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Oral Comments on New Milwaukee Lines Employee-Shipper Ownership Plan, Interstate Commerce Commission

Max S. Baucus

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December-1979

Interstate Commerce Commission

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New Milwaukee Lines Employee-Shipper Ownership Plan

12/19/1979
BEFORE THE
INTERSTATE COMMERCE COMMISSION

RICHARD B. OGILVIE, TRUSTEE OF THE PROPERTY OF
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD
COMPANY -- SUBMISSIONS UNDER SECTION 6 OF THE
MILWAUKEE RAILROAD RESTRUCTURING ACT

ORAL COMMENTS ON NEW MILWAUKEE LINES
EMPLOYEE-SHIPPER OWNERSHIP PLAN

MAX BAUCUS
U.S. SENATOR FROM MONTANA
DECEMBER 19, 1979
CHAIRMAN O'NEAL, AND MEMBERS OF THE COMMISSION, I APPRECIATE THIS OPPORTUNITY TO COMMENT ON THE NEW MILWAUKEE LINES EMPLOYEE-SHIPPER OWNERSHIP PLAN.

AS A MEMBER OF THE CONGRESS WHO WAS INVOLVED IN DEVELOPMENT OF THE MILWAUKEE RAILROAD RESTRUCTURING ACT WHICH HAS LED TO THIS PROCEEDING, I INTEND TO CONFINE MY COMMENTS TO CONGRESSIONAL INTENT IN PASSING THE ACT.

I WANT TO EMPHASIZE THAT MY OPINION IS SHARED BY A NUMBER OF MY COLLEAGUES WHO WILL NOT APPEAR TODAY BECAUSE OF THE PRESS OF LEGISLATIVE BUSINESS.

MY POSITION IS THAT IN ADDITION TO PROVIDING SUBSTANTIAL PUBLIC BENEFITS THE NEW MILWAUKEE LINES PROPOSAL MEETS THE SPECIFIC CRITERIA ESTABLISHED BY CONGRESS IN THE RESTRUCTURING ACT. THEREFORE, IT MUST BE APPROVED BY THE COMMITTEE.

In enacting the restructuring act, Congress expressly provided that the Interstate Commerce Commission -- not bankruptcy court and not the Federal Railroad Administration -- would determine whether a proposed employee-shipper ownership plan was acceptable.

Congress established six explicit criteria and determined that the commission must approve the plan if these criteria are met.
THE FIRST CRITERION IS THAT ADEQUATE PUBLIC AND PRIVATE FINANCING BE AVAILABLE TO THE PROPONENTS OF THE PLAN.

THE PLAN ENVISIONS A MODERATE SHIPPER INVESTMENT, AND LOAN GUARANTEES BY THE FEDERAL RAILROAD ADMINISTRATION, THE ECONOMIC DEVELOPMENT ADMINISTRATION, AND THE FARMERS HOME ADMINISTRATION.

ALL OF THE AFFECTED AGENCIES HAVE STATED THAT REQUESTED FUNDS ARE AVAILABLE UNDER EXISTING PROGRAMS.

BASED ON MY CONTACTS WITH THE MILWAUKEE SHIPPERS IN MONTANA AND ELSEWHERE, I AM CONFIDENT THAT THE $10 MILLION SHIPPER INVESTMENT IS MODEST AND AVAILABLE.

THUS, THE PLAN MEETS THE CRITERION THAT ADEQUATE PUBLIC AND PRIVATE FINANCING BE AVAILABLE.

FAIR & EQUITABLE TO THE ESTATE

THE SECOND CRITERION IS THAT THE PLAN BE FAIR AND EQUITABLE TO THE ESTATE.

