

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION—CONTROL—EJ&E WEST COMPANY

Decision No. 9

Decided: April 21, 2008

In Decision No. 2, served November 26, 2007, the Board accepted for consideration the application filed by Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), for Board authorization of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company (EJ&E), by CNR and GTC. CNR and GTC are referred to collectively as CN or applicants.

With their application, applicants submitted an operating plan that proposed and briefly described the construction of connecting tracks at six locations. Applicants stated that improved connecting tracks at Munger, IL, Joliet, IL, Matteson, IL, Griffith, IN, Ivanhoe, IN, and Kirk Yard, IN, would enable CN to route its trains efficiently over the EJ&EW arc. The connecting tracks to be constructed would connect existing EJ&E lines or facilities with lines of either CNR or other Class I rail carriers.

In Decision No. 7, served February 20, 2008, the Board stated that, based on the current record, it appeared that some or all of the connecting tracks that applicants proposed to construct might require Board authorization under 49 U.S.C. 10901. The Board directed the applicants to

¹ This decision also embraces Elgin, Joliet and Eastern Railway Company—Corporate Family Exemption—EJ&E West Company, STB Finance Docket No. 35087 (Sub-No. 1); Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—EJ&E West Company, STB Finance Docket No. 35087 (Sub-No. 2); Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—EJ&E West Company, STB Finance Docket No. 35087 (Sub-No. 3); Illinois Central Railroad Company—Trackage Rights Exemption—EJ&E West Company, STB Finance Docket No. 35087 (Sub-No. 4); Wisconsin Central Ltd.—Trackage Rights Exemption—EJ&E West Company, STB Finance Docket No. 35087 (Sub-No. 5); EJ&E West Company—Trackage Rights Exemption—Chicago, Central & Pacific Railroad Company, STB Finance Docket No. 35087 (Sub-No. 6); and EJ&E West Company—Trackage Rights Exemption—Illinois Central Railroad Company, STB Finance Docket No. 35087 (Sub-No. 7).

seek authority to construct the six connecting tracks or to show cause why authority is not needed for one or more of the construction proposals. Applicants submitted their response to the Board's decision on March 3, 2008.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10901(a), a person may “construct an extension to any of its railroad lines” or “construct an additional railroad line . . . only if the Board issues a certificate authorizing such activity.” However, not all railroad construction activities require Board approval. An extension or addition to a rail line that requires authority under 49 U.S.C. 10901 occurs when a construction project enables a carrier to penetrate or invade a new market. See Texas & Pac. Ry. v. Gulf, Etc., Ry., 270 U.S. 266, 278 (1925) (Texas & Pacific). Carrier improvements to or investments in their existing system do not require Board approval.²

In their reply, applicants state that Board approval for the proposed construction projects is not necessary because the projects would not fall within the Board's section 10901 jurisdiction. Applicants assert that the proposed connecting tracks would not enable CN or EJ&E to penetrate or invade any new markets that are not now accessible by either CN or EJ&E. Rather, applicants state that the proposed construction would improve the efficiency of moving traffic over lines that already cross or connect. Applicants also note that the proposed construction projects will be analyzed as part of the Board's ongoing environmental review of the proposed acquisition of control. Applicants maintain that a Board finding that applicants do not need authority to construct the connections proposed in this proceeding would not be inconsistent with the Board's action in past merger decisions, such as the Conrail proceeding (see CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196, 346-47 (1998)), where the need for authority to construct was not placed in issue.

The Board finds that none of the connecting tracks that applicants propose to construct are extensions of or additions to a rail line that require prior Board approval under section 10901. Rather, applicants have demonstrated in their reply and in maps submitted with it that the construction activities related to these short connections are for operational efficiency and that

² See Texas & Pacific at 278; City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208, 1216 (1993) (finding double-tracking to be an improvement to an existing rail line, and thus not an extension or addition to a rail line), aff'd sub nom. Detroit/Wayne County Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); Union Pacific RR Co.—Petition—Rehabilitation of MO-KS-TX RR, 3 S.T.B. 646, 651 (1998) (finding that rehabilitation and reactivation of a former line that would not penetrate or invade a new market but would simply augment the capacity of existing main line operations would not require the Board's construction authority despite the fact that the reactivated line was outside the right-of-way of the existing main line); Missouri Pacific Railroad Company and Southern Pacific Transportation Company—Construction and Operation Exemption—Avondale, LA, STB Finance Docket No. 33123 (STB served July 11, 1997) (finding that the construction following a previously approved merger of three proposed connecting tracks within existing railroad rights-of-way that would not permit the constructing carrier to invade new territory would not require Board approval).

the construction would take place within, or very close to, existing rights of way. Thus, the connections would not provide CN or EJ&E the ability to invade or penetrate new markets. See Port Authority of New York and New Jersey—Petition for Declaratory Order, STB Finance Docket No. 34428, slip op. at 5 (STB served Jan. 21, 2004). Accordingly, under these factual circumstances, the Board’s finding that the proposed construction of the connecting tracks does not require Board authorization is not inconsistent with past merger decisions. Further, the potential environmental impact of the proposed construction of the connecting tracks, if any, will be addressed in the environmental review process for the proposed acquisition of control.

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

It is ordered:

1. Applicants have shown that they do not need Board authorization under 49 U.S.C. 10901 to construct the six connections they have described in this proceeding.
2. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary