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SERVICE DATE - AUGUST 2, 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. 9

Decided: August 1, 2001

Based on the recommendation of the Board's Section of Environmental Analysis (SEA) following its independent review of the environmental record, including applicants' Environmental Appendix and the comments filed by interested parties, we find in this decision that there is no need for a formal environmental review under the National Environmental Policy Act (NEPA) and that the proposed transaction is "categorically excluded" from environmental analysis under our environmental rules at 49 CFR 1105.6(c)(2)(i). No Environmental Assessment (EA) or Environmental Impact Statement (EIS) is warranted here because the proposed transaction will result in only minimal changes in carrier operations, and there is nothing in the environmental information that is currently available to indicate that the transaction has any potential for significant environmental impacts. The proposed action also is exempt from historic review under the National Historic Preservation Act (NHPA) pursuant to 49 CFR 1105.8(b)(1), (3).

BACKGROUND

The Proposed Action

By application filed April 9, 2001, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and WC Merger Sub, Inc. (Merger Sub),¹ and Wisconsin Central Transportation Corporation (WCTC), Wisconsin Central Ltd. (WCL), Fox Valley & Western

¹ CNR is a rail carrier that controls, through its wholly owned GTC subsidiary (GTC, a noncarrier, is a holding company), several U.S. rail carriers: Grand Trunk Western Railroad Incorporated (GTW); Duluth, Winnipeg & Pacific Railway Company (DWP); St. Clair Tunnel Company (SCTC); Illinois Central Railroad Company (IC); Chicago, Central & Pacific Railroad Company (CCP); Cedar River Railroad Company (CRRC); and Waterloo Railway Company (WRC). CNR, GTC, and Merger Sub (Merger Sub is a wholly owned subsidiary of GTC), and their wholly owned (directly or indirectly) subsidiaries are referred to collectively as CN.

Ltd. (FVW), Sault Ste. Marie Bridge Company (SSMB), and Wisconsin Chicago Link Ltd. (WCLL),² seek approval 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).³ The proposed transaction would be an entirely end-to-end coupling of the existing CN and WC systems with no overlapping or parallel routes. Because there are no parallel CN and WC lines, there would be no rail line abandonments related to the transaction. Additionally, applicants do not anticipate any rail line construction as a result of this transaction.

Environmental Matters

NEPA, 42 U.S.C. 4321-43, generally requires federal agencies to consider “to the fullest extent possible” environmental consequences “in every recommendation or report on major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C). Under both the Council on Environmental Quality's (CEQ) regulations implementing NEPA and our own environmental rules, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review.⁴ Such activities are said to be covered by a “categorical exclusion,” which CEQ defines at 40 CFR 1508.4⁵ as

. . . . a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no effect in procedures adopted by a federal agency in implementation of these regulations . . . and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.

² WCTC (a noncarrier) and its wholly owned North American rail carrier subsidiaries — WCL, FVW, SSMB, and WCLL, which operate in the United States; and Algoma Central Railway, Inc. (ACRI), which operates in Canada — are referred to collectively as WC. CN and WC are referred to collectively as applicants.

³ This transaction is classified as a “minor” transaction. See 49 CFR 1180.2(c) (classification of 49 U.S.C. 11323 transactions), as applied in Decision No. 2 (served May 9, 2001, and published that day in the Federal Register at 66 FR 23757).

⁴ 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c).

⁵ An agency's procedures for categorical exclusions “shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect, thus requiring an EA or an EIS. Id. See 49 CFR 1105.6(d). But absent extraordinary circumstances, once a project is found to fit within a categorical exclusion, no further NEPA procedures are warranted.

Our environmental rules contain various categorical exclusions. As pertinent here, a merger proposal that would not result in operational changes that exceed certain thresholds — generally an increase in rail traffic of at least 8 trains a day or 100 percent in traffic (measured in gross ton miles annually) — normally requires no environmental review. 49 CFR 1105.6(c)(2)(i); 1105.7(e). Where properties 50 years old and older may be affected, historic review under the National Historic Preservation Act, 16 U.S.C. 470-470t (NHPA), may be required. However, historic review is not required where further approval will be required to abandon any service, there are no plans to dispose of or alter properties subject to our jurisdiction that are 50 years old or older, and common use of rail terminals will not substantially change the level of maintenance of railroad property. See 49 CFR 1105.8(b)(1), (3).

