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August 8, 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:

Yesterday, on August 7, 2007, Michigan Southern Railroad Co. ("MSO") and Elkhart & Western Railroad Co. ("EWR") filed a "Reply To The Petition For Reconsideration" ("Reply") in reply to the Petition For Reconsideration ("Petition") that had been filed on August 3 by the Brotherhood of Maintenance of Way Employees Division/IBT ("BMWE") and Brotherhood of Railroad Signalmen ("BRS"). Today, Norfolk Southern Railway Company ("NS") filed a reply to the MSO and EWR reply. In its reply, NS makes two points: (1) that a "host of parties . . . in response to Michigan Central's request for the adoption of the procedural schedule, either supported that schedule or remained silent;" and (2) that MSO's and EWR's repetition of the points made by BMWE and BRS was somehow unsupported by the record. Neither NS point is accurate.

With respect to the first point, a review of the docket in this proceeding clearly indicates that a "host of parties" did not support the proposed procedural schedule and did not remain silent. Indeed, on July 30, MSO and EWR themselves filed a comment that did not support the procedural schedule and expressed concerns over the use of the petition for exemption process. BMWE and BRS likewise filed comments specifically attacking the procedural schedule and requesting more time. Similar comments taking issue with the transaction or the procedural schedule were also made by Ann Arbor Charter Township, Michigan Environmental Council, The Honorable Mark Schauer, Southeast Michigan Council

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of Governments, City of Saline, and Washtenaw Area Transportation Study. It is simply not accurate to say that a "host of parties" supported the procedural schedule or remained silent with respect to the transaction.

With respect to the second point, NS argues that MSO and EWR somehow misconstrued the points made by BMWED and BRS. NS states:

**This is in contrast to MSO's wholly unsupported assertion on the second page of its reply that "BMWED 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 [Michigan] Central's proposed procedural schedule," a statement not made by BMWED and BRS and not otherwise supported by the record. (Emphasis added in the quoted material.)**

Yet, MSO's and EWR's assertion in its August 7<sup>th</sup> letter was not unsupported and did accurately paraphrase BMWED's and BRS's statements. BMWED and BRS did in fact point out that (1) several parties filed comments requesting additional time before the expiration of the 20 day period; and (2) that the Board's decision was decided without consideration of those comments. In fact, the precise point, repeated and reasserted in MSO's and EWR's Reply, is included in the below quoted language from page 2 of the BMWED/BRS Petition:

**Under STB rules, replies to such a petition were due within 20 days of July 13. 49 C.F.R. §1104.12. A few parties responded to the petition within the first two weeks. Other parties filed responses beginning July 30. BRS and BMWED filed their response on August 1, 2007, 19 days after the petition was filed. BMWED and BRS indicated that they were likely to oppose the petition but also argued that more time should be allowed for comments, any replies and for Board consideration of the petition. However, unbeknownst to the unions, on July 30, only 17 days after the petition was filed, the Board decided to adopt the schedule proposed by Michigan Central, WATCO, and NSR. As a result the Board did not consider the timely-filed response of the BMWED and BRS, or the timely filed responses of other persons and entities.**

Given this language, it is unclear to MSO and EWR why NS made the statement that MSO and EWR were somehow inaccurately portraying the statements of BMWED and BRS. MSO and EWR did not quote BMWED and BRS, but simply paraphrased their arguments, and as the above language indicates, MSO's and EWR's paraphrase was entirely accurate. Perhaps NS is trying to make a point that MSO and EWR used the phrase "without change," when in fact the Board's August 2 decision did slightly change the time periods involved. Alternatively, NS may be attempting to point out that the correct citation for the 20 day period

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is 49 CFR 1104.13(a) and not 1104.12. But if those were the points NS intended to make, then why didn't they say so? The bottom line is that MSO's and EWR's repetition of the points made by BMW/BRS was in fact entirely accurate, even to the point that MSO and EWR used the 1104.12 citation rather than the 1104.13(a) citation.

Sincerely,



William A. Mullins

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

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