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WISCONSIN DATCP

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

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

**COMMENTS OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION**

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Surface Transportation Board
CN-EJ&E BIS - FD-35087

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HDR

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The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is the state agency responsible under Wis. Stat § 93 for promotion of Wisconsin agriculture throughout the United States and in foreign markets. DATCP is also the counterpart to the Federal Trade Commission and administers Wisconsin's unfair trade practice act, Wis. Stat. § 100.20, which prohibits unfair trade practices and methods of competition.

In September, 2006 the Wisconsin Department of Agriculture, Trade and Consumer Protection held joint hearings with the Wisconsin Public Service Commission (PSC) regarding rail service and rate issues. Representatives from businesses in the agricultural, pulp & paper industries and utilities attended sessions at three locations and several testified.

Given the testimony that we received, DATCP provides the following comments regarding the proposed acquisition. The history of mergers appears to have resulted in negative consequences for Wisconsin businesses and utilities, and the outcome of the most recent merger does not appear to have resulted in the level of service that was assured. (STB Finance Docket No. 34000, September 5, 2001- CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND WC MERGER SUB, INC.--CONTROL--WISCONSIN CENTRAL TRANSPORTATION CORPORATION, WISCONSIN CENTRAL LTD., FOX VALLEY & WESTERN LTD., SAULTE STE. MARIE BRIDGE COMPANY, AND WISCONSIN CHICAGO LINK LTD.)

Information Received from Testimony

The testimony that was presented to DATCP and PSC could be summarized as “rates are up and service is down.” The following lists some of the major points that the two agencies heard.

1. Numerous loading sites have been closed, and companies were not notified of the closings. When an alternative loading site was found, businesses experienced additional closings.
2. CN opted to close intermodal facilities in Neenah and Green Bay. Many shipments with origins or destinations in Wisconsin are currently trucked to/from intermodal facilities located in Northern Illinois or the Minneapolis/St. Paul metropolitan area.
3. Switch service has been reduced in several areas of the state. One plant in Colby, WI had weekly service reduced from five days to three days, with one of the three days being on a Saturday for a plant that operates Monday through Friday. Another company had been ordering 40 rail cars each week, with trains arriving five days per week Monday through Friday, for the past 20 years. After the merger, service was reduced to approximately 20 rail cars per week with service on Tuesday, Thursday and Sunday. When this reduction in service occurred, no notification of any changes in the schedule was communicated.
4. Car availability has become scarce. Cars have been taken out of service and not replaced. Some customers have been asked to look at purchasing their own fleet of cars. However, the rate quoted for transportation was higher for customer owned cars vs. the rail company cars.
5. The car ordering procedure was streamlined. Cars are to be ordered seven days in advance. However, if the car order isn't filled by the end of the week, the order is cancelled and cars have to be reordered the next week. At that point, customers still aren't guaranteed a car. This creates a problem in meeting delivery deadlines which were established at the time the car was originally ordered.
6. In the past, customers could specify weight requirements when ordering cars, but no longer can. They run the risk of receiving cars that aren't big enough to handle the weight. They could order a larger size, such as a 60' car. However, they would have to pay an additional \$880 which does not make good business sense when 50' cars are available to handle the weight requirements.
7. Defective equipment is an issue. When customers reject damaged or unclean cars, there are shipping delays. Delivery deadlines not met can result in late delivery penalties. For example, USDA has a late delivery penalty of \$150 per car per day for food aid shipments.
8. Predictability of service has become an issue. Determining when rail equipment will arrive at origin for loading, when it will be furnished locomotive power to pull the train, and when it may reach destination have all become more uncertain. We have heard that it is common for 25-car grain trains to arrive, be loaded within the 24-hour requirement, only to have the train sit for five days to be picked up.
9. Everything is done on-line so the opportunity to speak to someone in customer service is reduced. Working on-line may be deemed more efficient, but a lack of personal communication and accountability is frustrating for the customer.

10. Rates increased at the same time that service was reduced.

Economic Impact

U.S. companies and agriculture continue to cite rail service and rate issues as major factors for maintaining a competitive edge and position in world markets. It is vitally important that U.S. businesses are not put at an economic disadvantage by uncertain service or higher rates. For instance, it is cheaper to ship grain from Argentina to the east coast of the U.S. than it is to ship it from Illinois. Several utilities have been importing coal from overseas, such as Indonesia, Columbia, or South Africa, in order to get reliable shipments of coal needed to serve their customers. Coal imports into the U.S. increased more than eleven percent from 2004 to 2005.

Rates are just one component of the cost increase in freight rail. Other items that can undermine efficient marketing of agriculture goods and commodities include undependable service, delays in shipments, late penalties, and additional human resource time needed to acquire service. These factors combined result in the real cost increase of doing business by rail.

Service for the small volume, captive shipper has the potential to be an ever increasing problem. The concentration of ownership in a few large railroads and a greater focus on improving the speed and efficiency of overhead traffic results in reduced service to the small, remote shipper. Railroads have eliminated many short haul movements, pushing more traffic to trucks. In 1980, railroads handled 50 percent of commercial U.S. grain and oilseed movements. Today, they account for barely a third.

Other Concerns

1. Shortfalls in the current rail industry service levels call into question the impact on the energy sector. We have heard that there is a major shortage of tank cars to handle the ethanol business – estimates of up to 30,000. The country is just beginning to see the economic impact of energy pricing and the need for alternative fuels. U.S. corn-based ethanol production capacity was a little over seven billion gallons in 2007. By July, another five billion gallons of capacity will come on stream, and by the end of the year, another billion in capacity is planned, bringing the capacity to 13 billion gallons, according to industry estimates. Transportation can only play an increasing role in this sector.
2. Transportation plays a major role in the emerging bio-economy, and we can expect that there will be more demand placed on it. Demands related to the bio-economy include transportation of inputs, product and byproducts – on a massive scale. Statistics show that the U.S. corn production in 2007 was the largest since 1933. More acres of corn and wheat are being planted, and it's expected that more acres of soy will be planted this year. This means increased demand for short haul lines, especially in the Midwest. The Midwest Governors have committed to growing the bio-economy which includes not only biofuels, but biopower and bioproducts.

3. On September 12, 2007, CN launched the new Port of Prince Rupert container terminal. The CN website advertises:
- CN has upgraded tunnels and bridges, built new intermodal terminals in Prince George and Edmonton, acquired 2250 platform cars and 50 new state-of-the-art locomotives specifically to serve our new venture.
 - As the closest port to Asia by up to 58 hours of sailing time compared to any other West Coast port in North America, the Port of Prince Rupert gives shippers approximately one extra round-trip voyage per year.
 - Strategically located to handle excess capacity on one of the world's busiest shipping corridors and with expansion plans in the near future, the Port of Prince Rupert is primed to become your facility of choice.
 - Compare the transit time advantage between Prince Rupert and key ports in Asia versus other West Coast ports
 - Deepest harbour in North America
 - Connected to the North American continent by CN's network reach. Our high-capacity and congestion-free main line connects right to the port and serves 17 intermodal terminals across Canada and the U.S. Midwest.
 - The intermodal terminals in the U.S. include:
 - Auburn, Maine
 - Chicago, Illinois
 - Detroit, Michigan
 - East Peoria, Illinois
 - Jackson, Mississippi
 - Memphis, Tennessee
 - New Orleans, Louisiana

Our concern is that the State of Wisconsin will see overhead traffic increase between the Port and the intermodal terminals that will not result in benefits to Wisconsin businesses or citizens. This could result in Wisconsin becoming merely a bridge state because CN is moving long-distance traffic through Wisconsin.

Summary

The Wisconsin DATCP appreciates the opportunity to submit comments to the Surface Transportation Board in your consideration of the application of the Canadian National Railway Company for the acquisition of the EJ&E West Company. Our interest in commenting is focused on protecting and preserving affordable and timely connectivity to rail service for Wisconsin's agricultural sector. The goal for this or other acquisitions should be to improve service for businesses, communities and markets while keeping rates in check. That is the standard that our agency would seek in this filing.

The opportunity exists for this application to relieve congestion on CN's lines in the Chicago area and the possibility for moving products from service areas to the north. However, those opportunities should not overshadow the potential for decreased services to Wisconsin businesses relying on rail transport or a diminishing opportunity for short-line connections because of heavily concentrated mainline long-distance traffic.

As the STB considers the application, DATCP urges that you ensure that additional concentration of the rail industry does not result in a further reduction or withdrawal of service to Wisconsin businesses. I further urge that any approval is conditioned to clearly ensure CN is held to a very high standard and commits to preserving access and service to those who may be affected by transport on these lines, whether directly or indirectly.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Comments of the Wisconsin Department of Agriculture, Trade and Consumer Protection are being served by United States mail on this 25th day of January, 2008, on all Parties of Record and on the following:

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WISCONSIN DEPARTMENT OF
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By: 
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