

SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub-No. 1)

Summary of Ex Parte Meeting between Railco Repair of Illinois, LLC. and Surface Transportation Board

304556

Member Karen Hedlund

May 6, 2022

ENTERED
Office of Proceedings
May 16, 2022
Part of
Public Record

Railco Repair of Illinois, LLC:

- Jennifer Null, Business Development/Customer Relations Manager
- Larry McGlumphy, Operations Manager – Wisconsin

STB Attendees:

- Karen Hedlund, Member
- Charles Vance, Attorney Advisor

Summary:

Railco began with a brief description about our company and services offered to Member Hedlund. Railco then proceeded to enlighten Member Hedlund of our situation about being a captive shipper at our location in New Auburn, Wisconsin. The 37.3-mile line from Norma to Cameron is operated under the name Wisconsin Northern, which is owned by Progressive Rail and leases the track from the Union Pacific. The lease is on a 30-year lease term in which the lease states that, if the Wisconsin Northern interchanges with another Class 1 railroad the rent for the lease will increase. Currently there is only one way in and off this line and that is at Norma, which is South. Looking at a map you would think there is an interchange with CN on the South end, but there is not. There is currently an active Canadian National interchange on the North end in Cameron, but approximately 232 ft of track 0.9 miles South of Cameron interchange has been removed, dirt piles place on track, and the track declared out of service.

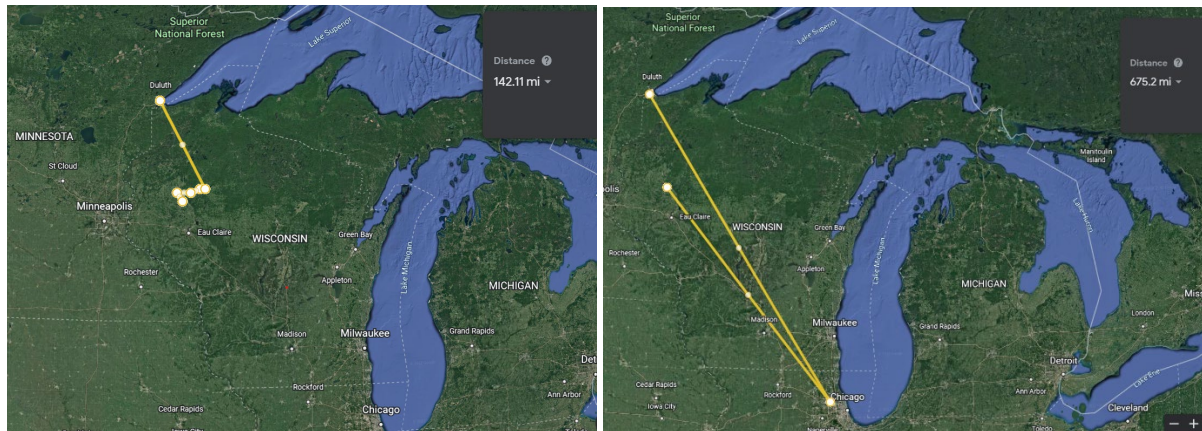
Railco also noted with Member Hedlund, that from the switch in Cameron and running south for 0.9 miles to MP49 is owned by the Canadian National and the remainder of the track South from MP49 is owned by the Union Pacific. With this situation it has caused Railco and other shippers along this line the ability to have zero competitive rates. To go North from New Auburn, Railco currently has to go South to the Union Pacific to Chicago to interchange with Canadian National at Chicago Junction, which happens to be another PGR owned line. This is currently costing Railco approximately 2,000 dollars extra with a round trip of 675 miles. If the Canadian National interchange in Cameron was accessible it would lower our travel time down to 141 miles, be more cost efficient, and help alleviate the rail congestion in Chicago.

In the current 2012 lease agreement that PGR has with Union Pacific, it does not state that there is anything stopping the Wisconsin Northern from interchanging with another Class 1, only that will increase their current lease. Railco would like to have the ability to ship with both the Union Pacific and Canadian National. Railco has offered to replace the missing rail that was removed to get the line back operational to the interchange, but that was replied with a statement from PGR "This line is closed and has always meant to be closed. From 2004-2012, Wisconsin Northern was the common carrier from

Norma to Rice Lake. In 2012 Canadian National took back their trackage rights from MP49 north when the frac sand was booming.

Concluding, Member Hedlund would like to know why the tracks were removed and when. Also questioned if maybe the rail was removed when the highway overpass was built and they may not have replaced them, but still gives no explanation of why it was done. She stated that something does not seem to add up right and she would like to do a little more investigating to figure out more to the story. Railco let Member Hedlund know that we have plenty of documents as well as a timeline that we will gladly email over to help expedite everyone's efforts.

141 miles VS 675 miles a difference of 534 miles traveled

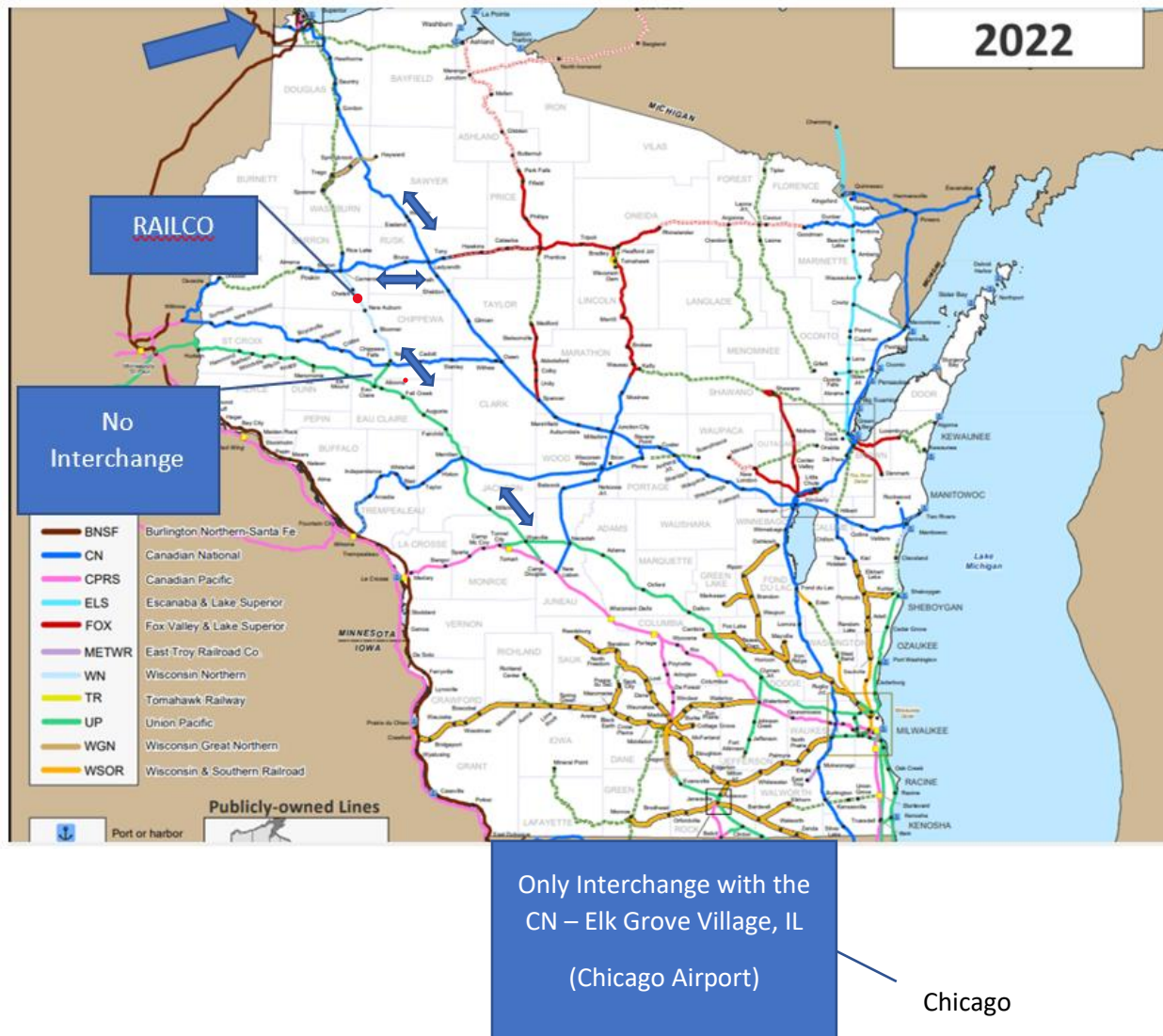


Docket No. EP 711 (Sub-No.1) RECIPROCAL SWITCHING

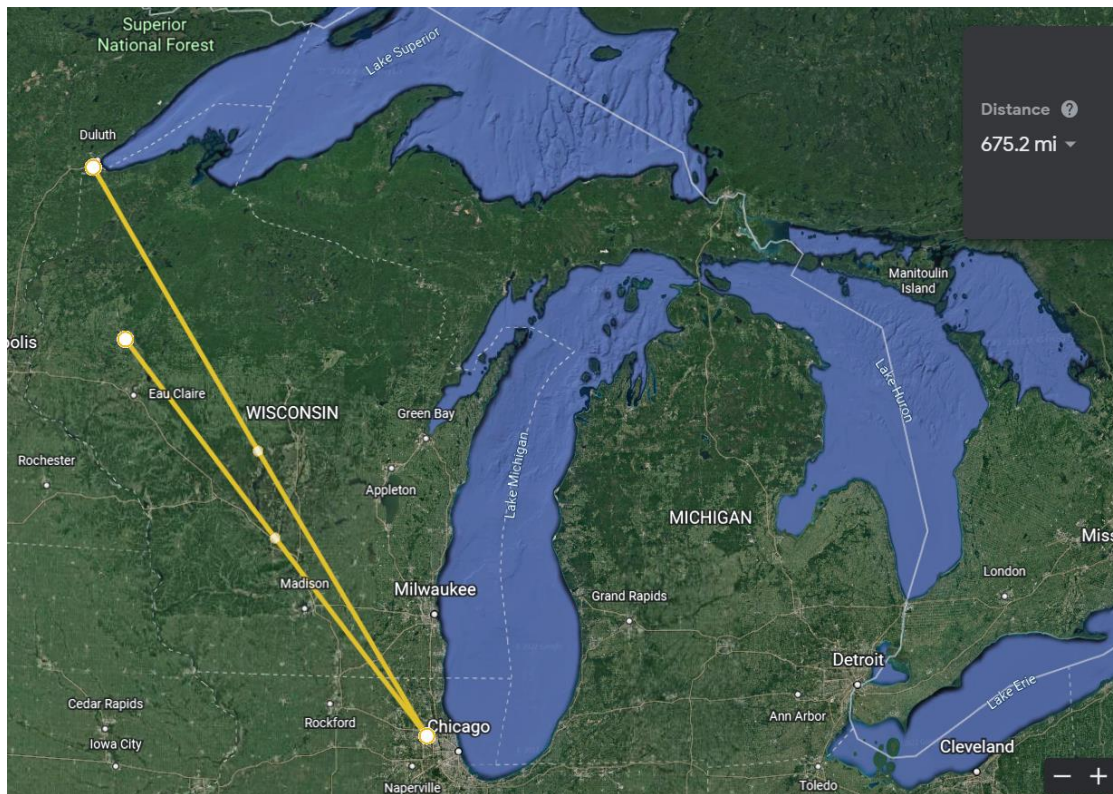
TESTIMONY OF RAILCO REPAIR OF ILLINOIS LLC

Supplement A

RAILCO is located Here

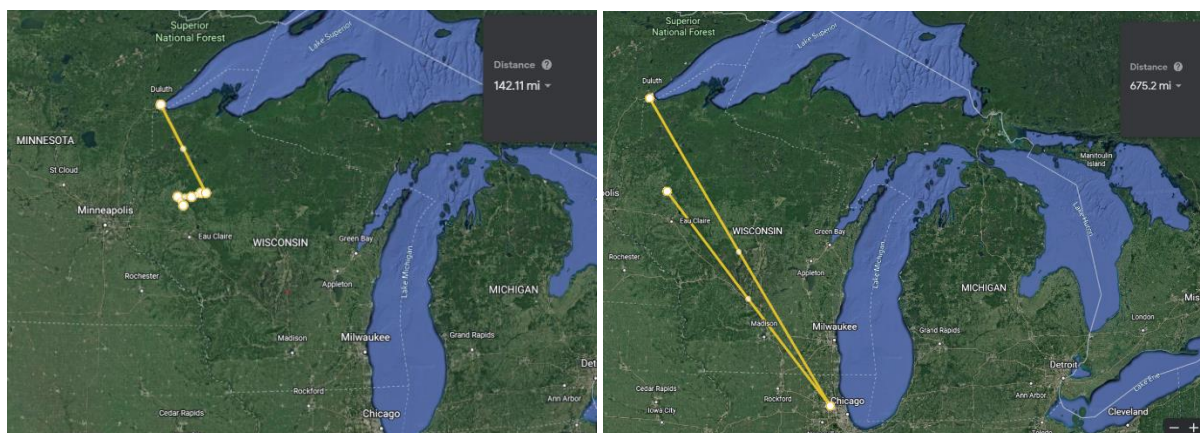


Current UP to CN Routing Protocol is to interchange located at Elk Grove Village, 2511 Pratt Blvd, IL
Access to CN, CP, CSX, NS, and UP

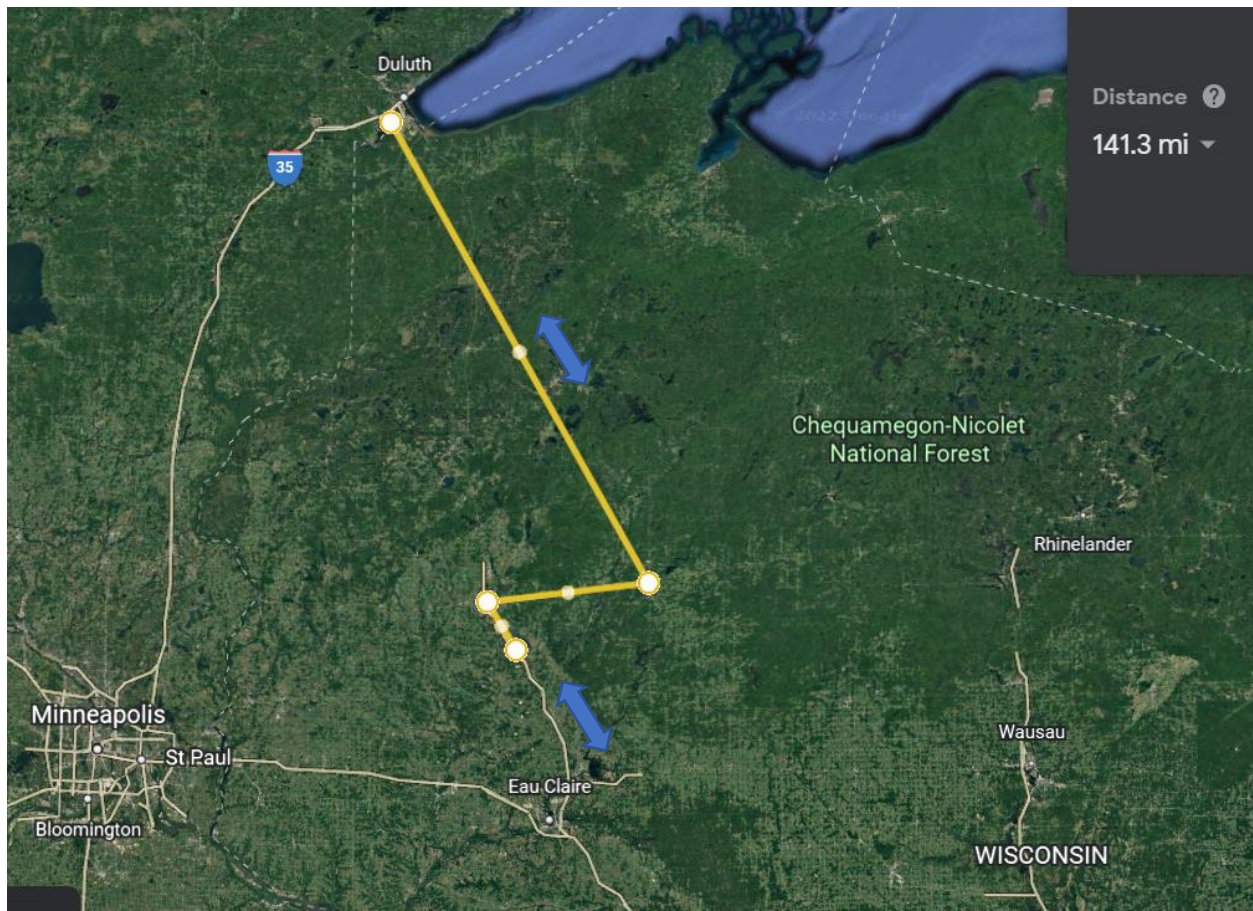


1. Railco to Elk Grove Village, IL – Only interchange available 292 miles. Here we would interchange with the CN
2. Elk Grove Village to Superior: 383 Miles
3. As a Crow Flies from Railco to Elk Grove Village interchange and on to Superior is a total distance of 675 miles

