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ENTERED
Office of the Secretary

JUN 12 2001

Part of
Public Record

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June 11, 2001

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Finance Docket No. 34000, Canadian National
Railway Company, et al. -- Control -- Wisconsin
Central Transportation Corporation, et al.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding please find an original and twenty-five (25) copies of AK Steel Corporation's Motion to Compel Great Lakes Transportation LLC's Production of Documents (**AKS-3**). We have enclosed an electronic version of this Motion as well.

Given the June 25 deadline for filing Comments in this case, AK Steel requests **expedited consideration** of this Motion.

Finally, we have enclosed an additional copy of this Motion to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Andrew B. Kolesar III".

Andrew B. Kolesar III
An Attorney for AK Steel
Corporation

Enclosures

202637

AKS-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

Canadian National Railway Company,	)
Grand Trunk Corporation, and WC	)
Merger Sub, Inc. -- Control and	)
Merger -- Wisconsin Central	)
Transportation Corporation,	)
Wisconsin Central Ltd.,	)
Fox Valley & Western Ltd.,	)
Sault Ste. Marie Bridge Company,	)
and Wisconsin Chicago Link Ltd.	)

Finance Docket No. 34000

-- Expedited Consideration Requested --

AK STEEL CORPORATION'S MOTION
TO COMPEL GREAT LAKES TRANSPORTATION LLC's
PRODUCTION OF DOCUMENTS

ENTERED
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Public Record



OF COUNSEL:

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1224 Seventeenth Street, N.W.
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Attorneys for AK Steel
Corporation

Dated: June 11, 2001

Canadian National Railway Company,)
Grand Trunk Corporation, and WC)
Merger Sub, Inc. -- Control and)
Merger -- Wisconsin Central)
Transportation Corporation,) Finance Docket No. 34000
Wisconsin Central Ltd.,)
Fox Valley & Western Ltd.,)
Sault Ste. Marie Bridge Company,)
and Wisconsin Chicago Link Ltd.)

**AK STEEL CORPORATION'S MOTION
TO COMPEL GREAT LAKES TRANSPORTATION LLC'S
PRODUCTION OF DOCUMENTS**

BACKGROUND

AK Steel is engaged in the production of flat-rolled carbon, stainless and electrical steels for use in automotive,

appliance, construction and manufacturing markets. AK Steel employs 11,500 men and women at major steelmaking plants and offices in Indiana, Kentucky, Ohio and Pennsylvania. With particular relevance to the instant proceeding, AK Steel operates facilities in Butler, Pennsylvania, and Middletown, Ohio.

AK Steel ships a considerable volume of traffic each year over lines owned by the Great Lakes rail subsidiaries. Specifically, the Bessemer & Lake Erie Railroad Company ("B&LE") ships large quantities of steel-related materials both to and from the Butler, Pennsylvania plant. In addition, AK Steel ships in excess of 1.5 million tons of taconite pellets over the Duluth, Missabe & Iron Range Railway Company's ("DM&IR") lines in Minnesota for ultimate delivery to AK Steel's Middletown, Ohio facility.

On April 30, 2001, Great Lakes filed a pleading in this case entitled "Reply to Petition Suggesting Procedural Schedule and a Petition to Dismiss Application or Require Supplemental Information." Therein, Great Lakes argued that the contemplated merger of Canadian National ("CN") and Wisconsin Central ("WC") would have significant anti-competitive impacts, including an anti-competitive impact specifically upon AK Steel at Butler, Pennsylvania. See id. at 10-11 & Verified Statement of Peter D. Stephenson ("Stephenson V.S.") at 7. In particular, Great Lakes argued that, as a consequence of the proposed CN/WC merger, 2.9 million tons of taconite traffic per year now moving in Great Lakes' rail-water-rail service from Minntac, Minnesota to U.S.

Steel's Edgar Thompson Works in Pittsburgh, Pennsylvania could be diverted to a new all-rail route. As a result of this anticipated diversion, Great Lakes stated that it would be forced to abandon the ninety-mile portion of the B&LE system that serves AK Steel's Butler facility. See Stephenson V.S. at 7 ("The most significant customer affected by abandoning the south end of the B&LE would be AK Steel. . . . Abandoning B&LE would leave AK captive to the Buffalo & Pittsburgh Railroad. Rates could increase for service to AK's various plants . . . AK could also lose competitive service on scrap movements to Butler.")

In response to Great Lakes' filing, AK Steel notified the Board of its intention to participate in this case (AKS-1), and served discovery requests upon Great Lakes to obtain more detail regarding the potential anti-competitive impacts referenced in the April 30 filing (AKS-2) (see Exhibit A hereto). On June 1, 2001, Great Lakes provided its responses and objections to AK Steel's Requests, and produced certain responsive documents.¹ In its formal response, however, Great Lakes objected to producing any documents in response to a number of requests related to Great Lakes' allegations regarding AK Steel.² In

¹ Great Lakes' 689-page document production consisted mainly of data reflecting the number of carloads shipped to and from each of the B&LE's customers over the last two years.

² Great Lakes declined to produce B&LE traffic tapes, contracts, or documents setting forth the costs that would be avoided through abandonment. In addition, Great Lakes indicated in its formal responses that it possessed no documents that were responsive to AK Steel's request for materials supporting Great
(continued...)

order to facilitate the expeditious resolution of this Motion, AK Steel seeks relief only with respect to a small number of the disputed requests.

ARGUMENT

AK Steel sought to determine whether traffic that currently moves via a Great Lakes rail-water-rail routing to Pittsburgh actually would (or even could) switch to an all-rail routing. In particular, AK Steel served requests upon Great Lakes that sought: (i) contracts between B&LE and any of its shippers applicable transportation over the southern half of the B&LE (most notably to U.S. Steel's Edgar Thompson Works in Pittsburgh, Pennsylvania); and (ii) information regarding DM&IR's control over the origin of this taconite traffic.

Great Lakes has objected to the production of this material. As AK Steel will demonstrate infra, Great Lakes' objections lack merit.

A. Contract(s) Relevant to Transportation
Over the "Southern Half of the B&LE"
to U.S. Steel's Edgar Thompson Works
(Request No. 16)

In its Request No. 16, AK Steel sought the production of all contracts relating to transportation over the ninety-mile

²(...continued)
Lakes' April 30 statements regarding the impact of the merger on AK Steel.

portion of the B&LE system that Great Lakes suggests that it would abandon as a result of the merger:

Produce all contracts in effect at any time from January 1, 1999 to the present relating to transportation over some or all of the Line.^[3]

For purposes of the present Motion, AK Steel hereby limits its Request No. 16 by seeking an order compelling Great Lakes to produce only those contracts relating to the transportation of taconite to U.S. Steel's Edgar Thompson Works (rather than to any of B&LE's customers on the southern half of its system).

In its June 1, 2001 formal Responses, Great Lakes objected to AK Steel's Request No. 16 on grounds of burden, vagueness, overbreadth, relevance, and commercial sensitivity. These objections are not well taken. As an initial matter, B&LE's contractual arrangements with U.S. Steel are directly relevant to the determination of whether the current rail-water-rail shipments of taconite to the Edgar Thompson mill will -- or even may -- switch to an all-rail routing. To that end, the rate levels, volume levels, service-related provisions, and remaining term set forth in these arrangements bear precisely upon the question of whether the merger will yield the significant traffic diversion that Great Lakes fears.

³ AK Steel defined "the Line" as the southern half of the B&LE, as that term is used in Great Lakes' April 30 filing; namely, the ninety miles of the B&LE system between Greenville and North Bessemer, Pennsylvania.

As to Great Lakes' commercial sensitivity objection, abundant Board precedent confirms that a two-tiered protective order, as is already in place in this case, is more than adequate to safeguard the commercial sensitivity of contracts. See, e.g., Docket No. 42056, Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Ry., Decision served Feb. 9, 2001, at 2-3 ("[W]e are satisfied that the parties' agreements regarding scope and the application of the 'highly confidential' provisions of the protective order are sufficient to protect the interests of third-party shippers."); Docket No. 41989, Potomac Electric Power Co. v. CSX Transp., Inc., Decision served Mar. 3, 1997; Docket No. 41295, Pennsylvania Power & Light Co. v. Consolidated Rail Corp., Decision served Mar. 10, 1997.

In addition, information of comparable sensitivity is routinely ordered to be produced in merger proceedings. See, e.g., Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern R.R. --Control and Merger -- Santa Fe Pacific Corp. and the Atchison Topeka and Santa Fe Ry., Decision served May 30, 1995 (compelling Oklahoma Gas & Electric Company's production of its transportation agreements to the Applicants); see also Finance Docket No. 33388, CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. --Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corp., Decision No. 1 served Apr. 16, 1997 (protective order entered by the Board expressly enumerated contracts as among the kinds of materials subject to discovery with appropriate confi-

dentiality restrictions); Finance Docket No. 32760, Union Pacific Corp. -- Control and Merger -- Southern Pacific Rail Corp., Decision No. 2 served Sept. 1, 1995.

B. Documents Regarding Great Lakes' Control Over the Origination of the Referenced Shipments to U.S. Steel
(Request Nos. 19-22)

The second general subject matter as to which AK Steel seeks an order compelling production has to do with the routing control that Great Lakes' subsidiary DM&IR appears to exercise over the origination of taconite shipments from Minnesota (including the 2.9 million tons of taconite per year moving from Minntac, Minnesota to U.S. Steel's Edgar Thompson plant).

It is AK Steel's understanding that DM&IR is the only rail carrier physically serving the Minntac origin. Also, DM&IR appears to have placed contractual restrictions via trackage rights agreements on other carriers' ability to serve the Minntac facilities.⁴ AK Steel formulated its Request Nos. 19-22 in an effort to obtain relevant information concerning Great Lakes' physical and contractual control over the Minnesota taconite shipments. Those requests sought the following:

⁴ AK Steel is aware of such an agreement between DM&IR and CN's subsidiary, the Duluth, Winnipeg and Pacific Railway, which was filed with the ICC in 1981 in Finance Docket No. 29745, Duluth, Winnipeg and Pacific Ry. -- Track Relocation Project in and around Duluth, Minnesota and Superior, Wisconsin, filed September 18, 1981 (copy attached as Exhibit B) (see Section 1(D) thereto). AK Steel seeks, via its Request No. 21, a copy of the current version of this Agreement.

Request for Production No. 19

Produce all documents prepared on or after January 1, 1990 regarding Canadian National Railway Company's ("CN") ability to originate rail transportation service for taconite shipments from: (a) Minntac, Minnesota; and (b) all other taconite mines in Minnesota now served by DM&IR.

Request for Production No. 20

Produce all agreements (including trackage rights agreements) currently in effect between Great Lakes and/or DM&IR and one or more of the Applicants concerning transportation of taconite over any line of the DM&IR.

Request for Production No. 21

Produce the currently effective version of the Trackage Rights Agreement, as amended or supplemented, filed with the ICC in Finance Docket No. 29745.

Request for Production No. 22

Produce all documents prepared on or after January 1, 1996 relating to the agreements produced in response to Document Production Request No. 20 and 21, *supra*.

Great Lakes objected to these Requests as follows:

- Request No. 19 - vagueness, overbreadth, and relevance
- Request No. 20 - vagueness, overbreadth, and relevance
- Request No. 21 - relevance
- Request No. 22 - vagueness, overbreadth, and relevance

Once again, given Great Lakes' specific allegation that AK Steel will be harmed by a diversion of the U.S. Steel taconite

traffic (away from B&LE and presumably away from its affiliate DM&IR by virtue of a build-out to one of the Applicants), AK Steel is entitled to explore whether such a diversion is possible. This inquiry easily qualifies as relevant under the Board's liberal discovery standards.

Finally, Great Lakes' objections as to vagueness and overbreadth lack specificity and should not preclude an order compelling the production of the requested material.

CONCLUSION

For the foregoing reasons, AK Steel requests that the Board issue an order compelling Great Lakes to produce responsive documents so that AK Steel may review these materials in advance of the June 25, 2001 deadline for Comments in this case.

Respectfully submitted,

OF COUNSEL:

Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: June 11, 2001

By: John H. LeSeur
Andrew B. Kolesar III 
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(202) 347-7170

Attorneys for AK Steel
Corporation

Exhibit A

BEFORE THE
SURFACE TRANSPORTATION BOARD

Canadian National Railway Company,	)	
Grand Trunk Corporation, and WC	)	
Merger Sub, Inc. -- Control and	)	
Merger -- Wisconsin Central	)	
Transportation Corporation,	)	Finance Docket No. 34000
Wisconsin Central Ltd.,	)	
Fox Valley & Western Ltd.,	)	
Sault Ste. Marie Bridge Company,	)	
and Wisconsin Chicago Link Ltd.	)	
	)	

**AK STEEL CORPORATION'S FIRST SET OF
DOCUMENT PRODUCTION REQUESTS AND INTERROGATORIES
TO GREAT LAKES TRANSPORTATION LLC**

Pursuant to 49 C.F.R. Part 1114 and the Board's Decision in this proceeding served on May 9, 2001, AK Steel Corporation ("AK Steel") hereby serves these Requests for Production of Documents and Interrogatories to Great Lakes Transportation LLC ("Great Lakes"), a party to this proceeding.

In view of the fact that comments on the Application are due on June 25, 2001, we are asking for responses to these Requests and Interrogatories (including production of documents) by June 1, 2001, and in accordance with the following Definitions and Instructions.

I.

DEFINITIONS

The following enumerated terms used herein are defined as follows:

1. "Applicants" shall mean Canadian National Railway Company, Grand Trunk Corporation, WC Merger Sub, Inc., Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link, individually and collectively, and any division thereof (including present or former directors, officers, employees, and agents) together with any parent subsidiary or affiliated corporation, partnership, or other legal entity.

2. "CN" shall mean the Canadian National Railway Company, and any division thereof (including present or former directors, officers, employees, and agents) together with any parent subsidiary or affiliated corporation, partnership, or other legal entity.

3. "WC" shall mean Wisconsin Central Transportation Corporation, and any division thereof (including present or former directors, officers, employees, and agents) together with any parent subsidiary or affiliated corporation, partnership, or other legal entity.

4. "Great Lakes" shall mean Great Lakes Transportation LLC, USS Fleet, DM&IR, B&LE, and P&C Dock, individually and collectively, and any division thereof (including present or former directors, officers, employees, and agents) together with

any parent subsidiary or affiliated corporation, partnership, or other legal entity.

