

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Public Record

STB FINANCE DOCKET NO. 36514

**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**

PETITION TO ESTABLISH PROCEDURAL SCHEDULE

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Dated: April 20, 2021

Pursuant to 49 C.F.R. § 1180.4(b)(4)(i), Canadian National Railway Company (“CNR”), Grand Trunk Corporation (“GTC”), and CN’s rail operating subsidiaries¹ (collectively, “CN”) respectfully petition the Board to establish a procedural schedule for the above-captioned proceeding. A proposed procedural schedule is enclosed as Appendix A. Under the process set forth in § 1180.4(b)(4)(i), CN asks the Board to publish a Federal Register notice soliciting comments on the proposed procedural schedule and to subsequently issue a procedural schedule to govern proceedings.

The proposed procedural schedule in Appendix A comports with the statutory requirements in 49 U.S.C. § 11325(b) and with the general schedule used for past transactions. The schedule largely aligns with the procedural schedule proposed in Finance Docket No. 36500, with three key differences.

First, the proposed procedural schedule in Appendix A affords the Board the full statutory 90 days to issue a decision after close of the record. While the Board has discretion to issue a decision sooner, a full 90 days is appropriate for

¹ CN’s rail operating subsidiaries in the United States include Illinois Central Railroad Company (“IC”), Wisconsin Central Ltd. (“WCL”), Grand Trunk Western Railroad Company (“GTW”), Bessemer and Lake Erie Railroad Company (“B&LE”), Chicago, Central & Pacific Railroad Company (“CC&P”), Cedar River Railroad Company (“CEDR”), The Pittsburgh & Conneaut Dock Company (“P&CD”), Sault. Ste Marie Bridge Company (“SSMB”), Waterloo Railway Company (“WLOO”), and Wisconsin Chicago Link Ltd. (“WCLL”). CN’s rail operating subsidiaries in Canada include Algoma Central Railway, Inc. (“ACR”), Quebec and Lake Saint John Railway Company (“QLSJR”), Canadian Northern Quebec Railway Company (“CNQ”), Canada Southern Railway Company (“CASO”), and BC Rail Partnership (“BCRP”).

this major transaction. Indeed, the Board typically takes 90 days for a decision after the close of the record in “significant” transactions.²

Second, the proposed procedural schedule adjusts the schedule to provide more time for responses to comments, protests, and requested conditions, and less time for final briefs. All parties are likely to need more time for analyzing initial responses and preparing responsive evidence than they will for preparing final pbriefs. The proposed Finance Docket 36500 schedule allowed only 45 days for responses to initial comments while having a 70-day gap between those responses and final briefs; the schedule proposed in Appendix A allows 70 days for responses to initial comments, and 60 days between those responses and final briefs.

Third, the proposal removes Finance Docket 36500’s reference to a voting conference, a mechanism that the Board has not used in many years. The Board certainly has discretion to revive the voting conference if it wishes.

For discovery, CN suggests that the Board appoint an administrative law judge to address discovery issues, as it has done in Finance Docket No. 36500. Applicants would plan to present suggested discovery guidelines for consideration by the ALJ. These guidelines would follow established principles, but would remove anachronistic elements such as document depository rooms in favor of a

² See, e.g., *Canadian Pacific Ry. Co., et al.—Control—Dakota, Minn. & E. R.R. Corp.*, Decision No. 11, STB Fin. Docket No. 35081 (served Sept. 30, 2008) (decision served 90 days after final briefs). See also Motion of Applicants to Establish Procedural Schedule at 3, *CSX Corp. and CSX Transp., Inc. et al.—Control and Merger—Pan Am Systems, Inc. et al.*, STB Finance Docket No. 36472 (filed Apr. 1, 2021) (proposing 90 days after final briefs for Board decision).

modern and streamlined process. For all parties, any discovery relating to applications and other filings would only take place after filing (with the exception of 100% traffic tapes for railroad participants, which should be made available in advance).

Applicants will confer with the Board's Office of Environmental Analysis on the contents of their Environmental Report and Safety Integration Plan and an appropriate schedule for the environmental review process.

CN notes that it will be submitting a separate procedural schedule for voting trust comments in its forthcoming Motion for Approval of Voting Trust, which will be consistent with 49 C.F.R. § 1180.4(b)(4)(iv)'s call for "a brief period of public comment and replies."

Respectfully submitted,

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APPENDIX A**PROCEDURAL SCHEDULE**

F ³	Primary application and any related applications filed.
F+30	Board notice of acceptance of primary application and related application published in the Federal Register.
F+30	Safety Integration Plan due.
F+45	Notification of intent to participate due.
F+45	Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
F+70	Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.
F+90	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application due, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT). Inconsistent and responsive applications due.
F+110	Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.
F+160	Response to comments, protests, requested conditions, and other opposition due. Response to comments of DOJ and DOT due. Rebuttal in support of primary application and related applications due. Response to inconsistent and responsive applications due.
F+190	Rebuttal in support of inconsistent and responsive applications due.
F+220	Briefs due, all parties (not to exceed 50 pages for applicants and not to exceed 25 pages for all other parties).
F+240	Oral argument (close of record). ⁴
F+330	Date of service of final decision.

³ The term “F” designates the date the application is filed, and “F + n” means “n” days following that date.

⁴ Oral argument would be set at the Board’s discretion. If the Board chooses not to hold an argument, the record would close with final briefs.