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By First Class Mail

Secretary  
Surface Transportation Board  
395 F. Street, SW  
Washington, DC 20423-0001

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Office of Proceedings

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Public Record



Re: Michigan Central Ry, F D 35063 et al, Norfolk Southern Ry F.D. 35065

To the Office of the Secretary

Enclosed please find an original and ten copies of the corrected comments of the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railroad Signalmen in the above-referenced proceedings. The corrections are to correct two typos: to add the word "it" on the second to last line on page one, and to change the word "if" to "it" on the fourth line of page two.

Sincerely,

Richard S Edelman  
O'Donnell, Schwartz & Anderson, P.C.

Enclosures

cc: Parties of Record (w/encl)

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35063

MICHIGAN CENTRAL RY, LLC-  
ACQUISITION AND OPERATION EXEMPTION-  
LINES OF NORFOLK SOUTHERN RY. CO.



**COMMENTS OF THE BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN**

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Brotherhood of Railroad Signalmen

September 18, 2007  
(corrected September 19, 2007)

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35063

MICHIGAN CENTRAL RY, LLC-  
ACQUISITION AND OPERATION EXEMPTION-  
LINES OF NORFOLK SOUTHERN RY. CO.



**COMMENTS OF THE BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN**

The Brotherhood of Maintenance of Way Employees Division/IBT ("BMWED") and Brotherhood of Railroad Signalmen ("BRS"), the unions that represent maintenance of way employees and signalmen employed on the rail lines that are the subject of this Finance Docket, submit these comments in opposition to the petition for exemption filed by Michigan Central Railway LLC for Michigan Central's proposed acquisition of certain rail lines, structures, facilities and equipment owned and operated by Norfolk Southern Ry. ("NSR"). BMWED and BRS submit that the Board should deny the petition because there is no actual, cognizable acquisition transaction for the Board to consider

Although the Michigan Central transaction has been characterized as involving a routine new short line company acquisition of a Class I carrier's rail lines with a related arrangement for a parent holding company (Watco Cos Inc.) to continue to control the new short line, it is anything but that sort of transaction. In this case the selling carrier, NSR, will have a substantial ownership interest in the acquiring entity. In fact NSR will have effective control of Michigan Central. Indeed there is no real acquisition transaction at all here. NSR would effectively transfer the right of way, lines, structures, facilities and equipment to an entity it would control. And the related trackage rights arrangement is not a simple trackage rights transaction, rather, it is a

contingent trackage rights transaction which is exercised at the decision of NSR when there is a recurring service failure, and then NSR will come in not to just travel over the tracks, but to serve two very major shippers. This is merely an arrangement whereby NSR is transferring assets it owns to an entity that it effectively controls. This is not an actual acquisition transaction under the Interstate Commerce Act; since there is no bona fide transaction, the Board should deny the petition for exemption from approval under Section 10901

### **BACKGROUND**

On Friday July 13, 2007, Michigan Central, Watco, and NSR filed various petitions and notices in this Finance Docket and related Finance Dockets. Among other things, Michigan Central petitioned for revocation of the class exemption for non-carrier acquisitions, and then petitioned for an exemption of the so-called plan for Michigan Central to "acquire" certain NSR assets in Michigan from prior approval under Section 10901

Michigan Central has been described as a newly formed company, to be owned by Watco and NSR to acquire 299 miles of right of way and track, 80 miles of trackage rights, certain incidental trackage rights, and related yards, structures, facilities and equipment. Petition To Revoke Exemption at 4-5; Petition for Exemption at 10-11. According to the Transaction Agreement, Watco will contribute \$18 million in cash and locomotives (\$9.4 million in cash, \$8.6 million in locomotives), and NSR will contribute the right of way, lines, structures, facilities, equipment and trackage rights. Petition To Revoke Exemption at 4-5. Michigan Central and NSR have not disclosed the value they attached to the rights of way, lines, structures, yards, facilities, equipment and trackage rights contributed by NSR. Nor has NSR disclosed the value that it placed on those assets for purposes of a sale. In response to a discovery request served by

BMWED and BRS, NSR provided recent estimates of "book value" and "net book value" of the rights of way, lines, facilities, equipment and trackage rights NSR Response to BMWED/BRS interrogatories (BMWED/BRS Ex 1 )at 8-9, response to interrogatory no.10. But as the unions are sure the Board well knows, book value is not reflective of actual sale value of railroads and rail lines, book value is generally many times higher than sale value BMWED and BRS served a follow-up set of interrogatories specifically focused on an actual value or sale value of the lines, as well as the value assumed for purposes of the proposed transaction. (BMWED/BRS Ex 2) But the NSR response was a general denial of the relevance of that information and a rather circular assertion that actual value was the value negotiated by NSR and Watco *Id* at 3, 4, response to interrogatories nos. 12 and 14 Interestingly, NSR responded that "in the context of this proceeding" the value of the assets to be conveyed "is reflected in the terms of the transaction as described by the Petition for Exemption and in the Transaction Agreement and related agreements . " *Id.* at 3 Perhaps "in some other context", or for its own purposes, NSR would attach a different value to these assets. But, at this point, no one knows the objective value of the assets contributed by NSR, and NSR isn't telling

Based on this description of the relative ownership interests, Michigan Central, NSR and Watco represent that Watco will have a 67% interest in Michigan Central and NSR will have a 33% interest, and there will be a management committee of 5 persons, two designated by NSR and three by Watco. Petition To Revoke Exemption at 4-5. The petitioners say that this means that Watco will control Michigan Central and NSR will not have a controlling interest. Petition for Exemption at 12-13.

However, NSR will have veto power over all "major decisions" such as a sale, lease,

acquisition or divestiture of any assets of the company; investment in another enterprise, approval of the annual budget, operating plan and business plan; expenditures of more than 110% of budget amounts; incurring of debt of more than \$1 million; material modifications of employee benefit plans, initiating or settling litigation, or regulatory proceedings, where the amount at issue exceeds \$1 million; and creation or change of interchange points and arrangements for haulage or trackage rights. In all of those situations, and others, at least one NSR member must vote to approve the action Michigan Central LLC Agreement at 9-10. So although Watco has a majority on the management committee of Michigan Central, NSR has a veto on major decisions. Furthermore, petitioners have acknowledged that NSR will not share in the "economic benefits of the operation of Michigan Central at the purported ownership ratio of 2/3 Watco-1/3 NSR Petition for Exemption at 11 n 2 In fact, NSR will share in the economic benefits, including net cash flow, at essentially a reverse ratio of the described ownership interests According to the Michigan Central LLC Agreement, the economic benefits will be divided 2/3 for NSR and 1/3 for Watco for the first \$7 million in earnings before interest, taxes, depreciation and amortization, the split will be 3/5 NSR and 2/5 Watco for the next \$3 million, and only once those earnings exceed \$10 million do the owners share equally. Michigan Central LLC Agreement at 6, 12, 23-24.

With respect to operations, it is asserted that there will be little increase in traffic. According to the Petition for Exemption (at 16), for the eight line segments, the largest increase will be 1.5 trains; freight traffic will increase only from 26.1 to 26.3 trains per day, and total gross ton miles measured by million gross ton miles will increase by "a modest 0.1 million gross ton miles" *Id* at 17. Petitioners project annual rail revenues for Michigan Central to exceed \$25

million. *Id* at 21

NSR can exercise control over track maintenance and improvements on Michigan Central Michigan Central is required to maintain the line to "reasonably good condition"; NSR may send a "geometry car" over the tracks by right twice a year to inspect the condition of the tracks. NSR may request facility changes and "betterments", if Michigan Central does not want to make the improvements because the expense exceeds the value to Michigan Central, it will be required to do so anyway, but cost in excess of the benefit to Michigan Central will be borne by NSR. Joint Use Agreement at 8, 17.

The Transaction Agreement requires Michigan Central to interchange only with NSR; even non-rail interchange is barred. Michigan Central is expressly prohibited from interchanging traffic with anyone other than NSR, this includes both interchange with steel wheel or rubber wheel movements Breach of this restriction is subject to heavy liquidated damages (a penalty provision) Transaction Agreement at 13.

The NSR trackage rights transaction is portrayed as a routine trackage rights transaction, but it is not an arrangement for NSR to generally operate across the transferred lines or to operate to specific locations. Rather, NSR has retained the ability to serve two major shippers on the lines, General Motors and Holt RSDC, if service by Michigan Central is deemed continually inadequate. This is a contingent trackage rights transaction which is exercised when there is a Service Standards Failure, and then NSR will come in not to just travel over the tracks, but will actually serve these two major shippers; and it will use its own crews and equipment to do so Joint Use Agreement at 4, Trackage Rights Exemption at 3-5. A Service Standards Failure is declared if Michigan Central has significant recurring service problems as defined by the Joint

Use Agreement (with dispute resolution by expedited arbitration), then NSR may exercise contingent trackage rights and directly serve the GM and Holt RSDC facilities. Joint Use Agreement at 9-10.

Petitioners have asserted that they are doing this transaction to allow capital contributions by NSR and Watco in a way that will not leave Michigan Central with high acquisition debt-- to provide Michigan Central with independent access to capital and the ability to invest where it is most needed, and to have local management. Petition to Revoke Exemption at 5, Petition for Exemption at 13. But they have not explained why this would allow or encourage more or better-targeted investment than if NSR still directly owned and was still responsible for the lines. Furthermore, the main line right of way, structures, facilities and equipment that NSR proposes to sell to Michigan Central are in good condition without need of major renovation, renewal, rehabilitation or other capital work, track inspection reports produced by NSR show that the track is safe and without defect for the applicable time table speeds, that the main line bridges are in good state of repair, and that some branch line bridges will need renewal and rehabilitation in the future. Declaration of Bradley Winter (BMWED/BRS Ex.3) ¶¶5 and 6.

As a result of this transaction NSR will no longer be responsible for operating and maintaining the subject assets; it would pass that duty on to Michigan Central. Joint Use Agreement at 8. But NSR will still keep all the traffic that comes off the lines because Michigan Central will be heavily penalized if it interchanges with anyone other than NSR. Furthermore, representatives of Michigan Central have advised union officers that it insists on operating under short line rates of pay, rules and working conditions which are substantially less beneficial to employees than those under the NSR agreements. Indeed, Michigan Central representatives have

said that they intend pay cuts of about \$2.00-\$4.00 per hour for maintenance of way workers, and about \$4.00 per hour for Signalmen. Michigan Central would also have a less beneficial health insurance plan than the national health plan, and no income protection arrangements comparable to those on NSR. Other work rules would be more advantageous to the railroad and less advantageous to employees than those on NSR. Additionally, Michigan Central is insisting on a single agreement for all employees with consolidated terms covering all workers. Winter Declaration ¶¶3-4. Michigan Central states that it plans to employ fewer railroad workers than are employed by NSR on these assets, according to the Petition for Exemption (at 9) employment will be reduced from 138 to 118 (16%), but BMWED has been advised that maintenance of way positions will be reduced by from 45 to 24 (47%). Winter Declaration ¶4. *See also* Declaration of BRS general Chairman Eldon Luttrell (BRS/BMWED Exhibit 4) ¶¶3-4.

### ARGUMENT

#### **I. THE BOARD IS REQUIRED TO REJECT PETITIONS AND APPLICATIONS WHERE THE TRANSACTIONS ARE SHAMS OR HAVE NO BONA FIDE TRANSPORTATION PURPOSE**

A well-established line of judicial and ICC/STB precedent holds that the Board can, and should, reject a proposed transaction that is a sham, that is a paper transaction or that otherwise seeks Board sanction for a purpose other than for the transportation purposes that have been described to the Board.

In *County of Marin v United States*, 356 U.S. 412 (1958), the Supreme Court vacated ICC approval of a transfer of operating authority from a motor carrier to its subsidiary in return for stock in the subsidiary. The effect of the transaction, indeed its apparent purpose, was to defeat State agency jurisdiction. *Id.* at 415. The Supreme Court held that the Commission should

have rejected the transaction presented. The Court said that the proposed transaction “contemplates an acquisition by one carrier, of another carrier, Golden Gate, a mere corporate shell without property or function”, additionally, the Court said that “[e]ven if we look beyond Golden Gate’s present status”, the planned transfer was little more than a “paper transaction” between the two commonly-owned corporations for the purpose of avoiding State regulation and was not an acquisition under the Act. *Id.* at 418 -419. In *Gilbertville Trucking Co v. United States*, 371 U.S. 115 (1962), the Court affirmed an ICC order rejecting a proposed merger of two carriers because they had already been the subject of unauthorized de facto common control. *Id.* at 120 - 125. And *Northern Alabama Express, Inc. v. ICC*, 971 F. 2d 661 (11<sup>th</sup> Cir.1992), the Eleventh Circuit reversed an ICC decision approving a transfer of operating rights because there was no real transaction where the party supposedly acquiring rights from another carrier already had such rights, and it appeared that the purpose of the arrangement was to avoid State regulation. *Id.* at 664-665 *Cf Burlington Northern Railroad Company v United Transportation Union et al*, 862 F. 2d 1266 (7<sup>th</sup> Cir. 1988), where the Seventh Circuit enjoined changes in working conditions under a purported trackage rights transaction between a parent corporation and defunct subsidiary and rejected arguments that the changes were permissible under an ICC trackage rights arrangement. The court found that there was not a legitimate trackage rights arrangement, and the arrangement was merely a device to evade a collective bargaining agreement. *Id.* at 1279-1281.

The ICC and STB have also rejected or modified transactions when they were found to be “shams” or were planned not for legitimate transportation purposes, but for other reasons. In *Fast Interstate Express, Inc.*, 127 M.C.C. 279, 282 (1976), an acquisition of a truck line by an

employee of a carrier was held to involve acquisition of control of the truck line by the employer due to the realities of employer-employee relationship *Sagamore National Corporation Acquisition and Operation Exemption - - Lines of Indiana Hi-Rail Corporation*, F.D. No. 32582 (served September 20, 1994, and October 28, 1994), involved a purported acquisition of a rail line, but the ICC held that no "transaction cognizable under the Interstate Commerce Act actually took place" because of a substantial interrelationship between the two parties. And in *Hi-Tech Trans, LLC -Petition for Declaratory Order-Newark, NJ*, F.D. No. 34192(Sub-No. 1)(served November 20, 2003 and August 14, 2003), the Board rejected a company's petition for a declaratory order that its operation of a truck-to-rail transloading facility was subject to STB jurisdiction, concluding that Hi-Tech was not a rail carrier, and that the purpose of the petition appeared to be to seek preemption of State and Local regulation of the facility. The Board also noted (*id.*n 12) that if Hi-Tech followed formal Board procedures to become a rail carrier, "the Board will not approve rail carrier authority that is a sham or intended solely to avoid local regulations" See also *SP&L Ry. . Inc -Acquisition and Operation Exemption- Toledo Peoria and Western Ry Corp.*, F.D. 33996 and AB 448 (served October 17, 2002 and January 31, 2003), where the Board revoked an acquisition based on a determination that the acquiring entity actually intended to abandon and salvage the line In its decision, the Board cited decisions holding that the Board has authority to act to protect the integrity of its processes and that the Board may "revoke sham transactions"; e g *Railroad Ventures v STB*, 299 F. 3d 523, 563-64(6th Cir. 2002), *Land Conservancy-Acq And Oper -Burlington Northern*, 2 STB 673 (1997); *Track Tec, Inc -Abandonment-in Adair and Union Counties, IA*, AB-493 (Sub -No. 7x)(served November 1, 1999) and *Minnesota Comm Ry, Inc. Trackage Exempt-Burlington*

*Northern R.R. Co.*, 8 ICC 2d 31 (1991). And see *Portland & Western R R –Trackage Rights Exemption– Burlington Northern R R Co.* (F D No 32766)(Served March 11, 1997), evidence that a lease was not bona fide would be considered to support a petition for revocation of an exemption; and *InterCarolinas Motor Bus*, 28 MCC 665, 669 (1941), - - “We are not bound by the name which the parties applied to the arrangement which they entered into”.

In *Delaware and Hudson Ry Co —Springfield Terminal Ry*, 4 ICC 2d 322(1988), the ICC concluded that a series of purported individual intra-corporate lease transactions were more akin to a merger or control transaction; that the series of transactions had been mis-characterized as leases and the goal was actually to apply on all commonly owned carriers advantageous work rules applicable on the smallest affiliate in order to reduce labor costs; and that in implementing the leases the affiliate with the extended operation has misinformed and misled employees about their rights. 4. ICC 2d at 327-330. However, because the leases had already been implemented, the ICC did not revoke the exemptions from regulation that it had granted and instead imposed the sort of employee protections that would be applied in a merger or control transaction. *Id.* at 325, 334. See also *Burlington Northern v UTU, supra* where the Seventh Circuit refused to issue a strike injunction based on the ICC’s action on a “lease” because there was no real lease transaction, merely an attempt to use an ICC authorization to achieve lower labor costs.

Thus, the Board can, and should, consider evidence that a transaction is illegitimate and must reject sham and paper transactions and transactions that invoke Board jurisdiction for purposes other than the purported transportation purposes presented to the Board.

**II. THE MICHIGAN CENTRAL TRANSACTION IS A SHAM, NOT A LEGITIMATE SALE/ACQUISITION, BECAUSE THERE IS NO ACTUAL TRANSFER OF CONTROL OF THE NSR’S ASSETS, NOR IS THERE A BONA FIDE TRANSPORTATION PURPOSE FOR THIS ARRANGEMENT**

BMWED and BRS respectfully submit that the petition for exemption of the arrangement at issue in this Finance Docket from the requirement for STB approval under Section 10901 should be rejected because there is no real sale, no transfer of control of NSR's assets. Instead NSR is effectively shifting rights of way, lines, structures, facilities and equipment from itself to an entity that it effectively controls. This is certainly a sham or paper transaction. Moreover, there is no legitimate transportation purpose to this arrangement; all that will be accomplished will be that NSR will retain traffic coming off these lines, and will retain the ability to serve the largest shippers on the line in the event of service failure by Michigan Central, but labor costs for operations of these lines will be dramatically reduced. Petitioners assert that the NSR will not maintain control because the agreements among the petitioners say that NSR will have only 33% ownership of Michigan Central; they further assert that there will be transportation benefits because Michigan Central will be able to invest in the lines and to do so where it is most needed. However, petitioners have described the concept of control too narrowly, the facts do not support their assertion that NSR will not have control of Michigan Central, and the purported transportation benefits are simply specious.

ICA Section 10102(3), originally in former Section 5, defines "control" as including "actual control, legal control and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust or a holding or investment company, or (B) any other means." In *United States v. Marshall Transport*, 322 U.S. 31 (1944), the Supreme Court rejected a narrow reading of the term "control" and said that former Section 5(2) and former Section 5(4) "embraced every type of control in fact", and that "the existence of control must be determined by a regard for the actualities of intercorporate relationships", and that it covered

control “however such result is attained, whether directly or indirectly, by use of common directors, officers or stockholders. .or in any manner whatsoever. §5(4). Control or management is defined to include ‘the power to exercise control or management §5(4)”. *Id.* at 38, ellipsis in original. In *Allegheny Corp v Breswick*, 353 U.S. 151, 163 (1957), the Court said that the determination of control depends on “the realities of the situation” and that it had “rejected artificial tests for ‘control’ and left its determination in a particular case as a practica[1] concept to the agency charged with enforcement”. And in *Gilbertville Trucking. supra.*, the Court found a control relationship based on family and employer-employee relationships; the Court noted that “We have construed this language to encompass every type of control in fact and have left to the agency charged with enforcement the determination from the facts whether ‘control’ exists, subject to normal standards of review”. 371 U.S. at 125

Given this broad definition of control, it cannot be said that NSR will relinquish control of the assets that it purports to convey to Michigan Central, or that NSR will not control Michigan Central. The unions submit that this arrangement plainly is not the sort of Section 10901 non-carrier acquisition that the Commission and Board have regularly permitted, where there is no relationship between the buying entity and the selling entity. The mere fact that NSR has such a large stake in the acquiring entity is inconsistent with the assertion that the arrangement is a Section 10901 non-carrier transaction. But there is much more.

Under the agreements between NSR and Watco, no “major decision” may be undertaken by Michigan Central without approval of one of NSR’s members of the management committee. Michigan Central LLC Agreement at 27. These decisions include items such as sale, lease, acquisition or divestiture of any assets of the company; investment in another enterprise,

approval of the annual budget, operating plan and business plan; expenditures of more than 110% of budget amounts; incurring of debt of more than \$1 million; material modifications of employee benefit plans; initiating or settling litigation, or regulatory proceedings, where the amount at issue exceeds \$1 million; and creation or change of interchange points and arrangements for haulage or trackage rights. In all of those situations, and others, at least one NSR member must vote to approve actions that are integral to actually having control of a railroad. Michigan Central LLC Agreement at 9-10 Essentially NSR can veto the most basic decisions a railroad can make. NSR may argue that its veto power over these major decisions does not demonstrate its control over Michigan Central, or the lack of a real sale, and that these restrictions are merely to protect its equity in the company But as is readily apparent, the categories of "major decisions" go way beyond disposition of the company's assets, incurring of debt and decisions on allocation of earnings, rather NSR will effectively control Michigan Central on a minute operational level -down to decisions to spend more than 110% of budget, to incur debt or start litigation or participate in regulatory proceedings where more than \$1 million is involved, to change interchange points and to materially modify employee benefit plans. The sort of decisions over which NSR will have a veto include day-to-day business decisions.

The parties' agreements also require Michigan Central to interchange all traffic with NSR, even interchange with trucks is subject to substantial penalties; there can be no movement of traffic off the lines without NSR participation NSR will effectively control track maintenance and improvements Michigan Central must satisfy NSR that the lines remain in "reasonably good condition" : NSR may send a "geometry car" over the tracks twice a year to inspect the condition of the tracks; and NSR may request improvements, which Michigan Central must make (if it

feels the expense exceeds the value of the improvements to Michigan Central, it is nonetheless required to make the changes, but the cost in excess of the benefit to Michigan Central will be borne by NSR). Joint Use Agreement at 8, 17 Furthermore, if there are recurring service problems, NSR can directly serve the largest shippers on these lines BMWED and BRS submit that these restraints and mandates that NSR has imposed on Michigan Central constitute "control" of that entity. Even if these restraints and mandates were not individually enough to show NSR's control of Michigan Central, in combination they demonstrate control; and when taken together with the NSR ownership interest, there certainly is control in fact- actual control based on the realities and practicalities of the situation within the meaning of the Act as described in *Marshall Transport, Allegheny* and *Gilbertville*.

The petitioners have argued that NSR conclusively lacks control over Michigan Central because their agreements say that NSR will have only 33% a ownership interest But *Marshall Transport, Allegheny* and *Gilbertville* all teach that such corporate arrangements and structures are not determinative. Substance, not form, is decisive, if a party can actually control another party, it does not matter that ownership status is below 50%. In this case, when all of the various restraints and mandates imposed on Michigan Central are considered, NSR would remain in control of the assets involved, and there is no actual transfer.

BMWED and BRS also submit that the ownership proportions described by the petitioners should not be credited It is asserted that Watco will have a 67% ownership interest after it contributes \$18 million in cash and locomotives; whereas NSR will have a 33% ownership interest. But the petitioners have not disclosed the value they have attached to NSR's capital contributions. And NSR has refused to provide that information to BMWED and BRS

despite multiple different discovery requests for the values assigned to NSR's contributions. BMWED and BRS also note that for the 2/3-1/3 split described, the value of NSR's contribution would have to be about \$9 million, and the total value of the assets about \$27 million. This plainly cannot be so. NSR is supposedly conveying 299 miles of right of way and track, yards, structures, facilities and equipment that are in generally good condition, and 80 miles of trackage rights plus incidental trackage rights. The lines to be conveyed have access to strong and reliable shippers and eight Amtrak trains per day run on the lines. The lines are not abandonable and they apparently make some profit. It simply cannot be that all of these items are worth a mere \$9 million-justifying the attribution of a 1/3 interest to NSR. And despite multiple requests for an explanation by BMWED and BRS, NSR has simply asserted that value attributed to these assets is what Michigan Central was willing to pay, NSR has refused to disclose its own pre-transaction valuation of the assets. A substantial body of precedent holds that a party's refusal to provide information that might support its position when such information that is in that party's exclusive control, is basis for an adverse inference against that party-that the information would be adverse to it.<sup>1</sup> BMWED and BRS submit that here it is reasonable to infer that an actual objective valuation of these assets would reveal that they are worth far more than \$9 million, and that the actual control situation is not as described by the petitioners.

A presumption that NSR's contribution to the acquisition is worth much more than \$9 million is supported by reference to sale prices in other recent line sales. In 2004, RailAmerica announced that it had acquired 100 miles of rail line in central Michigan that generated \$11

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<sup>1</sup> *Norfolk and Western Ry Co v Transportation Communications Intern. Union*, 17 F.3d 696, 701-702 (4<sup>th</sup> Cir 1994); *International Union (UAW) v N.L.R.B*, 459 F 2d 1329, 1336-1338 (D.C. Cir.1972); *Callahan v Schultz*, 783 F. 2d 1543, 1545 (11th Cir. 1986).

million in revenue for \$253 million (BMWED/BRS Ex 5a); but here Michigan Central would be acquiring three times as many miles of lines, plus 80 miles of trackage rights and incidental trackage rights also in central Michigan where much higher revenues are anticipated (projected at \$25 million annually, Pct. For Exempt. at 21), yet the implied purchase price here would be almost the same as the much smaller RailAmerica acquisition in 2004. In 2003, Genesee & Wyoming announced (BMWED/BRS Ex 5b) that it had acquired three short lines totaling 124 miles of lines that produced \$18 million in revenues for \$55.6 million (twice the imputed value for Michigan Central if NSR's contribution is \$9 million where the Michigan Central lines are nearly 3 times the trackage as those acquired by Genesee and Wyoming, and the Michigan Central is expected to produce more revenue). In 2002 Genesee & Wyoming announced (BMWED/BRS Ex. 5c) that it had acquired the 45 mile Utah Railway and its 378 miles of trackage rights for \$54 million. BMWED and BRS submit that any assertion that the value of NSR's capital contribution was something like \$9 million is simply not credible. Of course there are likely to be significant differences between the lines to be conveyed to Michigan Central and the lines acquired by Genesee and Wyoming and RailAmerica, but the disparity in price is so great that differences among the lines cannot possibly account for even a substantial part of the difference in price.

NSR may respond that it never asserted that the assets it contributed were worth only \$9 million, but that is the implication of its assertion that it will own just a 1/3 interest in Michigan Central in comparison to Watco's 2/3 interest. Indeed, this 1/3-2/3 split of ownership is the predicate for the assertions that NSR will not control Michigan Central, and that there is a real acquisition transaction here. But if, for example, if the actual value of the assets to be conveyed

was actually \$50 million (merely 2 times the cost of RailAmerica's 100 mile Central Michigan transaction) or \$80 million ( 1½ times the cost of Genesee & Wyoming's 2003 124 mile three short line acquisition) then the arguments of petitioners based on the ownership structure presented here would obviously be undercut. BMWED and BRS submit that the blithe assertion by petitioners that NSR will not control Michigan Central because only a 1/3 interest in Michigan Central has been attributed to NSR simply cannot be accepted in the absence of evidence of the actual value of the assets contributed by NSR, and in the face of evidence that the value of the assets certainly exceeds \$9 million.

Another indication that actual control of Michigan Central would not be as described by the petitioners is their acknowledgment that the "economic benefits" of the operation of Michigan Central will not be shared at the ratio of 2/3 Watco-1/3 NSR. Petition for Exemption at 11 n 2. Rather the economic benefits will be shared at essentially a reverse ratio of the ownership interests such that the economic benefits will be divided 2/3 for NSR and 1/3 for Watco for the first \$7 million in earnings before interest, taxes, depreciation and amortization; the split will be 3/5 NSR and 2/5 Watco for the next \$3 million, and only once those earnings exceed \$10 million do the owners share equally Michigan Central LLC Agreement at 6, 12, 23-24 This distribution of economic benefits is plainly inconsistent with the ownership interests petitioners have described, indeed NSR's willingness to be called a 1/3 owner may be explained by the fact that it will take 2/3 of the first \$7 million earnings and 3/5 of the next \$3 million in earnings.

Petitioners may answer that none of this matters because NSR and Watco have structured their arrangement so NSR is only a 1/3 owner of Michigan Central But as the control cases

discussed above make clear, control is determined not by corporate forms or presentation, but by practical ability to control. If the arrangements described by petitioners are not consistent with the capital contributions of the parties, and with the distribution of economic benefits, then the foundation for petitioners' assertions of lack of control fail. BMWED and BRS submit that when these inconsistencies are added to the level of control exercised by NSR through other means (veto power over major decisions, prohibition against other interchange, service failure intervention, ability to dictate maintenance work), it is clear that NSR would control Michigan Central and that there is no sale to a third party, rather NSR is selling its lines to itself -a sham and not a cognizable transaction. Given the evidence of record, the Board cannot simply exempt this arrangement from the prior approval requirements of Section 10901.

In their Petition for Exemption, the petitioners assert that NSR's control position with respect to Michigan Central is similar to its control position with respect to Meridian Speedway LLC, where "NSR's minority interest in the venture was not deemed to constitute control under Section 11323". Petition for Exemption at 12-13, *citing Norfolk Southern Ry.-Trackage Rights Exemption-Meridian Speedway LLC*, Finance Docket No. 34821 (served April 6, 2006).

However, review of the April 6 notice in *Meridian Speedway* reveals that it was not a Board decision or a Board action on a notice of exemption; it was a notice of exemption issued by the Board's Director of Office of Proceedings. The control relationship in *Meridian Speedway* was not made an issue by anyone, the facts concerning ownership and other indicia of control were not revealed and there certainly was no evidence of the sort of multiple restrictions and mandates that NSR has placed on Michigan Central. *Meridian Speedway* provides no support whatsoever for the assertions that NSR will not control Michigan Central or that there is a real transaction in

the instant case. Petitioners have also cited *Paducah & Louisville Ry, Inc–Acquisition–CSX Transportation, Inc* , Finance Docket No. 34738 (served August 29, 2005) as supporting their position regarding the question of whether NSR will control Michigan Central Petition for Exemption at 13 n 4. But *Paducah & Louisville* provides no support for their position While *Paducah & Louisville* was issued by the Board itself, it was not actually a Board decision on any issue in that matter, it was merely notice of acceptance of an application which described the transaction and set a procedural schedule. The notice did recite the applicants’ description of the ownership interests of the interested parties and did note their contention that CSXT’s 35% interest did not place it in a position of control, but the Board did not actually endorse the applicants’ position and did not decide that issue. 2005 WL 2071222 at \*6. The actual decision in that matter (served November 18, 2005) did not indicate that the control issue was disputed by any party, or that it was decided by the Board Thus, the two decisions relied on by the petitioners here provide absolutely no support for their position

Another indication that the proposed transaction is not actually as it has been described is that the explanations and justifications for the transaction make no sense. Petitioners have stated that the transaction “will serve several important goals. The structure of the proposed transaction will permit NSR and Watco to make substantial capital contributions to Michigan Central (consisting of NSR’s contribution of the rail lines and related assets and Watco’s contribution of \$18 million in working capital and locomotives) while allowing Michigan Central to avoid incurring a heavy acquisition debt load and financing costs” Petition for Exemption at 13. They also assert that “Michigan Central’s independent access to working capital will permit it to invest in the most needed and most productive capital projects”. *Id* And they assert that Michigan

Central's independent local management will be able to provide responsive service to local shippers and develop a new traffic base while maintaining and expanding the current traffic base..." *Id* But there is no explanation behind these assertions.

Surely NSR would have better and more advantageous access to capital than this new company, certainly the new company would not have better access to capital than NSR. Nor is it explained why the interposition of Michigan Central would allow or encourage more or better-targeted investment than if NSR still directly owned and still was still responsible for maintaining the lines. Why would Michigan Central be more knowledgeable than NSR about where capital investments are needed? And if Michigan Central was truly in a better position to maintain the lines, why has NSR reserved the right to unilaterally send its own geometry cars on the tracks twice a year? And why has NSR reserved the right to require Michigan Central to make "betterments" to the track that it wants with the costs above the value to Michigan Central borne by NSR? In response to BRS/BMWED interrogatories, Michigan Central stated that it "does not 'contend that it will be more or less better situated than NSR to make capital contributions to the lines to be conveyed to Michigan Central' nor does it contend that it will be better situated than NSR to know where capital investments are needed on the lines to be conveyed to Michigan Central..." Michigan Central response to BRS/BMWED interrogatory no. 3 BMWED/BRS Ex 6 at 3. But that statement is inconsistent with a central component of the claims made about this arrangement—that there is some benefit to be obtained by Michigan Central's ownership of the lines as a result of the capital contributions, minimal acquisition debt, the structure of the relationship among the parties and the consequent ability of Michigan Central to "invest in the most needed and most productive capital projects" Petition for Exemption at 13

Indeed the response to the BMWED/BRS interrogatory is directly at odds with Michigan Central's representations about asserted goals of the alleged transaction and the supposed public benefits and transportation purposes of the alleged transaction. Petition for Exemption at 13, 23-24; Petition to Revoke at 5.

With respect to the assertions that Michigan Central's management will be able to provide responsive service to local shippers and develop a new traffic base while maintaining and expanding the current traffic base (Petition for Exemption at 13), BRS and BMWED note that the actual projections for traffic on the lines indicate a very slight net increase in traffic. Petition for Exemption at 16-17. If the petitioners do not project any real increase in traffic over five years, what is the basis for saying that the new management will develop more traffic? And as for service, NSR often touts itself as the most efficient of railroads; and the lines in question are not inactive or sparsely used lines, but are active lines with major shippers. Indeed, if the prospects are for improved and more responsive service, why have the parties included in their agreement the highly unusual provisions for service standards, determination of service failure and NSR resumption of direct service to the largest shippers in the event of recurring service failures? It should also be noted that for over twenty-five years, the major carriers and the ICC and STB have touted the benefits of single-line service and reduction of interchange, but now the Board is being told that adding interchange with a new carrier, even over a main line, will improve service.

BRS and BMWED submit that all of these purported justifications for the transaction are simply specious and should not be credited. BMWED and BRS further submit that the complete lack of force for the proffered justifications for the Michigan Central arrangement provides

additional support for their assertion that there is no cognizable transaction before the Board and there is no real transportation purpose for this arrangement

If there is no real transaction, and the arrangement serves no bona fide transportation purpose, then why are NSR and Watco creating Michigan Central? Of course, BMWED and BRS do not have to supply actual reasons for this arrangement for the Board to deny the exemption on the basis that it not actually what has been presented to the Board. But it is apparent that by entering this arrangement, NSR can reduce its labor costs once these lines are removed from its system, while NSR obtains the benefit of continued control of the lines and the traffic they produce. The arrangement entered by NSR and Watco relieves NSR of responsibility for operating and maintaining these lines and related properties and systems while NSR can keep all the traffic that comes off the lines because Michigan Central cannot interchange with anyone other than NSR. And, as BMWED and BRS have shown, representatives of Michigan Central have insisted on operating under short line rates of pay rules and working conditions which are substantially less beneficial to employees than those under the NSR agreements: wages would be lower, health insurance would be less costly, there would be no income protection arrangements, and other work rules would be more advantageous to the railroad than those on NSR. Additionally, Michigan Central will employ fewer railroad workers than are employed by NSR. Perhaps there are other unstated reasons for this arrangement, but the facts do not support the explanations proffered by the petitioners.

But regardless of what the real reasons are for this transaction, and even if the justifications offered made sense, the Board is still faced with a petition for exemption for an arrangement that is not a real acquisition transaction, but one where NSR would be conveying its

assets to an entity that it effectively controls. In such circumstances, there is no transaction and there is no basis for Board authorization of the arrangement presented to it *County of Marin, supra ;Northern Alabama Express, supra; Fast Interstate Express, supra , Sagamore National Corporation*. Because there is no actual, cognizable acquisition transaction for the Board to consider the petition for exemption should be denied

**CONCLUSION**

For all of the foregoing reasons BMWED and BRS respectfully submit that the petition for exemption should be denied.

Respectfully submitted,

  
/s/

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(202) 898-1824

Counsel for the Brotherhood of Maintenance of Way  
Employes Division/IBT and

Brotherhood of Railroad Signalmen

Dated September 18, 2007

## CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing Comments of the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railroad, by first-class mail, postage prepaid, to the offices of the following:

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Chairman  
Michigan Association of Railroad Passengers  
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Royal Oak, MI 48067  
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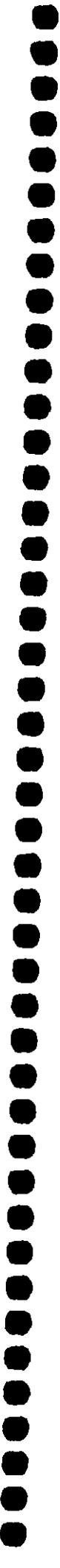
Honorable Mark Schauer  
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September 18, 2007  
corrected version served September 19, 2007

  
/s/ Richard S. Edelman



**BMWED/BRS**  
**Exhibit 1**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35063

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

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**NORFOLK SOUTHERN RAILWAY COMPANY'S RESPONSES AND OBJECTIONS  
TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY THE BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN**

Norfolk Southern Railway Company ("Norfolk Southern") submits the following responses and objections to the Interrogatories and Requests for Production of Documents ("Requests") propounded by the Brotherhood of Maintenance of Way Employees Division/IBT and the Brotherhood of Railroad Signalmen ("BMWED/BRS") to Michigan Central Railway LLC ("Michigan Central"), Watco Inc. ("Watco") and Norfolk Southern on August 15, 2007, to the extent such requests are addressed to Norfolk Southern.<sup>1</sup>

Unless otherwise specifically indicated, all information and documents produced in response to these Requests are hereby designated "Confidential," pursuant to the Protective Orders served July 27, 2007 in this proceeding and in Finance Docket No. 35065 (hereinafter referred to as the "Protective Order"). The assertion of certain objections by Norfolk Southern to the Requests is not intended to, and shall not, waive any other objections not expressly

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<sup>1</sup> Norfolk Southern understands that Michigan Central will respond separately on its own behalf to the BMWED/BRS Requests. Although Norfolk Southern is not a Petitioner in Finance Docket No. 35063, Norfolk Southern is responding to these Requests as a party of record in this proceeding.

asserted herein. Norfolk Southern reserves its right to assert other objections, or to otherwise amend or revise its objections and responses as necessary or appropriate.

### **GENERAL OBJECTIONS**

In addition to the objections to specific Requests set forth below, Norfolk Southern asserts the following general objections to each of the Requests, without further specific enumeration:

Norfolk Southern objects to the Requests to the extent they seek documents or information that are protected from disclosure by the attorney-client privilege, the work product doctrine, the joint or common interest privilege, and/or other privileges or protections from disclosure. Any inadvertent production of privileged or protected information is not intended as and shall not be deemed or construed to be a waiver of any applicable privilege or protection from disclosure, and no such privilege or protection from disclosure shall be deemed waived unless such waiver is expressly communicated in writing.

Norfolk Southern objects to the Requests to the extent they seek production of documents or information that are either already in BMWED's or BRS's possession or are readily available to either of them, including documents on public file with the Surface Transportation Board ("STB") or any court or government agency.

Norfolk Southern's willingness to produce documents or information, otherwise responsive to the Requests, that contain confidential, proprietary and or commercially sensitive information or trade secrets (which is the case for almost all of the Requests) is conditioned on BMWED's and BRS's compliance with the Protective Order. Norfolk Southern reserves its right to designate documents or information produced in this litigation as "Confidential" or "Highly

Confidential," (as defined in the Protective Order) at the time they are produced, or at any other time, and to revise or amend such designations at any time.

Norfolk Southern objects to the Requests to the extent they seek production of documents or information in a form or format not maintained by Norfolk Southern in the regular course of business or not readily available in the form requested by BMWED and BRS, on the ground that such production would be unduly burdensome and oppressive. In responding to such Requests, Norfolk Southern will provide responsive information in the form in which it is maintained by Norfolk Southern in the ordinary course of business.

Norfolk Southern objects to the Instructions to the Requests. Norfolk Southern is not obligated to reformulate objectionable discovery requests for BMWED/BRS. Norfolk Southern objects to the Instructions to the extent that they seek privileged information, and to the extent that compliance with said Instructions would constitute undue burden.

Norfolk Southern objects to the Instructions to the extent that they request preparation of a separate list of all assertedly privileged documents and seek information regarding documents that fall within the scope of the attorney-client privilege and/or constitute protected work product, where such documents were prepared in anticipation of this proceeding or Finance Docket Nos. 35064 or 35065. Identifying information about each such document would be unduly burdensome, oppressive, unnecessary, and would improperly reveal privileged and/or protected communications and work product.

Norfolk Southern objects to the 9-day response deadline set forth in Footnote 1 of the Requests as inconsistent with the STB's Rules of Practice (*see* 49 C.F.R. §114.26) and as unreasonable and unduly burdensome. Notwithstanding this objection, Norfolk Southern has

endeavored to respond as fully and as quickly as possible to the Requests within the specified time period.

Norfolk Southern incorporates by reference each of these General Objections in each specific response set forth below. Subject to these General Objections, Norfolk Southern responds as follows:

**RESPONSES TO INTERROGATORIES  
AND DOCUMENT PRODUCTION REQUESTS**

**Document Production Request.** Please identify any document reviewed by NSR, Watco and/or Michigan Central in answering the BMWED/BRS interrogatories and please produce, or arrange for counsel for BMWED and BRS to inspect, any such documents.

**Response:** Norfolk Southern is providing with this Response the documents identified in the response to the propounded interrogatories.

**Interrogatory No. 1.** Describe the ratio or percentages by which NSR and Watco will share in the profits of Michigan Central; and/or explain the percentages by which Michigan Central 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:** Norfolk Southern objects to the Interrogatory to the extent it is vague and ambiguous, and to the extent it calls for legal conclusions or speculation, or requires a special study. Subject to the foregoing objections, Norfolk Southern responds as follows: The specific allocations are set forth in Section 3 of the First Amended and Restated Limited Liability Company Agreement of Michigan Central Railway, LLC, attached as Appendix D to the Transaction Agreement, which itself is an Exhibit to the Petition for Exemption. That section provides for allocation of profits, losses, and special allocations. In response to the document request, Norfolk Southern refers BMWED/BRS to that First Amended and Restated Limited Liability Company Agreement, already on file with the Board and already provided to BMWED/BRS.

**Interrogatory No. 2.** Explain the statement at footnote 2 on page 11 of the petition for exemption that members of the limited liability company will be entitled to receive economic benefits, including a share of Michigan Central's net cash flow, differing from their respective membership interests and explain how the percentage or amount of benefits may vary.

**Response:** See Response to Interrogatory No. 1.

**Interrogatory No. 3.** Explain statements in the Michigan Central Petition for Exemption (at 13) that, by the structure of the proposed acquisition transaction with the capital contributions by NSR and Watco, Michigan Central will have independent access to capital so it can invest in the lines to be conveyed to Michigan Central, and that Michigan Central will be able to invest where investment is most needed and in the most productive capital projects. Additionally,

- a. State whether Michigan Central contends that it will be better situated than NSR to make capital contributions to the lines to be conveyed to Michigan Central, and if so why.
- b. State whether Michigan Central contends that it will be better situated than NSR to know where capital investments are needed on the lines to be conveyed to Michigan Central, and if so why.

**Response:** See Response of Michigan Central.

**Interrogatory No. 4.** Explain what is meant by the term "reasonably good condition" in Section 4(a) of the Joint Use Agreement. If the term is defined by some other document, identify the document.

**Response:** The referenced phrase appears in the following sentence in Section 4(a):  
"Landlord shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Landlord does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted." The referenced phrase is not a defined term, and parties to the Joint Use Agreement have not attempted to define it in the context of that Agreement or with reference to the lines to be conveyed to Michigan Central. Nevertheless, pursuant to Section 1(d) of the Joint Use Agreement, "All words, terms and phrases used in this Agreement, and not otherwise defined, shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry." The term is not defined in any other document. In response to the document request, Norfolk

Southern refers BMWED/BRS to the Joint Use Agreement, already on file with the Board and already provided to BMWED/BRS.

**Interrogatory No. 5.** State whether there are any restrictions, limitations and or penalties on Michigan Central with respect to its ability to contract out maintenance of way and/or signal work. In particular, state whether Michigan Central can only contract with Watco and/or Watco subsidiaries for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central, and whether there are penalties or conditions if Michigan Central contracts with an entity other than Watco or a Watco subsidiary for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central.

**Response:** Norfolk Southern objects to this Interrogatory to the extent it is vague or ambiguous with regard to what the terms "restrictions, limitations and or penalties" means, and to the extent that it calls for legal conclusions. Subject to the foregoing objections, Norfolk Southern states as follows: There are no such restrictions, limitations or penalties on Michigan Central with respect to its ability to contract out maintenance of way and/or signal work. There are no requirements that provide that Michigan Central can only contract with Watco and/or Watco subsidiaries for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central, and there are no penalties or conditions if Michigan Central contracts with an entity other than Watco or a Watco subsidiary for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central. In response to the document request, Norfolk Southern refers BMWED/BRS to the Transaction Agreement, already on file with the Board and already provided to BMWED/BRS.

**Interrogatory No. 6.** State whether Michigan Central will own the locomotives to be contributed by Watco. If so, state whether there are any restrictions, limitations, conditions or security interests on those locomotives.

**Response:** See Response of Michigan Central.

**Interrogatory No. 7.** State whether there were any original plans to transfer the lines to be conveyed to Michigan Central or to any other entity where NSR would not have any interest in the acquiring entity. If so, explain why there was a change to the current structure for the transaction.

**Response:** Norfolk Southern objects to this Interrogatory to the extent it is vague and ambiguous, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern responds. No.

**Interrogatory No. 8.** State whether any shippers were contacted about the proposed sale of the NSR lines to be conveyed to Michigan Central before the petition for exemption and petition for revocation of exemption were 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:** Norfolk Southern objects to this Interrogatory to the extent that it is vague and ambiguous as to the time frame covered by the request, and to the extent that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern states as follows:  
On the evening before the filing of the Petition for Exemption, Norfolk Southern representatives made courtesy phone calls to certain shippers and others, including the BMWED and BRS, to alert them to the anticipated filing the next day. The recipients of these phone calls are identified in a document produced herewith. No changes were made in the proposed transaction as a result of these calls. In addition, as described in the Petition for Exemption, rumors circulated widely with regard to a potential transaction involving the Norfolk Southern lines in Michigan. Some of these rumors likely were discussed in informal contacts between Norfolk Southern representatives and customers in the ordinary course of business. Norfolk Southern has no further information or records regarding these informal contacts. No changes were made in the proposed transaction in response to any discussions with customers.

**Interrogatory No. 9.** Describe the condition of the NSR lines to be conveyed to Michigan Central and describe any plans NSR had for maintenance, repair and/or renewal of the lines. Identify any document that describes or summarizes those plans.

**Response:** Norfolk Southern objects to the Interrogatory to the extent it is vague and ambiguous, overbroad, unduly burdensome and oppressive, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern and Michigan Central states as follows: Norfolk Southern is producing FRA track inspection reports for the week of July 9, 2007 which should cover all of the trackage to be transferred to Michigan Central with the possible exception of certain yard trackage subject to a 20 day inspection cycle which inspection did not happen to take place during the week of July 9, 2007. Further, Norfolk Southern is producing bridge inspection reports covering the inspection of the bridges on the lines to be transferred to Michigan Central. Norfolk Southern also is producing a list of grade crossing warning device improvements completed in 2006 and 2007 (to date) in the State of Michigan. Norfolk Southern has no current plans for the maintenance, repair and/or renewal of the lines to be transferred to Michigan Central other than in the normal course of business in response to special circumstances or situations attendant to the lines.

**Interrogatory No. 10.** State the value of the lines, structures, facilities and equipment to be conveyed by NSR to Michigan Central. Identify any document that placed a value on the lines, structures, facilities and equipment to be conveyed by NSR to Michigan Central 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 Michigan Central after NSR contemplated their sale.

**Response:** Norfolk Southern objects to the Interrogatory to the extent it is vague and ambiguous, overbroad, unduly burdensome and oppressive, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern states that attached is a spreadsheet that identifies the

book cost at December 21, 2005, the net book value at December 21, 2005, and total depreciation at the same date. This information is designated "Highly Confidential."

**Interrogatory No. 11.** State whether NSR viewed the lines to be conveyed to Michigan Central 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 Michigan Central.

**Response:** Norfolk Southern objects to the Interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and oppressive, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,



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Attorneys for  
Norfolk Southern Railway Company

Dated: August 24, 2007

**CERTIFICATE OF SERVICE**

I hereby certify this 24<sup>th</sup> day of August, 2007, that I have caused the foregoing to be served on the following parties in the manner indicated:

Richard S. Edelman  
O'Donnell, Schwartz & Anderson  
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Suite 800  
Washington, D.C. 20036  
(by hand)



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**BMWED/BRS**  
**Exhibit 2**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35063

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

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**NORFOLK SOUTHERN RAILWAY COMPANY'S RESPONSES AND OBJECTIONS TO  
SUPPLEMENTAL INTERROGATORIES AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS PROPOUNDED BY THE BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN**

Norfolk Southern Railway Company ("Norfolk Southern") submits the following responses and objections to the Supplemental Interrogatories and Requests for Production of Documents ("Supplemental Interrogatories") propounded by the Brotherhood of Maintenance of Way Employes Division/IBT and the Brotherhood of Railroad Signalmen ("BMWED/BRS") to Norfolk Southern on August 28, 2007.

The Supplemental Interrogatories incorporate by reference the instructions set forth in BMWED/BRS's first set of interrogatories and request for production of documents propounded to Norfolk Southern, Michigan Central Railway LLC ("Michigan Central"), and Watco Inc. ("Watco") on August 15, 2007. Accordingly, Norfolk Southern incorporates by reference its objections to these instructions, as stated in Norfolk Southern's first set of responses and objections (served August 24, 2007).

The assertion of certain objections by Norfolk Southern to the Supplemental Interrogatories is not intended to, and shall not, waive any other objections not expressly asserted

herein. Norfolk Southern reserves its right to assert other objections, or to otherwise amend or revise its objections and responses as necessary or appropriate.

### **GENERAL OBJECTIONS**

In addition to the objections to specific Supplemental Interrogatories set forth below, Norfolk Southern asserts the following general objections to each of the Supplemental Interrogatories, without further specific enumeration:

Norfolk Southern objects to the Supplemental Interrogatories to the extent they seek documents or information that are protected from disclosure by the attorney-client privilege, the work product doctrine, the joint or common interest privilege, and/or other privileges or protections from disclosure. Any inadvertent production of privileged or protected information is not intended as and shall not be deemed or construed to be a waiver of any applicable privilege or protection from disclosure, and no such privilege or protection from disclosure shall be deemed waived unless such waiver is expressly communicated in writing.

Norfolk Southern objects to the Supplemental Interrogatories to the extent they seek production of documents or information that are either already in BMWED's or BRS's possession or are readily available to either of them, including documents on public file with the Surface Transportation Board ("STB") or any court or government agency.

Norfolk Southern's willingness to produce documents or information, otherwise responsive to the Supplemental Interrogatories, that contain confidential, proprietary and or commercially sensitive information or trade secrets is conditioned on BMWED's and BRS's compliance with the Protective Orders served July 27, 2007 in this proceeding and in Finance Docket No. 35065 (hereinafter referred to as the "Protective Order"). Norfolk Southern reserves its right to designate documents or information produced in this litigation as "Confidential" or

"Highly Confidential," (as defined in the Protective Order) at the time they are produced, or at any other time, and to revise or amend such designations at any time.

Norfolk Southern objects to the Supplemental Interrogatories to the extent they seek production of documents or information in a form or format not maintained by Norfolk Southern in the regular course of business or not readily available in the form requested by BMWED and BRS, on the ground that such production would be unduly burdensome and oppressive.

Norfolk Southern incorporates by reference each of these General Objections in each specific response set forth below. Subject to these General Objections, Norfolk Southern responds as follows:

**RESPONSES TO INTERROGATORIES  
AND DOCUMENT PRODUCTION REQUESTS**

**Interrogatory No. 12:** Please identify and describe any estimate or assessment developed by, contracted for, and/or maintained by NSR regarding the sale value, and/or potential purchase price of the lines, structures, facilities and/or equipment to be conveyed by NSR to Michigan Central before NSR contemplated their sale, and after NSR contemplated their sale. Please provide the amount of any such assessment or estimate.

**Response:** Norfolk Southern objects to the Interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and oppressive, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern states that its estimate of the value of the lines, structures, facilities and/or equipment to be conveyed to Michigan Central, in the context of this proceeding, is reflected in the terms of the transaction as described in the Petition for Exemption and in the Transaction Agreement and related agreements attached as exhibits thereto (filed July 13, 2007). *See also* Norfolk Southern's Response to BMWED/BRS's Interrogatory No. 7 (served August 24, 2007).

**Interrogatory No. 13.** Please identify and describe any representation made by NSR to Watco regarding the sale value and/or any potential purchase of the lines, structures, facilities and/or equipment to be conveyed by NSR to Michigan Central.

**Response:** Norfolk Southern objects to the Interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and oppressive, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern states that its representations to Watco in the context of the proposed transaction are set forth in Sections 9.1 through 9.10 of the Transaction Agreement attached as an exhibit to the Petition for Exemption.

**Interrogatory No. 14.** Please describe the basis for the determination that Watco would contribute approximately \$18 million in cash and locomotives for its interest in Michigan Central and please describe any estimate or assessment of the value of the lines, structures, facilities and/or equipment to be conveyed by NSR to Michigan Central relied on by NSR and/or Michigan Central in determining NSR's rights and interests in Michigan Central.

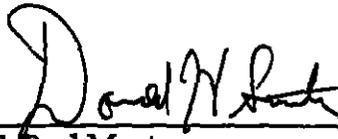
**Response:** Norfolk Southern objects to the Interrogatory on the grounds that it is vague, ambiguous, overbroad, unduly burdensome and oppressive, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern states that the terms of the proposed transaction, including the amount of Watco's capital contribution to Michigan Central, and the nature of Norfolk Southern's rights and interests in Michigan Central, were determined by negotiations between Norfolk Southern and Watco, based on the parties' respective business judgments. See also Response to Interrogatory No. 12, *supra*.

**Request For Production Of Documents No. 2:** Please identify any document reviewed by NSR, in answering the above interrogatories; and please produce, or arrange for counsel for BMWED and BRS to inspect, any such documents.

**Response:** Norfolk Southern objects to the Request on the grounds that it is overbroad, unduly burdensome and oppressive, and seeks information that is neither relevant nor reasonably

calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, Norfolk Southern states that the documents reviewed in answering the above interrogatories consist of the Petition for Exemption and the Transaction Agreement and related agreements attached as exhibits thereto (filed July 13, 2007).

Respectfully submitted,



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Norfolk Southern Corporation  
Three Commercial Place  
Norfolk, VA 23510  
(757) 629-2657

G. Paul Moates  
Jeffrey S. Berlin  
Donald H. Smith  
Sidley Austin LLP  
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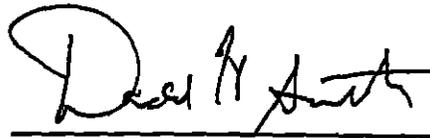
Attorneys for  
Norfolk Southern Railway Company

Dated: September 4, 2007

**CERTIFICATE OF SERVICE**

I hereby certify this 4<sup>th</sup> day of September, 2007, that I have caused the foregoing to be served on the following parties in the manner indicated:

Richard S. Edelman  
O'Donnell, Schwartz & Anderson  
1900 L Street, N.W.  
Suite 800  
Washington, D.C. 20036  
(by hand)

  
\_\_\_\_\_

**BMWED/BRS**  
**Exhibit 3**



Declaration  
of  
Bradley Winter

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35063

MICHIGAN CENTRAL RY, LLC-  
ACQUISITION AND OPERATION EXEMPTION-  
LINES OF NORFOLK SOUTHERN RY CO.

DECLARATION OF BRADLEY A. WINTER

I, BRADLEY A WINTER , declare under penalty of perjury that the following is true and correct and based upon personal knowledge

1 I am the General Chairman of the Consolidated Rail System Federation ("Federation"), of the Division/IBT ("BMWED"). BMWED is a labor organization headquartered in Southfield, Michigan and it is the collective bargaining representative under the Railway Labor Act of persons employed by rail carriers in the craft or class of maintenance of way employee including, but not limited to, employees who do maintenance, repair, rehabilitation and construction work on railroad rights of way, roadbeds, tracks, track and roadbed maintenance equipment, and bridges and buildings. BMWED is the exclusive bargaining representative of maintenance of way employees of Norfolk Southern Ry. ("NSR"), including those who work on the right of way, lines, structures, facilities and equipment that NSR proposes to sell to Michigan Central Ry. LLC ("Michigan Central") One of my responsibilities as General Chairman is to provide representation to BMWED members who work on the right of way, lines, structures, facilities and equipment that NSR proposes to sell to Michigan Central.

2. I am submitting this declaration in connection with BMWED's comments in opposition to NSR's proposed sales of certain of its right of way, lines, structures, facilities and equipment to Michigan Central.

3. BMWED is party to various collective bargaining agreements with NSR that cover NSR employees who work on its right of way lines, structures, facilities and equipment. Among

other things, those agreements provide BMWED members employed by NSR with levels of compensation, benefits and work rules that are generally standard national provisions and they are far more advantageous to employees than rates of pay, rules and working conditions provided to employees on short line and regional railroads that do not participate in national bargaining. There are substantial differences in rates of pay, rules and working conditions between the NSR agreements and other agreements derived from national bargaining in comparison to rates of pay, rules and working conditions on short line and regional railroads not involved in national bargaining, even when the employees of such railroads are organized. In particular, rates of pay, rules and working conditions on railroads owned or controlled by Watco are substantially less beneficial to employees than those under the NSR agreements.

4. I and other BMWED officers have met with representatives who spoke for Michigan Central regarding a possible agreement covering Michigan Central employees. They have been quite clear that they will not run the right of way lines, structures, facilities and equipment that Michigan Central would acquire from NSR under NSR collective bargaining agreements or other national standard agreements. Instead, they insist on a short line type agreement. The rates of pay, rules and working conditions discussed with us would mean pay cuts of about \$2.00 per hour for Track Foremen and over \$4.00 per hour for other maintenance of way workers relative to NSR. NSR Foremen are paid \$21.49 per hour and NSR Machine Operators and Trackmen are paid \$20.96 and \$19.60 respectively. A term sheet provided to BMWED by representatives for Michigan Central (attached) showed that they would pay Foremen \$19.50 per hour, Machine Operators \$16.50 per hour and Trackmen \$15.00 per hour. Michigan Central would also have a less beneficial health insurance plan than the national health plan, and no income protection arrangements comparable to those on NSR. Other work rules would be more advantageous to the railroad and less advantageous to employees than those on NSR. Additionally, Michigan

Central is insisting on a single agreement for all employees with consolidated terms covering all workers. It is also my understanding that Michigan Central plans to employ 50 percent fewer maintenance of way employees than are employed by NSR on the right of way, lines, structures, facilities and equipment that NSR proposes to sell to Michigan Central (there are about 45 maintenance of way employees now on these rights of way and lines, the representatives for Michigan Central told us that it would employ about 24 maintenance of way workers).

5. As General Chairman responsible for representing BMWED members who work on the right of way, lines, structures, facilities and equipment that NSR proposes to sell to Michigan Central I am familiar with the current circumstances of this territory. The right of way, lines, structures, facilities and equipment on the main line are in good condition and there is significant traffic with good and reliable shippers on that territory. As is often the case with branch lines, the branch lines here are not in as good condition as the main line. It is not apparent to me that NSR has any "need" to sell the right of way lines, structures, facilities and equipment that NSR proposes to sell to Michigan Central. These lines are certainly not candidates for abandonment and it is my understanding that they produce a profit.

6. Before becoming a union officer I worked as a maintenance of way employee for 8 years, holding positions such as trackman, truck driver, machine operator, track foreman and track inspector. Based on my experience as a maintenance of way employee I reviewed the track inspection and other reports produced by NSR in discovery in this proceeding. My review of these materials confirmed my assessment that the main line right of way, structures, facilities and equipment that NSR proposes to sell to Michigan Central are in good condition without need of major renovation, renewal, rehabilitation or other capital work, but that some rehabilitation is needed on the bridges on the branch lines. As I understand the reports produced in discovery, the track inspection reports for the period reported-on show that the track was safe and without

defect for the time table speed applicable for that period; the main line bridges are in good state of repair, but some branch line bridges will need renewal and rehabilitation in the future.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the foregoing statements are true and accurate.

9/11/07  
Date

Bradley A. Winter  
Bradley A. Winter

**APPENDIX I**

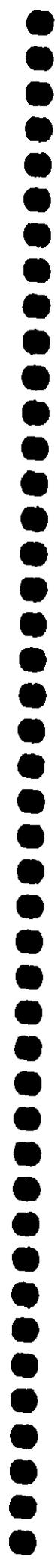
(a) Employees shall receive the following rates of pay effective March 1, 2008.

	<u>March 1, 2008</u>
<b>SIGNAL MAINTAINER</b>	<b>21.00/hr</b>
<b>ENGINEER</b>	<b>20.50/hr</b>
<b>CONDUCTOR</b>	<b>19.50/hr</b>
<b>TOWER OPERATOR</b>	<b>18.00/hr</b>
<b>MACHINIST</b>	<b>18.00/hr</b>
<b>ELECTRICIAN</b>	<b>20.00/hr</b>
<b>SECTION FOREMAN</b>	<b>19.50/hr</b>
<b>MACHINE OPERATOR</b>	<b>16.50/hr</b>
<b>TRACK LABORER</b>	<b>15.00/hr</b>
<b>WELDER</b>	<b>19.00/hr</b>
<b>WELDER HELPER</b>	<b>15.00/hr</b>
<b>CARMEN FOREMAN</b>	<b>17.00/hr</b>
<b>CARMEN</b>	<b>15.50/hr</b>

- (b) Recruitment Bonus: Each current NS employee who joins the Michigan Central Railway on the first day of operation and remains in its employment for one year will be given a \$5,000 bonus.
- (c) Current NS employees who join the Michigan Central Railway for the first day of operation will keep their NS Seniority Date for purposes of job bidding, vacation bidding and vacation accrual.
- (d) Employees hired on after the effective date of this Agreement shall be paid in accordance with the following schedule of wages and benefits;

Start	75% of regular applicable wage
After 3 Months	Health insurance coverage
Upon Full Qualification	100% of regular applicable wage

**BMWED/BRS**  
**Exhibit 4**



**Declaration of  
Eldon Luttrell**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35063

MICHIGAN CENTRAL RY, LLC-  
ACQUISITION AND OPERATION EXEMPTION-  
LINES OF NORFOLK SOUTHERN RY. CO.

**DECLARATION OF ELDON LUTTRELL**

I, **ELDON LUTTRELL**, declare under penalty of perjury that the following is true and correct and based upon personal knowledge:

1. I am the General Chairman of the United General Committee of the Brotherhood of Railroad Signalmen ("BRS"). BRS is a labor organization headquartered in Front Royal Virginia, and is the collective bargaining representative under the Railway Labor Act of persons employed by rail carriers in the craft or class of Signalman including, but not limited to, employees who do maintenance, repair, rehabilitation and construction work on railroad signal systems and equipment. BRS is the exclusive bargaining representative of Signalmen employed by the Norfolk Southern Ry. ("NSR"), including those who work on the lines and signal equipment that NSR proposes to sell to Michigan Central Ry. LLC ("Michigan Central"). One of my responsibilities as General Chairman is to provide representation to BRS members who work on the lines and signal equipment that NSR proposes to sell to Michigan Central.

2. I am submitting this declaration in connection with BRS's comments in opposition to NSR's proposed sales of certain of its right of way, lines, structures, facilities and equipment to Michigan Central.

3. BRS is party to various collective bargaining agreements with NSR that cover NSR employees who work on its signal systems and equipment. Among other things, those agreements provide BRS members employed by NSR with levels of compensation, benefits and work rules that are generally far more advantageous to employees than rates of pay, rules and working conditions provided to employees on short line and regional railroads that do not participate in national bargaining. There are substantial differences in rates of pay, rules and working conditions between the NSR agreements and other agreements derived from national bargaining in comparison to rates of pay, rules and working conditions on short line and regional railroads not involved in national bargaining, even when the employees of such railroads are organized. In particular, rates of pay, rules and working conditions on railroads owned or controlled by Watco are substantially less beneficial to employees than those under the NSR agreements.

4. Spokesmen for Michigan Central have made it clear to NSR employees that they will not operate the right of way lines, structures, facilities and equipment that Michigan Central would acquire from NSR under NSR collective bargaining agreements or other standard national agreements. Instead, they insist on a short line type agreement. No representative for Michigan Central contacted BRS. Currently, the rate of pay for a Signal Maintainer on NSR is \$23.36 per hour with an additional \$.85 per hour skill adjustment, for an effective straight time rate of \$24.21. This is substantially above what I understand Michigan Central plans to pay its Signalmen. I also note that seven of the 13 affected Signalmen, who range in age from 50-61 are currently entitled to 5 weeks annual vacation; I have no information that Michigan Central would match that level of benefits. We have heard from other organizations that Michigan Central is

insisting on rates of pay, rules and working conditions like those applicable on other Watco railroads; and, on a single agreement for all employees with consolidated terms covering all workers. And, according to the Michigan Central filings at the STB, the total number of Signalmen will be reduced from the current level.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the foregoing statements are true and accurate.

September 14, 2007  
Date

  
Eldon L. Luttrell

**BMWED/BRS**  
**Exhibit 5a**

inkSmart

Articles > Business Wire > Jan 26, 2004 > Article > Print friendly

### RailAmerica Completes Acquisition of Central Michigan Railway Company

Business Editors

LA RATON, Fla.--(BUSINESS WIRE)—Jan 26, 2004

RailAmerica, Inc. (NYSE:RRA) today announced that it has completed its acquisition of the Bay City, Michigan-based Central Michigan Railway Company (CMGN) for \$25.3 million. The transaction was funded by utilizing cash on hand supplemented by funds from the Company's \$100 million revolving credit facility.

Central Michigan Railway operates 100 miles of rail line from Midland, Michigan, south to Durand, Michigan and generated revenues of approximately \$11 million in 2003. CMGN provides rail freight service to the Saginaw, Michigan area, and interchanges traffic with Canadian National, CSXT, Lake State Railway, Tuscola & Saginaw Bay Railway, in addition to RailAmerica's Huron & Eastern Railway (HESR) and Saginaw Valley Railway (SGVY). Major shippers on the CMGN include Dow Chemical and Consumers Energy. Commodities moved on the CMGN include chemicals, coal, agricultural commodities, sugar beets, fertilizer and cement. CMGN also has cross-dock, warehouse and intermodal facilities.

John O. Marino, Chairman, President & CEO of RailAmerica said, "The CMGN represents our sixth Michigan railroad, where we now operate over 500 miles of rail lines and move over 60,000 freight carloads a year. The Central Michigan Railway has a history of strong operational performance and free cash flow (free cash flow is defined as operating income plus depreciation less capital expenditures and debt service). Due to the fact that its operations fit so well with RailAmerica's other Michigan railroads, we expect that we will derive significant cost savings and synergies from its integration into our organization. In fact, we anticipate that CMGN will be accretive to our earnings in 2004."

RailAmerica, Inc. (NYSE:RRA) is the world's largest short line and regional railroad operator with 49 railroads operating approximately 17,800 miles in the United States, Canada, Australia, Chile and Argentina, including track access arrangements. The Company is a member of the Russell 2000(R) Index. Its website may be found at <http://www.railamerica.com>.

**Disclaimer Regarding Forward-Looking Statements:** This press release contains forward-looking statements regarding future events and the performance of RailAmerica that involve risks and uncertainties that could cause actual results to differ materially including, but not limited to, operating costs, foreign currency risks, failure to successfully integrate acquisitions, failure to service debt, failure to successfully market and sell non-core assets, failure to successfully acquire and integrate non-strategic properties and assets when scheduled or at all, failure to accomplish new marketing initiatives, economic and weather conditions, customer demand, increased competition in the relevant market, and others. In particular, forward-looking statements regarding acquisitions, customer demand, increased competition in the relevant market, and others. In particular, forward-looking statements regarding acquisitions of the Company and entities to be acquired are subject to inherent economic, financial and operating uncertainties, including changes in economic and weather conditions, the ability to retain key customers and the impact of unforeseen costs and liabilities of such entities. Forward-looking statements speak only as of the date the statement was made. The Company assumes no obligation to update forward-looking information to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information. If the Company does update any forward-looking statement, no inference should be drawn that the Company will make additional updates with respect to that statement or any other forward-looking statements. We refer you to the documents that RailAmerica files from time to time with the Securities and Exchange Commission, such as the Form 10-K, Form 10-Q and Form 8-K, which contain additional important factors that could cause its actual results to differ from its current expectations and from the forward-looking statements contained in this press release.

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**BMWED/BRS**  
**Exhibit 5b**



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**Genesee & Wyoming to Acquire Railroads From Georgia-Pacific Corp.; Genesee & Wyoming Schedules Conference Call to Discuss Acquisitions**

ATLANTA, GA. December 19, 2003 -- Georgia-Pacific Corp. (NYSE: GP) and Genesee & Wyoming Inc. (GWI) (NYSE: GWR) today announced they have signed an agreement for GWI to acquire three short-line railroads from Georgia-Pacific for \$55.6 million.

In conjunction with the acquisition, GWI has entered into a 20-year agreement to provide rail transportation service to Georgia-Pacific facilities currently served by these railroad operations.

GWI will acquire the Chattahoochee Industrial Railroad (CIRR), the Arkansas Louisiana & Mississippi Railroad Company (ALM), and the Fordyce & Princeton Railroad Company (F&P). For the 12 months ended Sept. 30, 2003, these railroads reported a combined \$18 million in revenues, of which Georgia-Pacific accounted for approximately 90 percent.

"Consistent with our ongoing rationalization of non-strategic assets, this transaction is an excellent opportunity to sell assets that are more valuable to another company and use the proceeds to repay debt," said A.D. "Pete" Correll, Georgia-Pacific chairman and chief executive officer. "With GWI's expertise, we believe the key manufacturing facilities served by these railroads will continue to receive reliable service that meets their transportation needs."

GWI said it plans to fund the acquisition under its \$223 million revolving credit facility and, following the acquisition, expects to have approximately \$120 million of additional availability. As of Sept. 30, 2003, pro forma for the Georgia-Pacific railroads, GWI's total debt to total capitalization is expected to be approximately 36 percent. GWI expects the acquisitions to be immediately accretive to its earnings.

GWI has agreed to purchase the stock of CIRR, ALM, and F&P under Section 338 (h)(10) of the U.S. Tax Code and will therefore benefit from the stepped-up tax basis of the Georgia-Pacific assets. The boards of directors of both GWI and Georgia-Pacific have approved the transaction, which is subject to regulatory approval as well as other customary closing conditions. The acquisition is expected to be completed by Dec. 31, 2003.

Mortimer B. Fuller III, chairman and chief executive officer of GWI, said, "We are excited to be operating railroads that serve some of Georgia-Pacific's most important manufacturing facilities. Genesee & Wyoming is committed to providing world-class rail service to Georgia-Pacific and our other on-line customers through the expertise of our Rail Link subsidiary. The heavy switching nature of the railroads and their geographic proximity to other Rail Link operations make this an excellent strategic fit, and we see significant opportunity to enhance the service and operating efficiency of the railroads."

**Descriptions of Railroads**

Based in Cedar Springs, Ga., CIRR operates more than 15 miles of track between Hilton and Saffold, Ga., and interconnects with CSX Corporation and Norfolk Southern. CIRR serves Georgia-Pacific's Cedar Springs containerboard mill, which is one of the company's largest and lowest-cost containerboard facilities. In 2002, CIRR hauled 19,561 carloads, including pulp and paper (73 percent), coal (13 percent), forest products (5 percent), metals (4 percent), and chemicals (4 percent).

Based in Crossett, Ark., the ALM and F&P are composed of 109 miles of contiguous track between Monroe, La., and Fordyce, Ark., and interconnect with Union Pacific and Kansas City Southern. In Fordyce, the railroads serve one plywood plant and one oriented strand board plant for Georgia-Pacific. In Crossett, the railroads serve one plywood plant, one lumber mill, a paper mill complex producing tissue, paperboard and fine papers, and a chemical facility. At Crossett, the softwood plywood plant is the largest in the world while the paper mill is one of Georgia-Pacific's largest producers of tissue and other paper. In 2002, the ALM and F&P hauled 22,470 carloads, including forest products (67 percent), pulp and paper (14 percent), and chemicals (18 percent).

The CIRR, ALM and F&P will be managed by James W. Benz, president of GWI's Rail Link subsidiary, headquartered in Jacksonville, Fla. Rail Link provides switching services to six facilities, including three paper mills, proximate to the ALM and F&P and to one paper mill near the CIRR. In Georgia, Rail Link also operates the railroads that serve the ports of Savannah and Brunswick and also provides industrial railroad switching for paper mills in Brunswick, Oglethorpe and Jesup.

GWI has scheduled a conference call for Monday, Dec. 22, 2003 at 11:00 a.m. Eastern time to discuss the acquisitions. The dial-in number for the teleconference will be 1-800-450-0788.

GWI is a leading operator of short line and regional freight railroads in the United States, Canada, Mexico, Australia and Bolivia. The company operates over 8,000 miles of owned and leased track and over an additional 3,000 miles under track access arrangements.

Headquartered at Atlanta, Georgia-Pacific is one of the world's leading marketers and manufacturers of tissue, packaging, paper, building products, pulp and related chemicals. With 2002 annual sales of more than \$23 billion, the company employs approximately 61,000 people at 400 locations in North America and Europe. Its familiar consumer tissue brands include Quilted Northern®, Angel Soft®, Brawny®, Sparkle®, Soft 'n Gentle®, Mardi Gras®, So-Dri®, Green Forest® and Vanity Fair®, as well as the Dixie® brand of disposable cups, plates and cutlery. Georgia-Pacific's building products business has long been among the nation's leading suppliers of building products to lumber and building materials dealers and large do-it-yourself warehouse retailers. For more information, visit [www.gp.com](http://www.gp.com).

**Safe Harbor Statement (GWI):** This press release contains forward-looking statements regarding future events and the future performance of Genesee & Wyoming Inc. that involve risks and uncertainties that could cause actual results to differ materially including, but not limited to, economic conditions, customer demand, increased competition in relevant markets, and others. The Company refers you to the documents that Genesee & Wyoming Inc. files from time to time with the Securities and Exchange Commission, such as the Company's Forms 10-Q and 10-K which contain additional important factors that could cause its actual results to differ from its current expectations and from the forward-

looking statements contained in this press release.

**Safe Harbor Statement (Georgia-Pacific Corp.):** Certain statements contained in this release are forward-looking statements (as such term is defined under the federal securities laws) are based on current expectations, and are subject to risks and uncertainties. Actual results could differ materially as a result of numerous factors, including but not limited to factors listed in Georgia-Pacific Corporation's Securities and Exchange Commission filings, including its report on Form 10-Q for the fiscal quarter ended Sept. 27, 2003.

**CONTACTS:**

John C. Hellmann, Chief Financial Officer, Genesee & Wyoming Inc. 203-629-3722, or

Georgia-Pacific, Greg Guest (media) 404-652-4739/Meg Nollen (Investors) 404-652-4720.

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LinkSmart

Articles > Railway Track and Structures > Sept. 2002 > Article > Print friendly

**Genesee & Wyoming to acquire Utah Railway, underwrite commitment - Industry Today - Brief Article - Statistical Data**

ended

Genesee & Wyoming Inc. has signed an agreement to acquire the Utah Railway Company, a wholly-owned subsidiary of Mueller Industries, Inc., for \$54 million in cash, subject to working capital adjustments. UTAH operates more than 423 miles of track from Ogden, Utah, to Grand Junction, Colo., and interchanges with both Union Pacific and Burlington Northern and Santa Fe

ended in 1912, UTAH operates over 45 miles of owned track and 378 miles under track access agreements, including agreements with the UP from Provo, Utah, to Grand Junction, Colo., and with BNSF from Provo, Utah, to Ogden, Utah. In addition, UTAH serves industrial customers in and around the Salt Lake City area through trackage rights from the Utah Transit Authority.

initially plans to fund the acquisition under its existing \$103-million revolving credit facility. The company has agreed to purchase the stock of UTAH and its wholly-owned subsidiary, the Salt Lake City Southern Railroad, under Section 338 (b)(10) of the U.S. Tax Code and will, therefore, benefit from the stepped-up tax basis of the UTAH assets.

GW also announced that it has received an underwriting commitment from Fleet National Bank for \$250 million in new senior secured credit facilities, subject to customary conditions. Fleet's commitment provides GWI with access to capital for general corporate purposes, including potential acquisitions.

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**BMWED/BRS**  
**Exhibit 5c**



**BMWED/BRS**  
**Exhibit 6**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35063

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

**MICHIGAN CENTRAL RAILWAY, LLC  
RESPONSES AND OBJECTIONS TO  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY THE BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN**

Michigan Central Railway, LLC ("Michigan Central") submits the following responses and objections to the interrogatories and requests for production of documents ("Discovery Requests") submitted by the Brotherhood of Maintenance of Way Employes Division/IBT and Brotherhood of Railroad Signalmen ("BMWED/BRS") on August 15, 2007, to the extent such requests are addressed to Michigan Central.

**GENERAL OBJECTIONS**

Michigan Central objects generally to the Definitions and Instructions contained in the Discovery Requests to the extent that the Definitions and Instructions purport to impose upon Michigan Central burdens and obligations in excess of those imposed by the rules of the Surface Transportation Board.

Michigan Central objects generally to each of the Discovery Requests to the extent it seeks information that is protected from discovery by the attorney-client privilege, the attorney work product doctrine and/or any other privilege or immunity from disclosure. All claims of privilege are expressly reserved, and any inadvertent production of privileged information is not intended as and shall not be deemed or construed to be a waiver of any applicable privilege or

immunity from disclosure except where such waiver is expressly communicated in writing.

Subject to the foregoing objections, Michigan Central responds as follows:

**RESPONSES TO INTERROGATORIES  
AND DOCUMENT PRODUCTION REQUESTS**

**Document Production Request.** Please identify any document reviewed by NSR, Watco and/or Michigan Central in answering the BMWED/BRS interrogatories and please produce, or arrange for counsel for BMWED and BRS to inspect, any such documents.

**Response:** Michigan Central is providing with this Response the documents, if any, identified in the response to the propounded interrogatories.

**Interrogatory No. 1.** Describe the ratio or percentages by which NSR and Watco will share in the profits of Michigan Central; and/or explain the percentages by which Michigan Central 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:** See the Response of Norfolk Southern Railway Company ("Norfolk Southern").

**Interrogatory No. 2.** Explain the statement at footnote 2 on page 11 of the petition for exemption that members of the limited liability company will be entitled to receive economic benefits, including a share of Michigan Central's net cash flow, differing from their respective membership interests and explain how the percentage or amount of benefits may vary.

**Response:** See the Response of Norfolk Southern.

**Interrogatory No. 3.** Explain statements in the Michigan Central Petition for Exemption (at 13) that, by the structure of the proposed acquisition transaction with the capital contributions by NSR and Watco, Michigan Central will have independent access to capital so it can invest in the lines to be conveyed to Michigan Central, and that Michigan Central will be able to invest where investment is most needed and in the most productive capital projects. Additionally,

a. State whether Michigan Central contends that it will be better situated than NSR to make capital contributions to the lines to be conveyed to Michigan Central, and if so why.

b. State whether Michigan Central contends that it will be better situated than NSR to know where capital investments are needed on the lines to be conveyed to Michigan

Central, and if so why.

**Response:** Michigan Central objects to this Interrogatory to the extent it is vague and ambiguous, including but not limited to the ambiguity as to the definition of what it means to be "better situated ... to make capital contributions" and "better situated ... to know where capital investments are needed." Michigan Central objects to the extent to which this Interrogatory calls for a legal conclusion and/or seeks responses to a hypothetical. Subject to the foregoing objections, Michigan Central states as follows: Michigan Central will be an independent Class 2 railroad not controlled by Norfolk Southern. As such, it will be an entity with access to capital markets independent of Norfolk Southern, and to use capital realized from that access at locations on its lines pursuant to its discretion. Michigan Central does not "contend that it will be more or less better situated than NSR to make capital contributions to the lines to be conveyed to Michigan Central" nor does it "contend that it will be better situated than NSR to know where capital investments are needed on the lines to be conveyed to Michigan Central...." In response to the document request, Michigan Central refers BMWED/BRS to that First Amended and Restated Limited Liability Company Agreement, already on file with the Board and already provided to BMWED/BRS.

**Interrogatory No. 4.** Explain what is meant by the term "reasonably good condition" in Section 4(a) of the Joint Use Agreement. If the term is defined by some other document, identify the document.

**Response:** See the Response of Norfolk Southern.

**Interrogatory No. 5.** State whether there are any restrictions, limitations and or penalties on Michigan Central with respect to its ability to contract out maintenance of way and/or signal work. In particular, state whether Michigan Central can only contract with Watco and/or Watco subsidiaries for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central, and whether there are penalties or conditions if Michigan Central contracts with an entity other than Watco or a Watco subsidiary for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central.

**Response:** See the Response of Norfolk Southern.

**Interrogatory No. 6.** State whether Michigan Central will own the locomotives to be contributed by Watco. If so, state whether there are any restrictions, limitations, conditions or security interests on those locomotives.

**Response:** Michigan Central will own the locomotives to be contributed by Watco. There will be no restrictions, limitations, conditions or security interests on the locomotives at the time they are contributed by Watco. In response to the document request, Michigan Central refers BMWED/BRS to the Transaction Agreement, already on file with the Board and already provided to BMWED/BRS.

**Interrogatory No. 7.** State whether there were any original plans to transfer the lines to be conveyed to Michigan Central or to any other entity where NSR would not have any interest in the acquiring entity. If so, explain why there was a change to the current structure for the transaction.

**Response:** See the Response of Norfolk Southern.

**Interrogatory No. 8.** State whether any shippers were contacted about the proposed sale of the NSR lines to be conveyed to Michigan Central before the petition for exemption and petition for revocation of exemption were 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:** See the Response of Norfolk Southern.

**Interrogatory No. 9.** Describe the condition of the NSR lines to be conveyed to Michigan Central and describe any plans NSR had for maintenance, repair and/or renewal of the lines. Identify any document that describes or summarizes those plans.

**Response:** See Response of Norfolk Southern.

**Interrogatory No. 10.** State the value of the lines, structures, facilities and equipment to be conveyed by NSR to Michigan Central. Identify any document that placed a value on the lines, structures, facilities and equipment to be conveyed by NSR to Michigan Central 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 Michigan Central after NSR contemplated their sale.

**Response:** See Response of Norfolk Southern.

**Interrogatory No. 11.** State whether NSR viewed the lines to be conveyed to Michigan Central 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 Michigan Central.

**Response:** See Response of Norfolk Southern.

Respectfully submitted,



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Dated: August 24, 2007



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## **Genesee & Wyoming to Acquire Railroads From Georgia-Pacific Corp.; Genesee & Wyoming Schedules Conference Call to Discuss Acquisitions**

ATLANTA, GA. December 19, 2003 -- Georgia-Pacific Corp. (NYSE: GP) and Genesee & Wyoming Inc. (GWI) (NYSE: GWR) today announced they have signed an agreement for GWI to acquire three short-line railroads from Georgia-Pacific for \$55.6 million.

In conjunction with the acquisition, GWI has entered into a 20-year agreement to provide rail transportation service to Georgia-Pacific facilities currently served by these railroad operations.

GWI will acquire the Chattahoochee Industrial Railroad (CIRR), the Arkansas Louisiana & Mississippi Railroad Company (ALM), and the Fordyce & Princeton Railroad Company (F&P). For the 12 months ended Sept. 30, 2003, these railroads reported a combined \$18 million in revenues, of which Georgia-Pacific accounted for approximately 90 percent.

"Consistent with our ongoing rationalization of non-strategic assets, this transaction is an excellent opportunity to sell assets that are more valuable to another company and use the proceeds to repay debt," said A.D. "Pete" Correll, Georgia-Pacific chairman and chief executive officer. "With GWI's expertise, we believe the key manufacturing facilities served by these railroads will continue to receive reliable service that meets their transportation needs."

GWI said it plans to fund the acquisition under its \$223 million revolving credit facility and, following the acquisition, expects to have approximately \$120 million of additional availability. As of Sept. 30, 2003, pro forma for the Georgia-Pacific railroads, GWI's total debt to total capitalization is expected to be approximately 36 percent. GWI expects the acquisitions to be immediately accretive to its earnings.

GWI has agreed to purchase the stock of CIRR, ALM, and F&P under Section 338 (h)(10) of the U.S. Tax Code and will therefore benefit from the stepped-up tax basis of the Georgia-Pacific assets. The boards of directors of both GWI and Georgia-Pacific have approved the transaction, which is subject to regulatory approval as well as other customary closing conditions. The acquisition is expected to be completed by Dec. 31, 2003.

Mortimer B. Fuller III, chairman and chief executive officer of GWI, said, "We are excited to be operating railroads that serve some of Georgia-Pacific's most important manufacturing facilities. Genesee & Wyoming is committed to providing world-class rail service to Georgia-Pacific and our other on-line customers through the expertise of our Rail Link subsidiary. The heavy switching nature of the railroads and their geographic proximity to other Rail Link operations make this an excellent strategic fit, and we see significant opportunity to enhance the service and operating efficiency of the railroads."

### **Descriptions of Railroads**

Based in Cedar Springs, Ga., CIRR operates more than 15 miles of track between Hilton and Saffold, Ga., and interconnects with CSX Corporation and Norfolk Southern. CIRR serves Georgia-Pacific's Cedar Springs containerboard mill, which is one of the company's largest and lowest-cost containerboard facilities. In 2002, CIRR hauled 19,561 carloads, including pulp and paper (73 percent), coal (13 percent), forest products (5 percent), metals (4 percent), and chemicals (4 percent).

Based in Crossett, Ark., the ALM and F&P are composed of 109 miles of contiguous track between Monroe, La., and Fordyce, Ark., and interconnect with Union Pacific and Kansas City Southern. In Fordyce, the railroads serve one plywood plant and one oriented strand board plant for Georgia-Pacific. In Crossett, the railroads serve one plywood plant, one lumber mill, a paper mill complex producing tissue, paperboard and fine papers, and a chemical facility. At Crossett, the softwood plywood plant is the largest in the world while the paper mill is one of Georgia-Pacific's largest producers of tissue and other paper. In 2002, the ALM and F&P hauled 22,470 carloads, including forest products (67 percent), pulp and paper (14 percent), and chemicals (18 percent).

The CIRR, ALM and F&P will be managed by James W. Benz, president of GWI's Rail Link subsidiary, headquartered in Jacksonville, Fla. Rail Link provides switching services to six facilities, including three paper mills, proximate to the ALM and F&P and to one paper mill near the CIRR. In Georgia, Rail Link also operates the railroads that serve the ports of Savannah and Brunswick and also provides industrial railroad switching for paper mills in Brunswick, Oglethorpe and Jesup.

GWI has scheduled a conference call for Monday, Dec. 22, 2003 at 11:00 a.m. Eastern time to discuss the acquisitions. The dial-in number for the teleconference will be 1-800-450-0788.

GWI is a leading operator of short line and regional freight railroads in the United States, Canada, Mexico, Australia and Bolivia. The company operates over 8,000 miles of owned and leased track and over an additional 3,000 miles under track access arrangements.

Headquartered at Atlanta, Georgia-Pacific is one of the world's leading marketers and manufacturers of tissue, packaging, paper, building products, pulp and related chemicals. With 2002 annual sales of more than \$23 billion, the company employs approximately 61,000 people at 400 locations in North America and Europe. Its familiar consumer tissue brands include Quilted Northern®, Angel Soft®, Brawny®, Sparkle®, Soft 'n Gentle®, Mardi Gras®, So-Dri®, Green Forest® and Vanity Fair®, as well as the Dixie® brand of disposable cups, plates and cutlery. Georgia-Pacific's building products business has long been among the nation's leading suppliers of building products to lumber and building materials dealers and large do-it-yourself warehouse retailers. For more information, visit [www.gp.com](http://www.gp.com).

**Safe Harbor Statement (GWI):** This press release contains forward-looking statements regarding future events and the future performance of Genesee & Wyoming Inc. that involve risks and uncertainties that could cause actual results to differ materially including, but not limited to, economic conditions, customer demand, increased competition in relevant markets, and others. The Company refers you to the documents that Genesee & Wyoming Inc. files from time to time with the Securities and Exchange Commission, such as the Company's Forms 10-Q and 10-K which contain additional important factors that could cause its actual results to differ from its current expectations and from the forward-

forward-looking statements contained in this press release

**Safe Harbor Statement (Georgia-Pacific Corp.):** Certain statements contained in this release are forward-looking statements (as such term is defined under the federal securities laws) are based on current expectations, and are subject to risks and uncertainties. Actual results could differ materially as a result of numerous factors, including but not limited to factors listed in Georgia-Pacific Corporation's Securities and Exchange Commission filings, including its report on Form 10-Q for the fiscal quarter ended Sept. 27, 2003.

**CONTACTS:**  
John C. Hellmann, Chief Financial Officer, Genesee & Wyoming Inc. 203-629-3722, or  
Georgia-Pacific, Greg Guest (media) 404-652-4739/Meg Nollen (Investors) 404-652-4720.

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Genesee & Wyoming to acquire Utah Railway, underwrite commitment - Industry Today - Brief Article - Statistical Data

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Genesee & Wyoming Inc. has signed an agreement to acquire the Utah Railway Company, a wholly-owned subsidiary of Mueller Industries, Inc., for \$250 million in cash, subject to working capital adjustments. UTAH operates more than 423 miles of track from Ogden, Utah, to Grand Junction, Colo., and interchanges with both Union Pacific and Burlington Northern and Santa Fe.

Founded in 1912, UTAH operates over 45 miles of owned track and 378 miles under track access agreements, including agreements with the UP from Provo, Utah, to Grand Junction, Colo., and with BNSF from Provo, Utah, to Ogden, Utah. In addition, UTAH serves industrial customers in the Provo, Utah, area through trackage rights from the Utah Transit Authority.

Genesee initially plans to fund the acquisition under its existing \$103-million revolving credit facility. The company has agreed to purchase the stock of UTAH and its wholly-owned subsidiary, the Salt Lake City Southern Railroad, under Section 338 (b)(10) of the U.S. Tax Code and will, therefore, benefit from the stepped-up tax basis of the UTAH assets.

Genesee also announced that it has received an underwriting commitment from Fleet National Bank for \$250 million in new senior secured credit facilities, subject to customary conditions. Fleet's commitment provides GWI with access to capital for general corporate purposes, including potential acquisitions.

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**BMWED/BRS**  
**Exhibit 5c**

**BMWED/BRS**  
**Exhibit 6**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35063

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

**MICHIGAN CENTRAL RAILWAY, LLC  
RESPONSES AND OBJECTIONS TO  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY THE BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION/IBT AND BROTHERHOOD OF RAILROAD SIGNALMEN**

Michigan Central Railway, LLC ("Michigan Central") submits the following responses and objections to the interrogatories and requests for production of documents ("Discovery Requests") submitted by the Brotherhood of Maintenance of Way Employes Division/IBT and Brotherhood of Railroad Signalmen ("BMWED/BRS") on August 15, 2007, to the extent such requests are addressed to Michigan Central.

**GENERAL OBJECTIONS**

Michigan Central objects generally to the Definitions and Instructions contained in the Discovery Requests to the extent that the Definitions and Instructions purport to impose upon Michigan Central burdens and obligations in excess of those imposed by the rules of the Surface Transportation Board.

Michigan Central objects generally to each of the Discovery Requests to the extent it seeks information that is protected from discovery by the attorney-client privilege, the attorney work product doctrine and/or any other privilege or immunity from disclosure. All claims of privilege are expressly reserved, and any inadvertent production of privileged information is not intended as and shall not be deemed or construed to be a waiver of any applicable privilege or

immunity from disclosure except where such waiver is expressly communicated in writing.

Subject to the foregoing objections, Michigan Central responds as follows:

**RESPONSES TO INTERROGATORIES  
AND DOCUMENT PRODUCTION REQUESTS**

**Document Production Request.** Please identify any document reviewed by NSR, Watco and/or Michigan Central in answering the BMWED/BRS interrogatories and please produce, or arrange for counsel for BMWED and BRS to inspect, any such documents.

**Response:** Michigan Central is providing with this Response the documents, if any, identified in the response to the propounded interrogatories.

**Interrogatory No. 1.** Describe the ratio or percentages by which NSR and Watco will share in the profits of Michigan Central; and/or explain the percentages by which Michigan Central 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:** See the Response of Norfolk Southern Railway Company ("Norfolk Southern").

**Interrogatory No. 2.** Explain the statement at footnote 2 on page 11 of the petition for exemption that members of the limited liability company will be entitled to receive economic benefits, including a share of Michigan Central's net cash flow, differing from their respective membership interests and explain how the percentage or amount of benefits may vary.

**Response:** See the Response of Norfolk Southern.

**Interrogatory No. 3.** Explain statements in the Michigan Central Petition for Exemption (at 13) that, by the structure of the proposed acquisition transaction with the capital contributions by NSR and Watco, Michigan Central will have independent access to capital so it can invest in the lines to be conveyed to Michigan Central, and that Michigan Central will be able to invest where investment is most needed and in the most productive capital projects. Additionally,

a. State whether Michigan Central contends that it will be better situated than NSR to make capital contributions to the lines to be conveyed to Michigan Central, and if so why.

b. State whether Michigan Central contends that it will be better situated than NSR to know where capital investments are needed on the lines to be conveyed to Michigan

Central, and if so why.

**Response:** Michigan Central objects to this Interrogatory to the extent it is vague and ambiguous, including but not limited to the ambiguity as to the definition of what it means to be "better situated ... to make capital contributions" and "better situated ... to know where capital investments are needed." Michigan Central objects to the extent to which this Interrogatory calls for a legal conclusion and/or seeks responses to a hypothetical. Subject to the foregoing objections, Michigan Central states as follows: Michigan Central will be an independent Class 2 railroad not controlled by Norfolk Southern. As such, it will be an entity with access to capital markets independent of Norfolk Southern, and to use capital realized from that access at locations on its lines pursuant to its discretion. Michigan Central does not "contend that it will be more or less better situated than NSR to make capital contributions to the lines to be conveyed to Michigan Central" nor does it "contend that it will be better situated than NSR to know where capital investments are needed on the lines to be conveyed to Michigan Central...." In response to the document request, Michigan Central refers BMWED/BRS to that First Amended and Restated Limited Liability Company Agreement, already on file with the Board and already provided to BMWED/BRS.

**Interrogatory No. 4.** Explain what is meant by the term "reasonably good condition" in Section 4(a) of the Joint Use Agreement. If the term is defined by some other document, identify the document.

**Response:** See the Response of Norfolk Southern.

**Interrogatory No. 5.** State whether there are any restrictions, limitations and or penalties on Michigan Central with respect to its ability to contract out maintenance of way and/or signal work. In particular, state whether Michigan Central can only contract with Watco and/or Watco subsidiaries for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central, and whether there are penalties or conditions if Michigan Central contracts with an entity other than Watco or a Watco subsidiary for maintenance of way and/or signal work on the lines to be conveyed to Michigan Central.

Response: See the Response of Norfolk Southern.

Interrogatory No. 6. State whether Michigan Central will own the locomotives to be contributed by Watco. If so, state whether there are any restrictions, limitations, conditions or security interests on those locomotives.

Response: Michigan Central will own the locomotives to be contributed by Watco. There will be no restrictions, limitations, conditions or security interests on the locomotives at the time they are contributed by Watco. In response to the document request, Michigan Central refers BMWED/BRS to the Transaction Agreement, already on file with the Board and already provided to BMWED/BRS.

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Response: See the Response of Norfolk Southern.

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Response: See Response of Norfolk Southern.

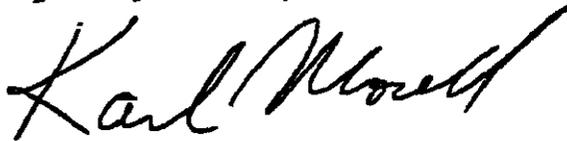
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**Response:** See Response of Norfolk Southern.

**Interrogatory No. 11.** State whether NSR viewed the lines to be conveyed to Michigan Central 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 Michigan Central.

**Response:** See Response of Norfolk Southern.

Respectfully submitted,



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Dated: August 24, 2007