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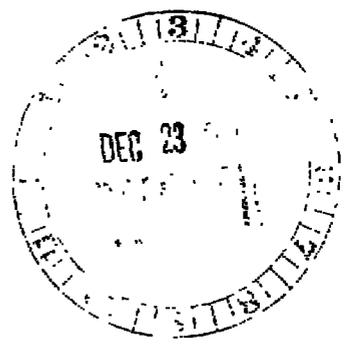
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FOUNDED 1866

December 23, 2008



**By Courier**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20005

Re: STB Finance Docket No. 35187, *Grand Elk Railroad, L.L.C.* – Lease and Operation Exemption – Norfolk Southern Ry. Co.; STB Finance Docket No. 35188, *Watco Companies, Inc.* – Continuance In Control Exemption – *Grand Elk Railroad, L.L.C.*

Dear Secretary Quinlan:

Please find enclosed for filing in the above-referenced proceedings an original and ten (10) copies of Norfolk Southern Railway Company's Reply To United Transportation Union's Petition For Stay.

If you have any questions, please contact the undersigned counsel.

Sincerely,

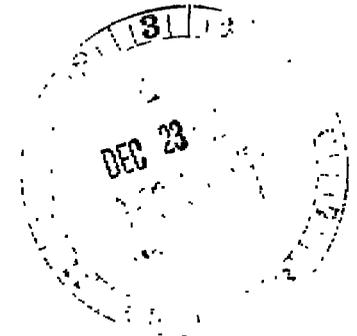
Richard E. Young

*Counsel for Norfolk Southern  
Railroad Company*

Enclosures

cc: All parties on service list

224253



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35187**

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**GRAND ELK RAILROAD, L.L.C.—  
LEASE AND OPERATION EXEMPTION —  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**FINANCE DOCKET NO. 35188**

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**WATCO COMPANIES, INC.—  
CONTINUANCE IN CONTROL EXEMPTION —  
GRAND ELK RAILROAD, L.L.C.**

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**NORFOLK SOUTHERN RAILWAY COMPANY'S  
REPLY TO UNITED TRANSPORTATION UNION'S  
PETITION FOR STAY**

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Dated: December 23, 2008

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35187**

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**GRAND ELK RAILROAD, L.L.C.—  
LEASE AND OPERATION EXEMPTION —  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**FINANCE DOCKET NO. 35188**

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**WATCO COMPANIES, INC.—  
CONTINUANCE IN CONTROL EXEMPTION —  
GRAND ELK RAILROAD, L.L.C.**

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**NORFOLK SOUTHERN RAILWAY COMPANY'S  
REPLY TO UNITED TRANSPORTATION UNION'S  
PETITION FOR STAY**

Norfolk Southern Railway Company (“Norfolk Southern” or “NS”) submits this Reply to the Petition For Stay (“Petition”) filed by the United Transportation Union (“UTU”) and dated December 18, 2008.

As described below, the UTU has not shown, and cannot show, that it satisfies the requirements for a stay. In particular, the UTU has not shown that it has a strong likelihood of prevailing on the merits, that it will suffer irreparable harm in the absence of a stay, that a stay would not substantially harm other parties, or that issuance of the stay would be in the public interest. Indeed, the evidence shows that each of these standards weighs against the issuance of a stay. For example, although the UTU makes the bald assertion that its members will suffer



irreparable harm absent a stay, in reality the proposed transaction will *add* jobs to the economy. For this reason, and the other reasons set forth herein, the Petition should be denied.

### **FACTUAL BACKGROUND**

These proceedings involve two separate notices of exemption filed by Grand Elk Railroad (“GER”) and Watco Companies, Inc. (“Watco”), respectively. In Docket No. 35187, GER, which is a non-carrier subsidiary of Watco, filed a notice of exemption pursuant to 49 C.F.R. § 1150.31 *et seq.* to lease from Norfolk Southern, and to operate, approximately 123 miles of rail line that runs from Grand Rapids, Michigan, via Kalamazoo to a point just outside the Elkhart Yard in Indiana (the “Kalamazoo Branch”). As part of the proposed transaction, GER will also obtain incidental trackage rights over a 0.43-mile segment of the Michigan Main Line to connect the Kalamazoo Branch with Botsford Yard outside Kalamazoo, which GER will lease for train and car handling purposes.

In Docket No. 35188, Watco, a non-carrier, has filed a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2), for Watco to continue in control of GER upon GER’s becoming a Class III railroad. Watco owns 100 percent of the stock of GER.<sup>1</sup>

Contrary to the UTU’s assertion, the proposed transaction is not a mere “progeny” of the transaction involving the Michigan Central Railroad that the Board previously rejected in Finance Docket Nos. 35063, *et al.*<sup>2</sup> The transaction proposed in the instant proceedings is an

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<sup>1</sup> The control exemption in Finance Docket No. 35188 became effective on December 3, 2008 – 30 days after Watco filed its notice of exemption. *See* 49 C.F.R. § 1180.2(g); 73 Fed. Reg. 67927-67928. Consequently, the UTU’s petition for a stay is necessarily limited to the lease and operation of the Grand Rapids-Elkhart line sought in Finance Docket No. 35187.

<sup>2</sup> *See* Petition at 2; Finance Docket Nos. 35063, *et al.*, *Michigan Central Railway, LLC – Acquisition and Operation Exemption – Lines of Norfolk Southern Ry. Co.*, Decision served Dec. 10, 2007 (“*MCR/Norfolk Southern Decision*”).

entirely new transaction that contains none of the “attributes of control” which the Board found to warrant rejection of the proposal at issue in the *MCR/Norfolk Southern* proceeding.

The transaction at issue in the *MCR/Norfolk Southern Decision* involved MCR’s acquisition of approximately 299 miles of track in Michigan and Indiana, trackage rights over 85.5 miles of track, and lease rights from Norfolk Southern. In exchange for these lines and rights, Norfolk Southern was to acquire: a 33% “membership interest” in MCR; a majority share of MCR’s profits; retention of certain management rights over MCR, including several minority shareholders rights that the Board characterized as a “right to veto almost all of MCR’s significant financial and operational decisions”; retention of certain trackage and haulage rights over MCR; and certain restrictions on MCR’s ability to interchange traffic with other carriers. *MCR/Norfolk Southern Decision* at 2, 7-8. The Board determined that the acquisition of these rights would give Norfolk Southern “extensive control” over MCR, and therefore precluded treating MCR as a “person other than a rail carrier” under 49 U.S.C. § 10901(a)(4). *Id.* at 7-9. Because Norfolk Southern “retained too much control over MCR to allow [the Board] to find that this transaction [was] subject to section 10901,” MCR’s petition for an exemption from Section 10901 was denied. *Id.* at 11.

The transaction at issue in these proceedings is totally different from that rejected in the *MCR/Norfolk Southern Decision*. Here, the transaction at issue is a simple lease, not a joint venture. Only 123 miles of track<sup>3</sup> – less than one-third of the total trackage involved in the *MCR/Norfolk Southern* proceeding – would be leased to GER. More importantly, the lease between Norfolk Southern and GSR contains none of the provisions that the Board found objectionable in the *MCR/Norfolk Southern Decision*. Under the Norfolk Southern-GER lease:

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<sup>3</sup> In addition, Norfolk Southern will grant GER incidental trackage rights covering 0.43 miles.

