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WISCONSIN DOT

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 CONDITIONS
BY WISCONSIN DEPARTMENT OF TRANSPORTATION

JOHN Sobotnik

JANUARY 25, 2008

Surface Transportation Board

CN-EJ&E EIS - FD-35087

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CORPORATION
-- CONTROL --
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**COMMENTS AND REQUEST FOR CONDITIONS
BY WISCONSIN DEPARTMENT OF TRANSPORTATION**

The Wisconsin Department of Transportation ("WisDOT") recognizes the efforts of the Canadian National Railway Company ("CN") to relieve the rail congestion on its rail lines in the Chicago area through its proposed purchase of the rail lines of the EJ&E West. We respectfully request the Surface Transportation Board ("STB") to impose the conditions listed below if they approve the CN's proposal.

The proposal may benefit the Chicago-area customers of the two companies as well as the long-distance customers whose traffic flows over the Chicago area. It will, however, move the impacts of the CN's operations from one portion of the area to another.

The application discusses how the proposal will benefit the current customers. What is noticeably absent, however, is discussion of the impact the proposal will have on other portions of the CN system that feed into the Chicago area. In particular, the Wisconsin Department of Transportation is concerned about the congestion that exists on the lines of the CN traversing through the state, and the potential for increased difficulties if this proposal is approved.

If the proposal is approved, long-distance traffic on the CN will be able to move more easily from northern portions of the CN's system to areas south and east of Chicago.

According to the CN's web site,¹ by opening Phase I of the Port of Prince Rupert Container Terminal on September 12, 2007, CN is entering the intermodal business in a significantly more active way. Phase I of the project will allow the Container Terminal to handle 500,000 TEUs. Phase II of the CN's project at the Port of Prince Rupert will expand the capacity of the facility to allow it to handle 2,000,000 TEUs. Phase II is scheduled for completion in 2010.

¹ http://www.cn.ca/specialized/ports_docks/prince_rupert/fairview/en_KFPortsPrinceRupert_fairview.shtml

This ultra-modern facility will move containers filled with many different products, including pulp, lumber, grain, paper, logs, coal, sulphur, iron ore, pipe, base metals, automotive components and finished vehicles for export to Asia and finished products coming into North America from Asia.

A significant portion of this traffic can be expected to move over the CN's lines from the Port of Prince Rupert to Superior, Wisconsin before moving to the Chicago area and points south and east. This additional traffic will travel through the heart of Wisconsin and add a significant number of trains to the already congested lines of the CN.

As one example of the existing congestion, a Wisconsin resident reports CN's trains blocking their driveway for several hours at a time. Despite assurances provided by CN to move crews to the site by cab, the resident reports that this has not occurred. This driveway serves as the family's only point of access to their residence. The extended blockages result in inherently unsafe conditions as described by the resident in their correspondence, and could lead to the obstruction of emergency services to the residence. A copy of the correspondence is attached.²

Another impact of the higher levels of long-distance traffic that will result from the opening of the Port of Prince Rupert Container Terminal and the better service CN proposes to provide as a result of the acquisition of the EJ&E West is that the CN's proposal will negatively impact traffic that moves shorter distances. As an example, since the CN acquired the lines formerly owned by the Wisconsin Central Transportation Corp., ("WCTC"), traffic with CN origins in Wisconsin has decreased 24.2%, from 10,715,284 tons to 8,121,190 tons.³ Traffic terminating at CN's destinations in Wisconsin has remained essentially static. Records show 12,754,677 tons inbound to Wisconsin in 1999, and 12,739,578 tons in 2005, the most recent year for which data was available.⁴ This traffic typically does not move to Atlantic or Gulf coastal destinations.

This decrease in originating traffic and flat line volume of terminating traffic at CN's Wisconsin stations has occurred at the same time that the Wisconsin portion of the economy dependent upon transportation services has grown more than 12% from 187 billion dollars to 212 billion dollars.⁵ During this same period, other rail carriers in Wisconsin have increased their Wisconsin origin traffic from 6,894,0107 tons to 7,709,226 tons.⁶ The other carriers in Wisconsin have also seen their terminating traffic decrease by less than 1.5% from 61,896,154 tons to 61,004,992 tons between 1999 and 2005.⁷

² See Exhibit 1: Correspondence from Karen Bourlag Phillips, VP, North American Government Affairs for CN to Wisconsin Congressman Obey and Exhibit 3: Correspondence from Barbara and James Vitort to Karen Borlaug Phillips, VP, North American Government Affairs for CN

³ See Exhibit 4: Outbound Commodity Chart

⁴ See Exhibit 5: Inbound Commodity Chart

⁵ See Exhibit 6: Wisconsin's Economic Output Chart

⁶ Ibid. FN 3

⁷ Ibid. FN 4

Further increases in CN's long-distance traffic moving through Wisconsin will exacerbate this trend as CN focuses on its most profitable traffic. The increase of traffic on the CN mainline through Wisconsin will make it increasingly difficult for it to accept trainloads of traffic from regional carriers serving Wisconsin.

Since the CN acquired the lines of the WCTC, the state of Wisconsin has made a concerted effort to improve the at-grade crossings in Wisconsin in cooperation with the CN. This has occurred as the CN's traffic levels have grown and their speeds have increased. The partnership has made significant improvements. With the anticipated increases, however, more will need to be done.

In his Verified Statement, Mr. Gerald P. Radloff says that CN "... will keep all existing gateways affected by the Transaction open on commercially reasonable terms".⁸ This statement does not provide any objective manner for the STB to effectively monitor the actions of the CN regarding their actions relative to shipper access to current gateways. The CN can respond to any challenges by asserting that the terms it is proposing are, in its judgment, "commercially reasonable."

REQUEST FOR CONDITIONS

We ask that any approval of the proposed transaction have the following conditions imposed:

- CN be required to maintain current gateways;
- CN be required to define "commercially reasonable terms" in a manner that will allow an objective determination of compliance with their assertion;
- CN be required to conduct its operations so as to not to block access to businesses or individuals for an unduly lengthy period of time and establish a means of removing blockages within 30 minutes when notified of a blockage. In any case, highway obstruction is prohibited pursuant to Section 192.292, Wis. Stat.;
- If CN is unable to prevent blockage to businesses or individuals with their current infrastructure, they will construct additional infrastructure as needed after obtaining appropriate permits;
- CN be required to negotiate alternative access to the Chicago terminal area with regional carriers who may be negatively impacted by the CN's growing number of trains moving through Wisconsin;
- CN not increase speeds on its lines in Wisconsin above current speeds until such time as grade crossing warning devices at at-grade crossings are determined by the Wisconsin Office of the Commissioner of Railroads to provide adequate warning for the proposed speed and if the warning devices are found to be inadequate for the proposed speed, the speed not be increased until the warning devices are adequate for the proposed speed.

⁸ Canadian National Railway Company and Grand Trunk Corporation - Control - EJ&E West Company (STB Finance Docket No. 35087), Application, p. 75.

- CN be required to share its plans for improvements to trackage in Wisconsin to accommodate the increased volumes including dollar amounts by line segment with the Wisconsin Department of Transportation.

Respectfully Submitted,

John Sobotik, Attorney
 Kathleen Chung, Attorney
 Office of General Counsel
 Wisconsin Department of Transportation
 4802 Sheboygan Ave.
 P.O. Box 7910
 Madison, WI 53707-7910
 (608) 266-8810

Attachments

- Exhibit 1: Correspondence from Karen Bourlag Phillips, VP, North American Government Affairs for CN to Wisconsin Congressman Obey
- Exhibit 2: Correspondence from Joseph Boardman, Administrator, Federal Railroad Administration to Wisconsin Congressman Obey
- Exhibit 3: Correspondence from Barbara and James Vitart to Karen Borlaug Phillips, VP, North American Government Affairs for CN
- Exhibit 4: Outbound Commodity Chart
- Exhibit 5: Inbound Commodity Chart
- Exhibit 6: Wisconsin's Economic Output: 1994 – 2005 Chart

cc: Secretary Frank Busalacchi, WisDOT
 Congressman Steve Kagen
 Congressman David Obey
 Congressman Tom Petri
 State Representative Al Ott
 Mayor Kevin Crawford, Manitowoc, WI
 Jessica Stoller, WI Department of Commerce
 Timothy LeMonds, WI Public Service Commission
 Frank Huntington, WisDOT
 Ron Adams, WisDOT
 Rod Clark, WisDOT



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Karen Bortaug Phillips
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karen.phillips@cn.ca

March 1, 2007

EXHIBIT

The Honorable David R. Obey
U.S. House of Representatives
2314 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Obey:

Thank you for your January 19, 2007 letter regarding the concerns of your constituent, Jim Vitort of Junction City. Mr. Vitort asserts that CN trains stop and block his driveway on occasion, thereby blocking his access to and from his property.

