

BAKER & MILLER PLLC

219957

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON DC 20037

TELEPHONE (202) 663-7820
FACSIMILE (202) 663-7849

William A Mullins

Direct Dial (202) 663-7823
E-Mail wmullins@bakerandmiller.com

August 7, 2007

VIA E-FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E St., S.W
Washington, DC 20423-0001

Re: STB Finance Docket No. 35063
Michigan Central Railway, LLC — Acquisition and Operation Exemption —
Lines of Norfolk Southern Railway Company

Dear Secretary Williams:

On August 3, 2007, the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railroad Signalmen filed a "Petition for Reconsideration" seeking reconsideration of the Board's August 2, 2007 decision in the above captioned proceeding. Michigan Southern Railroad Co. and Elkhart & Western Railroad Co. hereby submit, via e-filing, a "Reply To The Petition For Reconsideration" ("Reply"). As can be seen from the certificate of service attached, copies of this Reply are being served today on all parties of record. If there are any questions concerning this proposal, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakcrandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Daniel A. LaKemper, Esq.
All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB FINANCE DOCKET NO. 35063

**MICHIGAN CENTRAL RAILWAY, LLC
– ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY**

REPLY TO PETITION FOR RECONSIDERATION

**Daniel A. LaKemper
General Counsel
Michigan Southern Railroad Co.
and Elkhart & Western Railroad Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400**

**William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20037
Phone: (202) 663-7820
Fax: (202) 663-7849**

August 7, 2007

**Attorneys for Michigan Southern
Railroad Co., and Elkhart &
Western Railroad Co.**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB FINANCE DOCKET NO. 35063

**MICHIGAN CENTRAL RAILWAY, LLC
- ACQUISITION AND OPERATION EXEMPTION -
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY**

On July 20, 2007, Michigan Southern Railroad Co. ("MSO") and Elkhart & Western Railroad Co. ("EWR"), Class III common carriers controlled by Pioneer Railcorp, filed a letter with the Surface Transportation Board ("STB" or "Board") regarding the proposed transactions between Michigan Central Railway, LLC ("Central"), Watco Companies, Inc. and Watco Transportation Service, Inc. (collectively, "Watco"), and Norfolk Southern Railway Company ("NSR"). In that letter, MSO and EWR corrected the service list,¹ entered an appearance as a party of record, and expressed general concerns about the proposed transaction that MSO and EWR hope may be alleviated via further dialogue with the parties to the proposed transaction before the Board.

In a decision served on August 2 ("August 2 Decision"), the Board began a proceeding in Finance Docket Number 35063, and adopted the formal 90-day schedule that Central had requested. By petition filed August 3, the Brotherhood of Maintenance of Way Employees Division/IBT ("BMWE") and Brotherhood of Railroad Signalmen ("BRS") urge the Board to

¹ The service address for MSO and EWR in the July 13 filings of Central, Watco, and NS was incorrect. However, in noting the correct address, MSO and EWR transposed the zip code. The correct zip code is "61607" not "70."

reconsider its August 2 Decision. BMW and BRS point out that, notwithstanding the fact that several parties filed comments expressing concern over the proposed procedural schedule within the initial 20 day comment period provided at 49 CFR 1104.12, the Board reached a decision to accept without change Central's proposed procedural schedule on July 30, before the 20-day comment period had expired. Thus, the Board's decision was issued without considering or mentioning any of the responsive comments. BMW and BRS request reconsideration and propose a modestly revised procedural schedule, which would extend to interested parties an additional 30 days to file comments on the merits of the proposed transaction.

MSO and EWR support the joint BMW/BRS request and the revised procedural schedule therein. The proposed transaction has generated a considerable level of concern, and all of the parties who filed comments thus far emphasize the need for additional time to study the transaction and to prepare comments. Adding an additional 30 days to the schedule, which would provide for a Board decision on December 1, still complies with Watco's and NSR's stated goal of closing the transaction by the end of the calendar year, gives parties an opportunity to conduct discovery and file any necessary comments on the merits, and allows an adequate time to negotiate settlements.² Even with the additional 30 days, the schedule

² In line with the Board's stated desire for parties to attempt to work out any disagreements or concerns through private negotiation and settlement rather than Board litigation, MSO and EWR have requested a meeting with NSR to discuss the transaction. Due to NSR's schedule, that meeting cannot take place until August 16, at the earliest. Under the Board's expedited procedural schedule and assuming even the best results from the initial discussions, it is highly unlikely that NSR, MSO, and EWR will have resolved any differences by the current comment filing deadline. As such, the Board's expedited schedule places the parties in the position of having to file comments and litigate against each other just to preserve their legal rights in the event a negotiated settlement is not possible. Yet, this is precisely opposite of the

would still be shorter than any other relatively recent proceeding involving acquisitions of rail lines where the petition for exemption or application process was used instead of the class exemption process. Keokuk Junction Railway Company d/b/a Peoria And Western Railway – Lease and Operation Exemption – BNSF Railway Company, STB Finance Docket Nos. 34918 and 34974 (petition for exemption filed following stay of class exemption, proceeding instituted in 90 days, final decision pending); Wisconsin & Southern Railroad Co. – Acquisition Exemption – Iowa, Chicago & Eastern Railroad Corporation, STB Finance Docket No. 34464 (STB served June 30, 2004) (6 months to process petition for exemption seeking to acquire 7.33 miles of rail line); The Burlington Northern and Santa Fe Railway Company – Acquisition and Operation Exemption – State of South Dakota, STB Finance Docket No. 34645 and 34667 (notice of exemption stayed, application filed, exemption finally effective almost one year later); Riverview Trenton Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc., STB Finance Docket No. 33980, and Riverview Trenton Railroad Company – Petition for an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI, STB Finance Docket No. 34040 (two years to process petition for exemption); and New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Construction, Acquisition, and Operation Exemption – In Wilmington And Woburn, MA, STB Finance Docket No. 34797 (STB served Dec. 20, 2005)(granted 30 day extension of initial 20 day comment period before adopting procedural schedule).

Board's stated goal. See also August 3 filing by Michigan State Senator, Mark Schauer, Democratic Leader, seeking an extension of time so as to allow more time for discussions.

As the Board's precedent cited above indicates, the Board has rarely, if ever, processed from start to finish, a line acquisition under the petition for exemption process in 90 days, as the current schedule provides. Even with the modest 30-day increase in time, the schedule for the Board's handling of this proceeding would still be quite swift compared to the comparable proceedings discussed above. Accordingly, MSO and EWR support the request of BMWE and BRS for reconsideration and for a modification of the proposed procedural schedule.

Respectfully submitted,

Daniel A. LaKemper
General Counsel
Michigan Southern Railroad Co.
and Elkhart & Western Railroad Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400



William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20037
Phone: (202) 663-7820
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August 7, 2007

Attorneys for Michigan Southern
Railroad Co., and Elkhart &
Western Railroad Co.

CERTIFICATE OF SERVICE

I, William A. Mullins, hereby certify that on this 7th day of August 2007, copies of the foregoing Reply To Petition For Reconsideration have been served by first class mail, postage prepaid, or by more expeditious means of delivery upon all parties of record to this proceeding identified on the Surface Transportation Board's website.



William A. Mullins
Attorney for Michigan Southern Railroad
Co. and Elkhart & Western Railroad Co.