I AM AWARE THAT THIS FINDING INVOLVES SOME RATHER COMPLEX ISSUES; NEVERTHELESS, IT APPEARS THAT THE PLAN SUBSTANTIALLY BENEFITS CREDITORS COMPARED TO THE TRUSTEE'S MILWAUKEE II REORGANIZATION PLAN. THE NET PRESENT VALUE OF CASH FLOW IS HIGHER THAN MILWAUKEE II, AND CLAIMS AGAINST THE ESTATE ARE SUBSTANTIALLY SMALLER. THUS, THE PLAN WOULD MEET THE CRITERION OF BEING FAIR AND EQUITABLE.
IMPLEMENTATION OF THE PLAN

I am not aware of any factors which would prevent implementation of the New Milwaukee Lines Plan by April 1. Federal agencies can certainly process loan applications within this time frame, and there is no indication that negotiations with the Trustee would take longer. Physical and operating factors should not prevent a transfer of assets by the statutory deadline, as necessary equipment and personnel are in place.

PROPOSED RAILROAD WILL BE SELF-SUSTAINING

Congress does not intend to finance a Western Conrail, and therefore, established a criterion that the proposed system be self-sustaining over the long-term. The conservative New Milwaukee Lines projections indicate that the system can service its debt and produce net railway operating income by 1982.

Of course, projecting future revenues requires judgments about future economic conditions and traffic densities that will result in honest differences of opinion.

The FRA points out that New Milwaukee Lines projections may not be met. On the other side of the coin, it is only fair to point out that the projections may be substantially exceeded, particularly if the Milwaukee is able to capitalize on rapidly-increasing coal production.
I believe that the new Milwaukee Lines projections are reasonable, especially since Western shippers have indicated to me that they will immediately and substantially increase their use of the Milwaukee when service is restored.

Shippers also indicate to me that reliability, rather than speed, is of primary importance in their shipping decisions. Most traffic is not time-sensitive, and the condition of the Milwaukee track will not prevent increased shipments as long as equipment is provided on a regular basis.

Finally, the potential advantages of employee and shipper ownership, cannot be ignored by the Commission. Studies show sharp increases in productivity when employees are given a substantial voice in the management of their companies. In addition, shippers with a financial stake can be expected to provide maximum traffic to the Milwaukee.

In the absence of clear and convincing evidence that the traffic levels projected by New Milwaukee Lines will not be attained, the Commission should find that the proposed railroad will be self-sustaining.
OPERATING PRACTICES

FINALLY, CONGRESS IS CONCERNED ABOUT PRODUCTIVITY IN THE RAILROAD SECTOR AND INSISTED THAT THE PLAN INCLUDE AN ASSESSMENT OF OPERATING PRACTICES AND AGREEMENTS BY LABOR AND MANAGEMENT TO MAKE CHANGES DESIGNED TO IMPROVE LABOR PRODUCTIVITY.

CONGRESS RECOGNIZED THAT AN ORGANIZATION SUCH AS NEW MILWAUKEE LINES CANNOT ENTER INTO BINDING COMMITMENTS WITH LABOR ORGANIZATIONS. I AM IMPRESSED THAT THE RAILWAY LABOR EXECUTIVES ASSOCIATION HAS AGREED WITH NEW MILWAUKEE LINES TO PARTICIPATE IN AN UNPRECEDENTED MANAGEMENT-LABOR TASK FORCE WHICH HAS THE POTENTIAL FOR SUBSTANTIALLY INCREASING LABOR PRODUCTIVITY.

THE NEW MILWAUKEE LINES APPLICATION OUTLINES A NUMBER OF OTHER FACTORS WHICH WILL IMPROVE LABOR PRODUCTIVITY. THIS ANALYSIS MORE THAN COMPLIES WITH CONGRESSIONAL INTENT.

SUMMARY

IN ENACTING THE MILWAUKEE RAILROAD RESTRUCTURING ACT, CONGRESS RECOGNIZED THE ECONOMIC IMPORTANCE OF THE MILWAUKEE RAILROAD TO NORTHERN TIER STATES AND THE NECESSITY FOR EMERGENCY MEASURES TO DEAL WITH THE THREATENED CESSATION OF SERVICES.

BASED ON MY EXAMINATION OF THE NEW MILWAUKEE LINES PLAN, I BELIEVE THAT THE CONGRESSIONALLY-ESTABLISHED CRITERIA HAVE BEEN MET AND THAT THE COMMISSION HAS NO CHOICE BUT TO APPROVE THE PLAN.