

**SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36514]

**Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company****AGENCY:** Surface Transportation Board.**ACTION:** Decision No. 2 in Docket No. FD 36514; notice of receipt of prefiling notification.

**SUMMARY:** Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and their rail operating subsidiaries (collectively with CNR and GTC, CN or Applicants) have notified the Surface Transportation Board (Board) of their intent to file an application seeking authority for the acquisition of control by CNR, through its wholly owned subsidiary Brooklyn Merger Sub, Inc. (Brooklyn Merger Sub), of Kansas City Southern, and through it, of The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (collectively, KCS), in the event that Kansas City Southern accepts an acquisition proposal that CN conveyed to Kansas City Southern's Board of Directors on April 20, 2021 (CN Proposal). Applicants have indicated that 2019 will be the base year for their impact analysis and that they anticipate filing their application on approximately August 20, 2021.

**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 email only, if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, 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) CN's representative, Raymond A. Atkins, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005; (4) KCS's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW, Suite 300, Washington, DC 20037; (5) any other person designated as a Party of Record on the service list; and, as noted below, (6) the administrative law judge assigned in this proceeding.

**FOR FURTHER INFORMATION CONTACT:**

Valerie Quinn at (202) 245-0283. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** Under the terms of the CN Proposal, CNR,<sup>1</sup> through its subsidiary Brooklyn Merger Sub, would acquire all of the capital stock of Kansas City Southern. (Notice of Intent 4.) Specifically, upon receipt of approval by the shareholders of Kansas City Southern<sup>2</sup> and the satisfaction of other customary closing conditions, Brooklyn Merger Sub would merge with and into Kansas City Southern (the Merger), with Kansas City Southern surviving the Merger. (*Id.*) Upon completion of the Merger, holders of Kansas City Southern's common stock would become entitled to receive a combination of CNR common shares and cash in exchange for their common stock, and holders of Kansas City Southern's preferred stock would become entitled to receive cash in exchange for their preferred shares. (*Id.* at 4-5.) Immediately following completion of the Merger, CNR's voting interest in Kansas City Southern acquired in the Merger would be placed into an independent voting trust pending review and approval of the control transaction by the Board.<sup>3</sup> (Notice of Intent 5.) Applicants state that, should the Board take final and favorable action on the application, which would be filed pursuant to 49 U.S.C. 11323-11325, only then would the voting trust be terminated and CNR assume control of Kansas City Southern

<sup>1</sup> CN's rail operating subsidiaries in the United States include Illinois Central Railroad Company, Wisconsin Central Ltd.; Grand Trunk Western Railroad Company; Bessemer and Lake Erie Railroad Company; Chicago, Central & Pacific Railroad Company; Cedar River Railroad Company; The Pittsburgh & Conneaut Dock Company; Sault. Ste Marie Bridge Company; Waterloo Railway Company; and Wisconsin Chicago Link Ltd. CN's rail operating subsidiaries in Canada include Algoma Central Railway, Inc., Quebec and Lake Saint John Railway Company, Canadian Northern Quebec Railway Company, Canada Southern Railway Company, and BC Rail Partnership.

<sup>2</sup> On May 13, 2021, KCS announced that its board of directors determined that CN's Proposal constituted a "Company Superior Proposal" as defined in KCS's merger agreement with Canadian Pacific Railway Limited. For further details, see Press Release, KCS, KCS Receives Revised Proposal from CN That Bd. of Directors Determines is a "Company Superior Proposal" (May 13, 2021), <https://www.kcsouthern.com/media/news/news-releases/kansas-city-southern-receives-revised-proposal-from-canadian-national-railway-that-board-of-directors-determines-is-a-company-superior-proposal>.

<sup>3</sup> On April 26, 2021, Applicants submitted a motion for Board approval of a voting trust agreement, pursuant to 49 CFR 1180.4(b)(4)(iv). The Board addresses Applicants' motion in a separate decision.

and its railroad affiliates. (Notice of Intent 5.)

Applicants indicate that they will use 2019 as the base year for the impact analysis in the application and that they anticipate filing their application on approximately August 20, 2021. (*Id.* at 1.)

**Major Transaction Status.** The Board finds that this is a major transaction under 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. CNR presently controls GTC, a Class I rail carrier, and proposes to acquire common control of KCSR, also a Class I railroad.

**Protective Order.** By motion filed April 20, 2021, Applicants requested a protective order to protect confidential, highly confidential, and proprietary information to be submitted in connection with the control application. By decision served April 28, 2021, Applicants' motion for a protective order was granted.

**Proposed Procedural Schedule.** Also on April 20, 2021, Applicants filed a petition to establish a procedural schedule. The Board will solicit comments on the proposed procedural schedule in a separate decision.

**Administrative Law Judge.** The Board has signed a Memorandum of Understanding with the Federal Mine Safety and Health Review Commission to employ the services of administrative law judges (ALJs) on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in cases pending before the Board. The Board hereby assigns and authorizes Administrative Law Judge Thomas McCarthy to entertain and rule upon discovery matters and to resolve initially all disputes concerning discovery in this proceeding. Parties are directed to send copies of all their filings and documents in this proceeding to Judge McCarthy, at 1331 Pennsylvania Avenue NW, Washington, DC 20004-1710, and at [ctolbert@fmshrc.gov](mailto:ctolbert@fmshrc.gov) and [zbyers@fmshrc.gov](mailto:zbyers@fmshrc.gov).

**It is ordered:**

1. This proceeding is assigned to Administrative Law Judge Thomas McCarthy for the handling of all discovery matters and initial resolution of all discovery disputes.

2. In addition to filing pleadings with the Board and serving copies on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, and other parties of record, parties must send a copy of all filings and documents to Judge McCarthy at 1331 Pennsylvania Avenue NW, Washington, DC 20004-

1710, and at [ctolbert@fmshrc.gov](mailto:ctolbert@fmshrc.gov) and [zbyers@fmshrc.gov](mailto:zbyers@fmshrc.gov).

3. Judge McCarthy will be added to the service list in this proceeding and a copy of this decision will be served upon him.

4. A copy of this decision will be served on the U.S. Office of Personnel Management (OPM), at Human Resource Solutions, ALJ Program Office, 1900 E Street NW, Suite 2469, Washington, DC 20415-9400 and electronically at [karyn.lusby@opm.gov](mailto:karyn.lusby@opm.gov). Judge McCarthy shall send a copy of the notice or order that constitutes the final disposition of his assignment of this case to OPM at the above address.

5. This decision is effective on its service date.

Decided: May 14, 2021.

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

**Eden Besera,**

*Clearance Clerk.*

[FR Doc. 2021-10668 Filed 5-19-21; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2021-0017]

#### Pipeline Safety: Request for Special Permit; Colorado Interstate Gas Company, LLC

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice.

**SUMMARY:** PHMSA is publishing this notice to solicit public comments on a request for special permit received from the Colorado Interstate Gas Company, LLC (CIG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

**DATES:** Submit any comments regarding this special permit request by June 21, 2021.

**ADDRESSES:** Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website:* <http://www.Regulations.gov>

This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

- *Fax:* 1-202-493-2251.

• *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Docket Management System: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at <http://www.Regulations.gov>.

*Note:* There is a privacy statement published on <http://www.Regulations.gov>. Comments, including any personal information provided, are posted without changes or edits to <http://www.Regulations.gov>.

*Confidential Business Information:* Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) § 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as "Confidential"; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice.

Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA-PHP-80, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Any commentary PHMSA receives that is not

specifically designated as CBI will be placed in the public docket for this matter.

#### FOR FURTHER INFORMATION CONTACT:

*General:* Ms. Kay McIver by telephone at 202-366-0113, or by email at [kay.mciver@dot.gov](mailto:kay.mciver@dot.gov).

*Technical:* Mr. Steve Nanney by telephone at 713-272-2855, or by email at [steve.nanney@dot.gov](mailto:steve.nanney@dot.gov).

**SUPPLEMENTARY INFORMATION:** PHMSA received a special permit request from the CIG, a subsidiary of Kinder Morgan, Inc., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d), Change in class location and Confirmation or revision of maximum allowable operating pressure; and 49 CFR 192.619(a), Maximum allowable operating pressure: Steel or plastic pipelines.

This special permit is being requested in lieu of pipe replacement or pressure reduction for one (1) pipeline segment totaling 552 feet (approximately 0.105 miles) of 22-inch diameter pipe on the 0005-A Denver-Rock Springs Mainline Pipeline located in Adams County, Colorado. The proposed special permit will allow operation of the original Class 1 pipe in the Class 3 location.

The proposed special permit segment on the CIG 0005-A Denver-Rock Springs Mainline Pipeline has a maximum allowable operating pressure of 822 pounds per square inch gauge and was constructed in 1956.

The special permit request, proposed special permit with conditions, and Draft Environmental Assessment (DEA) for the CIG 0005-A Denver-Rock Springs Mainline Pipeline are available for review and public comments in Docket No. PHMSA-2021-0017. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.