141 miles VS 675 miles a difference of 534 miles traveled



Barron County Resolution No. 2019-19 Requesting Re-connection of Rail Line Cameron, Wisconsin
141.3 miles for RAILCO's Transloading and Storage facility to Superior



9.89 miles from RAILCO to the CN line located adjacent to HWY 8 overpass



Approrimately \$70,000 to replace missing 219 + 21 feet of track and refurbishing 0.9 miles of existing track

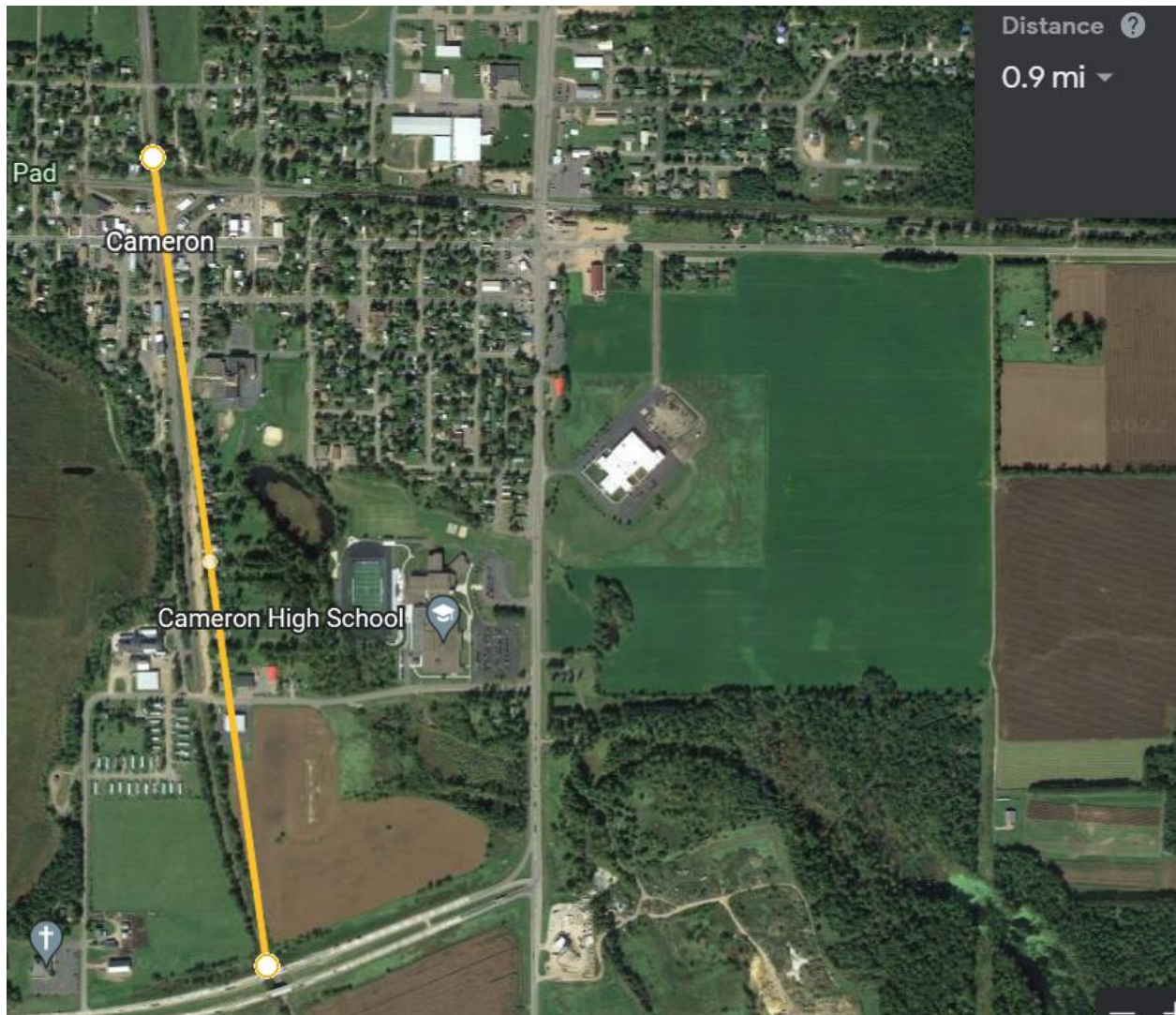


21 feet of missing rail and a dirt pile barrier



Approximately 232 feet of track need replacing





Cameron Interchange and turning east to Ladysmith...

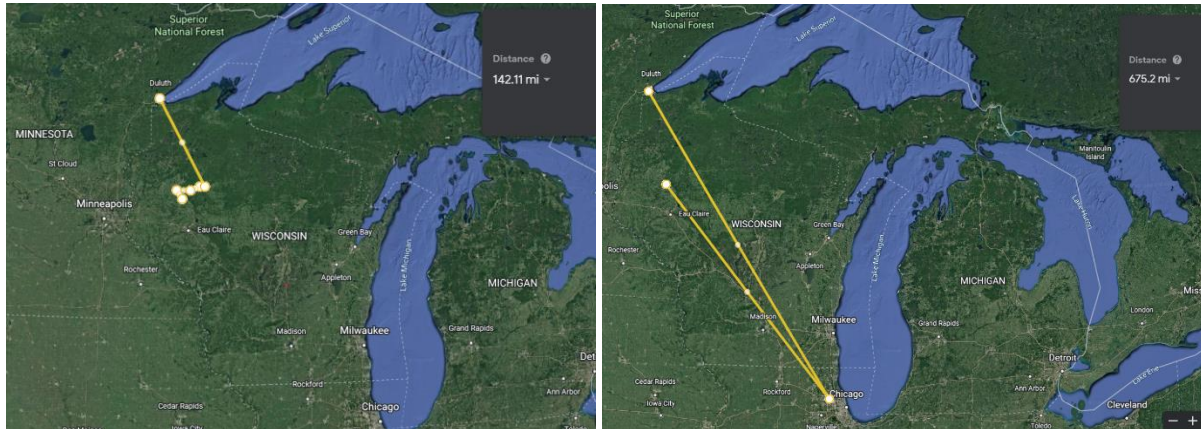


Summary of response from Progressive Railroad (Shortline), UP and CN

1. UP legal team said PGR lease agreement is for the track and can run it as they see fit. UP compared it to leasing a house; you can move the furniture around as you see fit, the only requirement is you must maintain the house in good order. AKA maintain the rail track.
2. CN said they need a request from PGR...
3. “@PGR 13-minute phone call: (Hesitation and pause) Uh, sure, I know the answer, but go ahead. Yeah, I know their stance on this. So, it’s not good. I’ve been telling you that, I don’t know, I guess do what you want, but it’s – you’re gonna really – it’s not good what’s going to come out of this for you guys – if, you know, it’s just not good. You’re asking them to open up a facility that was closed and was always meant to be closed.” **[Note:** That is not in the 2012 filing with the Surface Transportation Board, PGR specifically noted the new 30-year lease agreement between PGR/UP, does not impose an outright barrier to interchange between PGR and a carrier other than UP railroad. The interchange commitment requires a greater amount of rental payable depending on the extent of such interchange.” The filing established, “that any disincentive to interchange traffic with carries other than UP resulting from such this

interchange commitment is not absolute nor perpetual and would be more that counterbalanced by public benefits.”.

141 miles VS 675 miles a difference of 534 miles traveled



Locomotive Emission Inventories for the United States from ERTAC Rail

<https://www3.epa.gov/ttnchie1/conference/ei20/session8/mbergin.pdf>

Table 1. Summary of ERTAC Rail Inventories: U.S. Locomotive Emissions and Fuel Use for either 2007 or 2008*.

	Fuel Use** (gal/yr)	Emissions (tons/yr)						
		NO _x	PM _{2.5}	HC	SO ₂	CO	NH ₃	CO ₂
Class I*** line-haul	3,770,914,002	754,443	23,439	37,941	7,836	110,969	347	42,305k
Class I switcher	301,046,290	74,431	2,042	4,867	624	9,230	28	3,367k
Class II and III	157,800,000	47,035	1,065	1,737	327	4,631	14	1,765k

*See Appendix B for a description of the year and source of data utilized for each inventory.

**Locomotive grade diesel

***Excluding Amtrak and including work train fuel use

Table 2. Class I Railroads, Reported Locomotive Fuel Use, and Railroad Fuel Consumption Index (RFCI) ⁹.

Class I Railroads*	R-1 Reported Locomotive Fuel Use (gal/yr)		RFCI (ton-miles/gal)
	Line-Haul (2007)**	Switcher (2008)	
BNSF	1,393,874,954	52,497,057	883.14
Canadian National	93,830,751	12,290,022	1190.79
Canadian Pacific***	50,320,233	4,594,067	1096.28
CSX	514,687,186	53,717,674	963.81
Kansas City Southern	69,787,071	1,816,759	785.89
Norfolk Southern	463,267,278	32,317,375	865.75
Union Pacific	1,185,146,529	143,470,336	974.64
Total	3,770,914,002	300,492,223	929.47

* Excluding Amtrak

** Includes work trains

*** CP's line-haul fuel use values include 2008 data (rather than 2007) for their Delaware and Hudson subsidiary.

Historical Timeline of Events Related to Barron County Rail Service Beginning in 1993

Research and Compilation – Katie Fortin, NIS Logistics & Special Project Coordinator

A business, like many things, can only succeed when given opportunity to do so. Northern Industrial Sands is a business that aims to succeed and grow, while operating in the highest spectrum of the continuous improvement process. To do so, NIS must diversify its products to meet customers changing needs and expand into global markets of opportunity.

Access to the expanding global market of opportunity should be as close as few short miles from NIS's front door. However, there are literally gaps of disconnection between rail customers located along Progressive Rail short line and Canadian National Railway in Barron County, Wisconsin. Barron County has a deep understanding of the importance of keeping railroad lines open and active.

The following research is presented, often near verbatim from original sources, with the intention of educating the reader on the events, accomplishments and efforts taken to preserve, rehabilitate and maintain Barron County rail lines, beginning in 1993. Material is not original to this writer nor is implied, numerical identification of research sources available on reference pages.

In 1993, Barron County Board of Supervisors approved Resolution No. 19 – 93 which addressed Wisconsin Central Ltd.'s abandonment of its railroad corridor between Rice Lake and Cameron, and intentions of the Barron County Conservation Committee and Barron County residents to pursue the purchase of the corridor; with a Wisconsin Department of Transportation grant to develop it as an alternative transportation corridor. ¹

May 2001, the Surface Transportation Board (STB) accepted the Canadian National-Wisconsin Central rail merger application. Applicants noted no track redundancies or rail line abandonments would result from the merger. ²

August 2001, a Notice to Public was published by Wisconsin Central announcing plans to file an application for abandonment or discontinuance within the next three years of two Category 1 lines. One line, from Ladysmith to Alma, designated as the Ladysmith-Alma Segment, from Milepost 129.8 to Milepost 80.88, end of the track. Stations on this line: Bruce, Weyerhaeuser, Canton, Cameron at Milepost 96.1, Barron at Milepost 91, Poskin and Alma; Ladysmith not included as it served Superior subdivision. The second Category 1 line, from Rice Lake to Cameron, designated as the Rice Lake-Cameron Segment, from Milepost 36.35 (end of track) to Milepost 49. Stations on this line: Rice Lake at Milepost 56 and Cameron at Milepost 49.9. ³

October 2001, Wisconsin West Rail Transit Authority (WWRTA) was created, Barron County Resolution No. 2001-53, after Canadian National (formerly Wisconsin Central) filed for abandonment of the line from Ladysmith to Alma, including the branch line from Cameron to Rice Lake; permitting the removal of tracks and disposition of right-of-way. ⁴ No filings or decisions supporting this were found with STB; exception of February 2014 Environmental Assessment -abandonment exemption of Rice Lake area Milepost 55.2 to Milepost 56.0 ⁵; Rails to Trails conversion of this area continues to be pursued, though not finalized.

WWRTA, supporting the rail interests of both Barron and Chippewa counties and residents, together with Barron County businesses still using the railways, joined forces to keep rail service to the area. Noted in Resolution No. 2001-53, the two specific sections of Cameron to Rice Lake, and Cameron to Alma should be "retained and refurbished, and the portion of rail from Bloomer to Cameron, not subject to abandonment, be refurbished." The Barron County Board of Supervisors, per Wisconsin 6

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Statutes 59.968, was granted authority “to acquire a transportation system and to operate and maintain it or lease it to any operator or contract for its use by any operator.” 4

Over the next decade, WWRTA pursued the purchase of local rail lines from both Union Pacific (UP) and Canadian National (CN), hired Wisconsin Northern (WN/PGR), short line rail owned by Progressive Rail to operate the railway 6, secured funding for the purchase of and rehabilitation of rail lines in Barron and Chippewa Counties, and partnered with WisDOT in petitions to the Surface Transportation Board. All in effort to keep Barron County rail lines open while promoting business growth and future opportunities.

In 2004, local Barron County newspapers began reporting that WN would reopen the line from Chetek to Cameron, take over the line from Cameron to Rice Lake, and Cameron into Barron, with intentions of continuing service from Barron to Almena in the future. Tim Eklund, president of WN, said business arrangements were being finalized between them, Union Pacific, Canadian National and WWRTA. He said ‘WN sees the Chippewa Falls to Rice Lake corridor as an outstanding business opportunity for his company. The tracks along the Barron and Chippewa county lines will need some updating and refurbishing. Trains haven’t run on the Chetek to Cameron line in about ten years. There are a number of communities with successful industries already located along the railway that will benefit from rail service. 7

October 2004, Progressive Rail filed with the Surface Transportation Board (STB) a verified notice of exemption to lease from Union Pacific and operate 38.3 miles of rail line consisting of the Cameron Line that extends between Milepost 50.0 at or near Cameron and Milepost 11.70 at or near Norma, in Barron and Chippewa Counties. 8

November 2004, Progressive Rail also filed a verified notice of exemption to lease from Wisconsin Central and operate 23.97 miles of rail consisting of (1) the Almena-Cameron Branch that extends between Milepost 80.88 at or near Almena and Milepost 97.80 at or near Cameron; (2) the Rice Lake-Cameron Branch that extends between Milepost 49.0 at or near Cameron and Milepost 56.05 at or near Rice Lake. 9

August 2009, Progressive Rail (PGR) filed a notice of exemption to acquire the afore mentioned 23.97 miles from Wisconsin Central. This proposed transaction was scheduled to be consummated on or after October 11, 2009. PGR stated that it planned to convey the right-of-way and rail assets to the Wisconsin Department of Transportation (WisDOT), and PGR will retain the common carrier obligation. PGR acknowledged that this required the authority of STB for these transactions. 10

WWRTA, formed for the purpose of preserving and enhancing freight rail services in Barron and Chippewa Counties, had been working with Progressive Railroad and WisDOT since November 2007 to properly develop and execute Land Use and Operating agreements aligned with WWRTA’ established purpose. 11

In 2010, WisDOT received confirmation of Barron County’s continued participation in the rehabilitation of the Rail Lines from Cameron to Barron, and Cameron to Rice Lake; also, a firm resolution of Barron County’s financial commitment to provide matching funds as outlined the various grants and operating agreements. Total estimated project costs: \$5,133,700. Funding sources: WisDOT local match, \$2,683,700; Federal Rail Grant, \$2,450,000. 11

WisDOT first filed a Petition for Declaratory Order with the Surface Transportation Board in 2010 asking the Board to determine they have no regulatory authority over WisDOT's proposed acquisition of two-line segments owned by PGR, due to the structured transactions complying with the terms and conditions of State of Maine, Department of Transportation-Acquisition and Operation Exemption-Maine Central Railroad. The proposed acquisition included two transactions: WisDOT planned to purchase the property from PGR through a Purchase and Sale Agreement and Quitclaim Deed; simultaneously, WisDOT planned to enter into a Land Use Agreement and a Grant Agreement for Rail Service Continuation with WWRТА. Per those agreements, WisDOT planned to transfer certain rights to the property to WWRТА, which WWRТА planned to contract with PGR to provide freight rail service and grant PGR the right to provide such service. 12

