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November 24, 2000

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Ex Parte No. 634**
Consolidated Railroad Reporting

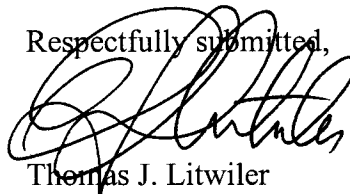
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Comments of Wisconsin Central Transportation Corporation**, dated November 24, 2000.

One extra copy of this transmittal letter and of the Comments are included as well. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Wisconsin Central
Transportation Corporation

TJL:tl

Enclosures



200629

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 634

CONSOLIDATED RAILROAD REPORTING

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**COMMENTS OF WISCONSIN CENTRAL
TRANSPORTATION CORPORATION**

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**ATTORNEYS FOR WISCONSIN CENTRAL
TRANSPORTATION CORPORATION**

Dated: November 24, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 634

CONSOLIDATED RAILROAD REPORTING

**COMMENTS OF WISCONSIN CENTRAL
TRANSPORTATION CORPORATION**

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Pursuant to the "proposal" issued herein on September 25, 2000, Wisconsin Central Transportation Corporation ("WCTC") hereby provides its comments on the Board's stated intention to adopt Statement No. 94 of the Financial Accounting Standards Board ("FASB"), Consolidation of All Majority-Owned Subsidiaries ("FASB 94), and require consolidated regulatory reporting by all commonly-controlled rail carriers in the United States. WCTC believes the Board's proposal is confusing, results-oriented and ill-advised. The Board has provided no reason why -- a full thirteen years after its initial issuance -- there is now a sudden need to adopt FASB 94 for rail regulatory purposes. The proposal addresses no pressing or even realistically foreseeable concerns, while creating significant burdens and far-reaching consequences for a broad range of Class II and Class III rail carriers. Moreover, there are serious legal problems with both the Board's casual assertion of jurisdiction over rail holding companies and the procedures being used to adopt this "proposal." While adopting "modifications" to FASB 94 may blunt some of the harm to the industry, they provide no additional rationale for adopting such an intrusive and re-regulatory scheme in the first place. Indeed, such modifications simply call into further question the suitability of adopting FASB 94 for railroad reporting purposes. The Board should reject mandatory consolidated reporting by rail carriers and discontinue this proceeding.

Alternatively, WCTC is filing herewith a motion to consolidate this proceeding with Ex Parte No. 584, Wisconsin Central Ltd. -- Petition for Rulemaking -- Classification of Carriers (petition filed November 15, 2000). In that proceeding, Wisconsin Central Ltd. ("WCL"), a WCTC subsidiary, is seeking to amend the rail carrier classification regulations in 49 C.F.R. § 1201(1-1)(a) and increase from \$250 million to \$500 million the operating revenue threshold for Class I railroads. It appears that a -- and perhaps the -- primary purpose of the Board's FASB 94 proposal is to compel Class I status for WCL and its carrier affiliates. If the FASB 94 proposal is not rejected for any of the numerous reasons that follow, it should be consolidated with Ex Parte No. 584 so that the common, actual underlying issue -- what carriers are properly designated as Class I's -- can be considered openly and rationally.

I. BACKGROUND

FASB 94 was adopted in October of 1987.¹ It requires the consolidation for accounting purposes of all of a company's majority-owned subsidiaries unless such control is temporary or does not actually rest with the majority owner (such as where, for example, the subsidiary is in bankruptcy). This concept of consolidation did not originate with FASB 94; indeed, it had been in place at least since the adoption of Accounting Research Bulletin No. 51, Consolidated Financial Statements, in 1959. The major effect of FASB 94 was to remove a widely-utilized exception to the consolidation standard for "non-homogeneous" operations. See FASB 94, Paragraph 6 ("Business enterprises have increasingly used 'nonhomogeneity' as a basis for excluding from consolidation majority-owned (even wholly owned) subsidiaries considered different in character from the parent and its other affiliates. Subsidiaries most

¹ Such statements become so-called "Generally Accepted Accounting Principles" ("GAAP").

commonly not consolidated on that basis have been finance, insurance, real estate, and leasing subsidiaries of manufacturing and merchandising enterprises.”). Against this background, it is unclear whether FASB 94 created any substantial new requirements among affiliated rail carriers that did not already exist under ARB No. 51.

The year before FASB 94’s adoption, the Interstate Commerce Commission (“ICC”) had revised its standards for determining railroad revenue adequacy among Class I rail carriers. Standards for Railroad Revenue Adequacy, 3 I.C.C.2d 261 (1986) (“Standards”). As relevant here, the ICC determined that return on investment, or “ROI” -- the basis for revenue adequacy -- should be determined on a combined basis for Class I railroads under common control where they form a unified, jointly-managed system. 3 I.C.C.2d at 301-303. In response to concerns raised by a group of Class II carriers that are today part of the Transtar family of railroads, the ICC stressed that “this consolidation policy applies only to Class I carriers, not to their Class II or Class III affiliates.” 3 I.C.C.2d at 303, n.52. The ICC also determined that results for a Class I railroad would be combined with all of the Class I’s rail-related, majority-owned subsidiaries for ROI purposes. 3 I.C.C.2d at 303-309.

In 1987 the ICC opened a second rulemaking proceeding to adopt revised reporting requirements consistent with the policies announced in Standards. Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes, Ex Parte No. 393 (Sub-No. 2) (ICC served May 11, 1987 and February 25, 1988). This proceeding overlapped with a recommendation by the now-defunct Railroad Accounting Principles Board (“RAPB”) to adopt the so-called “Entity Principle” for railroad accounting purposes. Under that principle, as applied to the ROI calculation, a Class I railroad would develop ROI on a consolidated system basis with any rail-related affiliate (including any affiliated Class II or Class III carriers). The

ICC ultimately adopted this approach, noting its consistency with FASB 94. Supplemental Reporting of Info. For Revenue Adequacy, 5 I.C.C.2d 65, 68-69 (1988) (“Supplemental Reporting”). While this outcome effectively overruled the ICC’s determination in Standards that revenue adequacy consolidation would not extend to Class II and Class III affiliates of a reporting Class I railroad, it remained (and remains) clear that reporting and consolidation requirements apply only where at least one Class I railroad is present in the first place. Supplemental Reporting, 5 I.C.C.2d at 65 (explaining that decision “[a]dopts new reporting requirements for Class I railroads”); Id. at 81 (noting in instructions for new schedule that “[w]hen a consolidated schedule is filed, only one Class I railroad in the affiliated group need file this schedule.”).

This has been the status quo for the last twelve years: Class I carriers must provide revenue adequacy data on a consolidated basis,² and may provide other R-1 data on a consolidated or non-consolidated basis at their discretion. In its recently-issued “proposal” herein, the Board now seeks to require consolidated reporting -- purportedly by adopting FASB 94 -- for a broader range of regulatory purposes. The Board provided little detail of its reasoning in initiating the proposal, other than to indicate that “consolidated data would provide more meaningful and accurate information on major rail systems operating in the United States” and “would be in keeping with our general policy of following GAAP” Consolidated Railroad Reporting, Ex Parte No. 634 (STB served September 25, 2000) (“FASB 94 Proposal”) at 3. Neither of these considerations, of course, is new since 1988.

² This is done via Schedule 250, which is filed separately from and a month after Annual Report Form R-1.

On one level, the Board's new proposal would expand the data which Class I railroads are required to report on a consolidated basis from just revenue adequacy information (Schedule 250) to all information presently included in the Annual Report Form R-1. This would be a fairly self-contained and technical change in the R-1 form -- not unlike many others adopted from time to time³ -- of interest primarily to existing Class I railroads and the Association of American Railroads. Indeed, as the Board notes, most Class I carriers already file consolidated R-1 reports with the agency. FASB 94 Proposal at 5, n.10.⁴ In this respect, the Board's proposal simply codifies existing practice and is largely unnecessary.

The Board's proposal, however, goes much further. Almost as an afterthought, deep within its proposal the Board indicates that:

This approach [i.e., adopting FASB 94 and requiring consolidated reporting] could change the 'classification' status of some railroads, whose revenues would be combined with the revenues of their corporate siblings to determine whether the railroads that are

³ See, e.g., Modification of Class I Reporting Regulations, Ex Parte No. 583 (STB served July 18, 2000) (pending proposal to add new annual report of cars loaded and terminated on Class I railroads).

