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VIA E-FILING

April 5, 2021

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

Re: *Watco Holdings, Inc.—Continuance in Control—Fox Valley & Lake Superior Rail System, L.L.C.*, Finance Docket No. 36506

Dear Ms. Brown:

Enclosed for filing is Watco Holdings, Inc.'s Petition for Exemption in the above-captioned proceeding. The filing fee under 49 C.F.R. § 1102(39)(vi) has been tendered electronically via Pay.gov.

Please let me know if you have any questions.

Sincerely,

Stinson LLP*David Rifkind*

David Rifkind

Enclosure

FILED
April 5, 2021
SURFACE
TRANSPORTATION BOARD

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April 5, 2021
SURFACE
TRANSPORTATION BOARD

1775 Pennsylvania Avenue N.W., Suite 800, Washington D.C. 20006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36506

**WATCO HOLDINGS, INC.—CONTINUANCE IN CONTROL EXEMPTION—
FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C.**

VERIFIED PETITION FOR EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

Date: April 5, 2021

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Counsel for Watco Holdings, Inc.

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Watco Holdings, Inc. (“Watco”), a non-carrier holding company, hereby submits this verified petition for an exemption under 49 U.S.C. § 10502 and 49 C.F.R. § 1121 from the provisions of 49 U.S.C. §§ 11323-11324 for Watco to continue in control of the Fox Valley & Lake Superior Rail System, L.L.C. (“FOXY”), a non-carrier, upon FOXY becoming a Class III carrier when it acquires certain rail lines in the State of Wisconsin and commences common carrier operations. Because Watco owns and controls one or more other rail carriers, Watco’s continuance in control of FOXY requires the prior approval of the Board. Accordingly, Watco requests that the Board grant the exemption requested herein.

Watco seeks expedited consideration of this petition and issuance of an exemption decision to be effective by June 30, 2021. Such a schedule will accommodate the parties’ intention to consummate the proposed FOXY acquisition transaction in the second quarter without requiring the use of a voting trust, and is consistent with the limited nature of the control exemption sought in this petition.

In support of this request for exemption, Watco represents as follows:

THE PROPOSED TRANSACTION

As described in the Verified Notices of Exemption concurrently filed in FD 36503¹ and FD 36504,² Wisconsin Central Ltd. (“WCL”)³ is selling several branch lines located in the states of Michigan and Wisconsin. FOXY, a new non-carrier indirectly controlled and wholly owned by Watco, plans to acquire from WCL 509.27 miles of rail lines in the State of Wisconsin, including 8.0 miles of jointly-owned tracks (the “Wisconsin Lines”), as follows (all locations in Wisconsin and all mileages rounded):

- Southern Cluster:
 - From Fond du Lac to Eden, 7.5 miles
 - From Granville to West Bend, 15 miles (the “West Bend Subdivision”)
 - From Mill (North Milwaukee) to Saukville, 20 miles (the “Saukville Subdivision”)
- Green Bay Cluster:
 - From Green Bay to Denmark, 15.5 miles
 - From Green Bay to Luxemburg, 17 miles
- Appleton Cluster:
 - From Appleton to Shawano, 44 miles
 - From Appleton through New London to Manawa, 31 miles [New London to Manawa discontinued]
 - From Appleton to Kaukauna, 7.5 miles (the “Kimberly Spur”)⁴
- Northern Cluster:
 - From Rothschild to Bradley, 53.5 miles [including 0.40 miles of assigned trackage rights]
 - From Kelly to Wausau/Schofield, 12 miles

¹ See Verified Notice of Exemption, *Grand Elk Railroad, Inc.—Acquisition Exemption—Lines of Wisconsin Central Ltd. in the State of Michigan*, FD 36503 (filed April 5, 2021).

² See Verified Notice of Exemption, *Fox Valley & Lake Superior Rail System, L.L.C.—Acquisition and Operation Exemption—Lines of Wisconsin Central Ltd. in the State of Wisconsin*, FD 36504 (filed April 5, 2021).

³ WCL is a wholly-owned, indirect subsidiary of Canadian National Railway Company.