This Case

Applicants asserted in their application that the proposed transaction would have insignificant environmental effects and would cause only modest changes in carrier operations, none of which would exceed the thresholds triggering environmental review established in 49 CFR 1105.7(e)(4) or (5) and 49 CFR 1105.6(c)(2)(i). Applicants further argued that the proposed transaction is exempt under 49 CFR 1105.8(b)(1) and (3) from historic review under NHPA.

To assist SEA in determining whether there is a need for formal environmental review of this transaction, SEA directed applicants to prepare an Environmental Appendix providing additional details and explanation, including maps. SEA reviewed the Environmental Appendix.

Applicants also worked with the Federal Railroad Administration (FRA) to develop a Safety Integration Plan (SIP), under FRA guidelines, specifically addressing the process of safely combining applicants' two separate systems, if the proposed transaction is approved. On April 30, 2001, the Board and FRA, with the concurrence of the United States Department of Transportation (DOT), entered into a Memorandum of Understanding (MOU), which establishes an ongoing monitoring process that will apply if the transaction is approved. The monitoring process would continue until FRA advises the Board in writing that the integration of operations subject to the transaction has been safely completed.

On May 9, 2001, we accepted the application and established a procedural schedule.⁶ To facilitate public review and comment on all aspects of the Environmental Appendix and the SIP,⁷ we directed applicants to mail copies of the Environmental Appendix and SIP, by May 14, 2001, to appropriate Federal, state, and local agencies and other interested parties and to announce that

⁶ See Board's Decision No. 2.

⁷ Both the SIP and the MOU were included in the Environmental Appendix to allow for public review and comment.

interested parties would have 30 days, or until June 13, 2001, to submit comments to SEA.⁸ We explained that, based on SEA's consideration of all timely comments and its own independent review of all available environmental information, including the SIP, SEA would recommend to the Board whether there is a need for formal environmental review in this case. We stated that we would then determine whether the proposed transaction is categorically excluded from environmental review, or, alternatively, whether an EA or an EIS is required to meet the Board's NEPA obligations (in which case the procedural schedule for the proceeding would be adjusted accordingly). Finally, we indicated that, even if no EA or EIS is warranted, consistent with our recent practice, we intended to impose a condition on any decision approving the transaction requiring applicants to comply with the SIP.

DISCUSSION

SEA has prepared a memorandum recommending that we find that there is no need for a formal environmental review in this case.⁹ We agree with SEA that there would be only modest changes in carrier operations as a result of the proposed transaction, that the thresholds in our regulations triggering an environmental review have not been met, and that preparation of an EA or an EIS is not warranted because there is nothing in the environmental information that is currently available to indicate that the proposed transaction has any potential for significant environmental impacts.

As SEA notes, the Environmental Appendix states (at pp. 6-7) that applicants project that the proposed acquisition will not lead to an average increase of more than one train a day on any rail segment, except for a one-mile segment between Harvey and Markham/Chicago Intermodal Terminal, IL, where they project an average increase of 1.77 trains a day. And the Environmental Appendix shows that the greatest transaction-related percentage increase in freight tonnage would be 22.48%, which would occur on the same one-mile segment. Because

⁸ In addition, we directed applicants to publish a notice in newspapers of general circulation in each county in the United States through which affected rail line segments pass alerting the public that the Environmental Appendix and SIP were available, and advising how to obtain copies and submit comments. We further ensured broad access to the Environmental Appendix and SIP by making them available on the Board's web site at www.stb.dot.gov.

⁹ SEA recommended that we impose conditions on any decision approving the transaction requiring applicants to comply with the SIP, which may be modified and updated as necessary to respond to evolving conditions, and to participate and fully cooperate in the ongoing activities related to the MOU. We will consider SEA's recommended conditions when we decide whether to approve the CN/WC transaction.

that line segment falls within a nonattainment area¹⁰ under the Clean Air Act, the applicable threshold for analysis in our rules for the segment is an increase of at least 3 trains per day or an increase in freight tonnage of at least 50%. See Environmental Appendix at 4; 49 CFR 1105.7(e)(5). The projected traffic increase falls well below even this lower threshold.

According to the Environmental Appendix, applicants have not identified any rail yards or intermodal facilities that would exceed the thresholds triggering environmental review in the Board’s regulations. The Environmental Appendix reiterates that applicants have proposed no transaction-related rail line abandonments or new line constructions. The Environmental Appendix also projects that the increase in numbers of hazardous materials carloads in yards will be less than 7 cars a day and that none of the rail segments would be new “Key Routes” (i.e., routes on which more than 10,000 carloads of hazardous materials would be carried per year), except for the Hayford-Blue Island Junction, IL segment, which CN is already operating pursuant to AAR Key Route standards,¹¹ and none would be a “Major Key Route” (i.e., one on which the number of hazardous materials carloads would double and would exceed 20,000 carloads per year).

