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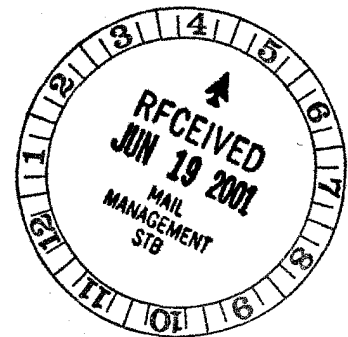
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June 19, 2001

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Canadian National Railway Company, Grand Trunk Corporation,
and WC Merger Sub, Inc.— Control – Wisconsin Central
Transportation Corporation, Wisconsin Central Ltd., Fox Valley &
Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin
Chicago Link Ltd. (CN/WC-13)
(STB Finance Docket No. 34000)

Dear Mr Williams:

Enclosed for filing in the above-captioned docket please find an original and 25 copies of Applicants' Comments on the Status of GLT Issues, which is designated as "CN/WC-13". Also enclosed is a diskette containing the text of this document in WordPerfect 6/7/8/9 format.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul A. Cunningham".

Paul A. Cunningham

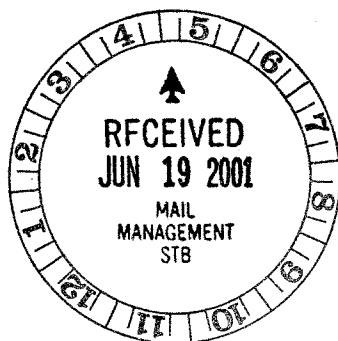
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CN/WC-13

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34000

CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, AND WC MERGER SUB, INC.
- CONTROL -
WISCONSIN CENTRAL TRANSPORTATION CORPORATION,
WISCONSIN CENTRAL LTD., FOX VALLEY & WESTERN LTD.,
SAULT STE. MARIE BRIDGE COMPANY, AND
WISCONSIN CHICAGO LINK LTD.

APPLICANTS' COMMENTS ON THE STATUS OF GLT ISSUES

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APPLICANTS' COMMENTS ON THE STATUS OF GLT ISSUES

Introduction

Applicants' proposed CN/WC Transaction ("Transaction") has generally been well received by the interested parties. At this point, only one topic has attracted significant public attention – the claims of Great Lakes Transportation LLC ("GLT"). The background of those claims is set forth in Appendix I.

GLT continues to argue that the Transaction will enable CN/WC to attract to all-rail movement large volumes of taconite pellets that currently move over GLT's rail-water network, and that these traffic shifts could result in the demise of GLT. Applicants, however, foresee no such traffic shifts as a result of the Transaction. Thus, we find it difficult to imagine a scenario in which GLT's concerns would be realized.

Applicants and GLT have been seeking to ease GLT's stated concerns through negotiations. While these negotiations are continuing, it is not clear whether they will be successful.¹ Accordingly, Applicants are filing these Comments to assure that all

¹ Applicants are trying hard to reach a settlement with GLT, but several sticking points have thus far prevented mutual agreement. Many of these sticking points have nothing to do with GLT's transportation of taconite. For example, GLT has interjected certain pre-existing issues between GLT and

participants in this proceeding are aware of the status of our efforts and of the basic public policy choice that may be presented by GLT's concerns.

Statement

In our negotiations, GLT has clarified the scope of its concerns. GLT's basic fear is that Applicants will successfully compete through an all-rail alternative for non-seasonal, non-spot movements of taconite pellets originating on DMIR and currently moving rail-water via GLT affiliates to any of the following destinations: Gary or Indiana Harbor, IND, Pittsburgh, PA, Nanticoke, ONT, or Lorain, OH. We will refer herein to that traffic as the "GLT Movements."

As we have explained to GLT, we foresee no reasonable likelihood that we will secure any of the GLT Movements from GLT. CN does not have the ability to secure such traffic; neither does WC, which has tried to attract it but failed. The merger of CN and WC will not substantially improve our ability to compete with GLT.

We do not expect to attract this traffic principally because GLT is a formidable competitor. It has a significant cost advantage; it has secured binding long-term contracts for much of the traffic in the GLT Movements; none of its customers has been shown to expect to shift current rail-water traffic to all-rail movement using CN/WC because of the Transaction; and GLT has bottleneck pricing power over all-rail moves through its DMIR subsidiary, which is the originating carrier for all GLT Movements and can effectively protect GLT's economic interest in rail-water traffic. GLT's competitive advantages will not be substantially offset by the Transaction. Thus, it is understandable

CN and/or WC that are not related to the CN/WC Transaction. We have sought to resolve these preexisting issues through the present negotiations, but they are not yet fully resolved. GLT has also proposed that we make certain very substantial investments in GLT. We have made it clear that we have no interest in making any such investment.

that GLT has provided no evidentiary support to substantiate its claim that significant rail-water taconite traffic will likely shift from GLT to all-rail movement involving CN/WC as a result of the CN/WC Transaction.

Nevertheless, GLT continues to express concern that there may be some risk that the GLT Movements will shift to all-rail movement involving CN/WC. Allegedly, such shifts would imperil the existence of GLT² and, by extension, the continued viability of the Port of Duluth. On this premise, propagated by GLT, many parties have joined GLT at the Board to express concern about such potential CN/WC competition with GLT.

Given GLT's strong assertions that the end of its Great Lakes shipping enterprise is near, we can understand why these parties would express concerns. But GLT's assertions are wholly unwarranted. Nothing arising out of this proceeding will impair or cause the end of GLT's Great Lakes operations. There is simply no reason for this minor proceeding to be further burdened with time-consuming and expensive litigation over the hypothetical diversion of the GLT Movements. Likewise, there is no reason to undertake a study of the hypothetical environmental impacts of speculative Transaction-related diversions that are not likely to occur.

There may, however, be a public policy issue implicated by GLT's claims. That issue is whether the public interest requires the protection of GLT in order to assure absolutely that it does not lose the GLT Movements and that there will be no dire

² GLT has recently retreated from its claim that the Transaction will result in the end of rail services over the southern portion of the B&LE line. In its response to the AK Steel motion to compel (GLT-10), GLT states (at 5) that, based on a more in-depth review of B&LE traffic, "even if there were substantial diversions of taconite traffic to all-rail, B&LE would continue to service 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."

consequences to the Great Lakes rail-water transportation system as a result of the Transaction.

If such protection were required by the public interest, then the issue of remedy would also be presented. As GLT has recognized in discussions with Applicants, there is, in essence, only one way for the Board to assure that GLT absolutely does not face any risk of losing the GLT Movements. Directly or indirectly, the Board would have to preclude Applicants from competing for those movements.³

It is unclear whether GLT will seek such relief directly from the Board. It has thus far sought to put pressure on Applicants to settle, through the specter of time-consuming environmental proceedings and possibly onerous environmental conditions.⁴

Applicants regret that the good offices of this Board might be used in aid of this sort of anticompetitive initiative in a context where the Board has traditionally sought to protect and encourage competition. Limits on competition are especially difficult for CN and WC. CN has become the most efficient railroad in North America in order to compete, not to withdraw from competition. WC has survived in a very hostile environment only by being a great competitor. Moreover, if nothing else, antitrust principles might prevent us from entering into such an agreement with GLT.

From a purely economic perspective, however, Applicants could agree not to compete for traffic that we foresee no reasonable likelihood of obtaining, for we would expect to lose nothing. And perhaps the Board would have the power to condition the

³ GLT has suggested that an indirect approach to precluding competition from the Applicants would be to require a re-opening of the proceeding for environmental and other review in the event that CN/WC were to begin to divert the GLT Movements. Whatever else might be said about this environmental review alternative, it is clear that *ex post* review of the environmental consequences of diversions would not protect against any occurrence of those diversions or their effect on GLT and Great Lakes shipping.

⁴In the context of the Board's request for comments on Applicant's Environmental Report, GLT has made an effort to turn its wholly unsupported conjectures into "evidence" that Applicants will divert the GLT Movements. But those efforts fail entirely. See Appendix II.

CN/WC transaction on such an agreement and could grant CN/WC antitrust immunity for not competing.

Conclusion

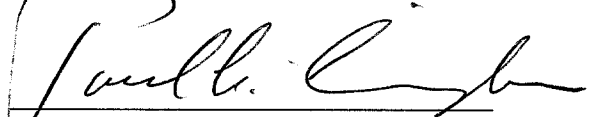
Applicants are filing these Comments on the status of GLT issues because the litigation and political consternation stirred up by GLT's claims is distracting from the real job that remains – making the otherwise uncontroversial Transaction work for CN/WC's customers. We need to get on with the business of running an even better railroad. Further litigation, procedural wrangling, or political maneuvering over traffic we have no reasonable expectation of handling would be just a waste of resources.

After reviewing these Comments, the comments of other participants, and any reply comments, the Board should be sufficiently informed to exercise its authority based on sound principles of public policy. It will be able to determine, within the period initially set forth in the procedural schedule established in Decision 2, whether or not to protect GLT by conditioning the Transaction to permit Applicants to agree with GLT not to compete for the GLT Movements.

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June 19, 2001

Appendix I: Background to GLT Issues

Applicants filed their application (the “Application”) on April 9, 2001, seeking authority from the Board for CN to acquire control of WC and its rail carrier subsidiaries, and for the consequent common control of those affiliates with CN’s rail carrier subsidiaries. In their Application, Applicants described their proposed control transaction (the “Transaction”) as “minor” under the Board’s rules, because the Transaction, which would bring about the end-to-end combination of the CN and WC systems, would clearly have no anticompetitive effects.¹ As Applicants explained, their proposed Transaction “is a minor transaction, not only by definition in the Board’s rules, but also in terms of the limited extent of anticipated changes in operations, as set forth in the Operating Plan” (CN/WC-2, vol. 1, at 427).

On April 30, 2001, Great Lakes Transportation LLC (“GLT”) filed a pleading entitled “Reply of Great Lakes Transportation LLC to Petition Suggesting Procedural Schedule; Petition to Dismiss Application or Require Supplemental Information” (“GLT Reply”).² In that pleading, GLT stated that it and its rail subsidiaries – DMIR, USS Fleet, P&C Dock, and BLE – “provide integrated transportation of taconite pellets and

¹ Applicants maintained that, even if it could be shown that the Transaction had any anticompetitive effects, those effects would “clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs,” and the Transaction would therefore still properly be classified as “minor.” 49 C.F.R. § 1180.2(b)(b)(2).

