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**Surface Transportation Board
Comments re Proposed CN-Watco Sale
of
Northwoods Distribution Services & Branch Line Railroad
August 3, 2021**

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VIA ELECTRONIC FILING

The Honorable Martin J. Oberman
Chairman
U.S. Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Oberman,

Re: SURFACE TRANSPORTATION BOARD—DECISION--Docket No. FD 36506

INTRODUCTION

We appreciate and applaud the July 1, 2021 STB decision to institute a proceeding under 49 U.S.C. § 10502(b) in this petition for exemption docket.

We appreciate that The Board is not seeking further public comment at this time; however, we believe that it is useful to review the facts, in light of President Biden’s July 14 Executive Order “Promoting Competition in the American Economy” as well as CN-Watco’s July 20 customer letter saying that a decision is forthcoming within 90 days.

We also appreciate your speech at the Midwest Association of Rail Shippers (MARS) this July.

SUMMARY OF RECOMMENDATIONS

We urge the STB to consider the CN-Watco proposed sale and divestment in the light of CNs broken promises and in the spirit of President Biden’s Executive Order 14036, “Promoting Competition in the American Economy”

We cannot sugarcoat the results of CNs ownership, management, and performance; and we must not ignore it, to do so is at our own peril and folly.

We urge the STB to open discovery to consider how CN has honored the requirements of STB 34000.

We urge the STB to fully apply the 2001 merger rules which require the demonstration of how the investment or in this case the divestment is in the public interest and how it increases competition, as it considers the failed CN management of the Northwoods lines, and its divestment sale to Watco.

We urge the STB to consider all of these remedies (reciprocal switching arrangements, trackage rights, and efforts to eliminate restrictions on interchanges by shortline railroads”) and more as it considers the CNs failures and their proposed divestment of the Northwoods Route 8 corridor to Watco.

We urge the STB to take all the time necessary to consider the damage that CN has done to the region; the shippers that have gone out of business, the unnecessary road damage from increased truck use, as well as the safety and environmental costs which the state and local governments and the tax paying public have incurred because of CNs management.

We request that the STB to appoint a hearing officer and to begin discovery so that a proper solution can be developed for the Northwoods and so that this situation can hopefully be avoided elsewhere in the future. We ask that:

- *STB bifurcate the CN-Watco sale as follows:*
- *Approve the sale for Central and Southern Wisconsin. This should benefit shippers there*
- *Direct CN to enter into negotiations to sell the Route 8 Corridor and its feeder lines including the right of way.*
- *Require CN to include the 19 miles of rail from Goodman to Pembine, which would permit interchange with the Escanaba & Lake Superior (E&LS) Railroad.*
- *Require CN to include 5.9 miles of track from Tony to Ladysmith, which could permit interchange with the Union Pacific and competition.*
- *Require interchange and trackage rights with both the CN & EL&S*
- *Requiring that ownership of the right-of-way be transferred to the future owner; this is essential for real competition and sustainable service. This will permit the addition of other stabilizing sources of revenue along the right of way; helping to provide economic stability for the operating company and regional benefits*
- *We urge the STB to consider the optimum solution of directing the sale of an economic unit from Escanaba to the Twin Cities, as was available to the Northwoods Shippers with the WC.*

BACKGROUND & DISCUSSION

President Biden's [Executive Order 14036](#) of July 9, 2021 "Promoting Competition in the American Economy"

Section 1. Policy. A fair, open, and competitive marketplace has long been a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.

The American promise of a broad and sustained prosperity depends on an open and competitive economy. For workers, a competitive marketplace creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage. For small businesses and farmers, it creates more choices among suppliers and major buyers, leading to more take-home income, which they can reinvest in their enterprises. For entrepreneurs, it provides space to experiment, innovate, and pursue the new ideas that have for centuries powered the American economy and improved our quality of life. And for consumers, it means more choices, better service, and lower prices.

Robust competition is critical to preserving America's role as the world's leading economy.

Yet over the last several decades, as industries have consolidated, competition has weakened in too many markets, denying Americans the benefits of an open economy and widening racial, income, and wealth inequality. Federal Government inaction has contributed to these problems, with workers, farmers, small businesses, and consumers paying the price.

The spirit of the President's Executive Order says enough is enough! It also recognizes the Federal Government's inaction as contributing to the current problems.

We urge the STB to consider the CN-Watco proposed sale and divestment in the light of CNs broken promises and in the spirit of President Biden's Executive Order 14036, "Promoting Competition in the American Economy"

Background, Perspective & Recommendations

The 2001 CN acquisition of the Wisconsin Central (WC) is, most unfortunately, a classic example of the problems that come from a failure of our federal government to constructively use its regulatory power. With the benefit of hindsight, the 2001 STB decision to find CNs acquisition of the WC as non-significant, was a monumental mistake. It resulted in CNs uncontrolled market power, which over the past 20 years has destroyed the rail service for the Wisconsin and Michigan Northwoods.

We cannot sugarcoat the results of CNs ownership, management, and performance; and we must not ignore it, to do so is at our own peril and folly.

In 2001, 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 2001 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.
- For two decades, CN's management ignored both its word and promise to the Northwoods Shippers 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 and hope to continue by the manner in which they have structured their sale with Watco, operating as a "handler."
- 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).

An inquiring mind might ask, is CN a bad actor? a bad company? The answer is no, of course not. What then? What is the explanation for what has happened? Why did CN for 20 years continually increase shipping price and why did it continue to disinvest in non-mainline maintenance?

While, we have not participated in CNs management committee, we would suggest the following answer:

First, the Northwoods shippers' requirements did not fit the CN business model which requires unit trains of one and two miles long and hauls of 500 miles or more.

Second, is that CN is a publicly traded and is governed by the quarterly earnings report. The hedge funds, investors and stockholders that follow the earnings report have a huge influence on CNs stock price and care little about service to small accounts and shippers in rural America. They simply want ever and ever greater returns. CN acted accordingly to disinvest in the Northwoods. *No amount of revisionist history can change this.*

Third, it is easy for corporate leadership under the ever-present pressure to increase earnings to conveniently forget the promises of earlier Chairmen.

STB Finance Docket 34000 June 25, 2001

In 2001, the US Department of Agriculture took a neutral position on the CN acquisition of the WC, it took some solace in the agreement which CN had struck with the National Industrial Transportation League (NITL).

The U S Department of Agriculture was primarily interested in the impact shipping barley to the Wisconsin breweries.

Once again, with the benefit of hindsight, the CN agreement with the NITL was ineffective; the USDA should have been concerned about the forestry impacts and the lack of competition and its impact on the forest products industry and regional economy.

We urge the STB to open discovery to consider how CN has honored the requirements of STB 34000.

Surface Transportation Board Issues New Rules Governing Major Railroad Mergers & Consolidations, June 11, 2001

“Surface Transportation Board (Board) Chairman Linda J. Morgan announced that the Board has issued new rules for major railroad mergers and consolidations involving two or more "Class I" railroads (railroads with annual revenues of at least \$250 million, as indexed for inflation). The new rules substantially increase the burden on rail merger and consolidation applicants to demonstrate that a proposed transaction would be in the public interest. The new rules require applicants to demonstrate that, among other things, a proposed transaction would enhance competition where necessary to offset negative effects of the transaction, such as competitive harm, and to address fully the impact of the transaction on service, including plans for service reliability.”

The 2001 new merger rules apply to companies of \$250 million or more. Both CN and Watco have revenues substantially more than \$250 million. We believe that in the case of failure to maintain the public trust and of failed acquisitions, that equal diligence should be applied to divestments.

We urge the STB to fully apply the 2001 merger rules which require the demonstration of how the investment or in this case the divestment is in the public interest and how it increases competition, as it considers the failed CN management of the Northwoods lines, and its divestment sale to Watco.

“The Board also indicated that competitive enhancements could include, but would not be limited to, reciprocal switching arrangements, trackage rights, and efforts to eliminate restrictions on interchanges by shortline railroads”

We urge the STB to consider all of these remedies and more as it considers the CNs failures and their proposed divestment of the Northwoods Route 8 corridor to Watco.

CN Customer News July 20, 2021

In a joint letter to customers, CN & Watco executives state:

“CN and Watco had originally anticipated receiving a decision from the Surface Transportation Board (STB) regarding the agreement for the sale in early June for a June 30, 2021 implementation.

Due to a high volume of requests this summer as well as some organizational changes, the Surface Transportation Board has informed us that we can now expect a decision within 90 days.”

Hopefully, CN-Watco are merely trying to reassure shippers regarding timely progress and that their letter does not reflect a STB hasty, rush to judgement approach to this vitally important matter to the future of the Northwoods economy.

We urge the STB to take all the time necessary to consider the damage that CN has done to the region; the shippers that have gone out of business, the unnecessary road damage from increased truck use, as well as the safety and environmental costs which the state and local governments and the tax paying public have incurred because of CNs management.

We request that the STB to appoint a hearing officer and to begin discovery so that a proper solution can be developed for the Northwoods and so that this situation can hopefully be avoided elsewhere in the future.

NDS-BLR May 11, 2021 STB submission

We requested STB oversight of the Route 8 Corridor and its feeder lines. We again ask the STB to consider the following path for success.

- *Bifurcate the CN-Watco sale as follows:*
- *Approve the sale for Central and Southern Wisconsin. This should benefit shippers there.*
- *Direct CN to enter into negotiations to sell the Route 8 Corridor and its feeder lines including the right of way.*
- *Require CN to include the 19 miles of rail from Goodman to Pembine, which would permit interchange with the Escanaba & Lake Superior (E&LS) Railroad.*
- *Require CN to include 5.9 miles of track from Tony to Ladysmith, which could permit interchange with the Union Pacific and competition.*
- *Require interchange and trackage rights with both the CN & EL&S*

- *Requiring that ownership of the right-of-way be transferred to the future owner; this is essential for real competition and sustainable service. This will permit the addition of other stabilizing sources of revenue along the right of way; helping to provide economic stability for the operating company and regional benefits.*
- *We urge the STB to consider the optimum solution of directing the sale of an economic unit from Escanaba to the Twin Cities, as was available to the Northwoods Shippers with the WC.*

CNs commitment to competition?

It is very difficult to take CNs commitment to competition in the USA seriously (and in its proposed acquisition of the KCS), when it went great lengths to not include 5.9 miles of track from Tony to Ladysmith and 19 miles of track from Goodman to Pembine which would permit interchange with the UP and the E&LS.

CN is simply acting in its own self-interest and taking every step to keep its monopoly market power and profits. CNs solution for its failure to serve is, not unexpectedly, a complete failure for the Northwoods.

Local Employees, Management & Ownership - Competition & Service

The concept for Branch Line Railroad (BLR) developed in Northern Wisconsin in early 2012 out of the need for reliable, dependable, and efficient rail service, which CN promised in 2001 but was failing to deliver. Based in Rhinelander BLR & Northwoods Distribution Services (NDS) have been able to witness first-hand, CNs continuous decline in service, reliability and maintenance.

BLR has a long-established involvement with the Northwoods Rail Transit Commission (NRTC); it has worked with NRTC since its beginning to help improve Northwoods rail service.

Long before CN announced its intent to sell, BLR assembled a robust business plan for the Northwoods and had established several dialogs with local shippers. NDS & BLR are committed to the Northwoods and will do all is right and necessary to bring back reliable and affordable rail service.

We request that the STB direct CN to enter negotiations to sell the Route 8 Corridor and its feeder lines on a stand-alone basis:

- 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

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 entirely 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 as presented. We appreciate your consideration of these comments, concerns, and suggestions. Thank you.

Respectfully submitted,

Robert E. Quick Jr

/s/ Robert E. Quick Jr
Chief Development & Government Relations
Branch Line Railroad
3200 North Rifle Road
Rhineland, WI 54501
715-224-2275
b.quick@branchlinerail.com

Roger S. Dahlquist

/s/ Roger S. Dahlquist
President & Owner
Northwoods Distribution Services
3200 North Rifle Road
Rhineland, WI 54501
715-365-3560
DHQT@dahlquistonline.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing comment has been e-filed this 3rd day of August 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

/s/ Roger S. Dahlquist
Roger S. Dahlquist

Cc:

Parties of Record
Wisconsin Governor Tony Evers
Wisconsin Department of Transportation Secretary Craig Thompson
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