

July 20, 2001

Via Messenger

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

**ENTERED
Office of the Secretary**

JUL 25 2001

**Part of
Public Record**



RE: Finance Docket No. 34000, *Canadian National Ry. Co. - Control - Wisconsin Central Transportation Corp.*

Dear Mr. Williams:

In accordance with the provisions of 49 C.F.R. § 1114.24(h) of the Board's Rules of Practice, enclosed are the original certified transcripts of two depositions taken on behalf of our client, United States Steel LLC in the above proceeding. Also enclosed are copies of the notices served this date on all parties of record in accordance with 49 C.F.R. § 1114.24(i) advising them of the filing of these depositions.

Respectfully,

Frederic L. Wood

Enclosures

202958

BEFORE THE
SURFACE TRANSPORTATION BOARD

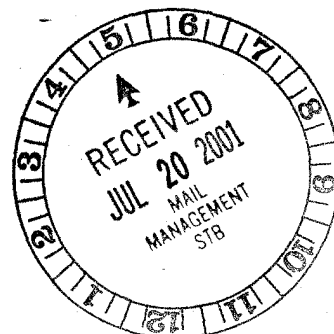
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Finance Docket No. 34000

*Canadian National Ry. Co. et al. — Control —
Wisconsin Central Transportation Corp. et al.*



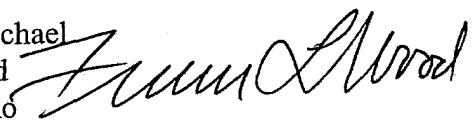
NOTICE OF FILING OF DEPOSITION
on behalf of
UNITED STATES STEEL LLC

TO ALL PARTIES OF RECORD:

Take Notice that, pursuant to the Rules of Practice of the Board, 49 C.F.R. § 1114.24(h) and (i), the deposition of Mr. G. P. Radloff, Assistant Vice President Marketing & Sales, Canadian National/Illinois Central, taken by United States Steel LLC on July 12, 2001, has been filed with the Board on this 20th day of July, 2001.

Respectfully submitted,

Nicholas J. DiMichael
Frederic L. Wood
Jeffrey O. Moreno
THOMPSON HINE LLP
1920 N Street N.W.
Suite 800
Washington, D.C. 20036-1600



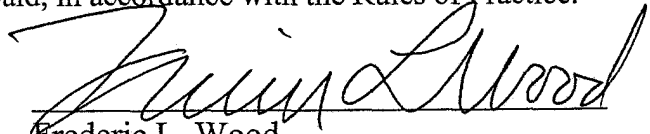
Richard J. Munsch
Assistant General Counsel
United States Steel LLC
600 Grant Street - Room 1500
Pittsburgh, PA 15219-2749

Attorneys for United States Steel LLC

Dated: July 20, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have on this 20th day of July, 2001, served a copy of the foregoing
NOTICE OF FILING OF DEPOSITION on behalf of UNITED STATES STEEL LLC on all
parties of record, by first class mail, postage pre-paid, in accordance with the Rules of Practice.


Frederic L. Wood

202958

A circular stamp with numbers 1 through 9 around the perimeter. In the center, an arrow points upwards towards the number 5. Below the arrow, the text reads: RECEIVED, JUL 20 2001, MAIL, and MANAGEMENT.

11	5	4550 North City Front	455 North City Front
49	17	Ebtac	Evtak
49	18	Ebtac	Evtak


Signature of Deponent

BEFORE THE
SURFACE TRANSPORTATION BOARD

CERTIFIED COPY

Finance Docket No. 34000

Canadian National Ry. Co. et al. - Control -
Wisconsin Central Transportation Corp. et al.



Washington, D.C.

Thursday, July 12, 2001

Deposition of G.P. "Rusty" Radloff, a
witness herein, called for examination by
counsel for U.S. Steel in the above-entitled
matter, pursuant to notice, the witness being
duly sworn by F. Renee Finkley, a Notary Public
in and for the District of Columbia, taken at
the offices of Harkins Cunningham, 801
Pennsylvania Ave., N.W., Washington, D.C., at
10:00 a.m., Thursday, July 12, 2001, and the
proceedings being taken down by Stenotype by
F. RENEE FINKLEY, RPR, CRR, and transcribed
under her direction.

ENTERED
Office of the Secretary

JUL 25 2001

Part of
Public Record

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C O N T E N T S

WITNESS	EXAMINATION BY COUNSEL FOR
RADLOFF	UNITED STATES STEEL LLC
By Mr. Wood	10, 96
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By Mr. Cunningham	94, 98

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3 Excerpt From Volume One	
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P R O C E E D I N G S

MR. WOOD: This is the deposition of Mr. G.P. Radloff being conducted pursuant to notice, amended notice, served July 10, 2001 in Surface Transportation Board, Finance Docket 34000, Canadian National Railway Company, et al., dash, Control, dash, Wisconsin Central Transportation Corporation, et al. My understanding that counsel for the Applicants has a preliminary statement before we proceed.

MR. CUNNINGHAM: I'd like to note for the record that the application which is the subject of this proceeding was filed April 9th. The issues which are nominally the subject of this morning's deposition were first raised by GLT on May 1st, and the Applicants responded to those issues. Shortly thereafter, the Board, after having considered the issues and the response of the Applicants, accepted the application on May 9th.

And the issues relating to GLT have not changed since that time. The likelihood of a settlement of dispute before the Board is always a possibility and is well understood, and that likelihood was heightened by the filing of

1 the Applicants on June 19th and a settlement was
2 announced by GLT in its comments on June 25th.

3 While U.S. Steel thus had notice of
4 the issues that it now seeks to explore in this
5 deposition, it did not seek leave to participate
6 or seek this deposition until July 6th, a period
7 of more than a week after the comments were due
8 in the proceeding and several months after the
9 application was filed and the issues were first
10 raised by GLT.

11 They sought the deposition on the
12 grounds that they had not been previously aware
13 of the settlement, this is U.S. Steel, and they
14 were concerned about unspecified issues raised
15 by the settlement.

16 We have spoken to counsel for U.S.
17 Steel and asked if it were possible to avoid
18 this deposition by providing answers to
19 questions about the settlement or stipulations.
20 Counsel informed us that they were only
21 interested in a deposition and could specify no
22 areas of inquiry in advance.

23 From CN's perspective U.S. Steel has
24 provided no rationale for deposition requests
25 which is out of time and contrary to the Board's

1 Decision Number 7 in this proceeding. CN
2 believes this deposition is unwarranted and a
3 complete waste of the witness' time and of
4 Canadian National's resources.

5 Nonetheless, to avoid any risk of
6 delay in the schedule and to assure that U.S.
7 Steel is fully apprised of the settlement
8 itself, CN has consented to let this deposition
9 proceed. However, while the witness will be
10 free to answer questions about the substance of
11 the settlement, CN will assert the Board's
12 settlement privilege and instruct the witness
13 not to answer any questions about the
14 negotiations that led up to the settlement.

15 We will also instruct the witness not
16 to answer questions relating to the services
17 that Applicants provide or might provide to
18 entities other than U.S. Steel or to matters
19 about which U.S. Steel might have sought to
20 discover prior to the announcement of the
21 settlement, matters generally arising under the
22 application. That's the end of my preliminary
23 statement.

24 MS. CORWIN: Mr. Wood, if I may, I'm
25 sorry, may I simply add --

1 MR. WOOD: Maybe, if I may interrupt
2 before we proceed any further, we probably ought
3 to take appearances so it's on the record who's
4 appearing here. My name is Frederic L. Wood,
5 Thompson Hine & Flory -- excuse me, Thompson
6 Hine LLP 1920 N Street, N.W., Washington, D.C.,
7 appearing here on behalf of United States Steel
8 LLC. Accompanying me today also from Thompson
9 Hine are Jeffrey O. Moreno and Michael Higgins.

10 MR. KOLESAR: Hi, my name is Andrew
11 Kolesar of the law firm of Slover & Loftus. I'm
12 here today on behalf of A.K. Steel.

13 MR. CUNNINGHAM: My name is Paul
14 Cunningham. I'm here on behalf of Canadian
15 National.

16 MR. NORTON: Gerald Norton also of
17 Harkins Cunningham on behalf of Canadian
18 National.

19 MS. CORWIN: Carolyn Corwin of
20 Covington & Burling here on behalf of Great
21 Lakes Transportation LLC.

22 MR. WOOD: If I may ask a point of
23 clarification, are you appearing today only on
24 behalf of Canadian National not on behalf of
25 Wisconsin Central.

1 MR. CUNNINGHAM: He's appearing here
2 as the witness whom you sought to depose. He is
3 an employee of Canadian National and not of WC.
4 He is not a witness at this point with respect
5 to anything, I believe, on behalf of the
6 Applicants.

7 MS. CORWIN: Mr. Wood, I wanted to
8 make one comment in response to Mr. Cunningham's
9 comments. I do agree with a number of the
10 things he said in terms of the timing of the
11 discovery and the lateness of the intervention,
12 however, I don't intend to say more about that.
13 I did want to articulate the view that to the
14 extent there are questions about the substance
15 of the settlement agreement, our position is
16 that the unilateral comments of Mr. Radloff or
17 anyone else really do not define the terms of
18 the settlement. The terms of the settlement are
19 defined by an agreement of the parties. As you
20 know the parties are working to finalize the
21 definitive terms of the settlement and we do not
22 yet have those finalized and submitted to the
23 Board although we hope to do so soon. Our
24 position is that it is the terms signed by the
25 parties as opposed to any party's unilateral

1 statement that govern what the terms are.

2 MR. WOOD: Let me just respond to
3 Mr. Cunningham's statement very briefly,
4 although certainly the issues that Great Lakes
5 Transportation raised were evident on the
6 record, the terms of the settlement agreement,
7 so-called, between Great Lakes and the
8 Applicants were not disclosed until Great Lakes
9 filed its comments on or about June 26, and
10 service was affected and received a few days
11 later, removed as promptly as possible in light
12 of the disclosure of the terms of the settlement
13 to effectuate our participation in this
14 proceeding and to promptly pursue discovery and
15 we plan to do so accordingly.

16 Would you please swear the witness.
17 Whereupon,

18 G.P. "RUSTY" RADLOFF
19 was called as a witness by counsel for United
20 States Steel LLC, and having been duly sworn by
21 the Notary Public, was examined and testified as
22 follows:

23 EXAMINATION BY COUNSEL
24 FOR UNITED STATES STEEL LLC
25 BY MR. WOOD:

1 Q. Would you state your name for the
2 record please?

3 A. Gerald Patrick Radloff.

4 Q. What is your current business address?

5 A. 4550 North City Front Plaza Drive,
6 Chicago, Illinois 60611.

7 Q. And by whom are you employed?

8 A. Canadian National/Illinois Central
9 Railroad.

10 Q. Mr. Radloff, have you ever been
11 deposed before?

12 A. Yes.

13 Q. So you're reasonably familiar with
14 deposition procedure?

15 A. Yes.

16 Q. In the interest of avoiding any
17 confusion and misunderstanding I'd like to
18 introduce an exhibit which I'll distribute and
19 then describe.

20 (Exhibit No. 1 was
21 marked for identification.)

22 BY MR. WOOD:

23 Q. This is an excerpt beginning at page
24 Roman Numeral VII of the application volume one
25 filed on April 9th by the Applicants which is a

1 table of abbreviations which, if it's acceptable
2 to you Mr. Radloff, I would like to use in the
3 course of the deposition, and if for any reason
4 any question that I may ask or response that you
5 may give involves the use of any of these
6 abbreviations that you disagree with or is not
7 correct would you so indicate please.

8 And I'd just like to indicate that in
9 the course of the examination, I may use some
10 additional abbreviations that are not listed on
11 this table. If I use the abbreviation GLT, the
12 reference is to Great Lakes Transportation LLC,
13 use of the abbreviation BLE is a reference to
14 Bessemer Lake Erie Railroad Company, reference
15 to P&C Dock is a reference to the Pittsburgh and
16 Conneaut, spelled C-o-n-n-e-a-u-t, Dock Company,
17 reference to USS Fleet is a reference to USS
18 Great Lakes Fleet, Inc. Those last three are
19 all subsidiaries of GLT. And last U.S. Steel,
20 of course, reference to United States Steel LLC.

21 Mr. Radloff what's your current
22 position with Canadian National IC?

23 A. Assistant vice president, marketing
24 and sales.

25 Q. How long have you been employed by

1 Canadian National IC?

2 A. A little over six years.

3 Q. Have you held any previous positions
4 before your current position with CNIC?

5 A. Yes.

6 Q. Would you please describe those, each
7 of those positions and the years in which you
8 held them?

9 A. April of '94 I was hired as a -- or
10 '95 I'm sorry, hired as a senior national
11 account manager. Approximately eight months
12 later I was promoted to managing director,
13 forest products. Approximately three months
14 after that I was promoted to assistant vice
15 president, intermodal. About six months after
16 that I was an AVP, intermodal automotives and
17 metals. In July of '99, Canadian National
18 purchased the Illinois Central. At that point I
19 became assistant vice president, intermodal
20 marketing and sales for the U.S. and
21 approximately eight months after that I became
22 assistant vice president, marketing and sales.

23 Q. Where were you employed prior to your
24 employment by CN in 1994?

25 A. CSI Logistics for approximately 12

1 months.

2 Q. I'm sorry?

3 A. CSI Logistics, and I was the vice
4 president, consolidated services.

5 Q. And what is the nature of that
6 company's business?

7 A. Transportation logistics, warehousing,
8 trucking.

9 Q. And how long had you been in that
10 position -- or how long were you employed by
11 that company?

12 A. 12 months approximately.

13 Q. Prior to your employment with CSI?

14 A. 16 and a half years at Southern
15 Pacific Transportation Company.

16 Q. What were your responsibilities with
17 Southern Pacific?

18 A. I had approximately 15 different
19 titles while I was there, if you want me to run
20 through them I will.

21 Q. Just a general description of what --

22 A. My last position was assistant vice
23 president, intermodal.

24 Q. While you were with Southern Pacific
25 did you have any involvement in the

1 transportation of taconite ore, iron ore by
2 Southern Pacific?

3 A. Yes.

4 Q. What was the nature of that
5 involvement?

6 A. Kaiser Steel out of their mine in
7 Eagle Mountain to their facilities in Fontana.

8 Q. What state is the origin point located
9 in?

10 A. I believe it's California, stretching
11 my memory a little bit. That was early on in my
12 career.

13 Q. Did you have any involvement of
14 movement of taconite to Geneva Steel in Provo,
15 Utah?

16 A. No.

17 MR. CUNNINGHAM: I'm going to ask you
18 to limit this line of questioning not because
19 the witness isn't fully capable of answering the
20 questions but the stated purpose of the
21 deposition was to explore the settlement between
22 GLT and Canadian National and we are going to
23 restrict the witness' testimony to those issues
24 and unless you can show some nexus between what
25 he did at Southern Pacific and/or subsequent to

1 that and the settlement itself, I'm going to
2 instruct him not to answer. I don't think you
3 have the right at this stage in the proceeding
4 to harass the witness by asking him a lot of
5 questions about his life which do not bear on
6 the notice subject of the deposition which we
7 are only allowing to accommodate U.S. Steel's
8 stated interest.

