

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35081

CANADIAN PACIFIC RAILWAY COMPANY, ET AL.—CONTROL—DAKOTA,  
MINNESOTA & EASTERN RAILROAD CORP., ET AL.

Decision No. 10

Decided: June 12, 2008

On November 26, 2007, the Board issued Decision No. 3, which provided notice of the proposed procedural schedule and requested comments for consideration of the application filed by Canadian Pacific Railway Corporation (CPRC), Soo Line Holding Company (Soo Holding), Dakota, Minnesota & Eastern Railroad Corporation (DM&E), and Iowa, Chicago & Eastern Railroad Corporation (IC&E), seeking approval for the acquisition of control of DM&E and IC&E by Soo Holding (and, indirectly, by CPRC). CPRC, Soo Holding, DM&E, and IC&E are referred to collectively as “applicants. As relevant here, the proposed procedural schedule provided “that the record would close with the filing of briefs on July 2, 2008, and that the Board’s proposed procedural schedule would provide for a possible oral argument or public hearing to be held on a date in June 2008 to be determined by the Board.”

On December 27, 2007, the Board issued Decision No. 4, which accepted for consideration the application and adopted the procedural schedule outlined in Decision No. 3. The procedural schedule’s language in Decision No. 4 stated that “final briefs, if any, will be due by July 2, 2008,” and that “a public hearing or oral argument may be held on a date to be determined by the Board.”

On June 4, 2008, KCS filed a letter requesting clarification regarding the Board’s acceptance of final briefs on July 2, 2008, in this proceeding. KCS argues that the record appears sufficiently well-developed such that final briefs are not needed. Furthermore, KCS argues that the “if any” language reflects the Board’s intention to not allow final briefs unless, after oral arguments, the Board deemed them necessary.

On June 5, 2008, applicants filed a response to KCS’s letter. Applicants disagree with KCS’s interpretation of the procedural schedule in Decisions No. 3 and No. 4. Applicants argue that, while the Board’s decisions left open the issue of whether to hold an oral argument or public hearing, the procedural schedule clearly contemplated that the record would close with the filing of briefs on July 2. Applicants contend that KCS has not provided a persuasive reason to deviate from the customary practice of allowing final briefs in non-minor consolidation cases.

Furthermore, applicants state that July 2 final briefs will be their only opportunity to respond to KCS's May 19, 2008 rebuttal statement.

On June 9, 2008, the Mayo Clinic also filed a response seeking clarification of the procedural schedule and the acceptance of final briefs. The Mayo Clinic states that final briefs would assist the Board in making its final decision. In addition, the Mayo Clinic requests that the Board schedule a public hearing and/or oral argument in this proceeding. The Mayo Clinic argues that the proposed acquisition raises significant issues about the safety and security threats posed by the rail transportation of hazardous materials.

The Board recognizes the reason for KCS's request for clarification regarding the procedural schedule and the filing of final briefs. Therefore, the Board will take this opportunity to clarify the procedural schedule. Final briefs will be due on July 2, 2008. This date will constitute the close of the record in this proceeding. Furthermore, parties are instructed to limit their final briefs to a maximum of 20 pages. Also, the Mayo Clinic's request for oral argument will be denied. The current record, which will include final briefs, is adequate to address any concerns parties may have regarding the transportation of hazardous materials.

It is ordered:

1. In accordance with the procedural schedule adopted on Decision No. 4, final briefs will be due on July 2, 2008, at a maximum length of 20 pages.
2. The Mayo Clinic's request for oral argument is denied.
3. This decision is effective on its date of service.

Decided: June 12, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan  
Acting Secretary