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SERVICE DATE – JUNE 29, 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. 19

Decided: June 29, 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 June 15, 2022, KCS filed a motion to redesignate the confidentiality designation of certain documents produced by BNSF Railway Company (BNSF) in discovery, pursuant to paragraph 10 of the protective order adopted in this proceeding. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 (STB served Apr. 2, 2021). Specifically, KCS requests that the Board order BNSF to redesignate as “confidential” certain discovery response materials designated and produced as “highly confidential,” arguing that the documents are not highly confidential under the definition contained in paragraph 6 of the protective order. (KCS Motion 2-3.) On June 21, 2022, BNSF replied, indicating its willingness to discuss redesignating the documents at issue in a meet-and-confer conference with KCS. (BNSF Reply 2.) BNSF further notes that Applicants’ own discovery instructions contemplate “cooperation” with BNSF counsel “to identify information that would warrant a confidential or highly confidential designation.” (BNSF Reply 2 & Ex. 1 at 6, Applicants’ Third Set of Discovery Requests to BNSF.)

Because the parties have not yet conferred on the issues raised in KCS’s motion, and because it appears that these issues may be narrowed or more expeditiously resolved without Board intervention—particularly in light of BNSF’s indication of willingness to meet and confer to discuss the redesignation request—KCS’s motion will be denied. Parties are directed to meet and confer on these discovery issues. Any unresolved discovery issues should be brought before the administrative law judge appointed in this proceeding, Hon. Thomas McCarthy. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 3 (STB served Apr. 21, 2021).

It is ordered:

1. KCS’s motion to redesignate is denied.
2. KCS and BNSF are directed to meet and confer on the discovery issues raised in KCS’s motion.

3. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.