

Before the
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
December 7, 2023
Part of
Public Record

Docket No. FD 36732¹

**CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY
SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND
OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.
IN LAUDERDALE COUNTY, MISS., AND CHOCTAW AND MARENGO COUNTIES,
ALA.**

Docket No. FD 36727²

**CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE
OF MERIDIAN & BIGBEE RAILROAD, L.L.C.**

**MERIDIAN & BIGBEE RAILROAD, L.L.C.’S REPLY TO COMBINED NORFOLK
SOUTHERN MOTION TO AMEND PROCEDURAL SCHEDULE**

Late on December 5, 2023, Norfolk Southern (“NS”) filed a Combined Motion to Amend the Procedural Schedule (the “NS Motion”) in both the CPKC Application proceeding and the CSXT Application proceeding. Although Meridian & Bigbee Railroad, L.L.C. (“MNBR”) is not

¹ Decision No.1 in Docket No. FD 36732 (the “CPKC Application proceeding”) also embraced the following related dockets: *CSX Transportation, Inc. – Discontinuance of Trackage Rights Exemption – in Marengo and Choctaw Counties, Ala. & Lauderdale County, Miss.*, Docket No. AB 55 (Sub-No. 814X); *Alabama & Gulf Coast Railway LLC – Trackage Rights Exemption – Kansas City Southern Railway d/b/a Canadian Pacific Kansas City*, Docket No. FD 36731; and *CSX Transportation, Inc. – Trackage Rights Exemption – Kansas City Southern Railway*, Docket No. FD 36730.

² Decision No.1 in Docket No. FD 38727 (the “CSXT Application proceeding”) also embraced the following related dockets: *Alabama & Gulf Coast Railway LLC – Trackage Rights Exemption – CSX Transportation, Inc.*, FD 36724; *Meridian & Bigbee Railroad, L.L.C. – Discontinuance of Incidental Overhead Trackage Rights – In Lowndes and Montgomery Counties, Ala.*, AB 1335X.

a party in either application proceeding, it feels compelled to reply to misleading statements in the NS Motion regarding MNBR's role in the proceedings, and to any suggestions that MNBR has done anything that would justify an extension of the procedural schedule.

As MNBR has discussed with NS counsel, MNBR is not an "applicant" in either the CPKC Application proceeding or the CSXT Application proceeding. (Neither is MNBR's parent company Genesee & Wyoming Inc. ("G&W") or its affiliate Alabama & Gulf Coast Railway LLC ("AGR").) Thus, it is totally inappropriate for NS to include G&W as part of the collective term "Applicants"³ or to include G&W in its repeated complaints that "Applicants" have impeded the conduct of discovery and stymied NS's participation.

Not only are MNBR, G&W and AGR not "applicants" in either Application proceeding, they are not even parties of record in either proceeding. MNBR is a party only in its discontinuance proceeding related to the CSXT Application proceeding, and AGR is party only in its two trackage rights proceedings one of which is related to the CSXT Application proceeding and one of which is related to the CPKC Application proceeding.

Not until November 14, 2023, did NS serve discovery on MNBR⁴ in both Application proceedings (despite the Board not consolidating the proceedings). The discovery was overbroad and burdensome, and none of the discovery related to MNBR's request for discontinuance authority. Additionally, given MNBR's status as a non-party in the Application proceedings, none of the discovery was properly propounded on MNBR. *See* 49 CFR §§1114.26, 1114.27 and 1114.30 (covering the service of various types of discovery that can be

³ *See* NS Motion at 5, 6. In fn 5, NS uses the term G&W to include Genesee & Wyoming Inc., together with MNBR and AGR.

⁴ No discovery was served on G&W or AGR.

served by a party on “any other party”). In further disregard of the Board’s discovery regulations, NS requested that MNBR raise any objections within 10 days. *See* 49 C.F.R. §1114.26(a) (responses and objections cannot be due in less than 15 days). Notwithstanding no requirement to do so, MNBR served its objections on NS on November 22, 2023 (with 8 days of service of the discovery). As NS concedes, MNBR counsel proceeded to promptly meet and confer with NS counsel regarding the MNBR objections. Without conceding that any of the discovery was properly propounded on MNBR or waiving other objections, MNBR agreed to respond to a limited set of the discovery requests to be selected by NS counsel. That discovery subset was served by NS counsel in the evening of November 29, 2023. MNBR diligently and expeditiously reviewed and responded or objected to the discovery subset within 48 hours on December 1. *See* NS Motion, pp. 11-12. Given its timely handling of NS’s discovery, there is no basis for NS’s claim that MNBR has failed to resolve discovery matters “expeditiously and amicably” as directed by the Board. *See* NS Motion at 16, heading “b”.

CPKC and CSXT will each respond to the specific NS request to amend the procedural schedule their respective Application proceedings.⁵ In considering the NS Motion, MNBR asks that the Board note that (1) MNBR is not an applicant in either the CPKC Application proceeding or the CSXT Application proceeding, (2) MNBR is not a party of record in either

⁵ MNBR notes that after the NS Motion was filed, on December 6, 2023, the Board issued Decision No. 3 in FD 36732 (CPKC Application proceeding) which among rulings, extended the date for filing comments, protests and requests for conditions until December 18, 2023, and the date for responses until January 18, 2024, and today, the Board issued Decision No. 3 in FD 36727 (CSXT Application proceeding) making the same changes to the schedule in the CSXT Application proceeding. Both decisions indicated that the NS Motion would be addressed in a subsequent decision of the Board.

Application proceeding or in any of the related proceedings except its discontinuance proceeding, and (3) MNBR has not done anything to delay NS's completion of discovery or to impede NS's participation in the Application proceedings in any way.

Respectfully submitted,

/s/ Eric M. Hocky

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*Counsel for Meridian & Bigbee Railroad,
L.L.C.*

Dated: December 7, 2023

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing “MERIDIAN & BIGBEE RAILROAD, L.L.C.’S REPLY TO COMBINED NORFOLK SOUTHERN MOTION TO AMEND PROCEDURAL SCHEDULE” by email or by first class mail, postage prepaid, on the Secretary of Transportation, the Attorney General of the United States and all parties of record in each of the following proceedings:

(1) Docket No. FD 36732, CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY, D/B/A CPKC – ACQUISITION AND OPERATION – CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C. IN LAUDERDALE COUNTY, MISS., AND CHOCTAW AND MARENGO COUNTIES, ALA.

and

(2 Docket No. FD 36727, CSX TRANSPORTATION, INC. – ACQUISITION AND OPERATION – RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C.

/s/ Eric M. Hocky

Eric M. Hocky

Dated: December 7, 2023