⁴ Based on review of the 1999 annual R-1 reports submitted by Class I carriers, CSX Transportation, Inc. ("CSXT"), Norfolk Southern Railway Company ("NS") and Union Pacific Railroad Company ("UP") each filed on a consolidated basis with their majority-owned rail carrier affiliates. The Burlington Northern and Santa Fe Railway Company ("BNSF") apparently has no such carrier affiliates, and thus also effectively files on a "consolidated" basis. Soo Line Railroad Company ("Soo") did not file on a consolidated basis with the affiliated Delaware & Hudson Railway Company, Inc., with which it does not connect. Grand Trunk Western Railroad, Incorporated ("GTW") did not file on a consolidated basis with the affiliated Duluth, Winnipeg & Pacific Railway Company, with which it does not connect. Illinois Central Railroad Company ("IC") did not file on a consolidated basis with the affiliated Chicago, Central & Pacific Railroad Company and Cedar River Railroad Company, which were acquired by IC's parent in 1996. (IC and GTW came under common ownership in mid-1999). The Kansas City Southern Railway Company ("KCS") did not file on a consolidated basis with the affiliated Gateway Western Railway Company, which was acquired by a KCS affiliate in 1997.

part of the commonly controlled families should be classified as Class I, Class II, or Class III.

FASB 94 Proposal at 4-5 (footnotes omitted). Unlike any similar rule before it, the Board's proposal here could have the effect of obliterating the current classification status of hundreds of individual railroad companies across the nation, and reclassify those railroads as part of invented consolidated "carriers" with no legal existence. For the first time, Class I rail "systems" could be created that have no constituent Class I carriers within them. This is a direct departure from -- not an extension of -- Supplemental Reporting, supra, which considered only whether and to what extent consolidated reporting should be required from existing Class I railroads that were already reporting anyway. Previous accounting changes dealt simply with how Class I railroads were to report to the Board. This change, in effect, determines who must report -- and indeed is much more than an "accounting change." It is this aspect of the Board's proposal that deeply concerns WCTC and that compels rejection of FASB 94 as construed by the Board.⁵ Oddly, despite the drastic effect the Board's proposal would have on reclassifying railroads across the nation, no corresponding changes were proposed to the Board's classification regulations at 49 C.F.R. § 1201(1-1).

There has been no specific reason given publicly for the abrupt initiation of this potentially drastic action. Recent activity involving WCTC, however, would seem to provide relevant background. WCTC is a non-carrier holding company with four wholly-owned rail

⁵ While WCTC's focus is on the aggregation of smaller carriers into a Class I "entity," many similar problems would result from the consolidation of a rail family's Class III carriers into a phantom Class II "carrier." WCTC joins many others in protesting that situation as well.

carrier subsidiaries conducting operations in the United States.⁶ Wisconsin Central Ltd. ("WCL") is a Class II rail carrier which operates approximately 2000 miles of track in Wisconsin, Illinois, Minnesota and Michigan's Upper Peninsula. Fox Valley & Western Ltd. ("FVW") is a Class II rail carrier which operates approximately 373 miles of rail line entirely within the State of Wisconsin. Sault Ste. Marie Bridge Company ("SSMB") is a Class II rail carrier⁷ which owns the bridge over the St. Mary's River between Sault Ste. Marie, Michigan and Ontario and approximately 220 miles of former Union Pacific Railroad Company lines in northern Wisconsin and the Upper Peninsula of Michigan. Wisconsin Chicago Link Ltd. ("WCLL") is a Class III switching and terminal carrier which owns trackage within the Chicago switching district.

By letter dated November 20, 1997 to WCL, the Board's Section of Costing and Financial Information informed WCL that it was about to be reclassified from a Class II to a Class I carrier. See Exhibit 1. That assertion was apparently based on a review of WCTC filings with the SEC, which encompassed all of the company's domestic and international operations. WCL responded that neither itself nor any of its carrier affiliates had operating revenues above the Class I threshold. See Exhibit 2. After a further exchange of correspondence, the Board confirmed WCL's continuing Class II status. See Exhibits 3, 4 and 5.

⁶ See Wisconsin Central Ltd. -- Control Exemption -- Sault Ste. Marie Bridge Company, Finance Docket No. 31167 (ICC served December 23, 1987 and March 25, 1988); Wisc. Central Transp. Corp. -- Control, 9 I.C.C.2d 233 (1992), reopening denied, 9 I.C.C.2d 730 (1992); Wisconsin Central Transportation Corporation -- Continuance in Control Exemption -- Wisconsin Chicago Link Ltd., Finance Docket No. 33811 (STB served March 8, 2000).

⁷ SSMB, formerly a Class III railroad, achieved Class II status on January 1, 2000.

In February, 2000, the Board (this time through its Section of Economics) again wrote to WCL, requesting annual operating revenues for the years 1997, 1998 and 1999 for “WCTC and its wholly owned subsidiaries.” See Exhibit 6. WCTC provided the information as requested, and on April 4, 2000 the Board again confirmed WCL’s continuing Class II status. See Exhibits 7 and 8. In its April correspondence, the Section of Economics noted the existence of FASB 94, and indicated that WCTC “could qualify as a Class I railroad” if the Board were to formally adopt FASB 94. Exhibit 8.

On August 1, 2000, with no advance notice, WCTC received a further letter (dated July 26, 2000) from the Section of Economics perfunctorily concluding, without elaboration, that WCTC “operates as a unified, jointly managed and integrated railroad system” and would be “designated a Class I railroad for accounting and reporting purposes” beginning January 1, 2001. The letter made no mention of FASB 94 or any other consolidated reporting standards. See Exhibit 9. WCTC responded with a letter to the Board’s chairman dated August 4, 2000 strongly objecting to the July 26th letter and questioning the Section’s sua sponte effort to reclassify WCTC and all of its rail subsidiaries. See Exhibit 10. Ultimately, WCTC understood that there would be no change in the classification status of any of its rail carrier affiliates pending further action or notice from the Board.

Approximately two months later, the Board issued the proposal in this proceeding to adopt FASB 94 and require consolidated reporting by rail carriers. Particularly given the absence of any other stated basis for resurrecting FASB 94 at this time, it seems likely that the proposal was issued in response to the correspondence between WCTC and the Board, and perhaps in furtherance of an effort to impose Class I status on the Wisconsin Central family of carriers. Such result-oriented regulatory action is arbitrary and problematic, as the many

(perhaps inadvertent) adverse consequences of the Board's proposal herein demonstrate. Questions regarding the proper definition of Class I carriers -- and whether WCTC's rail carrier affiliates or any other carriers should be included in that definition -- are properly and better addressed in Ex Parte No. 584. To the extent that this matter arises out of similar considerations, the proposal to adopt FASB 94 should be rejected and this proceeding discontinued.

II. DISCUSSION

A. The Proposed Action is Procedurally Deficient And Contrary to the Board's Own Regulations

As an initial matter, even before consideration of its many deficiencies on the merits, the Board's "proposal" to adopt FASB 94 and require consolidated reporting has been handled inappropriately and is not properly before the Board for final action. The Board has specific regulations governing the "[a]doption of generally accepted accounted principles issued by the Financial Accounting Standards Board (FASB)." 49 C.F.R. § 1200.2. That regulation provides that the Board's "Bureau of Accounts"⁸ shall issue an Accounting Series Circular ("ASC") providing for "carriers under the Board's jurisdiction to follow the new [FASB] standards in their accounts and reports filed with the Board." 49 C.F.R. § 1200.2(a). Carriers and interested parties are provided 45 days to comment, after which the Board may initiate formal action to amend its regulations to reflect the new standard:

Formal Adoption of the New Accounting Standards. After considering the comments submitted in response to the ASC, and based on the proposal of the Bureau of Accounts, the Board will decide whether or not to adopt the new accounting standards

⁸ While this entity apparently no longer exists, its functions have been assumed by other offices within the agency. See Annual Report Form R-1, Notice, note 8 ("Any references to the Bureau of Accounts or the Office of Economics contained in this report refer to the Office of Economics, Environmental Analysis, and Administration of the Surface Transportation Board.").

specified in the ASC by revising the Uniform System of Accounts (49 CFR 1201 through 1210).

49 C.F.R. § 1200.2(c).

In one of its letters to WCTC earlier this year the Board's Section of Economics specifically noted the applicability of these requirements to any consideration of FASB 94:

When the Board considers the [FASB/GAAP] standards appropriate we will revise the Uniform System of Accounts (49 CFR 1201) to conform to the accounting standard (See, 49 CFR 1200.2). We believe formal adoption of FASB No. 94 will allow the Board, for accounting and reporting purposes, to consider all comparable entities, regardless of the numerous organizational or legal corporate forms, as one reporting entity.

See Exhibit 8, April 4, 2000 letter to Daniel A. Josh, Jr., at 1. The Board's current "proposal," however, makes no reference -- general or specific -- to these requirements or to the involved regulation. But for the request by interested parties to extend the comment date herein,⁹ the initial, hurried schedule for adoption of the FASB 94 proposal -- reflective, we fear, of a rush to impose new Class I status on carriers beginning January 1, 2001 -- clearly violated the time requirements of 49 C.F.R. § 1200.2(b).

More significantly, the Board has taken no steps to amend its regulations to reflect the substantial policy action it is undertaking as it is required to do. The decision initiating this proceeding is designated a "proposal" rather than a "notice of proposed rulemaking," and contemplates no changes to the Uniform System of Accounts as required by 49 C.F.R. § 1200.2(c). These are more than technicalities: they reflect a failure to follow either the letter or intent of 49 C.F.R. § 1200.2. The Board certainly can remove that regulation after appropriate

⁹ See decision served October 20, 2000 (extending due date for comments from October 25, 2000 to November 27, 2000).

notice and comment if in the agency's eyes it no longer serves a necessary purpose, but it is not free to simply ignore the regulation in the meantime.

The serious and ultimately fatal deficiency in the Board's approach is demonstrated most profoundly with respect to the proposed classification (and, more precisely, the proposed reclassification) of carriers under FASB 94. It is apparently the Board's intention that its action here will eliminate the individual classification of any rail carrier under common control with other railroads, and will instead combine the revenue of all affiliated carriers to "determine whether the railroads that are part of the commonly controlled families should be classified as Class I, Class II or Class III." FASB 94 Proposal at 5. We are at a complete loss to understand how this can be accomplished without amendment of the relevant regulations at 49 C.F.R. § 1201(1-1) (part of the Uniform System of Accounts) expressly governing the classification of rail carriers. Absent such amendment, those provisions are directly contrary to and inconsistent with what the Board is proposing here.

49 C.F.R. § 1201(1-1)(b)(1), for example, provides that "[t]he class to which any carrier belongs shall be determined by annual carrier operating revenues after the railroad revenue deflator adjustment."¹⁰ But for any rail carrier that controls, is controlled by, or is under common control with another rail carrier, this is not how that carrier's class would be determined under the Board's FASB 94 proposal. Instead, the revenue of all affiliated rail carriers would be combined and a single classification applied to the "family." While the Uniform System of

¹⁰ A "carrier" is defined as "... any carrier to which this system of accounts is applicable." 49 C.F.R. § 1201(ii)(7). In turn, the regulations prescribe that "[c]arriers by railroad subject to provisions of the Interstate Commerce Act and not independently operated as electric lines, and each lessor of such a carrier, shall comply with regulations in this part as presented hereinafter." 49 C.F.R. § 1201(i).

Accounts includes definitions for “affiliated companies” and “control,” 49 C.F.R. § 1201(ii)(5)(a) and (b), those concepts are not used in the current railroad classification regulations. Classification is prescribed based on an individual carrier’s own operating revenues. A carrier’s lawful compliance with the currently effective and binding provisions of the Board’s own regulations at 49 C.F.R. § 1201(1-1)(b)(1) would necessarily be inconsistent with the “proposal” the Board is advancing herein.

Similarly, 49 C.F.R. § 1201(1-1)(d) provides that “[a]ll switching and terminal companies, regardless of their operating revenues, will be designated Class III carriers.” This too is a rule that would have to be changed if the Board’s proposal herein were to be adopted in an effective and legal manner. Under that proposal, all switching and terminal companies would not be Class III carriers -- those affiliated with other carriers would likely be Class II or Class I carriers. Such a proposal cannot and would not co-exist with Section 1201(1-1)(d) in its current form.

It is thus clear than any Board action on the FASB 94 proposal without corresponding revisions to the railroad classification regulations of 49 C.F.R. § 1201(1-1) would be null and void -- at least with respect to the reclassification of rail carriers contemplated on pages 4-5 of the Board’s September 25, 2000 decision. This is as it should be. The notice and comments procedures and other requirements of the Administrative Procedure Act were designed to ensure an open and fully informed consideration of generally applicable regulatory policies. An approach that allows substantive policy decisions and regulatory revisions to be accomplished through what look like housekeeping “proposals” is plainly inconsistent with an agency’s statutory duties. If the Board wants to radically alter the railroad classification structure -- and, indeed, the very concept of what constitutes a “carrier” -- it should do so in a

forthright and conscious manner with the opportunity for knowing participation by interested parties. At the very least, the Board must conform its own regulations to the policies it is proposing to adopt. Until and unless this obvious step occurs here, the Board's FASB 94 proposal should be rejected and this proceeding discontinued.

B. There is No Legal Authority for the Board's Attempt To Assert Jurisdiction over Rail Holding Companies

In a footnote near the end of its "proposal," the Board makes another statement with little fanfare but significant -- and troubling -- implications:

The parent of the commonly controlled railroads, whether that parent is a railroad or non-railroad, would be required to file consolidated financial reports. See 49 U.S.C. 721(b) (authorization for the collection of data from persons controlling a carrier). And if a family of carriers were to attain Class I status, it would be required to follow the Uniform System of Accounts (49 CFR Part 1201) and to file a variety of reports (49 CFR Part 1241-1248).

FASB 94 Proposal at 5, n.9. It is important to understand in the first instance why this attempt to bootstrap up to non-carrier holding companies is necessary, since it is reflective of the unprecedented nature of the Board's proposed action. In prior cases involving issues of consolidated reporting, including the Supplemental Reporting decision (5 I.C.C.2d 65) on which the Board now relies, there was always an existing Class I railroad which was already subject to the Board's accounting and reporting requirements. The Board's authority to obtain reports from that carrier was uncontroverted. The question was simply how that carrier should make those reports -- on an individual basis; on a consolidated basis with other commonly-controlled Class

I's; on a consolidated basis with its own rail-related subsidiaries; or on a consolidated basis with all rail-related affiliates.¹¹

Here, the Board is contemplating for the first time the designation of Class I consolidated rail "systems" that have no constituent Class I railroad members. That would be the case, for example, if WCTC's rail carrier subsidiaries were consolidated to form a Class I "system," since none of those carriers is itself a Class I railroad.¹² In such instances, it is unclear what entity is actually subject to the Board's accounting and reporting requirements, which apply only to Class I carriers.¹³ Footnote 9 appears to be an attempt to solve this legal and logical problem by making the non-carrier holding company the Class I reporting "entity" -- and subjecting it to regulations that by their terms apply only to "carriers."

The Board has no authority to engage in such regulation of non-carrier entities. The Board's general jurisdiction extends to "transportation by rail carrier." 49 U.S.C. §§ 10501(a)(1), (b)(1).¹⁴ The Board's specific power to impose accounting and reporting requirements is similarly limited to rail carriers. E.g., 49 U.S.C. § 11142 ("The Board may prescribe a uniform accounting system for classes of rail carriers providing transportation subject

¹¹ The ICC in Supplemental Reporting decided on the latter option, relying on the RAPB's Entity Principle and referencing FASB 94.

¹² As indicated above, WCL, FVW and SSMB are Class II rail carriers, while WCLL is a Class III switching and terminal road.

¹³ E.g., 49 C.F.R. § 1201(1-1)(c) ("Class I carriers shall keep all of the accounts of this system which are applicable to their operations. Class II and III carriers are not required to maintain the accounts of this system."); 49 C.F.R. § 1241.11 (annual report form R-1 required from "all line-haul railroad companies of Class I").

¹⁴ "Rail carrier" is defined as a "person providing common carrier railroad transportation for compensation" 49 U.S.C. § 10102(5).

to the jurisdiction of the Board under this part.”); 49 U.S.C. § 11144(a)(1) (“The Board may prescribe the form of records required to be prepared or compiled under this subchapter by rail carriers and lessors”); 49 U.S.C. § 11145(a)(1) (“The Board may require rail carriers, lessors and associations, or classes of them as the Board may prescribe, to file annual, periodic, and special reports with the Board”); 49 U.S.C. § 11162(a) (“Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Board under section 11161 of this title.”).

The ICC previously did have limited authority to extend its jurisdiction to non-carrier holding companies and require carrier-like reporting from those entities. Former 49 U.S.C. § 11348 allowed the ICC, in its discretion, to assert jurisdiction over a non-carrier when the non-carrier sought approval under former 49 U.S.C. § 11343 to acquire control over more than one rail carrier.¹⁵ This provision was repealed by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (“ICCTA”), thus seemingly eliminating any question about the Board’s continued ability to treat non-carriers like carriers.

¹⁵ Former 49 U.S.C. § 11348(a) provided that:

When the Interstate Commerce Commission approves and authorizes a transaction under sections 11344 and 11345 of this title in which a person not a carrier providing transportation subject to the jurisdiction of the Commission under chapter 105 of this title acquires control of at least one carrier subject to the jurisdiction of the Commission, the person is subject, as a carrier, to the following provisions of this title that apply to the carrier being acquired by that person, to the extent specified by the Commission: sections 504(f) and 10764, subchapter III of chapter 111, and sections 11301, 11709, 11901(f), (m)(1), 11909(a)(1), (b), and 11911(a).

