

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO: 36500

ENTERED
Office of Proceedings
June 7, 2021
Part of
Public Record

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

FINANCE DOCKET NO: 36514

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK 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

**SMART-TD AND ATDA COMMENTS ON CP'S
PETITION FOR EXPEDITED DECLARATORY RELIEF**

The Transportation Division of the International Association of Sheet Metal, Air, Rail
and Transportation Workers ("SMART-TD") and the American Train Dispatchers Association
("ATDA") respectfully submit the following in response to Canadian Pacific Railway

Company's ("CP") Petition for Expedited Declaratory Relief in the above-captioned potential transactions.

On, March 22, 2021, in Finance Docket No. 36500, Canadian Pacific Railway Limited ("CP") and their U.S. rail subsidiaries, along with Kansas City Southern ("KCS") and its U.S. rail subsidiaries, notified the Surface Transportation Board ("STB" or the Board") of their intent to file an application seeking authority under 49 U.S.C. §§ 11323-25 for the acquisition of control by CP of KCS. Applicants CP and KCS informed the Board of their intent to file their Application on or before June 28, 2021. Applicants also filed a motion for protective order, asserting that entry of their proposed order is necessary to safeguard confidential information and facilitate compliance with 49 U.S.C. §§ 11323 and 11904 and other relevant provisions of the ICC Termination Act of 1995, which was subsequently granted. *CP – Control – KCS*, FD 36500 (STB served April 2, 2021).

Thereafter, Canadian National Railway Company ("CN") offered KCS' shareholders a competing bid, and on April 20, 2021, in Finance Docket No. 36514, notified the STB of their intent to file an Application seeking authority under 49 U.S.C. §§ 11323-25 for the acquisition of control by CN of KCS. CN also filed a motion for protective order, which was granted by the Board. *CN – Control – KCS*, FD 36514 (STB served April 28, 2021). A bidding war ensued, and on May 21, 2021, KCS terminated its merger agreement with CP in order to enter into an alternative agreement with CN. On May 27, 2021, CP filed a Petition for Expedited Declaratory Relief, requesting that the Board 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 in Decision No. 1.

While SMART-TD and ATDA do not take any position at this time with regard to the proposed mergers, they support a party's ability, including CP's in this instance, to obtain information to fully engage in the STB processes and have access to requested information.

Respectfully submitted,

/s/Erika A. Diehl-Gibbons
Erika A. Diehl-Gibbons
Associate General Counsel
ediehl@smart-union.org

Counsel for SMART-TD and ATDA

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Intent to Participate has been e-filed this 7th day of June, 2021, via the STB's e-filing system and served upon the parties of record by United States postal service, postage paid mail upon the following:

Parties of Record

/s/Erika A. Diehl-Gibbons
Erika A. Diehl-Gibbons