

202745

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

jhl@sloverandloftus.com

June 25, 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.

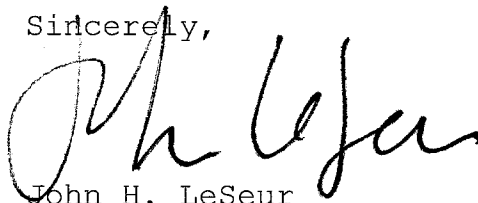
Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding
please find an original and twenty-five (25) copies of the
Comments of AK Steel Corporation **(AKS-8)**.

We have enclosed an electronic copy of these Comments
on a computer diskette, and have enclosed an additional hard copy
to be date-stamped and returned to the bearer of this letter.

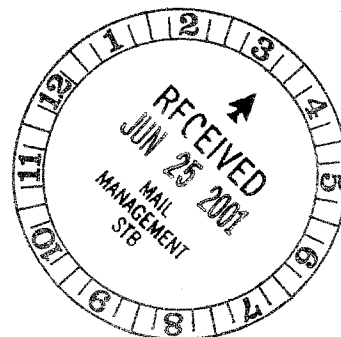
Thank you for your assistance in this matter.

Sincerely,



John H. LeSeur
An Attorney for AK Steel
Corporation

ENTERED
Office of the Secretary
JUN 25 2001
Part of
Public Record



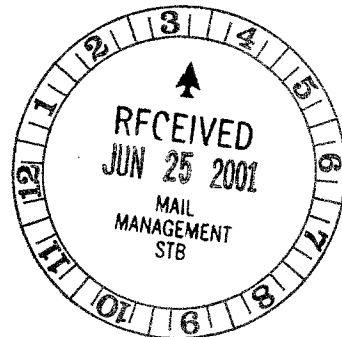
Enclosures

cc: Parties of Record

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.	)	

COMMENTS OF AK STEEL CORPORATION



AK STEEL CORPORATION
703 Curtis Street
Middletown, OH 45043-0001
(513) 425-5000

By: John H. LeSeur
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

OF COUNSEL:

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

Dated: June 25, 2001

Attorneys for AK Steel
Corporation

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.	)	
	)	

COMMENTS OF AK STEEL CORPORATION

AK Steel Corporation ("AK" or "AK Steel") requests that the Board enter an order directing Great Lakes Transportation LLC ("Great Lakes") to adhere to representations it has made in this proceeding. Specifically, Great Lakes has represented to the STB that approval of the merger between CN¹ and WC² will not result in abandonment of rail service by Great Lakes' affiliate B&LE³ to AK Steel's Butler, Pennsylvania facility. Accordingly, if the Board approves the merger of CW and WC,⁴ AK asks the Board to enter the following order:

¹Applicant Canadian National Railway Company, et al. ("CN").

²Applicant Wisconsin Central Transportation Corporation, et al. ("WC").

³Bessemer & Lake Erie Railroad Company ("B&LE").

⁴AK neither supports nor opposes the proposed merger of CN and WC.

The Board orders Great Lakes, and its affiliate B&LE, to adhere to representations made in this case that it will not take any actions to abandon service to AK Steel's Butler, Pennsylvania facility.

In support hereof, AK Steel states as follows:

A. Identity and Interest

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, including AK Steel's manufacturing facility in Butler, Pennsylvania.

The Butler facility is captive to a single railroad: the B&LE. AK Steel's Butler facility ships and receives a considerable volume of traffic each year over the B&LE. This traffic includes approximately 600,000 tons per year of inbound scrap, pig iron, and coils of steel, and a comparable amount of outbound traffic moving to a variety of different destinations. Due to its size, weight, and other characteristics, this traffic must be shipped by rail. It is not amenable to shipment by motor carrier or other transportation modes.

B. Great Lakes' Abandonment Threat

At the outset of this proceeding, Great Lakes vociferously argued that the merger of CN and WC would force Great

Lakes' subsidiary B&LE to abandon service to AK's Butler, Pennsylvania facility. Great Lakes contention went as follows:

- US Steel currently transports approximately 2.9 million tons of taconite ore from the Minntac taconite facility in Minnesota to US Steel's Edgar Thomson plant in Pittsburgh, Pennsylvania via a rail-water-rail routing.
- The carriers participating in the rail-water-rail routing for this 2.9 million tons are all Great Lakes-owned companies: DMIR,⁵ (Minntac to Lake Superior docks), Great Lakes' vessels (Lake Superior to Conneaut, Ohio), and B&LE (Conneaut to the Edgar Thomson facility in Pittsburgh).
- The merger of CN and WC would lead to the "diversion" of this 2.9 million ton taconite movement to an all-rail movement not involving B&LE.
- B&LE's loss of the 2.9 million ton taconite movement would force B&LE to abandon 90 miles of rail track on the south end of the B&LE system. This track serves, among others, AK Steel's Butler facility, and is used by B&LE to serve US Steel's Edgar Thomson facility.

The above-referenced contentions formed the focal point of Great Lakes initial filings in this case. For example, in its April 30, 2001 filing, Great Lakes argued that without the revenue associated with the U.S. Steel taconite traffic, B&LE would be forced to abandon the southern half of its system:

Great Lakes is handicapped in evaluating the full impact of the proposed transaction,

⁵Duluth, Missabe and Iron Range Railway Company ("DMIR").

because applicants provided no details about their plans for diverting rail-water traffic. There is little doubt, however, that the transaction is likely to eliminate essential rail competition on the southern half of the B&LE. . . .

If CN/WC succeeds in diverting the Pittsburgh taconite traffic to its all-rail route, the southern half of the B&LE will no longer be viable. Stephenson V.S. at 7-8. As Mr. Stephenson explains, the financial viability of B&LE between Greenville and North Bessemer, Pennsylvania, a distance of 90 miles, depends on taconite traffic. This year, that segment is expected to carry some 2.9 million tons of taconite. This is the taconite shipment to USX that applicants specifically target in their application. Without these taconite movements from USS Fleet ships, this line segment is no longer viable.

All active shippers on this 90-mile line will be deprived of rail service. . . . At least one major shipper, AK Steel at Butler, will lose competitive rail service and become "captive" to a single railroad.

Great Lakes' April 30, 2001 Reply to Petition Suggesting Procedural Schedule and A Petition to Dismiss Application or Require Supplemental Information, at 10-11 (emphasis added).

Great Lakes submitted a Verified Statement in conjunction with its April 30 filing that was even more explicit regarding the financial impact on B&LE of the diversion of taconite traffic, and the resulting impact of the abandonment upon AK Steel's Butler facility:

Impact on B&LE. CN and WC specifically target B&LE's 2.9 million annual tons of taconite traffic to Pittsburgh. 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. . . .

The most significant customer affected by abandoning the south end of the B&LE would be AK Steel. It uses B&LE rail service via an interchange from Norfolk Southern in Shenango. Abandoning B&LE would leave AK captive to the Buffalo & Pittsburgh Railroad. Rates could increase for service to AK's various plants, including those in Middletown and Aliquippa. AK could also lose competitive service on scrap movements to Butler. Eliminating B&LE's North Bessemer connection with Union Railroad would force all of the rail movements to B&P for delivery at Butler. Pig iron movements via Duquesne Wharf (50-60 cars monthly) would be shifted to CSX for movement to Butler, requiring longer transit times. The elimination of the B&LE line therefore will eliminate rail competition for AK Steel shipments of both inbound and outbound traffic.

Id., Verified Statement of Peter D. Stephenson at 7 (emphasis added).⁶

In response to Great Lakes' filing, AK Steel notified the Board of its intention to participate in this case (AKS-1), and, on May 22, 2001, served discovery requests upon Great Lakes directed at Great Lakes' threat to abandon service to AK's Butler facility.

⁶AK notes that Great Lakes' reference to the Buffalo & Pittsburgh Railroad Company is wrong. That carrier does not now have physical access to AK's Butler facility.

**C. Great Lakes Recants Its
Abandonment Threat**

Great Lakes refused to respond to critical portions of AK Steel's May 22, 2001 discovery requests concerning Great Lakes' service abandonment threats. On June 11, AK filed a motion to compel asking the Board to order Great Lakes to produce the withheld materials. At this point, Great Lakes' position made a one-hundred-eighty degree turn. In its response to AK's motion to compel, Great Lakes recanted its abandonment threats and represented to the Board that it would not abandon service to AK's Butler facility if the merger of CN and WC was approved. - Specifically, Great Lakes stated that it had taken a closer look at the data regarding the possible termination of service to AK Steel's Butler facility, and now had concluded that even if the merger of CN and WC produced "substantial diversions" of taconite traffic off the B&LE, Great Lakes would continue to serve customers on the southern part of the B&LE lines (including AK):

Great Lakes has had an opportunity to review the B&LE traffic in greater depth and has concluded that, even if there were substantial diversions of taconite traffic to all-rail, B&LE would continue to serve customers on the southern part of its line. Thus, Great Lakes no longer expects to argue that AK Steel and other shippers on the southern part of the B&LE line are likely to lose rail service if the merger is approved.

Great Lakes' June 14, 2001 Opposition to AK Steel's Motion to Compel Production of Documents, at 5.

On the basis of Great Lakes' new representations, AK Steel voluntarily withdrew its Motion to Compel.

ARGUMENT

Great Lakes has represented in on-the-record filings in this case that if the CN/WC merger is approved, and, as a consequence of this approval, B&LE incurs "substantial diversions" of taconite traffic, Great Lakes/B&LE will not seek to abandon service to AK's Butler facility. AK asks that the Board issue an order directing Great Lakes to adhere to these representations.⁷

It is important that the Board hold parties to merger proceedings to their asserted representations. As the Board stated in the recent decision in the Conrail case:

The Board takes very seriously statements and comments made by parties in all matters that come before us. We will continue to be vigilant in doing what we can to ensure that representations made by parties to our proceedings are actually honored.

Finance Docket No. 33388, CSX Corp. and CSX Transp., Inc., Norfolk Southern Corp. and Norfolk Southern Ry. -- Control and

⁷Great Lakes is not an applicant but is a party to this proceeding. The requested order could take the form of an order included in the CN/WC merger decision or a supplemental order entered pursuant to 49 U.S.C. § 11327. See Norfolk & W. Ry. Co. and New York, C. & St. L.R. Co. - Merger, 363 I.C.C. 270, 280 (1980) (the Board's power to issue supplemental orders in merger cases includes cases where "a representation has been made upon which we relied in approving the transaction . . .").

Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corp., at 7 (Decision No. 186, served May 21, 2001).

Holding Great Lakes to its representations is particularly important here given the circumstances surrounding them. As discussed above, Great Lakes' representations were made to avoid discovery disclosures. AK is concerned that Great Lakes made these representations solely to avoid discovery and, left to its own devices, Great Lakes may recant them.

Continued B&LE service to AK's Butler facility is critical to AK. Great Lakes' representations that the merger of CN/WC will not lead to service abandonments at this facility should be enforced by Board order.⁸

⁸AK, of course, has relied on Great Lakes' representations in formulating its position in this case.

CONCLUSION

For the reasons set forth herein, AK Steel requests that the Board issue an order requiring Great Lakes to adhere to its representations.

Respectfully submitted,

AK STEEL CORPORATION
703 Curtis Street
Middletown, OH 45043-0001
(513) 425-5000

By: John H. LeSeur 
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170

OF COUNSEL:

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

Dated: June 25, 2001

Attorneys for AK Steel
Corporation

CERTIFICATE OF SERVICE

I hereby certify that this 25th day of June, 2001, I have served a copy of the foregoing document by first class mail, postage-prepaid, upon all parties of record in this case.


Andrew B. Kolesar III