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SURFACE TRANSPORTATION BOARD ISSUES WRITTEN DECISION APPROVING COMMON CONTROL OF CANADIAN NATIONAL AND ILLINOIS CENTRAL

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued its written decision carrying out the Board's March 25, 1999 vote in open conference granting, with conditions, the consolidation application filed by Canadian National (CN) and Illinois Central (IC).

The Board's decision concerning this railroad merger was issued some 10 months after the July 15, 1998 application was filed, and on the date scheduled by the Board. The decision applies the statutory public interest standard for Board consideration of major railroad mergers and consolidations. The Board noted that the merger will create a highly efficient rail transportation system spanning the central part of the United States from the Canadian border to the Gulf of Mexico, allowing applicants to provide stronger competition, especially for NAFTA traffic, with the major Class I railroads. The Board also noted that the merger should generate quantifiable public benefits of more than $100 million a year, mainly through integration of support functions and more efficient use of equipment and crews. The Board further noted that this "end-to-end" merger, which was supported by more than 240 parties, including more than 190 shippers, will not reduce competition at any location. Additionally, the Board noted that the merger is supported by unions representing the majority of applicants' employees.

<u>The Alliance and Access Agreements</u>. The Board fully considered and rejected arguments that two agreements between The Kansas City Southern Railway Company (KCS) and applicants, the Alliance Agreement and the Access Agreement, transformed the CN/IC merger into a three-way CN/IC/KCS merger. The Board concluded that these agreements did not bring KCS into common control with applicants.

<u>Conditions Imposed by the Board</u>. The Board imposed the following conditions.

Geismar Shippers. In 1995, KCS sought regulatory approval to build a line to reach three IC-served shippers (BASF, Borden, and Shell) in Geismar, LA. The CN/KCS Access Agreement provides for KCS access to these shippers via haulage rights over IC. Three additional IC-served Geismar shippers (Rubicon, Uniroyal, and Vulcan) argued that this agreement would eliminate KCS's incentive to construct the line, which would also have enabled KCS to reach Rubicon, Uniroyal, and Vulcan. To ensure that the Access Agreement, which is contingent upon approval of the merger, does not reduce competition for these shippers, the Board imposed a condition requiring applicants to grant KCS access to Rubicon, Uniroyal, and Vulcan under the same terms that govern KCS's access to BASF, Borden, and Shell.

North Dakota. North Dakota argued that the merger would eliminate or impair an efficient routing via the Chicago gateway for agricultural commodities moving to the Gulf Coast. These commodities originate in North Dakota on the Soo Line, and are interchanged at Chicago with IC for transport to the Gulf Coast. To protect this gateway, the Board imposed a condition holding applicants to their representation that they will keep it open and competitive.

Detroit River Tunnel. CN and Canadian Pacific (CP) each holds a 50% interest in the Detroit River Tunnel between Detroit, MI, and Windsor, ON. CN also has a 100% interest in the recently built St. Clair Tunnel at Sarnia, ON. CP argued that, because CN now has access to a more modern tunnel and CP does not, CN has an incentive to use its 50% interest in the Detroit River Tunnel to thwart any effort by CP to expand or replace that tunnel. To protect CP's position, the Board imposed a condition holding CN to its commitment not to exercise unfairly any rights it may have under the CNCP Partnership Agreement to block needed proposed tunnel improvements.

Rail Labor. In approving major rail mergers, the Board is required by statute to impose "labor protective conditions" for the benefit of the employees of the applicant railroads. The Board imposed its traditional *New York Dock* conditions, with certain additions and clarifications. The Board augmented the *New York Dock* conditions to provide that, if CN/IC work is moved to Canada, CN/IC's United States employees who choose not to follow their work to Canada will not be deemed to have forfeited their *New York Dock* protections. The Board also clarified that good faith bargaining has always been an integral part of the *New York Dock* process, and that an arbitrator may take notice of any failure to bargain under that process. The Board imposed as conditions specific settlement agreements applicants reached with major unions. The Board also clarified that approval of the merger did not indicate approval or disapproval of any particular collective bargaining agreement overrides, and that such issues should be resolved through negotiation, if possible, or arbitration as necessary. The Board noted that applicants had acknowledged the importance of prior labor agreements. Furthermore, the Board clarified that safety would continue to be monitored in the implementation process, and that specific consultation with the Federal Railroad Administration (FRA) would take place regarding any transfer of the dispatching function to Canada.

Environmental Matters. To fulfill its obligations under the National Environmental Policy Act, the Board's Section of Environmental Analysis (SEA) prepared a thorough Environmental Assessment, which analyzed 19 topics, including safety, hazardous materials transport, and environmental justice. In its environmental review process, which included public review and comment, SEA concluded that the transaction would result in system-wide environmental benefits and that there would be potentially significant environmental impacts only with regard to hazardous materials transport safety and related environmental justice impacts. SEA proposed 15 conditions addressing those and other effects, and the Board imposed these conditions, the majority of which address safety.

With respect to safety integration issues, the Board required CN and IC to develop and comply with a detailed safety integration plan (SIP) explaining how each step in implementing the transaction will be performed safely. Because safety integration is an ongoing process, the SIP will continue to be modified and refined as this transaction moves forward. The Board and the FRA also entered into a Memorandum of Understanding regarding the ongoing safety integration process.

Oversight. Various parties expressed concerns over potential harms that might flow from the merger. In response, the Board imposed an oversight condition of up to 5 years, to enable the Board to address: concerns expressed by the United States Department of Transportation and others regarding the operation of the Alliance Agreement, particularly on competition in the Baton Rouge-New Orleans corridor; concerns expressed by North Dakota with respect to the Chicago gateway; concerns expressed by CP with respect to the Detroit River Tunnel; concerns expressed by certain labor unions with respect to future unauthorized common control of applicants and KCS; and concerns with respect to rates for lumber shippers. The oversight process will also enable the Board to monitor the environmental conditions it has imposed.

KCS Trackage Rights Application. The Board denied a CN/IC/KCS terminal trackage rights application that sought, for a KCS affiliate, terminal trackage rights over several miles of Union Pacific and Norfolk Southern track in Springfield, IL. The Board ruled that, because the terminal trackage rights had no real connection to the merger, the application would have to be evaluated on the basis of the criteria generally applicable to such applications, which this application failed to meet.

Chairman Morgan, Vice Chairman William Clyburn, Jr., and Commissioner Wayne O. Burkes commented with separate expressions. A printed copy of the Board's written decision in *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)**, is available for a fee by contacting: **D.C. News & Data, Inc., Room 210, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 463-8112**. The decision is available for viewing and downloading via the Board's website at **www.stb.dot.gov**.

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