley-reserve-louisiana-denka-plant-health-risk-higher-national-average-2019-07-24/>).

<sup>8</sup>U.S. Department of Transportation, Catastrophic Hurricane Evacuation Plan Evaluation: A Report to Congress, June 1, 2006, p. 2-19 ([https://www.fhwa.dot.gov/reports/hurricanevacuation/rtc\\_chep\\_eval.pdf](https://www.fhwa.dot.gov/reports/hurricanevacuation/rtc_chep_eval.pdf)).

were concerned that an interline traffic agreement between CN and KCS would reduce competitive options for shippers between New Orleans and Baton Rouge. The U.S. Department of Transportation proposed that the merger be conditioned on giving a second railroad trackage rights over the KCS and IC lines between New Orleans and Baton Rouge. In rejecting that solution to competitive concerns - the same solution that CN now proposes for the KCS Baton Rouge Line – the Board stated that it “seriously question[ed] the operational feasibility” of having a second railroad operate over “these densely traveled lines” to serve local shippers. Canadian National Ry. – Control – Illinois Central Corp., 4 S.T.B. 122, 151 (1999).

For all of the above reasons, it is clear that the “divestiture” plan for the KCS Baton Rouge Line that CN claims should assuage competitive concerns about CN’s voting trust would contravene the statutory requirement that mergers approved by the Board must be consistent with the public interest, or the criteria for imposition of conditions. See 49 USC § 11324 (c). As the Board has repeatedly and consistently stated, conditions imposed on rail mergers must be “operationally feasible” and produce “net public benefits.”<sup>9</sup> CN’s proposed “divestiture” flunks both tests.

If CN continues to pursue the CN Acquisition following the Board’s decision on the Motion, it is incumbent on CN to propose, and on the Board to require, conditions to remedy competitive harms resulting from the CN Acquisition that:

- Enhance competition;
- Advance rather than harm the public interest;
- Facilitate rather than impede expansion of Amtrak service;

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<sup>9</sup>CSX Corp. and Norfolk Southern Corp. – Control and Operating Agreements/Leases – Conrail, 3 S.T.B. 196, 278 (1998).

- Improve rather than degrade the environment; and
- Support rather than thwart environmental justice.

One such condition could be a requirement that CN actually divest the KCS Baton Rouge Line for nominal consideration to a governmental or government-owned entity. That entity would – either directly or by contracting with an independent non-Class I railroad – maintain and dispatch the KCS Baton Rouge Line and provide rail service to its shippers.

Freight traffic originating or terminating on the Line would move in local trains operated by the independent operator under a haulage arrangement on behalf of CN or any of the other four Class I railroads serving New Orleans and/or Baton Rouge. It would be interchanged in those cities with the Class Is or the city-owned New Orleans Public Belt Railway. The new governmental owner/lessor of the KCS Baton Rouge Line would also be required to accommodate Amtrak’s planned operations over the line on reasonable terms, and, in the event of an emergency, facilitate immediate access to critical evacuation infrastructure and give priority to such operations.

CN would not be harmed by this divestiture because it would retain access to all shippers along the KCS Baton Rouge Line. There is no apparent reason for CN to retain overhead trackage rights over the line, since its post-merger through freight traffic between Baton Rouge and New Orleans could be handled in trains operating over the parallel CN line.

This arrangement, unlike CN’s proposal, would be a “clean” divestiture that would enhance competition while producing other significant public benefits. It would be very similar to Conrail Shared Assets’ highly successful operation of local train service

on behalf of Norfolk Southern Railway and CSX Transportation that the Board endorsed when it approved their joint acquisition of Conrail. It would also:

- Preserve single-line service over the KCS (and CN) networks for shippers on the KCS Baton Rouge Line, one of CN's arguments for its "divestiture" proposal (Ruest V.S., p. 2);
- Reduce, rather than unnecessarily increase, freight train operations over the line;
- Preserve the competitive balance between the Class I railroads in the region by giving all of them, rather than a single railroad selected by CN, access to shippers on the KCS Baton Rouge Line; and
- Clear the tracks for the long-awaited initiation of Amtrak service between New Orleans and Baton Rouge.

## CONCLUSION

For the reasons stated above, CN's proposed "divestiture" of the KCS Baton Rouge Line is not a feasible or statutorily permissible way to solve the competitive issues raised by CN's proposed voting trust and the CN Acquisition. Therefore, Amtrak respectfully requests that the Board deny the Voting Trust Motion. If CN continues to pursue the CN Acquisition following the Board's decision on the voting trust, Amtrak stands ready to work with CN and KCS; local, state and multi-state governmental entities; and other affected stakeholders to develop a plan for the future of the KCS Baton Rouge Line that benefits rather than harms those who live along the line, and the future Amtrak passengers who will travel over it.

June 28, 2021

Respectfully submitted:

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## CERTIFICATE OF SERVICE

I, Sophia Ree, declare under penalty of perjury that the foregoing is true and correct. Pursuant to 49 § 1104.12, I hereby certify that on the 28<sup>th</sup> of June, 2021 I have caused to be served a copy of the foregoing National Railroad Passenger Corporation's Opposition to the Joint Motion for Approval of Voting Trust Agreement, upon the following parties of record in this proceeding via electronic mail:

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**CERTIFICATE OF SERVICE**

I, Sophia Ree, declare under penalty of perjury that the foregoing is true and correct. Pursuant to 49 § 1104.12, I hereby certify that on the 28<sup>th</sup> of June, 2021 I have caused to be served a copy of the foregoing National Railroad Passenger Corporation's Opposition to the Joint Motion for Approval of Voting Trust Agreement upon the following parties of record in this proceeding via mail:

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