

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.

Decided May 3, 2001

AGENCY: Surface Transportation Board

ACTION: Decision No. 2 in STB Finance Docket No. 34000; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed April 9, 2001, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and WC Merger Sub, Inc. (Merger Sub),¹ and by 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).² The application seeks Board approval and authorization under 49 U.S.C. 11321-26 for the acquisition of control by CNR and GTC of WCTC and through it of WCTC's rail carrier subsidiaries WCL, FVW, SSMB, and WCLL.³ As a result of the transaction, WCTC and its rail carrier subsidiaries would become indirect wholly owned subsidiaries of CN. The Board further finds that this is a "minor transaction" under 49 CFR 1180.2(c).

The Board has considered applicants' petition for scheduling order, filed April 9, 2001. With a modification to provide additional time for public comments, the Board is adopting the procedural schedule applicants have proposed (which, as modified, would result in a decision being issued some 28 days prior to the statutory deadline, assuming as explained later on that no oral

¹ CNR, GTC, and Merger Sub are referred to collectively as CN.

² WCTC, WCL, FVW, SSMB, and WCLL are referred to collectively as WC. CN and WC are referred to collectively as applicants.

³ Merger Sub, an indirect wholly owned subsidiary of CNR, will be merged into WCTC, whereupon the separate existence of Merger Sub will cease.

argument is held and no unanticipated environmental review is required). The Board's schedule provides for the issuance of a final decision no later than 45 days after the close of the record.

DATES: The effective date of this decision is May 9, 2001. Applicants must submit their Safety Integration Plan (SIP) to the Board by May 9, 2001. Applicants also must distribute their Environmental Appendix and SIP to the public and initiate publication of newspaper notices by May 14, 2001. Any person who wishes to participate in this proceeding as a party of record must file, no later than May 25, 2001, a notice of intent to participate. All comments on applicants Environmental Appendix and SIP must be filed no later than June 13, 2001. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application, including filings by the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT) must be filed by June 25, 2001. Response to comments, protests, requested conditions, and other opposition, response to comments of DOJ and DOT, and rebuttal in support of the application must be filed by July 25, 2001. For further information respecting dates, see Appendix A (Procedural Schedule).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: 1-800-877-8339.]

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 34000 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001.⁴ In addition, one copy of all documents in this proceeding must be sent to: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) Paul A. Cunningham, Esq., Harkins Cunningham, 801 Pennsylvania Avenue, N.W., Suite 600, Washington, DC 20004-2664; and (4) William C. Sippel, Esq., Fletcher & Sippel LLC, Two Prudential Plaza, 180 North Stetson Avenue, Chicago, IL 60601-6721.

⁴ In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision. As an exception to these requirements, parties filing comments to environmental documents should follow procedures as provided with such documents.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs),⁵ copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in WordPerfect 9.0 or compatible with this version of WordPerfect.⁶ Electronic spreadsheets must be in Lotus 1-2-3 Release 9 or Microsoft Excel 97 or compatible with these versions of the software. In the past, the Board has encountered problems with the "links" in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, naming and linking conventions should be used that will permit the spreadsheets to operate on the Board's computers.⁷ Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.⁸ The Board currently uses Microsoft Access 97, and data bases submitted should be either in this format or another ODBC compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for us to accept the data base in another format. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

SUPPLEMENTARY INFORMATION: Applicants are seeking approval of a proposed transaction set forth in their application (CN/WC-2) filed on April 9,

⁵ Parties must clearly label each formal filing with an identification acronym and number. See 49 CFR 1180.4(a)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. These electronic filing requirements do not apply to filings addressing environmental documents.

⁶ Absent a waiver for good cause, we require submissions to be in WordPerfect format so that they can be quickly and accurately disseminated electronically to Board staff.

⁷ We will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with our computers can be addressed to William Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565-1550.

⁸ ODBC is a Windows technology that allows a data base software package, such as Microsoft Access, to import data from a data base created using a different software package. All data bases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, etc.

2001.⁹ The proposed transaction involves the acquisition of control by CNR and GTC of WCTC and through it of WCTC's rail carrier subsidiaries WCL, FVW, SSMB, and WCLL. As a result of the transaction, WCTC and its rail carrier subsidiaries would become indirect wholly owned subsidiaries of CN.

