



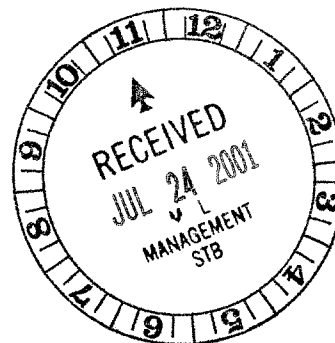
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May 21, 2001

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:

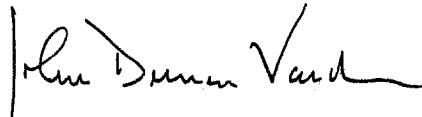
Pursuant to notice in the *Federal Register* of May 9, 2001, enclosed find the original and twenty-five (25) copies of the Reply Comments Filed on Behalf of Wisconsin Manufacturers & Commerce Responding to Conditions Requested by Canadian Pacific. We also enclose the disk specified in the Board's notice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

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

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 s.c.


John Duncan Varda

JDV:mc/rab

Enclosures

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

ENTERED
Office of the Secretary

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Part of
Public Record

**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



**REPLY COMMENTS
FILED ON BEHALF OF
WISCONSIN MANUFACTURERS & COMMERCE
RESPONDING TO
CONDITIONS REQUESTED BY CANADIAN PACIFIC**

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Dated: July 19, 2001
Due: July 25, 2001

**ENTERED
Office of the Secretary**

JUL 24 2001

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Public Record**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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STB Finance Docket No. 34000

**REPLY COMMENTS OF
WISCONSIN MANUFACTURERS & COMMERCE
RESPONDING TO
CONDITIONS REQUESTED BY CANADIAN PACIFIC**

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 and employ more than 500,000 people in the State of Wisconsin. WMC's members ship and receive significant volumes of freight to and from Wisconsin via rail including via Wisconsin Central. WMC's identification and qualification is further detailed in Comments filed herein to the deadline June 25, 2001.

The following Reply Comments are directed toward Comments of Canadian Pacific Railway Company ("Canadian Pacific" or "CPR"), specifically conditions sought by Canadian Pacific (document designated CPR-3).

CPR Example Illustrates Need for Systematic Review.

1. At paragraph 18 of WMC's Comments, we noted:

"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."

At paragraph 25 of its Comments, WMC requested a condition which would:

"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."

2. At CPR-3, pp. 11-12, is described CPR-WC Haulage Agreement that has been in place since 1993, notwithstanding a 90-day right of termination, governing intermodal traffic moving between Green Bay and points in the Northeastern United States served by CPR affiliate Delaware & Hudson.
3. The CPR-WC Haulage Agreement is the type of rail-to-rail pro-competitive arrangements referenced in WMC's Comments. These types of agreements entered into by WC deserve systematic review for retention or extension as a means of enhancing competition or balancing the negative impacts of the proposed consolidation on rail-to-rail competitive alternatives.

4. Such a systematic review cannot be afforded during the initial course of this proceeding leading to approval of the proposed transaction by Fall 2001. WMC fully supports the schedule which will provide prompt approval of the transaction but, also, requests conditions that will afford systematic review, preservation, and possible extension of agreements, such as the CPR-WC Haulage Agreement, during the monitoring period following approval of the transaction. This would appear to be the only means to afford a systematic review and determination as to which, if any, of the other such agreements WC had in place are necessary or will effectively serve to maintain and enhance competition following consummation of the transaction.
5. WMC fully supports CPR's request for a pre-consummation condition requiring retention of the CPR-WC Haulage Agreement. Imposition of CPR's requested condition is not an enhancement of competition but assurance of long-term retention of an alternative already available and granted by Wisconsin Central.

CPR's Gateway Conditions, Access by Other Railroads Essential.

6. CPR's requested gateway preservation condition parallels, from a CPR perspective, the broader conditions sought by WMC.

