

Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3087.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of certain rechargeable nickel metal hydride anode materials and batteries and products containing same, on September 8, 1994. Complainants allege infringement of claims 1-17, 22, 23, 25, 27, and 32 of U.S. Letters Patent 4,623,597 ("the '597 patent").

On December 9, 1994, complainants and the Sanyo companies filed a joint motion to terminate the investigation with respect to the Sanyo companies on the basis of a licensing agreement. The ALJ issued an ID granting the joint motion and terminating the investigation as to the Sanyo companies. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 C.F.R. 210.42.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: January 10, 1995.

By order of the Commission.

Donna R. Koehnke,  
Secretary.

[FR Doc. 95-1338 Filed 1-18-95; 8:45 am]

BILLING CODE 7020-02-P

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32640]

**Canadian National Railway Company;  
Contract to Operate; Grand Trunk  
Western Railroad Inc. and Duluth,  
Winnipeg & Pacific Railway Co.**

**AGENCY:** Interstate Commerce  
Commission.

**ACTION:** Notice of decision accepting application for consideration.

**SUMMARY:** The Commission is accepting for consideration the application filed December 19, 1994, by Canadian National Railway Company (CN), the Grand Trunk Western Railroad Inc. (GTW), and the Duluth, Winnipeg and Pacific Railway Co. (DWP) (collectively, applicants), for approval of an agreement among the applicants under which CN will contract to operate the properties of GTW and DWP. Under 49 CFR part 1180, the Commission finds this to be a minor transaction.

**DATES:** Written comments must be filed with the Commission no later than February 17, 1995, and concurrently served on applicants' representatives, the United States Secretary of Transportation (Secretary of Transportation), and the Attorney General of the United States (Attorney General). Comments from the Secretary of Transportation and the Attorney General must be filed by March 6, 1995. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 5 days of the issuance of the service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due by March 20, 1995.

**ADDRESSES:** Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32640, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of all documents to the Secretary of Transportation, the Attorney General, and applicants' representatives: (1) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh St., SW, Washington, DC 20590; (2) Attorney General of the United States, United States Department of Justice, 10th St. & Constitution Ave., NW, Washington, DC 20530; and (3) John Will Ongman, John F. DePodesta, and George A. Lehner, Pepper, Hamilton & Scheetz, 1300 19th Street, NW, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** By application filed December 19, 1994, Commission approval is being sought under 49 U.S.C. 11343-45 for CN to contract to operate the properties of two

wholly owned subsidiaries, GTW and DWP.<sup>1</sup>

CN is a Canadian Crown Corporation incorporated under a special act of the Parliament of Canada.<sup>2</sup> GTW is a Delaware corporation and a class I railroad. DWP is a Minnesota corporation and a class II railroad. Grand Trunk Corporation (GTC) is a noncarrier holding company of CN's American rail properties, including GTW and DWP. CN connects with GTW at the St. Clair River Tunnel at Sarnia, Ontario and Port Huron, Michigan, and at the Detroit Tunnel at Windsor, Ontario and Detroit, Michigan. CN connects with DWP at Fort Francis/Rainy River, Ontario. Included in the application as an applicant carrier is the St. Clair Tunnel Co. (SCTC), a class III carrier. SCTC is 97% owned by the noncarrier, St. Clair Tunnel Construction Co. (SCTCC) and 3% owned by three of its directors. SCTCC is in turn 75% owned by GTC and 25% owned by CN.

