

50990  
OEA

SERVICE DATE – NOVEMBER 12, 2021

SURFACE TRANSPORTATION BOARD

DECISION

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

**AGENCY:** Surface Transportation Board

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement (EIS); Notice of Initiation of the Scoping Process; Request for Comments on Scope of the EIS; and Notice of Public Scoping Meetings.

**SUMMARY:** On October 29, 2021, Canadian Pacific Railway Limited, Canadian Pacific Railway Company, and their U.S. rail carrier subsidiaries Soo Line Railroad Company; Central Maine & Quebec Railway U.S. Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS) filed an application with the Surface Transportation Board (Board) seeking the Board's approval of the acquisition of control by CP of KCS. The proposed acquisition has the potential to result in significant environmental impacts; therefore, the Board's Office of Environmental Analysis (OEA) has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate pursuant to the National Environmental Policy Act (NEPA). The purpose of this Notice is to inform stakeholders—including members of the public; tribes; federal, state, and local agencies; and environmental groups—interested in or potentially affected by potential environmental impacts related to the proposed acquisition. OEA will hold online public scoping meetings as part of the NEPA process. Oral and written comments submitted during scoping will assist OEA in defining the range of alternatives and potential impacts to be considered in the EIS. Public scoping meeting dates are provided below.

**DATES:** Comments on the scope of the EIS are due by December 17, 2021. OEA will hold six online public scoping meetings on the following dates (times in Central Standard Time).

- Tuesday, November 30, 2021, 6-8 p.m.
- Wednesday, December 1, 2021, 2-4 p.m.
- Thursday, December 2, 2021, 6-8 p.m.
- Tuesday, December 7, 6-8 p.m.
- Wednesday, December 8, 2021, 2-4 p.m.
- Thursday, December 9, 2021, 6-8 p.m.

Information on how to attend and participate in an online public scoping meeting, including how to register in advance, is available on the Board-sponsored project website at [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com).

**ADDRESSES:** Interested parties are encouraged to file their scoping comments electronically through the Board-sponsored project website at [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com) or through the Board's website at [www.stb.gov](http://www.stb.gov) by clicking on the "File an Environmental Comment" link. Please refer to Docket No. FD 36500 in all correspondence, including E-filings, addressed to the Board. Scoping comments submitted by mail should be addressed to: Joshua Wayland, Surface Transportation Board, c/o VHB, Attention: Environmental Filing, Docket No. FD 36500, 940 Main Campus Dr., Suite 500, Raleigh, NC 27606.

**FOR FURTHER INFORMATION CONTACT:** Joshua Wayland, Office of Environmental Analysis, Surface Transportation Board, c/o VHB, 940 Main Campus Dr., Suite 500, Raleigh, NC 27606, or call OEA's toll-free number for the project at 1-888-319-2337. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339. The website for the Board is <https://www.stb.gov>. For further information about the Board's environmental review process and the EIS, you may also visit the Board-sponsored project website at [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On October 29, 2021, CP and KCS (collectively, the Applicants) filed an application with the Board under 49 U.S.C. §§ 11323-25 seeking its approval of the acquisition of control of KCS by CP. CP and KCS are two of the seven Class I railroads in the United States, which are the largest railroads defined as having annual revenue greater than \$250 million. CP is one of Canada's two major railroads, extending across the country and connecting east and west coast ports. In the U.S., CP connects to Buffalo and Albany, New York and Searsport, Maine. CP also runs south into the U.S. Midwest and connects with KCS in Kansas City, Missouri. KCS is a Class I railroad that extends from Kansas City, Missouri to the Gulf Coast and into Mexico, operating across 10 states in the Midwest and Southeast. CP and KCS provide rail service for a variety of industries, including agriculture, minerals, military, automotive, chemical and petroleum, energy, industrial, and consumer products. CP and KCS are the two smallest Class I railroads, and the combined railroad would be the smallest Class I railroad by revenue. At the request of OEA, the Applicants have submitted information needed by OEA to initiate an environmental review of the proposed acquisition. Based on the information provided by the

Applicants, OEA has determined that the proposed acquisition has the potential to result in significant environmental impacts and that the preparation of an EIS is appropriate.

### **Summary of the Board’s Review Processes for this Proceeding**

The Board will review the proposed transaction through two parallel but distinct processes: (1) the transportation-related process that examines the competitive, transportation, and economic implications of the proposed acquisition on the national rail system, and (2) the environmental process conducted by OEA that assesses the potential environmental effects of the proposed acquisition on the human and natural environment through preparation of an EIS. Interested persons and entities may participate in either process or both. If interested persons or entities are primarily interested in potential environmental impacts on communities, such as noise, vibration, air emissions, grade crossing safety and delay, emergency vehicle access, and other similar environmental issues, the appropriate forum is OEA’s environmental review process. The statute setting forth the procedures for Board review of acquisitions at 49 U.S.C. § 11325 and the Board’s implementing regulations at 49 CFR § 1180.4 (2000) require that the Board complete its review within approximately 15 months after the application is accepted for a “major” transaction such as this, and OEA must complete the environmental process before the Board issues a final decision.