9 MR. WOOD: Well, I think this line of
10 inquiry which I've just virtually completed is
11 relevant, Paul -- excuse me, Mr. Cunningham,
12 because the witness was involved in an agreement
13 that relates to transportation of taconite and
14 I'm just determining what experience he might
15 have had or involvement in rail transportation
16 of taconite but I'm ready to move on.

17 MR. CUNNINGHAM: You've only
18 established his experience at Southern Pacific
19 which as far as I can see is unrelated to this
20 particular settlement, and whether he's
21 experienced or not does not relate to the
22 substance of the settlement. If you're ready to
23 move on, let's go.

24 BY MR. WOOD:

25 Q. Mr. Radloff, would you describe what

1 are your responsibilities, functions as
2 assistant vice president, marketing and sales
3 for CNIC?

4 A. A wide spectrum of negotiations with
5 other carriers, entities, special projects.

6 Q. Do you have any responsibilities for
7 any specific commodities or commodity groups?

8 A. No.

9 Q. Are there any commodity or commodity
10 groups that you do not get involved with?

11 A. Eventually through my negotiations
12 they have the ability to touch many commodity
13 groups.

14 Q. Do you have any responsibility for
15 negotiating rate and service terms with shippers
16 on CNIC directly?

17 A. No.

18 Q. Are there others in the CNIC marketing
19 and sales department that have that
20 responsibility?

21 A. Yes.

22 MR. WOOD: I'd like to introduce
23 another exhibit.

24 (Exhibit No. 2 was
25 marked for identification.)

1 BY MR. WOOD:

2 Q. For the record, Exhibit 2 is an
3 excerpt consisting of three pages from the
4 latest edition of the official railway guide
5 consisting of the table of contents and pages B2
6 and B3. Are you familiar with this publication
7 Mr. Radloff?

8 A. Yes.

9 Q. B3 which is the last page contains a
10 -- among other things, a listing of managers and
11 executives in the marketing department at
12 Canadian National; is that correct?

13 A. Yes.

14 Q. Could you identify from the listing
15 there the individuals that might have
16 responsibility for negotiating and interacting
17 with shippers of taconite regarding rate and
18 service terms?

19 A. Yes.

20 Q. Who is that individual?

21 A. Jerry Boland is the vice president of
22 metals and minerals.

23 Q. And you indicated that you, among
24 other things, you have responsibility for
25 dealing with arrangements with other carriers;

1 is that correct?

2 A. In certain instances, yes.

3 Q. Does that involve such things as
4 negotiating, establishing joint rates for
5 through service with other carriers?

6 A. Not specific rates.

7 Q. Does that involve negotiation
8 regarding establishment of interchange
9 arrangements with other carriers?

10 A. It could.

11 Q. Might it involve negotiation or
12 discussion with other carriers of trackage
13 rights or other joint facility arrangements?

14 A. It could.

15 Q. How about reciprocal switching
16 arrangements?

17 A. It could.

18 Q. Would you be involved in discussions
19 with other carriers regarding the establishment
20 of the division of joint rates for through
21 movements?

22 A. At times.

23 Q. At the present time does your
24 responsibility for these matters encompass all
25 of the carriers that are part of the CNIC

1 system, all of the rail carriers?

2 A. Yes.

3 Q. Both United States and Canada?

4 A. Yes.

5 Q. Now you indicated that you would not
6 be involved in the development of joint rates.
7 Did I understand your answer correctly?

8 MR. CUNNINGHAM: Objection to form.

9 BY MR. WOOD:

10 Q. You may answer. Do you understand the
11 question?

12 A. Yes.

13 Q. You did -- your answer to the question
14 is yes?

15 A. I said that I was not involved in the
16 creation of specific rates.

17 Q. With respect to the rail
18 transportation of taconite by the CNIC system,
19 would that responsibility rest with Mr. Boland?

20 A. Him and his group.

21 Q. Looking at, again at page B3 of
22 Exhibit 2, could you identify for us who your
23 immediate supervisor is?

24 A. Jim Foote, executive vice president,
25 marketing and sales.

1 Q. Is he also the immediate supervisor of
2 Mr. Boland?

3 A. Yes.

4 Q. You also indicated in response to a
5 previous question that you are --

6 MR. CUNNINGHAM: Objection to form.

7 MR. WOOD: If you have an objection
8 I'd appreciate it if you let me finish my
9 question before you interpose an objection,
10 okay. Thank you.

11 BY MR. WOOD:

12 Q. In response to a previous question you
13 stated that you are also involved in I think the
14 term you used was special projects. Would you
15 indicate what the nature of such special
16 projects might be?

17 A. A variety of issues that come up in
18 marketing and sales that Jim Foote wants
19 investigated.

20 MR. CUNNINGHAM: I'm going to once
21 again object to the line of questioning and I
22 will probably instruct the witness not to answer
23 if you do this any further. We've now been at
24 this for a half-hour, we've not touched on the
25 announced subject of this deposition and I think

1 we should get on to the announced subject if
2 that's really what you want to do here.
3 Otherwise we may have to go before the Board and
4 ascertain whether discovery is warranted. What
5 he has to do for a living does not seem to bear
6 at all on the nature of the settlement or such
7 concerns, whatever they might be, that U.S.
8 Steel might have. The guy has got a lot of work
9 to do and you have no basis for inquiring into
10 the work that he is doing not related to this
11 settlement.

12 BY MR. WOOD:

13 Q. Did the special projects that you
14 might have been involved in include involvement
15 in the preparation of the application for
16 approval of the merger of Wisconsin Central with
17 CN that was filed with the Surface
18 Transportation Board on April 9?

19 A. To a certain degree, yes.

20 Q. What was the nature of your
21 involvement in the preparation of that
22 application?

23 MR. CUNNINGHAM: I'm going to instruct
24 the witness not to answer. That is not the
25 announced subject of this deposition. The

1 question is the settlement between GLT and if
2 you wish to conduct discovery generally as to
3 the application, you had several months to do
4 so, and you have no basis -- have given no basis
5 or rationale for inquiring into the application
6 or Mr. Radloff's role in the preparation of the
7 application at this time.

8 MR. WOOD: Mr. Cunningham, as you so
9 eloquently stated at the outset of your -- in
10 your preliminary statement, while I don't
11 necessarily agree with your characterization,
12 you indicated that the settlement agreement
13 should have been perhaps anticipated given the
14 nature of the issues that were raised and the
15 issues that were presented by, among others,
16 Great Lakes Transportation. I think I should be
17 permitted to inquire regarding information that
18 was contained and developed and how it was
19 developed in the application that is directly
20 relevant and indeed apparently stimulated the
21 interest and participation of Great Lakes
22 Transportation. That is the nature of my
23 inquiry. I think I should be permitted to
24 inquire.

25 MR. CUNNINGHAM: That's not what the

1 notice said, A, and B, you had several months to
2 conduct that inquiry if you were interested in
3 the application or any statement therein. I'm
4 going to limit Mr. Radloff's testimony to the
5 settlement which you said was the purpose of
6 this deposition. If you wish to announce
7 another deposition in which you wish to explore
8 generally the application, we can decide whether
9 or not to allow it and we can decide, if not,
10 you can go to the Board and seek the --

11 MR. WOOD: I'm not going to inquire
12 generally about the application. I have
13 specific questions regarding information that's
14 contained in the application that is directly
15 relevant to the interest of United States Steel
16 which is mentioned by name and -- please don't
17 interrupt -- and issues that were -- directly
18 led to the settlement which was not disclosed
19 until June 26, and I think it's entirely
20 appropriate and indeed necessary that the record
21 be complete for the purposes of the Board's
22 decision in this case for the submission of
23 reply comments on July 25th that the context of
24 that settlement is entirely within the scope of
25 the notice of deposition. The reasons for the

1 settlement and the context of the issues that
2 were raised I think is entirely within the scope
3 of the notice.

4 MR. CUNNINGHAM: You have not asked a
5 question about the settlement yet or about the
6 reasons therefore or otherwise related to the
7 settlement. You've been asking questions
8 about -- you started asking a line of questions
9 about the application. Any time you want to
10 focus on the settlement, Mr. Radloff is here and
11 prepared and willing to answer questions about
12 that settlement, but we're not here for a
13 general fishing expedition. To the extent that
14 you can tie these things together so they relate
15 to the settlement we're delighted to have you
16 proceed.

17 MR. WOOD: You're not going to permit
18 him to answer my pending question?

19 MR. CUNNINGHAM: Restate the question.

20 THE REPORTER: "Question: What was
21 the nature of your involvement in the
22 preparation of that application?"

23 MR. CUNNINGHAM: No, I'm not. He's
24 not on trial here. He's not a witness. His
25 role in the formation of the application is

1 unrelated as far as you -- you've not
2 established any relationship between his role
3 and the merits or demerits of the settlement.
4 If you'd like to ask a specific question about
5 the portions of the application that relate to
6 the questions of taconite movements for U.S.
7 Steel, we will permit you to proceed on that
8 basis.

9 MR. WOOD: Fair enough.

10 (Exhibit No. 3 was
11 marked for identification.)

12 MR. WOOD: For the record what has
13 been marked for identification Exhibit 3 is an
14 excerpt from volume one of the application dated
15 April 9, 2001 that's the subject of the
16 proceeding before the Board and it consists of a
17 copy of the cover page, the first page of the
18 joint verified statement of James M. Foote and
19 William R. Schauer, I believe that's how it's
20 pronounced, S-c-h-a-u-e-r, the verification
21 pages and pages from the exhibit -- excuse me,
22 the appendix A, which is at pages 168 through
23 171 of the volume one.

24 BY MR. WOOD:

25 Q. Mr. Radloff, are you familiar with the

1 matter that's contained in Exhibit 3?

2 A. Yes.

3 Q. What is the nature of your familiarity
4 with this material? How did you arrive at that
5 familiarity?

6 A. We reviewed it as to its content and
7 commented on it.

8 Q. Before it was submitted to the Board?

9 A. Yes.

10 Q. Did you have any involvement in
11 conducting any research in developing any of the
12 information that's contained in Exhibit 3?

13 MR. CUNNINGHAM: I'm going to instruct
14 again the witness not to answer. If you'd like
15 to specify the subject that you're concerned
16 about, Exhibit 3 covers a number of topics such
17 as nitrogen based fertilizer not in the interest
18 of U.S. Steel. If you'd like to specify any
19 particular aspect of the application you'd like
20 to ask him a question about --

21 MR. WOOD: Certainly. Be glad to.

22 BY MR. WOOD:

23 Q. Let me turn your attention please,
24 Mr. Radloff, to page 169 and 170, paragraph that
25 begins at the bottom of the page and continues

1 on the next page and the following paragraph.

2 Do those paragraphs both contain references to
3 our client United States Steel?

4 A. Yes.

5 Q. Did you have any involvement in
6 conducting any research in developing the
7 information that's contained in these two
8 paragraphs before the application was filed?

9 A. Yes.

10 Q. What was the nature of your
11 involvement?

12 A. My responsibility was to head up the
13 marketing effort, to work closely with attorneys
14 to develop the verified statements that you have
15 in front of you.

16 Q. Did you -- strike that. Were you
17 involved in preparing any preliminary drafts of
18 the these two paragraphs?

19 MR. CUNNINGHAM: We're going to assert
20 the work product privilege.

21 MR. WOOD: I'm sorry, I didn't hear
22 you.

23 MR. CUNNINGHAM: We're going to assert
24 the work product privilege here. He's not
25 required to testify as to work product and

1 certainly since it's not related to the
2 settlement in the least as to how the
3 application was prepared, it's a privileged
4 matter between counsel and the client so we will
5 also assert the attorney/client and work product
6 privileges and I'm instructing him not to
7 answer. If you'd like to know something about
8 this testimony, his views on the testimony since
9 he is not the witness, but his role in the
10 preparation, his thoughts about the preparation
11 are not a subject of inquiry allowed by the
12 Board under its rules traditionally in mergers
13 or by the attorney/client privilege.

14 BY MR. WOOD:

15 Q. In response to a previous question,
16 Mr. Radloff, you indicated that you reviewed
17 this material before it was submitted to the
18 Board; is that correct?

19 A. Yes.

20 Q. What was the nature of that review?

21 MR. CUNNINGHAM: I'm going to instruct
22 him not to answer on the same grounds as the
23 last time. Mr. Wood, you're not entitled to
24 inquire, make an inquiry into the process by
25 which the application was framed. We have a

1 depository with our work papers in it. We have
2 a witness who ultimately signed the statement.
3 Mr. Radloff is not that witness, and as to his
4 interaction with counsel on the preparation of
5 this, you cannot inquire. It's also -- your
6 inquiry is incredibly remote to the announced
7 subject which is the settlement.

8 MR. WOOD: I think as I've indicated
9 in my previous response to your objection that
10 this is entirely and directly relevant to this
11 so-called settlement with Great Lakes which
12 arose directly out of the assertions that are
13 contained in these paragraphs.

14 MR. CUNNINGHAM: You haven't inquired
15 into the assertions, the substance of them.

16 MR. WOOD: You haven't given me an
17 opportunity to.

18 MR. CUNNINGHAM: I'm not going to let
19 you talk to the witness about his privileged
20 conversations relating -- or thoughts relating
21 to the preparation of these papers for which he
22 is not a witness. Could have called Mr. Foote
23 or Mr. Schauer and we could have decided whether
24 or not to deal with that, but he is not the
25 witness here. He is not testifying as to this

1 statement. And his responsibilities to work
2 with counsel to prepare the application are
3 privileged.

4 MR. WOOD: Well, I think he's already
5 indicated in response to an earlier question
6 that he reviewed this material.

7 MR. CUNNINGHAM: He did.

8 MR. WOOD: And I think I can be --

9 MR. CUNNINGHAM: He provided
10 comments --

11 MR. WOOD: Permitted to and inquire
12 about the nature of that review and what
13 comments he provided.

14 MR. CUNNINGHAM: You can tell the
15 Board that. I'm not going to let him do it.

16 MR. WOOD: This is discovery
17 deposition, it's not a cross-examination
18 deposition as has been conducted in previous --

19 MR. CUNNINGHAM: As I said, you can
20 tell the Board that. I'm not going to let him
21 talk about the process of the formulation of the
22 application. He is not the witness and the
23 application has been on file for four months and
24 the application was not the specified subject of
25 the deposition, neither in your notice nor in

1 our conversation with Mr. DiMichael. He has an
2 attorney/client privilege and I'm going to
3 protect it.