Chapter 111, subchapter III (49 U.S.C. §§ 11141-11145) continues to cover reports and records in the current version of the statute.

According to the Board, the general administrative powers of the agency at 49 U.S.C. § 721(b) allow it to assert jurisdiction over non-carrier holding companies, to assign those companies a rail carrier classification designation, and to impose on such non-carriers the full panoply of accounting and reporting obligations authorized by the Interstate Commerce Act. Such a conclusion is consistent with neither the structure nor the intent of the statute. 49 U.S.C. § 721(b)(2) and (3) -- which were carried over essentially verbatim from former 49 U.S.C. § 10321 and do not represent any kind of substitute or replacement for former 49 U.S.C. § 11348 -- provide that:

The Board may inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier [and] obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV

The Board apparently believes its administrative power to “obtain information” from non-carriers allows it to impose on them the same comprehensive reporting system that applies to carriers. If this were the case, of course, there would be no need or reason for the statute to contain the detailed carrier reporting and accounting requirements of 49 U.S.C. §§ 11141-11145 and §§ 11161-11164, since the Board’s general administrative powers in 49 U.S.C. § 721 extend to both carriers and non-carriers. There also would have been no purpose for former 49 U.S.C. § 11348, which gave the agency limited authority to extend reporting requirements to non-carriers in specified circumstances. E.g., Guilford Transp. Industries, Inc. -- Control -- D&H Ry. Co., 366 I.C.C. 396, 422 (1982) (“[W]e have the discretionary power under 49 U.S.C. 11348 to subject GTI, as a noncarrier controlling a carrier, to the reporting, accounting and securities requirements of 49 U.S.C. 11142, 11144, 11145 and 11301.”).

The real answer is simple: the ability to obtain information from a non-carrier holding company is not the same thing as authorization to regulate that non-carrier. Yet such regulation is precisely what the Board proposes here. As footnote 9 makes clear, non-carrier holding companies would be required to follow the Uniform System of Accounts and otherwise conduct their affairs, compile their records and submit reports in accordance with the requirements heretofore applicable only to rail carriers. We do not understand how a non-carrier can be independently subjected to the Uniform System of Accounts when the statutory authorization for such a system is expressly limited to “classes of rail carriers providing transportation subject to the jurisdiction of the Board under this part,” 49 U.S.C. § 11142, and the holding company provisions of former Section 11348 have been removed. The Board’s attempt here to translate an administrative information-gathering provision into a regulatory jurisdictional provision must fail.

The ICC previously considered and confirmed in similar circumstances these limitations on the agency’s jurisdiction. In Corporate Disclosure Regulations, 354 I.C.C. 27 (1977), clarified, 356 I.C.C. 103 (1978), the ICC rather expansively construed what is now 49 U.S.C. § 721¹⁶ to allow a requirement that carriers report certain information regarding their non-carrier holding company parents. The agency was clear, however, about what could not be required:

[W]e will respond to the objection that we may be requiring the filing of reports from those not subject to the Interstate Commerce Act. This objection has merit in that Section I of the proposed regulations could be interpreted as calling for reports from noncarrier parents and subsidiaries. Such was not intended. Our

¹⁶ The provisions now relied upon by the Board were then contained in 49 U.S.C. § 12(1). Those provisions were recodified to 49 U.S.C. § 10321 in 1978, and reenacted by ICCTA as 49 U.S.C. § 721 in 1996.

authority to require reports is contained in section 20(1) [current 49 U.S.C. § 11145; statutory quotation omitted]. It is our intention that the only entity required to file a report be the respondent carrier, in conformity with section 20(1). To make this clear, we have amended section I to state specifically that the information is to be submitted by the respondent carrier and have defined "respondent" as meaning only the carriers described therein and companies considered to be carriers pursuant to an order entered under section 5(4) of the act [later 49 U.S.C. § 11348, now repealed].

354 I.C.C. at 34-35. Such precedent precludes the Board's action here, which plainly seeks to require reporting by non-carrier holding companies. FASB 94 Proposal at 5, n.9.

49 U.S.C. § 11144 provides a practical, ongoing example of the principle involved. Under that section, the Board may "prescribe the form of records required to be prepared or compiled under this subchapter" by rail carriers, lessors and persons furnishing cars, and may "prescribe the time period during which operating, accounting, and financial records must be preserved by rail carriers, lessors, and persons furnishing cars." 49 U.S.C. § 11144(a), (c). The Board also may "inspect and copy any record of a rail carrier [and] a person controlling, controlled by, or under common control with a rail carrier if the Board considers inspection relevant to that person's relation to, or transaction with, that rail carrier." 49 U.S.C. § 11144(b)(2). As with 49 U.S.C. § 721(b), the Board can obtain information and records from non-carrier holding companies. But the Board's broader, regulatory powers -- to mandate compilation of certain records and impose document retention policies, for example -- are limited to rail carriers over which the Board has jurisdiction. There is no rational basis for expanding such regulatory powers to cover non-carriers.

Ultimately, the Board cannot enforce Class I accounting and reporting requirements on entities over which it has no jurisdiction, nor on entities over which it may have jurisdiction but which are not Class I carriers under the Board's own governing regulations.

Adoption of the FASB 94 proposal thus would not and could not impose Class I status on railroad “families” which have no individual Class I members. Substantially more would be required -- including at a minimum amendment of the Board’s railroad classification regulations -- to achieve that result.

C. Adoption of FASB 94 is Neither Necessary Nor Appropriate

As indicated above, the only reasoning provided by the Board for currently seeking to adopt FASB 94 -- thirteen years after its promulgation -- is a stated belief that “consolidated data would provide more meaningful and accurate information on major rail systems operating in the United States.” FASB 94 Proposal at 3.¹⁷ Taken by itself and at face value, this statement seemingly addresses carriers and carrier systems that are already reporting to the Board, and how such existing reporting can or should be improved. As discussed further below, to the extent that the intent or effect of the Board’s proposal goes beyond this to expand the pool of reporting parties -- that is, to create new Class I carriers or systems that do not exist today -- it raises a fundamentally results-oriented question that should be considered in conjunction with the pending Ex Parte No. 584 proceeding addressing the proper revenue threshold for Class I carriers.

With respect to existing Class I carriers, however, it is not clear what problem the Board’s current proposal is meant to address. Each of the four major U.S. rail systems -- NS, CSXT, BNSF and UP -- already reports regulatory information on a consolidated system basis.

¹⁷ The Board also indicated generally that “adherence to FASB No. 94 for all regulatory reporting purposes would be in keeping with our general policy of following GAAP unless such procedures are inconsistent with our regulatory requirements.” FASB 94 Proposal at 3. This rationale, of course, sheds little light on the Board’s decision to undertake consideration of this particular issue at this particular time.

The other four, much smaller Class I carriers (three of which are controlled by Canadian railroads) that may not report on a consolidated basis all involve either 1) geographically distinct and non-contiguous non-Class I rail affiliates or 2) recently-acquired non-Class I rail affiliates. There is no existing pattern of affiliated Class I carriers reporting separately to the Board.¹⁸ We are aware of no issues, complaints or difficulties that have arisen in any Board proceeding as a result of these current reporting practices. Frankly, it is hard to believe that the Board's FASB 94 proposal -- and all of the costs, burdens and problems associated with it -- are driven by a compelling concern that results for Soo are not consolidated with those of the Delaware & Hudson half a continent away, or that IC's reports have not included the operations of the CCP in Iowa.

As a result of the 1988 decision in Supplemental Reporting, 5 I.C.C.2d 65, all Class I railroads currently report revenue adequacy data on a consolidated system basis. Beyond that, information in the R-1 report and other annual and quarterly reports filed with the Board is used primarily as inputs into the Board's Uniform Railroad Costing System ("URCS"). URCS data, in turn, is used for a variety of purposes in rate reasonableness proceedings, and for calculating certain off-branch costs in regulated abandonment cases. 49 C.F.R. § 1152.32(n). Once again, we are unaware of any challenges to URCS data used in rate and abandonment cases at the Board based on the unconsolidated nature of the carrier information utilized in the costing process. This is hardly surprising -- rate complaints involving the smaller Class I's which may

¹⁸ IC and GTW filed separate 1999 R-1 annual reports, which seems logical given that those two previously independent carriers did not come under common control until the middle of the year.

not report on a fully consolidated system basis are few and far between, while cases involving the four largest carriers already use fully consolidated URCS data.

The objectives and benefits of the Board's consolidated reporting proposal are thus questionable at best. And even if the Board does go forward, FASB 94 is a questionable vehicle to use in this context. The Board's decision implies that FASB 94 was the underlying basis for the ICC's 1988 Supplemental Reporting decision requiring consolidated reporting for revenue adequacy purposes, but that was not the case. The ICC's action was based primarily on the RAPB's adoption of the so-called "entity principle," with FASB 94 mentioned only in passing -- and even then mostly for its consideration of what constitutes "control." 5 I.C.C.2d at 68-69.¹⁹

As discussed in the "Background" section above, FASB 94 did not initiate the consolidated reporting requirement, but instead modified the existing requirement by: 1) eliminating the "nonhomogeneity" exception; and 2) eliminating the exception for majority-owned foreign subsidiaries. Now the Board proposes to "adopt" FASB 94, but to exclude from consolidated reporting: 1) non-U.S. affiliates; and 2) non-railroad related operations -- that is, those not homogenous with a rail carrier's business. FASB 94 Proposal at 3-4. Effectively, the Board proposes to adopt FASB 94 simply to undo its substantive provisions.²⁰ This is the wrong tool for the wrong purpose.

¹⁹ The ICC's only discussion of FASB 94 as it specifically related to consolidated reporting was the statement that "[a]s Statement No. 94 indicates, the FASB clearly requires consolidation of majority-owned companies and wants more time to study the question of less than majority-owned companies and the appropriate reporting entity in these circumstances." 5 I.C.C.2d at 69.

²⁰ The Board's suggestion to exclude from consolidated reporting affiliated railroad companies which "have no connection with one another" -- while perhaps logical and

Ultimately, FASB 94 was intended to insure that shareholders and creditors received full and accurate public information about reporting entities, and arose from a concern that non-consolidated reporting was standing in the way of that objective. The Board, however, is not a public consumer or investor -- it is an expert regulatory agency with full authority to require whatever might be necessary from the carriers that report to it. There is no indication that the Board is uninformed or misinformed under existing reporting standards and practices, or that the Board could not (and would not) deal effectively with any specific situation to the contrary as it arose. The Board should not force FASB 94 into a regulatory structure where it neither fits nor is needed

D. The Board's Proposal Would Have Serious Adverse Consequences in All Segments of the Rail Industry

Adoption of FASB 94 as proposed by the Board would have significant adverse effects across the industry through its forced reclassification of individual rail carriers based on their affiliation with other rail carriers. Indeed, if allowed to stand, the Board's proposal would represent major new policy action on a number of fronts. While it is not known whether the Board understood these consequences when initiating this proceeding, they clearly must be addressed now.

Under the Board's proposal, many of the Class III railroad families in the U.S. apparently would be collectively redesignated as Class II's. Carriers within those families so reclassified would no longer be able to use the class exemption at 49 C.F.R. § 1150.41 to acquire rail lines under 49 U.S.C. § 10902, or for that matter to do any acquisitions under Section 10902

desirable in the rail context -- does even further violence to FASB 94's underlying purpose of eliminating the nonhomogeneous exception.

without the imposition of labor protection. Rail families made up of Class II and Class III carriers²¹ that were redesignated as Class I's would lose the ability to process rail line acquisitions under Section 10902 altogether. In each instance, the Board would simply be abandoning wholesale its long-standing and well-developed policy on when affiliated rail carriers should be considered the "alter ego" of each other for transactional purposes.²² Obviously, a proceeding that ostensibly deals with an accounting rule change is the wrong place to be engaging in such a dramatic rewriting of regulatory policy. Equally obviously, there is absolutely no basis on the merits for such action.

Recent history with the Sault Ste. Marie Bridge Company ("SSMB"), a WCTC rail carrier subsidiary, demonstrates the incongruous nature of what the Board is proposing in this proceeding. In 1997 SSMB, then a Class III carrier, purchased the Union Pacific Railroad Company's so-called "Duck Creek North" lines north of Green Bay, Wisconsin pursuant to a notice of exemption under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41. In accordance with 49 U.S.C. § 10902(d), no labor protection was imposed on the transaction.²³ A rail labor union sought revocation of SSMB's exemption, claiming that SSMB was the alter ego of WCL and thus should be deemed a Class II carrier. Under Section 10902, acquisition of the Duck Creek

²¹ WCTC has three Class II rail carrier subsidiaries and one Class III rail carrier subsidiary.

²² E.g., Gateway Eastern Railway Company -- Acquisition and Operation Exemption -- Lines of Consolidated Rail Corporation, Finance Docket No. 32304 (ICC served July 6, 1995); FRVR Corporation -- Acquisition and Operation Exemption -- Chicago & North Western Transportation Company, Finance Docket No. 31205 (ICC served February 28, 1989), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 914 F.2d 276 (D.C. Cir. 1990), cert. denied, 499 U.S. 959 (1991).

²³ SSMB voluntarily agreed to pay one year of severance pay to affected employees of the seller.

North Lines by a Class II carrier would have been subject to mandatory labor protection. Just this past summer, the Board denied the petition to revoke, finding that SSMB was not the alter ego of WCL and was properly considered a Class III carrier in its purchase of the Duck Creek North Lines. Sault Ste. Marie Bridge Company -- Acquisition and Operation Exemption -- Lines of Union Pacific Railroad Company, Finance Docket No. 33290 (STB served July 7, 2000). Having declined in July to consider SSMB as integrated with its carrier affiliates for classification purposes, the Board now apparently seeks less than three months later to adopt -- with no explanation and in a seemingly unrelated proceeding -- a directly contrary policy. Such action by the Board would plainly be arbitrary and capricious, and should be rejected here.

The Board's obliteration of rail carriers' individual classifications would cause other difficulties as well. For example, a carrier's ability to invoke provisions of the Rail Industry Agreement (which apply differently to Class II and Class III carriers, and are unavailable to Class I carriers) would be constrained. A particularly difficult situation would arise with respect to the so-called "grandfathered" boxcars that are held by the Class III affiliates of many Class I and Class II carriers, or within existing Class III railroad families.²⁴ See 49 C.F.R. § 1039.14(c)(2). Redesignation of Class III carriers holding such boxcars to Class II or Class I status would eliminate the car's grandfathered status and result in serious economic dislocations for many railroads across the nation.

The Board has apparently attempted to mitigate such circumstances by proposing that FASB 94 would not apply "where the railroads under common control have no connection with one another except for a common parent." FASB 94 Proposal at 4. Such a standard,

²⁴ Wisconsin Chicago Link Ltd. ("WCLL"), a Class III rail carrier subsidiary of WCTC, holds a number of such grandfathered boxcars.

however, may simply generate further confusion. Even where affiliated railroads are not physically contiguous, they may be “connected” through various shared administrative, marketing, dispatching, maintenance and operating functions. What degree of “connection” would be required to trigger consolidated reporting? Even if the test was one of physical contiguity, what about (for example) rail holding companies with numerous Class III carriers, some of which connect and some of which don’t? If the connecting carriers have consolidated revenue above the Class II threshold, is the rail holding company a Class II at some times or for some purposes and a Class III for others? How are the other carriers in the system treated? The more one thinks about it, the more absurd the outcomes get. Take a carrier which would be a Class III on a stand-alone basis but is classified as a Class II because the revenues of it and its connecting affiliates are above the Class II threshold. If the parent seeks to sell that carrier,²⁵ is the buyer acquiring a Class II or a Class III railroad?

If the hypotheticals are convoluted, the message is simple: any action by the Board that dispenses with the identity and classification of actual rail carrier entities will wreak havoc in the industry in ways that have likely yet to be thought of. Should the Board proceed with its consolidated reporting requirement, it must at the very least delete the language at pages 4-5 of FASB 94 Proposal and not allow its action to change the existing classification of any rail carrier.

²⁵ We note that there has been a number of recent sales of individual Class III carriers by short-line holding companies.

E. Issues Concerning the Proper Classification of Rail Carriers Should Be Considered in Ex Parte No. 584

For all of the reasons explained above, the Board's "proposal" herein is fundamentally flawed on its merits and should be rejected. There is no need to mandate consolidated reporting from rail carriers, and adoption of FASB 94 in the manner contemplated by the Board would entail significantly more harm than benefit. In truth, the mechanics of the pending proposal raise significant questions about the underlying purpose of this proceeding. The Board has proposed to adopt FASB 94, but simultaneously proposed "modifications" that nullify the main components of FASB 94 and then further suggested other exceptions to the rule's applicability. Ultimately, the target audience for the Board's proposal appears to become quite small.

