

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35087

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
- CONTROL -
EJ&E WEST COMPANY

**COMMENTS AND REQUEST FOR CONDITION
BY WISCONSIN & SOUTHERN RAILROAD CO.**

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
202-296-3334

Due: January 28, 2008

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INTRODUCTION

On October 30, 2007, Applicants Canadian National Railway Company, Grand Trunk Corporation,¹ and EJ&E West Company (hereafter “Applicants”) filed with the Surface Transportation Board an application under 49 U.S.C. 11323 *et seq.* for CN to acquire control of an entity named EJ&E West Company which in turn will own the majority of the rail assets of the Elgin, Joliet & Eastern Railway (identified as the “J”). The Board has designated this proceeding as a “minor” transaction under its railroad consolidation rules and has set January 28, 2008, as the deadline for affected parties to submit comments, protests, and requests for condition or other relief. Wisconsin & Southern Railroad Co. (“WSOR”), a class II carrier

¹ Canadian National Railway and Grand Trunk Corporation shall be referred to as “CN”.

operating in the States of Illinois and Wisconsin, files these comments opposing CN's absorption of the "J" without the imposition of certain conditions.

FACTUAL BACKGROUND

WSOR submits with these comments the Verified Statement of its President, Chief Executive Officer, and majority shareholder William E. Gardner. In his statement, Mr. Gardner describes WSOR, its traffic levels, commodities, and some of its major communities served. Gardner VS at 1-2. He encloses with his statement a color map of the railroad. Mr. Gardner predicts that if CN's acquisition of the "J" is granted without the requested conditions, the combined effect of the CN's control of the "J" along with the acquisition of control by Canadian Pacific Railway ("CPR") of the Dakota, Minnesota & Eastern Railroad ("EJ&E") and its affiliate the Iowa, Chicago & Eastern Railroad ("IC&E")² will result in significant rail congestion on those carriers' lines entering Chicago from the State of Wisconsin. Gardner VS at 2-3. Mr. Gardner testifies that this congestion will impede the ability of Wisconsin shippers to get their products to market in Chicago and will impair WSOR's ability to reach its two principal eastern connections, CSX Transportation and Norfolk Southern Railway. Gardner VS at 4-8.

² That application was originally filed on October 5, 2007, and as supplemented on December 5, 2007. It was docketed as STB FD No. 35081.

Accordingly, he requests that the Board require CN to sell its former Wisconsin Central rail line from Leithton (MP 37.9) to Forest Park, IL (MP 11.0) (where it connects with a line of CSXT giving it access to the Belt Railway of Chicago's³ Clearing Yard) at a price to be negotiated by the parties but subject to Board oversight and to grant WSOR overhead trackage rights over CN's line between Grays Lake (MP 44.0) and Leithton (MP 37.9) and for CN to assign to WSOR its trackage rights over CSXT from MP 11.0 (also known as CSXT MP 33.0) to the entrance to the Clearing Yard (approximately BRC MP 9.9, distance of about 8.9 miles) or, alternatively, to grant WSOR overhead trackage rights on this entire line from Grays Lake (MP 44.0), to Leithton (MP 37.9), and then to Forest Park, IL (MP 11.0) at a fee not to exceed 36 cents per mile, and to require CN to assign its rights over CSXT into the Clearing Yard. Gardner VS at 3.

Granting this request will alleviate a potential congestion problem by giving WSOR an alternative "back door" route to Chicago that will not adversely impair operations of either CN or CPR as well as those of Amtrak and METRA, Chicago's commuter rail authority.

³ Abbreviated as "BRC."