- Norfolk Southern will have no ownership interest in GER. GER is, and will remain, a wholly-owned subsidiary of Watco.
- Norfolk Southern will receive no share of GER's profits.
- Norfolk Southern will not have any "veto power" or any other form of involvement in the management, financial, or operational decisions of GER.
- Norfolk Southern will not retain trackage rights over GER's line.
- GER will make its own separate transportation contracts with shippers with respect to the transportation that it performs.
- There will be no restrictions on GER's ability to interchange traffic with other carriers. Nor will there be any other interchange commitments. Thus, GER will be free to interchange with any carrier that it chooses.

The proposed transaction will produce substantial benefits, without in any way affecting competition. For example, GER intends to invest significant resources to ensure faster speeds on the line. The transaction will also help the area's economy by creating new jobs.

### **ARGUMENT**

#### **THE UTU HAS NOT SATISFIED THE REQUIREMENTS FOR THE ISSUANCE OF A STAY.**

A party seeking a stay must establish that: (1) there is a strong likelihood that it will prevail on the merits; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed; and (4) the public interest supports the granting of the stay. *Grand Elk Railroad, L.L.C. – Lease and Operation Exemption – Norfolk Southern Railway Co.*, Finance Docket No. 35187, Decision served December 22, 2008 ("*GER December 22 Decision*"), slip opinion, at 2; *The New York, Susquehanna and Western Ry. Corp – Discontinuance of Service Exemption – In Broome and Chenango Counties, NY*, Docket No. AB-286 (Sub-No. 5X), Decision served Sept. 30, 2008, 2008 WL 4415853 (S.T.B.), at \*1; *Northwestern Pacific R.R. Co. – Change In Operators Exemption – North Coast Railroad Authority, et al.*, Finance Docket No. 35073, Decision served Sept. 7, 2007, 2007 WL 2571417

(S.T.B.), at \*1. The party seeking the stay “carries the burden of persuasion on all of the elements required for such extraordinary relief.” *GER December 22 Decision*, at 2; *The New York, Susquehanna and Western Ry. Corp. – Discontinuance of Service Exemption*, *supra*, at \*1.<sup>4</sup> As demonstrated below, the UTU has not carried its burden of persuasion on *any* of these required elements.

**I. THE UTU HAS NOT EVEN ATTEMPTED TO SHOW A STRONG LIKELIHOOD THAT IT WILL PREVAIL ON THE MERITS.**

The UTU has not shown, and cannot show, that there is a strong likelihood that it will prevail on the merits. The Board’s scope of review is narrow in these proceedings, because they involve notices of exemption filed under class exemptions previously granted by the Board or by the Board’s predecessor, the Interstate Commerce Commission (“ICC”). As previously discussed, GER has filed a notice of exemption pursuant to the class exemption from Section 10901 set forth in 49 C.F.R. §§ 1150.31 *et seq.*, and Watco has filed a notice of exemption pursuant to the “continuation-of-control” class exemption set forth in 49 C.F.R. § 1180.2(d)(2).

Although the UTU purports to address the other requirements for a stay – irreparable harm, harm to other parties in the event of a stay, and the public interest – it does not even purport to address the issue of the likelihood of success on the merits. Petition at 2-3. The UTU’s reticence is understandable, because it cannot make such a showing.

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<sup>4</sup> See also, e.g., *Watco Companies, Inc. and Watco Transportation Services, Inc. – Continuance in Control Exemption – Michigan Central Railway, LLC*, Finance Docket No. 35065, Decision served Aug. 8, 2007, 2007 WL 2259784 (S.T.B.), at \*2; *Union Pacific R.R. Co. – Trackage Rights Exemption – BNSF Ry. Co.*, Finance Docket No. 34881, Decision served June 6, 2006, 2006 WL 1541439 (S.T.B.), at \*1; *Central Illinois R.R. Co. – Operation Exemption – Rail Line of the City of Peoria and the Village of Peoria Heights in Peoria and Peoria Heights, Peoria County, IL*, Finance Docket No. 34518, Decision served July 1, 2004, 2004 WL 1474648 (S.T.B.), at \*2; *Canadian Pacific Ry. Co. – Trackage Rights Exemption – Norfolk Southern Ry. Co.*, Finance Docket No. 34562, Decision served Oct. 27, 2004, 2004 WL 2619721 (S.T.B.), at \*3.

The ICC and the Board have already found that these two class exemptions satisfy the requirements for an exemption set forth in 49 U.S.C. § 10502(a) – *i.e.*, that the transaction is not necessary to carry out the Rail Transportation Policy, and either is of limited scope or is unnecessary to protect shippers from market abuse.<sup>5</sup> Consequently, the Board performs no case-by-case analysis to determine whether a party filing a notice of exemption under the class exemption meets the requirements for an exemption under Section 10502. *Exemptions Under 49 U.S.C. § 11343(e) For Finance Transactions Involving Non-Rail Intermodal Parties*, 5 I.C.C.2d 726, 727 (1989) (“In class exemption proceedings, the class findings adopted in [the class exemption decision] apply, and no case-by-case analysis is done”).<sup>6</sup>

Instead, in proceedings involving notices of exemption, the Board determines (1) whether the proposed transaction falls within the scope of the class exemption, (2) whether the notice contains the information required by the Board’s regulations; and (3) whether the information in the notice is complete (*i.e.*, includes all information required by the Board’s regulations) and is not false or misleading.<sup>7</sup> If the notice of exemption meets these requirements, the Board will

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<sup>5</sup> See *Class Exemption For the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810, 817 (1985) (“*Section 10901 Exemption Decision*”), *aff’d sub nom. Illinois Commerce Commission v. ICC*, 817 F.2d 145 (D.C. Cir. 1987); 49 U.S.C. § 1180.2(d).

<sup>6</sup> See also, *e.g.*, *SF&L Railway, Inc. – Acquisition and Operation Exemption – Toledo, Peoria and Western Ry. Corp. Between La Harpe and Peoria, IL*, Finance Docket No. 33995, Decision served Oct. 17, 2002, at \*5 (stating that the ICC adopted the class exemption for acquisition and operation of rail lines by noncarriers “because the consideration of individual applications for exemption from 49 U.S.C. § 10901 had become a ‘burdensome and unnecessary expenditure’ on the agency and the individual petitioners”) (quoting *Section 10901 Exemption Decision*, 1 I.C.C.2d at 811).

<sup>7</sup> See, *e.g.*, 49 C.F.R. § 1150.32(a), (e) (stating that, to qualify for class exemption for acquisitions and operations under Section 10901, applicant must file verified notice of exemption with required information and a brief caption summary, and – in the case of a carrier with projected annual revenue of at least \$5 million – post a labor notice); *id.* § 1150.32(c) (exemption is void *ab initio* if notice contains false or misleading information); *id.* §§ 1180.2(d), 1180.4(g)

permit the exemption to become effective except in those rare circumstances where the notice presents substantially complicated or controversial matters for which the class exemption was not designed.<sup>8</sup> However, the mere fact that a notice of exemption is challenged does not make it so “complicated” or “controversial” as to warrant rejection. *City of Alameda – Acquisition Exemption – Alameda Beltline R.R.*, Finance Docket No. 34798, Decision served April 3, 2006, 2006 WL 866564 (S.T.B.), at \*2.<sup>9</sup>

The UTU has failed to provide any evidence that the notices of exemption filed by GER and Watco do not meet the applicable standards. It does not question that the transactions encompassed by the notices of exemption fall within the applicable class exemptions. It also

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(transaction is exempt if it is within one of 8 specified categories and applicant files notice of exemption which includes information required by Board’s regulations).

<sup>8</sup> *E.g., Greenville County Economic Development Corp. – Discontinuance of Service Exemption – In Greenville County, SC*, AB-490X, STB Decision served January 29, 2004 (class exemption discontinuance procedures under an out-of-service exemption were not appropriate when the failure to initiate service were under pending litigation and not reported to the Board); *Burlington Northern and Santa Fe Ry. Co. – Acquisition and Operation Exemption – State of South Dakota*, Finance Docket No. 34645, Decision served Jan. 14, 2005, 2005 WL 79210 (S.T.B.), at \*2 (“*South Dakota*”) (rejecting notice of exemption because class exemption is “typically reserved for uncomplicated and noncontroversial issues,” whereas BNSF’s notice of exemption involved lines then currently in litigation over a contractual dispute over the scope of rights retained under applicable agreements and the existence of access and purchase option rights, which complicated the transaction beyond the bounds intended for the class exemption procedure); *Riverview Trenton R.R. Co. – Acquisition and Operation Exemption – Crown Enterprises, Inc.*, Finance Docket No. 33980, Decision served Feb. 15, 2002, 2002 WL 226940 (S.T.B.), at \*2 (“*Riverview Trenton*”) (revoking exemption covered by notice because it involved the proposed conversion of private carrier operations into common carrier service, thereby raising issues of local control, and therefore attracting substantial controversy and opposition from the public agencies at risk of losing said control).

<sup>9</sup> The Board distinguished the *City of Alameda* proceeding from that involved in *South Dakota* and *Riverview Trenton*, even though both involved litigation. In *South Dakota*, substantial issues involving the level of service to be provided in the line, and what party would be permitted to grant other carriers access to the lines involved, were in question. In the *City of Alameda* proceeding, however, the Board found that, by contrast, “the City’s notice of exemption simply involve[d] the transfer of a line from one party to another, a transaction more limited in scope than *Riverview Trenton*, and therefore a stay [was] unnecessary.” 2006 WL 866564, at \*3.

does not challenge the completeness or veracity of the information set forth in the notices. *See* Petition at 2-3. Consequently, it cannot establish a strong likelihood of success on the merits. *See, e.g., Northwestern Pacific R.R. Co. – Change in Operators Exemption, supra*, 2007 WL 2571417, at \*1 (because petitioner had not shown that information in notice of exemption was false or misleading, it had “not met its burden of showing a likelihood of success on the merits”); *Union Pacific R.R. Co. – Trackage Rights Exemption – BNSF Railway Co.*, Finance Docket No. 34880, Decision served June 5, 2006, 2006 WL 1529120 (S.T.B.), at \*1 (party seeking stay had not demonstrated strong likelihood of prevailing on the merits, since “UP has submitted sufficient information with its notice to comply with our rules at 49 C.F.R. § 1180.4(g)”).

The UTU also does not argue that the notices should be rejected on the ground that they are “complicated” or “controversial.” As the Board has recognized, a mere transfer of a line from one party to another, as would occur here, does not fit within either of those categories. *City of Alameda – Acquisition Exemption, supra*, 2006 WL 866564, at \*3. Furthermore, as described above, the rare cases where the Board has rejected notices of exemption on such grounds involved complex issues that went beyond mere disagreements between the parties. *See* fns. 8-9, *supra*. That situation has not been shown to exist here.

Because the UTU has offered no legitimate basis for rejecting the notices of exemption, it cannot satisfy the first element of the Board’s test for a stay. That deficiency, by itself, requires that the Petition be denied. *See GER December 22 Decision*, at 2 (“MEDC’s request for stay will be denied because MEDC has not met, or even discussed, the criteria for granting a stay”).

## **II. THE UTU HAS FAILED TO SHOW THAT IT WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A STAY.**

The UTU also has not shown that it will suffer irreparable harm in the absence of a stay. The UTU claims that its members will suffer irreparable harm because “UTU members will be

displaced as a result of this lease, and it will be nearly impossible to unscramble the egg of seniority rights and residence changes created by this 49 U.S.C. § 10901 lease proceeding.” Petition at 2. The UTU’s claim ignores the fact that the Board does not impose employee protective conditions on this class of exemptions. *Section 10901 Exemption Decision*, 1 I.C.C.2d at 813-816. In any event, as discussed below, the proposed lease will result in the creation of *additional* jobs in Michigan.

The UTU also suggests that, absent a stay, it will have insufficient time to review the responses to the discovery requests that it recently served on the Applicants and Norfolk Southern. Petition at 2. This suggestion, however, can hardly be regarded as constituting “irreparable harm.” In any case, the UTU’s claim of insufficient time is incorrect. The responses to the UTU’s discovery requests must be served by January 5, 2009 – *26 days* before the lease/operation exemption is scheduled to become effective. Those 26 days give the UTU ample time to review the responses to the discovery requests (which consist of eight interrogatories and three document requests), and to submit any additional filings that it may deem necessary, long before the scheduled effective date of the lease/operation exemption.

Even leaving aside the 26-day period between the service of the discovery responses and the scheduled date of the exemption, the time constraints that the UTU alleges are entirely a matter of its own making. Although the Board published the notices of exemption on November 17, 2008, the UTU did not serve the discovery requests (or file its Petition) until December 19, 2008 – more than one month later. Two other interested parties, the Michigan Economic Development Corporation (“MEDC”) and Marquette Rail, L.L.C., were not only aware of the notices of exemption, but filed requests for a stay (or, in the case of Marquette Rail, a statement

of intent to seek a stay) almost four weeks ago.<sup>10</sup> The UTU, which offers no explanation for its delay, should not be permitted to wait for an extended period to serve discovery requests and then contend that it will lack sufficient time to review discovery responses if a stay is not issued. The Board should not tolerate such gamesmanship.

Finally, notwithstanding the UTU's professed need for responses to its discovery requests, the discovery that the UTU seeks either has been answered through the verified submissions already made to the Board, or is not relevant in this lease proceeding.<sup>11</sup> Although the discovery that the UTU seeks may have been relevant concerning the creation of the joint venture that was at issue in the *Michigan Central Railway* proceeding (and, indeed, is largely duplicative of discovery served in that proceeding), it is not relevant in the instant proceedings, which simply involve the lease of a line to a wholly-owned subsidiary of Watco. It is not reasonable for the UTU to seek a stay in order to review discovery responses unless there is some reason to believe that the discovery responses will provide information that is relevant to the issues in this proceeding and necessary to enable the Board to make a reasoned determination. Even a cursory review of the UTU's requests, however, demonstrates that the

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<sup>10</sup> See letter from James C. Epolito, President and CEO of the MEDC, to Anne K. Quinlan, STB, dated November 26, 2008 ("MEDC Letter"); letter from Myles L Tobin, attorney for Marquette Rail, to Anne K. Quinlan, dated November 26, 2008. Although the Board did not publish the notices until November 17, the notices have been listed in the daily filings on the Board's web site since shortly after their filing on November 3. The Board denied the petition for stay filed by MEDC. *GER December 22 Decision*.

<sup>11</sup> For example, the UTU's Interrogatory No. 1 asks for the ratio or percentages by which Norfolk Southern and Watco will share in the profits or earnings of GER. The notice of exemption filed by GER, however, already makes clear that Norfolk Southern will not receive any earnings, losses, or distributions from GER. Interrogatory No. 9 asks "whether NSR viewed the lines to be conveyed to GER as profitable over each of the last five years" – information that is plainly irrelevant to the Board's review of this notice-of-exemption proceeding.

discovery sought by the UTU is not designed to elicit such information.<sup>12</sup> Consequently, the UTU's discovery requests provide no basis for the issuance of a stay.

### **III. THE UTU HAS FAILED TO SHOW THAT OTHER INTERESTED PARTIES WILL NOT BE SUBSTANTIALLY HARMED BY THE ISSUANCE OF A STAY.**

The UTU has failed to show that other interested parties will not be substantially harmed by the issuance of a stay. The UTU asserts only that "Applicant would not be harmed considering the related transaction was filed back on July 13, 2007, and there does not seem to be any great rush to consummate here by Applicant based on its late filing of its notice required under 49 U.S.C. § 1150.32(e)." Petition at 2-3. However, that assertion is factually erroneous, because the proposed lease is most emphatically *not* "related to" to the Michigan Central transaction. Moreover, the UTU's assertion begs the question, because the Applicants are not the only interested parties here.

The evidence shows that the issuance of a stay would cause substantial harm to other interested parties. As discussed below, a stay would prevent the creation of several new jobs on the GER, at a time when Michigan's economy is in dire straits. A stay would also deny shippers higher-quality service on the line, which would result from the capital improvements that GER intends to make. Thus, if a stay is issued, the citizens of Michigan and the shippers on the line will be substantially injured.

### **IV. THE ISSUANCE OF A STAY IS NOT IN THE PUBLIC INTEREST.**

Finally, the UTU has not shown that the issuance of a stay would be in the public interest. Although the UTU asserts that it would be in the public interest for the Board to take a "more sober look" and "more careful look" at the transaction (Petition at 2), the current schedule

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<sup>12</sup>A copy of the UTU's First Set of Interrogatories is attached hereto as Attachment 1; a copy of the UTU's Request for Production of Documents is attached hereto as Attachment 2.

already gives the Board ample time to take such a “look” even absent a stay. Because the notices of exemption were filed with the Board on November 3, the Board will have had nearly three months to consider the transaction before the January 31st effective date of the lease/operation exemption.

Apparently to support of its public interest argument, the UTU cites the one-page stay request by the MEDC, which was based upon the demonstrably incorrect statement that the proposed transaction “would effectively eliminate one of Marquette Rail’s Class I rail connection [sic] at Grand Rapids.” See Petition at 2; MEDC Letter at 1. However, the Board has already determined that the MEDC’s claim is an insufficient basis for a stay. In its decision issued this week rejecting the MEDC’s stay request, the Board found that the factual basis for the MEDC’s claim is “questionable,” based upon the substantial evidence submitted by GER and Norfolk Southern “that there is currently no direct physical connection between Marquette [Rail] and NS at Grand Rapids and that what little traffic moves between these carriers must do so via an intermediate switch over track owned by CSX Transportation, Inc. (CSXT), subject to an interchange commitment fee charged by CSXT.” *GER December 22 Decision*, at 2.<sup>13</sup>

The evidence plainly shows, in fact, that the issuance of a stay would be contrary to the public interest, because it would deprive the Michigan economy of new jobs and new investment, and would deny shippers improved rail service. As described in a recent press release by Watco (and in the certificate of compliance with labor notice requirements that GER

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<sup>13</sup>The other justification that the UTU offers for the “more sober” and “more careful” look that it seeks – an alleged Dunn & Bradstreet rating and credit score for Watco – also does not withstand scrutiny. Petition at 2 n.1. The UTU’s claim, based on this report, that Watco will not have sufficient access resources to make capital improvements is completely unsubstantiated and speculative. Furthermore, the UTU’s claim appears to constitute an attempt to introduce a “fitness” standard that simply is not relevant in a notice-of-exemption proceeding.

recently filed with the Board), GER would employ at least 58 persons in various management, transportation, mechanical, engineering, car repair, signal, and clerical positions.<sup>14</sup> These jobs would be particularly beneficial to the economy of Michigan, where most of the line is located and where the unemployment rate is currently the highest in the Nation.<sup>15</sup> Given the current financial crisis involving Ford, Chrysler, and General Motors, that rate is likely to worsen.<sup>16</sup> Consequently, the jobs generated by GER would provide a badly needed economic benefit to Michigan.

The proposed transaction will also result in an increase in the quality of rail service provided to shippers using the Grand Rapids-Elkhart line. According to Watco, GER “will be investing significant resources in improving the railroad” to increase the speed of the line (which is only 10 miles per hour on some portions) to 25 miles per hour. *See* Attachment 3 hereto. This will provide shippers with faster and more efficient transportation service. The Board has recognized that such a result furthers the public interest. For example, in *Yellowstone Valley R.R., Inc. – Lease and Operation Exemption – BNSF Ry. Co.*, Finance Docket No. 34737, Decision served Aug. 10, 2005, 2005 WL 1900925 (S.T.B.), the Board found that a party seeking a stay had not shown that a stay would further the public interest, in view of the efficiencies and

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<sup>14</sup> “Grand Elk Railroad Update,” Watco press release issued December 3, 2008 (attached hereto as Attachment 3); letter from Karl Morell to The Honorable Anne K. Quinlan, filed Dec. 1, 2008, in Docket No. 35187 (attached hereto as Attachment 4).

<sup>15</sup> According to the Bureau of Labor Statistics, in November 2008 the unemployment rate in Michigan was 9.6 percent, an increase from 7.4 percent in November 2007. Michigan lost nearly 113,000 jobs between November 2007 and November 2008. Bureau of Labor Statistics, “Economic News Release – Regional and State Employment and Unemployment Summary,” dated December 19, 2008 (found at <http://stats.bls.gov/news.release/laus.nr0.htm>).

<sup>16</sup> Even before the “Big Three” auto manufacturers sought aid from Congress, General Motors announced that it would close its stamping plant at Grand Rapids by the end of 2008. Notice of Exemption filed by GER in Finance Docket No. 35187, at 8.

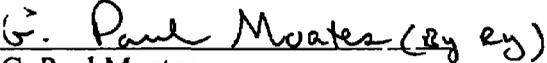
improved service that the transaction would produce: "Allowing the transaction to proceed is consistent with Congressional intent, as reflected by laws encouraging the formation of short line and regional carriers to serve the public interest." *Id.* at \*3. The Board's reasoning is equally applicable here. Thus, the public interest requires that the UTU's Petition be denied.

### CONCLUSION

Because the UTU has failed to show any of the elements required for the issuance of a stay, the Petition For Stay should be denied.

Respectfully submitted,

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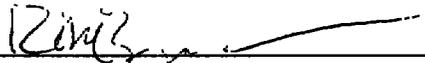
  
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1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000

Attorneys for  
Norfolk Southern Railway Company

Dated: December 23, 2008

## CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2008, I caused a copy of the foregoing Norfolk Southern Railway Company's Reply To United Transportation Union's Petition for Stay to be served to all parties listed in the official service list in this proceeding by first class mail, postage prepaid or a more expeditious method of delivery.

  
Richard M. Bryan

# **ATTACHMENT 1**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35187**

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**GRAND ELK RAILROAD, LLC –  
LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

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**AND**

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**FINANCE DOCKET NO. 35188**

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**WATCO COMPANIES, INC. –  
CONTINUANCE IN CONTROL EXEMPTION –  
GRAND ELK RAILROAD, LLC**

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**UNITED TRANSPORTATION UNION'S  
FIRST SET OF INTERROGATORIES TO  
NORFOLK SOUTHERN RAILWAY COMPANY,  
GRAND ELK RAILROAD, AND WATCO COMPANIES**

Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107  
Tel: (216) 228-9400  
Fax: (216) 228-0937  
[d\\_elliott@utu.org](mailto:d_elliott@utu.org)

Pursuant to Federal Rules of Civil Procedure 33, United Transportation Union ("UTU") submits its First Set of Interrogatories to Norfolk Southern Railway Company, Grand Elk Railroad ("Grand Elk" or "GER"), and Watco Companies which must be answered separately, in writing and under oath, and delivered to United Transportation Union, 14600 Detroit Avenue, Lakewood, Ohio 44107, within fifteen days, of service.

#### **DEFINITIONS AND INSTRUCTIONS**

A. The terms Norfolk Southern Railway Company ("NSR"), Grand Elk Railroad ("GER") or Watco Companies as used herein refer to any person, including attorneys and law firms, acting or purporting to act on its behalf.

B. The terms United Transportation Union or UTU as used herein refer to any subunit, official, employee, agent, consultant, or representative, or any other person, including attorneys and law firms, acting or purporting to act on its behalf.

C. The term "person" as used herein means all individuals or entities, including, but not limited to, government agencies, independent establishments, natural persons, labor unions, groups of natural persons acting in a collegial capacity (e.g. as a committee, board of directors, etc.), corporations (whether profit or non-profit), partnerships, associations, joint ventures, and any other incorporated or unincorporated business or social entity.

D. The term "document" as used herein means all written or recorded material of any kind or character in your possession, custody or subject to your control, or within your knowledge, including, without limitation, statements, letters, correspondence, telegrams, memoranda, notes, records, reports, studies, interoffice communications, calendar and diary entries, microfilm, bulletins, circulars, pamphlets, messages, invoices, charts, tabulations, summaries or abstracts, video or audio recordings, work sheets, surveys, graphs, statistics, tables, photographs, rules, regulations, opinions,

interpretations, guidelines, any notes or writings pertaining to any meetings, or other oral or telephone communications, electronic mail, or any data or information stored or saved on any computer hard disk, floppy disk, tape, or other medium, any computer print-outs, computer software or code, whether in machine or human readable form on any medium, and all other documentary material, including non-identical copies (whether different from the original because of any alterations, notes, comments, or other material contained thereon or attached thereto or otherwise, and whether a draft or final version).

E. The term “relate or refer to” as used herein means to make a statement about, discuss, describe, reflect, identify, deal with, consist of, explain, comprise, or in any way pertain in whole or in part, directly or indirectly, to the subject.

F. The term “explain the basis” as used herein means to state all facts, identify all documents and oral communications, and describe all legal theories with respect to the subject matter of the interrogatory.

G. The term “identify” and its cognates, when referring to a person, means to state the person’s full name, current home address and telephone number, current business address and telephone number, occupation, and position/job title. If you are unable, after earnest effort, to secure the home and/or business address and telephone number of the identified person, you shall supply the person’s last known home and/or business address and telephone number, and the name and location of the person’s last known employer. The term “identify” and its cognates, when referring to a situation or fact, or an occurrence or object, means to state each and every fact known concerning the information requested by the interrogatory, including, without limitation, (a) the identity of each person having knowledge of each fact or opinion relating to the information requested, (b) the identity of each document showing or related to the answer given or any part of the answer given, and (c) all relevant

dates and time periods.

H. The term “describe in detail” and its cognates means to state each and every fact known concerning the information requested by the interrogatory, including, without limitation, (a) the identity of each person having knowledge of each fact or opinion relating to the information requested, (b) the identity of each document showing or relating to the answer given or any part of the answer given, and (c) all relevant dates and time periods.

I. The term “communication” as used herein means every manner or means of discourse, transfer or exchange of information, whether oral, electronic, by document, or otherwise, and whether face to face, in a meeting, by telephone, mail, electronic mail, personal delivery, or otherwise.

J. The term Finance Docket(s)” as used herein means the original Finance Docket, and all subsequent amendments thereto, filed in this case.

K. If you respond to any interrogatory by reference to any document which you assert to be privileged or otherwise excludable from discovery, you are requested to provide the following information: the author, the recipient or addressee, all copy recipients, the date, a description of the document, the type of privilege being claimed, and the interrogatory to which the document is responsive.

L. If you respond to any interrogatory by reference to any document formerly in your possession, custody, or control which has been lost or destroyed, you are requested to:

(a) Identify the document and describe its contents in detail; and

(b) State when the document was lost or destroyed and, if destroyed, identify each person having knowledge concerning such destruction, the person requesting and performing the destruction, state the reasons for the destruction, and identify each document evidencing the document’s prior existence and/or facts concerning its destruction.

M. If you are unable to provide an exact date(s), time(s), or amount(s) where such information is requested in these interrogatories, you are requested to approximate this information to the best of your ability.

N. In responding to each interrogatory, identify every person who assisted you in preparing your answer, or supplied you with information to prepare your answer. If any of the information furnished in the following interrogatories is not within your personal knowledge, identify each person who has personal knowledge of the information provided.

O. The use of the singular form of any word used herein includes the plural and vice versa.

P. The words "and" and "or" as used herein are conjunctive and disjunctive.

Q. "Each" shall include the terms each and every.

### **INTERROGATORIES**

**Interrogatory No. 1.** Describe the ration or percentages by which NSR and Watco will share in the profits of Grand Elk; and/or explain the percentages by which Grank Elk will distribute earnings to the NSR and Watco. To the extent that sharing of revenues and/or profits will be based on a formula, please provide that formula.

**Response:**

**Interrogatory No. 2.** Explain the statement at footnote 1 on page 5 of Grand Elk's petition for exemption that "GER must comply with lease provisions that require it to maintain the leased lines and GER is prohibited from granting other carriers trackage rights over the line."

**Response:**

**Interrogatory No. 3:** State whether there are any restrictions, limitations, and or penalties on Grand Elk with respect to its ability to contract out any railroad work. In particular, state whether GER can only contract with Watco and/or Watco subsidiaries for any railroad work on the lines to be conveyed to Grand Elk, and whether there are penalties or conditions if GER contracts with an entity other than Watco or a Watco subsidiary for any railroad work on the lines to be conveyed to GER.

**Response:**

**Interrogatory No. 5:** State whether Watco will contribute locomotives to GER. If so, state whether there are any restrictions, limitations, conditions or security interests on those locomotives.

**Response:**

**Interrogatory No. 6:** State whether there were any original plans to transfer the lines to be conveyed to GER or to any other entity where NSR would have any interest in the acquiring entity. If so, explain why there was a change to the current structure for the transaction.

**Response:**

**Interrogatory No. 7:** State whether any shippers were contacted about the proposed sale of the NSR lines to be conveyed to GER before the petition for exemption was filed. If so, describe the nature of the contacts, any input or feedback given by the shipper(s) and any changes in the plans of NSR and Watco as a result of the shipper input or feedback.

**Response:**

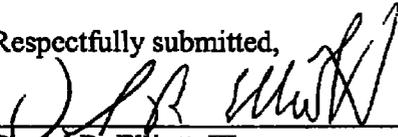
**Interrogatory No. 8:** Describe the condition of the NSR lines to be conveyed to GER and describe any plans NSR had for maintenance, repair and/or renewal of the lines. Identify any document that placed a value on the lines, structures, facilities and equipment to be conveyed by NSR to GER before NSR contemplated their sale, and any document that placed a value on the lines, structures, facilities, and equipment to be conveyed by NSR to GER after NSR contemplated their sale.

**Response:**

**Interrogatory No. 9:** State whether NSR viewed the lines to be conveyed to GER as profitable over each of the last five years. Provide any information, data, and/or statistics that NSR has that indicates or reflects NSR's calculation of the profitability of the lines to be conveyed to GER.

**Response:**

Respectfully submitted,



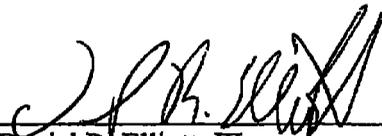
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Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107  
Tel: (216) 228-9400  
Fax: (216) 228-0937

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing United Transportation Union's Interrogatories to NSR, GER and Watco Companies and has been served this 19<sup>th</sup> day of December, 2008 via first-class, postage pre-paid mail upon the following:

All Parties of Record

  
\_\_\_\_\_  
Daniel R. Elliott, III

# **ATTACHMENT 2**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 35187**

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**GRAND ELK RAILROAD, LLC –  
LEASE AND OPERATION EXEMPTION –  
NORFOLK SOUTHERN RAILWAY COMPANY**

---

**AND**

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**FINANCE DOCKET NO. 35188**

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**WATCO COMPANIES, INC. –  
CONTINUANCE IN CONTROL EXEMPTION –  
GRAND ELK RAILROAD, LLC**

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**UNITED TRANSPORTATION UNION'S  
REQUEST FOR PRODUCTION OF DOCUMENTS**

Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107  
Tel: (216) 228-9400  
Fax: (216) 228-0937  
[d\\_elliott@utu.org](mailto:d_elliott@utu.org)

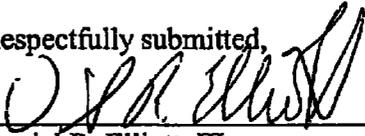
Pursuant to 49 C.F.R. § 1114.30, United Transportation Union (“UTU”) directs the following documents requests to Norfolk Southern Railway Company, Grand Elk Railroad and Watco Companies, Inc.

Responses should be served as soon as possible, and in no event later than 15 days from the date of service hereof. UTU will pay all reasonable costs for duplication and delivery of documents to its attorneys. “Documents” are writings or compilations of information in any form, including electronic messages. Karl Morell should contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

**DOCUMENT REQUEST**

1. Produce the documents referred to in the above-captioned exemption filings, including, but not limited to, any agreements with respect to the lines at issue in Finance Docket Nos. 35187 and 35188, and any and all attachments or exhibits thereto.
2. Produce any and all documents related to the transactions in Finance Docket Nos. 35187 and 35188, which pertain to any labor matters.
3. Produce any and all documents reviewed by NSR, Watco and Grand Elk in answering UTU’s Interrogatories herein.

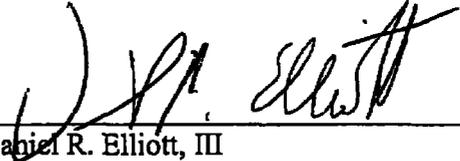
Respectfully submitted,

  
\_\_\_\_\_  
Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107  
Tel: (216) 228-9400  
Fax: (216) 228-0937

**CERTIFICATE OF SERVICE**

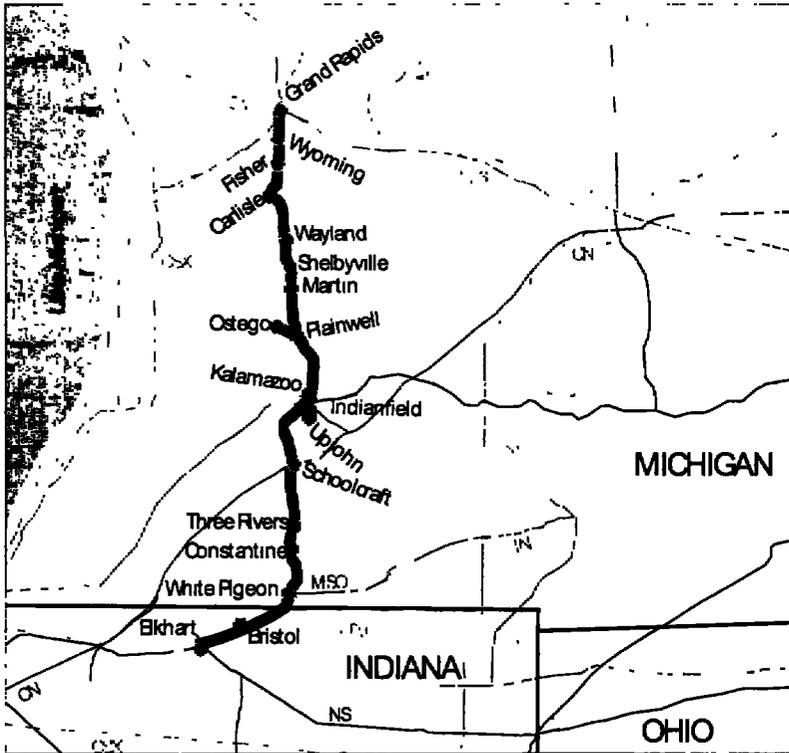
This is to certify that a copy of the foregoing United Transportation Union's Request for Production of Documents to Norfolk Southern Railway, Grand Elk and Watco Companies has been served this 19<sup>th</sup> day of December, 2008 via first-class, postage pre-paid mail upon the following:

All Parties of Record

  
\_\_\_\_\_  
Daniel R. Elliott, III

# **ATTACHMENT 3**

# GRAND ELK RAILROAD UPDATE



The Grand Elk Railroad filed an application Nov. 3, 2008, with the Surface Transportation Board (STB) to operate 122.9 miles of railroad that runs from Grand Rapids, Mich. to Elkhart, Ind. The filing process is expected to take 60 days with approval anticipated by January 26, 2009 and the start-up date for operations is March 1, 2009. The Grand Elk is taking the lines over from Norfolk Southern.

The Grand Elk Railroad will be operated by Watco Companies, Inc. (Watco) and serve more than 55 Customers in Michigan and Indiana. Watco is a Pittsburg, Kan. based transportation company established in 1983. Watco's focus on Customer Satisfaction has grown the company into an all-encompassing industry serving rail, mechanical, switching, storage, trucking, warehousing and intermodal needs of Customers throughout 24 states.

The Grand Elk will help the area's economy by providing freight service to Customers at various locations. As part of this transaction the Grand Elk will be investing significant

resources in improving the railroad. Currently, speeds on portions of the railroad have dropped to 10 mph and the Grand Elk Railroad will be inserting ties and working on the line to bring the speed up to 25 mph from Elkhart to Grand Rapids.

Annual carloads are projected at 22,000, the equivalent of 60,000-80,000 trucks, and will provide shippers with a cost effective method to transport product. Commodities that will be shipped on the Grand Elk include automotive parts, plastics, metals, lumber and wood products and aggregates.

The primary mission of the Grand Elk will be to safely provide service to its 55 existing Customers, and to add value to the communities that are served by growing the business on the railroad.

Three different yards will be located on the Grand Elk line; the Botsford in Kalamazoo, Mich., the Fischer in Wyoming, Mich., and the Hughart in Grand Rapids, Mich., which will house the locomotive shop. The Botsford Yard consists of 19 tracks, the Hughart Yard has 20 and the Fischer Yard has 8 tracks.

The Grand Elk office will be located in Kalamazoo at the Botsford Yard on Mill Street. Grand Elk Railroad will interchange with three Class I railroads including: Norfolk Southern at Kalamazoo, Mich., and Elkhart, Ind., Canadian National at Kalamazoo, Mich., and the CSX interchanges in Grand Rapids, Ind. Three short lines, Marquette Railroad, Mid-Michigan Railroad and the Grand Rapids Eastern Railroad will interchange at Grand Rapids, Mich. The Michigan Southern Railroad will interchange at White Pigeon, Mich.

Fifty-four people will be employed by the Grand Elk in the following areas: seven management positions, 27 transportation, three mechanical, eight engineering (track), three car repair, four signal and two clerical. All positions will be full-time with benefits included.

More information about Watco can be found at [www.watcocompanies.com](http://www.watcocompanies.com).

## CONTACT:

Operations and Human Resources: *Rodney Gordon*, General Manager: (620) 704-3011

Marketing and Customer Information: *Allan Roach*, Senior VP Marketing, (620) 687-3478

Transaction Management: *Ed McKechnie*, Chief Commercial Officer, (620) 232-4184

# **ATTACHMENT 4**

# BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307

FACSIMILE 202-783-6947

KARI MORFILL

kmorfill@bjllp.com

December 1, 2008

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street S.W.  
Washington, DC 20423-0001

Re: Finance Docket No. 35187, Grand Elk Railroad, LLC - Lease and  
Operation Exemption - Norfolk Southern Railway Company

Dear Acting Secretary Quinlan.

On November 25, 2008, Grand Elk Railroad, LLC ("GER"), certified to the Board that on November 20, 2008, GER had posted the attached Notice at the workplace of the employees on the rail lines that are the subject of this transaction and that on November 25, 2008, GER served a copy of the Notice on the national offices of all labor unions with employees on the affected line. Since that time, it has come to the attention of GER that there are two additional labor unions that were not served with a copy of the Notice and that the Notice was not posted at one workplace. Although no employee of those two labor unions will be affected by this transaction, GER today served a copy of the Notice on those two additional labor unions and had posted the Notice at the additional workplace.

Accordingly, GER hereby certifies that on November 20, 2008 and December 1, 2008, GER had posted the attached Notice at the workplace of the employees on the rail lines that are the subject of this transaction and that on November 25, 2008 and December 1, 2008, GER served a copy of the Notice on the national offices of all labor unions with employees on the affected rail lines.

In light of this revised certification, the Notice of Exemption in this proceeding will become effective on January 31, 2009.

**BALL JANIK LLP**

The Honorable Anne K. Quinlan  
December 1, 2008  
Page 2

If you have any questions regarding this matter, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Karl Morell". The signature is written in a cursive, flowing style with a large initial "K".

Karl Morell

Enclosure

## NOTICE

Grand Elk Railroad, L.L.C. ("GER"), a Delaware Limited Liability Company, will be leasing and operating the freight portion of the rail lines located between: (1) Milepost KH 1.4 at Elkhart, IN and Milepost KH 27.4 at Three Rivers, MI; (2) Milepost FB 27.3 at Three Rivers and Milepost FB 102.3 at Grand Rapids; (3) Milepost KZ 94.25 and Milepost KZ 95.0 (Kalamazoo Industrial Track); (4) Milepost OW 66.6 and Milepost OW 70.24 (Plainwell Industrial Track); (5) Milepost XH 88.10 and Milepost XH 92.40 (Hastings Running Track); (6) Milepost CQ 42.8 and Milepost CQ 43.9 (CK&S Industrial Track); (7) Milepost KY 0.0 and Milepost KY 3.2 (B O Secondary); (8) Milepost UP 0.0 and Milepost UP 6.7 (Upjohn Secondary); (9) Milepost QY 421.2 and Milepost QY 421.3 (Quincy Secondary); (10) Milepost VW 106.0 and Milepost VW 106.9 (Comstock Industrial Track); (11) Milepost AZ 69.6 and Milepost AZ 70.4 (Airline Extension); and (12) Milepost IJ 44.3 and Milepost IJ 44.7 (CK&S Industrial Track), along with 0.43 mile of trackage rights over the Michigan Main Line between MP 143.03 and 142.60 at Botsford Yard and the yard tracks in Botsford Yard located between Milepost MH 141.8 and Milepost MH 142.7

**GER operations on the leased lines are expected to commence on March 1, 2009.**

**As a result of operating the freight portion of the rail lines, GER expects to have approximately 58 employment opportunities, including 7 managerial positions, in the following locations: Grand Rapids and Kalamazoo. The non-managerial positions require the following minimum skills and/or qualifications:**

***Conductor:***

Approximately 15 positions as follows: Grand Rapids (4) and Kalamazoo (11). These positions require the following minimum skills and/or qualifications:

- At least 1 year experience as a Conductor/Brakeman.
- Must have Qualifications on the General Code of Operating Rules (GCOR) and have passed a written test in the past 18 months.
- Must have an understanding of air brake and mechanical systems of a train and locomotives, and pass a written test to verify competency.

***Engineer:***

Approximately 12 positions as follows: Grand Rapids (2) and Kalamazoo (10). These positions require the following minimum skills and/or qualifications:

- At least 1 year experience as a Locomotive Engineer.
- Must possess a valid Engineer's certificate issued by a program in compliance with 49 CFR Part 240.
- Must be able to meet all hearing and vision requirements of 49 CFR Part 240.
- Must have Qualifications on the General Code of Operating Rules (GCOR) and have passed a written test in the past 18 months.
- Must have an understanding of air brake and mechanical systems of a train and locomotives, and pass a written test to verify competency.

***Clerks:***

Approximately 2 positions located in Kalamazoo, MI. These positions require the following minimum skills and/or qualifications:

- Involved in day to day record keeping, billing, filing, and typing and general office duties.
- Must possess a high school education or GED, and a minimum of 6 months job-related experience; or equivalent combination of education and experience.
- This position will be accountable to all managers within the operation and is responsible for office coordination of activities.
- Other duties as assigned.

***Locomotive Electrical:***

Approximately 1 position located in Grand Rapids, MI. This position requires the following minimum skills and/or qualifications.

- Makes repairs and performs scheduled maintenance to both inbound and outbound locomotives.
- Must have knowledge of and comply with FRA standards.
- Must possess a high school education or GED, and a minimum of 12 months job-related experience; or equivalent combination of education and experience.
- Prefer background in technical training in Electrical maintenance/repair.
- Demonstrated knowledge and ability in using required hand and power tools.

***Locomotive Mechanical:***

Approximately 2 positions located in Grand Rapids, MI (1) and Kalamazoo, MI (1). These positions require the following minimum skills and/or qualifications:

- Makes repairs and performs scheduled maintenance to both inbound and outbound locomotives.
- Must have knowledge of and comply with FRA standards.
- Must possess a high school education or GED, and a minimum of 12 months job-related experience; or equivalent combination of education and experience.
- Prefer background in technical training in Diesel maintenance/repair.
- Demonstrated knowledge and ability in using required hand and power tools.

***Track Inspector:***

1 position located in Kalamazoo, MI. This position requires the following minimum skills and/or qualifications:

- Inspect railroad tracks, switches, crossings, bridges, roadbed and other parts of the railroad for any defects that would affect the safe operation of train traffic. The individual must be familiar with the Federal Railroad Administration Track Safety Standards part 213 and be able to Supervise activities of workers engaged in the installation and repair of railroad track on specified territory according to 49 CFR 213.7.
- Implement remedial action on defects pending repair.
- Inspect completed work to verify conformance to government regulations.

- Prepare inspection reports for management and government compliance.
- Must possess 3 years supervisory experience in Railroad Track Maintenance.

***MoW Foreman:***

Approximately 2 positions as follows: Grand Rapids (1) and Kalamazoo (1). These positions require the following minimum skills and/or qualifications:

- Supervises activities of workers engaged in the installation and repair of railroad track on specified territory according to 49 CFR 213.7.
- Installs and repairs railroad track on specified territory of railroad, is able to read, understand and apply, FRA track standards, track charts, track engineering standards book, GCOR, Safety rules, curve data, and be able to plan, project and apply the work force in an effective and efficient manner, provide track inspections,
- Supervise all track and switch repair/ rebuilding and new construction while maintaining a safe work environment.
- Follows guidelines for proper maintenance of track equipment and complies with applicable Roadway Worker Protection rules.
- Must possess 3 years supervisory experience in Railroad Track Maintenance.

***MoW laborer:***

Approximately 6 positions as follows: Grand Rapids (2) and Kalamazoo (4). These positions require the following minimum skills and/or qualifications:

- Perform tasks associated with track work including but not limited to, pulling and driving spikes, replacing ties, surfacing track, changing rail, bars, and other track apparatus.
- Must be willing to learn and apply FRA rules and regulations and be able to perform maintenance in a timely manner.
- Must be willing to learn to operate in a safe and efficient manner, all equipment and tools associated with track maintenance.
- Must possess a high school education or GED, and a minimum of 12 months job-related experience; or equivalent combination of education and experience.

***Welder:***

Approximately 1 position as follows: Kalamazoo (1). This position requires the following minimum skills and/or qualifications:

- Welds metal parts together using both gas welding or brazing and any combination of arc welding processes.
- Performs related tasks such as thermal cutting and grinding.
- Repairs broken or cracked parts, fills holes, and increases size of metal parts.
- Must possess a high school education or GED, and a minimum of 3 years job-related experience; or equivalent combination of education and experience.

***Welder Helper:***

Approximately 1 position as follows: Kalamazoo (1). This position requires the following minimum skills and/or qualifications:

- Welds metal parts together using both gas welding or brazing and any combination of arc welding processes.
- Performs related tasks such as thermal cutting and grinding.
- Repairs broken or cracked parts, fills holes, and increases size of metal parts.
- Must possess a high school education or GED, and a minimum of 6 months job-related experience; or equivalent combination of education and experience.

***Signal Supervisor:***

1 position located in Kalamazoo, MI. This position requires the following minimum skills and/or qualifications:

- Directs signal work leaders and foreman to complete construction projects and required maintenance including FRA required test and inspections.
- Inspects signal equipment to determine sequence of repair.
- Directs and assists workers in installing or repairing signal equipment, such as wayside signals, defect detectors and crossing protections. Inspects completed work for conformance to company specifications.
- Must possess a high school education or GED, and a minimum of 5 years job-related experience; or equivalent combination of education and experience.

***Signal Maintainer:***

Approximately 4 positions as follows: Grand Rapids (1) and Kalamazoo (3). These positions require the following minimum skills and/or qualifications:

- Responsible for installing, testing, troubleshooting, repairing and maintaining various railroad signals and grade crossing warning device equipment.
- Loading and unloading supplies, digging holes and trenches for cable, painting signal equipment, and climbing and working on poles and signal masts. Could also handle cable and wire and make electrical connections.
- Safely and effectively operate non-power tools, high precision measuring tools, power tools and low precision measuring tools.
- Must possess a high school education or GED, and a minimum of 12 months job-related experience; or equivalent combination of education and experience.

***Carmen Foreman:***

Approximately 1 position as follows: Kalamazoo (1). This position requires the following minimum skills and/or qualifications:

- Responsible for supervision of rail car inspection and maintenance in accordance with FRA standards.
- Familiar with AAR office manual, ability to identify AAR/FRA defects when present on railcars.
- Must possess a high school education or GED, and a minimum of 5 years job-related experience; or equivalent combination of education and experience.
- Comply with all FRA and Watco safety standards.
- Other duties as assigned.

***Carmen:***

Approximately 2 positions as follows: Kalamazoo (2). These positions require the following minimum skills and/or qualifications:

- Maintain, replace and/or repair air brake pipes, valves, gaskets, air hoses and other equipment as required.
- Inspects outlet gates on hopper cars and air dumps for defects and ensures they are properly secured.
- Operates electrical and gas welding equipment to join a variety of metals and alloys; operates acetylene torches for cutting and/or shaping metal parts such as aluminum, cast iron, steel, bronze, etc. Operates specialized off-highway motor vehicles including forklift trucks, mobile cranes, track mobiles, and ship tractors.
- Familiar with AAR office manual, ability to identify AAR/FRA defects when present on railcars.
- Must possess a high school education or GED, and a minimum of 12 months job-related experience; or equivalent combination of education and experience.

**The 7 managerial positions are as follows:**

***General Manager:***

1 Position located in Kalamazoo, MI.

***Train Masters:***

Approximately 3 positions as follows: Grand Rapids (1) and Kalamazoo (2).

***Marketing Manager:***

1 positions located in Kalamazoo, MI.

***Chief Mechanical Officer:***

1 position located in Grand Rapids, MI.

***Roadmaster:***

1 position located in Kalamazoo, MI.

The most qualified candidates will be selected from the available pool of applicants without regard to race, creed, color, religion, national origin, sex, age, marital status, disability or veteran status. The selection criteria will be job-related skills and attributes as outlined above. Successful candidates must have a stable work record and exhibit safe work practices. The ability to work in a team environment with a focus on customer service is critical. Applicants must be able to read and comprehend regulations and instructions in English, as well as possess good oral communication skills. Successful applicants will be required to pass a pre-employment drug and alcohol screen and complete a medical questionnaire. Every employee is an at-will employee. All employees are expected to know and abide by the standard code of Employee Conduct.

Anyone interested in these positions can contact the following:

Chris Spear  
620-687-4411  
[cspear@watcocompanies.com](mailto:cspear@watcocompanies.com)

315 W 3<sup>rd</sup>  
Pittsburg, KS 66762

Grand Elk Railroad  
Kalamazoo, MI