Applicants state that, because the proposed transaction does not involve the merger or control of two or more Class I railroads, their application is subject to 49 U.S.C. 11324(d). Applicants also assert that this is a "minor transaction" as defined in 49 CFR part 1180.¹⁰

Applicants argue that the proposed transaction would have no anticompetitive effects, noting that it would result in the end-to-end connection of two railroad systems that do not overlap. Applicants also state that there would be no 2-to-1 or 3-to-2 shippers on the CN/WC system,¹¹ no reduction in geographic or product competition and no increase in market power. According to applicants, the transaction will enhance competition and provide significant benefits to the shipping public.

On April 9, 2001, applicants also filed a petition for a scheduling order, as discussed below, that would provide for a more expedited processing of the application than the maximum time allotted for consideration of minor transaction applications. On May 1, 2001, Great Lakes Transportation, LLC (Great Lakes), late-filed a reply in opposition to the applicants' expedited scheduling petition, requesting also that the Board find that the proposed transaction is significant and dismiss the application as incomplete or require supplemental information.¹² Great Lakes also sought leave to file its reply one day late. Given our statutory deadline for publishing notice of acceptance of the application in the *Federal Register*, it is difficult to understand why Great Lakes

⁹ On April 27, 2001, applicants filed a list of errata (CN/WC-4) to their CN/WC-2 application.

¹⁰ In proceedings not involving the merger or control of at least two Class I railroads, a transaction is minor if a determination can be made either (1) that the transaction clearly will not have any anticompetitive effects, or (2) that any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. 49 CFR 1180.2(b).

¹¹ A 2-to-1 shipper would be a shipper served by both CN and WC, but by no other railroad, and a 3-to-2 shipper would be a shipper served by CN, WC, and a third railroad. As a result of a merger between applicants into one railroad entity, a 2-to-1 shipper would have only one serving railroad and a 3-to-2 shipper would have two serving railroads. While applicants state there are no such shippers on the CN/WC system, applicants note that Oba, Ontario, is technically a 2-to-1 location, but that there are no industries served by either of the two railroads at that point and therefore no adverse effect on competition for rail service there.

¹² We also have received correspondence asking us to find that the proposed transaction is significant, and not minor.

waited so long to make this filing in connection with the much-publicized transaction. Nevertheless, the filing will be accepted.

Great Lakes indirectly controls: (1) USS Great Lakes Fleet, Inc. (USS Fleet), a water carrier that operates on the Great Lakes; (2) The Duluth, Missabe & Iron Range Railway Company (DM&IR), a Class II railroad; (3) The Bessemer & Lake Erie Railroad Company (B&LE), also a Class II railroad; and (4) The Pittsburgh & Conneaut Dock Company (P&C Dock), a dock company that is also a Class III rail carrier. Great Lakes, entirely owned by the Blackstone Group and the management team at Great Lakes, is primarily concerned about the effects of the CN/WC transaction on the transportation of taconite pellets from Northeastern Minnesota to steel plants in the Midwest. According to Great Lakes, DM&IR moves taconite from taconite plants in Minnesota to dock facilities at Duluth and Two Harbors, MN, where it is loaded onto USS Fleet boats for movement on the Great Lakes. Great Lakes indicates that some of the taconite is then unloaded at P&C Dock and loaded onto B&LE trains for movement to U.S. Steel's Edgar Thomson steel mill in Pittsburgh, PA. Great Lakes maintains that the CN/WC's possible diversion of this taconite traffic to all-rail movements threatens to undermine the economics of water transportation service on the lakes and to eliminate essential rail and water services now provided by Great Lakes' affiliated carriers, as well as employment on those carriers. Great Lakes also asserts that all-rail movements would be less efficient and less safe than transportation that includes water movements across the Great Lakes. Because of the expressed concerns about the possible effects of the transaction on its companies, and potentially on users of their services, Great Lakes asserts that the applicants have not demonstrated that the proposed transaction is minor, and thus that the Board should find it to be significant and the application incomplete. Great Lakes also argues that we should require applicants to submit more detailed environmental information.

The applicants filed a reply to Great Lakes' filing on May 2, 2001. The applicants oppose Great Lakes' request for a finding that the transaction should be deemed "significant" and its request that the application be dismissed.

