

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35087 ^{*/}

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

COMMENTS AND REQUEST FOR CONDITIONS



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January 28, 2008

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*/ Also embraces Sub-Nos. 1-7, inclusive.

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COMMENTS AND REQUEST FOR CONDITIONS

Jay L. Schollmeyer,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment GO-386 (UTU/GO-386), submits these comments and request for conditions, pursuant to Decision No. 2, dated November 23, 2007 (served November 26). The comments are addressed to the lead docket and Sub-Nos. 1 thru 7.

UTU/GO-386 represents persons employed by BNSF Railway Company (BNSF), primarily (but not exclusively) on lines of the former Great Northern Railway Company (GN), and former Spokane, Portland & Seattle Railway Company (SP&S). Seniority rights of such personnel extend also to lines of the former Northern Pacific Railway Company (NP), and Chicago, Burlington & Quincy Railroad Company (CB&Q).

^{1/} General Chairman for United Transportation Union on lines of BNSF Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver, WA 98660. The Notice of Intent to Participate, was filed December 10, 2007, at the time John D. Fitzgerald served as General Chairman for UTU/GO-386.

The acquisition of Elgin, Joliet & Eastern Railroad Company (EJ&E) by Canadian National Railway Company (CN) would adversely affect persons employed by BNSF.

1. Competition-49 U.S.C. 11324(d)(1). The application fails to adequately present evidence which would enable agency findings on competition regarding railroad container traffic moving within the U.S. via Ocean-Rail routes between the Far East and the U.S. Midwest through Prince Rupert, BC, on the one hand, and U.S. West Coast ports such as Tacoma, WA, and other ports in the States of Washington, Oregon, and California, on the other hand. To be sure, there are some scattered references,^{2/} outside the application, but the \$300 million transaction has been advanced to the public in conjunction with CN container traffic via Prince Rupert, BC. Railroad employees have seen such references. For example, attached here as attachments 1, 2, and 3, are Aim for the Heartland (Traffic World, Oct. 1, 2007), Why CN is adding 'J' (Journal of Commerce, Oct. 22, 2007), and Fast Track for CN'S Buy, Traffic World, Dec. 3, 2007).^{3/}

Although news items and press releases under certain circumstances are not evidence, the Board should not ignore the concerns by the public and by railroad employees, which are common knowledge in the railroad industry. The diversion of export/import traffic from U.S. ports, and via U.S. overland rail routes, would

^{2/} See, for example, Reply by Village of Barrington, pp. 5-7 (Nov. 19, 2007); CN/EJ&E Reply to Village of Barrington Interrogatories, No. 22 (Jan. 8, 2008).

^{3/} The International UTU has reported the comments of a financial analyst linking the Prince Rupert business with the transaction. See: UTU Press Release, EJ&E deal has CN on track to beat bottleneck (Sept. 27, 2007).

diminish competition within the U.S. between and among U.S. ports currently enjoying important container business, and between and among U.S. rail carriers utilizing all-U.S. routes.

2. Employee conditions. The EJ&E today is primarily engaged in terminal operations. The transaction will affect many rail employees currently engaged in operations by different carriers in the Chicago and other terminal areas. Employee protective conditions should be imposed for all affected employees of the involved railroads, including those of non-applicant carriers. Generally, the Board does not impose protection for non-applicant carrier employees, but there is an exception for employees in terminal situations. This is such a terminal situation. The instant transaction, and Sub-Nos. 1-7, would justify protection for all affected employees. Accordingly, in the event the transaction(s) are nonetheless approved, in whole or in part, protection should extend to railroad personnel affected by the transaction who are nevertheless employed in the Chicago and other terminal areas, such as at Tacoma, WA, and other U.S. Pacific Coast ports.

Respectfully submitted,



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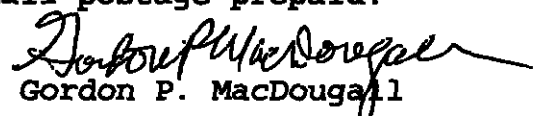
January 28, 2008

Attorney for Jay L. Schollmeyer

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC



Gordon P. MacDougall

Aim for the Heartland

Prince Rupert hopes to link Asia, Canada, U.S. Midwest via intermodal network

A built-from-scratch container terminal at *any* Prince Rupert, British Columbia, is open, and the Fairview Container Terminal is looking forward to handling cargo

"This is the West Coast bypass to the Midwest," said Don Krusel, the port's president and chief executive

The real test of that assertion won't come until the port's first container customer, *Cosco*, begins weekly service at Prince Rupert Oct. 31

Krusel said Prince Rupert offers new options for shippers. It also brings a new port competitor to the trans-Pacific table

Port officials expect Fairview's Phase 1 to handle about 300,000 TEUs in its first year of operation, and to reach its operating capacity of 500,000 TEUs shortly thereafter. They estimate the port could be moving 4 million TEUs annually by 2015

It's not yet clear how Prince Rupert will affect the competitive balance among ports on North America's West Coast. The losses, if they do occur, could be spread among the ports of Tacoma, Seattle, Los Angeles and Vancouver, British Columbia, all of which are closely watching developments at Prince Rupert

Tacoma, where about 70 percent of its intermodal container volume is destined for the same U.S. Midwest markets that Prince Rupert is targeting, could be the hardest hit, especially if Prince Rupert's 100 percent intermodal model catches on with other trans-Pacific carriers

Canadian officials say the coming years are expected to produce ample growth in container volume for everyone. But they also acknowledge that Prince Rupert is targeting the U.S. Midwest, specifically the Chicago and Memphis-region markets

"We're aiming straight for the heartland of North America," said David L. Emerson, Canada's minister of interna-

tional trade, minister for the Pacific Gateway and Vancouver-Whistler Olympics. "There's tremendous congestion on the West Coast. Rupert today is almost a blank page and a tremendous opportunity if we connect all of the pieces together," he said. "I would say the U.S. Midwest is the main target, but we don't see ourselves in competition with Seattle, Tacoma, Los Angeles, etc. It's one more logistical piece that will drive North American competitiveness."

Another reason that the timing is right for Prince Rupert, Emerson said, is "the

"We're aiming straight for the heartland of North America."

slowness of expansion in Vancouver, plus, it's virtually at capacity now."

"We want Prince Rupert to be part of the competitive mix," said Kevin Falcon, British Columbia's minister of transportation. "It has real potential, it has a community that's excited about the port, and a rail line that's underutilized. It should have a significant advantage."

A big selling point for the port is that it is on the great circle route from Asia, making it more than a day's sailing time closer to Asia than Vancouver and Seattle and nearly three days closer than Los Angeles-Long Beach. The shorter sailing time from Asia means a container from Asia will arrive in Chicago before a similar box will reach Los Angeles. Prince Rupert also has deep water — a natural depth of 130 feet in its harbor, and low tide depths of nearly

53 feet at berths — and room to expand

Krusel said the port's remote location, more than 1,600 miles north of Seattle, is another advantage. "Our remoteness, coupled with the fact that our rail corridor to the Midwest stretches through some of the most sparsely populated regions of North America, creates seamless and direct routing for goods destined to central North America," he said

"I don't think we are going head-to-head with any particular port," Krusel said. But he said Prince Rupert is capitalizing on its geographic advantage. "If you're pushing a container to central North America, why send it through a congested urban market? That's why we're confident."

There's not a truck gate in sight or planned at Fairview, meaning that the restive trucker labor relations that have



dogged Canada's Lower Mainland ports won't move north. Port and terminal officials also say there is excellent longshore union support and cooperation. They say the local community, which includes a large contingent of the Tsimshian First Nations tribe, supports the project

It won't be long before further expansion will be necessary, if all goes according to plan. Phase 2 at Fairview and another new container facility, Terminal 2, on a 240-acre site on nearby Ridley Island, are well beyond the planning stages

It's a virtual certainty that the port will push ahead with Phase 2, which will add another berth, 165 acres and an additional 2 million TEUs of container capacity at Fairview

"It's not a question of if, it's when," Krusel said

BY BILL DIBENEDETTO

Why CN is adding 'J'



LAWRENCE H KAUFMAN

The shortest distance between two points is not always a straight line — especially if it runs through the Chicago metropolitan area.