² GLT is the corporate parent of The Duluth Missabe & Iron Range Railway Company (“DMIR”), The Bessemer & Lake Erie Railroad Company (“BLE”), The Pittsburgh & Conneaut Dock Company (“P&C Dock”), and USS Great Lakes Fleet, Inc. (“USS Fleet”). GLT was created early in 2001 after Blackstone Group (“Blackstone”) and USX Corporation (“USX”), former owners of Transtar, Inc., and through it of Transtar’s rail and water carrier subsidiaries, reorganized the Transtar subsidiaries. As a result of that reorganization, GLT is owned entirely by Blackstone and a GLT management group, while Transtar (the parent of Birmingham Southern Railroad Company; Elgin, Joliet and Eastern Railway Company; Lake Terminal Railroad Company; McKeesport Connecting Railroad Company; Union Railroad Company; and Warrior and Gulf Navigation Company) is a wholly owned subsidiary of USX. GLT Reply at 2-3; *USX Corp. – Control Exemption – Transtar Inc.*, STB Finance Docket No. 33942, slip op. at 1-2 (STB served Nov. 30, 2000).

related materials from the iron ore producing region of northeastern Minnesota to steel plants throughout the Midwest region” (GLT Reply at 3). One of those subsidiaries, DMIR, is a rail carrier serving plants in Minnesota that originate movements of taconite pellets. DMIR transports movements of those pellets from the plants to docks in Duluth and Two Harbors, Minnesota, where they are unloaded from trains into USS Fleet vessels for transportation to mills located on the Great Lakes or to docks (such as GLT’s subsidiary P&C Dock) where the pellets are unloaded onto railcars for further transportation by rail (for example, on GLT’s BLE subsidiary).

GLT claimed that “the application anticipates a significant diversion of waterborne transportation to the merged railroad without discussing the competitive and other effects of this diversion,”³ and it accused Applicants of having failed to discuss “the major competitive, operating, labor, environmental, safety, and public interest consequences” of the diversion (GLT Reply at 1, 2). It further asserted that “[t]here is little doubt” that Transaction “is likely to eliminate essential rail competition” (*id.* at 10). GLT argued that, because the Transaction would have massive competitive and other public impacts, it could not therefore be characterized as “minor.” GLT requested that either the Application be dismissed or that Applicants be required to supplement it with all elements of an application for approval of a “significant” transaction. In reply, Applicants stated that GLT had mischaracterized the Application. Far from anticipating a “significant” or “major” diversion of waterborne taconite traffic, Applicants maintained, the Application had spoken very tentatively of a “potential long term opportunity” for CN/WC participation in an all-rail movement of taconite to Pittsburgh during winter months when weather disrupts Great Lakes shipping (Application, vol 1, at

³ See also GLT Reply at 6 (“The Applicants Anticipate a Major Diversion of Waterborne Traffic”).

170). Applicants further cited testimony in their Application that noted that “eventually” such an all-rail routing “might” provide a year-round alternative to movements on the Lakes (*id.*). In any event, Applicants noted, GLT had not shown that the Transaction fell outside the definition of a “minor” transaction in the Board’s rules. The Board agreed in Decision No. 2, which accepted the Application (Decision No. 2 at 8).

In Decision No. 2, the Board also required Applicants to serve an Environmental Appendix, prepared in consultation with the Board’s Section of Environmental Analysis (“SEA”), on “appropriate federal, state, and local agencies and other interested parties” (Decision No. 2 at 12). The Board ordered comments on the Environmental Appendix to be submitted by June 13, 2001 (*id.* at 2, 12). On May 14, 2001, as directed in Decision No. 2, Applicants served their Environmental Appendix, presenting and elaborating on information contained in the Application regarding Transaction-related increases in traffic on rail line segments and in activity at rail yards. The Environmental Application also stated Applicants’ view that, because the Transaction would cause no increases in traffic or yard activity above thresholds set out in the Board’s rules, the Transaction was categorically excluded from the requirement of environmental review under the National Environmental Policy Act of 1969 (“NEPA”) (Environmental Appendix at 3-6).

On June 13, 2001, in accordance with Decision No. 2, GLT filed Comments on Applicants’ Environmental Appendix (GLT-9). This document restated the claims GLT had made earlier to the effect that the Transaction would cause massive unacknowledged diversions of taconite traffic from GLT rail-water routings to all-rail routing over CN/WC lines, and it argued that these diversions would lead to extensive environmental impacts requiring review under NEPA. In its Comments, GLT cited the same reference

to “a potential longer term opportunity” to develop an all-rail movement to Pittsburgh that it had cited in its Reply, and it concluded from this reference that Applicants not only intended to divert the traffic Applicants had mentioned traffic from GLT’s rail-water routing, but also that they intended to divert *all* of GLT’s rail-water taconite traffic, and that they would likely succeed in doing so. GLT claimed that all these traffic shifts would be consequences of the CN/WC Transaction, and that therefore all resulting environmental effects must be examined before the Board could approve the Transaction.

Anticipating some of GLT’s arguments, Applicants filed their own environmental comments on June 13. They noted that CN and WC cannot presently transport taconite through Wisconsin to points east and south of Chicago without DMIR’s cooperation and consent, and that they would not be able to do so after consummation of the CN/WC transaction. They stated that CN does not serve any of the taconite origins served by DMIR, but that even if it did, it could not interchange any taconite traffic with WC without using trackage rights that DMIR has granted it over its line between Nopeming Junction, Minnesota, and South Itasca, Wisconsin. Applicants pointed out that, under the agreement with DMIR giving CN the right to use this line, CN had agreed that it “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.” (Letter from Paul A. Cunningham to Phillis Johnson-Ball at 2-3 (June 13, 2001) (quoting July 30, 1981 DMIR-DWP Trackage Rights Agreement, ¶ 1(D))). (Taconite pellets are a kind of iron ore covered by this restriction.) Moreover, Applicants pointed out, CN interchanges

traffic with WC at CN's Pokegama Yard, which is located on the DMIR track between Nopeming Junction and South Itasca, and which WC reaches by means of trackage rights granted by DMIR. Applicants noted that the DMIR agreement with WC provides that WC "shall not furnish transportation service over the joint tracks for iron ore, whether beneficiated or unbeneficiated[,] without first obtaining the consent of DMIR, which consent may include, at DMIR's option, participation by DMIR in the routing of such traffic." (Letter from Paul A. Cunningham to Phillis Johnson-Ball at 2 (June 13, 2001) (quoting April 14, 1998 DMIR-WC Trackage Rights Agreement, ¶ 8)).

Applicants also observed that, because DMIR has a bottleneck on the taconite origins at issue, any all-rail movements using WC for movement across Wisconsin would be interchanged between DMIR and WC and that DMIR can set rail rates for its portion of any DMIR/WC joint movements of taconite at a level that would make movements to Duluth or Two Harbors for subsequent water-borne movements more attractive to the shipper than an all-rail alternative (subject to the requirement that the entire origin-to-destination rate be a reasonable one. 49 U.S.C. § 10701(d)(1)). Because of DMIR's ability to set rates for rail transportation from the origin bottleneck, and because of the inherent cost advantage of water transportation, Applicants stated that CN/WC could not readily capture the water-borne taconite traffic that GLT claims CN/WC is likely to gain as a result of the Transaction.

Appendix II: Review of GLT's Environmental Claims

In Decision No. 2, the Board required Applicants to serve an Environmental Appendix, prepared in consultation with the Board's Section of Environmental Analysis ("SEA"), on "appropriate federal, state, and local agencies and other interested parties" (Decision No. 2 at 12). The Board ordered comments on the Environmental Appendix to be submitted by June 13, 2001 (*id.* at 2, 12). On May 14, 2001, as directed in Decision No. 2, Applicants served their Environmental Appendix, presenting and elaborating on information contained in the Application regarding Transaction-related increases in traffic on rail line segments and in activity at rail yards. The Environmental Appendix also stated Applicants' view that, because the Transaction would cause no increases in traffic or yard activity above thresholds set out in the Board's rules, the Transaction was categorically excluded from the requirement of environmental review under the National Environmental Policy Act of 1969 ("NEPA") (Environmental Appendix at 3-6).

On June 13, 2001, GLT filed its Comments on the Environmental Appendix (GLT-9), claiming that "Applicants' Environmental Appendix understates the likely environmental impacts of the transaction" (GLT-9 at 5). GLT offers little new in support of this claim. Instead, GLT rests its argument almost exclusively on the claim, already made in the GLT Reply, that Applicants failed to account for new taconite traffic that GLT claims is "likely" to be diverted from existing GLT rail-water routings to all-rail routings using WC's main line through Wisconsin (*id.*).

GLT's Comments also allege that substantial adverse environmental effects, not detailed in its previous pleadings, would result from its projected traffic diversions to CN/WC. These include increases in highway-rail accidents, other train accidents, "Train

Crossing events” (by which GLT presumably means crossings of highways by trains at grade, causing delays to emergency response and other vehicles), energy consumption, air pollution emissions, and noise (GLT-9 at 11-13; *id.* Exhibit E). Review of these effects, GLT maintains, is required in order to comply with NEPA.

But while GLT’s listing and discussion of environmental effects has the appearance of precision and specificity,¹ there is no substance behind that appearance. None of those effects will occur unless CN/WC is successful in diverting large amounts of taconite from GLT rail-water movements to all-rail movements over its lines. GLT provides no reason for thinking such diversions are reasonably foreseeable, much less that they are a reasonably foreseeable effect of the CN/WC Transaction itself.

As in the GLT Reply, GLT’s entire scenario of massive taconite diversions rests ultimately on a single paragraph in the Application, in which Applicants’ marketing witnesses, James M. Foote and William R. Schauer, say that they “see a potential longer term opportunity” to develop an all-rail routing to U.S. Steel’s Edgar Thompson Works in Pittsburgh, PA (CN/WC-2, vol. 1 at 170). That routing, Applicants’ witnesses said, “would offer what we believe will be an appealing transport alternative” when winter weather disrupts water-borne transportation on the Great Lakes, and “might also eventually provide” a year-round alternative (*id.*).²

GLT leaps from “might also eventually provide” to assume that “CN/WC will pursue this traffic,” and it concludes that substantial diversions of taconite traffic are “probable”—not just from the Edgar Thompson Works movement mentioned in the

¹ GLT, for example, submitted testimony purporting to calculate increased diesel fuel consumption to the gallon, increased number of train accidents to the first decimal place, and other impacts to a comparable level of false precision (GLT-9, Exhibit E).

² Taconite traffic that CN/WC might gain would effectively be diversions from other all-rail movement.

Application, but from *all* GLT's water-borne traffic, to six consignees in Indiana, Ohio, and Pennsylvania (GLT-9 at 6). Consequently, according to GLT, "the CN/WC transaction will enable the merged entity to divert to all-rail most or all of the taconite traffic that currently moves on the Lakes" (*id.* at 9), and "significant expansion of traffic on WC's Superior-Chicago mainline" is "likely" (*id.* at 6).³

This entire argument is based on conjecture, spun out from the Foote/Schauer statement but not supported by it in any way. GLT asks the Board to assume, without any factual showing, that:

- CN/WC intends to capture, not only the water-borne traffic to Edgar Thompson Works that was mentioned in the Application, but *all* GLT's water-borne taconite traffic (*id.* at 6),
- Diversions to CN/WC of 40% of total taconite now consumed by Edgar Thompson Works, 40% of the total taconite now consumed by the USX facility in Gary, Indiana, and Inland Steel's facility at Indiana Harbor, Indiana, and all of the taconite still moving by water to AK Steel's Middletown, Ohio, facility are "reasonably likely to occur in the near term" (*id.* at 10-11).

³ GLT also maintains that Applicants underestimated the number of trains necessary to handle the taconite traffic between Superior and Memphis that they projected would be gained as a result of the Transaction. According to GLT, "track limitations in Duluth-Superior constrain train length to 105 cars" (GLT-9, Exhibit A at 5), and so Applicants would be unable to operate the 115-car trains that were assumed in the Operating Plan. According to GLT, Applicants' projection of an additional 3.18 trains per day to handle the taconite traffic must be corrected to 3.48 trains per day.

Although this "correction" provides no reason for believing that Transaction-related traffic increases would exceed any of the Board's environmental thresholds [cite], Applicants would like to clarify the record. The traffic at issue, moving to U.S. Steel's plant at Fairfield, Alabama, is currently originated by DMIR and interchanged with BNSF. Unit trains handling this traffic include trains of 115 cars and more, as CN knows because it handles those trains on its line between Centralia and Memphis pursuant to a haulage agreement with BNSF. Applicants' Operating Plan assumed that this traffic could be carried in 52-foot hoppers, but it now appears that the current unit trains include a combination of cars 35, 44, 48, or 53 feet in length, in order to stay within applicable track limitations. (The cars of different lengths can all be loaded with 100 tons of taconite.) If Applicants were to gain this traffic, they could operate unit trains with cars of comparable lengths, and thus there would be no need to limit trains to 105 cars.

- Diversion of *all* of GLT's current water-borne taconite traffic to all-rail movements using CN/WC is "a definite possibility" (*id.*, Exhibit B at 14).
- CN/WC is prepared to cut its transportation rates to whatever level is necessary to capture GLT's water-borne taconite traffic (*id.* at 9)
- The CN/WC Transaction would make it possible (in ways not explained) for these large diversions to occur.
- The reason WC has not been successful in diverting large amounts of water-borne taconite to all-rail routings over WC has been capacity constraints on WC's line through Wisconsin between Superior and Chicago (GLT-9 at 7)
- CN's acquisition in WC will lead to capital investments, which WC has been unable to make, upgrading that line to the extent required to accommodate the movement of large amounts of taconite (*id.* at 7-8).

Each of these claims is based on nothing more than GLT's speculation, repeated enough times to obscure their lack of foundation. For the reasons set forth in detail below, they should not be credited by the Board, by SEA or any party to this proceeding.

Applicants' intent and ability to shift all water-borne taconite traffic to all-rail movements. Applicants studied the traffic they expected they could gain "from customers who might otherwise use other rail carriers *or modes of transportation*" as a result of their Transaction (Application, vol. 1, at 285 (emphasis added)). Applicants took care not to understate potential traffic gains, specifically because they knew that their projections would form the basis for assessing potential environmental impacts (*id.* at 290). As Applicants' traffic study witnesses testified, "we designed our study to consider potential traffic gains quite broadly and we took appropriate precautions

whenever we were concerned that potential traffic gains might not otherwise be fully reflected” (*id.*).

Even applying this careful standard, Applicants’ study did not find any of the water-borne taconite traffic identified by GLT as likely to shift to CN/WC as a result of the Transaction. The only specific discussion in the Application of transportation of taconite now moving by water is the mention (1) of a long-term possibility that CN/WC might, in cooperation with GLT’s DMIR subsidiary, develop seasonal all-rail movements of taconite to U.S. Steel’s Edgar Thompson Works, and (2) of the even more remote possibility of year-round all-rail routings to that destination. Again, Applicants found no basis for expecting that this traffic would eventually shift from GLT.

