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May 7, 2021

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

VIA E-FILING

Re: *Grand Elk Railroad, Inc.—Acquisition Exemption—Lines of Wisconsin Central Ltd. in Michigan*, Docket No. FD 36503

Fox Valley & Lake Superior Rail System, L.L.C.—Acquisition and Operation Exemption—Lines of Wisconsin Central Ltd. in Wisconsin, Docket No. FD 36504

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., Docket No. FD 36505

Watco Holdings, Inc.—Continuance in Control Exemption—Fox Valley & Lake Superior Rail System, L.L.C., Docket No. FD 36506

Dear Ms. Brown:

Enclosed for filing in the above-referenced dockets is the Response to Board's April 27, 2021 Order of Grand Elk Railroad, Inc., Fox Valley & Lake Superior Rail System, L.L.C., and Watco Holdings, Inc.

Please contact me should you have any questions.

Sincerely,

Stinson LLP

David Rifkind

DFR:ma

cc: Parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36503

GRAND ELK RAILROAD, INC.—ACQUISITION EXEMPTION—LINES
OF WISCONSIN CENTRAL LTD. IN THE STATE OF MICHIGAN

DOCKET NO. FD 36504

FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C.—ACQUISITION AND
OPERATION EXEMPTION—LINES OF WISCONSIN CENTRAL LTD.
IN THE STATE OF WISCONSIN

DOCKET NO. FD 36505

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.

DOCKET NO. FD 36506

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

**GRAND ELK RAILROAD, INC., FOX VALLEY & LAKE SUPERIOR RAIL
SYSTEM, L.L.C. AND WATCO HOLDINGS, INC. RESPONSE TO BOARD'S
APRIL 27, 2021 ORDER**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36503

GRAND ELK RAILROAD, INC.—ACQUISITION EXEMPTION—LINES
OF WISCONSIN CENTRAL LTD. IN THE STATE OF MICHIGAN

DOCKET NO. FD 36504

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OPERATION EXEMPTION—LINES OF WISCONSIN CENTRAL LTD.
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WATCO HOLDINGS, INC.
—EXEMPTION FOR INTRA-CORPORATE FAMILY TRANSACTION—
FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C. AND
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DOCKET NO. FD 36506

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

**GRAND ELK RAILROAD, INC., FOX VALLEY & LAKE SUPERIOR RAIL
SYSTEM, L.L.C. AND WATCO HOLDINGS, INC. RESPONSE TO BOARD’S
APRIL 27, 2021 ORDER**

Pursuant to the Board’s April 27, 2021 order in the above proceedings (the “Order”) GDLK, FOXY, and Watco Holdings, Inc. (collectively, “Watco”) hereby respond to 1) the small number of comments filed in FD 36503 and FD 36504 seeking unwarranted regulatory scrutiny of the proposed transactions in those dockets, and 2) the Board’s legal question regarding acquisition

of discontinued rail lines in their discontinued state. This submission is being filed early in order to facilitate a Board decision by June 7, 2021.

This response is supported by the Verified Statement of Stefan R. Loeb (“Loeb V.S.”).

INTRODUCTION

The proposed transactions accord with and promote the national rail transportation policy (“RTP”) of 49 U.S.C. § 10101. They also enjoy strong support from the shippers on the affected lines. Numerous shippers and other stakeholders¹ including the Wisconsin Department of Transportation have filed in support of the proposed transactions. Wisconsin Governor Tony Evers issued a statement hailing the proposed transactions as “truly great news for Wisconsin.”² Shippers and other stakeholders supporting the transaction recognize that the proposed transactions plainly are in the public interest. Watco brings a wealth of experience and resources in growing existing business, developing new business, and successfully operating branch lines like those at issue here for the benefit of local shippers and communities. Watco has a well-earned reputation for providing consistent and reliable service and is well positioned to cater to the specific rail service needs of their local customers. Moreover, the proposed transactions are free of interchange commitments. And the proposed transactions create jobs.³ For these reasons, the shippers support

¹ The following have filed support letters: Clark County Economic Development & Tourism Bureau, Domtar, Dunham Transportation, Limited, Green Bay Packaging, Inc., Graymont, LSSA, McDonald Companies, Michigan Railroads Association, The National Industrial Transportation League, Office of the Commissioner of Railroads State of Wisconsin, Packaging Corporation of America, Park Falls Industrial Management LLC, Tri-County Railroad Team, United Cooperative, WCG, Weather Shield Mfg., Inc., Wisconsin Department of Transportation, Wisconsin Manufacturers & Commerce, Wisconsin Paper Counsel and Wisconsin Railroad Association

² <https://wisconsindot.gov/Pages/about-wisdot/newsroom/news-rel/033021CanadianNationalSale.aspx> (last accessed May 6, 2021) attached as Exhibit A.

³ A list of approximately 48 employment opportunities with FOXY and GDLK is included in Exhibit C to the Notice of Exemptions filed in FD 36503 and 36504.

the proposed transactions and ask that the Board proceed under the Board's class exemption procedures applicable to such transactions.

