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JUN 25 2001

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May 21, 2001

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001



RE: STB Finance Docket No. 34000
Canadian National - Control - Wisconsin Central

Dear Secretary Williams:

Pursuant to notice in the *Federal Register* of May 9, 2001, enclosed find the original and twenty-five (25) copies of the Comments filed on behalf of Wisconsin Manufacturers & Commerce. We also enclose the disk specified in the Board's notice containing the text of this cover letter, the enclosed Comments, and Affidavit of Service in a format compatible with WordPerfect 9.0.

Pursuant to the Board's Decision No. 3, served June 12, 2001, we also enclose the original and 25 copies of an Affidavit of Service of Notice of Intent to Participate Filed on Behalf of Wisconsin Manufacturers & Commerce evidencing service of the Notice of Intent to Participate on all parties of record within 10 days of the Board's June 11, 2001 Decision No. 3. A disk containing the text of this Affidavit of Service in a format compatible with WordPerfect 9.0 is enclosed.

Also enclosed is a duplicate of this cover letter and return mail envelope, postage prepaid, for your stamped confirmation of receipt.

DEWITT
ROSS & STEVENS^{SC}
LAW FIRM

Surface Transportation Board
Office of the Secretary
June 21, 2001
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Your kind assistance with this filing is very much appreciated. If there is any problem with the filing, you are requested and authorized to telephone the undersigned, collect, at 608-252-9311.

Sincerely,

DEWITT ROSS & STEVENS^{SC}


John Duncan Varda

JDV:mc/rab

Enclosures

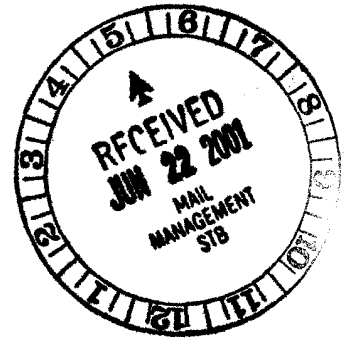
cc: Parties of Record (w/enclosure)
Eric Borgerding (w/enclosure)

202737

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Canadian National Railway Company, Grand Trunk Corporation,
and WC Merger Sub, Inc. - Control - Wisconsin Central
Transportation Corporation, Wisconsin Central Ltd., Fox Valley &
Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin
Chicago Link Ltd.**

STB Finance Docket No. 34000



COMMENTS

FILED ON BEHALF OF

WISCONSIN MANUFACTURERS & COMMERCE

ENTERED
Office of the Secretary
JUN 25 2001
Part of
Public Record

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**Dated: June 21, 2001
Due: June 25, 2001**

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SURFACE TRANSPORTATION BOARD**

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STB Finance Docket No. 34000

**COMMENTS OF
WISCONSIN MANUFACTURERS & COMMERCE**

Identification and Background.

Wisconsin Manufacturers & Commerce ["WMC"] is a not-for-profit, voluntary association of some 6,000 businesses which maintain manufacturing and commercial establishments in the State of Wisconsin who ship and receive significant volumes of freight to and from Wisconsin via rail including via Wisconsin Central. WMC was an active participant in proceedings before the Interstate Commerce Commission in 1988 through which Wisconsin Central Ltd., became a regional railroad by acquiring rail lines and related properties spun-off by the, then, Soo Line Railroad Company, and in 1992 through which Fox Valley & Western Ltd. acquired certain rail lines and related properties, parts of which were previously owned and historically operated by the Green Bay & Western Railroad and Chicago & Northwestern Transportation Company.

WMC's Transportation Committee is a group of some 30 professional managers of freight and other transportation for their businesses. The Committee meets bi-monthly, as it has for over 70 years, since 1930, to study, educate and comment on issues of interest to WMC members and public policy import affecting freight and other transportation to, from and through Wisconsin and the commerce of the Nation.

The Committee has recommended the filing of the within comments on behalf of WMC. WMC has adopted these comments and authorized their filing in its name.

WMC timely filed its notice of intent to participate and is duly listed among the parties of record.

WMC's Support - Unequivocal but Conditions Requested.

1. In the decade following inception in 1988, Wisconsin Central attracted steady growth of rail traffic on its Wisconsin properties and made remarkable progress in improving the quality of service, timeliness and particularly car supply.
2. The management of Wisconsin Central no longer has a vision for the future of the rail properties of the applicant group of Wisconsin Central railroads (collectively, "Wisconsin Central"). In what Wisconsin Central management describe as a market of consolidation in the rail industry, they believe Wisconsin

Central's is too small a property with too few resources and too little market leverage to compete effectively and to maintain the gains of the past.

