



SURFACE TRANSPORTATION BOARD

[Docket No. FD 36727]

CSX Transportation, Inc.—Acquisition and Operation—Rail Line of Meridian & Bigbee Railroad, L.L.C.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 1; Notice of acceptance of primary application; Notice of acceptance of related filings for consideration; Issuance of procedural schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting the primary application (Application) filed October 6, 2023, by CSX Transportation Inc. (CSXT), and accepting for consideration two related filings. The Application seeks Board approval for CSXT to acquire and operate the assets comprising the rail line of Meridian & Bigbee Railroad, L.L.C. (MNBR) that runs approximately 93.68 miles between the cities of Burkville, Ala., and Myrtlewood, Ala., in Lowndes, Dallas, Wilcox and Marengo Counties (the Eastern Line). This proposal is referred to as the “Proposed Transaction.” The related filings are notices of exemption seeking Board approval of transactions involving trackage rights of other carriers (Related Transactions).

DATES: The effective date of this decision is November 3, 2023. CSXT is directed to supplement its Application as discussed in this decision by November 21, 2023. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than November 27, 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 11, 2023. Responses to comments, protests, requests for conditions, other opposition, and rebuttal in support of the Application or related filings must be filed by January 8, 2023. 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. 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) CSXT's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC 20036; (4) AGR's and MNBR's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave., NW, Suite 1300 South Washington, DC 20004; and (5) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245-0368. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: 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 operate the Eastern Line. (Appl. 1.) 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 about 30.22 miles;¹ and (2) extending from a connection with the first segment at Western Junction,

¹ The Board notes that, for the Burkville-Western Junction segment, the difference between the milepost numbers is 33 but the claimed distance of the segment is 30.22 miles. CSXT is directed to confirm that 30.22 miles is the correct distance of this

milepost OOR 716.25 to milepost ORS 779.71 near Myrtlewood, a distance of about 63.46 miles. (Id.) The Eastern Line includes Selma Yard, at Selma, Ala., and the following stations: Myrtlewood, Linden, Thomaston, Safford, Orville, Beloit, Selma, Industrial Lead, Tyler, Benton, Whitehall, and Burkville. (Id.) Two other carriers, Alabama Gulf Coast Railway LLC (AGR) and Norfolk Southern Railway (NSR) connect with the Eastern Line. AGR's line connects to the Eastern Line at Linden, Ala. (Id. at 5.) AGR operates over an approximately 10-mile portion of the Eastern Line between Linden and Myrtlewood to interchange traffic with MNBR.² (Id.) NSR connects to the Eastern Line at Selma, where it interchanges traffic with MNBR. (Id. at 12.)

Prior to 2003, CSXT and its predecessors owned and operated the Eastern Line. (Id. at 2.) In 2003, CSXT entered into a Land Lease Agreement (2003 Agreement) with M&B Railroad, L.L.C. (M&B), which was later renamed MNBR,³ whereby CSXT: (1) sold to M&B the tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, crossing warning devices and any and all improvements or fixtures affixed to the Eastern Line (Assets); (2) leased to M&B for a 20-year term the real property underlying the Eastern Line; and (3) granted M&B incidental overhead trackage rights over approximately 14 miles of CSXT trackage between the eastern end of the Eastern Line at Burkville and Montgomery, Ala., to effectuate interchange between M&B and CSXT at CSXT's S and N Yard and Chester Yard at Montgomery. (Id.) The 2003 Agreement will expire at the end of its 20-year term, on November 14, 2023, thereby

segment or to provide a correction. CSXT shall submit this information by November 21, 2023 when it submits the supplemental information discussed below.

² AGR and MNBR are both controlled by Genesee & Wyoming Inc. (GWI). See Genesee & Wyo. Inc.—Control—RailAmerica, Inc., FD 35654, slip op. at 3 n.7 (STB served Dec. 20, 2012).

³ GWI acquired control of M&B in 2005 and later changed its name to MNBR. See Genesee & Wyo. Inc.—Control Exemption—Rail Partners, L.P., FD 34708 (STB served June 24, 2005).

ending MNBR's leasehold interest. (Id.) The 2003 Agreement provides that CSXT may reacquire the Assets from MNBR upon expiration of MNBR's leasehold interest. (Id.) The parties have entered an agreement for CSXT to reacquire the Assets from MNBR (Transaction Agreement).⁴ (Id. at 2-3.) Because MNBR's lease is set to expire during this proceeding, CSXT and MNBR have agreed to extend the 2003 Agreement until the first to occur of: (1) the closing date of the transactions contemplated under the Transaction Agreement; or (2) the "Drop Dead Date," as defined in the Transaction Agreement. (Id.)

In Docket No. AB 1335X, MNBR filed a verified notice of exemption under the class exemption at 49 CFR part 1152, subpart F, to discontinue overhead trackage rights along an approximately 14-mile rail line extending between milepost XXB189 near Burkville, Ala., and Montgomery Yard in Montgomery, Ala. In Docket No. FD 36724, Alabama Gulf Coast Railway LLC (AGR) filed a verified notice of exemption to acquire overhead trackage rights from CSXT over approximately 9.5 miles of the Eastern Line running between milepost 59.9 at Linden, Ala., and milepost 50.4 near Myrtlewood.⁵

The Board finds that the Application is complete and that the 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

⁴ The Transaction Agreement is attached to the Application as Exhibit 2.

⁵ This decision embraces the following dockets: Alabama & Gulf Coast Railway—Trackage Rights Exemption—CSX Transportation, Inc., Docket No. FD 36724; Meridian & Bigbee Railroad—Discontinuance of Incidental Overhead Trackage Rights—in Lowndes & Montgomery Counties, Ala., Docket No. AB 1335X.

submitted into the record for this proceeding. The Board also adopts a procedural schedule for consideration of the Application and directs CSXT to file certain supplemental information.

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.⁶

CPKC Transaction. In addition to the Eastern Line, MNBR owns and operates a rail line that connects to the Eastern Line at Myrtlewood and extends west to Meridian, Miss. (Western Line), where it connects with Canadian Pacific Railway Company (CPKC). (Id. at 3.) CPKC has filed an application seeking Board authority to acquire and operate over the Western Line (CPKC Transaction). CPKC Appl. 2, Oct. 6, 2023, Canadian Pac. Kan. City Ltd.—Acquis. & Operation—Certain Rail Line of Meridian & Bigbee R.R. in Lauderdale Cnty., Miss., & Choctaw & Marengo Cntys., Ala., FD 36732 et al. MNBR serves local traffic on the Eastern Line and the Western Line and operates over the two rail lines to move overhead traffic between CSXT at Montgomery⁷ and CPKC at Meridian. (Appl. at 3.) The Proposed Transaction contemplates CSXT taking over MNBR's operations on the Eastern Line and MNBR ceasing all operations on the Eastern Line. (Id.) The CPKC Transaction contemplates CPKC acquiring and operating over the Western Line but MNBR continuing to provide local service on the Western Line. CPKC Appl., Ex. 2, Retained Trackage Rights Agreement, art. 2.1, Oct. 6, 2023, Canadian Pac. Kan. City Ltd., FD 36732 et al. If both the Proposed Transaction and the

⁶ The Board is required to accommodate the requirements of NEPA 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.

⁷ As noted above, MNBR operates between Burkville (the eastern end of the Eastern Line) and Montgomery pursuant to overhead trackage rights.

CPKC Transaction are consummated, overhead traffic between Meridian and Montgomery will be directly interchanged between CSXT and CPKC at Myrtlewood, eliminating MNBR as an intermediate carrier for this overhead traffic. (Appl. at 13.)

CSXT states that the Proposed Transaction and the CPKC Transaction are not contingent on each other “in that the [Proposed] Transaction could proceed regardless of whether the CPKC Transaction is consummated.” (Id. at 6.) According to CPKC, the CPKC Transaction is contingent on CSXT acquiring and resuming operations on the Eastern Line. CPKC Appl. 2, Oct. 6, 2023, Canadian Pac. Kan. City Ltd., FD 36732 et al. CSXT asks that the Board examine the Proposed Transaction independently of the CPKC Transaction. (Id. at 8.) The Board declines to do so for purposes of this decision. CSXT states only that the Proposed Transaction “could proceed” if the CPKC Transaction is not consummated, not that it necessarily will do so. Thus, it is not clear that the Proposed Transaction is in fact independent of the CPKC Transaction. Moreover, because the CPKC Transaction is specifically dependent upon consummation of the Proposed Transaction, the CPKC Transaction, and the effects that flow from it, would themselves be effects of the Proposed Transaction and must therefore be considered in determining whether the Proposed Transaction is minor or significant under 49 CFR 1180.2.

Financial Arrangements. According to CSXT, no new securities would be issued in connection with the Proposed Transaction. (Id. at 22.) CSXT states that the purchase price would be paid from cash on hand. (Id.)

Passenger Service Impacts. CSXT states that there are no current passenger or commuter operations on the Eastern Line and there would be no impact on commuter or other passenger service. (Id., 22-A, V.S. Adams 15.)

Discontinuances/Abandonments. CSXT states that it does not anticipate abandoning any rail lines as a result of the Proposed Transaction. (Id., Ex. 15, Operating

Plan 17.) As noted above, MNBR seeks Board authority to discontinue trackage rights over CSXT's line between Burkville and Montgomery if the Proposed Transaction is approved.

Public Interest Considerations. CSXT asserts that if the Board approves the Proposed Transaction and the CPKC Transaction, it will create a direct CSXT-CPKC interchange at Myrtlewood, which will result in more efficient movement of existing CSXT-CPKC interchange traffic between the Eastern United States (CSXT) and the Western U.S. and Mexico (CPKC) without any reduction in competition. (Appl. 13.) CSXT claims the Proposed Transaction is an end-to-end transaction that will not result in any loss of competitive options available to MNBR-served shippers. (Id. at 11-12.) According to CSXT, the largest traffic group on the Eastern Line is overhead traffic to or from CSXT on which MNBR functions as a bridge carrier and that the Proposed Transaction will simply shift the interchange point for this traffic from Montgomery to Myrtlewood. (Id. at 13, Ex. 22-B, Reishus V.S. 11.) CSXT further states that most local traffic on MNBR today moves to CSXT and such movements will be unaffected by the CSXT Transaction. (Id., Ex. 22-A, V.S. Adams 13.) In addition, CSXT states that the short line carriers that connect to the Eastern Line (MNBR and AGR) will not lose a connecting alternative. (Id. at 11.) It contends that the CSXT network fails to reach locations or regions served by AGR or reached through CPKC at Meridian (or involving Western Line shippers) and cannot plausibly provide competing single-line service for existing interline traffic with these carriers; hence, it has no incentive to foreclose those shippers' use of AGR and CPKC for interchange service. (Id., Ex. 22-B, V.S. Reishus 13.) CSXT notes that local shippers today have the ability to move on MNBR to interchange with NSR at Selma and that NSR and CSXT compete at a variety of locations across the eastern United States. (Id., Ex. 22-A, V.S. Adams 11, Ex. 22-B, V.S. Reishus 13.) However, CSXT states that MNBR's shippers use this option only for a

small volume of traffic and CSXT is committing to keeping the gateway with NSR at Selma open on commercially reasonable terms and asking the Board to impose this commitment as a condition to approval of Proposed Transaction. (Id., Ex. 22-A, V.S. Adams 13.) CSXT further states that one MNBR shipper currently moves traffic both to NSR at Selma and to CSXT at Montgomery. (Id.) According to CSXT, it will commit to that customer to continue to provide service to NSR at Selma at current rates, subject to reasonable cost escalation, for five years and on commercially reasonable terms thereafter. (Id., Ex. 22-A, V.S. Adams 13-14.)

CSXT claims that the Proposed Transaction will have public benefits that are “large, important, and obvious.” (Appl. 14-15.) CSXT states that for the traffic that currently moves to or from CSXT, eliminating MNBR as an intermediate carrier will reduce costs and streamline the movement of traffic. (Id., Ex. 22-A, V.S. Adams 4.) In addition, CSXT states that certain CSXT-CPKC traffic is interchanged at less efficient gateways—such as New Orleans, La., Brookwood, Ala., and East St. Louis, Mo.—and that it projects that a portion of this traffic will be diverted to the new CSXT-CPKC Myrtlewood gateway if both the Proposed Transaction and the CPKC Transaction are approved. (Id. at 13.) CSXT further claims that establishing a new, more efficient gateway between CSXT and CPKC at Myrtlewood will allow each carrier to compete more effectively with other carriers and modes in the region and create redundancy in the southern portion of CSXT’s network that will give CSXT a greater ability to respond to unexpected network problems. (Id. at 13, 16.)

Additionally, CSXT states that once the transaction is consummated, it will make significant investments in the track, roadbed, bridges, warning devices, and wayside detectors on the Eastern Line, which will increase safety, reliability, and train speeds. (Id. at 15.) In addition, CSXT claims that acquisition of the Eastern Line will support CSXT’s ongoing efforts to attract new industrial development to its rail network and will

give CSXT's shippers expanded transportation options, which CSXT hopes will lead to further rail traffic growth. (Id.)

Time Schedule for Consummation. CSXT seeks to consummate the Proposed Transaction on or soon after the effective date of a Board decision authorizing the Proposed Transaction, subject to the completion of any required labor implementing agreements. (Id. at 20.) CSXT anticipates that the Related Transactions will be consummated concurrently with the Proposed Transaction. (Id.)

Environmental Impacts. According to CSXT, the Proposed Transaction will have no adverse impacts on the environment. (Id., Ex. 4, Env't Info. 8.) CSXT projects that if the Proposed Transaction and the CPKC Transaction are both consummated, there will be increases in gross ton miles and yard activity that exceed the Board's thresholds for environmental review on the Eastern Line and on the Burkville-Montgomery segment, but that there will be no additional trains as a result of the transactions in the next five years. (Id., Ex. 4, Env't Info. 6-7, Ex. 22-A, V.S. Adams 14.) CSXT asserts that improvements in train speeds will counteract any effect of increases in train length. (Id. at Ex. 22-A, V.S. Adams 14.) CSXT also claims that the Proposed Transaction will have environmental benefits because the planned infrastructure improvements will result in increasing safety, reliability, and train speeds and will remove truck traffic from congested highways. (Id., Ex. 4, Env't Info. 9.) For the reasons discussed below, an EA will be prepared because the Board's thresholds for environmental review will be exceeded if the Proposed Transaction and the CPKC Transaction are both consummated. See Environmental Matters section.

Historic Preservation Impacts. According to CSXT, under 49 CFR 1105.8(b)(1), the Proposed Transaction and the Related Transactions are exempt from historic preservation reporting requirements. CSXT states that rail operations will continue on the Eastern Line and the Burkville-Montgomery segment, and that further approval will

be required to abandon any service. CSXT further states that there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older. Therefore, based on the current record, no historic review is required.

Labor Impacts. CSXT asserts that the Proposed Transaction will not have any adverse impact on labor. (Id., Ex. 22-A, V.S. Adams 15.) CSXT states that it will be employing more people on the Eastern Line as a result of the Proposed Transaction. (Id., Ex. 22-A, V.S. Adams 16.) According to CSXT, CSXT, and MNBR will not integrate any of their forces and CSXT employees will assume the responsibility for maintaining, dispatching, and operating CSXT trains over the Eastern Line. (Id. at 25.) CSXT further states that it understands that MNBR intends to abolish seven transportation positions, four engineering positions, and one mechanical position as a result of the Proposed Transaction. (Id. at 26.) According to CSXT, in addition to possible employment with CSXT, MNBR, or other GWI-controlled carriers may have other positions for employees who currently occupy these positions. (Id.) In addition, CSXT states that AGR employees will continue to operate AGR trains over the Eastern Line between Linden and Myrtlewood as they do today pursuant to a new trackage rights agreement with CSXT. (Id.)

CSXT is requesting that the employee protective conditions established in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60, aff'd 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), be imposed on the Proposed Transaction to address any adverse impact to current employees. (Appl. at 26.)

Related Filings. In connection with the Related Transactions, MNBR, and AGR each filed a notice of exemption.⁸

MNBR Discontinuance: In Docket No. AB 1335X, MNBR filed a verified notice of exemption under the class exemption at 49 CFR part 1152, subpart F, to discontinue overhead trackage rights along an approximately 14-mile rail line extending between milepost XXB189 near Burkville and Montgomery Yard in Montgomery. MNBR states that it does not intend to consummate its discontinuance authority unless and until CSXT consummates the Proposed Transaction. If consummated, MNBR and CSXT will interchange traffic at Myrtlewood, rather than at Montgomery. According to MNBR, its proposed discontinuance qualifies for the Board's two-year out-of-service class exemption procedures because it seeks to discontinue overhead trackage rights and has not provided any local service within the past two years. However, another carrier, CSXT, 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, and 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, MNBR may not proceed under the Board's two-year out-of-service class exemption procedures, during consideration of the

⁸ Also, on October 6, 2023, CSXT filed a motion for protective order in Docket No. FD 36727, which was granted by decision served on October 11, 2023.

broader Proposed Transaction, the Board will nonetheless consider whether to grant an individual exemption for this discontinuance authority on its own motion. To that end, MNBR may supplement the record in Docket No. AB 1335X 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). Any supplement filed by MNBR in Docket No. AB 1335X will be due by November 21, 2023.

AGR Trackage Rights. In Docket No. FD 36724, AGR filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights from CSXT over approximately 9.5 miles of rail line running between milepost 59.9 at Linden, and milepost 50.4 near Myrtlewood. AGR states that it intends to consummate the transaction either on the effective date of its notice or upon the consummation of the Proposed Transaction, whichever occurs later. AGR intends to use its overhead trackage rights for the interchange of traffic with MNBR, CSXT, and other carriers at Myrtlewood.

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 because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR part 1180. Additionally, the Board is also accepting for consideration the related verified notice of exemption filed in Docket No. FD 36724,⁹ which is also in compliance with the applicable regulations. As discussed below, the Board will require CSXT to supplement the

⁹ Additionally, as discussed above, MNBR’s verified notice of exemption in Docket No. AB 1335X 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 MNBR an individual exemption on the Board’s own motion.

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, its classification will differ 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 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.

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. Shippers that are currently served by MNBR would be served by CSXT post-transaction and this service could become more efficient due to the elimination of MNBR as an intermediate carrier and the upgrades to the line planned by CSXT. These upgrades could also improve the safety of operations over the Eastern Line. In addition, CSXT has committed to keeping the Selma gateway open for interchange with NSR on commercially reasonable terms and, for the one shipper on the Eastern Line that currently connects to both CSXT and NSR, CSXT has committed to keep current rates in place for five years. The Proposed Transaction, in combination with the CPKC Transaction, would create a direct connection between CSXT and CPKC at Myrtlewood. This new East-West Class I connection, along with the infrastructure upgrades planned by CSXT

and CPKC, could provide a more efficient route for existing and future traffic moving between the eastern and southeastern United States and the southwestern United States and Mexico, potentially providing both economic and environmental benefits. Diverting existing traffic to the new Myrtlewood gateway from congested gateways such as New Orleans could also improve the efficiency of operations at those existing gateways.¹⁰ Moreover, adding a new East-West Class I gateway will 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). 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.

¹⁰ CSXT has broadly represented that “no gateways would be closed” to shippers as a result of the transactions. (CSXT Reply 7, Oct. 27, 2023 (replying to a request filed by NSR, discussed below).) CSXT states that there are no commercial agreements between CSXT and CPKC that would force a rerouting of traffic and that the creation of the new Myrtlewood gateway would simply give shippers a new competitive option to route traffic through Myrtlewood instead of moving through other congested locations. (Id.) It also states that “[t]hose gateways would remain fully open, but shippers would now have an efficient alternative to them.” (Id.)

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 the CPKC's Transaction, may result in shifts to traffic flows, including traffic currently interchanged with a third-party carrier. (See e.g., Appl., Ex. 22-A, V.S. Adams 6 (“[I]f CPKC also acquires the Western Line and upgrades it, the substantially improved efficiency of the line between Meridian and Montgomery. . . is expected to significantly increase the amount of traffic that can be diverted to the Eastern Line in overhead traffic.”); CPKC Appl., App. 3, Wahba V.S. 5-7, Oct. 6, 2023, Canadian Pac. Kan. City Ltd., FD 36732 et al. (describing potential diversion of premium automotive traffic moving between KCSM-served locations in Mexico and CSXT-served locations on the East Coast, but interchanged with a bridge carrier at Laredo and at East St. Louis, Memphis, and New Orleans, to direct CPKC-CSXT interchange at Myrtlewood).) To assist the Board in its consideration of the Proposed Transaction and in making the determination of what—if any—conditions might be warranted, CSXT will be directed to supplement its Application with certain additional information by November 21, 2023. See 49 CFR 1180.4(c)(2)(v) (“The applicant shall submit such additional information to support its application as the Board may require.”).¹¹

¹¹ On October 25, 2023, NSR filed a request (NSR's Request) for the Board to consolidate this proceeding with the proceeding regarding the CPKC Transaction and 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-CSXT traffic flows on other traffic. On October 27, 2023, CSXT filed a reply. CSXT does not oppose embracing the two cases in one proceeding but argues the Board should not require the parties to file a consolidated application. (CSXT Reply 6 n.3, Oct. 27, 2023.) CSXT further argues that its application is complete and that the issues raised by NSR can be addressed through the comment process required by the procedural schedule. (*Id.* at 7.) On October 31, 2023, Illinois Central Railroad Company filed in support of NSR's request for consolidation. 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,

Specifically, in its reply to NSR’s Request, CSXT broadly claims that “[n]o gateways would be closed as a result of either transaction” and that previously-used gateways “would remain fully open.” (CSXT Reply, 7, Oct. 27, 2023; see also supra note 9.) Moreover, CPKC specifically argues that “[f]or traffic from CSXT origins that might use the new Myrtlewood routing, CSXT would not be obtaining a longer haul than it could realize via other gateways like New Orleans, Memphis, or East St. Louis, and thus there is no conceivably applicable theory of foreclosure.” (CPKC Reply 5 n.3, FD 36732, Oct. 27, 2023.) The Board appreciates these statements. Nevertheless, CSXT will be directed to more fully explain its position that no gateway “would be closed,” and describe in detail what it means when it says that all previously-used gateways will “remain fully open.”¹² In addition, to help the Board evaluate the argument made by CPKC regarding certain CSXT gateways, CSXT should also address whether, and to what extent, the Proposed Transaction will give it the ability and incentive to avoid existing interline routing arrangements with carriers other than CPKC, and which may require interchange at New Orleans, Memphis, or East St. Louis (as well as Chicago or any other interchange location) for traffic from certain CSXT origin areas, so that it may move that traffic via a longer haul through the CPKC-CSXT interchange at Myrtlewood. See, e.g., https://www.up.com/customers/shortline/interline_agree/index.htm.

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 CSXT to supplement the record as discussed further in this decision.

¹² 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, FD 36732, Oct. 27, 2023.)

Additionally, in its supplement, to further inform the Board's analysis, CSXT shall provide a list of all origination/destination areas,¹³ 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);¹⁴ and provide the associated volumes by origination/destination areas for projected diverted and new traffic. The Board recognizes that CSXT was recently involved in a transaction that required the production of substantial information about its network and the markets it serves. Some of the work involved with that production may be relevant to the Proposed Transaction, potentially lowering the burden on CSXT 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 CPKC's proposed acquisition of the Western Line, CSXT 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 CSXT to detail any impacts anticipated on other rail operations, including (1) potential impacts on any passenger rail operations that involve crossing the Eastern Line, and (2) delays that may be occasioned because a line is scheduled to handle increased traffic due to route consolidations or traffic diversions. Additionally, CSXT

¹³ Origination/destination areas may be as broad as a state or group of states. CSXT shall provide a justification for its definition of the state or region whatever grouping metric it uses for its analysis, and it shall specify the gateway(s) used by traffic for the origination or destination areas.

