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SERVICE DATE – JUNE 7, 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. 6

Decided: June 7, 2021

By letter filed May 21, 2021, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) notified the Board that KCS has terminated the merger agreement with Canadian Pacific Railway Limited pertaining to the control transaction proposed in this docket and has entered into a merger agreement with Canadian National Railway Company. (KCS Letter 1, May 21, 2021.) As such, KCS states that it is withdrawing as a co-applicant in this proceeding. (Id. at 2.)

On May 27, 2021, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries (collectively, CP) filed a petition asking the Board to “issue declaratory relief confirming that (1) [KCS] has a continuing obligation to provide CP with the information CP needs to prepare, file, and defend its forthcoming Application for Board authorization to control KCS; and (2) CP has a continuing right to access the information KCS has already provided to CP under the Protective Order entered by the Board on April 2, 2021.” (Pet. 1.) CP requests that KCS be given three business days to reply so that the Board can rule on its request by June 4, 2021, “given that CP has proposed to submit its Application on or soon after June 28, 2021.” (Id.)

By letter filed on May 28, 2021, KCS states that, given the “complex legal questions” raised in CP’s petition, it intends to respond on or within 20 days from the filing of CP’s petition, pursuant to 49 C.F.R. § 1104.13(a) (setting a default 20-day reply deadline unless otherwise provided). (KCS Letter 1, May 28, 2021.)

CP’s request for an expedited reply deadline will be denied. While CP states that it seeks relief on an expedited basis because it has proposed to file its application on or soon after

June 28, 2021, (Pet. 1), the Board's regulations provide that CP has until September 23, 2021, to do so.¹ KCS has requested the full default period provided under the Board's regulations to reply to CP's petition, citing the complexity of the issues raised in the petition, and CP has not provided a persuasive reason for the curtailed reply deadline it seeks. Therefore, pursuant to the Board's regulations, replies to CP's petition will be due by June 16, 2021, 20 days from the filing date of CP's petition.

It is ordered:

1. CP's request for an expedited reply deadline is denied.
2. Replies to CP's petition are due by June 16, 2021.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

¹ Under 49 C.F.R. § 1180.4(b)(1), a prefiling notification for a major transaction must be filed three to six months before the application is filed. Here, because the prefiling notification is deemed filed as of March 23, 2021, see Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 2 n.1 (STB served Apr. 21, 2021), CP may file its application anytime between June 23 and September 23, 2021.