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U.S. Department of
Transportation
Office of the Secretary
of Transportation

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Office of the Secretary

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

JUN 25 2001

**Part of
Public Record**

June 25, 2001



Vernon A. Williams, Secretary
Surface Transportation Board
Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Fin. Dkt. No. 34000

Dear Secretary Williams:

Enclosed herewith are the original and twenty-five copies of the Initial Comments of the United States Department of Transportation in the above-referenced proceeding. There is also a computer diskette of this document, convertible into Word Perfect. I have included as well an additional copy of the Department's comments that I request be date-stamped and returned with the messenger.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney

Enclosures

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DOT-2

Before the
Surface Transportation Board
Washington, D.C. 20590

Canadian National Railway Company, Grand Trunk Corporation)
And WC Merger Sub, Inc. – Control – Wisconsin Central)
Transportation Corporation, Wisconsin Central Ltd., Sault Ste.)
Marie Bridge Company, and Wisconsin Chicago Link)

Fin. Dkt. No. 34000

Initial Comments of the
United States Department of Transportation



Introduction

The Surface Transportation Board (“Board” or “STB”) in this proceeding is considering the application of the Canadian National Railway Company and related entities (collectively referred to herein as “CN”) and the Wisconsin Central Transportation Corporation and related entities (collectively referred to herein as “WC”) ¹ pursuant to which CN would acquire control of WC. *See* Decision No. 2, served May 9, 2001. Pursuant to the procedural schedule established herein, the United States Department of Transportation (“DOT” or “Department”) hereby submits its preliminary comments on the transaction.

In brief, at this point the record is in significant measure incomplete, and therefore DOT takes no position on the merits of the transaction or on any of the issues raised to date. Consistent with past practice, in these circumstances we will reserve judgment

^{1/} CN as used herein encompasses the Canadian National Railway Co., Grand Trunk Corporation, and WC Merger Sub, Inc. WC as used herein encompasses the Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Co., and Wisconsin Chicago Link Ltd. We refer to CN and WC jointly as the “Applicants.”

pending a review of the initial comments of other parties, and we anticipate expressing our views on reply.² DOT notes only that this combination may raise questions that do not traditionally come before the Board. These concern the continuing availability of transportation options and infrastructure beyond the railroad industry; specifically, water carriage in the Great Lakes region. The Department looks forward to the development of a legal and factual record in this regard.

The Application

On April 9, 2001, CN and WC filed an application seeking STB approval of the acquisition of control of WC (including its rail carrier subsidiaries) by CN. CN/WC-2. CN is a major Canadian railroad with a network of more than 15,000 miles of track, almost 4,000 miles of which are in the U.S. CN has principal routes to every major city in Canada, and also serves Detroit, Chicago, Buffalo, and Duluth, Minnesota/Superior, Wisconsin. Through its recent purchase of the Illinois Central railroad ("IC"), the CN systems stretches from Chicago to the Gulf of Mexico, serving the gateways of St. Louis and Memphis. WC is a Class II carrier that operates approximately 2,500 miles of track in Wisconsin, Minnesota, Illinois, and Michigan. The railroad serves Chicago, Milwaukee, Duluth/Superior, Minneapolis/St. Paul, and nearly 300 miles into the Province of Ontario.

The Applicants state that theirs is an "end-to-end" transaction that secures an important link for CN's network, extends single-line service, eliminates interchanges, and increases efficiencies. CN/WC-2, Vol. 1, at 4-5, 12-13, 17. They estimate quantified public benefits of approximately \$52 million per year. *Id.* at 11. CN and WC also contend that their merger will neither reduce intramodal competition, result in abandonments, nor have significant adverse impact on employment. *Id.* at 12-14; Appendix A. The application includes expressions of support from hundreds of shippers, public bodies, and others. CN/WC-2. Vol. 2, *passim*.

²/ Reply comments are now due July 25, 2001.

