

301921

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
April 12, 2021
Part of
Public Record

**GRAND ELK RAILROAD, INC. – ACQUISITION EXEMPTION –
LINES OF WISCONSIN CENTRAL LTD. IN MICHIGAN**

STB Docket No. FD 36503

**FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C.
– ACQUISITION EXEMPTION –
LINES OF WISCONSIN CENTRAL LTD. IN WISCONSIN**

STB Docket No. FD 36504

**PETITION TO REVOKE AND STAY EXEMPTION
AND
FOR CLASSIFICATION AS “SIGNIFICANT”
PURSUANT TO 49 CFR PART 1180**

ON BEHALF OF

WISCONSIN CENTRAL GROUP
(an *ad hoc* rail freight shippers coalition)
and
LAKE STATES SHIPPERS ASSOCIATION
(a Classic Co-op Shippers Association)

John Duncan Varda
Attorney for
Wisconsin Central Group
Lake States Shippers Association

Of Counsel:
DeWitt LLP
Two East Mifflin Street, Suite 600
Madison, WI 53703
Tel: 608-252-9311
jdvarda@dewittllp.com

Dated: April 12, 2021
Due: April 12, 2021

TABLE OF CONTENTS

	<u>Page</u>
PETITION IN SUMMARY - REQUESTED RELIEF	1
INTRODUCTION - IDENTIFICATION OF PETITIONERS.....	3
Identification of Wisconsin Central Group.....	3
Identification of Lake States Shippers Association.	4
Previous Testimony in EP 704 and 705, Relevance Today.	5
WCL Competition Issues Not Previously Effectively Reviewed.....	5
Collaborative Efforts of CN and WCGroup Since 2011.	7
Why This Matter Is - As A Matter of Fact – Significant.	12
STATEMENT OF THE PETITION IN DETAIL.	15
End the Lockout of Shipper and Other Stakeholder Participation.	15
This Petition Is About Process Not Ultimately Opposition to CN/WC/Watco.....	17
Substantive Questions to Be Addressed by the Board?	17
This Proceeding Has Regional and National Significance.	20
CONCLUSION.....	23
VERIFICATION AND CERTIFICATE OF SERVICE.....	24

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**GRAND ELK RAILROAD, INC. – ACQUISITION EXEMPTION –
LINES OF WISCONSIN CENTRAL LTD. IN MICHIGAN**

STB Docket No. FD 36503

**FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C.
– ACQUISITION EXEMPTION –
LINES OF WISCONSIN CENTRAL LTD. IN WISCONSIN**

STB Docket No. FD 36504

**PETITION TO REVOKE AND STAY EXEMPTION
AND
FOR CLASSIFICATION AS “SIGNIFICANT”
PURSUANT TO 49 CFR PART 1180**

**ON BEHALF OF
WISCONSIN CENTRAL GROUP &
LAKE STATES SHIPPERS ASSOCIATION**

PETITION IN SUMMARY - REQUESTED RELIEF

Neither Applicant can fairly be said to be a “new carrier” within the meaning of 49 CFR 1130.31(a).

Both Applicants are in fact owned and controlled by Watco, which operates more than three dozen rail carriers and which Watco describes as an “unmatched network of short line railroads”.¹ The proposed transactions

¹ Watco’s network already includes some 600 rail miles in Wisconsin.

were publicly announced after entirely closed-door negotiations with no known participation by shippers or other stakeholders. They were announced as a deal between CN and Watco (“CN/WC/Watco Agreement”). Little detail was provided to the public.

There is no credible factual basis for the Board to deem either Applicant to be a “new carrier” for the purposes of public review.

Moreover, there is no credible basis for the Board, as required by 49 USC 10502(a), to grant exemption on the basis:

1. That public review by the Board is not necessary to carry out the transportation policy 49 USC 10101; or
2. That the transaction or service is of limited scope; or
3. That the application is not needed to protect shippers from the abuse of market power.

Neither Applicant’s Notice of Exemption mentions whether or not shippers on the acquired lines will continue to have the benefit of conditions imposed by the Board in the Board’s 2001 decision in *Canadian National – Control – Wisconsin Central*, STB Finance Docket No. 34000 (“Docket FD 34000”). That decision granted CN control of Wisconsin Central subject to which, to this day, CN continues to control Wisconsin Central.

Watco already controls some 600 miles of railroad lines in the State of Wisconsin, operated under the name Wisconsin & Southern Railroad.

The proposed transactions will result in Applicants acquiring more than 650 miles of rail lines in Wisconsin and Upper Michigan and will result in Watco's controlling a total of more than 1,250 miles of rail lines in Wisconsin and Upper Michigan.

These proposed transactions ought to be designated as "significant" under 49 CFR Part 1180 and subject to public review by the Board and that the Board revoke the presumptive waiver granted by 49 CFR 1180.0(b).

Wisconsin Central Group and Lake States Shippers Association request that this Petition be filed in the formal dockets and that Petitioners be designated parties of record in each Finance Docket, FD 36503 and FD 36504.

INTRODUCTION - IDENTIFICATION OF PETITIONERS

Identification of Wisconsin Central Group.

Wisconsin Central Group (www.centralcorridors.com/wcg) ("WCGGroup" or "WCG") is an *ad hoc* rail freight shippers coalition historically operating under the auspices of three Wisconsin and Michigan manufacturers and commerce trade associations.

The goal of WCGGroup since 2010, and its predecessors since 2001, has been to persuade the Canadian National Railway Company ("CN") or otherwise assure: (a) Restoration of Wisconsin Central System ("WC System") level service and competition for market share for traffic that originates and/or terminates on lines of the former WC System; and (b) for CN's main line between Superior, WI and Chicago, IL a transparent plan,

executed in due course, to mitigate the impact of increased traffic and provide ample capacity for serving current and increasing future traffic that originates and/or terminates on lines of the former WC System, currently, CN/WC and pursuant to the CN/WC and Watco Agreement to become “CN/WC/Watco”.

Identification of Lake States Shippers Association.

Lake States Shippers Association (“LSSA”) is a voluntary association originally organized in 2005 to address concerns of the region’s forest products industries with the efficiency of transportation of logs from forest to mill and later operating under the auspices of the same three trade associations as WCGroup. From 2005 through 2010, LSSA’s focus was on ways and means for optimizing, increasing the proportion of loaded to empty miles, the region’s log truck movements from forest to rail concentration yards and, thence, to mill with shorter hauls direct from forest to mill.

In 2011, LSSA’s participants shifted these efforts to working in collaboration with CN through the Wisconsin Central Group. LSSA remained dormant until 2017. LSSA was re-activated in 2017 to the present day to support the [LSSA Data Co-op Project](#) (more fully described, below) and remains ready at the option of its participants to assume role of a [Classic Co-op Shippers Association](#).

LSSA’s mission is summed up in two tag lines: “For Logs – More Cords, Fewer Truck Miles”; and “For the Region – Rail Competition for

Non-Captive, Truck-Competitive Freight”. The latter refers to LSSA’s frequently repeated expression, logs alone will not support CN/WC’s lighter density rail lines.

Previous Testimony in EP 704 and 705, Relevance Today.

WCGroup submitted [verified statement](#) and testimony in STB Docket EP 704 and submitted [comments](#) and testimony in EP 705. In both dockets, we urged the Board to consider obstacles to railroad competition for non-captive, truck-competitive freight, abundant in the CN/WC [Great Lakes Forests Region](#) (“GLFR”), and the potential for expanded rail market share of such freight to relieve the burdens of differential pricing borne by captive shippers and commodities.

Today, CN/WC has not begun to match the market share enjoyed by its immediate predecessor, Wisconsin Central System (1988-2001), nor their predecessors serving the GLFR prior to the Motor Carrier Act of 1980 and the Staggers Act. The critical problems and challenges described in WCGroup’s EP 704/705 submissions and testimony persist to this day.

WCL Competition Issues Not Previously Effectively Reviewed.

In 2001 the largest WCL shipper and most significant short line connection, Escanaba & Lake Superior Railroad (“E&LS”), did not participate directly or meaningfully in STB’s Docket FD 34000. The same was true in 1992 before the Interstate Commerce Commission when Wisconsin Central Ltd. (“WCL”) acquired the Green Bay & Western

Railroad and the Fox River Valley Railroad, creating and controlling the Fox Valley and Western Ltd. (“FVW”).²

Why not, one might ask?

In regard to the largest shipper, the answer in both 1992 and in 2001 in Docket FD 34000 with respect to control of WCL by CN, lies in a long-term contract entered into for the purpose of preserving “competitive rail pricing and routes”.³ The same is widely known to be true of a contract with E&LS. In both instances, first the ICC and later STB and, of course, the public were deprived of the opportunity for public review of the competitive consequences of the WCL consolidation in 1992 and in 2001 control of WCL by CN. In retrospect, one might also ask if the contracts in question were lawful⁴ or, in fact, subverted rights of the public to review competitiveness issues by ICC and STB?

Accordingly, today is the first opportunity for full review of competitiveness questions arising from what became the Nation’s largest unified short line rail system. In its day, WC only avoided classification as

² A later addition in 1997 was authorized and was exempted with no objection.