### **Environmental Review Process**

The NEPA process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on that proposal is made. OEA is responsible for ensuring that the Board complies with NEPA (42 U.S.C. §§ 4321-4370m-12) and related environmental statutes, including Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and Section 7 of the Endangered Species Act (16 U.S.C. § 1536).

### **Purpose and Need**

The proposed transaction involves an application for Board authority under 49 U.S.C. §§ 11323-25 for CP to acquire KCS. The proposed transaction is not a federal government-proposed or sponsored project. Thus, the project’s purpose and need should be informed by both the private applicant’s goals and the Board’s enabling statute—the Interstate Commerce Act as amended by the ICC Termination Act, Pub. L. No. 104-188, 109 Stat. 803 (1996). See Alaska Survival v. STB, 705 F.3d 1073, 1084-85 (9th Cir. 2013).

According to the Applicants, the purpose of the proposed acquisition is to combine America’s two smallest but fastest-growing Class I railroads to build a more efficient and more competitive rail network. The Applicants state that the proposed acquisition would further the need for expanded and more capable and efficient transportation infrastructure while simultaneously advancing the interests of current and future customers in more reliable and economical rail transportation options serving important North-South trade flows. The Applicants also state that the proposed acquisition would generate environmental benefits by reducing truck transportation on highways in North America by more than 60,000 trucks

annually, resulting in less congestion, less maintenance, and improved safety on those roads, as well as less noise pollution in the places where those trucks would have driven, and lowered air emissions, including greenhouse gas emissions. Under the Interstate Commerce Act, as amended, the Board “shall approve and authorize a transaction” such as this when, after considering several factors, “it finds the transaction is consistent with the public interest.” 49 U.S.C. § 11324 (b) & (c).

### **Proposed Action and Alternatives**

The Proposed Action in this proceeding is the Applicants’ proposed acquisition of KCS by CP. The combination of these two railroads would be an ‘end-to-end’ merger because the CP and KCS railroad networks do not overlap. The proposed acquisition would result in changes in rail traffic on portions of the combined rail network. Rail traffic would increase on certain rail line segments and would decrease on others. The largest change would occur on the CP mainline between Sabula, Iowa and Kansas City, Missouri, which would experience an increase in rail traffic of approximately 14.4 additional trains per day, on average. Increases in activities at rail yards and intermodal facilities would also occur. In addition, the Applicants propose to make certain capital improvements within the existing rail right-of-way, including adding approximately four miles of double track on the KCS Pittsburg Subdivision, adding approximately five miles of facility working track adjacent to the International Freight Gateway intermodal terminal near Kansas City, and adding or extending 24 passing sidings along the combined network. The Applicants do not propose to construct any new rail lines subject to Board licensing or to abandon any rail lines as part of the proposed acquisition.

The alternative to the Proposed Action is the No-Action Alternative, which would occur if the Board were to deny the proposed acquisition. Under the No-Action Alternative, CP would not acquire KCS.

### **Scoping**

The first stage of the environmental review process is scoping. Scoping is an open process for determining the range of issues that should be examined and assessed in the EIS. In addition to announcing that the Board will prepare an EIS for this proceeding, this Notice also requests comments on the scope of the EIS and presents the schedule of public scoping meetings. With this notice, OEA is soliciting written comments on the scope, alternatives, and issues to be analyzed in the EIS. After the close of the comment period on the scope of the EIS on December 17, 2021, OEA will review all comments received and issue a final scope of study for the EIS. OEA anticipates issuing the final scope of study in early 2022.

### **Draft EIS**

Following the issuance of the final scope, OEA will prepare a Draft EIS for the proposed acquisition. The Draft EIS will identify and analyze alternatives, including the Proposed Action and the No-Action Alternative, and will address potential impacts on the environment as well as issues and concerns identified during the scoping process. The Draft EIS will focus on (1) potential impacts from changes in rail operations along rail line segments and at rail yards that

would experience increases in rail traffic as a result of the proposed acquisition that would exceed OEA's thresholds for environmental review at 49 C.F.R. § 1105.7(e), (2) potential impacts related to changes in vehicular traffic on roadways and at facilities as a result of the proposed acquisition that would exceed OEA's thresholds for analysis, and (3) potential impacts that could result from making capital improvements within the rail right-of-way as part of the proposed acquisition.