Applicants state that the purpose of the application is to seek Commission approval for the contract to operate the properties of GTW and DWP and the operating plan developed to implement the contract to operate. According to applicants, GTW and DWP currently operate as independent entities. The contract to operate and the operating plan will coordinate and integrate service and operations among GTW, DWP and CN under the trade name CN North America. It is intended to permit the applicants to provide the seamless, single-line service that shippers

<sup>1</sup> Applicants simultaneously filed a petition for a finding of cause for a supplemental order under 49 U.S.C. 11351 and for procedural relief. In this petition, applicants alternatively request that we make a generic finding of cause under 49 U.S.C. 11351 to enable us to exercise our power under that section to issue any order dealing with the matters raised by the contract to operate as pertains to *Grand Trunk W.R. Co. Unification of Securities*, 158 I.C.C. 117 (1929) [*Acquisition of Control By Canadian National Railway*], Finance Docket No. 7320 (Sub-No. 1); and *Norfolk & W. Ry. Co.—Control—Detroit, T.I.R. Co.*, 360 I.C.C. 498 (1979) [*Grand Trunk Western Railroad—Control—Detroit, Toledo & Ironton Railroad Co. and Detroit, Toledo Shore Line Railroad Co.*, Finance Docket No. 28676 (Sub-No. 1)]. They also request that a protective order be entered in a form which they provide, that their proposed procedural schedule be approved, and that clarification or waiver of the regulations requiring certain information be granted. We will deny the request for a generic finding of cause because applicants have not established a need for such a finding, and we will grant the remaining requests. The requested protective order will be issued simultaneously with or shortly after issuance of this notice.

<sup>2</sup> CN does not generate sufficient revenues from its operations in the United States to achieve class I status. See *Canadian National Railway Company—Trackage Rights Exemption—Grand Trunk Western Railroad Inc.*, Finance Docket No. 32499 (ICC served July 25, 1994).

assertedly are seeking. Applicants state that this coordination and integration will enhance competition in the surface transportation industry; make GTW, in particular, a more efficient and viable property;<sup>3</sup> and provide substantial transportation benefits to the shipping public.

Applicants characterize the proposed transaction as "akin to an end-to-end merger in which connecting railroads whose routes do not overlap, but rather complement each other, join forces to create a stronger competitor in a highly competitive transportation market." They view the resulting change in the competitive balance as a positive one because "CN North America will be able to offer greatly improved service that will make it a viable transportation alternative for many shippers." According to applicants, the proposed transaction "will produce no results which suggest an adverse effect on competition, such as significantly higher rail rates to shippers or poorer rail service levels." To the contrary, applicants contend that the integration of CN and GTW and DWP will reduce costs and improve service.<sup>4</sup>

Applicants project that some traffic currently moving by other carriers will shift to CN North America as a result of the transaction, but that this does not signal harm to competition.<sup>5</sup> Applicants state that the impact on its competitors will be limited and will certainly not affect their ability to provide essential transportation services. They also assert that no U.S. port will suffer a significant diversion of traffic to Canadian ports. Lastly, applicants argue that even if the transaction were to produce some anticompetitive effects, the public benefits would dramatically outweigh such effects.

Applicants state that the transaction will affect certain agreement and nonagreement employees. According to applicants, it is not possible for them to state precisely the ultimate impact of the integration transaction on labor, because in some instances this impact

will occur only after fully integrated train service has been implemented. Applicants submit that if this transaction were among U.S. railroads and dealt with predominantly U.S. domestic traffic, the appropriate labor protection would be as prescribed in *New York Dock Railway—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60 (1979) (*New York Dock*).

Applicants argue that to reflect the extraordinary circumstances involved in the integration of two U.S. railroads with a predominantly Canadian railroad, some adjustments to the standard *New York Dock* conditions should be made. This is because, according to applicants, Canadian immigration law will not permit most GTW and DWP employees to follow work transferred to Canada. Therefore, applicants propose the following modifications to the *New York Dock* conditions. First, modify Article I, section 6(d) to require dismissed employees to accept comparable positions in another craft or class at any location on the GTW and DWP. Such employees will receive the protective benefits of Article I, sections 5, 9, and 12 and Article II, regarding displacement allowances, moving expenses, reimbursement for losses on home removal, and, if necessary, retraining. Second, modify Article I, section 6(d) to require dismissed employees to make reasonable efforts to obtain employment with an employer in another industry, so long as such outside employment does not require a change in residence. (Applicants expand on what reasonable efforts include.) Third, impose on employees who may elect benefits of existing protection agreements under Article I, section 3, the same modified obligations to accept comparable employment described under the second modification. Fourth, clarify Article I, section 1 to provide for a 6-year protective period, with total labor protection costs capped at the cost of 4 years' protection multiplied by 1.19.

