

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,² this exemption will be effective on November 23, 2022,³ unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,⁴ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 3, 2022.⁵ Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by November 14, 2022.

All pleadings, referring to Docket No. AB 603 (Sub-No. 5X), must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on V&S's representative, Eric M. Hocky, Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void ab initio.

V&S has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by October 28, 2022. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245-0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

² Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (i.e., subsidy or purchase) and demonstrating that they are preliminarily financially responsible. See 49 CFR 1152.27(c)(2)(i).

³ V&S states that it intends to consummate the abandonment of the Line on or after November 17, 2022. V&S may not abandon the Line before the exemption becomes effective.

⁴ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

⁵ Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), V&S shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by V&S's filing a notice of consummation by October 24, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at www.stb.gov.

Decided: October 19, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Regena Smith-Bernard,
Clearance Clerk.

[FR Doc. 2022-23069 Filed 10-21-22; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36397]

Wisconsin Central, Ltd.—Petition for Declaratory Order—Interchange With Soo Line Railroad Company

This proceeding derives from an April 14, 2020 petition for declaratory order filed by Wisconsin Central, Ltd. (CN), regarding the interchange of traffic from Soo Line Railroad Company (CP) to CN in the Chicago, Ill., area. On October 30, 2020, the Board served a decision denying the relief sought by the petition. CN appealed the Board's decision to the United States Court of Appeals for the Seventh Circuit, which vacated the Board's decision and remanded the matter to the Board.

On February 2, 2022, CN filed a post-remand brief. CP moved to strike CN's post-remand brief on February 14, 2022, and later filed a separate reply to it. Thereafter, CN filed a reply to CP's reply, which CP then asked the Board to reject.

For the reasons explained below, the Board will deny CP's motion to strike CN's post-remand brief and CP's request to reject CN's reply to reply. The Board also will solicit comments from stakeholders and other interested persons on the issues presented in this proceeding.

Background

From 2010 to 2019, CP and CN mainly interchanged Chicago-area traffic at Spaulding,¹ near Bartlett, Ill. *Soo Line*

¹ CN states that during that time, some traffic, especially toxic-by-inhalation hazardous materials, was moved by the parties to Clearing Yard, owned by the Belt Railway of Chicago, for interchange. (CN Post-Remand Brief 1, 4.)

R.R.—Pet. for Declaratory Ord. & Prelim. Inj.—Interchange with Canadian Nat'l, FD 36299, slip op. at 1–2 (STB served Nov. 29, 2019). However, in 2019 CN sought to move the Spaulding interchange traffic elsewhere. *Id.* at 1–2. CN first designated Kirk Yard in Gary, Ind., but CP objected and sought relief from the Board, requesting that the Board order CN to continue to receive CP cars at Spaulding unless a replacement location was agreed upon or the Board prescribed a replacement location. *Id.* at 2. Pending the Board's decision regarding Kirk Yard in Docket No. 36299, the parties signed an interim agreement in August 2019 in which they agreed to move the Spaulding interchange traffic to Clearing Yard (Clearing), owned by the Belt Railway of Chicago (BRC).² *Id.* at 2–3. Subsequently, the Board concluded that CN could not designate Kirk Yard for interchange with CP because it was not a reasonable interchange location, while also declining to address the reasonableness of interchange at Clearing. *Id.* at 3–4, 7.

On April 14, 2020, CN filed a petition for a declaratory order seeking a ruling under 49 U.S.C. 10742, which states:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier or of a water carrier providing transportation subject to chapter 137.

CN asked the Board to declare that: (1) CN may designate Clearing to receive interchange traffic from CP; and (2) each railroad must bear its own costs for those interchanges, including payment by the delivering carrier of BRC's switching fees. (Pet. 1, 3–4.) By decision served on October 30, 2020, the Board held that CN could not unilaterally designate Clearing as the interchange point and it therefore was not necessary to reach the issue of whether CN and CP must bear their own costs. *Wis. Cent. Ltd.—Pet. for Declaratory Ord.—Interchange with Soo Line R.R.*, FD 36397, slip op. at 4 (STB served Oct. 30, 2020). The Board found that, pursuant to precedent, when two carriers physically intersect, the receiving carrier is required to designate a point on its own line where it will receive traffic and to provide a free route over its tracks to that point but that when the

² CN, CP, and four other Class I railroads are co-owners of BRC. *Wis. Cent. Ltd.*, FD 36397, slip op. at 1 n.2.

carriers do not physically intersect, the receiving carrier has neither the right nor the obligation to designate an interchange point. *Id.* at 5. Accordingly, the Board held that if CP's and CN's lines physically intersected, CN was required to designate an interchange point on its own line and provide a free route for CP to travel to that point, but if the lines did not physically intersect, section 10742 would not apply and the case would be moot. *Id.* at 6–7, 9. In doing so, the Board rejected CN's argument that the language of section 10742 permitted CN to designate Clearing as the interchange based on CN's status as co-owner of BRC, which does intersect with CP at Clearing. *Id.* at 7. The Board reasoned that CN and BRC were distinct entities and, by designating a third party's rail line as the interchange point and forcing CP to pay a switching fee, CN would not be "providing" interchange facilities that are within its "power to provide" as required by section 10742. *Id.* at 7–8, 10.

The United States Court of Appeals for the Seventh Circuit vacated the Board's October 30, 2020 decision and remanded the matter to the Board. *Wis. Cent. Ltd. v. STB*, 20 F.4th 292 (7th Cir. 2021). The court held that the Board erred in interpreting section 10742 by: (1) concluding that carriers only have the "power to provide" facilities that they own; (2) finding that section 10742 only applies if two carriers physically intersect; (3) conflating an assumption about who pays the fees of a third-party carrier with the question of "whether a receiving carrier [can] ever designate a willing third party to receive traffic on its behalf"; and (4) relying on a "common-law norm" that a delivering railroad cannot compel a receiving railroad to exercise a voluntary contractual right to receive traffic on the line of a third party carrier. *Id.* at 294–95. The court also indicated that the word "reasonable" in section 10742 gives the Board interpretive leeway that the statutory phrase "that are within its power to provide" does not. *Id.* at 295.

CN filed a post-remand brief on February 2, 2022, arguing that the sole remaining issue in the case is whether CP should be required to pay BRC's switching fees for interchange traffic that CP will deliver to Clearing Yard. (CN Post-Remand Brief 1.) CN asserts the answer is yes, both under the BRC operating agreement and because requiring CP to pay would be fair and consistent with industry practice. (*Id.*) On February 14, 2022, CP filed a motion to strike CN's post-remand brief. CP argues that the Board has not directed the parties to file post-remand briefs, and it is for the Board, not CN, to decide

what procedures to follow on remand. (CP Mot. to Strike 1–2.) CP further argues that CN's post-remand brief improperly asserts that the sole remaining issue on remand is whether CP must pay the BRC switching fees for CN-bound traffic that CP delivers to Clearing. (*Id.* at 2.) CP claims that the court did not consider or address whether CN's proffer of Clearing Yard satisfied its statutory obligation under section 10742 to "provide reasonable, proper, and equal facilities that are within its power to provide." (*Id.* at 3.) CP also asserts that the court did not reach the question of whether CN may require CP to exercise its permissive trackage rights to deliver its traffic to CN at Clearing Yard. (*Id.*) CP requests that the Board strike CN's post-remand brief from the record, set a procedural schedule for initial briefs and reply briefs, and identify what issues should be addressed in the briefs. (*Id.* at 4.) On March 21, 2022, CP filed a reply to CN's post-remand brief. On April 20, 2022, CN filed a reply to CP's reply and a motion for leave to file a reply to a reply. On April 25, 2022, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) filed comments and a motion for leave to file comments out of time. On May 10, 2022, CP filed a reply to CN's April 20, 2022 reply requesting that the Board reject CN's reply because the Board has not authorized additional post-remand briefing and because CN's submission was filed nearly a month after CP's reply. (CP Reply 1, May 10, 2022.)

Discussion and Conclusions

The Board does not have specific regulations or procedures for cases following a judicial remand. While parties often do not file post-remand briefs without a directive from the Board or a petition for leave to file a brief, the Board will accept CN's post-remand brief and its April 20, 2022 reply brief because striking them would not serve a useful purpose. CP cites to *Western Fuels Association v. BNSF Railway*, NOR 42088 (STB served Feb. 1, 2011), for the proposition that unilaterally filing comments in a remand proceeding has been deemed inappropriate by the Board. (CP Mot. to Strike 1–2.) In that case, however, the Board did not state that the filing was inappropriate, and it accepted the comments into the record. *W. Fuels Ass'n*, NOR 42088, slip op. at 2–3. CP also argues that CN's filing improperly arrogated the Board's authority to decide what action and procedures should be followed on remand. (CP Mot. to Strike 2.) However, the Board is now

exercising its authority to set procedures in this remand proceeding, and the acceptance of CN's briefs will not interfere with those procedures or prejudice any party. In addition, to develop a more complete record, the Board invites CN, CP and any other rail carriers and other interested parties to file comments, as outlined below.

Given the Seventh Circuit's discussion of the Board's reliance on agency precedent and industry practice as summarized above, a post-remand decision resolving the dispute between CN and CP has the potential to significantly alter such precedent and practices regarding the interchange of rail traffic. Because the resulting interpretation of section 10742 by the Board could have wide-reaching consequences for the rail industry, the Board is soliciting input from stakeholders and other interested persons. Input from a wider variety of industry participants will give the Board a better sense of the potential impacts of different approaches and enable it to make a more informed decision.

Accordingly, the Board invites interested parties to comment on the broader legal issues presented by this declaratory order proceeding. Specifically, commenters are invited to address any or all of the following issues:

1. How a carrier's obligations under 49 U.S.C. 10742 to "provide reasonable, proper, and equal facilities that are within its power to provide" should be understood in light of the decision by the United States Court of Appeals for the Seventh Circuit, as well as the impact of that decision on existing ICC and Board precedent and current carrier practices.

2. Whether the Board can consider the costs to each railroad of using a particular interchange location designated by one carrier when determining whether interchange facilities are "reasonable" under section 10742 and, if so, whether the Board can allocate such costs between delivering and receiving railroads when resolving section 10742 disputes. If commenters believe that the Board may consider costs as part of a reasonableness determination under section 10742, commenters should address how the Board should consider costs and/or the allocation of costs in making such a determination.

3. Whether the Board has authority under any other statutory provision(s) to resolve a dispute regarding the costs associated with an interchange location and how the Board should apply any such statutory authority.

4. How the statutory term “reasonable” should be interpreted.

5. How the interests of delivering and receiving carriers should be balanced in the selection of an interchange location, particularly where the existing interchange location is well established or long-standing.

6. How a carrier’s “power to provide” facilities relates to the other carrier’s ability or rights to reach those facilities.

7. Generally what procedures and factors should apply when railroads cannot agree on an interchange location or one carrier unilaterally seeks to move an existing interchange location.³

8. Whether and how any changes a party recommends regarding the Board’s interpretation of section 10742 should affect the Board’s interpretation of other statutory provisions and related precedent (e.g., 49 U.S.C. 10705(a)(2) and related precedent).

The Board recognizes that CN and CP have an interest in resolving their dispute in a timely manner. However, in light of the court’s decision, because resolution of their dispute could potentially have a significant impact on the rail industry at large and because the industry will likely have insight regarding how any particular standard for designating interchange locations will impact rail operations, the Board believes that the delay necessary to obtain input from other stakeholders is warranted. Following the receipt of comments, the Board intends to work expeditiously to issue a decision. As always, the Board encourages the parties to settle their dispute privately without further Board action if possible.

Comments must be filed by December 19, 2022 and reply comments must be filed by January 17, 2023. To provide interested parties with notice of the opportunity to submit comments in this proceeding, this decision will be published in the **Federal Register**.

It is ordered:

1. CP’s motion to strike CN’s post-remand brief and request to reject CN’s April 20, 2022 reply are denied.

2. CN’s motion for leave to file a reply to a reply is granted.

³ As discussed above, CN, CP, and Metra have each already filed briefs or comments following the remand. In the interest of compiling a complete record, all post-remand briefs and comments filed to date will be accepted. In addition, parties that have already filed post-remand briefs or comments may also file initial comments and reply comments as requested by this decision. All comments should be limited to the broader legal issues discussed above and should not address the specific facts of this case; following the comments and replies permitted in this decision, CP and CN will be afforded an opportunity to further brief the application of the issues discussed to the facts of this case.

3. Metra’s motion for leave to file comments out of time is granted.

4. Interested parties may submit comments by December 19, 2022. Replies to those comments are due by January 17, 2023.

5. This decision will be published in the **Federal Register**.

6. This decision is effective on its service date.

Decided: October 18, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Aretha Laws-Byrum,
Clearance Clerk.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to develop and discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system.

DATES: The meeting will be held on Tuesday, November 29, 2022, from 9:00 a.m. to 4:30 p.m. and Wednesday, November 30, 2022, from 9:00 a.m. to 4:30 p.m. Eastern Daylight Time (EDT).

Requests to attend the meeting must be received no later than 5:00 p.m. EDT on the prior week Monday, November 21, 2022, in order to facilitate entry. Requests for accommodations to a disability must be received by the day prior to the meeting Monday, November 28, 2022. Those requesting to speak during the public comment period of the meeting must submit a written copy of their remarks to DOT by no later than by the prior week Monday, November 21, 2022. Requests to submit written materials to be reviewed during the meeting must also be received by the prior week Monday, November 21, 2022.

ADDRESSES: The meeting will be held at the DOT Conference Center located at 1200 New Jersey Ave. SE, Washington, DC 20590. Any Committee related request should be sent to the person listed in the following section.

FOR FURTHER INFORMATION CONTACT:

Chad Dorsey, Designated Federal Officer, at MTSNAC@dot.gov or at (202) 997–6205. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE, W21–307, Washington, DC 20590. Please visit the MTSNAC website at <https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/national-advisory-0>.

SUPPLEMENTARY INFORMATION:

Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the maritime transportation system. The MTSNAC was established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 50402 and operates in accordance with the provisions of the Federal Advisory Committee Act.

Agenda

The agenda will include: (1) welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) updates to the Committee on the subcommittee work; (5) public comments; and (6) discussions relevant to formulate recommendations for to the Secretary. A final agenda will be posted on the MTSNAC internet website at <https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/national-advisory-0> at least one week in advance of the meeting.

Public Participation

The meeting will be open to the public. Members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Seating will be limited and available on a first-come-first-serve basis.

Services for individuals with disabilities: The public meeting is physically accessible to people with disabilities. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.