Canadian National Railway is spending \$300 million to acquire the Elgin, Joliet & Eastern Railway, a Chicago-area switching line. It plans to spend even more to upgrade the line. Several securities analysts have commented that the deal seems to make sense, although they think CN is paying a lot of money for an addition that won't produce that much new revenue.

This transaction is not being done for the usual reasons of extending a franchise or capturing new revenue. CN's acquisition of the "J," as it generally is known, really is all about operating efficiency.

It also demonstrates CN management's ability to think in network terms. E. Hunter Harrison, CN's president and chief executive, told analysts that CN would gain a day by routing traffic around Chicago on the "J," rather than through the worst of the notoriously congested metropolitan area, as CN must do now.

The decision to buy the EJ&E marks a significant shift in CN's traditional approach to intermodal, which could be characterized as acceptance but not enthusiasm. Now CN is enthusiastic, and it is wagering \$300 million to demonstrate its enthusiasm.

The new container terminal at Prince Rupert, British Columbia, received its first ship this month. The land portion of the intermodal of all boxes that pass through the terminal will be on CN, which exclusively serves the port. Not only does com-

petitor Canadian Pacific not serve Prince Rupert, there aren't even any truck gates at the new terminal. With no local economy receiving or dispatching containers, it all will be rail intermodal traffic.

Prince Rupert is a day closer to Asian ports than other U.S. or Canadian West Coast ports. As CN upgrades its mainline route to eastern Canada and the U.S. Midwest, it is promoting the Prince Rupert route as competitive with other routes to the Midwest. Take a day out of the transit through Chicago, and CN can compete with currently shorter and faster U.S. rail routes to Memphis.

The benefit of going around Chicago through its suburbs rather than through the congested central city — and CN's existing route is among the most congested — applies to CN traffic from the east as well. CN carries a lot of auto parts and finished cars between Mexico and Detroit and the manufacturing complex in Ontario. Auto parts aside, the purchase of the "J" really is driven by intermodal and CN's growing volume of intermodal business.

It was not always so. CN has the smallest percentage of intermodal to total volume of any of the Big 6 Class 1 railroads. The decision to spend \$300 million essentially to gain a day transiting Chicago demonstrates the importance CN now gives intermodal.

CN management had believed that rates were not high enough to justify new investment in intermodal capacity. But the North American rail system is just that — a system. And CN understands that.

Prince Rupert gives CN an opportunity to expand its intermodal busi-

ness at fully compensatory rates (what happens when there is no truck or rail competition to undercut rates). The business will grow even faster if CN can compete with carriers on the U.S. side of the border on volume to Memphis and the Southeast.

CN's move also demonstrates that intermodal won't wait for government to act on investments to help improve transportation efficiency. I'm referring to the Chicago Regional Environmental Transportation Efficiency program to consolidate rail corridors through metro Chicago and eliminate many grade crossings. The public-private partnership would result in more efficient rail operations and alleviate highway congestion, with private interests paying for elements that benefit them and the public paying for projects that benefit it.

Although CREATE was the result of several years of negotiation, Congress stuffed it in the last surface transportation law. CN officials say the EJ&E purchase has nothing to do with delays in CREATE. But CREATE elements that would help CN the most are those at the back end of the multiyear project, and CN really cannot allow government delays to impinge on its business any more than they already have. Prince Rupert is a reality. The business potential of reaching Memphis is a reality. CREATE is not. Therefore, the "J" makes perfect sense to CN.

Larry Kaufman, former intermodal editor of The Journal of Commerce, has worked in and written about railroads for nearly 40 years. He can be contacted at Lkauf81509@aol.com.

Fast Track for CN's Buy

STB calls purchase of short line EJ&E 'Minor,' split decision ties approval to impact statement

Canadian National Railway's planned purchase of most of the Elgin, Joliet & Eastern's lines around Chicago can proceed for fast regulatory review as a "minor transaction" under a ruling by the U.S. Surface Transportation Board.

The 2-1 decision means the STB could approve CN's purchase sometime next spring, although the board did not set a firm final date in order to first complete

The deal also comes just as CN is starting trains from the new Maher container terminal at the British Columbia Port of Prince Rupert. Containerships already docking there are unloading boxes destined for the U.S. heartland, through Chicago, so the sooner CN gets a better route in that U.S. gateway the sooner it can cut delivery times from Rupert.

Industry sources say CN trains could save as much as 24 hours by using EJ&E. That would make CN's intermodal trains

CN has said it needs to improve its Chicago route.

an environmental impact assessment. Board Vice Chairman W. Douglas Buttrey dissented from the approval by Chairman Charles D. Nottingham and Board member Francis P. Mulvey, preferring to treat the deal as "significant" and taking up to 10 months to work through it.

CN now uses a mix of owned tracks and trackage rights to snake through downtown Chicago, North America's largest rail hub. Battling congestion that can shred freight schedules, CN for years has said it needs to improve its Chicago route.

In late September, CN announced its plan to buy what it would call EJ&E West for \$300 million from owner United States Steel, to get a route that avoids the downtown by swinging west around the city.

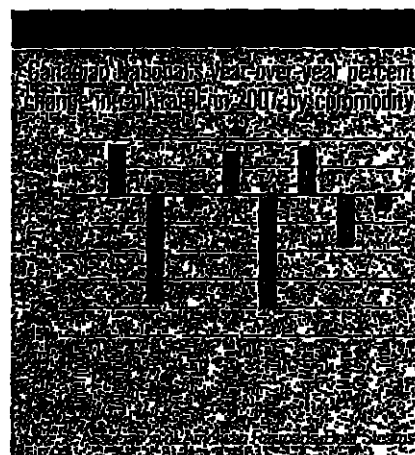
CN plans to spend another \$100 million to upgrade tracks that run from Waukegan, Ill., north of the Chicago, around and below to Gary, Ind., to the southeast. A small segment serving the Gary steel works would remain with U.S. Steel.

more competitive with the U.S. West Coast ports and the railroads that serve them.

Such issues have BNSF Railway and Rep. Peter Visclosky, D-Ind., arguing for the STB to slow things down before giving its okay. The agency ruled another deal this fall, in which Canadian Pacific bought the U.S. regional line Dakota, Minnesota & Eastern, qualifies for a "significant" review that would last into next fall.

In both cases, CP and CN are top-ranked or Class I carriers buying non-Class I lines, and sought "minor" status and fast-track approval. After the STB decision to give CP's deal a longer look, analysts expected the same for CN.

STB commissioner Buttrey said that "in light of the configuration of Class I railroad lines, traffic flows, critical junctures the EJ&E offers in the Chicago area, and the applicants' less than thorough treatment of how their consolidation would impact other carriers, I do not



believe applicants have satisfied the standards necessary for the board to categorize this transaction as 'minor'."

Visclosky told the STB he will participate in its review and asked that the deal be given the longer treatment. He said just in Lake County, Ind., EJ&E has 118 highway grade crossings that would be affected by a "dramatic increase in rail traffic" if CN absorbs the operator. A quick review, he said, "would not provide sufficient time for all interested parties in Northwest Indiana to analyze the impacts."

BNSF did not ask for "significant" status with its 10-month review schedule, but said a 156-day process proposed by CN was too short to work out issues that BNSF was already discussing with CN.

It said the purchase of EJ&E and greater use of its track "could affect BNSF's ability to provide efficient, competitive service to shippers whose traffic moves to, from or through the critical Chicago rail terminal. It is important that these concerns be resolved before the board approves the proposed transaction."

But CN lined up plenty of supporters, from Canadian shippers sending loads to U.S. customers to a big U.S. plastics shipper, major ocean carrier, U.S. barge line and the head of the port at Memphis, Tenn., where CN's intermodal trains would go after clearing Chicago.

Weighing all in the balance, the STB's decision said it "has preliminarily determined that any anti-competitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs."

BY JOHN D. BOYD