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SERVICE DATE – NOVEMBER 3, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36732¹

CANADIAN PACIFIC KANSAS CITY LIMITED AND THE KANSAS CITY SOUTHERN RAILWAY COMPANY, D/B/A CPKC—ACQUISITION AND OPERATION—CERTAIN RAIL LINE OF MERIDIAN & BIGBEE RAILROAD, L.L.C. IN LAUDERDALE COUNTY, MISS., AND CHOCTAW AND MARENGO COUNTIES, ALA.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1 in Docket No. FD 36732; Notice of Acceptance of Application; Notice of Acceptance of Related Filings for Consideration; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the primary application (Application) filed October 6, 2023, by Canadian Pacific Kansas City Limited (CPKCL), a noncarrier, on behalf of itself and its wholly owned subsidiary, The Kansas City Southern Railway Company (KCS) d/b/a CPKC (collectively, Applicants). The Application seeks Board approval for KCS, a Class I rail carrier, to acquire from Meridian & Bigbee Railroad, L.L.C. (MNBR), a Class III rail carrier, and to operate approximately 50.4 route miles of rail line between Meridian, Miss., and Myrtlewood, Ala. (the Western Line). This proposal is referred to as the “Proposed Transaction.” The Board is also accepting for consideration three related filings.

The Board finds that the Application is complete and that the Proposed Transaction is a minor transaction based upon the preliminary determination that the Proposed Transaction’s anticipated contribution to the public interest in meeting significant transportation needs clearly outweighs any potential anticompetitive effects. 49 CFR 1180.2(b), (c). The Board makes this preliminary determination based solely on the evidence presented in the Application. The Board emphasizes that this is not a final determination and may be revisited or rebutted by subsequent filings and evidence submitted into the record for this proceeding. The Board also adopts a procedural schedule for consideration of the Application and directs Applicants to file certain supplemental information.

¹ This decision embraces the following dockets: CSX Transportation, Inc.—Discontinuance of Trackage Rights Exemption—in Marengo & Choctaw Counties, Ala. & Lauderdale County, Miss., Docket No. AB 55 (Sub-No. 814X); Alabama & Gulf Coast Railway—Trackage Rights Exemption—Kansas City Southern Railway d/b/a Canadian Pacific Kansas City, Docket No. FD 36731; and CSX Transportation, Inc.—Trackage Rights Exemption—Kansas City Southern Railway, Docket No. FD 36730.

Finally, an Environmental Assessment (EA) will be prepared to comply with the Board's obligations under the National Environmental Policy Act, 42 U.S.C. 4321-4370m-11 (NEPA), and related environmental laws.

DATES: The effective date of this decision is November 3, 2023. Applicants are directed to supplement their Application as discussed in this decision by November 20, 2023. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than November 24, 2023, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application and related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by December 8, 2023. Responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the Application must be filed by January 8, 2024. See Appendix (Procedural Schedule). A final decision in this matter will be served no later than 45 days after the date on which the evidentiary proceedings conclude, subject to the completion of environmental review.² Further procedural orders, if any, would be issued by the Board.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board's website. In addition, one copy of each filing must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Applicants' representative, David F. Rifkind, Stinson LLP, 1775 Pennsylvania Avenue, N.W., Suite 800, Washington, DC 20006; and (4) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 740-5567. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: Applicants seek the Board's prior review and authorization pursuant to 49 U.S.C. 11323-25 and 49 CFR part 1180 for KCS to acquire from MNBR and operate the Western Line, which comprises approximately 50.4 route miles of rail line between milepost 0.0± at Meridian and milepost 50.4± at Myrtlewood. (Appl. 1, 21-22.) According to the Application, KCS would also acquire all operating rail property owned by MNBR on the Western Line, including yards at Meridian; Naheola, Ala.; and Myrtlewood; as well as stations at Meridian; Whynot, Miss.; Yantley, Ala.; Cromwell, Ala.; Jachin, Ala.; Naheola; and Myrtlewood. (Id. at 22.)

CPKC's family of operating railroads in the United States includes two Class I rail carriers (including KCS) and four Class II rail carriers. (Id. at 23.) The CPKC system also

² The Board is required to accommodate NEPA's requirements in its decision-making. Therefore, the Board will not issue a final decision on the merits of the Application until the environmental review is complete, including preparation of an EA and opportunity for public comment and participation during the EA process. See Environmental Matters section below.

includes operations in Canada by the Canadian Pacific Railway Company (CPRC) and in Mexico by the Kansas City Southern de México, S.A. de C.V. (KCSM). (Id.) Together, these railroad companies operate approximately 8,600 miles of track in the United States, which connects with approximately 7,700 miles that CPRC operates in Canada and approximately 3,800 miles that KCSM operates in Mexico. (Id.) KCS currently operates or possesses property rights in Alabama, Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. (Id. at 19.)

MNBR, a subsidiary of Genesee & Wyoming, Inc. (G&W), currently operates approximately 168 miles of single-track mainline between Meridian and Montgomery, Ala. (Id. at 21; id., Ex. 2 at 1.) MNBR owns and is the sole operator on the Western Line, where it serves 11 local customers. (Id., App. 2, V.S. Clements 6; id., Ex. 15, Operating Plan 2; id., Ex. 4, Env't Info. 37.) In addition to the Western Line, MNBR operates a rail line known as the Eastern Line that connects to the Western Line at Myrtlewood and extends east to Burkville, Ala.³ (Id. at 21.) MNBR also operates between Burkville (the eastern end of the Eastern Line) and Montgomery pursuant to overhead trackage rights. (Id. at 21; id., Ex. 15, Operating Plan 2.) On the Western Line, MNBR currently interchanges with CPKC and Norfolk Southern Railway Company (NSR) at Meridian. (Id., Ex. 15, Operating Plan 3.) On the Eastern Line, MNBR currently interchanges with Alabama & Gulf Coast Railway LLC (AGR)⁴ at Linden, Ala., and with NSR at Selma, Ala. (Id.) MNBR also interchanges with CSXT at Montgomery. (Id.)

Applicants state that KCS is acquiring the Western Line to establish a direct interchange with CSXT at Myrtlewood, and that the Proposed Transaction is contingent on CSXT acquiring and resuming operations on the Eastern Line. (Id. at 2); see also CSX Transp., Inc.—Acquis. & Operation—Rail Line of Meridian & Bigbee R.R., Docket No. FD 36727. According to Applicants, CPKC trains will handle overhead traffic only and will not provide local service. (Appl., Ex. 4, Env't Info. 37.) Applicants state that they expect to interchange one train pair daily with CSXT, with an average volume of 70 cars per train, for at least the first five years. (Id. at 13; id., Ex. 15, Operating Plan 8.) Applicants represent that, while CPKC intends to grow the volumes served on this route, one train pair daily should provide sufficient capacity to accommodate much of the growth in the first five to ten years. (Id., Ex. 15, Operating Plan 8.)

According to the Application, MNBR would continue to provide local and overhead rail service on the Western Line post-transaction much as it does today, except that it would no longer act as an intermediate bridge carrier for CPKC-CSXT traffic. (Id., Ex. 4, Env't Info. 37.) Specifically, MNBR would retain exclusive trackage rights to operate over the Western Line to (1) serve existing customers and (2) interchange with, and handle freight rail traffic to and from, AGR at or near Myrtlewood for interchange with CPKC and NSR at Meridian. (Id., Ex. 2, Retained Trackage Rights Agreement, art. 2.1.) MNBR would also retain non-exclusive trackage rights to operate over the Western Line to (1) interchange with, and handle freight rail traffic to and from, CSXT at or near Myrtlewood for interchange with NSR at Meridian and

³ MNBR owns the line but leases the underlying right of way from CSX Transportation, Inc. (CSXT). (Appl. 21; id., App. 4, V.S. Walsh 2.) Applicants note that MNBR's lease is scheduled to expire in November 2023. (Id. at 2.)

⁴ AGR is also a subsidiary of G&W. (Id. at 4.)

(2) if requested by CPKC, handle CPKC-CSXT overhead freight rail traffic between Meridian and Myrtlewood. (Id.)

Financial Arrangements. According to Applicants, no cash is involved in the Proposed Transaction and no new securities would be issued in connection with the Proposed Transaction. (Id. at 14, 16.) Applicants state that the only relevant financial arrangement is the in-kind consideration paid by CPKC as provided in the draft purchase agreement (Transaction Agreement).⁵ (Id.) Applicants state that the parties have agreed upon a valuation of the property rights that KCS would acquire, and as consideration, MNBR’s parent company, G&W, would receive equivalent value in the form of rights with respect to two CPKC operating properties in Canada. (Id. at 16.) Applicants further state that the Transaction Agreement entitles G&W to receive additional compensation under certain circumstances. (Id.)

Passenger Service Impacts. Applicants assert that there would be no impact on commuter or other passenger service because no commuter or passenger service moves on the Western Line. (Id., Ex. 15, Operating Plan 12.)

Discontinuances/Abandonments. According to Applicants, CPKC does not anticipate seeking authority for any discontinuances of service or rail line abandonments in relation to the Proposed Transaction. (Id., Ex. 15, Operating Plan 12.) Applicants state that CSXT has agreed to seek authority to discontinue its overhead trackage rights on the Western Line. (Id.); see also CSXT Notice, Oct. 6, 2023, CSX Transp., Inc.—Discontinuance of Trackage Rts. Exemption—in Marengo & Choctaw Cntys., Ala. & Lauderdale Cnty., Miss., AB 55 (Sub-No. 814X). Additionally, Applicants state that, in conjunction with CSXT’s proposed acquisition of the Eastern Line, CPKC anticipates that MNBR will seek authority to discontinue its overhead trackage rights between Burkville and Montgomery. (Appl., Ex. 15, Operating Plan 12); see also MNBR Notice, Oct. 6, 2023, Meridian & Bigbee R.R.—Discontinuance of Incidental Overhead Trackage Rts.—in Lowndes & Montgomery, Ala., AB 1335X.

Public Interest Considerations. Applicants assert that the Proposed Transaction would enhance competition by establishing a direct, efficient interchange with CSXT at Myrtlewood, thereby creating a new east-west Class I freight rail corridor linking CPKC-served markets in Mexico and the southwestern United States with CSXT-served markets in the southeastern United States and beyond. (Appl. 2.) Applicants state that a direct CPKC-CSXT routing would give CPKC and CSXT control over the traffic between origin and destination, enabling them to deliver “a reliable and consistent premium train service.” (Id. at 11.)

According to Applicants, this new freight rail corridor would provide a shorter and more efficient route for existing CPKC-CSXT traffic and a new, highly attractive option for new customers. (Id.) Applicants state that CPKC and CSXT intend to coordinate interchange to minimize dwell and would operate utilizing run-through power. (Id. at 11-12.) Applicants further state that a direct CPKC-CSXT routing over Myrtlewood would reduce the amount of traffic that CPKC currently interchanges with intermediate carriers and would avoid areas such as New Orleans that are difficult to traverse and susceptible to seasonal weather disruptions. (Id.)

⁵ The Transaction Agreement is attached to the Application as Exhibit 2.

at 10-11, 14.) As a result, CPKC anticipates that the Proposed Transaction would reduce the number of work events and yard dwell time associated with existing CPKC-CSXT interline traffic, and in turn reduce operational risks. (*Id.* at 14.) Additionally, Applicants contend that the Proposed Transaction would position CPKC to compete for the new traffic that it states will be generated by several new automotive plants that are planned to open in the southeastern United States in the next few years. (*Id.* at 11.) Applicants also note that CPKC intends to invest approximately \$46 million to upgrade the infrastructure of the Western Line to Class I railroad standards⁶ and approximately \$9 million on bridge repair and improvements, elevating the Western Line from a lower-density line to a competitive east-west corridor.⁷ (*Id.* at 12-13.)

Time Schedule for Consummation. Applicants state that the Proposed Transaction is scheduled to be consummated as soon as practicable after the Board's decision approving the Application becomes effective and upon satisfaction of all other conditions precedent to closing set forth in the Transaction Agreement. (*Id.* at 9.)

Environmental and Historic Preservation Impacts. Applicants state that they include with the Application the information required by 49 CFR 1180.6(a)(8) and 49 CFR part 1105. (Appl. 36.) As discussed below, the Proposed Transaction would exceed the Board's thresholds for environmental review. Therefore, the Board will prepare an EA. Based on the available information, no historic review is required.

Labor Impacts. Applicants state that, as a result of the Proposed Transaction, CPKC anticipates it would hire 12 new, full-time employees in 2024, including one track inspector, one foreman, one machine operator, one trackman, and eight Meridian-based train and engine service employees. (Appl. 17; *id.*, Ex. 15, Operating Plan 13.) Applicants state that no CPKC employee will be adversely affected by the Proposed Transaction. (*Id.* at 17; *id.*, Ex. 15, Operating Plan 13.) Applicants note that employees adversely affected by the Proposed Transaction would be entitled to the employee protective conditions and other procedures adopted in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Railway v. United States*, 609 F.2d 83 (2d Cir. 1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc., 6 I.C.C.2d 799, 814-26 (1990), *aff'd sub nom. Railway Labor Executives' Association v. Interstate Commerce Commission*, 930 F.2d 511 (6th Cir. 1991). (Appl. 16.)

Related Filings. Three verified notices of exemption and an application for acquisition and operation authority were filed in connection with the Proposed Transaction.⁸

⁶ Applicants state that CPKC is planning an extensive track maintenance and rehabilitation program to improve the track to support operations at a sustained maximum speed of 25 MPH, with the potential for additional improvements in the future. (Appl. 12.)

⁷ Applicants further note that CPKC intends to embark on a multi-year bridge rehabilitation program, which it estimates will cost over \$100 million. (*Id.* at 12-13.)

⁸ Also, on September 28, 2023, Applicants filed a motion for protective order in Docket No. FD 36732, which was granted by decision served on October 11, 2023.

CSXT Acquisition of Trackage Rights. In Docket No. FD 36730, CSXT filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights from KCS over approximately two miles of rail line between milepost 50.4 and milepost 48.4 on the Western Line. CSXT states that the trackage rights are related to its proposed acquisition of the Eastern Line between Burkville and Myrtlewood in Docket No. FD 36727. CSXT states that the overhead trackage rights would allow CSXT to access a point on the Western Line to interchange traffic with AGR and MNBR at Myrtlewood. CSXT states that it intends to consummate this transaction on or shortly after the date it acquires the Eastern Line from MNBR. As a condition to use of this exemption, CSXT states that any employees adversely affected by the transaction would be protected by the conditions set forth in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

AGR Acquisition of Trackage Rights. In Docket No. FD 36731, AGR, a Class II rail carrier, filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights from CPKC over approximately 8.4 miles of rail line between milepost 50.4± and milepost 42.0±. AGR currently holds incidental operating rights from Linden to Myrtlewood over the Eastern Line for purposes of interchange with MNBR. AGR intends to use the overhead trackage rights sought in Docket No. FD 36731 for continued interchange with MNBR and to interchange with CSXT at Myrtlewood following CSXT's acquisition of the Eastern Line.⁹ AGR states that it intends to consummate the agreement and commence operations either on the effective date of its notice or upon the consummation of CPKC's acquisition of the Western Line, whichever is later. As a condition to use of this exemption, AGR states that any employees adversely affected by the transaction would be protected by the conditions set forth in Norfolk & Western Railway—Trackage Rights, 354 I.C.C. 605, as modified in Mendocino Coast Railway—Lease & Operate, 360 I.C.C. 653.

CSXT Discontinuance of Trackage Rights. In Docket No. AB 55 (Sub-No. 814X), CSXT filed a verified notice of exemption under the class exemption at 49 CFR part 1152, subpart F to discontinue overhead trackage rights over the entirety of the Western Line, including “head and tail operating room” at both ends, for a total distance of approximately 51 miles. CSXT states that it has not moved any traffic over the line during the past two years and that it intends to consummate its discontinuance authority on the same day that CPKC consummates its proposed acquisition of the Western Line. As a condition to the use of this exemption, CSXT states that any employees adversely affected by the transaction would be protected by the conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

⁹ Applicants state that CPKC would grant AGR trackage rights to Naheola Yard in order to give AGR the flexibility to interchange with MNBR at Naheola Yard instead of Myrtlewood if operating conditions warrant, e.g., if for some reason, the designated Myrtlewood yard track cannot accommodate the volume of MNBR's and AGR's interchange traffic. (Appl., Ex. 15, Operating Plan 8.)

CSXT is seeking this discontinuance authority under the Board’s two-year-out-of-service class exemption procedures, although another carrier, MNBR, has been providing local service over the same line during that two-year period. In Austin Area Terminal Railroad—Discontinuance of Service Exemption—in Bastrop, Burnet, Lee, Llano, Travis, & Williamson Counties, Tex., AB 578X (STB served Nov. 3, 2023), the Board recently reaffirmed that to qualify for the two-year-out-of-service class exemption a carrier must certify that *no local traffic* has moved over the line for two years, not just its own traffic. Accordingly, the Board upheld a prior decision that rejected a verified notice because the required certification concerning the absence of local traffic on the line was deficient. *Id.* at 1. The Board noted, however, that carriers may petition the Board for individual exemptions under 49 U.S.C. 10502(a) and granted on its own motion an individual exemption authorizing the discontinuance. *Id.* at 4-5.

Although, per Austin Area Terminal Railroad, CSXT may not proceed under the Board’s two-year-out-of-service class exemption procedures, the Board will nonetheless consider whether to grant an individual exemption for this discontinuance authority on its own motion as it considers the Proposed Transaction. To that end, CSXT may supplement the record in Docket No. AB 55 (Sub-No. 814X) by November 20, 2023, with any additional information and argument it would like the Board to consider in determining whether the proposed discontinuance meets the exemption standard of 49 U.S.C. 10502(a).

CSXT Acquisition of the Eastern Line. In Docket No. FD 36727, CSXT seeks the Board’s prior review and authorization pursuant to 49 U.S.C. 11323-25 and 49 CFR part 1180 to acquire from MNBR and to operate the Eastern Line. The Eastern Line consists of two segments totaling approximately 93.68 miles: (1) extending from milepost XXB 189.00 near Burkville to milepost XXB 222.00 at Western Junction, a distance of approximately 30.22 miles;¹⁰ and (2) extending from a connection with the first segment at Western Junction, milepost OOR 716.25 to milepost ORS 779.71 near Myrtlewood, a distance of approximately 63.46 miles. The Eastern Line includes Selma Yard, at Selma, and the following stations: Myrtlewood, Linden, Thomaston, Safford, Orville, Beloit, Selma, Industrial Lead, Tyler, Benton, Whitehall, and Burkville. Together with the Proposed Transaction, CSXT’s proposed acquisition of the Eastern Line would create a direct CPKC-CSXT interchange at Myrtlewood. While CPKC states in the Application that the Proposed Transaction is contingent on CSXT acquiring and resuming operations on the Eastern Line, CSXT states in its application that its acquisition of the Eastern Line could proceed regardless of whether the CPKC acquires the Western Line.¹¹

¹⁰ By decision served November 3, 2023, in Docket No. FD 36727, CSXT has been asked to confirm the total distance of the Burkville to Western Junction segment. See CSX Transp., Inc.—Acquis. & Operation—Rail Line of Meridian & Bigbee R.R., FD 36727 et al., slip op. at 3 n.3 (STB served Nov. 3, 2023).

¹¹ On October 25, 2023, NSR filed a request (NSR’s Request) for the Board to consolidate this proceeding with the proceeding in Docket No. FD 36727 regarding the CSXT’s acquisition of the Eastern Line (and all of the related filings in both dockets) and to hold the consolidated proceeding in abeyance, including the Board’s determination of whether to designate the transactions as minor or significant, until such time that CSXT and CPKC provide certain additional information, primarily regarding the potential effects of changes in CPKC-

PRIMARY APPLICATION AND RELATED FILINGS. The Board finds that the Proposed Transaction would be a “minor transaction” under 49 CFR 1180.2(c), and the Board accepts the Application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR pt. 1180. Additionally, the Board is accepting for consideration the related filings in Docket Nos. FD 36730 and FD 36731, which are also in compliance with the applicable regulations.¹² As discussed below, the Board will require Applicants to supplement the record and reserves the right to require further supplemental information as necessary to complete the record.

When a transaction does not involve the merger or control of two or more Class I railroads, the Board’s treatment differs depending upon whether the transaction would have “regional or national transportation significance.” 49 U.S.C. 11325. Under 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as “minor”—and thus not having regional or national transportation significance—if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects, or (2) any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is to be classified as “significant” if neither of these determinations can be made. (Id.)

The Board finds the Proposed Transaction to be a “minor transaction” because it appears from the face of the Application that the efficiency and other public interest benefits would clearly outweigh the potential anticompetitive effects of the transaction. The Proposed

CSXT traffic flows on other traffic. On October 27, 2023, Applicants replied in opposition to NSR’s request, arguing that the Proposed Transaction builds upon but is not part of CSXT’s proposed acquisition of the Eastern Line and is properly classified as a minor transaction. (CPKC Reply 4-6, Oct. 27, 2023.) Applicants further argue that the Application appropriately addresses the cumulative effects of the Proposed Transaction against the backdrop of CSXT’s proposed transaction. (Id. at 6-10.) On October 31, 2023, Illinois Central Railroad Company filed in support of NSR’s request for consolidation, and CPKC responded the same day. For the reasons given above, the current record supports a minor designation. The Board will not order the parties to submit a consolidated application at this time, though as discussed below, the Board’s Office of Environmental Analysis (OEA) has determined that it is appropriate to prepare one EA to encompass both the Western Line and the Eastern Line. The Board may further address the consolidation issue in a subsequent decision. Additionally, the Board will not hold the proceedings in abeyance, as the Board is requiring Applicants to supplement the record as discussed further in this decision.

¹² In Docket No. FD 36727, the Board accepted for consideration CSXT’s application to acquire the Eastern Line. See CSX Transp., Inc.—Acquis. & Operation, FD 36727 et al., slip op. at 8. Additionally, as discussed above, CSXT’s verified notice of exemption in Docket No. AB 55 (Sub-No. 814X) does not qualify for the class exemption procedures under which it was filed; however, the verified notice will be accepted as evidence bearing on consideration of whether to grant CSXT an individual exemption on the Board’s own motion.

Transaction, in conjunction with CSXT's acquisition of the Eastern Line, would create a new, direct Class I to Class I connection that could provide potential improvements in the efficient movement of existing and future intermodal, automotive, and other interline traffic between the Southeastern United States and the Southwestern United States and Mexico. (See Appl. 5.) A direct CPKC-CSXT route has the potential to offer faster transit times and more efficient and reliable service, (see *id.*, App. 3, V.S. Wahba 6), giving CPKC a new ability to compete effectively against existing interline routing options. It could also reduce the amount of traffic that CPKC currently interchanges with intermediate carriers—including with the MNBR at Meridian—and allow certain movements to avoid areas such as New Orleans that are difficult to traverse and susceptible to seasonal weather disruptions. (See *id.* at 14.) Diverting existing traffic to the new Myrtlewood gateway from congested gateways such as New Orleans could improve the efficiency of operations at those existing gateways. Moreover, adding a new gateway would provide redundancy in the national network and could reduce the economic impact of future outages in other areas (e.g., if rail infrastructure in the New Orleans area becomes unusable for a prolonged period due to flooding). The shorter transit times could also benefit shippers by lowering equipment costs and inventory carrying costs. (See *id.*, App. 3, V.S. Wahba 2.)

Applicants represent that there would be no two-to-one shippers as a result of the Proposed Transaction, i.e., no shipper would lose access to a second rail carrier. (See *id.* at 14-15.) They further assert that, given MNBR's retained trackage rights (including pricing authority) with no limitations on interchange, existing shippers on the Western Line could receive the same rail service and have the same rail options currently available. (See *id.* at 2, 14; *id.*, Ex. 2, Transaction Agreement, § 2.06(a).) Indeed, it appears that, given Applicants' anticipated investments in the Western Line, customers of both Applicants and MNBR would benefit from more efficient service over upgraded and safer facilities. (See *id.* at 12-13, 15.) There is a potential that traffic currently interchanged with other carriers may be diverted to the Myrtlewood interchange post-transaction (as discussed in the section below), and this has implications for competition, including a potential increase in competition to the benefit of shippers. The Board finds, at least preliminarily, that the potential risks of anticompetitive effects are clearly outweighed by the Proposed Transaction's anticipated benefits.

For these reasons, based on the information provided in the Application, the Board finds the Proposed Transaction to be a minor transaction under 49 CFR 1180.2(c). This determination should not be read to mean that the Proposed Transaction is insignificant or of little importance. Indeed, after the record is fully developed, the Board will conduct a careful review before making a final determination as to whether the Proposed Transaction would substantially lessen competition, create a monopoly, or restrain trade, and whether any anticompetitive effects would be outweighed by the public interest. See 49 U.S.C. 11324(d)(1)-(2). The Board may also consider imposing conditions on the Proposed Transaction.

SUPPLEMENTAL INFORMATION. The Board notes that the Proposed Transaction, in conjunction with CSXT's proposed acquisition of the Eastern Line, may result in shifts to traffic flows, including traffic currently interchanged with a third-party carrier. For example, post-transaction, CPKC anticipates being able to use the new connection at Myrtlewood to interchange directly with CSXT automotive traffic moving between KCSM-served locations in

Mexico and CSXT-served locations on the East Coast, (*see id.*, App. 3, V.S. Wahba 5-7), whereas today, KCSM interchanges that traffic with a bridge carrier at Laredo, Tex., which carries the traffic to/from CSXT interchanges at East St. Louis, Memphis, and New Orleans, (*id.*, App. 3, V.S. Wahba 5 (“The available direct links between the CPKC and CSXT networks generally do not provide competitive options for this traffic category . . . ”)). In order to assist the Board in its consideration of the Application and in making the determination of what—if any—conditions might be warranted, Applicants will be directed to supplement the Application by November 20, 2023, with certain additional information. *See* 49 CFR 1180.4(c)(2)(v) (“The applicant shall submit such additional information to support its application as the Board may require.”).

In CPKC’s reply to NSR’s Request, CPKC maintains that it is “bound by KCSR’s 2004 commitment not to close the Laredo gateway,” and hence that “UP will continue to have the opportunity to compete to participate in flows of traffic between Mexico and CSXT destinations in the U.S. Southeast via Laredo and New Orleans.” (CPKC Reply 5 n.3, Oct. 27, 2023.) CPKC also states, “[t]he newly invigorated rail service that CPKC is pursuing via this transaction is an outgrowth of the Board’s approval of the CP/KCS transaction, which for example enabled the combined CPKC system to offer improved transportation solutions—and thereby to compete more effectively against its much larger rivals—for traffic of automotive manufacturers and parts suppliers.” (*Id.* at 2-3.) In making its preliminary determination here, the Board recognizes the effects of the conditions it imposed on the merger between Canadian Pacific Railway and Kansas City Southern Railway regarding gateways and related data reporting requirements. *See Can. Pac. Ry.—Control—Kan. City S. (CPKC Approval Decision)*, FD 36500 et al, slip op. at 12-13 (STB served Mar. 15, 2023). These conditions decrease the likelihood of any substantial lessening of competition.¹³ Nonetheless, in a supplemental filing, CPKC will be directed to describe in detail the scope of “KCSR’s 2004 commitment not to close the Laredo gateway,” the intersection between the 2004 commitment and the conditions imposed in *CPKC Approval Decision*, FD 36500 et al., and the commitment’s potential implications on the Board’s final analysis of the competitive effects of the Proposed Transaction.

Additionally, in its supplement, to further inform the Board’s analysis, CPKC additionally shall provide a list of all origination/destination areas,¹⁴ including gateways, for the projected diverted and new traffic; identify any interchange partners participating in current movements of this traffic as well as projected diverted and new movements (if applicable);¹⁵ and provide the associated volumes by origination/destination areas for projected diverted and new traffic. The Board recognizes that CPKC was recently required to produce substantial

¹³ The Board notes that CPKC states that there is not “some secret overarching agreement between CPKC and CSXT that has not been put before the Board and that somehow implicates the competitive landscape.” (CPKC Reply 5-6, Oct. 27, 2023.)

¹⁴ Origination/destination areas may be as broad as a state or group of states. CPKC shall provide a justification for whatever grouping metric it uses for its analysis and shall specify the gateway(s) used by traffic for the origination or destination areas.

¹⁵ Information should include the total count of cars interchanged, categorized by two-digit Standard Transportation Commodity Code and broken out by interchange partner.

information about its network and the markets it serves in Canadian Pacific Railway—Control—Kansas City Southern, Docket No. FD 36500 et al. Some of the work involved with that production may be relevant to the Proposed Transaction, potentially lowering the burden on CPKC of producing the information requested here, which the Board recognizes goes beyond what is generally required for a minor transaction under 49 CFR 1180.4 (and therefore, not necessarily applicable to future minor transactions).

To assist the Board in evaluating the Proposed Transaction, in conjunction with CSXT's proposed acquisition of the Eastern Line, the Applicants will be directed to provide additional operational information. As NSR notes, the Application does not include an analysis of the potential operational impacts to shippers or Amtrak passengers on rail segments outside the Eastern Line and Western Line. (NSR Reply 12-13.) Accordingly, the Board directs Applicants to detail any impacts anticipated on other rail operations, including (1) potential impacts on any passenger rail operations that involve crossing the Western Line and (2) delays that may be occasioned because a line is scheduled to handle increased traffic due to route consolidations or traffic diversions. Applicants also shall provide a description of the effect of any deferred maintenance or delayed capital improvements on the subject lines and associated equipment. This should include the schedule for eliminating such deferrals, details of general system rehabilitation (including rehabilitation relating to the transaction, such as proposed yard and terminal modifications), and how these activities will lead to service improvements or operating economies anticipated from the transaction.

PROCEDURAL SCHEDULE. Applicants are directed to supplement their Application as discussed in this decision by November 20, 2023. Any person who wishes to participate in this proceeding as a Party of Record must file a notice of intent to participate no later than November 24, 2023; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application, including filings by DOJ and DOT, must be filed by December 8, 2023; and responses to comments, protests, requests for conditions, and other opposition on the transportation merits of the Proposed Transaction must be filed by January 8, 2024.¹⁶ The Board is required to issue “a final decision by the 45th day after the date on which it concludes the evidentiary proceedings,” 49 U.S.C. 11325(d)(2), and will do so here, subject to the completion of environmental review.¹⁷ The Board reserves the right to adjust the schedule as circumstances may warrant. The adopted procedural schedule is in the Appendix to this decision.

¹⁶ Applicants propose a round of briefs due on the same day that the evidentiary record is statutorily required to close. (Appl. 8); see also 49 U.S.C. 11325(d)(2). But they provide no explanation as to the intent or necessity of these additional briefs, which are not contemplated by the governing statute or the Board's regulations. See 49 U.S.C. 11325(d)(2); 49 CFR 1180.4(e)(2). Accordingly, the Board has not included the proposed briefs in the procedural schedule adopted here.

¹⁷ This notice will be published in the Federal Register on November 8, 2023, and all subsequent deadlines will be calculated from this date. Deadlines for filings are calculated in accordance with 49 CFR 1104.7(a).

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than November 24, 2023, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Applicants' representative.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a "Non-Party." Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that they have complied with the service requirements set forth at 49 CFR 1180.4 and any other requirements set forth in this decision.

DISCOVERY. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

SERVICE ON PARTIES OF RECORD. Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of this decision, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of this decision, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this decision must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

ENVIRONMENTAL MATTERS. NEPA requires that the Board take environmental considerations into account in its decision-making. Under the Board's environmental regulations, an acquisition under 49 U.S.C. 11323 generally requires the preparation of an EA where certain thresholds would be exceeded. See 49 CFR 1105.6(b)(4). The thresholds for assessing environmental impacts from increased rail traffic on rail lines in acquisitions are an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains per day. 49 CFR 1105.7(e)(5). For air quality impacts, rail lines located in areas classified as being in "nonattainment" areas 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% (measured in gross ton miles annually) or an increase of at least three trains per day. 49 CFR 1105.7(e)(5)(ii).

In the Application, Applicants submitted environmental information, including estimated volume increases on the Western Line by track segment (Exhibit 4). The estimated volume for each segment includes transaction-related projections for five years (through 2029), as well as no-action projections (traffic including increases that would occur without the Proposed Transaction). CPKC states that there would be a transaction-related increase of one train a day

in each direction on the Western Line, an overall addition of two trains per day, which would result in an increase in gross-ton miles in excess of 100%. (Appl., Ex. 4, Env't Info. 41-42.) According to Applicants, the Proposed Transaction would not result in traffic being diverted to other transportation systems or modes. (Appl., Ex. 4, Env't Info. 40.)

The NEPA Process. OEA has reviewed the data provided by Applicants, including their traffic projections through 2029. Based on the current record, neither the 8-trains-per-day nor the 3-trains-per-day thresholds for environmental review will be exceeded as a result of the Proposed Transaction. However, because there will be an increase in gross-ton miles in excess of 100% on the line segments involved in the Proposed Transaction, the gross-ton mile threshold will be exceeded and therefore, OEA will prepare an EA. See 49 CFR 1105.7(e)(5)(i); 1105.10(b). For expediency and efficiency, OEA has determined that it is appropriate to prepare one EA to encompass both the Western Line and the Eastern Line (including the Burkeville-Montgomery segment) because these transactions involve contiguous segments of the same rail line; indeed, CPKC's acquisition of the Western Line is contingent on CSXT's acquisition of the Eastern Line, and both CPKC and CSXT provided volume forecasts showing exceedance of the gross-ton mile thresholds based on each transaction being authorized and implemented. (Appl., Ex. 4, Env't Info. 38); see also CSXT Appl., Ex. 4, Env't Info. 6-7, Oct. 6, 2023, CSX Transp., Inc.—Acquis. & Operation—Rail Line of Meridian & Bigbee R.R., FD 36727. In addition, the environmental impacts from both transactions are expected to be very similar and both applications were filed at the same time, allowing environmental review of the two transactions to proceed simultaneously.

The EA process will address potential environmental impacts of activities associated with both the Western Line and the Eastern Line, including changes in rail line traffic and rail yard activity. OEA will prepare a Draft EA and issue it for public comment. Following the close of the comment period, OEA will prepare a Final EA. The Final EA will address the comments received on the Draft EA, present OEA's final conclusions regarding the potential environmental impacts of the transactions, and set forth OEA's final recommendations to the Board, including recommended environmental mitigation measures.¹⁸ The Board then will consider the entire record, including the record on the transportation merits, the Draft EA, the Final EA, and all public comments received. In its final decision, the Board will decide whether the Proposed Transaction should be authorized and, if so, what conditions, including environmental mitigation conditions, to impose.

Historic Review. The Board's regulations provide that historic review normally is not required for acquisitions where there would be no significant change in operations and properties 50 years old and older would not be affected. See 49 CFR 1105.8. Based on the current record, no historic review is required.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the service list as a

¹⁸ The Board's general practice has been to mitigate only impacts resulting directly from a proposed transaction, and not to require mitigation for existing conditions and existing railroad operations. See 49 CFR 1180.1(f)(1).

Party of Record or Non-Party. All other interested persons are encouraged to obtain copies of decisions, orders, and notices via the Board's website at www.stb.gov.

ACCESS TO FILINGS. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The Application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at www.stb.gov. In addition, the Application may be obtained from Applicants' representative at the address indicated above.

It is ordered:

1. The Application filed in Docket No. FD 36732 and the related filings in Docket Nos. FD 36730 and FD 36731 are accepted for consideration.
2. Applicants shall file the supplemental information described above by November 20, 2023.
3. The filing in Docket No. AB 55 (Sub-No. 814X) is accepted to the extent discussed above. CSXT may file supplemental evidence and argument in support of an individual exemption in that docket by November 20, 2023.
4. The parties to this proceeding must comply with the procedural schedule shown in the Appendix to this decision and the procedural requirements described in this decision.
5. NSR's request to hold this proceeding in abeyance is denied.
6. This decision is effective on November 3, 2023.

Decided: November 3, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz. Board Member Schultz, joined by Board Member Fuchs, concurred with a separate expression.

BOARD MEMBER SCHULTZ, with whom BOARD MEMBER FUCHS joins, concurring:

I agree that the Proposed Transaction should be classified as minor and that the record at this stage of the proceeding indicates that any anticompetitive effects of the Proposed Transaction will clearly be outweighed by the Proposed Transaction's anticipated contribution to the public interest in meeting significant transportation needs. On this record, I would not order Applicants to submit this extensive amount of supplemental information at this stage in the proceeding. While the Board has the authority to require the filing of supplemental information, the better course here would have been to assess whether any supplemental information is necessary after full analysis of all comments and requests for conditions and

again after responses to those comments and requests, when the Board would benefit from the full views of shippers, railroads, and the broader public.

APPENDIX

PROCEDURAL SCHEDULE

October 6, 2023	Application filed.
November 3, 2023	Board notice of acceptance of application served.
November 20, 2023	Applicants' supplemental information due.
November 24, 2023	Notices of intent to participate in this proceeding due.
December 8, 2023	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings of DOJ and DOT, due.
January 8, 2024	Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the application due.
TBD	Record closes.
No later than 45 days after close of the record	Date by which a final decision will be served. ¹⁹
30 days after service	Board's decision becomes effective.

¹⁹ Under 49 U.S.C. 11325(d)(2), the Board must issue its final decision within 45 days of the close of the evidentiary record. However, under NEPA, the Board may not issue a final decision until after the required environmental review is complete. In the event the environmental review process is not able to be concluded in sufficient time for the Board to meet the 45-day provision in § 11325(d)(2), the Board will issue a final decision as soon as possible after that process is complete.