Wisconsin Central Group

An ad hoc Rail Freight Stakeholders Coalition

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The railroads, third-parties and some shippers reaffirmed their support for the status quo.

Coal and chemical shippers and trade groups provided examples to support claims that the railroads do not compete with each other – even where a shipper has access to more than one railroad. The railroads (especially BNSF) disputed data provided by coal shippers allegedly showing, from 2004 onward, the limited instances of a competing railroad defeating the incumbent for competitive coal movements.

Chairman Elliott frequently asked shippers: if the choice were for the Board to make it easier to challenge rates or provide more competitive access, which would you choose. Most chose "competition." Vice Chair Begeman observed and raised as a question, the conundrum: If the railroads are not competing when two can serve the same freight now, what reason is there to believe that greater competitive access is going to solve anything? WCGroup (using our experience with WC as an example) was the only participant to claim that the true problem is the railroad industry's failure to compete effectively for non-captive freight.

Our main purpose in participating in both EP 704 (investigation of exemptions from regulation) and EP 705 (competition in the railroad industry) was: (a) to establish a credible foundation for potential Board action to enforce CN's obligations under the control order; and (b) by raising the profile for potential enforcement through the Board, to encourage CN to seriously engage with WCG in the implementation of Mr. Tellier's Plan (CN's obligation under the control order) or alternative steps that accomplish the purposes of the Tellier Plan.

At both hearings, a member of the Board acknowledged that the Board is aware of our dissatisfaction. Regardless of the outcomes of EP 704 and EP 705, we have laid a new foundation for potential enforcement of CN's obligations through STB action. Meeting with several members of WCG's Steering Committee on June 7, 2011, Canadian National opened the door to the possibility of CN's engaging in serious efforts to provide the level of service and competition the Tellier Plan envisioned.

Following is WCG's testimony, as given in EP 705, on June 23, 2011:

WCGroup's STB EP 705 Testimony
June 23, 2011

Chairman Elliott, Vice Chair Begeman, Commissioner Mulvey, thank you for undertaking this proceeding and for the opportunity to speak today.

I am setting aside our previously submitted written testimony to summarize the main points and to provide a couple of observations prompted by testimony given by others over these two days.

The associations and shippers in our group were present in the 1980s for the collapse of the Class Is serving what became the Wisconsin Central lines (principally, in Wisconsin and Upper Michigan). We were present for the formation of WC and its competitive successes through the 1990s. And, we have been present for the failure of that competitiveness under the control of WC by Canadian National, over the last decade. We participated in all the related ICC and STB proceedings.

Our Initial Comments and written Testimony describe this experience, including specific examples, that demonstrate the independent WC to have been a competitive model for non-captive freight and, since control by CN, an ongoing example of the failure to compete for non-captive freight.

Our principal point is this: The Board cannot effectively review the state of competition in the railroad industry without addressing more broadly the current state and future prospects of the railroad industry's competitiveness for non-captive freight. The burden carried by those subject to differential pricing is, after all, and, perhaps in large part, a function of the effectiveness of the industry's competition for non-captive freight, that is, freight which contributes to going concern value with revenue/variable cost ratios between 100 and 180. The few allusions to non-captive freight, in this record, are insufficient.

Mr. Hamberger's last comment, yesterday (leaving on a high note as it were) suggested railroads work with their shippers to move the available freight. Mr. Burkhardt said (and I am paraphrasing): an intelligent railroad will not let truck competitive freight get away if the railroad feels able to quote a rate that will move the freight. Indeed, Mr. Burkhardt's statement was absolutely and positively true of WC on his watch and until WC came under the control of CN.

Speaking to the Wisconsin DOT Annual Freight Railroad Conference, November 19, 2008, Mr. Burkhardt described a skew in the North American railroad industry between Class Is and regional railways and short lines.

Mr. Burkhardt characterized the Class Is as having "restructured into plain vanilla, high volume trunk line operations," with "scant interest in running distribution networks" and light density lines. Juxtapose Mr. Burkhardt's characterization to Mr. Manion's [Norfolk Southern's] description of maximizing "velocity" and minimizing classification and switching. As in Sen. Franken's story, were Mr. Manion's railroad serving Albert Lea, the train probably would not stop for the quilt factory either.

In contrast, much like the testimony of General Timmons and Mr. Ogborn, yesterday, Mr. Burkhardt characterized successful regional and short lines as concentrating "management efforts on rebuilding single-car networks and containerization," "focused on customers' requirements (service and price)" and keeping "unremitting pressure on costs."

That is how the independent WC successfully took lots of trucks off the highways. Examples are provided in our Initial Comments. It has not been that way for most of the last 10 years under CN control (though we are cautiously optimistic that CN is now ready to address many of the problems we have described to you).

The Midtec Mill, that gave its name to the precedent and standard for competitive access, discussed in testimony yesterday, is located at Kimberley, WI on the WC. It has been closed due to the recession. Before closing, among other rail service problems, the mill was receiving only approximately 60% to 80% of the boxcars it ordered, despite the fact that the railroad had similar cars "in storage."

The 60 to 80% means that the railroad's rates for the mill's non-captive, highway competitive freight, would have moved at least 20-40% more carloads. The railroad had already sold the freight. The freight was not taken away by vigorous truck competition. Trucking the freight was the default, when the railroad failed to serve.

What does "not-to-compete" or failure to compete mean? From our perspective, one way to answer the Chairman's question is:

> "Not-to-compete" means that the railroad has set a rate that will move the freight but fails to provide the equipment and the service.

Could we make a case of failing to deal or foreclosure under the Midtec competitive abuse standards? Maybe? But, of course, only after a successful petition to revoke the boxcar and commodity exemptions. That's not going to happen.

The Board is not going to hear about this type of railroad competitiveness problem, at least not until fuel prices or other factors make trucking prohibitive.

Again, from the perspective of our experience, one element of a better standard for granting competitive access for non-captive freight might be:

> If the incumbent railroad is not moving the freight, let the other guy have a chance to compete the freight off the highways.

That's why we said in our Initial Comments and Testimony that the competitiveness problem, from our perspective, has more to do with service than rates.

We provided a number of other examples: rail carloads from PCA's Tomahawk, WI mill (as well as 3 others) down from 70% to 50% since 2005 or so; 2400 carloads per year from another mill (which WC's competitiveness had increased from 1000/yr) now down to as few as 20 since about 2003, with the difference having been returned to truck; as well as other examples.

Yesterday, there was testimony that rail rates are rising. The question we think you should address is:

> Are Class I rates rising because, as the result of consolidations, the railroads differential pricing of relatively captive freight has become more effective, allowing them to pick and choose when to accept, or to simply forgo, the challenges and risks of capturing contribution to going concern value from non-captive freight –
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> Or, in Mr. Brukhardt's words - allowing the Class Is to focus their attention on "plain vanilla, high volume trunk line operations," with "scant interest in running distribution networks" and light density lines – retail railroading that competes with trucks.

This is why we are skeptical about the Board's changing its access rules and policies until it has fully investigated and understands the state of competitiveness in the railroad industry for non-captive freight.

Thank you.