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GREG POWELL
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Anne K. Quinlan, Acting Secretary
U S Department of Transportation Surface Transportation Board
3095 E Street, S W
Washington, D C 20423-0001

January 19, 2009

Re STB Finance Docket Nos 35187 & 35188
Watco Companies, Inc -Continuance
In Control Exemption-Grand Elk Railroad, LLC

Dear Secretary Quinlan

Please find enclosed the original and ten copies of the Brotherhood of Locomotive Engineers & Trainmen/Michigan Legislative Board's Petition for Stay for filing in the above-captioned matter along with a check covering the \$200 filing fee

Thank you for your cooperation

Sincerely,

Greg Powell
Chairman,
Michigan Legislative Board
Brotherhood of Locomotive Engineers & Trainmen Teamsters

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35187

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

AND

FINANCE DOCKET NO. 31588

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

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN
MICHIGAN LEGISLATIVE BOARD'S
PETITION FOR STAY**

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Pursuant to 49 C.F.R. §1150.32(c), Brotherhood of Locomotive Engineers & Trainmen / Michigan Legislative Board ("BLET/MLB") respectfully moves the board for a stay of the effective date of the exemption in the above-captioned proceedings. "Irreparable harm" is evident. Currently there are seventy-two jobs covering the area included in this proposed transaction. "GER" proposes to hire only fifty-eight employees, creating a net loss of fourteen jobs. This is contrary to their claim of job creation. Some current employees will be forced to commute long distances to other Norfolk Southern work locations. Other employees will be forced to relocate outside of the state in many cases. It will be next to impossible for them to sell their homes in this depressed economic environment. Many of these homes will be subject to foreclosure, leading to personal financial crisis and further depression of residential home values. This burden would be directly born by the residents of the State of Michigan. In the previously proposed transaction (STB Finance Docket No. 35063) as mentioned in the current filing (STB Finance Docket No. 35187), Norfolk Southern entered into agreements with the BLET and UTU which offered job protection in the form of flow back, moving allowances when appropriate, job training for displaced workers, and monetary bonuses. At a meeting in Jackson MI on January 8, 2009 Norfolk Southern informed the BLET and UTU that no such protections would be offered in this transaction.

Both "GER" and "NS" answered submissions by the Michigan Economic Development Corporation "MEDC" and Marquette Rail by stating they would not suffer irreparable harm due to the fact that there is no direct connection between Marquette Rail and "NS". The facts are that Marquette Rail has a direct connection to "NS" via the Grand Rapids Terminal Subdivision beginning at CGE 3.6 and extending to Fuller Jct.

Marquette Rail and "NS" have adjoining rights of way north of Turner St. This validates the original submissions by "MEDC" and Marquette Rail.

"GER" has made assertions that the approximate carloads would be 22,000 units per year leading to no significant changes to operations. The "BLEI/MLB" believes that this figure is substantially low. Currently carloads for the cities of Bristol, White Pigeon and the MSO are handled by crews stationed out of Elkhart IN. Cars destined for Constantine, Three Rivers, Schoolcraft, Kalamazoo and Otsego are handled out of Botsford Yard in Kalamazoo. Cars destined for Martin, Wayland, Carlisle, and Grand Rapids are handled out of Hugart Yard in Grand Rapids. Cars destined for these cities would now be interchanged out of Elkhart and shipped to Botsford Yard for classification, causing rail yard activity to exceed the threshold of 100% contained in 49 C.F.R. §1105.7(e)(5)(b), therefore requiring an environmental report. Additionally the lease agreement for trackage rights over the CK&S Industrial now jointly held by the CN Railroad and NS may not be renewed by CN Railroad in April 2009. This would amount to a significant change in operations at Kalamazoo Botsford Yard. CN Railroad currently handles large amounts of Hazardous materials on the CK&S Industrial. These cars would be added to the cars currently being handled in Botsford Yard possibly causing significant environmental impact. It was not disclosed in the "GER" petition as required in C.F.R. §1105.7(7)(iii), that Botsford Yard is a known Hazardous Waste Site (EPA ID# MID006007306). An environmental report is needed to assess the true health risk to the public. The "GER" petition states that their headquarters will be Botsford Yard. This location in relation to the lines listed in the exemption make it such that carloads arriving from Grand Rapids or other locations north of Kalamazoo, would have to be pulled through the downtown area, then stopped and pushed back north and east. Conversely, all moves going north out of Botsford Yard would be required to back out west and south.

before going north. At a minimum, this will double and possibly triple delay times at crossings. This in effect would cut the city in two, severely impeding emergency vehicles, school busses, and general traffic. "GER" has stated it will run its trains during daylight hours which will compound the problem due to the fact that this is the peak time for vehicle traffic in Kalamazoo. This is another example of a major operational change due to the fact that NS currently runs the majority of their traffic at night.

"GER" states it plans to invest 8.9 million dollars in startup capital for improvements, of which 3 million will be used for the replacement of 20,000 ties, one bridge, and the rehabilitation of Botsford and Hugart Yards. 1.2 million dollars will be used to purchase track equipment and 10 locomotives will be purchased for 4.084 million dollars. Currently there are 28 crossings identified by the MDOT as being deficient and in need of immediate repair, with a projected cost of 1.4 million dollars. This does not include the cost of hiring and training employees or for rolling stock and two additional bridges in need of repair. These figures demonstrate that there are insufficient funds to capitalize the "GER" as characterized in their petition. Earlier this year Watco Cos had to realign their credit agreement to get them through the slowing economy. The current Dunn & Bradstreet rating for Watco Transportation Services is 1R4 with a credit score of 419. This credit score could greatly limit their access to the substantial amounts of financial resources they will need if they are going to be able to make the capital improvements in the first year as claimed in their "GER" Petition.

NS is a class 1 railroad with over 25 billion dollars in assets and has enjoyed record profits even in these tough economic times. NS Dunn & Bradstreet rating is 5A2 with an overall good credit appraisal. NS has the resources needed to upgrade the tracks and yards if they so choose. NS also has the resources to cover the cost of cleanup in the event of a major Hazmat spill or other catastrophic accident. "GER" on the other hand

may not have the resources necessary to cover the cost of everything they have indicated that they would do and certainly may not have sufficient cash reserves to pay for major Hazmat spills or major accidents. This would leave the citizens of the State of Michigan to pay the bill.

The "BLEI/MLB" believes that after a thorough review of the facts and questions raised in this petition, the board will realize it is in the best interest of the general public, the employees, and the customers, to grant our Petition for Stay and avoid the irreparable harm they will suffer.

It is the opinion of the "BLEI/MLB" that the granting of the Petition for Stay will not harm the "GER". The NS will also be unharmed due to the fact that they still retain ownership of the railroad and are free to follow any business model they choose.

The "BLEI/MLB" believes the public interest supports the granting of a Stay for all of the reasons stated in this petition as well as filings by Senator Basham and the "MEDC".

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2009 copies of "Brotherhood of Locomotive Engineers & Trainmen / Michigan Legislative Board request for Stay of Exemption" in this proceeding were served via first class mail, postage pre-paid, upon the following:

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