5. "USS Fleet" shall mean USS Great Lakes Fleet, Inc.

6. "B&LE" shall mean The Bessemer & Lake Erie Railroad Company.

7. "DM&IR" shall mean The Duluth, Missabe & Iron Range Railway Company.

8. "P&C Dock" shall mean The Pittsburgh & Conneaut Dock Company.

9. "Southern half of the B&LE" shall have the same meaning as ascribed to that term in Great Lakes' April 30, 2001 Reply filing in this proceeding; namely, the ninety miles of the B&LE system between Greenville and North Bessemer, Pennsylvania.

10. "The Line" shall mean the southern half of the B&LE.

11. "AK Steel" shall mean AK Steel Corporation.

12. "Document" means the term "document" as that term is used in Fed. R. Civ. P. 34(a) in Great Lakes' current or prior possession, custody or control. "Document" as used herein also encompasses physical things such as computer disks in Great Lakes' current or prior possession, custody or control.

13. "Identify," when used with reference to a document, means to either produce such document or to state its date, type of document (e.g., letter, memorandum, chart, etc., or other means of identifying it), its title or heading, the author's (authors') full name(s), its recipient(s), general subject matter

contents, number of pages and the document's present location and custodian. If such document was, but is no longer in Great Lakes' possession, custody, or control, state what disposition was made of it.

14. "Identify," when used with reference to a communication other than a document, means to state the nature of the communication (e.g., meeting, telephone call, etc.), the time, date and place the communication occurred, the participants' full names, business addresses and job titles.

15. "Relating to" means making a statement about, discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining in whole or in part, to a subject.

16. The terms "avoidable costs", "net liquidation value", and "salvage value" shall have the meaning ascribed to them under the STB's abandonment regulations set forth at 49 C.F.R. §§ 1152.32 and 1152.34, and as applied in the STB's abandonment-related decisions.

II.

INSTRUCTIONS

1. Great Lakes should provide answers and produce responsive documents to the offices of Slover & Loftus, 1224 Seventeenth St., N.W., Washington, D.C. 20036 on or before June 1, 2001.

2. To the extent that Great Lakes considers any of the following Document Production Requests or Interrogatories objectionable, respond to each part thereof as is not objectionable in your view, and separately identify that part of the Request that you find objectionable and state the grounds for each such objection.

3. If Great Lakes objects to any Document Production Request or Interrogatories on ground of privilege, identify which privilege is claimed.

4. If Great Lakes wants clarification concerning any Document Production Request or Interrogatory set forth, Counsel for Great Lakes is instructed to contact Counsel for AK Steel (either in writing or telephonically) concerning such Requests reasonably in advance of the due date referenced in Instruction No. 1.

III.

DOCUMENT PRODUCTION REQUESTS

1. Produce all B&LE profit and loss statements and all B&LE balance sheets prepared on or after January 1, 1999.

2. Produce all documents relating to:

- i. the statement at page 10 of Great Lakes' April 30, 2001 Reply filing in this proceeding that "[i]f CN/WC succeeds in diverting the Pittsburgh taco-nite traffic to its all-rail route, the southern half of the B&LE will no longer be viable;"

- ii. the statement at page 11 of Great Lakes' April 30, 2001 Reply filing in this proceeding that "[w]ithout these taconite movements from USS Fleet ships, this line segment is no longer viable;" and
- iii. the statement at page 7 of the Verified Statement of Mr. Peter D. Stephenson submitted in support of Great Lakes' April 30, 2001 Reply filing in this proceeding that "Eliminating this traffic from the south end of the B&LE will destroy the viability of the south half of the railroad, south of Shenango, Pennsylvania. Revenue from this 90-mile segment will be reduced by 80 percent."

3. Produce documents identifying, by milepost, the southern half of the B&LE, as that phrase is used in Great Lakes' April 30, 2001 Reply filing in this proceeding.

4. Please produce current track charts or "Condensed Profiles" covering all lines comprising the B&LE system, with the data contained on the track charts or "Condensed Profiles" produced in machine-readable format to the extent available (including all necessary documentation).

5. Please produce the data bases and computer programs (with all documentation related to these data bases and computer programs), in a computer-readable format, that include the information listed below for each movement B&LE handled as originating, terminating, overhead or single-line carrier for each year or partial year 1999 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin city and state;
- c. Destination city and state;
- d. For shipments that originated on B&LE's system, the date and time the shipment was originated;
- e. For shipments B&LE received in interchange, the on junction location and station number;
- f. For shipments B&LE received in interchange, the road received from;
- g. For shipments B&LE received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, the off junction location and station number;
- i. For shipments given in interchange, the road given to;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on the B&LE system, the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code ("FSAC");
- m. Destination FSAC;
- n. Origin Standard Point Location Code ("SPLC");
- o. Destination SPLC;
- p. Number of Cars;
- q. Tons (Net);

- r. Tare weight;
- s. Total freight revenues including any adjustments thereto;
- t. B&LE's share or division of the total freight revenues, including any adjustments thereto;
- u. Waybill number and date;
- v. TOFC/COFC plan;
- w. Car/trailer initial for each car/trailer used to move the shipment;
- x. Car/trailer number for each car/trailer used to move the shipment;
- y. The train identification number of all trains used to move the shipment;
- z. The number of locomotives, by train identification, by segment, used to move the shipment;
- aa. The total horsepower, by train identification, by line segment, used to move the shipment;
- bb. Total loaded movement miles;
- cc. Total loaded miles on the B&LE system;
- dd. AAR car-type code; and
- ee. Ownership of car (i.e., B&LE, a shipper, or a foreign road).

If some or all of these records do not exist in a computerized format, then they should be produced in whatever format in which they are maintained.

6. Produce documents sufficient to identify: (i) all shippers that have used the Line from January 1, 1999 to the present; (ii) the location of those shippers' facilities on the Line; and (iii) the monthly volume and type of goods shipped by each shipper via the Line since January 1, 1999.

7. Produce all forecasts for B&LE traffic and revenue prepared on or after January 1, 1999 for: (i) the entire B&LE system; and (ii) the Line.

8. Produce documents sufficient to identify all avoidable costs for the Line.

9. Produce all documents prepared on or after January 1, 1999 reflecting Great Lakes' efforts to attract additional business to the Line, including but not limited to:

- i. all communications with potential shippers on the Line;
- ii. all marketing or advertising efforts undertaken by Great Lakes; and
- iii. all communications between Great Lakes and officials of local governments, chambers of commerce, and/or economic development agencies regarding the future prospects of the Line.

10. Produce all documents prepared on or after January 1, 1999 reflecting communications regarding the sale of the Line, track located along the Line, or any other railroad property associated with the Line.

11. Produce documents sufficient to identify the Line's estimated net liquidation value, including both the salvage value of the track and track materials (less cost of removal) and the value of any and all of the subject right-of-way held by Great Lakes in fee simple.

12. Produce all documents regarding the ownership and/or lease of the real estate underlying the Line, including but not limited to documents sufficient to identify whether Great Lakes obtained any financing from third parties to assist in its purchase of the Line, including the identity of these third parties, the nature of any security interest that these third parties hold in the Line's track materials, right-of-way, and/or mineral rights.

13. Produce all documents relating to the ICC/STB proceeding(s) in which Great Lakes obtained authority to operate the Line.

