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SERVICE DATE - LATE RELEASE OCTOBER 2, 1998

SURFACE TRANSPORTATION BOARD

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 AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

Decision No. 10

Decided: October 1, 1998

In Decision No. 7 in this proceeding,¹ served September 18, 1998, we granted petitions for waiver or clarification with respect to anticipated responsive applications by, among other rail carriers, CSX Corporation and CSX Transportation, Inc. (CSXT) (collectively CSX). By request filed September 21, 1998 (designated as CSX-7), CSX seeks permission to file an amended description of its responsive application. Applicants replied on September 24, 1998 (designated as CN/IC-20).

We noted in Decision No. 7 that CSX anticipated filing a responsive application seeking overhead trackage rights over CN lines between Sarnia, Ontario, and Port Huron, MI; overhead trackage rights over CN's Shore Line Subdivision between Detroit, MI, and Toledo, OH; and trackage rights over the lines of IC to serve customer facilities in Decatur, IL, and Memphis, TN, that CSX currently serves through reciprocal switching provided by IC. We allowed CSX to amend its petition for waiver or clarification to include a request that its responsive application be considered a minor transaction and we found that CSX was proposing three separate minor

¹ In Decision No. 6, we accepted for consideration the application filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW) (collectively with their affiliates, CN), Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC) (collectively with their affiliates, IC) seeking approval and authorization under 49 U.S.C. 11321-26 for: (1) the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp., and through it of ICR and its railroad affiliates; and (2) for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. CN and IC are referred to collectively as applicants.

transactions.² In its instant pleading, CSX states that it has decided not to pursue its request for trackage rights between Detroit and Toledo. CSX seeks to further amend its description of its responsive application to include a request for trackage rights over The Kansas City Southern Railway Company (KCSR) between the point of interchange between CSX and KCSR in New Orleans and milepost 814 on KCSR's Baton Rouge-New Orleans line.

CSX states that its amendment is based on further analysis of the competitive implications of the so-called CN-IC-KCSR alliance and the Board's decision in Finance Docket No. 32530 to hold in abeyance KCSR's application for approval to construct a 9-mile build-in from milepost 814 on KCSR's Baton Rouge-New Orleans line to the industries at Geismar, LA, on the ground that KCSR will be able to access Geismar through the new alliance. CSX asserts that KCSR's participation in the alliance may reduce the scope of head-to-head competition between IC and KCSR that industries in the Geismar industrial area anticipated from the KCSR build-in prior to the formation of the alliance. CSX maintains that the trackage rights it intends to seek over KCSR would allow CSX to serve industries in Geismar via a build-in similar to that contemplated by the KCSR construction application in Finance Docket No. 32530, thereby assuring that there is no loss of competitive rail options at Geismar stemming from the alliance and the CN-IC control transaction. CSX also requests that, if it is permitted to amend its description of its responsive application, the Board "continue to treat its proposed responsive application as a minor transaction."

Applicants oppose CSX's request. They contend that, because the information CSX relies on to justify its amendment was available to CSX well before applicants filed their primary application, CSX has failed to show good cause for making such a substantial change in its description of its responsive application. If we grant CSX's amendment request, applicants maintain that CSX's proposed trackage rights over KCSR at Geismar would constitute a significant transaction, rather than the minor transaction designation sought by CSX.

KCSR also filed a reply (designated as KCS-4) in opposition to CSX's request on September 29, 1998, on the grounds that: (i) the petition was filed out of time and in violation of the Board's procedural schedule; (ii) the relief it seeks represents an impermissible request that the Board impose trackage rights over the lines of a nonapplicant carrier; and (iii) the relief it seeks will unduly prejudice KCS. If the pleading is not rejected, KCSR seeks denial of those aspects of CSX-7 that affect KCSR.

While CSX has not, in our view, offered a very persuasive explanation as to why it should be permitted to make a late amendment, it does not appear that applicants or KCSR will be procedurally prejudiced by granting CSX's request to amend its description of its responsive

² We also granted CSX's requests to: limit the definition of "applicant carrier" to CSXT and Board-regulated rail carriers in which CSX now holds an interest greater than 50%; submit information and data required by the Board's procedures on a consolidated basis; use the same system for classifying employee impact data as used by the primary applicants.

application.³ We will, therefore, grant CSX's request to amend its description of its responsive application. We caution, however, that we will not permit the filing of amendments and errata sheets significantly altering the evidence and conclusions contained in earlier submissions, as such filings may curtail the ability of other parties to respond fully and adequately within the time frames we have established.

We cannot, however, accede to petitioner's request to designate its proposed trackage rights over KCSR a minor transaction. In Decision Nos. 7 and 8 in this proceeding, served September 18, 1998, we concluded that descriptions of responsive applications that included similar trackage rights proposals in connection with service to Geismar, LA, were not minor. Here, as in those instances, petitioner's presentation is insufficient to support a minor transaction designation. Accordingly, CSX's amendment describing trackage rights between New Orleans and milepost 814 will be considered a significant transaction.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The CSX-7 request to amend the description of responsive application in CSX-3 and CSX-5 is granted.
2. CSX's amendment describing trackage rights between New Orleans and milepost 814 will be considered a significant transaction.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ We have previously exercised our authority to grant a request to amend a description of a responsive application where the request is reasonable. Union Pacific Corp. – Control and Merger – Southern Pacific Rail Corp., Finance Docket No. 32760 (Decision No. 25, served March 25, 1996) (granting request of Capital Metropolitan Transportation Authority to amend description of responsive application).