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JUL 13 2007
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July 13, 2007

BY HAND DELIVERY

The Honorable Vernon Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

FILED
JUL 13 2007
SURFACE
TRANSPORTATION BOARD

Re: STB Finance Docket No. 35063, Michigan Central Railway, LLC –
Acquisition and Operation Exemption – Lines of Norfolk Southern
Railway Company

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Petition to Revoke
Class Exemption.

Please time and date stamp the extra copy of the Petition and return it
with our messenger.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell

Karl Morell

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Office of Proceedings
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Public Record

Enclosures

FILED
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SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35063

MICHIGAN CENTRAL RAILWAY, LLC –
ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY

PETITION TO REVOKE CLASS EXEMPTION

FEE RECEIVED

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SURFACE
TRANSPORTATION BOARD

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Dated: July 13, 2007

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35063

**MICHIGAN CENTRAL RAILWAY, LLC –
ACQUISITION AND OPERATION EXEMPTION –
LINES OF NORFOLK SOUTHERN RAILWAY COMPANY**

PETITION TO REVOKE CLASS EXEMPTION

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.1 *et seq.*, Michigan Central Railway, LLC (“Michigan Central”), a noncarrier, respectfully requests revocation of the class exemption governing the acquisition and operation of rail lines by noncarriers (set forth at 49 C.F.R. § 1150.31), with respect to Michigan Central’s proposed acquisition and operation of certain rail lines currently owned and operated by Norfolk Southern Railway Company (“NSR”) in Michigan and Indiana.

Although Michigan Central’s proposed acquisition falls within the scope of the class exemption, several interested parties have expressed concern about its potential consequences. Although Michigan Central does not believe these concerns have any merit that would affect the issuance of an exemption, Michigan Central does believe that it is appropriate, and consistent with past actions by the Surface Transportation Board (the “Board”), for the Board to revoke the class exemption in order to allow a more detailed review of the relevant facts.

Concurrently with this Petition, Michigan Central is filing an individual Petition for Exemption relating to the acquisition. Michigan Central respectfully submits that review of the acquisition under the Board's individual exemption procedures, in accordance with the procedural schedule proposed herein, will provide the appropriate level of regulatory scrutiny, and will ensure that interested parties' concerns are appropriately addressed, without undue burden to the Board or the parties.

I. STATEMENT OF FACTS

A. Description Of The Proposed Transaction

1. Michigan Central, a noncarrier, is a Delaware limited liability company formed for the purpose of acquiring and operating the rail lines at issue. Michigan Central currently is wholly owned by Watco Transportation Services, Inc. ("Watco"), a noncarrier subsidiary of Watco Companies, Inc., a noncarrier holding company that owns and controls 16 individual Class III railroads in 15 states, none of which abuts Michigan or Indiana. *See* STB Finance Docket No. 34766, *Watco Companies, Inc.—Continuance in Control Exemption—Vicksburg Southern Railroad, Inc.* (served January 13, 2006).

2. The rail lines at issue consist of 299 miles of NSR rail lines between Ypsilanti and Kalamazoo, Michigan; Kalamazoo and Elkhart, Indiana (not including Elkhart Yard); Kalamazoo and Grand Rapids, Michigan; and Jackson and Lansing, Michigan; 80 miles of trackage rights over Amtrak's line between Kalamazoo and the Michigan/Indiana border (east of Michigan City, Indiana), and approximately 5.5 miles of related trackage rights.

3. In the proposed acquisition, NSR will contribute these rail lines, trackage rights, and related assets to Michigan Central, subject to certain traffic restrictions, in exchange for a non-controlling 33 percent membership interest in Michigan Central. Watco will contribute \$18 million in cash and locomotives over time to Michigan Central in exchange for a controlling

67 percent membership interest. These exchanges will occur only after a final STB decision authorizing the transactions is issued.

4. Michigan Central will operate and maintain its rail assets. It will be independently managed and operated under the direction of a management committee, with three members appointed by Watco and two members appointed by NSR. The management committee will establish an Annual Operating Plan, including a Budget and Business Plan. Day-to-day operations of Michigan Central and its employees will be under the direction of a General Manager and other officers appointed by the Management Committee. Michigan Central also will have a Capital Project Committee, with two members appointed by Watco and one by NSR, with responsibility for determining and overseeing capital expenditures and improvements.

5. Michigan Central's acquisition of the rail lines at issue will serve several important goals. The structure of the proposed transactions will permit NSR and Watco to make substantial capital contributions to Michigan Central (consisting of NSR's contribution of the rail lines and related assets, and Watco's contribution of \$18 million in cash and locomotives), while allowing Michigan Central to avoid incurring a heavy acquisition debt load and financing costs. Michigan Central's independent access to working capital will permit it to invest in the most needed and most productive capital projects. Michigan Central's independent local management will be able to provide responsive service to local shippers, and develop a new traffic base while maintaining and expanding the current traffic base, all while operating safely and efficiently, thereby enhancing its own long term financial viability and strength.

6. There will be no adverse effect on overhead freight traffic. Detroit-area NSR and Conrail lines are unaffected.

B. Public Concern And Opposition Regarding The Proposed Acquisition

7. Rumors have circulated widely with regard to a potential transaction involving the NSR Lines in Michigan, giving rise to concerns voiced through the Michigan Senate and House of Representatives and individual legislators, Amtrak (given its passenger rail service over the rail lines at issue between Ypsilanti and Kalamazoo), and short lines. Many of these concerns are based on incomplete or inaccurate information regarding the proposed acquisition, or are otherwise unfounded. Michigan Central believes that the concerns expressed by these interested parties will be put to rest after an examination of the facts described in its Petition for Exemption and accompanying documentation. In the end, Michigan Central firmly believes that all parties will benefit from the dialogue an individual exemption proceeding will engender, and that the record will show that the criteria for the granting of an individual exemption are fully satisfied.

II. REASONS FOR GRANTING THE PETITION TO REVOKE THE CLASS EXEMPTION

Because Michigan Central is a noncarrier, its acquisition of the rail lines at issue is subject to 49 U.S.C. § 10901.¹ Rail line acquisitions by noncarriers generally are eligible for a class exemption from regulation pursuant to 49 C.F.R. § 1150.31.² In this case, however, revocation of the class exemption is appropriate, for the reasons described herein.

A. Revocation of a Class Exemption is Appropriate in Certain Cases.

Although Michigan Central believes that the proposed acquisition will promote substantial capital investment in the acquired rail lines, safe and efficient operations, and

¹ See, e.g., STB Finance Docket No. 34177, *Iowa, Chicago & Eastern R. Corp.—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC* (served January 21, 2003); STB Finance Docket No. 31974, *Mountain Laurel R. Co.—Acquisition And Operation Exemption—Consolidated Rail Corp.* (served May 15, 1998), and cases cited therein.

² See *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985), *aff'd mem. sub nom. Illinois Commerce Comm'n v. ICC*, 817 F.2d 145 (D.C. Cir. 1987).

improved service to shippers, Michigan Central understands that certain interested parties have expressed concern about or opposition to any change in status for the affected rail lines. In order to provide these parties the opportunity to review the relevant facts, the Board the opportunity to hear from all interested parties, and Michigan Central the opportunity to respond to any concerns raised, Michigan Central believes that it would be appropriate for the Board to revoke the class exemption that would otherwise govern the proposed acquisition. The circumstances do not warrant full regulation of the acquisition under 49 U.S.C. § 10901, but Michigan Central respectfully submits that a review of the acquisition by the Board under its individual exemption procedures would provide the appropriate level of regulatory scrutiny, and would ensure that interested parties' concerns will be appropriately addressed.

The Board and its predecessor have recognized that most cases processed under its class exemption procedures are non-controversial.³ Conversely, the Board has found it appropriate to revoke the class exemption in cases that have attracted substantial attention and concern, particularly from public agencies. *Riverview Trenton*, *id.* at 7. In that case, the STB revoked the class exemption that otherwise would have applied to the proposed transaction, and provided an opportunity in that case for development of a more complete record pursuant to its individual exemption procedures under 49 C.F.R. § 1121.1 *et seq.* instead.⁴ *Id.* at 7-8. The Board ultimately granted an individual exemption for the proposed transaction. *See* STB Finance Docket No. 34040, *Riverview Trenton Railroad Company—Petition For Exemption*

³ *See* STB Finance Docket No. 33980, *Riverview Trenton Railroad Company-Acquisition and Operation Exemption-Crown Enterprises, Inc.* (served Feb. 15, 2002) (“*Riverview Trenton*”); ICC Docket No. AB-167 (Sub-No. 1088X), *Consolidated Rail Corporation-Exemption-Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH*, (served June 14, 1989) (“*Weirton Secondary*”) (class exemption was intended to provide a “simple, expedited procedure” for abandonment of out-of-service rail lines that would in “almost all instances” involve “noncontroversial, unopposed abandonments.”)

⁴ *See also Weirton Secondary*, *supra* (same).

From 49 U.S.C. 10901 To Acquire And Operate A Rail Line In Wayne County, MI (served May 15, 2003), *recons. denied* (served Aug. 27, 2003). The Board's decision granting the individual exemption was upheld on appeal, in *City of Riverview v. STB*, 398 F.3d 434 (6th Cir. 2005).

In this case, the Michigan Senate and House of Representatives and a number of individual state legislators have raised concerns regarding an acquisition of the rail lines at issue. It would be appropriate in this case for the Board to provide adequate opportunity for these state officials to express their views on the merits of the proposed acquisition, and for Michigan Central, NSR and Watco to respond to those views, before the Board reaches a final decision.

Michigan Central believes that the concerns of the Michigan legislators will be put to rest. For example, following the transaction, Michigan Central will be a Class II carrier with substantial financial resources, including Watco's capital contribution of \$18 million in cash and locomotives and annual rail revenues projected to exceed \$25 million. In addition, Michigan Central is committed to making substantial capital expenditures to maintain and improve the rail lines at issue. Thus, there is no reason to believe that Michigan Central's acquisition of the rail lines at issue will adversely affect rail safety or the financial viability of these rail lines – in fact, quite the opposite.

Michigan Central looks forward to the opportunity to respond fully to the concerns raised by interested parties. For this reason, among others, Michigan Central believes that the Board should revoke the class exemption in order to permit Michigan Central to use the Board's individual exemption procedures to provide additional information regarding the proposed acquisition, and to address the interested parties' concerns.

B. Standards for Revocation

In assessing whether to revoke an exemption, the Board must consider the statutory standard set forth at 49 U.S.C. § 10502(d), which provides that the Board may revoke

an exemption, to the extent it specifies, “when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of § 10101 of this title.”

In *Riverview Trenton*, the STB stated, “we are revoking the exemption pursuant to the standards of 49 U.S.C. 10502(d), specifically, the need to address the rail transportation policy at 49 U.S.C. 10101(2).” *Id.*, slip op. at 8. The latter cited provision provides that, in regulating the railroad industry while minimizing the need for regulatory control, it is the policy of the United States “to require fair and expeditious regulatory decisions when regulation is required.” Based on the circumstances presented in *Riverview Trenton*, the Board concluded, “more scrutiny is needed.” *Id.*

In this case, Michigan Central believes that similar relief is appropriate. Although Michigan Central believes that its proposed acquisition of the rail lines at issue is fully consistent with the transportation policy of § 10101, the Board’s class exemption procedures are unlikely to assuage the concerns expressed by other interested parties. Therefore, more regulatory scrutiny of the proposed acquisition may be needed to address these concerns. Application of the Board’s individual exemption procedures will provide the appropriate degree of regulatory review.

Revocation of the class exemption is appropriate because application of the Board’s individual exemption procedures would help to ensure that the concerns of interested parties are adequately addressed, thereby promoting “fair and expeditious regulatory decisions when regulation is required.” 49 U.S.C. § 10101(2).

Revocation of the class exemption also would help to provide for the “expeditious handling and resolution” of this proceeding. 49 U.S.C. § 10101(15). Because the proposed acquisition already has attracted considerable public interest, it seems unlikely that a class

exemption notice would go unchallenged. Concerned parties would be likely to seek to stay or to revoke any class exemption that became effective in this case. Such proceedings would be time-consuming, and could be more burdensome both to Michigan Central and to the Board than simply processing the case under the Board's individual exemption procedures from the outset.

III. PROPOSED PROCEDURAL SCHEDULE

While the Board's regulations provide that exemption proceedings are informal, and public comments generally are not sought during consideration of exemption petition proposals, the Board has discretion to provide the opportunity for public comments in such proceedings. *See* 49 C.F.R. § 1121.4.

Michigan Central believes that its Petition for Exemption will demonstrate that the criteria for the granting of an individual exemption are fully satisfied, and that the exemption should be granted. Nonetheless, in order to ensure that interested parties are provided adequate opportunity to comment, and to provide for the orderly handling of this proceeding, Michigan Central respectfully requests that the Board adopt the following procedural schedule:

Day 1	Petition For Exemption Filed
Day 20	Federal Register Notice Published
Day 50	Comments Due
Day 65	Replies Due
Day 90	Decision

Michigan Central believes that this proposed schedule will allow adequate time for interested parties to comment, and for the Board to compile a complete record, while providing for a prompt resolution of this proceeding. Because Michigan Central's proposed acquisition of the rail lines at issue otherwise would fall within the scope of the class exemption, a more extended procedural schedule is not warranted. After the completion of the record,

Michigan Central respectfully requests that the Board issue a final decision as soon as practicable, in order to permit the timely completion of the proposed transactions, and to permit the benefits of these transactions to begin as soon as possible.

A draft Federal Register notice is attached hereto as Exhibit A.

CONCLUSION

For these reasons, Michigan Central respectfully requests that the class exemption for the acquisition and operation of rail lines by noncarriers be revoked with respect to the proposed acquisition, in order to permit the acquisition to be processed under the Board's individual exemption procedures, in accordance with the proposed procedural schedule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorney for:
Michigan Central Railway, LLC

Dated: July 13, 2007

[Federal Register: July __, 2007 (Volume 72, Number __)]

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35063]

Michigan Central Railway, LLC – Acquisition and Operation Exemption – Norfolk Southern Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Petition for revocation of class exemption and petition for exemption.

SUMMARY: The Board, under 49 U.S.C. 10502(d), grants a request by Michigan Central Railway, LLC (“Michigan Central”), a noncarrier, for revocation of the class exemption governing the acquisition and operation of rail lines by noncarriers (set forth at 49 C.F.R. 1150.31), with respect to Michigan Central’s proposed acquisition and operation of certain rail lines currently owned and operated by Norfolk Southern Railway Company (“NSR”) in Michigan and Indiana. Although the proposed acquisition falls within the scope of the class exemption, Michigan Central seeks revocation in order to allow a more detailed review of the relevant facts. The Board will revoke the class exemption and review the acquisition under its individual exemption procedures, in order to provide the appropriate level of regulatory scrutiny.

Michigan Central seeks an individual exemption to acquire and operate certain NSR rail lines running generally between Elkhart, IN and Grand Rapids, MI; between Kalamazoo, MI and a point near Ypsilanti, MI; and between Jackson, MI and Lansing, MI, along with trackage rights between a point near Kalamazoo, MI and the Michigan/Indiana border (east of Michigan City, IN). Specifically, the rail lines to be acquired include lines between Milepost KH 1.4 at Elkhart, IN and Milepost KH 27.4 at Three Rivers, MI; between Milepost FB 27.3 at Three Rivers and Milepost FB 102.3 at Grand Rapids, MI; between Milepost MH 143.03 at CP BO in Kalamazoo, MI and Milepost MH28 at CP Ypsi; and between Milepost LZ 0.0 at Jackson, MI and Milepost LZ 36.9 at Lansing, MI, along with 80 miles of trackage rights over the line of the National Railroad Passenger Corporation (“Amtrak”) between MP MH 143.3 near Kalamazoo and MP MH 222.8 at the Michigan/Indiana border (east of Michigan City, IN).

In addition, Michigan Central will exercise trackage rights over the CSX Transportation, Inc. (“CSXT”) line between mileposts 0.0 – 1.0 M9 in Grand Rapids, MI; over CSXT between mileposts LZ 36.8 – 37.9 and 0.0 – 2.2 HZ in Lansing, MI; and over Canadian National Railway Company (“CN”) between mileposts 176.7 – 175.5 in Battle Creek, MI. Michigan Central will become landlord to CSXT for a short stretch of track between mileposts LZ 36.8 – 37.9 in

Lansing, MI. Further, Michigan Central will host trackage rights for CN over a short stretch of track between mileposts UP 2.2 – UP 0.0, KY 0.0 – KY 0.4, and FB 54.0 – FB 56.3 in Kalamazoo, MI. Michigan Central will become lessor of the rail line leased to CN between Kalamazoo (MP 9.51) and Pavilion (MP 0.4).

Comments must be filed with the Board and served as follows:

DATES: The Board's revocation of the class exemption is effective July __, 2007. Comments on the proposed individual exemption are due August __, 2007 [30 days after Federal Register publication]. Replies are due September __, 2007 [45 days after Federal Register publication].

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 35063 must be filed with the Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on petitioner's representative: Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245-0350 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. A copy of the decision is available on the Board's Web site at <http://www.stb.dot.gov>. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail asapdc@verizon.net; telephone (202) 306-4004. [Assistance for the hearing impaired is available through FIRS at 1-800-877-8339]. Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: July __, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,
Secretary.

CERTIFICATE OF SERVICE

I hereby certify this 13th day of July, 2007, that I have caused the foregoing Petition To Revoke Class Exemption to be served by first class mail, postage pre-paid, on the Governor and the Department of Transportation of the States of Indiana and Michigan, on the national offices of the labor unions with employees on the affected lines, and on the following parties:

National Railroad Passenger Corp., 60 Massachusetts Ave., NE, Washington, DC 20002

Marquette Rail LLC, 5500 First Street, Ludlington, MI 49431

Michigan Southern Railroad Co., 1318 South Johnson Road, Peoria, IL 61607

Grand Rapids Eastern Railroad Inc., 101 Enterprise Drive, Vassar, MI 48768

Mid-Michigan Railroad, 432 E. Grove Street, Greenville, MI 48838 USA

In addition, notice of this filing and instructions on how to obtain copies thereof have been or will be served by fax, email, or first class mail, postage prepaid, on all shippers located on the rail lines involved, within one week of the date hereof.


