

**Surface Transportation Board
Comments & Petition re Proposed CN-Watco Sale
of
Northwoods Distribution Services & Branch Line Railroad
May 11, 2021**

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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: Modified Petition for Revocation of Exemptions and Stay of Effective Date

Docket No. FD 36503

Grand Elk Railroad, Inc. -- Acquisition Exemption -- Lines of Wisconsin Central Ltd. in Michigan

Docket No. FD 36504

Fox Valley & Lake Superior Rail System, L.L.C. -- Acquisition and Operation Exemption -- Lines of Wisconsin Central Ltd. in Wisconsin

Dear Ms. Brown:

On behalf of Northwoods Distribution Services (NDS) & Branch Line Railroad (BLR), we appreciate the opportunity to continue to comment on the proposed CN-Watco sale.

REQUEST SUMMARY:

REQUEST 1 We respectfully request that the STB consider the unique requirements of Northwoods rail transportation.

REQUEST 2 We respectfully request that STB consider what CN has offered to sell to Watco on the Route 8 Corridor.

REQUEST 3 We respectfully request that the STB consider what Watco negotiated to purchase from CN on the Route 8 Corridor.

REQUEST 4 We respectfully request that the STB bifurcate the CN-Watco sale. We request that STB separate the Central & Southern Wisconsin

component from everything north of Wausau. Remove the Route 8 Corridor and its feeder lines (Wausau north from mile post 91) from the proposed CN-Watco sale.

REQUEST 5 We respectfully request STB oversight of the Route 8 Corridor and its feeder lines.

REQUEST 6 If STB bifurcates the CN-Watco sale, we respectfully request STB direct CN to enter negotiations to sell the Route 8 Corridor and its feeder lines on a stand-alone basis.

BACKGROUND:

From 1986 to 2001, under the ownership and management of the Wisconsin Central (WC), the Northwoods-Route 8 Corridor Shippers were well served. The WC provided east-west rail service for Northwoods shippers:

- To the open water ports of Escanaba and Green Bay, with all year access to the east coast and European markets.
- To the Twin Cities with Class 1 options and price competition to the west coast and Pacific markets

In 2001, Canadian National (CN) acquired the Wisconsin Central (WC); the acquisition of the WC filled the gap in CN's transcontinental system linking the Pacific and Atlantic coasts with the Gulf of Mexico.

At that time, CN's Chairman Paul M. Tellier promised, "we will maintain the same level of service" and the STB required CN to be bound by order STB Finance Docket 34000.

- The STB determined that the CN acquisition of the WCL was a minor transaction. In retrospect, this acquisition should have been viewed as a significant transaction and the purchase given more scrutiny. With the benefit of hindsight, we now know that shippers and communities in Northern Wisconsin and Upper Michigan are now suffering the consequences of that decision.
- For two decades, CN's management ignored both its word and promise to the Northwoods Shippers in particular as well as the STB Finance Docket 34000.
- The CN acquisition of the WC made CN the only Class 1 shipper serving the Northwoods. It put CN in a position to exercise monopoly power, which they have proceeded to exercise to this very day.
- CN has presided over the degradation and demise of the WC rail service for Northwoods shippers (i.e., the Route 8 Corridor and its associated branches).

From 2001 to 2021, Northwoods shippers have experienced CN's exercise of monopoly power. The 2019 Railroad Hearings, in Marquette Michigan and Rhinelander Wisconsin, clearly documented the following:

- **20 years of successive, compounding price increases**
- Undependable and erratic service
- Balkanization of the Route 8 Corridor with out-of-service (OOS) sections
- Declining infrastructure maintenance and investment
- Removal of 40 log sidings
- Monopolistic manipulation of railcar availability, especially log cars; enabling the CN to charge an increased rate for available cars and/or a fee to bring log cars out of storage

This has forced Northwoods shippers to shift to truck transport to survive.

- Truck transport creates a greater carbon footprint, is less efficient, less safe, creates more road damage and leads to higher taxes.

In July 2020, CN announced its intention to sell some 850 miles of track in Wisconsin, Michigan and Ontario.

It is worthwhile to examine what CN offered for sale...some very nice, profitable, customer dense lines in Central & Southern Wisconsin coupled with parts of the Northwoods Route 8 Corridor which includes 59% out-of-service track as well as restricted 25 mph and even 10 mph track.

- Clearly, CN packaged fresh fruit with distressed and damaged goods, to make the sale palatable.

March 30, 2021, CN announced the sale of the aforementioned properties to Watco of Pittsburg, Kansas.

- Watco will be operating as a “handling carrier”
- CN retains control of all pricing and customer billing
- CN continues to have restrictions over the entire right-of-way
- Watco-CN has requested expedited STB approval of the sale, i.e., a finding of non-significance

WHAT IS THE EFFECT OF THIS PROPOSED SALE ON CENTRAL & SOUTHERN WISCONSIN SHIPPERS AND ON NORTHWOODS SHIPPERS?

For Central & Southern Wisconsin, the hauls are shorter and the customer density is far greater. Since Watco will control approximately 60% of track in Central & Southern Wisconsin, and since many of its hauls will be short, Watco will be easily able to offer significantly improved service and pricing over CN.

- With the structure of this sale, Central Wisconsin customers (those along the Highway 29 Corridor) will benefit greatly from Watco operating practices in conjunction with CN accessibility.

For Northwoods shippers (Wisconsin & Michigan), the situation is completely different:

The hauls are long, customer density is very thin and the vast majority of the hauls need to move traffic off of the proposed Watco system to CN to reach eastern and western markets. So, as the sale is currently structured, there is no access to other Class 1 railroad connections, which promote competitive pricing and access to substantially larger geographic markets for Northwoods industries.

- CN does not reach as many U.S. markets as compared to BNSF or UP, which is why an UP interchange at Ladysmith is essential.
- Adding the Goodman-Pembine track segment would provide a direct interchange with the Escanaba & Lake Superior Railroad, allowing for movement of forest products along the Route 8 Corridor to Louisiana Pacific's plant in Sagola, Michigan. This would provide wood producers in northcentral and western Wisconsin with another rail market for their pulpwood during a time where they have seen shrinking markets for this wood.

REQUEST 1 We respectfully request that the STB consider the unique requirements of Northwoods rail transportation.

For the past 20 years, CN's predatory practices and monopoly position and has led to continual disinvestment in the Northwoods region and a significant loss of industry and primary wage earner jobs.

The proposed CN-Watco sale clearly favors shippers in Central and Southern Wisconsin over those of the Northwoods (Wisconsin & Michigan).

For Northwoods shippers, the only Class 1 railroad is CN. This puts the entire Northwoods community at a major competitive disadvantage with respect to Central & Southern Wisconsin. There is no guarantee that Watco can mitigate that risk and there are no firm plans to bring back the out-of-service lines on the Route 8 Corridor.

- The lack of rail options for the Northwoods of Wisconsin and Michigan inhibits the economic competitiveness of the entire region.

REQUEST 2 We respectfully request that STB consider what CN has offered to sell to Watco on the Route 8 Corridor.

CN carefully chose what they included the sale package and what they did not.

- CN did not include the section of rail from Goodman to Pembine, which would permit interchange with the Escanaba & Lake Superior (E&LS) Railroad.

- By excluding Goodman to Pembine, it prevented the E&LS from being a viable operating option and participating partner in this sale.
- CN did not include track from Tony to Ladysmith, which could permit interchange with the Union Pacific and competition.

Counsel for Watco, in their May 7 submission to the STB stated,

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

- This statement is not germane for Northwoods Route 8 Shippers. “Robust intramodal and intermodal competition” is completely non-existent in the vicinity of the Route 8 Shippers. There is no benefit in this for Northwoods Shippers.

It is quite clear that the CN does not want any chance of price competition from another Class 1 provider or any other railroad (E&LS) for that matter. CN continues to want to perpetuate its monopoly pricing power by eliminating any source of potential competition and by retaining ownership of the right-of-way.

Had CN offered the entire Route 8 Corridor (from Escanaba to the Twin Cities and its feeder lines) for sale as a complete package. It would have been a sustaining economic unit supporting the Northwoods, and not subject to the suboptimization that inevitably comes from large organizations like CN & Watco with competing interests.

REQUEST 3 We respectfully request that the STB consider what Watco negotiated to purchase from CN on the Route 8 Corridor.

It is noteworthy that Watco negotiated for more trackage in Wausau but did not put similar effort into the Route 8 Corridor. It is difficult not to interpret this as Watco’s assessment of the profitability of Wausau versus Northwoods Shippers, as well as their commitment or lack thereof to the Northwoods Route 8 Corridor Shippers.

REQUEST 4 We respectfully request that the STB bifurcate the CN-Watco sale. We request that STB separate the Central & Southern Wisconsin component from everything north of Wausau. Remove the Route 8 Corridor and its feeder lines (Wausau north from mile post 91) from the proposed CN-Watco sale.

- We believe the CN-Watco sale will be beneficial for Central & Southern Wisconsin Shippers and should be approved.

- We believe that the lack of price competition due to CNs monopoly position as the sole Class 1 provider to the Northwoods is anti-competitive; and marginalizes Northwoods shippers.

REQUEST 5 We respectfully request STB oversight of the Route 8 Corridor and its feeder lines. Please consider:

- Making the sale an economic unit from Escanaba to the Twin Cities, as was available to the Northwoods Shippers with the WC
- Requiring that ownership of the right-of-way be transferred to the future owner; this is essential for real competition and sustainable service
- Require the ability for open interchange for the Northwoods

REQUEST 6 If STB bifurcates the CN-Watco sale, we respectfully request STB direct CN to enter negotiations to sell the Route 8 Corridor and its feeder lines on a stand-alone basis, as follows:

WCL North Lines

<u>Track Segment</u>	<u>Mileage</u>	<u>Active/OOS</u>
Ashland-Park Falls	58.6	OOS
Goodman-Rhineland	53.5	OOS
Goodman-Pembine	19.2	Active
Prentice-Rhineland	46.1	Active
Prentice-Park Falls	30.4	Active
Bradley-Wausau	47	Active
Tony-Ladysmith	5.9	Active
Prentice-Tony	35	OOS
Marengo Jct-White Pine	<u>76.9</u>	OOS
Total Trackage	372.6	
Active Trackage	148.6	
OOS Trackage	224	

Features:

- Creates an economic unit that will serve the Northwoods Shippers
- Creates opportunity for any and all bidders
- Provides competitive options for interchange with the UP and the E&LS

- Ensures real price competition and enhanced service options
 - Operator acquires the right-of-way
 - Operator controls all customer pricing and billing
- We believe that the best option for sale of the Northwoods Route 8 Corridor is to a locally owned company with local management and local employees, whose sole interest, purpose and commitment is to serve the Northwoods shippers.
 - NDS/BLR is prepared to present a plan to bring the out-of-service segments back to active service and to provide the STB with regular progress reports.

SUMMARY:

We sincerely believe that the proposed CN-Watco sale has both an upside and a downside risk. We believe that Watco will provide sound service in Central and Southern Wisconsin; customers there will be the upside beneficiaries of the proposed sale. The downside risk lies in the trackage north of Wausau into Northern Wisconsin and Western Upper Michigan. It remains our concern that the intent of the STB to protect interests of shippers, communities and Class 3 entrepreneurial short line railroads, will not be met if this transaction is granted in whole without any conditions. Thank you for considering these concerns.

Respectfully submitted,

Robert E. Quick Jr

/s/ Robert E. Quick Jr
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing comment has been e-filed this 11st day of May 2021 via the STB's e-filing system and served via email or regular postage prepaid mail upon the parties of record:

/s/ Robert E. Quick Jr
 Robert E. Quick Jr

Cc:

Parties of Record

Mr. Roger S. Dahlquist
Wisconsin Governor Tony Evers
Wisconsin Commissioner of Railroads Yash Wadhwa
U.S. Senator Ron Johnson
U.S. Senator Tammy Baldwin
U.S. Representative Tom Tiffany
Wisconsin State Senator Mary Felzkowski
Wisconsin State Representative Rob Swearingen
Wisconsin State Representative Calvin Callahan
Michigan Governor Gretchen Whitmer
U.S. Senator Debbie Stabenow
U.S. Senator Gary Peters
U.S. Representative Jack Bergman
Michigan State Senator Ed McBroom
Michigan Representative Greg Markkanen
Michigan Representative Sara Cambensy
Michigan Representative Beau LeFave