3. WMC views "drift" as the worst enemy. Long delay in resolution of Wisconsin Central's future will result in acceleration of deterioration of the level of rail service quality which it took Wisconsin Central most of a decade to build. These historic gains are already threatened by some two years of drift and indecision or internal disputes within Wisconsin Central's management leading up to the decision to sell to Canadian National Railroad Company ("CN"). WMC views the physical resources, financial strength, size and scope of the CN-Illinois Central rail network as very positive indicators of capacity to advance development of the Wisconsin Central properties and service; and the only alternative available in time to arrest erosion of past gains.
4. Thus, WMC's support for this transaction is unequivocal.
5. At the same time, WMC submits in the remainder of these comments reasons why conditions should be imposed. Because WMC feels constrained to make a clear statement of support to assure timely succession by CN, WMC's support for the transaction is not "subject to" the Board's imposing the requested

conditions. However, as set forth below, there are compelling reasons to impose the requested conditions in line with the public policy interests so recently identified by the Board in its final rules in *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), June 11, 2001 ("New Rules").

Major Competition Policy Issues Have Not Been Addressed.

6. *Downstream Mergers.* Immediately prior to the moratorium just ended, just 18 months ago, CN was engaged to merger with Burlington Northern. Many trade press reports claim that merger interest remains alive, as well as reports of potential merger of CN and Canadian Pacific ("CP"). As a result of the instant transaction between CN and WC, any combination of these three railroads would dramatically change rail competition in Wisconsin and must be considered major.
7. *Trans-National Ownership.* Though the New Rules specifically address this subject, the timing and characterization of this proceeding result in an apparent pass on the subject. It is not addressed. Yet, even without the potential downstream merger of CN and CP, the result of this transaction is that the lion's share of rail properties for Wisconsin shippers and all rail properties serving central and northern Wisconsin and the Upper

Peninsula of Michigan are under the control of foreign ownership.

8. *Legacy of Spin-Off Conditions Restricting Competition.*

Conditions were imposed in spin-offs from which the Wisconsin Central system was created that restricted competitive alternatives. From its inception in 1988 for most of its first decade, Wisconsin Central labored under a spin-off restriction which precluded overhead traffic between Superior, WI and Chicago. Although that restriction was later eliminated, permitting a haulage agreement between CN and Wisconsin Central which was a prelude to the present transaction, there has been no systematic review of such legacy, anti-competitive restrictions for consistency with current public policy as articulated by the Board in the New Rules. Although the New Rules do not technically apply to these legacy conditions, WMC submits that they are detrimental to competitiveness and should not be allowed to stand indefinitely in the face of the policy articulated in the New Rules favoring enhancement of competition.

9. *Enhancement of Competition.* Just as there has been no systematic review and elimination of legacy restrictions, conditions offered by CN to garner support of the instant

transaction, most notably the agreement between CN and the National Industrial Transportation League ("CN/NITL Agreement"), do nothing to address enhancement of competition. Essentially all of the benefits claimed in support of the transaction are traditional benefits of consolidation, which certainly can enhance competitiveness of rail in relation to other modes, but either do nothing or weaken rail-to-rail competitiveness.

Conditions in CN/NITL Agreement, Limited Scope & Ambiguity.

10. WMC salutes and thanks both CN and NITL for their efforts in creating the CN/NITL Agreement. It represents a positive step and the type of private sector negotiated problem solving that often effectively advances important public policy objectives and is most encouraged by the Board.
11. On the other hand, the constraint of time and resources (and, perhaps, other tactical considerations) mean that not all stakeholders were at the table to negotiate the CN/NITL Agreement. The timing of announcement of the Agreement may, in fact, have discouraged shipper participation in this proceeding while encouraging others to simply support the transaction without qualification. Even WMC, as discussed above, having substantial concerns about the Agreement, faced the dilemma of

having concluded that on balance the transaction should go forward and needed to go forward in an expedited process. Nevertheless, there are substantial flaws and shortcomings in the CN/NITL Agreement as a model for imposition of conditions consistent with the policies articulated in the New Rules.

12. *Service Protection.* The service protection provisions of the CN/NITL Agreement have at least the following serious flaws:

- a. Service protection is afforded only to those shippers who enter into a contract with railroads. No relief or service standard commitment is made to smaller shippers or single car freight. No commitment is made beyond making a "good faith offer" to enter any agreement.
- b. The service protection relates solely to transit-time. WMC's members major concern is maintenance of boxcar supply. A particular expression of this concern is that the fleet of quality boxcars in which Wisconsin Central invested for the Wisconsin paper industry, supported by rates paid by Wisconsin shippers, not be diluted throughout the CN network without adequate assurances that a comparable concentration and availability of quality boxcars will be maintained for Wisconsin shippers currently served by WC's boxcar fleet. This includes

many shippers whose freight does not move under contract.

- c. Overall service levels, including transit-time, car supply, and other pertinent measures of service quality are not addressed. While WMC applauds the effort to focus on private and market-based mechanisms for protection of service, the conditions should include commitment of CN to mechanisms by which shippers or groups of shippers may trigger CN's attention to service protection on a broader basis prior to resort to seeking formal relief from the Board.

