BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34000

CANADIAN NATIONAL RAILWAY CO. *et al.* – CONTROL – WISCONSIN CENTRAL TRANSPORTATION CORP. *et al.*

COMMENTS OF THE

U.S. DEPARTMENT OF AGRICULTURE

Bill Hawks
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Date: June 25, 2001

AUTHORITY AND INTEREST

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (Board) proceedings involving rates, charges, tariffs, practices, and services.

On April 9, 2001, Canadian National Railways (CN) and Wisconsin Central Transportation Corporation (WC) filed a control and merger application with the Board, requesting that the application be treated as a minor transaction. On May 9, 2001, the Board accepted the application for consideration as a minor transaction.

The Department of Agriculture (USDA) neither supports nor opposes this merger. USDA, however, concurs with the Board's ruling that this merger should be classified as a minor transaction since any anti-competitive effects will clearly be outweighed by the transaction's contribution to the public interest in meeting significant transportation needs (49 C.F.R. § 1180.2 (b)). USDA recognizes that many shippers will benefit from this merger and that the merger– if conditioned by the CN agreement with the National Industrial Transportation League (NITL) – will have few discernible competitive or service effects on shippers.[1]

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[1] The CN-NITL agreement provides for the protection of rates and services through existing WC interchanges with any rail carrier, preservation of shipper relief from bottleneck rates (where a shipper prior to the transaction would have been entitled to the Board's "contract exception"), an offer to enter into service protection agreements with affected shippers, and the prompt resolution of any disputes by

USDA had been concerned that this transaction would adversely affect the transportation of barley grown in North Dakota to breweries in Wisconsin. Burlington Northern Santa Fe (BNSF) and Canadian Pacific (CP) currently compete for the transportation of this barley to the Wisconsin markets and interchange with WC to reach these markets. If the Board includes the CN-NITL agreement as a condition of the merger, however, these concerns would be greatly alleviated.

Further, based upon the nearly flawless integration of the Illinois Central system into the CN system in 1999, USDA does not expect significant rail service disruptions due to this merger, especially since CN plans to use a deliberate step-by-step approach to integration. In addition, CN has stated that it is willing to guarantee shippers that rail service will be at least as good as it is currently. Regarding the rail service guarantee, shippers, who are cautiously concerned, given the way they have been treated by other railroads engaging in large rail mergers, should be reassured by the terms of CN's agreement with the NITL. In addition, USDA recognizes the service-oriented management of the applicants and is aware of the potential economic efficiencies of this merger.

Although USDA is not opposed to this merger, we do not support it due to our concerns regarding the continuing concentration in the rail transportation market. This concentration, if unabated, could increase the bargaining-power disadvantage of shippers and smaller railroads. Thus, if the Board approves this merger application, USDA requests that the Board condition the merger with the agreement that CN signed with the NITL.

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arbitration.

Although the downstream effects of this merger could lead to increased rail competition in the Midwest through the creation of a third Class I railroad competing in the region, USDA also is concerned that the downstream effects of this merger could lead the U.S. farther down the path toward a North American railroad duopoly, or lead to the geographic expansion of an existing regional rail monopoly.

USDA's general concern with railroad mergers in recent years has been based on the decline in the number of Class I railroads from 33 competing carriers in the early 1980's to only seven today. This has resulted in increased overall levels of market concentration and reduced competition in the railroad industry which has affected U.S. agriculture more than any other industrial sector of the country. While the top five railroads originated 57 percent of all rail grain traffic in 1982, by 1995 this figure had climbed to 90 percent. By 2000, the top five railroads originated nearly 98 percent of the 1.19 million carloads of grain hauled by Class I railroads. Similarly, assuming two railroad markets (one in the East and one in the West), the Herfindahl-Hirschman Index (HHI) – a standard measure of concentration within a market – of the Eastern Class I railroads increased from 1,364 in 1980 to 4,297 in 1999, while the HHI of the Western Class I railroads increased from 1,364 in 1980 to 4,502 in 1999.[2] HHIs in excess of 1,800 indicate a highly concentrated market.

CONCLUSION

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[2] R. L. Banks and Associates, Inc., ***North American Railway Restructuring and Implications for Merger Policy***.

USDA neither supports nor opposes this merger. However, we request that the Board, if it does approve this merger application, condition it with the agreement made between CN and the NITL, which should alleviate many shipper concerns regarding potential abuses of railroad market power.

Respectfully submitted,

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