The petition was denied as STB determined the transaction would make WisDOT a rail carrier and thus subject to STB authority. They also expressed concern the transaction proposal was deficient in two areas. One, the easement retained by PGR was ambiguous in the Operating Agreement and did not contain the permanent, exclusive freight rail operating easement language required by the precedent set by State of Maine. Second, the transaction agreements failed to demonstrate that WisDOT and WWRТА would not be able to unreasonably interfere with PGR's ability to operate, as required by the same precedent. 13

2011, WisDOT filed a revised Petition for Declaratory Order with the STB, accompanied by letters of support from then Wisconsin Governor Scott Walker, and Wisconsin State Senator Bob Jauch. Each expressed the economic benefits of this acquisition. Filed with revised agreements, removing the easement language that STB determined ambiguous, PGR would now not transfer its common carrier obligation to WisDOT or WWRТА, and neither WisDOT nor WWRТА would hold itself out as a common carrier performing freight rail service. The Operating Agreement was modified to state that PGR "will immediately seek authorization from STB to discontinue service and may not end service until another carrier is put into place with Board approval or until abandonment or discontinuance authorization is obtained". Based on these findings, STB found nothing in the transaction that would affect the continuing validity of PGR's permanent, exclusive freight easement, as provided in the deed, or would otherwise unduly interfere with PGR's ability to fulfill its common carrier obligation. As such, WisDOT's acquisition of a railroad line, under these circumstances, does not require STB authorization. 13

Local newspapers provided detailed railroad related discussions and decisions from the Barron County Board of Supervisors (BCBS) during 2006 to 2011. For instance, when the Barron County Economic Development Corporation (BCEDC) and WWRТА joined efforts to rally local support and financial resources and spoke to the BCBS. The director of BCEDC presented to the board the importance of the railways and the impact he saw PGR already had on Barron County's economy since short line rail service resumed in 2004. He went on to say, "We can't underestimate the contribution that has been made by PGR/WN in helping businesses in Barron County to compete, to expand, and to prosper." 14

WWRТА told these same board members that it hoped to capitalize on a grant from WisDOT to upgrade the rails in both counties, served by PGR. WWRТА expressed that to improve service, PGR leasing the tracks from UP and CN was no longer a viable option (leases filed in 2004 w/STB). The WisDOT grant would pay 100% of the railroad land purchase price (13.75 miles between Cameron and Rice Lake, and Cameron and Barron) and 80% of the net salvage value of the tracks, ties and switches;

though WWRTA must obtain 20% monetary match (\$120,000) for the 13.75 miles of track in the first phase of renovation. ¹⁴

The entire renovation project was estimated at approximately \$2 million dollars. The Barron County Board of Supervisors agreed to accept jurisdictional transfers of monies from the state and then designate those funds towards the acquisition and refurbishment of specific rails within the county. One board member questioned why the county was bailing out a private business (Wisconsin Northern and Progressive Rail), the rail companies currently operating the line, and why the rail companies (UP and CN) allowed the rail to deteriorate and are so excited about selling it. ¹⁵

Newspaper coverage of the Western Wisconsin Freight Rail Summit in January 2007 noted two representatives from Progressive Rail stated PGR's main goal was to preserve rail service in Barron County, not to own railways. WN served nine different customers in Barron County at some point (2004-2007) with several potential businesses identified in both Chippewa and Barron Counties; of which five businesses had already made financial contributions to the railway. ¹⁶

After months of preparation, research and numerous meetings of the Barron County rail subcommittee, WWRTA and the Barron County Economic Development Board, and in front of an auditorium filled with business owners and employees whose livelihood depended on active rail service, the Barron County Board of Supervisors unanimously voted to support the future of rail service in Barron County. ¹⁷

Mid - 2007, Wisconsin Congressman Dave Obey announced the U.S. House of Representatives had approved his request for \$2.5 million in transportation appropriations to help WWRTA upgrade the rail lines in Chippewa and Barron Counties. Though the bill still had to be approved by the Senate, the federal funds were intended to help WWRTA move forward with a multi-phase plan to upgrade approximately 50 miles of existing track in the two counties to 25 mph. ¹⁸

Barron County Financial Director, Jeff French's rail update to the Barron County Board of Supervisors Executive Committee was reported in local news in late 2008. He and Supervisor Ken Jost told the committee members that the \$2.45 million earmarked for WWRTA "...can be used for the WWRTA only. It can be used for purchase and/or rehabilitation of rail. We just need federal approval of the expenditure before spending federal dollars." ¹⁹ The project was fully funded after another \$1 million grant was awarded in late 2009. ²⁰ Union Pacific initial asking price, \$4,452,677 and final purchase price decided at \$2,398,850. ²¹

June 2011, for the second time in two years, WWRTA's attempts to secure the Cameron to Rice Lake and Cameron to Almena railroad lines had been stalled by the STB. Frank Huntington, representative of the WisDOT, prepared WWRTA that the WisDOT/WWRTA application to purchase the lines from CN would likely be denied again due to the purchase would be overstepping into federal territory and the two agencies becoming classified a railroad operator. WWRTA board members universally disliked the idea of owning and operating the rail and edged towards buying the land as purely a real estate transaction, then giving PGR the permanent, exclusive right to operate with only federal oversight. Huntington suggested moving forward before STB approval to let PGR buy the lines from CN, have WWRTA acquire an indefinite option to buy (fronting about 92% of the purchase cost), start rehabilitation and put a lien on the property while STB ponders the resubmitted application. The WisDOT rep said he, 'thinks the federal grant is no strings attached-meaning the WWRTA could spend it

on rehabilitation before they own the track.’ Adding, once the CN deal is finalized, the state and regional authority would know how best to proceed with the acquisition of the UP line. 22

Returning now to STB’s November 2011 decision of WisDOT Petition for Declaratory Order – Rail Lines in Almena, Cameron, and Rice Lake, Barron County, Wisconsin: “The Wisconsin Department of Transportation (WisDOT) does not need Board authorization to acquire two segments of rail line in Barron County, WI. Although WisDOT is acquiring the physical assets, it will not acquire the right and legal obligation to provide freight rail service, which will remain with the seller, nor will WisDOT be in a position to interfere unduly with freight operations.” 13 Local newspapers noted the **sticking point** there was that the state Department of Transportation had to remove all controls from the operating agreement to get clearance from the federal board. Only the STB would retain oversight, and if PGR fails to maintain adequate service, local and state officials would have to wait for STB to settle disputes. 23

Years and years of effort, research, collaborations between Barron and Chippewa Counties and a dozen organizations and businesses, funding secured, permissions achieved, agreements completed; a virtual green line to go. And then, December 2011, Canadian National Railway told Barron County officials they were ‘analyzing the business option of putting their rail lines back into service in Rusk and Barron counties. Not planning, just an analysis.’ 24

WWRTA members discussed during their December 2011 meeting, a new wrinkle in the plans: CN, which had given every indication previously that they would be willing to sell the property, is considering rehabilitating the lines and keeping ownership for themselves. WWRTA members were left speculating on what that meant and how they should proceed as a board. PGR urged the board to be patient as a decision from CN was expected in the first quarter of 2012. PGR rep, Lon Van Gemert, said his “company had an option-to-buy agreement in their current lease with CN, but that CN recently decided to analyze the costs and benefits of keeping and rehabilitating the lines themselves. CN withdrew their agreement to sell, but it’s not off the table.” 23

At risk now, the millions of dollars in federal grant money secured to rehabilitate the rails line, which must be spent and accounted for-with the work done, paid and invoiced-by September 2012. WWRTA authorized board member and Barron County highway commissioner, Mark Servi, to inquire if an extension of grant money is possible, without reapplying for the financing. If CN decides to keep the railroad property, WWRTA board members wondered if the grant money could be applied to CN’s rehabilitation project. Frank Huntington, of WisDOT, confirmed the state funds approved could only be used if property is state owned, not if CN retains ownership. 23

Also present at this meeting, Barron County Supervisor for District 18, Andrew Mommsen. He said the Cameron to Rice Lake section of rail runs all through his district, and that he is a big supporter of rail. With frac sand companies showing interest in the county, he believed it was important to the WWRTA mission not only to ‘make sure we have rail, but to make sure we have the best rail available’. Mommsen questioned previous public comments by frac sand company representatives that did not think PGR could handle the capacity that frac sand mines were looking for. He also echoed previous statements by Barron County Finance Director Jeff French, and WWRTA board member and Barron County Supervisor Lee Romsos, who both found it troubling public policy for a government to spend taxpayer’s dollars directly and without competition to benefit a private company like operator

Progressive Rail. “Allowing one private company to buy another private company’s land with government money isn’t the best idea,” said Mommsen.²³

The board also discussed the ‘worst-case scenario’ of CN not making a decision now, forcing the counties to lose out on federal and state grant rehabilitation money, and then CN not making the choice of rehabilitating the lines themselves. “Don’t fix, don’t sell’ would mean that rail service in Barron County would still be underutilized and if frac sand companies located in the region, their only reliable mode of transportation would be trucking, and other rail access points elsewhere.²³

2012, was not the end of the world as Mayan calendar enthusiasts predicted. It was, however, the end of WWRTA and their decade long project of preventing the abandonment of freight rail lines would.²⁵

May 2012, Progressive Rail filed a verified notice of exemption to lease from Union Pacific Railroad Company (UP) and operate a 37.3-mile line of railroad between Milepost 49.0 at or near Cameron and Milepost 11.70 at or near Norma, in Barron and Chippewa Counties. Accord to PGR, PGR and UP have entered into a new Lease Agreement for PGR to lease the Line from UP; term of the lease is 30 years.²⁶

PGR disclosed that the Agreement contains an interchange commitment in the form of an adjustment in the amount of rent payable in each year, depending on the percentage of total traffic transported over the Line that is interchanged with UP in that year. Attached to the notice of exemption submitted to STB, the verified statement of David Fellon, President of PGR. PGR states that a relatively high percentage of traffic interchanged with UP would result in a relatively low amount of rent, and vice versa. According to PGR, it believes that it can substantially grow its outbound traffic if it is able to make significant improvements to the Line. PGR states that the interchange commitment will enable it to make “major renewals of main tracks, sidetracks, and bridges, and to construct a number of new sidings and yard tracks to enable staffing of railcars for loading and to achieve efficiencies in railcar switching,” to the benefit of the shipping public. PGR also states that (1) although there is a Canadian National Railway Company (CN) line at Cameron, the CN line is officially out of service and would require extensive rehabilitation to be made operable, and (2) there is CN line at Chippewa Falls, but the Line does not extend to Chippewa Falls.²⁶ *[This writer has yet to discover evidence in support of the statement ‘CN line is officially out of service.’] We believe that the Public and STB was misled.*

Surface Transportation Board (STB) Vice Chairmen Mulvey’s dissent: “I disagree with the Board’s decision to allow a transaction containing a significant interchange commitment to be processed under the Board’s class exemption procedures at 49 CFR par 1150. In general, the Board should be carefully scrutinizing transactions that include interchange commitments before deciding whether to permit them to go into effect. The notice in this particular case does not allow me to conclude summarily-without any examination-that the lease is consistent with the public interest. 49 U.S.C. 10902. The notice asserts that there really are no competitive interchange options for PGR because the CN line that connects to the Line is not operational.

Yet, disregarding this claimed reality, the lease nonetheless contains an interchange commitment with substantial economic rewards for PGR if it interchanges with UP. One has to wonder why such an economic incentive is necessary if there is little chance that PGR would interchange with CN in any event. The lease term is 30 years, which is far longer than some other recent transactions

involving paper barriers. (See *Middletown & New Jersey RR-Lease and Operation Exemption* 10yr lease term STB served Sept 2011) Moreover, we do not know how many shippers will be affected, what volume of traffic will be affected, or whether CN has plans to rehabilitate its connecting line. Nor do we know whether the 2004 lease that PGR and UP are currently operating under also included an interchange commitment and, if it did not, why such a provision became necessary eight years later. 26

The Board needs to take a close look at long-term leases that have the potential to control the competitive environment for shippers-thus affecting rates and service-for years to come. At a time of far different economic circumstances in the railroad industry, our predecessor agency, the Interstate Commerce Commission, approved long-term leases and sales involving interchange commitments with little or no analysis. Years later, the Board is still grappling with the economic and competitive consequences of those transactions.” 26

July 2012 PGR and Wisconsin Central Ltd (CN parent company) collectively filed with the STB a petition for exemption from the provisions of 49 U.S.C. 10903 to discontinue rail service provided by PGR over approximately 23.97 miles of rail line in Barron County. The Lines consisting of: (1) 16.92 miles of rail line between Milepost 80.88 at or near Almena and Milepost 97.80 at or near Cameron, and (2) 7.05 miles of rail line between Milepost 49.0 at or near Cameron and Milepost 56.05 at or near Rice Lake. The lines owned by Wisconsin Central Ltd (WISCONSIN CENTRAL LTD) have been operated by PGR since 2004 under lease from WISCONSIN CENTRAL LTD. WISCONSIN CENTRAL LTD intends to resume operating the Lines itself. The Lines include the stations of Almena (MP81.0), Poskin (MP 85.4), Barron (MP91.10), Cameron (MP 96.1), and Rice Lake (MP 56.05). 27

October 2012 STB determined PGR is permitted to stop providing rail service over approximately 23.97 miles of rail line located in Barron County owned by WISCONSIN CENTRAL LTD. In their Discussion and Conclusions, STB stated: Detailed scrutiny of the Petitioners’ proposed discontinuance under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will expedite regulatory action and reduce regulatory barriers to exit, in accordance with 49 U.S.C. 10101 (2) and (7). Consistent with 49 U.S.C. 10101 (5) and (9), an exemption will also foster sound economic conditions and encourage efficient management by more quickly allowing PGR to discontinue its common carrier obligation to provide service and by allowing WISCONSIN CENTRAL LTD to resume operations on the Lines, as agreed by the Petitioners. Other aspects of the rail transportation policy will not be adversely affected. Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. WISCONSIN CENTRAL LTD will resume operations on the Lines in place of PGR, and no shipper has opposed the proposed discontinuance of PGR’s service. 28

Local newspapers typically cut to the chase when reporting. February 2012 it seems they could see the beginning of the end for WWRTA. One article noted rail rehabilitation has stalled as CN continued to ponder whether to keep and rehabilitate the tracks from Cameron to Rice Lake and from Cameron to Barron (published prior to STB approval for WWRTA efforts to buy and rehab the rail lines). Then, CN indicated interest in keeping the lines and also rehabbing the tracks from Ladysmith to Almena. The company withdrew its offer to sell because frac sand traffic had made the lines economically viable again. One WWRTA board member reflected that “Ultimately, if CN makes the decision to rehab...the lines, the goal of WWRTA has been attained.” 29

Returning to service the WISCONSIN CENTRAL LTD /CN railroad line from Ladysmith to Almena would significantly increase rail traffic through Ladysmith, thus gaining the Wisconsin Commissioner of Railroads attention. The impact led the commissioner to indefinitely stay a request from the State Department of Transportation to alter a proposed roadway improvement project near the public CN rail crossing, just west of Weyerhaeuser. That intersection is located in close proximity to the Old 14 Road crossing of the Cameron to Ladysmith railroad line. During a public hearing, in late 2011, it was announced that ‘the likelihood has substantially increased that the rail line will be reactivated and rehabilitated.’ 30

WISCONSIN CENTRAL LTD indicated it was ‘exploring the possibility of rehabilitating the line from Ladysmith to Almena in order to provide train service for the rapidly expanding frac sand operations in the area’. DOT Rail Coordinator Anna Davey said while nothing is official yet on future rail corridor plans by CN, she added, the corridor has never been officially closed and it is still an active line, even though some communities have paved over rails along the route and some crossbucks have been taken down at those crossings. 30

A feature piece published April 29, 2012, in the local Chippewa County newspaper, may have summed up the entire rail/county/frac sand connection best. “...the seeds of the explosion of the frac sand industry were planted in the county board rooms of Chippewa and Barron counties back in 2001. The ground was made fertile by decisions by railroad companies and the work of economic development specialists trying to mitigate the damage from the decisions. What took place is an excellent lesson on how economic development activities are linked and how local and state government policies really do matter. Now those seeds have not only blossomed into a mining industry but are poised to blossom into the development of other industries as well – specifically because of the growth of the frac sand industry. 31

The article continues, “The decision that set it all off was WISCONSIN CENTRAL LTD -later sold to CN- to abandon certain low-volume lines. Lost were lines from Cameron to the Chippewa County Line, from Almena to Polk County and Cameron to Rice Lake, and 56 miles of track from Ladysmith to Barron County. ‘Canadian National had purchased the rail and they notified the communities targeted for abandonment’ per Charlie Walker, executive director of Chippewa County Economic Development Corp. In jeopardy was a link between Jenny-O Turkey Store in Barron County and the major rail lines, needed for shipping both supplies and products for manufacturers like Bloomer Plastics. Not only were jobs at stake, but the possibility of gaining future jobs from industries that required rail service would be lost. 31

In April 2000, a summit called “The Future of Rail Service” was held in Barron County. The solution was the formation of a quasi-public rail transit authority, with industry partnering with the counties to lease and rehabilitate the decaying tracks. The Western Wisconsin Rail Transit Authority (WWRTA) was born. Several responses were received when it was time to hire what is called in the rail business a short-line operator. WWRTA was impressed with PGR’s market capabilities and intentions to work hard to gain more customers along the line, and to serve even the smallest rail user. Walker said PGR ‘saw every train load as important’. 31

The track was being improved, one section at a time, but there was still a lot to do. Then, in 2007, the sand companies came calling. Walker admits he never envisioned the level of interest the frac

sand industry has shown in Chippewa and Barron counties. He envisioned improved rail infrastructure leading to more industries attracted by reliable rail. The presence of rail was absolutely essential to the frac sand companies. In short, had the counties not stepped forward to save the tracks, the frac sand mines and plants would not be in Chippewa and Barron counties. 31

According to Walker, PGR met with companies such as Canadian Sand and Proppants, the company that initiated the Chippewa Falls sand plant project and assured them of their commitment to reliable rail service. But to serve the frac sand industry and its heavy loads, PGR would have to improve the track at a faster pace than the WWRTA and the state grant program would allow. Fortunately, the rail service brought by the frac sand industry brought the volume of service that justified PGR proceeding on its own. 31

PGR owner and president, Dave Fellon is quoted saying, “The interesting thing about sand is that the demands allow us to put a lot of capital in the line.” Walker said PGR can now buy the track according to an option in the original agreements and has funded track improvements on its own. That will save Barron and Chippewa counties hundreds of thousands of dollars in future rail rehabilitation costs. ‘Because of the frac sand and the demand for rail, the WWRTA has not had to come up with the funds to improve the track,’ Walker said. ‘I suspect we will have discussions to disband the organization.’ Chances are, no one on the Chippewa or Barron County boards were thinking about or had necessarily heard of frac sand when they voted to form the Rail Transit Authority and spend public dollars on industrial infrastructure. But they did have the vision to see that reliable freight rail service is essential to economic health.” 31

Indeed, June 12, 2012, the Barron County Board of Supervisors (BCBS) approved Barron County Resolution No. 2012-24: Dissolving the West Wisconsin Rail Transit Authority (WWRTA) and Return of Dollars from Wisconsin Department of Transportation.

In summary: Whereas in 2001, BCBS and Chippewa County Board of Supervisors (CCBS) recognized the significant economic threat posed by the continued deterioration and possible abandonment of the railroad lines within their respective Counties, and BCBS Resolution No. 2001-53 jointly created WWRTA to take the steps necessary to ensure rail service along the CN rail line from Cameron to Barron and Cameron to Rice Lake and the UP rail from Eau Claire to Cameron. Barron and Chippewa Counties entered into a contract creating an Authority (WI State Statutes Sec. 66.0301) to set out the agreement allowing WWRTA to accept certain grant funds for the acquisition and refurbishment of rail lines in both counties, of which these lines are currently owned by either CN or UP; and as both CN and UP have withdrawn their offers to sell their respective positions of the rail lines to the Wisconsin Department of Transportation (WisDOT) and whereas Barron County had previously paid WisDOT \$120,000 for their proportionate share of the residual value of ballast on the rail line from Cameron to Barron; and whereas membership and active participation by both counties in WWRTA are no longer necessary to effectuate the goals of WWRTA because CN and UP through various means are rehabilitating the rails; Barron and Chippewa Counties do hereby recognize and agree that WWRTA is dissolved; Barron County Lead Fiscal Coordinator is directed to disburse the original contributors the remaining \$12,405.07; whatever ancillary and remaining functions of WWRTA are transferred to the Barron County Highway Committee and the County Administrator is authorized to seek reimbursement from WisDOT the \$120,000 already contributed by Barron County to the purchase of rail from Cameron to Barron. 32

The tale of the little county that could is almost complete, except for one detail...the grant money. Where did it go? Surely towards the Barron-Cameron and Cameron-Rice Lake rail lines. For this answer we turn once again to the local newspapers.

August 2012 headline “County wraps up rail deal”: Barron County involvement in railroad rehabilitation is almost a done deal. BCBS effectively ended the county’s active interest in the decade-long project of preventing abandonment of freight rail lines. Now that CN and UP are plugging millions into rehabbing local railroads, CN wants the \$2.45 million federal grant Barron County won for fixing the Barron-Cameron and Cameron-Rice Lake lines [emphasis by this writer]. BCBS passed a second resolution during the same meeting that engineered the transfer of money to CN via local subsidiary Wisconsin Central Ltd (WISCONSIN CENTRAL LTD). In it, WISCONSIN CENTRAL LTD agreed to do the work and pay back Barron County’s \$97,030.31 investment, and the county agreed to collect receipts and funnel reimbursement funds from the Federal Railroad Administration to WISCONSIN CENTRAL LTD. [emphasis by this writer] 25

When CN completes the track, it will be able to handle 45mph trains, where WWRTA could only afford to fix up the tracks for 25mph trains, Jeff French, County Administrator told the BCBS. Also, that there will be no more cost to the county, though the county agrees to market the rail to potential customers. 25

CN released information on its \$35 million project to restore nearly 40 miles of track between Ladysmith and Barron. The company ‘will upgrade rail and replace railroad ties, repair culverts and bridges and restore rail service along the line. The Barron Subdivision will connect to CN’s North American rail network at Ladysmith and will be in service later this year.’ CN will provide rail service to the new Superior Silica Sand plant in Poskin, moving [product] across the continent. 25

Also published, August 2012, “Crews work on rehabilitating Cameron railroad”: CN is quickly making good on its promise to rehabilitate and upgrade the Cameron-Barron and Cameron-Rice Lake rail lines. The main crossing on CTH SS in Cameron was closed as CN employees and crews worked. Across Barron County, crews are improving track to facilitate faster shipping of frac sand. The main crossing in Canton, Town of Sumner, will be closed for two days next week. 33

And finally, “Barron, Cameron negotiate railroad crossing closures”: Barron city officials and representatives of CN are still negotiating over the number of city streets that will be closed after the reconstructed freight line begins operating later this year. City Council members listened to a report from Mayor Dave Vruwink about traffic and safety issues connected with reactivating the rail line that runs east-west through the city. So far, the only crossing the city has agreed to close is on Second Street, just north of apartments run by the city Housing Authority. Vruwink said one of his big concerns was the railroad’s suggestion to close the Lake Street crossing west of the middle school. This was objected to by council members due to increased safety concerns. One suggestion for the huge traffic crossing area was for CN to put up crossing lights; forcing them to put up signals. Vruwink said the railroad’s dealings are with federal authorities, not the city, and that according to what he was told, the CN ‘is only required by law to put the crossings back the way they were (before the railroad went dormant). Cameron Village Clerk Roger Olsen said that after the CN requested that three crossings be closed, the Village Board decided to allow only one closing – an east-west crossing at Arlington Avenue. The board decided not to agree to the CN’s request to close two north-south crossings on 10th and 11th streets in

the village. Olsen said that the railroad has suggested a meeting with village officials about safety and ‘they are also concerned about (village) residents using the railroad right-of-way. That will need to stop.’

34

PGR made the local news a couple months later by announcing its intent to pay for the upgrade of a town road as part of its plan to resume operations at a frac sand transloading site south of Cameron. PGR, the article continued, operates the line between Cameron and Chippewa Falls, plans to upgrade about 300 feet of Creamery Road, or 20th Street, from Hwy 8 to the entrance of its transloading site in order to accommodate heavy trucks loaded with frac sand. PGR did not say where the sand would come from. The Cameron transloading site was last active in late 2011 as sand was trucked in from a mine in the Town of Arland. 35

Wisconsin recognizes the impact railroading has on economic development, not only in the incredible efforts undertaken in Barron and Chippewa Counties with WWRTA, to say the least; evident also in publications such as Wisconsin Rail Issues and Opportunities Report 2004, Barron County Comprehensive Plan 2010-2030, Wisconsin Rail Plan 2030, Wisconsin Northwoods Freight Rail Study 2018, Wisconsin State Freight Plan 2018, Connections 2030 Statewide Long-Range Transportation Plan.

