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SEC

SERVICE DATE - LATE RELEASE JULY 23, 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. 8

Decided: July 23, 2001

By application (referred to as the CN/WC control application) filed April 9, 2001, Canadian National¹ and Wisconsin Central² (Canadian National and Wisconsin Central are referred to collectively as 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 U.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), the Board accepted the CN/WC application for consideration and established a procedural schedule that set June 25, 2001, as the date for filing all comments, protests, requests for conditions, and any other evidence and argument in opposition to the CN/WC control application, and set July 25, 2001, as the date for filing responses to comments, protests, requested conditions, and other opposition.

¹ 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.

² 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.

On June 25, 2001, Great Lakes Transportation LLC (GLT)³ filed comments in which it asked the Board to approve the CN/WC control transaction subject to the terms of a settlement agreement (the GLT/CN Agreement) that GLT had reached with applicants. See GLT-14 (filed June 25, 2001). GLT indicated that the GLT/CN Agreement consisted of “general terms” (described in GLT-14, Attachment B) and “additional terms” (described in GLT-14, Attachment C). While GLT initially indicated that the GLT/CN Agreement would be reduced to “definitive terms” and submitted to the Board by early July, GLT submitted the “definitive terms” of that agreement on July 18, 2001. See GLT-16, filed July 18, 2001 (a copy of the “definitive terms” of the GLT/CN Agreement). GLT urges the Board to approve the CN/WC control transaction subject to the condition that applicants comply with the terms of the GLT/CN Agreement.

On July 20, 2001, AK Steel Corporation (AK Steel) and Eveleth Mines, LLC d/b/a EVTAC Mining (EVTAC), filed a joint request (designated AKS-9/EVT-3) for a 1-week extension (to August 1, 2001) of the due date for the filing of their responsive comments. AK Steel and EVTAC contend that, although the procedural schedule (which called for all requests for conditions to be made by June 25, 2001) contemplated that parties such as AK Steel and EVTAC would have a month to prepare their reply comments, GLT, by waiting until July 18, 2001, to file the “definitive terms” of the GLT/CN Agreement, has left AK Steel and EVTAC with only a week to review, and to prepare their reply comments on, the issues raised by the definitive terms of the 16-page GLT/CN Agreement. AK Steel and EVTAC further contend that this truncated time period is not sufficient, particularly because key AK Steel in-house personnel will not be able to begin review of the GLT/CN Agreement until the week of July 23, 2001.

On July 23, 2001, applicants and GLT separately filed replies (CN/WC-15 and GLT-17) to the AKS-9/EVT-3 extension request. Applicants and GLT contend that, by and large, the “definitive terms” of the GLT/CN Agreement are much the same as the terms (referred to as “general terms” and “additional terms”) that were indicated in the GLT-14 submission that was filed on June 25, 2001. Further, they point out that, on July 12 and 17, 2001, United States Steel LLC took depositions of CN and GLT representatives regarding the GLT/CN Agreement, that counsel for AK Steel attended these depositions but chose not to question the witnesses, and that, against this background, AK Steel and EVTAC cannot legitimately claim either that they were “surprised” by the definitive terms of the GLT/CN Agreement or that they have not had adequate time to consider the implications of that Agreement. Applicants and GLT therefore urge denial of the AKS-9/EVT-3 extension request.

³ GLT owns the Duluth, Missabe, and Iron Range Railroad Company (DM&IR), USS Great Lakes Fleet, Inc. (USS Fleet), the Bessemer and Lake Erie Railroad Company (B&LE), and the Pittsburgh & Conneaut Dock Company (P&C Dock).

The AKS-9/EVT-3 extension request will be denied. AK Steel and EVTAC knew at least as early as June 25, 2001, the date of filing of the GLT-14 submission, what the principal terms of the GLT/CN Agreement would be, and AK Steel and EVTAC had an opportunity to interrogate the key negotiators of that Agreement on its terms at the depositions held on July 12 and 17, 2001. Although it took longer than applicants and GLT had anticipated to finalize the definitive terms of the GLT/CN Agreement, AK Steel and EVTAC have not been prejudiced by the delay. Therefore, AK Steel and EVTAC have not shown that a delay is warranted in the procedural schedule established for this minor transaction in Decision No. 2.

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

It is ordered:

1. The AKS-9/EVT-3 extension request is denied.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary