

STB FINANCE DOCKET NO. 33556 (SUB-NO. 4)¹

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)

Decided March 3, 2000

AGENCY: Surface Transportation Board

ACTION: Decision No. 1; Notice of General Oversight Proceeding, and Request for Comments from Interested Persons on the Progress of Implementation of the CN/IC Transaction and the Workings of the Various Conditions Imposed.

SUMMARY: In 1999, *Canadian National, Et Al. — Control — Illinois Central, et al.*, 4 S.T.B. 122 (1999) Decision No. 37 (*CN/IC Dec. No. 37*), we approved, subject to various conditions (including a 5-year general oversight condition): (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 and Pacific Railroad Company, and Cedar River Railroad Company (collectively, IC), and (2) the integration of the rail operations of CN and IC. We are now instituting a proceeding to implement the general oversight condition imposed in *CN/IC Dec. No. 37*. We are requiring Canadian National Railway Company (CNR) to file a progress report respecting the CN/IC transaction and to make certain data available to interested persons. We are inviting interested persons to submit comments on the progress of implementation of the CN/IC transaction and the conditions we imposed.

¹ A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33556.

DATES: CNR must file a progress report by July 3, 2000, and must make CN/IC's 100% traffic waybill tapes available to interested persons by July 17, 2000. Comments of interested persons will be due on August 18, 2000. Replies will be due on September 5, 2000.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33556 (Sub-No. 4) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33556 (Sub-No. 4), 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each document filed in this proceeding must be sent to CNR's representative: Paul A. Cunningham, Harkins Cunningham, 801 Pennsylvania Avenue, N.W., Suite 600, Washington, DC 20004-2664.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), one electronic copy of each such document (*e.g.*, textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and must clearly label pleadings and attachments and the corresponding disks/CDs with an identification acronym and pleading number.² Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in some version of Lotus, Excel, or Quattro Pro. Parties may individually seek a waiver from the disk/CD requirement.

FOR FURTHER INFORMATION, CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: In *CN/IC Dec. No. 37*, we established general oversight for a period of up to 5 years so that we might assess the competitiveness of service provided by CN/IC and KCS under the Alliance Agreement³ and the effectiveness of the various conditions we imposed. We reserved jurisdiction to implement the oversight condition and, if necessary, to

² A copy of each such disk or CD should be provided to any other party upon request.

³ In *CN/IC Dec. No. 37*: The Kansas City Southern Railway Company and Gateway Western Railway Company, and all other wholly owned (directly or indirectly) subsidiaries of Kansas City Southern Industries, Inc., were referred to collectively as KCS; and a settlement agreement entered into on April 15, 1998, by CN, IC, and KCS was variously referred to as the Alliance Agreement or, on occasion, the CN/IC/KCS Alliance Agreement.

impose additional conditions and/or to take other action if, and to the extent, we determined that it was necessary to impose additional conditions and/or to take other action to address matters respecting the CN/IC control transaction, including without limitation: (a) concerns regarding the operation of the Alliance Agreement, particularly with respect to ongoing competition within the Baton Rouge-New Orleans corridor; (b) concerns of North Dakota grain shippers with respect to the Chicago gateway; (c) concerns with respect to investment in and operation of the Detroit River Tunnel; (d) concerns with respect to any merger-related link to any unfair pricing practices in the lumber industry; (e) concerns with respect to lack of appropriate labor protective conditions if unauthorized control of CN/IC and KCS should occur; and (f) any necessary monitoring of our environmental mitigating conditions. See, *CN/IC Dec. No. 37*, at 128 (item 8), 161, 182 (ordering paragraph 1).

We are now instituting this proceeding to implement the general oversight condition imposed in *CN/IC Dec. No. 37*.⁴ We invite information from interested persons as to both the status of implementation of the CN/IC transaction and the effects of the various conditions we imposed.

We are requiring CNR to file, by July 3, 2000, a progress report respecting implementation of the CN/IC transaction. This progress report should contain an in-depth analysis of implementation of the transaction and of the workings of the various conditions. We are further requiring CNR to make CN/IC's 100% traffic waybill tapes available by July 17, 2000, to those interested persons who have entered the appropriate confidentiality agreement pursuant to the protective order discussed below. These tapes should include the most up-to-date data then accessible by CNR.

We are directing that interested persons submit, by August 18, 2000, any comments respecting the progress of implementation of the CN/IC transaction and the workings of the various conditions we imposed. Replies to comments must be submitted by September 5, 2000.

Protective Order. Parties may submit filings (including electronic submissions contained on disks and CDs), as appropriate, under seal marked Confidential or Highly Confidential pursuant to the protective order entered in STB Finance Docket No. 33556 in Decision No. 1 (served February 26, 1998),

⁴ We are establishing a procedural schedule similar to that imposed in *Union Pacific/Southern Pacific Merger*, 2 S.T.B. 251 (1997).

as modified in certain respects in Decision No. 36 (served April 6, 1999),⁵ Waybill files made available to interested persons will be subject to this protective order.

Service List. A copy of this decision is being served on all persons designated as POR, MOC, or GOV on the service list in STB Finance Docket No. 33556. This decision will serve as notice that persons who were parties of record in STB Finance Docket No. 33556 will not automatically be placed on the service list as parties of record in the STB Finance Docket No. 33556 (Sub-No. 4) general oversight proceeding. Any persons interested in being on the STB Finance Docket No. 33556 (Sub-No. 4) service list and receiving copies of CNR's filings relating to the general oversight proceeding must send us written notification with copies to CNR's representative.

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

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

⁵ Parties submitting filings under seal will be expected to file redacted versions that will be placed in the public docket.