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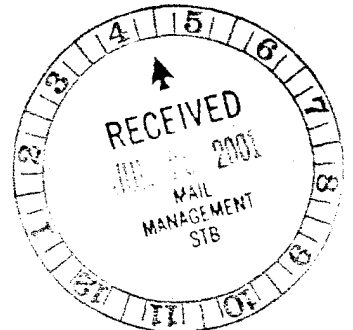
JUL 26 2001

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Public Record

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 and Western Ltd.,
Sault Ste. Marie Bridge Company, and
Wisconsin Chicago Link Ltd.*



REPLY COMMENTS

submitted on behalf of

UNITED STATES STEEL LLC

Nicholas J. DiMichael
Frederic L. Wood
Jeffrey O. Moreno
Michael H. Higgins
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 25, 2001

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,
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Sault Ste. Marie Bridge Company, and
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REPLY COMMENTS

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UNITED STATES STEEL LLC

This proceeding involves the application of Canadian National Railway Co., et al. ("CN") for approval by the Board under the provisions of 49 U.S.C.A. § 11323-26 of CN's acquisition of control of Wisconsin Central Transportation Corp., et al. ("WC") (collectively "Applicants" or "CN/WC"). These Reply Comments are submitted by United States Steel LLC ("U. S. Steel") in accordance with the procedural schedule established by the Board's Decision No. 2 in this proceeding.

U. S. Steel supports the basic transaction set forth in the original Application, because the control and merger of WC by CN appears to offer opportunities for rail transportation services that would meet the present and future transportation needs of U. S. Steel. However, recent

events arising out of the participation in this proceeding by Great Lakes Transportation LLC ("GLT") require U. S. Steel to object in the strongest terms to any approval by the Board that involves compliance with or enforcement of the terms of a recently-disclosed "Settlement Agreement" between CN and GLT. These Reply Comments are therefore submitted by U. S. Steel in strong opposition to the request by GLT, which was submitted in GLT's Comments filed June 25, 2001 (GLT-14) and supplemented with a filing by GLT on July 18 (GLT-16), requesting the Board to impose compliance with the Settlement Agreement as a condition of the proposed transaction.

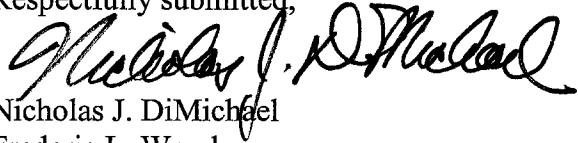
These Reply Comments consist of two parts.

Part I contains the verified statement of Mr. Richard M. Efke, Director, Raw Materials Planning, Procurement, Distribution and Sales of U. S. Steel, as well as excerpts from the transcripts of two depositions taken by U. S. Steel in this proceeding. For the convenience of the Board, Part I also contains a schematic of taconite shipments in the Great Lakes Region that was attached as Attachment A to GLT's June 25 Comments. This schematic shows current and future competitive rail transportation options of U. S. Steel and certain other domestic steel producers, that are at issue in this proceeding.

Part II contains the Argument of U. S. Steel.

For all of the reasons set out in the Evidence and Argument presented in these Reply Comments, U. S. Steel urges the Board not to impose any condition involving the GLT/CN Settlement Agreement on its approval of the proposed acquisition of control of WC by CN.

Respectfully submitted,



Nicholas J. DiMichael

Frederic L. Wood

Jeffrey O. Moreno

Michael H. Higgins

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 25, 2001

PART I

VERIFIED STATEMENT OF RICHARD M. EFKEMAN

**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.**

RAILROAD CONTROL APPLICATION

**VERIFIED STATEMENT OF
RICHARD M. EFKEMAN
ON BEHALF OF
UNITED STATES STEEL LLC**

I, Richard M. Efke, being duly sworn, say:

My name is Richard M. Efke, and I reside at 3013 Sturbridge Court, Allison Park, Pennsylvania 15101. I am currently employed by United States Steel LLC (hereinafter "U. S. Steel"), and my business address is 600 Grant Street, Room 2382, Pittsburgh, Pennsylvania 15219-2749.

I have been employed by U. S. Steel for approximately 30 years, and for the past 2 1/2 years, I have had responsibility for raw materials including transportation. My current job title is Director - Raw Materials Planning, Procurement, Distribution & Sales. In that position I have had, until recently, responsibility for managing, in conjunction with U. S. Steel's Distribution & Logistics Services Department, movements of coal, coke, limestone, iron ore, taconite pellets and bentonite via rail, truck and/or barge to and from all U. S. Steel facilities and to customer facilities. Effective May 1, 2001, as a result of a corporate reorganization, I have been given sole responsibility for managing the raw

material movements referenced above. I am authorized to submit this statement on behalf of U. S. Steel in this proceeding in support of the above-referenced railroad control application, but opposing imposition, as a condition of the proposed merger between the Canadian National Railway Company ("CN") and the Wisconsin Central Railroad Company ("WC"), a Settlement Agreement between the CN and Great Lakes Transportation LLC.

I. U. S. Steel's Business

U. S. Steel is the largest domestic integrated producer of iron and steel products.¹ U. S. Steel, with executive offices in Pittsburgh, manufactures and sells a variety of steel mill products, coke and taconite pellets. Primary steel operations are: the Mon Valley Works (which includes the Edgar Thomson steelmaking and Irvin finishing operations) on the Monongahela River near Pittsburgh; the Gary (Indiana) Works; the Fairfield (Alabama) Works near Birmingham; and U. S. Steel Košice, s.r.o. in the Slovak Republic. U. S. Steel's domestic production capacity totals approximately 12 million tons of steel per year, and in 2000 domestic steel shipments totaled 10.4 million tons. Since each ton of finished steel requires approximately three tons of raw materials, U. S. Steel's dependence on the transportation industry, especially rail and water carriers, is vital to its continued ability to remain in business. The movement of raw materials and finished products in large volumes over great distances mandates the use of railroads and water carriers as the primary transportation sources.

¹ U. S. Steel was formerly a division of USX Corporation. USX recently completed a reorganization into a holding company. In this transaction USX created a new wholly owned subsidiary named USX HoldCo Inc. USX HoldCo Inc. in turn formed a new wholly owned subsidiary named United States Steel LLC. Effective July 2, 2001, USX Corporation was merged into United States Steel LLC. In this merger, United States Steel LLC was the survivor. In addition, USX HoldCo Inc. changed its name to USX Corporation. As a result of this reorganization the domestic steel business formerly conducted as an unincorporated division of USX, is now conducted by United States Steel LLC as a wholly owned subsidiary of the new holding company.

U.S. Steel and the entire domestic steel industry are in the midst of a crisis caused by unfairly traded imports. On June 5, 2001, President Bush announced that his administration will initiate a trade action under Section 201 of the U.S. Trade Act of 1974. Under Section 201, the U.S. International Trade Commission will investigate whether domestic steel makers are being harmed by imported steel, and, if injury is proved, will propose remedies for consideration by President Bush. As a national policy matter, the Surface Transportation Board should be extremely concerned about the implications of the long-term, anticompetitive condition being sought in this proposed rail merger that is adverse to the interests of U.S. Steel and other steel producers, at the same time that the Bush Administration is attempting to ensure the competitiveness of the domestic steel industry.

II. U. S. Steel's Relationship to Great Lakes Transportation

Until December 1988, U. S. Steel owned the current subsidiaries of Great Lakes Transportation LLC ("GLT"), namely, the Duluth, Missabe & Iron Range Railway ("DM&IR"); USS Great Lakes Fleet, Inc. ("Fleet"); the Bessemer and Lake Erie Railroad ("B&LE"); and the Pittsburgh & Conneaut Dock Company ("P&C Dock"). In December of 1988, U. S. Steel sold a majority interest in the GLT subsidiaries and in other of its subsidiary transportation companies. See Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P. and USX Corporation - Exemption From 49 USC 10746, 11321 and 11343, Finance Docket No. 31363, decision dated December 19, 1988.

On March 23, 2001, U. S. Steel re-acquired ownership of all its former transportation subsidiaries, except the DM&IR, Fleet, B&LE and P&C Dock, which became wholly-owned subsidiaries of GLT at that time. See USX Corporation--Control Exemption--Transtar, Inc. Finance Docket 33942, Decision dated November 30, 2000,

65 FR 71356. As a result, U.S. Steel currently has no affiliation with GLT or any of its subsidiaries.

III. U. S. Steel's Taconite Traffic

A. *U.S. Steel's Taconite Production Facility*

U. S. Steel's Minnesota Ore Operations Mine ("Minntac") is located just north of Mountain Iron, Minnesota, on the Mesabi Iron Range. Minntac, which is owned and operated by U. S. Steel, mines and processes taconite, an iron ore-bearing rock that contains anywhere from 15 to 30 percent magnetic iron particles. The processed taconite is fired into pellets which are charged into a blast furnace to make molten iron, which is, in turn, used to make steel. Minntac's East Pit is 1 1/2 miles wide and 3 miles long. Minntac is currently digging on its 11th bench in the East Pit. Each bench is 40 feet deep, making the current depth 440 feet. Minntac's West Pit is 1 3/4 miles wide and 5 miles long, and is currently digging on the 8th bench (that is, 320 feet deep). Covering over 37,000 acres, Minntac is North America's largest taconite plant. Minntac currently ships approximately 16.4 million net tons of taconite per year, which is close to capacity.

Minntac's major competitors on the Minnesota Iron Range are: Hibbing Taconite, served by the Burlington Northern Santa Fe ("BNSF"); National Steel Pellet Plant, served by the BNSF; Eveleth Taconite, served by the DM&IR; Minorca Mine, served by the DM&IR; and North Shore Mine, located on Lake Superior, which loads pellets directly to lake vessels. Additional domestic competition is provided by two Michigan taconite producers, Tilden Mining and Empire Mining, both served by the WC. Minntac also faces foreign competition from Canadian producers and South American (Venezuelan & Brazilian) pellet producers. Because the fixed costs involved in operating Minntac are large, it is very much in U. S. Steel's interest to operate the facility at or near capacity, in order to produce low-cost pellets for movement to U. S. Steel's steel production facilities and for sale to third parties.

The DM&IR is the sole rail carrier accessing Minntac. All rail traffic in and out of the facility is handled by the DM&IR. Under normal operations, five unit trains per day are scheduled out of Minntac's Agglomerator stockpiles. Four of these trains are shipped to a DM&IR dock (usually Two Harbors, MN) for transfer to lake vessel or for storage pending movement on the lakes. The fifth train normally moves all-rail to a western customer (Geneva Steel in Provo, Utah) or to U.S. Steel's Fairfield Works near Birmingham, AL. Each unit train to the docks consists of approximately 116 DM&IR ore jennies with each car holding approximately 70 gross tons of pellets. Each train shipped all-rail consists of approximately 105 hopper cars supplied by a trunk line, with each car holding approximately 89 gross tons. It takes about 2 hours to load each unit train.

Taconite production from Minntac is shipped to consuming locations via two general methods: (a) combined rail-water transportation; and, (b) all-rail transportation.

Under the combined rail-water method, Minntac normally ships pellets by train destined for lake transportation via the DM&IR to a dock owned and operated by the DM&IR at Two Harbors, Minnesota, although a small percentage moves over a DM&IR dock at Duluth, MN. The pellets are loaded onto ore freighters and shipped to two general types of destinations. First, at the upper lake dock, taconite pellets are shipped direct to lower Great Lakes steel mills that are located on the lakes ("rail-lake" shipments). These mills include, but are not limited to, U. S. Steel's facility at Gary, Indiana ("Gary Works") and Republic Technologies International's facility at Lorain, Ohio ("Lorain Works"). Second, pellets are also shipped to the lower lake transloading facility at Conneaut, Ohio, which is owned by the B&LE and operated by P&C Dock, for transfer to rail for onward movement by rail to eastern steel mills not located on the lakes ("rail-lake-rail" shipments). Steel mills not located on the lakes include, but are not limited to, U. S. Steel's Edgar Thomson Plant near Pittsburgh, Pennsylvania.

U. S. Steel is required by contract to ship most of its taconite shipments moving on the Great Lakes via USS Great Lakes Fleet, Inc. ("Fleet"). U. S. Steel is also required by contract to source a minimum of sixty percent (60%) of its iron ore or taconite requirements at its Edgar Thomson plant through Conneaut, Ohio for movement on the B&LE.

In summary, Minntac's shipments on the Great Lakes consist of two types of shipments: (1) "rail-lake" shipments direct to blast furnace consumption points located on the lakes, and (2) "rail-lake-rail" shipments to eastern consumption points not located on the lakes.

The second general method of shipments from Minntac is an all-rail method. Minntac ships direct rail to U. S. Steel's own Fairfield Works in Birmingham, Alabama, and to Geneva Steel in Provo, Utah. As noted further below, U. S. Steel also can ship and has shipped certain taconite via an all-rail movement to its Edgar Thomson plant near Pittsburgh.

B. Taconite/Ore Consuming Facilities

In addition to its all rail shipments to its customer, Geneva Steel, in Utah, U. S. Steel currently ships to four primary ore consuming facilities in the United States: the Edgar Thompson Plant, located in the vicinity of Pittsburgh, PA; the Gary Works, located in Gary, Indiana; the Fairfield Works, near Birmingham, AL; and Lorain Works, near Lorain, Ohio. I will discuss each of these in turn.

1. Edgar Thomson Plant (Pittsburgh, PA vicinity)

U. S. Steel's historic Edgar Thomson plant in Braddock, Pennsylvania, near Pittsburgh, is the "hot end" of the Mon Valley Works, where iron ore is converted into steel. Andrew Carnegie's first plant, Edgar Thomson was built in 1875 to make steel rails for the rapidly expanding railroads and was named after the president of the

Pennsylvania Railroad at the time. While Edgar Thomson's roots go back to the beginnings of the American steel industry, the plant is among the most modern and productive integrated steelmakers in the world. In 2001, Edgar Thomson was awarded the Department of Energy Office of Industrial Technology's Plant of the Year award.

Edgar Thomson produces about 2.8 million tons of raw steel each year. The raw steel becomes the slabs which are finished into value-added sheet products at the Mon Valley Works finishing operation, named the Irvin Plant, primarily for use in the automotive and appliance industries. Edgar Thomson is served by rail through a switching carrier, the Union Railroad ("URR"), which connects to the major eastern trunk lines, NS and CSX, as well as the B&LE and the Wheeling and Lake Erie Railroad ("W&LE"). Edgar Thomson's requirements for taconite during the past five years have been as follows:

YEAR	TACONITE CONSUMPTION (net tons)
2000	3,173,932
1999	3,334,455
1998	3,035,385
1997	2,729,304
1996	2,995,181

As indicated above, contractual commitments between U. S Steel and GLT require that a minimum of 60% of Edgar Thomson's taconite requirements move through the P&C Dock facility at Conneaut, Ohio for movement to Edgar Thomson via the B&LE. This means, however, that transportation for 40% of the plant's taconite requirements -- or approximately 1,300,000 tons -- can be bid competitively. Edgar Thomson has limited storage capacity for taconite, and thus maintains its winter storage pile at Conneaut, Ohio. As I discuss in more detail later in this statement, in order to avoid the cost of

building a winter stockpile at Conneaut, U.S. Steel has the option, during the winter, to source Edgar Thomson from Minntac via an all-rail route; or to displace its own pellets with foreign pellets moving through New Orleans for barge movement to Pittsburgh. Rail routes used in the past for the all-rail movement to the Edgar Thomson facility have been: (1) the DM&IR to South Itasca, WI; thence on the WC to Chicago; thence on the CSX to Pittsburgh, PA; and at Pittsburgh, the URR to the plant; and, (2) the DM&IR to South Itasca; thence on the WC to Chicago; and thence on Conrail to Pittsburgh, for transfer to the URR to the plant.

2. Gary Works (Gary, Indiana)

Gary Works is U. S. Steel's largest manufacturing plant and the largest integrated steel plant in North America. Covering almost 4,000 acres on the south shore of Lake Michigan in Gary, Indiana, the plant is close to the major automobile manufacturing areas of the country and has excellent access to water and rail transportation and to major interstate highways. Raw materials arrive and finished steel departs daily by ship, barge, train and truck. Starting with raw materials – iron ore, coal, coke and limestone – Gary Works has the capacity to produce 7.7 million tons of raw steel annually. The raw steel is processed into a wide variety of value-added, flat steel products – hot-rolled sheet, cold-rolled sheet, coated sheet, tin mill products and steel plate – used in automobiles, food packaging, appliances and construction. The plant purchases more than \$1 billion in goods and services per year.

Taconite shipments to Gary Works arrive on self-unloading lake vessels which discharge directly into Gary Works' ore yard adjacent to its blast furnaces. The ore yard has storage capacity of approximately 2.5 million tons of pellets. That storage capacity is used to maintain a winter storage pile sufficient to meet Gary Works' requirements for pellets during the period lake transportation from Lake Superior is not available. Gary Works is not configured to efficiently receive taconite via rail, and capital expenditures

would be required to permit efficient delivery of pellets by rail. Rail service to and from Gary Works is provided by the Elgin, Joliet and Eastern Railway Company ("EJ&E"), an indirect subsidiary of U.S. Steel, which connects to all major trunk lines serving the Chicago area, including CN and WC. Taconite consumption at Gary Works during the past five calendar years has been as follows:

YEAR	TACONITE CONSUMPTION (net tons)
2000	7,782,312
1999	8,060,077
1998	7,424,474
1997	8,184,336
1996	7,364,865

3. *Fairfield Works (Birmingham, AL vicinity)*

U. S. Steel's Fairfield Works, located near Birmingham, Alabama, is a one blast furnace facility, with the capacity to produce approximately 2.9 million net tons of raw steel per year. Fairfield Works includes a modern seamless pipe production facility and ships both steel sheet products and tubular products to its customers. Fairfield is served by rail by the Birmingham Southern Railroad Company ("BSRC"), an indirect subsidiary of U. S Steel, which connects with the major southern trunk lines and with a barge-rail transloading facility operated by Warrior & Gulf Navigation Company on the Black-Warrior River near Birmingham. Fairfield's consumption of taconite during the past five years has been as follows:

YEAR	TACONITE CONSUMPTION (net tons)
2000	2,996,296
1999	2,912,286

1998	3,028,756
1997	3,377,276
1996	2,619,518

Because U. S. Steel's business strategy has been to attempt to operate Minntac at or near capacity, but also to avoid expensive transportation movements when possible, Fairfield's source for its pellet requirements has fluctuated. When steel markets are strong and U. S. Steel has the ability to operate Minntac at capacity while shipping only to U. S. Steel's northern facilities (Gary & Edgar Thomson) and to third party customers, U. S. Steel sources Fairfield with foreign pellets shipped through the port of Mobile for barge movement to Port Birmingham and transloading to the BSRC for movement by rail to the plant. If U. S. Steel is unable to maintain Minntac at capacity solely with northern shipments, U. S. Steel will source Fairfield with pellets from Minntac. U. S. Steel is currently sourcing Fairfield with Minntac pellets moving via a DM&IR - BNSF - BSRC route. The proposed CN/WC merger is pro-competitive for Fairfield's taconite requirements, because it offers a new route: the DM&IR to South Itasca, WI; the merged CN/WC to Memphis, TN; the BN, NS or CSX to Birmingham; and finally the BSRC to the plant. This statement will not address Fairfield's sourcing in detail, because Fairfield is not a destination covered by the Settlement Agreement between GLT and CN. The Settlement Agreement does not preclude U.S. Steel, or other taconite producers located on the DM&IR, from negotiating joint-line all rail rates directly with the merged CN/WC for movements to Fairfield.

4. Lorain Works (Lorain, OH)

Lorain Works, currently owned and operated by Republic Technologies International LLC ("RTI") is located on Lake Erie at Lorain, Ohio, just west of Cleveland.

Lorain Works is a significant customer for Minntac. Shipments from Minntac to Lorain during the past five years have been as follows:

YEAR	TACONITE CONSUMPTION (net tons)
2000	2,537,050
1999	1,659,370
1998	2,224,145
1997	2,661,531
1996	3,087,871

Like Gary Works, Lorain is configured to receive pellets via lake vessel and cannot efficiently receive taconite via rail.

IV. Actual and Potential Competition Between All-Rail and Rail-Water Movements

A. Current Competitive Situation Between All-Rail and Rail-Water Movements

Because U. S. Steel's commitment to Fleet is only a percentage of U. S. Steel's requirements for lake transportation, Fleet's rail-lake and rail-lake-rail movements of taconite have been and continue to be subject to all-rail competition. As noted, U. S. Steel has an obligation to source only 60% of Edgar Thomson requirements through Conneaut, Ohio. As a result, both 40% of Edgar Thomson's requirements as well as 100% of Minntac's shipments to other U. S. Steel mills or to customers, have had and will continue to have the flexibility to be shipped (1) via rail-lake or (2) rail-lake-rail routes or via the competing all-rail routes.

The DM&IR, of course, is the originating carrier on all of the competing routes. Despite the historic availability of all-rail competition to movements via the Great Lakes,

U. S. Steel's experience has been that rail carriers have not been able in the past to match the price of rail-lake movements of taconite directly to consumption points, that is, to facilities located directly on the lake, such as Gary Works and Lorain Works. Moreover, as discussed above, neither of these two lake front mills currently receiving Minntac pellets are configured to permit efficient receipt of pellets by rail.

However, the situation for consuming plants not located on the Great Lakes has been different. In the past, it has been difficult, but not impossible, for rail carriers to compete with rail-lake-rail movements of taconite when the Great Lakes are open for transportation. However, at the present time, during the winter months, lake shipments cannot physically be made from Lake Superior ports to the lower lakes, since the Soo locks at Sault Ste. Marie between Lake Superior and Lake Huron close on January 15 and do not reopen until March 25. As a result, U. S. Steel has required, and will continue to require, an all-rail option to source some of its requirements at Edgar Thomson.

Specifically, eastern steel production facilities that are not located directly on the Great Lakes (such as U. S. Steel's Edgar Thomson Plant), for which a final rail movement from the Lake ports to the plant is required, have the following options for their winter supply of pellets: (1) during the lake shipping season, to build and maintain a winter stockpile of pellets, either at the consumption point or at a lower lake Erie port such as Conneaut, Ohio; (2) to ship pellets via an all rail route during the winter; or (3) to replace domestic pellets with foreign pellets during the period the lakes are closed for shipping.

Option 1, of course, is the antithesis of just-in-time delivery and requires that the receiving plant incur the considerable expense of building a large inventory of pellets well in advance of the time they are actually needed. In order to avoid the expense of maintaining a large winter inventory for its Edgar Thomson Works, it has been attractive

to U. S. Steel to consider Options 2 and 3 for its winter requirements. Option 2 - all-rail shipments of Minntac pellets -- is preferable because it maintains sourcing from U. S. Steel's own production facility at Minntac. In addition, all-rail movements significantly reduce handling of the pellets which results in better quality of the pellets (i.e., less "fines" caused by breakage and deterioration). Also, it has been U. S. Steel's experience that when the Great Lakes close for shipping, rail hopper cars used in rail-lake service often become available for a seasonal movement at attractive rates.

In recent years, the WC has been the most aggressive competitor for the all-rail movement to Edgar Thomson and all-rail taconite movements from Minntac have typically moved via the DM&IR -WC - CSX route to the plant. During the last five winter seasons, U. S. Steel has moved the following quantities of pellets to Edgar Thomson Works via the following routes during winter months:

WINTER SEASON	VOLUME (NT)	ROUTE
2000-2001	0	N/A
1999-2000	292,006	DM&IR-WC-CSX
1998-1999	0	N/A
1997-1998	371,481	DM&IR-WC-Conrail
1996-1997	605,017	DM&IR-WC-CSX

The fluctuations in the all-rail winter movement to Edgar Thomson are caused by excess inventory buildups at Conneaut, OH. If U.S. Steel's projections of its inventory requirements at Conneaut exceed Edgar Thomson's actual needs, which typically occurs when steel markets deteriorate, the excess inventory may be sufficient to meet Edgar Thomson's winter requirements, without any all-rail shipments.

It is important to note that this all-rail option for the winter supply of pellets affects the competitive situation vis-à-vis GLT throughout the year, because GLT, if it is to win the "winter" business, must carry the pellets during the non-winter months, and must therefore price its transportation service in non-winter months accordingly.

B. Potential Future Competitive Situation

The CN/WC merger, if approved, would create a very attractive new all-rail route to the Edgar Thompson plant for U. S. Steel for the future. At the present time as noted above, an all-rail movement to the Edgar Thomson plant involves three rail carriers: the DM&IR to South Itasca, WI; the WC to Chicago; an interchange in Chicago with the CSX or the NS and a movement beyond to Pittsburgh.

If the merger of the CN and WC is approved, a new all-rail movement would involve the DM&IR to South Itasca, WI; thence on the merged CN/WC all the way to Toledo, Ohio; and finally on the W&LE to Edgar Thomson at Pittsburgh. This route would substantially extend the current all-rail movement over the WC, which now terminates in Chicago where WC interchanges with either the NS or the CSX, eastward over a merged CN/WC to Toledo. The W&LE currently interchanges with the CN near Toledo and could transport the pellets to Pittsburgh for delivery to the plant. The new route would avoid an interchange in Chicago.

A major advantage of this route is that it would avoid (and thus provide a competitive alternative to) the major trunk line carriers in the east, CSX and NS. Both CSX and NS have advised U. S. Steel to expect double-digit percentage rate increases in 2002, far in excess of the anticipated percentage increases communicated to U. S. Steel by our western rail carriers. U. S. Steel believes that, having suffered the expense of serious service disruptions arising out of the CSX and NS acquisition of Conrail, eastern shippers such as U. S. Steel may now be subjected to unreasonable increases to permit NS and CSX recover from financial difficulties arising out of the Conrail

acquisition. As a result, an ability to move taconite during the winter months to Edgar Thomson, via an all-rail route that does not include NS or CSX, is very attractive to U. S. Steel.

V. The Great Lakes-CN Agreement is Anti-Competitive

U. S. Steel believes that the GLT-CN Settlement Agreement is a naked non-compete arrangement, clearly designed to prevent all-rail movements over the merged CN/WC from competing with moves currently being handled by Fleet and the B&LE.

DM&IR needs no protection from competition since it is the originating carrier on both the all-rail and the rail-lake or rail-lake-rail movements from the taconite facilities it serves. Paragraph II (A) (2) of the Settlement limits its scope to specific destinations. The destinations (specified in the Settlement) and the steel companies at those destinations (not specified in the Settlement) are as follows: Gary, IN (U. S. Steel); Indiana Harbor, IN (Ispat Inland Steel); Pittsburgh/Braddock, PA (U.S. Steel); Nanticoke, ON (Stelco, Inc.); and Lorain, OH (Republic Technologies International). Thus, three of the five destinations specified in the Settlement Agreement involve the movement of U.S. Steel taconite. Other eastern steel producers, which compete directly with the facilities subject to the anti-competitive Settlement Agreement, remain entirely free from the anti-competitive constraints of the Settlement Agreement.

As a result, eastern steel producers such as AK Steel located in Middleton, OH, Weirton Steel located in Weirton, WV, and Wheeling Pittsburgh Steel located in Wheeling, WV would be able to move pellets from Minntac and other facilities served by the DM&IR, via the merged CN/WC free from anti-competitive constraints designed to ensure that pellets move on the Great Lakes. If CN/WC competes aggressively for winter movements to other eastern producers, it is quite possible that Minntac could sell pellets to direct competitors of U. S. Steel which will have the ability to move pellets via

an all-rail route to their facilities at more attractive rates than those available to U. S. Steel for movement to Edgar Thomson.

The blatant discrimination arising out of the Settlement is three-fold. First, U. S. Steel's taconite production facility will be prejudiced because it competes directly with taconite producers not located on the DM&IR, who are not subject to the Settlement Agreement, and who will be able to market pellets to the non-U. S. Steel destinations covered by the Settlement Agreement, without being subject to the same anti-competitive constraints that will affect Minntac's shipments. Thus, the full benefit of increased competition arising out of the CN/WC merger will accrue to some of Minntac's direct competitors, while those same benefits will be denied, or at least reduced, for Minntac. U. S. Steel's Edgar Thomson facility will also be prejudiced because it competes directly with steel producers such as AK Steel, Weirton Steel and Wheeling Pittsburgh Steel, who will not in any way be constrained by the Settlement Agreement. Finally, the CN/GLT Settlement Agreement prevents U. S. Steel from benefiting from the proposed merger between CN and WC, which would create a competitive alternative to the CSX and NS for the all-rail movement beyond Chicago.

In addition, U. S. Steel is party to a long term contract with GLT which governs rate negotiations with the DM&IR. That agreement provides that the DM&IR's division of joint line rail rates shall increase or decrease (subject to a minimum rate) by the same percentage increase or decrease which U. S. Steel negotiates with other carriers in the route. As a result, there is little, if any, need for U. S. Steel to negotiate with the DM&IR concerning all-rail movements. Thus, U. S. Steel's negotiations directly with trunk line railroads, which have an interest in promoting all-rail options to movements on the Great Lakes, are determinative of the DM&IR's division of the through rate. Furthermore, the DM&IR cannot address the car supply issues which are crucial to any all-rail movement because its ore jennies are precluded under AAR rules, due to their age, from interline

service. In other words, other rail carriers involved in an all-rail route to Edgar Thomson are true competitors of the Fleet and the B&LE. The DM&IR's interest, by contrast, as clearly set forth in GLT's filings in this proceeding, is to maximize the tonnage moved via its affiliates (Fleet & B&LE) over rail-lake and rail-lake-rail routes. But the Settlement Agreement puts U. S. Steel in position of being required to negotiate all-rail movements over the merged CN/WC with an entity (DM&IR) that has a compelling interest to not let any taconite be diverted from the Fleet to all-rail movements.

VI. Conclusion

U. S. Steel supports the basic merger of the CN and WC, since that merger -- unconditioned by the CN/GLT Settlement Agreement -- is likely to result in better rail service and more competitive rail transportation. However, U. S. Steel strongly opposes conditioning that merger on the CN/GLT Settlement Agreement, which is designed to protect direct competitors from competition. As a result, U. S. Steel respectfully requests that the Board deny the request by CN and GLT that their Settlement Agreement be imposed as a condition of the merger.



Richard M. Efke

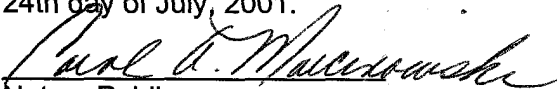
VERIFICATION

I have read the foregoing statement, and do hereby affirm that it is true and correct to the best of my knowledge, information and belief.



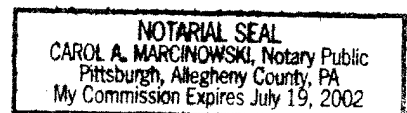
Richard M. Efke

Subscribed and sworn to before me this
24th day of July, 2001.



