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SERVICE DATE – DECEMBER 15, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36727¹

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

Docket No. FD 36732²

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.

Decision No. 4³

Digest:⁴ This decision grants a motion to amend the procedural schedules.

Decided: December 15, 2023

By decision served November 3, 2023, the Board accepted for consideration the application filed by CSX Transportation, Inc. (CSXT), seeking Board approval for CSXT to acquire from Meridian & Bigbee Railroad, L.L.C. (MNBR), and operate certain rail line between Burkville, Ala., and Myrtlewood, Ala. See CSX Transp., Inc.—Acquis. & Operation—Rail Line

¹ This decision embraces the following dockets: Alabama & Gulf Coast Railway—Trackage Rights Exemption—CSX Transportation, Inc., Docket No. FD 36724; Meridian & Bigbee Railroad—Discontinuance of Incidental Overhead Trackage Rights—in Lowndes & Montgomery Counties, Ala., Docket No. AB 1335X.

² This decision embraces the following dockets: CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—in Marengo & Choctaw Counties, Ala. & Lauderdale County, Miss., Docket No. AB 55 (Sub-No. 814X); Alabama & Gulf Coast Railway—Trackage Rights Exemption—Kansas City Southern Railway, Docket No. FD 36731; CSX Transportation, Inc.—Trackage Rights Exemption—Kansas City Southern Railway, Docket No. FD 36730.

³ These two sets of proceedings are not consolidated. A single decision is being issued for administrative purposes.

⁴ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

of Meridian & Bigbee R.R. (Decision No. 1), FD 36727 et al. (STB served Nov. 3, 2023). On the same day, the Board accepted for consideration the application filed by Canadian Pacific Kansas City Limited, on behalf of itself and its wholly owned subsidiary, The Kansas City Southern Railway Company (KCS) (collectively, CPKC), seeking Board approval for KCS to acquire from MNBR and to operate certain rail line between Meridian, Miss., and Myrtlewood. See Can. Pac. Kan. City Ltd.—Acquis. & Operation—Certain Rail Line of Meridian & Bigbee R.R. in Lauderdale Cnty., Miss., & Choctaw & Marengo Cntys., Ala. (Decision No. 1), FD 36732 et al. (STB served Nov. 3, 2023). In each of these decisions, the Board also established a procedural schedule and provided that discovery may begin immediately. Id. at 11-12; Decision No. 1, FD 36727 et al., slip op. at 11-12.

On December 5, 2023, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NSR) filed in both dockets a motion to allow for completion of discovery and amend the procedural schedules. In its motion, NSR requests an extension of the comment period until December 29, 2023, which would, in turn, move the deadline for responses and rebuttal in support of the applications to January 26, 2024. (NSR Mot. 5, Dec. 5, 2023.) NSR argues that an extension is warranted because: (1) CSXT, CPKC, and Genesee & Wyoming Inc. (G&W)⁵ have impeded the discovery process and therefore prevented NSR from evaluating and reviewing the matters addressed by those entities, (NSR Mot. 5, 16-19, Dec. 5, 2023), and (2) CSXT's and CPKC's supplemental submissions, filed November 21, 2023, were inadequate and necessitate that NSR conduct additional discovery and prepare additional analysis, (id. at 5, 13-16).⁶

On December 7, 2023, CSXT and MNBR each replied to NSR's motion. CSXT requests that the Board reject NSR's motion, noting the expedited timeline for minor transactions in 49 U.S.C. § 11325(d). (CSXT Reply 1, Dec. 7, 2023, FD 36727.) CSXT argues that NSR has failed to justify the extension, asserting that CSXT diligently responded to NSR's discovery requests in three document productions, all of which are now complete.⁷ (CSXT Reply 2, 4,

⁵ G&W is MNBR's parent company. (See MNBR Reply 2.)

⁶ NSR also argues that an extension is warranted because CSXT, CPKC, and G&W over-designated certain material in their pleadings and discovery. (NSR Mot. 5, 8, Dec. 5, 2023.) NSR notes that, on November 8, 2023, it filed a motion to redesignate certain materials designated by CPKC as "highly confidential," which, as of the date it filed its extension request, remained pending before the Board. (Id. at 8.) The Board has since addressed the issue, granting in part and denying in part NSR's motion for redesignation by decision served December 6, 2023, in Docket No. FD 36732.

⁷ CSXT also asserts that NSR's arguments regarding CSXT's confidentiality designations lack merit and do not warrant an extension of the procedural schedules. (CSXT Reply 5, Dec. 7, 2023, FD 36727.) As noted above, supra note 6, the Board has already resolved this issue. Additionally, CSXT argues that NSR's motion to amend the procedural schedules is not timely because it was not filed at least 10 days before the then-December 11, 2023 comment deadline. See 49 C.F.R. § 1104.7(b). The Board notes that, by decision served December 6, 2023 (the day after NSR filed its motion), the comment deadline was extended to December 18, 2023, in light of the Board ordering CPKC to redesignate certain material. See Can. Pac. Kan.

Dec. 7, 2023, FD 36727.) MNBR states in its reply that, although it is not a party to either proceeding, it is replying to address “misleading statements” in NSR’s motion. (MNBR Reply 1-2.) Specifically, MNBR argues that NSR inappropriately includes G&W in the collective term “Applicants” and objects to the suggestion that G&W impeded the conduct of discovery. (*Id.* at 2.) MNBR states that, although not required of MNBR as a non-party, it nevertheless agreed to respond to a limited set of discovery requests and provided that response within 48 hours. (*Id.* at 2-3.)

CPKC replied in opposition to NSR’s motion on December 8, 2023. CPKC argues that further extension is not warranted and risks delaying CPKC’s ability to deliver to shippers the benefits of the proposed transaction. (CPKC Reply 1, Dec. 8, 2023.) CPKC asserts that it has been diligent, forthcoming, and responsive to NSR’s discovery requests, stating that it provided responses and objections to discovery on an expedited basis. (*Id.* at 2.) CPKC further argues that NSR has no legitimate need for an extension because NSR has had all the information needed to evaluate and comment on the proposed transaction.⁸ (CPKC Reply 3, Dec. 8, 2023.)

The Board will grant NSR’s motion. The Board finds that the requested extension would provide commenters with time to complete discovery, including discovery related to CSXT’s and CPKC’s November 21, 2023 supplemental filings; review materials; and prepare their comments without unduly delaying the Board’s consideration of the proposed transaction. Accordingly, the deadline for filing all comments, protests, requests for conditions, and any other evidence and argument in opposition to the applications and related filings, including filings by the U.S. Department of Justice and the U.S. Department of Transportation, will be extended to December 29, 2023. Additionally, the Board will extend the deadline for filing responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the

City Ltd.—Acquis. & Operation—Certain Rail Line of Meridian & Bigbee R.R. in Lauderdale Cnty., Miss., & Choctaw & Marengo Cntys., Ala. (Decision No. 3), FD 36732, slip op. at 7 (STB served Dec. 6, 2023); see also CSX Transp., Inc.—Acquis. & Operation—Rail Line of Meridian Bigbee R.R., FD 36727, slip op. at 2 (STB served Nov. 7, 2023) (modifying the procedural schedule to keep it aligned with the procedural schedule for Docket No. FD 36732). Nevertheless, the Board will waive the requirement in 49 C.F.R. § 1104.7(b) to the extent that it requires NSR’s extension request to have been filed at least 10 days before the deadline.

⁸ In support of its argument, CPKC misinterprets a passage from the Board’s decision addressing NSR’s motion to redesignate. (CPKC Reply 3, Dec. 8, 2023.) While the Board noted in that decision that “the information needed to assess the transaction from an operational standpoint is already included in the public version of the [a]pplication,” it made that finding regarding the particular information for which NSR sought redesignation. Decision No. 3, FD 36732, slip op. at 6. The Board’s discussion indicated that the specific information NSR wanted to redesignate offered little if any insight into operational issues beyond that which was publicly available in the application. The Board did not suggest, as CPKC argues, that parties “[t]hus” have “had *all* the information needed to independently evaluate” the transaction’s operational impacts since the filing of the application. (CPKC Reply 3, Dec. 8, 2023 (emphasis added).) Nor can CPKC’s interpretation be reconciled with the Board’s own requirement that CPKC and CSXT supplement their applications with “additional operational information.” Decision No. 1, FD 36732 et al., slip op. at 11; Decision No. 1, FD 36727 et al., slip op. at 11.

applications to January 26, 2024. The Board expects the parties to complete discovery expeditiously, and further extension requests will not be entertained absent compelling circumstances.

It is ordered:

1. NSR's motion to amend the procedural schedules is granted.
2. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the applications and related filings, including filings by the U.S. Department of Justice and the U.S. Department of Transportation, must be filed by December 29, 2023. Responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the application must be filed by January 26, 2024.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.