

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

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

Decision No. 7

Decided: February 20, 2008

In Decision No. 2, served November 26, 2007, the Board accepted for consideration the application filed by Canadian National Railway Corporation (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. The Board found the proposed transaction to be a “minor” transaction and the application to be in substantial compliance with the applicable regulations governing minor transactions. (This proposal is referred to as the primary transaction.) However, the Board reserved the right to require the filing of any supplemental information necessary to complete the record.

With their application, applicants submitted an operating plan that proposed and briefly described the construction of connecting tracks at six locations. Applicants state that the improved connecting tracks at Munger, IL, Joliet, IL, Matteson, IL, Griffith, IN, Ivanhoe, IN,

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).

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.

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.” 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). However, not all railroad construction activities require Board approval. Carrier improvements to or investments in their existing system do not require section 10901 authority.² Furthermore, under 49 U.S.C. 10906, the Board does not have licensing authority “over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.”

Based on the current record, it appears that some or all of the connecting tracks that applicants propose to construct might require Board authorization. Applicants refer both to improved connections and to new tracks. Application at 222. Moreover, some or all of the connections appear to require the acquisition of new right-of-way.³

Applicants appear to assume that they do not need Board authority for any of these constructions, but do not offer any basis for not seeking that authority. Applicants do not assert that the trackage proposed to be constructed falls under section 10906 and thus could be constructed without Board authorization. And Applicants do not explain why this case differs from past control proceedings in which parties have sought, and the Board has granted, authority to construct connecting tracks similar to those proposed here in conjunction with a proposed

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 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).

³ While the need to acquire new right-of-way is not necessarily determinative, it is significant in determining whether the class exemption for construction of connecting track at 49 CFR 1150.36 is available.

merger. See CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196, 346-47 (1998); CSX Transportation, Inc.—Construction and Operation Exemption—Connecting Track at Crestline, OH, STB Finance Docket No. 33388 (Sub-No. 1) et al. (STB served Nov. 25, 1997); Burlington Northern et al.—Merger—Santa Fe Pacific et al., 10 I.C.C.2d 661, 792 (1995).⁴

As a result, we direct applicants to file for construction authority for each of the six connecting tracks they propose to construct by March 3, 2008, or to show cause why authority is not needed for one or more of these construction projects by March 3, 2008.

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

It is ordered:

1. Filings seeking authority to construct the six connecting tracks or showing cause why authority is not needed for one or more of the construction proposals will be due by March 3, 2008.
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

⁴ In Canadian National, et al.—Control—Illinois Central, et al., 4 S.T.B. 122, at 130 (1999), the Board observed that the applicants in that proceeding asserted that the construction and operation of one connection and the upgrade of another did not require Board approval under section 10901. The Board, however, did not rule on that assertion in its decision approving the overall control transaction.