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GENESEE & WYOMING INC
Form 10-K/A
December 06, 2001

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Fiscal Year Ended December 31, 2000

or

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the transition period from _____ to _____

Commission File No. 0-20847

GENESEE & WYOMING INC.

(Exact name of registrant as specified in its charter)

Delaware 06-0984624

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

66 Field Point Road, Greenwich, Connecticut 06830

(Address of principal executive offices) (Zip Code)

(203) 629-3722

(Telephone No.)

Securities registered pursuant to Section 12(b) of the Act:

| Title of Each Class ----- | Name of Each Exchange on which Registered ----- |
|------------------------------|-------------------------------------------------------|
| None | |

Securities registered pursuant to Section 12(g) of the Act:

Class A Common Stock, \$0.01 par value

(Title of Class)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

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YES NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of the Regulations S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this form 10-K or any amendment to this Form 10-K.

Aggregate market value of Class A Common Stock and Class B Common Stock held by non-affiliates based on closing price on March 19, 2001: \$78,790,471.

Shares of common stock outstanding as of the close of business on March 19, 2001:

| Class ----- | Number of Shares Outstanding ----- |
|----------------------|---------------------------------------|
| Class A Common Stock | 3,702,117 |
| Class B Common Stock | 845,447 |

EXPLANATORY NOTE

This Form 10-K/A is being filed to include as an exhibit to the Form 10-K the Report of Independent Auditors, Ernst & Young and Consent of Independent Auditors, Ernst & Young pursuant to Rule 2-05 of Regulation S-X of the Securities and Exchange Commission. Other than these additions to the Exhibits Index, the text of Item 14 has not been amended and speaks as of the date of the original filing of the Form 10-K.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K.

(A) DOCUMENTS FILED AS PART OF THIS FORM 10-K

Financial Statements:

Report of Independent Public Accountants

Consolidated Balance Sheets as of December 31, 2000 and 1999
Consolidated Statements of Income for the Years ended December 31, 2000, 1999 and 1998

Consolidated Statements of Stockholders' Equity and
Comprehensive Income for the Years Ended December 31, 2000,
1999 and 1998

Consolidated Statements of Cash Flows for the Years Ended
December 31, 2000, 1999 and 1998

Notes to Consolidated Financial Statements

(B) REPORTS ON FORM 8-K

The following reports on Form 8-K were filed during the last quarter of the period covered by this report:

- (a) Report dated October 30, 2000 reporting on Item 5. Other Events and Regulation FD Disclosure

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- (b) Report dated November 3, 2000 reporting on Item 5. Other Events and Regulation FD Disclosure
- (c) Report dated November 6, 2000 reporting on Item 9. Regulation FD Disclosure
- (d) Report dated December 6, 2000 reporting on Item 9. Regulation FD Disclosure
- (e) Report dated December 7, 2000 reporting on Item 5. Other Events and Regulation FD Disclosure

(C) EXHIBITS - SEE INDEX TO EXHIBITS

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INDEX TO EXHIBITS

- (2) Plan of acquisition, reorganization, arrangement, liquidation or succession

Not applicable.
- (3) (i) Articles of Incorporation

The Restated Certificate of Incorporation referenced under (4) (a) hereof is incorporated herein by reference.

(ii) By-laws

The By-laws referenced under (4) (b) hereof are incorporated herein by reference.
- (4) Instruments defining the rights of security holders, including indentures
- (a) Restated Certificate of Incorporation (Exhibit 3.1)14
 - (b) Certificate of Designation of 4.0% Senior Redeemable Convertible Preferred Stock, Series A (Exhibit 3.2)14
 - (c) By-laws (Exhibit 3.3)1
 - (d) Specimen stock certificate representing shares of Class A Common Stock (Exhibit 4.1)3
 - (e) Form of Class B Stockholders' Agreement dated as of May 20,1996, among the Registrant, its executive officers and its Class B stockholders (Exhibit 4.2)2
 - (f) Promissory Note dated October 7, 1991 of Buffalo & Pittsburgh Railroad, Inc. in favor of CSX Transportation, Inc. (Exhibit 4.6)1
 - (g) First Amendment to Promissory Note dated as of March 19, 1999 between Buffalo & Pittsburgh Railroad, Inc. and CSX Transportation, Inc. (Exhibit 4.1)7
 - (h) Third Amended and Restated Revolving Credit Agreement dated as

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of August 17, 1999 among the Registrant, certain subsidiaries, BankBoston, N.A. and the Banks named therein. (Exhibit 4.1)9

- (i) Stock Purchase Agreement by and between Genesee & Wyoming Inc. and The 1818 Fund III, L.P. dated October 19, 2000 (Exhibit 10.1)14
- (j) Registration Rights Agreement between Genesee & Wyoming Inc. and The 1818 Fund III, L.P. dated December 12, 2000 (Exhibit 10.2)14
- (k) Letter Agreement between Genesee & Wyoming Inc., The 1818 Fund III, L.P. and Mortimer B. Fuller, III dated December 12, 2000 (Exhibit 10.3)14

(9) Voting Trust Agreement

Voting Agreement and Stock Purchase Option dated March 21, 1980 among Mortimer B. Fuller, III, Mortimer B. Fuller, Jr. and Frances A. Fuller, and amendments thereto dated May 7, 1988 and March 29, 1996 (Exhibit 9.1)1

(10) Material Contracts

The Exhibits referenced under (4) (d) through (4) (k) hereof are incorporated herein by reference.

- (a) Form of Genesee & Wyoming Inc. 1996 Stock Option Plan (Exhibit 10.1)2
- (b) Form of Genesee & Wyoming Inc. Stock Option Plan for Outside Directors (Exhibit 10.2)2
- (c) Form of Compensation agreement between the Registrant and each of its executive officers (Exhibit 10.3)1
- (d) Form of Genesee & Wyoming Inc. Employee Stock Purchase Plan (Exhibit 10.4)2
- (e) Agreement dated February 6, 1996 between Illinois & Midland Railroad, Inc. and the United Transportation Union. (Exhibit 10.65)1
- (f) Amendment No. 1 to the Genesee & Wyoming Inc. 1996 Stock Option Plan (Exhibit 10.1)4
- (g) Amendment No. 1 to Genesee & Wyoming Inc. Stock Option Plan for Outside Directors (Exhibit 10.1)5
- (h) Memorandum of Lease between Minister for Transport and Urban Planning a Body Corporate Under the Administrative Arrangements Act, the Lessor, and Australia Southern Railroad Pty. Ltd., the Lessee, dated 7 November 1997. (Exhibit 10.2)5
- (i) Amendment No. 2. To the Genesee & Wyoming Inc. 1996 Stock Option Plan (Exhibit 10.1)6
- (j) Amendment No. 1. To the Genesee & Wyoming Inc. Employee Stock Purchase Plan (Exhibit 10.2)6

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- (k) Promissory Note dated May 20, 1998 of Mortimer B. Fuller, III in favor of the Registrant (Exhibit 10.1)7
- (l) Assignment Letter between Charles W. Chabot and the Registrant, effective November 1, 1998. (Exhibit 10.2)7
- (m) Amendment No. 1 to Promissory Note dated May 28, 1999 of Mortimer B. Fuller, III in favor of the Registrant (Exhibit 10.1)8
- (n) Genesee Wyoming Deferred Stock Plan for Non-Employee Directors 10
- (o) Purchase and Sale Agreement dated August 17, 1999 between the Federal Government of United Mexican States, Compania de Ferrocarriles Chiapas-Mayab, S.A. de C.V., and Ferrocarriles Nacionales de Mexico (Exhibit 10.1)9
- (p) Amendment No. 3 to the Genesee & Wyoming Inc. 1996 Stock Option Plan (Exhibit 10.1)11
- (q) Amendment No. 4 to the Genesee & Wyoming Inc. 1996 Stock Option Plan (Exhibit 10.1)12
- (r) Amendment No. 5 to the Genesee & Wyoming Inc. 1996 Stock Option Plan (Exhibit 10.2)12
- (s) Amendment No 2. to the Genesee & Wyoming Inc. Stock Option Plan for Outside Directors (Exhibit 10.3)12
- (t) Amendment No. 6 to the Genesee & Wyoming Inc. 1996 Stock Option Plan (Exhibit 10.1)13
- (u) Genesee & Wyoming Australia Pty. Ltd. Executive Share Option Plan (Exhibit 10.2)13
- (v) Agreement for sale of Business dated December 16, 2000 among The Hon Murray Criddle MLC, The Western Australian Government Railways Commission, The Hon Richard Fairfax Court MLA, Westrail Freight Employment Pty Ltd, AWR Holdings WA Pty Ltd, Australian Western Railroad Pty Ltd, WestNet StandardGauge Pty Ltd, WesterNet NarrowGauge Pty Ltd, AWR Lease Co. Pty Ltd, and Australian Railroad Group Pty. Ltd. (Exhibit 2.1)15
- (w) Westrail Freight Bidding and Share Subscription Agreement dated October 25, 2000 among Wesfarmers Railroad Holdings Pty Ltd, Wesfarmers Limited, GWI Holdings Pty Ltd, Genesee & Wyoming Inc., and Genesee & Wyoming Australia Pty Ltd. (Exhibit 99.1)15
- (x) Shareholders Agreement, dated December 15, 2000 among Wesfarmers Holdings Pty Ltd, GWI Holdings Pty Ltd, and Australian Railroad Group Pty Ltd. (Exhibit 99.2)15
- (y) Rail Freight Corridor Land Use Agreement (NarrowGauge) and Railway Infrastructure Lease dated December 16, 2000 among The Hon Murray Criddle MLC, The Western Australian Government Railways Commission, The Hon Richard Fairfax Court MLA,

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WestNet NarrowGauge Pty Ltd, Australia Western Railroad Pty Ltd, and Australian Railroad Group Pty Ltd. (Exhibit 99.3)15

- (z) Rail Freight Corridor Land Use Agreement (StandardGauge) and Railway Infrastructure Lease dated December 16, 2000 among The Hon Murray Criddle MLC, The Western Australian Government Railways Commission, The Hon Richard Fairfax Court MLA, WestNet StandardGauge Pty Ltd, Australia Western Railroad Pty Ltd, and Australian Railroad Group Pty Ltd. (Exhibit 99.4)15

(10.1) Loan Agreement between GW Servicios, S.A. de C.V., Compania de Ferrocarriles Chiapas-Mayab, S.A. de C.V. and International Finance Corporation dated December 5, 2000. (Copies of omitted Annexes and Schedules will be provided upon written request.)

(10.2) Loan Agreement between GW Servicios, S.A. de C.V., Compania de Ferrocarriles Chiapas-Mayab, S.A. de C.V. and Nederlandse Financierings-Mattaschappij Voor Ontwikkelingslanden N.V. dated December 5, 2000. (Copies of omitted Annexes and Schedules will be provided upon written request.)

(10.3) Subscription Agreement between GW Servicios S.A. de C.V. and International Finance Corporation dated December 5, 2000.

(11.1) Statement re computation of per share earnings

(12) Statements re computation of ratios

Not applicable.

(13) Annual report to security holders, Form 10-Q or quarterly report to security holders

Not applicable.

(16) Letter re change in certifying accountant

Not applicable.

(18) Letter re change in accounting principles

Not applicable.

(21.1) Subsidiaries of the Registrant

(22) Published report regarding matters submitted to vote of security holders

Not applicable.

(23.1) Consent of Arthur Andersen LLP

(24) Power of attorney

Not applicable.

(99) Additional Exhibits*

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- (a) Report of Independent Auditors, Ernst & Young
- (b) Consent of Independent Auditors, Ernst & Young

Except as otherwise indicated, all exhibits were filed with the initial filing of the Form 10-K.

* Filed herewith.

1Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Registration Statement on Form S-1 (Registration No. 333-3972). The exhibit number contained in parenthesis refers to the exhibit number in such Registration Statement.

2Exhibit previously filed as part of, and incorporated herein by reference to, Amendment No. 1 to the Registrant's Registration Statement on Form S-1 (Registration No. 333-3972). The exhibit number contained in parenthesis refers to the exhibit number in such Amendment.

3Exhibit previously filed as part of, and incorporated herein by reference to, Amendment No. 2 to the Registrant's Registration Statement on Form S-1 (Registration No. 333-3972). The exhibit number contained in parenthesis refers to the exhibit number in such Amendment.

4Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-Q for the quarter ended June 30, 1997. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

5Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-K for the fiscal year ended December 31, 1997. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

6Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-Q for the quarter ended June 30, 1998. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

7Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-K for the fiscal year ended December 31, 1998. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

8Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-Q for the quarter ended June 30, 1999. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

9Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-Q for the quarter ended September 30, 1999. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

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10Previously filed as part of, and incorporated herein by reference to, the Registrant's 1999 Definitive Proxy Statement, which was filed in electronic format on April 19, 1999 as Annex A to the Proxy Statement.

11Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-Q for the quarter ended March 31, 2000. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

12Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-Q for the quarter ended June 30, 2000. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

13Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 10-Q for the quarter ended September 30, 2000. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

14Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 8-K dated December 7, 2000. The exhibit number contained in parenthesis refers to the exhibit number in such Report.

15Exhibit previously filed as part of, and incorporated herein by reference to, the Registrant's Report on Form 8-K dated December 16, 2000. The exhibit number contained in parenthesis refers to the exhibit number in such report.

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SIGNATURES

Pursuant to the requirements of the Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 6th day of December, 2001.

GENESEE & WYOMING INC.

By: /s/ Alan R. Harris

Name: Alan R. Harris
Title: Senior Vice President
and Chief Accounting Officer