On April 27, 2001, The National Industrial Transportation League (NITL) filed a statement in support of approval of the application and in support of finding that it involves a minor transaction. NITL states that it has entered into an agreement with CN, by which CN has agreed to provide certain protections for rail shippers.

THE APPLICANTS. CN is a major Canadian railroad¹³ that operates a rail network consisting of 3,912 route miles in 14 states in the United States, and 11,620 route miles in eight Canadian provinces. CN has principal routes (1) to every major metropolitan area in Canada; (2) to the major U.S. cities of Buffalo, NY; Detroit, MI; Duluth, MN/Superior, WI; and Chicago, IL; (3) north-south between Chicago and the Gulf of Mexico, reaching every major metropolitan area on the Mississippi River, including Chicago, IL, East St. Louis, IL/St. Louis, MO, Memphis, TN, and New Orleans, LA; and (4) east-west between Chicago and Nebraska and Iowa, extending from Sioux City, IA, and Omaha, NE/Council Bluffs, IA, in the West to Chicago in the East. The eastern terminus of CN's network is Halifax, Nova Scotia; the western termini are Vancouver and Prince Rupert, British Columbia; and the southern terminus is New Orleans. CN's traffic, between Duluth/Superior and Chicago, is carried under haulage agreements over the lines of WC.

WC¹⁴ operates over 2,464 route miles in Wisconsin, Minnesota, Northeastern Illinois, and the Upper Peninsula of Michigan, and over 296 route miles in the Province of Ontario. WC's main route extends from outside Chicago north through the Fox River Valley region of Wisconsin through Fond du Lac to Neenah and then northwestward through Stevens Point to Superior, WI. Another main route diverges from this line and extends to Withrow, MN, via trackage rights over CP to Minneapolis/St. Paul, MN. Other WC lines extend to Green Bay, Milwaukee, Wausau, Wisconsin Rapids, Ashland, and East Winona, WI; to Sault Ste. Marie, MI; and between the iron ore ranges around Ishpeming, MI, and the lake docks at Escanaba, MI. WC, through its ACRI subsidiary, also operates 296 miles of rail line in Canada between Sault Ste. Marie and Hearst, ON. WC's principal yard terminals and shop facilities are located at Fond du Lac and Stevens Point, WI, and Sault Ste. Marie, ON. Major interchange locations on WC's routes are Chicago, Superior, Minneapolis/St. Paul, and Sault Ste. Marie, ON.

The principal routes of the combined CN/WC rail system would be identical to those of the individual railroads, with the addition of through routes where interchange or haulage is now required. Applicants state that no track

¹³ CN indirectly controls two Class I railroads — Grand Trunk Western Railroad Incorporated and Illinois Central Railroad Company — and several non-Class I railroads operating in the United States.

¹⁴ WC consists of three Class II railroads (WCL, FVW, and SSMB), one Class III railroad (WCLL), and a Canadian carrier (Algoma Central Railway Inc. (ACRI)). WCTC is a noncarrier holding company.

redundancies would be created by the transaction, and no abandonments would result from the combination of the two systems.

CN/WC Agreement. According to the applicants, on January 29, 2001, CNR, Merger Sub, and WCTC entered into an Agreement and Plan of Merger (Agreement). Subject to the Board's authorization and other conditions, Merger Sub (a Delaware corporation and an indirect wholly owned subsidiary of CN) will be merged into WCTC in accordance with Delaware law, whereupon the separate existence of Merger Sub will cease, and WCTC will be an indirect wholly owned subsidiary of CNR. The Agreement provides that, upon the merger of Merger Sub into WCTC, each share of WCTC that was outstanding immediately before the merger will be converted into the right to receive \$17.15 in cash.¹⁵ On April 4, 2001, approximately 79% of WCTC's outstanding shares were voted on the proposal, and 99% of those shares voted were in favor of the Agreement.

PUBLIC INTEREST. Applicants assert that the transaction will further the public interest by improving the quality of rail transportation service to the public with an extended unified network, offering more efficient single-line routings linking markets in the United States and Canada, improving or eliminating interchanges, and improving equipment utilization, which will reduce operating costs and reduce terminal dwell time and overall cycle times for both cars and locomotives. Applicants claim that quantified public benefits arising from efficiencies of the transaction would be approximately \$52 million per year.

