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SERVICE DATE – JANUARY 16, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36368

SOO LINE CORPORATION—CONTROL—
CENTRAL MAINE & QUEBEC RAILWAY US INC.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1 in Docket No. FD 36368; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed on December 17, 2019, by Soo Line Corporation (Soo Line Corp.) and Central Maine & Quebec Railway US Inc. (CMQR US) (collectively, Applicants). The application seeks Board approval for Soo Line Corp., an indirect wholly owned holding company subsidiary of Canadian Pacific Railway Company (CP), to acquire control of CMQR US. This proposal is referred to as the Transaction.

The Board finds that the application is complete. The Board also makes the preliminary determination, based on the evidence presented in the application, that the Transaction is a minor transaction because it “clearly will not have any anticompetitive effects” and that, if any such anticompetitive effects were found to exist, they would “clearly be outweighed by the [T]ransaction’s anticipated contribution to the public interest in meeting significant transportation needs.” 49 C.F.R. § 1180.2. The Board emphasizes that this is not a final determination and may be rebutted by subsequent filings and evidence submitted into the record for this proceeding. The Board will carefully consider any claims that the Transaction would have anticompetitive effects.

DATES: The effective date of this decision is January 16, 2020. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than February 4, 2020, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by February 18, 2020. Responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the primary application or related filings must be filed by March 20, 2020. See Appendix (Procedural Schedule). A final decision in this matter will be served no later than May 4, 2020. Further procedural orders, if any, would be issued by the Board, if necessary.

ADDRESSES: Any filing submitted in this proceeding must be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each filing must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) applicant Soo Line Corp.'s representative, David F. Rifkind, Stinson LLP, 1775 Pennsylvania Ave, N.W., Suite 800, Washington, DC 20006; (4) applicant CMQR US's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street, N.W. #600, Washington, DC 20005; and (5) any other person designated as a Party of Record on the service list notice. As explained below, the service list notice will be issued as soon after February 4, 2020, as practicable.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245-0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Applicants seek the Board's prior review and authorization pursuant to 49 U.S.C. §§ 11323-25 and 49 C.F.R. part 1180 for Soo Line Corp. to acquire control of CMQR US. (Appl. 1.) Applicant Soo Line Corp. is an indirect, wholly owned subsidiary of CP. (Id. at 1 n.1.) Applicant CMQR US is a wholly owned subsidiary of Railroad Acquisition Holdings LLC (RAH). (Id. at 1, 6.) RAH is a wholly owned subsidiary of Fortress Transportation and Infrastructure Investors LLC. (Id. at 1 n.2.) Soo Line Corp. plans to acquire all of the outstanding membership interests of RAH, including all of the outstanding common stock of CMQR US, through a merger of Black Bear Acquisition LLC, a wholly owned subsidiary of Soo Line Corp., and RAH, pursuant to an Agreement and Plan of Merger (Merger Agreement). (Id. at 6.) RAH would be the surviving limited liability company and a wholly owned subsidiary of Soo Line Corp. (Id.)

CMQR US owns and operates approximately 244.2 miles of rail lines in Vermont and Maine and also has the right to operate on approximately 57.25 miles of rail line leased from the Maine Department of Transportation, for a total of approximately 301.45 route miles in the United States.¹ (Id. at 1, 18.) More specifically, these lines consist of the rail line beginning at a point in the vicinity of Searsport, Me., designated on CMQR US's system map as milepost 0.0± of CMQR US's Bangor Subdivision and continuing north through Maine through Brownville Junction, Me. to a point in the vicinity of Millinocket, Me., designated as milepost 109.00± of CMQR US's Millinocket Subdivision, a distance of approximately 109 miles; the rail line beginning at a point in the vicinity of Millinocket, designated on CMQR US's system map as milepost 0.0± of the East Millinocket Subdivision and continuing southeast to East Millinocket,

¹ Soo Line Corp. will also acquire 236.81 route miles of rail line from CMQR Canada and will seek authorization from the appropriate Canadian authority for that acquisition. (Appl. 2 n.3.)

Me., to a point designated as milepost 6.19± of CMQR US's East Millinocket Subdivision, a distance of approximately 6.19 miles; the rail line beginning at a point in the vicinity of Brownville Junction, designated on CMQR US's system map as milepost 0.0± on CMQR US's K.I. Subdivision and continuing to a point in the vicinity of Brownville Junction, designated as milepost 4.0± of the K.I. Subdivision, a distance of approximately 3.74 miles; the rail line beginning in the vicinity of Brownville Junction, from a point of connection with Eastern Maine Railway Company designated on CMQR US's system map as milepost 0.0± of CMQR US's Moosehead Subdivision and continuing west to the United States/Canada border near Skinner, Me., designated as milepost 101.80± of the Moosehead Subdivision, a distance of approximately 101.8 miles; the rail line beginning at the United States/Canada border crossing in the vicinity of Richford, Vt., designated on CMQR US's system map as milepost 26.25± of CMQR US's Newport Subdivision, continuing north into Canada, re-entering the United States near North Troy, Vt., and then continuing south to a point in the vicinity of Newport, Vt., designated as milepost 60.4± at the end of the Newport Subdivision, a distance of approximately 23.47 miles in the United States;² and the rail line leased from the Maine Department of Transportation beginning in the vicinity of Brunswick, Me., designated on CMQR US's system map as milepost 29.40± of CMQR US's Rockland Subdivision and continuing to a point in the vicinity of Rockland, Me., designated as milepost 86.65± of the Rockland Subdivision, a distance of approximately 57.25 miles. (*Id.* at 18-20.)

Financial Arrangements. According to Applicants, no new securities would be issued in connection with the Transaction. Applicants state that the only relevant financial arrangement is the payment of the purchase price by Soo Line Corp., as provided in the Merger Agreement. (*Id.* at 12.)

Passenger Service Impacts. Applicants state that the only passenger service operating on lines owned or operated by CMQR US is the National Railroad Passenger Corporation (Amtrak) service on the Rockland subdivision. (*Id.*, Ex. 15 at 13.) According to Applicants, there are no plans to make any changes to the operations or management of the Rockland operation that would alter Amtrak's future ability to operate. (*Id.*)

Discontinuances/Abandonments. Applicants state that Soo Line Corp. does not plan to abandon or discontinue service on rail lines in the United States as a result of the Transaction. (*Id.* at 22, Ex. 15 at 13.)

Public Interest Considerations. Applicants assert that the Transaction would not result in the lessening of rail competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. (*Id.* at 2, 12.) Applicants state that the Transaction is an end-to-end line acquisition and note that neither applicant has lines that are parallel or duplicative of the other's system. (*Id.* at 12-13.) Applicants assert that there will be

² The Newport Subdivision crosses into Canada at milepost 32.63± and enters the United States again at milepost 43.32± near North Troy, Vt. (Appl. 19.)

no negative competitive impacts and that no shipper would see a reduction in the number of competitive rail options as a result of the Transaction. (Id.)

According to Applicants, CMQR US will continue to maintain interline service agreements with Class II and Class III carriers with which it currently interchanges traffic, and none of the interline traffic originates or terminates at facilities on those carriers that are directly served by CP. (Id.)

Applicants claim that intermodal competition in Maine and Vermont is strong and that the Transaction will preserve and enhance competition by allowing Applicants to compete more vigorously against other rail carriers and transportation modes in the region. (Id. at 13-14.) The Transaction will, according to Applicants, allow them to provide faster, seamless, and more economical and efficient service. (Id.) In addition, Applicants state that improved service will extend market reach for CP and CMQR customers, providing them direct access to markets on each other's systems, including certain import and export markets. (Id.)

Time Schedule for Consummation. Applicants state that the Transaction is scheduled to be consummated on December 30, 2019. (Id. at 7.)³

Environmental Impacts. Applicants state that, pursuant to 49 C.F.R. § 1105.6(c)(1), no environmental reporting is required because the environmental impacts of the Transaction fall below the thresholds established in 49 C.F.R. § 1105.7(e)(4) and (5). (Appl. 20-22.)

Historic Preservation Impacts. Applicants state that no historic report is required under 49 C.F.R. § 1105.8, as rail operations would continue after Soo Line Corp.'s purchase of CMQR US, and Soo Line Corp. has no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. (Appl. 2, 22.)

Labor Impacts. Applicants state that CMQR US currently employs 94 people in Maine, Vermont, and Ohio. (Id. at 15.) Applicants state that no current CP employees in the United States would be adversely affected by the Transaction. (Id.)

Applicants state that any employees adversely impacted by the Transaction would be entitled to labor protective conditions in accordance with New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60, aff'd New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc., 6 I.C.C. 2d 799, 814-26 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991). (Appl. 15.)

³ On December 30, 2019, Applicants filed a letter confirming the consummation of the Transaction. The letter also stated that all of the outstanding common stock of CMQR US was deposited in an independent voting trust pending the Board's decision on the application. (Soo Line Corp. Ltr. 1, Dec. 30, 2019 (citing 49 C.F.R. § 1013.3).)

PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED. The Board finds that the proposed Transaction would be a “minor transaction” under 49 C.F.R. § 1180.2(c), and the Board accepts the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. §§ 11321-26; 49 C.F.R. pt. 1180. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

When a transaction does not involve the merger or control of two or more Class I railroads, the Board’s treatment differs depending upon whether the transaction would have “regional or national transportation significance.” 49 U.S.C. § 11325. Under 49 C.F.R. § 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as “minor”—and thus not having regional or national transportation significance—if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as “significant” if neither of these determinations can be made.

Nothing in the record thus far suggests that the Transaction would have anticompetitive effects. The Transaction is an end-to-end acquisition involving approximately 301.45 miles of rail line in Vermont and Maine. As Applicants note, the Board has held that end-to-end transactions are unlikely to raise competitive concerns. (Appl. 5); see Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC, FD 35147 et al., slip op. at 5 (STB served Mar. 10, 2009). The application indicates that the Transaction would not result in any two-to-one shippers. (Appl. 13.)

Moreover, if anticompetitive effects resulting from the Transaction should later be shown to be likely, they would appear, from the face of the application, to be clearly outweighed by the Transaction’s contribution to the public interest in meeting significant transportation needs. As noted in the application, the Transaction would result in more efficient movement of existing and future interline traffic between CMQR and CP, thus reducing costs. (Id. at 4, 9-10.) Moreover, according to Applicants, the Transaction would benefit shippers by opening new markets, including import and export markets served by the Atlantic deep-water ports of Searsport, Me., and Saint John, N.B. (Id. at 9.) Applicants’ intention to ensure that CMQR US will have access to capital and other resources needed to grow and operate safely and efficiently would also be beneficial. (Id. at 11.)

Therefore, based on the information provided in the application, the Board finds the proposed Transaction to be a minor transaction under 49 C.F.R. § 1180.2(c). Such a categorization does not mean that the proposed Transaction is insignificant or not of importance. Indeed, after the record in the proceeding is fully developed, the Board will carefully review the proposed Transaction to make certain that it does not substantially lessen competition, create a

monopoly, or restrain trade, and that any anticompetitive effects are outweighed by the public interest. See 49 U.S.C. § 11324(d)(1)-(2). The Board may also impose conditions to mitigate or eliminate any anticompetitive impacts of the transaction.

PROCEDURAL SCHEDULE. The Board has considered Applicants' motion for a procedural schedule, filed December 17, 2019.⁴ Applicants' proposed procedural schedule provides 33 days for comments from all parties on the application and 30 days for the concurrent filing of replies to comments and rebuttal in support of the application. Applicants' proposed procedural schedule then provides 54 days after the close of the evidentiary period for the Board to issue its final decision. The Board will adopt a procedural schedule that will allow 33 days for comments on the application and 31 days for replies to comments and rebuttal in support of the application. The Board is required to issue "a final decision by the 45th day after the date on which it concludes the evidentiary proceedings," 49 U.S.C. § 11325(d)(2), and will do so here.⁵

For further information regarding procedural dates, see the Appendix (Procedural Schedule) to this decision.

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than February 4, 2020, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Applicants' representatives.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a "Non-Party." Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 C.F.R. § 1180.4 and any other requirements set forth in this decision.

SERVICE LIST NOTICE. The Board will serve, as soon after February 4, 2020, as practicable, a notice containing the official service list (the service list notice). Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of

⁴ Applicants provide for 31 days from the filing of the application to the publication of this notice. The Board, however, is required to publish this notice within 30 days of the filing of the application. 49 U.S.C. § 11325(a).

⁵ This notice will be published in the Federal Register on January 16, 2020; all subsequent deadlines will be calculated from this date. Deadlines for filings are calculated in accordance with 49 C.F.R. § 1104.7(a).

Record will also be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of the service list notice must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's website at www.stb.gov.

ACCESS TO FILINGS. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 C.F.R. § 1180.4(a)(3). The application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at www.stb.gov.⁶ In addition, the application may be obtained from Applicants' representatives at the addresses indicated above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application is accepted for consideration.
2. The parties to this proceeding must comply with the procedural schedule shown in the Appendix to this decision and the procedural requirements described in this decision.
3. This decision is effective on January 16, 2020.

Decided: January 10, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

⁶ Applicants have submitted a public version and highly confidential version of their application. The public version is available on the Board's website. The highly confidential version may be obtained subject to the provisions of the protective order issued by the Board on December 3, 2019.

**APPENDIX
PROCEDURAL SCHEDULE**

November 26, 2019	Motion for Protective Order filed.
December 17, 2019	Application and Motion for Establishment of Procedural Schedule filed.
January 16, 2020	Board notice of acceptance of application served and published in the <u>Federal Register</u> .
February 4, 2020	Notices of intent to participate in this proceeding due.
February 18, 2020	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
March 20, 2020	Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the application due.
May 4, 2020	Date by which a final decision will be served.
June 3, 2020 ⁷	Date by which a final decision will become effective.

⁷ The final decision will become effective 30 days after it is served.