The list of current supporters now includes some stakeholders that initially expressed reservations. Those reservations were largely focused on the level of regulatory scrutiny in the STB's exemption process. However, two organizations representing shipper interests, Wisconsin Central Group ("WCG") and Lake States Shippers Association ("LSSA") quickly withdrew their opposition and committed to working with FOXY and GDLK after the Watco companies met with them and discussed their concerns.⁴ Two additional organizations, Northwoods Transit Commission and the Western Upper Peninsula Planning & Development Regional Commission have advised that they too intend to withdraw their request for increased regulatory scrutiny, and instead file in support of expedited authority for the proposed transactions.⁵

The few remaining dissenters appear to have only general concerns about the exemption process and do not identify any specific issues with the proposed transactions. Five commenters (U.S. Representative Tiffany, Northwoods Distribution Services, Inc. ("NDS") together with the Branch Line Railroad ("BLR") and Dahlquist Trucking Company,⁶ and the Timber Professionals

⁴ Watco company representatives met with WCG and LSSA and several shippers on April 21 and 22, 2021 in Green Bay, WI. These meetings not only resulted in their full throated support of the transaction, but also helped forge collaboration on efforts to develop business and restore service on the discontinued lines. These entities now understand that Watco's ownership of the branch lines is a positive first step towards their goals, and that the sooner that Watco can get its feet on the ground in Michigan and Wisconsin, the sooner Watco can get to work. See Stefan Loeb VS at 3.

⁵ Watco representatives had productive discussions with Northwoods Rail Transit Commission on April 21 and 29, 2021 and May 4, 2021. The Western Upper Peninsula Planning & Development Regional Commission also participated in the May 4, 2021 discussions.

⁶ NDS jointly with the BLR filed comments on April 14, 2021 and again on April 22, 2021 and then jointly filed comments with Dahlquist Trucking Company on April 21, 2021. BLR appears to be a special purpose company formed to lease and operate Northwoods Distribution Services' industry track as a line of railroad, an effort that was rejected by the Board. See *Branch Line R.R., Inc.—Lease & Operation Exemption—Northwoods Distrib. Servs., Inc.*, FD 36422 (STB served April 6, 2021).

Cooperative⁷) only one of whom is a rail customer (NDS), ask the Board to subject GDLK's acquisition of rail lines in Michigan and FOXY's acquisition of rail lines in Wisconsin to increased regulatory scrutiny. However, they provide no legitimate basis for departing from the established Board class exemption procedures applicable to these proposed rail line acquisitions. They identify no lessening of competition or other competitive harm from the proposed transactions. In fact, NDS, a transloader, expresses concern that the proposed transactions could result in *increased* competition if Watco should choose to establish a competing transload facility.⁸ Nor do these commenters explain what they hope to achieve from subjecting the proposed transactions to unnecessary delay and regulatory burden. Finally, although styled as petitions for stay and to revoke the exemptions, these comments make no effort whatsoever to satisfy the Board's standards for stay or revocation. Nor could they satisfy such standards.

As to the acquisition of the discontinued lines, GDLK and FOXY's intent and goal is to restore rail service on these lines in due course. Acquisition of these lines in their discontinued state is consistent with Board precedent and sound policy. By reducing risk and regulatory burden on the transfer of such lines to new owners who are willing to invest the resources necessary to restore economically viable rail service, the proposed transactions promote the Board's goals of preserving inactive rail lines as part of the national rail system for potential future rail service.

At bottom, the proposed transactions in FD 36503 and 36504 are the type of routine, Class III line acquisitions for which the class exemptions were designed. They enjoy strong support from shippers on the affected lines and other stakeholders. The transactions raise no unresolved unusual or controversial issues. Accordingly, GDLK, FOXY and Watco Holdings, Inc. respectfully request

⁷ Timber Professionals Cooperative participated in a call with Watco on Thursday, April 29, 2021.

⁸ April 21, 2021 Letter filed by Northwoods Distribution Services and Branch Line Railroad in FD 36503 and 36504.

that the Board allow the exemptions in FD 36503, 36504, and 36506 to become effective; and also grant the related Petition for Exemption in FD 36505 by June 7, 2021.

ARGUMENT

I. The Board’s Class Exemption Procedures Are Critical Tools to Achieving The Rail Transportation Policy.

Congress directed the Interstate Commerce Commission (“ICC”) to exempt transactions “to the maximum extent” when regulation is unnecessary to implement the transportation policy and the matter is of limited scope or will not result in abuse of market power. 49 U.S.C. § 10502. In 1985, the ICC established a class exemption for various 49 U.S.C. § 10901 transactions, *i.e.*, transactions involving a non-carrier acquisition or operation of rail property resulting in the non-carrier becoming a Class III carrier, to “fulfill[] this legislative directive.” *Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. 10901*), 1 I.C.C. 2d 810, 811 (1985), *review denied mem. sub nom. Ill. Commerce Comm’n v. ICC*, 817 F.2d 145 (D.C. Cir. 1987). In establishing the class exemption for certain § 10901 transactions, the ICC explained that it had handled several such transactions under its exemption procedures and granted “virtually all of the exemption requests,” and concluded that “case-by-case handling of these exemptions involved a burdensome and unnecessary expenditure of resources both by individual petitioners and by the Commission.” *Id.* at 811. Also, the ICC noted the shipper and community benefits of “transferring a line to a new carrier that can operate the line more economically or more effectively than the existing carrier” and the fact that “shortlines are dependent on local traffic for their survival, and thus have a greater incentive than class I carriers to provide local shippers with service tailored to their needs.” *Id.* at 813. The ICC concluded:

The transfer of abandoned or underused rail property for more efficient use by a railroad can be beneficial to the shippers on the line, to the community that the line runs through, and to the selling railroad. When a transfer occurs, shippers receive

continued, if not enhanced service, while the selling railroad continues to receive the feeder traffic generated by the line at its junction point with the new operator.

