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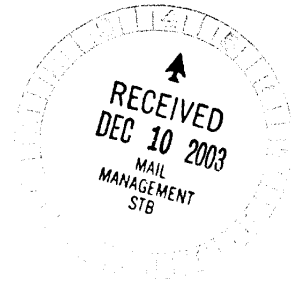
U.S. Department of
Transportation
Office of the Secretary
of Transportation

General Counsel

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

December 10, 2003

Surface Transportation Board
Section of Environmental Analysis
1925 K St., N.W.
Washington, D.C. 20423-0001



Attn: Phillis Johnson-Ball

Re: Finance Docket No. 344~~24~~

Dear Ms. Johnson-Ball:

Enclosed herewith are the original and ten copies of the Comments of the U.S. Department of Transportation on the Environmental Appendix in the above-referenced proceeding, together with a computer diskette containing these Comments (in WordPerfect 5.x for Windows). Please date stamp the additional copy and return it to the messenger bringing these comments.

Please contact me if you have any questions, and thank you for your assistance in this matter.

Sincerely,

Paul Samuel Smith
Senior Trial Attorney
(202) 366-9280

Enclosures

cc: U.S. Attorney General
Paul A. Cunningham, Esq.

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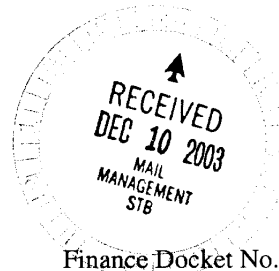
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DOT-1

Before the
Surface Transportation Board
Washington, D.C.



Finance Docket No. 34424

_____)
Canadian National Railway Company, and Grand Trunk
Corporation -- Control -- Duluth, Missabe, and Iron Range
Railway Company, Bessemer and Lake Erie Railroad
Company, and the Pittsburgh & Connneaut Dock Company)
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Comments of the
United States Department of Transportation
On the Environmental Appendix

Introduction

The Surface Transportation Board ("STB" or "Board") in this proceeding is considering whether to approve the combination of the Canadian National Railway Company ("CN") and three other rail carriers, the Duluth, Missabe, and Iron Range Railway Company ("DMIR"), Bessemer and Lake Erie Railroad Company ("B&LE"), and the Pittsburgh & Conneaut Dock Company ("P&C Dock").¹ Mindful of the Board's obligations under the National Environmental Policy Act ("NEPA"), and following discussions with the STB's Section of Environmental Analysis ("SEA"), CN submitted an Environmental Appendix ("Appendix") in support of its view that the transaction would have no significant environmental impacts requiring the preparation of an environmental assessment or environmental impact statement.

Pursuant to the procedural schedule adopted by the Board in this proceeding, the United States Department of Transportation ("DOT" or "Department") hereby submits its comments on the Environmental Appendix. In sum, DOT believes that transaction-related operational changes may pose a threat to safety at several railroad grade-crossings, and that CN and appropriate state and local authorities should take action to address this possibility.

¹/ CN actually seeks to acquire the Great Lakes Transportation Company ("GLT"), which includes these three railroads as well as the Great Lakes Fleet ("GLF"), a water carrier that owns and operates a fleet of vessels transporting iron ore and other bulk commodities on the Great Lakes. The purchase of the GLF is not subject to the Board's jurisdiction, but is under review by the U.S. Department of Justice. Decision No. 2 (served December 1, 2003) at 3-4. The Coast Guard and the Maritime Administration are separately considering whether CN's acquisition of the GLF would be consistent with the requirements of the Jones Act and with relevant portions of those agencies' regulations. Id.

The Environmental Appendix

The Appendix describes the GLT properties that CN is purchasing as an integrated iron ore delivery chain between mines in Minnesota and steel processing plants in Pennsylvania. CN notes that two of the three small carriers it wishes to purchase (the B&LE and P&C Dock) do not connect with any point on its system, that it plans no changes in their operations, and it concludes from this that the transaction would have no environmental impact in the areas served by these carriers. Appendix at 7.

The third railroad (the DM&IR) and CN do connect, and CN has trackage rights on the DM&IR. Of particular relevance is the fact that both CN and the DM&IR operate their own single lines of track between the Minnesota points of Shelton Junction and Nopeming Junction, a distance of roughly sixty-four miles. If the acquisition is approved, CN plans to use its ownership of both of these lines to increase efficiencies through "directional running" (*i.e.*, southbound trains would use the DM&IR line, and northbound trains would use CN's line).

