

March 23, 2016

**Counsel's Report
 WMC Transportation Committee
 WMC Headquarters, Madison – March 24, 2016**

*John Duncan Varda[®] - DeWitt Ross & Stevens
 For more information, please contact counsel at 608-252-9311 or jdvarda@dewittross.com*

CN/WCGroup Collaboration – Updated Since Our Last Report.

2016, April 20	At Stevens Point, CN/NRTC senior management meeting (scheduled).
2016, March 24	WCGroup Agenda 2016Q1 concluded, forward agenda for 2016 pending CN/NRTC meeting.
2016, March 21	CN/NRTC meeting, questions updated.
2016, March 16	NRTC conference call reviews “questions” and priorities for CN/NRTC senior management meeting.
2016, Feb. 23	Meeting with WisDOT Railroads and Harbors Section, at WMC. Discussion re challenges of northwoods line preservations (network in addition to branch perspective) and log cars.
2016, Jan. 29	Northwoods Rail Transit Commission Meeting – Adopted resolution supporting SB305/AB458 log car funding. Discussion reviewed USDOT TIGER VII debriefing, CN’s response to request to meet senior management, CN’s request NRTC “prioritize” line segments. Set committee to prepare for CN/NRTC meeting. Concluded to pass on TIGER VIII grant application (due 4/29/2016) for log cars.
2015-2016, Jan. 15	Consultation with stakeholders, set WCGroup agenda for 2016Q1
2015, Nov. 30	Debriefing with USDOT on unsuccessful 2015 TIGER VII application – received suggestions for enhancing the application, specifically, emphasis on loggers and other communities who will benefit.
2015, Nov. 17	At Madison, WisDOT Annual Freight Railroad Conference, Peter Kammer of Wisconsin Railroad Association expresses antipathy for public ownership of railcars.
2015, Nov. 16	Proposed 2016 Q1 agenda submitted to WCGroup Steering Committee.
2015, Nov. 12	CN/WCGroup. consultation task group call-in, finalize immediate agenda, proposed agenda for 2016 Q1.
2015, Nov. 6	At O'Hare, CN/WCGroup, consultation task group, brainstorming session
2015, Oct. 13	At PCA, Lake Forest, IL, CN/WCGroup consultation, assessment of status of collaborative efforts.
2015, Sept. 25	Northwoods Rail Transit Commission meeting, WCGroup presentation.
2015, Sept. 9	“WCGroup Branch Line Projects 2015-2016, Looking at the Region from a Branch Line Perspective,” post map.
2015, Sept. 4	Sen. Baldwin Transportation Roundtable, at Sun Prairie, presentation on railroad industry competitiveness for non-captive truck-competitive freight.
2015, Aug. 31	Request consultation with CN re overall collaborative effort.
2015, July-Aug.	Consultations with individual WCGroup stakeholders re log cars, funding options and other considerations for preservation of northwoods branch lines.
2015, July 7	WI State Budget passed without \$4.8 million earmark for log cars.
2015, June 4	Log car TIGER VII grant application filed: \$13.8 million total project: \$4.8, TIGER; \$4.8, WI; \$3.0, MI; and \$1.2, CN.
2015, May . . .	Communications re log car funding and preparation of grant application.
2015, May 4	Log car TIGER VII Pre-Application filed.

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**Wisconsin Central Group Agenda 2016Q1 – Concluded.
Moving in a Different Direction?**

In December 2015, WCGroup's Steering Committee opted to promulgate the following action agenda for 2016Q1. Set forth below is our report card, notable for lack of success.

- Log Cars – WI SB305/AB458, \$4.8 Million Earmark, Minimum 20% Match (**not this session**):
 - Push for public hearing (February-March), potential adoption mid-March 2016, subject to confirming minimum stakeholder support (**only partially confirmed**), *i.e.*:
 - Key shipper/commercial stakeholders commit (before 12/31/2015 – **accomplished but some slippage**) to public support (i.e., attend public hearing, other contacts and PR);
 - CN commits to public support and contribution of \$1.2 million match (by early Jan., 2016 – **no response from CN**);
 - NRTC commits to public support (**resolution adopted 1/29/2016**); and
 - Cooperative support (at least tacit) from Walker Administration and WisDOT (**pending**).
 - Michigan funding – Promote parallel legislative effort for \$3 million (**non-starter**).
 - No WCGroup involvement in 2016 TIGER VIII absent WI and/or other state funding. (**confirmed at NRTC meeting 1/29/2016**).
- Branch Line Projects – Focus on Central Wisconsin and L'Anse-Baraga branch lines (**stalled**).
- Based On Responses From CN Take Action On – Intermodal/transload project target location; and cooperate to implement CN public relations support for WCGroup projects (**no CN response**).

WCGroup's next forward agenda awaits results of the scheduled 4/20/2016 meeting of CN senior management with NRTC at Stevens Point, WI.

Freight marketplace developments may strongly influence WCGroup's next agenda. It is now publicly known that PCA is moving finished product via truck from Tomahawk to Chetek for transloading to Progressive Rail for furtherance west via Union Pacific. What other negative impacts on CN/WC lighter density lines are likely to follow? This development appears to be a shocking (if not wholly surprising) failure by CN to effectively compete for non-captive, truck-competitive freight essential to sustain CN/WC lighter density lines.

It is possible freight marketplace developments will elevate the priority of consideration of alternative operators for CN/WC lines serving local industry. In any event, notwithstanding the ambivalence of several key stakeholder groups and skepticism among state policy makers outside of the Northwoods, this development underscores the relevance and importance of a publicly owned log car fleet to serve, and sustain rail access in, the Great Lakes Forests Region.

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A Remedy For a Railroad's Failure To Effectively Compete?

The Interstate Commerce Act, codified at 49 USC § 10907, Railroad Development, authorizes the Surface Transportation Board ("STB") to require sale of a rail line (or network), at a price not less than the constitutionally minimum value, to a financially responsible person, upon finding:

- The rail carrier operating such line refuses within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over such line;
- The transportation over such line is inadequate for the majority of shippers who transport [or have sought to transport] traffic over such line;
- The sale of such line will not have a significantly adverse financial effect on the rail carrier operating such line;
- The sale of such line will not have an adverse effect on the overall operational performance of the rail carrier operating such line; and
- The sale of such line will be likely to result in improved railroad transportation for shippers that transport traffic over such line.

STB's authority to impose specific facilitating conditions (e.g., trackage rights, pricing authority, etc.) applies.

STB has already imposed certain conditions in Finance Docket 34000, *Canadian National – Control – Wisconsin Central*, Decision and Order, September 7, 2001, Item 5 of the Order, at p. 28:

Applicants must adhere to all of the representations they made on the record during the course of this proceeding, whether or not such representation are specifically referenced in this decision.

Among those representations, verified statement of CN's CEO, 4/5/2001, at p. 2:

We are confident that implementation of the CN/WC merger will proceed smoothly and will result in meaningful service improvements. **We plan to operate WC as the sixth division of the CN system in order to preserve WC's local characteristics** and the value of its employees' experience as much as possible while securing the benefits of system integration. **Among other things, this will assure that customers on WC's relatively low-density lines will continue to receive the quality of service they have come to expect from WC.** We have provided a Service Assurance Plan that we are confident will assure customers that **service levels for each of them will be as good as or better than current levels.** [Emphasis added]

WC's premier "local characteristic" was effectively competing for non-captive, truck-competitive freight originating and/or terminating or moving over what are now CN/WC's lighter density lines.