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September 18, 2007

PUBLIC - REDACTED

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

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

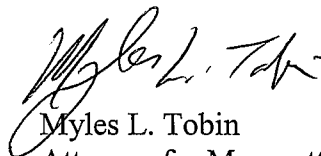
Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is a public, redacted version of the **Comments and Request for Conditions of Marquette Rail, LLC**, dated September 18, 2007.

A highly confidential version of this pleading has been separately filed with the Board under seal, pursuant to the protective order previously entered in this proceeding. Upon request, we will provide a copy of the highly confidential version to any party of record which has executed the highly confidential undertaking.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Myles L. Tobin
Attorney for Marquette Rail, LLC

MLT:tjl

Enclosure

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35063

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

**COMMENTS AND REQUEST FOR CONDITIONS
OF MARQUETTE RAIL, LLC**

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MARQUETTE RAIL, LLC**

Dated: September 18, 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

**COMMENTS AND REQUEST FOR CONDITIONS
OF MARQUETTE RAIL, LLC**

Pursuant to Board decisions in this proceeding served August 2, 2007 and August 24, 2007, Marquette Rail, LLC ("Marquette Rail" or "MQT") files these comments on the proposed acquisition of significant main line trackage of Norfolk Southern Railway Company ("NS") in the state of Michigan by Michigan Central Railway, LLC ("MCR"). Unless conditioned in the limited and reasonable manner outlined below, the proposed acquisition will significantly diminish the service and competitive access of Marquette Rail shippers to NS via the Grand Rapids, Michigan gateway.

INTRODUCTION

In considering NS's proposed divestiture of the bulk of its Michigan lines to MCR, it is particularly important that the Board remember the historical context of this transaction and the regulatory background of the parties and rail lines at issue. NS's ownership of the Michigan lines dates back less than a decade, to NS's acquisition (with CSX Transportation, Inc. ("CSXT")) of Consolidated Rail Corporation ("Conrail"). See CSX Corp., et al. – Control – Conrail Inc., et al., 3 S.T.B. 196 (1998) ("NS/Conrail"). The promises and representations that NS used to justify that transaction provide a revealing counterpoint for the actions that NS now seeks to undertake here. Prior transactions involving MCR's parent, Watco

Companies, Inc. ("Watco"), similarly provide a benchmark for the repeated, but cursory, claims of transportation benefits and service stability in MCR's Petition for Exemption. As the Board evaluates the validity and persuasiveness of NS and Watco's public interest arguments here, the Board should be mindful of the adage that "those who cannot remember the past are condemned to repeat it."¹

For its part, NS promised that the NS/Conrail transaction would provide shippers throughout the entire eastern United States with dramatically improved single-system service and with unprecedented direct competition between NS and CSXT. NS's Chairman, President and Chief Executive Officer stressed that "[t]his transaction is by far the most pro-competitive railroad restructuring in history. It will create two new Northeast/Southeast rail systems that will do their utmost to best each other in the marketplace every day. This will bring about a blossoming of rail competition, the likes of which the Northeast has not experienced in decades." NS/Conrail, CSX/NS-18, Railroad Control Application, Vol. 1, at 323. Another high-ranking NS officer reiterated that "[t]oday's routes will be maintained and improved; many new routes will be introduced. The result for NS and its customers will be almost a 'go everywhere' eastern system." Id. at 528 (Verified Statement of James W. McClellan). In approving the transaction, the Board relied extensively on such justifications. See NS/Conrail, 3 S.T.B. at 247-248, 333, 336-337; see also 3 S.T.B. at 379-380 (Chairman Morgan, commenting).

NS didn't say then that Michigan would be exempt from the proclaimed benefits of the NS/Conrail transaction, but that has proven to be the case. Except for the Detroit Shared Asset Area and the lines necessary to reach it, NS is now getting out of Michigan completely, abandoning to others such significant industrial areas as Jackson, Lansing, Battle Creek, Grand Rapids and Kalamazoo. Far from being maintained and improved, the former Conrail's major

¹ Taken from "Life of Reason, Volume 1" by George Santayana.

presence in Michigan is being eliminated, and "going everywhere" no longer entails going to Michigan.

Watco has had its own experiences that detract from the bare representations and reassurances offered by MCR in its Petition for Exemption. Watco's apparently unilateral cessation of service on rail lines in the State of Washington resulted in a complaint proceeding at the STB brought by the state itself. See State of Washington v. Palouse River and Coulee City Railroad, Inc., Finance Docket No. 34892 (STB served August 24, 2006). A recent major Watco acquisition of high-density Class I trackage in West Virginia was turned over to another operator after little more than a year. Appalachian & Ohio Railroad, Inc. – Lease and Operation Exemption – CSX Transportation, Inc., Finance Docket No. 34653 (STB served March 11, 2005); Four Rivers Transportation, Inc. – Control Exemption – Appalachian & Ohio Railroad, Inc., Finance Docket No. 34856 (STB served May 23, 2006).

In both cases, the bottom line is that the claims made in the MCR Petition for Exemption should not and cannot be taken simply at face value. Past is prologue, and it is vitally important that the Board review the proposed transaction carefully and critically, and take whatever steps are necessary to assure that the reality of competitive, adequate and secure transportation on the Michigan lines matches the rhetoric.

BACKGROUND

Marquette Rail is a Class III rail carrier which operates approximately 130 miles of line extending from Grand Rapids northward and westward to Ludington and Manistee, Michigan. See map attached hereto as Exhibit A. Marquette Rail leased its rail lines from CSXT in 2005, and interchanges at Grand Rapids with both CSXT and NS. Marquette Rail, LLC – Lease and Operation Exemption – CSX Transportation, Inc., Finance Docket No. 34728

(STB served October 26, 2005). NS reaches Grand Rapids solely via a former Conrail line between Kalamazoo and Grand Rapids that is to be sold to MCR.

Marquette Rail serves a diverse group of shippers with significant importance to the economy of western Michigan, and traffic has grown since Marquette Rail's assumption of rail service on the lines. Verified Statement of Kevin Ruble, attached hereto ("Ruble V.S."), at 2. For example, Marquette Rail handles nearly 4,800 carloads of outbound calcium chloride annually from a major facility of The Dow Chemical Company ("Dow") at Ludington. Dow is the nation's largest producer of liquid and dry calcium chloride products, and the Ludington plant is Dow's only manufacturing site in the nation for that product. Dow is separately participating in this proceeding as a party of record, and has filed its own Comments and Request for Conditions ("Dow STB Comments") with the Board. A further statement from Dow is attached hereto as Exhibit D.

Packaging Corporation of America ("PCA") has a large corrugated packaging plant at Filer City, Michigan (just south of Manistee), and ships approximately 4,000 cars per year via Marquette to interchanges at Grand Rapids with CSXT and NS. Statement of Packaging Corporation of America, attached hereto as Exhibit E. Martin Marietta ships and receives over 4,000 carloads of traffic a year at a major magnesium compounds facility in Manistee. Statement of Martin Marietta Magnesia Specialties, attached hereto as Exhibit F. More than fifteen other smaller customers rely on Marquette Rail for rail service, with a traffic base that includes chemicals, grain, salt and petroleum products. Ruble V.S. at 2; see also additional shipper support statements attached hereto as Exhibits G-L.

Marquette Rail currently has access to both CSXT and NS via interchanges at Grand Rapids. Marquette Rail's line ends at Turner Street on the north side of Grand Rapids,

where a connection is made with CSXT trackage. Marquette Rail operates on the CSXT line through Grand Rapids to CSXT's Wyoming Yard, and conducts interchange with CSXT there. Marquette Rail-NS interchange traffic is handled by CSXT as an intermediate switch between Wyoming Yard and NS's Hughart Yard just to the south of Grand Rapids. The CSXT intermediate switching fee has recently been increased from \$75 to \$105/car, and the delay in moving traffic to and from NS via the CSXT intermediate switch averages 3.9 days. Ruble V.S. at 4. Marquette Rail traffic interchanged to NS also is subject to a paper barrier fee imposed by CSXT in the initial Marquette Rail acquisition transaction. Ruble V.S. at 3, n.1.²

Historically, little or no traffic on what are now Marquette Rail's lines north of Grand Rapids was interchanged with NS (and, before NS, Conrail) at Grand Rapids. That is obviously not surprising, given CSXT's ownership of the lines and desire to protect its long-haul. In the slightly less than two years since Marquette Rail's creation, however, Marquette Rail and its shippers have aggressively and somewhat successfully worked to develop competitive traffic movements with NS via a Grand Rapids interchange. These efforts have been sustained by intense head-to-head competition between NS and CSXT for Grand Rapids interchange traffic – exactly the kind of competition that the NS/Conrail transaction was promised and intended to produce. Despite the obvious cost disadvantages imposed by both the CSXT intermediate switching charge and the CSXT paper barrier fee, NS and Marquette Rail have been able to develop sufficiently attractive rate offerings that some traffic has begun to move on a Marquette Rail-NS routing via Grand Rapids. Ruble V.S. at 2; see also Dow Statement and PCA Statement, attached as Exhibits D and E, respectively. Marquette Rail shippers have been actively looking to expand those traffic volumes to NS-served destinations. Dow STB

² The CSXT paper barrier charge is not directly at issue in this proceeding, and Marquette Rail seeks no relief with respect to that charge.

Comments at 3; see also, e.g., PCA Statement ("Much of our traffic moves via CSX, but over the past year we have been increasing our shipments via NS. We have significant potential for growth and distribution at NS-served sites and are endeavoring to market those sites and capitalize on this potential."); Statement of Michigan Rail & Storage, Inc., attached hereto as Exhibit K ("We are rail-served by Marquette Rail, and chose to locate our facility at its present site because of the short distance that Marquette Rail has to travel to interchange both with CSX and NS in Grand Rapids.").

As part of those efforts, Marquette Rail and NS have developed arrangements for construction of a short, 1,700-foot track near Turner Street in north Grand Rapids that would provide a direct connection between Marquette Rail and NS trackage at that location. See Ruble V.S. at 5 and Attachment 1. Such a connection would allow Marquette Rail traffic to be delivered directly to an NS yard, avoiding the time-consuming CSXT intermediate movement and eliminating the intermediate switching fee on Marquette Rail-NS traffic. This important project would substantially improve the competitiveness of Marquette Rail-NS routings, and Marquette Rail shippers, most particularly Dow, strongly support it. Dow STB Comments at 7-8.

Arrangements between NS and Marquette Rail for the new connector were nearly complete, but now have been shelved apparently as a result of the pending MCR acquisition of NS's Grand Rapids area lines. Ruble V.S. at 5. As significantly, the proposed transaction severs Marquette Rail's connection with NS, and adds yet another carrier to the routing for potential Marquette Rail traffic interchanged with NS. MCR will acquire NS's rail line from Grand Rapids to Elkhart, Indiana, and any Marquette Rail-NS interchange traffic will now have to be

separately handled by MCR from Grand Rapids to Elkhart, where MCR will itself interchange traffic with NS.

Taken together, these two effects of the proposed Michigan Central transaction will drastically degrade Marquette Rail's ability to provide and maintain competitive interline options for its shippers: what would have been a two-carrier movement for traffic to NS destinations (MQT-Grand Rapids-NS) will now be up to a four-carrier movement (MQT-Grand Rapids-CSXT-Grand Rapids-MCR-Elkhart-NS). The availability of NS routings as a reasonable alternative to direct CSXT routings over Grand Rapids would effectively be eliminated – taking with it the head-to-head competition between CSXT and NS for Grand Rapids interchange traffic that had its origins in the NS/Conrail transaction and that had provided tangible present and future benefits for Marquette Rail shippers. Ruble V.S. at 5; see Dow Statement, Exhibit D hereto ("Much of our traffic currently moves via CSX, but NS offers a viable competitive alternative. The competition between NS and CSX at Grand Rapids and our direct access to two Class I carriers is critical to our success."); Statement of Seng Dock and Trucking, attached as Exhibit G ("... the ability of Marquette Rail to interchange with NS at Grand Rapids creates a competitive environment and ensures dependable rail service at competitive rates to Grand Rapids."). All of Marquette Rail's supporting shippers have identified the imperative need to maintain existing Class I competition at Grand Rapids.³

NS's departure from the Michigan market thus will have significant if discrete adverse effects on the adequacy and competitiveness of rail transportation available to Marquette Rail shippers. This fundamental impact is not diminished by the supposed "joint venture" nature of MCR's corporate structure. Make no mistake – NS is getting out of town. NS is a minority

³ In addition to those previously identified, supporting shippers include Ambassador Steel Corporation, Harsco Track Technologies, Cal-Chlor Corp. and Flat Rock Bagging. Their supporting statements are attached as Exhibits H, I J and L, respectively.

partner in MCR, and its sole capital contribution to MCR is the subject rail lines themselves. As Watco took pains to point out in the companion MCR control case,⁴ NS will not be liable for any of the obligations of MCR and shall not "be required to lend any funds or to make any additional contributions, assessments or payment to Michigan Central." Watco Control Notice at 6-7. Indeed, MCR will maintain complete "financial and operational independence" from NS. Id. at 7.

For the scant items NS thought significant enough – service to two automotive plants – NS has retained limited trackage rights to protect its interests. Norfolk Southern Railway Company – Trackage Rights Exemption – Michigan Central Railway, LLC, Finance Docket No. 35065 (STB served July 27, 2007).⁵ Otherwise, NS is simply walking away from Michigan and leaving behind its remaining rail assets as a "capital contribution" to the company left behind. It is among the largest major market withdrawals by a Class I railroad in recent years, and deserves close scrutiny by the Board.

DISCUSSION

MCR's proposed acquisition of the NS Michigan lines is governed by 49 U.S.C. § 10901(c), which provides that a transaction cannot be approved if it is inconsistent with the public convenience and necessity, and further provides that the Board may impose conditions on the transaction that are "necessary in the public interest." In making that determination, the national Rail Transportation Policy, 49 U.S.C. § 10101 ("RTP"), directs the Board (among other

⁴ Watco Companies, Inc. and Watco Transportation Services, Inc. – Continuance in Control Exemption – Michigan Central Railway, LLC, Finance Docket No. 35064 (STB served July 27, 2007).

⁵ Although barely mentioned in MCR's exemption petition, NS and MCR have entered into a haulage agreement for MCR to transport cars in NS's account between Elkhart and connections with several Class III carriers (including Marquette Rail) at Grand Rapids. MCR Petition for Exemption at 19 (Item iii). The largely illusory and potentially anti-competitive nature of that haulage arrangement is addressed further below.

relevant things) to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public;" to "foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;" to "prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;" and to allow "competition and the demand for services to establish reasonable rates for transportation by rail." 49 U.S.C. § 10101(1), (4), (5) and (12).

MCR has sought an exemption from Section 10901(c), which can only be granted if (among other things) regulation "is not necessary to carry out the transportation policy" of Section 10101. 49 U.S.C. § 10502(a)(1).⁶ As the Board and its predecessor have consistently held, in determining under Section 10502 whether regulation of a transaction is necessary to carry out the RTP, the Board considers those policy elements related to the statutory provision from which exemption is sought and under which the Board's determination would otherwise be made. E.g., Indiana R. Co. – Acq. & Oper. – Illinois Central R. Co., 6 I.C.C.2d 1004, 1006-1007 (1990), aff'd sub nom. Village of Palestine v. ICC, 936 F.2d 1335 (D.C. Cir. 1991). In other words, the Board's analysis in an exemption proceeding extends to what it would address in an application proceeding involving the same transaction. Here, the exemption analysis encompasses the "public convenience and necessity" test of Section 10901(c) as well as the ability to impose conditions as a prerequisite to finding that the public interest and the RTP support the transaction and the granting of an exemption.

⁶ In granting MCR's request under 49 U.S.C. § 10502(d) to revoke the class exemption that otherwise would govern MCR's acquisition of the Michigan lines, see 49 C.F.R. § 1150.31, et seq., the Board already initially made "a finding here based on the particular circumstances of this transaction" that "application of regulation is necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101." Decision served August 2, 2007 at 3.

We note as well that, in deciding not to require MCR to file a fully regulated application under 49 U.S.C. § 10901 for the proposed transaction, the Board relied on the fact that "[t]he parties to this transaction have submitted comprehensive information about the transaction," that other parties would have ample opportunity to examine the transaction, develop the record and file comments, and that the process established by the Board was "fair and responsive." Decision served August 24, 2007 at 3. That essentially procedural determination involved no substantive findings regarding the statutory criteria of Section 10901 and 10502.

If left unconditioned, MCR's proposed acquisition of the NS Michigan lines will have a profound and lasting effect on the availability of competitive interline rail service for the shippers on Marquette Rail's lines. The conditions requested by Marquette Rail and those shippers are necessary and appropriate to protect the public interest in adequate rail transportation in West Michigan and to preserve existing market access options for Marquette Rail shippers.

I. The Proposed Transaction Will Result in Significant Competitive and Service Harms for Marquette Rail and Its Shippers

The proposed transaction creates a debilitating "2-to-3" situation for Marquette Rail traffic moving on competitive routings to and from NS: what previously had been a two-carrier movement (MQT-NS) would now become a three-carrier movement (MQT-MCR-NS).⁷ As Kevin Ruble, Marquette Rail's president, explains at length in his attached verified statement, inserting additional carriers and, in turn, additional interchanges in a line-haul movement complicates schedule and operational coordination, raises the likelihood of mishandling, errors

⁷ This description excludes the CSXT intermediate switch at Grand Rapids, which in the absence of the MCR transaction would have been eliminated by the construction of the direct MQT-NS connector at Turner Street. If, as appears likely, the transaction results in the connector not being constructed, the impairment to efficient interline movements is even greater.

and loss and damage claims, increases transit times, reduces the competitiveness of the movement and almost invariably leads to higher rates. Ruble V.S. at 3-7.

None of this is news to the Board, which directly and decisively confronted the same issue in – ironically – the NS/Conrail proceeding that led to NS's ownership of the Michigan lines in the first place. Indeed, much of the reasoning for approving that transaction relied on the reverse rationale: that the absorption of Conrail by NS and CSXT would result in the creation of numerous single-line routings in place of joint-line routings, and that significant public benefits would result. NS/Conrail, 3 S.T.B. at 271, 333, 336.

Even so, there were a smaller but significant number of shippers for whom the Conrail break-up meant the loss of single-line service. The applicants acknowledged the public interest harm inherent in such situations, and negotiated an agreement with the National Industrial Transportation League that attempted to address the problem. See NS-Conrail, 3 S.T.B. at 271 ("[A]pplicants concede that there are some shippers whose single-line service will be replaced by somewhat less efficient joint-line service as a result of the merger."). The Board agreed both that shippers were harmed by the imposition of inefficient joint-line service and that a remedy for the situation was required. The Board went on to find, however, that such remedies must be extended to the exact situation that Marquette Rail and its shippers confront here:

After examining the record in this case as it relates to shortline railroads, we have determined that these remedies [i.e., for single-line to joint-line situations] should be extended to single-line to joint-line situations also involving a third carrier that is a Class III railroad. Shippers on Class III railroads in those circumstances would face the same degree of harm as do shippers that are losing single-line Conrail service through the transaction, and this slight expansion of the NITL agreement provides an appropriate remedy. In other words, where a Class III railroad could provide through service connecting solely with Conrail, but will now have to provide a three-carrier connecting service with both CSX and NS,

the Class III carrier, at its option, will be able to invoke the single-line to joint-line protections set forth in the NITL agreement.

NS-Conrail, 3 S.T.B. at 254.

As in NS/Conrail, Marquette Rail is a Class III railroad that currently provides interline service through a connection with NS, and that will be forced as a result of the proposed transaction to provide a "three-carrier connecting service" with both MCR and NS. As the Board found, short-line carriers in such 2-to-3 circumstances "face the same degree of harm" as 1-to-2 shippers who lose single-line service in an STB-approved transaction. Indeed, that finding is inherent in decades of agency precedent holding that the imposition of additional interchanges in traffic routings is costly, time-consuming and inefficient. See Dow STB Comments at 4 (collecting cases). Marquette Rail faces a significant impairment of the competitive NS routings currently available to its shippers, and any approval of the MCR petition for exemption must address that transaction-related harm.

The reality of these competitive harms may explain why NS has proposed to enter into a haulage agreement with MCR under which MCR will haul cars in NS's account between NS at Elkhart and several connecting Class III railroads on the lines being sold to MCR.⁸ While NS's acknowledgment of the problem is notable, its possible haulage "solution" is illusory, at best, and itself anti-competitive, at worst. As Mr. Ruble points out, there is no requirement that NS and MCR actually utilize the haulage arrangement for Marquette Rail interchange traffic moving between Grand Rapids and Elkhart. Ruble V.S. at 6. And haulage itself would not fully address the operating inefficiencies of the additional interchanges and participating carriers to

⁸ Besides Marquette Rail at Grand Rapids, these include Grand Rapids Eastern Railroad and Mid-Michigan Railroad at Grand Rapids and Michigan Southern Railroad Company at White Pigeon, Michigan. MCR Petition for Exemption, Exhibit 2, Joint Use Agreement at 6-7.

which Marquette Rail-NS traffic would be subjected, since the physical handling of the traffic is the same with or without a haulage arrangement.

Overshadowing all of those considerations is that fact that the haulage rate agreed to by MCR and NS for the movement of Marquette Rail interchange traffic between Grand Rapids and Elkhart is so high that it would effectively foreclose movements via that routing – essentially leaving Marquette Rail and its shippers as "2-to-1" parties who will lose one of their two competitive rail options when NS withdraws from Grand Rapids. While the "2-to-3" effect of inserting MCR into Marquette Rail-NS routings discussed above would make those routings less competitive and efficient, haulage rates at the levels proposed by NS and MCR simply eliminate the routings altogether.

The distance between Grand Rapids and Elkhart is just over 100 miles. Ruble V.S. at 3. Regardless of commodity, car type or the size of the car block tendered, the MCR haulage rate for overhead NS-Marquette Rail interchange traffic between those points is [REDACTED]/car.⁹ As is explained in detail in the attached Joint Verified Statement of Sandra J. Dearden and Mazhar Ali Awan of HIGHROAD Consulting, Ltd. and Transportation Economics Inc., respectively ("Dearden/Awan J.V.S."), that unitary and arbitrary rate has little if any relationship with MCR's likely costs in handling the traffic or with the competitive realities of the existing NS routing options that Marquette Rail shippers currently enjoy.

At Marquette Rail's request, Dearden and Awan performed a detailed cost study of Grand Rapids-Elkhart haulage traffic, using both Highroad's proprietary INSIGHT: Rail Edition© program and the Board's Uniform Rail Costing System ("URCS") model. As Mrs.

⁹ The haulage rate is actually [REDACTED] for Marquette Rail traffic, as compared to the [REDACTED] for haulage of other carriers' traffic from Grand Rapids. The extra \$75 presumably was added to cover absorption of 50% of the CSXT intermediate switch charge at Grand Rapids (Marquette Rail absorbs the other 50%).

Dearden details, the INSIGHT program is based on real-world experience and insight, closely approximates the internal costing that railroads develop themselves, and provides significantly more reliable and realistic figures than URCS. Dearden/Awan J.V.S. at 2, 7-9. The INSIGHT and URCS analyses were each performed with NS data inputs and thus reflect the relatively high cost structures of Class I railroads. Both analyses thus overstate the expenses that will likely be experienced by MCR, as a smaller, more flexible and lower cost Class III carrier. Dearden/Awan J.V.S. at 6-7,11.

Dearden and Awan found that transportation costs for Grand Rapids-Elkhart haulage service across all traffic types and configurations and under both the INSIGHT and URCS models ranged from \$150.39/car to \$335.24/car. The highest per car cost of any kind under INSIGHT was \$171.71. Dearden/Awan J.V.S. at 11. None of the figures for any traffic under either model even approached the [REDACTED]/car charge contained in the NS-MCR haulage agreement, and the profit margins on the haulage traffic at the [REDACTED] rate would (assuming such traffic ever moved) be wildly disproportionate to that normally expected and obtained on haulage business. Dearden/Awan J.V.S. at 12-13.

All other available information confirms the fundamental conclusions of the Dearden/Awan costing analysis. Marquette Rail's Kevin Ruble did not have access to the amount of the proposed NS-MCR haulage rate (which NS and MCR designated highly confidential), but explains that under normal industry practice the expected haulage charge for the 100-mile movement between Grand Rapids and Elkhart (with an empty return) would range from approximately \$206/car for single-car movements to approximately \$103/car for large blocks (60 cars or more) of traffic. Ruble V.S. at 6. Mrs. Dearden's own first-hand knowledge of recent arms-length haulage arrangements indicates a comparable Grand Rapids-Elkhart

haulage rate that would be no higher than \$246.57/loaded car (inclusive of the empty return). Dearden/Awan J.V.S. at 13.

It is also evident that, at a [REDACTED]/car haulage rate, Marquette Rail interline traffic with NS simply will not continue to move. Marquette Rail shippers have reported that new NS rate quotations – presumably incorporating the MCR haulage rate – are not sufficiently competitive to handle the traffic. Ruble V.S. at 6. Dow and other shippers independently confirm that rate increases such as would be necessary to cover a [REDACTED]/car haulage charge could eliminate NS as a competitive option for their interline traffic. Dow STB Comments at 2; PCA Statement at 1. Using the STB's 2005 Public Use Waybill File, Mrs. Dearden separately reviewed transportation rates from competing origins for several specific commodities shipped by Marquette Rail's on-line customers. She found those rates to be lower than the likely post-transaction rates for traffic originating on Marquette Rail, meaning that both Marquette Rail and its shipper would be at risk of losing the business. Dearden/Awan J.V.S. at 14-15.

Ultimately, a [REDACTED]/car haulage rate would serve as a kind of perverse paper barrier, restricting, if not functionally eliminating, Marquette Rail's existing access to NS for interline movements. Of course, paper barriers are usually imposed by a selling Class I railroad to assure that traffic cannot be funneled to a competing Class I. That is not the case here; consistent with NS's desire and effort to exit the Michigan rail market entirely, the excessive haulage rate would leave Marquette Rail's interline traffic captive to a competing Class I carrier ("CSXT"). Class III railroads usually seek regulatory relief to expand their competitive access to additional connecting railroad partners. Here, Marquette Rail's sole interest is to insure continued effective access to NS after consummation of the proposed NS-Michigan Central transaction.

The loss of competitive routing options via NS would, in turn, eliminate the need and justification for the proposed direct connection at Turner Street north of Grand Rapids that Marquette Rail and NS have been pursuing. Indeed, this may be why, with the public announcement of the NS-Watco transaction, discussions regarding that connection have ceased. Ruble V.S. at 7. All of these factors contribute to a multi-faceted anti-competitive impact on Marquette Rail and its shippers. The "2-to-3" insertion of MCR into Marquette Rail-NS routings diminishes the efficiency and competitiveness of those routings. The proposed haulage arrangement not only fails to address those competitive 2-to-3 harms – it significantly exacerbates and expands them by creating "2-to-1" impacts for Marquette Rail shippers who will lose any effective access to NS for their traffic. And the 2-to-3 and 2-to-1 effects both diminish the viability of the pro-competitive direct Marquette Rail-NS connection in Grand Rapids. Taken together, these are significant and legitimate problems for Marquette Rail and West Michigan shippers that require regulatory mitigation.

II. Tailored Remedial Conditions Should Be Imposed to Ameliorate the Adverse Public Interest Impacts of the Proposed Transaction

Without conditions that address the adverse impacts of the proposed NS-MCR transaction on Marquette Rail and its shippers, that transaction satisfies the criteria of neither 49 U.C.S. § 10901 or 49 U.S.C. § 10502, and cannot be approved or exempted. Marquette Rail does not, however, oppose the transaction generally, Ruble V.S. at 7, and believes that the imposition of several specifically-tailored, effective conditions would allow Board approval of the transaction to be granted.

A. Grand Rapids Direct Connection

As a condition of any exemption authority, MCR should be required to participate with Marquette Rail in the construction of the previously-planned connector at Turner Street in

Grand Rapids, with each party responsible for the construction expenses on its right-of-way. See Ruble V.S. at 7 and Ruble V.S. Attachment 1. That short, 1,700-foot connector, would be located entirely on existing railroad right-of-way, presents no engineering or land acquisition issues, and was the subject of detailed and nearly-completed discussions between Marquette Rail and NS prior to the announcement of the Michigan Central transaction. The direct connection would eliminate a time-consuming, expensive and unnecessary CSXT intermediate switch, and result in no operational issues or revenue impacts on MCR. It was a plainly pro-competitive initiative with NS, the viability and likelihood of which has been diminished and perhaps terminated by the pending sale of NS's Michigan lines. Ruble V.S. at 5, 7. Requiring MCR's participation, in place of NS, in the connection project would directly address a material adverse impact of the transaction.

In addition, requiring construction of the connection is a reasonable (if not completely adequate) mitigation of the significant and well-recognized "2-to-3" harm that Marquette Rail shippers face because of the insertion of MCR as an additional carrier in MQT-NS routings. By eliminating the CSXT intermediate switch at Grand Rapids, the direct connection at least assures that no more than three carriers (MQT-MCR-NS) handle NS interline traffic to and from Marquette Rail stations, rather than potentially four carriers (MQT-CSXT-MCR-NS). Without any significant burden on MCR or NS, the connection will help to mitigate the 2-to-3 effects that will otherwise result from the transaction. As in the NS/Conrail case, where the Board confronted nearly identical issues, this is an important and acceptable remedy for "a problem that does not generally lend itself to easy solutions." 3 S.T.B. at 254.

MCR and NS may argue that, in this respect, a condition requiring a connection at Grand Rapids does not directly address a harm arising from the transaction and somehow

improves the position that Marquette Rail occupies today.¹⁰ But the idea that conditions cannot be imposed on a transaction if they would have any incidental pro-competitive effects is neither realistic nor consistent with recent Board policy. In a comprehensive review of nationwide rail access, service and competition issues in 1998, the Board concluded that "it is [] clear that we have reached a regulatory crossroads." Review of Rail Access and Competition Issues, 3 S.T.B. 92, 95 (1998). When it later adopted new regulations governing major railroad consolidations, the Board recognized the difficulty sometimes inherent in addressing transactional harms on a direct, one-to-one basis with remedial conditions, and found that broader conditions were appropriate or desirable where well-understood harms were nonetheless difficult to discern or address. Major Rail Consolidation Procedures, 5 S.T.B. 539 (2001). Even before that, the Board recognized the need to prevent an approved transaction from expanding the scope or effect of existing detrimental service or rate situations. NS/Conrail, 3 S.T.B. at 277.

Here, the 2-to-3 impacts arising from MCR's acquisition of the NS Michigan line are clear and troublesome, and the direct connection remedy sought by Marquette Rail and its shippers, with MCR bearing the relevant expenses on its own right-of-way, is reasonable and appropriate to address them.

B. Elkhart Trackage Rights

NS's withdrawal from Michigan will eliminate Marquette Rail's important and pro-competitive direct access to NS, and the proposed haulage arrangement between NS and MCR for Marquette Rail's interline traffic with NS – at haulage rates far in excess of any rational cost-based number – will preclude an economic rate structure that would move such interline traffic anyway. Ruble V.S. at 6-7; Dearden/Awan J.V.S. at 14. The net effect of the proposed

¹⁰ As discussed above, Marquette Rail believes this is an incorrect premise in the first place, since the proposed NS-MCR transaction has directly diminished the prospects for the Grand Rapids connector that Marquette Rail and NS were pursuing.

transaction will be to leave Marquette Rail shippers captive to CSXT interline service, when that is plainly not the case today. To effectively address this "one-two" combination punch of 2-to-3 and 2-to-1 impacts, Marquette Rail must be allowed to "follow" NS to Elkhart by obtaining overhead trackage rights on the NS/MCR Grand Rapids-Elkhart line for such purposes.

Such rights would come closest to maintaining the competitive *status quo*, and would not unreasonably interfere with MCR operations or service on the route. MCR plainly has sufficient capacity on lines that it says it will upgrade and, unlike other MCR lines, no Amtrak trains operate on the Grand Rapids-Elkhart line over which Marquette Rail would obtain rights.¹¹ See MCR Petition for Exemption at 11, 13-14, 16. Because no further Marquette Rail-NS interline traffic is likely to move via MCR in the absence of this competitive condition, the trackage rights operations by Marquette would create a revenue stream for MCR where none would otherwise exist.

That such trackage rights are both necessary and feasible is conclusively demonstrated by what NS proposes to do for itself in this transaction for Michigan automotive traffic. Rather than relying on the haulage service that is supposedly adequate for its existing Class III connections in Michigan, NS would obtain trackage rights over the MCR lines to reach the auto assembly plants that it wishes to continue to access. The parties plainly foresaw no operational difficulties with such trackage rights, and NS plainly foresaw that haulage rights would be insufficient to assure efficient and competitive rail service to those automotive facilities. Marquette Rail should similarly be granted limited overhead trackage rights on MCR's Grand Rapids-Elkhart, at the same rate MCR would receive from NS (██████/car mile).

¹¹ At Kalamazoo, these trackage rights would merely cross the east-west MCR line that hosts several daily Amtrak trains.

C. Elkhart Haulage Rights

In the alternative, the Board should require MCR to provide haulage service to Marquette Rail for NS interline traffic between Grand Rapids and Elkhart, subject to reasonable service standards and at reasonable rates not to exceed \$206 per loaded car for smaller units of cars and \$103 per loaded car for larger units (sixty or more cars). These rates would be inclusive of the empty return. Ruble V.S. at 8-9; see Dearden/Awan J.V.S. at 11, 15. If MCR failed to meet service standards agreed to by the parties or imposed by the Board, Marquette Rail would have limited contingent overhead trackage rights that could be exercised at the same rate paid by NS for its MCR trackage rights (██████/car mile).

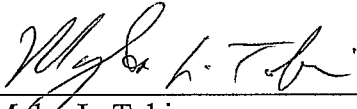
The Board, of course, is not generally in the business of regulating rates for unregulated haulage services. But here, MCR and NS apparently seek to rely on the haulage service and rates they have proposed for Marquette Rail-NS interline traffic as an effective solution for the 2-to-3 impacts of their proposed transaction. And, as discussed above, the haulage rates proposed by MCR and NS give rise themselves to serious anti-competitive effects and market foreclosures. In either instance, the Board must assure that such haulage rates are reasonably effective and competitive before it can make the necessary statutory findings that would allow the proposed transaction to proceed. If the Board is unable or unwilling to address haulage rates in that manner, it must grant the trackage rights discussed in the prior section.

Taken together, Marquette Rail and its shippers have proposed, and the Board should impose, rational and targeted conditions that are reasonably designed and intended to protect the strong public interest in adequate and competitive rail transportation in West Michigan. The competition promised by NS in the NS/Conrail transaction has in fact

materialized for Marquette Rail shippers, and should not be eliminated by NS's departure from Michigan when effective and limited conditions are available that would prevent that result.

WHEREFORE, Marquette Rail respectfully requests that approval of MCR's petition for exemption be made subject to the conditions described herein.

Respectfully submitted,

By: 

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**ATTORNEYS FOR
MARQUETTE RAIL, LLC**

Dated: September 18, 2007

EXHIBIT A



**VERIFIED STATEMENT
OF
KEVIN RUBLE**

My name is Kevin Ruble. I am the President and Chief Executive Officer of Marquette Rail, LLC ("Marquette Rail") with business offices at 5550 West First Street in Ludington, Michigan. I have served as Marquette Rail's President and CEO since the railroad's inception in November of 2005.

I began my transportation career with the Missouri-Kansas-Texas Railroad Company where I held the position of Assistant Manager-Car Service. Thereafter, I became President of TranSolutions, Inc. where I participated in the organization and development of over 80 regional and short line railroads since the early 1980's.

I earned an MBA in Finance and Marketing from the University of Dallas Graduate School of Management and a BBA in Economics from Sam Houston State University, where I was the recipient of the Wall Street Journal Award for Economics.

I. MARQUETTE RAIL.

Marquette Rail is a West Michigan short line railroad with the unique distinction of being the world's only majority employee-owned railroad. Marquette Rail operates approximately 130 miles of railroad acquired from CSX Transportation, Inc. ("CSX") on November 12, 2005. Our primary route extends from interchanges with CSX and Norfolk Southern Railway Company ("NS") at Grand Rapids northward to Ludington and Manistee. We connect directly with CSX and currently connect with NS via a CSX intermediate switch, although as discussed in greater detail below we had been negotiating a direct connection to NS for well over a year prior to the announcement of the pending Michigan Central transaction.

Marquette serves about 20 customers in six West Michigan counties, transporting chemicals, paperboard, grain, salt, petroleum products and other commodities. We are continually growing the business by generating more traffic from existing customers, attracting customers to the economic benefits of rail transportation (including multimodal transload facilities for customers not directly located along our line), and actively promoting the economic development of new industrial and distribution facilities.

Our customers reflect a cross-section of the North American economy. We serve such companies as (1) Dow Chemical USA (“Dow”), whose Marquette Rail-served Ludington plant is North America’s largest producer of liquid and dry Calcium Chloride products, (2) Packaging Corporation of America (“PCA”), a \$2 billion world-class manufacturer of container board and corrugated packaging, (3) Martin Marietta, which produces magnesium hydroxides and oxides at a major facility in Manistee and ships and receives nearly 4,000 inbound and outbound rail carloads a year via Marquette Rail, and (4) Ambassador Steel Corp., the largest independent rebar fabricator in the United States with fabricating facilities in eight Midwestern states.

Marquette Rail’s customers ship and receive commodities from points throughout North America and, indeed, from points throughout the world. Their economic well-being is heavily dependent on the competitiveness and market access provided by the two Class I carriers with whom we connect at Grand Rapids.

II. NS-CSX COMPETITION AT GRAND RAPIDS.

Competition between NS and CSX at Grand Rapids for our traffic has been fierce. When we started up in late 2005, all of our shippers’ traffic moved via CSX. However, over the past year, NS’s competitive rate structure has resulted in a shift of an increasing number of carloads to NS. Shippers such as Dow and PCA have been working with NS to further increase their

carloadings via NS well beyond existing levels.¹ Correspondingly, CSX has been adjusting its rate levels to keep our shippers' traffic on its lines. Further, as large Class I carriers, NS and CSX individually and collectively provide tremendous market access for our world-class multinational shippers.

This rate competitiveness and market access is exactly what NS and CSX touted when they convinced the STB to permit their acquisition of Conrail only nine years ago. And indeed, NS and CSX (and ultimately the STB) were right. Rate competition has heated up between these two Class I's to the benefit of our shippers. Market access via Grand Rapids on NS and CSX has been of tremendous benefit to our shippers. In short, for shippers on Marquette Rail's line, the Conrail transaction has worked.

Now, however, NS is proposing to abandon Grand Rapids and, in fact, abandon nearly the entire State of Michigan. As this transaction relates to our line and shippers, NS proposes to retrench back to Elkhart, Indiana, approximately 100 miles from Grand Rapids. An additional intermediate short line carrier, Michigan Central (a Watco subsidiary), would be substituted in lieu of NS from Grand Rapids to Elkhart. Thus, NS and Watco are proposing to increase the carriers in our shippers' routes from two to three.²

III. THE NS-WATCO-MICHIGAN CENTRAL TRANSACTION IS HARMFUL TO MARQUETTE RAIL SHIPPERS.

The proposed transaction, in its current form, will have a tremendously adverse impact on our shippers. From a customer service standpoint, NS and Watco are proposing to add another carrier in the route as an intermediate hauling carrier with all of the operational handling inefficiencies inherent in such a routing. At the same time, NS is effectively departing from

¹ Under our lease with CSX, for certain traffic CSX imposes a surcharge on traffic moved to NS. Despite this surcharge, traffic to NS has been increasing, due to the rate competition between the two Class I's.

² Indeed, this substitution will increase the carriers from three to four if we count the intermediate CSX switch at Grand Rapids.

Grand Rapids, thereby creating a two to one situation in which CSX will be the only remaining Class I railroad directly available for our shippers at Grand Rapids. The impact on rate competitiveness and market access for our shippers would be profound.

A. Rail service efficiency is critical, and increasing the number of carriers in the route will render routings via Michigan Central-NS non-competitive from a service standpoint.

As the STB is well aware, rail service efficiency is a critical element of transportation success. In this regard, Marquette Rail has been an extremely efficient short line and we take pride in providing our customers with "top notch" service. We are employee-owned, and as a result, each of our employee-owners takes a personal interest in ensuring that our customers' service needs are met.

From a physical standpoint, our mainline boasts both 110 lb. and 132 lb. rail, a third of which is welded. We are capable of handling the industry standard 286,000 lb. gross rail loading at speeds of up to 40 m.p.h. We maintain our mainline to FRA Class 3 track standards.

Of course, the ability to provide our customers with efficient service is not only dependent on us. It also depends on the efficiency of the balance of the routing. Currently, for routings to and from NS points, we interchange the cars to NS via a CSX intermediate switch at Grand Rapids. We deliver those cars to CSX's Wyoming Yard in Grand Rapids, and CSX moves the cars to NS's Hughart Yard. My analysis of Grand Rapids dwell times has revealed that, from time of delivery by Marquette Rail to CSX to time of NS departure from Grand Rapids, cars have been delayed, on average, 3.9 days.

Thus, about eighteen months ago, I commenced discussions with NS regarding construction of a direct connection on the north side at Grand Rapids between NS and our railroad. This direct connection, as shown on the attached Attachment 1, would only be about

1,700 feet in length, and would cost about \$324,000. Since 90% of the track construction would have been on NS's right-of-way, and NS would get the "lion's share" of resulting traffic benefits (as Marquette Rail would move the traffic regardless of whether it is routed via NS or CSX), we believed that NS should similarly bear the lion's share of the construction cost.

Discussions on the direct connection were proceeding smoothly and then, suddenly, they just stopped altogether. Shortly, thereafter, the NS-Watco transaction became public. Clearly, that transaction had inappropriately stymied discussions regarding the direct connection.

Now, in light of this proposed transaction, not only do we not have a direct connection to NS, but NS and Watco are proposing to place yet another intermediate carrier into our primary NS route via Elkhart. So, when we thought we would soon be down to two carriers in the route (Marquette Rail-NS) now the transaction proposes to increase the number of carriers to four (Marquette Rail-Grand Rapids-CSX-Michigan Central-Elkhart Junction-NS).

It has been axiomatic in the rail industry, and my personal experience has borne this out, that the more carriers in the route, the more operational inefficiencies are created. More hands touch the cars, more switching occurs, schedules are tougher to coordinate and cars are delayed, and commodity loss and damage increases with the increased handling. In short, little good comes of adding additional carriers to the same route particularly where, as here, they are only intermediate overhead carriers without a direct interest in the customers.

Bottom line – from a service standpoint, this transaction negatively impacts our customers. The stymied discussions regarding a direct connection at Grand Rapids and the addition of an intermediate carrier into the NS routing, both a direct result of this transaction, should not be tolerated.

B. Michigan Central substitution for NS between Grand Rapids and Elkhart will negatively impact competition at Grand Rapids.

NS and CSX directly compete with each other at Grand Rapids. NS is proposing to depart. Michigan Central, an additional intermediate carrier, is being added to the route under a "haulage arrangement" with NS. Our connection to NS would now be over 100 miles away in Elkhart, Indiana.

Adding an intermediate carrier to the NS route increases handling costs which, in turn, increases rates to the shippers. Increased rates make the NS route less competitive vis-à-vis CSX. At the end of the day, the competition that previously existed between NS and CSX at Grand Rapids would no longer exist, and this transaction will have created a two to one point at Grand Rapids for Marquette Rail shippers.

NS may counter that it has preserved competition by creating a haulage arrangement whereby Michigan Central will haul NS cars from Grand Rapids to Elkhart at a specified rate. But, I urge the Board to look at the haulage deal for what it really is – a sham transaction:

- (1) Where in the agreement does it require NS to use the haulage? It doesn't! If NS doesn't use the haulage, Michigan Central can interpose its own rates on top of the NS rates.
- (2) Will the NS-Michigan Central haulage rates move the traffic? I'm not privy to the confidential haulage rate between NS and Michigan Central, but in my own experience, reasonable short line haulage rates are about 50 cents per car mile for large units (60 or more cars), in this case \$103 per loaded car for unit trains and \$1 per car mile for single cars or small units (six or so cars), in this case approximately \$206 per loaded car.³ Are the

³ The empty return is included in the loaded car rate.

Michigan Central-NS haulage rates comparable? The Board will have to judge that based on the accompanying verified statements submitted by Marquette Rail, but I can tell you that in my recent discussions with Marquette Rail shippers as to the new rates NS is quoting (inclusive of the haulage rates) the NS rates will not move the traffic.

- (3) What arrangement did NS make with Watco for the traffic NS evidently really cares about – namely, the auto traffic? NS has negotiated trackage rights to move that traffic! Evidently, NS did not consider Marquette Rail shippers' traffic important enough to obtain those same trackage rights.

IV. THE STB MUST IMPOSE CONDITIONS ON THIS TRANSACTION TO AMELIORATE THE HARMS TO MARQUETTE RAIL SHIPPERS.

Marquette Rail does not oppose this transaction generally. However, as detailed in my statement, this transaction, without appropriate conditions, will be adverse to our shippers.

Therefore, our proposed conditions, which we urge the STB to impose, are as follows:

- (1) **Order the construction of a direct connection between Michigan Central and Marquette Rail as detailed on Attachment 1 with Michigan Central being responsible for all costs of construction on its right-of-way and Marquette Rail being responsible for costs of construction on its right-of-way.**

As discussed, this transaction stymied discussions that were already proceeding between Marquette Rail and NS as to this direct connection. There are no physical impediments to the connection, and indeed, a track formerly existed almost exactly where Marquette Rail proposes that a connecting track be installed now. The connection will eliminate an intermediate switch charge from CSX as well as much of the significant delay currently being experienced by movements to NS in Grand Rapids.

- (2) **In addition to the construction of a connecting track, the STB should order the imposition of Marquette Rail trackage rights over Michigan Central from Grand Rapids to a connection with NS at Elkhart, Indiana at the same rate charged by Michigan Central to NS.**

Our shippers currently have access to NS at Grand Rapids, and both NS and CSX compete for this traffic. If NS is retrenching to Elkhart, then we are prepared (and entitled) to effectively follow NS and reestablish that direct access at Elkhart. These trackage rights will eliminate the two to three and two to one conditions that this transaction will otherwise create.

NS and Michigan Central may complain about purported operational difficulties of trackage rights. However, as the STB is well aware, trackage rights by one carrier over another are extremely common methods of operation among railroads and no abnormal difficulties exist here to prevent imposition of those rights. NS acquired Conrail's lines to create head-to-head competition with CSX in Michigan and other states. We propose to retain that competition by maintaining access to both Class I carriers – CSX at Grand Rapids, and now, NS at Elkhart.

- (3) **As an alternative to condition number two above, the STB should order the connection construction and Marquette Rail haulage rights over Michigan Central from Grand Rapids to Elkhart at reasonable rates – which we deem to be \$206 per loaded car in small units (six or more cars) and \$103 per loaded car in large units (60 or more cars). Further, if Michigan Central cannot meet agreed upon (or STB ordered) service standards, then Marquette Rail should receive contingent trackage rights to operate over this trackage at the same rate which Michigan Central is receiving from NS.**

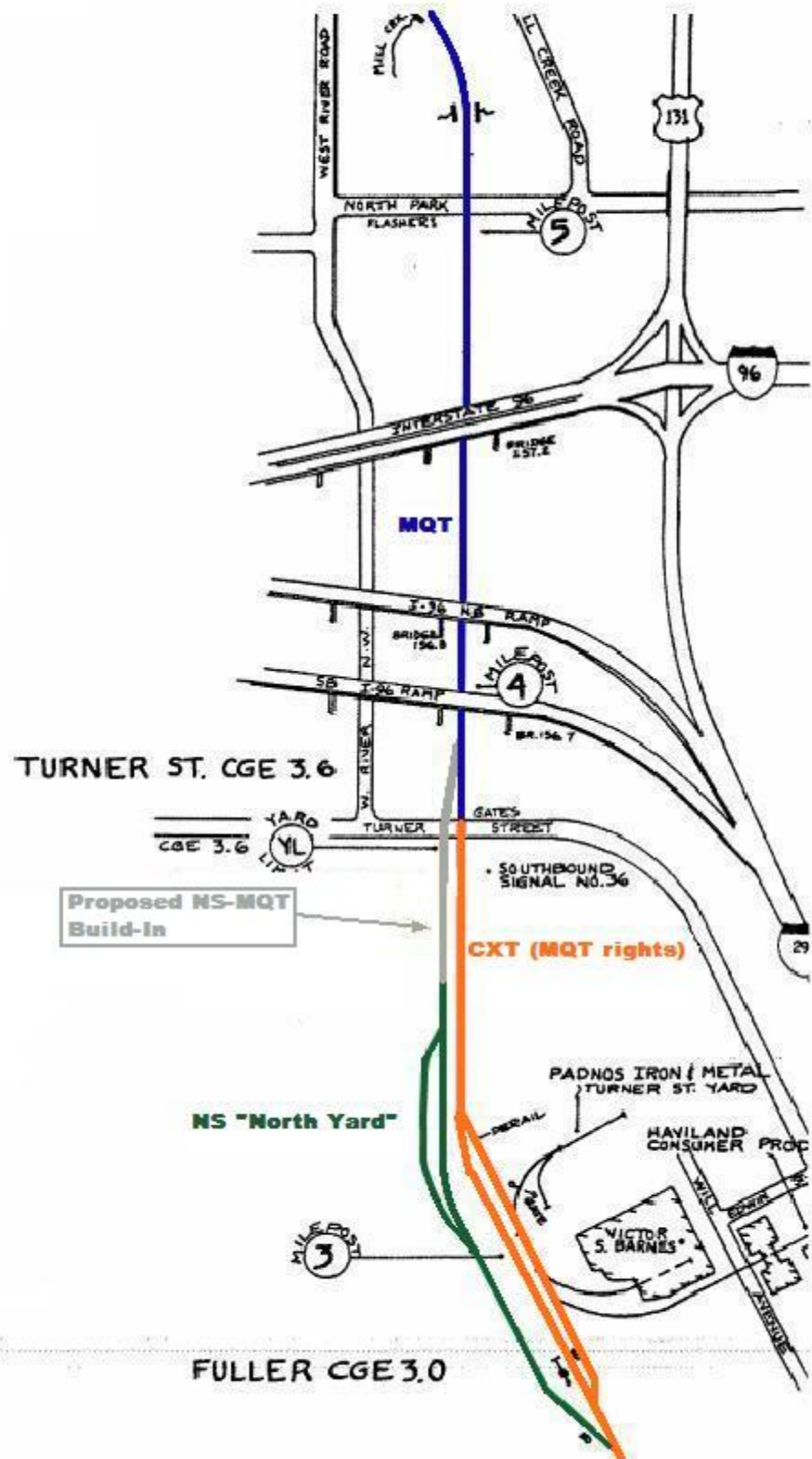
This haulage remedy with contingent trackage rights is not nearly as effective as trackage rights in maintaining our direct connection with NS, and it does not as readily solve the two to three and two to one circumstances created by

this transaction. However, reasonable haulage rates will enable Marquette Rail to work with NS in order to price our shippers' traffic in a fashion that will retain competitiveness with CSX rates.⁴ Further, should Michigan Central fail to move the traffic in a timely fashion pursuant to a reasonable set of service standards, we would have the same ability to move the traffic ourselves as NS proposes to have with its favored auto traffic.

The NS-Watco transaction, as currently proposed, adversely affects competition and should not be approved by the STB. With the conditions we have proposed, the competition promised by NS when it purchased Conrail will be preserved for Marquette Rail shippers, and I urge the STB to impose those conditions.

⁴ We have proposed rates for the movement of six or more units and sixty or more units on one bill of lading as that is how we anticipate the traffic will move post-transaction.

RUBLE V.S.
ATTACHMENT 1



Oct. 95

VERIFICATION

Kevin Ruble, under penalty of perjury, declares and verifies that he is President and Chief Executive Officer of Marquette Rail, LLC, that he has read the foregoing Verified Statement and knows the facts asserted therein, and that the same are true as stated.

A handwritten signature in black ink, appearing to read "Kevin Ruble", is positioned above a horizontal line.

Kevin Ruble

Dated: September 17, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket 35063

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

JOINT VERIFIED STATEMENT OF
SANDRA J. DEARDEN AND MAZHAR ALI AWAN,
HIGHROAD CONSULTING, LTD.

Sandra J. Dearden of HIGHROAD Consulting, Ltd. (HIGHROAD), and Mazhar Ali Awan of Transportation Economics, Inc. are pleased to submit their Verified Statement regarding the petition of Michigan Central Railway, LLC (MCR) to exempt its acquisition and operation of certain railroad lines of the Norfolk Southern Railway Company (NSR) in Michigan and Indiana.

Sandra J. Dearden is founder and President of HIGHROAD, a transportation and logistics consulting firm located in Chicago, Illinois. Prior to founding HIGHROAD in 1996, Sandra held a series of management positions over the course of a 26-year career in the marketing and sales departments of Illinois Central Railroad and the Chicago & North Western Transportation Company (North Western). During her tenure at North Western, she had profit and loss responsibility for a variety of transportation commodity groups, including business that moved under haulage arrangements. Also, since founding HIGHROAD, she has been involved with

numerous Surface Transportation Board proceedings involving regulatory costing. Under her direction, HIGHROAD developed the only rail costing model in the industry that is not based on URCS. INSIGHT: Rail Edition© costs are based on actual financial data filed by the Class I railroads in their R-1 reports to the STB. It is the only model that includes costs for Canadian railroads (Canadian rail costs are based on data reported in the Statistics Canada's Rail-In-Canada report). HIGHROAD has used INSIGHT: Rail Edition© on a variety of studies for railroad and rail shipper clients, including studies contracted by Class I railroads (Canadian National Railroad and the Kansas City Southern Railroad).

In 2003, Ms. Dearden published a white paper, "*2003 Rail Fuel Impact Report*" that showed the railroads were over-recovering fuel costs with their rail fuel surcharges. HIGHROAD also prepared cost evidence for four shippers that filed statements into *STB Ex Parte 661 Rail Fuel Surcharge Hearing*, and Ms. Dearden testified at the hearing. The cost evidence revealed fuel surcharges for the lanes studied were four to five times higher than the total cost of fuel for the moves.

During her career Ms. Dearden has been involved in the negotiation and implementation of numerous interline carrier agreements. She has extensive knowledge of haulage rates that have been negotiated and paid by carriers on various rail lines.

Mazhar Ali Awan, Managing Director of Transportation Economics, Inc. is an economist that has been working in the transportation industry for more than ten years. Mazhar Ali Awan and Associates have extensive

experience working on issues for the Federal Government. At the U.S. Surface Transportation Board (hereafter, STB or Board), Mr. Awan participated as an analyst or team leader in nearly all of the coal transportation rate cases brought before the Board since 1998. In addition to his case work, Mr. Awan has worked on the Board's rate studies and has briefed Commissioners on trends and developments in the railroad industry.

We have been retained by Marquette Rail to evaluate the haulage rate proposed by NSR and Watco for traffic moving from Marquette Rail via Grand Rapids, MI to Elkhart Junction, IN. Qualifications for Dearden and Awan are included in Attachment 1 hereto.

Statement of Mazhar Ali Awan

I was asked to perform cost studies on representative moves with the objective to determine railroad costs on the haulage portion of the Marquette Rail shipments from Grand Rapids, MI to Elkhart Jct., IN. The principal calculations are for shipments of calcium chloride (CaCl_2) from Ludington, MI, and movements of Pulp Board (Corrugated Cardboard) from Filer City, Michigan as they represent the bulk of the traffic currently moving via Marquette Rail-Norfolk Southern Railroad (NSR). Costs for both of these movements were calculated using the general methodology enunciated, *infra*.

Mr. Awan received data pertaining to the movements from Ludington and Filer City, MI and developed other inputs for the analysis. The reason these origins were selected is that the shipments move predominantly on NSR. The analysis employed the following inputs for the Uniform Rail Cost System (URCS) Phase III analysis:

- The analysis was for the haulage portion of the moves, from Grand Rapids, MI to Elkhart Jct., IN;
- Operating miles were based on PC Rail®;
- Shipment type (overhead);
- Number of freight cars;
- Lading weight;
- Commodity (for loss and damage expenses);
- Type of car and tare weight of the cars;
- Car ownership (railroad or private).

The analysis used 2005 URCS variable costs data, the most recent data available from the STB. The costs were updated to the current level, using data from categories which included Total Excluding Fuel, Equipment Rents Depreciation and Interest, Wage Rates and Supplements, and Materials and Supplies from the annual indexes of chargeout prices and wage rates (Table A Eastern Region) from the AAR Railroad Cost indexes, and developed factors based on current levels which was done by dividing 2006 annual numbers of those categories by 2005 annual numbers of those categories and then 2007 numbers of those categories in 4Q06 and 1Q07 by 2006 annual numbers of those categories. Next, we applied the average of all of the categories in which they all had equal weight and multiplied the final URCS 2005 numbers by those two averages from both indexed values from 2006 and 2007, which were 1.0577 (2006) and 1.04601 (2007 QTR 2) respectively.

We used the industry average tare weights for private and railroad cars, industry average empty/loaded miles ratios, industry average general

overhead ratio. Moreover, we used actual NSR costs for the moves. Discussion of the movement characteristics, costing assumptions and other factors follow.

Movement Characteristics – Shipments from Dow Chemical at Ludington, MI and Packaging Corporation of America at Filer City, MI will involve three segments: (1) Marquette Rail moves the cars as a handling carrier for Norfolk Southern, from the origins to Grand Rapids, MI (103 miles); (2) Michigan Central moves the cars for NSR from Grand Rapids, MI to Elkhart Junction, IN under a haulage agreement (103.6 miles); (3) NSR, the final line haul carrier, moves the cars to destinations or interchange points beyond Elkhart, IN.¹

For the variable cost calculations, we calculated NSR variable costs for the haulage portion of the move from Grand Rapids, MI to Elkhart, IN. Since the haulage move from Grand Rapids to Elkhart does not require switching of cars from shippers or to consignees, costs were calculated on the basis that this is an overhead move. An overhead move is one where the carrier neither originates nor terminates a movement, instead the overhead carrier simply performs as an intermediary between two or more other carriers that originate and terminate the movement. Further, one of the terms of the proposed haulage arrangement is cars bearing railroad reporting marks ("railroad cars") will stay in the account of NSR. Therefore, the haulage

¹ Currently CSX performs an intermediate switch for cars moving from Marquette Rail to NSR. If the STB orders construction of a direct connection between Marquette Rail and Michigan Central, the CSX intermediate switch will no longer occur.

costs were calculated assuming that Michigan Central would not incur car hire and mileage to be paid on railroad cars.

For costing purposes, we assumed each shipment would consist of at least six to ten cars based upon the advice of Mr. Kevin Ruble, in his Verified Statement, that anticipated movements to NSR, post-transaction, would be in the range of six to ten car units. Therefore, we calculated costs assuming six to ten-car shipments moving in manifest train service.

Other Considerations - the cost of capital affects the variable cost calculations. If the STB moves from a Discounted Cash Flow (DCF) method of determining the cost of equity component of the cost of capital to a Capital Asset Pricing Model (CAPM) method this would change the cost calculations.² The effect would be a decrease in the cost of capital in aggregate for the railroad industry, which I estimate would result in a reduction in the costs calculated for this proceeding by some 2% - 4% or more.

Results – summarized below are the results of our cost analysis for haulage service from Grand Rapids, MI to Elkhart Jct., IN:

<u>Commodity</u>	<u>Railroad Costs</u>³
Calcium Chloride	\$288.46 - \$315.58
Pulp Board	\$310.67 - \$335.24

It is generally accepted in the rail industry that short line railroad companies have lower labor, overhead and regulatory costs than Class I railroads. When performing the instant URCS cost studies, the calculations were based on Eastern Carriers average costs. Eastern average costs are

² STB Ex Parte No. 664, Methodology to be Employed in Determining the Railroad Industry's Cost of Capital, *Decision dated August 14, 2007*.

³ The full range of the URCS costs is detailed on page 11, *infra*.

developed by average costs for Class I carriers operating in the eastern half of the United States. Therefore, since Michigan Central will be providing the haulage service for NSR, actual operating costs for providing the haulage service to NSR should be lower than those produced by this analysis.

Statement of Sandra J. Dearden

Based on my experience and knowledge of other haulage agreements, the haulage rate proposed by NSR and Watco is extraordinarily high. Haulage rates vary based on distance and operations specific to the line. However, except for those instances where the Class I railroad has incredible market power and can demand a disproportionately high haulage rate, typical haulage rates are significantly lower than those proposed by NSR. This opinion is supported by the results of the URCS cost analysis performed by Mr. Awan, and the results are even more significant when comparing the haulage rates to costs calculated on the INSIGHT: Rail Edition© cost model.

In 1996, HIGHROAD developed INSIGHT: Rail Edition© so we would have the ability to understand railroad operating costs because we want to view the costs in the same manner railroad management personnel view their costs internally. HIGHROAD also uses URCS studies for certain projects, primarily for developing costs for STB proceedings. However, we do not use URCS for strategic planning. While we respect the reason behind the development of URCS, railroad marketing personnel do not use URCS for decision making, and the accuracy of the current URCS model is not useful for internal railroad costing.

Five years ago, we were asked to perform parallel cost studies, using URCS and INSIGHT: Rail Edition©. At that time, URCS costs averaged about 40% higher than the costs calculated by our cost model. In 2007 when performed parallel studies for a client with URCS and INSIGHT, URCS costs were more than double the costs calculated with our model.

When the Interstate Commerce Commission adopted URCS, it issued an order that URCS was to be updated every five years. However, URCS has not been updated since it was adopted in 1989.

When looking at the railroad industry pre-Staggers and post-Staggers, the industry has changed dramatically. The railroads are producing more with less, so the operating relationships and regression equations have changed, while URCS has not.

URCS relies on switching studies and special studies that are severely outdated, some 50 years or more. For example, in the early 50's, switching operations were paper generated orders managed by yardmasters. Today, the railroads use state-of-the art technology and paperless transactions.

	<u>1980</u> ⁴	<u>2004</u> ⁵
Revenue Ton Miles Per Employee (millions)	2.1	10.6
Revenue Ton Miles Per Employee Hour	1,776	3,908
Revenue Ton Miles Per Gallon of Fuel Consumed	235	410
Net Ton Miles Per Train Hour	40,392	59,209
Revenue Ton Miles Per Carload	41,352	55,245

⁴ Railroad Facts, 1990 Edition.

⁵ Railroad Facts, 2005 Edition.

The fact that some of the Class I railroads have requested studies based on INSIGHT: Rail Edition© costs, we believe, is an indication that the railroad clients were convinced the calculations from the cost model are valid.

INSIGHT: Rail Edition© was developed by HIGHROAD for calculation of rail costs for Class I railroads, for single car or multiple car shipment moving in manifest train service. Cost components can also be adjusted for calculation of unit train costs. The costs are carrier specific; unlike URCS-based cost models, INSIGHT: Rail Edition© includes costs for the Canadian railroads.

Costs are based on the railroads' own financial data filed in the R-1 reports with the Surface Transportation Board (U.S. railroads), and Statistics Canada's Rail-In-Canada report (Canadian railroads). Costs for all Class I railroads, collectively, and rail costs grouped by eastern and western regions, are also available in the model. Because shortline and regional railroads are not required to file R-1 reports, when routes include those railroads, eastern or western regional costs are used for the shortline/regional segment of the move.

Expenses are reported under *Movement Specific Expenses* and *System Average Expenses*, which allows the analysts to customize the studies by entering information that may be known as specific to the study in question rather than the averages built into the formulae. As with the URCS model, defaults are set for each car type, so costs are calculated based on the

industry average empty return ratios as reported by the Association of American Railroads (AAR).

Movement Specific Expenses include:

- Per Diem Payable – Per diem paid on foreign cars.
- Mileage Payable – Mileage portion of car hire paid on foreign cars.
- Loss and Damage – An allocation of carrier's loss and damage expenses to this carload. Based on net ton-miles, and is included in Movement Specific Expenses because it can be customized to be commodity specific.
- Joint Facility Charges – Joint facility charges paid to other carriers; usually specific by carrier and junction.
- Absorbed Switching – Switch charges paid to other carriers for either (a) intermediate switching to or from another line haul carrier, or (b) industry switching.
- Per Diem Reclaim – Per diem relief granted to switch carrier.
- Car Depreciation and Interest – That portion of a car's depreciation and interest allocated to this particular shipment, based on turnaround time.
- Heavy Repairs – That portion of a car type's heavy repair history allocated to this particular shipment, based on turnaround time.
- Running Repairs – Car type's running repair history, allocated based on round trip miles.
- Hazardous Risk – An allocation of carrier's hazardous commodity liability.
- Hazardous Switching – Additional switching expenses incurred when handling hazardous commodities.

System Average Expenses:

The following expenses are based on carrier specific average costs per ton-mile or car-mile:

- Locomotive Repairs and Maintenance – Per gross ton-mile.
- Locomotive Depreciation and Rental – Per gross ton-mile.
- Train Servicing – Servicing and preparation of locomotives, per gross ton-mile.
- Fuel – Per gross ton-mile.
- Maintenance of Way – Per gross ton-mile.
- Train Supplies and Expense – Per car-mile.
- Crew Wages – Per car-mile.
- Casualties – Carrier's historical casualty claims, per car mile.
- Heavy Wheel Loading – Maintenance of Way related costs; it is incurred if the lading weight is greater than 90 tons per loaded gross ton-mile.

- Switching – Average classification, industry and interchange switching minutes are estimated for the movement and multiplied by the carrier specific cost per minute.

Results - INSIGHT costs for the Michigan Central-NSR-Grand Rapids-Elkhart haulage operation, based on NSR costs, ranged from \$150.93 to \$171.71 per car for six to ten car units.⁶

Summarized below are the results of our analyses:

Commodity	Car Type	Shipment Weight	URCS	INSIGHT
28126	Private Hopper	95	\$298.80	\$171.69
Calcium	Private Tank Car	66	\$288.46	\$150.93
Chloride	Refrigerated Box Car	69	\$315.58	\$152.56
26311	Unequipped Box Car	65	\$310.67	\$150.39
Pulp board	Equipped Box Car	85	\$335.24	\$171.71

The above chart details costs for movements of six to ten car units based on Mr. Ruble's Verified Statement indicating that anticipated traffic to NSR will predominantly move in units of that size.⁷

However, as Mr. Ruble also indicates, there is the potential for movement of sixty car unit trains as well. I costed sixty car unit train movements from Grand Rapids to Elkhart Junction using the INSIGHT methodology and determined that the per car cost for those moves would be \$103 per car (inclusive of the empty return movement). This lower cost is due to the inherent efficiencies associated with the handling of larger unit trains.

⁶ Even the INSIGHT costs are over-stated in this case, since short line railroad costs are typically lower than Class I railroad costs.

⁷ These costs are inclusive of the empty return move.

The haulage rate proposed by NSR and Watco from origins on Marquette Rail, which includes an intermediate switch via CSX, is [REDACTED] per loaded car. However, the haulage rate proposed from the other two short line carriers, that do not use CSX as an intermediate switch carrier, is [REDACTED] per loaded car. If the STB orders a direct connection between Marquette Rail and NSR, the absorbed CSX intermediate switch charge of \$75 per car will be eliminated, so, for accurate comparison purposes, the proposed NSR-Watco haulage rate for Marquette Rail cars would be [REDACTED] per loaded car. As the above charts detail, this [REDACTED] per loaded car haulage rate is astronomical as compared to the actual costs associated with these movements.

Revenue-to-variable cost ratios developed with the above costs and assuming a [REDACTED] haulage rate would range [REDACTED]% - [REDACTED]% (URCS), and [REDACTED]% - [REDACTED]% (INSIGHT). These are extraordinarily high compared to the 10% to 12% margins that typically apply on haulage rates. Based on my experience with similar arrangements, if one assumes URCS costs, the haulage rate should be \$317 - \$368 per car. As discussed previously, we believe INSIGHT costs more accurately portray current costs. Assuming INSIGHT costs, the haulage rate should be \$166 - \$189 per loaded car for six to ten units and \$113 per loaded car for units of sixty or more.⁸

The fact that the NSR-Watco haulage rate for Marquette Rail traffic is astronomical as compared to the actual costs of the movement is born out by my real life experiences. Over the years, I have dealt extensively with

⁸ These rates are also inclusive of the empty return move.

haulage arrangements by shortline carriers on behalf of Class I railroads similar to the arrangement proposed in this proceeding.

For example, I reviewed various Class I-shortline agreements negotiated in 2003, which ranged from \$0.60 - \$0.70 per car mile. Escalated to bring to the 2007 level, those rates would be \$0.72 - \$0.83 per car mile. Applying those rates to this line (207.2 car miles), the haulage rate would be \$149.18 - \$171.98 per car, inclusive of the empty car return.

Another haulage agreement for 478 miles (round trip) to access multiple industries, was \$1.00/mile; escalated to bring to 2007 level, that rate would be \$1.19 per car mile. Applying that rate to the line from Grand Rapids to Elkhart Jct., IN, the haulage rate would be \$246.57 per car, inclusive of the empty return.

Similarly, shortline factors for unit train movements are typically well below the [REDACTED] per loaded car rate proposed by NSR and Watco. Two unit train agreements negotiated in 2003 and 2004 for unit train movements of coal over distances of 132-miles and 50-miles, respectively, reflect shortline factors of \$49 per loaded car for the 132-mile move and \$22 per car for the 50-mile move. Escalated to 2007 levels, this would result in rates of \$56.72 and \$25.20 per car.

Typically, when short line railroads assume operation of lines formerly served by Class I railroads, it results in a *Win/Win/Win* for the short line, the Class I railroad, and the shippers served on the line, because short line operators generally have lower labor, overhead, and regulatory costs than Class I railroads and therefore are often able to operate profitable lines that

were marginal or lost money for the original owners.⁹ Service is preserved for the shippers and it is likely that they will also realize long term benefits if they are served by a low cost carrier.

Prior to starting HIGHROAD in 1996, I was General Manager – Marketing & Sales for a Class I railroad which was a market leader for the commodities I managed, because I practiced market based pricing, which is pricing to maximize contribution while understanding the customers' requirements, which included the market dynamics and competitive factors, i.e., my railroad's competition presented by other carriers and source competition, in addition to competition presented by our customers' competitors, which we addressed in partnership with the customers.

Shippers make sourcing decisions and select carriers and routes based on the total delivered costs. It is difficult to comprehend that business will be preserved on this line if the haulage rate proposed by NSR is approved, since the shippers will be required to absorb a haulage rate of [REDACTED] per car in addition to the rates and lease costs for those shipments that move in private cars.

For example, from what I know about the rate in effect for one of the commodities currently moved via the Marquette Rail line to NSR, the haulage rates proposed by NSR will likely result in loss of business on the rail line:

⁹ United States Department of Agriculture, Prater, Marvin, *The Long Term Viability of Shortline and Regional Railroads*, July 1998. Heffner, J.D. (1983, January 31). *Shortline Railroads, Traffic World*, pp. 68-73, p. 68.

Current Rates
Haulage
Total Costs



We reviewed the 2005 STB Public Use Waybill File and found numerous records for shipments of the same commodity from other origins to the same destination BEA, that were rated lower than the above rates. The number of records we could have used were so significant, we selected three records for shipments from the Richmond/Petersburg, VA BEA that are representative. Rates for those moves in 2005 were \$3434.00; \$2612.00; and \$3587.00¹⁰. If we assume the rates were increased by two 5% rate increases, the current rates would be \$3786; \$2880; and \$3954 per car. Based on this data comparison, it is reasonable to assume that NSR *and* Marquette Rail will lose this business to CSX or motor carriers.

The key factor to an arrangement like the one proposed by NSR is that the Class I railroad benefits because the short line railroad can provide service at a lower cost, *and* then the Class I railroad (NSR) also receives haulage revenues. In this case, the haulage rate proposed by NSR appears to be self-serving and does not create a *Win/Win* for NSR and the short line. Further, I believe it likely that at least some of the business on the rail line will be lost on the line as a result of this haulage rate.

CONCLUSION

In sum, the NSR-Watco haulage rate is astronomical, to say the least, and is not likely to move the Marquette Rail traffic. Based on my real life experiences and our costing models, the haulage rates for Marquette Rail

¹⁰ STB 2005 Public Use Waybill File, Lines 1534, 1535, and 1536.

traffic moving via NSR between Grand Rapids and Elkhart Junction should be \$166 - \$189 per loaded car (inclusive of the empty return) for units of six to ten cars, and \$113 per loaded car (inclusive of the empty return) for units of sixty or more cars.

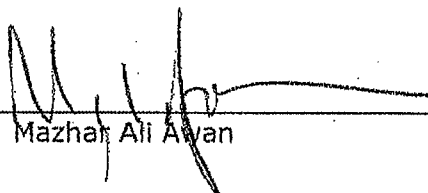
VERIFICATION

Sandra J. Dearden, under penalty of perjury, declares and verifies that she is President of Highroad Consulting, Ltd., that she has read the foregoing Verified Statement and knows the facts asserted therein, and that the same are true as stated.


Sandra J. Dearden

VERIFICATION

Mazhar Ali Awan, under penalty of perjury, declares and verifies that he is Managing Director of Transportation Economics, Inc., that he has read the foregoing Verified Statement and knows the facts asserted therein, and that the same are true as stated.



Mazhar Ali Awan

Sandra J. Dearden, President



Sandra J. Dearden is the founding President of HIGHROAD Consulting, Ltd. Prior to forming the firm in 1996, Sandra was General Manager – Sales & Marketing for a strategic business unit at Chicago & North Western Transportation Company; she brings more than thirty years of experience in strategic planning, contribution based management, business development, regulatory and litigation support to the firm's engagements.

Ms. Dearden was instrumental in the development of the unit train distribution system for Canadian potash to U.S. markets. She conceived and implemented North Western's truck competitive fertilizer marketing program, which received recognition when North Western was awarded a *Golden Freight Car Award* for distinguished marketing by Modern Railroads Magazine.

Also, representing North Western, Ms. Dearden directed a legislative campaign against a U. S. Department of Commerce preliminary decision relative to the dumping of Canadian potash into the United States. Working with Governmental Affairs personnel, she developed a seven-page fact sheet showing the economic impact and she responded to inquiries from congressional and senatorial aids to representatives on key committees. As a result, a compromise agreement was reached to the satisfaction of all parties. By invitation, Ms. Dearden subsequently was a seminar leader at a NAFTA seminar in Toronto, ON where the dumping decision was presented as a case study.

Sandra has directed numerous cross-functional projects and has the experience needed to consult on a number of subjects and projects. Under her direction, HIGHROAD personnel designed and developed our rail costing model, **INSIGHT: Rail Edition®** and our benchmarking analytical process, **VIEWPOINT™**.

Ms. Dearden developed HIGHROAD's business model based on providing consultants who are experts in their respective fields. All of HIGHROAD'S consultants have senior management or middle management line experience in their respective functional areas.

HIGHROAD'S project work covers all functional areas of transportation and logistics, including strategic planning, rate and contract services, transportation operations, transportation management, asset utilization, industrial development, activity based costing, rail costing and regulatory costing. An example of a current project - HIGHROAD is assisting PepsiCo in the consolidation of rail operation for PepsiCo's business units, Frito-Lay, Quaker Oats, Tropicana and Pepsi.

Ms. Dearden has submitted expert testimony in numerous proceedings before the Interstate Commerce Commission and its successor agency, the Surface Transportation Board. She served as an expert marketing witness in North Western's acquisition of the former Rock Island Spine Line from Minneapolis to Kansas City, and on the anti-trust portion of North Western's application to acquire the Milwaukee Road. North Western received favorable rulings in all of these proceedings.

Under **STB Finance Docket No. 42060, North American Freight Car Association v. Burlington Northern and Santa Fe Railway Company**, Ms. Dearden represented a client in the proceeding, opposing empty car storage charges. HIGHROAD was contacted by the railroad's outside counsel, an agreement was negotiated that was favorable to HIGHROAD's client.

Under her direction, HIGHROAD cost experts reviewed financial data presented by Burlington Northern Santa Fe, **STB Docket No. AB-6 (Sub-No. 382X), Burlington Northern and Santa Fe Railway Company Abandonment within the city limits of Chicago in Cook County, Illinois**. HIGHROAD'S Consultant, representing the clients opposing the abandonment, prepared a verified statement noting errors in the BNSF filing. The abandonment was denied by the Surface Transportation Board.

Ms. Dearden directed a team of consultants that submitted rebuttal testimony for the complainant shipper, Wisconsin Power & Light, in a stand-alone rate case against the Union Pacific Railroad See **Finance Docket 42051, Wisconsin Power and Light Company, Complainant, v. Union Pacific Railroad, Defendant.** The Surface Transportation Board found that the defendant railroad had market dominance and that the challenged rate was too high. Maximum reasonable rates were prescribed and reparations were ordered. The decision was upheld in the Court of Appeals.

Ms. Dearden also prepared the competitive impact analysis for Kansas City Southern to support its position opposing the merger of Union Pacific Railroad's and Southern Pacific Transportation Company, **Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. And the Denver and Rio Grande Western Railroad Company, Comments of the Kansas City Southern Railway.** Although the Surface Transportation Board approved the merger, KCS received a favorable opinion from the Department of Justice, due to the competitive impact.

Sandra is respected as a seminar speaker. Topics include: Rail Fuels Surcharges – Rail Fuel Impact Study; Integrating Activity Based Costing into Distribution Planning and Market Based Pricing; Logistics Tools, Midwest Advisory Board; and at a NAFTA Seminar in Toronto, ON, Impact of Department of Commerce Surcharges on Canadian Potash on U.S. Farm Economy.

She is a member of the Intermodal Advisory Board, Chicago Area Transportation Study (CATS); Rail Committee, National Industrial Traffic League; and serves on the Board of Directors, Midwest Association of Rail Shippers, and a former officer and member of the Governing Board of the Traffic Club of Chicago. As a representative of CATS, Ms. Dearden participated in the RTP 2030 Initiative to develop a Regional Transportation Plan for northeastern Illinois; she authored the freight component of the 2030 Plan which has been adopted without change.



Sandra J. Dearden President

Sandra J. Dearden is President of **HIGHROAD Consulting, Ltd.** Prior to forming the firm in 1996, Sandra was General Manager – Sales & Marketing for a strategic business unit at Chicago & North Western Transportation Company; she brings more than 25 years of experience in strategic planning, contribution based management, business development, regulatory and litigation support to the firm's engagements.

During her tenure at North Western, business unit revenues increased in the double digits each year, and by 69% during the last five years in an otherwise declining market. Annual profits increased by \$15 million during the same time period due to business growth and productivity changes, including improved covered hopper utilization which was the result of a new customer service program, and allocation of equipment based on contribution per car day.

While Sandra was responsible for pricing and marketing of transportation services she also chaired the North Western's Hazardous Commodity Committee, which was responsible for development of policies for handling of hazardous commodities, for seven years. As Chair, she conducted research and authored the company's Degree of Hazard Rating Manual, which successfully limited the company's liability. Also in that role, she researched and drafted a policy for handling of hazardous waste, which was adopted by senior management, and she represented North Western on a nationwide committee of railroads to plan for transportation of high level nuclear waste.

Ms. Dearden was instrumental in the development of the unit train distribution system for Canadian potash to U.S. markets. She conceived and implemented North Western's truck competitive fertilizer marketing program, which received recognition when North Western was awarded a *Golden Freight Car Award* for distinguished marketing by Modern Railroads Magazine.

As a consultant, Ms. Dearden has earned a reputation for her work for railroads and shipper clients to identify and measure competitive impact. Under her direction, the firm developed **VIEWPOINT™**, an analytical process to benchmark freight transportation costs.

Also, while at North Western, Ms. Dearden directed a legislative campaign against a U. S. Department of Commerce preliminary decision relative to the dumping of Canadian potash into the United States. Working with Governmental Affairs personnel, she developed a seven-page fact sheet showing the economic impact and she responded to inquiries from congressional and senatorial aids to representatives on key committees. As a result, a compromise agreement was reached to the satisfaction of all parties. By invitation, Ms. Dearden subsequently was a seminar leader at a **NAFTA** seminar in Toronto, ON where the dumping decision was presented as a case study.

Sandra has participated in numerous proceedings before the Interstate Commerce Commission and its successor agency, the Surface Transportation Board. During her tenure at North Western, she served as an expert marketing witness on more than twelve line abandonment cases. North Western received favorable rulings in all of those proceedings. Additional examples of litigation experience include:

The Consulting Firm -

- **STB Ex Parte 661, Rail Fuel Surcharge Hearing.** **HIGHROAD** prepared cost evidence for four clients that filed statements into the proceeding, which proved the railroads were over-recovering with their fuel surcharge programs. Ms. Dearden also presented testimony into the proceeding. The Board ruled that surcharges that are based on a percentage of the rates constitute an unreasonable practice, and ordered the railroads to revise their programs so surcharges reflect actual fuel cost increases. In April 2007, the railroads announced new fuel surcharge programs on non-exempt traffic that are mileage based.
 - **Finance Docket 42051, Wisconsin Power and Light Company, Complainant, v. Union Pacific Railroad, Defendant.** A team of **HIGHROAD** consultants prepared and submitted rebuttal testimony regarding G&A staffing of the stand-alone railroad for the shipper, Wisconsin Power & Light, in a stand-alone rate case against the Union Pacific Railroad. Ms. Dearden developed the staffing plan for the Marketing Department and she served as Project Manager, directing development of the staffing plan for the other departments. Sandra prepared the joint rebuttal verified statement for the three **HIGHROAD** witnesses. In their decision, the STB found that the defendant railroad had market dominance and that the challenged rates were too high. Maximum reasonable rates were prescribed and reparations were ordered.
 - **Finance Docket 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail, Inc. and Consolidated Rail Corporation.** Ms. Dearden presented testimony on behalf of a client supporting neutral control of Indiana Harbor Belt. CSX was awarded control over IHB; however, the STB established oversight for a five-year period, which was without precedent. As a result, CSX is required to file weekly reports with the STB relative to service on the line.
 - **Finance Docket 42060, North America Freight Car Association – Protest and Petition for Investigation, Reply to Motion to Dismiss of the Burlington Northern and Santa Fe Railway Company.** Ms. Dearden representing a client participated in the proceeding, opposing storage charges on empty cars announced by Burlington Northern Santa Fe, on the basis that the charges violate the terms of an agreement negotiated in 1983 under Exparte 328. Ms. Dearden was contacted by BNSF outside counsel and an agreement was negotiated for the client, which precluded significant cost increases.
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- **Finance Docket 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company, Comments of the Kansas City Southern Railway.** Sandra Dearden prepared the competitive impact study for Kansas City Southern to support its position, opposing the merger of Union Pacific Railroad's and Southern Pacific Transportation Company. Although the Surface Transportation Board approved the merger, KCS received a favorable opinion from the U. S. Department of Justice, due to the competitive impact.
 - **Finance Docket No. AB-6 (Sub-No. 382X), Burlington Northern and Santa Fe Railway Company Abandonment within the city limits of Chicago in Cook County, Illinois.** **HIGHROAD's** Consultants worked with legal counsel representing the clients opposing the abandonment, and noted errors in the BNSF financial filing. BNSF work papers were requested through discovery and BNSF failed to respond. A Consultant prepared a verified statement noting the errors in the BNSF filing, and the abandonment was denied.

Representing Chicago & North Western -

- **Finance Docket 28640, Chicago, Milwaukee, St. Paul and Pacific Railroad Company – Reorganization – Acquisition by Grand Trunk Corporation.** Ms. Dearden presented written and oral testimony as an expert marketing witness, on the anti-trust portion of North Western's application to acquire the Chicago, Milwaukee, St. Paul & Pacific Railroad. North Western received a favorable ruling on this part of the case.
- **Finance Docket 29518, Soo Line Railroad Company – Purchase (Portion) – Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) – Lines in Minnesota, Iowa and Missouri.** This case involved Chicago & North Western's proposed acquisition of the former Rock Island Spine Line from Minneapolis to Kansas City. Ms. Dearden presented expert marketing testimony that outlined the benefits of the proposed acquisition relative to the competitive impact on the farm retailers in Iowa. The acquisition was approved.

Ms. Dearden has directed numerous cross-functional projects and has the experience needed to consult on a number of subjects and projects. She serves on the Intermodal Advisory Board, Chicago Area Transportation Study (CATS). As CATS' representative she recently authored the freight component of the RTP 2030 Initiative to develop a Regional Transportation Plan for northeastern Illinois. She is an Officer on the Board of Directors of the Traffic Club of Chicago; she is a member of the Rail Committee, for the National Industrial Traffic League; and she serves on the Board of Directors as Chair of Legislative Matters for the Midwest Association of Rail Shippers. She also served a two-year as the National Representative for Public Policy for the National Association of Women Business Owners.

Mazhar Ali Awan, Executive Consultant, is an economist that has been working in the transportation industry for nearly ten years. Awan has been a lobbyist on Capitol Hill and served as an economic consultant to various international institutions.

Awan started his transportation career as an Economic Advisor at the David Institute, where he performed research and advised on the effects of public policy and the ramifications relative to the Institute's goals and objectives. Subsequently, he was recruited as Research Associate by George Mason University. His work included:

- Research and computer modeling of various Intelligent Transportation Systems (ITS) projects related to intermodal mass transportation.
- Research of economic development impacts on small and medium sized airports on regional economies.
- Research for CAPWIN project governance requirements.

Prior to launching a career as a professional consultant, Awan was an Economist for the United States Surface Transportation Board (STB), where he worked to identify and remedy market failures in the railroad and pipeline industries. He is well versed in both the theoretical and practical implications of various problems within the transportation industry.

During his tenure at the Board, Awan worked on numerous coal rate cases for the Surface Transportation Board, performing as an individual analyst or as a team leader in nearly all of the rate cases brought before the Board since 1998. His scope of responsibilities included:

- Written and oral reports on matters before the STB.
- Economic analysis of railroad maximum reasonable rate cases, market structure analysis, Ramsey pricing, and Stand-Alone-Cost (SAC) analysis.
- Review and analysis of economic effects of abandonment and discontinuance applications.
- Oversight and regulation of inter-city bus industry (primarily merger and control transactions), pipeline carriers, non-contiguous domestic water transportation, household goods carriers, and collectively determined motor carrier rates.
- Research of public policy proposals and transportation related topics of interest to the STB.

Awan's work as a consultant includes:

- Quality control of evidence and work papers to ensure adherence to STB evidentiary standards.
- Advise clients on appropriate litigation strategies when litigation is required, and the likely outcomes of the various permutation of case.
- Critical analysis of defending railroad arguments and formulation of responses to said arguments.
- Implement management and efficiency requirements in the development of rate cases and related evidence.
- Oversight of the various (Opening, Reply, Rebuttal, and as required, Supplemental) rounds of evidence.

Research

Presentations:

- "Privatization, Regulation and the International Railroad Industry" presented at the STB Special Luncheon Seminar Series.
- "Transportation Modal Considerations in Privatization Techniques" presented at George Mason University, School of Public Policy, Policy Seminars.
- "Developing a SAC Case" presented at the Western Coal Traffic League Annual Conference.
- "Uniform Rail Costing System: Its development functions, and uses in the public and private sector" presented at the World Conference on Transportation Research.
- "Considerations in STB Rail Rate Proceedings" presented at the National Coal Transportation Association Annual Conference.
- "Rail Infrastructure and Capacity: Demand, Supply, and Regulation – A Quick Micro Macro Tour" presented at Informa Economics' Transportation and Logistics Roundtable.
- Various Surface Transportation Board Voting Conferences.

Published:

- "An Alternative Solution to Poverty – Advantages of Employee Stock Ownership Programs" published in the Chicago Independent.
- "Educational Development in the Black Community", Black and Right – a collection of essays concerning Black America with Clarence Thomas, Thomas Sowell, and others, editor-in-chief Stan Faryna.
- "Going Trans-European" – book review published in the Journal of the Transportation Research Forum.
- "The Road from Kyoto: Current CO2 and Transportation Policies in the IEA" – book review published in the Journal of the Transportation Research Forum.
- "Partners in Motion's SmarTraveler" – Executive Summary for the Venter for Regional Analysis Report on the use of ITS technologies for dissemination of traffic information.

In Progress:

- "A Comparative Analysis of Railroads to Other Network Industries" – a paper that compares railroads to airline, telecommunications, and electric utility industries.

Mazhar Ali Awan is fluent in English, Urdu, Hindi, Punjabi, and limited Spanish. He earned a Ph.D. Public Policy, Theory Methods in Regional Policy, School of Public Policy, George Mason University, Fairfax, VA. *Dissertation: Democratization: Accurately Measuring Democracy.* He earned his M.A. Interdisciplinary Studies, Regional Economic Development and Technology, George Mason University, Fairfax, VA. *Thesis: Privatization: An Assessment of the Rail Freight Transport Sector.* He received a B.S. Economics, Minor in History, George Mason University, Fairfax, VA.



September 18, 2007

The Dow Chemical Company
Midland, Michigan 48674
USA

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is Jeff Baker, Senior Market Supply Manager of Dow Chemical Company ("Dow"). Dow strongly supports the efforts of Marquette Rail, LLC to preserve an adequate direct connection with Norfolk Southern on behalf of Dow and other Marquette Rail shippers in the above-referenced transaction. We have submitted separately Comments and Request for Conditions seeking construction of a direct connection from Marquette Rail to Michigan Central at Grand Rapids. We are submitting this letter in support of the other conditions sought by Marquette Rail in this proceeding.

Dow is a diversified chemical company that harnesses the power of innovation, science and technology to constantly improve what is essential to human progress. The company offers a broad range of products and services to customers in more than 175 countries, helping them to provide everything from fresh water, food and pharmaceuticals to paints, packaging and personal care products. Built on a commitment to its principles of sustainability, Dow has annual sales of \$49 billion and employs 43,000 people worldwide. The company has 150 manufacturing sites in 37 countries and produces more than 3100 products.

The Dow Chemical Company is the world's largest producer of Calcium Chloride. Our products, sold under the trademarks of PELADOW, LIQUIDOW, DOWFLAKE, DOWFLAKE Xtra, and COMBOTHERM are used in a wide variety of applications, including snow and ice control, dust control, ready-mix concrete and agriculture.

Dow's sole manufacturing facility for the production of Calcium Chloride is located at Ludington, Michigan and is served by the Marquette railroad. Dow originates approximately 4,800 cars of Calcium Chloride annually. Much of our traffic currently moves via CSX, but NS offers a viable competitive alternative. The competition between NS and CSX at Grand Rapids and our direct access to two Class I carriers is critical to our success.

If NS were to succeed with its current plan to sell a substantial portion of its Michigan lines to Michigan Central, Dow would lose the presence of competition between two large railroads, CSX and NS, and be hindered in its marketing efforts to access locations served by NS.

Nearly a decade ago, NS advised the Surface Transportation Board that the fundamental basis of the Conrail merger was to introduce rail competition to the Northeast and Midwest. The break-up of Conrail resulted in the Michigan rail lines at issue in this Michigan Central transaction being transferred from Conrail to NS. Since CSX already reached parts of this area, the result of the merger was the introduction of new Class I rail competition in our State. Points formerly served only by Conrail were served by NS or CSX, two large railroads with significant territory and resources and the wherewithal to deliver dependable, long-range rail service.

Taking NS out of this competitive environment would degrade the ability of rail customers in Michigan, particularly those located along Marquette Rail, to have interchange access to two competitive Class I railroads only a short distance away in Grand Rapids, Michigan. Further, it would impede our marketing efforts at NS-served locations because shippers will have to deal with an additional intermediate short line carrier in the routing.

We believe that the Surface Transportation Board should impose the remedies sought by Marquette Rail as a condition to approval of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as Marquette Rail trackage rights via Michigan Central to a direct connection with NS at Elkhart Junction, Indiana, or alternatively a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), while not as good as the current direct connection to Norfolk Southern, are vital to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the Surface Transportation Board nine years ago when NS touted its single line service as a primary basis for its acquisition of the Conrail lines in Michigan.

We appreciate the STB's consideration of our thoughts on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Baker". The signature is fluid and cursive, with the first name "Jeff" and last name "Baker" clearly distinguishable.

Jeff Baker
Senior Market Supply Manager
The Dow Chemical Company



September 18, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is Paul T. Stecko, Chairman and Chief Executive Officer of Packaging Corporation of America ("PCA"). PCA strongly supports the efforts of Marquette Rail, LLC and Dow Chemical Company to preserve an adequate direct connection with Norfolk Southern on behalf of PCA and other Marquette Rail shippers in the above-referenced transaction.

PCA is a world-class manufacturer of containerboard and corrugated packaging. Our focus on a single line of business not only differentiates us from our major competitors, but also helps us achieve levels of operational excellence that are highly respected within the industry. With 2006 net sales of \$2.2 billion and 8,300 employees, PCA produced 2.4 million tons of containerboard and shipped 31.3 billion square feet of corrugated products. In 2006, we produced over 1.5 million tons of kraft linerboard at our mills in Counce, TN and Valdosta, GA. We also produced 916,000 tons of semi-chemical medium at our mills in Tomahawk, WI and Filer City, MI. Our 68 converting operations produce a wide variety of corrugated packaging products, including conventional shipping containers used to protect and transport manufactured goods.

At our Filer City, MI facility, which is located on Marquette Rail's line, we have invested over \$40,000,000 in plant improvements over the last three years. From this location, we ship approximately 4,000 cars per year via Marquette Rail to interchanges at Grand Rapids with NS and CSX. Much of our traffic moves via CSX, but over the past year we have been increasing our shipments via NS. We have significant potential for growth and distribution at NS-served sites and are endeavoring to market those sites and capitalize on that potential. The competition between NS and CSX at Grand Rapids and our direct access to two Class I carriers is critical to our success.

If NS were to succeed with its current plan to sell a substantial portion of its Michigan lines to Michigan Central, PCA would lose the presence of competition between two

large railroads, CSX and NS, and be hindered in its marketing efforts to access locations served by NS.

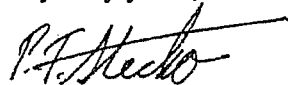
Nearly a decade ago, NS advised the Surface Transportation Board that the fundamental basis of the Conrail merger was to introduce rail competition to the Northeast and Midwest. The break-up of Conrail resulted in the Michigan rail lines at issue in this Michigan Central transaction being transferred from Conrail to NS. Since CSX already reached parts of this area (primarily on the old Pere Marquette railroad), the result of the merger was the introduction of new Class I rail competition in our State. Points formerly served only by Conrail were served by NS or CSX, two large railroads with significant territory and resources and the wherewithal to deliver dependable, long-range rail service.

Taking NS out of this competitive environment is an ill-advised move. It would degrade the ability of rail customers in Michigan, particularly those located along Marquette Rail, to have interchange access to two competitive Class I railroads only a short distance away in Grand Rapids, Michigan. Further, it would impede our marketing efforts at NS-served locations because shippers will have to deal with an additional intermediate short line carrier in the routing. Finally, NS's departure would increase CSX's market power due to the absence of effective Class I competition in Grand Rapids, thus raising the floor on CSX's rates.

We believe that the Surface Transportation Board should impose the remedies sought by Marquette Rail and Dow Chemical Company as a condition to approval of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as Marquette Rail trackage rights via Michigan Central to a direct connection with NS at Elkhart Junction, Indiana, or alternatively a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), while not as good as the current direct connection to Norfolk Southern, are vital to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the Surface Transportation Board nine years ago when NS touted its single line service as a primary basis for its acquisition of the Conrail lines in Michigan.

We appreciate the STB's consideration of our thoughts on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,



Paul T. Stecko
Chairman & Chief Executive Officer
Packaging Corporation of America

**Martin Marietta
Magnesia Specialties**



1800 Eastlake Road
P.O. Box 398
Manistee, MI 49660
Telephone: 231-723-1205
Fax: 231-723-1240

September 16, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E. Street S.W.
Washington, DC 20423-0001

Regarding:
STB Finance Docket No. 35063
Michigan Central Railway, LLC
Acquisition and operation exemption
Lines of Norfolk Southern Railway Company

Dear Secretary Williams:

The purpose of this letter is to comment on the above referenced matter. Martin Marietta does not oppose the transaction provided the Board imposes certain conditions to preserve the existing situation for traffic destined for or originating at Martin Marietta's Manistee, MI plant.

Martin Marietta is a publicly traded company headquartered in Raleigh, North Carolina. It processes minerals and aggregates at facilities throughout the United States and is a significant user of rail services. Martin Marietta's sole manufacturing facility for the production of magnesium hydroxides and magnesium oxides is located in Manistee, MI. The facility receives 2,000 cars per year of raw materials and ships approximately 2,000 more cars of a variety of products to customers and terminals throughout North America. The Manistee facility is served by the Marquette Railroad (MQT)

Martin Marietta's current ability to be competitively served through Norfolk Southern Railway (NSR) is already hampered by the required CSX Transportation, INC (CSXT) interchange in Grand Rapids, MI. The proposed transaction to convey NSR's Grand Rapids to Elkhart Junction line to Michigan Central Railway, LLC (MCR) will insert yet another party adding additional costs and delivery delays. Martin Marietta believes that this transaction will further impair NSR's ability to compete with CSXT for MQT traffic.

The STB's approval of the proposed transaction without conditions will essentially eliminate market competition for rail shipments originating or terminating on MQT. This will leave the sole provider, CSXT with the ability to implement unreasonable pricing for rail shipments into and out of Martin Marietta's Manistee, MI facility. Martin Marietta respectfully submits that the STB consider this carefully and advocate a position to protect shippers such as Martin Marietta from abuses of market power that would be a consequence of an unconditional approval of the proposed transaction.

Martin Marietta endorses the conditions of approval submitted by the Dow Chemical Company in their comments and request for conditions regarding this matter. The condition to require the MCR and/or NSR to construct a direct connection to MQT in Grand Rapids will preserve the existing rail shipping alternatives and satisfy the statutory requirements for the exemption necessary for this transaction. Construction of the connection also appears to be feasible and economically reasonable based on our knowledge and experience. Martin Marietta also supports the comments and request for conditions made by MQT relating to haulage rates paid by NSR to MCR. The level of these rates could have an equally unfavorable impact on NSR's ability to competitively service the Manistee, MI facility.

Martin Marietta respectfully requests that the STB condition its approval of this transaction upon the construction by MCR and/or NSR of a direct connection at Grand Rapids between MQT and the NSR track to be acquired by MCR, and upon the haulage rate paid by NSR to MCR.

Sincerely,



Jim Reithel
General Manager -- Operations
Martin Marietta Magnesia Specialties

EXHIBIT G

August 30, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is Ed Seng, President of Seng Dock and Trucking. Seng Dock and Trucking strongly supports the efforts of Marquette Rail, LLC to preserve an adequate direct connection with Norfolk Southern on behalf of Seng Dock and Trucking and other Marquette Rail shippers in the above-referenced transaction.

Seng Dock and Trucking, located in Manistee, Michigan, is ~~Construction Materials~~. Seng Dock and Trucking is a current user of rail service, receiving inbound freight at its location in Manistee, Michigan. Marquette Rail is the delivering carrier and they receive it in interchange at Grand Rapids from CSX. However, we are currently seeking opportunities from NS-served origination points, and the ability of Marquette Rail to interchange with NS at Grand Rapids creates a competitive environment and ensures dependable rail service at competitive rates to Grand Rapids.

If NS were to succeed with its current plan to sell a substantial portion of its Michigan lines to Michigan Central, Seng Dock and Trucking would lose the presence of competition between two large railroads, CSX and NS, and be hindered in its marketing efforts for locations served by NS.

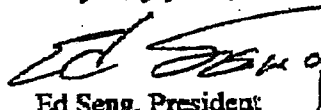
A strong selling point of the Conrail merger was to introduce rail competition to the Northeast and Midwest. The break-up of Conrail resulted in the lines in this transaction going from Conrail to NS. Since CSX already reached parts of this area (primarily on the old Pere Marquette), the result was that a new rail competition was introduced on the old Conrail lines because points that used to be served only by Conrail would now be served by NS or CSX, two large railroads with significant territory and resources and the wherewithal to deliver dependable, long-range rail service.

Taking NS out of this competitive environment is an ill-advised move. It degrades the ability of rail customers in Michigan, particularly those located along Marquette Rail, to have interchange with two Class I railroads, that compete with each other throughout the East and Midwest, only a short distance away in Grand Rapids, Michigan. It impedes marketing efforts at NS-served locations because shippers will have to deal with an intermediate carrier and it increases CSX's market power because they no longer have Class I competition in Grand Rapids, thus raising the floor on CSX's rates.

We believe that the Surface Transportation Board should impose the remedies sought by Marquette Rail as a condition to approving of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), with contingent trackage rights for Marquette Rail in the event of service performance failures, while not as good as the current direct connection to Norfolk Southern, are vital to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the Surface Transportation Board nine years ago when NS touted its single line service as a primary basis for its acquisition of the Conrail lines in Michigan.

We appreciate the STB's consideration of our thoughts on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,



Ed Seng, President
Seng Dock and Trucking

September 18, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is JEFFREY ALBERT of Ambassador Steel Corporation. Ambassador Steel strongly supports the efforts of Marquette Rail, LLC to preserve an adequate direct connection with Norfolk Southern on behalf of Ambassador Steel and other Marquette Rail shippers in the above-referenced transaction.

Ambassador Steel Corporation, headquartered in Auburn, Indiana, is a fabricator and distributor of concrete reinforcing steel and related products. Founded in 1974, the corporation has grown to be one of the largest independent fabricators and distributors of rebar in the Midwestern United States.

If NS were to succeed with its current plan to sell a substantial portion of its Michigan lines to Michigan Central, Ambassador Steel would lose the benefit of competition between two large railroads, CSX and NS, and be frustrated in its marketing efforts to access locations served by NS.

Almost a decade ago, NS advised the Surface Transportation Board that the fundamental basis of the Conrail merger was to introduce rail competition to the Northeast and Midwest. The break-up of Conrail resulted in the Michigan rail lines at issue in this Michigan Central transaction being transferred from Conrail to NS. Since CSX already reached parts of this area (primarily on the old Pere Marquette railroad), the effect of the merger was the introduction of new Class I rail competition in our State. Points formerly served only by Conrail were served by NS or CSX, two large railroads with significant territory and resources and the capacity to deliver dependable, long-range rail service.

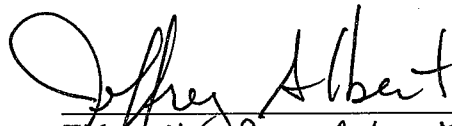
Taking NS out of this competitive environment is an ill-conceived step. It would hinder the ability of rail customers in Michigan, particularly those located along Marquette Rail,

to have interchange access to two competitive Class I railroads only a short distance away in Grand Rapids, Michigan. Further, it would thwart our marketing efforts at NS-served locations because shippers will have to deal with an additional intermediate short line carrier in the routing. Finally, NS's departure would increase CSX's leverage due to the lack of effective Class I competition in Grand Rapids, thus raising the floor on CSX's rates.

We believe that the STB should impose the remedies sought by Marquette Rail as a condition to approval of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as Marquette Rail trackage rights via Michigan Central to a direct connection with NS at Elkhart Junction, Indiana, or alternatively a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), while not as good as the current direct connection to Norfolk Southern, are vital to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the Surface Transportation Board nine years ago when NS touted its single line service as a primary basis for its acquisition of the Conrail lines in Michigan.

We appreciate the Board's consideration of our thoughts on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey Albert". The signature is fluid and cursive, with a large initial "J".

Title: Vice President, General Manager
Ambassador Steel Corporation



Harsco Track Technologies

Harsco

200 S. Jackson Rd.
Ludington, MI 49431 USA

Telephone: 231.843.3431

Fax: 231.843.4030

Web: www.harscotrack.com

September 10, 2007

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is Roger Nash, General Manager-Ludington Plant of Harsco Track Technologies. Harsco Track Technologies strongly supports the efforts of Marquette Rail, LLC to preserve an adequate direct connection with Norfolk Southern on behalf of Harsco Track Technologies and other Marquette Rail shippers in the above-referenced transaction.

Harsco Track Technologies is a major international supplier of railway track maintenance equipment and services for private and government-owned railways worldwide. It is a division of Harsco Corporation, a diversified, global provider of market-leading industrial services and engineered products with annual sales in excess of \$3.4 billion. Serving customers around the world, Harsco's lineage dates to 1742 and includes one of the oldest continuously operating industrial companies in the United States. Harsco's operations employ over 21,000 people at over 400 locations in 40 countries.

With manufacturing facilities in the United States, Australia and England, Harsco Track Technologies designs and manufactures an extensive line of equipment including tamping machines, ballast regulators and brooms; tie inserters and removers; spike drivers, pullers and reclaimers; rail grinders; track geometry vehicles; Hy-Rail® attachments; ballast undercutters; tie handlers; track construction and renewal machines; rail welding equipment; and dust control systems.

Major railway contract services include rail grinding, new track construction, track renewal, track and turnout undercutting, plus rail renewal and tie pad change out systems.

Harsco Track Technologies' engineering expertise and depth of product line enable it to offer the most comprehensive portfolio of capabilities to the worldwide railroad maintenance-of-way industry and make it the largest provider of railway track maintenance services and equipment.

We have a production facility located in Ludington, Michigan. Marquette Rail cars originating or terminating at Ludington are interchanged in Grand Rapids. At Grand Rapids, Marquette Rail can currently interchange with NS or CSX. Having the ability to interchange our cars with two Class I railroads a short distance from our facility allows Harsco Track Technologies to market its product throughout the Northeast and Midwest, and provides a competitive rail environment for many locations in those regions.

If NS were to succeed with its current plan to sell a substantial portion of its Michigan lines to Michigan Central, we would lose the benefit of competition between two Class I's, CSX and NS, and be frustrated in our marketing efforts for NS-served destinations.

A chief benefit of the Conrail break-up was to introduce competition in the Northeast and Midwest. The break-up of Conrail resulted in the lines in this transaction going from Conrail to NS. Since CSX already served parts of this area (primarily on the old Pere Marquette), the result was that a new rail competition was introduced on the old Conrail lines because points formerly served solely by Conrail would now be served by NS or CSX, two Class I railroads with significant reach and resources and the ability to deliver dependable, long-range rail service.

Taking NS out of this competitive environment is a step backward. It degrades the ability of shippers in Michigan, particularly those located on Marquette Rail, to have interchange access to two competing Class I railroads only a short distance away in Grand Rapids, Michigan. It frustrates marketing efforts at NS-served locations because shippers will have to deal with an intermediate short line railroad in the route. Finally, the proposed sale to Michigan Central increases CSX's leverage because they no longer have Class I competition in Grand Rapids, thus raising the minimum level on CSX's rates.

We believe that the STB should require the remedies sought by Marquette Rail as a condition to implementation of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as Marquette Rail trackage rights via Michigan Central to a direct connection with NS at Elkhart Junction, Indiana, or alternatively a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), while not as preferred as the current direct connection to Norfolk Southern, are vital to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the Surface Transportation Board nine years ago when NS emphasized its single line service as a key reason for its acquisition of the Conrail lines in Michigan.

We appreciate the STB's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,



Roger Nash, General Manager
Ludington Plant



Ludington, MI
Phone 231-843-1147
Fax 231-843-1355

Plant: P.O. Box 622 / 5379 West 6th Street Ludington, MI 49431

Lafayette, LA
Phone 337-264-1429
Fax 337-264-9359

Opelousas, LA
Phone 337-942-9599
Fax 337-942-7949

September 7, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is Wayne Wagner of Cal-Chlor Corp. Cal-Chlor strongly supports the efforts of Marquette Rail, LLC to preserve an adequate direct connection with Norfolk Southern on behalf of Cal-Chlor and other Marquette Rail shippers in the above-referenced transaction.

Cal-Chlor is the largest distributor of Calcium Chloride in the world. Cal-Chlor strives to provide customers the best options for dry calcium chloride products and services worldwide and is considered the world's leading authority on dry calcium chloride packaging and distribution. Cal-Chlor and its worldwide network of producer partners have combined to offer the most complete line of dry calcium chloride products available from convenient locations throughout Europe and the United States. From anhydrous to dihydrate, pellets to powder, ready-mix concrete to completion fluids, our product line satisfies the needs of most customers.

In 1996, Cal-Chlor acquired an existing packaging facility in Ludington, Michigan and invested more than \$4,000,000 in upgrading the facility which is now the largest calcium chloride packaging facility in the world.

Cal-Chlor purchases the dry calcium chloride from DOW Chemical in Ludington and all material is purchased in hopper railcars. We have three facilities that package the material from hopper railcars. The locations are Opelousas, LA, Piscataway, NJ and Ludington, MI. Any material traveling to the locations outside of Ludington are handled by the rail. We

move 50-60 cars a month to Opelousas. In Piscataway, we are currently only packaging for DOW, so they are moving 50-60 cars a month to that location. We also load boxcars in the Ludington site and we are moving on average 3-4 boxcars a month. Marquette Rail handles our daily switches for our packaging which is vital to us handling the different needs that our customers require for the different product types, container types and sizes. We are very dependant upon the rail for handling the movement of our commodity before packaging and after packaging.

If NS were to succeed with its current plan to sell a substantial portion of its Michigan lines to Michigan Central, Cal-Chlor would substantially lose the benefit of competition between two large railroads, CSX and NS, and experience hurdles in its marketing efforts for locations served by NS.

Nearly ten years ago, a strong selling point of the Conrail merger was to introduce rail competition to the Northeast and Midwest. The break-up of Conrail resulted in the lines in this transaction going from Conrail to NS. Since CSX already reached parts of this area (primarily on the old Pere Marquette), the effect of the Conrail break-up was that new rail competition was introduced on the old Conrail lines because points that used to be served only by Conrail would now be served by NS or CSX, two large railroads with significant territory and resources and the ability to deliver dependable, long-range rail service.

Taking NS out of this competitive environment is an ill-advised move. It hinders the ability of rail shippers in Michigan, especially those located along Marquette Rail, to have interchange access with two Class I railroads, that compete with each other throughout the East and Midwest, only a short distance away in Grand Rapids, Michigan. It thwarts marketing efforts at NS-served locations because shippers will have to deal with an intermediate railroad in the route and it increases CSX's market power because they no longer have Class I competition in Grand Rapids, giving CSX greater leverage on its rates.

We believe that the Surface Transportation Board should grant the relief sought by Marquette Rail as a condition to approving of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as Marquette Rail trackage rights via Michigan Central to a direct connection with NS at Elkhart Junction, Indiana, or alternatively a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), while not as good as the current direct connection to Norfolk Southern, are critical to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the STB in the Conrail transaction when NS touted its single line service as a key basis for its acquisition of the Conrail lines in Michigan.

We appreciate the Board's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

Wayne Wagner

Cal-Chlor Corp.

September 7, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is David Boerema, of Michigan Rail & Storage, Inc. Michigan Rail & Storage strongly supports the efforts of Marquette Rail, LLC to preserve an adequate direct connection with Norfolk Southern on behalf of Michigan Rail & Storage, Inc. and other Marquette Rail shippers in the above-referenced transaction.

Michigan Rail & Storage is an inland terminal providing logistics services for a variety of commodities, including bulk products and break-bulk freight such as lumber. We have over 70 acres of development situated not far from the interchange of Interstate 96 and US Highway 131 in Grand Rapids, Michigan. Our facility is new, starting just this year. We are rail-served by Marquette Rail, and chose to locate our facility at its present site because of the short distance that Marquette Rail has to travel to interchange both with CSX and NS in Grand Rapids. This gave our site excellent market potential because of the coverage of these two Class I railroads and also provided competition between the two Class I's. We are very interested in growing our business both on NS and CSX.

If the STB were to approve the proposed NS sale to Michigan Central, Michigan Rail & Storage would lose the benefit of competition between two Class I railroads at Grand Rapids, and be frustrated in its marketing efforts for NS-served destinations.

A major benefit of the Conrail break-up was to bring rail competition to the Northeast and Midwest. The break-up of Conrail resulted in the lines in this transaction going from Conrail to NS. Since CSX already served parts of our area in Michigan, the Conrail breakup introduced competition in this area because points formerly solely Conrail served would now be served by NS or CSX, two Class I railroads with significant reach and resources and the wherewithal to deliver dependable, long-range rail service.

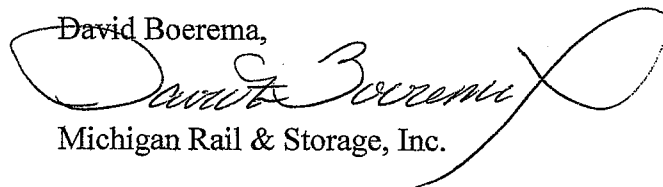
Taking NS out of this competitive environment is an ill-conceived move. It would hinder the ability of rail customers in Michigan, particularly those located along Marquette Rail, to have interchange access to two competitive Class I railroads only a short distance away in Grand Rapids, Michigan. Further, it would impede our marketing efforts at NS-served locations because shippers will have to deal with an additional intermediate short line carrier in the routing. Finally, NS's departure would increase CSX's leverage due to the lack of effective Class I competition in Grand Rapids, thus raising the floor on CSX's rates.

We believe that the STB should require the remedies sought by Marquette Rail as a condition to implementation of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as Marquette Rail trackage rights via Michigan Central to a direct connection with NS at Elkhart Junction, Indiana, or alternatively a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), while not as good as the current direct connection to Norfolk Southern, are critical to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the Surface Transportation Board nine years ago when NS touted its single line service as a primary basis for its acquisition of the Conrail lines in Michigan.

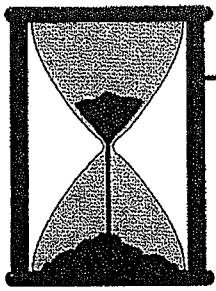
We thank the STB for their consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

David Boerema,

A handwritten signature in black ink, appearing to read "David Boerema", with a large, stylized flourish extending from the end of the signature.

Michigan Rail & Storage, Inc.



FRB FLAT ROCK BAGGING

27938 COOKE ST
FLAT ROCK MI 48134
734 782 2073
FAX 734 782 4138

233 PROSPECT ST
SPARTA MI 49345
616 887 8823
616 887 8824

August 23, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Williams:

My name is Don Brown, President of Flat Rock Bagging. Flat Rock Bagging strongly supports the efforts of Marquette Rail, LLC to preserve an adequate direct connection with Norfolk Southern on behalf of Flat Rock Bagging and other Marquette Rail shippers in the above-referenced transaction.

Flat Rock Bagging is a leading distributor of bagged and bulk materials, such as rock salt, deicers, silica sands, and other sand products for industrial and manufacturing applications. We have large distribution centers in Flat Rock and Sparta, Michigan, and send out 2.5 million bags of product per year. Our customers are located in Michigan, Ohio, Indiana, Illinois, New York and Pennsylvania.

We currently move sand, slag and other packaged bulk material by rail. At this time, our rail shipments originate on Marquette Rail and then move primarily over CSX. But the CSX points are competitive with NS points where the current routing would be Marquette Rail-NS. We also continue to market NS-served points.

If NS were to succeed with its current plan to sell a substantial portion of its Michigan lines to Michigan Central, Flat Rock Bagging would lose the benefit of competition between two Class I's, CSX and NS, and be frustrated in its marketing efforts for NS-served destinations.

A chief benefit of the Conrail break-up was to introduce competition in the Northeast and Midwest. The break-up of Conrail resulted in the lines in this transaction going from Conrail to NS. Since CSX already served parts of this area (primarily on the old Pere Marquette), the result was that a new rail competition was introduced on the old Conrail lines because points formerly solely Conrail served would now be served by NS or CSX, two Class I

railroads with significant reach and resources and the ability to deliver dependable, long-range rail service.

Taking NS out of this competitive environment is a step backward. It degrades the ability of shippers in Michigan, particularly those located on Marquette Rail, to have interchange with two Class I railroads, that compete with each other throughout the East and Midwest, only a short distance away in Grand Rapids, Michigan. It frustrates marketing efforts at NS-served locations because shippers will have to deal with an intermediate carrier and it increases CSX's leverage because they no longer have Class I competition in Grand Rapids, thus raising the floor on CSX's rates.

We believe that the STB should require the remedies sought by Marquette Rail as a condition to implementation of this transaction. Construction of a direct connection to Michigan Central from Marquette Rail, as well as a Marquette Rail-Michigan Central haulage agreement (at reasonable rates), with contingent trackage rights for Marquette Rail in the event of service performance failures, while not as good as the current direct connection to Norfolk Southern, are vital to (1) preserving our market access and (2) fulfilling the promises made by Norfolk Southern to the Surface Transportation Board nine years ago when NS touted its single line service as a primary basis for its acquisition of the Conrail lines in Michigan.

We appreciate the STB's consideration of our views on this matter. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that I am qualified and authorized to file this statement.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Don Brown", written in a cursive style.

Don Brown, President
Flat Rock Bagging

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2007, a copy of the foregoing public – redacted version of the **Comments and Request for Conditions of Marquette Rail, LLC** was served by overnight express courier to:

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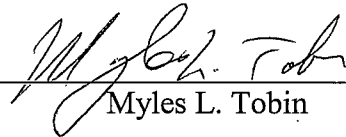
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