As you are aware, Junction City is an important junction on CN's mainline from Superior to Stevens Point and from Wisconsin Rapids to Wausau. There are as many as 20 to 22 train movements daily through the Superior - Stevens Point corridor, and these trains run around the clock. The main siding in Junction City on the Superior - Stevens Point line is 10,000 feet long, but it has two public and two private crossings, including Mr. Vitort's driveway. Multiple train-meets cause the blockings of the crossings, but this is occurring less frequently because of measures being taken by CN.

Of particular note, CN is investing approximately \$1.5 million in infrastructure improvements in Junction City to improve train fluidity. This investment includes the installation of a Northwest "Y" to better accommodate the coal trains traveling from Minneapolis to Weston, Wisconsin. Prior to the installation of the "Y", coal trains had to make numerous back and forth movements in Junction City. Now, coal trains can make one continuous movement through town, minimizing coal train blockages. By May 2007, CN will have installed power switches at all four "Y's" in Junction City, so that trains will be able to move in any direction without stopping.

Further, when the operations center anticipates a problem, they hold trains as far away as Marshfield and Auburndale in order to avoid creating additional meets at Junction City, thus minimizing any crossing blocking in that village. In addition, when two trains meet, our crews will lay back of the siding to minimize the crossings blocked. When necessary, CN also will send in crews in taxicabs to Junction City to

** TOTAL PAGE.03 **

The Honorable David R. Obey
March 1, 2007
Page Two

cut the crossings and then put the trains back together, in an effort to minimize crossing blocking times.

I also would note that, while not a major cause of blocking of Mr. Vitort's driveway, we also utilize our Hlawatha siding on the Wisconsin Rapids - Wausau line to set out cars going to Ashley Furniture in Arcadia, Wisconsin that come from our mainline. These trains pull into the main siding and sit while the Ashley cars and locomotive are separated, pulled south, and then backed into the Hlawatha siding. Once the cars are placed in the Hlawatha siding, the locomotive makes the same move in reverse back to the train sitting in the main siding. The crossings are cut while this activity is ongoing. When the train is then put back together, however, the crew must restore the brake pipe air and conduct brake testing in accordance with federal regulations. This can take 20 minutes and, in cold weather, could take as long as 45 minutes. While this is going on, the train must remain stationary, thereby blocking crossings on the main siding.

While we regret these crossing blockings, we make every effort to operate as efficiently and expeditiously as possible in accordance with safety requirements. The combination of the measures taken by CN has improved the situation and will continue to reduce the number and duration of crossing blockings in Junction City.

Thank you for the opportunity to respond on behalf of CN to your constituent's concerns. Please do not hesitate to contact me if you need additional information on this matter.

Sincerely,

Karen Bortaug Phillips
Karen Bortaug Phillips
Vice President
North American Government Affairs

cc: Gordon Trafton
Jeff Liepelt
Bruce Bierman
Kevin Soule

P.03/03

TO 92253240

JAN 03 1996 22:44 FR



U.S. Department
of Transportation

Federal Railroad
Administration

APR 23 2007

Office of the Administrator

1120 Vermont Ave. N.W.
Washington, D.C. 20590

APR - 5 2007

The Honorable David Obey
U.S. House of Representatives
Washington, DC 20515

CLOSED

Dear Congressman Obey:

Thank you for your letter to the Federal Railroad Administration (FRA) on behalf of your constituent, Mr. James L. Vitort of Junction City, Wisconsin. Mr. Vitort wrote to you expressing concern about a blocked highway-rail crossing near his home.

The FRA has not issued regulations concerning the amount of time a train may block a crossing; however, we take the problem of blocked crossings very seriously, both because of their safety effects (e.g., impeding the movement of emergency response vehicles) and because of their influence on the livability of our communities. Of course, we also understand that many operational realities require trains to stop for significant periods of time at some locations.

