

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. 7

Decided: June 21, 2001

We are denying the motion filed by Great Lakes Transportation, LLC (GLT or movant) to compel production by AK Steel Corporation (AKS) of certain documents.

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 set 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 proposed CN/WC transaction is a "minor" transaction. In a petition for leave to intervene, filed May 1, 2001, GLT had opposed the designation of the transaction as minor and the proposed schedule, based on the alleged impact on taconite traffic that it handles in combined rail-water service. GLT asserted that approval of the CN/WC application would result in the diversion of taconite traffic from GLT to an all-rail route in which applicants would participate, and that this would have significant competitive,

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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.

environmental, and safety effects and thereby implicate the public interest. In Decision No. 2, we stated that GLT's concerns can be fully addressed and considered within the procedural schedule that we established. Slip. op at 8.

#### MOTION TO COMPEL

In its motion (designated as GLT-11), GLT contends that a fundamental question in this proceeding is whether, as a result of the CN/WC transaction, taconite traffic currently moving via GLT will be diverted to an all-rail route. According to movant, WC has already succeeded in diverting to all-rail a substantial portion of the taconite movements to the facilities of AKS<sup>3</sup> in Middletown, OH.<sup>4</sup> GLT states that, in view of the potential diversion of all of AKS's Middletown traffic and the shortness of time to prepare comments, it moves to compel AKS to provide the information sought in three discovery requests: (1) information related to AKS's decision whether to use an all-rail route or a rail-water-rail route to transport taconite; (2) reasons why AKS has chosen to increase its use of an all-rail route to the Middletown facility; and (3) documents reflecting communications between AKS and any railroad, other than The Duluth, Missabe & Iron Range Railway Company (DMIR), a GLT affiliate, relating to the transportation of taconite to the Middletown facility. GLT contends that the information it seeks is relevant and should be produced. According to movant, although AKS's decision to use an all-rail movement for some of the taconite delivered to Middletown occurred before the CN/WC transaction was proposed, GLT believes that information about AKS's choice of all-rail service will shed light on whether greater diversions are likely following a combination of CN and WC.

By reply (designated AKS-6) filed June 19, 2001, AKS asserts that the information sought is of no relevance in this proceeding and appears to have been filed solely to harass AKS. According to AKS, there is no Middletown traffic subject to diversion from a GLT vessel because AKS uses a competing vessel service for its remaining rail-water-rail movement to

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<sup>3</sup> AKS intervened as a party of record in this proceeding on May 2, 2001. Based on GLT's assertion that an all-rail diversion of taconite would force its railroad affiliate, The Bessemer & Lake Erie Railroad Company (B&LE), to abandon a rail line serving one of AKS's plants, AKS served discovery requests on GLT on May 22, 2001. On June 4, 2001, GLT served discovery requests on AKS. GLT declined to provide certain information sought by AKS and, on June 11, 2001, AKS filed a motion to compel GLT to provide documents. GLT replied to the motion on June 14, 2001 and, based on representations by GLT in its reply that it no longer expects to argue that AKS and other shippers on the southern part of the B&LE line are likely to lose rail service if the CN/WC transaction is approved, AKS sought leave to withdraw its motion on June 15, 2001. In Decision No. 5, served June 18, 2001, the Board's Secretary granted AKS's request to withdraw its motion.

<sup>4</sup> The remainder of the taconite movements to Middletown are provided by rail-water-rail service.

Middletown. AKS maintains that GLT's concern that shippers other than AKS may divert their taconite traffic from GLT should be directed to those shippers, rather than to AKS. AKS contends that the requested information involves routing decisions it made years ago and has no bearing on the CN/WC proceeding. AKS stipulates that it has no studies or analyses that address what impact, if any, the proposed CN/WC merger would have on any routing of future deliveries of taconite to its Middletown facilities.

#### DISCUSSION AND CONCLUSIONS

We see no relevance in the material sought by GLT. Although GLT asks that AKS provide information as to its decision to increase its all-rail transportation to Middletown at the expense of a rail-water route, GLT does not participate at all in the water portion of the route used by AKS, and thus GLT has no AKS traffic that could be subject to diversion. Moreover, AKS stipulates that it has no studies or analyses addressing the impact the proposed combination would have on any routing of future deliveries of taconite to its Middletown facilities. GLT's concerns that other shippers may divert traffic from GLT should be directed to those shippers. Because the information sought by GLT does not appear to be relevant to any matter in dispute in this case, the motion to compel will be denied.

We note that, despite our instruction that the parties begin discovery immediately following our May 9 decision and our encouragement to resolve discovery matters "expeditiously and amicably," both GLT and AKS have asked us to resolve discovery disputes at the eleventh hour.<sup>5</sup> While greater diligence in pursuing discovery is essential, we have nevertheless accommodated GLT's request for expeditious handling of its discovery motion in view of the procedural schedule established in this case. While we do not expect to need to rule on further discovery requests in this proceeding, we would generally look with disfavor on discovery requests that are not pursued in a timely manner.

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-11 motion to compel is denied.

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<sup>5</sup> See AKS-3 motion to compel, filed June 11, 2001.

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