⁴ FOXY will also acquire 0.1 miles of incidental trackage rights on WCL at Appleton to access the Kimberly Spur.

- Mosinee to Rothschild, 8 miles [undivided one-half interest with WCL]
- Tony to Goodman, 131 miles [Tony to Prentice and Rhinelander to Goodman discontinued]
- Prentice to Ashland, 91 miles [Park Falls to Ashland discontinued]
- Marengo Jct. to Wisconsin/Michigan border, 30 miles [discontinued]
- Spencer to Medford, 27.5 miles

With two minor exceptions, none of the Wisconsin Lines connect to a railroad that is currently owned or controlled directly or indirectly by Watco or its affiliates. Two isolated and short segments of the Wisconsin Lines -- the West Bend and Saukville Subdivisions in the Southern Cluster, which comprise 35 miles of the more than 500 miles of trackage involved in the FOXY acquisition -- connect to rail lines operated by Wisconsin & Southern Railroad, L.L.C., (“WSOR”), an indirectly controlled, wholly-owned subsidiary of Watco and a Class II carrier. Solely because of those two small connections, the WSOR-FOXY control transaction is not eligible for the class exemption notice procedures of 49 C.F.R. § 1180.2(d)(2) that would otherwise apply to control of a non-connecting carrier. Accordingly, Watco is filing this Petition for Exemption.

In order to simplify, to the extent possible, the line sale transaction between the Watco companies and WCL that is the subject of FD 36503 and FD 36504, Watco plans to utilize a single Wisconsin entity as a vehicle to acquire all of the Wisconsin Lines from WCL. Upon FOXY’s acquisition of the Wisconsin Lines, Watco anticipates that FOXY will convey the Southern Cluster lines to WSOR to own and operate.⁵

⁵ See Verified Notice of Exemption, *Watco Holdings, Inc.—Exemption for Intra-Corporate Family Transaction—Fox Valley & Lake Superior Rail System, L.L.C. and Wisconsin & Southern Railroad, L.L.C.*, FD 36505 (filed April 5, 2021). As is explained in the notices of exemption in FD 36503 and FD 36504, Michigan law does not permit a limited liability company to operate as a rail carrier in that state. FOXY was thus not able to act as the acquiring party for the WCL lines in Michigan that are part of the current line sale transaction.

ADDITIONAL INFORMATION

Watco provides the following additional information about the transaction to enable the Board to process this Petition⁶:

Brief summary of the proposed transaction, etc.: 1180.6(a)(1)(i)

Watco is a non-carrier holding company which currently indirectly controls one Class II rail carrier and thirty-nine Class III rail carriers listed in the Appendix to this Petition.

FOXY, a new non-carrier entity indirectly controlled by Watco, will acquire approximately 509.27 miles of rail lines, including 8.0 miles of jointly-owned track, and operate 328.52 miles of railroad (service has been discontinued over the remaining mileage) located in Wisconsin, pursuant to a Notice of Exemption filed in FD 36504. Watco proposes to continue in control of FOXY and its other rail carrier subsidiaries once FOXY acquires the Wisconsin Lines from WCL and becomes a rail carrier.

The full name and address of the Petitioner herein is:

Watco Holdings, Inc.
315 West 3rd Street
Pittsburg, Kansas 66762

Any questions concerning this Notice should be sent to Watco's representative at the following address:

David F. Rifkind
Stinson LLP
1775 Pennsylvania Ave, NW, Suite 800
Washington, DC 20006
(202) 969-4218

⁶ This additional information is the information that would have been required under 49 C.F.R. § 1180.4(g) if the transaction were eligible for a class exemption.

Proposed Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

Watco intends to consummate the proposed continuance in control transaction on June 30, 2021 simultaneous with FOXY's acquisition of the Wisconsin Lines and becoming a Class III rail carrier.⁷

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The exemption sought herein will allow Watco (and its affiliates) to continue to exercise common control of its existing rail carrier subsidiaries and FOXY upon that entity becoming a Class III rail carrier pursuant to the acquisition that is the subject of FD 36504. It will also permit Watco to proceed with the intra-corporate transaction that is the subject of FD 36505, and for FOXY and WSOR to proceed with the operation of the Wisconsin Lines as contemplated therein.

States in Which Property of Applicants is Located: 49 C.F.R. § 1180.6(a)(5)

Watco is a non-carrier holding company and does not directly own any rail property. FOXY will acquire and operate rail property in the state of Wisconsin. Watco's existing rail carrier subsidiaries own or lease and operate over rail property located in 27 states, as shown in the Appendix.

⁷ If by June 28, 2021, this Petition remains pending or the exemption has not yet become effective, Watco anticipates establishing an independent voting trust to allow the transaction that is subject of FD 36504 to be consummated on or before June 30, 2021. Upon consummation, Watco will immediately deposit the shares of FOXY into the independent voting trust to protect against the exercise of unlawful control pending the outcome of this proceeding.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

Maps of the Lines to be acquired by FOXY, the current WSOR lines, and generally showing the location of Watco's existing rail carrier subsidiaries in the United States are attached hereto as Exhibit 1.

Agreement: 49 C.F.R. § 1180.6(a)(7)(ii)

Watco already controls FOXY, currently a non-carrier. No agreement is contemplated or necessary for Watco to continue in control once FOXY acquires the Wisconsin Lines and commences common carrier operations.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

WCL has represented to Watco that no WCL employees will be dismissed as a result of the related acquisition transactions in FD 36503 and FD 36504, and Watco does not anticipate that any of its employees will be dismissed as a result of this or any of the related transactions. Nevertheless, because the transaction proposed herein involves the control of one Class II carrier (Watco's existing subsidiary, WSOR) and multiple Class III rail carriers (Watco's remaining existing rail carrier subsidiaries and FOXY), the transaction is subject to the labor protection requirements of 49 U.S.C. § 11326(b) and *Wis. Cent. Ltd. –Acq. Exempt. –Union Pac. R. Co.*, 2 S.T.B. 218 (1997), *rev'd in part sub nom. Ass'n of Amer. Railroads v. STB*, 162 F.3d 101 (D.C. Cir. 1998).

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), the proposed control transaction is exempt from environmental reporting requirements. Watco's continuance in control of FOXY will not

result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed continuance in control also is exempt from historic preservation reporting requirements. The control transaction will not substantially change the level of maintenance of any railroad property.

Interchange Commitments: 49 C.F.R. § 1180.4(g)(4)

The proposed transaction does not itself involve the acquisition or operation of a rail line, and thus the provisions of 49 C.F.R. § 1180.4(g)(4) are not applicable. In any event, the acquisition transaction that is the subject of the FD 36504 proceeding does not include any provision restricting FOXY's interchange of traffic with a third-party connecting carrier. Likewise, the intra-corporate family transaction that is the subject of the FD 36505 proceeding does not include provisions restricting FOXY or WSOR's interchange of traffic with a third-party connecting carrier.

CONTINUANCE IN CONTROL SHOULD BE EXEMPTED

The acquisition or continuance in control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers is subject to the prior approval and authorization of the Board under 49 U.S.C. § 11323(a)(5). Thus, unless the exemption requested herein is granted, the proposed control of FOXY by Watco would require an application under 49 C.F.R. § 1180. Because the transaction does not involve the merger of two Class I railroads, however, the Board would be required to approve the application unless it were to find both:

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

See 49 U.S.C. § 11324(d).

The Board is directed by 49 U.S.C. § 10502 to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy (“RTP”) of 49 U.S.C. § 10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. The Interstate Commerce Commission held:

In determining whether regulation of a transaction proposed for exemption under § 10505 [now 10502] is necessary to carry out the RTP, our analysis generally focuses on the criteria relating to the underlying statute from which exemption is sought. We need not extend our analysis beyond what we would address in an application proceeding itself. See Finance Docket No. 31493, *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp., Et al.* (not printed), served July 5, 1989, at 2. Section 10505 provides a shortcut analysis to see if regulation -- in this case under § 11344(d)[now 11324(d)] -- is necessary. If § 11344(d) does not require review of particular issues, neither does the § 10505 process.

Indiana R.R. Co.—Acq. & Oper.—Illinois Central R.R. Co., 6 I.C.C.2d 1004, 1006-07 (1990), *aff’d sub nom., Village of Palestine v. ICC*, 936 F.2d 1335 (D.C. Cir. 1991).

A. No Lessening of Competition or Anticompetitive Effects Are Likely.

As noted above, the inquiry under Section 11324(d) would focus on the lessening of competition and anticompetitive effects. Here, no such effects will be likely as a result of Watco’s continued exercise of control of FOXY upon it becoming a Class III carrier. With the exception of the West Bend and Saukville Subdivisions, none of FOXY’s rail lines connect to those of any other rail carrier owned or controlled by Watco or its affiliates.

With respect to the 15-mile West Bend Subdivision and the 20-mile Saukville Subdivision (the “WSOR Connecting Lines”), no loss of competition is likely. Those lines are branch lines

currently solely served by WCL, but are islands to the WCL system. To bridge the gap, WSOR currently handles WCL traffic to and from each line in haulage service for WCL over WSOR's own lines. After consummation of the proposed related transactions, traffic on the WSOR Connecting Lines will continue to be handled by WSOR in WCL's account to and from interchange with WCL pursuant to a contractual handling carrier agreement between the parties. In addition, shippers on the WSOR Connecting Lines will also be able to ship via WSOR and its interline connections.⁸ There are no dually-served shippers at the points where the West Bend and Saukville Subdivisions connect with WSOR's rail lines,⁹ and no shipper will go from two to one railroad service.

B. Grant of the Requested Exemption Would Be Fully Consistent With the Standards of 49 U.S.C. § 10502

1. Detailed Scrutiny of a Full Application is not Required to Carry Out the Transportation Policy of 49 U.S.C. § 10101.

Detailed scrutiny of a full application is not required to carry out the transportation policy of 49 U.S.C. § 10101. The grant of an exemption will minimize the need for Federal regulatory control over the rail transportation system; (49 U.S.C. § 10101(2)). And the exemption will enable Watco, a company experienced in the development of short line railroads, to bring its experience, knowledge and resources to bear in helping FOXY maintain, operate, and develop the Wisconsin Lines. Thus, the grant of an exemption will "promote a safe and efficient rail transportation system" (49 U.S.C. § 10101(3)), "ensure the development of a sound rail transportation system"

⁸ As indicated above, none of the acquisition or related transactions involved in this matter contain interchange commitments or any other form of "paper barriers."

⁹ WSOR currently holds overhead trackage rights over the WCL Saukville Subdivision for the sole purpose of accessing WSOR-operated trackage north of Saukville. *See Wis. & So. R.R. Co.—Trackage Rights Exemption—Wis. Cent. Ltd.*, FD 34621 (STB served Dec. 20, 2004). No local service is or could be provided by WSOR pursuant to those bridge rights.

(49 U.S.C. § 10101(4)), “foster sound economic conditions in transportation” (49 U.S.C. § 10101(5)), and “encourage efficient management of railroads” (49 U.S.C. § 10101(9)). Granting an exemption will “reduce the regulatory barriers to entry into and exit from the industry” (49 U.S.C. § 10101(7)) and “provide for expeditious handling and resolution of all proceedings” (49 U.S.C. § 10101(15)). Moreover, the grant of the exemption will not adversely affect any of the other eight items which have been made a part of rail transportation policy by 49 U.S.C. § 10101.

2. The Proposed Transaction is Limited in Scope.

Additionally, the proposed transaction is clearly limited in scope. As noted above, with the exception of two short branch lines, none of FOXY’s lines connect to any other railroad owned or controlled by Watco. Most of FOXY’s lines are branch lines that connect to the WCL system and, with the exception of certain lines in the Northern Cluster, do not connect to each other. Several of those lines or segments of those lines have been formally discontinued.

Accordingly, granting of the petition is consistent with Congress’s statutory instructions to the Board, the national Rail Transportation Policy, and STB precedent.

EXPEDITED CONSIDERATION

The parties have agreed to consummate the related acquisition transactions that are the subject of FD 36503 and FD 36504 by the end of the 2nd quarter of this year. For this reason, if by June 28, 2021, the control exemption that is the subject of this Petition remains pending, then the line acquisitions will be consummated (assuming the exemptions in FD 36503 and 36504 are effective and all other conditions to closing have been met) and Watco will immediately place the shares of FOXY into an independent voting trust in order to protect against the exercise of unauthorized control. For its part, Watco would strongly prefer to avoid, if possible, the preparations attendant to the use of a voting trust. The exemptions in FD 36503 and FD 36504 are

anticipated to otherwise be effective by May 31, 2021. Accordingly, Watco respectfully requests that the Board expedite consideration of this Petition and issue its exemption decision in this matter by June 7, 2021, to be effective no later than June 30, 2021.

CONCLUSION

For the foregoing reasons, Watco requests that the Board, under 49 U.S.C. § 10502, exempt from regulation under 49 U.S.C. §§ 11323-11324 its proposed continuance in control of Fox Valley & Lake Superior Rail System, L.L.C., together with the control of the other carriers already controlled by Watco, and that the exemption be granted on an expedited basis.

Respectfully submitted,

Dated: April 5, 2021

/s/ David F. Rifkind

David F. Rifkind

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1775 Pennsylvania Avenue NW

Suite 800

Washington, D.C. 20006

(202) 969-4218

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Counsel for Watco Holdings. Inc.

VERIFICATION

I, Craig R. Richey, declare under penalty of perjury that the foregoing is true and correct.

I am the Executive Vice President and General Counsel of Watco Holdings, Inc. ("Watco").

Further, I certify that I am qualified and authorized to file this Petition for Exemption.

The proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

I have read the foregoing Petition for Exemption, and hereby verify that the facts stated therein are true and correct.

Executed on April 5th, 2021

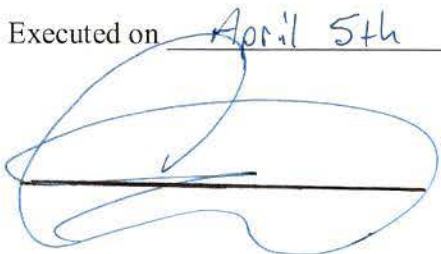
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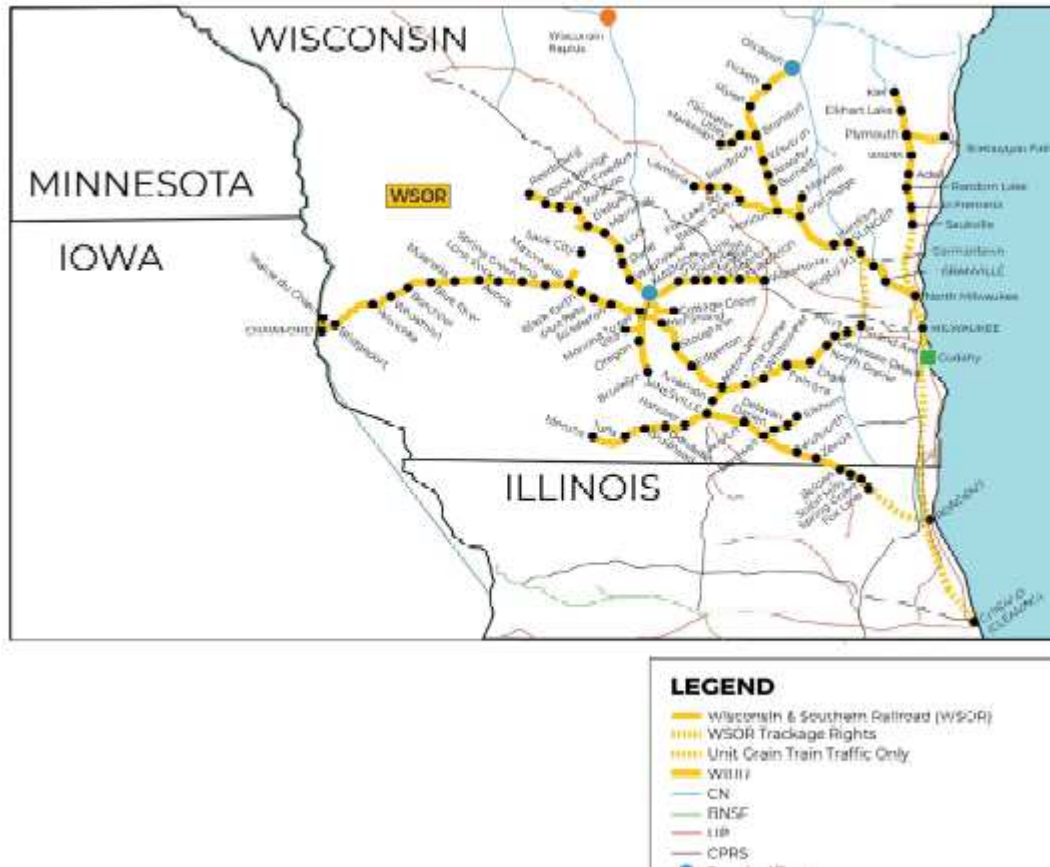
EXHIBIT 1
MAPS

3

Watco system map



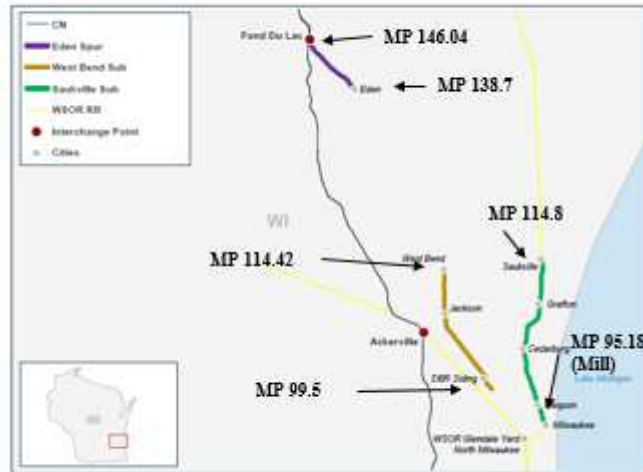
WSOR lines



FOXY lines

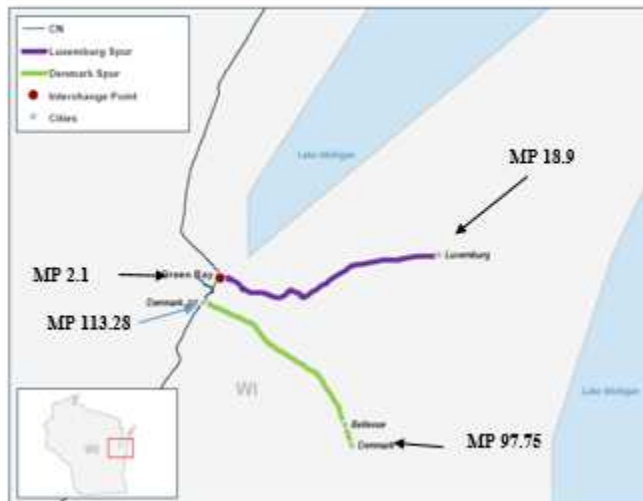
Southern Cluster

Eden Spur, West Bend and Saukville Subdivisions



Green Bay Cluster

Denmark and Luxemburg Spurs



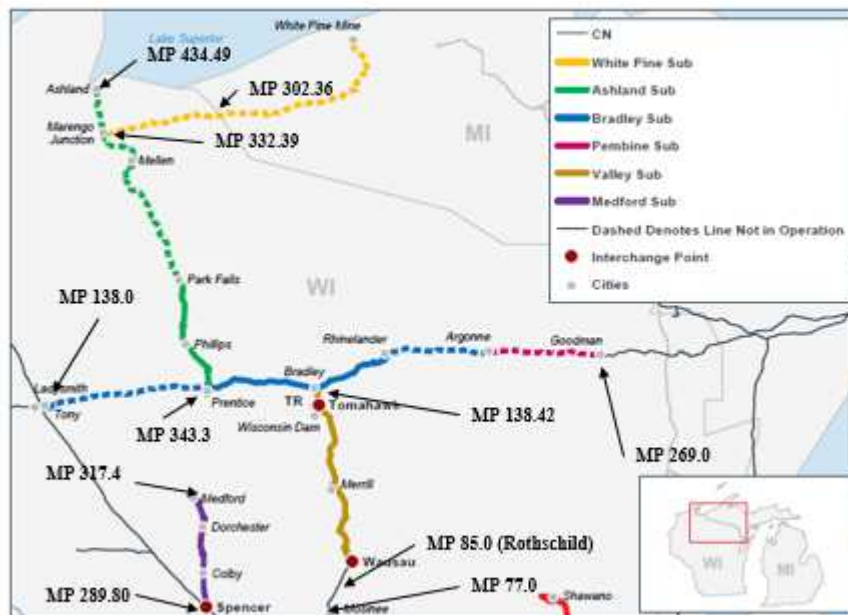
Appleton Cluster

Shawano Subdivision, New London and Kimberly Spurs



Northern Cluster

Valley, Bradley, Pembine, Ashland, White Pine, and Medford Subdivisions



APPENDIX

Class II Carrier

Wisconsin & Southern Railroad, L.L.C. [Illinois, Wisconsin]

Class III Carriers

Alabama Southern Railroad, L.L.C. [Alabama, Mississippi]

Alabama Warrior Railway, L.L.C. [Alabama]

Ann Arbor Railroad, Inc. [Michigan, Ohio]

Arkansas Southern Railroad, L.L.C. [Arkansas, Oklahoma]

Austin Western Railroad, L.L.C. [Texas]

Autauga Northern Railroad, L.L.C. [Alabama]

Baton Rouge Southern Railroad, L.L.C. [Louisiana]

Birmingham Terminal Railway, L.L.C. [Alabama]

Blue Ridge Southern Railroad, L.L.C. [North Carolina]

Bogalusa Bayou Railroad, L.L.C., also d/b/a Geaux Geaux Railroad [Louisiana]

Boise Valley Railroad, L.L.C. [Idaho]

Cicero Central Railroad, L.L.C. [Illinois]

Decatur & Eastern Illinois Railroad, L.L.C. [Illinois, Indiana]

Dutchtown Southern Railroad, L.L.C. [Louisiana]

Eastern Idaho Railroad, L.L.C. [Idaho]

Elwood Joliet & Southern Railroad, L.L.C. [Illinois]

Grand Elk Railroad, Inc. [Indiana, Michigan]

Great Northwest Railroad, L.L.C. [Idaho, Washington]

Ithaca Central Railroad, L.L.C. [New York, Pennsylvania]

Jacksonville Port Terminal Railroad, L.L.C. [Florida]

Kanawha River Railroad, L.L.C. [Ohio, West Virginia]

Kansas & Oklahoma Railroad, L.L.C. [Colorado, Kansas]

Kaw River Railroad, L.L.C. [Kansas, Missouri]

Louisiana Southern Railroad, L.L.C. [Louisiana]

Lubbock and Western Railway, L.L.C. [Texas]

Mission Mountain Railroad, L.L.C. [Montana]

Mississippi Southern Railroad, L.L.C. [Mississippi]

Palouse River & Coulee City Railroad, L.L.C. [Idaho, Oregon, Washington]

Pecos Valley Permian Railroad, L.L.C. d/b/a Pecos Valley Southern Railway [Texas]

Pennsylvania Southwestern Railroad, L.L.C. [Pennsylvania]

San Antonio Central Railroad, L.L.C. [Texas]

Savannah & Old Fort Railroad, L.L.C. [Georgia]

South Kansas and Oklahoma Railroad, L.L.C. [Kansas, Missouri, Oklahoma]

Stillwater Central Railroad, L.L.C. [Oklahoma]

Swan Ranch Railroad, L.L.C. [Wyoming]

Texas and New Mexico Railway, L.L.C. [New Mexico]

Timber Rock Railroad, L.L.C. [Louisiana, Texas]

Vicksburg Southern Railroad, L.L.C. [Mississippi]

Yellowstone Valley Railroad, L.L.C. [Montana, North Dakota]