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SERVICE DATE - LATE RELEASE FEBRUARY 12, 1999

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. 31

Decided: February 11, 1999

By application (variously referred to as the CN/IC application, the CN/IC control application, and the CN/IC primary application) filed July 15, 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 & Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC),² seek approval under 49 U.S.C. 11321-26 for:³ (1) the acquisition by CN of control of IC; and (2) the integration of the rail operations of CN and IC.⁴

¹ CNR is a rail carrier. GTC, a holding company, is a wholly owned subsidiary of CNR. GTW, a rail carrier, is a wholly owned subsidiary of GTC, as are Duluth, Winnipeg and Pacific Railway Company (DWP, a rail carrier) and St. Clair Tunnel Company (SCTC, a rail carrier). CNR, GTC, and GTW, and their wholly owned subsidiaries (including DWP and SCTC, but excluding Illinois Central Corporation and its wholly owned subsidiaries) are referred to collectively as CN.

² IC Corp. is a holding company, as is CCP Holdings, Inc. (CCPH, a wholly owned subsidiary of IC Corp.). ICR, a rail carrier, is a wholly owned subsidiary of IC Corp. Waterloo Railway Company (WRC, a rail carrier) is a wholly owned subsidiary of ICR. CCP and CRRC, both rail carriers, are wholly owned subsidiaries of CCPH. IC Corp., ICR, CCP, and CRRC, and their wholly owned subsidiaries (including CCPH and WRC) are referred to collectively as IC.

³ The transaction for which approval is sought (i.e., the acquisition by CN of control of IC, and the integration of the rail operations of CN and IC) is referred to as the CN/IC control transaction.

⁴ CN and IC are referred to collectively as the applicants (or, sometimes, the primary
(continued...))

Applicants contend, among other things, that the benefits of the CN/IC control transaction will be enhanced by two settlement agreements entered into on April 15, 1998, with The Kansas City Southern Railway Company (KCS): an “Alliance Agreement” entered into by CN, IC, and KCS;⁵ and an “Access Agreement” entered into by CN and KCS.⁶ Opposing parties have argued, among other things, that the two agreements, and in particular the Alliance Agreement, have effectively transformed the two-way CN/IC control transaction into a three-way CN/IC/KCS control transaction that requires approval under 49 U.S.C. 11323. Opposing parties have also argued that the two agreements, taken in conjunction with the CN/IC control transaction, have the effect of creating a pooling arrangement that requires approval under 49 U.S.C. 11322.⁷

The record that has been compiled in this proceeding contains several copies of the two agreements. All of these copies, however, have been stamped “Highly Confidential” and have been submitted under seal. The public side of the record contains narrative descriptions of these agreements, but these narrative descriptions are insufficient to allow full discussion of the issues necessary for the oral argument, the voting conference, and the final decision.

In view of the importance of the issues that have been raised with respect to the two agreements, and in view of the difficulty of discussing these issues in any detail without resort to the precise language of the agreements themselves, we are directing CN (the only applicant that is a party to both agreements) to enter into the public side of the record redacted copies of these agreements. There would appear to be, in these circumstances, no substitute for the precise language of the two agreements. CN is cautioned to redact only information that is truly confidential.

⁴(...continued)
applicants).

⁵ See CN/IC-57 at 253-67; KCS-18 at 7-22. See also CN/IC-57 at 269-72 (the first amendment to the Alliance Agreement); KCS-18 at 23-26 (same).

⁶ See CN/IC-57 at 273-87; KCS-18 at 27-41. IC will not become a party to the Access Agreement until such time as the CN/IC control transaction is approved by the Board and implemented by CN and IC.

⁷ As indicated in the text, we shall refer to the Alliance Agreement and the Access Agreement as two separate agreements (although we recognize that portions of the Access Agreement amount to an addendum to the Alliance Agreement). To avoid confusion, we shall not use the alternative one-agreement terminology occasionally used by KCS. See KCS-17 at 7-8 and 135 (KCS occasionally refers to the two agreements as if they were a single agreement, which KCS calls the Alliance Agreement but which KCS notes has two parts, one part being what KCS calls the Alliance Agreement and the other part being what KCS calls the Access Agreement).

We emphasize that we have not reached any conclusions, one way or the other, with regard to the issues raised with respect to the two agreements. The only conclusion we have thus far reached is that these issues cannot be discussed publicly in any detail as long as the precise language of the agreements remains under seal.

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

It is ordered:

1. CN must submit redacted copies of the Alliance and Access Agreements by February 22, 1999.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams
Secretary