13. *Interchange Protection.* The gateway protection provisions of the CN/NITL Agreement have at least the following serious flaws:

- a. The commitment to maintenance of a given gateway is limited to the shipper or shippers who actually used the gateway within 12 months prior to the CN/NITL Agreement and, also, appears to limit to specific origins and/or destinations of traffic which cleared the interchange. WMC's position is all such gateways:
 - i. Should be open to any shipper;

- ii. Should not be restricted to specific origins and/or destinations or commodities;
 - iii. Should include all open gateways regardless of activity within any specified time period (*e.g.*, existence of an open gateway may have provided the competitive pressure for consummation of a multi-year contract via an alternative gateway); and
 - iv. Should not be subject to a "then in active use" condition at the close of the 5-year period following consummation of the subject transaction.
- b. Gateway protection should not be limited to traffic moving under contract nor require entry into a contract to be maintained.
14. *Dispute Resolution.* The CN/NITL agreed dispute resolution procedure requires a contract with a shipper seeking redress. CN should be invited to offer an alternative dispute resolution procedure, which is available to any person or entity (*i.e.*, not just shippers but including, without limitation, others such as governmental bodies, interest groups, and rail and other carriers). Furthermore, assurance of availability of a reasonable and effective alternative dispute resolution procedure requires

informal and formal access to dispute resolution before the Board for minor as well as major matters.

Gateway or Bottleneck? What's "Minor" to You is Major to Us.

15. WMC supports the determination that this proceeding is "minor" because of the need to expeditiously resolve the future of the Wisconsin Central properties. In terms of rail service, Wisconsin Central's relationship to WMC's rail user members and all Wisconsin, however, is anything but minor. It is definitely *major*.
16. Wisconsin Central has been the premier quality service provider for Wisconsin rail users, particularly boxcar traffic. Wisconsin Central invested in a new boxcar fleet to serve Wisconsin shippers when other railroads were figuratively and, in some cases, literally, abandoning boxcar freight.
17. As the largest regional rail carrier in North America, Wisconsin Central provided Wisconsin rail users short haul to gateways to all of the nation's Class I rail carriers and, in many cases, multiple alternative gateways.
18. Alternative gateways were provided by Wisconsin Central both through physical interchange points and through many pricing and marketing accords which extended the WC's reach beyond its own lines and extended the reach of other railroads into

Wisconsin directly to rail users' locations on Wisconsin Central properties.

19. For a major segment of Wisconsin rail users, Wisconsin Central is their gateway to the nation's railroads and beyond. Or, conversely, the *bottleneck* between them. The difference will be the creativity and quality of the conditions imposed by the Board in this proceeding.
20. The difference will be whether the Board applies the competition enhancement policies articulated in the New Rules in conditions set in this proceeding.
21. The difference will be whether or not rail users located on the Wisconsin Central properties are afforded the same application of the National Transportation Policy - in the form of the competition enhancement policies articulated in the New Rules - as rail users who happen to be located on Class 1s. Sound a little like "equal protection"?
22. WMC urges the Board not to wait for the next merger to apply competition enhancement policies to rail users on the Wisconsin Central properties.

Conditions Requested by WMC.

23. First, WMC requests that the Board retain jurisdiction for a minimum of five years and provide a clear path beyond private

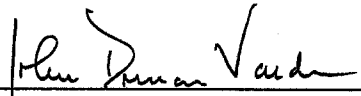
dispute resolution procedures to both informal and formal dispute resolution before the Board.

24. Second, WMC requests that the Board refine and expand the conditions set forth in the CN/NITL Agreement to remove the serious flaws and ambiguities and incorporate the refined and expanded version as formal conditions in the Board's order approving this transaction - including, by way of example and not limitation, to:
- a. Provide access to the protective conditions for common as well as contract rail users;
 - b. Expand the "service protection" to include the availability and quality of boxcars comparable to the supply and quality concentration achieved by Wisconsin Central;
 - c. Extend "service protection" conditions to overall service levels not simply selected origin/destination pairs and including not only transit-time but car supply and other pertinent measures of service quality;
 - d. Require maintenance of all gateways maintained by Wisconsin Central for any freight, origin or destination for all classifications of freight and service, for all origins and destinations; and

- e. Require CN to use its good offices and all commercially reasonable resources to maintain cooperative pricing and marketing arrangements by which Wisconsin Central extended its reach beyond Wisconsin Central properties and other railroads extended their reach to users on Wisconsin Central properties.

Dated this 21nd day of June, 2001.

DeWitt Ross & Stevens s.c.

By: 
John Duncan Varda

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Canadian National Railway Company, Grand Trunk Corporation,
and WC Merger Sub, Inc. - Control - Wisconsin Central
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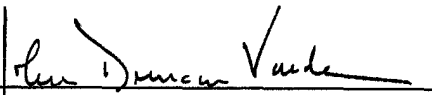
STB Finance Docket No. 34000

**AFFIDAVIT OF SERVICE
OF COMMENTS
OF
WISCONSIN MANUFACTURERS & COMMERCE**

The undersigned hereby certifies that he has duly served, by first class mail, postage prepaid, this 21st day of June, 2001, on all Parties of Record attached to the Surface Transportation Board's Decision No. 3 dated June 11, 2001, a copy of the Comments of Wisconsin Manufacturers & Commerce filed with the Secretary of the Surface Transportation Board this date.

Dated this 21st day of June, 2001.

DeWitt Ross & Stevens s.c.

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John Duncan Varda

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