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JAN 31 2011
RECEIVED

228705

January 25, 2011

Surface Transportation Board
Attn: Docket No. EP 704
395 E Street, S.W.
Washington, DC 20423-0001

Re: Notice of Intent to Participate at Oral Hearing February 24, 2011
Review of Commodity, Boxcar and TOFC/COFC Exemptions, No. EP 704

Greetings:

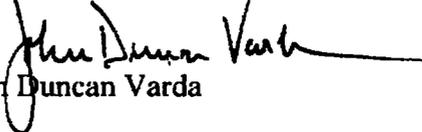
Enclosed for filing are ten (10) copies of the "Verified Statement on Behalf of Wisconsin Central Group". A duplicate of this letter and return mail envelope, postage prepaid, is enclosed for your stamped verification of receipt.

Wisconsin Central Group requests that its representative, John Duncan Varda, written testimony enclosed, be afforded five (5) minutes, at the oral hearing scheduled for February 24, 2011, to address key topics of the testimony, as follows:

- The problem is a failure of competition and competition policy.
- Freight competition in our region has changed dramatically since the Exemptions were granted and since Class I's have reached their present level of consolidation.
- The Board should investigate potential revocation of the Exemptions. Canadian National's treatment of the former Wisconsin Central System, as described in WCG's Statement, illustrates why the Board should do so.
- Wholesale revocation of the Exemptions is not necessarily the answer. Small, targeted adjustments may better serve to give competition another chance.

Sincerely,

DEWITT ROSS & STEVENS, L.L.C.


John Duncan Varda

JDV:mc/mso

Enclosures

JAN 31 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**REVIEW OF COMMODITY, BOXCAR
AND TOFC/COFC EXEMPTIONS**

STB Docket No. EP 704

228 705

VERIFIED STATEMENT

ON BEHALF OF

WISCONSIN CENTRAL GROUP
(an *ad hoc* rail freight shippers coalition)

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Dated: January 25, 2011
Due: January 31, 2011

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**REVIEW OF COMMODITY, BOXCAR
AND TOFC/COFC EXEMPTIONS**

STB Docket No. EP 704

**VERIFIED STATEMENT ON BEHALF OF
WISCONSIN CENTRAL GROUP¹**

IDENTIFICATION OF WISCONSIN CENTRAL GROUP

Wisconsin Central Group (www.centralcorridors.com/wcg) is an *ad hoc* rail freight shippers coalition operating under the auspices of:

- Wisconsin Paper Council (www.wipapercouncil.com);
- Wisconsin Manufacturers & Commerce (ww.wmc.org); and
- Michigan Forest Products Council (www.michiganforest.com).

The goal of Wisconsin Central Group (“WCG”) is to persuade the Canadian National Railway Company (“Canadian National” or “CN”) or otherwise assure: (a) Restoration of Wisconsin Central System (“WC System”) level service and competition for market share for traffic that originates and/or terminates on lines of the former WC System; and (b) for CN's main line between Superior, WI and Chicago. a transparent plan, executed in due course, to mitigate the impact of increasing Prince Rupert traffic and to provide ample capacity for serving current and increasing future traffic that originates and/or terminates on lines of the former WC System.

¹ Verification and identification of the affiant follows the text of the statement.

WCG'S STATEMENT – IN SUMMARY

The problem is a failure of competition and competition policy.

Freight competition in our region has changed dramatically since the Exemptions were granted and since Class I's have reached their present level of consolidation. The Class I, Canadian National, which this Board granted control of the WC System in 2001, has utterly failed to compete for market share on traffic originating and/or terminating in our region on lines served by the former Wisconsin Central System. CN has strong incentives to not compete for, in fact to suppress, such traffic. Given the Exemptions, shippers and other stakeholders in our region, including those in the public sector, have no realistic means to get CN's attention to the problem, to say nothing of holding CN accountable or otherwise restoring rail competition in our region.

The Board should investigate potential revocation of the Exemptions. CN's treatment of the former Wisconsin Central System, as described in WCG's Statement, illustrates why the Board should do so.

Wholesale revocation of the Exemptions is not necessarily the answer. Small adjustments or targeted revocation of the Exemptions may better serve to: (a) give competition another chance, where failure of competition has been the unintended consequence of Class I consolidation; and (b) provide adequate oversight and effective means by which individual shippers might bring attention to such problems on a case-by-case basis.

WISCONSIN CENTRAL GROUP'S STATEMENT

Competition in Our Region, 1980s, Before the WC System.

By the mid-1980s, Soo Line Railroad Company ("Soo") and Chicago & Northwestern Transportation Company ("CNW"), the Class Is serving most of the lines that later became the WC System, were reeling from motor carrier competition unleashed by the Motor Carrier Act of 1980. Soo, having just acquired lines of the bankrupt "Milwaukee Road," reorganized its lines in central Wisconsin and Upper Michigan into its "Lakes States Division," which it spun-off to the newly created Wisconsin Central Ltd., in 1988. Shortly, thereafter, citing truck competition for paper industry traffic, CNW spun-off its lines serving Green Bay and the Fox River Valley (just south of Green Bay) to the Fox River Valley Railroad, under common control with the Green Bay & Western Railroad.

Competition in Our Region 1990s-2001, WC System.

WC System aggressively competed for market share in the region it served and was successful in increasing density of traffic originating and/or terminating on its lines, including lighter density feeder lines throughout its region.

WC System invested in new "paper grade" boxcars² and upgrading of its log car fleet to meet the needs of the paper and forest products industry in its region. Overall, WC System had great success in providing

² "Paper grade" means water tight, no holes in roof or floor, a prime source of water damage in-transit.

sufficient and suitable railcars to meet the needs of shippers on its lines. WC System instituted “quality” programs in partnership with key shippers to measure and continuously improve performance on railcar supply for loadings, predictable and consistent train schedules and other customer satisfaction factors, including predictable and scheduled intra-plant and inter-terminal switching and short-haul inter-facility moves. WC System operated cleaning and inspection tracks to assure delivery of clean, good order railcars for loading and maintained a comprehensive and consistent damage control program that minimized claims and assured customer satisfaction. Due to WC System's competitive efforts to take traffic back from all-highway, outbound carloads from one on-line shipper grew from fewer than 1000 car loads per year in the late 1980s to a typical volume of over 2400 car loads per year through the remaining years that the service was controlled by WC System.

WC System established several truck-rail intermodal facilities, including daily service between Green Bay and Chicago which came to be strongly utilized and supported by Schneider National, the nation's largest truckload motor carrier, headquartered at Green Bay.

Negative Impact of Class I Consolidations.

WC System began and conducted most of its business during a period in which most of its traffic was exempt from regulation but also, a period mostly prior to many, and the most important, of the Class I consolidations. Most Wisconsin and Upper Michigan shippers supported

the shortline consolidations that brought about the WC System, reducing local rail-to-rail competition.³ They did so, however, without appreciating the long term impact of Class I consolidations on the ability of the WC System to continue to provide excellent service on its lines and competitive through rates from and to origins and destinations nationwide.

Year by year, WC System provided excellent, competitive service, earned its cost of capital and enjoyed strong stock prices right up to the point that its management team purportedly concluded that WC System's success and continued growth could not be sustained in the new Class I consolidated environment.⁴

What Canadian National Promised.

In *Canadian National – Control – Wisconsin Central*, Finance Docket No. 34000, Decision and Order, September 7, 2001, Item 5 of the Order, at p. 28, this Board ordered (emphasis added):

Applicants must adhere to all of the representations they made on the record during the course of this proceeding, whether or not such representations are specifically referenced in this decision.

Among such “representations” was the following:

We are confident that implementation of the CN/WC merger will proceed smoothly and will result in meaningful service improvements. We plan to operate WC as the sixth division of the CN system in order to preserve WC’s local characteristics and the value of its employees’ experience as much as possible while securing the benefits of system integration. Among other things, this will assure that customers on WC’s relatively low-density lines will continue to

³ *Wisconsin Central Transportation Corporation, et al – Continuance in Control – Fox Valley & Western Ltd.*, 9 I.C.C.2d 233 (1992), petition to reopen denied, 9 I.C.C.2d 730 (1993); and *Sault Ste. Marie Bridge Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*, Finance Docket 33290 (1997).

⁴ Shortly before reaching this conclusion, this management team had ousted WC System's founder and architect of its success and growth through the 1990s, who is believed to have disputed the conclusion and rationale for merger into CN.

receive the quality of service they have come to expect from WC. We have provided a Service Assurance Plan that we are confident will assure customers that **service levels for each of them will be as good as or better than current levels.** [Emphasis added.]⁵

And, this “representation”:

Shippers will enjoy transportation service that is as good as - if not better than - what they receive from CN and WC today.⁶

In other words, CN's top management represented to the Board that, notwithstanding the economic incentives CN enjoys as a long-haul Class I, it would maintain the “local characteristics” of the shortline or regional WC System. Chief among such “local characteristics” was Wisconsin Central System's aggressively competing for market share on traffic, to, from and within the region served by WC System lines.⁷

In the Verified Statement of E. Hunter Harrison, then Canadian National's Chief Executive Officer, in *Canadian National – Control – Elgin Joliet & Eastern*, Finance Docket 35087, October 30, 2007, Canadian National represented to this Board that:

In the past decade, CN has acquired in the U.S. the Illinois Central, the Wisconsin Central and the GLT systems. As we expected, each of these transactions has added to our capacity to serve customers, and to [increase] our network efficiency. And, **as we promised**, in each transaction, CN met its commitments to integrate the new systems smoothly, **without any reduction in competition**, and to enhance the public interest in rail transportation. [Emphasis added]

In the real world of competition, Mr. Harrison's statement is patently not true. Because CN has and is failing to preserve the Wisconsin Central's

5 Verified Statement of Paul M. Tellier, Canadian National's Chief Executive Officer, p. 2, April 6, 2001, Surface Transportation Board Finance Docket 34000, *Canadian National – Control – Wisconsin Central*.

6 Verified Statement of James M. Foote, Canadian National's Executive Vice President, Sales and Marketing, p. 6, April 6, 2001, FD 34000. *supra*.

7 CN representations were significant. *inter alia*, because they were made in pleadings which became the basis for the Board determining the FD Docket 34000 to be a “minor” proceeding, thus, blocking inconsistent alternative applications.

“local characteristics,” there has been and continues to be a significant reduction in competition.

CN's Failure to Compete on WC System Lines, 2001-Present.

By way of example, within a relatively short time after establishing its control over the WC System, CN:

- Eliminated the “Wisconsin Central Division” which it had promised to operate “in order to preserve the local characteristics” of the WC System.
- Instituted rationing of railcar supply (CN's so-called “Guaranteed Car Order” system, but quite the opposite), which continues to the present, under which shippers have reported over significant periods, and repeatedly, receiving as few as 60% of railcars ordered, despite the fact that the railroad was known to have cars of the type ordered “in storage”.
- Terminated inspection and cleaning tracks, with resultant increase in delivery of dirty and bad order railcars for loading, increased loss and damage claims, increased destination customer dissatisfaction with their suppliers located on former WC System lines and, for those suppliers, consequent loss of competitiveness in their end markets.⁸
- Withdrew 60-foot boxcars (the basis for certain incentive rates) from lumber traffic originating on former WC System lines for destinations

⁸ Due to the railroad's rationing of railcar supply, shippers often face the dilemma of having to clean dirty cars themselves or accepting railcars of questionable quality or rejecting the car, doing without and suffering dissatisfaction of their own customers who planned for delivery via rail.

on the West Coast and in the Southwest and, thus, terminated CN's participation in the traffic.

- Increased boxcar rates on hardwood lumber originating in WC System lines in central Wisconsin, destined to Texas, the Southwest and West Coast such that the boxcar rate exceeded the cost on trucking three intermodal containers (equivalent to one boxcar) to intermodal connections in the Chicago area for furtherance to such destinations by 166% and, thus, terminated CN's participation in the traffic.
- Terminated intermodal facilities on former WC System lines including, despite pleas from shippers, Schneider National and other motor carriers, intermodal service between Green Bay and Chicago, operating in part on its **Superior-Chicago mainline** and, thus, terminated CN's participation in the traffic.
- Terminated a rail-to-truck trans-load operation for plastic pellets, on side track on its **Superior-Chicago mainline** and, thus, terminated CN's participation in the traffic.⁹
- Reduced from five and six days to three days per week, switching at pulpwood loading and recyclable facilities located on its **Superior-Chicago mainline**, even though traffic at those facilities remained strong.

⁹ The operation was established in 1997 through the efforts of WC to recruit a local trucker to lease side track and purchase specialized equipment to trans-load plastic pellets from private railcars for local delivery. CN initially attempted to unilaterally terminate the track lease and, failing that, at the next opportunity increased the track rental to a level that forced relocation of the trans-load operation to track on a short line (at no lease charge) but not as well located for the local deliveries.

- Declined, in 2008, to quote rates to return to rail a regular weekly movement of boxcars from east central Wisconsin to lower Michigan, routed in part **on its Superior-Chicago mainline**, amounting to some 650 carloads per year which would have taken 1,500 truckloads per year off the highways.¹⁰

Surveying the opinion of any former Wisconsin Central System shipper, anonymously, beyond the reach of retribution, will yield the opinion that Canadian National has and continues to consistently neglect to compete for, if not outright suppresses, traffic originating and/or terminating on former WC System lines.

CN's Incentives to Suppress WC System Traffic.

Traffic moving via the port of Prince Rupert has already significantly increased international traffic on the Superior-Chicago mainline. The build-out of Prince Rupert capacity by 2015 will dramatically increase this traffic, possibly enough to increase the number of international trains transiting the Superior-Chicago mainline from the current low 20s to the mid-60s.

Canadian National has consistently acted to reserve the available capacity on its Superior-Chicago mainline by neglecting to compete for and, apparently, outright suppressing domestic traffic originating and/or terminating on former WC System lines. The economic incentives of high volume, long-haul, international traffic trumps the economics of retail

¹⁰ This is the same shipper whose traffic increased from 1000 to 2400 cars per year as a result of WC Systems competitive efforts. The shipper's traffic has now dwindled to fewer than 20 carloads per year, the difference now moving all-highway.

railroading, shorter-haul (at least on CN) domestic traffic which was the bread-and-butter business of the former WC System.

That would seem incentive enough to explain Canadian National's failure and refusal to compete for market share on former WC System lines. However, for the last several years, CN has also had another incentive – the problem of dealing with EJ&E mitigation and oversight. Much of the traffic originating and/or terminating on the former WC System lines transits the Chicago gateway and can only add to CN's burden to comply with mitigation and oversight, such as street-crossing blockages in the communities along the EJ&E line.

With the Full Exemptions, Shippers Have No Meaningful Remedy.

Public sector enforcement of the conditions imposed in Finance Docket 34000, on Canadian National's control of Wisconsin Central System has been non-existent. Private enforcement of such conditions appears to require concerted action by many shippers and other stakeholders across central and northern Wisconsin and the Upper Peninsula and great expense. Full, partial or selectively targeted revocation of the Exemptions may provide reasonable means for case-by-case presentation of these issues to the Board.

Clearly, neither unregulated competition under the Exemptions nor the specific conditions imposed in Finance Docket 34000 have been adequate to assure the survival of the “local characteristics” of the

WC System, a promise and representation on which the Board relied in granting CN control of the WC System.

CONCLUSION AND REQUESTED ACTION

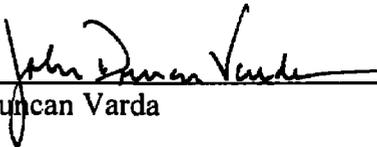
WC Group submits that the examples provided in this Statement illustrate why the Board ought to: (a) Conduct an in-depth investigation of the effectiveness of the Exemptions, changed circumstances and implications of revocation of the Exemptions; and (b) in particular, consider the pros and cons of limited and/or targeted revocation of the Exemptions to address failures of competition policy and conditions on Class I consolidations such as those illustrated by ten (10) years of Canadian National's control of the Wisconsin Central System.

Dated this 25th day of January, 2010.

[See the next page, following, for verification.]

Verification

I, John Duncan Varda, counsel to Wisconsin Central Group, have, since 1970, represented Wisconsin Manufacturers & Commerce and other Wisconsin and Upper Michigan transportation shpper groups and various of their constituent members before the Interstate Commerce Commission and, lately, before the Surface Transportation, and do hereby affirm and verify that I have read the foregoing Verified Statement on behalf of Wisconsin Central Group and know the facts stated therein to be true and correct to my own knowledge and, as to those stated upon information and belief, I reasonably believe them to be true and correct.



John Duncan Varda

STATE OF WISCONSIN)
) SS
Dane COUNTY)

Personally came before me this 25th day of January, 2011, the above named John Duncan Varda, personally known to me to be the person who executed the foregoing verification and acknowledged the same.




Notary Public, State of Wisconsin
My commission 8/14/2011