Barron County Conditions and Trends Report in 2008 said it simply, “Rail service is an important component of the local economic market...Keeping these rail lines in service will ensure that future economic development opportunities will not be precluded.” 36

Wisconsin State Freight Plan 2018 reports: While the state is committed to maintaining essential freight rail service for Wisconsin communities, this must be balanced with preservation of the existing system. Supporting this stance is the Staggers Rail Act of 1980 and its implementation by the Interstate Commerce Commission (now the Surface Transportation Board). This act meant many of the regulatory restraints on the railroad industry were removed. The Staggers Act simplified the regulatory process associated with railroad mergers, line sales, and abandonments. Specifically, the Act also allowed for easier abandonment of light density rail lines, which led larger railroads to ‘spun off’ their less-productive rail lines to the newly created short line and regional railroads. The primary changes to the regulatory system under the Act included: (1) Rail carriers could charge any given rate for services unless the STB determined no competition for such services existed (2) Industry-wide rate adjustments were removed (3) Access must be given by one railroad to another’s rails in the case where a single railroad had “bottleneck” control of the rail traffic. 37

Abandonment allows railroads to cease operating service over a line; ‘exemptions to the abandonment process’ requires that a railroad has not carried traffic over the said line segment for two years. 37 Whereas discontinuous ‘allows for a railroad to cease operating a line for an indefinite period while preserving the rail corridor for possible reactivation of service in the future.’ 38

As a reminder, STB granted PGR the exemption to discontinue freight rail service over approximately 23.97 miles of rail line owned by WISCONSIN CENTRAL LTD in Barron County, in October 2012. The original lease between PGR and WISCONSIN CENTRAL LTD for the operation of the Lines expired at the end of 2008, and PGR continued to operate the Lines without objection from WISCONSIN CENTRAL LTD. WISCONSIN CENTRAL LTD, as stated in the background filed, now intends to resume rail operations on the Lines itself, provided the parties (PGR/WISCONSIN CENTRAL LTD) obtain regulatory authority authorizing PGR to discontinue service on the Lines. The Lines consisting of: (1) 16.92 miles of

rail line between Milepost 80.88 at or near Almena and Milepost 97.80 at or near Cameron, and (2) 7.05 miles of rail line between Milepost 49.0 at or near Cameron and Milepost 56.05 at or near Rice Lake. 28

Detailed scrutiny of the Petitioners' proposed discontinuance is not necessary to carry out the rail transportation policy. An exemption will also foster sound economic conditions and encourage efficient management by more quickly allowing PGR to discontinue its common carrier obligation to provide service and by allowing Wisconsin Central Ltd to resume operations on the Lines. Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. WISCONSIN CENTRAL LTD will resume operations on the Lines in place of PGR, and no shipper has opposed the proposed discontinuance of PGR's service. 28

This exemption, submitted by PGR, was filed two months after they submitted a new extended lease agreement with UP, with interchange traffic incentives; alleging the CN line is officially out of service and would require extensive rehabilitation to be made operable. STB Chairman Mulvey pointed out, that if there really are no competitive interchange options for PGR because the CN line that connects to the Line is not operational, why would the PGR/UP lease nonetheless contain and interchange commitment with substantial economic rewards for PGR if it interchanges with UP? 26

If, as PGR states, the CN line is officially out of service and in need of extensive rehabilitation, there are Federal Grants available for funding of such circumstances. If prior to CN's purchase of Wisconsin Central Ltd rail lines the WCL removed trackage from a rail before it obtained authority to do so, there are legal arguments taken as high as the United States Court of Appeal, Seventh Circuit: *Wisconsin Central Ltd, Petitioner v Surface Transportation Board and United States of America, Respondents*. Decided April 1997. This is one of the cases where the STB must revisit the haunting past of inconsistencies occasionally set down by its predecessor, the Interstate Commerce Commission. 39

Interestingly, UP filed for trackage rights exemption from Wisconsin Central (WC) in 1998. WC agreed to grant overhead trackage rights to UP between Milepost 308.5 near Owen, WI, extending to Milepost 352.2 at Chippewa Falls, extending to Milepost 432.1 Withrow, MN; a distance of 123.6 miles. The purpose of the trackage rights was to permit UP to use WC's trackage in an efficient and economical routing of through traffic. 40

March 2016 WISCONSIN CENTRAL LTD filed trackage rights exemption to acquire overhead trackage rights over two rail segments owned by UP, one segment owned by WISCONSIN CENTRAL LTD's affiliate, Illinois Central (IC). WISCONSIN CENTRAL LTD explained that it will acquire the trackage rights over these connecting lines pursuant to an agreement with IC, which itself has trackage rights for the Trackage Rights Lines. Specifically, WISCONSIN CENTRAL LTD claims that IC has agreements with UP that allow IC to admit others to operate over the Trackage Rights Lines under certain circumstances. 41

Competitive Access is the extent to which a rail customer should have access to a second, potentially competing railroad; shippers sometimes use the term 'open access' and railroads use the term 'forced access.' Railroads often interchange traffic with one another at terminals located at the end points of their networks, when a shipment's origin and destination traverses more than one railroad's network. This type of interchange can be viewed as an operating partnership among two or more railroads that is necessary to complete an interline movement. By statute, an origin railroad and a destination railroad are required to provide a physical connection with each other's networks. 42

Another kind of interchange occurs when a railroad hands off cargo to a competing railroad that offers an alternative route to the same destination. The interchange may also involve use of the owning railroad's track outside the terminal area for a reasonable distance. Under existing practice (written in 2011), this type of interchange generally occurs only on certain segments of rail routings because STB required it as a condition for approving a merger transaction. Although the law allows STB to order terminal inter-switching if the Board finds it to be practicable and in the public interest, or necessary to provide competitive rail service, STB will only order such inter-switching if it finds anti-competitive conduct, such as a railroad using its market power to extract unreasonable terms on through shipments.⁴²

Captive shippers seek to change the statute to state the Board *shall* require railroads to interchange traffic, if practicable and in the public interest, and would not require that anti-competitive practices be proven first. Captive shippers support this change because they assert that proving anti-competitive conduct by a railroad is onerous. To date, no shipper has succeeded in proving that a terminal-owning railroad has engaged in anti-competitive conduct. ⁴²

The Freight Rail Customer Alliance (FRCA) was a co-signer of the 2011 National Industrial Transportation League (NITL) petition, filed with STB, notice of proposed rulemaking to determine the pros and cons of requiring railroads to provide the requested switching arrangements. ⁴³

In 2016 the STB granted, in part, the petition to adopt revised reciprocal switching proposed by the NITL. In summary: The Board would allow a party to seek a reciprocal switching prescription that is either practicable and in the public interest or necessary to provide competitive rail service, in accordance with 49 U.S.C. 11102 (c)(1). Competitive access generally refers to the ability of a shipper or a competitor railroad to use the facilities or services of an incumbent railroad to extend the reach of the services provided by the competitor railroad. The Interstate Commerce Act makes three competitive access remedies available to shippers and carriers: the prescription of through routes, terminal trackage rights, and reciprocal switching. ⁴⁴

Under reciprocal switching, or as it is sometimes called, 'competitive switching,' an incumbent carrier transports a shipper's traffic to an interchange point, where it switches the cars over to the competing carrier. Reciprocal switching thus enables a competing carrier to offer its own single-line rate to compete even if the competing carrier's lines do not physically reach a shipper. Reciprocal switching can occur as part of a voluntary arrangement between carriers, or it may be ordered by the Board. ⁴⁴

Barron County has shown resilience, determination and frankly, vision when evaluating the value of rail lines and railroad services; impact on the economy and future of opportunities for businesses and community expansion.

NIS is asking for your review and consideration of this historical outline of rail service in Barron County since 1993. Outlined are areas of strength (the people and spirit of determination), opportunity (reopen rail lines; require carrier service agreements fulfilled), and growth (expansion through competitive access).

Success cannot be achieved alone. Thank you.

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Historical Timeline of Events Related to Barron County Rail Service Beginning in 1993

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