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September 27, 2021
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September 27, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 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 September 7, 2021, a letter of the same date from the Honorable Thomas J. Tiffany, U.S. Representative for the 7th Congressional District in Wisconsin, to Chairman Oberman regarding the above-captioned dockets was posted as a "Comment" on the Board's website. That letter reflects several factual inaccuracies or misunderstandings which Wisconsin Central Ltd. ("WCL"), the seller in the proposed transactions, believes should be corrected.

- In several instances Representative Tiffany's letter refers to the rail corridor "from Escanaba to the Twin Cities." There has not been such a corridor for more than three decades, since 18 miles of unused rail line between Amery and Almena, Wisconsin was abandoned in 1990. *Wisconsin Central Ltd. – Abandonment Exemption – In Barron and Polk Counties, WI*, Docket No. AB-303 (Sub-No. 4X) (ICC served Apr. 24, 1990). As background, that right-of-way is now the Cattail State Trail under a notice of interim trail use. The 1990 abandonment, which occurred less than three years after WCL's purchase of its rail lines in Wisconsin from Soo Line Railroad Company and more than a decade before the acquisition of WCL by Canadian National Railway Company, was authorized under the agency's

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class exemption for rail lines that has been out-of-service for at least two years. 49 C.F.R. § 1152, Subpart F.

- Representative Tiffany's letter questions how the endpoints of certain of the rail lines to be sold to Fox Valley & Lake Superior Rail System, L.L.C. ("FOXY") were chosen, but those endpoints simply reflect the inclusion of previously-discontinued WCL line segments in the proposed transaction – thus allowing FOXY the potential opportunity to return those segments to service as traffic conditions and demand warrant. The endpoint at Goodman, Wisconsin is the east end of the discontinuance authorized in *Wisconsin Central Ltd. – Discontinuance of Service Exemption – In Oneida and Marinette Counties, Wis.*, Docket No. AB-303 (Sub-No. 49X) (STB served Oct. 16, 2017). The endpoint at Tony, Wisconsin is the west end of the discontinuance authorized in *Wisconsin Central Ltd. – Discontinuance of Service Exemption – In Rusk and Price Counties, Wis.*, Docket No. AB-303 (Sub-No. 54X) (STB served Jan. 10, 2020).¹ The status of these discontinued segments, and their relationship to the other lines proposed for sale, was clearly presented in FOXY's filings. See Docket No. FD 36504, FOXY Notice of Exemption, April 5, 2021, at 4, n.7.
- There is not a connection with Union Pacific Railroad Company ("UP") at Ladysmith, Wisconsin that would "permit interchange" with UP at that location. Tiffany Letter at 1. UP does not have a rail line in, at or near Ladysmith; it simply conducts train operations through Ladysmith on WCL's north-south mainline pursuant to overhead trackage rights obtained by a predecessor in a series of related transactions in 1991-1992.² Given the absence of any local rights of UP to serve customers or interchange in Ladysmith, the proposed line sale transaction was obviously not "structured" to avoid such an interchange.
- WCL widely solicited interest in the rail lines that are the subject of the proposed transaction, and the Escanaba & Lake Superior Railroad Company ("E&LS") was equally welcome and able to participate in that process with other potential bidders. E&LS is a local Class III carrier whose rail lines connect only with other rail lines of WCL. While E&LS's lines do not connect with the Northern Cluster of WCL

¹ WCL is retaining one mile of discontinued track at Tony that has been used for railcar storage.

² See *Chicago and North Western Transportation Company and Wisconsin Central Ltd. – Joint Relocation Project Exemption*, Docket No. FD 32043 (ICC served May 27, 1992); *Chicago and North Western Transportation Company – Trackage Rights Exemption – Over Wisconsin Central Ltd.*, Docket No. FD 31882 (ICC served June 6, 1991).

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rail lines being sold in the proposed transaction, that was equally true for Wisconsin & Southern Railroad, L.L.C., the existing local rail carrier subsidiary of FOXY's parent Watco Holdings, Inc.

- Lastly, WCL notes again that each of the discontinued rail lines included in the proposed sale transactions could have been abandoned by WCL under the same class exemption criteria that governed the granting of WCL's discontinuance authority. Instead, WCL chose to keep the track infrastructure of those inactive lines in place, and preserve at least the possibility of a future resumption of rail service.³ That is a uniquely positive aspect of WCL's stewardship of these rail lines, when other Class I systems likely would have obtained abandonment authority and commenced salvage. It laid the groundwork for some of the opportunity that the FOXY acquisition transaction now presents for the northern Wisconsin rail transportation network. The Board should allow that transaction to proceed.

I certify that a copy of this filing has been served by electronic mail on all parties of record in these dockets.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Wisconsin Central Ltd.

TJL:tl

cc: Hon. Thomas P. Tiffany
David F. Rifkin, Esq.
All Parties of Record

³ Indeed, in one instance WCL and local interests specifically reconfirmed this intention. See *Wisconsin Central Ltd. – Discontinuance of Service Exemption – In Oneida and Marinette Counties, Wis.*, Docket No. AB-303 (Sub-No. 49X) (STB served Nov. 14, 2017).