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SERVICE DATE – MARCH 16, 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. 16

Digest:<sup>1</sup> The Board directs applicants to address an apparent inconsistency in certain data submitted to the Board, provides an opportunity for other parties to reply to applicants' submission, and suspends the procedural schedule. This decision also explains the service requirements for the sub-docketed proceedings.

Decided: March 16, 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).

*Clarification of Data.* As part of their Application, Applicants submitted traffic density charts in Exhibit 14 as required by 49 C.F.R. § 1180.8(a)(5).<sup>2</sup> (Appl., Vol. II, Ex. 14 at 462-516.) Exhibit 14 shows CP and KCS lines that handle one million or more gross ton-miles per mile of road (GT/M) per year and respective densities, broken down by segments of such lines between major freight yards and terminals. Applicants' Exhibit 14 contains 2019 baseline and 2020 GT/M data for CP and KCS lines, as well as estimated GT/M levels upon full integration of the CP-KCS networks that would be expected to occur three years following Board approval of the Transaction, referred to as "Growth Plan Year 3."

On October 28, 2021, one day before filing the Application, Canadian Pacific responded to an information request from the Board's Office of Environmental Analysis (OEA), submitting requested materials that were developed in cooperation with KCS. (CP Response to OEA Information Request No. 1 (CP Response No. 1), Oct. 28, 2021.) CP's submission includes a "Master Segment Table," which contains, among other things, 2019 baseline GT/M data for CP and KCS lines. (CP Response No. 1, Master Segment Table.) However, it appears that the 2019 baseline GT/M data in the Master Segment Table submitted to OEA are different from the

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<sup>1</sup> 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).

<sup>2</sup> The proposed Transaction is subject to the regulations set forth at 49 C.F.R. part 1180, subpart A, in effect before July 11, 2001, pursuant to the waiver for a merger transaction involving KCS and another Class I railroad under 49 C.F.R. § 1180.0(b). See Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 2-3 (STB served Apr. 23, 2021).

2019 baseline GT/M data in Exhibit 14 of the Application. (Compare, e.g., Appl., Vol. II, Ex. 14 at 498 (showing the Kansas City, Mo.-Slater, Mo. segment having 10.376 million average GT/M in 2019), with CP Response No. 1, Master Segment Table at 7 (showing the Kansas City, Mo.-Slater, Mo. segment having 5.83 million GT/M in 2019).)

This apparent inconsistency has been raised in the context of the responsive application filed by Canadian National Railway Company and its rail operating subsidiaries (collectively, CN). In a reply to CN's January 12, 2022 description of its anticipated responsive application, Applicants fault CN's use of the 2019 baseline GT/M data for rail segments that constitute KCS's Springfield Line, which were taken from Exhibit 14 of the Application. (Applicants Reply 8-10, Jan. 28, 2022.) Applicants state that the data presented by CN "reflects an apples-to-oranges comparison between two very different calculations of traffic density on the Line," and proffer data to provide "a correct, apples-to-apples comparison," which appear to be the 2019 baseline data submitted to OEA and which, according to Applicants, were readily available in the Application workpapers submitted last fall. (Id. at 9.) Applicants suggest that the two sets of baseline data resulted from differences in how KCS and CP calculate such data. Specifically, Applicants state that the 2019 baseline data taken from Exhibit 14 and used by CN "were calculated as KCS does in the ordinary course, treating all gross tons that touch a segment as present for all the miles of a segment," whereas the estimated "Growth Plan Year 3" data from Exhibit 14 that was presented by CN "were calculated as CP does in the ordinary course, treating gross tons as on the segment only for the actual miles they traversed." (Id. at 9 n.7.)

The Board will direct Applicants to explain further this apparent inconsistency between the 2019 baseline GT/M data in Exhibit 14 and the 2019 baseline GT/M data submitted to OEA, and to indicate which 2019 baseline data should be used in analyzing the environmental and transportation impacts of the Transaction, and the reasons why that data should be used. Should Applicants conclude that they wish to supplement or amend Exhibit 14, Applicants shall indicate what, if any, other data or information in the Application should be revised accordingly, and any necessary changes to the procedural schedule. Other parties will have an opportunity to respond.

Applicants shall be directed to provide the Board with this information by March 21, 2022. Replies to Applicants' submission will be due no later than five days after the filed date of Applicants' submission.<sup>3</sup> The Board will suspend the procedural schedule in this proceeding, pending further order by the Board.

*Filings in Sub-docketed Proceedings.* On February 28, 2022, CN filed a responsive application in Docket Nos. FD 36500 (Sub-No. 1), FD 36500 (Sub-No. 2), FD 36500 (Sub-No. 3), and FD 36500 (Sub-No. 4). Also on February 28, 2022, Norfolk Southern Railway Company filed a responsive application in Docket No. FD 36500 (Sub-No. 5). Any filing submitted in any of these sub-docketed proceedings is subject to the same service requirements applicable to filings in the primary docket, see Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 2 (STB served Nov. 23, 2021), and must also be served on all parties of record in each sub-docket.

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<sup>3</sup> If the fifth day falls on a weekend or holiday, the due date will be the next business day. See 49 C.F.R. § 1104.7(a).

It is ordered:

1. Applicants shall provide the information described above by March 21, 2022. Replies to the information provided by Applicants are due no later than five days following Applicants' submission.

2. The procedural schedule in this proceeding is suspended until further order by the Board.

3. Any filing submitted in Docket Nos. FD 36500 (Sub-No. 1), FD 36500 (Sub-No. 2), FD 36500 (Sub-No. 3), FD 36500 (Sub-No. 4), and FD 36500 (Sub-No. 5), is subject to the same service requirements applicable to filings in the primary docket and must be served on all parties of record in each sub-docket.

4. This decision is effective on its service date.

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