Other Parties

There are a large number of parties of record in this proceeding. The single most active party to date is Great Lakes Transportation, LLC (“GLT”), a corporate entity that controls one or more water carriers, dock companies, and small railroads, and that engages primarily in water carriage on the Great Lakes.³ GLT is concerned that the proposed merger will result in the diversion of much of its taconite traffic from what is now a predominantly water movement to all rail movement. *See* GLT-1 at 3-6; GLT-9 at 7-11. Such an outcome, GLT alleges, would constitute a substantial threat to water transportation services on the Great Lakes, with negative implications for employment, vital marine infrastructure, and essential rail and water services. *See* GLT-1 at 7-12.⁴

Preliminary Comments

The role of the Department in this proceeding is ultimately grounded both in the statutory and regulatory provisions and administrative orders that govern this transaction, and in DOT’s statutory responsibilities as the Executive Department of the United States established by Congress “to provide general leadership in identifying and solving transportation problems,”⁵ to the end that the Secretary of Transportation “shall provide leadership in the development of transportation policies and programs.”⁶

The Department has already submitted comments on the potential environmental and community impacts of this transaction. DOT-1, filed June 13, 2001. The record in other respects remains incomplete, and thus, consistent with past practice in these circumstances, we do not take a position on the merits of the application at this time. *See Canadian National Railway, et al. – Control – Illinois Central Corp, et al.*, STB Finance Docket No. 33556, DOT-1 (filed October 27, 1998). Neither does DOT now offer any

³/ GLT is in turn owned by the Blackstone Group. *See* GLT-1at 2-3.

⁴/ GLT has also pointed out that major diversions of this traffic would also entail significant environmental and community impacts along the main line of the WC from Duluth/Superior to Chicago. GLT-9 at 11-13.

⁵/ 49 U.S.C. § 101(b)(5).

⁶/ 49 U.S.C. § 301(2).

views on the question of whether conditions would be required in the public interest as a condition to any approval by the Board.

It is clear, however, that the proposed merger at least potentially presents issues of importance that are not typically raised in such proceedings. These include the transaction's true impacts upon the continued viability of water carriage on the Great Lakes and the attendant infrastructure. DOT understands that the Applicants reject the notion that their merger poses a realistic threat to these interests. CN/WC-5 at 2, 4; CN/WC-13, *passim*. However, there is as yet no record that thoroughly explores the factual and legal questions that must be addressed in order to resolve such a dispute.⁷ There may also be other issues raised by different parties in the initial comments. The Department accordingly will reserve judgment until it reviews the initial submissions of other parties; we will take a position on the merits of this transaction in reply comments.

The Department submits that, in addition to this matter and to the safety and environmental issues noted elsewhere, the following issues also warrant consideration in this proceeding:

- Whether the merger will significantly reduce competition (including intramodal, intermodal, product and geographic), as reflected in the transportation rates and services likely to be available to the shipping public after the transaction.
- If the merger would significantly reduce competition, whether the anticompetitive effects can be eliminated or mitigated through conditions on the consolidation.
- If the merger would significantly reduce competition, whether this loss would be offset by transportation benefits to the shipping public.
- If the merger would significantly reduce competition, whether the public benefits could still be secured by less anticompetitive measures.
- Whether the merger would result in a loss of essential services.
- Whether the merger would have adverse effects on passenger rail transportation.
- The effect of the transaction on the merging carriers' employees.

⁷/ GLT has yet to submit its initial comments or respond to "Applicants' Comments on the Status of GLT Issues" (CN/WC-13), for example.

- The effects of the transaction on communities.
- Whether the merger would adversely affect the adequacy of transportation available to the public and/or the development and maintenance of a sound transportation system in the United States.

Conclusion

The Department appreciates this opportunity to participate in a proceeding of such significance to the railroads, shippers, and the general public in the Great Lakes region. We look forward to reviewing the complete record and to contributing to a sound final decision.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rosalind A. Knapp", written in a cursive style.

ROSALIND A. KNAPP
Acting General Counsel

June 25, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a copy of the Initial Comments of the United States Department of Transportation in STB Finance Docket No. 34000 to be served upon all Parties of Record by first class mail, postage prepaid.


Paul Samuel Smith

June 25, 2001