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SERVICE DATE – FEBRUARY 25, 2022

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. 15

Decided: February 25, 2022

In Decision No. 11, served November 23, 2021, and published in the Federal Register on November 26, 2021 (86 Fed. Reg. 67,571), the Board accepted for consideration the control application (Application) filed in this docket and established a procedural schedule for the proceeding.¹ Canadian Pac. Ry.—Control—Kan. City S., FD 36500 (STB served Nov. 23, 2021). Under the procedural schedule, comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application are due on February 28, 2022.

On February 18, 2022, the Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra (Metra), filed a request for a 30-day extension, until March 30, 2022, to file its comments regarding the proposed Transaction. Metra states that, on November 24, 2021, it requested from CP documents necessary to understand what, if any, Rail Traffic Controller (RTC) modeling CP relied on in making its assertions in the Application, regarding the

¹ The application was filed by Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries, Soo Line Railroad Company, 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). The Application seeks Board approval 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 its U.S. railroad subsidiaries, and KCSR and its railroad affiliates (Transaction).

Transaction’s lack of impact on Metra’s service. (Metra Request 3.) Despite “lengthy engagement between Metra and CP,” including a motion to compel, Metra states that CP only recently, on February 15, 2022, “provided a delayed and incomplete production of requested documents that are responsive to Metra’s previous requests and that are necessary to assess the impact of the Transaction.”² (*Id.* at 2, 4, 5.) Metra asserts that additional time is necessary for it to conduct an adequate analysis of the Transaction and provide complete and informative comments on the Transaction. (*Id.* at 8.)

On February 23, 2022, Applicants replied to Metra’s request,³ stating that, while they do not believe that the discovery issues raised by Metra warrant an extension, they do not oppose a 15-day extension, limited to Metra, for the specific purpose of allowing Metra to further evaluate the effects of the proposed Transaction on Metra’s operations. (Applicants Reply 1-2, Feb. 23, 2022.)

Other responses to Metra’s extension request were filed separately on February 23, 2022, by Canadian National Railway Company (CN), CSX Transportation, Inc. (CSXT), Union Pacific Railroad Company (UP), and Norfolk Southern Railway Company (NSR). These parties do not oppose Metra’s request for a 30-day extension but contend that an extension to the procedural schedule should apply to all parties. (CN Reply 1, CSXT Reply 1, UP Reply 2, NSR Reply 2.) CN, UP, and NSR assert that doing so would avoid the creation of a multitrack procedural schedule that may result in confusion and unfairness to other parties. (CN Reply 1-2; UP Reply 2; NSR Reply 2-3.) CSXT argues that the extension should apply to all future dates set forth in the procedural schedule, asserting that no party would suffer prejudice from a 30-day extension of the existing deadlines, given the anticipated time needed for environmental review. (CSXT Reply 1-3.) NSR asserts that the production of RTC analyses implicates other parties’ ability to analyze the Transaction. (NSR Reply 3.) CSXT and UP argue that other discovery challenges warrant additional time. (CSXT Reply 3-4; UP Reply 2.)

On February 24, 2022, Applicants replied to these comments, noting, among other things, that a 15-day extension for Metra alone would not affect the April 22, 2022 deadline for Applicants’ response to comments and thus avoid creating a multitrack procedural schedule. (Applicants Reply 2, Feb. 24, 2022.)

A 15-day extension of time for Metra to file its comments on the proposed Transaction is reasonable in light of the discovery challenges Metra describes, while still permitting a reasonable opportunity for responses by the April 22, 2022 reply deadline. No other deadlines set forth in the procedural schedule will be extended at this time. While CN, CSXT, UP, and NSR contend that the extension should apply to all parties, no party other than Metra has provided a specific reason why it cannot file comments by the February 28, 2022 deadline. Nor did any other party seek its own extension sufficiently in advance of the comment deadline, as various concerns have been raised only in response to Metra’s request.

² On February 22, 2022, Metra filed an amended extension request, correcting the date on which CP provided Metra with the requested documents.

³ Replies to Metra’s extension request were due no later than February 23, 2022. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 (STB served Feb. 22, 2022).

Accordingly, Metra's comments on the proposed Transaction will be due by March 15, 2022.

It is ordered:

1. Metra's comments on the proposed Transaction will be due by March 15, 2022.
2. This decision is effective on its service date.

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