SEA received 16 responses to its request for public comments on the Environmental Appendix and SIP. Comments were received from Federal and state agencies, communities, commercial entities, and the applicants.¹² None of the agencies filing comments indicate that the transaction would have significant environmental impacts or that an EA or an EIS should be prepared. Indeed, DOT specifically states that “the relatively minor changes in traffic projected in the application appear to warrant a finding that no significant environmental or community impacts are likely to result from the merger,” DOT Comments at 2, that “adverse environmental or community consequences arising from the merger are unlikely,” *id.* at 5, and that “the SIP produced by Applicants is satisfactory to FRA as respects the implementation process now envisioned.” *Id.*

¹⁰ A nonattainment area is an area that the U.S. Environmental Protection Agency has classified as not complying with the National Ambient Air Quality Standards promulgated under the Clean Air Act.

¹¹ The Association of American Railroads has issued standards and guidelines for the movement of hazardous materials in “Recommended Railroad Operating Practices for Transportation of Hazardous Materials,” AAR Circular No. OT-55-B.

¹² Village of Solon Springs, WI; Village of Sussex, WI; City of Des Plaines, IL; Village of Mukwonago, WI; Village of Buffalo Grove, IL; County of Porter, IN; City of Gary, IN; City of Hammond, IN; Four City Consortium, IN; U.S. Department of Transportation; U.S. Army Corps of Engineers, Omaha District; Indiana Department of Natural Resources; Michigan Department of Environmental Quality; Illinois Historic Preservation Agency; Great Lakes Transportation; and applicants.

Certain communities and commercial entities are concerned that significant volumes of taconite (a form of iron ore) could switch from rail-water movements to all-rail movements on rail lines of CN and WC if the transaction is approved. But, as SEA notes, these commenters raise only generalized concerns that all-rail movements of the taconite traffic could affect noise, air, safety and emergency services in communities through which this traffic would pass. Moreover, applicants indicate in their comments that the transfer of taconite shipping to all-rail routes is not likely to occur at all, or at least until 2006 because rail-water shipping is substantially cheaper and the Duluth, Missabe & Iron Range Railway Company has a contract to ship taconite by rail-water shipping for the next 5 years. In these circumstances, SEA does not believe that the commenters have shown a need to conduct a formal environmental analysis in this case.

While none of the commenters have demonstrated that formal environmental review is needed now, DOT and others do suggest that we should stand ready to address the consequences of unforeseen circumstances in the near future. As in any other case, however, communities and others can seek redress in the future, if appropriate, by filing a petition to reopen any Board decision approving the transaction, alleging changed circumstances, new evidence, or material error.¹³ See 49 CFR 1115.4.

We also find that the proposed transaction is exempt from historic review under NHPA. The Environmental Appendix (at p. 7) states that applicants intend to continue rail operations after CN's consummation of control of WC, and that further approval will be required to abandon any service. Applicants also state that they have no plans to dispose of or alter any properties subject to the Board's jurisdiction that are 50 years old or older. Moreover, according to the Environmental Appendix, the common control of CN and its rail carrier subsidiaries with the rail carrier subsidiaries of WC would not substantially change the level of maintenance of railroad property. Thus, we agree with SEA that the project is excepted from NHPA under 49 CFR 1105.8(b)(1), (3). See also the comments of the Illinois Historic Preservation Agency (stating that no historic properties will be affected by the transaction).

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

¹³ DOT has suggested a 3-year environmental oversight period. Also, in commenting on the SIP, DOT states that FRA is concerned that the SIP would permit the applicants to move WC's rail dispatching operations from the United States to Canada. DOT notes that applicants indicated in the SIP (at p. 61) that they would consult with FRA if they decided to move the dispatching operation. DOT urges the Board to impose, as a condition of any approval, a requirement that applicants adhere to this representation, and that the Board should retain jurisdiction for this purpose, and allow for a 3-month consultation period during which FRA would work with CN to address issues of concern to FRA. We will address these aspects of DOT's comments in our decision considering whether to approve this transaction.

It is ordered:

1. The proposed transaction is categorically excluded from the need to prepare an environmental analysis under the National Environmental Policy Act and exempt from historic review under the National Historic Preservation Act.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary