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November 8, 2019

248915

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
November 8, 2019
Part of
Public Record

Re: **Docket No. FD 36346**
Wisconsin Central Ltd. -- Operation Exemption --
Hallett Dock No. 5 in Duluth, Minnesota

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are the **Petition for Exemption of Wisconsin Central Ltd.** and a **Petition for Establishment of Procedural Schedule**, both dated November 8, 2019. The sum of \$14,900, representing the appropriate fee for the Petition for Exemption, has been tendered electronically via Pay.gov.

Please note that expedited consideration is sought for the Petition for Establishment of Procedural Schedule. A draft *Federal Register* notice of the proposed transaction, Exhibit A to that Petition, is also submitted separately herewith in Microsoft Word format.

Should any questions arise regarding these filings, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,


Thomas J. Litwiler
Attorney for Wisconsin Central Ltd.

TJL:bs

Attachments

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36346

WISCONSIN CENTRAL LTD.
-- OPERATION EXEMPTION --
HALLETT DOCK NO. 5 IN DULUTH, MINNESOTA

**PETITION FOR ESTABLISHMENT
OF PROCEDURAL SCHEDULE**

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: November 8, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36346

WISCONSIN CENTRAL LTD.
-- OPERATION EXEMPTION --
HALLETT DOCK NO. 5 IN DULUTH, MINNESOTA

**PETITION FOR ESTABLISHMENT
OF PROCEDURAL SCHEDULE**

Wisconsin Central Ltd. (“WCL”) requests that the Board adopt the procedural schedule proposed herein to govern consideration of WCL’s concurrently-filed petition for exemption under 49 U.S.C. § 10502 to operate a rail/water dock facility in Duluth, Minnesota known as Hallett Dock No. 5. A draft *Federal Register* notice of the proposed transaction is attached as Exhibit A and also submitted herewith in Microsoft Word format. WCL’s proposed procedural schedule would result in the issuance of a final Board decision 3 ½ months after the filing of the petition for exemption, to be effective 30 days after issuance. The proposed approach is consistent with prior Board practice and accommodates the opportunity for public participation in this matter, the Board’s need for sufficient time to render a decision, and the parties’ reasonable desire for certainty in their transactional timeline.

49 U.S.C. § 10502(b) provides that the Board shall, within 90 days of receiving a petition for exemption, “determine whether to begin an appropriate proceeding.” In prior practice, the Board has either acted on the merits of the petition on the 90th day, or issued a decision on the 90th day indicating that it was instituting a proceeding on the matter. In the latter case, the only further timeline limitation is that the instituted proceeding must be concluded within an additional nine months. The parties would usually not know with certainty which

route the Board would take until the 90th day after the filing of the petition. WCL and the seller, Hallett Dock Company (“Hallett”), thus face a hypothetical open-ended period of up to a full year for the issuance of a Board decision. For reasons described below and in the attached letter from Hallett’s President, certainty is needed regarding the anticipated timing of the STB’s decision.

At the request of the petitioner, the Board has instituted a proceeding under Section 10502(b) at the beginning of the process, upon the filing of the petition for exemption, to receive any public comments and then proceed to a decision on the merits. *See Genesee & Wyoming Inc. – Acquisition of Control Exemption – Providence and Worcester Railroad Company*, Docket No. FD 36064 (STB served Sep. 20, 2016) (“G&W/P&W”). WCL asks the Board to adopt a similar process here, on the following schedule:

November 8, 2019 [Day 1]	WCL’s Petition for Exemption filed
November 22, 2019 [Day 14]	Proceeding instituted, <i>Federal Register</i> notice published ¹
December 13, 2019 [Day 35]	Comments to WCL’s petition due
January 2, 2020 [Day 55]	WCL reply to any comments due
February 26, 2020 [Day 110]	STB decision issued
March 27, 2020 [Day 140]	STB decision effective

¹ Should it appear that there is a risk that a federal government shutdown may occur prior to November 22, WCL would respectfully request that the Board expedite this matter so as to allow publication of the *Federal Register* notice – and thus commencement of the proposed timeline – before any such shutdown occurs.

WCL notes that the overall schedule proposed here – and specifically the 3 ½-month period for the Board to issue a decision – matches the schedule in *G&W/P&W*, where the petitioner sought a Board decision in 2 ½ months and the Board actually issued its decision in 3 ½ months. *See Genesee & Wyoming Inc. – Acquisition of Control Exemption – Providence and Worcester Railroad Company*, Docket No.FD 36064 (STB served Dec. 16, 2016). The 35 days from the filing of the petition for exemption to the due date for any comments also equals the 35-day comment period that the Board’s regulations provide for an *application* under 49 U.S.C. § 10901. *See* 49 C.F.R. § 1150.10(g). The proposed procedural schedule is reasonable and consistent with accepted Board practice.

A decision that is effective by the end of March would accommodate important operational considerations in WCL’s assumption of operations at Hallett Dock No. 5, which as noted in the petition for exemption receives vessels during the Lake Superior shipping season extending from April to January. Late-March ground storage inventories of limestone at Hallett Dock No. 5 will be at a seasonal low just prior to the resumption of the vessel season, and WCL will be in a better position at that time to implement its inventory monitoring systems than later in the shipping season. More broadly, transactional implementation would be optimized at the end of March as the dock transitions from winter to spring operating procedures.

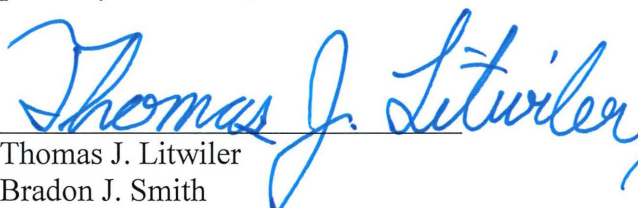
Lastly, WCL notes that Hallett is a non-carrier not otherwise subject to the Board’s jurisdiction, and could sell Hallett Dock No. 5 without any Board approval or exemption in a transaction with a party other than WCL. The need to obtain regulatory approval for the proposed transaction with WCL has created certain comparative disadvantages given Hallett’s understandably time-sensitive desire to redeploy its capital and resources elsewhere after consummating the sale of Dock No. 5. The procedural schedule proposed by WCL will provide

consummating the sale of Dock No. 5. The procedural schedule proposed by WCL will provide a degree of certainty to the parties that helps mitigate that disadvantage, while fully accommodating the Board's responsibilities under 49 U.S.C. §§ 10901 and 10502. Hallett strongly supports the Board's adoption of the proposed procedural schedule. *See* Hallett letter attached hereto as Exhibit B.

WHEREFORE, WCL respectfully requests that the Board institute a proceeding under 49 U.S.C. § 10502(b) on WCL's petition for exemption, publish *Federal Register* notice of the proposed transaction, and adopt the procedural schedule proposed above.

Respectfully submitted,

By:


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**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: November 8, 2019

EXHIBIT A

DRAFT *FEDERAL REGISTER* NOTICE

NOTICES

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36346]

Wisconsin Central Ltd. – Operation Exemption – Hallett Dock No. 5 In Duluth, Minnesota

[November 22, 2019]

On November 8, 2019, Wisconsin Central Ltd. (WCL) filed a petition under 49 U.S.C. 10502 and 49 CFR 1121 for exemption from the provisions of 49 U.S.C. 10901 to allow WCL to operate a rail/water dock facility in Duluth, Minnesota known as Hallett Dock No. 5 after WCL acquires that dock facility from its current non-carrier owner, Hallett Dock Company (Hallett). WCL is a rail carrier and an indirect subsidiary of Canadian National Railway Company.

Hallett Dock No. 5 is a 100-acre, ground-level rail/water bulk commodity transfer and storage dock facility dock located on St. Louis Bay at 37th Avenue West in Duluth. It includes a 2,400-foot vessel berth, two ship loaders, a railcar unloader, dry storage building, approximately 9,000 feet of rail trackage on the dock itself, and approximately 6,300 feet of adjacent railcar holding tracks along the shore line.

WCL states that its operation of Hallett Dock No. 5 requires approval or exemption under 49 U.S.C. 10901, citing *Acquisition by Norfolk & W. Ry. Co.*, 154 I.C.C. 371, 374-375 (1929). WCL further states that the proposed operation of Hallett Dock No. 5 will bring the facility within the Board's jurisdiction as part of the national rail network and ensure that the dock continues to be available to serve existing rail customers.

The Board will institute an exemption proceeding pursuant to 49 U.S.C. 10502(b). A procedural schedule for comments to the petition will be set as noted below.

It is ordered:

1. An exemption proceeding is instituted under 49 U.S.C. 10502(b).
2. Comments to WCL's petition are due by December 13, 2019.
3. WCL's reply to any comments is due by January 2, 2020.
4. Notice of this decision will be published in the Federal Register.
5. This decision is effective on its date of service.

Decided: November __, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

EXHIBIT B

SUPPORT LETTER OF HALLETT DOCK COMPANY



*World Gateway for Transloading
& Storage of Bulk Commodities*

P.O. Box 16447 • Duluth, Minnesota 55816-0447
Phone 218-628-2281 • Fax 218-628-2284 • 1-800-637-4497

November 8, 2019

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E St SW
Washington, DC 20423

Re: Docket No. FD 36346
Wisconsin Central Ltd. – Operation Exemption –
Hallett Dock No. 5 in Duluth, Minnesota

Dear Ms. Brown,

We are writing in support of the Petition for Exemption and the Motion to Establish Procedural Schedule, filed by Wisconsin Central Ltd. (“WCL”) in the above referenced proceeding.

Hallett Dock Company is an outgrowth of Hallett Construction Company, established in 1903. Hallett Dock Company serves the global transportation system from its three modern facilities in the Duluth-Superior portion of Lake Superior. We are an employee-owned company established in 1961. We offer transloading, stockpiling and delivery of a variety of bulk commodities from our three facilities in the Duluth-Superior Harbor.

We understand that WCL’s assumption of operations upon sale of Dock 5 to WCL is subject to the Surface Transportation Board’s oversight and jurisdiction. Prompt completion of the transaction is important to Hallett as a privately owned business. To that end, we request that the Board approve the Petition for Exemption and also adopt the Procedural Schedule proposed by WCL, which would ensure this transaction is completed in a timely manner.

Sincerely,

J. M. McCoshen

President