7. CPR independently identified essentially the same deficiencies and ambiguities in the CN/NITL Agreement related to gateway preservation as did WMC. CPR Comments provide key insights into the practical side of the necessity that other rail carriers, as well as shippers, be afforded the right to request quotation of commercially reasonable rates for interline shipments. See CPR-3, pp. 8-9. CPR aptly describes why extending the "interchange protection" provisions of the CN/NITL Agreement to CPR and other railroads is essential for effectiveness. The connecting railroads provide the resources that actually make the competitive alternative available in a marketable form which actually provides shippers the opportunity to choose.
8. At a minimum, the Board should impose the form of gateway preservation condition requested by CPR. That condition is essential if the "gateway protection" provisions of the CN/NITL Agreement are to have any chance of being effective in providing a playing field free of artificial impediments to fair competition.

CPR's Requested Conditions, Otherwise Too Narrow.

9. Both CN and CPR appear to tie gateway or interchange protection to specific traffic, taking differing views on the problem of defining what constitutes qualifying activity.

10. WMC's requested conditions seek an open gateway protection: a gateway open for any freight shall remain open for all freight, subject only to commercial reasonableness.
11. The type of condition proposed by CN and CPR is static. Freight movements are not static. Change is inherent in transportation.
12. The condition proposed by WMC is dynamic. The scope of the railroad's obligation under such a condition is limited in the particular circumstances by what is commercially reasonable and commitment to a good faith effort.
13. Because a gateway is available for some freight does not mean that it is commercially reasonable for all freight. However, far better that the limits of the obligation be set by the market, by commercial reasonableness, rather than an accident of timing as to whether or not and to what extent the gateway was "active" relative to an arbitrary date CN and WC happened to enter into to an agreement.

Enhancing Competition, Through Multilateral Reciprocity.

14. Clearly, the Board recognizes that enhancement of competition is not something accomplished by regulation or decree. Rather, at best, enhancing rail-to-rail competition likely requires a process, preferably a dynamic rather than a static process. Such

a process is not inherently supported by the market for rail services. Such a process needs to be seeded or facilitated by STB to offset the inherent pressure on those with market power to enhance return by limiting or defining the market to increase their own return by reducing competition and by rationing or reducing the output of services.

15. Thus, WMC recommends that STB fashion a type of standard condition, in addition to the specific conditions offered by CN and sought by CPR and WMC, which requires CN and challenges shippers, other railroads, governmental entities and other interested persons to engage during the five-year monitoring period in good faith negotiations to enhance rail-to-rail competition through: (a) traditional bilateral negotiation to open what will be CN-only and what are CPR-only shipper locations in Wisconsin; and (b) multilateral negotiation of railroads, shippers, and others working toward a balancing of interests or trade-offs including, but not limited to, expanding access opportunity, commitment of new freight not otherwise then moving via rail, other relevant economic and service factors, and public and/or private funding contributions to assist needed infrastructure improvements.

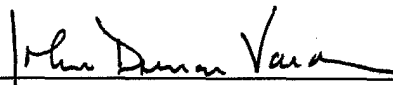
16. Thence, the record of enhancement of competition, in the monitoring period following consummation of an approved transaction, through multilateral reciprocity may be considered with respect to offsetting negative consequences or shortfall of predicted savings or other advancements of public interests which supported approval of the transaction or may be considered with respect to any downstream application for merger, control or other consolidation.

Conclusion.

17. The conditions WMC requests the Board to fashion are consistent with and will advance the spirit and objectives articulated by the Board in *Ex Parte 582, Sub-No.1* (6/11/01). They provide a process and an opportunity to balance railroad consolidation with enhancements of competition and will provide benchmarks for a meaningful period of monitoring following consummation.

Dated this 19th day of July, 2001.

DeWitt Ross & Stevens s.c.

By: 
John Duncan Varda

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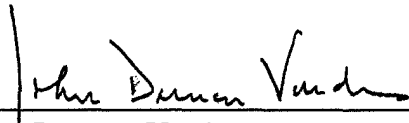
STB Finance Docket No. 34000

**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 19th day of July, 2001, on all Parties of Record attached to the Surface Transportation Board's Decision No. 3 dated June 11, 2001, a copy of the Reply Comments of Wisconsin Manufacturers & Commerce Responding to Conditions Requested by Canadian Pacific filed with the Secretary of the Surface Transportation Board this date.

Dated this 19th day of July, 2001.

DeWitt Ross & Stevens s.c.

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