CN contends that the proposed transaction should be categorically excluded from NEPA review because the transaction-related changes in prospect would not exceed the relevant STB thresholds triggering additional environmental analysis. *Id.* Specifically, in air quality attainment and maintenance areas (like this portion of Minnesota) the Board's threshold for environmental analysis is either an increase of 8 trains per day or a 100% increase in annual ton-miles. 49 C.F.R. § 1105.7(e)(5). CN estimates that through directional running traffic on the now less-used DM&IR track would increase an average of 6.5 trains per day, while traffic on the CN track would decrease by the same amount. Appendix at 7-8.

This assertion is qualified, however, because CN notes that a major customer on the DM&IR line (Eveleth Mines, LLC, d/b/a/ EVTAC Mining) recently ceased shipments. *Id.* at 8. If the historical levels of shipments from that source are subtracted from the pre-transaction traffic base -- *i.e.*, if only the actual current traffic levels are used -- the tonnage increase projected on this DM&IR line *would* exceed the Board's regulatory threshold for additional environmental analysis. CN maintains, however, that it is appropriate to include rather than exclude this historical traffic in the comparison, because EVTAC Mining may resume operations, in which case no additional environmental analysis would be warranted. *Id.*

The Position of the Department

The increased traffic on this segment of the DM&IR line appears to DOT to be the only transaction-related change that might result in an adverse environmental impact.² The rural nature of much of the area and the forecast level of train traffic imply that any environmental impacts resulting from the increased traffic should be minor. However, we do not take a position on which traffic level is appropriate for determining whether the relevant threshold is exceeded. The reason is because DOT's primary concern at this point

²/ CN proposes no other operating changes and anticipates no other relevant developments, such as construction projects or abandonments.

is with effect of the transaction on safety, and the threshold specifically relates to the impact of a transaction on air quality. 49 C.F.R. § 1105.7(e)(4).³ Those rules going to safety properly do not specify a particular level of traffic or other quantitative element in order to trigger a more detailed assessment. Rather, they require applicants such as CN to describe “any effects of the transaction on the public health and safety (including vehicle delay time at railroad grade crossings).” 49 C.F.R. § 1105.7(e)(7).

The Appendix’s entire discussion of this point is as follows:

Roadway at-grade crossings should remain safe after a shift of up to 6.5 trains per day from the CN line to the DMIR line. There are only 37 such crossings on the affected DMIR line, all of which have adequate crossing protection, and most of which have very low volumes of vehicular traffic.

Id. at 10 (footnote omitted).

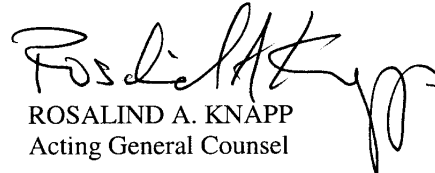
Such assurances notwithstanding, DOT believes that the anticipated increase in traffic on the DM&IR line raises a question about the level of safety at certain rail-highway grade crossings on this line. The Department agrees that most of these crossings experience only low levels of vehicle traffic. Id. at Exhibit D. Two, however, average 4,800 vehicle crossings per day, which is a significant level by any measure, and four others range from 680 to 930 per day. Id. The projected increase in rail traffic, especially after a period of very light rail traffic following the closure of EVTAC Mining, may increase the safety risk of grade crossing accidents. On the other hand, it is possible that vehicle traffic on some of the roads that cross the rail line may have declined due to the halt in EVTAC operations.

DOT believes the prudent course in these circumstances is to require CN to consult with those public agencies responsible for the above-referenced grade crossings to determine whether and to what extent safety may be compromised by the projected operational changes, and whether suitable protection measures are in place. Any additional steps that might be necessary to ensure continued safety at these crossings should impose at most only minor costs in light of the small number of crossings and other factors. If CN and the affected agencies can reach an equitable agreement, no further analysis would appear to be necessary.

^{3/} Even with respect to air quality, the Board always retains discretion to modify its requirements in circumstances disclosing the “potential” for significant impacts. 49 C.F.R. § 1105.6(d); *see also* Appendix at 6 and note 16.

The Department does not foresee any additional environmental issues. However, we will consider the views of others and revise our comments if appropriate.⁴

Respectfully submitted,



ROSALIND A. KNAPP
Acting General Counsel

December 10, 2003

⁴/ DOT also notes that CN envisions addressing, *inter alia*, "highway-rail grade crossing systems" in its upcoming Safety Integration Plan ("SIP"). Appendix at 13. We will also be including this subject in our comments on that document.