Candor thus compels the conclusion that this proceeding may very well be more about creating new Class I carriers than it is about consolidated reporting and financial accounting standards. Given the correspondence with WCTC over the last several years, followed by the Section of Economics' unilateral action in July declaring WCTC to be a Class I carrier, it is hard not to conclude that the true purpose of the pending proposal is not a sudden desire to adopt FASB 94 but a desire to reclassify WCTC as a Class I carrier.²⁶ From WCTC's viewpoint, the rationale for such action is hard to discern. Such a reclassification would disregard the current structure of the railroad industry, seriously burden the long-standing

²⁶ We note that, whatever action the Board takes, pursuant to 49 C.F.R. § 1201(1-1)(b)(1) any reclassification could not occur before three years of Class I revenue qualification under the new standard.

successful operation of the Wisconsin Central railroads, and result in literally no meaningful increase in the regulatory information available to the Board.²⁷

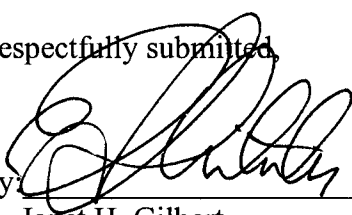
As is requested in a motion filed by WCTC simultaneously herewith, this proceeding -- if not dismissed on its merits -- should be consolidated with Ex Parte No. 584, Wisconsin Central Ltd. -- Petition for Rulemaking -- Classification of Carriers (petition filed November 15, 2000). That proceeding, in which WCL has requested an increase in the present Class I revenue threshold from \$250 million to \$500 million, will address directly the proper definition of a Class I carrier and who should and should not be included in that definition. Decisions on those issues should come from a transparent and forthright consideration of the subject with informed participation by all interested parties -- not as the hidden result of an ostensibly technical proceeding addressing unrelated matters.

²⁷ WCL has addressed these issues at length in its petition in Ex Parte No. 584, and those arguments should be considered as reincorporated here to the extent necessary or appropriate.

III. CONCLUSION

WHEREFORE, WCTC hereby respectfully requests that the Board accept these comments, reject the pending proposal to adopt FASB 94 and require consolidated reporting from rail carriers, and discontinue this proceeding.

Respectfully submitted,

By 

Janet H. Gilbert
Vice President & General Counsel
Wisconsin Central North American Properties
P.O. Box 5062
Rosemont, Illinois 60017-5062
(847) 318-4691

Thomas J. Litwiler
Fletcher & Sippel LLC
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, Illinois 60601-6721
(312) 540-9440

**ATTORNEYS FOR WISCONSIN CENTRAL
TRANSPORTATION CORPORATION**

Dated: November 24, 2000



Surface Transportation Board
Washington, D.C. 20423-0001

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

NOV 20 1997

Mr. Walter C. Kelly
Vice President Finance
Wisconsin Central Ltd.
6250 North River Road
Rosemont, IL 60018

Dear Mr. Kelly:

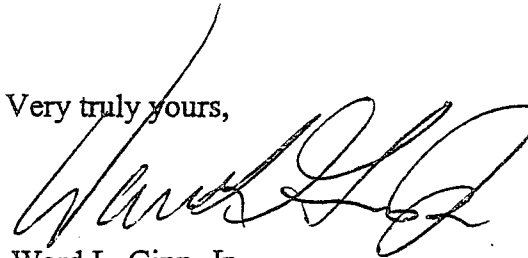
The purpose of this letter is to advise the Wisconsin Central Railroad of their pending reclassification from a Class II to a Class I railroad. Results of operations as reported by the railroad to the Securities and Exchange Commission for the 3rd Quarter 1997, indicate that annual operating revenues for the period ending December 31, 1997 are projected to exceed the Class I revenue threshold for the third consecutive year.

The Code of Federal Regulations (CFR), Title 49, Uniform System of Accounts (USOA), Part 1201 Instruction 1-1 (b) (1), provides that the class to which any carrier belongs shall be determined by carrier operating revenues after the revenue deflator adjustment. Upward and downward reclassification will be effected as of January 1 in the year immediately following the third consecutive year of revenue qualification. Further, (b) (2) of that instruction provides, if a carrier's classification is changed based on three consecutive years' adjusted revenues, the carrier shall complete and file the Classification Index Survey Form with the Surface Transportation Board by March 31 of the following year.

Please be advised that appropriate notification of classification change should be timely
filed with this Board.

Should you have any questions, please contact me at (202) 565-1533.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ward L. Ginn, Jr.", written in dark ink.

Ward L. Ginn, Jr.
Chief, Section of Costing
and Financial Information



OFFICE:
One O'Hare Centre
6250 North River Road
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Rosemont, IL 60018
Tel. (847) 318-4600

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P.O. Box 5062
Rosemont, IL 60017-5062

January 2, 1998

Mr. Ward L. Ginn, Jr.
Chief, Section of Costing and Financial Information
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Mr. Ginn:

This is in response to your letter dated November 20, 1997 which indicates that Wisconsin Central Ltd. would be reclassified from a Class II to a Class I railroad after 1997. That conclusion is apparently based on total revenue from the various domestic and international operations of the Wisconsin Central Transportation Corporation ("WCTC"), a non-carrier holding company, and is not correct for any of WCTC's domestic rail carrier subsidiaries subject to the jurisdiction of the Board.

WCTC is a holding company doing business in the United States, Canada, Great Britain, Australia and New Zealand through various wholly owned subsidiaries and affiliates. In the United States, Wisconsin Central Ltd., Fox Valley & Western Ltd., WCL Railcars, Inc. and Sault Ste. Marie Bridge Company are WCTC's operating subsidiaries. These are separate operating companies and none of them meets the revenue levels required to become a Class I railroad. (WCL Railcars, Inc. is an equipment leasing company, in any event, and not a common carrier by rail.)

While WCTC, as a publicly-traded company, reports its overall financial results on a consolidated basis, we have consistently maintained separate records and financial statements for each domestic rail operating subsidiary. The following represents the operating revenue levels for each of these subsidiaries in the two most recent years.

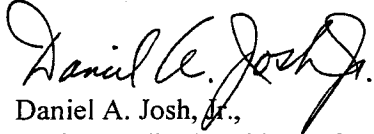
Company	Operating Revenues (\$ in thousands of U.S. dollars)	
	1996	1995
WCL	\$ 210,114	\$ 209,679
FWW	27,550	33,062
Sault Ste. Marie	1,521	1,718

Since the Code of Federal Regulations, title 49, Uniform System of Accounts, Part 1201, Instruction 1-1 defines a Class I as a railroad having annual revenues of \$250 million or more, none of our railroads would qualify for classification as a Class I railroad.

Indeed, even if the revenue for each of WCTC's three domestic rail carrier subsidiaries was combined (and there plainly is no basis for so doing), the aggregated revenue amounts for 1996 remain below the \$250 million threshold, even before application of the revenue deflator adjustment specified in the regulations.

Please call me at (847) 318-4710 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Josh, Jr.", with a stylized flourish at the end.

Daniel A. Josh, Jr.,
Assistant Vice President - Controller



Surface Transportation Board
Washington, D.C. 20423-0001

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

JAN 28 1998

Mr. Daniel A. Josh
Assistant Vice President - Controller
Wisconsin Central Limited
One O'Hare Center
6250 North River Road
Suite 9000
Rosemont, IL 60018

Dear Mr. Josh:

This is in response to your letter dated January 2, 1998 in which you indicated that the Wisconsin Central Ltd. should not be reclassified to a Class 1 railroad. In your correspondence you stated that domestic revenue for the years 1995 and 1996, was below the present threshold level for Class 1 carriers.

The basis for determining the proper classification of the Wisconsin Central Ltd., for the year beginning January 1, 1998 is the carrier's annual operating revenues for three consecutive years. Therefore, please provide a statement listing the operating revenues for the consecutive calendar years 1995, 1996, 1997. Revenues shall be reported as recorded in the carrier's general ledger, without adjustment for the deflator factor. Annual operating revenue shall include all revenues earned by Wisconsin Central Ltd. on freight traffic movements handled by the carrier, originating or terminating within the continental United States.

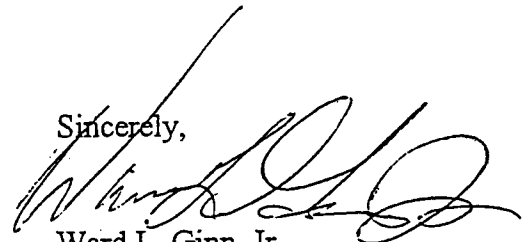
A statement from your outside accountants independently verifying the revenue amounts reported, should accompany your response.

Also, we would appreciate your reporting the associated car loadings for each year, if readily available. Operating revenues for the Fox Valley & Western Ltd., and the Sault Ste. Marie Bridge Company should be provided separately for each year.

Your response within 30 days would be greatly appreciated.

Should you have any questions, or wish to discuss this matter further, please contact me at (202) 565- 1533.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ward L. Ginn, Jr.', with a large, sweeping flourish extending upwards and to the left.