The scope of the issues that will be analyzed in the Draft EIS may include potential impacts related to:

- Freight rail capacity and safety;
- Passenger rail capacity and safety;
- Grade crossing safety and delay;
- Motor vehicle traffic and roadway systems;
- Land use;
- Air quality;
- Noise;
- Biological resources;
- Water resources;
- Hazardous waste sites;
- Cultural resources;
- Environmental justice; and
- Cumulative impacts.

The thresholds for assessing environmental impacts from increased rail traffic on rail lines in railroad acquisition proceedings are an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains per day. For air quality impacts, rail lines located in areas classified as being in nonattainment under the Clean Air Act (42 U.S.C. §§ 7401-7671q) are also assessed if they would experience an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains per day. Based on the information provided by the Applicants to date, OEA has identified rail lines in Illinois, Iowa, Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas that would experience increases in rail traffic that would exceed the analysis thresholds as a result of the proposed acquisition.

In addition to assessing the environmental impacts of the proposed acquisition, the Draft EIS will also set forth OEA's preliminary recommendations for environmental mitigation measures. OEA anticipates issuing the Draft EIS in the spring of 2022.

## **Final EIS**

Upon its completion, the Draft EIS will be made available for public and agency review and comment for 45 days. OEA will then prepare and issue a Final EIS that will address the comments on the Draft EIS from the public; and federal, state and local agencies; and other interested parties and will set forth OEA's final recommended environmental mitigation. Then,

in reaching its decision in this case, the Board will consider the Draft EIS, the Final EIS, public comments, and any final environmental mitigation proposed by OEA. OEA anticipates issuing the Final EIS in the fall of 2022.

### **Public Scoping Meetings**

As noted above, scoping is the first stage of the environmental review process. OEA will hold online public scoping meetings at the dates and times listed below. All times are listed in Central Standard Time. There is no need to attend more than one online meeting, but all are welcome to attend as many meetings as desired.

- Tuesday, November 30, 2021, 6-8 p.m.
- Wednesday, December 1, 2021, 2-4 p.m.
- Thursday, December 2, 2021, 6-8 p.m.
- Tuesday, December 7, 6-8 p.m.
- Wednesday, December 8, 2021, 2-4 p.m.
- Thursday, December 9, 2021, 6-8 p.m.

The online public scoping meetings will include a brief presentation by OEA, followed by an opportunity for interested individuals to make oral comments. Participants who have registered in advance will be called upon first to deliver their oral comments and will be given three minutes in which to do so. If time permits, participants who did not register in advance will be given the opportunity to make oral comments. A court reporter will record the oral comments, and OEA staff will be available to listen and make notes of comments.

For information on how to attend an online public scoping meeting, including how to register in advance, please visit the Public Involvement page on the Board-sponsored project website ([www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com)). Although individuals who would like to make oral comments are encouraged to register in advance, registration is not required to attend the public scoping meetings. OEA will consider all comments equally no matter how comments are received, and it is not necessary to attend an online public scoping meeting to provide scoping comments, as OEA will also be accepting written comments during the comment period, which ends on December 17, 2021.

### **Submitting Written Comments on the Scope of the EIS**

Interested parties are encouraged to file their scoping comments electronically through the Board-sponsored project website at [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com). Written comments can also be submitted electronically on the Board's website, [www.stb.gov](http://www.stb.gov), by clicking on the "E-FILING" link. Please refer to Docket No. FD 36500 in all correspondence, including E-filings, addressed to the Board. Scoping comments submitted by mail should be addressed to Joshua Wayland, Surface Transportation Board, c/o VHB, 940 Main Campus Dr. Suite 500, Raleigh, NC 27606, Attention: Environmental Filing, Docket No. FD 36500. Following these directions will help ensure that your comments are considered in the environmental review process for this proposed acquisition.

All comments submitted during scoping will be made available to the public on the Board-sponsored project website and the Board's website. OEA will add commenters' names to its email distribution list to announce the availability of the final scope of the EIS, the Draft EIS, and the Final EIS, which will be posted on the Board's website and the Board-sponsored project website. Commenters without email addresses will receive notifications by U.S. mail if accurate mailing addresses are provided, as needed.

All Board decisions, orders, and notices in this proceeding will also be available on the Board's website at [www.stb.gov](http://www.stb.gov) under "E-Library," and "Decisions & Notices" or "Filings." For further information about the Board's environmental review process and the EIS, you may also visit the Board-sponsored project website at [www.CP-KCSMergerEIS.com](http://www.CP-KCSMergerEIS.com).

By the Board, Danielle Gosselin, Acting Director, Office of Environmental Analysis.