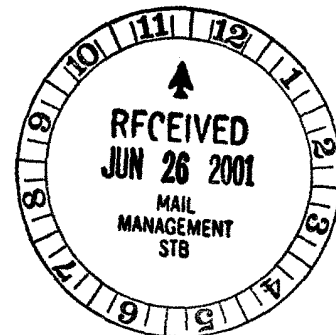


202154

GLT-14

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34000



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.

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Public Record

COMMENTS OF GREAT LAKES TRANSPORTATION LLC

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Counsel for Great Lakes Transportation LLC

Dated: June 25, 2001

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

COMMENTS OF GREAT LAKES TRANSPORTATION LLC

In accordance with the procedural schedule adopted in Decision No. 2, Great Lakes Transportation LLC ("GLT") hereby submits its comments on the application filed in this proceeding on April 9, 2001.

As the Board is aware, GLT has previously expressed concerns about the effects of the proposed transaction. Mindful of the Board's many statements encouraging private settlements of disputes relating to proposed mergers,¹ GLT contacted Applicants to determine whether a resolution of GLT's concerns might be possible. To this end, the parties have had numerous discussions during recent weeks.

GLT is pleased to advise the Board that these efforts have been fruitful and that GLT has now reached agreement with the Applicants on the terms of a settlement. Assuming

¹ See, e.g., Ex Parte No. 582 (Sub-No. 1), *Major Rail Consolidation Procedures*, at 27 (served June 11, 2001) (noting that Board "continue[s] to encourage private-sector solutions" to competitive and other problems shortline and regional railroads and ports may experience as a result of a rail merger).

that the settlement terms are imposed as a condition of the proposed transaction, GLT fully supports the transaction. GLT accordingly urges the Board to approve the proposed transaction subject to the terms of the settlement.

I. BACKGROUND

A. GLT and the Great Lakes Taconite Trade

GLT, through subsidiaries, transports taconite and other commodities by rail and water. GLT owns the Duluth, Missabe, and Iron Range Railroad Company ("DM&IR"), USS Great Lakes Fleet, Inc. ("USS Fleet"), the Bessemer and Lake Erie Railroad Company ("B&LE"), and the Pittsburgh & Conneaut Dock Company ("P&C Dock"). Together, DM&IR, USS Fleet, P&C Dock, and B&LE provide integrated transportation of taconite pellets and related materials from the iron-ore producing region of northeastern Minnesota to steel plants throughout the Midwest. Specifically, DM&IR transports taconite from three mines either (a) to DM&IR docks on Lake Superior (Duluth and Two Harbors) for loading onto USS Fleet ships (or bulk vessels of other lake carriers) or (b) to Steelton, MN, for interchange with other railroads.

Transportation of taconite is the economic backbone of the Great Lakes shipping industry. The bulk of the taconite produced on the Minnesota Iron Range and Michigan's Upper Peninsula originates by rail and then moves by ship to ports in Indiana, Ohio, and elsewhere for delivery--directly or by rail--to steel mills.² While taconite accounts for a majority of the tonnage of the large-ship U.S.-flag carriers on the Great Lakes, those carriers also transport large

² Wisconsin Central Transportation Corporation ("WC"), one of the Applicants in this proceeding, transports taconite produced on the Upper Peninsula to the port of Escanaba on northern Lake Michigan for carriage by ship to steel plants at the southern end of that lake. DM&IR does not currently have access to the Escanaba dock. Escanaba is open for shipping at certain times of the year when GLT's ports on Lake Superior are closed.

volumes of coal, limestone, and other commodities, in many cases on return voyages. These commodities are sometimes referred to as “backhaul” commodities. A map depicting the primary origins and destinations of taconite is appended as Attachment A.

While some taconite now moves to steel mills exclusively by rail, that portion is modest. It consists largely of shipments that can move only by rail to mills in Alabama and Utah, spot movements, and seasonal movements to other destinations when some or all of the Lakes are closed to shipping. In the past few years, a limited volume of non-seasonal taconite traffic bound for the Midwest has shifted from the Lakes to an all-rail movement.

B. The CN/WC Merger Proceeding

In an application filed on April 9, 2001, Canadian National Railway Company (“CN”) and WC³ sought the Board’s approval of a proposed transaction whereby WC would become a wholly-owned subsidiary of CN. On May 1, 2001 GLT petitioned the Board to reject the application as incomplete or to classify the application as “significant” for purposes of 49 U.S.C. §11325 (c) and 49 C.F.R. §1180.4.⁴ GLT noted its view that the application suggested potentially substantial shifts of taconite shipments from the Great Lakes to all-rail routing. Among other things, GLT suggested that diversions of baseload taconite shipments could lead to higher freight rates for backhaul shipments of limestone and other commodities that currently move on the Lakes. GLT pointed out that the Applicants had not addressed the environmental or competitive implications of such a shift. The Applicants responded to GLT on May 2, 2001,

³ CN, WC, and their subsidiaries are jointly referred to in these comments as “Applicants.”

⁴ Reply of Great Lakes Transportation LLC to Petition Suggesting Procedural Schedule; Petition to Dismiss Application or Require Supplemental Information (May 1, 2001) (“GLT Petition”)

stating that there was no basis to believe that the merger would result in a significant shift of taconite traffic from the Great Lakes to all-rail movement involving CN/WC.⁵

Pursuant to Decision No. 2, served May 9, 2001, Applicants distributed the environmental appendix to the application on May 14, 2001. In comments on the appendix, submitted on June 13, GLT stated that physical constraints on WC's system had limited WC's ability to attract taconite traffic, but that the proposed merger, by providing access to CN's large financial resources, could enable WC to eliminate those constraints. GLT's comments cited the verified statement of G. Avery Grimes, an expert in transportation-related environmental and safety matters, and catalogued the adverse safety and environmental consequences that GLT expected would flow from a posited diversion of GLT water-borne taconite traffic to all-rail routing.⁶

In a letter to the Board dated June 13, and in a subsequent filing on June 19, Applicants emphatically repeated that there is no realistic prospect that they could effect any significant diversion of taconite traffic. Among other things, they noted that the only references to shift of taconite traffic from rail-water movement to all-rail movement involving CN/WC concerned movements from Minntac, MN, to the U.S. Steel plant in Pittsburgh, particularly seasonal movements when the Lakes were closed due to weather. They referred to the cost advantages of water carriage and DM&IR's ability to influence the subsequent routing of

⁵ Applicants' Reply to Petition to Dismiss Application or Require Additional Information (May 2, 2001).

⁶ Comments of Great Lakes Transportation LLC on Applicants' Environmental Appendix ("GLT Comments") (June 13, 2001).

taconite originating on DM&IR.⁷ They also presented the verified statement of a WC Vice President, Randy H. Henke, stating that wholly apart from any merger with CN, there are no capacity constraints on the WC system prevent it from handling substantial new volumes of taconite traffic.⁸

II. THE SETTLEMENT

General terms of the settlement agreed to by the Applicants and GLT are set forth in a letter dated June 22, 2001 from G. P. Radloff, Assistant Vice President Marketing and Sales of Canadian National/Illinois Central, to John E. Giles, President and Chief Executive Officer of GLT, a copy of which is attached as Attachment B. GLT's summary of an additional agreement between the parties on certain operational matters is attached as Attachment C. The parties contemplate that the terms of these agreements, though intended to be legally binding, will be reduced to definitive form within the next 10 days. We will submit the definitive terms to the Board.

The settlement confirms the existing ability of customers to choose between a rail-water routing and an all-rail routing based on which is more economical. At the same time, the settlement creates a more cooperative joint arrangement under which DM&IR, through an agency arrangement with the merged CN/WC, will offer one-stop shopping for customers making this choice. In addition, the parties have resolved certain other issues in a manner that will provide each with increased operational flexibility, yielding competitive benefits for GLT, Applicants, and the Great Lakes community.

⁷ See Letter from Paul A. Cunningham to Phillis Johnson-Ball (June 13, 2001); Applicants' Comments on the Status of GLT Issues (June 19, 2001) ("Applicants' June 19 Comments").

⁸ Verified Statement of Randy H. Henke at 2-3.

The parties undertake several obligations:

(1) CN and WC will designate DM&IR as their agent for the arrangement of all-rail transportation using interline rates for movements over CN or WC of taconite pellets originating on the DM&IR and destined to Gary or Indiana Harbor, IN; Pittsburgh, PA; Nanticoke, ONT; or Lorain, OH. This designation will remain in place for 10 years, absent specified changes in the control of CN, GLT, or DM&IR. Under this arrangement, CN/WC will independently define its revenue requirement for all-rail movements.

(2) CN/WC will provide DM&IR with a rate factor for the movement over WC tracks of taconite pellets originating on DM&IR and moving over the docks at Escanaba for subsequent water movements.

(3) The parties also resolved a number of other outstanding disputes. In particular:

(a) The parties will modify certain existing trackage rights agreements to provide for a standard rate per loaded car.

(b) DM&IR will confirm the right of WC to interchange with other carriers at the Pokegama Yard.

(c) DM&IR will provide WC access to a shipper (Koppers) under a reciprocal switch arrangement, thereby eliminating a track maintenance problem for DM&IR.

(d) The parties have resolved the compensation to DM&IR for the costs of reconstruction of the Oliver Bridge, which spans the St. Louis River between Minnesota and Wisconsin.

The parties contemplate that interpretation of the settlement terms would be subject to arbitration and that the agreement would be enforceable by the Board as a condition of approval of the proposed transaction.

III. THE BOARD SHOULD APPROVE THE PROPOSED TRANSACTION SUBJECT TO THE TERMS OF THE SETTLEMENT.

On the assumption that the settlement reached by GLT and Applicants will be imposed as a condition of approval, GLT supports the CN/WC transaction. As Applicants have pointed out, the proposed transaction offers a number of public benefits. With imposition of the settlement terms, the concerns GLT expressed about potential adverse effects of the transaction would be dispelled. The Board should approve the proposed transaction subject to the terms of the settlement.

A. The Settlement Serves the Public Interest.

The settlement agreement reached by GLT and Applicants serves the public interest. The arrangement by which DM&IR will serve as agent for CN/WC for rail movement of taconite originating on the DM&IR preserves the existing commercial situation under which customers are able to choose between a rail-water routing and an all-rail routing, depending on which is more economical. Under this cooperative agency arrangement, the carriers will have incentives to choose the most efficient and cost-effective routing, so as to compete more effectively with taconite movements on other carriers, such as The Burlington Northern and Santa Fe Railway Company ("BNSF"). At the same time, the arrangement offers shippers greater flexibility.

Under the agency arrangement, CN/WC will continue to have the right to set its revenue requirements independently. This will allow CN/WC to price its segment as aggressively as it sees fit -- subject, of course, to any applicable legal restrictions on predatory or

other anticompetitive pricing -- in seeking to compete with waterborne carriers. The agency arrangement preserves the existing opportunity for DM&IR and CN/WC to provide all-rail service when it is economically advantageous.⁹ Furthermore, it offers shippers the benefit of one-stop shopping. GLT believes its customers will welcome the convenience of such an arrangement.

The settlement promotes competition in several significant respects. Most notably, under the settlement CN/WC will provide DM&IR with a rate factor for taconite originating on DM&IR and moving to the Escanaba dock. This feature of the agreement provides a significant benefit to lake transportation customers. As noted above, Escanaba remains open for shipping at certain times when the ports directly served by DM&IR (Duluth and Two Harbors), as well as other ports on Lake Superior, are closed for the winter. By facilitating access to an additional port, the settlement will provide lake shippers with greater flexibility. This provision of the settlement thus directly addresses the concerns previously stated by GLT and others that approval of the proposed transaction will cause substantial taconite traffic currently moving on the Great Lakes to be diverted to all-rail routing, thereby threatening the viability of the lake transportation industry.

The settlement will improve efficiency by providing CN/WC with reciprocal switching rights at the Koppers facility. CN/WC will be able to maintain efficient access to this rail customer, providing it with continued service from both DM&IR and CN/WC, while DM&IR eliminates track maintenance problems associated with the Ambridge diamond.

⁹ Of course, DM&IR could not simply refuse to enter into an all-rail movement if a shipper requested an all-rail movement. DM&IR would be required to provide a rate for such service in connection with CN/WC or other carriers.

Under the settlement, the parties also resolved several operational issues, some of which bear on operations of the merged CN/WC. In particular, the agreement confirms that the merged CN/WC may interchange traffic directly with other carriers at DM&IR's Pokegama Yard. This clarifies a right that was previously in dispute between DM&IR and the Applicants, permitting smooth operations for the merged entity. The settlement also resolves various disputes concerning standardization of trackage rights charges for CN and WC, compensation for dispatching of joint facilities, and construction for the mutual benefit of the carriers in connection with operation of those joint facilities. These provisions of the settlement will eliminate any need for the Board to resolve these controversies.¹⁰

B. The Settlement Should Be a Condition to Approval of the Proposed Transaction.

Under 49 U.S.C. §11324 (c), the Board has broad authority to impose conditions on mergers. That authority encompasses all conditions "needed to advance the public interest."¹¹ As described above, the provisions of the settlement agreement between GLT and Applicants meet that standard by both preserving and promoting competition. The provisions offer benefits to Great Lakes shippers, including greater convenience and flexibility of routing, and improved operations for the merged CN/WC. With the settlement, the public-interest benefits of the transaction would outweigh any potential adverse effects.

¹⁰ The settlement should also obviate environmental concerns that GLT had identified.

¹¹ *Lamoille Valley R.R. v. ICC*, 711 F.2d 295, 299 & n.3 (D.C. Cir. 1983).

The Board should adopt the settlement as a Section 11324 (c) condition to the Board's approval of the proposed transaction in order to ensure that the conditions will be insulated from collateral attack. For the reasons described above, GLT is confident that the settlement provisions would withstand any antitrust challenge. The settlement terms preserve the existing ability of customers to choose between rail-water and all-rail routings depending on which is more economical, as well as DM&IR's rights as originating carrier. In several respects (including new access for DM&IR to the Escanaba dock), the settlement allows both GLT and the merged CN/WC to become more effective competitors, providing additional transportation options and greater flexibility for the carriers and their customers. Both companies will continue to have strong incentives to offer the most economical transportation options, in order to compete effectively with BNSF and other taconite transportation providers.

Nevertheless, the cost, in terms of time and resources, of defending against any antitrust challenge could in itself be significant. For that reason, GLT and Applicants condition their assent to the settlement terms, and GLT conditions its support of the proposed transaction, upon the adoption of the settlement as a condition to the Board's approval of the proposed transaction.

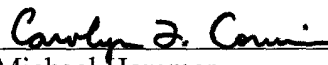
As described above, the parties contemplate that their settlement agreement will be reduced to definitive terms and submitted to the Board within 10 days. Compliance with those definitive terms should be a condition to the Board's approval of the proposed transaction.

CONCLUSION

For the foregoing reasons, GLT respectfully requests that the Board approve the transaction proposed by the Applicants subject to the condition that the Applicants comply with the terms of the above-described settlement as submitted to the Board in definitive form.

Respectfully submitted,

Leann M. Greenwald
Great Lakes Transportation LLC
135 Jamison Lane
Monroeville, PA 15146
(412) 829-6892



J. Michael Hemmer
Nicholas W. Fels
Carolyn F. Corwin
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 662-5578

Counsel for Great Lakes Transportation LLC

Dated: June 25, 2001

CERTIFICATE OF SERVICE

I, Carolyn F. Corwin, certify that, on this 25th day of June, 2001, I caused a copy of the Comments of Great Lakes Transportation LLC to be served as indicated below:

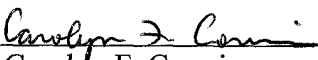
By Hand:

Paul A. Cunningham
Harkins Cunningham
801 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004-2664

By Overnight Mail:

William C. Sippel
Fletcher & Sippel LLC
180 N. Stetson Avenue
Two Prudential Plaza
Suite 3125
Chicago, IL 60601-6721

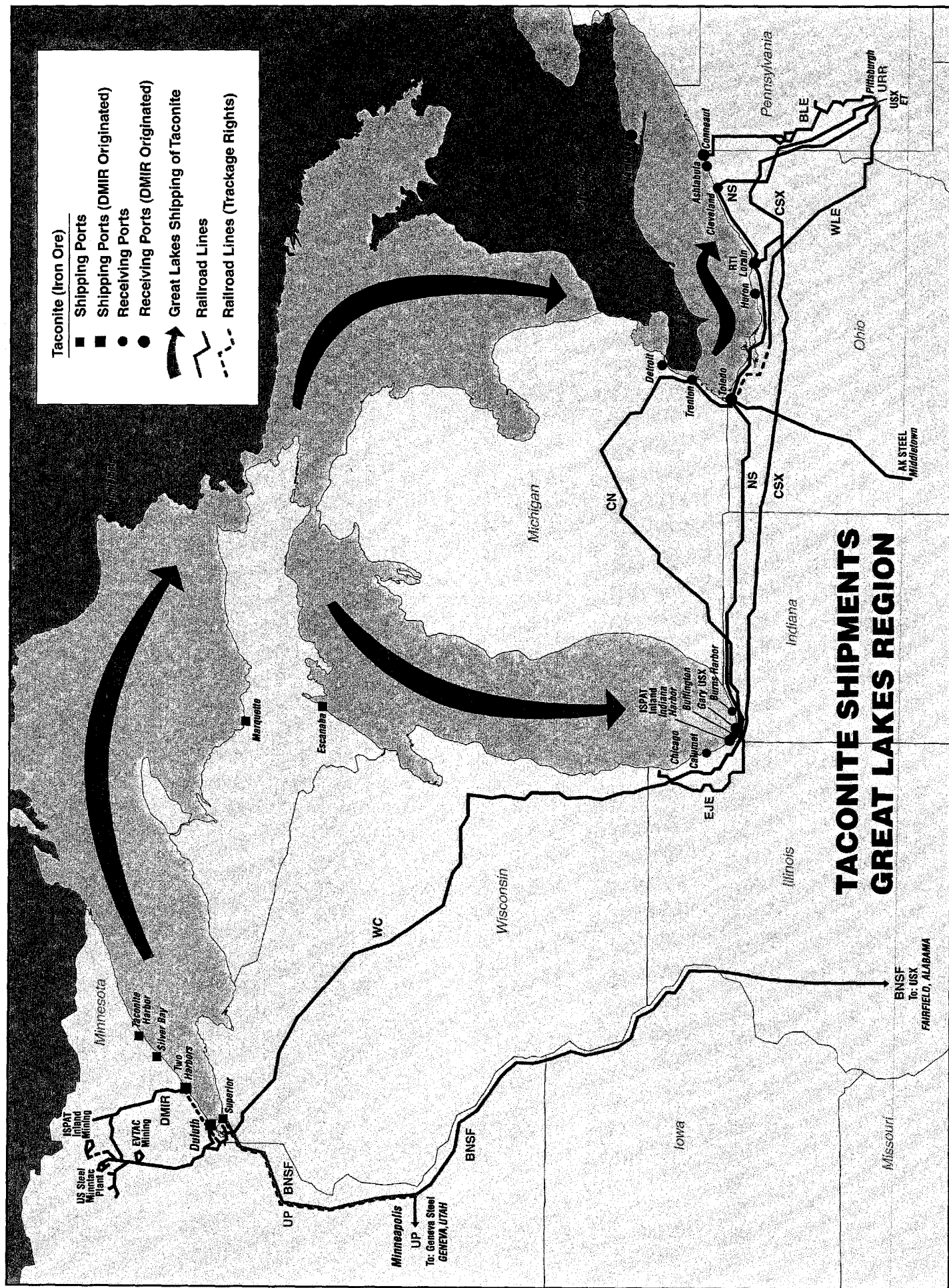
I further certify on this 25th day of June, 2001, I caused a copy of the foregoing Comments of Great Lakes Transportation LLC to be served by first-class mail, postage prepaid, on all other parties of record listed on the official service list, as modified, issued as Appendix A to Decision No. 3 in Finance Docket No. 34000.


Carolyn F. Corwin

ATTACHMENT A

Taconite (Iron Ore)

- Shipping Ports
- Shipping Ports (DMIR Originated)
- Receiving Ports
- Receiving Ports (DMIR Originated)
- ➔ Great Lakes Shipping of Taconite
- Railroad Lines
- - - Railroad Lines (Trackage Rights)



TACONITE SHIPMENTS GREAT LAKES REGION

BNSF
To: USX
FAIRFIELD, ALABAMA

ATTACHMENT B



G.P. "Rusty" Radloff
Assistant Vice President
Marketing & Sales

Canadian National/Illinois Central
455 North Cityfront Plaza Drive
Chicago, IL 60611-5317
Telephone: (312) 755-7895
Fax: (312) 755-7858
Internet: Rusty.Radloff@cn.ca

June 22, 2001

Mr. John E. Giles
President
Great Lakes Transportation LLC
P.O. Box 68
135 Jamison Ln.
Monroeville, PA
15146

Dear John:

This further responds to your request that we suggest a means to address the traffic shift that you fear will result from our CN/WC transaction.

As you know, we cannot understand why you are so concerned about these moves, which we already have no hope of handling unless DMIR consents. Nevertheless, given that we are incurring substantial costs to litigate your claims, and that we expect to incur no economic loss from meeting your goals, we offer the following for your consideration.

One means to achieve your goal would be for us to designate DMIR as our exclusive agent for the arrangement of all-rail transportation for movements over CN or WC of taconite pellets originating on the DMIR and destined to: Gary or Indiana Harbor, IND, Pittsburgh, PA, Nanticoke, ONT, or Lorain, OH. This designation would apply for a period of ten years (twice the STB's oversight period for "major" mergers) and would continue during that period in the event of a change of control of CN or a change of control of GLT or DMIR so long as DMIR was not directly or indirectly subject to the control of a CN customer or a Class I railroad. Under this arrangement, we would independently define CN/WC's revenue requirements to assure that any movement that DMIR might arrange would be profitable for CN/WC. So long as DMIR was our agent for these movements, CN would not independently solicit such movements or set prices to shippers for its portion of such movement unless required to do so by law.

This designation would become effective if the CN/WC Transaction were approved by the STB on or before September 7, 2001 and consummated by CN and WC.

This arrangement makes sense to us for two basic reasons. First, as you know, we expect that there is no likelihood that these movements will occur in the foreseeable future without your consent. GLT just has too great a cost and service advantage for us to be an effective competitor. So, as far as we are concerned, we have nothing to lose by this arrangement. Second, even if all-rail movements for this traffic made sense in the market, given that DMIR has exclusive access to the origin mines, we do not believe that all rail movements can practically be arranged off the DMIR without DMIR's full consent and participation. Therefore, if there is any chance that we would ever participate in these movements, it would only arise if DMIR saw our participation as being in its self-interest because CN/WC offered a more profitable route to DMIR than DMIR's other alternatives and if DMIR actively solicited the traffic for joint routing with CN/WC. Under these circumstances, we believe that the interests of DMIR would be co-extensive with those of CN/WC. Thus, CN/WC could have something to gain by this arrangement.

For these reasons, if we could otherwise settle our dispute, and GLT could support our transaction (and urge support by all of the parties rallied by GLT) on the grounds that there is no reasonable likelihood that CN/WC will handle this traffic in the foreseeable future, we would be willing to have this agency arrangement be imposed by the STB as a condition on the CN/WC transaction and to support this settlement.

As a separate matter, CN/WC would give DMIR a rate factor over WC for taconite pellets originating on DMIR and moving to or through the Escanaba docks.

Any dispute under these arrangements or any other aspect of our settlement would be subject to arbitration under terms to be agreed upon. GLT or CN could also seek STB enforcement of any condition imposed by the Board in connection with these arrangements.

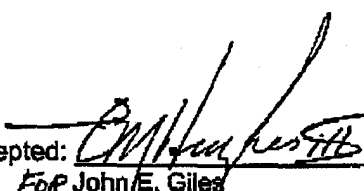
I've enclosed two copies of this executed letter. Please sign and return one copy for our files.

Sincerely,



Rusty Radloff
Assistant Vice President
Sales & Marketing

Accepted:


For John E. Giles

President

Great Lakes Transportation LLC

Cc: Mr. James M. Foote
Mr. Myles Tobin

ATTACHMENT C

Additional Settlement Agreement Terms

1. The CN and WC trackage rights agreements with DM&IR will be standardized to provide for a single per loaded car rate, which will be the rate specified in the current DM&IR-CN agreement. The consolidated agreement will grant rights to both DWP and WC and will include the ability for WC to interchange with other carriers at Pokegama Yard.
2. The Ambridge diamond will be removed. DM&IR will serve the Koppers facility for CN on a reciprocal switch basis, at \$50 per car. DM&IR consents to the right, post-merger, for former WC traffic to be interchanged directly with all other carriers at Pokegama Yard.
3. DM&IR accepts continuation of existing agreements with CN and WC regarding compensation for the Joint Operations dispatching reimbursement, running concurrently into the future.
4. In lieu of arbitrating the parties' dispute on this subject, CN will make payments of \$1.9 million to DM&IR associated with the current reconstruction of the Oliver Bridge, with reimbursement to be made as expenses are incurred.