Ward L. Ginn, Jr.
Chief, Section of Costing and
Financial Information



OFFICE:

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Rosemont, IL 60017-5062

February 26, 1998

Mr. Ward L. Ginn, Jr.
Chief, Section of Costing and Financial Information
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Mr. Ginn:

This is in reference to prior correspondence and specifically your last letter of January 28, 1998.

The attached schedule reflects the annual operating revenues for Wisconsin Central Ltd., Fox Valley & Western Ltd., and Sault Ste. Marie Bridge Company for each of the years 1995, 1996 and 1997 (without adjustment for the deflator factor). The schedule also shows the revenue carloads as you requested. We have also attached an independent auditors' report on the schedule, which was prepared by KPMG Peat Marwick LLP. We again believe that since none of these railroad carriers have exceeded the revenue threshold for Class I carriers for three consecutive years, none qualify as a Class I railroad.

Please confirm your agreement that none of our railroads are Class I at this time.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel A. Josh, Jr.", is written over the typed name.

Daniel A. Josh, Jr.,
Assistant Vice President - Controller



OFFICE:

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Rosemont, IL 60018
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P.O. Box 5062
Rosemont, IL 60017-5062

Operating Revenues & Carloads
(\$ in thousands)

Railroad	1997		1996		1995	
	Amount	Carloads	Amount	Carloads	Amount	Carloads
Wisconsin Central Ltd.	\$ 244,795	441,830	\$ 210,114	421,283	\$ 209,679	383,691
Fox Valley & Western Ltd.	28,512	48,797	27,550	52,869	33,062	66,428
Sault Ste. Marie Bridge Company	31,060	138,563	1,521	30,420	1,718	34,360

Notes:

- One shipment moving over more than one of these railroads would be included in the carload count for each of the specific railroads involved.
- One carload is equal to a revenue freight car or revenue intermodal trailer or container.

CERTIFIED CORRECT

Daniel A. Josh, Jr.

KPMG Peat Marwick LLP

Peat Marwick Plaza
303 East Wacker Drive
Chicago, IL 60601-5255

Independent Auditors' Report

The Board of Directors

Wisconsin Central Transportation Corporation and subsidiaries:

We have audited the accompanying schedule of operating revenues and carloads of Wisconsin Central Ltd., Fox Valley & Western Ltd. and Sault Ste. Marie Bridge Company for the years ended December 31, 1997, 1996 and 1995. This schedule is the responsibility of management. Our responsibility is to express an opinion on this schedule based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the schedule of operating revenues and carloads is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedule of operating revenues and carloads. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the schedule of operating revenues and carloads referred to above presents fairly, in all material respects, the operating revenues and carloads of Wisconsin Central Ltd., Fox Valley & Western Ltd. and Sault Ste. Marie Bridge Company for the years ended December 31, 1997, 1996 and 1995, in conformity with generally accepted accounting principles.

KPMG Peat Marwick LLP

January 27, 1998



Surface Transportation Board
Washington, D.C. 20423-0001

OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION

March 3, 1998

Mr. Daniel A. Josh, Jr.
Assistant Vice President- Controller
Wisconsin Central Ltd.
One O'Hare Center
6250 North River Road
Suite 9000
Rosemont, IL 60018

Dear Mr. Josh:

The purpose of this letter is to confirm that the Wisconsin Central Ltd. is currently a class II railroad in accordance with provisions of the Uniform System of Accounts. Our conclusion is based upon review of your verified statement and independent confirmation, concerning your company's operating revenues for the most recent three year period.

Your cooperation in this matter is greatly appreciated.

Sincerely,

Ward L. Ginn, Jr.
Chief, Section of Costing and
Financial Reporting

***SURFACE TRANSPORTATION BOARD
OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION***

Mr. Daniel A. Josh, Jr.
Assistant Vice President - Controller
Wisconsin Central Ltd.
One O'Hare Center
6250 North River Road
Suite 9000
Rosemont, IL 60018

February 1, 2000

Dear Mr. Josh:

In our letter of March 3, 1998 we confirmed Wisconsin Central Ltd.'s current Class II railroad accounting and reporting status. Our conclusion was based upon your verified statement as well as confirmation from your independent accountants KPMG Peat Marwick LLP which was attached to your response of February 26, 1998.

The "Operating Revenues & Carloads" schedule attached to your response of February 26, 1998 indicated that Wisconsin Central Transportation Corporation (WCTC) and its wholly owned subsidiaries for 1997 had combined annual operating revenues (without adjustment for the deflator factor) of approximately 304.4 million dollars. This represents the first year WCTC and its wholly owned subsidiaries had revenues greater than the revenue range of Wisconsin Central Ltd.'s present Class II status.

The basis for determining the proper classification of the WCTC and its wholly owned subsidiaries for the year beginning January 1, 2000 is the carrier's annual operating revenues for three consecutive years. Therefore, please provide a statement listing the operating revenues for the consecutive calendar years 1997, 1998, and 1999. Revenues shall be reported as recorded in the carrier's general ledger, without adjustment for the deflator factor. Annual operating revenue shall include all revenues earned by WCTC on freight traffic movements handled by the consolidated company both originating and terminating within the continental United States.

A statement from your independent accountants verifying the revenue amounts reported should accompany your response.

As you have furnished in the past, please report the associated car loadings for each year as well as the operating revenues for each of WCTC's principal operating subsidiaries; Wisconsin Central Ltd., Fox Valley & Western Ltd., and the Sault Ste. Marie Bridge Company.

Your response within 30 days would be greatly appreciated.

If you have any questions, please call me @ (202) 565 - 1527.

Sincerely yours,

A handwritten signature in cursive script that reads "Paul Aguiar".

Paul Aguiar

Assistant Chief, Section of Economics



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Rosemont, IL 60017-5062

March 6, 2000

Mr. Paul Aguiar
Assistant Chief, Section of Accounts
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Dear Mr. Aguiar:

This is in response to your letter dated February 1, 2000, which requests information regarding the operating revenues of Wisconsin Central Transportation Corporation's ("WCTC") wholly owned rail subsidiaries for three consecutive years.

WCTC is a non-carrier holding company doing business in the United States, Canada, Great Britain, Australia and New Zealand through various wholly owned subsidiaries and affiliates. In the United States, Wisconsin Central Ltd. ("WCL"), Fox Valley & Western Ltd. ("FVW"), WCL Railcars, Inc. and Sault Ste. Marie Bridge Company ("SSMB") are WCTC's major operating subsidiaries. WCL Railcars is an equipment leasing company and a non-carrier. WCL, FVW and SSMB are each separate and well-established operating rail carriers. WCL, a Class II carrier, was formed in 1987; FVW, a Class II carrier, began operations in 1993; and SSMB, historically a Class III carrier, dates from 1871. They each have been and continue to be accounted for and reported separately.

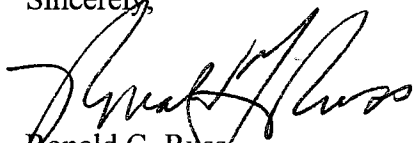
While WCTC, as a publicly-traded company, necessarily reports its overall financial results on a consolidated basis, we have consistently maintained separate records and financial statements for each domestic rail operating subsidiary. The attached schedule reflects the annual operating revenues for WCL, FVW and SSMB for each of the years 1999, 1998 and 1997 (without adjustment for the deflator factor). We have also attached an independent auditors' report on the schedule, which was prepared by KPMG LLP.

Since the Code of Federal Regulations, Title 49, Uniform System of Accounts, Part 1201, Instruction 1-1 defines a Class I carrier as a railroad having annual revenues of \$250 million or more for three consecutive years, none of WCTC's rail operating subsidiaries qualifies for classification as a Class I carrier.

I would note that, as the attached schedule shows, SSMB's operating revenues for the past three years indicate a reclassification from Class III to Class II status for that carrier. If anything further is required to comply with the notification requirements of Instruction 1-1(b)(2) in this respect, please let me know.

Please confirm your agreement that none of our railroads should be considered Class I. If you have any questions do not hesitate to call me at (847) 318-4700.

Sincerely,

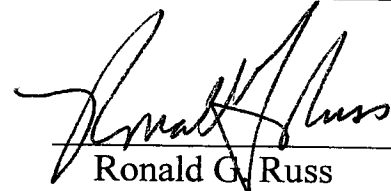
A handwritten signature in black ink, appearing to read "Ronald G. Russ", written in a cursive style.

Ronald G. Russ
Executive Vice President-
Chief Financial Officer

Operating Revenues
(\$ in thousands)

<u>Railroad</u>	1999	1998	1997
	<u>Amount</u>	<u>Amount</u>	<u>Amount</u>
Wisconsin Central Ltd.	\$281,071	\$255,372	\$244,795
Fox Valley & Western Ltd.	26,452	27,182	28,512
Sault Ste. Marie Bridge Company	35,817	35,909	31,060

CERTIFIED CORRECT


Ronald G. Russ



303 East Wacker Drive
Chicago, IL 60601-5212

Independent Auditors' Report

The Board of Directors

Wisconsin Central Transportation Corporation and subsidiaries:

We have audited the accompanying schedule of operating revenues of Wisconsin Central Ltd., Fox Valley & Western Ltd. and Sault Ste. Marie Bridge Company for the years ended December 31, 1999, 1998 and 1997. This schedule is the responsibility of management. Our responsibility is to express an opinion on this schedule based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the schedule of operating revenues is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedule of operating revenues. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the schedule of operating revenues referred to above presents fairly, in all material respects, the operating revenues of Wisconsin Central Ltd., Fox Valley & Western Ltd. and Sault Ste. Marie Bridge Company for the years ended December 31, 1999, 1998 and 1997, in conformity with generally accepted accounting principles.

KPMG LLP

January 28, 2000



KPMG LLP, KPMG LLP, a U.S. limited liability partnership, is
a member of KPMG International, a Swiss association.

***SURFACE TRANSPORTATION BOARD
OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS, AND ADMINISTRATION***

Mr. Daniel A. Josh, Jr.
Assistant Vice President - Controller
Wisconsin Central Ltd.
One O'Hare Center
6250 North River Road-Suite 9000
Rosemont, IL 60018

April 4, 2000

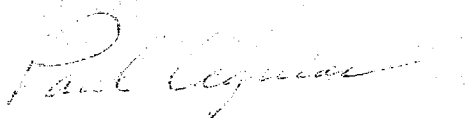
Dear Mr. Josh:

This confirms Wisconsin Central Ltd.'s status as a Class II railroad for the 1999 reporting period. This determination is based on our review of your verified statement and independent confirmation provided by KPMG LLP concerning Wisconsin Central Ltd.'s operating revenues for the most recent three year period.

However, as you may know in 1987 the Financial Accounting Standards Board (FASB) in FASB Statement No. 94 determined that consolidated statements must be prepared when one company owns more than 50% of the outstanding voting common stock of another company. Thus, almost all subsidiaries must be included in the consolidated financial statements under FASB Statement No. 94. The Board attempts to align our accounting and reporting regulations with Generally Accepted Accounting Principles. When the Board considers the standards appropriate we will revise the Uniform System of Accounts (49 CFR 1201) to conform to the accounting standard (See, 49 CFR 1200.2). We believe formal adoption of FASB No. 94 will allow the Board, for accounting and reporting purposes, to consider all comparable entities, regardless of the numerous organizational or legal corporate forms, as one reporting entity. If the Board adopts FASB Statement No. 94, Wisconsin Central Transportation Corporation (WCTC) could qualify as a Class I railroad.

If you have any questions please call me at (202) 565-1527.

Sincerely yours,



Paul Aguiar
Assistant Chief, Section of Economics

SURFACE TRANSPORTATION BOARD
OFFICE OF ECONOMICS, ENVIRONMENTAL ANALYSIS,
AND
ADMINISTRATION

SECTION OF ECONOMICS

July 26, 2000

Mr. Daniel A. Josh, Jr.
Vice President - Controller
Wisconsin Central Transportation Corporation
One O'Hare Center
6250 North River Road
Suite 9000
Rosemont, IL 60018

Dear Mr. Josh:

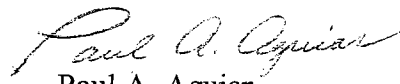
This Office has determined that the Wisconsin Central Transportation Corporation (WCTC) operates as a unified, jointly managed and integrated railroad system.¹ In this circumstance the Board has determined that WCTC has for the last three consecutive years met the Class I railroad revenue threshold, and will be treated in the same manner as all other Class I railroads. WCTC will be designated a Class I railroad for accounting and reporting purposes. (49 CFR 1201) Therefore, WCTC is required to follow the Uniform System of Accounts and file a consolidated Annual Report Form R-1 for the calendar year beginning January 1, 2001. WCTC's Annual Report R-1 must be filed with this Office on or before March 31, 2002. Furthermore, the following annual, quarterly and monthly reports are required, commencing in the year 2001.

1. Condensed Balance Sheet (CBS),
2. Revenue, Expenses & Income (RE&I)
3. Quarterly and Annual Commodity Statistics (QCS)
4. Quarterly and Annual Report Of Railroad Employees, Service, and Compensation (Wage A & B)
5. Monthly Report of Number of Railroad Employees (M-350)

¹ WCTC operating subsidiaries consist of Wisconsin Central Limited, Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, WCL Railcars Inc., Wisconsin Central International Inc., WC Canada Holdings, Inc., Algoma Central Railway Inc., and Wisconsin Chicago Link Ltd.

Please let me know if you have any questions (202-565-1527).

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Aguiar".

Paul A. Aguiar
Assistant Chief



OFFICE:

One O'Hare Centre
6250 North River Road
Rosemont, IL 60018
Suite 9000
Tel. (847) 318-4600

MAILING ADDRESS:

P.O. Box 5062
Rosemont, IL 60017-5062

August 4, 2000

VIA FAX

Linda J. Morgan
Chairman
Surface Transportation Board
1925 "K" Street N.W. Suite 500
Washington, D.C. 20423

RE: Office of Economics Letter Dated July 26, 2000

Dear Chairman Morgan:

On August 1, 2000, Wisconsin Central Transportation Corporation (WCTC) received a letter from Paul Aguiar, Assistant Chief of the Section of Economics of the STB's Office of Economics, Environmental Analysis and Administration, informing WCTC that the Office had declared WCTC to be a Class I railroad and instructing it to follow the Uniform System of Accounts and file a consolidated Annual Report Form R-1 for the calendar year 2001. A copy of the letter is attached.

WCTC and its individual North American operating subsidiaries strongly object to the Office's finding. We believe the finding not only is wrong but it is an extremely unfair action to spring unannounced upon us with no opportunity for prior input. It is particularly unfair when not but four months earlier, in April of this year, the Office wrote to Wisconsin Central Ltd. (WCL) to confirm the carrier's status as a Class II carrier. The April letter (copy attached) also notified WCL that the Board was considering revising its Uniform System of Accounts to incorporate Financial Accounting Standards Board (FASB) Statement 94 and, after formal adoption of FASB 94, WCTC could qualify as a Class I railroad.

To our knowledge, the Board has not yet published any notice, provided any opportunity to comment, or taken any other action on the adoption of FASB 94. Moreover, the Office's letter of July 26 does not even reference FASB 94, leaving open the question as to precisely what test or standards the Office used in reaching its conclusion that WCTC is now a Class I carrier. Hence, with no articulation of the standards being used by the Office, with no explanation as to why the Office believes WCTC meets whatever standards it is using, with no opportunity to have any input into the decision and, to the best of our knowledge, without any Board consideration of what is clearly a case of first impression, the Office has, sua sponte, reclassified WCTC and all of its subsidiaries.

To add to the confusion, the Office has asserted jurisdiction over WCTC, a non-carrier holding company. When Congress passed the ICC Termination Act of 1995, it repealed former 49 USC 11348 and, in so doing, removed holding companies from the general jurisdiction of the Board. Yet it is the holding company that the Office has declared to be both a carrier and a Class I carrier, subject to the Board's reporting rules. WCTC has organized itself, and its subsidiaries, in accordance with all applicable rules and regulations of the Board and, if there is to be a wholesale change in how the Board views holding companies and their status as carriers, surely due process would dictate advance notice of such a change and the opportunity for WCTC, as well as other similarly situated companies, to be heard.

Finally, after concluding that WCTC is somehow a "unified, jointly managed and integrated railroad system," the Office proceeds to footnote all of WCTC's subsidiaries, including its Canadian and other international interests. From this we can only infer that the Office is including both U.S. and international revenue in its determination and, again, sua sponte, changing the classification of each and every one of WCTC's subsidiaries. This is particularly difficult to understand given that the Board recently declined to consider Sault Ste Marie Bridge Company, a WCTC subsidiary, as integrated with its carrier affiliates for classification purposes. See Sault Ste. Marie Bridge Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company, Finance Docket No. 33290 (STB served July 7, 2000).

In sum, on behalf of WCTC and its U.S. operating subsidiaries, I am expressing our serious concern with the action the Office has taken and am requesting that the July 26 letter be rescinded. I believe that the Office's action is not an STB proceeding that triggers the appeal process set forth in 49 CFR Parts 1011.7(b)(1) and 1115.1(c), nor by this letter am I now instituting such a process. Please notify me immediately if this understanding is not correct.

Sincerely,



Janet H. Gilbert
Vice President and General Counsel
Wisconsin Central North American Properties