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GOLLATZ, GRIFFIN & EWING, P.C.

ATTORNEYS AT LAW

PHILADELPHIA OFFICE:
SIXTEENTH FLOOR
TWO PENN CENTER PLAZA
PHILADELPHIA, PA 19102
(215) 563-9400

213 WEST MINER STREET
POST OFFICE BOX 796
WEST CHESTER, PA 19381-0796

Telephone (610) 692-9116
Telecopier (610) 692-9177
E-Mail: gge@ggelaw.com

WILMINGTON OFFICE:
1901 SUPERFINE LANE
SUITE 2
WILMINGTON, DE 19802
(302) 428-3761

DELAWARE COUNTY
CONFERENCE FACILITY:
205 N. MONROE STREET
MEDIA, PA 19063
(610) 565-6040

PITTSBURGH OFFICE:
225 ROSS STREET
2ND FLOOR
PITTSBURGH, PA 15219
(412) 434-7930

ERIC M. HOCKY
emhocky@ggelaw.com

November 24, 2000

FedEx

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 634
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Consolidated Railroad Reporting
STB Ex Parte No. 634
Comments of Genesee & Wyoming, Inc.

Dear Sir or Madam:

Enclosed for filing in the above referenced proceeding are an original and 10 copies of the Comments of Genesee & Wyoming, Inc., along with a diskette containing the document in a format (WordPerfect 6/7/8) that can be converted by, and into, WordPerfect 9.0.

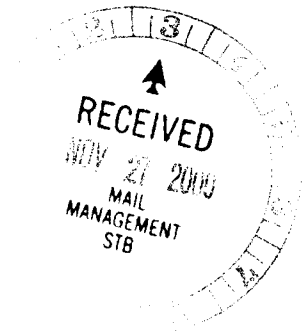
Please time stamp the extra copy of this letter to indicate receipt, and return it to me in the stamped self-addressed envelope provided for your convenience.

Very truly yours,


Eric M. Hocky

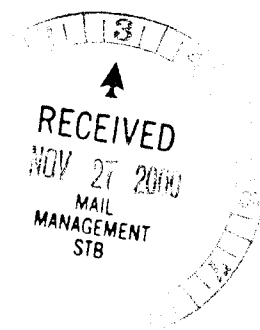
Enclosures

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200631

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB EX PARTE NO. 634



CONSOLIDATED RAILROAD REPORTING

**COMMENTS
OF
GENESEE & WYOMING INC.**

WILLIAM P. QUINN
ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

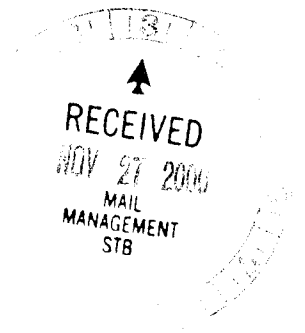
Dated: November 24, 2000

Attorneys for Genesee & Wyoming Inc.
and its Subsidiary Railroads

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB EX PARTE NO. 634

CONSOLIDATED RAILROAD REPORTING

COMMENTS
OF
GENESEE & WYOMING INC.



The Board commenced this proceeding with a notice served September 25, 2000 expressing the Board's intent to require consolidated reporting by commonly controlled U.S. railroads and their U.S. railroad-related affiliates. Genesee & Wyoming Inc. ("GWI") is filing these comments on behalf of itself and its subsidiary railroads to express its view that the adoption of such requirements is unnecessary and would adversely affect GWI and its short line subsidiaries (and other short lines) by imposing additional costs and reducing their ability to make future acquisitions.

The Board has chosen a most inopportune time for the industry to suggest these changes. At a time when the nation's Class I's are in an uncertain financial state with stock prices plummeting, GWI expects the pressures for a new round of divestitures of less profitable branch lines cannot be far away. The rules proposed by the Board will do nothing but hamper the best financed, most experienced potential acquirers of these lines, leaving the fate of these lines and their shippers to newly formed entities that may not be able to handle the demands of their

operations. Not only is there no clear reason set forth for changing the existing rules, but as explained herein, the results will actually be harmful to the industry.