LABOR IMPACT. Applicants have submitted one Labor Impact Statement which shows the projected effects of the CN/WC merger on all categories of employment, including both agreement and nonagreement personnel of the combined CN/WC system. The Labor Impact Statement is organized by location and, for each location, reflects job classification(s) that will be created, eliminated, or transferred. Also indicated are the number of positions affected at each location by classification and the year in which positions will be moved to another location, abolished, or added. If a position is to be relocated, the Labor Impact Statement identifies the new location.

¹⁵ Applicants stated that all monetary amounts listed in the application are stated in U.S. dollars, unless otherwise noted.

As explained in the Operating Plan,¹⁶ the transaction will have a relatively small impact on CN/WC's employment levels. The applicants foresee that throughout the implementation period the major mechanical shops in Stevens Point and Fond du Lac will remain in place, as will the Stevens Point customer service, train dispatching, crew management and clearance bureau operations.¹⁷ As new systems are implemented, applicants will focus significantly on training to ensure that all present employees acquire the necessary skills to continue operating safely and efficiently in their new environments.

Applicants anticipate that the merger will likely affect employment levels in three primary areas. First, duplicative administrative activities will be streamlined, which primarily will affect executive and senior management personnel in WC's Rosemont corporate headquarters. Second, the transaction will give rise to significant improvements in equipment utilization and maintenance activities, which will reduce the need for mechanical shop employees. Third, the greater maintenance-of-way resources of the larger system can support meaningful maintenance-of-way efficiencies, thereby reducing that work force, which mostly will affect temporary and seasonal employees across the WC service territory. Applicants believe that some of these expected employment reductions will be accomplished through normal attrition.

Applicants acknowledge that, if we approve the transaction proposed in the application, the transaction would be subject to the employee protective conditions and other procedures adopted in *New York Dock — Control — Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979).

ACCEPTANCE OF APPLICATION. Under 49 CFR Part 1180, the Board must determine whether a proposed transaction is major, significant, or minor. Great Lakes opposes the designation of the transaction as minor, based on the alleged impact on taconite traffic that it handles in combined rail-water service. Great Lakes' own submission appears to show that this taconite traffic can already move in all-rail service, whether or not the application is approved. Great Lakes' filing does not make enough of a showing that the proposed

¹⁶ See CN/WC-2, Vol. 1, at 410-13.

¹⁷ Applicants expect that improved productivity of the locomotive and car fleets will allow CN/WC to eliminate most locomotive repair work at Stevens Point, relying instead on Fond du Lac, and to reduce the need for car repair work at Stevens Point and Fond du Lac. Applicants state that they do not currently plan any major changes in the day-to-day maintenance of way and signal maintenance operations as a result of the transaction. CN/WC-2, Vol. 1, at 403-04.

transaction, as described, has regional or national transportation significance as referenced in 49 U.S.C. 11325 or that there would be anticompetitive effects that would outweigh the transaction's anticipated contribution to the public interest in meeting significant transportation needs pursuant to 49 CFR 1180.2(b)(2). But Great Lakes' concerns (including environmental concerns) can be fully addressed in the submissions of all interested parties and considered by the Board within the schedule we are establishing for this proceeding. Accordingly, we will treat the proposal as a minor transaction under 49 CFR 1180.2(c) subject to the procedural provisions of 49 U.S.C. 11325(a)(3) and 11325(d). Because the application complies with the applicable regulations governing minor transactions, we accept the application for consideration.

PUBLIC INSPECTION. The application, including various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, D.C. In addition, they may be obtained from applicants' representatives named above.

PROCEDURAL SCHEDULE. In their petition for a scheduling order, applicants request that we issue a final decision in this proceeding within 180 days from the filing of the application. Applicants propose that all comments, protests, and requests for conditions, and any other evidence or argument in opposition to the application by all parties be due June 8, 2001 (30 days after publication of the *Federal Register* notice accepting the application), and that applicants' rebuttal or other responses to those filings be due July 9, 2001 (30 days later). According to applicants, this schedule leaves ample time for the Board to schedule an oral argument if warranted and to render a decision within the statutory deadline. As noted above, Great Lakes opposes the applicants' proposed schedule.

