

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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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**

**NOTICE OF INTENT TO FILE APPLICATION FOR APPROVAL OF
TRANSACTION SUBJECT TO 49 U.S.C. §§ 11323-25**

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Dated: April 20, 2021

Pursuant to 49 C.F.R. § 1180.4(b), Canadian National Railway Company (“CNR”), Grand Trunk Corporation (“GTC”), and CN’s rail operating subsidiaries¹ (collectively, “CN”) submit this prefiling notification of their intent to file an application seeking authority under 49 U.S.C. §§ 11323-25 for the acquisition of control by CNR, through its wholly owned subsidiary Brooklyn Merger Sub, Inc. (“Brooklyn Merger Sub”), of Kansas City Southern, and through it of The Kansas City Southern Railway Company (“KCSR”), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, “KCS”), in the event that Kansas City Southern accepts an acquisition proposal that CN conveyed to Kansas City Southern’s Board of Directors on April 20, 2021 (the “CN Proposal”).²

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”).

² KCS’s merger agreement with Canadian Pacific (“CP”) permits KCS to consider and accept superior alternative transaction proposals submitted to it before KCS’s shareholders have voted to approve the proposed CP-KCS merger. The CN Proposal constitutes a “Company Superior Proposal” within the meaning of the KCS merger agreement. *See* Canadian Pacific Railway Limited, Form 8-K (filed Mar. 22, 2021), at Ex. 2.1.

CN believes that a combination of CN and KCS represents an unparalleled opportunity to create the premier railway for the 21st century—offering greater choice and efficiencies for customers, more sustainable performance, more opportunities for employees, more robust investment in local communities and significant safety improvements.

CN and KCS have highly complementary networks with minimal overlap. Customers of both companies will benefit from a faster, more direct and more efficient network of end-to-end single-line services from Mexico to Canada, with an enhanced ability to connect ports in the Atlantic, Pacific, and the Gulf of Mexico. We intend to add more fluid, rapid and cost-efficient options across network points such as Laredo, Texas; Detroit, Michigan; and Southern Ontario, Canada, for both new and existing customers. The combined company will be the premier service-competitive railway to Michigan and Eastern Canada, resulting in better fuel efficiency and customer service.

CN has a strong pipeline of growth opportunities to add business to its existing network and expand its reach while advancing its innovation and digital capabilities. We believe a combination of CN and KCS will also drive growth opportunities for communities across Canada, Mexico and the United States, generating jobs and greater economic stability for these communities.

A combined CN-KCS would yield demonstrable benefits for the North American environment by converting significant volumes of truck traffic onto rail, which delivers safer service and better fuel efficiency at lower cost, while

also reducing traffic congestion and preventing thousands of tons of emissions from entering the atmosphere.

CN's submission of this notice of intent to file an application in the event that KCS accepts the CN Proposal is consistent with past practice,³ and is being done to provide full transparency to the Board and interested stakeholders. Should KCS reach an agreement with CN, CN is prepared to subject this proposed merger to an appropriately rigorous approval process before the Board to maximize the benefits of the merger and provide a full forum for stakeholders to comment on the transaction.⁴

Below this notice addresses the rules that should apply to this transaction and each of the elements for prefiling notices set forth in 49 C.F.R. § 1180.4(b).

A. The Board's Current Merger Rules Should Apply In This Proceeding.

The CN Proposal contemplates a major transaction that would involve KCS. As such, this proposed transaction presents a threshold question under 49 C.F.R. § 1180.0(b) of whether the Board would review it under its current major

³ For example, in 1998 when CSX and Norfolk Southern submitted separate bids to acquire Conrail, the Board accepted separate prefiling notifications from both railroads, and requested comments on each procedural schedule. *See Norfolk So. Corp. and Norfolk So. Ry. Co.—Control—Conrail Inc. and Consolidated Rail Corp.*, STB Fin. Docket No. 33286 (Nov. 27, 1996); *CSX Corp. and CSX Transp., Inc.—Control and Merger—Conrail Inc. and Consolidated Rail Corp.*, STB Fin. Docket No. 33220 (Nov. 15, 1996).

⁴ KCS and its subsidiaries are not party to this notice of intent or other related filings being made in this docket today, but would be co-applicants with CN in the event that KCS accepts the CN Proposal.

merger rules, or whether the current rules should be waived in favor of the rules that were in place before *Major Rail Consolidation Procedures*, 5 S.T.B. 539 (2001). The Board is currently considering that very question in Finance Docket 36500 for the proposed combination of CP and KCS. Along with the majority of stakeholders to submit comments on this question in Finance Docket No. 36500, CN believes that the current major merger rules should be applied to a transaction involving KCS, and that mergers involving KCS should not be subject to a different set of rules. CN believes that its proposed transaction can satisfy all elements of the *Major Rail Consolidation Procedures* rules, and it is prepared to submit a robust application under those rules.⁵

B. Description of Transaction (49 C.F.R. § 1180.4(b)(1)(i))

Under the terms of the CN Proposal, CNR, through its subsidiary Brooklyn Merger Sub, would acquire all of the capital stock of Kansas City Southern. Specifically, upon receipt of approval by the shareholders of Kansas City Southern and the satisfaction of other customary closing conditions, Brooklyn Merger Sub will merge with and into Kansas City Southern (the “Merger”), with Kansas City Southern surviving the Merger. Upon completion of the Merger, holders of Kansas City Southern’s common stock will become entitled to receive a combination of CN

