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ALJ

SERVICE DATE - NOVEMBER 4, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED

-- CONTROL --

ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD
COMPANY, CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, AND CEDAR
RIVER RAILROAD COMPANY

DECISION NO. 18

Decided: October 29, 1998

By unopposed Petition filed October 22, 1998, Applicants request adoption of the proposed discovery guidelines appended to the pleading and appropriately tailored to address the schedule for remaining evidentiary submissions and discovery.

Accordingly, and for good cause, the Discovery Guidelines attached to this Decision are adopted.

This Decision is effective on the service date.

By the Board, David I. Harfeld, Administrative Law Judge

Vernon A. Williams
Secretary

DISCOVERY GUIDELINES

A. General

1. All discovery requests must be tailored to be consistent with the procedural schedule adopted in the proceeding. The parties shall avoid duplicative discovery requests.

2. The Board's discovery rules set forth at 49 C.F.R. pt. 1114 will apply to this proceeding except as modified by Board decision or by these discovery guidelines. Any of the discovery guidelines contained herein may be varied by agreement between any two or more parties (except if such a variance would adversely affect any third party). The Administrative Law Judge ("ALJ") may vary any discovery guideline for good cause.

3. Persons wishing to participate in discovery in this proceeding and receive discovery requests and responses must complete and fax to Harkins Cunningham, Attention: Jeffrey Jakubiak at 202-973-7617, the attached Request to be Placed on the Restricted Service List ("Request") no later than 10 days following the adoption of these Guidelines. Harkins Cunningham shall distribute the Restricted Service List to persons thereon.

4. Discovery requests, responses, motions to compel, and replies shall be labeled and numbered in a manner consistent with the labeling/numbering requirement for filings (e.g., CN/IC-1).

5. All workpapers and documents produced in response to a discovery request will be numbered such that each page can be uniquely identified and will include the acronym the producing party has chosen pursuant to 49 C.F.R. § 1180.4(a)(2) (e.g., CN/IC) and alpha digits which correspond to the level of confidentiality assigned to the document ("P" meaning public/not confidential, "CO" meaning confidential, and "HC" meaning highly confidential).

6. Immediately upon each evidentiary filing, the filing party will place all the work papers or other documents required by the Board's schedule decision in a depository open to all parties. CN and IC shall maintain a joint depository located at the offices of Harkins Cunningham, 1300 19th Street, N.W., Washington, D.C.

7. Parties maintaining depositories shall provide suitable indices that identify the general classes of documents in their depositories and that identify documents relating to each witness statement contained in their evidentiary filings. Such indices shall be made available to any party using the depository. When a party responds to a discovery request by

referring to documents in a document depository, the responding party must provide a description of the document to permit it to be located within the depository that is reasonable under the circumstances.

8. All depositories shall be maintained in the Washington, D.C. area, unless a party requests and receives written permission from the ALJ, after notice to all other parties and for good cause shown, to maintain its depository outside of the Washington, D.C. area. All depositories shall be open to any other party during normal business hours on weekdays and the party operating the depository shall provide staffing assistance reasonable under the circumstances. The party maintaining the depository shall establish reasonable procedures for the operation of the document depository, which may include requirements that reasonable notice be provided in advance of a planned visit, and must provide that persons reviewing documents marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with the protective order in Decision No. 1 in Finance Docket No. 33556 shall first execute an appropriate undertaking pursuant to that protective order. Parties shall provide services for the making of copies of documents contained in their depositories, may charge a reasonable amount for duplication, and shall use their best efforts to provide copies within two (2) business days of receiving a request from a party for such documents.

9. Any discovery response containing confidential information or data as defined in the protective order shall be designated and stamped "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and shall be handled pursuant to the procedures contained in the protective order. Discovery responses (other than with respect to documents that are placed in the document depository) which contain information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be served only in redacted form on parties who have not represented on the Request to be Placed on the Restricted Service List that they have executed the relevant protective order undertaking.

B. Depositions

10. A person who has submitted written testimony in this proceeding shall be made available for deposition. A person who has not submitted written testimony in this proceeding may be deposed on notice in accordance with 49 C.F.R. 1114.22. Any party seeking a ruling as to depositions shall follow the procedures set forth in Paragraph 17 below.

11. Absent agreement among all parties or prior approval from the ALJ, all depositions of persons submitting verified statements shall be conducted in the Washington, D.C. area. Absent agreement by the party with whom the deponent is affiliated, or prior approval from the ALJ for good cause shown, (1) no witness shall be deposed more than one time as to any

written initial statement or more than one time as to any written rebuttal statement submitted by that witness in this proceeding, and (2) no other person shall be deposed more than one time. Parties shall use their best efforts to complete depositions as promptly as practicable, and if possible within one day.

12. Any party wishing to depose a witness who submitted a verified statement shall provide at least five business days notice of the deposition. Any other party who wishes to participate in the deposition shall, at least two business days prior to the scheduled deposition, confirm with counsel for the party with whom that witness is affiliated, and with counsel who originally requested the deposition, that the other party will participate in the deposition. Any party who, after giving notice of its intent to participate, decides not to do so, shall give an oral notice of such decision, confirmed in writing, to counsel for the party with whom that witness is affiliated and to counsel who originally requested the deposition, and written notice to all parties on the Restricted Service List.

C. Service

13. All discovery requests, deposition notices, objections and motions to compel shall be served only on the Restricted Service List (a) by hand delivery, overnight mail or facsimile on the ALJ and the party to which the requests,

objections or motions are directed, and (b) by mail on other parties on the Restricted Service List.

14. Discovery responses shall be served only on the party that propounded the discovery and on any party making a written request for copies of such responses. Documents produced by a party in response to a discovery request shall be placed in the responding party's depository in lieu of being served. All discovery responses shall be immediately placed in the depository of the responding party, who shall simultaneously provide written notice to all parties on the Restricted Service List that it has done so. The party propounding the discovery or any other party may request copies, pursuant to paragraph 8.

D. Responses

15. A responding party shall, within five business days after receipt of service, serve a response stating its objections to any discovery request as to which it will be providing no affirmative response (i.e., no information or documents), so that disputes as to such requests may be resolved quickly. Responding parties shall, within 15 days after receipt of service, answer, object, or answer over objection to all other discovery requests.

16. The responding party shall endeavor, to the greatest extent possible, to produce documents by placing those documents in its document depository within the 15-day response

period. If the responding party is not able to produce such documents within the 15-day period, it shall expeditiously contact the propounding party and indicate its best judgment as to the date the documents will be provided. Upon request by the propounding party, the responding party shall, if reasonable, produce documents on an "as-available" basis rather than in a lump-sum production of all responsive documents.

E. Objections

17. All parties shall attempt to resolve discovery disputes voluntarily whenever possible. Counsel for the party seeking a ruling on a discovery dispute shall contact Julia Moore in ALJ Harfeld's office at (202) 219-2554 by 4:00 p.m. Monday to request a prehearing discovery conference to be held at 9:30 a.m. on Thursday of the same week at a hearing room at 888 1st Street, N.E., Washington, D.C. The party requesting the conference shall serve written notice specifically identifying the discovery in dispute by facsimile or hand delivery on all parties on the Restricted Service list, and shall make good faith efforts to give telephone notice prior to 4:00 p.m. on that Monday to the opposing party. The opposing party may respond orally at the hearing, or file a written response to be served on the ALJ and all parties on the Restricted Service List no later than 5:00 p.m. on the business day immediately preceding the conference.

No later than 5:00 p.m. on the business day immediately preceding the conference, the moving party shall send notice by facsimile to the ALJ and to all parties on the Restricted Service List indicating, based on the status of such settlement discussions as may have been held, as to whether or not the conference will be necessary. If there is no request for a conference, there will be no conference. At any discovery conference, those parties seeking and resisting discovery are expected to be represented by counsel authorized to speak for the party on the matter at issue. If discovery is ordered, the ALJ shall require it as soon as it can practicably be accomplished.