We will adopt a procedural schedule that provides some additional time to that proposed by applicants for comments on their application, but still provides for less total time than that provided by the deadlines set forth at 49 U.S.C. 11325(d), to ensure proper review of the transaction, including consideration of the position of Great Lakes. The statute allows for 6 months for the processing of minor consolidation proceedings. Under 49 U.S.C. 11325(d)(2), the Board must conclude the evidentiary stage of the proceeding by the 105th day after publication of the *Federal Register* notice accepting the application, and must issue the final decision by the 45th day after the conclusion of the evidentiary stage.

Accordingly, all comments, protests, and requests for conditions, and any other evidence or argument in opposition to the application by all parties will be due 45 days after publication of the *Federal Register* notice accepting the application, which will be on June 25, 2001. As suggested by applicants, applicants' rebuttal and other responses to those filings will be due 30 days later, on July 25, 2001. The final written decision addressing the application will be issued within 45 days thereafter. If we determine that an Environmental Assessment or Environmental Impact Statement is required, we will adjust the procedural schedule as necessary. Also, if oral argument is held, then the final decision will be issued within 45 days after the argument. Other relevant due dates are discussed in detail under our discussion of filing due dates.

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than May 25, 2001, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, Attorney General of the United States, and on applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

We will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record also will be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

We will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance

arrangements with the Board's copy contractor, Dā-to-Dā Office Solutions, to receive copies of Board decisions, orders, and notices served in this proceeding. Dā-to-Dā Office Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for Dā-to-Dā Office Solutions is: (202) 756-1649.¹⁸

COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT. Any interested persons, including the U.S. Attorney General and the U.S. Secretary of Transportation, may file written comments, protests, requests for conditions, and any other opposition evidence and argument no later than June 25, 2001. This deadline applies to comments, etc., addressing the application.

Parties addressing the application, filing comments, protests, requests for conditions, and any other opposition evidence and argument (including filings by DOJ and DOT) must submit an original and 25 copies of such documents, referring to STB Finance Docket No. 34000 (lead docket). All submissions must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, applicants' representatives, and all other parties of record.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments, etc., must include:

¹⁸ An interested person does not need to be on the service list to obtain a copy of the application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." See 49 CFR 1180.4(a)(3), as recently amended in *RR Consolidation Procedures — Modification of Fee Policy*, 2 S.T.B. 57 (1997) published at 62 Fed. Reg. 9714, 9717 (1997) (*interim rules*), and 2 S.T.B. 232 (1997) published at 62 Fed. Reg. 28,375 (1997) (*final rules*). The application and other filings in this proceeding also will be available on the Board's website at "WWW.STB.DOT.GOV" under "Filings." Furthermore, Dā-to-Dā Office Solutions will provide, for a charge, copies of the application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order entered heretofore in this proceeding.

- (A) the docket number and title of the proceeding;
- (B) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made;
- (C) the commenting party's position, i.e., whether it supports or opposes the proposed transaction;
- (D) a statement whether the commenting party intends to participate formally in the proceeding, or merely to comment on the proposal;
- (E) if desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can be resolved only at a hearing; and
- (F) a list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. *See* 49 CFR 1180.4(d)(4)(i).

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co. v. ICC*, 711 F.2d 295 (D.C. Cir 1983).

RESPONSE TO COMMENTS, PROTESTS, REQUESTED CONDITIONS, AND OTHER OPPOSITION, INCLUDING DOJ AND DOT; REBUTTAL IN SUPPORT OF APPLICATION. Parties submitting responses to comments, protests, requested conditions, and other opposition, including DOJ and DOT, and rebuttal in support of the application must be filed with the Board by July 25, 2001.

OTHER DATES. The procedural schedule adopted in this decision further provides: (1) that applicants must file a SIP on May 9, 2001, as they have proposed; (2) that applicants must distribute copies of their Environmental Appendix and SIP to the public and initiate publication of newspaper notices by May 14, 2001 (within 5 days of service of this decision); (3) that all comments on applicants' Environmental Appendix and SIP are due on June 13, 2001; and (4) that the final written decision, addressing the application will be served on September 7, 2001, if we determine that no Environmental Assessment or Environmental Impact Statement is required and that there will be no oral argument. If oral argument is held, the decision will be served 45 days thereafter.

DISCOVERY. Discovery may begin immediately. We encourage the parties to resolve all discovery matters expeditiously and amicably.

ENVIRONMENTAL MATTERS. Applicants assert in their application that the proposed transaction will have insignificant environmental effects and therefore does not require a formal environmental review under the National Environmental Policy Act of 1969 (NEPA). Applicants state that the transaction will cause only modest changes in carrier operations, none of which would exceed the thresholds triggering environmental review established in our environmental rules at 49 CFR 1105.7(e)(4) or (5). Applicants further state that the transaction is exempt under 49 CFR 1105.6(c)(2)(i) from environmental reporting requirements and exempt under 49 CFR 1105.8(b)(1) and (3) from historic preservation reporting requirements.

To assist the Board's Section of Environmental Analysis (SEA) in determining whether there is a need for environmental review of this transaction, SEA directed applicants to prepare an Environmental Appendix providing additional details and explanation, including maps, supporting applicants' conclusion that this transaction does not warrant environmental documentation. SEA has reviewed the Environmental Appendix.

Applicants also have been working 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. Applicants indicate that they will submit the SIP to SEA by May 9, 2001.

To facilitate public review and comment on all aspects of the Environmental Appendix and the SIP, we are directing applicants, within 5 days of the service date of this decision (*i.e.*, May 14, 2001), to mail copies of these materials to appropriate federal, state, and local agencies and other interested parties and to announce that we are providing a 30-day period for interested parties to submit comments by June 13, 2001, to SEA. In addition, we direct 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 are available, and how to obtain copies and submit comments. We will further ensure broad access to the Environmental Appendix and SIP by making them available on the Board's web site at WWW.STB.DOT.GOV. Applicants shall certify that they have met these mailing and newspaper notice requirements.

Based on its consideration of all timely comments and its own independent review of all available environmental information, including the SIP, SEA will

recommend to the Board whether there is a need for formal environmental review in this case. We will then determine whether to issue a finding of no significant environmental impact, or, alternatively, whether an Environmental Assessment (EA) or Environmental Impact Statement (EIS) should be prepared. If it appears that an EA or EIS is required to meet the Board's NEPA obligations, the procedural schedule set forth here will be adjusted accordingly. Even if no EA or EIS is warranted, consistent with our recent practice, we intend to impose a condition on any decision approving the transaction requiring applicants to comply with the SIP.

ELECTRONIC SUBMISSIONS.¹⁹ As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or compatible with, WordPerfect 9.0. Electronic spreadsheets must be in, or compatible with, Lotus 1-2-3 Release 9, or Microsoft Excel 97. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 5, 2001, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.²⁰

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

¹⁹ As noted previously, these requirements do not apply to filings addressing environmental documents. Parties submitting comments to applicants' Environmental Appendix and SIP should follow procedures as provided with such documents.

²⁰ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate*, 1 S.T.B. 754 (1996) published at 61 Fed. Reg. 52,710, 52,711 (1996) and 1 S.T.B. 857 (1996) published at 61 Fed. Reg. 58,490, 58,491 (1996).

It is ordered:

1. The application is accepted for consideration under 49 U.S.C. 11321-26 as a minor transaction under 49 CFR 1180.2(c).
2. Great Lakes' filing of May 1, 2001, is accepted.
3. Great Lakes' request for dismissal of the CN/WC application is denied.
4. Parties must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
5. Parties must comply with the procedural requirements described in this decision.
6. This decision will be published in the *Federal Register* on May 9, 2001.
7. This decision is effective on May 9, 2001, the service date.

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

APPENDIX A: PROCEDURAL SCHEDULE

April 9, 2001	Application and Petition for Scheduling Order filed.
May 9, 2001	Board notice of acceptance of application published in the <i>Federal Register</i> .
May 9, 2001	Safety Integration Plan (SIP) due.
May 14, 2001	Applicants distribute Environmental Appendix and SIP to public and initiate publication of newspaper notices.
May 25, 2001	Notice of intent to participate due.
June 13, 2001	All comments on Environmental Appendix and SIP due.
June 25, 2001	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the application due, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT).
July 25, 2001	Response to comments, protests, requested conditions, and other opposition due. Response to comments of DOJ and DOT due. Rebuttal in support of application due (close of record).
September 7, 2001	Date of service of final decision (if no Environmental Assessment or Environmental Impact Statement is required and there is no oral argument).