4 (Exhibit No. 4 was
5 marked for identification.)

6 MR. CUNNINGHAM: I'd like the record
7 to note that at this point we as yet have no
8 substantive questions from U.S. Steel about
9 movements of taconite to or from U.S. Steel, its
10 mills or mines or about the settlement. We've
11 now been at this for 45 minutes.

12 MR. WOOD: Well, by interposing your
13 objections and your instructions to the witness
14 not to answer, you've precluded me from any
15 opportunity to inquire of the witness concerning
16 movements of taconite for U.S. Steel.

17 MR. CUNNINGHAM: I have not.

18 MR. WOOD: I beg to differ.

19 MR. CUNNINGHAM: I've precluded you
20 from asking about his role in the preparation of
21 the application, you have not asked him one
22 question about the movement of taconite and I
23 have not interposed an objection to such a
24 question since none has been asked.

25 MR. WOOD: For the record Exhibit 4 is

1 a complete copy of the comments of Great Lakes
2 Transportation LLC filed in the Surface
3 Transportation Board in this proceeding, dated
4 June 25th, apparently filed on June 26th.

5 BY MR. WOOD:

6 Q. Have you seen this document
7 Mr. Radloff before today?

8 A. Yes.

9 Q. Have you read it?

10 A. Yes.

11 Q. Let me ask you to turn to attachment B
12 to Exhibit 4 and direct your attention to the
13 letterhead on this document. Are you the same
14 G.P. "Rusty" Radloff who's name is contained on
15 this letterhead?

16 A. Yes.

17 Q. And turning to the second page, is
18 that your signature on this document?

19 A. Yes.

20 Q. Does your -- strike that. Were you
21 involved in the negotiations with Great Lakes
22 Transportation that led to the preparation of
23 this document?

24 A. Yes.

25 Q. Was anyone else from CNIC involved in

1 those negotiations?

2 A. To a minor extent.

3 Q. Pardon me?

4 A. To a minor extent.

5 Q. And who were those individuals?

6 A. Jim Foote, Gordon Trafton.

7 Q. Could you spell that please?

8 A. G-o-r-d-o-n, T-r-a-f-t-o-n.

9 Q. What is his position?

10 A. Vice president of transportation.

11 Q. Anyone else from CNIC?

12 A. Just from an advisory position, that's
13 all, that would be Myles Tobin.

14 Q. What is Mr. Tobin's position?

15 A. Vice president, law.

16 Q. Attachment B is a letter addressed to
17 Mr. John E. Giles; is that correct?

18 A. Correct.

19 Q. And he's indicated that he's president
20 of Great Lakes Transportation; is that correct?

21 A. To the best of my knowledge.

22 Q. Was he involved in the negotiations
23 with CN regarding this letter?

24 A. To a certain extent.

25 Q. Was anyone else from GLT involved in

1 the negotiations?

2 A. GLT was represented by Jerry Vest from
3 the Kingsley Group.

4 Q. What is the Kingsley Group?

5 A. Consultants.

6 Q. And what is the nature of their
7 consulting business?

8 A. You'd have to ask them or GLT.

9 Q. You don't have any independent
10 knowledge of what kind of work they do?

11 A. Transportation logistics.

12 Q. Anyone else operate in the
13 negotiations on behalf of GLT?

14 A. One discussion with Peter Stevenson.

15 Q. Was a Mr. Hughes involved in the
16 negotiations?

17 A. Not with me.

18 Q. I notice that the letter is signed on
19 behalf of Great Lakes Transportation by what
20 appears to be Mr. Hughes. Do you know why he
21 signed it instead of Mr. Giles?

22 A. Yes.

23 Q. What's your understanding of why he
24 signed it?

25 A. Mr. Giles was not there to sign it.

1 He's an officer of the corporation, he was
2 instructed to sign it.

3 Q. Was anyone from Wisconsin Central
4 involved in the negotiations regarding this
5 letter?

6 A. No.

7 Q. Did you consult with anyone at
8 Wisconsin Central regarding this matter in the
9 course of the negotiations?

10 A. No.

11 Q. When did you begin negotiating this
12 agreement, what date did you begin negotiating
13 this agreement with GLT?

14 A. I don't remember the specific date.

15 Q. Was it after the application was filed
16 on April 9th?

17 A. Yes.

18 Q. Was it after GLT submitted pleadings
19 to the Board in early May in this proceeding?

20 A. Yes.

21 Q. Was it before or after June 1st?

22 A. Again I don't remember the specific
23 date.

24 Q. During the month of June, is that when
25 they occurred?

1 A. We were certainly talking in June,
2 absolutely.

3 Q. Didn't have any conversations with
4 them before the month of June?

5 A. Again I have no memory of the
6 inception of the discussion.

7 Q. How did you -- strike that. From whom
8 did you receive your instructions to engage in
9 these negotiations with Great Lakes?

10 A. Jim Foote.

11 Q. Were those instructions in writing?

12 A. No.

13 Q. Completely oral instructions?

14 A. Yes.

15 Q. You don't recall when you received the
16 assignment from Mr. Foote to commence these
17 negotiations?

18 A. If you want me look at my planner, I
19 could probably tell you.

20 Q. Do you have your planner available
21 here?

22 A. Yes.

23 Q. Could you look please?

24 A. Sure.

25 MR. WOOD: Would this be a good time

1 to take a break, Paul.

2 MR. CUNNINGHAM: Sure.

3 (Recess.)

4 BY MR. WOOD:

5 Q. Have you had a chance to consult your
6 planner and determine when you received this
7 assignment from Mr. Foote?

8 A. Yes.

9 Q. What date was that?

10 A. May 24.

11 Q. Were the negotiations with Great Lakes
12 conducted face to face?

13 A. The initial meeting.

14 Q. What was the date of that initial
15 meeting?

16 A. May 24.

17 Q. Were there any subsequent meetings
18 with Great Lakes?

19 A. Telephone conversations.

20 Q. No subsequent meetings?

21 A. No face to face meetings.

22 Q. When, in your mind, did the
23 negotiations conclude, what date?

24 A. On or about June 22 or so the
25 documents were prepared.

1 Q. The date that letter carries and
2 attachment B to Exhibit 4?

3 A. Correct.

4 Q. Had you submitted previous drafts of
5 this letter to Great Lakes for their review?

6 MR. CUNNINGHAM: I'm going to instruct
7 the witness not to answer. He's not required to
8 talk about the back and forth of the transaction
9 or of the negotiation, pardon me, leading to a
10 settlement in a merger proceeding.

11 MR. WOOD: I only asked him if he
12 submitted -- I'm sorry, I didn't mean to
13 interrupt.

14 MR. CUNNINGHAM: If there is some
15 particular factual matter that you wish to
16 inquire into, we will be glad to discuss a
17 limited waiver of the settlement privilege if
18 you will agree that it does not constitute a
19 general waiver of the settlement privilege, and
20 I would extend that to this question.

21 MR. WOOD: I am simply trying to find
22 out if this was the only time a written document
23 embodying the settlement was submitted to Great
24 Lakes for its review. I don't think that gets
25 into the substance of the negotiations at all.

1 MR. CUNNINGHAM: I'm willing to let
2 you have the answer to that if you'll agree that
3 it's not a general waiver of the settlement
4 agreement.

5 MR. WOOD: Okay.

6 MR. CUNNINGHAM: You may answer the
7 question.

8 BY MR. WOOD:

9 Q. Do you recall the question?

10 A. Yes.

11 Q. Would you like to have it read back?

12 A. No.

13 Q. Okay.

14 A. There are -- there were other
15 documents prepared.

16 Q. Were those transmitted to Great Lakes?

17 A. Yes.

18 Q. Mr. Radloff, turn for a moment to page
19 5 in Exhibit 4, and I direct your attention to
20 the first paragraph under the heading the
21 settlement on that page, and the sentence
22 indicates -- the last two sentences indicate the
23 definitive terms of the agreement will be
24 submitted to the Board. Do you know if those
25 definitive terms have been submitted?

1 A. They have not been submitted at this
2 point.

3 Q. Do you know when they will be
4 submitted?

5 A. I estimate soon.

6 Q. Today?

7 A. I have no ability to say it will
8 happen today, tomorrow or the next day; soon.

9 Q. Do you have any explanation as to why
10 CN and Great Lakes have been unable to
11 accomplish the submission of the definitive
12 terms within the ten-day period contained in
13 this document?

14 MR. CUNNINGHAM: You through with the
15 question?

16 MR. WOOD: It is framed as a question.

17 MR. CUNNINGHAM: I'm going to instruct
18 the witness not to answer, subject of the
19 settlement privilege.

20 BY MR. WOOD:

21 Q. Mr. Radloff, were you involved in the
22 preparation of the document containing the
23 definitive terms of this agreement?

24 A. Yes.

25 Q. Has there been any action by CN in the

1 course of those preparations to seek to change
2 the terms of the agreement contained in the June
3 22 letter?

4 MR. CUNNINGHAM: I'm going to again
5 assert the settlement privilege but will waive
6 if you will agree that it is not a general
7 waiver of the privilege.

8 MS. CORWIN: I would simply like to
9 add that to the extent that Mr. Cunningham
10 chooses to waive the settlement privilege, that
11 should not necessarily be viewed as a waiver by
12 Great Lakes Transportation of the privilege.

13 BY MR. WOOD:

14 Q. Is it the intention of CN to submit
15 the definitive terms of this agreement to the
16 Board before the date for reply comments, under
17 the current procedural schedule, of July 25?

18 A. Yes.

19 Q. Does CN have a date in mind which
20 would be the last date by which they intend to
21 submit the definitive terms of this agreement?

22 A. I believe that's a variation of a
23 question I've already answered. I have no date
24 in mind; the sooner the better.

25 Q. Let me turn your attention to the

1 letter of June 22nd which is attachment B to
2 Exhibit 4. Call your attention to the second
3 paragraph, first sentence which contains a
4 reference to these moves. What does that refer
5 to?

6 A. Refers to the taconite movements in
7 the Foote/Schauer verified statements.

8 MR. WOOD: Could you read that
9 response back, please.

10 THE REPORTER: "Answer: Refers to the
11 taconite movements in the Foote/Schauer verified
12 statements."

13 BY MR. WOOD:

14 Q. And specifically the references
15 contained in pages 169 and 170 of Exhibit 3; is
16 that correct?

17 A. Yes.

18 Q. Does that refer to both of the
19 movements of taconite for U.S. Steel referred to
20 in those pages?

21 A. It implies primarily towards the
22 taconite movement moving via rail, water, rail
23 currently today and not the movement that is
24 currently all rail to Fairfield, Alabama.

25 Q. And what's the destination of the

1 rail, lake, rail movement?

2 A. In the third paragraph specifically
3 Gary, Indiana Harbor, Pittsburgh, Nanticoke and
4 Loraine.

5 Q. Well, isn't it true that on page 170
6 of Exhibit 3 it only refers to the movement to
7 Pittsburgh?

8 A. That is correct.

9 Q. Why were these additional destination
10 points included within the term "these moves" in
11 this letter?

12 MR. CUNNINGHAM: It is a matter again
13 subject to the settlement privilege. If you
14 will agree that an answer to the question will
15 not constitute a general waiver of the
16 privilege, I will allow him to answer.

17 MS. CORWIN: I'm asserting a standard
18 qualification of the sort I mentioned before
19 which is that any waiver by Mr. Cunningham as to
20 his client should not be interpreted as a waiver
21 vis-a-vis GLT, and I won't repeat that each
22 time. I'll just ask you to consider it a
23 standard statement.

24 MR. WOOD: I'm sorry, I may have lost
25 the thread here. Are you instructing him not to

1 answer unless I consent to the notion that this
2 is only a limited waiver.

3 MR. CUNNINGHAM: Yes.

4 MR. WOOD: I accept.

5 BY MR. WOOD:

6 Q. Do you understand the question?

7 A. Yes, I do. GLT expressed concern
8 about not just a singular diversion of taconite
9 but a total diversion of waterborne taconite.

10 Q. Can you identify who the receiver of
11 taconite would be at Gary, Indiana?

12 A. Yes.

13 Q. Who is it?

14 A. U.S. Steel.

15 Q. Who is the receiver of taconite at
16 Indiana Harbor, Indiana?

17 A. Could be Bethlehem, I believe.

18 Q. Pardon me?

19 A. Could be Bethlehem Steel, I believe.

20 MS. CORWIN: I'm sorry, I did not hear
21 that full answer. Can you read it please.

22 THE REPORTER: "Answer: Could be
23 Bethlehem Steel, I believe."

24 BY MR. WOOD:

25 Q. Might it possibly be Ispat Inland,

1 that's I-s-p-a-t Inland?

2 A. Could very well be.

3 Q. Who would be the receiver at
4 Nanticoke, Ontario?

5 A. I'm not sure who the receiver at
6 Nanticoke is.

7 Q. Did Great Lakes give you any
8 indication why they were concerned about
9 movements of taconite to Nanticoke, Ontario?

10 A. Again they are concerned about
11 waterborne taconite movements.

12 Q. Just in general, regardless of the
13 receiver --

14 MR. CUNNINGHAM: Again I'm going to
15 ask if you will consent to -- I don't object to
16 this line of questioning as a factual matter but
17 again if you'll agree that this is not a general
18 waiver.

19 MR. WOOD: Well, in order to save
20 time, to the extent you permit him to answer
21 questions regarding the settlement agreement I'm
22 prepared to have that construed as a limited
23 waiver. I do want to say, however, that we are
24 reserving any rights we have to assert before
25 the Board that we have a particularized need for

1 information regarding the scope and terms of
2 this settlement as it affects the request in GLT
3 14, which is Exhibit 4 that the agreement be
4 imposed as a condition on the grounds that it's
5 necessary in the public interest and also
6 because we have a particularized need insofar as
7 it affects United States Steel which is the
8 purpose of my inquiry.

9 So I don't want any acknowledgment
10 that you've granted a limited waiver to be
11 construed as any waiver on our part that we're
12 not going to assert that we have a
13 particularized need for information which is, on
14 our understanding of the scope and the qualified
15 privilege, an acceptable grounds for obtaining
16 information that might otherwise be privileged.

17 MR. CUNNINGHAM: Could you restate --

18 MR. WOOD: With that understanding I
19 think we can proceed without the necessity of
20 repeated insertions about limited waiver.

21 MS. CORWIN: And I will insert since
22 we're stating this more generally that my
23 qualification stands with respect to any waiver
24 that Mr. Cunningham makes with respect to his
25 client should not be interpreted as a waiver on

1 behalf of GLT.

2 MR. CUNNINGHAM: Would you read back
3 the question?

4 MR. WOOD: Do we have a question
5 pending, I forget.

6 THE REPORTER: "Question: Just in
7 general regardless of the receiver --"

8 BY MR. WOOD:

9 Q. Do you understand the question?

10 A. No.

11 Q. Did Great Lakes express to you a
12 general concern about all waterborne movements
13 of taconite?

14 MR. CUNNINGHAM: You may answer the
15 question.

16 THE WITNESS: Yes.

17 BY MR. WOOD:

18 Q. Let me ask do you know who the
19 receiver of taconite at Loraine, Ohio would be?

20 MR. CUNNINGHAM: You may answer the
21 question.

22 THE WITNESS: I'm not sure about
23 Loraine, Ohio.

24 BY MR. WOOD:

25 Q. Moving back to the first -- excuse me,

1 the second paragraph, the end of that first
2 sentence has a statement that we, and I assume
3 that refers to CN, already have no hope of
4 handling unless DM&IR consents, what's the basis
5 for that statement?

6 A. DM&IR serves the three mines that
7 produce taconite. Therefore they must construct
8 the through rate with their rate factor, and
9 without their consent to grant a rate factor
10 they control them.

11 Q. What are the three mines, the three
12 taconite mines that we referred to, can you
13 identify them by name?

14 A. Minntac, Minorca, and Fairlane.

15 Q. I'm sorry what was the last one?

16 A. Fairlane.

17 Q. Is that also known as Ebtac,
18 E-b-t-a-c?

19 A. I believe so.

20 Q. You know who operates the taconite
21 processing facility at Minntac?

22 A. I believe it's U.S. Steel's mine.

23 Q. Does CN provide rail service at any of
24 these three mines?

25 A. No.

1 Q. On any commodity?

2 A. No.

3 Q. Does CN have a line from -- goes from
4 the vicinity of Duluth, Minnesota north into
5 Canada that traverses the iron range where these
6 mines are located?

7 A. Yes.

8 Q. How close does the CN line come to the
9 Minntac facility?

10 A. It would be a guess on my part.

11 Q. What would be your best guess?

12 A. Couple miles.

13 Q. Are there any other reasons why CN
14 would have no hope of handling these moves as
15 you put it in the letter?

16 A. There are agreements in place that
17 preclude us from doing so without DM&IR in the
18 route.

19 Q. What are the nature of those
20 agreements?

21 A. I'm not an expert on those agreements.

22 Q. Have you looked at those agreements?

23 A. I read them once.

24 Q. What was the nature of the agreement?

25 MS. CORWIN: I'm going to object on

1 the grounds of foundation. I don't think he has
2 established that he knows enough to answer the
3 question.

4 MR. WOOD: I'm not sure that counsel
5 for Great Lakes has any standing to interpose
6 objections to my questions to a CN witness. I
7 don't think that's proper.

8 BY MR. WOOD:

9 Q. Do you recall the question?

10 A. Yes.

11 Q. Can you answer it?

12 A. Again, I'm not an expert on that
13 subject, on those agreements. To my knowledge
14 we are precluded from handling taconite from the
15 mines in question without the DM&IR in the
16 route.

17 Q. Do you know when those agreements were
18 entered into?

19 A. I don't know the specific date.

20 Q. You indicated that, in response to an
21 earlier question, you had read those agreements
22 once. When did you read those agreements?

23 A. Late May.

24 Q. Of this year?

25 A. Uh-huh.

1 Q. Was that before or after you started
2 negotiations with Great Lakes?

3 A. After.

4 Q. You weren't previously aware of those
5 agreements?

6 A. I was aware of agreements in
7 existence.

8 Q. You didn't have any knowledge as to
9 their terms?

10 A. Correct.

11 Q. Why did you find it necessary to read
12 the agreements?

13 MR. CUNNINGHAM: Objection as to form.

14 BY MR. WOOD:

15 Q. You indicated you read the agreements
16 for the first time sometime after May 24; is
17 that correct?

18 A. Correct.

19 Q. Why was it necessary for you to read
20 the agreements?

21 MR. CUNNINGHAM: Objection as to form.

22 BY MR. WOOD:

23 Q. You may answer.

24 MR. CUNNINGHAM: Lack of foundation.

25 You may answer the question.

1 THE WITNESS: Obviously we were
2 involved in discussing taconite movements with
3 the DM&IR and I wanted to see what provision
4 stated that we could not serve, just for my own
5 benefit, directly those mines.

6 BY MR. WOOD:

7 Q. Had you previously been given
8 information from someone else in CN that such
9 agreements existed?

10 A. I had heard, yes.

11 Q. You recall who you heard it from?

12 A. I believe it was from Jerry Boland's
13 group.

14 Q. How many such agreements are there?

15 A. There's two agreements to my
16 knowledge, one involving the WC, one involving
17 the DWP.

18 Q. Are there any other reasons why you
19 would make the statement that CN has no hope of
20 handling these moves?

21 A. Just from experience when you come up
22 against waterborne competition, it's extremely
23 difficult to compete on a per ton basis from a
24 rate perspective for a commodity which is bulk
25 and very heavy.

1 Q. Wasn't it true that the statement in
2 Mr. Foote and Mr. Schauer's verified statement
3 in Exhibit 3 indicated that CN and WC both had
4 high hopes for moving that kind of traffic?

5 MR. CUNNINGHAM: Objection.

6 BY MR. WOOD:

7 Q. You can answer.

8 A. I don't believe the statement says we
9 had high hopes. It was an illustration of an
10 alternative for the shipping public should
11 conditions, climatic or otherwise, change and
12 give them an alternate chain of supply.

13 MR. WOOD: Could you have that answer
14 read back please.

15 THE REPORTER: "Answer: I don't
16 believe the statement says we had high hopes.
17 It was an illustration of an alternative for the
18 shipping public should conditions, climatic or
19 otherwise, change and give them an alternate
20 chain of supply."

21 BY MR. WOOD:

22 Q. Could you turn to Exhibit 3, page
23 numbered 170 at the bottom.

24 A. Okay.

25 Q. Could you read the last sentence in

1 that middle paragraph on the page?

2 A. This option might also eventually
3 provide more than a seasonal choice and steel
4 makers are showing a growing interest in rail
5 service and a desire to move away from the use
6 of multimodal transportation particularly the
7 combined use of water and rail.

8 Q. Do you believe that's an accurate
9 statement?

10 A. Yes.

11 Q. So CN and WC believe that there's more
12 than just a seasonal alternatives that make
13 possible future movements of taconite; is that
14 correct?

15 A. Might be possible, yes.

16 Q. The second sentence in the paragraph
17 describes an all rail route and indicates the
18 originating carriers DM&IR?

19 MR. CUNNINGHAM: Which paragraph
20 you're discussing.

21 MR. WOOD: The same paragraph, I'm
22 sorry.

23 MR. CUNNINGHAM: Same paragraph in --

24 MR. WOOD: The full paragraph on the
25 page 170.

BY MR. WOOD:

Q. Do you see that sentence there,
Mr. Radloff, the second sentence?

MR. CUNNINGHAM: Which exhibit is
that?

MR. WOOD: Exhibit 3. I'm sorry.

MR. CUNNINGHAM: Thank you.

BY MR. WOOD:

Q. I assume although it doesn't
explicitly say so that CN, as merged with WC,
would be a participant in this movement; is that
correct?

MR. CUNNINGHAM: Objection as to form.

THE WITNESS: Yes.

BY MR. WOOD:

Q. Where would the traffic on this route
be interchanged from DM&IR to the merged CN/WC?

A. I believe the interchange is Steelton.

Q. I'm sorry?

A. Steelton.

Q. Is that near Duluth?

A. Yes.

Q. Do you know why the taconite is
interchanged at Steelton instead of at Pokegama
Yard in Wisconsin or at South Itasca, also in

1 Wisconsin?

2 A. Not specifically, other than that's
3 the normal interchange point for the Wisconsin
4 Central and DM&IR.

5 Q. The sentence also refers to the
6 regional carrier WLE as a participant in the
7 route. Where would CN/WC interchange traffic,
8 this traffic, this movement to WLE?

9 A. It's a point in Ohio, the station name
10 escapes me at this moment but it's in Ohio.

11 Q. Is it near Toledo?

12 A. Yes.

13 Q. So that under the route that's
14 described here CN/WC would obtain participation
15 in the movement all the way from Steelton,
16 Minnesota to somewhere in the neighborhood of
17 Toledo; is that correct?

18 A. Correct.

19 Q. And would that routing be the one that
20 would be used for both the seasonal and
21 nonseasonal movements that are described in this
22 paragraph?

23 A. Yes.

24 Q. But is it your testimony based on the
25 assertions in the letter that CN and WC have no

1 hope of handling this traffic?

2 A. Could you repeat the question please?

3 MR. WOOD: Would you read it back
4 please?

5 THE REPORTER: "Question: But is it
6 your testimony based on the assertions in the
7 letter that CN and WC have no hope of handling
8 this traffic?"

9 THE WITNESS: From the beginning of
10 Great Lakes' involvement in the transaction, we
11 have not been able to understand their
12 inordinate fear that we would divert this
13 taconite movement as well as other waterborne
14 taconite movements. We have stated all along
15 that we have no understanding of why there is
16 this inordinate fear of all rail diversion for
17 the taconite.

18 BY MR. WOOD:

19 Q. Were you saying that Great Lakes
20 should not have believed what it read in this
21 paragraph on page 170?

22 A. I did not say that.

23 Q. Why do you believe that Great Lakes'
24 fear, as you put it, is inordinate?

25 MR. CUNNINGHAM: Calls for a little

1 speculation per the witness but subject to that
2 you can answer.

3 MR. WOOD: It's his words.

4 THE WITNESS: Two reasons; one, the
5 all rail route existing today does not move the
6 taconite; two, DM&IR serves the origin mines and
7 controls to a great extent the rate structures
8 that are offered on an all rail route.

9 BY MR. WOOD:

10 Q. Are you saying that there's no traffic
11 of taconite traffic moving all rail between
12 Minntac and Pittsburgh within the last three
13 years, say?

14 A. To my knowledge I don't believe
15 anything has moved all rail to Pittsburgh. I'm
16 not certain of that but I don't believe so, and
17 if it has, it's due to a response I made
18 previous if there was some sort of climatic
19 problem, some sort of dock problem, a broken
20 vessel out of the Great Lakes fleet, et cetera,
21 and it would be merely an emergency avenue of
22 supply chain for Pittsburgh plant. And that is
23 exactly what we reference on page 170 here, an
24 alternate supply route.

25 Q. Do you know, Mr. Radloff, if either

1 Mr. Foote or Mr. Schauer have had any
2 discussions with U.S. Steel regarding this
3 potential longer term opportunity that's
4 described here?

5 A. I would have no knowledge of personal
6 conversations of either gentlemen with U.S.
7 Steel.

8 Q. They've not indicated to you that
9 they've had any such conversations?

10 A. First, I don't talk to Bill Schauer
11 about WC's business and secondly, I have no
12 knowledge of either gentleman having discussions
13 with U.S. Steel.

14 Q. Have you had any discussions or
15 conversations with Mr. Boland regarding this --
16 whether this potential longer term opportunity
17 exists?

18 A. Yes.

19 Q. When did those conversations take
20 place?

21 A. Periodically from the beginning of the
22 writing of the document itself.

23 Q. I'm sorry, which document are you
24 referring to?

25 A. I'm sorry, the verified statement of

1 Jim Foote and Bill Schauer.

2 Q. Did Mr. Boland indicate that he'd had
3 any conversations with -- discussions with U.S.
4 Steel directly regarding --

5 MR. WOOD: Pardon me? I haven't
6 finished. Let me just finish.

7 BY MR. WOOD:

8 Q. Did Mr. Boland indicate to you whether
9 or not he had had any direct discussions or
10 conversation with U.S. Steel regarding this
11 potential longer term opportunity?

12 MR. CUNNINGHAM: You can answer the
13 question.

14 THE WITNESS: No.

15 BY MR. WOOD:

16 Q. Do you know if Mr. Foote made any
17 request to U.S. Steel to provide a statement for
18 submission of the STB supporting the application
19 that's involved in this proceeding?

20 A. I wouldn't know if Jim made any
21 request directly to U.S. Steel. There is very
22 little doubt in my mind that representatives of
23 Canadian National and/or the WC have solicited
24 support from U.S. Steel.

25 Q. You know when that occurred?

1 A. That could have occurred at any time,
2 probably very early on in the application
3 process.

4 Q. You were not involved in those
5 discussions with U.S. Steel?

6 A. I was not involved in discussions with
7 U.S. Steel.

8 Q. Turning your attention back to Exhibit
9 4 of the attachment B, the letter of June 22 --
10 let me ask you first, do you regard this as a
11 binding commitment by both CN and Great Lakes on
12 the part of both Great Lakes and CN?

13 A. I consider it in essence a memorandum
14 of understanding on the negotiations on the
15 topics discussed between ourselves and GLT and
16 that we would work on a definitive agreement
17 from this point forward.

18 Q. Well, let me ask you then, looking
19 again at the second paragraph on the page in the
20 second sentence there's a reference to we, and
21 again I assume that means CN only are incurring
22 substantial costs to litigate your claims. Did
23 you have in mind a particular amount that -- of
24 costs that CN is incurring?

25 A. I have absolutely no dollar amount in

1 mind, but any cost to litigate this situation is
2 too much in my opinion.

3 Q. What was the basis for your -- for the
4 assertion here that these costs are substantial?
5 I mean do you regard \$50 as substantial in this
6 context?

7 A. Any money spent by my company to
8 litigate what we believe to be a frivolous claim
9 is too much.

10 MR. WOOD: I'm going to move on to
11 another area in the letter but could we take a
12 short recess?

13 MR. CUNNINGHAM: Certainly.

14 (Recess.)

15 BY MR. WOOD:

16 Q. Let me draw your attention,
17 Mr. Radloff, to the last sentence of the third
18 paragraph. Well, actually let me go back to the
19 first sentence which refers to the idea that CN
20 would designate DM&IR as our exclusive agent for
21 the arrangement of all rail transportation of
22 taconite pellets, do you see that reference?

23 A. Yes.

24 Q. Who first proposed the idea of having
25 CN designate DM&IR as its exclusive agent?

1 MR. CUNNINGHAM: I'm going to --
2 pardon me. You may answer the question pursuant
3 to our earlier understanding. Go ahead.

4 THE WITNESS: The CN proposed the
5 arrangement.

6 BY MR. WOOD:

7 Q. Does CN have other such arrangements
8 with DM&IR or any other carrier?

9 A. We have multiple marketing
10 arrangements with various entities, none of
11 which are totally alike in my opinion.

12 Q. Some of them containing provisions
13 giving a connected carrier the right to act as
14 exclusive agent for setting the rates on CN/WC?

15 A. It could be construed as that, yes.

16 MS. CORWIN: I'm sorry could you read
17 that again?

18 THE REPORTER: "Answer: It could be
19 construed as that, yes."

20 BY MR. WOOD:

21 Q. Does CN have any other such
22 arrangements today with any of the constituent
23 members of the Great Lakes Transportation
24 family?

25 A. Not to my knowledge.

1 Q. Do you know if Wisconsin Central has
2 any such arrangements with any of the Great
3 Lakes Transportation carriers?

4 A. I do not believe so.

5 Q. All right. Now turning to the last
6 sentence which refers to the designation of
7 DM&IR as its exclusive agent, it then goes on to
8 say CN would not independently solicit such
9 movements or set prices to ships for its portion
10 of such movement unless required to do so by
11 law. You see that sentence?

12 A. Yes.

13 Q. What did you have in mind in the last
14 phrase that says unless required to do so by
15 law?

16 MR. CUNNINGHAM: Objection as to form.

17 BY MR. WOOD:

18 Q. Do you understand the question?

19 A. Yes, I do.

20 Q. Can you answer please?

21 A. The Canadian National will follow the
22 letter of any existing law or any law that was
23 passed as specifically would speak to the
24 arrangement that we have as an agent or an
25 agency for the DM&IR.

1 Q. Would that include any directive that
2 might be issued by the Surface Transportation
3 Board?

4 A. Absolutely.

5 Q. The sentence says that CN would not
6 independently solicit such movements, does that
7 mean CN would never contact United States Steel
8 about setting rates for an all rail movement
9 between Minntac and Pittsburgh if this agreement
10 was in effect?

11 A. That's exactly what it says.

12 Q. Does this sentence mean that if U.S.
13 Steel requested a rate for an all rail rate --
14 all rail movement between Minntac and Pittsburgh
15 in which CN would participate that CN would not
16 provide such a rate?

17 A. From a direct request from a customer,
18 U.S. Steel as an example, we would talk with the
19 DM&IR and again we would provide a rate
20 structure in concert with DM&IR over CN/WC to
21 the interchange point with WLE and no doubt
22 contact the carriers for their division
23 requirements. The DM&IR would be our agent. We
24 would provide our factor to the DM&IR.

25 Q. If United States Steel contacted CN

1 and this agreement was in effect and requested a
2 rate for its portion of the movement between the
3 interchange with the DM&IR and the interchange
4 with the WLE, would you provide such a rate?

5 A. Under this agreement, no.

6 Q. Would you provide for that portion of
7 the movement on the CN/WC, if this agreement was
8 in effect, a rule 11 rate?

9 A. I believe that's pretty much the same
10 thing that you just asked and the answer is no.

11 Q. Would the same answer be given if U.S.
12 Steel requested a confidential contract rate for
13 the CN/WC portion of the movement?

14 A. Yes.

15 Q. You indicated in response to a
16 question that you thought your best guess was
17 that the CN line went within two miles of the
18 Minntac facility. If a build in or a build out
19 was to be constructed between the Minntac mine
20 and the CN line and this agreement was in
21 effect, would CN decline to provide a rate
22 applicable over the portion of the movement
23 between Minntac and the junction with WLE?

24 MR. CUNNINGHAM: Objection as to form.

25 THE WITNESS: That question is total

1 speculation.

2 BY MR. WOOD:

3 Q. Let's treat it as a hypothetical
4 question.

5 A. I would -- even hypothetically that's
6 very far out.

7 Q. I'm sorry, I didn't mean to interrupt.

8 A. That's okay. Go ahead.

9 Q. I'm trying to understand your
10 understanding of what the terms of this
11 agreement precludes you from doing. Would it
12 preclude you from setting a rate on a movement
13 from Minntac over a build in or a build out to
14 the CN line, the DWP to a junction with WLE for
15 an all rail movement of taconite to Pittsburgh?

16 MR. CUNNINGHAM: Could you clarify as
17 to whether you're talking about movement that
18 originates at DM&IR.

19 MR. WOOD: I could clarify that. The
20 premise of the hypothetical question is that it
21 would be a build in or build out to the CN line
22 and that the movement would therefore be over
23 the CN. The DM&IR would not be involved.

24 BY MR. WOOD:

25 Q. Do you understand with that

1 clarification?

2 A. Yes.

3 Q. Can you answer?

4 A. Again total speculation on my part.

5 This agreement limits the agency responsibility
6 of the DM&IR to DM&IR originations. If a build
7 in or a build out were performed it could be
8 argued that it is no longer a DM&IR origin point
9 on the trackage that has been built in or built
10 out.

11 Q. So the short answer is this agreement
12 would not preclude you from responding to a
13 request from U.S. Steel for such a rate?

14 MR. CUNNINGHAM: Objection, calls for
15 a legal conclusion, the answer to your question.

16 THE WITNESS: It would be a legal
17 question at that point in time, not a marketing
18 question.

19 MS. CORWIN: I'll recall for the
20 record the statement I made at the outset which
21 is the agreement is defined by its terms, that
22 the parties have signed -- that the unilateral
23 interpretation of one party or the other we
24 don't regard as the terms of the agreement and I
25 will add the point about some of the questions

1 being legal in nature in terms of how one would
2 interpret the agreement and therefore I would
3 not concede that Mr. Radloff's responses are
4 necessarily the correct legal response.

5 BY MR. WOOD:

6 Q. Was it your intention by entering into
7 this agreement to preclude CN from providing a
8 rate to U.S. Steel for a movement over a build
9 in/build out in connection with an all rail rate
10 to Pittsburgh?

11 MR. CUNNINGHAM: Objection as to form
12 but if you could answer the question you may.

13 THE WITNESS: It was never our
14 intention to construct a mechanism to harm any
15 shipper, what we constructed was an agreement
16 that allows for rapid response in a
17 pro-competitive environment that should benefit
18 the shippers at any given time should the
19 economics prove themselves capable of handling
20 the business. Build in/build out was never
21 thought about.

22 MR. CUNNINGHAM: Can we have two
23 minutes while you're thinking of your next
24 question.

25 MR. WOOD: Actually if we can take a

1 short break, I need to take a break.

2 MR. CUNNINGHAM: Okay, great.

3 (Recess.)

4 BY MR. WOOD:

5 Q. Mr. Radloff, this provision precluding
6 CN from independently soliciting such movements
7 or setting rates -- setting prices, who first
8 proposed this provision be included in the
9 agreement?

10 A. Back to --

11 MR. CUNNINGHAM: You may answer the
12 question.

13 THE WITNESS: Back to a point I made
14 earlier, the Canadian National came up with the
15 thought process about an exclusive agent.

16 BY MR. WOOD:

17 Q. So this provision here is all part of
18 the exclusive agency arrangement that you had in
19 mind?

20 A. Correct.

21 Q. Again, as with the build out questions
22 I posed, speaking hypothetically, if
23 United States Steel came to CN and said we would
24 like to challenge DM&IR's bottleneck rate from
25 the Minntac mine to the interchange and request

1 a contract rate from CN, would this agreement,
2 if in effect, preclude CN from providing such a
3 rate?

4 MR. CUNNINGHAM: You can answer such
5 question to the extent that it doesn't require a
6 legal conclusion, but I don't --

7 MR. WOOD: I'm sorry, Paul, I can't
8 understand.

9 MR. CUNNINGHAM: I'm sorry. He can
10 answer the question under our prior
11 understanding to the extent that it doesn't
12 require a legal conclusion, but the witness
13 can't be asked a legal judgment.

14 THE WITNESS: And I believe I said
15 something similar to this previously, that would
16 become a legal question at that point in time,
17 not necessarily a marketing question, and we
18 would defer to our lawyers to answer that.

19 BY MR. WOOD:

20 Q. Did you contemplate that that
21 possibility might occur when you were
22 negotiating this agreement with Great Lakes?

23 A. We never contemplated an uproar from
24 any shipper in particular because we believed
25 this to be a pro-competitive transportation

1 solution continuing alternatives to open gateway
2 policies that the Canadian National supports
3 wholeheartedly.

4 Q. Does CN presently participate in the
5 all rail movement of iron ore from Minntac to
6 Fairfield, Alabama?

7 A. Yes.

8 Q. What portion of the movement do they
9 participate in?

10 A. Centralia, Illinois to Memphis,
11 Tennessee.

12 Q. Does WC participate in any portion of
13 the movement?

14 A. I believe it's the Burlington Northern
15 that participates in that.

16 Q. WC has no participation in it?

17 A. Not to my knowledge.

18 Q. As a result of CN's participation in
19 that movement to Fairfield, Alabama do you have
20 knowledge of what DM&IR's revenue factor is per
21 its portion of that movement?

22 A. I'm not familiar with the rate
23 structure on that particular movement. It's my
24 understanding that we are providing a haulage
25 service for the Burlington Northern Santa Fe

1 from Centralia, Illinois to Memphis, Tennessee.

2 Q. So it's your testimony, to be sure I
3 understand it, that CN does not have any
4 knowledge because their only participation is as
5 a haulage carrier --

6 MR. CUNNINGHAM: Objection to form.
7 He didn't -- you didn't ask him whether CN had
8 knowledge. You asked if he had knowledge.

9 MR. WOOD: Could you read back the
10 previous question and answer?

11 THE REPORTER: "Question: As a result
12 of CN's participation in that movement to
13 Fairfield, Alabama do you have knowledge of what
14 DM&IR's revenue factor is per its portion of
15 that movement?

16 "Answer: I'm not familiar with the
17 rate structure on that particular movement.
18 It's my understanding that we are providing a
19 haulage service for the Burlington Northern
20 Santa Fe from Centralia, Illinois to Memphis,
21 Tennessee."

22 BY MR. WOOD:

23 Q. All right. Let me broaden the
24 question a little bit and maybe I created some
25 uncertainty. When I was referring to you, I was

1 meaning CN generally, not you personally. Would
2 your answer be the same?

3 A. Absolutely.

4 Q. Pardon me?

5 A. Yes.

6 Q. If this agreement was in effect and
7 United States Steel approached CN about
8 supporting a request to the Surface
9 Transportation Board for competitive access over
10 the DM&IR line between the interchange at Duluth
11 Superior to Minntac, would this agreement
12 preclude CN from supporting that kind of a
13 request by U.S. Steel?

14 MS. CORWIN: I'm going to object. I
15 know you don't recognize my right to object but
16 I think that is calling for an improper legal
17 conclusion from the witness and I just repeat my
18 position that his views do not determine what
19 the agreement says.

20 MR. WOOD: Well, I'll interpose my
21 observation and indeed request that you not
22 interpose objections for questions directed to a
23 witness that's not even yours. You'll have your
24 chance next week when we talk to your witnesses
25 but at the moment I would appreciate it if you

1 let Mr. Radloff answer the question. Otherwise
2 we'll be here a little longer. Could you read
3 the question back please?

4 THE REPORTER: "Question: If this
5 agreement was in effect and United States Steel
6 approached CN about supporting a request to the
7 Surface Transportation Board for competitive
8 access over the DM&IR line between the
9 interchange at Duluth Superior to Minntac, would
10 this agreement preclude CN from supporting that
11 kind of a request by U.S. Steel?"

12 MR. CUNNINGHAM: Objection as to form,
13 calls for a legal conclusion or may call for a
14 legal conclusion.

15 BY MR. WOOD:

16 Q. You have the question in mind?

17 A. Yeah, I've got it. There is
18 absolutely nothing that can prevent a customer
19 from asking support from a carrier on any topic.
20 Whether or not this agreement is binding as to
21 our participation and support of that request
22 would have to be addressed by our legal
23 department at that point in time.

24 Q. Was it your intention to have this
25 agreement preclude that kind of support by CN?

1 MR. CUNNINGHAM: Objection as to form,
2 lack of foundation.

3 THE WITNESS: Our intention was to
4 provide a pro-competitive arrangement with
5 GLT/DM&IR that maintains competitive
6 alternatives in the marketplace and makes it
7 more efficient for a shipper to obtain those
8 services. That was our only intention and to
9 basically remove GLT's overriding unfounded
10 fears of total water taconite diversion.

11 BY MR. WOOD:

12 Q. So the answer to my question is yes,
13 it was your intention to have the agreement
14 preclude that kind of support?

15 MR. CUNNINGHAM: Objection as to form.

16 THE WITNESS: No, that's not what I
17 said.

18 BY MR. WOOD:

19 Q. What is the answer to my question, is
20 the answer no, it does not preclude --

21 MR. CUNNINGHAM: Asked and answered.
22 He answered your question.

23 BY MR. WOOD:

24 Q. Would a request by U.S. Steel to the
25 STB for competitive access over the DM&IR line

1 for Canadian National be regarded by CN as a
2 pro-competitive step?

3 MR. CUNNINGHAM: Objection, calls for
4 speculation on the part of the witness.

5 THE WITNESS: Pro-competitive can be
6 defined in many different ways. Whether
7 competitive access is pro-competitive by a rail
8 perspective versus a shipper perspective could
9 be a completely different thing.

10 BY MR. WOOD:

11 Q. What would CN's perspective be, would
12 it be regarded as a pro-competitive step?

13 MR. CUNNINGHAM: Objection, calls for
14 speculation on the part of the witness, no
15 foundation, there's no specification. Totally
16 vague hypothetical.

17 THE WITNESS: I am not in a position
18 to comment as a representative of CN as to
19 whether the CN views that as a pro-competitive
20 or a nonpro-competitive move.

21 BY MR. WOOD:

22 Q. In the sentence where it says unless
23 required to do so by law, if CN/WC were required
24 by the STB to establish a proportional rate for
25 all rail movements of taconite from the junction

1 at Duluth Superior, would CN regard that as a
2 breach of this agreement?

3 MR. CUNNINGHAM: Asked and answered,
4 also calls for a legal conclusion.

5 MR. WOOD: I don't think it was
6 answered.

7 MS. CORWIN: Could I hear the question
8 again?

9 MR. CUNNINGHAM: It was answered, we
10 can go back and find it if you want but it was
11 answered that CN was going to abide by the law
12 including directives from the Surface
13 Transportation Board notwithstanding this
14 agreement. Whether it constitutes a breach is a
15 legal question which Mr. Radloff is not
16 qualified to answer.

17 BY MR. WOOD:

18 Q. You can answer.

19 A. I believe I've answered that before.
20 The Canadian National will abide by any existing
21 laws pertaining to this agreement to rate
22 structures that are going to be created and by
23 any laws that are passed in the future
24 pertaining to this agreement and/or rate
25 structures.

1 Q. Turning to the next page, the top
2 paragraph states that we, meaning CN, I believe,
3 will be willing to have this agency arrangement,
4 and I assume you mean by that all of the terms
5 of this agreement, imposed as a condition. Does
6 CN believe that the imposition of this condition
7 would be in the public interest?

8 A. Absolutely. As I've stated
9 previously, we believe this to be a
10 pro-competitive arrangement.

11 (Exhibit No. 5 was
12 marked for identification.)

13 MR. WOOD: For the record Exhibit 5 is
14 the complete text of a pleading submitted to the
15 STB in this proceeding on or about June 19th
16 titled Applicants' comments on the status of the
17 GLT issues.

18 BY MR. WOOD:

19 Q. Have you seen this document before,
20 Mr. Radloff?

21 A. Yes.

22 Q. At the time you were negotiating
23 between May 24th and June 22nd with Great Lakes,
24 were you aware that this document was being
25 prepared for filing at the STB?

1 A. Yes.

2 Q. Did you have any part in the decision
3 to file this document at the STB?

4 A. I was part of the discussion.

5 Q. Who else was it discussed with?

6 A. Our attorneys and several of the folks
7 at the CN that head up particular segments of
8 the transaction.

9 Q. I'd like to turn your attention to
10 page 4, the second paragraph on that page that
11 begins it is unclear.

12 MS. CORWIN: Can you explain where you
13 are again?

14 MR. WOOD: Pardon me?

15 MS. CORWIN: Can you explain where you
16 are in the document?

17 MR. WOOD: Page 4, second full
18 paragraph that begins it is unclear.

19 MS. CORWIN: I'm with you. Thank you.

20 BY MR. WOOD:

21 Q. Is it still CN's position that the
22 characterization of GLT's efforts in this
23 proceeding are accurately described here?

24 MR. CUNNINGHAM: What is the scope of
25 your question, as accurately described by what?

1 MR. WOOD: Can you read the question
2 back? I think it was clear.

3 THE REPORTER: "Question: Is it still
4 CN's position that the characterization of GLT's
5 efforts in this proceeding are accurately
6 described here?"

7 MR. CUNNINGHAM: Here is where, the
8 whole document?

9 MR. WOOD: In this paragraph that I
10 was referring to.

11 MR. CUNNINGHAM: Okay, second
12 paragraph.

13 MR. WOOD: Yes.

14 BY MR. WOOD:

15 Q. You understand the question with that
16 clarification?

17 A. Yes, I do. This second paragraph when
18 brought out of the context of relating back to
19 the previous paragraph would indicate that at
20 one time GLT could seek from the Board some
21 authority that precludes our ability to compete
22 for the waterborne movements. What we have done
23 is put together what we consider to be a
24 pro-competitive, pro-shipper agreement with GLT
25 in lieu of seeking the Board's approval for this

1 noncompete issue.

2 Q. Is the agreement that is embodied in
3 the memorandum of understanding, as you
4 characterize it, in Exhibit 4 any different from
5 what's described in these two paragraphs?

6 MR. CUNNINGHAM: Asked and answered.

7 BY MR. WOOD:

8 Q. You could answer.

9 A. Yes, absolutely it's different than
10 what is described in these two paragraphs.

11 Q. In what way is it different?

12 A. These two paragraphs make reference to
13 an application to the Board that will provide
14 for noncompete on waterborne taconite. The
15 agency agreement that we have entered into, or
16 will enter into, with GLT, DM&IR is again a
17 pro-competitive, shipper-friendly arrangement
18 that provides for alternative transportation,
19 while these two paragraphs would dictate no
20 alternative transportation for those taconite
21 movements. The agency agreement is a very
22 simplistic tool in the marketplace to provide
23 alternative transportation for the shipper.

24 Q. Do you have any -- does CN have any
25 reason to believe that DM&IR would ever agree to

1 set a rate under the arrangements specified in
2 the June 22 letter that would allow CN and WC to
3 participate in an all rail movement?

4 A. Yes.

5 Q. What basis do you have that
6 expectation?

7 A. There are alternate sources of
8 taconite around available to steel producers,
9 whether it be import other mines -- there are
10 competitive routes coming off of the DM&IR with
11 other major class one carriers to the markets
12 that these steel producers are in. It is in the
13 best interest of the DM&IR to always maintain a
14 commercially reasonable rate structure and it is
15 the philosophy of the Canadian National to
16 supply commercially reasonable rate structures.

17 Q. Let me call your attention back to the
18 letter agreement, memorandum of understanding,
19 the second paragraph refers to, we, CN, expects
20 to incur no economic loss for meeting your
21 goals. Does that mean that CN never had any
22 expectation of obtaining --

23 A. Which paragraph are you talking about?

24 Q. Second paragraph, the last -- second
25 sentence.

1 A. I'm sorry. Okay. I've got it. I'm
2 sorry to interrupt.

3 Q. Does that sentence -- does that
4 statement mean that CN never had any realistic
5 expectation of being able to participate in all
6 rail movements of taconite?

7 MR. CUNNINGHAM: Objection as to form.

8 THE WITNESS: As stated previously we
9 have absolutely no understanding as to why GLT
10 considered this a major threat to their
11 existence. We have -- we are not in a position
12 in our opinion to compete with waterborne
13 taconite transportation from the standpoint of
14 straight up rate to rate structures. We do not
15 foresee handling that taconite, therefore it
16 would be impossible for us to sustain economic
17 loss when we see no future movement to the
18 benefit of the CN on the taconite in question.

19 BY MR. WOOD:

20 Q. So that the statement contained in
21 Mr. Foote and Mr. Schauer's verified statement
22 was incorrect?

23 MR. CUNNINGHAM: Objection as to form.

24 THE WITNESS: Again, I believe this
25 has been covered once. No, the statement is

1 correct. It provides an alternative solution to
2 the marketplace at times of climatic problems,
3 whether there be equipment failure or some sort
4 of unforeseen problem in the existing supply
5 chain that is provided by GLT.

6 BY MR. WOOD:

7 Q. Was there any limitation contained in
8 that discussion in the joint verified statement
9 that it was limited to emergency situations or
10 climatic situations?

11 A. That statement went on to say that it
12 had the potential to provide continued supply
13 chain capability via an all rail, and that's a
14 very true statement. It has that capability,
15 but the customer will decide, not the railroads.

16 Q. But if the customer decides that it
17 wants to use that all rail alternative and this
18 agreement is in effect, has CN taken itself out
19 of the marketplace by agreeing to this
20 arrangement with GLT?

21 A. Not at all.

22 Q. Is CN in the position to respond
23 directly to any request from a customer for
24 rates for an all rail movement with this
25 agreement in effect?

1 A. Again I think we've touched on that in
2 several different forms. The DM&IR on an all
3 rail movement to the points named within this
4 agreement will be our exclusive agent. We will
5 provide a commercially reasonable rate structure
6 to the DM&IR so that they may make a through
7 contract rate for that customer. We are not out
8 of the market.

9 Q. And if the customer receives such a
10 rate from DM&IR after forwarding a request to CN
11 and does not believe that the rate is responsive
12 and it approaches CN again and says we would
13 like you to set the rate, are you precluded from
14 responding to that request by this agreement?

15 A. Again to the points that are contained
16 within this agreement for the all rail movements
17 of taconite, the DM&IR is our exclusive agent.
18 We will quote a commercially reasonable through
19 rate with the DM&IR.

20 Q. But you would let DM&IR set the level
21 of those rates?

22 A. DM&IR will set the overall level of
23 the rate once they receive our factor.

24 Q. You would have no input into it, other
25 than providing your revenue factor as to what

1 level the DM&IR sets those rates?

2 MR. CUNNINGHAM: Objection as to form.

3 THE WITNESS: There is nothing in this
4 agreement that precludes talking to the DM&IR
5 about the overall rate structure and what is
6 required in the marketplace to move the taconite
7 from mines served by the DM&IR to the points
8 listed in the agreement.

9 BY MR. WOOD:

10 Q. Ultimately DM&IR has the exclusive
11 right and the sole right to set that rate level;
12 is that correct?

13 A. Under the provisions of this agreement
14 the DM&IR is the exclusive agent of the Canadian
15 National for taconite movements from the mines
16 it serves to the points listed in the agreement.

17 Q. So the answer to my question is yes?

18 MR. CUNNINGHAM: Asked and answered.

19 THE WITNESS: I believe I answered it
20 but to shorten that answer, yes, they are our
21 exclusive agent from the mines they serve to the
22 points named in the agreement.

23 BY MR. WOOD:

24 Q. Referring again to page 2 of the
25 memorandum of understanding letter, the top

1 paragraph indicates that you would support a
2 request but the -- well, it says agency
3 arrangement. Let me clarify one point. Is it
4 your understanding that the request will be to
5 impose the entire agreement as a condition of
6 the transaction, the definitive terms of the
7 agreement, that's ultimately submitted to the
8 Board?

9 A. Yes.

10 Q. Including the ancillary terms that are
11 shown in attachment C?

12 A. Yes.

13 Q. If the Surface Transportation Board
14 were to decide not to impose this agreement as a
15 condition on approval of the transaction, would
16 Canadian National continue to abide by the terms
17 of the agreement?

18 A. If this is not a condition of the
19 transaction approved by the Board there is no
20 agreement.

21 Q. If the Surface Transportation Board,
22 before imposing this as a condition, were to
23 modify any of the terms of this agreement would
24 CN still consider itself bound by the terms as
25 modified?

1 MR. CUNNINGHAM: Objection, calls for
2 speculation by the witness.

3 MR. WOOD: Stated as a hypothetical
4 question obviously. I'm asking what his -- CN's
5 intention would be.

6 MR. CUNNINGHAM: Answer if you know.

7 THE WITNESS: It would be impossible
8 for me to say what our intention would be not
9 knowing what the changes of the conditions would
10 be.

11 BY MR. WOOD:

12 Q. If the Board modified the agreement so
13 as to preclude CN from designating DM&IR as its
14 exclusive agent within the provisions specified
15 in here, would CN continue -- consider the
16 agreement still to be binding?

17 MR. CUNNINGHAM: Asked and answered.

18 THE WITNESS: I believe I've answered
19 that question. I said that if the agreement has
20 been changed we would have to review what those
21 changes would be and then make a decision at
22 that time.

23 BY MR. WOOD:

24 Q. Does CN regard the imposition of this
25 agreement as a condition by the STB essential to

1 make it binding on both CN and Great Lakes?

2 A. Yes.

3 Q. Was it CN's intention to obtain
4 thereby, from such imposition of the agreement
5 as a condition, immunity from the antitrust
6 laws?

7 A. No. The antitrust immunity would be
8 referring back to your earlier questions on page
9 4 where we were talking about the noncompete
10 issue, and that was in --

11 Q. I'm sorry page 4 in the Exhibit 5?

12 A. Exhibit 5, second full paragraph tied
13 into the first full paragraph.

14 Q. So you no longer feel -- does CN no
15 longer feel the imposition of this agreement as
16 a condition is necessary to provide antitrust
17 immunity?

18 A. I'm not certain I follow your
19 question.

20 Q. I'm not sure I understand your
21 previous answer.

22 A. We believe the conditional support of
23 the STB on this agreement has absolutely nothing
24 to do with an antitrust violation. This is a
25 pro-competitive marketing arrangement with some

1 operational items thrown in.

2 Q. Then I would just like an explanation
3 -- then I'd like an explanation why CN believes
4 it's necessary to have this agreement imposed as
5 a condition if it does not want the benefit of
6 the antitrust immunity?

7 MR. CUNNINGHAM: Objection as to form.

8 THE WITNESS: I am not in a position
9 to speak to the antitrust issue whatsoever from
10 a legal perspective. What I am in a position to
11 speak to is what we believe this agreement does
12 in the marketplace, what it does for the shipper
13 and what it does for the rail carriers. We are
14 asking the STB to support this agreement as a
15 condition to the transaction.

16 BY MR. WOOD:

17 Q. Well, if CN's view of this agreement
18 is correct and it is pro-competitive, isn't that
19 true whether or not it's imposed as a condition
20 on approval?

21 MR. CUNNINGHAM: Calls for a legal
22 conclusion.

23 MR. WOOD: I don't think it does.

24 MR. CUNNINGHAM: Well, that's fine. I
25 do, and I'm going to object.

1 BY MR. WOOD:

2 Q. You can answer.

3 A. Repeat the question please?

4 MR. WOOD: Could you read it back
5 please?

6 THE REPORTER: "Question: Well, if
7 CN's view of this agreement is correct and it is
8 pro-competitive, isn't that true whether or not
9 it's imposed as a condition on approval?"

10 MR. CUNNINGHAM: Calls for a legal
11 conclusion.

12 THE WITNESS: From the perspective of
13 a marketing officer, it is a pro-competitive
14 agreement.

15 BY MR. WOOD:

16 Q. And that would be so whether or not
17 it's included as a condition on approval of the
18 agreement; is that correct from a marketing
19 perspective?

20 A. Yes.

21 MR. CUNNINGHAM: I'm going to need
22 about five minutes, before 1:15, for redirect.

23 MR. WOOD: If I could maybe have a few
24 minutes to consult with my colleagues to see if
25 there's -- look at my notes to see if there's

1 anything else we need to cover it would be
2 appreciated.

3 (Recess.)

4 MR. WOOD: I have nothing further of
5 this witness subject to anything you might ask
6 on redirect, if any, and certainly don't want --
7 let me just interject if I may, I don't want to
8 preclude anyone else representing other parties
9 who might have any questions.

10 MR. NORTON: I think Mr. Kolesar has
11 indicated he has no questions.

12 MR. KOLESAR: No questions.

13 MS. CORWIN: I don't plan to ask any
14 questions unless something comes up.

15 EXAMINATION BY COUNSEL FOR
16 CANADIAN NATIONAL RAILWAY COMPANY

17 BY MR. CUNNINGHAM:

18 Q. You had a clarification you said you
19 wanted to make with respect to one of your
20 answers?

21 A. Yes. I made a reference talking about
22 the taconite movements and referenced it back to
23 the Foote/Schauer verified statement, and in
24 reality, it's much more global than that, the
25 single reference to GLT's fears went far beyond

1 that one taconite movement, and again while it
2 was referenced in some of the dialogue that I
3 had, they had what we considered to be an
4 unfounded fear that would be a diversion of all
5 railborne taconite and that was the central
6 issue that became their platform in front of
7 their constituency.

8 Q. The only other question I have on
9 redirect is a -- as a practical matter, from a
10 commercial standpoint, could CN/WC have any
11 realistic expectation of participating in an all
12 rail move which would be subject to the
13 settlement agreement, in the absence of that
14 agreement, without the consent and active
15 participation of DM&IR in the movement?

16 A. Absolutely not. It is standard in the
17 industry that cooperation among the rail
18 carriers to establish commercially reasonable
19 rate structures capable of transporting commerce
20 is required. The DM&IR as the origin carrier
21 carries considerable leverage as to the final
22 outcome of any given rate structure on a through
23 basis.

24 Q. Did you have anything else that you
25 wanted to --

1 A. That's it. I'm done.

2 MR. CUNNINGHAM: Does that conclude
3 the deposition.

4 MR. WOOD: Thank you. Just a moment.

5 FURTHER EXAMINATION BY COUNSEL

6 FOR UNITED STATES STEEL LLC

7 BY MR. WOOD:

8 Q. Let me ask first about the point you
9 made about GLT's fears about diversion of all of
10 the traffic. What did they convey to you and
11 the CN was the basis for those fears?

12 A. The Foote/Schauer verified statement.

13 Q. Anything else?

14 A. Nothing else.

15 Q. The other question Mr. Cunningham
16 asked you about whether, from a commercial
17 aspect, from a business aspect, the -- strike
18 that. In response to his other question you
19 indicated that it's CN's view, and perhaps
20 generally in the railroad industry that the
21 origin carrier is in a position to control the
22 rate structure, is that a fair characterization
23 of your answer?

24 A. It's close. What I said is that they
25 have considerable leverage in the creation of

1 the rate structure, in particular when there are
2 multiple outlets for that carrier to create
3 contract through rates.

4 Q. And is it also your experience that a
5 carrier which possesses that considerable
6 leverage is more likely to use it to favor other
7 carriers that are part of its system?

8 A. Not necessarily. They're going to
9 provide the most efficient service product to
10 the customer. After all, the customer is going
11 to make a choice as to which of the products.

12 Q. If the customer makes the choice that
13 it would like an all rail service as opposed to
14 a rail, lake, rail movement of taconite, do you
15 think that DM&IR would still be responsive to
16 that choice by the customer if it meant that it
17 would lose the water portion of the movement?

18 A. That, at that point in time, becomes
19 an economic decision by the customer himself
20 predicated off of the rate structures that are
21 presented before him by the competing modes.

22 Q. And that choice would then be driven
23 entirely by whatever rate the DM&IR chose to
24 offer under this agreement; is that right?

25 A. It would be driven by a combination of

1 rate and service predicated off the requirements
2 of that customer.

3 MR. WOOD: That's all I have.

4 MR. CUNNINGHAM: I have one other
5 follow up to Mr. Wood's last question. I'm
6 sorry.

7 FURTHER EXAMINATION BY COUNSEL FOR

8 CANADIAN NATIONAL RAILWAY COMPANY

9 BY MR. CUNNINGHAM:

10 Q. Would your last answer apply whether
11 or not this agreement were in place?

12 A. Yes.

13 MR. CUNNINGHAM: That's all.

14 MR. WOOD: Nothing else.

15 (Whereupon, at 1:04 p.m., the taking
16 of the instant deposition ceased.)

17
18 _____
19 Signature of the Witness

20
21 SUBSCRIBED AND SWORN to before me this _____
22 day of _____, 20__.

23
24 _____
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My Commission expires: _____

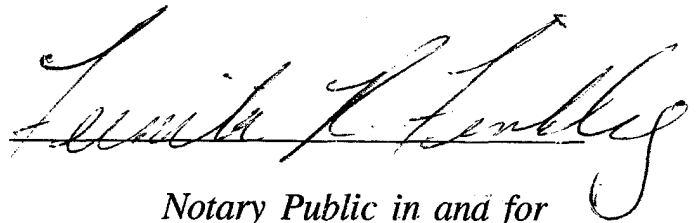
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I, FERNITA R. FINKLEY, CRR, RPR, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



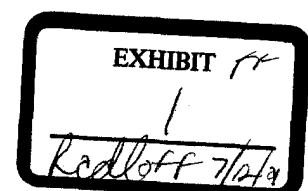
Notary Public in and for

the District of Columbia

My commission expires: 01-01-2005

TABLE OF ABBREVIATIONS

ACRI	Algoma Central Railway, Inc.
Agreement	Agreement and Plan of Merger dated as of January 29, 2001, among Wisconsin Central Transportation Corporation, Canadian National Railway Company and WC Merger Sub, Inc.
ALK	ALK Technologies, Inc.
Amtrak	National Railroad Passenger Corporation
Applicants	CN and WC
ATN	Australian Transport Network Limited
ATSF	The Atchison, Topeka and Santa Fe Railway Company
BCOL	British Columbia Railway Company
BNSF	Burlington Northern Santa Fe Corporation, The Burlington Northern and Santa Fe Railway Company, and, where the context indicates, their subsidiaries
BOCT	Baltimore and Ohio Chicago Terminal Railroad Company
Board	Surface Transportation Board
BRC	The Belt Railway Company of Chicago
CCP	Chicago, Central & Pacific Railway Company
CIC	Cedar Rapids and Iowa City Railway Company
CMGN	Central Michigan Railway Company



CN	CNR and subsidiaries
CNR	Canadian National Railway Company
Conrail	Consolidated Rail Corporation
CP	Canadian Pacific Ltd., Canadian Pacific Railway, and, where the context indicates, their subsidiaries
CR	Consolidated Rail Corporation
CRL	Chicago Rail Link, L.L.C.
CRRC	Cedar River Railroad Company
CSS	Chicago SouthShore & South Bend Railroad
CSX	CSX Corporation, CSX Transportation, Inc., and, where the context indicates, their subsidiaries
DMIR	Duluth, Missabe and Iron Range Railway Company
DNE	Duluth & Northeastern Railroad Company
DWP	Duluth, Winnipeg & Pacific Railway Company
EJE	Elgin, Joliet & Eastern Railway Company
EWS	English, Welsh & Scottish Railway Holdings Limited
FNM	Ferrocarriles Nacionales de Mexico
FRA	Federal Railroad Administration, United States Department of Transportation
FVW	Fox Valley & Western Ltd.
Goldman Sachs	Goldman, Sachs & Co.
GTC	Grand Trunk Corporation

GTW	Grand Trunk Western Railroad Incorporated
IAIS	Iowa Interstate Railroad
IC	Illinois Central Railroad Company, and, where the context indicates, its subsidiaries
ICC	Interstate Commerce Commission
IHB	Indiana Harbor Belt Railway Company
IMRL	I & M Rail Link, LLC
IORY	Indiana & Ohio Railway
IT	information technology; information technologies
KCS	Kansas City Industries, Inc., The Kansas City Southern Railway Company, and, where the context indicates, their subsidiaries
KCSR	The Kansas City Southern Railway Company
Kearney	A.T. Kearney, Inc.
Merger Sub	WC Merger Sub, Inc.
METRA	Northern Illinois Railroad Corp.
MJ	Manufacturers' Junction Railway, L.L.C.
NAFTA	North American Free Trade Agreement
NEPA	National Environmental Policy Act of 1969
NICTD	Northwestern Indiana Commuter Transportation District
NPRC	National Passenger Railroad Corporation (Amtrak)
NS	Norfolk Southern Corporation, Norfolk Southern Railway Company, and, where the context indicates, their subsidiaries

OMR	Ontario Michigan Railroad Corporation
ONT	Ontario Northland Railroad
PAL	Paducah & Louisville Railway, Inc.
Reebie	Reebie Associates
Rule 11	AAR Railway Accounting Rule 11, which permits shippers to protect confidential prices or meet customer requirements by providing for issuance of multiple freight bills on shipments covered by a through bill of lading. Generally speaking, a single waybill is not issued for the complete origin-to-destination movement; rather, each railroad participating in a movement to which Rule 11 is applied issues a separate waybill for its respective portion of the through movement.
SCTC	St. Clair Tunnel Company
SP	Southern Pacific Rail Corporation, Southern Pacific Transportation Company, and, where the context indicates, their subsidiaries
SSMB	Sault Ste. Marie Bridge Company
ST	ST Rail System
STB	Surface Transportation Board
Tex-Mex	Texas Mexican Railway Company
TFM	Transportación Ferroviaria Mexicana, S.A. de C.V.
TMM	Transportación Marítima Mexicana, S.A. de C.V.
Transaction	Proposed acquisition of control of WC by CN, pursuant to the Agreement
UP	Union Pacific Corporation, Union Pacific Railroad Company, and, where the context indicates, their subsidiaries

VIA	Via Rail Canada
WC	WCTC, WCL, FVW, SSMB, WCLL, and, where the context indicates, their subsidiaries
WCLL	Wisconsin Chicago Link Ltd.
WCTC	Wisconsin Central Transportation Corporation
WCL	Wisconsin Central Limited
WSOR	Wisconsin & Southern Railroad Co.

The standard two-letter postal abbreviations are used for U.S. states and Canadian provinces. Because the U.S. abbreviations are familiar to U.S. readers, they are not listed here. However, the Canadian province abbreviations, which may be less familiar, are listed below.

AB	Alberta
BC	British Columbia
MB	Manitoba
NB	New Brunswick
NF	Newfoundland
NT	Northwest Territories
NS	Nova Scotia
ON	Ontario
PE	Prince Edward Island
PQ	Quebec
SK	Saskatchewan
YT	Yukon Territory

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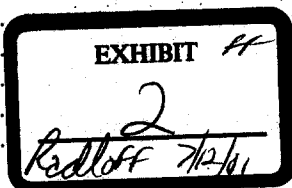
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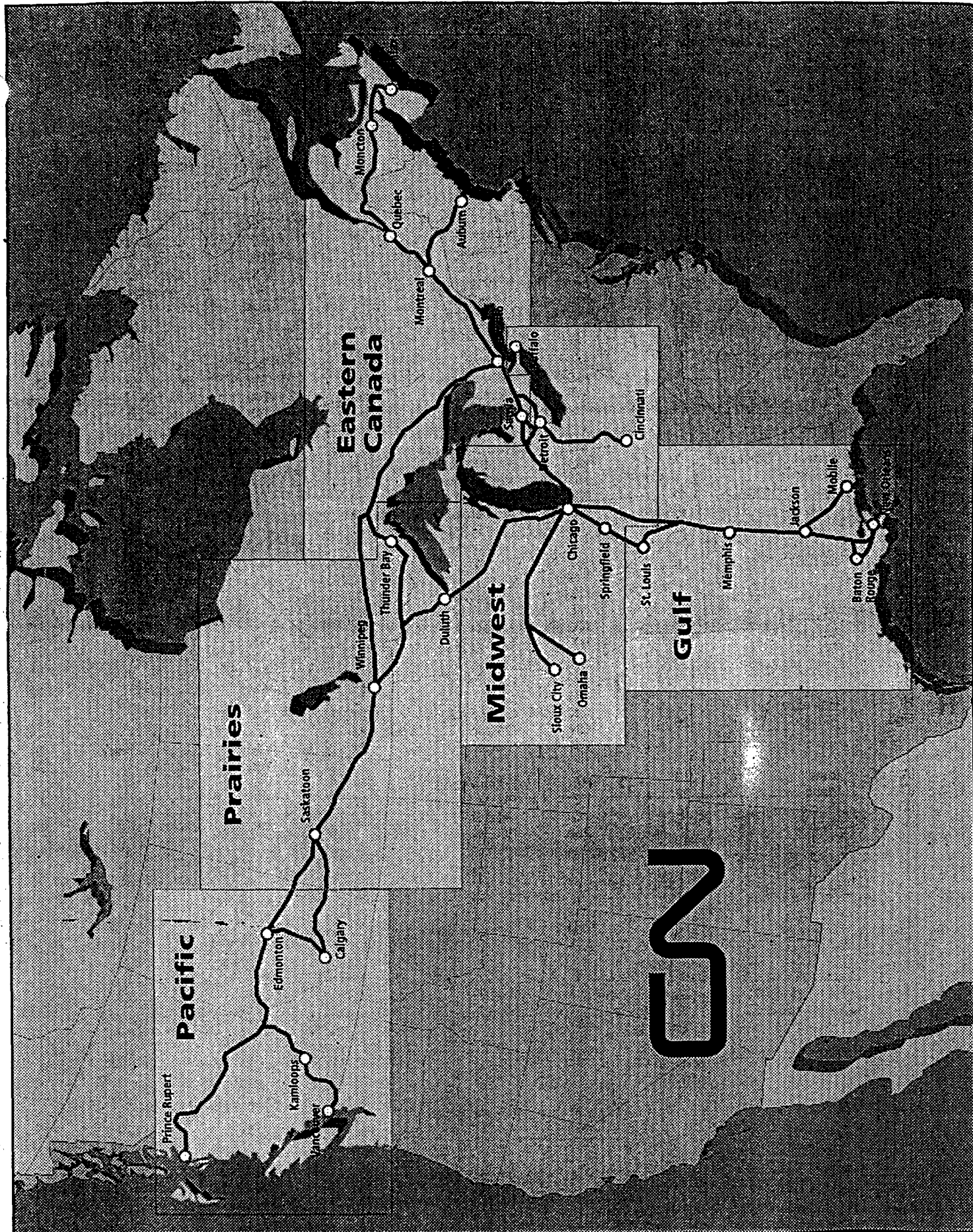
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

RAILROAD CONTROL APPLICATION

VOLUME 1 OF 2

**SUPPORTING INFORMATION, SUMMARY OF BENEFITS, STATEMENTS OF
APPLICANTS' PRINCIPAL OFFICERS, OTHER SUPPORTING STATEMENTS,
RELATED APPLICATION, DENSITY CHARTS, OPERATING PLAN - MINOR,
AND SERVICE ASSURANCE PLAN**

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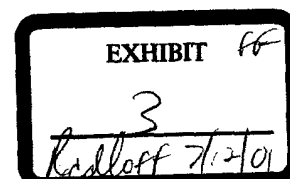
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April 9, 2001



JOINT VERIFIED STATEMENT
OF
JAMES M. FOOTE AND WILLIAM R. SCHAUER

We are James M. Foote, Executive Vice President of Sales and Marketing at Canadian National Railway Company ("CN"), and William R. Schauer, Vice President, Marketing, for Wisconsin Central System ("WC"). Our respective professional backgrounds are outlined in Attachment A to this statement.

I. SUMMARY OF STATEMENT

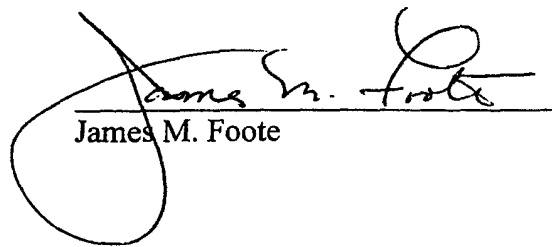
The purpose of this verified statement is to discuss our vision for an integrated CN/WC that will allow us to provide integrated service to the benefit of existing and potential customers alike. The new system will better meet the needs of existing customers, not only through the benefits of expanded single-line service, but also through the advantages of unified management focus and a common information system. CN and WC have been successful partners in developing competitive and responsive interline service. The Transaction will allow us to offer customers an even more reliable transportation product, and will allow our customers to do business with us more easily.

Our customers not only want reliable transportation, but also a sense that their transportation provider can and will be held fully accountable for the quality of service they are promised. In our experience, customers who rely on interline rail service often expect lower quality than when the service is provided by a single railroad. In part, that is because it is more difficult for interline customers to know whom to hold accountable for their service. In single-

VERIFICATION

I, James M. Foote, 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.

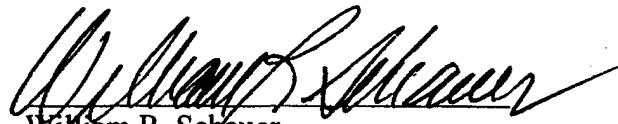
Executed on April 6, 2001.


James M. Foote

VERIFICATION

I, William R. Schauer, 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 April 6, 2001.


William R. Schauer

and industrial applications. We will be able, post-Transaction, to explore new avenues to improving service over the consolidated system, including fine-tuning the advance staging of potash at facilities in Winnipeg and at WC-served rail facilities in Wisconsin.¹⁶ The CN/WC system will link sources of nitrogen fertilizers, such as urea, along the Gulf Coast, Manitoba, and Saskatchewan with markets in Wisconsin. This will create an opportunity for us to offer a more competitive all-rail alternative for Wisconsin nitrogen-based fertilizer consumers, who often rely on river transport for the larger portion of the haul from domestic sources originated along the Gulf Coast and for imported fertilizers that do enter the U.S. along the Gulf.

Metals and Minerals

"Metals and Minerals" represents to CN and WC a diverse group of commodities, including, among others, roofing granules, construction aggregate, sand, cement, iron ore, finished steel, scrap iron and steel, non-ferrous metals, and dimensional (or "oversized") shipments. We believe that the Transaction presents us with the opportunity to better meet the needs of shippers of these commodities, and to aid them in the development of new markets.¹⁷ It

¹⁶PCS Sales Inc., the largest fertilizer company in the world, producing potash and other fertilizers, supports the Transaction due to the likelihood that it will receive more consistent service, enjoy streamlined service between Saskatchewan potash sources and consumers in Wisconsin and south of Chicago. PCS observes that the Transaction may "assist in eliminating the... congestion that presently exists in the busy Chicago [terminal]." Verified Statement on behalf of PCS Sales (USA) Inc. at 1-2 (Mar. 2, 2001).

¹⁷As one WC-served producer of limestone-derived products states: "[WC] has been very good for Western Lime Corporation... but we have been limited by the size of the [WC] system. A merger with [CN] would allow [us to enjoy] access to a much larger geographic area without multiple line delivery. The [CN/WC] system will link the Northeast and Northwest and lower Midwest, and create [single-line service] which will fit our sales area well." Verified Statement on behalf of Western Lime Corporation at 1 (Mar. 2, 2001).

A Winnipeg-based producer of large transformers supports the transaction because of the possibility of obtaining "faster, more reliable single-line service to and from points on the WC system, and improvement in efficiency of obtaining dimensional and cost information..." Verified Statement on behalf of Pauwels Canada Inc. (Mar. 15, 2001). A variety of other shippers falling within the "metals and minerals" category also support the Transaction, including several scrap steel brokerage firms, steel manufacturers and fabricators, and shippers of aggregate and decorative stone. See, e.g., Verified Statement on behalf of Simsmetal America (Mar. 13, 2001)

will also enable us to offer an improved rail transportation option where shippers today select other modes.

The Transaction will enable WC-served producers of industrial sand (sand of a quality that makes it suitable for foundry applications, oil drilling, and glass making) to better access potential markets where such specialty sand is needed. For example, WC-served Badger Mining Corporation at Taylor, WI, a producer of industrial sand, will have single-line access to CN-served points in Alberta, where such sand (also known as “frac sand”) is required to support oil drilling activities. Sand from this mine may also, with the cooperation of CN’s Alliance partner KCS, find new markets in Mexico, where industrial sand is used in the foundries producing parts for the automobile industry.¹⁸

We believe that the merged system can fill a new role in the transport of taconite. In one case, the merged system can become an efficient link in the transport of taconite from U.S. Steel’s processing plant at Minntac, MN, and its steel mill facility at Fairfield, AL. We look forward to a new opportunity to work with originating carrier, DMIR, and the various line-haul carriers serving Alabama (such as NS and BNSF) in developing a more efficient rail transportation option. Specifically, we can route this taconite traffic from the DMIR interchange at Steelton, MN, through Chicago and on to such southerly interchange points with NS and

(scrap steel broker); Verified Statement on behalf of IPSCO (Mar. 15, 2001) (producer of steel and steel products); Verified Statement of Birmingham Steel Corporation (Mar. 8, 2001) (steel bar manufacturer); Verified Statement on behalf of Algoma Seamless Tubulars, Inc. (Mar. 14, 2001) (steel tube maker); and Statement on behalf of Aggregates America (Mar. 13, 2001) (decorative stone supplier).

¹⁸The transaction may similarly benefit another WC-served sand producer, A.F. Gelhar Co., Inc. *See* Verified Statement on behalf of A.F. Gelhar Co., Inc. (Mar. 6, 2001) (Transaction may offer an “opportunity to broaden [Gelhar’s] customer base in the future”).

BNSF as Memphis. The advantage of such a routing is that it will eliminate some of the interchanges that now must take place between various carriers involved in the current movement of this traffic, and it forges a new, more direct route that is capable of handling this high tonnage traffic. The Transaction will also enable the merged system more easily to design rate and service proposals for this traffic.

In another case, we see a potential longer term opportunity to develop a new all-rail taconite service between Minntac, MN, and U.S. Steel's Edgar Thompson Works in Pittsburgh, PA. Such an all-rail route would involve the participation of originating carrier DMIR, regional carrier WLE, and destination carrier, Union Railroad. Such an all-rail route would offer what we believe will be an appealing transport alternative for U.S. Steel for those times when winter weather disrupts the movement of taconite through the Great Lakes. This option might also eventually provide more than a seasonal choice, as steelmakers are showing a growing interest in rail service and a desire to move away from the use of multi-modal transportation, particularly the combined use of water and rail.¹⁹

We expect that the efficiencies of single-line service will enable pig iron consumers in Wisconsin – Neenah Foundry (at Neenah), Waupaca Foundry (at Waupaca), and Charter Steel (at Saukville) – to consider CN/WC service for imported raw material from South America. The Transaction will create single-line service via CN's rail-marine terminal at Convent, LA, as a

¹⁹The transfer of taconite pellets from rail to ship (and in some cases back to rail again) involves additional handling of the commodity, which takes its toll on the pellets transported and results in product loss. In addition to the added handling, the multi-modal transport of taconite requires the operation of transfer facilities accompanied by large, open-air storage areas. The operation and maintenance of such facilities contributes to the total transportation cost for this commodity. An all-rail transportation option would reduce the shipper's reliance on such transfer facilities, increase the overall speed of delivery, and reduce steel manufacturers' inventory costs.

more expeditious alternative to the barge-to-truck or barge-to-rail service that all three companies rely upon today.²⁰

The Transaction will also present a single-line rail service alternative for the transport of cement from producers in southern Ontario to distribution terminals in Green Bay, WI. Today, this cement is handled via Great Lakes water transport. With single-line service between origin and destination, CN/WC will offer a faster and more reliable alternative to water transport of this commodity.

Finally, expanded single-line service over the merged system will give WC-served producers of roofing granules the opportunity to explore potential new markets for their products. Wausau, WI-based roofing granule producer 3M will enjoy single-line service to a variety of markets into which it already ships products, and the Transaction may allow it to consider rail transport to new markets. For roofing granule producer ISP (Pembine, WI), the single-line service options that would become available for the transport of its products might encourage it to expand its focus beyond its traditional markets in the Midwest to markets in the South.²¹ We envision such new market opportunities to include construction and roofing companies located in Tennessee and Alabama, along CN's lines south of Chicago.

²⁰National Material Trading, a scrap iron and steel brokerage company selling these commodities to consumers in Wisconsin notes that "[o]ne of the largest volumes of business is the sale and distribution of nodular, foundry, and basic pig iron... and many of the largest consumers of pig iron are in Wisconsin.... NMT is... willing to look at discharging vessels at ports in New Orleans, which are served by [CN].... [W]e may be able to load [pig iron] directly from vessel to railcar or vessel to ground to railcar right in New Orleans and ship all the way to our final consumers on [WC].... It will result in much more efficiency in the transportation of pig iron imported into this country." Verified Statement on behalf of National Material Trading at 2 (Feb. 22, 2001).

²¹See Verified Statement on behalf of ISP Mineral Products at 1 (April 3, 2001) ("We believe that the [Transaction] will benefit ISP Mineral Products Inc. by providing single-line service to selected markets in both the United States and Canada").

202754

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.

ENTERED
Office of the Secretary

JUN 26 2001

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Public Record

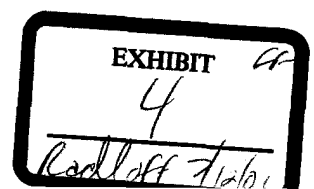
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Counsel for Great Lakes Transportation LLC

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

Carolyn F. Corwin
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:

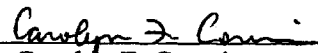
By Hand:

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

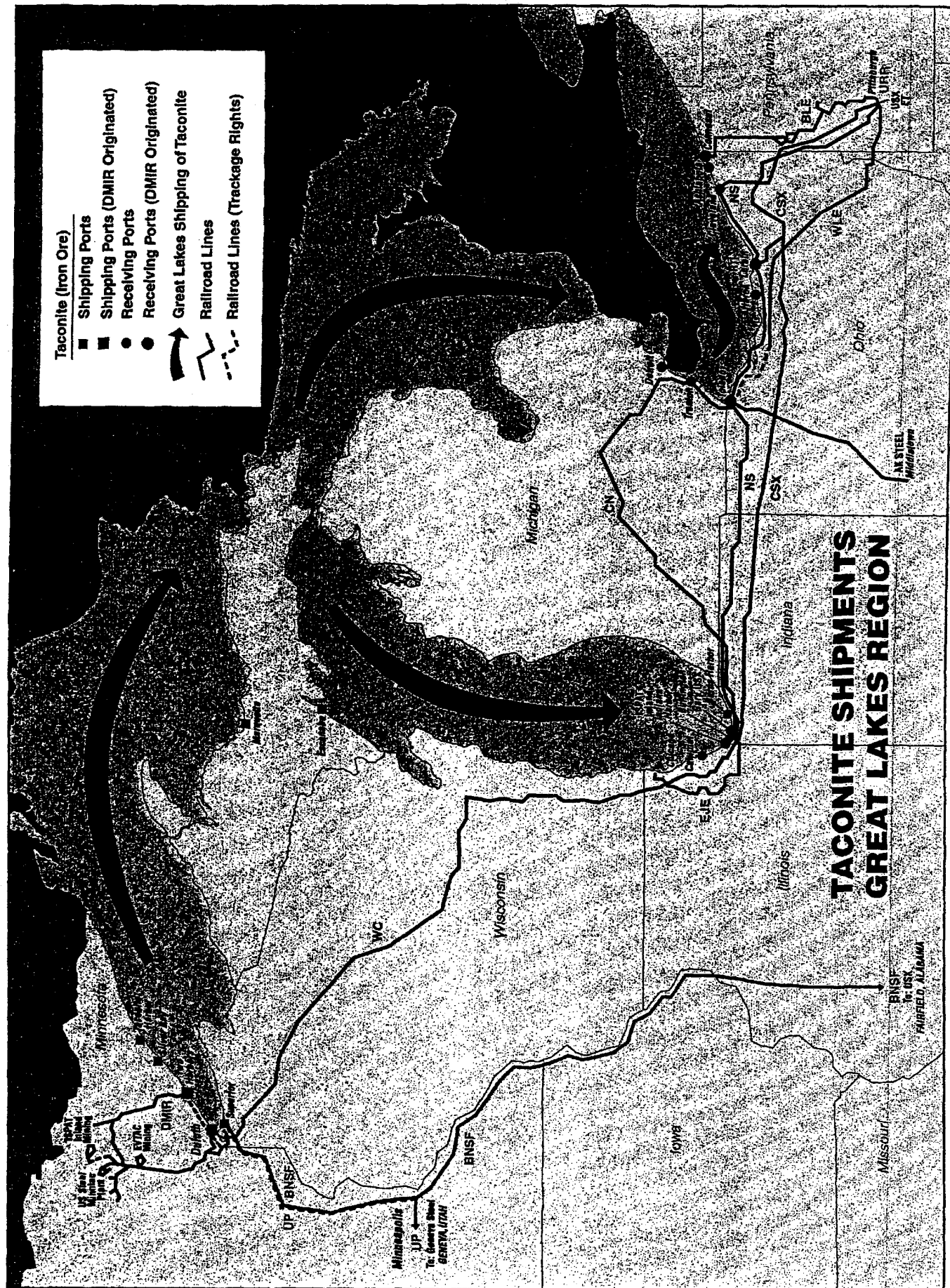
By Overnight Mail:

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



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.

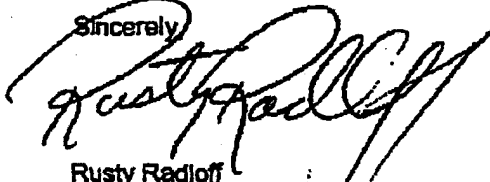
For these reasons, if we could otherwise settle our dispute, and GLT could support our transaction (and urge support by all of the parties rallied by GLT) on the grounds that there is no reasonable likelihood that CN/WC will handle this traffic in the foreseeable future, we would be willing to have this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

 - VP-Sales & Marketing
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.

202689



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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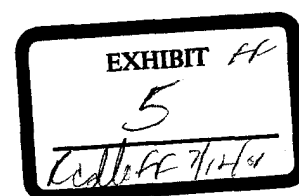
Counsel for Canadian National Railway
Company, Grand Trunk Corporation,
and WC Merger Sub, Inc.

June 19, 2001

ENTERED
Office of the Secretary

JUN 20 2001

Part of
Public Record



BEFORE THE SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34000

CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, AND WC MERGER SUB, INC.
B CONTROL B
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

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.

⁴ In 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

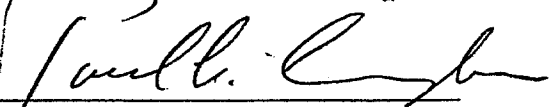
Applicants are filing these Comments on the status of GLT issues because the litigation and political consternation stirred up by GLT's claims is distracting from the real job that remains – making the otherwise uncontroversial Transaction work for CN/WC's customers. We need to get on with the business 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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Railway Company, Grand Trunk
Corporation, and WC Merger Sub,
Inc.

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.

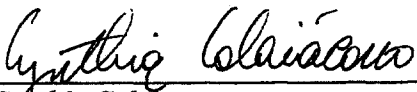
Executed on June 19, 2001.



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 Colaiaacovo