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ENTERED
Office of Proceedings
January 21, 2021
Part of
Public Record

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January 20, 2021

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

Re: **Docket No. FD 36422**
Branch Line Railroad, Inc. – Lease and Operation
Exemption – Northwoods Distribution Services, Inc.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Petition of Wisconsin Central Ltd. to Reject Notice of Exemption**, dated January 20, 2020. The sum of \$350, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Wisconsin Central Ltd.

FILED

January 21, 2021

SURFACE

TRANSPORTATION BOARD

TJL:tl

Attachment

cc: David C. Dillon, Esq.

FEE RECEIVED

January 21, 2021

SURFACE

TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36422

BRANCH LINE RAILROAD, INC.
-- LEASE AND OPERATION EXEMPTION --
NORTHWOODS DISTRIBUTION SERVICES, INC.

**PETITION OF WISCONSIN CENTRAL LTD.
TO REJECT NOTICE OF EXEMPTION**

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(312) 252-1500

**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: January 20, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36422

BRANCH LINE RAILROAD, INC.
-- LEASE AND OPERATION EXEMPTION --
NORTHWOODS DISTRIBUTION SERVICES, INC.

**PETITION OF WISCONSIN CENTRAL LTD.
TO REJECT NOTICE OF EXEMPTION**

Wisconsin Central Ltd. (“WCL”)¹ hereby petitions the Board to reject the notice of exemption (the “Notice”) of Branch Line Railroad, Inc. (“BLRR”) filed in this docket on December 21, 2020 and supplemented on January 13, 2021. The Notice presents a confused and confusing – at times virtually incomprehensible – transaction involving two sidings, largely within WCL’s right-of-way, that WCL uses to provide rail service to Northwoods Distribution Services, Inc. (“Northwoods”) near Rhinelander, Wisconsin pursuant to an August 1, 2003 Industry Track Agreement (the “2003 ITA”) between WCL and Northwoods. As far as can be deduced from BLRR’s filings, BLRR seeks to lease trackage from Northwoods that BLRR would then sublease to other entities for railcar storage. But neither the actual parameters of the trackage involved in its proposal nor its actual rail carrier service intentions and capabilities for Northwoods or any other rail shipper are evident.

¹ WCL is a wholly-owned indirect subsidiary of Canadian National Railway Company (“CNR”). See *Canadian National Ry. Co. – Control – Wisconsin Central Transp. Corp.*, 5 S.T.B. 890 (2001). WCL and the other U.S. rail carrier subsidiaries of CNR report to the Board on a consolidated Class I basis under the name of Grand Trunk Corporation. See *Consolidated Reporting By Commonly Controlled Railroads*, 5 S.T.B. 1050 (2001), codified at 49 C.F.R. § 1201(1-1)(b)(1).

Where a notice of exemption under 49 C.F.R. § 1150.31 raises too many unanswered questions, the Board will reject it. *Perry County Railroad, LLC – Operation Exemption – Uniontown, Ala.*, Docket No. FD 36296 (STB served June 7, 2019) (“*Perry County*”), slip op. at 1; *FPN-USA, Inc. – Operation Exemption – Tijuana-Tecate Shortline*, Docket No. FD 35155 (STB served Aug. 8, 2008), slip op. at 3. It is also a basis for rejection where a notice of exemption is incomplete under the Board’s rules. *Id.*; *Washington & Idaho Railway, Inc. – Lease and Operation Exemption – BNSF Railway Company*, Docket No. FD 35370 (STB served Apr. 23, 2010). BLRR’s Notice here should be rejected on both grounds.

As an initial and foundational matter, the Notice is both unclear and inconsistent as to the trackage that BLRR seeks to lease and purportedly operate. The existing tracks that serve Northwoods were constructed pursuant to the 2003 ITA and are depicted in the diagram attached hereto as Exhibit 1.² These tracks are also shown in the schematic included as Exhibit A to the 2003 ITA, which is attached hereto as Exhibit 2.³ Those tracks extend a total distance of 2,766 feet, of which WCL owns 345 feet (170 feet of track at the west connection to WCL’s main line and 175 feet of track at the east connection to WCL’s mainline), with Northwoods owning the remaining 2,421 feet of the track. *See* 2003 ITA, Sections 3(a), (b) and Ex. A. WCL personnel have visited the Northwoods site within the last week and confirmed that the trackage arrangement there remains as depicted in Exhibit 1 and the 2003 ITA, and that no additional tracks have been constructed at the location.

² The thin red line on Exhibit 1 shows WCL’s main line, while the thicker red lines outline WCL’s right-of-way. The chartreuse lines show the two sidings utilized to serve Northwoods.

³ Pages 5 and 6 are missing from the copy of the 2003 ITA in WCL’s contract file.

Thus, Northwoods owns at most 2,400 feet of existing track that could even hypothetically be leased to BLRR.⁴ Yet the Notice claims that “[t]here is currently 3,000 linear feet of track located on the Rhinelander Transload Facility,” Notice at 3, and indicates in numerous locations that BLRR will be leasing and operating 3,000 feet of track. Notice at 2 (acquisition by lease and operation “of approximately 3,000 feet (0.567 miles) of existing railroad right-of-way and trackage and transloading facilities”); Notice at 6 (“A total of approximately 3,000 feet/0.56 mile of trackage is to be operated by BLRR.”); Notice, App. 1-A (“Total Track: 3,000 linear feet = 0.56 mile of track”). No explanation of the discrepancy or where the additional 600 feet of trackage may be located is provided.

What’s more, the Lease Agreement attached to the Notice specifies that BLRR has agreed to lease 3,500 feet of railroad track from Northwoods. Lease Agreement, § 2 (“Lessor agrees to lease to the Lessee a length of railroad track located in Owner/Lessor’s Yard, sufficient to contain Fifty (50) railroad cars of up to 70 feet in length, coupler-to-coupler.”); *see also*, Lease Agreement, § 4. Not only is this significantly different than the 2,400 feet of existing siding track that Northwoods actually owns, it is inconsistent with the 3,000-foot length of track specified by the Notice itself as being the subject of the transaction.

The map attached to the Notice as Appendix 1-B and incorporated in the Notice to provide the line description required by the Board’s regulations, Notice at 2, 6, only confuses the matter further. The map (an aerial view of the Northwoods facility and surrounding property) illustrates tracks in no less than five different colors, reasonably approximating in red the WCL main line track (incorrectly identified on the map as “Canadian National Railroad”), but

⁴ As discussed further below, the majority of that trackage lies within WCL’s right-of-way, and WCL questions whether Northwoods would have any ability, under the 2003 ITA or otherwise, to lease or convey other rights in that track to a third party.

otherwise with significantly misleading elements. The track identified in blue as “Northwoods Distribution Services” fails to reflect WCL’s ownership of the connecting trackage to WCL’s main line at either end, thereby overstating visually the extent of Northwoods’ track ownership. More fundamentally, the tracks shown in orange and yellow (cryptically identified as “Track to be acquired by Branch Line Railroad”) **do not currently exist**, and to WCL’s knowledge have never existed, thus calling into question the reason for their inclusion on the map. All of the orange track and a portion of the yellow track shown on Appendix 1-B would be located on WCL’s right of way, despite the fact that neither Northwoods nor BLRR have any right to construct any additional track on WCL’s property. To be clear, WCL has had no communication or correspondence from BLRR or Northwoods regarding these matters, and was unaware of any potential lease transaction involving the Northwoods facility trackage until BLRR’s Notice was filed.

Ultimately, none of this satisfies the Board’s requirements for a notice of exemption under 49 C.F.R. § 1150.31. While noting that the subject trackage does not have mileposts, the sole description of the track provided by BLRR pursuant to 49 C.F.R. § 1150.33(e)(3) is “Total Track: 3,000 linear feet = 0.56 mile of track” and a reference to the perverse map exhibit. Notice at 6 (“The trackage is described and depicted in Appendices 1-A and 1-B attached to this Notice.”). Yet the Board has been clear that while it “has in the past accepted a description of a line in lieu of mileposts where none exist, that description must give reference points, such as street intersections and distances from those points.” *Swanson Rail Transfer LP – Operation Exemption – Olive Investors*, Docket No. FD 35376 (STB served May 28, 2010), slip op. at 2 (rejecting notice of exemption); *see also, e.g., Perry County, supra*, slip

op. at 2 (rejecting notice of exemption where “the Line’s description and map do not provide sufficiently clear information regarding the Line.”).

In the words of the Board’s prior decisions, “unanswered questions” abound here: Is the track that BLRR proposes to lease and operate 2,400 feet long? 3,000 feet? 3,500 feet? Where exactly is it located? Does it include trackage that does not currently exist but is expected to be constructed?⁵ And if there is track in the last category, does BLRR require Board authority before it may construct and operate it? See *Joliet Bulk Barge & Rail, LLC – Acquisition and Operation Exemption – Centerpoint Properties*, Docket No. FD 35875 (STB served Dec. 2, 2014) (Section 1150.31 class exemption does not include construction); *Swanson Rail Transfer LP – Operation Exemption – Olive Investors*, Docket No. FD 35376 (STB served July 7, 2010), slip op. at 1 (rejecting amended notice of exemption where “Swanson also states that it will install ‘additional trackage,’ but Swanson has not sought construction authority here.”); *Perry County*, slip op. at 2, n.2. In such circumstances, Board precedent dictates that the Notice be rejected.

The Notice also raises significant questions regarding BLRR’s ability and intention to provide rail service to Northwoods or other rail customers. As indicated above, BLRR has attached a draft Lease Agreement to its Notice,⁶ presumably in attempted satisfaction of the requirements of *Anthony Macrie – Continuance in Control Exemption – New Jersey Seashore Lines, Inc.*, Docket No. FD 35296 (STB served Aug. 31, 2010) (“*Macrie*”). While the

⁵ This would include not only the hypothetical tracks shown in orange and yellow on BLRR’s Appendix 1-B map, but also those shown in green and marked as “Future expansion”.

⁶ While designated as a “Draft,” the Lease Agreement is dated December 11, 2020 and executed by one of the parties.

Lease Agreement can be admittedly difficult to decipher in some respects,⁷ it is plainly a tripartite agreement between Northwoods, BLRR and an unnamed “Sub-Lessee,” under which Northwoods would lease 3,500 feet of track to BLRR, and BLRR would then **sub-lease** the entirety of that track to the “Sub-Lessee” for railcar **storage**. Lease Agreement, § 3 (BLRR, “as Lessee will provide to the Sub-Lessee(s) rail car storage spots at [Northwoods] for the storage of loaded and empty freight cars In consideration of the Agreements between Lessee and Sub-Lessee herein contained, Lessor does by these presents demise and lease unto the Lessee/Sub-Lessor, a rail car storage track”); Lease Agreement, § 4 (providing for Sub-Lessee to pay BLRR rent for the same trackage BLRR is leasing from Northwoods; compare § 2); Lease Agreement, § 5 (“When the Lessee/Sub-Lessor places cars on said track for the Sub-Lessee, for storage”); Lease Agreement, § 15 (“Sub-Lessee agrees that cars are stored last in first out”).

Regardless of whether simply hosting railcar storage, by itself, is sufficient to make BLRR a rail carrier,⁸ BLRR offers no explanation of how a transaction in which all of the trackage currently used to serve Northwoods and subject to the 2003 ITA between Northwoods and WCL is sub-leased to a third-party entity for railcar storage would accommodate continued rail service to Northwoods, by WCL, BLRR or anyone else. The trackage at issue here consists

⁷ The preamble of the Lease Agreement provides that Northwoods is referred to therein as “the ‘Owner/Lessor’, with words referring to the Sub-Lessee to be taken of such number and gender as shall be appropriate” – language that seems to defy interpretation. Section 10 of the Lease Agreement provides that the lease is subject to the approval of, and termination by, the “Wisconsin Commerce Commission” – an agency unknown to Wisconsin law.

⁸ See *North America Freight Car Association, et al. v. BNSF Railway Company*, Docket No. NOR 42060 (Sub-No. 1) (STB served Jan. 26, 2007), slip op. at 15 (storage of rail cars not within meaning of “transportation” as defined in 49 U.S.C. § 10101(9)(B)), *aff’d sub nom. North America Freight Car Ass’n v. STB*, 529 F.3d 1166, 1180-81 (D.C. Cir. 2008).

solely of two simple sidetracks, parallel to WCL's main line, one of which runs *through* Northwoods' warehouse via doors at either end of that building. While the STB has previously permitted processing of a notice of exemption that involved a similarly unique configuration, that was only after the prospective operator had provided detailed, unrefuted information that it would be able to serve the traffic of multiple shippers at the location. *Rock River Railroad, Inc. – Acquisition and Operation Exemption – Rail Lines of Renew Energy, LLC*, Docket No. FD 35016 (STB served May 10, 2007), slip op. at 2. Here, the proposal of the operator – BLRR – is to sublease the entirety of the subject trackage to someone else for railcar storage. How BLRR will do that and simultaneously operate as a common carrier and maintain service to Northwoods (and other potential shippers) on those same tracks is manifestly unclear. BLRR's Notice cannot be processed in the face of such fundamental questions.

Nor does it appear that the Lease Agreement comes anywhere near satisfying the relevant criteria of *Macrie*. Nowhere does the Lease Agreement acknowledge BLRR's intended common carrier status on the track or indicate that BLRR's operations on the leased tracks will be regulated by the Board. *Compare Macrie*, slip op. at 4 (noting that agreement granted the operator "the exclusive and unlimited right to access and operate over the Line as a common carrier" and did not permit the owner to remove the operator from the line). And the Lease Agreement is clearly terminable at will by Northwoods.⁹ It is thus impossible to conclude that

⁹ See Lease Agreement, § 11 ("Owner/Lessor shall be permitted to terminate this lease and the tenancy hereby created at any time by giving the Lessee/Sub-Lessor, and Sub-Lessee, sixty days' notice of such intention."). Even without such action, the intended term of the Lease Agreement is hopelessly confused. Section 17 of the Lease Agreement provides that it "shall have a term of Ninety (90) days from the date of signing by both [Northwoods and BLRR] and is renewable for additional Ninety (90) day periods, by both Parties signing a Lease Extension Agreement." But Section 3 provides that the lease extends from June 1, 2020 to December 31, 2021.

BLRR would be free from interference in any conduct of common carrier operations as required by *Macrie*.

Finally, WCL notes that any proposed lease of the trackage currently owned by Northwoods to BLRR is confounded by the fact that a majority of that track lies ***within*** WCL's right-of-way and is not subject to such a purported transfer. Section 5(a) of the 2003 ITA states in part that "[WCL] shall have control of the operation of railroad locomotives and cars over the track." Nothing in the 2003 ITA grants Northwoods the right to assign the agreement, or to admit new rail operators onto the track. The 2003 ITA is the sole document establishing and governing the rights of Northwoods to place its tracks on WCL's right of way. Because the 2003 ITA contains no apparent term or termination provisions, and thus is of indefinite duration, under Wisconsin law it may be terminable by either party after a "reasonable time." See *MS Real Estate Holdings, LLC v. Donald P. Fox Family Trust et al.*, 362 Wis.2d 258, 277, 864 N.W.2d 83 (2015). The 2003 ITA remains in effect currently.

WCL acknowledges, as it must, that the Board will not undertake to enforce or interpret the 2003 ITA, a task more appropriately undertaken by a court when necessary. *Township of Woodbridge, NJ v. Consolidated Rail Corp.* 5 S.T.B. 336, 340 (2000), *clarified*, 5 S.T.B. 488, 490-491 (2001); *Kansas City Terminal Railway Company and The Atchison, Topeka and Santa Fe Railway Company – Contract to Operate Exemption – In Kansas City, MO*, Docket No. FD 32896 (STB served Nov. 20, 1996), slip op. at 3-4. That said, the 2003 ITA sets forth the rights and obligations of Northwoods and WCL, and confirms the track and land ownership adjacent to the Northwoods facility. The 2003 ITA highlights the reasons why BLR's Notice is confusing and incomplete, and should be rejected.

This is not a routine case arising under *Effingham R. Co. – Pet. For Declaratory Order*, 2 S.T.B. 606 (1997), *aff'd sub nom. United Transp. Union-Ill. Legis. Bd. v. STB*, 183 F.3d 606 (7th Cir. 1999), and WCL does not here challenge the underlying reasoning of *Effingham* and its progeny. A non-carrier's proposed lease and operation transaction involving indeterminate trackage and equally uncertain service intentions does not comply with the letter or intent of the Board's class exemption regulations, raises far too many unanswered questions, and should not be allowed to proceed in this fashion. Should the Board go forward to *Federal Register* publication of BLRR's Notice, WCL would file a petition to stay and revoke BLRR's exemption. As discussed herein, however, there are clearly ample grounds to reject BLRR's Notice at this stage of the proceeding.

WHEREFORE, WCL respectfully requests that BLRR's amended notice of exemption be rejected.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

By: _____

Thomas J. Litwiler

Thomas J. Healey

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Suite 800

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(312) 252-1500

**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: January 20, 2021

EXHIBIT 1

**TRACK LAYOUT AT
NORTHWOODS DISTRIBUTION SERVICES, INC.
RHINELANDER, WISCONSIN**

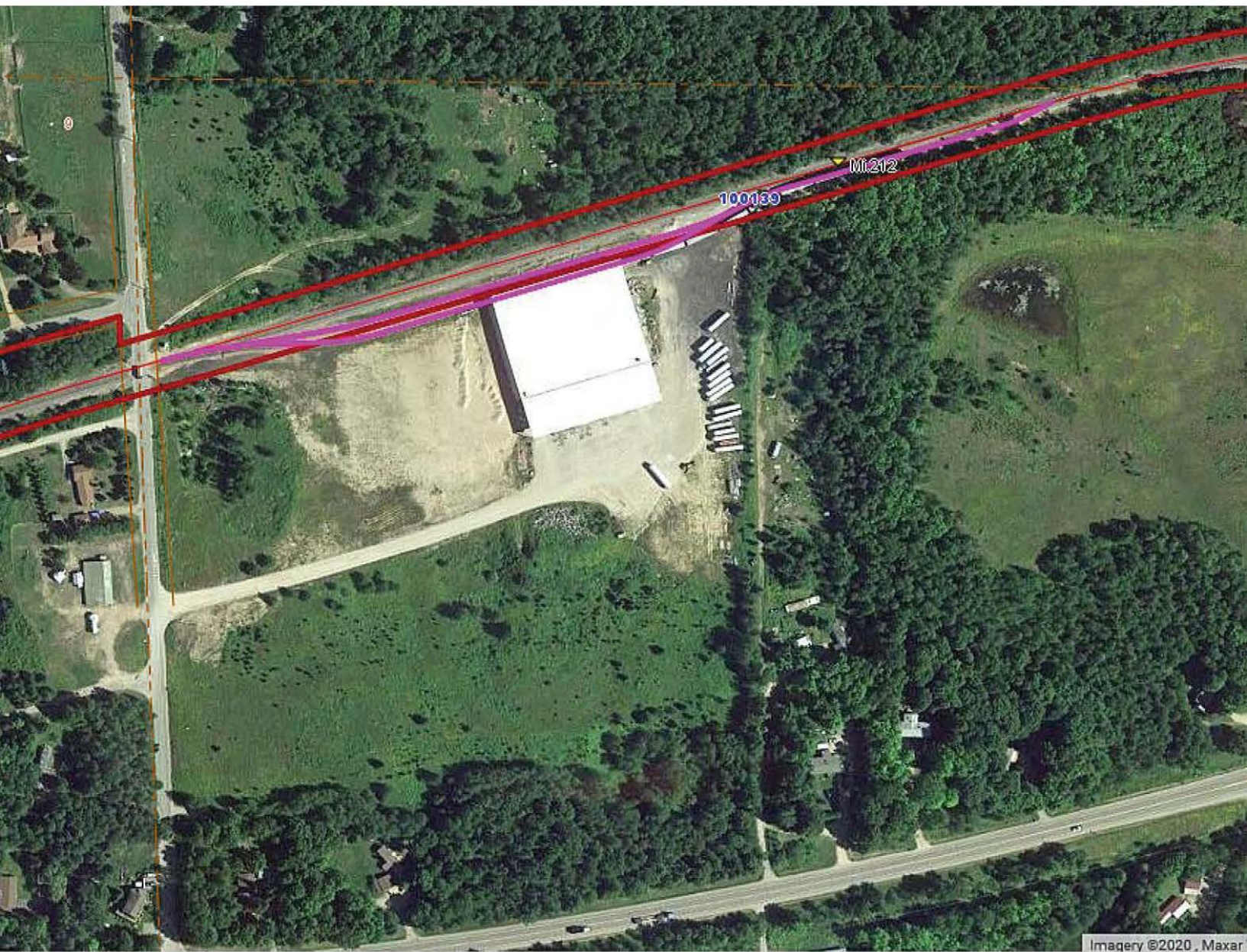


EXHIBIT 2

**INDUSTRY TRACK AGREEMENT
BETWEEN WISCONSIN CENTRAL LTD. AND
NORTHWOODS DISTRIBUTION SERVICES, INC.
DATED AS OF AUGUST 3, 2003**

INDUSTRY TRACK AGREEMENT

No. 5427 - W

THIS AGREEMENT entered into as of this 1st day of August 2003 by and between WISCONSIN CENTRAL LTD., hereinafter called ("RAILROAD"), whose post office address is 17641 South Ashland Avenue, Homewood, IL 60430-1345, and NORTHWOODS DISTRIBUTION SERVICES, INC., hereinafter called ("INDUSTRY"), whose post office address is 4591 Business 8 East, Rhinelander, WI 54501.

WHEREAS, the INDUSTRY desires the construction, maintenance and operation of approximately two thousand seven hundred and sixty six (2,766) feet of track ("Track") to serve the INDUSTRY near Milepost MS 211.73 at Rhinelander, WI and to be located substantially as indicated in red line between the points designated as:

Track 1		Track 2	
Segment	Footage	Segment	Footage
A - B	170	G - H	150
B - C	94	H - I	54
C - D	783	I - J	734
D - E	463	J - K	19
E - F	175	K - L	124

shown on the print dated 01/09/03 attached hereto as Exhibit "A" and made a part hereof, and the RAILROAD is willing to permit the same;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. RIGHT-OF-WAY

(a) INDUSTRY, without cost to RAILROAD, shall provide all the right-of-way and secure all authority or permission, public and private, required for the operation of the Track in case and insofar as the Track extends beyond RAILROAD's property. INDUSTRY shall not construct or allow the construction of any road (public or private), gate, tunnel, bridge, culvert, pit, gasoline, pipe or other items on, over, under or along the Track or right-of-way without RAILROAD's prior written consent. RAILROAD's consent may be conditioned upon INDUSTRY's acceptance of responsibility for the construction, maintenance, repair and removal costs for the foregoing items, as well as any protective appliances required in connection with the operation of the Track.

(b) INDUSTRY shall indemnify, defend and save harmless RAILROAD from and against any all claims, demands and causes of action of any party whatsoever and all cost and expense incident thereto, including attorneys' fees and costs, which may be sustained or incurred by RAILROAD arising from the lack or failure of title of INDUSTRY to said right-of-way or failure to comply with the foregoing covenant.

2. CONSTRUCTION

(a) The INDUSTRY shall, at its sole cost and expense, prepare the grade, install drainage facilities and furnish the engineering, labor and material for construction of the Track, as shown on Exhibit "A" and as identified as:

Track 1		Track 2	
Segment	Footage	Segment	Footage
A – B	170	G – H	150
B – C	94	H – I	54
C – D	783	I – J	734
D – E	463	J – K	19
E – F	175	K – L	124

3. OWNERSHIP, MAINTENANCE AND REPAIRS

(a) RAILROAD shall own, have sole control of, and at the sole cost and expense of the INDUSTRY, maintain, repair and renew, and keep free and clear of snow, ice, weeds and similar obstructions that portion of the Track shown on Exhibit "A" and as identified as from points "A" to "B" and from points "E" to "F".

- (i) The INDUSTRY shall pay the RAILROAD an annual fee of \$1,250.00 (Base Fee) for services rendered keeping that portion of such track free and clear from snow, ice, weeds and similar obstructions and incidental maintenance and inspections, which fee shall be paid to the RAILROAD on the date first above written and subsequent anniversary dates thereafter.
- (ii) The INDUSTRY shall be separately billed for costs of repairs and renewals as they occur, which amounts shall be payable to the RAILROAD within 30 days of receipt of the bill.

(b) INDUSTRY shall own and, at its own cost and expense, maintain, repair and renew, and keep free and clear of snow, ice, weeds and similar obstructions, that portion of the Track as shown on Exhibit "A" and as identified as:

Track 1		Track 2	
Segment	Footage	Segment	Footage
		G – H	150
B – C	94	H – I	54
C – D	783	I – J	734
D – E	463	J – K	19
		K – L	124

INDUSTRY shall maintain said portion in a condition that will safely and satisfactorily accommodate the equipment to be operated thereover by RAILROAD. In the event INDUSTRY shall fail to so maintain, RAILROAD may refuse to operate and shall be under no obligation nor shall it have any liability if it does not operate over said portion of the Track. Failure of

RAILROAD to notify INDUSTRY of the need of such repairs or RAILROAD's continued operation over the Track shall not relieve INDUSTRY of its obligation to maintain said portion of the Track in a safe condition and shall not relieve INDUSTRY of any responsibility for loss or damage resulting from its failure to so maintain. Further, INDUSTRY shall provide adequate drainage and keep the area along and adjacent to said portion of the Track free and clear of all ice and snow, materials, obstacles and debris so as to provide a safe workway for RAILROAD's employees. Any future changes in or extensions of the Track upon which the RAILROAD would be expected to operate railroad locomotives and cars thereover shall not be made by INDUSTRY without prior written notice to RAILROAD's Director Contracts, or his authorized representative.

(c) The INDUSTRY shall pay all compensation, assessments, fees, taxes and other charges and agrees to comply with all statutes and regulations required at any time by any federal, state or municipal authority, person or corporation regarding the maintenance, operation and ownership of the Track and the property in the vicinity thereof.

4. ADDITIONS, BETTERMENTS AND CHANGES TO TRACK

(a) The INDUSTRY shall pay to the RAILROAD the cost and expense of all additions, betterments and changes to the Track as, in the judgment of the RAILROAD, may be necessary, including, but not limited to, the cost of installation and maintenance of derails, signals and other safety devices and changes rendered necessary by changes in the RAILROAD's tracks, property or operating requirements, including a change of grade or alignment required by any federal, state or municipal law or ordinance.

(b) In addition, the INDUSTRY shall pay to the RAILROAD the cost and expense of any changes in or additions to the RAILROAD's tracks and property made necessary by the construction, maintenance or operation of the Track.

5. SERVICE & USE

(a) The RAILROAD shall have control of the operation of railroad locomotives and cars over the Track, and shall have the right to enter upon the property of the INDUSTRY, for the purpose of operating and using the Track. The RAILROAD shall deliver on the Track all freight in carloads consigned to the INDUSTRY and will place empty cars thereon for loading full carloads to be shipped by the INDUSTRY pursuant to tariff or contract rates. The RAILROAD shall have the right to extend, cross and connect with the Track, when such extension, crossing or connection does not unreasonably interfere with service to the INDUSTRY.

(b) The RAILROAD shall not be obligated to operate over the Track if prevented or hindered from doing so by acts of God, public authority, strikes, riots, labor disputes or any other cause beyond its control.

6. CLEARANCES

Except for the exemption as noted on Exhibit A, the INDUSTRY shall not place, permit to be placed, or allow to remain, any material, equipment, structure, pole, wire, cable or other obstacle or obstruction of any kind adjacent to said Track at distances less than, nine (9) feet on straight track or ten (10) feet on curved track, laterally of the center, or within thirty-five (35) feet vertically from the top of either rail of the Track; nor shall it make, permit to be made, or allow to remain, any excavation adjacent to the Track. The number of feet of clearance herein specified may be changed by the RAILROAD at any time to meet legal requirements by giving written notice thereof to the INDUSTRY. Any such approved RAILROAD change shall not relieve

INDUSTRY from any risk arising from establishment of clearance less than those herein above specifically described. Within 10 days after receipt of such notice, the INDUSTRY shall, at its own expense, proceed to make such changes as may be necessary to comply therewith. If the INDUSTRY shall fail to do so, the RAILROAD shall have the option of making such changes at the expense of the INDUSTRY or to suspend service over the Track. Should the RAILROAD exercise its option to make such changes, the INDUSTRY agrees to pay the cost and expense thereof.

7. INDEMNIFICATION

(a) It is understood that the movement of railroad locomotives involves some risk of fire. The INDUSTRY agrees to assume responsibility for and to protect, defend, indemnify and save harmless the RAILROAD, its parent and affiliates and all its officers, directors, agents, invitees and employees thereof (hereinafter referred to collectively in this Section 7 as RAILROAD), against loss or damage (including costs of defense, settlement and attorneys' fees) to property, other than property of the RAILROAD or rolling stock or lading belonging to third parties, arising directly or indirectly from fire caused by locomotives operated by the RAILROAD on or near the Track while serving the INDUSTRY, whether such loss or damage is caused or contributed to, in whole or in part, by the negligence or strict liability of the RAILROAD.

(b) The INDUSTRY further agrees to protect, defend, indemnify and save harmless the RAILROAD, from and against, and to assume payment in full of any and all liabilities, penalties, fines, demands, claims, causes of action, suits and costs (including costs of defense, settlement and attorneys' fees) which any or all of them may suffer or incur relating in any way to the Track or associated right of way, whether caused or contributed to, in whole or in part, by the negligent act or omission or strict liability of the RAILROAD, as a result of:

- (i) Damage to or loss of use of any public or private property whatsoever; contamination of or adverse effects on the environment; or any violation or alleged violation of statutes, ordinances, orders, rules or regulations of any governmental entity or agency, directly or indirectly caused by, or arising in whole or in part out of, any act or omission of the INDUSTRY, its employees, agents or representatives;
- (ii) Bodily injuries, including death, to any person whomsoever directly or indirectly caused by, or arising in whole or in part out of, any act or omission of the INDUSTRY, its employees, agents or representatives;
- (iii) Bodily injuries, including death, to any trespasser or other third party on the Track or associated right of way, regardless of any act or omission of the RAILROAD; and
- (iv) Violation by the INDUSTRY of any provision of this Agreement.

(c) In the event the INDUSTRY fails to defend RAILROAD as specified herein, RAILROAD shall assume such defense. The INDUSTRY shall remain responsible for all costs thereof, including attorney's fees, and be bound by all judgments or settlements resulting therefrom.

(d) The Comprehensive Environmental Responses, Compensation and Liability Act of 1980 (Public Law 96-510), which imposes liability for contamination of or adverse effects on the environment, contains no statute of limitations for the enforcement of liability arising under

agency thereof. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

(b) INDUSTRY shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of (a) on the Track (except in railcar shipments), or (b) within the clearance requirements established herein, or (c) within one hundred (100) feet of RAILROAD's connecting mainline track by INDUSTRY, INDUSTRY's agents, employees, contractors, subcontractors or invitees, or any related persons or entities. Any permitted storage of Hazardous Substances shall be in compliance with all applicable laws, ordinances, rules, regulations and requirements of all governmental authorities and the various departments thereof. If Hazardous Substances are used, stored, generated, or disposed of on or in the Track or right of way as permitted above, or if Hazardous Substances are used, stored, generated, or disposed of on, in or from the Track or right of way in violation of local, state, or federal law, or if the Track or right of way or surrounding, adjacent or nearby property becomes contaminated in any manner for which INDUSTRY is legally liable, INDUSTRY shall indemnify, defend and hold harmless RAILROAD, as defined in Section 7(a), from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the term of this Agreement and arising as a result of that use, storage, generation, disposal or contamination by INDUSTRY. This indemnification includes, without limitation, any and all costs incurred because of any investigation of contamination or violation of local state or federal law, or any cleanup, removal, or restoration mandated by a federal, state or local government or agency thereof.

16. GENERAL TERMS

(a) Failure or delay of RAILROAD to require full compliance with any one or more of the terms of this Agreement shall not be held as a waiver of a right to subsequently insist upon such compliance or terminate this Agreement, or to terminate this Agreement for any subsequent breach which may occur, or to enforce any other provision of this Agreement.

(b) The waiver of a breach of any of the terms or conditions hereof shall be limited to the act or acts constituting such breach and shall never be construed as being a continuing or permanent waiver of any such terms or conditions, all of which shall be and remain in full force and effect as to future acts or happenings, notwithstanding any such waiver.

(c) The captions of the various Sections of this Agreement are for convenience only and are not to be considered in the interpretation hereof.

(d) No termination of this Agreement shall release either party hereto from any liability or obligations which have accrued prior to said termination. The indemnification obligations of the parties shall survive the termination or expiration of this Agreement.

(e) The quality of work employed and the materials used by the INDUSTRY or its contractor in the performance of this Agreement shall conform to the specifications of, and be subject to, the approval of the RAILROAD's Division Engineer.

(f) The terms "cost and expense" as used in this Agreement shall include, but not be limited to, all expenditures incurred by the RAILROAD in performance hereof, including changes in or relocation of poles, wires and other obstructions. Assignable costs shall be added to labor

costs to cover general supervision, accounting, use of tools, and other elements of expense not capable of exact ascertainment. Material shall be billed at current market value and shall include the cost of storage and transportation. Work train service and use of equipment shall be billed at established rates.

(g) All costs and expenses set forth in this Agreement, including, but not limited maintenance expenses and annual fee as established in Section 3, shall be adjusted each anniversary of the date of this Agreement in an amount equal to the product of the Base Fee multiplied by the fraction, the numerator of which is the "index" available for the month most recently preceding that anniversary and the denominator of which is the "index" for December 2002 (index 527.20) (which will appear on the invoice). Notwithstanding anything to the contrary, such annual fee shall never be adjusted below the Base Fee. The term "index" shall mean the "all items" group of the United States City Average Consumer Price Index (CPI-W) (1967=100) issued monthly by the Bureau of Labor statistics of the US Dept. of Labor.

(h) All notices required herein shall be sent to the signatory parties at the addresses listed below either by US certified mail, return receipt requested or by fax provided receipt of such fax is confirmed.

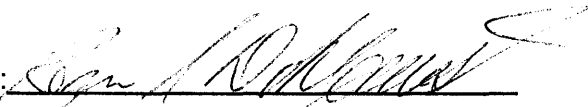
(i) If any section, subsection, sentence or clause of this Agreement shall be adjudged illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of any other section, subsection, sentence or clause hereof not so adjudged and shall not invalidate this Agreement as a whole.

(j) This Agreement constitutes the entire Agreement between the parties and cancels and supersedes all prior agreements or understandings regarding the Track or property described herein, except as to obligations incurred by either party under such agreements prior to the date hereof.

(k) The INDUSTRY shall notify RAILROAD not less than three (3) business days prior to performing any Work on RAILROAD Property or rendering any portion of the Track unusable.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

NORTHWOODS DISTRIBUTION SERVICES, INC.
4591 Business 8 East
Rhineland, WI 54501

By: 

Name: ROGER S. DAHLQUIST

Title: OWNER

WISCONSIN CENTRAL LTD.
Attn: Director Contracts
17641 South Ashland Avenue
Homewood, IL 60431-1345

By: 

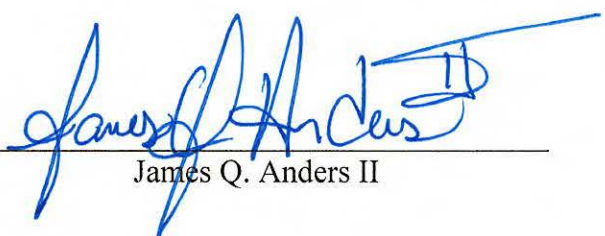
Name: Paul E. Ladue

Title: Region Director
Contracts & Administration

PROJECT: TRUCK AGREEMENT FOR NORTHWOODS DISTRIBUTION SERVICES, INC.		 ENGINEERING DEPARTMENT 1625 DEPOT STREET STEVENS POINT, WI 54481 PHONE: (715) 345-2500 FAX: (715) 345-2507	REVISED BY:	DATE:	☐ PRELIMINARY PLAN - SURVEY REQUIRED ☐ PRELIMINARY PLAN - SURVEY COMPLETED ☒ FINAL PLAN
LOCATION: INTELIN, Line Segment, Mile Post: RHINELANDER, WI. (MS211.73)			WORK ORDER: _____	SCALE: 1" = 100'	DATE: 01/09/03
LEVELS: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63		FILE LOCATION: D:\OFFICE\ENR\INTELIN\ANSO\501-52\53,54,55,56,57,58,59,60,61,62.dwg			

VERIFICATION

James Q. Anders II, under penalty of perjury, declares and verifies that he is Manager Contracts for Wisconsin Central Ltd., that he has read the foregoing petition and knows the facts asserted therein with respect to Wisconsin Central Ltd., and that the same are true as stated.


James Q. Anders II

Dated: January 20, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2021, a copy of the foregoing
Petition of Wisconsin Central Ltd. to Reject Notice of Exemption was served by overnight
delivery upon:

David C. Dillon, Esq.
Dillon & Nash, Ltd.
3100 Dundee Road
Suite 508
Northbrook, IL 60062

and by first class mail, postage prepaid, upon:

Mr. Roger Stephen Dahlquist
Chief Executive Officer
Northwoods Distribution Services, Inc.
3200 North Rifle Road
Rhineland, WI 54501

/s/ Thomas J. Litwiler

Thomas J. Litwiler