

SERVICE DATE – APRIL 5, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

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

Decision No. 2

Decided: April 5, 2021

Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company (CPRC), and their U.S rail carrier subsidiaries, Soo Line Railroad Company (Soo Line), Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) (CP and KCS collectively, Applicants) have notified the Board of their intent to file an application seeking authority, under 49 U.S.C. §§ 11323-11325, for the acquisition of control by Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corporation, of Kansas City Southern, and through it, of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of both its U.S. railroad subsidiaries, and KCSR and its railroad affiliates.¹

The notice of intent states that this is a major transaction as defined at 49 C.F.R. § 1180.2(a), because it is a control transaction involving two or more Class I railroads, but that the application is subject to the regulations set forth at 49 C.F.R. pt. 1180 (2000) pursuant to the waiver for transactions involving KCSR described in 49 C.F.R. § 1180.0(b).² (Notice of

¹ Applicants initially submitted a notice of intent on March 22, 2021. However, on March 23, 2021, Applicants filed an errata and asked the Board to substitute a revised notice of intent for the notice of intent filed on March 22, 2021. As such, March 23, 2021 is deemed the filing date of Applicants' notice of intent to file an application under 49 C.F.R. § 1180.4(b).

² Section 1180.0(b) provides, in pertinent part, that the Board “will waive application of the regulations contained in this subpart for a consolidation involving [KCSR] and another

Intent 3-4 & n.5.) Under 49 C.F.R. § 1180.0(b), any objections to this waiver were due within 10 days after the applicants' prefiling notification under 49 C.F.R. § 1180.4(b).

Several objections to the waiver have been filed.³ Applicants submitted a letter on April 2, 2021, stating that they intend to respond to the objections by April 12, 2021. In view of the 10-day deadline under § 1180.0(b) for objections to the waiver, and in order for the Board to expeditiously consider the merits of the waiver issue, replies to the objections to the waiver will be due on April 12, 2021. See 49 C.F.R. § 1104.13(a) (setting a default deadline for replies "unless otherwise provided").

It is ordered:

1. Replies to the objections to the waiver set forth in 49 C.F.R. § 1180.0(b) are due on April 12, 2021.

2. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Class I railroad and instead will apply the regulations in this subpart A in effect before July 11, 2001 . . . unless [the Board is] shown why such a waiver should not be allowed."

³ Specifically, objections were filed by: the American Chemistry Council, the Corn Refiners Association, The Fertilizer Institute, the National Grain and Feed Association, The National Industrial Transportation League, and US Wheat Associates; BNSF Railway Company; Canadian National Railway Company; Cargill Inc.; the Freight Rail Customer Alliance, the National Coal Transportation Alliance, and the Private Railcar Food & Beverage Association, Inc.; Norfolk Southern Railway Company; and Union Pacific Railroad Company.