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November 8, 2019

248914

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
November 8, 2019
Part of
Public Record

Re: **Docket No. FD 36346**
Wisconsin Central Ltd. -- Operation Exemption --
Hallett Dock No. 5 in Duluth, Minnesota

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are the **Petition for Exemption of Wisconsin Central Ltd.** and a **Petition for Establishment of Procedural Schedule**, both dated November 8, 2019. The sum of \$14,900, representing the appropriate fee for the Petition for Exemption, has been tendered electronically via Pay.gov.

Please note that expedited consideration is sought for the Petition for Establishment of Procedural Schedule. A draft *Federal Register* notice of the proposed transaction, Exhibit A to that Petition, is also submitted separately herewith in Microsoft Word format.

Should any questions arise regarding these filings, please feel free to contact me. Thank you for your assistance on this matter.

FEE RECEIVED
November 8, 2019
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,


Thomas J. Litwiler
Attorney for Wisconsin Central Ltd.

FILED

TJL:bs

November 8, 2019

Attachments

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36346

WISCONSIN CENTRAL LTD.
-- OPERATION EXEMPTION --
HALLETT DOCK NO. 5 IN DULUTH, MINNESOTA

**PETITION FOR EXEMPTION OF
WISCONSIN CENTRAL LTD.**

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**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: November 8, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36346

WISCONSIN CENTRAL LTD.
-- OPERATION EXEMPTION --
HALLETT DOCK NO. 5 IN DULUTH, MINNESOTA

**PETITION FOR EXEMPTION OF
WISCONSIN CENTRAL LTD.**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. § 1121, Wisconsin Central Ltd. (“WCL”) respectfully submits this petition for an exemption from the prior review and approval requirements of 49 U.S.C. § 10901 for WCL’s operation of a rail/water dock facility in Duluth, Minnesota known as Hallett Dock No. 5.

The dock is currently owned and operated by Hallett Dock Company (“Hallett”), a non-carrier, and will be acquired and operated by WCL pursuant to a recently-executed Asset Purchase Agreement (“APA”) between Hallett and WCL. WCL’s existing customers depend on rail/water transfer at Hallett Dock No. 5 during the shipping season on Lake Superior. Among other commodities, Hallett Dock No. 5 handles limestone from lake vessels to rail for movement to taconite processing facilities in northern Minnesota. After consummation, WCL will continue existing operations at the dock on an open basis for shippers and railroads that utilize the dock today. The proposed transaction will bring the rail-related operations of Hallett Dock No. 5 within the Board’s regulated national rail system and assure the continued availability of Hallett Dock No. 5 for customers who depend on the rail-water transfer, handling, storage and other capabilities that it provides for customers transporting bulk commodities, mostly in the iron ore

supply chain. As demonstrated further below, exemption from the prior approval requirements of Section 10901 clearly is warranted for WCL's operation of Hallett Dock No. 5 under the relevant standards of Section 10502.

Maps showing the location of Hallett Dock No. 5 and the rail trackage on and adjacent to the dock owned by Hallett are attached hereto as Exhibits A-1 and A-2. In support of this Petition for Exemption, WCL submits the following.

I. BACKGROUND

A. Identification of WCL and Hallett

Petitioner WCL is a common carrier by rail which owns or operates approximately 2,400 route miles of rail line in the states of Indiana, Illinois, Wisconsin, Michigan and Minnesota. WCL's routes include a main line extending north from Chicago through the Twin Ports of Duluth, Minnesota and Superior, Wisconsin to a connection with Canadian National Railway Company ("CNR") at the international border at Ranier, Minnesota. WCL is a wholly-owned indirect subsidiary of CNR, which acquired control of WCL and its affiliated rail carriers in 2001. *See Canadian National Ry. Co. – Control – Wisconsin Central Transp. Corp.*, 5 S.T.B. 890 (2001).

