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SERVICE DATE – MAY 27, 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

Docket No. FD 36500 (Sub-No. 1)

ILLINOIS CENTRAL RAILROAD COMPANY—ACQUISITION OF A LINE OF
RAILROAD BETWEEN KANSAS CITY, MO., AND SPRINGFIELD AND EAST ST. LOUIS,
ILL.—KANSAS CITY SOUTHERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 2)

ILLINOIS CENTRAL RAILROAD COMPANY—TRACKAGE RIGHTS BETWEEN
AIRLINE JUNCTION, MO., AND GRANDVIEW, MO.—
KANSAS CITY SOUTHERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 3)

CANADIAN NATIONAL RAILWAY COMPANY AND ILLINOIS CENTRAL RAILROAD
COMPANY—CONTROL—GATEWAY EASTERN RAILWAY COMPANY

Docket No. FD 36500 (Sub-No. 4)

ILLINOIS CENTRAL RAILROAD COMPANY—ASSIGNMENT OF KCS TRACKAGE
RIGHTS BETWEEN ROCK CREEK JUNCTION, MO., AND AIRLINE JUNCTION, MO.—
UNION PACIFIC RAILROAD COMPANY

Docket No. FD 36500 (Sub-No. 5)

NORFOLK SOUTHERN RAILWAY COMPANY—TRACKAGE RIGHTS—
KANSAS CITY SOUTHERN

Decision No. 18

Decided: May 27, 2022

On October 29, 2021, 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), filed an application (Application) seeking 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).

On March 16, 2022, the Board suspended the procedural schedule and directed Applicants to address an apparent inconsistency in certain data they had submitted. Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 3 (STB served Mar. 16, 2022). Thereafter, on April 27, 2022, the Board directed Applicants to amend their Application to further explain and support the analysis underlying the Application’s Operating Plan, as well as address technical issues with the workpapers associated with the Operating Plan. Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 17), FD 36500, et al., slip op. at 5-6 (STB served Apr. 27, 2022). The Board provided 20 days following Applicants’ submission for other parties to amend comments and/or responsive applications that address the new information in the amended Application and use the modeled traffic density data in the resubmitted workpapers. Id. at 6-7. Decision No. 17 also stated that an updated procedural schedule with revised dates would be published upon receipt of Applicants’ amended Application and resubmitted workpapers and that the procedural schedule would resume upon the filing of amended comments and responsive applications.

Applicants filed their amended Application, including amended workpapers,¹ on May 13, 2022, and an errata on May 20, 2022, to correct errors in their amended Application, including workpaper file names for workpapers that were previously difficult or impossible to open.

Also on May 20, 2022, Canadian National Railway Company and its rail operating subsidiaries (collectively, CN), requested an extension of time for filing amended comments and responsive applications to June 16, 2022. CN asserts that an extension is needed to provide sufficient time for parties to identify and understand changes to Applicants’ operating plan and the implications of those changes for comments and responsive applications. On May 23, 2022, Applicants filed a reply opposing the extension request.

¹ Applicants state that confidential and highly confidential workpapers would be made available to those parties who have executed appropriate confidentiality undertakings pursuant to the protective order issued in this proceeding. The public workpapers are available on the Board’s website.

In light of Applicants' May 20, 2022 errata, good cause exists to extend the deadline for amended comments and responsive applications by one week, to June 9, 2022.

Accordingly, the Board is issuing the following revised procedural schedule: amended comments and responsive applications will be due June 9, 2022; responses to comments, responses to responsive applications, and the rebuttal in support of the Application, will be due July 12, 2022; rebuttals in support of responsive applications will be due August 11, 2022; and final briefs will be due September 20, 2022. The full revised procedural schedule is set forth in the Appendix to this decision.

It is ordered:

1. The procedural schedule is revised, as described above and set forth in the Appendix to this decision.

2. This decision is effective on its service date.

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

APPENDIX

REVISED PROCEDURAL SCHEDULE

June 9, 2022	Amended comments and responsive applications due.
July 12, 2022	Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the Application due. Responses to responsive, including inconsistent, applications due.
August 11, 2022	Rebuttals in support of responsive, including inconsistent, applications due.
September 20, 2022	Final briefs due. ²
TBD	Public hearing (if necessary). ³ (Close of the record.)
TBD	Service date of final decision. ⁴

² The Board will determine the page limits for final briefs in a later decision after the record has been more fully developed.

³ Although the Board will decide at a future date whether to conduct a public hearing, (see 49 U.S.C. § 11324(a)), such a hearing is likely to be ordered given the complexity of the Transaction and the many issues raised by it and the responsive applications.

⁴ The governing statute states that the Board must issue its final decision within 90 days of the close of the evidentiary record and that evidentiary proceedings must be completed within one year of the date of publication of the notice of the application in the Federal Register. 49 U.S.C. § 11325(b)(3). However, under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4370m-12, the Board may not issue a final decision until after the required environmental review is complete. In the event the environmental review process cannot be concluded in sufficient time for the Board to meet the 90-day provision set forth in § 11325(b)(3), the Board will issue a final decision as soon as possible after that process is complete.