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SERVICE DATE - LATE RELEASE JUNE 15, 2001

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34000

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.

Decision No. 4

Decided: June 14, 2001

We are denying, as unnecessary, the request to waive our rule at 49 CFR 1180.4(d)(4)(i) precluding the filing of responsive applications in minor transactions.

BACKGROUND

By application (referred to as the CN/WC application) filed April 9, 2001, Canadian National<sup>1</sup> and Wisconsin Central<sup>2</sup> (applicants) seek Board approval and authorization under 49 U.S.C. 11321-26 for the acquisition of control by CNR and GTC of WCTC and WCTC's rail carrier subsidiaries (WCL, FVW, SSMB, and WCLL).

In Decision No. 2 (served May 9, 2001, and published that day in the Federal Register at 66 FR 23757), we accepted the CN/WC application for consideration and established a procedural schedule that sets June 25, 2001, as the deadline for filing comments, protests, requests for conditions, and other evidence and argument in opposition to the CN/WC application. We also determined that, under 49 CFR 1180.2(c), the CN/WC transaction is a "minor" transaction. And we noted, among other things, that, because the CN/WC transaction is

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<sup>1</sup> Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and WC Merger Sub, Inc. (Merger Sub) are referred to collectively as Canadian National or CN.

<sup>2</sup> Wisconsin Central Transportation Corporation (WCTC), Wisconsin Central Ltd. (WCL), Fox Valley & Western Ltd. (FVW), Sault Ste. Marie Bridge Company (SSMB), and Wisconsin Chicago Link Ltd. (WCLL) are referred to collectively as Wisconsin Central or WC.

a minor transaction, “no responsive applications will be permitted. See 49 CFR 1180.4(d)(4)(i).” Decision No. 2, slip op. at 11.

## PLEADINGS

*Great Lakes.* By petition (designated GLT-5) filed May 29, 2001, Great Lakes Transportation, LLC (Great Lakes) requests that § 1180.4(d)(4)(i) be waived in order to permit Great Lakes to seek, and the Board to grant, remedies (e.g., trackage rights and inclusion) that ordinarily would be sought through a responsive application. Great Lakes, which is concerned about the competitive, environmental, and safety implications of statements contained in the CN/WC application regarding a potential diversion to all-rail movement of taconite shipments that currently move by a combination of rail and water, contends that we should grant a waiver of § 1180.4(d)(4)(i) in order to ensure that our decision classifying the CN/WC transaction as “minor” does not preclude any remedy that might be appropriate in light of the evidence. A waiver, Great Lakes argues, would leave open the full range of remedies, and would thus allow the Board to impose measures such as trackage rights or inclusion if the evidence should warrant such measures.

*Applicants.* By reply (designated CN/WC-9) filed June 8, 2001, applicants urge the denial of the GLT-5 waiver request. Applicants contend that Great Lakes has neither indicated that it or any other party actually intends to submit a responsive application nor demonstrated that such an application would be necessary to relieve any harm resulting from the CN/WC transaction. Applicants also contend that, if a responsive application were to be considered in this proceeding, there is no realistic way that the evidentiary proceeding could be completed and a final decision issued within the statutory deadline. Applicants further contend that the GLT-5 waiver request amounts to an impermissible collateral attack on Decision No. 2.

## DISCUSSION AND CONCLUSIONS

If an interested party can demonstrate that the harms that would be caused by an unconditioned CN/WC transaction can best be remedied by relief such as trackage rights or inclusion, such relief — which would ordinarily be sought by responsive application, see 49 CFR 1180.3(h) — is not prohibited simply because the CN/WC application has been accepted as a minor transaction. We do not agree, however, that the process for obtaining relief needs to include a waiver of § 1180.4(d)(4)(i), which precludes the filing of responsive applications in minor transactions. The procedural schedule established in Decision No. 2 would have to be substantially altered if the rule were waived, and such an extension is not necessary to provide the opportunity to argue for appropriate relief. Great Lakes (and any other interested party) will have the opportunity in their June 25, 2001 filings to attempt to show harm to competition and seek appropriate relief.

Nothing we say here should be taken to indicate any view on our part as to whether any such relief should or should not be granted. What we say reflects nothing more than our conviction that, although we have accepted the CN/WC application as a minor transaction, every interested party must be given a full and fair opportunity to seek relief that the party contends is necessary to remedy the harms that the party believes would otherwise be caused by an unconditioned CN/WC transaction, which does not necessitate the requested waiver.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The GLT-5 request for a waiver of § 1180.4(d)(4)(i) is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary