

31695

SERVICE DATE - MARCH 22, 2001

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34005]

Canadian Pacific Railway Company—Corporate Family Transaction Exemption—Interests
in Detroit River Tunnel and Niagara River Bridge

Canadian Pacific Railway Company (CPR) has filed a verified notice of exemption under 49 CFR 1180.2(d)(3)¹ for what CPR describes as a corporate family transaction involving CPR's reorganization of certain assets in the Detroit River Tunnel (Tunnel) and the Niagara River Bridge (Bridge).²

The Detroit River Tunnel Company (DRTC) currently owns the Tunnel and leases it to the CNCP Niagara-Detroit Partnership (N-D Partnership). N-D Partnership owns all of the voting stock of DRTC. The Niagara River Bridge Company (NRBC) currently owns the Bridge and leases it to N-D partnership. NRBC is a wholly owned subsidiary of Canadian Southern Railway Company (CSR). N-D Partnership owns all of the voting stock of CSR. CPR owns a 50% partnership interest in N-D Partnership and holds a 50% undivided interest in the Tunnel and the Bridge through N-D Partnership. The Canadian

¹ On February 27, 2001, CPR also filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

² According to CPR, a portion of the Tunnel (approximately 1.8 route miles) and the Bridge (approximately .2 route miles) are located in the United States.

National Railway Company (CN) owns the other 50% partnership interest in N-D Partnership.

Under the proposed transaction, N-D Partnership will be dissolved and its assets distributed equally to its partners CPR and CN. CPR will contribute its 50% undivided interest in the Tunnel, including the stock of DRTC and the Tunnel lease, to Detroit River Tunnel Partnership (DRT Partnership), a noncarrier partnership. Also, CPR will contribute its 50% undivided interest in the non-Tunnel assets, including the stock of CSR and the Bridge lease, to CNCP Niagara-Windsor Partnership (N-W Partnership), a noncarrier partnership. Upon consummation, CPR will own a 50% partnership interest in both DRT Partnership and N-W Partnership.³

The transaction was scheduled to be consummated on or soon after the March 6, 2001 effective date of the exemption (7 days after the exemption was filed).

CPR has filed its notice of exemption under 49 CFR 1180.2(d)(3) based on its assertion that the proposed reorganization is exempt as one within the CPR corporate

³ This transaction is related to the following verified notices of exemption all filed at the Board on February 27, 2001: STB Finance Docket No. 34006, Canadian Pacific Railway Company–Trackage Rights Exemption–Detroit River Tunnel Company; STB Finance Docket No. 33984, Borealis Infrastructure Trust Management, Inc., Sole Trustee of the Borealis Transportation Infrastructure Trust–Acquisition Exemption–Detroit River Tunnel Company; STB Finance Docket No. 34007, Canadian National Railway Company–Corporate Family Transaction Exemption–Interest in Detroit River Tunnel and Niagara River Bridge; and STB Finance Docket No. 34001, Canadian National Railway Company–Trackage Rights Exemption–Detroit River Tunnel Company.

family.⁴ As described, the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family, but whether CPR and its affiliates qualify for the corporate family transaction class exemption and whether they need that exemption or some other Board approval (or exemption) for the proposed transaction are matters that will be addressed by the Board in its consideration of CPR's motion to dismiss.

Applicants state that the reorganization of CPR's ownership interests in the Tunnel and Bridge will affect no CPR employees. Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its United States employees. As a condition to this exemption, any United States employee affected by the transaction will be protected by the conditions imposed in New York Dock Ry.–Control–Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34005, must be filed with the Surface Transportation Board, Office of the Secretary,

⁴ Unredacted versions of the Distribution Agreement among CPR, CN and N-D Partnership, the Dissolution Agreement between CPR and CN, the Partnership Agreement between CPR and Borealis Infrastructure Trust Management, Inc. (Borealis), the Operating, Management and Maintenance Agreement among DRT Partnership, CPR and Borealis, and the Partnership Agreement between CPR and CN, as required by 49 CFR 1180.6(a)(7)(ii), were filed under seal. A motion for a protective order, filed on February 27, 2001, was granted by the Board's decision served on March 14, 2001.

Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on George W. Mayo, Esq., Hogan & Hartson L.L.P., 555 Thirteenth Street, N.W., Washington, DC 20004-1109.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: March 14, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary