

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**REVIEW OF COMMODITY, BOXCAR
AND TOFC/COFC EXEMPTIONS**

STB Docket No. EP 704 Sub No. 1

COMMENTS

ON BEHALF OF

WISCONSIN CENTRAL GROUP
(an *ad hoc* rail freight shippers coalition)

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COMMENTS – IN SUMMARY

We join in the Comments and request of the American Forest and Paper Association (“AF&PA”) that the Board revoke existing forest products exemptions and the box car exemption to the extent it applies to forest products. Our stakeholders are the forest products and paper industry and communities of the [Great Lakes Forests Region](#) (“GLFR”), the core of the CN/Wisconsin Central Ltd. (“CN/WC”)

As we described, in 2011, in comments and testimony in Docket Nos. EP 704/705, the problem is and remains a failure of competition and competition policy. Despite extensive collaborative efforts, since 2011, by an extended group of CN/WC GLFR stakeholders, the fundamental problem and challenge remains today – (1) CN/WC, in contrast to its predecessor, has been ineffectual in competing for non-captive, truck-competitive freight and (2) truck competition does not constrain CN/WC rates. As does AF&PA, we believe the proposed revocation of exemptions

will facilitate our ongoing collaborative efforts, most likely with little call for actual regulatory intervention or oversight.

WISCONSIN CENTRAL GROUP'S COMMENTS

Identification of Wisconsin Central Group.

Wisconsin Central Group (www.centralcorridors.com/wcg) is an *ad hoc* rail freight shippers coalition operating under the auspices of:

- Wisconsin Paper Council (<http://wipapercouncil.org>);
- Wisconsin Manufacturers & Commerce (www.wmc.org); and
- Michigan Forest Products Council (www.michiganforest.com).

The goal of Wisconsin Central Group (“WCG”) since 2010, and its predecessors since 2001, has been to persuade the Canadian National Railway Company (“CN”) or otherwise assure: (a) Restoration of Wisconsin Central System (“WC 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, executed in due course, to mitigate the impact of increased traffic and provide ample capacity for serving current and increasing future traffic that originates and/or terminates on lines of the former WC System, now, CN/WC.

Previous Testimony in EP 704 and 705, Relevance Today.

WCGroup submitted [comments](#) and [testimony](#) in STB Docket EP 704 and submitted [comments](#) and [testimony](#) in EP 705. In both dockets, we urged the Board to consider obstacles to railroad competition for non-captive, truck-competitive freight, abundant in the CN/WC GLFR, and the potential for expanded rail market share of such freight to relieve the burdens of differential pricing borne by captive shippers and commodities.

Today, CN/WC has not begun to match the market share enjoyed by its immediate predecessor, Wisconsin Central System (1988-2001), nor their predecessors serving the GLFR prior to the Motor Carrier Act of 1980 and the Staggers Act. The critical problems and challenges described in WCGroup's EP 704/705 submissions and testimony persist to this day.

Collaborative Efforts of CN and WCGroup Since 2011.

Beginning in mid-2011, shortly following WCGroup submissions and testimony in Dockets EP 704/705, CN and WCGroup stakeholders met and identified a series of joint projects aimed at increasing freight volume and density on CN/WC lighter density lines. In late 2012, with WCGroup support, CN established an Advisory Board; and CN and WCGroup began using the terms "collaboration" and "collaborative effort" to describe their joint activities. In 2012 and 2013, WCGroup assisted in creation of the Northwoods Rail Transit Commission ("NRTC"), the public sector

incarnation of the CN/WCGroup collaborative efforts, including, today, 13 northern Wisconsin and 9 Michigan Upper Peninsula counties.¹

In 2014 and 2015, CN and WCGroup assisted NRTC with submitting TIGER VI and TIGER VII grant applications for funding to begin replacing the aging railroad-owned fleet of over 1,000 log cars serving the GLFR with a new publicly-owned log car fleet.² CN funded NRTC's engagement of consultants who provided benefit cost analyses pursuant to USDOT standards.³ Though recommended, neither application was awarded a grant. Debriefing with USDOT following the 2015 application has suggested a pathway for potential 2017 TIGER and/or FAST grant applications by NRTC supported by CN and WCGroup.

A chronological summary of our five (5) years of collaborative efforts, since 2011, can be found at [Highlights – WCGroup Activities](#).

Although these collaborative efforts have resulted in better understanding of the challenges facing CN/WC GLFR rail carriers and stakeholders, together we have achieved no notable breakthrough in increasing freight volume and density on lighter density CN/WC GLFR lines.

¹ NRTC is a public body operating under an interstate cooperation agreement authorized by Michigan and Wisconsin statutes.

² Most of the railroad-owned log cars were put in service prior to 1980 and are reaching AAR 40- and 50-year mandated retirement. Use of private log cars is limited. Neither CN nor WCGroup stakeholders have been able to make a business case for investment in railroad or privately owned log car replacements.

³ The benefit-cost analyses demonstrated direct public benefits (road and bridge wear and highway safety) of \$4 for each \$1 invested in new log cars (based on a 20-year life rather than the 50-year actual experience for GLFR log cars).

In fact, the marketplace may be working in reverse. In March 2016, we were startled to learn a major shipper served directly by CN/WC shifted a volume of previous CN/WC direct rail freight to a truck-rail transload (over 100 mile dray) to a shortline and Union Pacific connections. We have word of other similar transloads in the offing, in one instance a major new volume, bulk commodity. Although our continuing preference has and is retention of CN control of CN/WC lines, freight marketplace developments have revived consideration of alternative operators for CN/WC lines serving local industry.

Concluding a year-long review of our collaborative efforts, in consultation with CN, shortline operators in the region and a broad group of WCGroup shipper stakeholders, WCGroup is near completion of a new forward agenda, [Moving in New Directions](#), and a broader consideration of [Action Options](#).

Value of Revoking Forest Industry Exemptions for CN/WC GLFR.

This topic is addressed both broadly and in detail in AF&PA's comments and the supporting Verified Statement of Jay Roman. We offer the following supplement.

In our 2011 submissions and testimony in Dockets EP 704/705, we beseeched the Board to consider the exemptions and overall railroad industry in the context of the level and intensity of railroad industry competition for non-captive, truck-competitive freight. This is the freight

CN/WC GLFR has in abundance and a past history of moving via rail before and during the Wisconsin Central System era, 1988-2001, until curtailed by Class I consolidations and subsequent control by CN.

Today, some railroad industry analysts observe that Class I industry-wide began de-marketing as early as 2005 through the present, in favor of serving higher margin freight. Indicators of the potential validity of these observations are sufficient to warrant the Board's attention. If substantiated, the trend supports our contention of the need for the Board's attention to the industry's competitiveness for non-captive, truck-competitive freight. Competitiveness for such freight is directly related to its contribution to going concern value and constraining and alleviating the burden that is borne by captive freight. The history of competition in the CN/WC GLFR is, perhaps, a fertile petri dish of competitiveness on which the Board might focus.

For the CN/WC GLFR, the more significant and helpful impacts of revocation of the exemptions may not be the potential for access to regulatory review in rate challenges under 49 USC § 10707 but, rather, impacts of the potential for access to regulatory authority over, for example, classifications, rules and practices, through routes, interchange and car service.

Finally, and by way of further example, CN/WC GLFR rates for logs have escalated steeply in the last several years. They are largely

unrestrained by truck competition. CN appears not to price to market competition. Instead, CN prices to its perception of the variable cost of CN/WC's providing transportation of logs.

There is no transparency to cost involved in CN/WC's rate setting. Without revocation of the exemptions, there is no authority under 49 USC § 10707(d)(1)(B), for determination of CN/WC's "unadjusted costs" for transportation of logs. More importantly, perhaps, there is no authority to define "variable cost" or set other standards for fairly measuring the contribution to going concern value of specific rates for transportation of logs or any other forest industry freight exempt from regulation.

CONCLUSION AND REQUESTED ACTION

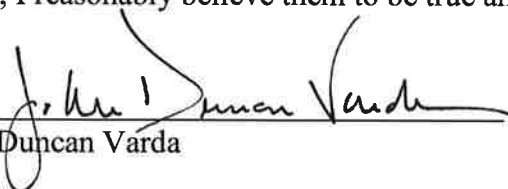
Revoking existing forest products exemptions and the box car exemption will, we believe: (a) facilitate our CN/WC GLFR collaborative efforts to achieve their objectives without resorting to direct adverse regulator intervention or oversight; and (b) provide oversight and effective means by which individual shippers might bring attention to CN/WC GLFR competitiveness issues on a case-by-case basis.

Dated this 25th day of July, 2016.

[See the next page, following, for verification.]

Verification


I, John Duncan Varda, counsel to Wisconsin Central Group, have, since 1970, represented Wisconsin Manufacturers & Commerce and other Wisconsin and Upper Michigan transportation shipper groups and various of their constituent members before the Interstate Commerce Commission and, after its termination, before the Surface Transportation, and do hereby affirm and verify that I have read the foregoing Comments on behalf of Wisconsin Central Group and know the facts stated therein to be true and correct to my own knowledge and, as to those stated upon information and belief, I reasonably believe them to be true and correct.



John Duncan Varda

STATE OF WISCONSIN)
) ss
DANE COUNTY)

Personally came before me this 25th day of January, 2011, the above named John Duncan Varda, personally known to me to be the person who executed the foregoing verification and acknowledged the same.



Martha S. Olson, Notary Public,
State of Wisconsin

Martha S. Olson
Notary Public
State of Wisconsin

My commission expires 7/23/2019.