³ The Contract Summary for WTC-FVW-C-0001, ICC_FVW_C-0001 (“FVW-0001”), effective September 1, 1993, publicly identified as governing “All Freight” and termination on December 31, 2017 and subject to extension “Upon Mutual Consent”. The terms of FVW-0001 are confidential except for, inter alia., disclosure “to the ICC or appropriate regulatory agency”. Exemption of the 1997 addition to the WC System was at least in part due to a long-term contract identified as STB-WC-C-0555-A terminating December 31, 2015.

⁴ Did these contracts comport with the intended purposes of 49 USC 10709?

a Class I as the result of amendment of rules for classification as a Class I railroad.

Collaborative Efforts of CN and WCGroup Since 2011.

Beginning in mid-2011, shortly following WCGroup's submissions in Dockets EP 704/705, CN and WCGroup stakeholders met and identified a series of joint projects aimed at increasing freight volume and density on CN/WC lighter density lines.⁵ In late 2012, with WCGroup support, CN established an Advisory Board; and CN and WCGroup began using the terms "collaboration" and "collaborative effort" to describe their joint activities.

In 2012 and 2013, WCGroup assisted in creation of the Northwoods Rail Transit Commission ("NRTC"), the public sector incarnation of the CN/WCGroup collaborative efforts, over the years including some thirteen (13) northern Wisconsin and nine (9) Michigan Upper Peninsula counties.⁶

In 2014 and 2015, CN and WCGroup assisted NRTC in submitting TIGER grant applications⁷ for funding to begin replacing the aging railroad-

⁵ The meeting included CN/WC operations and marketing officials and representatives of four paper companies and the Wisconsin Paper Council. At the outset of the meeting CN/WC representatives were asked to either compete for freight on CN/WC lighter density lines or sell them to a rail carrier that would do so. CN/WC responded affirming CN/WC's intent to compete for freight on all of the lines. The meeting concluded with an agenda of three projects on which the parties would work collaboratively to increase freight on lighter density CN/WC lines. The meeting commenced a decade long series of collective activities including CN/WC, GLFR shippers and other stakeholders described in further detail further on in this Petition.

⁶ NRTC is a public body operating under an interstate cooperation agreement authorized by Michigan and Wisconsin statutes.

⁷ Summary of the 2015 TIGER grant application. "[Great Lakes Forest Log Car Fleet](#)".

owned fleet of over 1,000 log cars serving the GLFR with a new publicly owned log car fleet.⁸ CN funded NRTC's engagement of consultants who provided benefit cost analyses pursuant to USDOT standards.⁹ Though recommended, neither application was awarded a grant. Debriefing with USDOT following the 2015 application has suggested a pathway for potential future grant applications by NRTC and/or other GLFR stakeholders depending on the qualifications requirements of the grant program.

A chronological summary of our over ten (10) years of collaborative efforts, since 2011, can be found at [Highlights – WCG/LSSA Activities](#).

Although these collaborative efforts had resulted in a better understanding of the challenges facing CN/WC GLFR rail carriers and stakeholders, as of 2016, together we had yet to achieve any notable breakthrough in increasing freight volume and density on lighter density CN/WC GLFR lines.

In fact, the marketplace may be working in reverse. In March 2016, we were startled to learn a major shipper served directly by CN/WC shifted, for a time, a volume of previous CN/WC direct rail freight to a truck-rail

⁸ Most of the railroad-owned log cars were put in service prior to 1980 and are reaching AAR 40- and 50-year mandated retirement. Use of private log cars is limited. Neither CN nor WCGroup stakeholders have been able to make a business case for investment in railroad or privately owned log car replacements.

⁹ The benefit-cost analyses demonstrated direct public benefits (road and bridge wear and highway safety) of \$4 for each \$1 invested in new log cars (based on a 20-year life rather than the 50-year actual experience for GLFR log cars).

transload (over 100-mile dray) to a short line and Union Pacific connections. We have word of other similar transloads in the offing, in one instance a major new volume, bulk commodity. Although our continuing preference has and is retention of CN control of CN/WC lines, freight marketplace developments revived consideration of alternative operators for CN/WC lines serving local industry.

As early as 2012, WCGroup indicated its openness to “[Shortline Spin-Off of CN/WC Lines](#)”. None of us, however, contemplated the scatter-shot approach apparently taken in the CN/WC/Watco Agreement.

Rather, we envisioned very different characteristics for the change:

- Those served by a short line operator will have the same, but “virtual,” single line service and pricing to/from CN single-line points and connections as those on CN/WC lines.
- Benefits of the Log, Chicago Gateway and Intermodal Projects shall be implemented in a manner that ensures that CN/WC lines operated by a CN short line partner are on par with CN/WC lines.
- A short line operator of CN/WC lines, on its own or through conditions, mutual undertakings or commitments by CN, shall have power, rail car and private capital resources and capabilities, with respect the CN/WC lines it operates, comparable to CN’s or as necessary to fulfill conditions imposed in STB Docket FD 34000.
- CN and any short line candidate to operate and/or own a CN/WC line shall inform and ensure meaningful consultation, well in advance of any application to STB, with WCGroup and other WC line stakeholders, as to the ways and means to ensure establishing and implementing the forgoing “characteristics”.

The CN/WC/Watco Agreement not only does not reflect such characteristics but, rather, is their total and complete antithesis.

In 2017, WCGroup concluded a year-long review of our collaborative efforts, in consultation with CN, short line operators in the

region and a broad group of WCGroup shipper stakeholders. The result became known as the [LSSA Data-Coop Project](#), Phase I in partnership with Michigan Technological University (“Michigan Tech”) (supported by approximately \$250,000 in public sector grant funding), [final report issued March 2020](#). Although the report focused mainly on movement of logs via CN/WC rail, the methodology was designed with all freight, carload and intermodal, in mind, for the purpose of addressing the following question:

To what extent will cooperative coordination of multi-shipper freight lanes provide sufficient volume, consistency and balance that will yield transportation efficiencies and increasingly competitive and sustainable rates and services from railroads and truckers serving the forest products and other industries of the Great Lakes Forests Region?

The answer to the question is that [Actionable Shipper Data](#)¹⁰ commercially available and can be effectively marshalled and deployed on a scale necessary for Rail Infrastructure Investment and Operations Planning (“RII-OP”).

LSSA began planning LSSA Data Co-op Project Phase II in early 2020 and were moving well along in the process by mid-2020, COVID notwithstanding. In addition, during Q2 2020, LSSA and WCGroup assisted Wisconsin Department of Transportation (“WisDOT”) and WisDOT’s

¹⁰ The concept and terminology emerged from collaboration through the CN/WCGroup Advisory Board, Intermodal Working Committee, circa 2014. By 2018-2020, Actionable Shipper Data became the foundation for the LSSA/MITech Data Co-op Project, supported by an omnibus Confidentiality and Antitrust Compliance Agreement structure

See [final report posted 4/3/2020](#), at pages 7 & 12: “Objective 1 – Create a methodology to obtain and securely store freight data at the “Actionable Shipper Data

expert “Rail Advisors in their work on a [Northwoods Freight Assessment](#), including a [WisDot/WCG/LSSA joint letter](#) seeking survey responses from shippers and other stakeholders.¹¹

LSSA and WCGroup also actively supported work of the North Central Wisconsin Regional Planning Commission (“NCWRPC”) and of the East Central Wisconsin Regional Planning Commission (with other local governmental agencies) (“ECWRPC”) in two studies of the potential and planning for intermodal freight on CN/WC lines in Wisconsin and Upper Michigan and the Twin Cities in Minnesota.¹² The NCWRPC and ECWRPC projects involve some \$400,000 of grant funding by WisDOT plus local matching funds (a minimum of 20%).¹³

CN’s July 2020 announcement of CN’s “[Wisconsin – Northern Michigan Branch Line Proposed Divestiture Plan](#)” (“Divestiture Plan”)

¹¹ LSSA’s contribution included providing the WisDOT/LSSA [Confidentiality Agreement Governing Responses to WisDOT’s Northwoods Rail Lines Business Potential Questionnaire](#) and antitrust compliance guidelines.

¹² During Q2 2020, representatives of WisDOT, Minnesota DOT, NCWRPC and ECWRPC participate in online presentations and discussion, organized by WCG/LSSA, regarding the use of Actionable Shipper Data for RII-OP.

¹³ The ECWRPC findings are scheduled for release Q3 2021.

brought a halt to shipper and public planning activity with regard to the “branch lines”¹⁴ included in the Divestiture Plan.¹⁵

Why This Matter Is - As A Matter of Fact – Significant.¹⁶

The Applicants, CN/WC/Watco, on the one hand, and, on the other hand, the Petitioners, GLFR shippers, other public and private stakeholders and their Northwoods communities (the “People”)¹⁷ (as will emerge in the evidence submitted to the Board upon a finding of “significant”) have **starkly contrasting visions of the future of the CN/WC rail lines of the Great Lakes Forests Region.**

On the one side is that apparent vision offered by CN/WC and Watco reflected publicly in the announcement of the Divestiture Plan and the limited statements included in the two Notices of Exemption. The

¹⁴ The Divestiture Plan and the CN/WC/Watco Agreement continue to consider the included line only from a “branch line” perspective. Since as early as mid-2016, WCG and others have also looked at the CN/WC lines from a Regional Perspective, [Looking at the Region as a Rail System and from a Corridors Perspective](#). This perspective considers rail lines not as branches only but in terms of their function as “rail line corridors”.

¹⁵ To be precise, we all very much appreciate that CN/WC has actively continued collaborative work with shippers, other private stakeholders and public bodies with respect to planning and business development opportunities for CN/WC lines which are **not** involved in the Divestiture Plan (as originally announced or later modified). CN, as well as WCG/LSSA, continues as an active member of the steering committee for ECWRPC Intermodal Project.

¹⁶ This section and those that preceded it address the factual predicate for supporting a finding that this proceeding is “significant”. The following section “Statement of the Petition in Detail” including “This Proceeding Has Regional and National Significance” mixes fact and legal concept supporting a finding of “significant” by the Board.

¹⁷ The People, for example, are Wisconsin and Michigan Counties who are members or participate in the Northwoods Rail Transit Commission, their County Boards and local economic development agencies, and have included participating representatives of the Wisconsin, Michigan, and Minnesota Departments of Transportation.

CN/WC/Watco vision, from the limited evidence publicly available, features fragmented, disconnected line segments. The CN/WC/Watco vision appears so far to be a more scattered repeat of the strategy of the Chicago & Northwestern Railroad (“C&NW”) in the 1980s. C&NW had concluded that Class Is could not effectively compete in this Region. That conclusion led C&NW into creation of a disconnected Fox River Valley Railroad and Duck Creek North¹⁸ which later became part of the WC in 1992 and 1997. In other words, the CN/WC/Watco strategy appears to be one from the past that was tried and failed.

On the other side, the People’s vision is one that has evolved over the last decade of collaboration among the People in many, many meetings and exchanges¹⁹ and with significant participation by CN/WC, often sharing information and teaching about how the railroad works and the challenges of operating and competing for GLFR freight.²⁰

By 2020, our collaborative activity was accelerating as reflected in [Comprehensive Updates, Rail Projects in Progress – Spring/Summer 2020](#)

¹⁸ STB Finance Docket No. 33290, *Sault Ste. Marie Bridge Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*, January 24, 1997.

¹⁹ Examples include ongoing meetings of the Northwoods Rail Transit Commission since 2012 and *ad hoc* forums such as a meeting of representatives of shippers, local governmental and MI DOT and WisDOT representatives at Escanaba, MI on March 16, 2017. The Escanaba meeting resulted in a “[Consensus Outline](#)” which in turn led to the [LSSA/MITech Data Co-op Project Phase I](#).

²⁰ Examples include education presentations by CN/WC at the 4th Annual Michigan Rail Conference, Marquette, MI, August 16-18, 2016 and several similar presentations at WisDOT Annual Rail Conferences. Other examples included CN/WCs providing information and data for NRTC’s TIGER grant applications for log car funding in 2014 and 2015 and providing operating data for the LSSA/MI Data Co-op Project, 2018-2019.

right up to the CN/WC late-July 2020 announcement of CN/WC's Divestiture Plan. Our rail projects activity has continued unabated despite announcement of the Divestiture Plan²¹ and subsequent filing of the present Notices of Exemption.

From all of this collaborative activity, the People's vision of today emerged.

This People's vision is that it is practicable and feasible not only to restore but to transform GLFR's rail lines into a [Northwoods Rail System](#).

- The People's vision anticipates a future in which shippers and other third-parties provide Actionable Shipper Data on a scale sufficient for Rail Infrastructure and Operations Planning and successfully attracting new private investment and state and federal grant funding for such investments in rural areas such as the GLFR.²²
- The People's vision anticipates unmasking in the market place the energy efficiency and reduced emissions of rail²³ and availability from

²¹ For example, shortly following announcement of CN/WC's Divestiture Plan, WCGroup and LSSA advanced an "[Alternative Approach](#)" to the Divestiture Plan and, responding to a request from WisDOT, offered "[Considerations for Responding](#)" to the Divestiture Plan.

²² One example is USDOT's [Rural Opportunities to Use Transportation for Economic Success \(ROUTES\)](#).

²³ This concept was first presented to the Board in comments and testimony in 2011 in Docket EP 704 ([Joint Verified Statement of The Mercury Group and Breakthrough Fuel LLC](#)) and in Docket EP 705 ([testimony](#) and [oral argument exhibits](#) of the Mercury Group). The technology and data capabilities and its use in truckload and intermodal (though not yet accepted by the rail industry) have substantially advanced over the last decade and today support the People's vision for uses of Actionable Shipper Data and RII-OP in the future.

increased market share rail and rail intermodal for transporting materials for manufacturing and, thence, goods to consuming markets.

- The People’s vision anticipates a future in which rail intermodal is not solely long double-stacked container trains moving, principally overseas, container freight very long distances. Instead, the future will include more domestic (*i.e.* North American) intermodal and shorter/short-haul intermodal which, by way of example, will be “Fast, Frequent, Profitable” with intermodal terminals designed as hubs providing transloading, COFC, TOFC and other supply chain services. Drayage distances and routes will avoid congestion and permit multiple loaded trips within each driver’s tour time on any given day.

Thus, the contrast between CN/WC/Watco’s vision and the People’s vision of the future for GLFR rail lines and communities is dramatic. The People’s vision is exactly in sync with the trends in the Nation’s rail industry which are described, below, in the section entitled “This Proceeding Has Regional and National Significance”.

STATEMENT OF THE PETITION IN DETAIL.

End the Lockout of Shipper and Other Stakeholder Participation.

CN is ill-advised in its attempt to advance the CN/WC/Watco Agreement via a notice of exemption and was possibly not only ill-advised, but also ill-served, by its investment banking advisor as to conducting all negotiations behind closed doors under strict terms of confidentiality

throughout. CN/WC's approach is unprecedented²⁴ and totally at odds with the collaborative mode in which CN/WC has worked with shippers and other stakeholders since 2011.

CN has simply taken a wrong turn with the CN/WC/Watco Agreement ignoring the hundreds of hours of shipper and stakeholder time commitments and hundreds of thousands of dollars of public funding that have been expended in search of solutions for the challenges facing lighter density CN/WC lines and transforming the network into an integrated system capable of competing competitively for over-the-road, non-captive truckload freight.

Rural Great Lakes Forests Region communities have a critical stake in competitive rail access: "Industries, jobs and taxes want to go where the railroad is." Wick Moorman, CEO Norfolk Southern, [Congressional Testimony](#), April 24, 2013. We all responded to the call to commit to work collaboratively:

"An ecosystem of collaboration, 'is what former CEO Claude Mongeau says of [CN's] supply chain approach, which aims to build trust while improving service and efficiency for railway and customers alike. 'It's the gift that keeps on giving . . . It leads, eventually, to ideas you didn't know were possible."

²⁴ At the inception of Wisconsin Central, circa 1988, WC leadership met with shippers and other stakeholders at various locations in northern Wisconsin sponsored, in part, by the Wisconsin Manufacturers & Commerce Transportation Committee and the Wisconsin Paper and Pulp Manufacturers Transportation Association. Similar events took place in 1992 and 1996 as WC acquired lines to form the Wisconsin Central System. Representatives of CN and WC met with the WMC Transportation Committee in March 2001 in preparation for filing of what became STB Docket FD 34000.

Trains, March 2017, CN CEO Claude Mongeau. M. Mongeau’s insight and foresight has been borne out as discussed, below, in “This Proceeding Has Regional and National Significance”.

The means is at hand for this Board to correct CN’s misstep by granting the relief sought by Petitioners.

This Petition Is About Process Not Ultimately Opposition to CN/WC/Watco.

Petitioners seek only process remedies: (a) Revocation of the exemptions and stay of the effective; and (b) a determination that the proposed CN/WC/Watco transaction is “significant” under 49 CFR Part 1180 with revocation of the presumptive waiver granted by 49 CFR 1180(b).

WCGroup and LSSA, at this time, has taken no position on supporting, seeking conditions, or opposing the CN/WC/Watco transaction.

Substantive Questions to Be Addressed by the Board?

The list is not intended to be exhaustive but merely to highlight the scope of the unanswered questions and unknowns, most of which we believe the shippers, other stakeholders and the public have a right to know, now, through an appropriate proceeding before the Board pursuant to 49 CFR Part 1180, subject to whatever protective orders may be deemed proper.

1. Purchase Price?

- a. What assets are included and what assets are not included in the assets purchased by Watco? Specifically, what locomotives, rolling stock and vehicles are included in the purchased assets?
- b. What is the relationship of the purchase price to net liquidation value?
- c. Does the purchase price include a “premium”? If so, how does Watco intend to recover the cost of the premium?
- d. Is the purchase price discounted for disaggregation/fragmentation of the lines?
- e. Will there be added costs arising from operating disconnected line segments? How does Watco intend to recover such cost?