14. Produce documents sufficient to provide a full and complete assessment of the Line's condition, including the FRA status for all portions thereof.

15. Produce documents sufficient to identify all track rehabilitation projects (including costs expected to be associated therewith) that Great Lakes contends are needed or will be needed within the next twenty-four months in order to maintain the Line in a suitable operating condition.

16. Produce all contracts in effect at any time from January 1, 1999 to the present relating to transportation over some or all of the Line.

17. Produce all contracts in effect at any time from January 1, 1999 to the present between Great Lakes and any carrier that connects with the B&LE system.

18. Produce all contracts in effect at any time from January 1, 1999 to the present under which Great Lakes receives revenue in exchange for a third party's use of the Line or its associated right-of-way (e.g., easements permitting the use of the right-of-way for fiber-optics cables).

19. Produce all documents prepared on or after January 1, 1990 regarding Canadian National Railway Company's ("CN") ability to originate rail transportation service for taconite shipments from: (a) Minntac, Minnesota; and (b) all other taconite mines in Minnesota now served by DM&IR.

20. Produce all agreements (including trackage rights agreements) currently in effect between Great Lakes and/or DM&IR and one or more of the Applicants concerning transportation of taconite over any line of the DM&IR.

21. Produce the currently effective version of the Trackage Rights Agreement, as amended or supplemented, filed with the ICC in Finance Docket No. 29745.

22. Produce all documents prepared on or after January 1, 1996 relating to the agreements produced in response to Document Production Request No. 20 and 21, *supra*.

23. Produce all agreements currently in effect between B&LE and connecting carriers relating to B&LE service to AK Steel's Butler, Pennsylvania facility.

IV.

INTERROGATORIES

1. Please identify all currently effective traffic interchange points between DM&IR and WC and between DM&IR and CN.

2. Please identify all origin-to-destination routings in which B&LE has participated since January 1, 1999 to transport traffic by rail to and from AK Steel's Butler, Pennsylvania facility.

Respectfully submitted,

By: John H. LeSeur
Andrew B. Kolesar III 
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(202) 347-7170

OF COUNSEL:

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Washington, D.C. 20036

Attorneys for AK Steel
Corporation

Dated: May 22, 2001

Exhibit B

EXHIBIT A

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, made this 30TH day of July, 1981, by and between DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY (hereinafter referred to as "DMIR"), a Minnesota corporation, and DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY (hereinafter referred to as "DWP"), a Minnesota corporation,

WITNESSETH:

WHEREAS, the Minnesota Department of Transportation (hereinafter referred to as "MNDOT") is preparing to extend Interstate 35 easterly of Mesaba Avenue in Duluth, Minnesota, under a plan which will necessitate the relocation of certain trackage, yards, interchange points and other facilities owned and operated by DWP, and

WHEREAS, DMIR owns and operates main line trackage extending from a point (hereinafter designated as Point A) in St. Louis County, Minnesota, near DMIR's mile post 5.78 on its Spirit Lake Branch, to a point hereinafter designated as Point H in Douglas County, Wisconsin, near mile post 21.7 on its Interstate Branch, all said trackage colored in red (hereinafter called the "joint tracks") and Points A through H being shown on the plan designated Exhibit I, attached hereto and made a part hereof; and

WHEREAS, DMIR is willing to allow DWP to relocate facilities and operations over and adjacent to said joint tracks; and

WHEREAS, DWP desires to acquire and DMIR is willing to grant to DWP trackage rights between Points A through H above referred

to, but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein stipulated to be kept and intending to be legally bound hereby, DMIR and DWP agree as follows:

1. GRANT OF TRACKAGE RIGHTS

A. DMIR grants to DWP, in perpetuity, the non-exclusive right to use and operate its trains, including but not limited to, locomotives, freight cars, passenger cars, cabooses, track inspection equipment, hyrail equipment and other work or wreck equipment necessary and convenient to DWP rail operations, on and over the joint tracks as shown on Exhibit I, attached hereto and made a part hereof.

B. The right granted DWP in A. above is limited to bridge and overhead rights only and does not include the right to originate or terminate traffic at any point on the joint tracks including DWP's yard at Pokegama, Wisconsin, unless, as to the yard at Pokegama only (including facilities contiguous to said yard), otherwise mutually agreed upon by the parties. Such agreement will not be unreasonably withheld by DMIR. The joint tracks shall include, but not be limited to, right-of-way sidings, passing tracks, wye tracks, crossovers or appurtenances thereto now existing or which may be hereafter constructed, except that DWP shall not use or operate over the joint tracks to pick up or set out cars, except as provided in Section 13. herein.

C. DMIR shall have the right to grant to other carriers operating rights over the joint tracks or any portion thereof. At DWP's request, DMIR will grant trackage rights to other carriers

to enable said carriers to interchange with DWP at DWP's Pokegama Yard.

(1) In the event DMIR grants such rights at the request of DWP to enable such carriers to interchange with DWP at DWP's Pokegama Yard, the combined rental paid to DMIR shall not exceed the rental provided to be paid by DWP to DMIR, hereunder, and apportionment of said rental shall be negotiated among all participating carriers in compliance with the provisions of Section 6. of this Agreement.

(2) In the event DMIR grants such rights to any carriers for a purpose other than for the purpose of interchanging with DWP at DWP's Pokegama Yard, rental for such rights shall be established as determined solely between such carrier and DMIR.

D. DWP shall not furnish transportation service over the joint tracks for iron ore, whether beneficiated or unbeneficiated, which originates south of Britt Station (Brittmount), Minnesota, without first obtaining the consent of DMIR, which consent may include, at DMIR's option, participation by DMIR in the tariff routing of such traffic.

2. OPERATION OF TRAINS. DWP shall operate its trains over the joint tracks with its own crews under the applicable timetable, or portions thereof, operating rules and regulations of DMIR. DWP trains shall be afforded equal precedence and rights with DMIR trains, and all train movements over the joint tracks shall be made expeditiously and in order of readiness without priority under control of DMIR dispatchers.

3. DWP CONNECTION. Subject to location, design and engineering

approval of DMIR, DWP shall (i) acquire or cause to be acquired at no expense to DMIR necessary land and easements, and (ii) provide necessary labor and materials, to establish the necessary track connections from existing DWP trackage to the 14-foot clearance point of DMIR tracks at Point A, and from proposed DWP trackage at Points D and E, all as shown on Exhibit I, attached hereto. DMIR shall at the request of DWP, for \$1,938.00, grant permanent easements to DWP over DMIR lands for purposes of establishing such connections. DWP shall thereafter maintain such portion of the connection on DWP property and/or easements at its expense. DMIR shall construct and maintain that portion of said connections at Points A, D, and E from existing DMIR tracks up to the 14-foot clearance point therefrom and shall maintain that portion of each connection as hereinafter provided in this Agreement.

4. DISPATCHING

A. DMIR shall have the general control and management of all the tracks and facilities comprising the joint tracks and shall, in the exercise of such control and management, comply with any and all laws and governmental regulations applicable thereto. It shall order the direct movement of the engines, cars and trains of DWP and DMIR over said tracks and facilities expeditiously and in order of readiness without priority, under reasonable rules and regulations to be prescribed by DMIR subject to DMIR's Consolidated Code of Operating Rules.