Id.

In 1996, following Congress's enactment of 49 U.S.C. § 10902, which governs acquisition or operation of additional rail lines by Class II or Class III railroads, the Board established a class exemption for transactions arising under § 10902 involving Class III carriers. *Class Exemption for the Acquis. & Operation of Rail Lines By Class III Rail Carriers Under 49 U.S.C. 10902*, 1 S.T.B. 95 (1996), 1996 WL 339192. In establishing the class exemption, the Board cited "the ICC's considerable experience in considering individual petitions for exemption and in adopting class exemptions from the provisions of section 10901 and section 11343." *Id.* at *4. The Board also cited Congressional intent that § 10902 "promote clearer and more expeditious handling of the affected transactions and avoid imposing additional and sometimes potentially fatal costs on start-up operations of smaller railroads who often can keep rail lines in service even if not viable as part of the larger carrier's system." *Id.* The Board found that the class exemption "will facilitate the acquisition of rail lines by Class III carriers and ensure the continuation of rail service on lines that may otherwise be abandoned if not for sale." *Id.* at *5. It concluded that detailed scrutiny of such transactions was not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the "RTP") and that the class exemption was consistent with several provisions of the RTP. Specifically, that the class exemption will,

promote the continuation of a sound rail system to meet the needs of the public and will enhance efficiency, coordination and completion among rail carriers. *See* 49 U.S.C. 10101(4), (5) and (9). The exemption will also minimize the need for Federal regulatory control over the rail transportation system and reduce barrier to entry into and exit from the industry. By limiting the level of regulatory review of such transactions and by relying upon the more expeditious notice of exemption procedure, the Board's regulation of Class III acquisitions will be facilitated and reduced. 49 U.S.C. 10101(2) and (7).

Id. at *6. The Board also found that the acquisition or operation of rail lines by Class III carriers met both standards for exempting transactions under 49 U.S.C. § 10502. Such transactions are limited in scope as “[m]ajor changes in rail operations or competitive relationships between railroads are not likely to occur because, under the exemption, the purchasing carrier’s operations will merely supplant the selling carrier’s operation.” *Id.* at *6. And the Board found regulation of such transactions as unnecessary to protect shippers from abuse of market power as “[c]ompetition or transportation options for the shipping public typically will not be lessened. Rather continued rail operations made possible by such acquisitions should improve service for shippers and decrease the cost of its provision.” *Id.* at *7. The Board concluded that “a class exemption will reduce regulatory burdens, expedite the acquisition of rail lines by imposing specific time frames on the exemption process and allow us to use our resources in a more efficient manner.” *Id.*

Time and again, the class exemptions have proved themselves to be an invaluable tool allowing Class I railroads to spin off low density lines, or lines that would otherwise be abandoned, to shortline operators. And those shortlines, including Watco-controlled companies, have successfully operated the acquired lines, growing existing business, and developing new business as they propose to do here. More than three decades of experience and the creation of hundreds of successful Class III rail carriers have borne out the wisdom of the STB’s class exemptions.

The proposed transactions are precisely the type of “routine, uncomplicated, and non-controversial transaction[s] for which the class exemptions were designed.” *See Branch Line R.R., Inc.—Lease & Operation Exemption—Northwoods Distrib. Servs, Inc.*, FD 36422, slip op. at 2 (STB served Apr. 6, 2021) (rejecting verified notice for raising too many unresolved questions regarding the accuracy of the description of the trackage and the nature of the rail service to be provided). Here, the transactions involve the transfer of low density and inactive rail property—

some of which might otherwise be abandoned—for continued use, or in the case of inactive lines, for possible restoration of service by GDLK and by FOXY. There are no “unresolved issues or questions that require considerable scrutiny.” *Id.*

II. The Issues Raised Do Not Warrant a Departure from the Board’s Class Exemption Procedures.

U.S. Representative Tom Tiffany⁹ and the Timber Professionals Cooperative each filed near identical comments in FD 36503 and FD 36504. These commenters, neither of whom are shippers, ask the Board to stay or revoke the exemptions and to review the proposed transactions in those dockets as “significant” transactions under 49 C.F.R. Part 1180. According to these commenters, neither applicant can be said to be a “new carrier” within the meaning of 49 C.F.R. 1130.31(a), the transaction was negotiated privately between CN and Watco, Watco already controls some 600 miles of rail lines in Wisconsin and as a result of the proposed transactions will control more than 1,250 miles of rail lines in Wisconsin and Upper Michigan, and the applicants’ Notices of Exemption do not address the conditions that the Board imposed in 2001 in approving CN’s acquisition of WCL.

Before addressing those arguments below, we address a more basic error in the comments. The commenters assert that the proposed transactions do not meet the standards for an exemption under 49 U.S.C. § 10502. But by establishing the class exemptions, the Board has already made the determination that transactions such as those proposed here meet the standards for an exemption under 49 U.S.C. § 10502. To revoke the exemption “in whole or in part”, the Board must find “that regulation is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101. *Caldwell R.R. Comm’n—Exemption From 49 U.S.C. Subtitle IV*, FD 32659 (Sub-No.1)

⁹ Representative Tiffany also issued a press release tentatively supporting the transaction attached hereto as Exhibit B.

slip op at 1-2 (STB served Nov. 26, 2014). “The party seeking revocation of an exemption has the burden of proof, and the petition to revoke must be based on reasonable, specific concerns.” *Id.* Here, the commenters make no effort to meet or address this high standard. They do not articulate any reasonable, specific concerns regarding the transactions, but rather make general assertions. And they do not explain why even these assertions warrant subjecting the transactions to additional regulatory scrutiny, whether or how the proposed transactions frustrate the RTP, or otherwise warrant revocation or stay, which they do not.

A. GDLK and FOXY Are Acquiring Lines Pursuant to Section 10901 and 10902 Which Are Not Subject to 49 CFR Part 1180.

As an initial matter, these proceedings are not subject to 49 C.F.R. Part 1180 which governs transactions “initiated under 49 U.S.C. § 11323.” 49 C.F.R. § 1180.0(a) GDLK’s acquisition of the Michigan lines (FD 36503) is initiated under 49 U.S.C. § 10902 and FOXY’s acquisition of the Wisconsin lines (FD 36504) is initiated under 49 U.S.C. § 10901. Neither of these transactions are initiated under 49 U.S.C. § 11323 and therefore 49 C.F.R. Part 1180 is simply inapplicable to the proposed transactions.

To the extent 49 U.S.C. § 11323 is implicated, it is in only FD 36506 where Watco has petitioned for exemption authority to continue in control of FOXY upon FOXY becoming a Class III carrier. Notably, but for the fact that two of the branch lines, the 15-mile West Bend Subdivision and the 20-mile Saukville Subdivision connect to the Wisconsin & Southern Railroad (“WSOR”) and will ultimately become part of the WSOR¹⁰, Watco’s continuance in control would have been subject to the class exemption under 49 C.F.R. § 1180.2(d)(2). Those two branch lines

¹⁰ See *Watco Holdings, Inc.—Exemption for Intra-Corporate Family Transaction—Fox Valley & Lake Superior Rail System, L.L.C.*, FD 36505.

account for a fraction of the total line miles acquired by GDLK and FOXY, raise no competitive concerns, and not a single commenter has suggested otherwise.

In any event, there is no basis for treating the proposed transactions different from the hundreds of proceedings in which a class exemption has been applied to Class III acquisitions of low density, branch rail lines from Class I railroads.

B. FOXY Will Be a “New Carrier”.

As to commenters’ claim that GDLK and FOXY are not “new carriers,” they are partially correct, but it makes no difference under the law. As stated in the Notice of Exemption in FD 36503, GDLK is an existing rail carrier and its acquisition of rail lines in Michigan is subject to 49 U.S.C. § 10902 and the Board’s class exemption specifically for *existing* carriers. FOXY, however, indisputably will be a new carrier in Wisconsin following consummation of the proposed transaction in FD 36504 and therefore is proceeding under 49 U.S.C. § 10901 and the Board’s class exemption specifically for acquisition of rail lines by a *non*-carrier. That FOXY will be owned and controlled by Watco, which in turn owns and controls several other railroads, does not obviate the fact that FOXY is a separate legal entity established for the purpose of acquiring and operating the rail lines described in the Notice of Exemption. By establishing FOXY to acquire the lines and become a new carrier, Watco and FOXY are following a well-worn path that is expressly contemplated by statute and the Board’s rules establishing the exemption. *See e.g., Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901*, 1 I.C.C. 2d 810. Regardless, of whether the carriers are new or existing, the transactions fall within the Board’s class exemption procedures.

C. Confidential Negotiation of the Purchase Agreement is Both a Normal and Essential Feature of Rail Transactions.

As to the private negotiation of the transaction between the buyer and seller, that is hardly unusual or a legitimate basis for concern or increased regulatory scrutiny. Such transactions are routinely negotiated behind closed doors between the principals. Indeed, the ability to conduct confidential negotiations is often essential to their success. The time for engaging other stakeholders typically comes after an agreement between the buyer and seller has been struck. And since executing the purchase agreement, the Watco companies and CN have and continue to conduct an aggressive outreach campaign to engage stakeholders regarding service needs, growth opportunities, and to plan for upcoming transition of service at the end of June. This outreach includes shippers as well as the non-shipper commenters identified above, some of whom Watco representatives have communicated with on multiple occasions. *See* Loeb V.S. at 3.

D. The Amount of Route Miles Involved is Significantly Less than Other Transactions Utilizing the Board's Class Exemptions.

While the commenters identify the total number of route miles that GDLK and FOXY will acquire and the total number of route miles that Watco affiliated companies will control in Wisconsin after consummation of the proposed transactions, they do not explain why the amount of route miles warrants additional burdensome and time consuming regulatory scrutiny. They also identify no potential competitive harm or potential for abuse of market power that might result from the proposed transactions and no such potential exists.

The total number of route miles being acquired provides no basis for subjecting these proposed transactions to increased regulatory scrutiny. The Board's class exemptions are not subject to a mileage cap. Transactions involving far more miles than those being acquired by either GDLK or by FOXY have proceeded under the class exemptions, including WCL's acquisition of approximately 1,800 route miles—among them the very lines involved in the instant transaction.

See Wis. Cent. Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line R.R Co., FD 31102, 52 Fed. Reg. 35005 (Sep. 16, 1987) (utilizing class exemption in acquisition of approximately 1,800 route miles of rail lines and 173 route miles of trackage rights). *See also Iowa, Chicago & E. R.R Corp.—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC*, FD 34177 (STB served July 22, 2002) (allowing class exemption in acquisition of 1,125 miles of rail line and 275 miles of incidental trackage rights); *Rapid City, Pierre & E. R.R., Inc.—Acquisition and Operation Exemption Including Interchange Commitment—Dakota, Minn. & E. R.R. Corp.*, FD 35799 (STB served May 14, 2015) (utilizing class exemption in acquisition of approximately 670 miles of rail lines and approximately 219 miles of incidental trackage rights).¹¹ Notably, each of the cited transactions involved connected rail lines that created a cohesive rail system. By contrast, the proposed transactions involve acquisition of a series of disconnected branch lines. Viewed individually, acquisition of each of these branch lines would not merit a second glance. No more scrutiny is warranted simply because the branch lines are bundled together as part of one streamlined transaction between seller and buyer. In this case, from a regulatory perspective, the whole is less than the sum of its parts.

Moreover, the fact that WSOR controls 600 route miles in Wisconsin provides no basis for additional regulatory scrutiny. Much of that mileage is owned by the state, which supports this transaction based on its experience with WSOR.¹² Additionally, much of the 600 miles, as well as some of the rail lines in the proposed transactions, are in the vicinity of rail lines owned and

¹¹ Indeed, the Board's class exemption procedures specifically contemplate acquisition transactions that would result in the creation of new Class II rail carriers—transactions that of necessity would be larger than those involved here. *See* 49 C.F.R. § 1150.35.

¹² *See* Wisconsin Department of Transportation Support Statement, FD 36504 (filed April 12, 2021). *See also* <https://wisconsindot.gov/Pages/about-wisdot/newsroom/news-rel/033021CanadianNationalSale.aspx> attached as Exhibit A.

operated by BNSF, CN, CP, and/or UP and subject to robust intramodal and intermodal competition.

III. Stakeholder Desire for Increased Rail Service and Economic Development Support Exemptions Under the Board's Expedited Procedures.

The service that GDLK and FOXY intend to provide on the acquired lines reinforces the beneficial nature of the proposed transactions and the appropriate nature of the GDLK and FOXY notices of exemption. Specifically, GDLK and FOXY's intent is to address the service needs of the shippers on the line, grow existing business, and attract and develop new business. This is why the proposed transactions enjoy shipper support, and why after meeting with representatives of the Watco companies, WCG and LSSA withdrew their petition for stay and revocation and threw their weight behind the Board's expeditious handling of the exemption proceedings; and why Northwoods Transit Commission and the Western Upper Peninsula Planning & Development Regional Commission have advised that they intend to do the same.

Some commenters inquired about how the proposed transactions might impact the conditions the Board imposed on the 2001 CN/WC transaction. CN has confirmed that the proposed transactions will have no impact.¹³ GDLK, FOXY, and WSOR will act as a handling carriers for WCL on the acquired lines. Under the handling carrier agreement, WCL will retain ratemaking authority for traffic moving between WCL and origins and destinations located on the lines to be acquired.

¹³ See April 21, 2021 Letter from WCL to Wisconsin Department of Transportation, FD 36504 (filed April 22, 2021).

IV. Northwoods Distribution Services, Branch Line Railroad and Dahlquist Trucking, Inc.’s Joint Comments Likewise Support Expedited Handling of the Proposed Transactions.

Northwoods Distribution Services (“NDS”), Branch Line Railroad (a non-carrier) (“BLR”), and Dahlquist Trucking, Inc. filed various joint comments in FD 36503 and FD 36504 generally raising the same issues as the non-shipper commenters. In addition, NDS/BLR’s April 21, 2021 joint comments inexplicably call out Watco’s size and the fact that Watco is an “American success story” as apparent causes for concern.¹⁴ Just the opposite is true. Watco has forged its American success story in large part by investing in underutilized rail lines and growing rail traffic on those lines, as it seeks to do here. Watco’s model for success focuses on meeting customer rail service needs and on working hand-in-glove with local and regional stakeholders. Watco’s experience and access to resources are key to Watco’s ability to provide strong service in the future on these lines. Thus, the concerns these commenters express are all the more reason to expedite authorization for a new owner, with a more regional focus, to acquire and operate the lines in question.

NDS/BLR also expresses concern that FOXY and GDLK do not own log cars and have not made arrangements to acquire such cars. Given that the purchase agreement was just inked and is awaiting regulatory authority, this criticism is premature. Indeed, as part of their preparations to

¹⁴ NDS/BLR also assert that Brookfield Asset Management Inc., (“Brookfield”) which recently acquired Genesee & Wyoming, owns Watco by virtue of Brookfield’s acquisition of an interest in Oaktree Capital Management LP (“Oaktree”) which itself is an investor in Watco. Oaktree, is a minority investor in Watco Companies, L.L.C., a subsidiary of Watco Holdings, Inc., currently holding shares with no voting rights, limited protection rights, and only two seats on Watco Companies, L.L.C.’s ten-seat board. Under STB precedent, Oaktree’s investment in Watco’s subsidiary does not give Oaktree “control” either directly of Watco or indirectly of any of its railroad subsidiaries. *See e.g., Union Pacific RR Co. and Missouri Pacific Railroad Company—Trackage Rights Over Lines of Chicago and North Western Transp. Co. Between Fremont, NE/Council Bluffs, IA, and Chicago, IL*, 7 I.C.C. 2d 177, 195-96 (1990) (equity with limited voting rights and right to name three directors to nine-member Board did not put Union Pacific in control of CNW). By extension, Brookfield’s investment in Oaktree does not place Brookfield in control of Watco or any of its railroad subsidiaries and raises no issues of concern for the STB. Accordingly, Brookfield’s investment in Oaktree is not pertinent to whether the transactions qualify for an exemption.

take ownership of the lines on June 30, 2021, FOXY and GDLK are in advanced talks to acquire logging rail cars. Also, they will continue to have access to CN's fleet of such cars. See *Loeb V.S.* at 4.

Next, NDS/BLR expresses concern that FOXY will be bound by WCL's pricing structure for their facility at Rhineland, WI. Apart from this transloader, no other commenter has raised this concern to the Board. WCL retains ratemaking authority for traffic that will be interchanged with WCL. Such handling carrier arrangements are an essential feature of the vast majority of short line spin-offs, without which such transactions would not be possible. Additionally, FOXY will have its own optional services tariff for demurrage and optional services.

The nub of NDS/BLR's opposition, however, appears to be the concern that Watco will itself establish a transload facility that will compete directly with NDS. Such issues are beyond the scope of the Board's consideration even if the Board were to subject the transaction to regulatory scrutiny. Moreover, Watco has no plans to establish a competing transload facility at this time but does intend, consistent with its common carrier obligation, to serve customers on the line, including customers that may now or in the future compete with NDS.

V. Acquisition of Discontinued Lines in the Discontinued State is Consistent with Board Precedent and the Intent of the Class Exemptions.

The Board *sua sponte* seeks clarification as to GDLK and FOXY's representation that they are acquiring the inactive rail lines in their discontinued state, noting that the intent of the class exemption procedures at issue were "adopted to serve shippers and community interests by facilitating continued rail service." Order, slip op. at 3. No commenters raised this question. Indeed, some supporters are excited about the possibilities that the transactions present for future resumption of rail service on these lines.

Agency precedent is consistent with acquisition of a rail line in its discontinued state. See *Ventura County Transp. Comm'—Acquisition Exemption—S. Pac. Transp. Co.*, FD 32794 (ICC served December 29, 1995); *Golden Gate Bridge, Highway & Transp. Dist.—Acquisition Exemption—N.W. Pac. R.R. Co. and S. Pac. Transp. Co.*, FD 31689 (July 3, 1990). And doing so is fully consistent with the intent of the class exemption to facilitate continued rail service.

Here, as Stefan Loeb explains in his Verified Statement, GDLK and FOXY are each acquiring the inactive rail lines with the goal and intent of restoring rail service on those lines. See *Loeb V.S.* at 2. However, the lines have been out of service for several years. Watco has not yet had an opportunity to assess fully the condition of the tracks, bridges, and other facilities and the costs of restoring the lines to safe operating condition. In addition, potential rail shippers located on the lines will need to be persuaded to utilize rail and new business will need to be developed. Accordingly, restoring rail service will require both an investment in the physical infrastructure and rail customers to warrant the investment. GDLK and FOXY are already engaged in efforts to develop rail customers and hope to work with state economic development officials and other interested stakeholders to develop rail business and to identify funding opportunities, as Watco companies previously have done in Wisconsin, Michigan, and elsewhere. Watco intends to pursue re-investment in these discontinued lines using the various options available to short line railroads, such as Federal and state grant programs coupled with private capital to restore service if market conditions allow. These efforts will undoubtedly take time. However, in the meantime, the discontinued status protects against the risk that FOXY or GDLK would be presented with a demand for rail service before they have developed an economically viable plan to restore service.

Allowing the lines to be acquired in their discontinued state is good policy. Removing the discontinuance status upon transfer to a new owner would impose unnecessary risk and regulatory

burdens on transactions involving discontinued lines. It would create a disincentive for the acquisition of such lines, even where a new owner would otherwise pursue efforts to restore service, thus frustrating the intent of the class exemption. And it would do so even where the reasons for discontinuance persist after the acquisition. In that situation, the new owner would either need to risk premature demand for rail service or seek immediately to discontinue service on the line, an effort that would be complicated by the fact that the new owner may not be able to utilize the discontinuance class exemption procedures for the first two years of ownership. By contrast, allowing lines to be acquired in their discontinued state encourages the transfer of inactive lines to a new operator who may be able to restore rail service. This goal is fully consistent with the rationale underpinning the Board's class exemption procedures. *See Class Exemption for the Acquisition and Operation of Rail Lines By Class III Rail Carriers Under 49 U.S.C. 10902*, 1 S.T.B. 95 (1996), 1996 WL 339192, at *6-7.

CONCLUSION

For the reasons stated above GDLK, FOXY and Watco Holdings, Inc. respectfully request that the Board allow the exemptions in FDs 36503, 36504, and 36506 to become effective and also grant the related Petition for Exemption in FD 36505 by June 7, 2021.

Respectfully submitted,

/s/ David F. Rifkind

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AND WATCO HOLDINGS, INC.

Dated: May 7, 2021

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May, 2021, copies of the foregoing Response were served by either first class postage prepaid mail or by electronic mail on the following:

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EXHIBIT A



Canadian National Sale "Great News" for Wisconsin

Governor Evers, Transportation Secretary Thompson Applaud Sale to Watco

Release date: March 30, 2021

Wisconsin Governor Tony Evers and Transportation Secretary-designee Craig Thompson today praised the announcement that the Canadian National Railroad has reached an agreement to sell key rail lines, including 650 miles of track in Wisconsin and upper Michigan, to logistics company Watco.

"This is truly great news for Wisconsin. This announcement means not only continued freight rail service for Wisconsin's Northwoods, but it also presents an opportunity to expand service," Governor Evers said. "That is especially good news for our Northwoods economy and the timber and paper industries that rely heavily on freight rail to connect to major ports and markets all over the world."

"More than 170 million tons of freight move by rail in Wisconsin each year," Secretary Thompson said. "For many of Wisconsin's major industries – agriculture, manufacturing, and wood products – rail is the most cost-effective way to move freight. Having reliable rail access will make our industries more competitive and contribute to our economic recovery. Rail is also a more energy-efficient way to move freight, reducing our state's carbon footprint. Plus, every ton of freight that move by rail means less congestion and wear and tear on our highways," he said.

In Wisconsin, nearly all rail lines are owned by private companies. Watco currently operates the Wisconsin and Southern Railroad (WSOR), which connects to the CN line and other Class I railroads.

For more information, contact:

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EXHIBIT B



For Immediate Release: March 30, 2021

Lawmakers Hopeful About Prospects for Improved Rail Service

Announcement of CN partnership with WATCO offers new potential for businesses, local economy

WASHINGTON, DC – Rep. Tom Tiffany and Rep. Jack Bergman today expressed appreciation for freight rail carrier Canadian National (CN) after the company announced a partnership with WATCO that the companies say will improve access to rail service in northern Wisconsin and the Upper Peninsula of Michigan.

CN on Wednesday announced an agreement “for the sale of non-core lines and assets on the Soo subdivision (approximately 250 miles of track) that runs from Sault Ste. Marie, Ontario to Oba, Ontario and approximately 650 miles of branch lines of Wisconsin Central Ltd. in Wisconsin and Michigan. This marks the successful conclusion of the sale process that CN announced and launched in July of 2020.”

“Access to reliable rail service is a critically important to the viability of our agriculture, timber and manufacturing sectors,” said Tiffany. “Northern Wisconsin is poised for growth, and stable, affordable and dependable rail service a key component for reaching that potential.”

It’s good that CN followed through on their commitment to spin off old the Wisconsin Central lines and I hope we can work together to ensure a brighter future for the region,” Tiffany added.

“Economic prosperity for many industries, manufacturers, and working families in the Upper Peninsula is tied to rail connectivity,” said Bergman. “While I will continue to remain watchful, I’m optimistic that today’s announcement will safeguard future commerce and access across the U.P. and throughout the region.”

Owing to service reductions in recent years, businesses throughout the region face limited shipping options and must rely more heavily on trucking to transport goods as a result. While the trucking industry plays a critically important role in regional and international commerce, the economics are often not as favorable or desirable as those associated with freight rail options.

“This is a great opportunity, but the devil is in details,” concluded Tiffany. “I look forward to working with CN and WATCO, the Surface Transportation Board, industry leaders and other stakeholders to ensure that this agreement results in better service, lower rates, and a long-term commitment to the region.”

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36503

GRAND ELK RAILROAD, INC.—ACQUISITION EXEMPTION—LINES
OF WISCONSIN CENTRAL LTD. IN THE STATE OF MICHIGAN

DOCKET NO. FD 36504

FOX VALLEY & LAKE SUPERIOR RAIL SYSTEM, L.L.C.—ACQUISITION AND
OPERATION EXEMPTION—LINES OF WISCONSIN CENTRAL LTD.
IN THE STATE OF WISCONSIN

DOCKET NO. FD 36505

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.

DOCKET NO. FD 36506

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

VERIFIED STATEMENT OF STEFAN R. LOEB

My name is Stefan Loeb. I am the Executive Vice President & Chief Commercial Officer for Watco Companies, L.L.C. (“Watco”) and have held this position since 2018. I began my employment with Watco in 2010 and have served in multiple commercial roles including Chief Marketing Officer, Executive Vice President – Network Strategy, Senior Vice President – Marketing & Sales and Vice President of Business Development. In my various roles, I helped spearhead the acquisition and start-up of nearly half of Watco’s short line railroads.

The purpose of my verified statement is to explain Grand Elk Railroad, Inc. (“GDLK”) and Fox Valley & Lake Superior Rail System, L.L.C’s (“FOXY”) intent with respect to the acquisition of certain lines from WCL in their discontinued state, describe our outreach to stakeholders regarding the above transactions, and describe some of the preparations that are being made to commence operations on the various branch lines.

1. Intent as to Discontinued Lines

GDLK and FOXY are acquiring several rail lines on which WCL previously discontinued service on all or a portion of the line. GDLK and FOXY’s goal and intent in acquiring these discontinued lines is to restore rail service while recognizing that because the discontinued lines have been out of service for several years, restoring service will take time. As a first step, we will need to evaluate the condition of the physical infrastructure including track, roadbed, and bridges and develop a plan for rehabilitating the lines. We will also need to work with various Federal, state, and local stakeholders on funding. We intend on pursuing re-investment in these discontinued lines using the various options available to short line railroads such as Federal and state grant programs coupled with our private capital to restore service if market conditions allow and customers on the lines that are currently using other modes of transportation, are willing to use rail service. We will also need to develop new business for the lines.

We have successfully executed this model on numerous occasions on underutilized lines, including in Wisconsin and Michigan. We are already engaged in efforts to develop rail customers on all of the lines we will be acquiring and hope to work with state economic development officials and other interested stakeholders to develop rail business and to identify funding opportunities as well as potential new rail shippers.

2. Stakeholder Discussions

Watco's efforts to develop both the active and inactive lines include meeting with Wisconsin Central Group ("WCG") and Lake States Shippers Association ("LSSA") and several shippers on April 21 and April 22, 2021 in Green Bay, WI. This meeting helped forge collaboration on efforts to develop business and restore service on the discontinued lines and resulted in WCG and LSSA withdrawing their opposition at the Board and instead expressing support for handling the transactions under the Board's expedited exemption procedures.

In addition, we have met with various other non-shipper stakeholders. This includes meetings with Northwoods Rail Transit Commission (April 21 and 29, 2021 and May 4, 2021), U.S. Representative Tom Tiffany (March 30, 2021 and April 29, 2021), Northwoods Distribution Services (April 16, 2021 and May 4, 2021), the Timber Professionals Cooperative (April 29, 2021), and the Western Upper Peninsula Planning & Development Region Commission (May 4, 2021). These meetings were constructive and we addressed many if not all of the various parties' questions and concerns. In each of our meetings, we shared real success stories where we succeeded in the very recent past on similar start-ups to prove similar success can occur here if we are given the chance. Following these meetings, the Northwoods Rail Transit Commission and the Western Upper Peninsula Planning & Development Region Commission advised that they would be filing at the Board in support of expedited approval of the proposed transactions. Nevertheless, we recognize there may be a certain amount of skepticism among some of these stakeholders that we will need to overcome with our actions.

Also, we have engaged in extensive outreach to shippers to begin exploring how we can best serve them and help grow their business. Our service model focuses on catering to the specific needs of our customers, particularly with respect to frequency and reliability. Our local and regional focus often allows us to provide a greater number of switches and highly personalized

service. We are pleased with the overwhelming support that we are receiving from shippers, both small and large, on the lines to be acquired.

3. Preparations

On April 21, 2021, Northwoods Distribution Services and Branch Line Railroad filed a comment noting that Watco “informs us that they do not have a fleet of log cars” and asserts that Watco has “not made appropriate plans to acquire a fleet of log cars for the Route 8 shippers.” While Watco does not own a fleet of log cars since it currently does not have customers requiring their use, we recognized that having log cars to provide customers on these lines will play a major roll and immediately began working on potential short and long-term solutions with railcar owners once our deal to purchase these lines was announced. After consummating the transaction, we will continue to have access to WCL’s railcar fleet. In addition, as part of their preparations to take ownership of the lines on June 30, 2021, FOXY and GDLK are in advanced talks to acquire log rail cars from the aforementioned railcar owners.

VERIFICATION

I, Stefan Loeb, declare under penalty of perjury that I am authorized to make this verification on behalf of Grand Elk Railroad, Inc., Fox Valley & Lake Superior Rail System, L.L.C., and Watco Holdings, Inc., and that the information included in the foregoing statement is true and correct to the best of my knowledge and belief.



Stefan R. Loeb
Executive Vice President & Chief Commercial Officer
Watco Companies, L.L.C.

Dated: May 7th, 2021