ARGUMENT

This proceeding presents a question of first impression, namely the power of the Board to impose conditions necessary to ameliorate the combined adverse effects of two more or less simultaneous railroad consolidation transactions. Historically, the Board and the Interstate Commerce Commission before it had a “one case at a time” policy whereby the agency only reviewed the transaction before it without regard to any other pending or future transactions. But in Ex Parte No. 582 the Board repudiated that policy stating that would in future major merger proceedings examine the likely "downstream" effects of a proposed transaction, including the likely strategic responses to that transaction by non-applicant railroads. STB Docket No. EP-582 (sub-no. 1), Major Rail Consolidation Procedures (served March 31, 2000). Such is the case here. While each of these proceedings here – the CN/EJ&E and the CPR/DM&E/IC&E proceedings - is not a major rail consolidation proceeding involving two or more class I carriers, each has a dramatic impact on Midwestern rail service. Since the two carriers serve the same basic territory (Canada and the Upper Midwest including Illinois and Wisconsin), the Board would not be fulfilling its statutory public interest responsibility to consider one transaction without analyzing its impact on the other. Accordingly, WSOR maintains that the

Board must consider the adverse impacts of both transactions on the State of Wisconsin, its shippers, and WSOR in deciding whether to grant the conditions sought by WSOR.

Moreover, at least one former STB Chairman has recognized in speeches, if not in decisions, the role that short line and regional railroads can play in using their service and facilities to relieve class I railroad congestion. WSOR believes that granting it the requested relief will permit it to play a valuable role as a congestion reliever without adversely affecting either CN and CPR traffic or operations.

WSOR begins with the basic proposition that the Board has the power to impose conditions in railroad consolidation transactions. Specifically, section 11324(c) states that the Board “may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights to other facilities.” Moreover, in determining whether to approve a transaction, the Board’s governing statute, the I.C.C. Termination Act, requires the Board to find that the transaction is in the public interest. Id.

The advent of railroad congestion is a very recent phenomenon. Since World War II, the American railroad industry has been in a slow but constant decline with railroads reducing their physical plant, equipment, and

work force to meet a declining traffic and revenue base. Each new downward cycle was met with another “downsizing” effort until the cycle repeated itself. Due in part to the Staggers Act rate freedoms, a new aggressive marketing and pricing strategy by railroads, the use of the American rail system to move new international commerce, changes in the trucking industry, and a recognition that railroads are more energy efficient and environmentally-friendly than trucking, that downward spiral has reversed itself. Traffic has been growing on many key freight routes, in some cases outpacing the capacity of the lines themselves. Simultaneously, communities have begun to recognize the importance of using the rail system to haul passengers, both intercity passengers handled by Amtrak and commuters handled by public agencies in major metropolitan areas. All of these developments have put or will soon put a strain on the American rail system without capacity additions or alternate routes.

In the case of Wisconsin, CN’s former Wisconsin Central line between the Canadian border and Chicago will according to CN form the backbone of a high speed corridor for moving intermodal freight between Prince Rupert, BC, and the Chicago Gateway.⁴ Similarly, CPR’s route between the Twin Cities, Milwaukee, and Chicago will handle CPR’s traffic

⁴ See, video prepared by CN that can be found on the internet at www.cn.ca/specialized/ports_docks/prince_rupert/en_PrinceRupert.shtml touting the advances of CN’s high speed rail line between Prince Rupert, BC, Chicago, IL, and other points.

from Canada to the Midwest as well as a growing amount of Amtrak and commuter rail passenger service into Chicago. Should CPR's application to acquire the DM&E be granted and DM&E construct a route into the Powder River Basin in Wyoming, CPR's Twin cities-Chicago line would likely experience substantial traffic growth and congestion from the new coal traffic. The Board has the power and the duty to prescribe conditions to address and alleviate such congestion.

The Board has broad authority to impose conditions governing railroad consolidations. Because conditions generally tend to reduce the benefits a consolidation would provide, they will only be imposed where certain criteria are met. However, the Board has indicated that it will impose conditions where the transaction produces effects harmful to the public interest that a condition will ameliorate or eliminate. Typically, such harms for which conditions are appropriate involve a significant loss of competition or the loss by another rail carrier of the ability to provide essential services. See, e.g., Union Pacific Corp. Et Al.-Cont.-MO-KS-TX Co. Et Al, 4 I.C.C.2d 409, 437 (1988); Union Pacific-Control-Missouri Pacific; Western Pacific, 366 I.C.C. 459, 562 (1982) aff'd sub.nom. Southern Pacific Transp. Co. v. ICC, 736 F.2d 708 (D.C. Cir. 1984), *cert. den.*, 105 S.Ct. 1171 (1985). Furthermore, the Board has stated that the

requested condition(s) must be operationally feasible and produce net public benefits. Id. A condition must address an effect of the transaction, and will generally not be imposed "to ameliorate longstanding problems which were not created by the merger." Finally, a condition should also be tailored to remedy adverse effects of a transaction, and should not be designed simply to put its proponent in a better position than it occupied before the consolidation. CSX Corp. Et Al – Control – Conrail, Inc. – Et Al, 3 S.T.B. 196, 278 (1998).

WSOR has reviewed agency precedent looking for instances where either the Board or the ICC required the sale of a line or the grant of trackage rights to another railroad to alleviate congestion. Because railroad congestion is a such very recent phenomenon, few examples exist. The Board did grant trackage rights to the Texas Mexican Railway to relieve congestion in the aftermath of the Union Pacific-Southern Pacific “meltdown” of the late 1990’s arising out of that merger case.⁵ In the Conrail Acquisition case, the Board granted certain relief requested by the Wheeling & Lake Erie Railroad (“W&LE”) noting

“W&LE not only provides valuable competitive service to shippers, but it also provides a transportation network that could be important

⁵ In order to mitigate congestion over the UP/SP “Sunset Route,” the Texas Mexican Railway sought and was granted trackage rights over a route south of Houston, between Placedo and Algoa, TX. STB Service Order No. 1518, Joint Petition for Service Order (served Oct. 31, 1997).

to shippers if the major carriers have difficulty providing service.”

CSX Corp. Et Al – Control – Conrail, Inc. – Et Al, supra at 310.⁶

Times and circumstances have changed since the Conrail case. The Board’s statutory public interest obligation requires it to grant such a request in today’s environment where it is appropriate as it is here.

A grant of WSOR’s requested condition would be consistent with Board policy on imposing conditions. Clearly increased rail congestion is harmful to the public interest and could threaten the essential services that WSOR provides to local Wisconsin customers. As Mr. Gardner has testified, WSOR’s proposed acquisition of the Leithton to Forest Park portion of the Waukesha Line along with certain trackage rights from Grays Lake to Leithton and then to the BRC Clearing Yard or, alternatively, trackage rights over the entire line from Grays Lake to Forest Park and then to the BRC Clearing Yard is operationally feasible. Gardner VS at 8. According to Attachment A.1 accompanying CN’s operating plan, the addition of the “J” to the CN System would allow CN to divert 93% of its traffic off this line between Leithton and Forest Park, leaving METRA as the

⁶ The then independently owned Wisconsin Central itself sought such a condition premised on alleviating congestion in the Chicago area, to allow it to acquire a portion of a CSXT line that afforded a connection with other railroads on the grounds, among others, that this acquisition would mitigate congestion on the CSXT route and enhance the overall efficiency of the Chicago switching district. The Board denied that request without any discussion in its decision. CSX Corp. Et Al – Control – Conrail, Inc., Et Al, supra, 3 S.T.B. at 376.

primary user.⁷ The operation of several daily WSOR trains over this line would not adversely affect either METRA service or any remaining CN service, especially in view of the fact that most WSOR Chicago movements occur at night.⁸ Gardner VS at 5. Similarly, shifting many WSOR trains from the CPR/METRA C&M Line to the Waukesha Line would produce substantial net tremendous benefits for CPR, Amtrak, and METRA by reducing any possibility of congestion as all of these carriers' services continue to grow. A grant of WSOR's requested condition will directly address congestion issues caused by traffic attributable to the CPR/DM&E and CN/EJ&E transactions as Mr. Gardner has explained. VS at 5-8. Finally, a grant of these conditions will not put WSOR in a better position than it would have occupied had there been no consolidation transaction. WSOR could have lived with the status quo.

CONCLUSION

Accordingly, Wisconsin and Southern Railroad requests that the Board impose as a condition of its decision allowing Canadian National Railway and Grand Trunk Corporation to acquire the EJ&E West Company a requirement that Applicants convey to it CN's former Wisconsin Central

⁷ According to CN's operating plan CN would divert to the EJ&E between 15.8 and 17.4 (depending upon the segment) of its current 19.5 trains moving on the Waukesha Line to Chicago. See Attachment A.1 to the operating plan.

⁸ WSOR does not believe that CN even uses the southern most portion of its trackage rights over either CSXT or BRC, as the case may be. Gardner VS at 3.

rail line from Leithton (MP 37.9) to Forest Park, IL (MP 11.0) (where it connects with a line of CSXT giving it access to the BRC Clearing Yard) at a price to be negotiated by the parties but subject to Board oversight and to grant WSOR overhead trackage rights over CN's line between Grays Lake (MP 44.0) and Leithton (MP 37.9) and for CN to assign to WSOR its trackage rights over CSXT from MP 11.0 (also known as CSXT MP 33.0) to the entrance to the Clearing Yard (approximately BRC MP 9.9, distance of about 8.9 miles) or, alternatively, to grant WSOR overhead trackage rights on this entire line from Grays Lake (MP 44.0), to Leithton (MP 37.9), and then to Forest Park, IL (MP 11.0) at a fee not to exceed 36 cents per mile, and to require CN to assign its rights over CSXT into the Clearing Yard.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, D.C. 20006
202-296-3334

Due: January 28, 2008

VERIFIED STATEMENT
OF
WILLIAM E. GARDNER

William E. Gardner, being duly sworn, deposes and states as follows:

My name is William E. Gardner. My mailing address is P.O. Box 90229, Milwaukee, WI 53209. Since 1988, I have served as President, Chief Executive Officer, and majority owner of the Wisconsin & Southern Railroad Co (“WSOR”), a class II regional railroad that serves a substantial part of central southern Wisconsin and northern Illinois.

WSOR plays a vital role in the economy of the State of Wisconsin handling over 60,000 car loads of freight on a network of more than 700 miles of track and trackage rights. WSOR is the principal rail carrier serving such communities as Madison, Wisconsin’s State capital, Janesville, Horicon, and Oshkosh, just to name a few. WSOR handles a diverse group of commodities including grain and other types of agricultural produce, ethanol, coal, aggregate, minerals, lumber, paper products, plastics, and manufactured goods. WSOR is fairly unique among regional railroads in that it represents a true public private partnership with public ownership of its railroad infrastructure. Approximately, 81% of WSOR’s track and rights-of-

way are owned by the State of Wisconsin through a series of government entities known as Transit Commissions. WSOR leases another 13% of its track and rights-of-way from CP Rail and Union Pacific Railroad and owns the balance (6%). WSOR holds overhead trackage rights between Fox Lake and Chicago, IL, and between Milwaukee, WI, and Chicago, IL, that give it the right to connect to all six major class I railroads serving Chicago. I am attaching to my statement a color map that depicts WSOR's route structure and the communities it serves.

My purpose in submitting this statement is to give the Board the benefit of my railroad's views on the proposed absorption of the Elgin, Joliet & Eastern Railroad ("EJ&E" or more simply "the J") into the Canadian National Railroad ("CN"). It is my understanding that the State of Wisconsin, through its Department of Transportation,¹ will also be filing comments which WSOR believes will be consistent with WSOR's views. Simply stated, WSOR believes that the unconditioned approval of this transaction and the recently filed application by Canadian Pacific Railway ("CPR") to desire to acquire the commonly owned Dakota, Minnesota & Eastern Railroad ("DM&E") and the Iowa, Chicago & Eastern Railroad ("IC&E") will result in significant congestion on CN and CPR lines entering

¹ Commonly known as "WISDOT."

Chicago from the State of Wisconsin. Such condition will impair WSOR's ability to reach Chicago-area rail lines where it currently interchanges traffic with various class I railroads there. Accordingly, WSOR asks the Board to require CN to sell it CN's former Wisconsin Central rail line from Leithton (MP 37.9) to Forest Park, IL (MP 11.0) (where it connects with a line of CSX Transportation ("CSXT") giving it access to the Belt Railway of Chicago's ² Clearing Yard) at a price to be negotiated by the parties but subject to Board oversight and to grant WSOR overhead trackage rights over CN's line between Grays Lake (MP 44.0) and Leithton (MP 37.9) and for CN to assign to WSOR its trackage rights over CSXT from MP 11.0 (also known as CSXT MP 33.0) to the entrance to the Clearing Yard (approximately BRC MP 9.9, distance of about 8.9 miles) or, alternatively, to grant WSOR overhead trackage rights on this entire line from Grays Lake (MP 44.0), to Leithton (MP 37.9), and then to Forest Park, IL (MP 11.0) at a fee not to exceed 36 cents per mile, and to require CN to assign its rights over CSXT into the Clearing Yard.³

² Abbreviated as "BRC."

³ The CN's property ends at CN MP 11 near Madison Ave. in Forest Park, IL. CSXT's MP at this point is 37.2. The connection to the BRC from the CSXT is at MP 33 near what CSXT people refer to as 48th Ave. (BRC people refer to this same location as 14th Street). The BRC mainline goes over the CSXT at approximately MP 32.9. The BRC MP at connection is MP 3.5 (this is approximate). Connection off the BRC mainline for the BRC Clearing Yard west end is MP 8.2 (approximate). Connection off the BRC mainline to the BRC Clearing Yard east end is MP 9.9 (approximate). So for trains going to the BRC Clearing Yard it would be an approximate distance of 8.9 miles. Trains coming from the BRC Clearing Yard would travel a distance of 10.6 miles. As a side note I believe the current CN trackage rights allow CN to operate all the way to Barr Yard. They (CN) currently do not utilize these rights.

Today the Board is faced with two different control transactions filed by both Canadian-owned class I railroads. Several months ago, the Canadian Pacific Railroad, generally known as CP Rail, announced its desire to acquire the commonly-owned Dakota, Minnesota & Eastern and Iowa, Chicago & Eastern Railroads. A few weeks later CN announced its intention to acquire the “J”. The Board has decided to treat the CPR acquisition as a “significant” transaction while relegating the CN transaction to a lower level of scrutiny as a “minor” transaction.

A superficial reading of CN’s application suggests that it would result in few, if any, adverse impacts on other railroads in the region and even on communities in the region. Unfortunately, the truth is otherwise. While I don’t believe that CN’s application even references any impacts on WSOR, it does have a very definite impact on both my railroad and the State of Wisconsin. Unlike many railroad consolidations that involve loss of modal competition for and/or traffic diversion from connecting carriers, CN’s absorption of the “J” will have significant operating impacts on other railroads and communities.

WSOR currently has two overhead routes into Chicago. First, WSOR operates into the State of Illinois from Janesville, WI, to Fox Lake, IL,

where connects with a commuter line owned by Chicago's commuter rail agency (METRA) from Fox Lake via Rondout and thence into downtown Chicago to reach the Belt Railway of Chicago Clearing Yard. Second, WSOR recently obtained a second route for overhead traffic by a grant of trackage rights from CPR from over its line⁴ from North Milwaukee to downtown Chicago via Milwaukee. These two routes converge at Rondout with METRA owning the track and right-of-way south of that point. Upon reaching downtown Chicago, WSOR then turns west on another METRA-owned line to reach the Clearing Yard owned by the Belt Railway of Chicago where it interchanges with other carriers.⁵ I should also note that under WSOR's trackage rights agreement with METRA, WSOR has a very limited operating "window" over the METRA-owned lines, between midnight and 2AM.

Chicago is an extremely important destination for WSOR. 61% of WSOR's 60,000 car loads per year traffic base continues to Chicago for interchange with other railroads, notably CSXT and Norfolk Southern Railway. The Chicago Gateway provides the only source of coal for WSOR which handles all inbound coal traffic for the electric utility serving the City of Madison and for the University of Wisconsin's own power plant. Grain

⁴ Commonly known as the "C&M Line."

⁵ The BRC also provides access to yards of the Indiana Harbor Belt Railway and CSXT.

represents 25% of WSOR's total car loadings and 75% of that grain traffic goes to Chicago, the location of WSOR's end customers. Significantly, WSOR hauls more of Wisconsin's grain than all other railroads in the State combined! WSOR presently operates one roundtrip nightly over the Fox Lake to Chicago line and some limited additional service over the line from North Milwaukee south to Chicago.

The more or less simultaneous combination of the CPR/DM&E/IC&E acquisition and the CN absorption of the "J" present WSOR with a "double-whammy." Assuming that the Board approves CPR's acquisition of the DM&E and IC&E *and* the DM&E eventually builds into the Powder River Basin, the C&M Line will become flooded with coal trains. According to the traffic density map that CPR has filed in its application to acquire control of the DM&E and IC&E, the C&M Line currently has about 25 scheduled freight trains per day. See, Graphical Summary of CPR mainline trains, Appendix A attached to CPR's Operating Plan, Exhibit 13 of its Application. It is my understanding that should the DM&E build the Powder River Basin extension, the DM&E would operate as many as 37 trains per day over at least a part of its line, many of which would likely continue to Chicago over the C&M Line. Add to that Amtrak's frequent Chicago-Milwaukee *Hiawatha* service, frequent METRA commuter service into Chicago, and the

eventual prospect of higher speed multi-frequency Amtrak service between Chicago and the Twin Cities, this already heavily utilized route will become *one busy railroad*. WSOR is understandably concerned that the resulting congestion could make it difficult for CPR and METRA to accommodate WSOR's existing service, let alone any growth potential. And METRA has already advised WSOR that it cannot accommodate any additional WSOR service on its lines.

The prospect of the "J's" absorption into the CN System further tightens the noose of rail congestion. CN's Wisconsin rail network today does not resemble the system of lines that the Wisconsin Central Railroad assembled some 20-plus years ago from the former Soo Line Railroad (now CPR). The organizers of Wisconsin Central LTD established that carrier as a customer-focused regional railroad to provide more frequent and higher quality service to meet the needs of local shippers in Wisconsin, Minnesota, and the Upper Peninsula of Michigan. When CN acquired the Wisconsin Central a few years ago, it did so in order to connect its mainline from western Canada to the Chicago Gateway. Since then, CN has invested substantial sums in the Wisconsin Central track and right-of-way to enable it to handle frequent through freight trains. But CN's local service to Wisconsin shippers has atrophied in quantity and quality and freight rates

have increased. WSOR firmly believes that as CN continues to develop its through traffic to and from Prince Rupert, BC, at the expense of service to its Wisconsin shippers (utilizing the “J” as a Chicago bypass), those customers will be forced to find alternatives and to abandon CN by relocating to other railroads such as WSOR, utilizing truck transload facilities to bring traffic to WSOR. As a result, WSOR anticipates an increase in local traffic and a need to operate additional trains into the Chicago Gateway for interchange with other railroads.

Fortunately, CN’s absorption of the “J” presents an obvious and easy solution to WSOR’s potential congestion dilemma. Currently, CN owns a former Wisconsin Central rail line (“the Waukesha Line”) that extends from Waukesha into Chicago. That line intersects the “J” at a point called Leithton (MP 37.9) and continues south to Chicago. If CN reroutes most of its through traffic off this line and onto the “J” to travel around Chicago, the Waukesha Line becomes largely surplus to CN except for any local customers⁶ and METRA (which operates over it for a portion of the line between MP 20.4 and Antioch (MP 55.4). WSOR’s acquisition of this line from Leithton (MP 37.9) to Forest Park, IL (MP 11.0) along with the

⁶ According to CN’s operating plan submitted with its application, the number of train moving over the Waukesha Line south of Leithton will drop from 19.5 trips per day to either 3.7 or 2 trips per day depending upon location, a 93% reduction. See Attachment A.1 contained in the Operating Plan, Exhibit 15 of the application.

trackage rights discussed at page 3 of my comments will give WSOR a very good “back door” access to all three major Chicago yards that WSOR reaches via CPR and METRA track and will eliminate or reduce congestion on these passenger routes.

Requiring CN to sell this line and grant or assign related trackage rights to WSOR, or alternatively, to grant WSOR overhead trackage rights over the entire line from Grays Lake to the BRC Clearing Yard will have obvious and significant public benefits. CN will be able to eliminate an asset that it no longer needs for its through service. If sold to WSOR, WSOR would be able to provide local shippers with the same low cost personalized service that has brought WSOR customer acclaim in Wisconsin. CPR, Amtrak, and METRA would be able to reduce freight congestion from WSOR on their lines. Wisconsin shippers will get more frequent and faster access to the Chicago Gateway and WSOR will be able to add service to meet market demand. Rail users will get a “safety valve” for rail routings in this era of increasing congestion on rail freight lines.

Accordingly, WSOR respectfully asks the Board to condition its approval of CN’s acquisition of EJ&E West with a requirement that CN sell it the former Wisconsin Central rail line from Leithton (MP 37.9) to Forest Park, IL (MP 11.0) (where it connects with a line of CSX

Transportation (“CSXT”) giving it access to the BRC Clearing Yard) at a price to be negotiated by the parties but subject to Board oversight and to grant WSOR overhead trackage rights over CN’s line between Grays Lake (MP 44.0) and Leithton (MP 37.9) and for CN to assign to WSOR its trackage rights over CSXT from MP 11.0 to the entrance to the Clearing Yard (approximately BRC MP 9.9, distance of about 8.9 miles) or, alternatively, to grant WSOR overhead trackage rights on this entire line from Grays Lake (MP 44.0), to Leithton (MP 37.9), and then to Forest Park, IL (MP 11.0) at a fee not to exceed 36 cents per mile, and to require CN to assign its rights over CSXT into the Clearing Yard.

VERIFICATION

STATE OF)
 Wisconsin) SS
CITY OF)
 Milwaukee

William E Gardner, being duly sworn according to law,
hereby deposes and states that (s)he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of (her)his knowledge, information and belief.

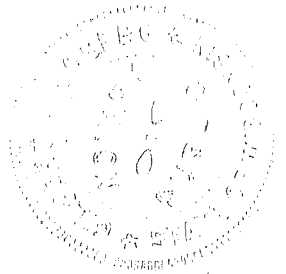
Wm E Gardner

Subscribed and sworn to before me, a Notary Public, in and for
the City of *Milwaukee* in the State of *Wisconsin*, this *28th*
day of *January*.

Hubert J. Loberg
Notary Public

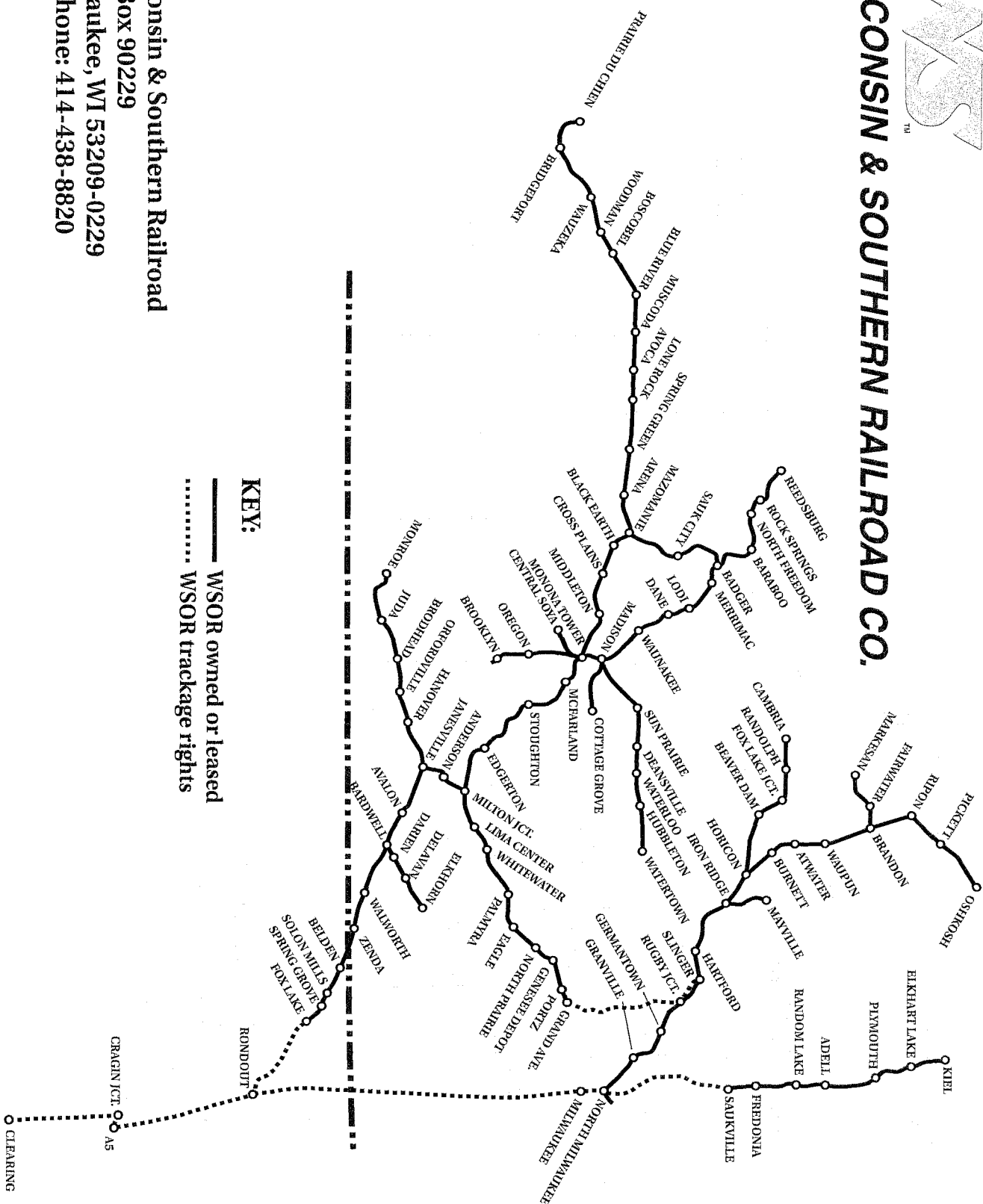
My Commission expires:

4-17-11





**Wisconsin & Southern Railroad
P.O. Box 90229
Milwaukee, WI 53209-0229
telephone: 414-438-8820**



CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Comments and Request for Condition by Wisconsin & Southern Railroad Co. was served on January 28, 2008 to all parties listed on the STB website list.



John D. Heffner