

Surface Transportation Board Approves "Canadian National-Wisconsin Central" Rail Merger

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision, in accordance with its procedural schedule, approving the railroad control ("merger") application filed with the Board on April 9, 2001, by Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc. (collectively referred to as "CN"), and Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd. (collectively referred to as "WC").

CN operates a rail network consisting of 11,620 route miles in Canada (between Prince Rupert and Vancouver, British Columbia, in Western Canada, and Halifax, Nova Scotia, in Eastern Canada) and 3,912 route miles in the United States (extending to Duluth, Minnesota-Superior, Wisconsin; Chicago, Illinois; Detroit, Michigan; Buffalo, New York; St. Louis, Missouri; Memphis, Tennessee; and New Orleans, Louisiana). WC operates a rail network consisting of 296 route miles in Canada (in Ontario, between Sault Ste. Marie and Hearst) and 2,464 route miles in the United States (in Wisconsin, Minnesota, Illinois, and Michigan). The principal routes of the combined CN/WC system will be identical to those now operated separately by CN and WC, with the addition of through routes where interchange or haulage is now required, such as between Duluth-Superior and Chicago where CN's traffic is now carried under haulage agreements over WC's lines. No track redundancies will be created by the merger, and no rail line abandonments will result from the combination of the two systems.

In the decision issued today, the Board, after noting that the evidence in the record demonstrated that common control of CN and WC would not harm competition, approved the acquisition by CN of control of WC, and the integration of their rail operations, as proposed in the merger application. The Board imposed a condition holding the applicants to their representations that a unified CN/WC will: (1) keep all existing active gateways affected by the merger open on commercially reasonable terms, and (2) waive defenses it might otherwise have (as a result of the merger) under the Board's bottleneck rates policy (where, prior to the merger, a shipper would have been entitled to regulation of a bottleneck rate). Concerning service, the Board noted that CN/WC had submitted a Service Assurance Plan, and the Board imposed a condition requiring the applicants to report for one year on the progress of the integration of their operations. Concerning safety, the Board imposed conditions requiring the applicants to: (1) comply with their Safety Integration Plan, and (2) participate and fully cooperate in ongoing activities with the Federal Railroad Administration (FRA) and the Board related to the Board-FRA safety related Memorandum of Understanding, until such time as FRA advises that the merger has been safely implemented. In addition, the Board imposed the *New York Dock* labor protective conditions on the merger, noting that there would be only minor workforce reductions as a result of the transaction, and that applicants had committed to achieve work organization changes through voluntary, mutually acceptable agreements. The Board also required CN to adhere to its representation not to use the *New York Dock* process to replace labor agreements with the United Transportation Union (UTU) on the CN system with the agreement between WC and UTU. In so doing, the Board noted that UTU had expressed its support for the merger, given CN's representation on that matter.

In approving the application, the Board noted that the National Industrial Transportation League and CN had reached a privately negotiated agreement providing for certain benefits for rail customers whose shipments originate or terminate on WC, to apply when the merger is consummated. Because neither party to the agreement sought the imposition of its terms as a condition and because the evidence did not show that such action was necessary to remedy any adverse consequences of the merger proposal, the Board did not impose the terms of the agreement as a condition. The Board also declined to impose the terms of a settlement agreement between Great Lakes Transportation LLC (GLT) and CN sought by them as a merger condition regarding taconite traffic originating at mines served by a GLT affiliate and moving via other GLT affiliates to destination via rail-water routes using the Great Lakes. The Board found that there was no merger-related harm that needed to be addressed by the GLT/CN agreement, that other remedies under the law remained available in the unlikely event that a combined CN/WC should engage in below-cost pricing for this traffic, and that other parties had raised sufficient doubts about the anticompetitive nature of certain elements of the agreement such that the imposition of its terms as a condition would not be in the public interest. Consistent with the position of the United States

Department of Transportation, the Board stated that it would remain open to any complaints about below-cost pricing strategies should they arise and that GLT and CN could enter into their own private agreement, without Board approval, that would preserve those terms that do appear to be consistent with the public interest.

The Board approved the CN/WC merger today in the decision entitled *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, Decision No. 10. Commissioner Burkes commented in a separate expression. A printed copy of the decision is available for a fee by contacting **D~ 2 D~ Legal, Room 405, 1925 K Street, NW, Washington, DC 20006, telephone (202) 293-7776**, or via [http://Da_To_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>. [STOP