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SERVICE DATE – JULY 28, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500¹

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. 23

Decided: July 28, 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 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.

¹ This decision embraces: Docket No. FD 36500 (Sub-No. 1), Illinois Central Railroad—Acquisition of a Line of Railroad Between Kansas City, Mo., & Springfield & East St. Louis, Ill.—Kansas City Southern Railway; Docket No. FD 36500 (Sub-No. 2), Illinois Central Railroad—Trackage Rights Between Airline Junction, Mo., & Grandview, Mo.—Kansas City Southern Railway; Docket No. FD 36500 (Sub-No. 3), Canadian National Railway—Control—Gateway Eastern Railway; Docket No. FD 36500 (Sub-No. 4), Illinois Central Railroad—Assignment of KCS Trackage Rights Between Rock Creek Junction, Mo., & Airline Junction, Mo.—Union Pacific Railroad; and Docket No. FD 36500 (Sub-No. 5), Norfolk Southern Railway—Trackage Rights—Kansas City Southern.

On July 20, 2022, Applicants filed a motion to strike certain evidence filed on July 12, 2022, by BNSF Railway Company, Canadian National Railway Company, and CSX Transportation, Inc. (CSXT), and requested expedited review of the motion. On July 25, 2022, CSXT replied to Applicants' request for expedited review, asserting that expedited review would deny CSXT's ability to respond within 20 days, as provided in the Board's rules at 49 C.F.R. § 1104.13(a).

Replies to Applicants' motion to strike will be due on August 1, 2022. The Board's rules generally permit 20 days to reply to pleadings "unless otherwise provided." 49 C.F.R. § 1104.13(a). In this proceeding, the Board has indicated that a more compressed reply period is appropriate, consistent with prior major merger proceedings. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 13 (STB served Nov. 23, 2021) ("any reply to any motion filed with the Board itself in the first instance must be filed within three working days of the date of filing of the motion").

It is ordered:

1. Replies to Applicants' motion to strike are due on August 1, 2022.
2. This decision is effective on its service date.

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