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SERVICE DATE - LATE RELEASE JUNE 23, 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. 4

Decided: June 22, 1998

On February 12, 1998, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),¹ and Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC),² filed a notice of intent (CN/IC-1)³ to file a joint application seeking Surface Transportation Board (Board) authority under 49 U.S.C. 11321-26 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc. (Merger Sub), of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

Prior Decisions. In Decision No. 1 (served February 26, 1998), in order to facilitate the prompt and efficient resolution of this proceeding, the parties to this proceeding were directed to comply with the protective order attached to that decision as an Appendix.

In Decision No. 2 (served March 13, 1998, and published that day in the Federal Register at 63 FR 12574), we found that the transaction contemplated by applicants is a major transaction, as that term is defined at 49 CFR 1180.2(a); we assigned the proceeding to Administrative Law Judge David Harfeld for handling of all discovery matters and the initial resolution of discovery disputes;

¹ CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

² IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

³ CN/IC-1 reflected applicants' expectation that they would file the Primary Application on or before June 12, 1998. In view of the need to take account of subsequent developments, applicants state that they now expect to file in early July.

and we advised the parties that they will be required to submit all pleadings both in the required paper form and also as computer data contained on diskettes (disks) or compact discs (CDs).

In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the Federal Register at 63 FR 28442-444), we denied the petition for reconsideration of Decision No. 2, filed by the United Transportation Union - Illinois Legislative Board, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

This Decision. We address in this decision the CN/IC-4 petition, filed May 20, 1998, by applicants, wherein applicants, pursuant to 49 CFR 1180.4(f), seek waiver or clarification of certain requirements of the Board's Railroad Consolidation Procedures at 49 CFR part 1180, subpart A, and of certain other regulations governing filings related to the Primary Application.

On May 20, 1998, applicants filed a proposed procedural schedule (CN/IC-5), which will be addressed in a separate decision.

DISCUSSION AND CONCLUSIONS

EFFECTS OUTSIDE UNITED STATES. Applicants request that the Board waive or clarify its regulations to allow the application to exclude effects of the transaction that would take place entirely outside the United States. Applicants state that, although CN is primarily a Canadian rail carrier, its proposed acquisition of control of IC is subject to the jurisdiction of the Board under 49 U.S.C. 11321-26 because both CN and IC operate in the United States and are "rail carriers providing transportation subject to the jurisdiction of the Board under [the ICC Termination Act of 1995 (ICCTA)]." See 49 U.S.C. 11323(a). Applicants further note that, as set out in 49 U.S.C. 11324(c), under the public interest standard by which the Board must evaluate the proposed CN/IC transaction, the Board may consider certain matters that affect both sides of the international border (for example, the financial strength of the combined system and improved service on traffic movements between the United States and Canada). Applicants state that the regulatory focus of that inquiry will be on how those effects bear on shippers and communities in the United States and on the United States rail transportation system.⁴ Applicants further state that the statute constitutes neither a mandate nor authority for the Board to inquire generally into CN's operations outside the United States, and that requiring them in this case to include detailed information about the effects of the transaction outside the United States could impose significant burdens on them in preparing the

⁴ Applicants indicate that the application will include system-wide effects of the transaction and will, to the extent necessary or helpful to explain effects within or on traffic to and from the United States, describe effects of the transaction occurring outside the United States.

application, without materially assisting the Board in applying the public interest standard.⁵ Applicants therefore request that the Board waive or clarify its regulations to allow the application to exclude effects of the transaction that would take place entirely outside the United States. We find applicants' request reasonable and will therefore grant the request to allow the application to exclude effects of the transaction that would take place entirely outside the United States.

DEFINITION OF "APPLICANT." The Railroad Consolidation Procedures define "applicant" as one of "[t]he parties initiating a transaction." 49 CFR 1180.3(a). Applicants seek waiver or clarification that, with respect to the Primary Application, the term "applicant" includes only CNR, GTC, GTW, IC Corp., ICR, CCP, and CRRC, and does not include Holdings or Merger Sub. Applicants state that Holdings is a wholly owned subsidiary of IC Corp., and that it owns 100% of the stock of CCP and CRRC but does not conduct any operations in its own name. Applicants further state that Merger Sub is an indirect, wholly owned subsidiary of CNR whose sole function is to effectuate the proposed acquisition of IC Corp. stock, and that Merger Sub's separate corporate existence will end when it merges with and into IC Corp. We agree that there is no need for Holdings or Merger Sub to be a formal applicant. These entities currently have no rail activities or rail operations, nor will any of such entities have any such activities or operations prior to such time, if ever, as we approve the primary application; rather, these entities have been, or will be, created simply to effectuate the control transaction. We will therefore grant the waiver or clarification sought by applicants.⁶

⁵ In support of their request, applicants noted that, in this regard, it is not necessary for the Board to have before it descriptions or analyses of the transaction's impact on: Canadian markets (see 49 CFR 1180.6(a)(2)(i), 1180.7); on employees located outside the United States (1180.6(a)(2)(v)); on yard activity in Canada (1180.8(a)(1)); or on passenger and commuter trains operating in Canada (1180.8(a)(2)). Applicants further noted that the Interstate Commerce Commission (ICC), interpreting the predecessor to 49 U.S.C. 11326(a), demonstrated this point in a decision regarding impacts on employees outside the United States. The ICC held that it was neither required nor permitted to impose conditions for the protection or the interests of employees outside the United States who are affected by a transaction submitted for approval under the predecessor to 49 U.S.C. 11323. See Great Northern Pac.--Merger--Great Northern Ry., 6 I.C.C.2d 919, 929-30 (1990).

⁶ Similar relief has been granted in prior cases. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 7 (STB served May 30, 1997) (CSX/NS/CR No. 7), slip op. at 5; Norfolk Southern Corporation and Norfolk Southern Railway Company--Control--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33286, Decision No. 5 (STB served Feb. 21, 1997) (NS/CRC No. 5), slip op. at 4; CSX Corporation and CSX Transportation, Inc.--Control and Merger--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket (continued...)

DEFINITION OF “APPLICANT CARRIERS.” The Railroad Consolidation Procedures define “applicant carriers” as “[a]pplicant, all carriers related to the applicant, and all other carriers involved in the transaction.” 49 CFR 1180.3(b) (italics in original). Applicants seek waiver or clarification with respect to the Primary Application, to limit the definition of “applicant carriers” to GTW, ICR, CCP, CRRC, and any other Board-regulated rail carriers in which either CN or IC now hold an interest greater than 50%. CN/IC-4 at 7-8. The requested waiver or clarification would exclude from the definition of “applicant carriers” any rail carrier subsidiaries not subject to the Board’s jurisdiction,⁷ and any in which CN or IC have interests of 50% or less. Applicants state that CN and IC have less-than-majority interests in a number of rail carriers, all of which operate independently of CN and IC and maintain their own records (e.g., terminal, switching, or short-line railroads owned jointly with other railroads).⁸ Applicants state that, because these companies are under separate management from CN and IC, applicants do not anticipate any change in the management or operation of these companies as a result of the proposed transaction. Applicants further state that requiring the Primary Application to include information on these entities as “applicant carriers” would impose significant burdens on them without enhancing the Board’s ability to evaluate the control transaction proposed in the Primary Application.⁹

⁶(...continued)

No. 33220, Decision No. 7 (STB served Jan. 24, 1997) (CSX/CRC No. 7), slip op. at 3; Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 3 (ICC served Sept. 5, 1995) (UP/SP No. 3), slip op. at 1-2; Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company, Finance Docket No. 32133, Decision No. 3 (ICC served Oct. 26, 1992) (UP/CNW No. 3), slip op. at 1-2.

⁷ Applicants indicate that this exclusion has reference to rail carrier subsidiaries located entirely in foreign countries.

⁸ Applicants indicate that all such carriers will be identified for the Board either in the corporate chart required by section 1180.6(b)(6) (Exhibit 11 to the Primary Application), or in the statement of direct or indirect intercorporate or financial relationships required by section 1180.6(b)(8).

⁹ Applicants state that the requested waiver or clarification would also exclude any motor carrier and water carrier affiliates from the definition of “applicant carrier,” consistent with past practice by the Board and the ICC. See CSX/NS/CR No. 7, slip op. at 6 & n.16; NS/CRC No. 5, slip op. at 5-6 & n.13; CSX/CRS No. 7, slip op. at 4-5 & n.11; UP/SP No. 3, slip op. at 3-4; Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket (continued...)

We will grant the waiver or clarification sought by applicants, by confirming that, with respect to the Primary Application, the term “applicant carriers” refers to GTW, ICR, CCP, CRRC, and any other Board-regulated rail carriers in which either CN or IC now holds, directly or indirectly, a majority interest. We agree with applicants that the burdens of including financial and other data with respect to carriers other than those described in the preceding sentence would be unjustified because these data would not contribute to our evaluation of the Primary Application. We have no need for these data with respect to rail carrier subsidiaries not subject to our jurisdiction.¹⁰ We similarly have no need for these data with respect to rail carrier subsidiaries in which neither CN nor IC has (directly or indirectly) a majority interest.¹¹ Furthermore, we have no need for these data with respect to carrier subsidiaries other than rail carriers because, under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), regulatory approval is no longer required for common control of rail carriers together with motor and water carriers.¹²

We expect, however, that all such excluded carriers will be identified either in the corporate chart required by 49 CFR 1180.6(b)(6) or in the statement of direct or indirect intercorporate or financial relationships required by 49 CFR 1180.6(b)(8). We also expect that applicants will fully describe, in the Primary Application, the effects, if any, of the Primary Application on the operations of the excluded carriers. We further expect that applicants will file, along with the primary application, either an application for approval or a petition for exemption with respect to control by CN or IC of any Board-regulated rail carrier in which CN or IC, respectively, does not now hold, directly or indirectly, a majority interest but will hold such an interest if the Primary Application is approved and the merger is consummated.

⁹(...continued)

No. 32549, Decision No. 3 (ICC served Oct. 3, 1994) (BN/SF No. 3), slip op. at 3; UP/CNW No. 3, slip op. at 2-3. There are, however, no such motor carrier or water carrier affiliates subject to the Board’s jurisdiction.

¹⁰ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 6; NS/CRC No. 5, slip op at 5; CSX/CRC No. 7, slip op. at 4.

¹¹ Similar relief with respect to rail carrier subsidiaries in which no applicant carrier had a majority interest has been granted in prior cases, even with respect to those subsidiaries in which the applicant carriers together held a combined interest greater than 50%. See CSX/NS/CR No. 7, slip op. at 5-6; NS/CRC No. 5, slip op. at 5 & n.12; CSX/CRC No. 7, slip op. at 4 n.10; UP/SP No. 3, slip op. at 2-3; UP/CNW No. 3, slip op. at 2; BN/SF No. 3, slip op. at 2-3.

¹² Similar relief was granted even in cases decided prior to the enactment of the ICCTA, during the time when regulatory approval was required for common control of rail carriers together with motor and water carriers. See CSX/NS/CR No. 7, slip op. at 6 & n.16; UP/SP No. 3, slip op. at 3-4; BN/SF No. 3, slip op. at 3; UP/CNW No. 3, slip op. at 2-3. See also NS/CRC No. 5, slip op. at 6 n.13; CSX/CRC No. 7, slip op. at 5 n.11.

SUBMISSION OF CONSOLIDATED DATA. Applicants request clarification that information and data pertaining to applicant carriers that are required by the Board's Railroad Consolidation Procedures may be submitted on a consolidated basis (i.e., consolidated information regarding CNR and IC Corp., as appropriate, with their respective majority-owned subsidiaries). Applicants further state: that information and data pertaining to CNR and IC Corp., and their respective majority-owned subsidiaries, would be submitted on a consolidated basis, and separate information is not necessary for the Board's consideration and disposition of the Primary Application; that it will be necessary to submit evidence on a consolidated basis in order for the Board to be able to evaluate the benefit of the transaction and the financial position of the combined rail system that will result from the transaction; and that, because they do not maintain required information on a subsidiary-by-subsidiary basis or in a form that aggregates information on applicant carriers separate from information on noncarrier affiliates, requiring them to create such information would impose a significant burden without providing significant assistance to the Board. We agree that separate information regarding majority-owned subsidiaries is not necessary for our consideration and disposition of the Primary Application, and that use of consolidated information and data will avoid the unnecessary burden and redundancy of preparing and providing the information and data on a carrier-by-carrier basis. We will therefore permit the filing of information and data pertaining to each of the applicant carriers (including their majority-owned subsidiaries) on a consolidated basis.¹³

CLASSIFICATION AND FORMAT OF EMPLOYEE IMPACT DATA. Our regulations at 49 CFR 1180.6(a)(2)(v) require a discussion of the "effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached." Because the regulations do not specify the "class or craft" to be used, applicants seek, with respect to the Primary Application, confirmation that they may use the system of classification shown in attached Appendix A. Applicants also seek confirmation that, in presenting the required employee impact data, that they may use the format presented in attached Appendix B. CN/IC-4 at 10. Applicants' proposal is adequate to provide the information we need, and we will therefore approve it.¹⁴

FORM 10-K'S, FORM S-14'S, AND ANNUAL REPORTS. Under our regulations at 49 CFR 1180.6(b)(1), (2), and (4), applicant carriers must submit their most recent Form 10-K and Form S-14 (now S-4) filings with the Securities and Exchange Commission (SEC) as Exhibits 6 and

¹³ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 7; NS/CRC No. 5, slip op. at 6; CSX/CRC No. 7, slip op. at 5-6; UP/SP No. 3, slip op. at 4; BN/SF No. 3, slip op. at 3-4; UP/CNW No. 3, slip op. at 2.

¹⁴ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 7-8; NS/CRC No. 5, slip op. at 6; CSX/CRC No. 7, slip op. at 6; UP/SP No. 3, slip op. at 4-5; BN/SF No. 3, slip op. at 4; UP/CNW No. 3, slip op. at 3.

7, respectively, and they must submit their two most recent annual reports as Exhibit 9. Furthermore, any Form 10-K's, Form S-4's, and annual or quarterly reports to stockholders issued during the pendency of the proceeding must also be submitted to the Board upon their issuance. Applicants request waiver or clarification of these requirements as indicated in the next three paragraphs. CN/IC-4 at 10-12.

1. Applicants request waiver or clarification of 49 CFR 1180.6(b)(1). This section requires the filing of applicant carriers' most recent Form 10-K. This form, however, is not filed by any of the applicant carriers other than ICR. Instead of Form 10-K, CNR files Form 40-F with the SEC.¹⁵ Applicants therefore seek waiver or clarification to permit them to satisfy this requirement by filing, as part of their application, the most recent Form 40-F for CNR and the most recent 10-K's for IC Corp. and ICR, together with any supplementation required by the regulations. Applicants' request is reasonable, and we will therefore grant it.¹⁶

2. Applicants request waiver of the requirement in 49 CFR 1180.6(b)(2) that applicant carriers file past S-14's. Applicants indicate that neither CNR nor any of its applicant carrier subsidiaries has ever filed a Form S-14 or its replacement, Form S-4. Applicants state that, while ICR filed a Form S-4 in 1996, that filing was not related to any securities related to the transaction to be proposed in the Primary Application, and therefore would be of little or no value to the Board in evaluating the merits of said application. Applicants further add that financial information relevant to this proceeding will be contained in applicants' Schedule 14D-1, including amendments thereto, relating to CN's and Merger Sub's cash tender offer for up to 75% of IC Corp.'s stock and in CNR's Form F-4 (including applicants' joint consent statement/prospectus), which they will file with the SEC in connection with the solicitation of consents by IC Corp. shareholders for the merger of Merger Sub into IC Corp.¹⁷ Applicants state that they propose to file these materials with supplementation as required by the regulations, as part of the Primary Application, rather than any Form S-4's or S-14's that may have been filed in the past. Given the circumstances, we conclude that the requested waiver will not have a significant impact on our review of the proposed transaction.

¹⁵ Applicants state that, under SEC rules, certain Canadian issuers of securities may use Form 40-F to file reports pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (Exchange Act). 17 CFR 249.240f. Form 10-K is prescribed for reports under those sections of the Exchange Act for which no other form is prescribed. *Id.* 249.310.

¹⁶ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 9-10; NS/CRC No. 5, slip op. at 7; CSX/CRC No. 7, slip op. at 6-7; UP/SP No. 3, slip op. at 5; UP/CNW No. 3, slip op. at 3-4.

¹⁷ Applicants state that CNR is a "foreign private issuer," as defined in SEC rules, and, as such, it is permitted to file Form F-4 in lieu of Form S-4 to register securities issued in connection with certain business transactions. 17 CFR 239.34; *cf. id.* 239.25 (prescribing Form S-4).