On December 28, 1994, the Transportation Communications Union and the United Transportation Union (collectively, Unions) filed a protest to applicants' proposed procedural schedule and to their characterization of the transaction as minor. The Unions argue that this is a major transaction and, as such, that the prefiling notification under 49 CFR 1180.4(b) must be 3 to 6 months, with an additional 3 months added to make up for applicants' failure to comply with the allegedly applicable prefiling notification requirements. Also, on January 9, 1995, the Brotherhood of

Locomotive Engineers (BLE) moved to dismiss or reject the application and replied to applicants' petition for a finding of cause. BLE submits that the application must be rejected or dismissed because there is no basis for the exercise of the Commission's authority under 49 U.S.C. 11343. According to BLE, CN already controls the GTW and DWP, and this control authority includes the authority to engage in the various marketing and operating coordinations proposed in the operating plan accompanying the operating agreement. BLE argues that the only other purpose stated in the application is to abrogate or modify the provisions in the existing labor agreements, which raises the question of whether this is a sham transaction. Applicants replied on January 12, 1995.

At the outset, we note that under 49 U.S.C. 11347 the Commission is required to impose at least *New York Dock* conditions in 49 U.S.C. 11343 transactions. While we may impose enhanced protection, applicants have not demonstrated why negotiations and dispute resolution procedures (including arbitration) under the provisions of *New York Dock* cannot effectively accommodate implementation of the transaction.

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor or exempt. The proposal here does not involve the control or merger of two or more class I railroads and has no national significance. While the proposed transaction may have regional significance because it should increase the level of competition in the affected areas, it nevertheless concerns carriers that already are under common control and that arguably may accomplish much of what is sought here without need for our approval. The greatest impact of the transaction may well be on rail labor and management, but these concerns can be adequately addressed under *New York Dock*. Accordingly, we find the proposal to be a minor transaction as defined in 49 CFR 1180.2(c). See *RR Consolidation Proced. of Significant Transactions*, 9 I.C.C. 2d 1198 (1993). Because the application complies with our regulations governing minor transactions, we are accepting it for consideration. We will deny the Union's request to amend the procedural schedule to conform it to a major transaction under 49 U.S.C. 1180.2 *et al.* with an additional 60 days to address labor protective conditions. We will also deny BLE's motion to reject the application. The arguments raised by BLE in its alternative motion to dismiss are also denied but can be considered in

<sup>3</sup> Applicants predict that the transaction will result in a dramatic improvement in GTW's financial performance. They characterize GTW's current financial status as "suffering massive losses, which prevent it from making much needed capital improvements and which—unless reversed—threaten its ability to provide transportation services in the future."

<sup>4</sup> Applicants predict reduced transit times, improved service reliability, and economies of scale flowing from the consolidation of shops and administrative functions.

<sup>5</sup> Applicants' projections of volume growth in intermodal traffic include 101,000 units of traffic currently moving by truck and 67,000 units currently moving by rail. This projected growth in carload traffic includes 22,800 carloads diverted from other railroads.

the subsequent decision on the merits of the transaction based upon supplemental or further legal argument.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, copies may be obtained upon request from applicants' representatives named above.

Any interested person, including government entities, may participate in the proceeding by submitting written comments. Any person who filed timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this constitutes a minor transaction, no responsive applications will be permitted. We are adopting applicants' proposed schedule for processing this transaction. The proposed schedule cuts 60 days from the usual 180-day schedule set forth at 49 U.S.C. 11345(d) for processing minor transactions. See 49 CFR 1180.4.

Discovery may begin immediately. We admonish parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c). Applicants' alternative petition for a generic finding of cause for a supplemental order under 49 U.S.C. 11351 is denied.

