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KARL MORELL



November 3, 2008

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**SURFACE  
TRANSPORTATION BOARD**

BY HAND DELIVERY

The Honorable Anne K Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street S W  
Washington, DC 20423-0001

Re STB Finance Docket No 35187, Grand Elk Railroad, LLC – Lease  
and Operation Exemption – Norfolk Southern Railway Company

Dear Acting Secretary Quinlan

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C F R § 1150 31 and a check covering the \$1,800 filing fee Also enclosed is a Disc containing the Notice and Summary

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger

If you have any questions, please contact me

Sincerely yours,

Karl Morell

Enclosures

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO 35187

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GRAND ELK RAILROAD, L.L.C  
--LEASE AND OPERATION EXEMPTION--  
NORFOLK SOUTHERN RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.31, Et Seq.

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223897

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Attorney for  
GRAND ELK  
RAILROAD, L.L.C.

Dated: November 3, 2008

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO 35187

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GRAND ELK RAILROAD, L.L.C.  
--LEASE AND OPERATION EXEMPTION--  
NORFOLK SOUTHERN RAILWAY COMPANY

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VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C F R. § 1150 31, Et Seq.

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Grand Elk Railroad, L.L.C. ("GER"), a non-carrier, files this Notice of Exemption pursuant to 49 C F R Part 1150, Subpart D--Exempt Transactions, to permit GER to lease from Norfolk Southern Railway Company ("NS") and operate rail lines located in Michigan and Indiana totaling approximately 122.9 miles in length, not including the tracks in Botsford Yard. GER will also obtain incidental trackage rights over a 0.43-mile rail line.

In support of this Notice of Exemption, GER submits the following information as required by 49 C.F.R. § 1150.33

- (a) Full name and address of applicant.

Grand Elk Railroad, L.L.C.  
315 W 3<sup>rd</sup> Street  
Pittsburg, Kansas 66762

(b) Applicant's Representative

Karl Morell  
Of Counsel  
BAI.I. JANIK LLP  
Suite 225  
1455 F Street, N.W.  
Washington, DC 20005  
(202) 638-3307

(c) Statement of Agreement:

GER and NS have entered into a lease agreement

(d) The operator of the property:

GER will be the operator of the leased lines.

(e) Summary of proposed transaction.

GER is a new, wholly owned, non-carrier subsidiary of Watco Companies, Inc (“Watco”), headquartered in Kalamazoo, MI. In this proposed transaction, GER will lease 122.9 miles of NS rail lines between a point just outside of Elkhart Yard in Indiana and Grand Rapids, Michigan via Kalamazoo, Michigan (collectively, the “Kalamazoo Branch”). GER also will lease the Botsford Yard outside Kalamazoo for train and car handling purposes. Finally, GER will obtain incidental trackage rights over a 0.43-mile segment of the Michigan Main Line to connect Botsford Yard and the Kalamazoo Branch.

This proposed transaction involves some of the same rail lines, and some of the same parties, as an earlier proposed transaction reviewed in STB Finance Docket No. 35063, *Michigan Central Railway, LLC – Acquisition and Operation Exemption – Lines of Norfolk Southern Railway Company* (the “Michigan Central Transaction”), the approval of which was denied by the Surface Transportation Board (“Board”) in a decision served on December 10, 2007. GER

acknowledges that, as a result, persons may be tempted to compare the Michigan Central Transaction with the proposed transaction under review in this proceeding (the "Grand Elk Transaction") GER notes that the Grand Elk Transaction is significantly more routine than the Michigan Central Transaction:

- The Grand Elk Transaction involves only a portion of the rail lines that were the subject of the much larger and significantly more complex Michigan Central Transaction The Grand Elk Transaction concerns the lease of 122.9 miles, with incidental trackage rights over a 0.43 mile segment, to a new company, while the Michigan Central Transaction involved the capital contribution of 299 miles of rail lines and 85.5 miles of trackage rights to a joint venture company
- In the Grand Elk Transaction, GER will be a wholly-owned subsidiary of Watco Unlike the joint venture company proposed in the Michigan Central Transaction, NS will have no ownership, management or other interest in GER, will have no members on the GER board, and will have no ability – by veto rights or otherwise – to control internal economic, strategic or operating decisions of GER <sup>1</sup>
- In the Grand Elk Transaction, NS will not share in GER's profits. In the Michigan Central Transaction, the parties proposed to create a joint venture limited liability company that would have enabled NS – as a member of the limited liability company – to participate in the profits.

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<sup>1</sup> Of course, GER must comply with lease provisions that require it to maintain the leased lines to a minimal level, and GER is prohibited, as a lessee of the line, from granting other carriers trackage rights over the lines Further, and as noted below, there are no interchange restrictions involved in the Grand Elk Transaction.

- GER will have the unrestricted ability to interchange with all of the rail carriers it physically connects with, and NS will receive no compensation for carloads interchanged with other carriers, unlike the structure in the Michigan Central Transaction

In the Grand Elk Transaction, the parties contemplate leasing certain lines in the State of Michigan to GER, a locally based carrier. The parties believe that the proposed transaction will be successful in reversing the significant decline in rail carloadings on these lines. GER will be better situated to work with customers and local communities to once again grow the traffic on the lines.

The Grand Elk Transaction is the very type of pro-competitive transaction that the Board and its predecessor, the Interstate Commerce Commission ("ICC") have repeatedly endorsed and affirmed. As the ICC noted:

[I]t has been our experience with transactions of this type that the acquiring firm will bring new vitality to the line. Typically, the new operator has closer ties to local communities and will provide better service, often at lower rates, and will work closely with shippers on the line.

Finance Docket No. 31089. *Montana Rail Link, Inc. – Exemption Acquisition and Operation – Certain Lines of Burlington Northern R. Co.* (not printed), served May 26, 1988, slip op. at 21. See also *Class Exemption for Acq. & Op. of Rail Lines*, 1 I.C.C. 2d 810, 813 (1985), *aff'd sub nom Illinois Commerce Comm'n v ICC*, 817 F.2d 145 (D.C. Cir. 1987) ("Transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves shipper and community interests by continuing rail service.... [S]hortlines are

dependent on local traffic for their survival, and thus have a greater incentive ... to provide local shippers with service tailored to their needs”)

In summary, the Grand Elk Transaction that is the subject of this Notice of Exemption is structured in a manner similar to the numerous other lease arrangements between Watco’s other railroad subsidiaries and various Class I carriers, and one consistent with historic Board precedent. It is structured in a manner distinctly different from the joint venture transaction proposed in the Michigan Central Transaction and, as such, should not be viewed as one related to that transaction.

**Other transaction summary information.**

- (1) The name and address of the company leasing the subject property.

Norfolk Southern Railway Company  
Three Commercial Place  
Norfolk, VA 23510

- (2) The involved transaction is expected to be consummated some time after the effective date of this Notice.

- (3) GER will lease and operate the rail lines owned by NS and located between (1) Milepost KII 1.4, at Elkhart, IN, and Milepost KH 27.4, at Three Rivers, MI, (2) Milepost FB 27.3, at Three Rivers, MI, and Milepost FB 102.3, at Grand Rapids, MI, (3) Milepost KZ 94.25 and Milepost KZ 95.0 (Kalamazoo Industrial Track); (4) Milepost OW 66.6 and Milepost OW 70.24 (Plainwell Industrial Track), (5) Milepost XH 88.10 and Milepost XH 92.40 (Hastings Running Track); (6) Milepost CQ 42.8 and Milepost CQ 43.9 (CK&S Industrial Track); (7) Milepost KY 0.0 and Milepost KY 3.2 (B O Secondary); (8) Milepost UP 0.0 and Milepost UP 6.7 (Upjohn Secondary), (9) Milepost QY 421.2 and Milepost QY 421.3 (Quincy Secondary), (10) Milepost VW 106.0 and Milepost VW 106.9 (Comstock Industrial Track); (11)

Milepost AZ 69.6 and Milepost AZ 70.4 (Airline Extension), and (12) Milepost IJ 44.3 and Milepost IJ 44.7 (CK&S Industrial Track), along with the yard tracks in Botsford Yard located between Milepost MH 141.8 and Milepost MH 142.7. In addition, GER will be granted incidental trackage rights over the NS rail line located between milepost 143.03 and milepost 142.60, at the Botsford Yard.

(4) The length of the lines being leased is approximately 122.9 miles, not including the tracks in Botsford Yard. The length of the trackage rights line is approximately 0.43 miles.

(f) A map of the rail lines being leased and the incidental trackage rights is attached as Exhibit A.

(g) GER hereby certifies that GER's projected revenues as a result of this transaction will not result in GER becoming a Class II or Class I rail carrier. The projected annual revenue of GER may exceed \$5 million. Consequently, GER is in the process of complying with the notice requirements of 49 C.F.R. § 1150.32(e). GER will certify its compliance in the very near future. GER readily recognizes that the revenue projection is optimistic, given the economic and market forces that have led to this Grand Elk Transaction. If anything, recent events such as the announced closure of the General Motors stamping plant in Grand Rapids, MI (the largest shipper on the lines) point to a further exacerbation of the forces that give rise to this proposed transaction. Nevertheless, GER believes that it will be better able to arrest and reverse the declining traffic patterns that have become endemic to the leased lines.

(h) The Lease Agreement between GER and NS will not contain any provision that prohibits GER from interchanging traffic with a third party.

A caption summary, as required by 49 C.F.R. § 1150.34, is attached.

## **ENVIRONMENTAL AND HISTORIC IMPACTS**

GER is leasing the rail lines and obtaining the trackage rights from NS for continued rail operations. Further Board approval is required for GER to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

GER's lease and operation of the rail lines will not result in significant changes in carrier operations. There will not be a diversion of (1) more than 1,000 rail carloads a year to motor carriage, or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent, or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. GER's lease and operation of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,



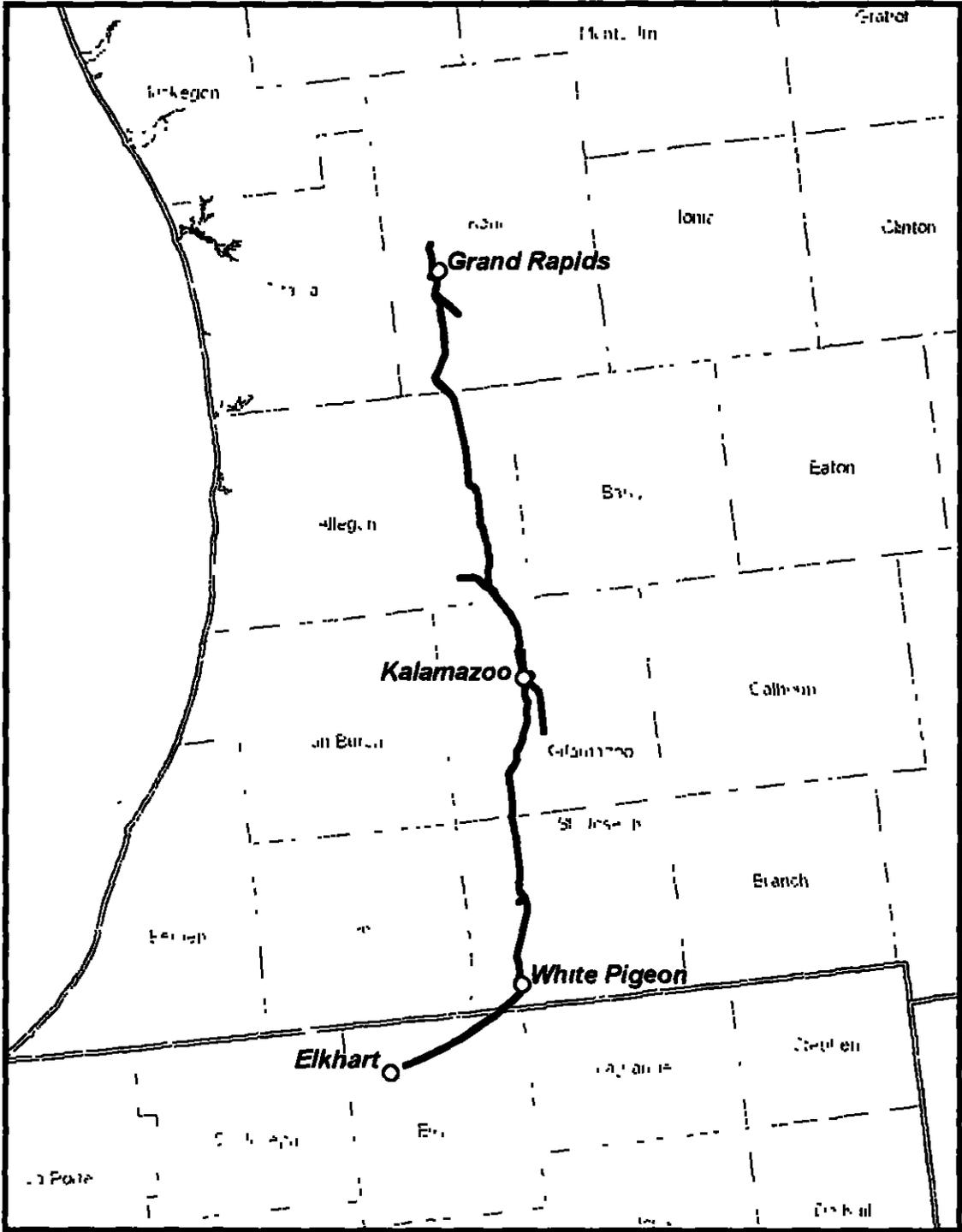
KARL MORELL  
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1455 F Street, N W  
Washington, DC 20005  
(202) 638-3307

Attorney for:  
GRAND ELK RAILROAD, L.L.C

Dated: November 3, 2008

# **EXHIBIT A**

Grand Elk Railroad



**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

**STB FINANCE DOCKET NO. 35187**

**GRAND ELK RAILROAD, L.L.C.  
--LEASE AND OPERATION EXEMPTION--  
NORFOLK SOUTHERN RAILWAY COMPANY**

Grand Elk Railroad, L.L.C. ("GER"), a non-carrier, has filed a notice of exemption to lease from Norfolk Southern Railway Company ("NS") and operate rail lines owned by NS located between: (1) Milepost KH 1 4, at Elkhart, IN, and Milepost KH 27 4, at Three Rivers, MI, (2) Milepost FB 27 3, at Three Rivers, MI, and Milepost FB 102 3, at Grand Rapids, MI; (3) Milepost KZ 94.25 and Milepost KZ 95 0 (Kalamazoo Industrial Track), (4) Milepost OW 66 6 and Milepost OW 70 24 (Plainwell Industrial Track); (5) Milepost XH 88 10 and Milepost XH 92 40 (Hastings Running Track); (6) Milepost CQ 42 8 and Milepost CQ 43.9 (CK&S Industrial Track), (7) Milepost KY 0 0 and Milepost KY 3 2 (B O Secondary), (8) Milepost UP 0 0 and Milepost UP 6 7 (Upjohn Secondary); (9) Milepost QY 421 2 and Milepost QY 421 3 (Quincy Secondary); (10) Milepost VW 106 0 and Milepost VW 106 9 (Comstock Industrial Track); (11) Milepost AZ 69 6 and Milepost AZ 70.4 (Airline Extension), and (12) Milepost IJ 44.3 and Milepost IJ 44 7 (CK&S Industrial Track), along with the yard tracks in Botsford Yard located between Milepost MH 141.8 and Milepost MH 142.7. In addition, GER will be granted incidental trackage rights over the NS rail line located between milepost 143 03 and milepost 142.6, at the Botsford Yard.

This transaction is related to STB Docket No. 35188, Watco Companies, Inc. -- Continuation In Control Exemption -- Grand Elk Railroad, LLC, wherein Watco Companies, Inc.,

has concurrently filed a verified notice to continue in control of GER upon GER becoming a Class III rail carrier.

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 1455 F Street, N W , Washington, DC 20005, (202) 638-3307.

This notice is filed under 49 C F R 1150 31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

**VERIFICATION**

**STATE OF KANSAS**

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**COUNTY OF CRAWFORD**

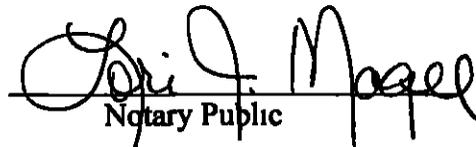
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I, Arthur E. McKechnie, III, being duly sworn depose and state that I am Executive Vice President of Watco Companies, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief

  
Arthur E McKechnie III

SUBSCRIBED AND SWORN TO before me this 31 day of October, 2008, in the County of Crawford, State of Kansas.

My Commission Expires: 8/16/2012

  
Notary Public