The FRA's rail safety regulations do address standing trains that unnecessarily activate grade crossing warning systems. These regulations, under Title 49 Code of Federal Regulations Section 234.209, prohibit standing trains, locomotives, or other rail equipment from activating the warning systems at grade crossings unless the operations are part of normal train or switching movements. This rule deals primarily with trains standing in the approach circuits to active warning systems. The rule also makes clear that normal realities of railroad operations sometimes require that trains stop in such circuits, activating the crossing devices even while the train is standing still outside of the crossing itself. Moreover, in some situations, a railroad may have to stop a train in order to comply with Federal regulations, such as those requiring that brake tests and equipment inspections be performed or that locomotive engineers comply with signals and other mandatory directives. It is important to note that this regulation only pertains to sitting trains. There is no limit to the amount of time a long and/or slow-moving train may occupy a crossing or activate a signal.

Certain State governments have enacted laws that set a maximum length of time that a train may block a grade crossing. Wisconsin law prohibits a train from blocking a crossing for more than 10 consecutive minutes, except outside cities.

EXHIBIT

2

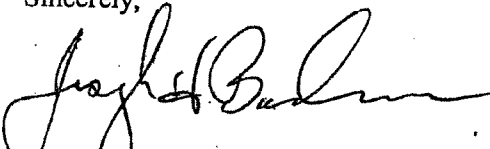
2

Your letter states that the crossing in question is located on Mr. Vitort's driveway. If the crossing is a private crossing, it should be noted that FRA has no jurisdiction regarding access to private crossings. These matters are normally governed by State or local laws and agreements between property owners and the railroads. Likewise, FRA does not have the authority to settle disputes over private crossings. Such disputes are a matter for the courts to decide. Currently, there is no Wisconsin State law regarding private crossings.

Mr. Vitort may wish to contact his local law enforcement agency or district attorney's office to inquire about what local ordinances may be in place that can be helpful in this matter.

I appreciate your interest in this important transportation matter. We look forward to working with you. If you or Mr. Vitort have further questions about this issue, please contact Ms. Tammy Wagner, FRA's Regional Manager for Highway-Rail Grade Crossing Safety and Trespass Prevention Programs. Ms. Wagner can be reached at: FRA, 200 West Adams Street, Suite 310; Chicago, Illinois 60606; telephone: (312) 353-6203.

Sincerely,



Joseph H. Boardman
Administrator

JAN 15 2008

James and Barbara Vitort
4671 Hwy 10
Junction City, WI 54443

jamba@tds.net

Jan. 2, 2008

Karen Borlaug Phillips
Vice-President, North American
Government Affairs
601 Pennsylvania Avenue, N.W.
Suite 500, North Building
Washington, D.C. 20004

Dear Karen,

This letter is in regards to our telephone conversation on 12-27-07. I relayed to you some concerns about the CN train blocking our driveway. You asked me to put all of this information in writing and send it to you.

In your letter of March 1, 2007 to Congressman Obey, you stated that CN will send out crews in taxicabs to Junction City to cut the crossings and then put the trains back together in an effort to minimize blocked crossing times. This is not being done. I can't even remember the last time they cut the train.

We are being blocked daily and sometimes more than once a day. This is causing much stress and duress in our family. Family and friends get blocked in or out all of the time. We are self-employed and conduct our business from our home location. This has been very difficult because trucks can't get in or out and other business contacts run into the same problem. Children are dropped off here every morning and picked up in the late afternoon. The CN train blocking has caused this to be a real stressful situation. There have also been times when the school bus can't get in. I have been late for work several times. How would you like that on your work record? There have been times when we have actually missed church services because we were blocked in. On Christmas Eve we were blocked for 3 ½ hours and missed our Christmas Eve church service. Our 10 year old cried because he was so upset. We were blocked on Halloween night and adults climbed over the train with young children and a baby! Many people have climbed over the train and this is out of our control. This train situation is an accident waiting to happen. In August we missed a wedding rehearsal dinner because we were blocked in on a Friday evening for 3 ½ hours. As you can see, I have given you just a few examples of how the CN train blocking has affected our lives.

EXHIBIT

3

Every time we get blocked we make several phone calls and each time no one can help us. Everyone passes the buck to the next person. It seems no one is responsible and no one really cares.

If we were to have a medical emergency or a fire, the outcome would be devastating because on most of the occasions that we are blocked, there is no engine even connected to the train. We would never be able to get help in a timely manner.

First of all, we are asking that each and every time the train stops that they have to cut it. You would think that they would automatically do this. They have been belligerent and rude towards us and we have been told we have no rights. It has been a case of laziness on their part not to cut the train.

Secondly, we feel the only answer here is to build a frontage road so that we would have access in and out of our private crossing. It could either go east to Cty Trk G or west to State Hwy 34.

Third, CN railroad informs us that there are no laws they have to obey. We need to have laws like they do in Ohio. Please refer to Bill H.B.399. As citizens, we feel we should have rights. Right now, we have none.

Thank you for your consideration in this matter. We will be awaiting you reply.

Sincerely,

Barbara Vitort
James Vitort
Barbara and James Vitort

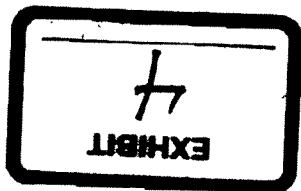
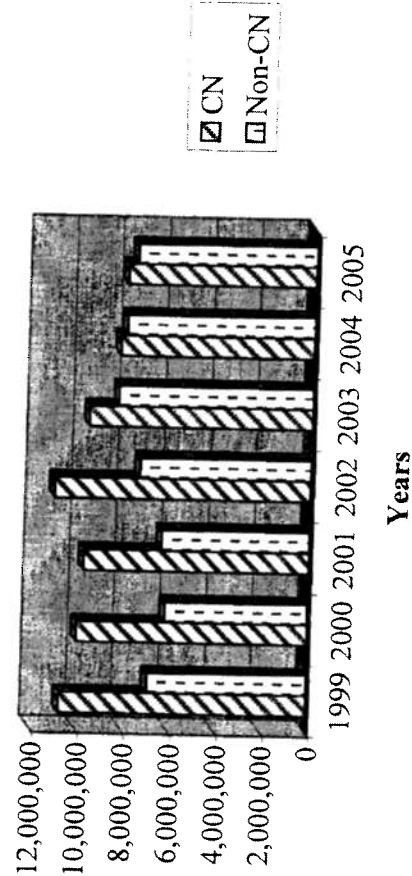
cc: U.S. House of Representatives,
David R. Obey
FRA U.S. Dept. of Transportation,
Attorney General
United States Senate, Herb Kohl

Summary of Commodity Tonnage Originating from Wisconsin from 1994 to 2005

Originating Carrier	Year	1999	2000	2001	2002	2003	2004	2005
CN		25,840	61,020	3,520	2,074,264	8,604,044	7,982,744	7,844,300
WC		9,073,584	8,104,228	8,124,164	7,488,772	912,160	385,400	276,880
FVW		1,463,324	1,670,020	1,443,516	1,302,684	131,960		
SSAM		152,500	170,840	184,720	226,924	12,960		
CPRS		2,688,827	2,221,734	1,935,172	1,880,948	1,932,108	1,876,333	1,543,590
ELS		9,840	42,680	9,960	33,300	96,804	96,400	152,600
BNSF		660,126	452,936	959,026	629,064	932,703	755,860	983,273
UP		3,009,204	2,605,768	2,736,776	3,438,828	3,839,960	3,490,034	3,443,575
WSOR		526,020	822,872	550,144	1,427,678	1,578,054	1,877,252	1,586,188
HTB								
DWP								
GBW								
IC								
ATFS								
CNW								
DMIR								
DWP								
GTW								
IMRL			1,920	131,488				
			25,480					
TOTAL (STATE)		17,609,265	16,179,498	16,157,026	18,502,462	18,040,753	16,464,023	15,830,406

Year	1999	2000	2001	2002	2003	2004	2005
Non-CN	6,894,017	6,173,390	6,401,106	7,409,818	8,379,629	8,095,879	7,709,226
CN	25,840	61,020	3,520	2,074,264	8,604,044	7,982,744	7,844,300
WC	9,073,584	8,104,228	8,124,164	7,488,772	912,160	385,400	276,880
FVW	1,463,324	1,670,020	1,443,516	1,302,684	131,960		
SSAM	152,500	170,840	184,720	226,924	12,960		
Total (CN)	10,715,248	10,006,108	9,755,920	11,092,644	9,661,124	8,368,144	8,121,180
Year	CN	Non-CN					
1999	10,715,248	6,894,017					
2000	10,006,108	6,173,390					
2001	9,755,920	6,401,106					
2002	11,092,644	7,409,818					
2003	9,661,124	8,379,629					
2004	8,368,144	8,095,879					
2005	8,121,180	7,709,226					

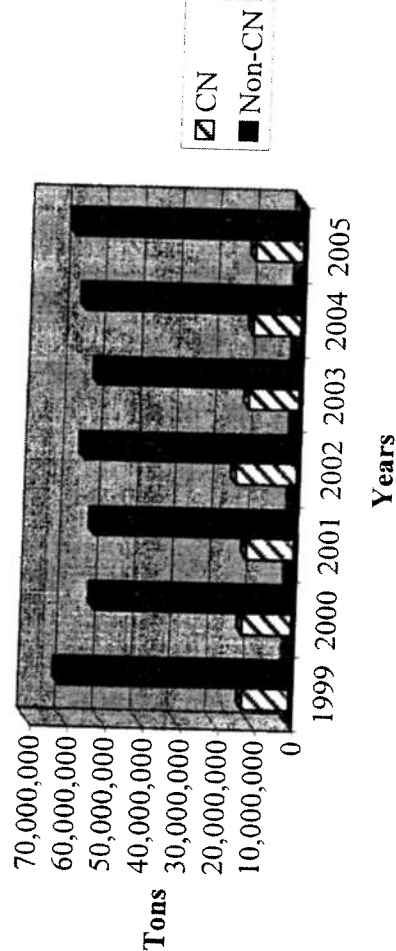
Outbound Commodity



Summary of Inbound Commodity Tonnage (Terminating in Wisconsin) Between 1994 to 2005

Terminating Carrier	1999	2000	2001	2002	2003	2004	2005
CN	28,720	67,280	3,959,211	13,456,282	12,810,342	12,739,578	
SSAM	154,760	191,840	194,480				
WC	10,860,169	11,056,173	10,784,192	10,249,068			
FVW	1,711,028	1,968,868	1,825,396	1,997,884			
CPRS	16,925,477	8,740,344	9,177,245	8,395,821	8,289,656	8,888,150	8,393,970
ELS	111,100	75,000	101,300	81,400	73,000	41,600	52,228
BNSF	28,493,721	28,020,079	27,528,138	32,350,549	28,959,981	31,608,658	35,846,199
UP	15,698,522	15,685,082	16,017,024	15,186,726	15,451,505	15,651,198	15,684,599
WSOR	484,480	362,060	351,000	761,600	991,250	1,384,835	939,636
CNW							
GTW		95,360	368,840				
IMRL	126,454	75,920	78,040	57,560			
HTB							
DWP	56,400			54,440	50,880	88,360	
WICT							
TOTAL (STATE)	74,650,831	66,338,006	66,425,655	73,154,859	67,276,114	70,435,663	73,744,570
Canadian National & its affiliated Railroads							
CN	28,720	67,280	3,959,211	13,456,282	12,810,342	12,739,578	
WC	10,860,169	11,056,173	10,784,192	10,249,068			
FVW	1,711,028	1,968,868	1,825,396	1,997,884			
SSAM	154,760	191,840	194,480	115,040			
Total for CN	12,754,677	13,284,161	12,804,068	16,321,203	13,456,282	12,810,342	12,739,578
Totals for Non-CN	61,896,154	53,053,845	53,621,587	56,833,656	53,819,832	57,625,321	61,004,992

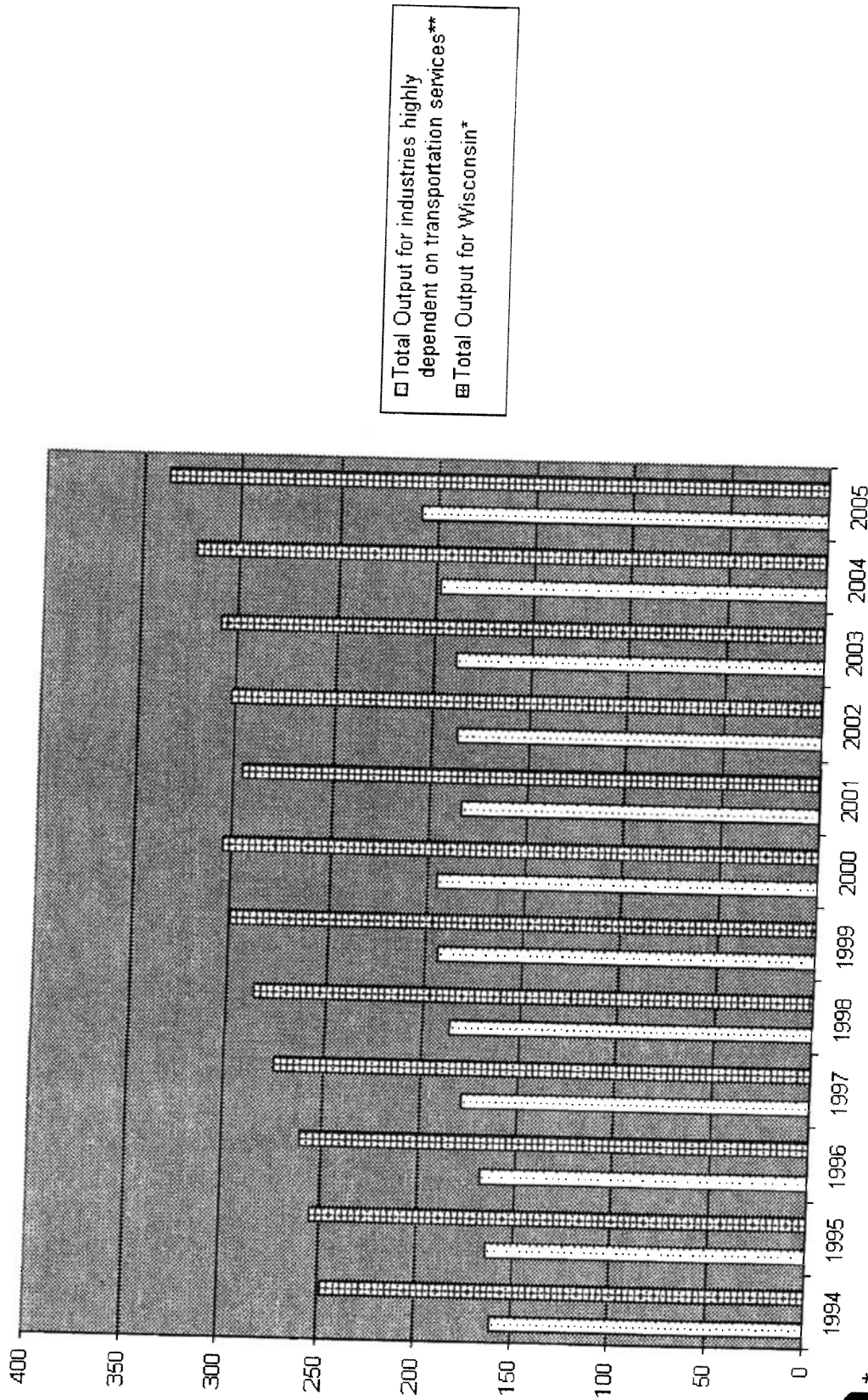
Inbound Commodity



EXHIBIT

5

Wisconsin's Economic Output: 1994 to 2005 (Billions of Dollars)



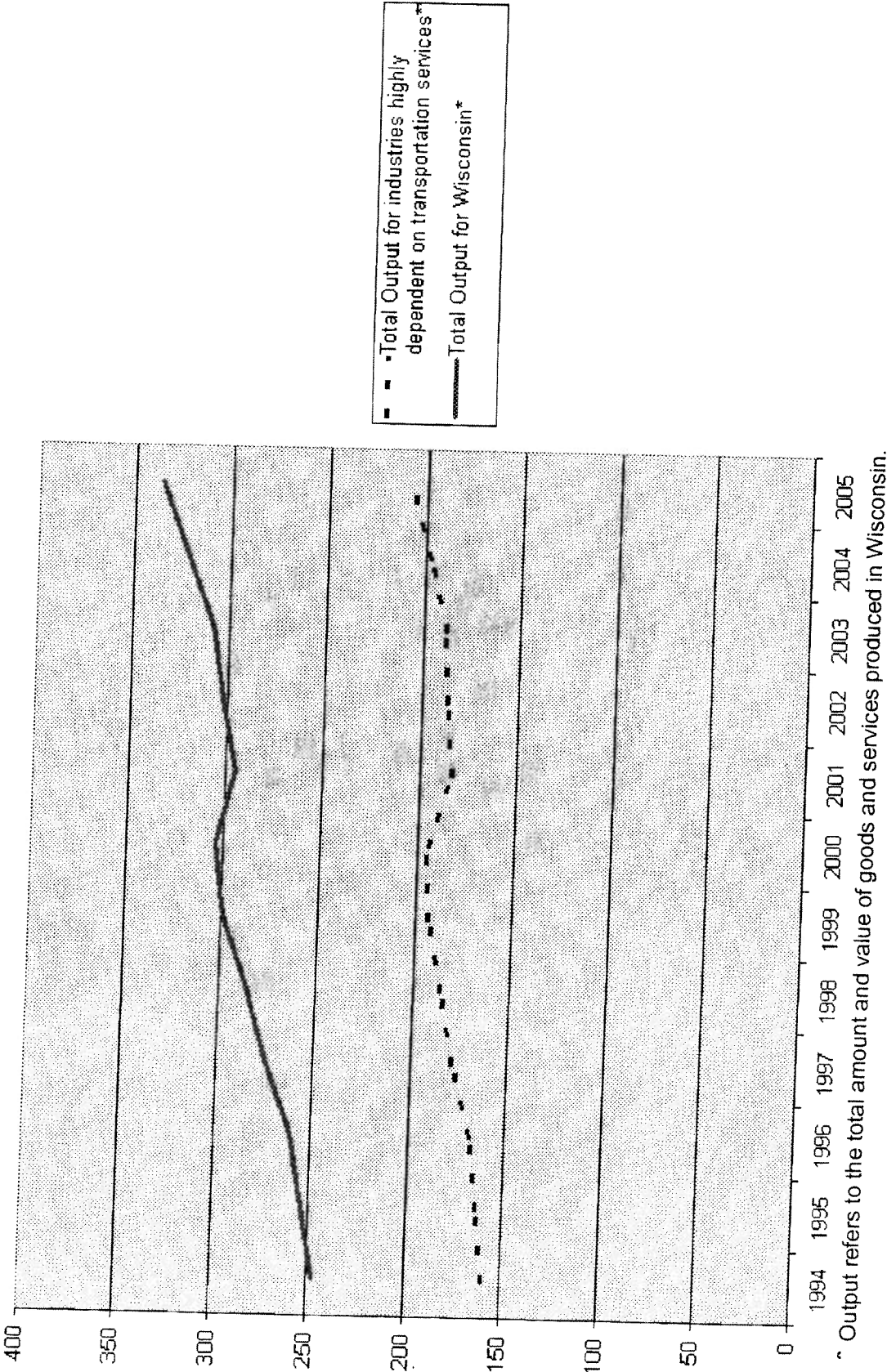
* Output refers to the total amount and value of goods and services produced in Wisconsin.

** Output for those industries that produce and consume commodities that are highly dependent upon transportation services. These industries include Mining, Utilities, Construction, Manufacturing, Wholesale Trade, Retail Trade, Transportation and Warehousing. Transportation services for Retail Trade are often provided by in-house fleet operations to transport inbound inventory.

EXHIBIT

6

Wisconsin's Economic Output: 1994 to 2005 (Billions of Dollars)



* Output refers to the total amount and value of goods and services produced in Wisconsin.

** Output for those industries that produce and consume commodities that are highly dependent upon transportation services. These industries include Mining, Utilities, Construction, Manufacturing, Wholesale Trade, Retail Trade, Transportation and Warehousing. Transportation services for Retail Trade are often provided by in-house fleet operations to transport inbound inventory.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Comments and Request for Conditions in regards to Financial Docket No. 35087, Canadian National Railway Company – Control – EJ&E West Company, to be served by first class mail, postage prepaid, this 25th day of January 2008, on all parties of record on the service list, and the following:

Secretary of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Attorney General of the United States
C/o Assistant Attorney General
Antitrust Division
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Kathleen Chung, Attorney
Wisconsin Department of Transportation
Office of General Counsel