Description of GWI

GWI is a publicly traded, noncarrier holding company that controls one Class II railroad (BPRR)¹ and 16 Class III railroads, as listed on the attached Exhibit A, that are subject to the jurisdiction of the Board.² As noted on Exhibit A, GWI also controls several companies that may qualify as "U.S. railroad-related affiliates"³ including Rail Link which performs contract switching services that are not subject to the Board's jurisdiction, Genesee & Wyoming Rail Services, Inc. which performs administrative services for GWI's U.S. and foreign railroads and its non-railroad subsidiaries and two equipment leasing companies.

The subsidiary railroads currently operate in 10 states. In two regions, certain of the carriers connect with each other – in Oregon, PNWR and WPRR connect, and in New York and Pennsylvania, BPRR, PSRR, ALY, BR, RSR, GNWR, and DMM each connect with at least one of the other carriers. The subsidiaries are run as separate corporations. They are in different regions and serve different markets and largely different customers. They connect with different

¹ Railroad subsidiaries are referred to herein by their respective marks as shown on Exhibit A.

² GWI also has subsidiary railroad operations in Canada and Mexico, and affiliated rail operations in Australia and Bolivia.

³ For the purposes of these comments, GWI will use the term "railroad-related affiliates" as meaning those affiliates that "could not exist but for the revenues derived from, or support provided for, railroad operations." Notice at 4, n.6 (citation omitted).

Class Is. Some have paper barriers and some do not. They have different labor relationships – nonunion, single union and multiple union – even where they connect with one another.

Collectively, the estimated annual revenues for GWI's U.S. railroads are in excess of \$92,000,000.⁴ (Estimated revenues for the year 2000 for each of the railroads are set forth on Exhibit B.) As a publicly traded company, GWI currently produces financial statements on a consolidated basis for SEC purposes. However, such reports include all of GWI's controlled entities, whether U.S. based or not, whether railroad affiliates or not.

GWI and its subsidiary railroads have been involved in various transactions subject to the Board's jurisdiction including common control, acquisitions, and trackage rights. Most of the transactions have been eligible for exemptions under the Board's regulations.

The Board's Proposal

The Board has general authority over the reports that will be required of railroads under its jurisdiction and how those reports will be presented. Currently, only Class I railroads are required to file Form R-1 Annual Reports, to keep their records in accordance with the detailed system of accounts set forth in 49 CFR Part 1201, and to file a variety of other reports under 49 CFR Parts 1241-1248. The Board also determines how carriers will be classified. *See* 49 CFR Part 1201 at General Instruction 1-1. In conjunction with this authority, the Board (and before it, the Interstate Commerce Commission ("ICC")) reviews the various statements issued by the

⁴ Although GWI has not yet determined what affiliates or income would be included for railroad-related affiliates, the total estimated annual revenue for the affiliates listed on Exhibit A is less than \$30,000,000.

Financial Accounting Standards Board ("FASB") to determine if carriers under the Board's jurisdiction should be required "to follow the new standards in their *accounts and reports filed with the Board*." 49 CFR §1200.2(a) (emphasis added). The Board also has the authority to determine if a FASB statement should not be required for Board reports. 49 CFR §1200.2(d).

The Board is now proposing to adopt the consolidated reporting requirements of FASB Statement No. 94 ("FASB 94") (with modifications) for "all purposes." FASB 94 is not a newly issued statement – it was issued by FASB in October 1987. At the time FASB 94 was issued, it was reviewed by the Board's predecessor agency who determined that consolidated reporting should, in effect be required only for the purposes of completing schedule 250 of Form R-1 (relating to revenue adequacy determinations), and to permit it for other reports and schedules. *See Supplemental Reporting of Information for Revenue Adequacy*, 5 ICC 2d 65 (1988). The Board indicates that it wants to expand the requirements not only to all of the reports required to be filed with it, but also to the determination of the classification of railroads. The Board gives no evidence of problems with how FASB 94 is currently being applied, or why it is taking this new position. It merely states, without citation, that "consolidated data would provide more meaningful and accurate information on major rail systems operating in the United States." Notice at 3.

Effect of Proposed Reporting Requirement

If the Board merely wanted the reports it currently receives (from Class I carriers) to reflect consolidated data, its proposal (although previously rejected by the ICC) would likely be

less objectionable. Requiring the use of consolidated data in all reports that are filed with the Board would be consistent with the purpose of FASB statements to set standards for the disclosure of financial information so that they can be reviewed and compared on a consistent basis.⁵ See "The Mission of the Financial Accounting Standards Board."

However, the Board has indicated that it intends to go beyond the information required in its reports, and use the data for "all purposes" including apparently to change the classification of carriers. See Notice at 4. For certain groups of carriers, the requirements will mean that all of their affiliated carriers will become classified as Class I carriers, subject to all of the Board's substantial accounting and reporting rules. For GWI, the change would mean that instead of having only one Class II subsidiary, all 17 of its subsidiary railroads would be considered Class II carriers, as would any newly formed subsidiary railroads or any railroads it might purchase.

The effects of such a change in how railroads are classified go well beyond the mere disclosure of financial information in a more meaningful way, they affect how a number of substantive provisions of Board's regulations will be applied. As discussed more fully below, these changes would have a substantial adverse affect on costs and on the ability of families of short lines like GWI and its subsidiaries to enter into new transactions.

⁵ Of course, because the Board is making substantial changes to FASB 94 by including only U.S. railroads and U.S. railroad-related affiliates, data presented to the Board will not be consistently presented. Even entities such as GWI that currently prepare financial statements in accordance with FASB 94 will be required to incur the additional expense of creating new statements in accordance with the Board's modifications. Further, GWI is not clear how the Board's proposal would apply to railroad-related subsidiaries that earn a substantial portion of their revenues from foreign railroad operations.

The Board has often commented on the growth of the short line industry and the vital role it plays in preserving rail infrastructure beyond the Class I trunk lines for much of rural America. GWI and other families of short lines have used existing regulations to acquire a series of lines and carriers, many of which were low density spinoffs of Class I carriers that might otherwise have been subject to abandonment. GWI has been able to use shared administration and expertise, combined purchasing power and borrowing ability to keep down costs for its subsidiaries. This has allowed GWI's subsidiaries to grow their businesses and to become profitable.

The biggest effect of the Board's proposed change will be to chill future acquisitions by families of carriers. The proposed change will undermine the nation's rail transportation policies of minimizing regulatory control, removing unnecessary regulatory burdens to entry, and encouraging the development of a sound rail transportation system (including the short line industry). 49 USC §10101 (2), (4), (7). It undermines the policies that have supported short line growth – exemptions that allowed short lines on an expedited basis to form, make acquisitions and obtain the authority necessary to continue operations and save lines from abandonment.

The benefits of family ownership of short lines have long been recognized:

As the short-line interests point out, their continuing expansion has both resulted in and been facilitated by "group owners," *i.e.*, individuals or corporate parents that own or control a group of noncontiguous rail carriers or lines. These short-line conglomerates often provide common administrative, maintenance,

marketing, and other management function, thus permitting economies of scale and lower costs.

Rail Consolidation Procedures – Continuance in Control of a Nonconnecting Carrier, 2 ICC 2d 677, 678 (ICC 1986). The Board's new proposal would now, without any stated reason, take away those benefits and actually discourage short line families like GWI from making further acquisitions. This will leave future Class I divestitures to less experienced, less financially secure purchasers, jeopardizing the long term future of these lines.

The Board's regulations and the governing statute seem to use the size of a carrier (its classification) as a short hand for the carrier's market power – the larger the carrier, the more regulation that is needed to make sure that it does not abuse that market power. Even at that, the ICC recognized that it is not necessarily appropriate to consolidate even commonly controlled Class I carriers when they are operated as separate systems. *See Standards for Railroad Revenue Adequacy*, 3 ICC 2d 261, 302-303 (1986). Similarly, the class exemptions adopted by the Board with respect to the control of noncontiguous small carriers recognize that each individual carrier is but a small cog in its market and that there is little if any chance of abuse of market power. *See, e.g., Rail Consolidation, supra*, 2 ICC 2d at 680 ("Continuance in control of nonconnecting lines has little, if any, impact on market power.") Thus, especially in the case of nonconnecting short lines, there is no reason to require consolidated reporting of data or to use such data for classification purposes.