⁵ While CN believes that application of the current merger rules is appropriate, if the Board were to decide in Finance Docket No. 36500 that the proposed CP-KCS transaction in that docket should receive a waiver from the current merger rules, that decision should apply equally to the proposed CN-KCS transaction in this docket. It would be fundamentally unfair to use one set of rules to evaluate a proposed CP-KCS transaction and a different set of rules to evaluate a proposed CN-KCS transaction.

common shares and cash in exchange for their common stock, and holders of Kansas City Southern's preferred stock will become entitled to receive cash in exchange for their preferred shares. Immediately following completion of the Merger, CN's voting interest in Kansas City Southern acquired in the Merger will be placed into an independent voting trust (the "Voting Trust") pending review and approval of the control transaction by the Board.

As described below, the Voting Trust will ensure that the day-to-day management and operation of KCS and its railroad affiliates will not be controlled by CN or anyone affiliated with CN. After the Board takes final and favorable action on the Application, only then would the Voting Trust be terminated and CNR assume control of Kansas City Southern and its railroad affiliates.

C. Year to Be Used for Impact Analysis (49 C.F.R. § 1180.4(b)(1)(ii))

2019 will be used for the impact analysis.

D. Approximate Filing Date of Application (49 C.F.R. § 1180.4(b)(1)(iii))

August 20, 2021. Should KCS accept the CN Proposal, CN and KCS will confer about steps needed to prepare the Application, and this estimated date may be adjusted if needed in an amended prefiling notice pursuant to 49 C.F.R. § 1180.4(b)(3). Any adjusted date will be between three to six months of this Notice pursuant to the Board's regulations.

E. Why the Transaction is Major (49 C.F.R. § 1180.4(b)(1)(iv))

The proposed transaction would be a major transaction within the meaning of 49 C.F.R. § 1180.2(a), because it is a control or merger involving two Class I railroads.⁶

F. Proposed Procedural Schedule (49 C.F.R. § 1180.4(b)(4)(i))

A proposed procedural schedule is being filed at CN-2.

G. Proposed Draft Protective Order (49 C.F.R. § 1180.4(b)(4)(ii))

A proposed draft protective order is being filed at CN-3. Its terms mirror those in the protective order entered by the Board on April 2, 2021 in *Canadian Pacific Railway Limited, et al.—Control—Kansas City Southern et al.*, STB Finance Docket No. 36500.

H. Statement of Waybill Availability (49 C.F.R. § 1180.4(b)(4)(iii))

CN will make available, as soon as practicable after the issuance of a Protective Order in this proceeding and subject to such Order, its 100% traffic tapes for the impact analysis year of 2019 upon the written request of a requesting party. If the requesting party is a railroad or represents a railroad, CN's provision of access to 100% traffic tapes will be conditioned upon the written agreement of the other railroad to provide reciprocal access to its 100%

⁶ The U.S. rail carrier subsidiaries of CNR report to the Board on a consolidated Class I basis under the name of Grand Trunk Corporation. *See Consolidated Reporting By Commonly Controlled Railroads*, 5 S.T.B. 1050 (2001), codified at 49 C.F.R. § 1201(1-1)(b)(1).

traffic tapes for use by Applicants in this proceeding (subject to the terms of the Protective Order).

CN notes that, while KCS is not a party to this Notice, KCS has already committed to making its 100% traffic tapes available to other parties under the Protective Order in Finance Docket No. 36500 and to conditioning the provision of such access to other railroads on reciprocal agreement to provide that access.

I. Voting Trust (49 C.F.R. § 1180.4(b)(4)(iv))

CN intends to utilize a Voting Trust. The form of Voting Trust Agreement will be filed separately in a Motion for Approval of Proposed Voting Trust, along with an explanation of how the voting trust would guard against a control violation and of why the voting trust is in the public interest. CN expects to submit the Motion for Approval of Proposed Voting Trust in the coming days.

The Voting Trust will be designed to ensure that the day-to-day management and operation of KCS and its railroad subsidiaries will not be controlled by CN or anyone affiliated with CN until such time as the Board approves the Application. KCS will continue to be independently managed and operated during the time of the Voting Trust.

Approval of the Voting Trust is in the public interest, because it allows the Board the time to complete a thorough review of the Application and any comments on it, without holding KCS's shareholders in limbo for over a year. Voting trusts are an essential mechanism to put potential railroad acquirers on

an equal footing with non-railroad acquirers, in light of the longer regulatory process that the Board uses to evaluate proposed control transactions, as compared to the process that would apply to acquisitions by a non-railroad entity.

The primary public interest consideration identified in *Major Rail Consolidations*—that a carrier might suffer serious financial harm in the divestiture process—is not a concern here. The facts that CN and CP have submitted independent bids, and that KCS recently entertained a private equity offer, suggest that there would be significant interest in KCS if CN’s acquisition of KCS were not consummated.

Respectfully submitted,

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