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SERVICE DATE - DECEMBER 27, 2001

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556 (Sub-No. 4)

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

[GENERAL OVERSIGHT]

Decision No. 4

Decided: December 26, 2001

Our oversight during the first and second years has revealed no significant problems following implementation of the CN/IC merger. We are therefore concluding our formal oversight process in the CN/IC merger proceeding. We remain available, however, to enforce the conditions we imposed on the merger, as needed. Thus, the conclusion of the formal oversight process does not preclude any party from invoking our continuing jurisdiction to address merger-related concerns arising out of our conditions.

**BACKGROUND**

In 1999, we approved, subject to various conditions: (1) the acquisition, by Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively CN), of control of Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, and Cedar River Railroad Company (collectively IC), and (2) the integration of the rail operations of CN and IC. See 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, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999) (CN/IC Dec. No. 37).

In our decision approving the transaction, we required general oversight for a period of up to 5 years so that we might assess the effectiveness of the various conditions we imposed and the

competitiveness of service provided by CN/IC itself as well as service provided jointly with The Kansas City Southern Railway Company, Gateway Western Railway Company, and other wholly owned subsidiaries of Kansas City Southern Industries, Inc. (collectively KCS) under the so-called CN/IC/KCS Alliance Agreement. While several parties filed comments in the first annual oversight round,<sup>1</sup> only one comment was filed in response to CN's second (and most recent) annual progress report. In that comment, DOT simply stated that, even though CN and IC have managed their combination successfully and there have been no complaints from shippers or competitors, we should continue to oversee the long-term implications of the CN/IC merger.

In view of the lack of complaints, particularly from shippers who may have been affected by the merger, we preliminarily concluded that our formal oversight process in the CN/IC transaction should end. See CN/IC Oversight, Decision No. 3 (STB served Nov. 7, 2001), slip op. at 4. Before making a final determination, however, we invited comments on this issue. Id. On November 27, 2001, CN/IC filed comments supporting our decision to end formal oversight. One other comment was filed: ATOFINA Petrochemicals, Inc. (ATOFINA) and KCS filed a joint comment asking us to confirm that, in the event formal oversight is discontinued, we will continue informally to monitor competition issues in the Baton Rouge-New Orleans corridor and that we will be available to address requests for remedial relief upon petition by interested parties.<sup>2</sup>

## DISCUSSION AND CONCLUSIONS

The record on the whole does not show any competitive or other problems stemming from the CN/IC combination. Our oversight during the first and second years has revealed that the merger has been implemented successfully and without significant complaints. The only comment filed during the second year was positive. Although DOT in its reply asks us to continue to oversee the long-term implications of the merger, we do not believe that a formal oversight process is necessary to accomplish this purpose.

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<sup>1</sup> See 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 (General Oversight), STB Finance Docket No. 33556 (Sub-No. 4), Decision No. 1 (STB served Mar. 9, 2000), 65 FR 12623-24 (Mar. 9, 2000) (CN/IC Oversight).

<sup>2</sup> ATOFINA and KCS indicate that they are currently negotiating a rail transportation arrangement for ATOFINA's petrochemical plant in the Geismar, LA area and that KCS' proposed service involves a haulage arrangement arising out of the CN/IC/KCS Alliance Agreement and out of the related access condition imposed by us in CN/IC Dec. No. 37. ATOFINA and KCS state that, if an access agreement with CN is not reached, they intend to ask us for appropriate relief based on the condition imposed on the merger.

Although we are concluding our formal oversight process for the CN/IC merger, we continue to have authority to enforce the conditions we imposed on the merger. Under 49 U.S.C. 11327, we have continuing authority to enter supplemental orders and to modify decisions entered in merger and control proceedings under 49 U.S.C. 11323, and the conclusion of the formal oversight process does not preclude any party from invoking our jurisdiction to address any merger-related concerns arising out of our conditions. See, e.g., Union Pacific Corp.—Control & Merger—Southern Pacific Rail Corp., STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 1 (STB served May 7, 1997), slip op. at 3 n.3; CN/IC Oversight, Decision No. 3 (STB served Nov. 7, 2001), slip op. at 4 (“we have authority independent of the formal oversight process to enforce or revise merger conditions as warranted upon request or on our own initiative.”).<sup>3</sup> Accordingly, we remain available to consider and promptly resolve disputes relating to KCS’ access to shippers under any of the conditions we imposed on the CN/IC merger.

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

It is ordered:

1. The formal oversight process is discontinued.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>3</sup> Also, our Office of Compliance and Enforcement continues to monitor the rail industry generally and to make its Rail Consumer Assistance Program available to consider informal complaints involving railroads.