Wisconsin Central Group
An ad hoc Rail Freight Stakeholders Coalition
www.centralcorridors.com/wcg/

Lake States Shippers Association
A Classic Co-op Shippers Association
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November 3, 2020

Grassroots Local Credentials for Responding to CN Divestiture
Past Is Prologue

1. Background & Prior Relationships with CN/WC and Shippers.

a. *Early Collaborative Efforts*. CN/WC engaged collaboratively with Wisconsin Central Group ("WCGroup") to explore how to add freight to CN/WC's lighter density Wisconsin Central Ltd. lines, beginning in June 2011 and as the "CN Advisory Board" from 2012 through 2015.[1] Consideration of possible short line divestiture and some exploratory contacts occurred as early as 2012; however, CN/WC was generally not interested in spin-offs. In 2014 and 2015, to begin replacement of the aging log car fleet, WCGroup provided the laboring oar and CN/WC contributed funds for cost/benefits expertise for two TIGER grant applications[2] submitted in coordination with the Northwood Rail Transit Commission ("NRTC").[3] Though well received per the debriefing conferences with USDOT, there were no awards. In the process, CN/WC and WCGroup refined a concept for the data needed for infrastructure investment and operational decisions, "Actionable Shipper Data".[4]

b. *Data Co-op Project Phase I*. Laying the foundations with stakeholders during 2016 and early 2017, WCGroup's Lake States Shippers Association ("LSSA") engaged with Michigan Technological University (MITech) in the LSSA/MITech Data Co-op Project.[5] CN/WC provided MITech critical operations detail and data for the Project. A major accomplishment of the Data Co-op Project is confirmation of the potential for Actionable Shipper Data to be aggregated to bring transparency to over-the-road truckload freight susceptible to conversion to rail or rail intermodal.

c. *Data Co-op Project Phase II and Ongoing.* The final LSSA/MITech Project Report issued in March 2020. LSSA was already immersed in rolling out Phase II of the LSSA Data-Co-

1 WCGroup is an ad hoc rail freight stakeholders coalition dedicated to increasing economic opportunity and competitiveness throughout the Wisconsin Central and Great Lakes Forests Region by working collaboratively to increase freight on the region's lighter density rail lines.

2 TIGER Phase I Summary, April 28, 2014; TIGER VII Application At-A-Glance, June 5, 2015.

3 In 2012, WCGroup provided, *pro bono*, legal services for development of NRTC articles, bylaws and interstate cooperation agreement, including obtaining required approval by Wisconsin's Attorney General.

4 See CN/WCGroup Committees, Actionable Shipper Data. The omnibus CN/WCGroup Confidentiality Agreement was a key component as well as the CN/WCGroup Confidentiality and Antitrust Compliance Guidelines.

5 Obtaining proprietary and highly confidential data from shippers, at the Actionable Shipper Data level of detail required: (a) MITech/LSSA Master Confidentiality Agreement; (b) a data privacy and Security Plan; and (c) LSSA Antitrust Compliance Guidelines.

op Project.[6] In early 2020, LSSA identified a commercial source for near real-time Actionable Shipper Data – *i.e.* data readily available for other commercial purposes plus a means of adding data of specific shippers for specific rail line corridors. The tool, identified as "RII-OP" for Rail Infrastructure Investment and Operations Planning," is believed to be essentially unique, unlike any data set typically available for public infrastructure investment planning or to the railroad industry because RII-OP includes all over-the-road truck and intermodal freight movements of the participating shippers, is highly reliable and available for many past years as well as currently and ongoing in near real time (*i.e.* week-by-week).[7] Wisconsin and Minnesota Departments of Transportation and various local planning officials have participated in introductions to RII-OP. Data Co-op Project Phase II was well underway at the time of CN/WC's July 2020 announcement of a "Wisconsin – Northern Michigan Branch Line Proposed Divestiture". Representatives of CN/WC had yet to be invited to an introduction to RII-OP as announcement of the proposed Divestiture Plan intervened.[8]

d. *Future GLFR System Business Development.* RII-OP is a tool GLFR System anticipates will be available for its future rail and rail intermodal business development.

2. Background, Public Affairs Capabilities.

a. *State and Federal Legislators, Local Officials.* Over the last decade, all of the key state and Congressional legislators whose districts include WC lighter density lines in Wisconsin and Upper Michigan have been involved and interacted with WCGroup, LSSA and NRTC activities and are wholly supportive of sustainable, rail access for the Great Lakes Forests Region. Among the most active recently and currently are: Rep. Tom Tiffany (former State Senator, now WI-7); Janet Bewley (WI State Senator and current minority leader); Rep. Mike Gallagher (WI-8); MI State Senator McBroom; and WI U.S. Senator Baldwin. Local officials mainly include NRTC members, their County Boards and development organizations and the Wisconsin Counties Association.

b. *Departments of Transportation, MI, MN and WI.* Beginning in late 2019 upon being approached by representatives of CN/WC concerning several limited sales of lighter density lines in northern Wisconsin, WisDOT retained the services of advisors expert in shortline rail. WisDOT requested WCGroup/LSSA's assistance in surveying shipper preferences. Early on (from 2012), WCGroup had shared its views on shortline alternatives for northern WI and MI rail lines. In August 2020, WCGroup/LSSA shared with WisDOT

6 Due to budget and other constraints, the Data Co-op Project Report largely focuses on log with limited attention to non-log freight. Per WCGroup/LSSA shipper Phase II will fully address non-log freight.

7 What we mean by "Actionable Shipper Data and RII-OP.

8 In August 2020, WCGroup/LSSA began consideration of An Alternative Approach to CN's "Wisconsin –Northern Michigan Branch Line Proposed Divestiture" but concluded to await the anticipated RFP process that CN/WC had chosen as the path forward.

"Considerations for Responding to CN's WC Divestiture Plan, Restoring/Transforming a System for Rail Access For Former Wisconsin Central Lighter Density Corridors". GLFR System, not coincidentally, satisfies all of the critical characteristics outlined in these "Considerations" with the exception that GLFR System's "entrepreneurial" investors do not include any current or anticipated Company and GLFR System shippers.

3. Shippers Association Affiliate.

As an integral part of its establishment, GLFR System consortium will facilitate creation of a "shippers association" to help assure shipper satisfaction with the Class III railroad services of the GLFR System.

a. *Shippers Association Membership.* The shipper members of the association will determine its scope of activity and whether or not it chooses to operate, in part, as A Classic Co-op Shippers Association. The shipper members will determine if and to what extent the association will function in separate "conferences" based on the geographic relationships of the shipping and/or receiving facilities of its members in relation to access to the GLFR System. The shipper members will define eligibility for membership and various classes of shipper and associate membership

b. *Relationship to GLFR System.* The shipper members and GLFR System constituents will determine, by mutual agreement, how the association will function in relation to GLFR System and to what extent, if any, in the governance of GLFR System and/or its constituents.

c. *Antitrust Compliance, Confidentiality and Data Privacy and Security.* The shippers association and GLFR System will operate in strict compliance with U.S. Department of Justice and Federal Trade Commission guidelines governing such shippers association and all collaborations among competitors.[9]

d. *Right of Independent Action.* At all times, the association's members' right of independent action shall be reserved and preserved.

9 See: The Antitrust Division's Approach to Shippers' Associations (2017) and Antitrust Guidelines for Collaborations Among Competitors (2000).