¹⁴ Information should include the total count of cars interchanged categorized by two-digit Standard Transportation Commodity Code and broken out by interchange partner.

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. CSXT is directed to supplement its Application as discussed in this decision by November 21, 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 27, 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 11, 2023; and responses to comments, protests, requests for conditions, and other opposition on the transportation merits of the Transaction must be filed by January 8, 2024.¹⁵ 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.¹⁶ The Board reserves the right to adjust the schedule as circumstances may warrant. The adopted procedural schedule is in Appendix to this decision.

¹⁵ CSXT proposes a round of briefs due on the same day that the evidentiary record is statutorily required to close. (Appl. 26); see also 49 U.S.C. 11325(d)(2). CSXT however provides 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.

¹⁶ This notice will be published in the Federal Register on November 9, 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 27, 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 CSXT's 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.

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 its Application, CSXT submitted environmental information, including estimated volume increases on the Eastern 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). CSXT presented two scenarios for its traffic projections. The first scenario assumes that the Proposed Transaction would occur without the CPKC Transaction. CSXT expects that this scenario would not produce significant changes to the existing traffic because the same number of trains currently operated by MNBR and CSXT over the Eastern Line would be operated by CSXT post-transaction. In the second scenario, CSXT assumes that both the Proposed Transaction and the CPKC Transaction would occur at the same time. CSXT states that the second scenario would result in an increase in gross-ton miles of 100%. (Appl., Ex. 4, Env't Info. 7.) According to CSXT, the Proposed Transaction would result in improved efficiency and potential traffic diversions from truck to more environmentally favorable rail. (Appl., Ex. 4, Env't Info. 9.)

The NEPA Process. OEA has reviewed the data provided by CSXT, including its traffic projections through 2029. Based on the current record, neither the 8-trains-per-day nor 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 under CSXT's second scenario, 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 will prepare one EA to encompass both the Eastern Line (including the Burkville-Montgomery segment) and the Western Line because these transactions involve contiguous sections of the same rail line; indeed, both CPKC and CSXT (under scenario two) 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. 6-7; see also CPKC Appl., Ex. 4, Env't Info. 38, Oct. 6, 2023, Canadian Pac. Kan. City Ltd., FD 36732 et al.) In addition, the environmental impacts from both transactions are expected to be very similar and both applications were filed at the same time, allowing the 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 changes. 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.¹⁷ 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. CSXT states that rail operations would continue on the Eastern Line and that there are no plans

¹⁷ 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).

to dispose of or alter properties that are fifty years old or older. (Appl., Ex. 4, Env't Info.

1.) Therefore, based on the current record, no historic review is required.

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.

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 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 CSXT's representative at the address indicated above.

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

It is ordered:

1. The Application filed in Docket No. FD 36727 and the related verified notice of exemption filed in Docket Nos. FD 36724 are accepted for consideration.

2. CSXT shall file the supplemental information described above by November 21, 2023.

3. The filing in Docket No. AB 1335X is accepted to the extent discussed above. MNBR may file supplemental evidence and argument in support of an individual exemption in that docket by November 21, 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 this 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 CSXT 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.

Jeffrey Herzig,

Clearance Clerk.

APPENDIX

PROCEDURAL SCHEDULE

October 6, 2023	Application filed.
November 3, 2023	Board notice of acceptance of application served.
November 21, 2023	CSXT's supplemental information due.
November 27, 2023	Notices of intent to participate in this proceeding due.
December 11, 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 Date by which a final decision will be served.¹
close of the record

30 days after service Board's decision becomes effective.

[FR Doc. 2023-24854 Filed: 11/8/2023 8:45 am; Publication Date: 11/9/2023]

¹ 49 U.S.C. 11325(d)(2) provides that 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 section 11325(d)(2), the Board will issue a final decision as soon as possible after that process is complete.