GLT misstates this reference as evidence of Applicants’ intention to actively “pursue” this traffic to GLT’s detriment, and of a “a realistic prospect that CN/WC efforts to divert such traffic would succeed” (GLT-9 at 9). In the face of Applicants’ testimony that their traffic study took care to include all likely traffic gains resulting from the Transaction, this amounts to the outrageous and wholly unsupported accusation that Applicants deliberately concealed their motives and attempted to mislead the Board by omitting the water-borne taconite traffic from the traffic projections reported in the Application and in the Operating Plan developed from those projections. This accusation is wholly unwarranted but GLT goes on in the same vein. GLT dismisses Applicants’ earlier quotation and explanation of that reference as an attempt to “minimize the prospects that [massive taconite] diversion would actually occur” (GLT-9 at 4) – as if Applicants had indicated in any way that such prospects were likely. Applicants are

confident that an examination of the actual words of the Application should suffice to refute GLT's characterization.

But GLT does not rest with baselessly attributing to Applicants an expectation of diverting all or any significant part of the Edgar Thompson Works traffic mentioned in the Application. Rather, according to GLT, Applicants "presumably" are "prepared to undercut existing rail-water rates" in order to divert "most or all" of GLT's water-borne taconite traffic to all destinations (GLT-9 at 9). There is nothing on the record in this case to indicate such an intent, but GLT asserts it as if it needed no proof, and proceeds to conclude that Applicants would succeed in diverting "most or all of the taconite traffic that currently moves on the Lakes" (*id.*) to their all-rail routing.

In particular, GLT asserts that in the short run, as a result of the Transaction, CN/WC should be able to divert 40% of the taconite consumed at Edgar Thompson Works (*i.e.*, *all* the taconite not subject to contractual restraints preventing the diversion), 40% of all the taconite moving by water to the USX facility in Gary, Indiana, and to Inland Steel's facility at Indiana Harbor, Indiana, and *all* of the taconite that currently moves by water to the AK Steel facility in Middletown, Ohio (GLT-9 at 10-11; *id.*, Exhibit B at 10-13). In the long run, according to GLT, all of its water-borne taconite traffic could be diverted to all-rail movements on CN/WC (*id.* at 11; *id.*, Exhibit B at 13-14).

Applicants, however, have explained why diversion of this traffic is highly unlikely without consent and cooperation of GLT, and in particular why Applicants are unlikely to be able to undercut GLT's rates. In their June 13, 2001, environmental comments, Applicants stated that DMIR (the GLT subsidiary that has a bottleneck on all

origins of the taconite at issue here) consistently quotes a revenue requirement for its share of an all-rail movement to Edgar Thompson Works (which would compete with GLT's rail-water movement) at a consistently higher level than its revenue requirement for its share of a movement to Fairfield, Alabama ((Letter from Paul A. Cunningham to Phillis Johnson-Ball at 3 (June 13, 2001))). WC has estimated that this high revenue requirement, combined with the inherent cost advantage of Lakes vessel transportation, makes the transportation rate for all-rail movements from Minntac to Edgar Thompson Works nearly 25% higher than the rail-water alternative (*id.*). GLT does not explain how CN's supposedly vast resources would enable CN/WC to reduce the rate on its share of an all-rail routing sufficiently to overcome this cost differential.⁴

Capacity constraints on WC line. The only explanation GLT provides for how the CN/WC transaction would cause between 38 and 100% of all GLT water-borne taconite to shift to CN/WC all-rail movements is that CN will bring "significant resources" to bear that will make possible investments in the capacity of WC's line between Superior and Chicago that must be made in order to handle the traffic. Since GLT cites no other relevant change, it implicitly claims that the only reason WC has been unable to capture all this taconite traffic already (other than constraints in transportation

⁴ GLT's witness Elliott M. Hughes, III, claims that "DMIR (and GLT) has little if any ability to influence routing decisions made by the shipper" (GLT-9, Exhibit B at 5). This statement ignores the power DMIR has as originating carrier to influence those decisions by setting its rates so as to make one routing clearly preferable to another (subject only to the requirement that the total origin-to-destination rate be reasonable). Moreover, Mr. Hughes's statement directly contradicts holdings of the Board's predecessor agency. See *St. Louis S.W. Ry. – Purchase (Portion) – Gibbons, Trustee of the Property of Chicago, R.I. & Pac. R.R., Debtor*, 363 I.C.C. 323, 444 (1980); *Burlington N., Inc. – Control – St. Louis-S.F. Ry.*, 360 I.C.C. 788, 1078 (1980).

contracts) is that it has not been able to make the investments (*see id.* at 7-8; *id.*, Exhibit B at 7).⁵

This implication is patently untrue. WC's limited success in capturing taconite for all-rail movements has nothing to do with any limitations in its existing capacity, and everything to do with factors such as those listed in the preceding section and in Applicants' June 13, 2001, letter commenting on the Environmental Appendix (*e.g.*, DMIR's bottleneck pricing power and the relatively low cost of Great Lakes transportation). WC has neither concluded nor been told by a shipper that capacity constraints on its line through Wisconsin have been the reason for not obtaining a shipper's taconite business. Moreover, WC is confident that, in the unlikely event that it succeeded in capturing *all* GLT's existing water-borne taconite traffic, its existing infrastructure would be adequate for it to move the 8.13 additional trains per day that GLT has projected would result from that diversion (*see* Verified Statement of Randy H. Henke).⁶

There is no basis for GLT's claim that "WC's limited financial resources inhibit its ability to add sufficient capacity to permit diversion of substantial taconite traffic from

⁵ GLT's witness Hughes also suggests that delivery of taconite by rail to the Ispat Inland Indiana Harbor facility at East Chicago would require "construction of equipment to unload and ground store taconite" (GLT-9, Exhibit B at 9), but neither he nor GLT claims that WC has been unable to fund this investment, much less that WC has failed to gain taconite traffic to that facility because of any such inability. Nor does he or GLT suggest any plausible reason why the infrastructure investments it mentions could or would not have been made by other railroads that could handle or participate in all-rail movements of the taconite in question, such as Union Pacific or BNSF.

⁶ If the ability to make investments in track infrastructure were preventing WC from capturing additional taconite traffic, one would expect that fact to be reflected in documents kept by WC's marketing personnel. However, as GLT knows, Applicants found no such documents when they searched WC's files in response to a GLT discovery request seeking "all documents relating to or discussing any investment (*e.g.*, addition or upgrade of track or roadbed, locomotives, or freight cars) that would be needed in connection with any effort by (a) CN or WC individually or (b) the merged CN/WC entity to increase all-rail service for transportation of taconite" (Request No. 7, Great Lakes Transportation LLC's First Requests to Applicants for the Production of Documents and First Set of Interrogatories to Applicants at 9).

water routes” (GLT-9 at 7-8). GLT witness Grimes’s discussion of an additional 16 to 36 new miles of siding capacity to accommodate diverted taconite traffic does not reflect any capacity analysis, but, as Mr. Grimes admits, is the product of a “back-of-the-envelope” calculation that assumes that existing volume-to-trackage ratios would have to remain constant if the line were to carry additional traffic (GLT-9, Exhibit E, at 30). Mr. Grimes suggests no basis for such an assumption, and in fact there is none; as stated above, the line today is capable of handling all the additional taconite that GLT projects would shift to CN/WC as a result of the Transaction, without any infrastructure investments.

Even if infrastructure improvements were necessary (and they are not) for CN/WC to handle the taconite traffic that GLT claims would shift to the merged system as a result of the Transaction, there is no reason to assume, as GLT does, that CN/WC would necessarily make those investments. GLT fails to acknowledge that CN/WC would have to balance the expected return on any such investments against their cost (just as WC must today). If lack of line investments were the reason WC does not carry large volumes of taconite traffic today, it would not by any means follow that CN/WC could profitably make those investments and capture the taconite traffic, nor should the Board conclude that CN’s acquisition of WC would make those investments more likely.

Effect of the CN/WC Transaction. GLT acknowledges that WC has been marketing its all-rail service for taconite, with limited success (*id.* at 8; *id.* Exhibit D). It has no coherent explanation, however, of how the CN/WC Transaction will make it possible for CN/WC to capture up to 15.37 million tons of GLT taconite traffic that WC has not been able to gain as an independent rail system.

When GLT first raised the prospect of massive unreported diversions to CN/WC, Applicants pointed out GLT's failure to identify any nexus between the CN/WC Transaction and the diversions that GLT maintains are "likely" to result from it.⁷ GLT has now tried to remedy this omission by suggesting that "[o]nce WC has access to additional resources from CN, it is likely to expand its taconite marketing efforts" (GLT-9 at 8). (Indeed, GLT suggests that those additional "resources" will make taconite diversions not only more likely, but nearly inevitable.) The nexus that GLT now attempts to draw between the Transaction and the diversions is fanciful.

GLT's only suggestion of how CN's resources would bring about the nearly magical effects GLT predicts is that CN could make infrastructure improvements that WC is presently unable to make. Any apparent nexus between the Transaction and the diversions vanishes upon examination, however. As discussed above, there are in fact no infrastructure improvements that WC needs to make to handle the taconite traffic that GLT fears it would lose as a result of the Transaction. WC's line as presently configured could accommodate the additional 8.13 trains a day that GLT projects would be necessary to carry *all* the taconite GLT now moves by rail-water routings, should CN/WC be so fortunate as to gain it. Without the supposed need for new infrastructure, there is nothing GLT can point to that make such gains more likely to CN/WC than to WC as an independent rail system.

⁷ CN/WC-5 at 4 ("GLT suggests that as a result of the Transaction, for reasons not explained, CN/WC may make major inroads in this market that the Application failed to discuss"), 5 ("GLT does not suggest that Applicants, who are creating no new routes, and cannot offer a single-line option for the traffic at issue, have carried any significant amount of this traffic. As the Application makes clear, the Transaction will only incrementally improve the CN/WC portion of an existing option comprising the lines of five carriers. GLT makes no showing to question the conclusion that such incremental improvement would be insufficient to cause such traffic shift.").

In short, all of GLT's arguments that Applicants somehow overlooked – or rather, concealed – large Transaction-related diversions of taconite to CN/WC are simply speculation piled on speculation. Merely stringing together a series of remote possibilities and unsubstantiated links of causation, as GLT has done, does not make any of those possibilities any less remote. Nor do repeated statements that a certain outcome is “likely,” without any evidence, make it any more likely in fact. Indeed, GLT's claim in its Environmental Comments is so extraordinary – that applicants mentioned taconite but chose not to divulge their investment intentions or their expectations of diverting the traffic – that the claim properly should be considered a matter for the Board to resolve, whatever the extent of SEA's normal fact-finding with respect to disputed traffic volumes. If nevertheless SEA does undertake to resolve this issue, it should find that GLT's speculations do not make any of the consequences it claims for the Transaction “reasonably foreseeable” and thus appropriate subjects for analysis pursuant to NEPA. 40 C.F.R. § 1508.8(b).

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34000

CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, AND WC MERGER SUB, INC.
- CONTROL -
WISCONSIN CENTRAL TRANSPORTATION CORPORATION,
WISCONSIN CENTRAL LTD., FOX VALLEY & WESTERN LTD.,
SAULT STE. MARIE BRIDGE COMPANY, AND
WISCONSIN CHICAGO LINK LTD.

VERIFIED STATEMENT OF RANDY H. HENKE

I, Randy H. Henke, am Vice President-Engineering of the Wisconsin Central System. The Wisconsin Central System consists of Wisconsin Central Ltd. ("WCL"), Fox Valley & Western Ltd. ("FVW"), Sault Ste. Marie Bridge Company ("SSMB"), Algoma Central Railway Inc. ("ACRI"), and Wisconsin Chicago Link Ltd. ("WCLL"), all of which are rail carrier subsidiaries of Wisconsin Central Transportation Company ("WCTC").¹ WCTC, WCL, FVW, SSMB, and WCLL are Applicants in this proceeding.

I have been asked by Applicants² to submit this verified statement in order to address allegations made by Great Lakes Transportation LLC ("GLT") regarding the capacity of WC's line between Superior, Wisconsin, and Chicago, Illinois, to handle increased volumes of taconite traffic. I understand that GLT has claimed that, as a result of the CN/WC Transaction proposed in this proceeding, between 5.9 million and 15.37 million tons of taconite, which are now carried by GLT subsidiaries by rail to Duluth or Two Harbors, Minnesota, and by water on the Great Lakes, would shift to all-rail

¹ In this verified statement, I will refer to WCTC and its rail carrier subsidiaries in the Wisconsin Central System collectively as "WC."

movements using WC's line between Superior and Chicago. I understand further that GLT has suggested that the reason the CN/WC Transaction would cause this traffic shift is that CN would be able to "invest in expanding the capacity of this line" (GLT-9 at 8). GLT apparently maintains that "WC's limited financial resources inhibit its ability to add sufficient capacity to permit diversion of substantial taconite traffic from water routes," but that CN's financial resources would permit those investments and thus cause those diversions (*id.* at 7-8).

I would like to put to rest any misconception that WC's line today lacks any capacity needed to handle substantial new volumes of taconite traffic. In recent years, WC has made substantial track investments in its line between Superior and Chicago, in order to be able to handle any traffic (including CN haulage traffic) that it might be called on to carry over that line. Although I understand that it is highly unlikely that WC could succeed in gaining all 15.37 million tons of taconite carried by GLT on rail-water routings, as GLT has claimed, the present capacity of the line is sufficient to accommodate the additional 8.13 unit trains per day that, according to GLT, would be needed to carry that entire volume (*see* GLT-9 at 11; *id.*, Exhibit E at 10).

It is simply not true that increases in train density along the Superior-Chicago line would "require the construction of siding extensions and/or new sidings," as suggested by GLT's witness G. Avery Grimes (GLT-9, Exhibit E at 29). Mr. Grimes calculated that between 16 and 36 miles of additional siding capacity would be required to handle additional taconite traffic on the line, but this calculation was not the result of any capacity analysis, but rather of what Mr. Grimes calls a "back-of-the-envelope"

² As used herein, "Applicants" refers to WC and its constituent corporations (other than ACRI) and to Canadian National Railway Company, Grand Trunk Corporation, and WC Merger Sub, Inc.

calculation, based on the assumption that existing demand-to-capacity ratios would have to be maintained (*id.*, Exhibit E at 30). Mr. Grimes had no basis for making that assumption, which is in fact incorrect. As I have stated, WC has made significant investments in the capacity of its line between Superior and Chicago and thus has substantial available capacity that could readily accommodate up to 8.13 additional unit trains of taconite per day.

WC's limited success to date in capturing taconite traffic from GLT has nothing to do with the physical capacity of its line. WC is prepared today to handle any volumes of such traffic that its marketing efforts are likely to obtain for it, whether as an independent rail system or as part of the CN family. CN's purported ability to make additional investments in track capacity is a red herring, as GLT's arguments about the need for such investments are simply wrong.

VERIFICATION

I, Randy H. Henke, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

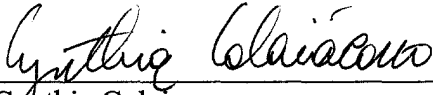
Executed on June 19, 2001.

A handwritten signature in cursive script, appearing to read "R. Henke", written over a horizontal line.

Randy H. Henke

CERTIFICATE OF SERVICE

I certify that I have this 19th day of June, 2001, served copies of the foregoing Applicants' Comments on the Status of GLT Issues (CN/WC-13) by causing a copy to be sent to all known parties of record in this proceeding by first-class mail or a more expeditious method of delivery.



Cynthia Colaiacovo