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SERVICE DATE – JULY 22, 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

Decided: July 22, 2022

AGENCY: Surface Transportation Board.

ACTION: Decision No. 22; notice of public hearing; revision of procedural schedule; page limit for final briefs.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing in this proceeding on September 28, 29, and 30, 2022. The hearing will be held in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001. All interested persons are invited to appear in person or via online video conferencing. Additionally, the Board will revise the procedural schedule and set a limit of 30 pages for final briefs.

DATES: The hearing will be held on September 28, 29, and 30, 2022, beginning at 9:30 a.m. EDT and ending around 5:30 p.m. EDT each day and will be open for public observation. The hearing also will be available for viewing on the Board's website. Persons may participate online using video conferencing. The Board will issue a subsequent decision with instructions for participation in, and public observation of, the hearing. Any person wishing to speak at the

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.

hearing shall file with the Board by September 14, 2022, a notice of intent to participate (identifying the entity, if any, the person represents, the proposed speaker, and whether they will appear in person or via video conferencing, and summarizing the key points the speaker intends to address). Each speaker will be allotted five minutes for their presentation unless they request otherwise in their notice of intent, in which case, the Board will consider the request for a different allotment. The notices of intent to participate are not required to be served on the parties of record; they will be posted to the Board's website when they are filed. Final briefs will be due after the public hearing, by October 14, 2022.

ADDRESSES: All filings pertaining to the public hearing should refer to Docket No. FD 36500 and/or appropriate subdockets and must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245-0283. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: 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). By decision served November 23, 2021, and published in the Federal Register on November 26, 2021 (86 Fed. Reg. 67,571), the Board accepted for consideration the primary Application filed in Docket No. FD 36500 and established a procedural schedule for the proceeding. Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 11), FD 36500 (STB served Nov. 23, 2021).²

By decision served July 1, 2022, and published in the Federal Register on July 7, 2022 (87 Fed. Reg. 40,576), the Board accepted for consideration the responsive applications filed in Docket Nos. FD 36500 (Sub-Nos. 1-4) by Canadian National Railway Company and its rail

² The procedural schedule was amended by decision served on May 27, 2022. Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 18), FD 36500 et al. (STB served May 27, 2022).

carrier affiliate, Illinois Central Railroad Company (ICRR) (collectively, CN),³ and FD 36500 (Sub-No. 5) by Norfolk Southern Railway Company (NSR).⁴

Section 11324(a) of title 49 of the U.S. Code requires the Board in a control proceeding to “hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.” In Decision No. 11, FD 36500, the Board stated that it would decide whether to conduct a public hearing after the record had been more fully developed. Decision No. 11, FD 36500, slip op. at 18 n.13. Based on the comments that have been submitted, the Board finds that a public hearing, which will provide the Board an opportunity to directly question the Applicants and other interested persons about the issues that have been raised, is in the public interest. See Decision No. 18, FD 36500 et al., slip op. at 4 n.3 (noting the likelihood of a public hearing given the complexity of the proposed Transaction and the many issues raised by it and the responsive applications). Environmental and historic preservation issues will be addressed through the ongoing environmental review process being conducted by the Board’s Office of Environmental Analysis. During the public hearing, the Board will not consider issues being addressed through the environmental review process.

Under the current procedural schedule, final briefs are due by September 20, 2022, prior to any public hearing. Decision No. 18, FD 36500 et al., slip op. at 4. However, the Board finds that it would be beneficial to receive final briefs after the public hearing and will amend the procedural schedule to have final briefs due by October 14, 2022. As such, October 14, 2022, will be considered the close of the record.⁵ Additionally, the page limit for final briefs will be set at 30 pages.⁶

Prior to the hearing date, the Board will issue a decision setting a schedule of appearances with specific allotments of time for presentations. Each speaker will be allotted five minutes for their presentation unless they request otherwise in their notice of intent, in which case, the Board will consider the request for a different allotment. Speakers should be prepared to keep their

³ In Docket Nos. FD 36500 (Sub-No. 1), FD 36500 (Sub-No. 2), FD 36500 (Sub-No. 3), and FD 36500 (Sub-No. 4), CN seeks, as a condition to any approval of the proposed Transaction, approval of ICRR’s acquisition of KCS’s line between Kansas City, Mo., and Springfield and East St. Louis, Ill., and other related relief. (CN Amended Responsive Appl. 6-7.)

⁴ In Docket No. FD 36500 (Sub-No. 5), as a condition to any approval of the proposed Transaction, NSR seeks certain contingent trackage rights for overhead movement on KCS’s line between the connection of KCS with the Meridian Speedway, at Shreveport, La., and the Wylie Intermodal Terminal, in Wylie, Tex. (NSR Amended Responsive Appl. 4, 9.)

⁵ Additionally, in response to an inquiry from the public, the Board clarifies that, as indicated in the Appendix to Decision No. 18, FD 36500 et al., submissions permitted to be filed by August 11, 2022, are limited to rebuttals in support of responsive, including inconsistent, applications.

⁶ The Board previously stated that it would determine the page limits for final briefs after the record had been more fully developed. Decision No. 11, FD 36500, slip op. at 17 n.12.

comments succinct to ensure an opportunity for questions by the Board and for all interested persons to be heard. The schedule will also provide, among other things, that Applicants will speak first, and that they may choose to reserve part of their time for a closing statement. Speakers at the hearing are encouraged to use their time to call attention to the points they believe to be particularly important. The purpose of the hearing is not to restate the written submissions, but to summarize and emphasize the key points of a party's case or a speaker's position, and to provide an opportunity for the speaker to respond to questions the Board may have regarding the matters at issue.

BOARD RELEASES AND TRANSCRIPT AVAILABILITY: Decisions and notices of the Board, including this notice, are available on the Board's website at www.stb.gov. The Board will issue a separate notice containing the schedule of appearances, as well as instructions for participating in and observing the hearing. A recording of the hearing and a transcript will be posted on the Board's website when they become available.

It is ordered:

1. A public hearing will be held on September 28, 29, and 30, 2022, beginning at 9:30 a.m. EDT and ending around 5:30 p.m. EDT each day, in the Hearing Room of the Board's headquarters, located at 395 E Street, S.W., Washington, DC 20423-0001.
2. By September 14, 2022, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate: (i) identifying the entity, if any, the person represents, the proposed speaker, and whether the speaker will appear in person or via video conferencing, and (ii) summarizing the key points the speaker intends to address.
3. Notices of intent to participate will be posted to the Board's website and need not be served on parties of record, any hearing participants, or other commenters.
4. Final briefs will be due by October 14, 2022.
5. Final briefs are limited to no more than 30 pages.
6. This decision is effective on its service date.
7. This decision will be published in the Federal Register.

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