



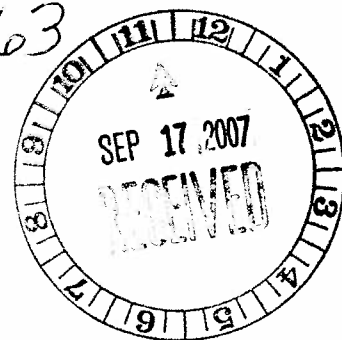
Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference-International Brotherhood of Teamsters

NATIONAL DIVISION

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220263



September 14, 2007

Hon. Vernon A. William, Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

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

Dear Secretary Williams:

Enclosed for filing in the above-captioned matter, pursuant to the decision of the Board bearing service date of August 2, 2007, as amended on August 20, 2007, are the original and ten copies of the Comments of the Brotherhood of Locomotive Engineers and Trainmen and a disk in WordPerfect format.

Thank you for your cooperation.

Sincerely yours,

Harold A. Ross
Acting General Counsel

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35063

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

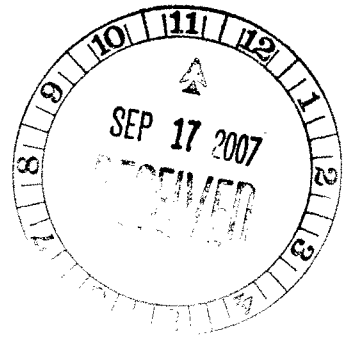
**COMMENTS OF
BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN,
A DIVISION OF THE RAIL CONFERENCE,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

Harold A. Ross
Acting General Counsel
Brotherhood of Locomotive
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Attorney for Brotherhood of
Locomotive Engineers &
Trainmen

Dated: September 14, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FINANCE DOCKET NO. 35063

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

**COMMENTS OF
BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN,
A DIVISION OF THE RAIL CONFERENCE,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

The Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters ("BLET"), believes that the instant transaction, accompanied by the two ancillary proceedings thereto, do not appear to be in the public interest; therefore, it submits these comments in opposition.

The exemption involved in Finance Docket No. 35063 is based upon a number of assumptions. For example, it is assumed that the lines of rail should be acquired by a non-carrier, because the lines are not needed, are not profitable and would otherwise be abandoned. There is a need for the lines, however, as evidenced by their use by General Motors at Grand Rapids and Lansing, Michigan, along with the RSDC of Michigan Automotive Steel processing facility at Holt, Michigan, which operations help maintain automobile manufacturing in

Michigan and contribute to sales of American cars in interstate and foreign commerce. The need for these rail lines is augmented by the many smaller shippers by rail in this area, the agricultural sector and Amtrak passenger service. Based on the use of the lines, one would conclude operation of these lines is profitable. In sum, one would say but for Norfolk Southern's desire to transfer the lines to a non-carrier and Watco's desire to capture what may be a favorable deal at little cost to it, particularly immediately, the transaction would not have occurred and the lines would not be abandoned.

In addition to the fact that the sale to Watco and Michigan Central is unneeded and also will prove detrimental to both rail freight and passenger service in the state of Michigan, Watco, as well as other sponsors of the purchase of short lines by non-carriers, have a record of subsequently abandoning lines acquired in the name of their non-carrier subsidiaries. For example, as to Watco itself, there have been instances in recent years where Watco has given up on such operations in the states of Washington, Minnesota and West Virginia. See Exhibits 1 and 2. We also understand that Watco has failed to maintain trackage on an Oklahoma subsidiary. Protest of Ann Arbor Charter Township, July 31, 2007, at 1. Based upon these events, review of the document underlying the notice of exemption submitted in this matter fails to establish that Watco has sufficient resources, under the existing national financial credit crunch, to provide the \$18,000,000 to Michigan Central that is mentioned in its proposal or will have adequate cash flow to enable it to provide the \$9.4 million cash portion of it as working capital within the next year in order to keep Michigan Central running.

With all these questions arising, BLET submits that this transaction and the dockets ancillary to it, cannot be considered to be in the public interest.

Although over the years since amendment of the Act the agency has not considered labor a significant part of the public interest of the Federal Transportation Policy in a proceeding conducted pursuant to 49 U. S. C. §10502 and 49 C. F. R. §1121.1 et seq., whereby, as here, the non-carrier Michigan Central seeks an individual exemption from the provisions of 49 U. S. C. § 20901, particularly where employee protections will be imposed, there are two significant reasons in favor of the Board taking a look at Labor's concerns with respect to the exemption and, if granted, to the seniority rights and the residence relocation benefits set forth in the protective conditions.

As noted, the involved operations are profitable but the real purpose of the transaction is to make them more profitable. Obviously, one step to do that is to reduce labor costs which the transaction will do by abrogating the Norfolk Southern collective bargaining agreements and replacing them by a carrier policy or with negotiated labor agreements with reduced rates of pay, working rules and conditions, and benefits. The rail operations by a newly created non-carrier corporation, one-third of which is held by the current carrier owner, allows the owners to circumvent current collective bargaining obligations and the Railway Labor Act. In turn, the economic burden is shifted from the stockholders, in order to increase the rate of return on their investment, to the existing employees of Norfolk Southern. Those employees who can and are willing to take jobs with Michigan Central will carry the additional economic burden by reduced earnings and benefits. Those employees holding sufficient seniority on Norfolk Southern to obtain work elsewhere also will suffer economic losses, particularly those who are required to relocate. Although Michigan Central may not be considered the alter ego of Norfolk Southern under current legal authorities, the Board in reviewing the transaction should carefully consider whether the employee interests being adversely affected by this transaction, in conjunction with

those effects upon the interests of the shippers, Amtrak and its passengers, the municipalities and State of Michigan, contravene the public interests contained in 49 U. S. C. §10101. Full consideration of all these interests, BLET submits, require this Board to reject the exemptions involved in this docket and in Finance Docket Nos. 35064 and 35065.

We have noted that the current economic situation materially impacts the economic viability of this transaction. Moreover, this virtually recessionary economy has severely reduced the valuation of real property in Michigan, so much so that the market value of residences is less than tax values being applied. In fact, Michigan ranks third in the nation in the rate of mortgage foreclosures with one foreclosure for every 320 households. See “As foreclosures mount, D. C. debates answer to mortgage mess, MSNBC.com” (Exhibit 3). Thus, the economy also will have a significant impact upon those employees who will be subject to relocations. Since a substantial portion of Norfolk Southern lines in Michigan are involved in this transaction, those employees choosing to exercise their Norfolk Southern seniority, rather than accepting employment with Michigan Central, will be forced to sell their homes and relocate away from the area where they currently live. If Norfolk Southern is required in the future to honor its commitment to step in and reassume common carrier obligations due to the failure of Michigan Central to satisfactorily execute the service plan, some or all of those who relocated on Norfolk Southern initially would most likely be candidates to fill these positions. However, as such moves can be costly, they may be reticent to do so, which in turn could severely delay Norfolk Southern’s ability to restore needed services, further damaging rail service in the State.

Under these real-life scenarios, which are not contemplated or taken care of by currently applicable employee protections, we suggest several modifications be made to those protections if the exemptions are not rejected. First, those Norfolk Southern employees accepting

employment with Michigan Central be allowed a term of two years from the effective date of the transaction to exercise rights permitting them to return and exercise their seniority on Norfolk Southern. Second, that those employees taking positions on Norfolk Southern requiring relocation of their residences be given two additional options: (1) If they are able to sell their house within six (6) months of the effective date of the transaction and the purchase price is less than 100% of the market value of the home prior to June 1, 2006, Norfolk Southern will make a payment of the difference; or (2) if unable to sell their home for more than 85% of its market value prior to June 1, 2006, within twelve (12) months of the effective date of the transaction, Norfolk Southern will purchase same at 100% of the June 1, 2006 market value. By adopting these modifications for the special circumstances arising in this case, the employees will not bear an inordinate share of the monetary burdens meted out by this transaction.

Conclusion

Based upon the foregoing, the Brotherhood of Locomotive Engineers & Trainmen submits that this exemption and those in Finance Docket Nos. 35064 and 35065 should be rejected. In the event the Board should allow the exemptions to become effective, the Brotherhood requests the applicable employee protections be modified to reflect the changes requested herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Harold A. Ross", is written over a horizontal line.

Harold A. Ross
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Attorney for Brotherhood of
Locomotive Engineers &
Trainmen

Dated: September 14, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing comments of the Brotherhood of Locomotive Engineers & Trainmen, by first-class mail, postage prepaid, on this 14th day of September, 2007 to the offices of the following:

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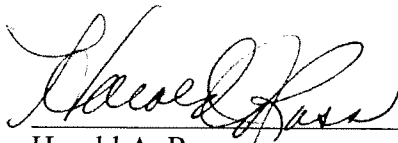
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September 14, 2007



Harold A. Ross

State to buy crucial stretch of rail line

Richard Roesler

Staff writer

February 9, 2007

OLYMPIA – After years of often-rancorous negotiation with a Kansas-based rail operator, the state has agreed to buy a 108-mile stretch of rail line between Cheney and Coulee City.

As first reported on spokesmanreview.com, the purchase price is about \$5.6 million, according to Mark Blazer, senior vice president for the western region of Watco Companies Inc., the firm that owns the line.

"We're happy we could work out the whole process with the state," Blazer said. "As a private company, (the line) didn't work for us."

Local economic development officials and farmers have urged the state to prop up the line, which Watco said had been operating at a loss for years. The company infuriated some local growers and lawmakers by tacking hefty surcharges onto car shipments and at one point completely halted shipments.

"Washington for the first time will become the owner of a critical operating rail system that supports a large portion of our agricultural community," said Gov. Chris Gregoire, who on Thursday signed a memorandum to buy the line. Without the support of lawmakers, farmers and others, she said, "this critical infrastructure would be lost."

The so-called CW line is part of the larger Palouse River and Coulee City rail system, which stretches for more than 300 miles across the Palouse and the area west of Spokane. State taxpayers two years ago spent \$6.5 million to buy the other main sections of the system: the PV Hooper and P&L branches.

"I'm happy to have this hurdle behind us," said Sen. Mark Schoesler, R-Ritzville.

The next steps, he said, will be to improve the track for faster trains and to diversify the shipping with a proposed loading facility on the West Plains. Spokane County and other proponents are asking lawmakers for \$4.3 million this year to build a rail loading center on the county's 3.5-mile Geiger Spur line. Lawmakers gave \$60,000 for a study of the project last year.

Under the memorandum of agreement, Watco will continue to run trains on the three branches until May 31. After that, the company will continue to operate the PV Hooper branch under an agreement with the state Transportation Department. The state plans to ask rail operators to submit bids for running the P&L and CW lines.

Nearly all the rail traffic on the CW line – about 2,400 cars a year, according to Blazer – consists of grain shipments. But local economic development officials say traffic could grow from local manufacturing or waste shipments.

Watco had long sought state help on its lines, saying that years of deferred maintenance by previous owners of the line left the company with a system that forced it to run trains

very slowly. Upgrading rock, rail and ties could speed trains and increase efficiency, proponents say.

But Blazer said another big part of the line's red ink was simple competition: Wheat growers would truck their crop to barge it down the Columbia River. A new loading facility in Ritzville was also a worry for keeping enough traffic on the short-line rail stretch to keep it profitable, he said.

Rep. David Buri, a Colfax Republican who's spent much of the past 18 months trying to preserve the tracks, predicted that more growers will return to rail shipping now. And he said he's confident that, as a whole, the 372-mile state-owned system will run in the black.

One problem yet to be solved, however, is what to do about a massive, decades-old wooden trestle that burned last year during a combine-caused brush fire near Colfax. Replacement estimates are \$4.5 million to \$5.5 million, Buri said. State officials are starting to think it might be smarter, he said, to lay 8 miles of new track between Oakesdale and Thornton, using an existing rail bed that was stripped of its rails years ago.

"We have roads, we have river, and rail is the third part of it," he said.



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5/16/2006 Small Road Acquisition

Watco sells West Virginia short line to Four Rivers Transportation

The Watco Cos. Inc. recently agreed to sell the 158-mile Appalachian and Ohio Railroad (A&O) to Four Rivers Transportation Inc. Terms weren't disclosed.

In March 2005, Watco launched the A&O to operate a line between Grafton and Cowen, W. Va., that the holding company leased from CSX Transportation. During the past year, Watco — which owns 16 short lines operating in 14 states — increased the short line's carloads about 20 percent primarily by moving more coal from West Virginia mines to eastern U.S. end users.

"Unfortunately, the terms of the lease would not allow Watco to reach an acceptable level of profitability," said Watco Chief Executive Officer Rick Webb in a prepared statement.

Four Rivers Transportation also owns the 300-mile Paducah & Louisville Railway Inc. and 124-mile Evansville Western Railway Inc., which the holding company launched in December 2005 after leasing a CSXT line between Mt. Vernon, Ind., and Okawville, Ill.

"Four Rivers has been looking for opportunities for growth for the last several years," said Four Rivers President and CEO Tony Rock. "We have considerable experience in the transportation of coal and saw the A&O as a good chance to become involved in the Appalachian coal market."

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Exhibit 2



Mortgage foreclosures rise to record

Delinquencies jump among riskiest loans; California, Nevada hit hard

By John W. Schoen
Senior Producer

MSNBC

Updated: 10:36 a.m. ET June 14, 2007

As the U.S. housing market continues to slog through a hangover from its post-millennium boom, mortgage foreclosure data released Thursday provide fresh evidence that the slow-motion unwinding of the easy-money mania is still under way.

The number of residential mortgages going into foreclosure hit a record in the first quarter of the year, with the biggest increases coming in the so-called "subprime" market of borrowers with weaker credit histories. Foreclosure rates were highest in a handful of states where home prices and sales surged during the boom, including California, Florida, Nevada and Arizona.

The rate of delinquencies, defined as borrowers who are at least 30 days behind on their payments, also rose among subprime borrowers to 15.75 percent. For all mortgages, the delinquency rate dipped a bit compared with last year's fourth quarter, but remained higher than the comparable year-ago period.

The housing industry watches these numbers closely because the delinquency rate is a bellwether for more serious problems down the road, including a default by borrowers who have gotten in over their heads. Unless those borrowers can renegotiate a new loan with more favorable terms, those defaults will likely become foreclosures. While the dip in delinquencies is a positive sign, it's too soon to say the rate has peaked, said Doug Duncan, chief economist of the Mortgage Bankers Association.

"We're not ready to say one data point is a trend," he said. "We will probably see modest increases in delinquencies and foreclosures for the next couple of quarters."

A separate report this week by RealtyTrac reported that foreclosures for May were up 19 percent from April and up nearly 90 percent from May 2006. In Nevada, there was one foreclosure filing for every 166 households last month, nearly four times the national average and the highest rate in the country for the fifth month in a row, according to RealtyTrac.

Some lenders are working to help borrowers who got into trouble. By making concessions, like offering a new loan with a lower interest rate or shifting from an adjustable to a fixed rate, those lenders may lose a little in the short term. But they're hoping to head off bigger losses if the loan goes to default and the borrower's home is sold in a foreclosure.

"There's no question that within the industry it's kind of all hands on deck — let's work with borrowers," said Duncan. "They are aggressively restructuring loans for people who, largely due to circumstances beyond their control, are in some difficulty."

Those circumstances include a drop in housing prices in many parts of the country, which has left some recent homebuyers holding loans that are bigger than the value of their houses. So far, the biggest problems are cropping up in the relatively small subprime market, where the riskiest lending took place.

No one can say for sure when the housing market will hit bottom. The outlook for an overall recovery depends on a variety of factors, including the overall strength of the economy and job market, the direction of future interest moves, and how well borrowers now facing delinquency can get back on their feet.

In any case, it will be some time before the dust settles on the mortgage market and any housing turnaround can be confirmed. That's because the process of working out a delinquent loan — whether through refinancing or foreclosure — can take months to play out. For lenders and investors who bought bad loans, the process

Exhibit 3

will likely extend well into next year.

"It can take 12 to 14 months for the loans to go through the foreclosure process and then be sold before a loss might be incurred (by the lender)," said Susan Barnes, head of mortgage-backed securities ratings at Standard & Poor's.

In the meantime, hopes for a buoyant spring season have come and gone for the real estate market with little sign of recovery, especially in regions where the level of unsold new and existing homes remains at historically high levels.

"There are large inventories that will have to be worked off in certain sections of the country before we see a recovery take place," said Duncan.

Meanwhile, lenders have tightened standards for new loans, which has shut some potential buyers out of the market. Rising interest rates have also slowed demand.

"Certainly the evidence suggests that the housing recession is getting worse, not better," said Nouriel Roubini, a former White House economist who is now an economics professor at New York University.

While the number of foreclosures hit a record, the national average masks strength and weakness in different regions of the country. Markets in California, Florida, Nevada and Arizona, which saw the biggest boom, are now feeling the most pain — and will likely take the longest to recover. Ohio, Indiana and Michigan also saw high rates of foreclosures, according to the latest figures. But nearly half the states outside those trouble spots saw a drop in new foreclosures.

So far, it doesn't appear that the housing recession has spread to the wider U.S. economy. Though interest rates have bumped higher, they still remain fairly tame by historical standards. Inflation, as measured by the Producer Price Index, appears to be holding steady, according to figures released Thursday. And despite the pinch of higher gasoline prices, consumer spending has shown little sign of slowing, based on retail sales figures released on Wednesday.

All of which leads some economists to believe that despite the financial hit to the millions of individual borrowers who got in over their heads, the impact on the wider U.S. economy will be limited.

"The U.S. is a massive economy with incredible productivity, and the non-housing (gross domestic product) has been growing over 3 percent in the last year," said Brian Wesbury, chief economist at First Trust Advisors.

"We can absorb these losses. It's going to be painful, and there's still some losses to come. But it's not the kind of thing that will drag the entire economy down."

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STATE-BY-STATE **FORECLOSURES**

Foreclosure filings in U.S. up 9 percent from previous month

State	1 for every #HH	% from June 07	Rank
Alabama	4,173	-21.54	38
Alaska	3,226	7.59	36
Arizona	433	2.84	8
Arkansas	1,196	-15.40	17
California	333	0.55	4
Colorado	347	3.77	5
Connecticut	672	-11.23	11
Delaware	4,463	-15.15	39
District of Columbia	39,682	-58.82	--
Florida	431	-8.82	7
Georgia	299	75.25	2
Hawaii	5,777	-24.78	45
Idaho	1,408	-23.92	19
Illinois	930	-3.91	15
Indiana	609	8.83	10
Iowa	2,105	35.89	28
Kansas	2,782	18.46	32
Kentucky	2,897	-20.00	33
Louisiana	3,484	-21.22	37
Maine	5,470	-26.90	43
Maryland	1,027	1.00	16
Massachusetts	580	48.64	9
Michigan	320	38.52	3
Minnesota	2,151	8.27	29
Mississippi	7,354	-22.22	46
Missour	1,275	5.01	18
Montana	5,099	12.00	42
Nebraska	3,080	60.65	35
Nevada	199	8.34	1
New Hampshire	2,946	-53.85	34
New Jersey	828	-12.81	14

New Mexico	5,705	-17.42	44
New York	1,839	-3.24	25
North Carolina	2,075	-2.26	27
North Dakota	11,710	-38.10	49
Ohio	376	12.10	6
Oklahoma	1,767	17.67	22
Oregon	2,329	-23.98	30
Pennsylvania	1,813	32.42	24
Rhode Island	2,666	-40.85	31
South Carolina	4,679	4.04	40
South Dakota	11,598	-11.76	48
Tennessee	748	5.29	13
Texas	726	45.94	12
Utah	1,800	-22.28	23
Vermont	34,149	12.50	50
Virginia	1,621	13.17	21
Washington	1,497	8.92	20
West Virginia	9,279	-38.16	47
Wisconsin	2,004	34.52	26
Wyoming	4,811	68.97	41
TOTAL	693	9.08	--

Source: RealtyTrac

Updated: 3:26 p.m. ET Aug. 20, 2007

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