We will therefore grant the requested waiver of 49 CFR 1180.6(b)(2) as respects past Form S-4's and Form S-14's.¹⁸

3. Applicants request waiver of the requirement of 49 CFR 1180.6(b)(4) that the Primary Application include each applicant carrier's two most recent annual reports to stockholders. Applicants note that none of the applicant carriers other than CNR has any public shareholders and none other than CNR prepares an annual report to stockholders. Applicants request that they be allowed to submit the two most recent CNR and IC Corp. annual reports to stockholders, as well as the subsequent annual and quarterly reports to CNR and IC Corp. stockholders required by 49 CFR 1180.6(b)(4). This request is reasonable, and we will therefore grant it.¹⁹

CORPORATE INFORMATION AND REPORTS. The Railroad Consolidation Procedures require applicants to submit information respecting changes in control (Exhibit 8), a corporate chart (Exhibit 11), and certain information respecting intercorporate or financial relationships not disclosed elsewhere in the Primary Application. 49 CFR 1180.6(b)(3), (6), and (8), respectively. Applicants request that we authorize omission or modification of the particular requirements indicated in the next three paragraphs. CN/IC-4 at 12-14.

1. Section 1180.6(b)(3) requires applicants to list, among other things, any change in officers not indicated on the most recent Form R-1. Applicants note that CNR, ICR, CCP, CRRC, and their majority-owned rail carrier subsidiaries operating in the United States, have a large number of officer positions that could arguably come within the scope of this requirement, and applicants contend that compiling this list would be burdensome and that the list itself would be of little or no value in this proceeding. Applicants therefore request that they be required to list only the principal six officers of CNR, ICR, CCP, CRRC, and their majority-owned rail carrier subsidiaries. We believe that the proposed submissions will provide sufficient information, and we will therefore grant the request.²⁰

2. Section 1180.6(b)(6) requires applicants to submit a corporate chart that includes, for each company identified in the chart, a statement indicating any director or officers which that

¹⁸ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 10; NS/CRC No. 5, slip op. at 7; CSX/CRC No. 7, slip op. at 7; UP/SP No. 3, slip op. at 5; BN/SF No. 3, slip op. at 4-5; UP/CNW No. 3, slip op. at 4.

¹⁹ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 10; NS/CRC No. 5, slip op. at 7 (although we apparently erred in indicating in that decision that no NS majority-owned carrier subsidiary issues annual reports); CSX/CRC No. 7, slip op. at 7; UP/SP No. 3, slip op. at 6; BN/SF No. 3, slip op. at 4-5; UP/CNW No. 3, slip op. at 4.

²⁰ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 10-11; NS/CRC No. 5, slip op. at 8; CSX/CRC No. 7, slip op. at 8; UP/SP No. 3, slip op. at 6; BN/SF No. 3, slip op. at 5; UP/CNW No. 3, slip op. at 4.

company has in common with any other company on the chart. Applicants seek a partial waiver or clarification of this requirement. In order to present this information on the corporate chart in a concise and intelligible manner, applicants propose to list only those officers and directors who are either: (1) common to both CNR (including majority-owned subsidiaries) and ICR (including majority-owned subsidiaries); or (2) common to CNR, ICR, or any of their majority-owned subsidiaries and any carrier outside the CN or IC corporate families. This request appears reasonable because our primary interests concern the relationship between the transportation activities of the applicant carriers and our immediate informational needs will be met by the information applicants propose to file. We will therefore permit applicants to indicate common officers or directors as they propose.²¹

3. Section 1180.6(b)(8) requires applicants to disclose intercorporate or financial relationships between applicant carriers or affiliated persons and other carriers or any persons affiliated with them. Applicants request waiver or clarification that this requirement pertains only to significant intercorporate or financial relationships. Applicants propose to describe only those relationships involving ownership by applicants or their affiliates of more than 5% of a non-affiliated carrier's stock, including those relationships in which a group affiliated with applicants owns more than 5% of a non-affiliated carrier's stock. This proposal will not impede our review of the financial and competitive impacts of the Primary Application. Accordingly, we will grant it.²²

CONTROL-RELATED CONSTRUCTION PROJECTS. Applicants state that they may have certain modest control-related construction projects, probably involving the construction of connections, for which they will seek approval or exemption in applications submitted together with the Primary Application. According to applicants, they will be identifying these projects as they progress in their preparation of the application. Section 1150.1(b) requires consultation with the Board's Section of Environmental Analysis (SEA) at least 6 months before the filing of a construction application under 49 U.S.C. 10901, and section 1105.10(a) requires submission of a written notice to SEA at least 6 months before the filing of a construction application if the proposed construction might require preparation of an environmental impact statement (EIS). Applicants note that the Board's predecessor agency recognized that such requirements need not be applied to control-related construction projects.²³

²¹ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 11; NS/CRC No. 5, slip op. at 8; CSX/CRC No. 7, slip op. at 8; UP/SP No. 3, slip op. at 6; BN/SF No. 3, slip op. at 5; UP/CNW No. 3, slip op. at 4.

²² Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 11; NS/CRC No. 5, slip op. at 8; CSX/CRC No. 7, slip op. at 8; UP/SP No. 3, slip op. at 6; BN/SF No. 3, slip op. at 5; UP/CNW No. 3, slip op. at 4-5.

²³ CN/IC-4 at 15, citing Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Missouri-Kansas-Texas Railroad Company, Finance (continued...)

Applicants anticipate that any control-related construction projects for which they will seek approval or exemption in this proceeding will have minor, if any, adverse environmental impacts, and that preparation of an EIS will not be required.²⁴ Applicants state that they have begun the process of consulting with SEA with regard to the Primary Application and all related applications, and that they will advise SEA as soon as they identify specific control-related construction projects and will provide SEA with any required information regarding those projects. Applicants assert that they will identify all such projects by no later than 30 days before the filing of the Primary Application, which will provide at least 1 month in advance of that filing for SEA to begin its environmental analysis of these projects. Applicants originally intended to file an environmental report 30 days after the Primary Application, but after recent consultations with SEA, it was determined that applicants will file an environmental overview with the Primary Application and operating plan. See 49 CFR 1180.6(a)(8) (requirement that applicants submit information and data with respect to environmental matters in accordance with 49 CFR part 1105). Applicants therefore request that we waive or clarify the prefiling notice requirements of 49 CFR 1150.1(b) and 49 CFR 1105.10(a), and find that notice to SEA of control-related construction projects will be satisfactory if provided no later than 30 days prior to the filing of the Primary Application.

In view of applicants' previous consultations with SEA and on the condition that the consultations with SEA continue, waiver of the 6-month time periods required in both 49 CFR 1150.1(b) and 49 CFR 1105.10(a) will be granted.²⁵ However, we emphasize that any speculation regarding the appropriate level of environmental review of any merger-related construction projects is premature at this time. When SEA has obtained and analyzed the relevant information on the individual construction projects, and when it has consulted with other Federal, state, and local agencies, it will determine the type of environmental document that should be prepared.

²³(...continued)

Docket No. 30800, Decision No. 6 (ICC served Oct. 24, 1986) (UP/MKT No. 6, slip op. at 3).

²⁴ Applicants state that such construction projects may qualify for the class exemption in section 1150.36 for construction of connecting track within existing right-of-way or on railroad property, and in that event, they will file a notice of exemption no later than the date of the Primary Application for any projects qualifying for the class exemption.

²⁵ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 18-19; NS/CRC No. 5, slip op. at 9-10; CSX/CRC No. 7, slip op. at 9-10; UP/SP No. 3, slip op. at 7; BN/SF No. 3, slip op. at 6-7.

OPERATING TIMETABLES. We request that applicants submit, with the Primary Application, 10 copies of each of their operating timetables for CNR, ICR, GTW, CCP, and CRRC. This information will facilitate our analysis of a number of aspects relating to this proceeding.²⁶

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

It is ordered:

1. The CN/IC-4 petition for waiver or clarification, and related relief, is granted to the extent set forth in this decision.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

²⁶ Similar requests have been made in prior cases. See CSX/NS/CR No. 7, slip op. at 23; NS/CRC No. 5, slip op. at 14; CSX/CRC No. 7, slip op. at 14.

APPENDIX A

CLASSIFICATION OF JOBS SHOWN IN
LABOR IMPACT DATA, 49 CFR 1180.6(a)(2)(v)

Blacksmiths/Boilermakers

Carmen

Clerks/Communication Workers

Electricians

Engineers

Laborers/Firemen and Oilers

Machinists

Maintenance of Way
(including Track Employees,
Bridge and Building Employees, and
Work Equipment Employees)

Nonagreement

Police

Railway Supervisors

Sheet Metal Workers

Signalmen

Train Dispatchers

Trainmen

Yardmasters

APPENDIX B

EFFECTS ON APPLICANT CARRIERS' EMPLOYEES
49 CFR 1180.6(a)(2)(v)

(Applicant Carrier)

Current Location	Classification	Jobs Transferred to	Jobs Abolished	Jobs Created	Year
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