

BEFORE THE
SURFACE TRANSPORTATION BOARD

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DOCKET NO. FD 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY

CSX TRANSPORTATION, INC. COMMENTS WITH RESPECT TO RULES APPLICABLE TO THIS PROCEEDING

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Dated: April 1, 2021

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When the Board adopted certain regulations in 2001 concerning Class I mergers¹ (the “2001 Rules”), it decided for reasons existing at that time that in reviewing the consolidation of KCS and another Class I railroad, the regulations in effect before July 11, 2001 and contained in 49 CFR, Parts 1000 to 1199, revised as of October 1, 2000 (the “2000 Rules”) would apply (the “KCS Waiver”) unless the Board is “shown why such a waiver should not be allowed.” 49 CFR § 1180.0(b).

While CSX Transportation, Inc. (“CSXT”) intends to participate actively, will continue to review the proposed CP-KCS merger (the “Transaction”), and will comment as to the merits of the Transaction in the future, it expects the Transaction will be reviewed under the 2000 Rules and not the undefined, untested 2001 Rules which do not appear to have application to a consolidation involving KCS.

The basic standards enunciated in the 2000 Rules governed the consolidation of Class I railroads from 1977 (*see* 42 FR 14871 (March 17, 1977)) until 2001 (*see* 66 FR 32583 (July 11, 2001)). The 2001 Rules were promulgated in a rulemaking² initiated in response to the Burlington Northern Santa Fe Railway (“BNSF”)-Canadian National Railway (“CN”) merger

¹ 66 FR 32583 (July 11, 2001).

² *Major Rail Consolidation Procedures*, STB Ex Parte 582 (Sub-No.1) (STB served June 11, 2001).

proposed in 1999. When the 2001 Rules were adopted, all interested parties and the Board were adjusting to both a) the reductions in regulation that had culminated in the enactment of the Interstate Commerce Commission Termination Act in 1995; and b) the series of Class I consolidations that began in the 1970s. By 1999, those consolidations had resulted in six major North American railway systems—BNSF, CN, CP, CSXT, Norfolk Southern Railway Company, and Union Pacific Railroad Company (“UP”)—and a seventh Class I carrier, KCS.

Opponents of the BNSF-CN merger argued it would aggravate the service degradation then persisting after UP and Southern Pacific Transportation Company’s merger in 1996 and the division of the Consolidated Rail Corporation in 1998. Their service concerns were magnified by predictions that the BNSF-CN proposal would precipitate “downstream” Class I mergers that would pose an even greater threat to service and initiate reductions in competition. The 2001 Rules reflected these concerns.

By far the smallest Class I carrier in 2001 and now, KCS had not been a party to the prior Class I consolidations and therefore its merger with another Class I carrier was deemed unlikely to precipitate either a service melt-down or a downstream transaction threatening competition.

Successful consolidation proponents have traditionally met the public interest standard in the statute by demonstrating that the efficiencies expected to result from their transaction, with reasonable mitigation of potential reductions in competition, would result in more competitive and efficient rail transportation. The Applicants should have to do that here. To achieve that goal, however, there is no need to subject the Transaction to the uncertainties associated with the 2001 Rules.

Twenty years past the post-meltdown environment that engendered the 2001 Rules, in an era when large rail systems work far better than any of their pre-consolidation predecessors and few real competitive issues have ever been shown to have resulted from the consolidation that led to the industry's present configuration, the Board has all the tools it needs under the 2000 Rules.

Respectfully Submitted,

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Attorneys for CSX Transportation, Inc.

Dated: April 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused these CSX Transportation, Inc. Comments with Respect to Rules Applicable to This Proceeding in Docket No. FD-36500, *Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. – Control – Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Paul A. Cunningham

Paul A. Cunningham
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CSX Transportation, Inc.*

April 1, 2021