

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

[STB Finance Docket No. 33556 (Sub-No. 2) et al.]

**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; et al.**

**AGENCY:** Surface Transportation Board.

**ACTION:** Decision No. 21; Notice of Acceptance of Responsive Applications.

**SUMMARY:** The Board is accepting for consideration the responsive application filed by Ontario Michigan Rail Corporation (OMR)<sup>1</sup> in STB Finance Docket No. 33556 (Sub-No. 2), and the responsive application filed by Canadian Pacific Railway Company (CPR) and St. Lawrence & Hudson Railway Company Limited (SL&H) in STB Finance Docket No. 33556 (Sub-No. 3). The responsive applications relate to the primary application filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW), Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC).<sup>2</sup>

**DATES:** The effective date of this decision is November 17, 1998. Comments regarding the responsive filings must be filed with the Board by December 11, 1998. Rebuttal in support of the responsive filings must be filed with the Board by January 11, 1999. Briefs (not to exceed 50 pages for the primary applicants and not to exceed 25 pages for all other parties) must be filed with the Board by February 19, 1999.<sup>3</sup>

**ADDRESSES:** An original and 25 copies of all comments referring to the responsive applications in STB Finance Docket No. 33556 (Sub-No. 2) and STB Finance

Docket No. 33556 (Sub-No. 3) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33556, 1925 K Street, N.W., Washington, DC 20423-0001.<sup>4</sup>

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.<sup>5</sup> Further details are discussed below.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2514; FAX: (202) 219-3289] and on each of applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036-1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710.

In addition, one copy of all comments filed in these proceedings must be

<sup>4</sup>In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision. Parties must clearly label each formal filing with an identification acronym and number. See 49 CFR 1180.4(a)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing.

<sup>5</sup>In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the **Federal Register** at 63 FR 28442-44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

served on the responsive applicants' representatives: Fritz R. Kahn, Esq., Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, N.W., Washington, D.C. 20005-3934 (representing OMR); and Terence M. Hynes, Esq., Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006 (representing CPR and SL&H).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33556. See the service list attached to Decision No. 9 (served September 28, 1998), as modified in Decision No. 13 (served October 20, 1998).<sup>6</sup>

**FOR FURTHER INFORMATION CONTACT:** Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

**SUPPLEMENTARY INFORMATION:** By application filed with the Board on July 15, 1998, the primary applicants seek approval and authorization under 49 U.S.C. 11321-26 for: (1) The acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp. and through it of ICR and its railroad affiliates; and (2) the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. A related application for terminal trackage rights in Springfield, IL, was also filed in STB Finance Docket No. 33556 (Sub-No. 1), seeking relief contingent upon approval of the primary application. In Decision No. 6, served August 14, 1998, and published that day in the **Federal Register** at 63 FR 43744-51, the Board accepted for consideration the primary application and the related filing. In Decision No. 11, served October 2, 1998, the Board extended the procedural schedule at the request of various parties and directed that inconsistent and responsive applications be filed by October 27, 1998.<sup>7</sup>

<sup>6</sup>Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. See Decision No. 6 (served Aug. 14, 1998), slip op. at 9.

<sup>7</sup>By motion filed November 2, 1998 (designated as ECA-8), Exxon Chemical Americas (ECA) requests that the public version of its comments filed on October 27, 1998, be reclassified as confidential because its public version filed on that date inadvertently included information that should have been redacted. ECA states that it has served corrected copies of the public version of its comments on all parties of record. ECA's motion will be granted.

<sup>1</sup>Although OMR referred to its filing as an "inconsistent application," the relief sought by OMR is conditional to, rather than in lieu of, approval of the primary application. Accordingly, OMR's filing is a responsive application and will be referred to as such. See 49 CFR 1180.3(h).

<sup>2</sup>CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN. IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

<sup>3</sup>The briefs should succinctly present all arguments on which parties intend to rely, supported by clear references to any portions of the evidentiary record supporting their positions.

### Responsive Filings: Conditions Requested

In STB Finance Docket No. 33556 (Sub-No. 2), as a condition to any approval of the CN/IC transaction, OMR seeks to require CN to convey its 50% interest in the CNCP Niagara-Detroit Partnership (NDP), owner of the Detroit River Tunnel Company (DRTC), to OMR.<sup>8</sup> In STB Finance Docket No. 33556 (Sub-No. 3), CPR seeks a similar condition requiring CN to convey its one-half interest in DRTC to CPR's affiliate SL&H, which would result in CPR's indirect ownership of 100% of DRTC.

In its application, OMR requests that its proposed divestiture be found to be a minor transaction.<sup>9</sup> Even if OMR's requested relief is a minor transaction, a responsive applicant is required to submit certain information, including operational data and a discussion of the public interest justification in support of the application. See 49 CFR 1180.6 and 1180.8. The filing by OMR provides rudimentary financial and operational evidence. On the basis of this information alone, however, the Board will be unable to determine whether there will be significant changes in traffic patterns or whether OMR's proposed acquisition and operation of the DRTC will be in the public interest in terms of OMR's ability to cover, through tunnel operating profits, the fixed charges that will arise from the proposed financing.

We previously reserved the right to require the filing of supplemental information from any party or individual if necessary to complete the record in this matter. See Decision No. 6, slip op. at 7 n.14, 63 FR at 43747 n.14. To enable the Board to assess the impact of OMR's proposal, OMR will be required to submit no later than December 1, 1998, the following information: (1) the operational data prescribed at 49 CFR 1180.8(b); (2) information regarding carrier usage of the existing tunnel and the impact of projected traffic increases on carrier

<sup>8</sup>In addition, OMR seeks the divestiture of CN's one-half interest in The Canada Southern Railway Company and The Niagara River Bridge Company, switching railroads also owned by NDP. OMR states that these rail properties are potential sources of needed traffic to support the DRTC.

<sup>9</sup>Although OMR filed a description of its anticipated inconsistent application on the August 31, 1998 due date for such submissions, OMR failed to file a petition for waiver or clarification with respect to its proposed relief. In Decision No. 7 (served September 18, 1998), however, we granted CPR's petition for waiver or clarification by finding, among other things, that CPR's similar divestiture proposal constituted a minor transaction. A similar conclusion is warranted here with respect to OMR's proposal.

facilities on both sides of the Detroit River; (3) identity and amount of financing for each expected source of capital, as outlined on page 2 of the verified statement of Patrick J. O'Neill; (4) method(s) and amount of financing expected to be undertaken by any prospective partnership group to fund construction and ongoing operations of the proposed Detroit-Windsor Tunnel; (5) balance sheet of OMR giving effect to construction and financing of the tunnel, as estimated for the beginning of the first year of post-construction operations, including the proposed method of handling interest on debt financing during construction; and (6) income statements showing expected revenues, expenses, fixed charges, and net income from operations for the first year of operations and for a normal year of operations.

### Responsive Filings Accepted

The responsive applications filed by OMR, CPR, and SL&H are in substantial compliance with the applicable regulations. We are accepting for consideration the responsive application by CPR and SL&H. Subject to the supplemental filing requirement above, we are accepting for consideration the responsive application by OMR.

### Public Inspection

The responsive filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. The responsive filings may also be obtained upon request from the applicants' representatives named above.

### Proceedings Consolidated

The responsive filings in STB Finance Docket No. 33556 (Sub-Nos. 2 and 3) are consolidated for disposition with the primary application in STB Finance Docket No. 33556 (and the embraced Sub-No. 1 proceeding).

### Comments May Be Submitted

Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as "Response[s]" in the procedural schedule) must be filed with the Board by December 11, 1998. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in

support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

### Requests for Affirmative Relief Will Not Be Accepted

Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33556, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

### Electronic Submissions

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 26, 1998, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.<sup>10</sup>

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

<sup>10</sup>The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

*It is ordered:*

1. The responsive applications in STB Finance Docket No. 33556 (Sub-Nos. 2 and 3) are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33556 (and the embraced Sub-No. 1 proceeding), subject to the requirement that OMR file the supplemental information outlined in this decision no later than December 1, 1998.

2. The parties shall comply with all provisions as stated above.

3. The motion in ECA-8 to reclassify as confidential the public version of ECA's comments filed on October 27, 1998, is granted.

4. This decision is effective on November 17, 1998.

Decided: November 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 98-30704 Filed 11-16-98; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

[Treasury Order Number 101-05]

**Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury**

Dated: October 29, 1998.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), and Executive Order (E.O.) 11822, dated December 10, 1974, it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Chief of Staff shall report directly to the Secretary and shall exercise supervision over the Director, Secretary's Scheduling Office, and the Executive Secretary.

3. The Executive Secretary shall report directly to the Chief of Staff and shall exercise supervision over the functions of the Executive Secretariat Correspondence Unit; the Office of Public Correspondence; and, for purposes of administrative and

managerial control, over the Special Assistant to the Secretary (National Security). The Special Assistant to the Secretary (National Security) shall report to the Secretary and the Deputy Secretary.

4. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)  
Under Secretary (Domestic Finance)  
Under Secretary (Enforcement)  
General Counsel

Assistant Secretary (Legislative Affairs and Public Liaison)

Assistant Secretary (Public Affairs)

Assistant Secretary (Economic Policy)

Assistant Secretary (Tax Policy)

Inspector General

Assistant Secretary (Management) and Chief Financial Officer

Commissioner of Internal Revenue

Comptroller of the Currency

Director, Office of Thrift Supervision

5. The Assistant Secretary (Management) serves as the Department's Chief Financial Officer pursuant to Chapter 9 of Title 1, U.S.C., and serves as the Department's Chief Operating Officer for purposes of the Presidential Memorandum, "Implementing Management Reform in the Executive Branch," dated October 1, 1993.

6. The Deputy Assistant Secretary (Information Systems) reporting to the Assistant Secretary (Management) and Chief Financial Officer is designated as the Department's Chief Information Officer pursuant to Division E of the Clinger-Cohen Act of 1996, and E.O. 13011, dated July 16, 1996, and shall have direct access to the Secretary to the extent required by that Act and related statutes.

7. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary in that official's own title is hereby affirmed and ratified as the action of the Secretary.

8. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by [the Deputy Secretary or] any of these officials in that official's own title is hereby affirmed and ratified as the action of the Secretary.

9. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. The following individuals, in the order of the date on which they were first appointed to a position within the Department requiring appointment by the President by and with the advice and consent of the Senate:

- Under Secretary (International Affairs);

- Under Secretary (Domestic Finance); and

- Under Secretary (Enforcement);

c. General Counsel; and

d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

10. *Cancellation.* Treasury Order 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated May 4, 1995, is superseded as of this date.

**Robert E. Rubin,**

*Secretary of the Treasury.*

**Attachment**