2. Trackage Rights and Pricing Authority Among Watco Clusters?

- a. Does the CN/WC/Watco Agreement provide for the short line operating over CN/WC between the disconnected “clusters”? Moving revenue freight from one cluster to another and interchange between and among the Watco controlled rail carriers?
- b. Will Watco locomotives operate in revenue service on CN/WC lines? If so, what costs and fees apply?

3. Single Line v Multiple Line Service?

- a. In Docket FD 34000, CN/WCL emphasized the virtues of increased single line service for better more efficient rail service. By what means will CN/WC and the Watco rail carriers make reduction in single line service transparent to shippers? Who will bear the additional expense incurred for multi-line service? What savings are available to offset the increased expense of multi-line service?
- b. Why is the line between White Pine and Marengo Junction divided at the WI/MI stateline between two separate Watco rail carriers? Is this step a prelude to abandonment of the segment between Marengo Junction and the WI/MI stateline? Have CN/WC/Watco discussed such an abandonment?
- c. Were the lines between White Pine and Marengo Junction returned to service, how would CN/WC/Watco intend to price and provide

adequate service on logs moving from, for example, Gogebic County, Michigan and Nekoosa or Wisconsin Rapids?

4. Out-of-Service Rail Lines and Infrastructure Investment?

- a. What is Watco's plan for retuning out-of-service segments to revenue service? White Pine? Ashland? The east-west so-called "Highway 8 Rail Line Corridor" between Tony and Goodman?
- b. Does Watco have a plan for seeking public infrastructure grant funding to return out-of-service lines to revenue service? Invest in improvements to other acquired lines and bridges? If so, what is the plan for investment of private and public funds for such purposes?
- c. Since 2015 the number of CN/WC owned log cars in the GLFR has declined from over 1,000 log cars to fewer than 350 and increased over-the-road log truck traffic is recognized as a burden on road infrastructure and cited for safety concerns and increased concentration of emission at various mill locations. How do CN/WC and Watco intend to address demand for return of log and related forest product traffic to rail? Do CN/WC/Watco have a plan for dealing with other new investments in rolling stock and related infrastructure?
- d. Will CN/WC/Watco, in the future, offer interchange service at Pembine, WI with E&LS, and near Cameron, WI with Progressive Rail (thence, Union Pacific)?

5. Other Provisions of the CN/WC/Watco Agreement?

- a. What, if any, rate-making authority will be afforded to the Watco rail carriers?
- b. What are the car handling fees to be paid to Watco? Are they differentiated by cluster, commodity, car type, new business or other factors? How will car handling fees be adjusted?
- c. Will the car handling fees change the current CN/WC expense levels for operating the lines? Does the answer vary by cluster or line segment?
- d. Does CN/WC retain re-purchase rights and/or rights to operate over the purchased assets and, if so, under what circumstances and on what terms?

6. Conditions Imposed in STB Docket FD 34000?

- a. Do CN/WC and Watco acknowledge and agree that conditions imposed in Docket FD 34000 continue to apply including with respect to lines purchased by Watco?
- b. What is CN/WC's and Watco's plan to maintain and/or restore the "local characteristics" of WC? Specifically in a manner consistent with the representation and imposed condition that:

[To] operate WC . . . to preserve WC's local characteristics and the value of its employees' experience as much as possible while securing the benefits of system integration. Among other things, this will assure that customers on WC's relatively low-density lines will continue to receive the quality of service they have come to expect from WC.

- c. Finally, one might ask, why a Divestiture Plan of any kind?²⁵ What has motivated CN to change course after some many years, announcing its Divestiture Plan with little or no notice in July 2020?

This Proceeding Has Regional and National Significance.

Petitioners submit that there is no basis for the Board to make a determination that: (a) the proposed transaction clearly will not have any anticompetitive effects; or (b) any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

The proper context for judging "significant transportation needs" is the ongoing evolution of the Nation's railroad industry as reflected in various discussions and developments from mid-2020 and ongoing, which

²⁵ E. Hunter Harrison was said to have remarked (paraphrased): "Why would I want to give it up? I can operate it better than they can". WCGroup and LSSA often heard a form of this remark over the years whenever the subject of spin-off of CN/WC lines came up: Show us somebody that can do it better than CN can. CN/WC has set its own standard: How can CN/WC/Watco do it better?

are directly relevant to the future of the CN/WC/Watco lines which are the subject of the CN/WC/Watco Agreement and future of rail access throughout the Great Lakes Forests Region, for example:

- As Precision Scheduled Railroading (“PSR”) matures, a “capacity dividend”? Focus on changing customer demands, make product more compelling.²⁶
- More competition, more options for shippers?²⁷
- PSR 1.0 to pivot to PSR 2.0, pivot to growth. RRs in an age of disruption. Short, fast trains if one has capacity.²⁸
- [RailPulse Venture](#), will true telematics come to railcars, transform non-RR ownership?²⁹ How long will it take? Will technology acceleration overcome RR-time?
- Opportunities in “service sensitive” markets. Not so much speed as “reliability”, “predictability”. Consistency and accuracy. Intermodal to lead growth, truck competitive. Become more truck-like. Visibility for customers –make it easier to do business with us.³⁰

²⁶ Mike McClellan, VP Strategic Planning, NS, Virtual Midwest Rail Conference 8/12/2020.

²⁷ Martin Oberman, Surface Transportation Board, ATLP Transportation Forum XVII 11/12/2020.

²⁸ Tony Hatch, Senior Transportation Analyst, ABH Consulting, RailTrends 11/19/2020.

²⁹ Panel discussion: McClellan, VP Strategic Planning, NS; DeGroot, Senior VP, Sales, TrinityRail; Titterton, Sr. VP and COO, GATX -RailTrends 11/19/2020.

³⁰ Alan Shaw, Executive VP, Chief Marketing Officer, NS, RailTrends 11/20/2020.

- Intermodal growth above GDP growth, faster than carload. Not a seller of short lines. Will compete with anybody.³¹
- Finally, from CN's own current CEO – Oriented to the consumer side, competing with truck is our bigger future. ESG coming. Propulsion will not be diesel. Supply chain visibility for customers is down the road. Cost leadership is how to divert freight from highway. More door-to-door, like long haul trucking. The secret sauce is how to manage a smart network, safely with increased capacity.³²

For some years the Nation has grappled with transportation infrastructure issues. It may be on the brink of a major commitment to renewal of the Nation's infrastructure, specifically aimed at reuniting urban and rural America. The too is the context in which the Board ought to determine the significance of the transportation needs of the Great Lakes Forests Region and the process for review of the proposed CN/WC/Watco transaction. Determining the proceeding to be "significant" is all but mandated by the National "Rail Transportation Policy".³³

³¹ Jim Foote, President and CEO, CSX, RailTrends 11/20/2020.

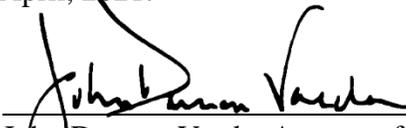
³² Jean-Jacques Ruest, President and CEO, CN, RailTrends 11/20/2020.

³³ See particularly, by way of example, 49 USC 10101(1), (2), (5), (8), and (14).

CONCLUSION

The proposed transaction is “significant” for the broad Great Lakes Forests Region and its communities and, in the present context is significant for the Nation’s general system of railroad transportation as a whole. It is not a private matter to be resolved between and among private railroads behind closed doors.

Dated this 12th day of April, 2021.



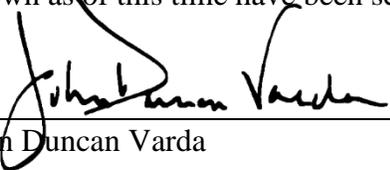
John Duncan Varda, Attorney for
Wisconsin Central Group
Lake States Shippers Association

Of Counsel:
DeWitt LLP
Two East Mifflin Street, Suite 600
Madison, WI 53703
Tel: 608-252-9311
jdvarda@dewittllp.com

VERIFICATION AND CERTIFICATE OF SERVICE

I, John Duncan Varda, counsel to Wisconsin Central Group and Lake States Shippers Association, have, since 1970, represented Wisconsin Manufacturers & Commerce and other Wisconsin and Upper Michigan transportation shipper groups and various of their constituent members before the Interstate Commerce Commission and, after its termination, before the Surface Transportation, and do hereby affirm and verify that I have read the foregoing Petition on behalf of Wisconsin Central Group and Lake States Shippers Association and know the facts stated therein to be true and correct to my own knowledge and, as to those stated upon information and belief, I reasonably believe them to be true and correct.

I hereby certify that Applicant’s representative and other parties of record known as of this time have been served a copy of this Petition.



John Duncan Varda

STATE OF WISCONSIN)
) ss
Dane COUNTY)

Personally came before me this 12th day of April, 2021, the above named John Duncan Varda, personally known to me to be the person who executed the foregoing verification and acknowledged the same.

Martha S. Olson


Notary Public, State of Wisconsin

My commission expires August 13, 2023 .

