

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36004

CANADIAN PACIFIC RAILWAY LIMITED—PETITION FOR EXPEDITED
DECLARATORY ORDER

Decided: March 10, 2016

On March 2, 2016, Canadian Pacific Railway Limited (CPRL)¹ filed a petition requesting that the Board issue a declaratory order on two issues pertaining to CPRL's pursuit of a possible merger with Norfolk Southern Railway Company (NSR) whether: (1) "a structure in which CPRL holds its current rail carrier subsidiaries in an independent, irrevocable voting trust while it acquires control of [NSR] and seeks STB merger authority potentially could be used to avoid the exercise of unlawful premature common control"; and (2) "it would be potentially permissible for the chief executive officer of [CPRC] to terminate his position at [CPRC] entities in trust and then to take the comparable position at [NSR] pending merger approval." (Pet. 2.) CPRL has requested that the Board issue an expedited declaratory order by May 6, 2016.

On March 7, 2016, the Transportation Communications Union/IAM (TCU/IAM) requested that the Board provide interested parties 45 days to reply to the March 2 petition.² Also on March 7, 2016, CSX Corporation requested that the Board deny the March 2 petition, or, should the Board proceed, issue a procedural schedule that would allow parties 30 days from publication to submit comments and 15 days for the simultaneous submission of reply comments. On March 9, 2016, the Brotherhood of Maintenance of Way Employees Division/IBT, Brotherhood of Railroad Signalmen, and International Association of Sheet Metal, Air, Rail and Transportation Workers/Mechanical Division jointly submitted a reply requesting until April 1, 2016, to reply to the March 2 petition and that no replies to replies be permitted. By comment filed on March 9, 2016, the Transportation Division of the Sheet Metal, Air, Rail and Transportation Workers Union joined in TCU/IAM's request for at least 45 days to reply to the March 2 petition.

¹ CPRL is a noncarrier, publicly traded holding company that wholly owns directly or indirectly rail carriers in Canada and the United States that do business as "CP" or "Canadian Pacific." "CP" or "Canadian Pacific" refers to the Canadian Pacific Railway Company (CPRC), the Canadian operating company and parent of the U.S. railroad operating subsidiaries Soo Line Railroad Company, Delaware and Hudson Railroad Company, and Dakota, Minnesota and Eastern Railroad Corporation.

² On March 7, 2016, CPRL filed a reply requesting that the Board deny TCU/IAM's extension request.

Replies will be due by April 8, 2016, and should address the merits of CPRL's petition. CPRL will be permitted to file a rebuttal by April 13, 2016. Under the circumstances, this schedule will provide a sufficient opportunity for interested persons to present their views on the issues raised and for CPRL to respond.

It is ordered:

1. Substantive replies to CPRL's petition are due by April 8, 2016.
2. CPRL's rebuttal is due by April 13, 2016.
3. Notice of this action will be published in the Federal Register.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.