B. DMIR shall provide 24-hour dispatching service. Dispatchers for the joint tracks (hereinafter "Dispatchers")

shall remain the full employees of DMIR and will be located and housed within DWP facilities at Pokegama, Wisconsin. If for any reason DMIR is unable or unwilling to provide dispatching as provided herein, DWP shall have the right to provide dispatching for all trains over the joint tracks. In such an event, DMIR shall be solely responsible for all time claims filed by DMIR employees.

C. Except as provided in D. and F. below, all costs of Dispatchers shall be the responsibility of DWP.

D. DWP shall be responsible for all costs of Dispatchers only as long as Dispatchers' operations are confined to the tracks and facilities comprising the joint tracks. Should Dispatchers be assigned duties by DMIR in addition to dispatching only for the joint tracks, the above costs shall be apportioned 90 percent to DWP and 10 percent to DMIR. DMIR agrees with DWP that DWP supervisors, yardmasters and train crews shall at all times have direct access to Dispatchers by telephone, radio telephone and in person for making work-related requests and exchanging work-related information connected with dispatching the joint tracks and Dispatchers shall, subject to the provisions of A. of this Section 4., give priority to the duties of dispatching the joint tracks over any additional dispatching duties assigned by DMIR.

E. The determination of costs of Dispatchers in C. and D. above shall be in accordance with the General Managers Association of Chicago (GMA) "Rules Governing the Preparation of Joint Facility

and Other Bills Between Carriers", revised November 1, 1976 and as amended from time to time. The GMA labor fringe surcharge rate shall be adjusted to reflect any different fringe costs of DMIR (current rates are displayed on Exhibit II).

F. Should DMIR grant other carriers operating rights over the joint tracks at the request of DWP, the apportionment of dispatcher costs shall not change from that described under Section 4.C. or 4.D. of this Agreement. Should DMIR grant other carriers operating rights other than at the request of DWP, dispatching costs shall be apportioned in accordance with the provisions of Section 6.B. of this Agreement.

5. MAINTENANCE

A. For the purpose of Sections 5. and 6. of this Agreement, the term "joint tracks" shall include (1) all tracks, bridges, structures and facilities on the line of track extending from Point A to Point H, as shown on Exhibit I attached hereto and made a part hereof, and (2) all communications systems, centralized traffic control systems, other signal systems, track connections and related structures and facilities necessary to service said line of track between Point A and Point H aforesaid.

Also for the purpose of Sections 5. and 6.B. of this Agreement, the words "car" and "cars" when used shall be understood to include all loaded and empty freight cars, passenger cars, locomotives, and cabooses, excluding, however, track inspection equipment, hyrail equipment and work and wreck equipment moved over the joint tracks.

For the purpose of Sections 5. and 6. of this Agreement,

all trains operated over the joint tracks which are owned and/or operated by DWP or by a carrier granted trackage rights at the request of DWP shall be deemed to be the trains of DWP, and all other trains shall be deemed to be the trains of DMIR.

B. DMIR shall maintain all tracks and facilities comprising the joint tracks, shall at all times keep the same in good condition and repair suitable for its purposes and those of DWP hereunder, and shall make all additions, betterments, repairs, renewals and replacements. DMIR shall have the right from time to time to change, better and repair said tracks and facilities as in its judgment may be advisable. DMIR shall establish separate accounts and/or accounting procedures to segregate and document all costs of maintenance for the joint tracks, and shall maintain segregation of such costs for each of the portions from Point A on Exhibit I to Milepost 13 on the Interstate Branch and from Milepost 13 to Point H on Exhibit I.

C. DMIR shall provide all materials, labor and equipment necessary or convenient to maintain the joint tracks at no less than FRA Class II Standards in effect as of the date of this Agreement. It shall, however, be bound to use only reasonable and customary care, skill and diligence in maintaining and repairing said tracks and facilities. DWP shall not, by reason of any defect in any of said tracks and facilities, or by reason of the failure or neglect of DMIR or of any of its employees to repair any such defect, have or make against DMIR any claim or demand for any loss, damage or injury whatsoever; but DWP shall, either

upon agreement of the Superintendents of the parties hereto, or in the event DMIR shall have failed to commence repair of any defect within ten (10) days after receipt of written notice thereof from DWP (which notice shall specifically describe the defect and request that it be repaired), have the right itself to repair such defect. In such event, DMIR shall reimburse DWP for its costs and expenses incurred in repairing such defect and shall include the amount in the operating expenses of such tracks and facilities for apportionment between the parties as provided for in Section 6.B. herein. In such event, DMIR shall be solely responsible for all time claims filed by DMIR employees.

In order to give effect to this Section 5., DWP shall have the right to have its own employees, alone or accompanied by employees of DMIR, inspect the track and facilities comprising the joint tracks.

D. Except as otherwise provided in Section 5.E. herein, all maintenance costs of the timber portion of the Oliver Bridge (DMIR Bridge SL 13C) not reimbursed by the States of Minnesota and Wisconsin shall be borne equally by DWP and DMIR after the initial ten (10) year period of this Agreement. The timber portion of the bridge includes curbs, railing, timber, floor beams, timber planks, and the steel mesh guard beam on the swing span. All other Oliver Bridge maintenance costs shall be apportioned between DMIR and DWP as provided for in Section 6. of this Agreement.

E. Should DMIR grant other carriers operating rights over the joint tracks other than at the request of DWP and those operating rights include rights over the Oliver Bridge, the

maintenance costs of the timber portion of the Oliver Bridge not reimbursed by the States of Wisconsin and Minnesota shall be apportioned equally among the carriers using the bridge, i.e., if three carriers use the bridge, each carrier will pay 33 1/3% of the maintenance costs; if four carriers use the bridge, each carrier will pay 25% of the maintenance cost.

6. RENTAL

A. As consideration for the rights granted herein to operate over the joint tracks, DWP shall pay DMIR a base rental per loaded car for all DWP traffic moved over the joint tracks. A car moving over the joint trackage shall be counted as a loaded car if (1) revenue is derived by reason of the movement of the car over the joint trackage; or (2) the lading of the car is owned by or used in the business of the carrier, whether or not revenue is derived from its movement over the joint trackage. The base rental rate effective as of June 1, 1979 of \$4.50 per loaded car is subject to escalation as of the first of each calendar quarter based on the index figure either preliminary or final stated for "Material prices, wage rates, and supplements combined (excl. fuel)" appearing under the heading "District and Group, WESTERN DISTRICT" on Table 1. of the "INDEXES OF RAILROAD MATERIAL PRICES AND WAGE RATES, Railroads of Class I" prepared by the Association of American Railroads (AAR), Economics and Finance Department. The base index is defined as 264.7 which was the most recent published index available at the time the base rental rate was established at \$4.50 per loaded car. The AAR is developing

refined indexes for implementation on or about December 1, 1981; therefore, the above quoted index would necessarily be converted to a comparable index as made available by the AAR. The rental paid for any loaded car whose gross weight exceeds 263,000 pounds shall be determined as follows:

$$\text{Rental Paid} = \text{Base Rental Rate Escalated times} \\ \frac{\text{gross weight of loaded car (in pounds)}}{263,000 \text{ pounds}}$$

The above notwithstanding, in the event that DWP engages in the transport of railway equipment with lading weight plus equipment weight (light weight) exceeding 263,000 lbs, constituting in excess of 5% of the Gross Ton Miles during any calendar year, then the equation shown above will be subject to renegotiation by six months notice.