Even in situations with connecting short lines, the benefits of applying the Board's proposed rule are questionable. In most instances where common control involves connecting lines, acquiring families have been able to demonstrate that there was a legitimate business

reason for forming a new corporation and that there was little likelihood of abuse of market power despite the existence of the connection. *See, e.g., Genesee & Wyoming, Inc. -- Control Exemption – Portland & Western Railroad, Inc.*, STB Finance Docket No. 32759 (served August 1, 1997), at 4. The Board's proposal here, by requiring all of the carriers in GWI's family to be considered Class II carriers, negates these findings that the individual carriers do not have market power, and imposes on each of them, regardless of size, the increased regulation applicable to Class II carriers.⁶

Re-classifying GWI's carriers as Class II carriers will have the following effects on acquisitions:

Acquisitions by newly formed subsidiaries under 49 USC §10901 and 49 CFR §1150.31 et seq. Newly formed subsidiaries are classified according to their expected first year revenues. 49 CFR Part 1201, General Instruction 1-1(b)(3). If new carriers are consolidated with existing family members it is more likely that they will need to comply with the 60 day advance notice requirements where projected revenues exceed \$5,000,000. Additionally, with respect to GWI, the newly formed carrier could be considered a Class II carrier meaning the additional requirements of 49 CFR §1150.35 (in addition to the 60 day notice, a separate 14 day advance notice to certain entities, and a delayed 21 day effective date) would come into play.

⁶ In cases of connecting lines, use of the class exemption is not permitted, and either an application or petition for exemption must be filed. If there is a risk of abuse of market power, or if the Board is not convinced of the reasons given for setting up separate carriers, then it could in those instances, based on specific findings in such cases, require consolidated reporting by the involved carriers.

Acquisitions by existing subsidiaries under 49 USC §10902 and 49 USC §1150.41

et seq. Under the Board's proposal, again it will be more likely that family-owned carriers will exceed the \$5,000,000 threshold for additional notice requirements. Similar additional requirements will apply to the GWI carriers that will all be considered to be Class II carriers. Additionally, Class II carriers under Section 10902 are required to provide labor protection of one year's severance that would not be applicable if the acquisition were made by a subsidiary that is currently a Class III carrier.

Transactions with a Class II carrier outside of the family. Any transaction between a GWI Class III subsidiary with a Class II carrier outside of the family (for example, a lease, trackage rights or merger), would be subject to a higher level of labor protection. Under 49 USC §11326, instead of a transaction being between a Class II and a Class III subsidiary requiring one year's severance, it would be considered to be between two Class II carriers requiring full labor protection under Section 11326(a).

Thus, groups of carriers such as GWI will be forced to incur additional expenses to acquire lines or expand operations, prejudicing them in making bids vis-a-vis other smaller bidders, and could raise the cost of some acquisitions to levels that will mean that GWI will not bid on the lines. If existing financially secure families of carriers are discouraged from buying lines, it will mean that more of the marginal lines of Class I carriers will either be sold to unproven start-ups or abandoned rather than preserved.

In addition, the proposal will require carrier families to do special accounting reports under the Board's modified rules to determine what classification the carriers in the family will

have. Now, each individual carrier which is a separate corporation can track its own revenues and its financials will determine its current classification. There will thus be increased accounting costs for individual carriers and families that will have no corresponding benefit.⁷

The Board's proposal will also affect families like GWI in other less apparent ways. For example, boxcars with Class III markings continue to have prescribed rates. However, if carriers are re-classified as Class II these grandfathered cars may lose their protected status, jeopardizing this investment. Additionally, under the Railroad Industry Agreement (privately negotiated between large and small carriers under the auspices of STB Ex Parte 575), Class II carriers are not provided as many rights as Class III carriers. This will make it harder for carriers to avoid burdensome paper barriers and expand their business.

In sum, the Board's proposal will markedly increase the costs of operating as carriers in a family of carriers and will chill future acquisitions by such families. These families which have been responsible for saving jobs and preserving service for shippers should not be penalized for doing so. The Board should be breaking down barriers to the growth of short lines not setting up additional barriers.

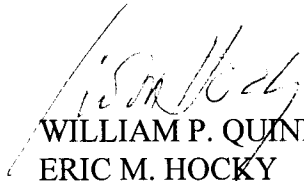
Conclusion

For all the foregoing reasons, GWI and its subsidiary railroads believe that the Board should not require consolidated reporting as a general rule. If the Board continues to believe that consolidated data would present a more complete picture than the reports required by its

⁷ If GWI were to grow large enough to be a Class I carrier on a combined basis, the extra costs would grow exponentially. GWI would be required to absorb the substantial expense of converting the accounts of even its smallest subsidiary to the Board's Uniform Classification of Accounts, and complying with the Board's other significant reporting requirements.

current regulations, then the Board should require the use of such data only in the reports themselves, but the Board should not use the data for classification purposes.⁸

Respectfully submitted,



WILLIAM P. QUINN
ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Dated: November 24, 2000

Attorneys for Genesee & Wyoming Inc.
and its Subsidiary Railroads

⁸ In no event should the Board require the use of consolidated data with respect to non-contiguous short lines (Class II and III carriers). Likewise with respect to contiguous lines, the Board should not require the use of consolidated data unless it determines on a case-by-case basis if it should be required based on the unique circumstances of the particular action before it.

Exhibit A

**U.S. RAILROADS
AND
U.S. RAILROAD-RELATED AFFILIATES**

A. GWI directly controls the following U.S. railroads through stock ownership:

Railroad	Marking	Class	States of Operation
Buffalo & Pittsburgh Railroad, Inc.	BPRR	II	New York, Pennsylvania
Bradford Industrial Rail, Inc.	BR	III	Pennsylvania, New York
Genesee & Wyoming Railroad Company	GNWR	III	New York
Dansville and Mount Morris Railroad Company	DMM	III	New York
Rochester & Southern Railroad, Inc.	RSR	III	New York
Louisiana & Delta Railroad, Inc.	LDRR	III	Louisiana
Allegheny & Eastern Railroad, Inc.	ALY	III	Pennsylvania
Willamette & Pacific Railroad, Inc.	WPRR	III	Oregon
Illinois & Midland Railroad, Inc.	IMRR	III	Illinois
Pittsburg & Shawmut Railroad, Inc.	PSR	III	Pennsylvania
Portland & Western Railroad, Inc.	PNWR	III	Oregon
Corpus Christi Terminal Railroad, Inc.	CCPN	III	Texas
Savannah Port Terminal Railroad, Inc.	SAPT	III	Georgia
Golden Isles Terminal Railroad, Inc.	GITM	III	Georgia

B. GWI indirectly controls the following U.S. railroads through its ownership of Rail Link, Inc.:

Railroad	Marking	Class	States of Operation
Carolina Coastal Railway, Inc.	CLNA	III	North Carolina
Commonwealth Railway, Inc.	CWRY	III	Virginia
Talleyrand Terminal Railroad, Inc.	TRR	III	Florida

C. GWI directly controls the following companies which might qualify as U.S. railroad-related affiliates:

Rail Link, Inc.

Genesee & Wyoming Railroad Services, Inc.⁹

GWI Leasing Corporation

Kitanning Equipment Leasing Company

⁹ This affiliate receives revenues for administrative services from both U.S. and foreign subsidiaries and its revenues are not currently segregated.

EXHIBIT B
OPERATING REVENUES

Railroads	Marking	Est. 12-month ¹⁰
Buffalo & Pittsburgh Railroad, Inc.	BPRR	25,746,000
Bradford Industrial Rail, Inc.	BR	--- ¹¹
Genesee & Wyoming Railroad Company	GNWR	41,000
Dansville and Mount Morris Railroad Company	DMM	--- ¹²
Rochester & Southern Railroad, Inc.	RSR	4,209,000
Louisiana & Delta Railroad, Inc.	LDRR	6,044,000
Allegheny & Eastern Railroad, Inc.	ALY	888,000
Willamette & Pacific Railroad, Inc.	WPRR	15,107,000
Illinois & Midland Railroad, Inc.	IMRR	22,997,000
Pittsburg & Shawmut Railroad, Inc.	PSR	2,945,000
Portland & Western Railroad, Inc.	PNWR	6,529,000
Corpus Christi Terminal Railroad, Inc.	CCPN	1,450,000
Savannah Port Terminal Railroad, Inc.	SAPT	2,056,000
Golden Isles Terminal Railroad, Inc.	GITM	1,177,000
Carolina Coastal Railway, Inc.	CLNA	181,000
Commonwealth Railway, Inc.	CWRY	713,000
Talleyrand Terminal Railroad, Inc.	TRR	2,108,000
Railroad Totals:		92,191,000

¹⁰ Annual revenues have been estimated based on the actual operating revenues for the 9-month period from January 1, 2000 through September 30, 2000, rounded to the nearest thousand dollars..

¹¹ Revenues are reported together with BPRR.

¹² Revenues are reported together with GNWR.