2. The petition of the Unions for handling as a major transaction is

denied, and the petition of BLE for rejection and its alternative motion to dismiss are denied except that supplemental or further argument may be submitted as to the latter.

3. Applicants' request to waive the information requirements of 49 CFR 1180.6 (a)(2)(v) and (a)(5), (6), and (7)(v) is granted with respect to the other specified carriers not directly related to the proposed transaction.

4. The parties shall comply with all provisions stated above.

Decided: January 13, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,  
*Secretary.*

[FR Doc. 95-1395 Filed 1-18-95; 8:45 am]

BILLING CODE 7035-01-P

**[Finance Docket No. 32567]**

**Central Oregon & Pacific Railroad, Inc.—Lease, Operation, and Acquisition Exemption—Southern Pacific Transportation Company**

Central Oregon & Pacific Railroad, Inc. (CORP), a noncarrier, has filed a verified notice under 49 CFR Part 1150, Subpart D—*Exempt Transactions* to lease, acquire and operate certain lines owned by the Southern Pacific Transportation Company (SPT) and to acquire certain incidental trackage rights in connection therewith for a total distance of approximately 446.05 miles in Coos, Douglas, Jackson, Josephine, and Lane Counties, OR and Siskiyou County, CA. The notice filed by CORP erroneously reported the total mileage as 446.37. Counsel for CORP has confirmed that this figure should be 446.05. CORP will (1) lease and operate (a) 23.37 miles of SPT's rail line between milepost 786.500 at or near Coquille, OR and milepost 763.130 at or near Cordes, OR; (b) .250 miles between milepost 644.300 at or near Springfield Junction, OR and milepost 644.020 and between milepost 644.020 and milepost 621.300 on the SPT's Cascade Line; and (c) 79.0 miles between milepost 425.290 at or near Bellview, OR and milepost 346.00 at or near Black Butte, CA; (2) acquire and operate (a) 111.016 miles between milepost 763.13 at or near Cordes, OR and milepost 652.114 at or near Danebo, OR, (b) 218.730 miles between milepost 644.020 at or near Springfield Jct., and milepost 425.290 at or near Bellview, OR to milepost 346.000 and (c) 5.87 miles between milepost 450.5 at or near Tolo, OR and milepost 456.374 at or near White City, OR (White City Branch); and (3) acquire

7.814 miles of incidental trackage rights between milepost 652.114 at or near Danebo, OR and milepost 644.300 at or near Springfield Jct., OR, including access to SPT's Eugene, OR Yard.

The proposed transaction was expected to be consummated on December 31, 1994.

This proceeding is related to *RailTex, Inc.—Continuing in Control Exemption—Central Oregon & Pacific Railroad, Inc.*, Finance Docket No. 32568, wherein RailTex seeks an exemption for its continuance in control of CORP once it acquires or leases rail lines from SPT and becomes a rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. Pleadings must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Ave., N.W., Washington, DC 20036.

Decided: January 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,  
*Secretary.*

[FR Doc. 95-1513 Filed 1-18-95; 8:45 am]

BILLING CODE 7035-01-P

**[Finance Docket No. 32639 and Finance Docket No. 32639 (Sub-No. 1)]**

**Metro North Commuter Railroad Company—Acquisition Exemption—The Maybrook Line and Metro North Commuter Railroad Company—Exemption—From 49 U.S.C. Subtitle IV**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts: (1) from the requirements of 49 U.S.C. 11343-11345, the acquisition by Metro North Commuter Railroad Company from Maybrook Properties, Inc., of the Maybrook Line, between milepost 71.2 on the Connecticut/New York State Line and approximately milepost 0.0<sup>1</sup> at Beacon, NY, a distance of 41.1 miles, subject to standard employee protective conditions and (2) Metro North Commuter Railroad

<sup>1</sup> The connecting branches that form the Maybrook Line also retain their original milepost designations used by the former New York Central and New York, New Haven & Hartford, which are milepost 12.8 and milepost 42.9.