B. As additional rental, the cost of maintenance, provided for in Section 5. above, and all taxes and assessments levied on the joint tracks and allocable thereto shall be apportioned monthly between DMIR and DWP on the basis of use as measured by gross ton miles (GTM). Any refunds or rebates of such taxes or assessments shall be similarly apportioned. For the purpose of this Section 6., the phrase "gross ton miles" shall mean the aggregate tons expressed in net tons of two thousand (2,000) pounds of (1) the lightweight of all cars, as cars are defined in Section 5.A. of this Agreement and (2) the weight of all lading moved over the joint tracks, multiplied by the distance in miles so moved.

The determination of these costs for monthly apportionment shall be in accordance with the General Managers Association of Chicago "Rules Covering Preparation of Joint Facility and Other Bills Between Carriers", revised November 1, 1976 and as amended from time to time. GMA labor fringe surcharge rates applied to the labor base shall be adjusted to reflect any different fringe costs of DMIR (current rates are displayed on Exhibit II). Said apportionment shall be computed on a monthly basis as follows:

(1) For purposes of this Section 6. only, "DMIR Gross Ton Miles" shall be defined as those gross ton miles traveled by all cars transported by DMIR moved in either direction on or over any portion of the joint tracks. "DWP Gross Ton Miles" shall be defined as those gross ton miles traveled by all cars transported by DWP in either direction on or over any portion of the joint tracks.

(2) DWP rental shall equal:

$$\frac{\text{DWP GTM}}{\text{DMIR \& DWP GTM}} \times \text{Apportionable Maintenance Costs and Taxes and Assessments}$$

C. Notwithstanding anything contained herein to the contrary, in the event that DMIR performs any non-capitalized (as defined by the ICC Bureau of Accounts as of the date of this Agreement) scheduled rail, tie or ballast renewals, the total cost of such programmed renewals (including other track materials) shall be apportioned between DMIR and DWP upon the basis of use as measured by gross ton miles for (1) the period of the Agreement to date or (2) the preceding five (5) year period of the Agreement, whichever period is shorter.

D. For purposes of determining applicable charges hereunder, DWP and DMIR shall exchange reports of gross ton miles as well as copies of other necessary business records pertaining to traffic over the joint tracks for each month within ten (10) days after the end of each month. Should such data not be furnished by DWP as prescribed above, DMIR shall bill DWP based on the billing for the most recent month for which such data has been furnished. A revised billing for a month so billed will be rendered by DMIR upon receipt of the applicable data from DWP. DWP and DMIR each have the right of access to records of the other as necessary to audit the data reported for billing purposes under this Section 6.

E. A detailed statement of all rentals shall be furnished DWP each month.

7. BILLING Billing for the charges set forth in this Agreement shall be rendered on a monthly basis. DWP shall pay DMIR in full each month within twenty (20) calendar days after receipt from the duly authorized officer in charge of DMIR's books, accounts, records and memoranda, of a statement of such charges calculated as provided in Section 6. above. In the event DWP disputes any charge or charges contained in the above-mentioned billing, it will submit objection thereto in writing to DMIR, within fifteen (15) days of receipt of the billing along with reasons therefor. Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment. Where the point of dispute

concerns quantities (e.g., cars, tons, man-hours of maintenance, etc.) DWP will remit payments based on the lesser quantities in dispute. DWP and DMIR will thereafter resolve the disputed charge or charges as expeditiously as possible.

Any payment by DWP shall be subject to audit of the records of operations, performance and costs relating to performance under this Agreement. Any proposed audit adjustment shall be submitted to the other party for review and resolution by the parties. DMIR shall maintain supporting records of accounting, operating and mechanical departments as well as any other related data which may be required by the Interstate Commerce Commission, Federal Railroad Administration or any other governmental agency, and any records which DWP and DMIR may, from time to time, agree upon. Such records shall be retained not less than sixty (60) months or the time required by the record retention rules of the Interstate Commerce Commission, whichever is greater, and shall be available to DWP during regular business hours. A statement of activities, charges and adjustments shall be submitted in a form mutually agreed upon.

8. DEFAULT. Should DWP become in default under this Agreement, either by failing to pay when due, any payment which it is obligated to make under Section 6. of this Agreement, or by failing in any other respect to perform any of its obligations under this Agreement, DMIR shall serve written notice upon DWP describing in said notice in which respect DWP is in default. If DWP shall make the payment due or shall perform the obligation required within six

(6) months from receipt of said written notice, the default shall be considered cured. Should such default not be cured within said six (6) month period, DMIR may, at its election, terminate this Agreement and exclude DWP from all use of any or all of the joint tracks, subject however, to DWP's right to reinstate this Agreement upon cure of the noticed default or defaults and upon payment to DMIR of all of DMIR's costs, including attorney's fees and related expenses, incurred by DMIR in connection with termination of this Agreement and exclusion of DWP from the use of the joint tracks. Failure to make any payment or to perform any other obligation which is the subject of a dispute, arbitration or litigation between DMIR and DWP shall not, however, pending such arbitration or litigation, be a default hereunder. Notwithstanding any such termination, the necessary provisions of this Agreement shall remain in full force and effect until all payments contemplated by this Agreement shall have been made.

9. LIABILITY. For purposes of this Section 9., the word "equipment" when used herein shall be understood to include (i) trains, locomotives and cars, and (ii) inspection and maintenance, hyrail, work and wreck equipment, both on and off track.

A. Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars or equipment of one party only being involved, that party shall assume all liability therefor, and all costs and expenses in connection therewith, and shall indemnify the other party against

and save it harmless from any such liability, costs and expense.

B. When any such loss, damage, destruction, injury or death occurs with the trains, locomotives, cars or equipment of both parties being involved:

(1) Each party agrees to assume all liability for loss of or damage to said trains, locomotives, cars or equipment operated by it (including lading) and for injury to or death of its sole employees and persons in its care, custody and control, and

(2) The parties hereto further agree that liability for injury or death of any other person or persons whomsoever, and loss, damage or destruction of all other property (including track and road bed repairs and any other facilities required to be repaired) so occurring shall be borne equally by the parties hereto.

C. When any injury or death occurs to any DMIR employee engaged in an activity under this Agreement, any payment for such death or injury shall be apportioned between DMIR and DWP on the same basis as provided in this Agreement for the apportionment of the costs of the activity in which such employee was engaged.

D. Except as provided for in Section 9.A., B. and C. herein, each party shall assume all liability for injury or death to its sole employees. Whenever any loss of, damage to, or destruction of any other property whatsoever, or injury to or death of any other person or persons whatsoever, occurs arising out of the performance of this Agreement where cause cannot be

determined, or where the cause is other than provided in A. or B. of this Section 9., the parties agree that liability for such injury, death, loss, damage or destruction shall be borne equally by them.

E. Neither party to this Agreement shall, under any circumstances arising under the provisions of this Section 9. have any cause of action against the other for loss or damage of any kind caused by or resulting from interruption or delay to its business.

F. In case a suit shall be commenced against either of the parties hereto for damages for which the other party is ultimately liable, the party sued may give notice of such suit to the other party and thereupon the latter shall assume the defense of the suit and save the party sued harmless therefrom.

G. The parties to this Agreement will settle as between themselves any claim for loss or damage according to the terms of this Agreement, notwithstanding any judgments or decree of a court or other tribunal in a proceeding brought by any third party not a party to this Agreement.

10. CLEARING OF WRECKS. Each party shall be responsible to promptly take up and remove all wrecks or derailments of its own trains at its own expense. Each party shall have the right to use independent contractors as in its discretion are necessary to remove such wrecks or derailments. DMIR shall restore tracks to service on a priority basis in keeping with prudent management

practices. Should DMIR fail to restore the tracks to service within a reasonable time after DWP shall have notified DMIR in writing requesting that the tracks be restored to service, then DWP shall have the right to make the necessary repairs at once and DMIR shall pay to DWP the cost thereof. Any expenses incurred in restoring the tracks to service shall ultimately be apportioned as provided in Section 9. hereof.

11. DETOUR RIGHTS

A. If, for any reason, the joint tracks or any portion thereof are removed from service, DWP shall, at its request, be accorded detour rights over other DMIR tracks as best fits DWP traffic patterns and until such time as service over the joint tracks can be fully restored.

B. In such event, regardless of the reason for closure, DWP will pay DMIR on the basis of the "Standard Form for Detour Agreement" in force between DWP and DMIR from time to time.

C. DMIR will restore the joint trackage to service on a priority basis in keeping with prudent management practices. Should DMIR fail to restore the tracks to service within a reasonable time after DWP shall have notified DMIR in writing requesting that the tracks be restored, then DWP shall have the right to make the necessary repairs at once, and DMIR shall pay to DWP the cost thereof. All costs incurred in restoring tracks to service (except such costs incurred under Section 10. herein) shall ultimately be apportioned as provided in Section 6.B. herein.

12. RULES AND REGULATIONS

A. All employees of DWP engaged in or connected with the operations of DWP trains and equipment on or along the joint tracks shall be required to pass periodic examinations on the rules of DMIR, provided, that with respect to such examinations, that upon request of DWP, DMIR shall qualify one or more of DWP's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all DWP employees engaged in or connected with DWP's operations on or along the joint tracks. Pending qualification of DWP train and engine crews, DWP will furnish qualified pilot or pilots as needed. In the event that DWP cannot furnish pilot or pilots, DMIR shall furnish pilot or pilots, at the expense of DWP, to assist in operating trains of DWP over the joint tracks.

B. With respect to operation of trains over the joint tracks, each party shall comply with all applicable laws, rules, regulations and orders promulgated by a municipality, board, commission or governmental agency having jurisdiction, including but not limited to, the United States Environmental Protection Agency, the Minnesota Pollution Control Agency and the Wisconsin Department of Natural Resources, and if any failure on the part of either party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against the other party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge, and all expenses and attorney's fees incurred in connection therewith, and shall, upon request of the other party, defend such action

free of cost, charge and expense to the other party.

13. BAD ORDER CARS. If any DWP cars, cabooses or locomotives are bad ordered en route on the joint tracks and it is necessary that they be set out for repairs, such cars, cabooses or locomotives, after being repaired, shall be promptly picked up by DWP. DWP shall furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement.

14. SURRENDER AND SHIFTING. When not in default hereunder, DWP may at any time surrender the rights and privileges herein granted with respect to the joint tracks by giving DMIR written notice of its election to do so; and upon the expiration of six (6) months from the receipt of such notice, all rights and privileges of DWP under the provisions of this Agreement with respect to the joint tracks shall terminate. Notwithstanding any such surrender, the necessary provisions of this Agreement shall remain in full force and effect until all payments contemplated by this Agreement have been made.

If any portion of the joint tracks, the use of which is herein granted, should for any reason be shifted, whether to comply with shifting clauses in the grants or deeds of rights-of-way, or for any other reason, the provisions of this Agreement shall attach to the shifted tracks in their new location insofar as applicable.

15. RIGHT OF FIRST REFUSAL. DMIR shall not sell, convey or lease any portion of the joint tracks to any other person unless and until it shall have first offered the joint tracks for sale or lease to DWP upon the same terms and conditions as contained

in the bona fide offer to lease or purchase received by DMIR. In the event that DWP does not choose to exercise its right of first refusal herein granted, within ninety (90) days after notice thereof by DMIR, any such sale or lease when completed shall be subject to the rights granted DWP in this Agreement.

16. ARBITRATION. In the event any dispute or controversy arises with respect to the application, interpretation or enforcement of any of the provisions of this Agreement which cannot be settled within thirty (30) days after such dispute first arises, such dispute may be submitted at the written request of DWP or DMIR to a Board of Arbitration selected as hereinafter provided. DWP and DMIR shall each, within ten (10) days, select one member of the Arbitration Board, and the two members thus chosen shall select a third member who shall serve as Chairman. Should the two members be unable to agree upon the appointment of the neutral member within ten (10) days, either party may request the American Arbitration Association to furnish a list of five persons from which the neutral member shall be selected. The parties shall within five (5) days after receipt of such list, meet and in turn eliminate one of the five persons until only one person remains. The remaining person on the list shall then be the neutral member of the Arbitration Board.

The decision by majority vote of the Arbitration Board shall be final, binding and conclusive and shall be rendered within forty-five (45) days from the date the neutral member is appointed. The salaries and expenses of the Arbitration Board shall be borne equally by the parties hereto.

17. GOVERNMENTAL APPROVAL

A. DWP shall, at no cost and expense to DMIR, initiate such appropriate applications or petitions as may be required and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from all necessary State and Federal governmental agencies, including the Interstate Commerce Commission, for the sanction of this Agreement and operations to be carried out by DWP hereunder. DMIR, at its expense, shall assist and support any such applications or petitions as may be required and will furnish such information and execute, deliver and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval or authority. DWP and DMIR agree to cooperate fully to procure all necessary consents, approvals or authority. Only in the event all the required State and Federal governmental agencies, including the Interstate Commerce Commission, grant any such necessary authority in form and substance satisfactory to DWP and DMIR, but not otherwise, shall the terms and conditions of this Agreement become effective.

B. This Agreement is made subject to all of the following:

(1) Minnesota Department of Transportation - Federal Highway Authority Funding and completion on terms acceptable to DWP and DMIR of the relocation of DWP yard and related facilities and operations from Duluth, Minnesota, to Pokegama, Wisconsin.

(2) Execution of necessary operating rights and/or interchange agreements by DWP with Burlington Northern Railroad Company, Chicago Milwaukee, St. Paul and Pacific Railroad, Soo Line Railroad

Company and Chicago and North Western Transportation Company.

(3) Approval of all State and/or Federal regulatory or legislative bodies having jurisdiction over the rights and privileges granted herein, including but not limited to, the Interstate Commerce Commission, if required.

(4) Execution of an Agreement between DMIR and Minnesota Department of Transportation and/or Federal Highway Authority for funding and construction of modifications to the joint tracks and approval thereof by DWP.

(5) A binding, written commitment by the Minnesota Department of Transportation and Wisconsin Department of Transportation satisfactory to both DWP and DMIR, conditionally relieving both DWP and DMIR of responsibility for the maintenance and/or replacement of the timber portion (including the highway deck) of the Oliver Bridge over the St. Louis River.

(6) Receipt by DMIR of a ruling from the United States Internal Revenue Service to the effect that payment for modifications to the Spirit Lake and Interstate Branches agreed to under Section 17.B.(4) above shall not constitute taxable income to DMIR for federal income tax purposes.

18. IMPROVEMENTS. DWP shall not be required to contribute to any capital projects for the joint tracks which either do not directly benefit or which only nominally benefit DWP. Either DWP or DMIR may propose capital projects. In the event that a proposed capital project would directly benefit DWP, DWP and DMIR shall negotiate respective percentages of contribution towards

the total expenditure (including related operating expenditures) based upon respective benefits to be derived from the proposed expenditures. DWP shall pay for its percentage of net cost of capital projects as the capital projects progress. Billings for capital projects shall be made on a monthly basis with payment made in accord with Section 7. of this Agreement. "Net Cost" for purposes of this Section 18. shall mean: Total capital expenditures less salvage and any investment tax credit or other tax credit allowable to DMIR under applicable Federal or State income tax or property tax laws. Under no circumstances shall the rental provided herein be increased as a result of improvements or capital expenditures. For purposes of this Agreement "capital" is as defined by the ICC Bureau of Accounts as of the date of this Agreement.

19. NOTICES. Any notice or other communication pursuant to this Agreement shall be in writing and shall be deemed to have been duly given when actually received by the other party at the following address:

- A. General Manager
Duluth, Winnipeg and
Pacific Railway Company
72nd Avenue West and Raleigh Streets
Duluth, MN 55807
- B. General Manager
Duluth, Missabe and Iron Range
Railway Company
500 Missabe Building
Duluth, MN 55802

Such addresses or persons to whom such notices shall be sent may be amended from time to time by giving written notice thereof to the other party of such changes.

20. MISCELLANEOUS PROVISIONS

A. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, lessees and assigns. Except for the sale, assignment, mortgage or lease of all or substantially all of its railroad, no sale, assignment, mortgage or lease by DWP of any interest or right given it under this Agreement shall be valid or binding without the prior written consent of DMIR.

B. This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any rights in any third person to recovery by way of damages or otherwise against either of the parties hereto.

C. If any covenant or provision of this Agreement other than one which creates the right of DWP to use the tracks covered hereunder, shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is, in itself, valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of this Agreement be adjudged void, the parties will make such other arrangements as, under the advice of counsel, will effect the purposes and intent of this Agreement.

D. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

E. This contract shall be construed in accordance with

F. The rights to use and operate over the joint tracks granted hereunder shall remain in full force and effect in perpetuity.

DULUTH, MISSABE AND IRON
RANGE RAILWAY COMPANY

DULUTH, WINNIPEG AND PACIFIC
RAILWAY COMPANY

By C. H. H. per
Its President

556+70

16

PS
564+75

PS
567+40

11

TO DMIR YD
JT SING
ML

TO DWP YD

DULUTH, MISSABE & IRON RANGE RAILWAY COMPANY
Fringe Billing Rate for DWP Joint Operation
Effective January 1, 1981

COMPOSITE PERCENTAGES

When labor surcharges are applicable, the following composite percentages will be used.

A to direct MWES subject to the following percentages:

Actual Labor	\$100	
(1) Vacations 6.50% of \$100.00		\$ 6.50
(2) Paid Holidays 3.50% of \$100.00		3.50
(3) R. R. Ret. & Unempl. Ins. Taxes 15.50% of \$110.00		17.05
(4) Program of Insurance benefits 9.40% of \$100		9.40 (1)
(5) Supervision, Administration & Use of Tools 25.00% of \$100		25.00
(6) Non-Contributory Pension 14.00% of \$110.00		15.40 (2)
(7) Supplemental Sick Benefits 1.00% of \$100		1.00
		<u>\$77.85</u>

B to direct M of E labor subject to the following percentages:

Actual Labor	\$100	
(1) Vacations 6.50% of \$100.00		\$ 6.50
(2) Paid Holidays 3.50% of \$100.00		3.50
(3) R.R. Ret. & Unempl. Ins. Taxes 15.50% of \$110.00		17.05
(4) Program of Insurance Benefits 9.40% of \$100.00		9.40 (1)
(5) Supervision Administration & Use of Tools 20.00% of \$100		20.00
(6) Non-Contributory Pension 14.00% of \$110.00		15.40 (2)
(7) Supplemental Sick Benefits 1.00% of \$100.00		1.00
		<u>\$72.85</u>

C to direct T-RL labor subject to the following percentages (including holidays):

Actual Labor	\$100	
(1) Vacations 6.50% of \$100.00		\$ 6.50
(2) Paid Holidays 3.50% of \$100.00		3.50
(3) R. R. Ret. & Unempl. Ins. Taxes 15.50% of \$110.00		17.05
(4) Program of Insurance Benefits 9.40% of \$100.00		9.40 (1)
(5) Supervision and Administration 15.00% of \$100.00		15.00
(6) Non-Contributory Pension 14.00% of \$110.00		15.40 (2)
		<u>\$66.85</u>

D to direct T-RL labor subject to the following percentages (excluding holidays):

Actual Labor	\$100	
(1) Vacation 6.50% of \$100.00		\$ 6.50
(2) R. R. Ret. & Unempl. Ins. Taxes 15.50% of \$106.50		16.51
(3) Program of Insurance Benefits 9.40% of \$100.00		9.40 (1)
(4) Supervision and Administration 15.00% of \$100.00		15.00
(5) Non-Contributory Pension 14.00% of \$106.50		14.91 (2)
		<u>\$62.32</u>

- Notes: (1) Based on actual experience for prior year
 (2) Determined by actuarial methods of United States Steel and Carnegie Pension Fund
 (3) All other are established by GMA Agreement.

DULUTH, WINNIPEG & PACIFIC RAILWAY COMPANY

Resolution Adopted by the Executive Committee
of the Board of Directors of the
Duluth, Winnipeg & Pacific Railway Company

January 23, 1981

"YARD AND OPERATIONS RELOCATION

The Company is currently negotiating agreements, trackage rights, applications, certificates, and other papers with certain governmental bodies and other railroads relative to its yard and operation relocation. Board approval is required authorizing proper officers of the Company to sign and attest these various documents.

THEREFORE, ON MOTION DULY ADOPTED IT IS RESOLVED

THAT approval be and hereby is given authorizing the President, the Vice Presidents, the Secretary and any other proper officers of the Company to sign, execute, request exemption, or file any and all applications, agreements, certificates, and other papers and to do all such other acts and take such other steps as may be proper or necessary to complete the negotiations with the Interstate Commerce Commission, Minnesota Department of Transportation, Wisconsin Transportation Commission, Duluth, Missabe and Iron Range Railway, Burlington Northern, Chicago and North Western Transportation Company, Soo Line Railroad Company, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee II) in all matters pertaining to the Company's relocation of its yard and operations in the States of Minnesota and Wisconsin".

I, E. G. Fontaine, Secretary of Duluth, Winnipeg & Pacific Railway Company, hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Executive Committee of the Board of Directors of Duluth, Winnipeg & Pacific Railway Company on January 23, 1981.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served this 11th day of June, 2001 by hand upon:

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I also certify that this 11th day of June, 2001, I served copies of the foregoing document via overnight mail upon the following:

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I also certify that this 11th day of June, 2001, I served copies of the foregoing document via first-class mail, postage-prepaid upon the following:

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