As relevant to this Petition, WCL's rail lines, routes, and facilities in the vicinity of Hallett Dock No. 5 were previously owned and operated by the Duluth, Missabe and Iron Range Railway Company ("DMIR"). CNR had assumed control of DMIR in 2004. *Canadian National Ry. Co. – Control – Duluth, M. & I.R. Ry. Co.*, 7 S.T.B. 526 (2004) ("CN/DMIR"). On December 31, 2011, WCL merged with DMIR and another CN-affiliated rail carrier operating in the United States, with WCL as the surviving corporation. *See Wisconsin Central Ltd. – Intra-Corporate Family Merger Exemption – Duluth, Missabe and Iron Range Railway Company and Duluth, Winnipeg and Pacific Railway Company*, Docket No. FD 35476 (STB served Apr. 22,

2011 and Jun. 24, 2011). WCL and the remainder of the U.S. rail carrier subsidiaries of CNR report to the Board on a consolidated Class I basis under the name of Grand Trunk Corporation. *See Consolidated Reporting By Commonly Controlled Railroads*, 5 S.T.B. 1050 (2001), *codified at* 49 C.F.R. § 1201(1-1)(b)(1).

The complete name and address of petitioner WCL is:

Wisconsin Central Ltd.
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Hallett was established in 1961 and is a privately-held company that operates three dock facilities in the Twin Ports area: Dock No. 5 and Dock No. 6 in Duluth and Dock No. 8 in Superior, Wisconsin. Hallett transfers, stockpiles and delivers a variety of bulk commodities at its three docks through various combinations of vessel, truck, rail and dry storage. Hallett is not a rail carrier, and the Hallett dock facilities are not subject to the regulatory jurisdiction or authority of the STB.

B. The Hallett Dock No. 5 Facility

Hallett Dock No. 5 is a ground-level rail/water bulk commodity transfer and storage dock facility dock located on St. Louis Bay at 37th Avenue West in Duluth, Minnesota. It occupies approximately 100 acres of total property, with a 2,400-foot vessel berth, two ship loaders, a railcar unloader and a dry storage building. The facility includes approximately 9,000 feet of rail trackage on the dock itself, as well as approximately 6,300 feet of adjacent railcar holding tracks along the shore line in an area historically known as “Boston yard.”¹ Hallett conducts its own rail switching operations at the facility, utilizing its own locomotive and crews.

¹ The Boston holding tracks are owned by Hallett and situated on land leased by Hallett from BNSF Railway Company (“BNSF”).

Hallett Dock No. 5 is directly served by WCL and BNSF. WCL reaches Hallett Dock No. 5 via existing trackage rights on a BNSF rail line that extends along the waterfront past the location of the dock. WCL operates on the BNSF line pursuant to a January 20, 1913 trackage rights agreement, as amended, between predecessors of BNSF and DMIR, and uses those rights to access Hallett Dock No. 5 from WCL's nearby Missabe Jct. Yard.² Hallett Dock No. 5 is also open via a BNSF reciprocal switch to Canadian Pacific Railway/Soo Line Railroad Company ("CP") and Union Pacific Railroad Company ("UP").

Approximately 70% of the commodity volume handled at Hallett Dock No. 5 is limestone transferred from lake vessels to railcars for movement by WCL to taconite processing facilities north of the Twin Ports in the Mesabi Range of northern Minnesota. WCL also moves blast furnace trim (BFT) by rail into Hallett Dock No. 5 for outbound water movement by vessel. WCL understands from Hallett that approximately 10% of the traffic at Hallett Dock No. 5 is rail-to-water movements of bentonite from BNSF and from CP via a BNSF reciprocal switch. WCL and BNSF also handle a small volume of taconite fines by rail into the dock. Finally, a small amount of salt is transferred annually from vessels to trucks (or to ground storage and then to trucks) for delivery in the local area. Overall, WCL moves approximately 90% of the traffic volume that is handled by rail at Hallett Dock No. 5.

C. The Proposed Transaction

Pursuant to an Asset Purchase Agreement dated as of November 8, 2019 between WCL and Hallett, WCL will acquire Hallett Dock No. 5, including the on-dock tracks and

² WCL uses these same trackage rights to reach its existing Lakehead Storage Facility, a ground-level bulk commodity storage and transferring site located to the north of Hallett Dock No. 5. Between Hallett Dock No. 5 and the Lakehead Storage Facility, WCL's existing elevated Ore Dock No. 6 passes overhead. See attached Map Exhibit 1A.

adjacent Boston holding tracks. WCL proposes to assume operation of the dock from Hallett upon consummation of that acquisition.

The transaction arose from Hallett's decision to sell Dock No. 5 and WCL's desire to ensure continued operation of Dock No. 5. WCL is the predominant rail carrier user of Hallett Dock No. 5, and the capacity offered by that dock is vital to WCL's existing customers and to WCL's ability to fulfill its commitments to handle their traffic. WCL faced significant uncertainty that Hallett Dock No. 5 could be removed from the transportation supply chain – for example, through sale of the property to a residential or commercial developer that did not intend to keep the dock open for rail/water transfer and related commodity storage purposes. Such a disposition of Hallett Dock No. 5 and termination of the existing dock services that Hallett provides would not have required prior STB approval. WCL and Hallett have now entered into the Asset Purchase Agreement, which will preserve operation of Hallett Dock No. 5 under WCL ownership.

WCL does not intend to implement significant changes in the railcar handling and commodity transfer and storage currently conducted at Hallett Dock No. 5. WCL expects to retain most if not all of the existing Hallett employees who operate the dock. WCL will assume and fulfill Hallett's existing contractual arrangements with shippers and rail carriers for the performance of services at the dock.³ As is the case today, WCL will operate Hallett Dock No. 5 as an open dock, with transfer and handling services equally available to any interested parties as capacity and existing customer commitments permit during shipping season.

³ Depending on the commodity and movement, Hallett's arrangements for dock services are sometimes directly with the shipper (owner of the commodity) and sometimes with the serving rail carrier, which may have its own arrangement with the shipper for the bundled services.

As Hallett does today, WCL's dock crews working at Hallett Dock No. 5 plan to exchange railcars with WCL train crews and BNSF train crews on the Boston holding tracks. WCL currently operates 2-3 trains per day to and from Hallett Dock No. 5 during the shipping season when the dock receives vessels, which runs approximately from April to January. WCL expects similar train frequencies after consummation of the proposed transaction. In the future, WCL will review whether minor adjustments in commodity flows via Hallett Dock No. 5, WCL's nearby Lakehead Storage Facility and the WCL dock facility in Two Harbors, Minnesota could result in improved efficiencies and utilization at all three facilities.

II. JURISDICTION AND STATUTORY STANDARDS

A. WCL's Proposed Operation of Hallett Dock No. 5 is Subject to STB Approval Under 49 U.S.C. § 10901

Pursuant to 49 U.S.C. § 10901, an existing rail carrier such as WCL may operate over an "extended or additional railroad line" if the Board finds that such activity is not inconsistent with public convenience and necessity. 49 U.S.C. § 10902(a), (c). The Board's regulations specifically provide that "[e]xisting carriers require approval under section 10901 . . . to operate a rail line owned by a noncarrier" 49 C.F.R. § 1150.1(a). Given the current non-regulated status of Hallett Dock No. 5, WCL has sought herein an exemption from Section 10901 for its "operation" of the dock, rather than its "acquisition and operation" of the dock. Governing agency precedent under Section 10901 provides that, in such circumstances, the acquisition of the dock from a non-carrier does not itself involve the transfer of a regulated interest or any common carrier obligation. Rather, it is the proposed operation of the dock by the rail carrier that implicates the Board's jurisdiction and the need for agency authorization. *See, e.g., Norfolk & W. Ry. Co. – Aban. – St. Marys & Minster in Auglaize Cty., OH*, 9 I.C.C.2d 1015, 1019 (1993) (railroad may lease previously-abandoned rail line without agency approval, but

“may not operate a railroad over the right-of-way without first obtaining Commission approval or an exemption.”); *Plymouth Short Line, Ltd. – Operation Exemption – In Plymouth, IN*, Docket No. FD 30654 (ICC served May 28, 1985) at 1, n.1 (“[T]he proposed purchase is not governed by section 10901, since this no longer is a line of railroad. Our only concern lies with the operation of the line.”).⁴

This proceeding involves a rail/water dock facility, rather than a railroad branch line as in the cases referenced, but the result should be the same because both involve operation of a rail asset that does not require new construction. Hallett Dock No. 5 would constitute a “railroad line” as that term is used in Section 10901 once it is acquired and operated by WCL. The ICC addressed the precise situation presented in this petition – a railroad’s acquisition of a dock facility from a non-carrier – in *Acquisition by Norfolk & W. Ry. Co.*, 154 I.C.C. 371, 374-375 (1929). There, Norfolk & Western Railway Company sought authority under what is now Section 10901 for “the acquisition and operation by it of the terminal properties owned by the city of Norfolk, Va., located at Sewalls Point, Norfolk County, Va.” The ICC had previously found that the city of Norfolk was not a rail common carrier with respect to the municipal piers at issue. *Wharfage, Handling, and Storage Charges at Municipal Terminals, Norfolk, VA*, 59 I.C.C. 488, 489, (1920).

The ICC explained that the agency has jurisdiction when an existing rail carrier proposes to operate a municipal pier being purchased from a non-carrier:

In its application the Norfolk & Western contends that the properties proposed to be acquired and operated by it do not constitute a line of railroad, the acquisition or operation of which is

⁴ To the extent that the Board otherwise determines that WCL’s acquisition of Hallett Dock No. 5, as distinct from its operation of the facility after the transaction is consummated, is within the agency’s jurisdiction, WCL requests that this petition for exemption be considered to encompass the proposed acquisition.

prohibited until authorized by our certificate under paragraph (18) of section 1, but on the contrary consist of land, wharves or piers, grain elevators, appurtenant tracks, etc., and constitute only an enlargement or expansion of its terminal facilities which may be undertaken without such certificate. It states that the application is filed to secure a determination of the question whether our certificate is necessary, and if we determine that it is, request for such certificate is made. We are of the opinion that we have jurisdiction.

154 I.C.C. at 374-375.

The ICC analogously has held that dock companies that are owned by a rail carrier and conduct their own on-dock rail operations are performing regulated rail transportation and are themselves rail carriers subject to the jurisdiction of the STB. *Assoc. of P&C Dock Longshoremen v. The Pitts. & Conneaut Dock Co.*, 8 I.C.C.2d 280 (1992). A dock facility that will be *directly* operated by a rail carrier and that includes on-dock rail operations would likewise fall within the regulatory ambit of the STB.⁵

Other cases have similarly found that railroad dock facilities were subject to ICC jurisdiction. In *Florida E.C. Ry. Co., Petition for Declaratory Order*, 360 I.C.C. 272 (1979), *reconsid. denied*, 360 I.C.C. 449 (1979), *appeal dismissed*, *City of Miami v. ICC*, 669 F.2d 219 (5th Cir. Unit B 1982), the ICC determined that a railroad dock facility and related trackage was a “line of railroad” subject to ICC abandonment jurisdiction. *Brown v. Consolidated R. Corp.*, 422 F. Supp. 1251 (N.D. Ohio 1976), likewise found that a railroad ore dock was a line of railroad. More recently, a *State of Maine* decision by the STB addressing a local governmental entity’s

⁵ Although not the case in 1992, The Pittsburgh & Conneaut Dock Company (“P&C Dock”), the company involved in the cited decision, is today a rail carrier affiliate of WCL and is also indirectly controlled by CNR. *CN/DMIR*, 7 S.T.B. at 534 (noting that P&C Dock, “a Class III railroad, does not own or operate any rail routes, but performs switching operations and ship-to-rail and rail-to-ship bulk transfer operations for [another CNR rail carrier subsidiary] at three docks at Conneaut, OH.”). A jurisdictional distinction between P&C Dock and WCL’s proposed operation of Hallett Dock No. 5 is not readily apparent.

acquisition of a railroad dock facility in Cleveland, Ohio was predicated on the assumption it otherwise involved “[t]he acquisition of an active rail line and the common carrier obligation that goes with it” *Consolidated Rail Corporation – Petition for Declaratory Order – C&P Dock*, Docket No. 33296 (STB served Dec. 13, 1996).

All of this precedent makes clear that Section 10901 embraces WCL’s proposal to assume the existing operation of Hallett Dock No. 5 upon consummation of the acquisition.

B. The Board Should Grant An Exemption From the Prior Approval Provisions of Section 10901 for WCL’s Proposed Operation of Hallett Dock No. 5

Under 49 U.S.C. § 10502, the Board shall exempt a transaction from regulation under Part A of Subtitle IV of Title 49 of the U.S. Code (including Section 10901) if the Board finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

WCL initially notes – as the Board itself has recognized – that pursuing a full application under Section 10901 for WCL’s operation of Hallett Dock No. 5 would be unnecessary and confusing given that the only application regulations at 49 C.F.R. § 1150, Subpart A are tailored for rail *construction* projects, and are largely unsuitable for this proposed operation of an existing dock. The STB has recognized that petitions for exemption are appropriate and sufficient for transactions under Section 10901 that do not involve rail construction. *See Riverview Trenton Railroad Company – Petition for Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne County, MI*, Docket No. FD 34040 (STB served Feb. 15, 2002) at 10, n.16 (“In rail construction cases, the filing of a formal application under 49 U.S.C. 10901 entails the submission of extensive financial information in compliance with our regulations. . . . In contrast, we have no specific regulations governing the

content of applications to acquire and operate rail lines under 49 U.S.C. 10901, and we can proceed with the appropriate regulatory scrutiny in a proceeding for a petition for exemption.”).

That approach is consistent with the broader motivations for the exemption provisions of Section 10502. In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the ICC use its expanded statutory exemption authority to free certain transactions and service from the administrative and financial costs associated with regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, which reenacted the existing exemption provisions as 49 U.S.C. § 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An exemption from the requirements of Section 10901 for WCL’s operation of Hallett Dock No. 5 would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 10901, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the objectives established in the transportation policy as described below. Moreover, WCL’s proposed operation of Hallett Dock No. 5 is of limited scope and will not result in any abuse of market power.

III. WCL’S PROPOSED ASSUMPTION OF OPERATIONS AT HALLETT DOCK NO. 5 FULFILLS THE BOARD’S EXEMPTION CRITERIA

A. Regulation Is Not Necessary to Carry Out the Rail Transportation Policy Of 49 U.S.C. § 10101.

WCL’s proposed assumption of the operation of Hallett Dock No. 5 is wholly consistent with the rail transportation policy outlined in 49 U.S.C. § 10101. The dock is an important component of the transportation infrastructure in the Twin Ports that serves the needs of bulk commodity rail customers throughout the region. Yet the dock does not currently fall within the statutory jurisdiction of the STB because it is owned by a non-carrier. The dock would not be subject, for example, to the regulatory oversight that normally governs the abandonment or discontinuance of rail assets that would protect the public interests of bulk commodity shippers and participants in their supply chains. Hallett decided to sell Dock No. 5, and a sale to an entity other than WCL could result in an uncertain future for a dock that is needed to serve existing rail/water customers. Sale of the Dock No. 5 property to a non-transportation-oriented buyer could reduce the availability of rail-to-water and water-to-rail transfer services and capacity in the Twin Ports. Waterfront redevelopment, for example, could crowd out the bulk commodity operations that are currently conducted at Dock No. 5. Even if a transportation function remained, there is no assurance that it would be focused on and responsive to the needs of rail customers that currently rely on the services that Hallett provides at Dock No. 5. WCL’s assumption of current operations at Hallett Dock No. 5 assures the continuation of existing service, and for the first time will bring the dock operations within the protective ambit of the STB’s regulatory jurisdiction. As such, exemption will promote the “continuation of a sound rail transportation system” to meet the needs of the public. 49 U.S.C. § 10101(4).

By preserving and enhancing the long-term viability of a dock operation that facilitates the established movement of various commodities via rail and lake vessel during the shipping season on Lake Superior, WCL's proposed operation also will "foster sound economic conditions in transportation" and promote fluid operation among rail carriers and other transport modes. See 49 U.S.C. § 10101(5). The transaction should also facilitate coordination between rail and dock operations for the large volume of traffic at Hallett Dock No. 5 that is moved in rail service from or to the dock. And by accommodating WCL's willingness to invest in additional dock infrastructure in the Twin Ports area to serve existing customers and traffic, exemption will encourage the "honest and efficient management of railroads". 49 U.S.C. § 10101(9).

Granting the relief sought herein will advance several other goals enumerated in the rail transportation policy as well. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). The statutory exemption contained in Section 10502 will obviate the need for the expensive, time-consuming and relatively uncertain processes associated with a non-construction application proceeding under Section 10901, particularly where the existing application regulations are designed for construction cases. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation on this transaction. *E.g., Livonia, Avon & Lakeville Railroad Corporation – Acquisition and Operation Exemption – Line of Consolidated Rail Corporation*, Docket No. FD 32754 (STB served March 11, 1996) at 4.

B. Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power

WCL's operation of Hallett Dock No. 5 will have no adverse impact on rail competition. Hallett Dock No. 5 operates as an open dock today, and WCL is similarly committed to providing service at the dock to interested shippers, railroads, motor carriers and vessel operators on an open basis. The proposed operation preserves WCL's ability to effectively serve its existing customers transporting bulk commodities, mostly in the iron ore supply chain, by rail/water, and similarly preserves the existence of the dock as a transportation facility for current customers of BNSF and CP. In addition, Hallett Dock No. 5 is one of twenty privately-owned and operated dock facilities in the Twin Ports serving a wide variety of commodities,⁶ many of which are rail-served and several of which are owned by WCL or BNSF. And WCL's common carrier obligation will extend to its future operation of Hallett Dock No. 5 – unlike the situation today where Hallett operates the dock as an unregulated non-carrier.

Because approval of WCL's proposed operation of Hallett Dock No. 5 will not lessen rail competition or rail transportation options for any such shippers, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

C. The Transaction Is Limited in Scope

Because regulation is not necessary to protect shippers from an abuse of market power, WCL need not demonstrate that the proposed transaction is of limited scope. 49 U.S.C. § 10502(a)(2); *Fort Worth & Western Railroad Company, Inc. – Lease Exemption – St. Louis Southwestern Railway Company*, Docket No. FD 32955 (STB served Sep. 5, 1996) at 3. Nevertheless, it is clear that WCL's operation of Hallett Dock No. 5 satisfies this criterion as well. Upon consummation, WCL proposes to assume operation of a single dock facility,

⁶ See website for Duluth Seaway Port Authority, "Port of Duluth-Superior," www.duluthport.com/port.php (last visited November 5, 2019).

adjacent to other WCL dock facilities, which WCL already accesses and where WCL currently accounts for nearly 90% of the traffic handled. No significant changes in existing operations or service at Hallett Dock No. 5 are anticipated, and customers whose commodities are shipped through Dock No. 5 today will continue to be able to do so. While the regulatory status of Hallett Dock No. 5 will change as a result of the proposed transaction, its established role in handling bulk commodities, mostly in the iron ore supply chain, and as an important component of the Twin Ports' dock infrastructure will not. Accordingly, the Board should find that this transaction is of limited scope within the meaning of Section 10502(a)(2)(A).

IV. LABOR PROTECTION

The Board may not impose labor protection conditions on a transaction authorized or exempted under Section 10901, such as WCL's proposed operation of Hallett Dock No. 5. 49 U.S.C. § 10901(c). WCL understands that Hallett currently employs fifteen full-time personnel at Dock No. 5, including eleven dock workers, a superintendent, a secretary/scale operator and two officers (president and officer). With the exception of the two officers, and subject to meeting WCL's qualification requirements, WCL will seek to hire and retain the existing workforce at Hallett Dock No. 5. WCL also will extend preferential hiring consideration to two existing seasonal employees at the dock.

V. ENVIRONMENTAL ASSESSMENT

A petition for exemption must comply with the Board's environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(a). Under 49 C.F.R. § 1105.6(c)(2), WCL's proposed operation of Hallett Dock No. 5 is exempt from environmental reporting requirements. Hallett Dock No. 5 is located in an attainment area for air quality under the Clean Air Act. The proposed transaction will not result in significant changes in existing rail carrier operations or

existing operations at the dock, i.e., changes that would exceed the applicable thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed operation of Hallett Dock No. 5 by WCL also is exempt from historic preservation reporting requirements. The proposed transaction is for the purpose of continuing existing rail, transfer, storage and related operations at the dock. Further Board approval would be required as a prerequisite to abandonment of Hallett Dock No. 5 by WCL. There are no plans in connection with this transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.

VI. PROCEDURAL SCHEDULE

In a Petition for Establishment of Procedural Schedule submitted concurrently herewith (for which expedited consideration is sought), WCL has asked the Board to adopt a procedural schedule for this matter that would result in the issuance of a final Board decision three and one-half months after the filing of this petition, to be effective 30 days after issuance. 49 U.S.C. § 10502(b) generally provides that the Board will either rule on a petition for exemption within 90 days of filing or decide at the end of that period to institute a proceeding to further consider the petition, with such proceeding to be completed within nine additional months. Consistent with prior Board practice, however,⁷ WCL seeks to have the Board immediately institute a proceeding and provide public notice of WCL's petition for exemption. After a period for filing of any comments and a brief WCL reply period, the Board would proceed to issue its decision.

WCL's proposed procedural schedule would permit the participation of any potentially interested party while providing some timeline certainty to WCL and Hallett, who

⁷ See *Genesee & Wyoming Inc. – Acquisition of Control Exemption – Providence and Worcester Railroad Company*, Docket No. 36064 (STB served Sep. 20, 2016).

otherwise face a period of up to a full year for the issuance of a Board decision. This is particularly salient given that Hallett, a non-carrier not otherwise subject to the Board's jurisdiction, could sell Hallett Dock No. 5 without Board approval or exemption in a transaction with a party other than WCL. As explained in the letter from Hallett's President attached as Exhibit B to WCL's concurrently-filed Petition for Establishment of Procedural Schedule, consummation of the acquisition on a prompt basis is important to Hallett as a privately owned business. A timely decision that is effective by the end of March would also accommodate important seasonal considerations in WCL's assumption of operations at Hallett Dock No. 5. Transactional implementation would be optimized at the end of March as the dock transitions from winter to spring operating procedures.

The procedural schedule sought by WCL is a reasonable accommodation of these considerations and the Board's responsibilities under 49 U.S.C. §§ 10901 and 10502. Hallett strongly supports WCL's proposed approach, as shown in its letter.

VII. CONCLUSION

WCL is acquiring Hallett Dock No. 5 to ensure that the rail/water transfer capacity at the dock continues to be available to serve existing rail customers. Hallett Dock No. 5 is important for rail/water shippers transporting bulk commodities in the iron ore supply chain on Lake Superior during shipping season. WCL's proposed operation of the dock will bring the dock within the Board's jurisdiction as part of the national rail network, subject to WCL's commitment to continue the dock's open status with transfer and handling services equally available to interested parties. The transaction is in the public interest and fully satisfies the exemption criteria of 49 U.S.C. § 10502.

WHEREFORE, WCL respectfully requests that the Board grant an exemption from the provisions of 49 U.S.C. § 10901 for WCL's operation of Hallett Dock No. 5 in Duluth, Minnesota.

Respectfully submitted,

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**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**



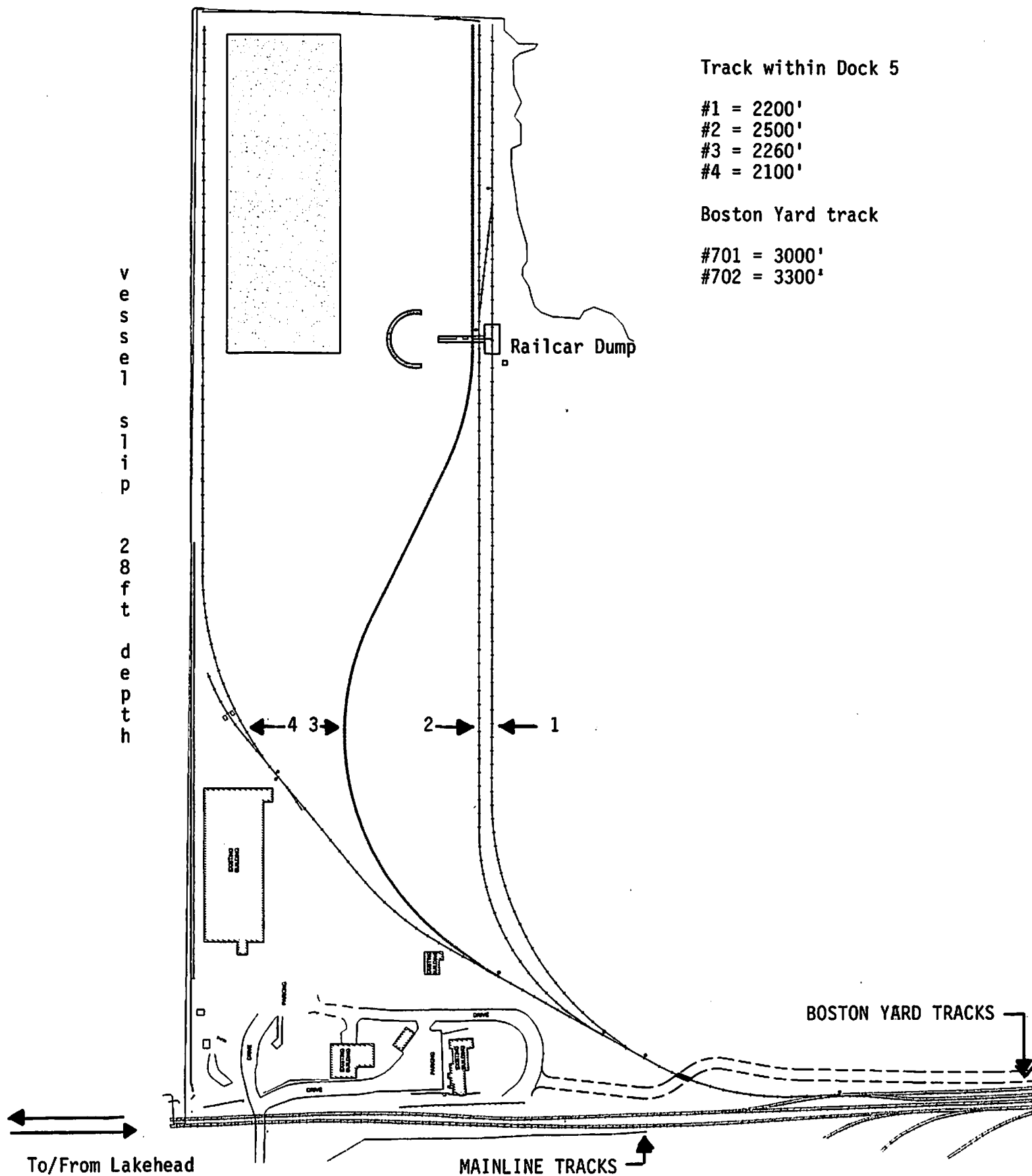
Docket No. FD 36346

Exhibit A-1

Hallett Dock No. 5 – Duluth, Minnesota



HALLETT DOCK NO. 5



Track within Dock 5

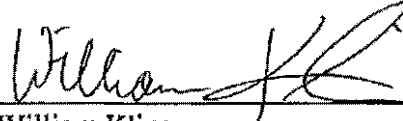
- #1 = 2200'
- #2 = 2500'
- #3 = 2260'
- #4 = 2100'

Boston Yard track

- #701 = 3000'
- #702 = 3300'

VERIFICATION

I, William Kline, declare under penalty of perjury that the facts asserted in the foregoing Petition for Exemption are true as stated to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'William Kline', is written over a horizontal line.

William Kline
Senior Manager, Dock Operations, Marketing –
Supply Chain Iron Ore

Executed on November 8, 2019.