

INTRODUCTION

Mr. Chairman, Members of the Board, thank you for this opportunity to be heard on this subject.

IDENTIFICATION

I am legal counsel to the Wisconsin Central Group an *ad hoc* rail freight shippers coalition operating under the auspices of: Wisconsin Paper Council; Wisconsin Manufacturers & Commerce; and Michigan Forest Products Council.

Our group, under various names, was present (including participation in various ICC proceedings) for the transition following Staggers and the Motor Carrier Act of 1980. In the mid-1980s through the early 1990s, we were present for the withdraw of the Class I's from Wisconsin and Upper Michigan through various spin-offs. In the late 1980s and into the 1990s, we were present for the creation, consolidation and successes of the independent Wisconsin Central System. And, of course, we were present for the grant of control of the WC System to Canadian National and its aftermath.

The goal of Wisconsin Central Group is to persuade the Canadian National, or by other means if necessary, to assure: (a) Restoration of Wisconsin Central System level service and competition for market share for traffic that originates and/or terminates on lines of the former WC System; and (b) for CN's main line between Superior, WI and Chicago, a transparent plan to mitigate the impact of increasing international traffic and to provide ample capacity for serving traffic that originates and/or terminates on lines of the former WC System.

TESTIMONY

From our perspective, the problem, today, is a failure of competition and competition policy. From our perspective, the primary competitiveness problem is not with captive freight but, rather, with non-captive freight.

Freight competition in our region has changed dramatically since the Exemptions were granted and since Class I's have reached their present level of consolidation. The Class I, Canadian National, which this Board granted control of the WC System in 2001, has utterly failed to compete for market share on traffic originating and/or terminating in our region on lines served by the former Wisconsin Central System.

CN has strong incentives to not compete for, in fact to suppress, such traffic. Ironically, this Board's efforts to require mitigation of the impacts of operational changes arising from Canadian National's control of EJ&E – which we shippers supported – has added incentives for CN to suppress traffic originating and terminating on lines of the former Wisconsin Central System.

Given the Exemptions, shippers and other stakeholders in our region, – including those in the public sector such as the States of Wisconsin and Michigan and communities like those who are in the process of forming the Blue Line Coalition - have no realistic means to get CN's attention to the problem, to say nothing of holding CN accountable or otherwise restoring rail competition in our region.

The Board should investigate potential revocation of the Exemptions. CN's treatment of the former Wisconsin Central System, as described in WCG's Statement, illustrates why the Board should do so.

Wholesale revocation of the Exemptions is almost certainly not the answer. Small adjustments or targeted revocation of the Exemptions may better serve to: (a) give competition another chance, where failure of competition has been the unintended consequence of Class I consolidation; and (b) provide adequate oversight and effective means by which individual shippers might bring attention to such problems on a case-by-case basis.

The independent Wisconsin Central System is a model for the pro-competitive impacts of Staggers deregulation, specifically in providing first-mile/last-mile retail railroad service, competing successfully, mostly for non-captive freight. The independent WC System successfully won back boxcar freight that the Class I's serving Wisconsin and Upper Michigan lost to highway in the 1980s. The independent WC System even successfully provided short-haul intermodal services, with the largest truckload motor carrier in the nation as its largest and devoted customer.

There is considerably more to this story. We ask the Board to investigate, specifically:

1. To conduct an in-depth investigation of the effectiveness of the Exemptions, changed circumstances and implications of revocation of the Exemptions; and
2. In particular, to consider the pros and cons of limited and/or targeted revocation of the Exemptions to address failures of competition policy and failures of conditions imposed on Class I consolidations, such as those illustrated by ten (10) years of Canadian National's control of the Wisconsin Central System.

THANK YOU FOR YOUR CONSIDERATION