Notary Public

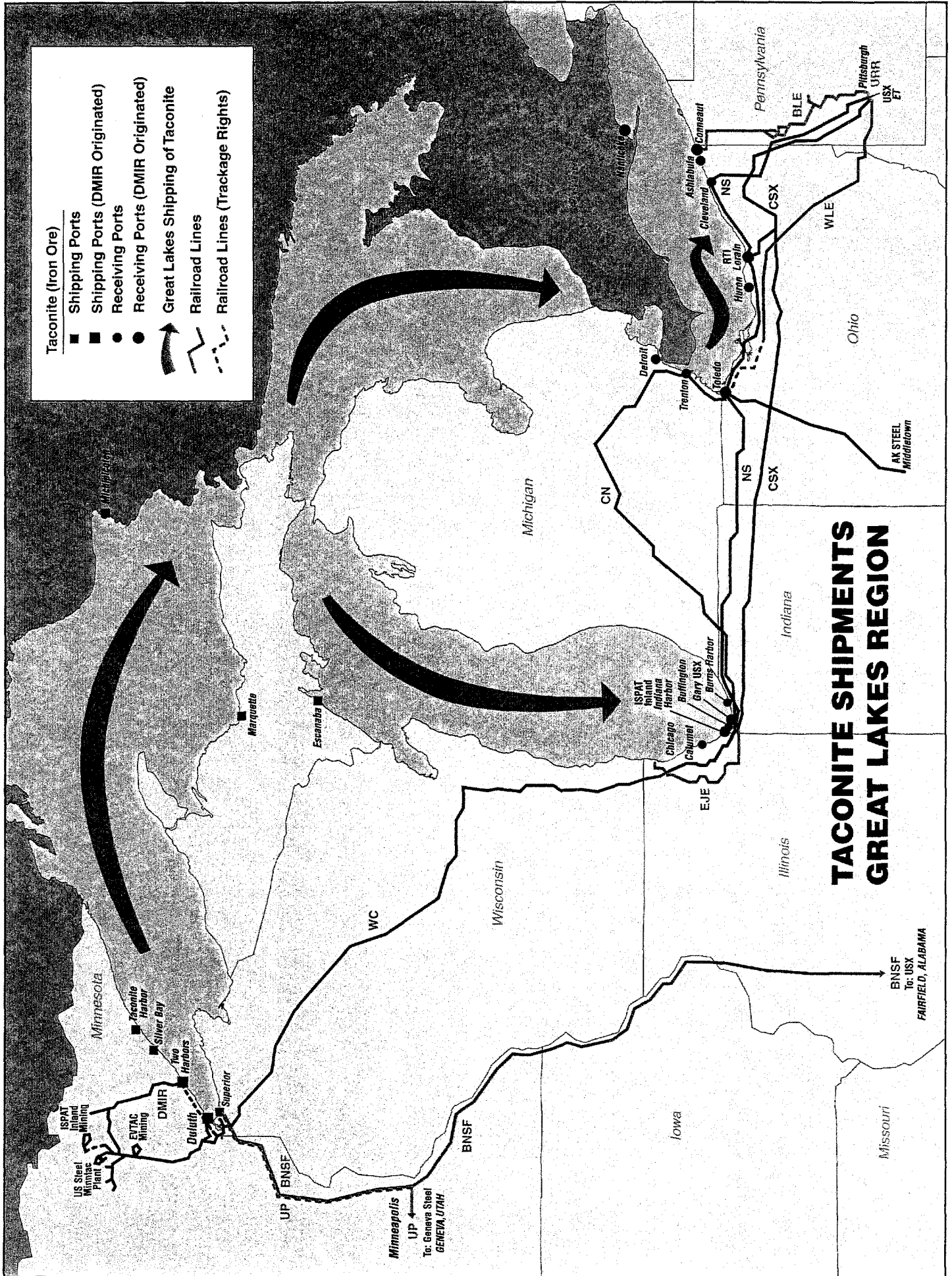
My Commission Expires: _____



SCHEMATIC OF TACONITE SHIPMENTS, GREAT LAKES REGION

Taconite (Iron Ore)

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



**TACONITE SHIPMENTS
GREAT LAKES REGION**

BNSF
To: USX
FAIRFIELD, ALABAMA

DEPOSITION
TRANSCRIPT EXCERPTS

BEFORE THE

SURFACE TRANSPORTATION BOARD

CANADIAN NATIONAL RY. CO.)
et al. - Control -)
Wisconsin Central) Finance Docket
Transportation Corp.) No. 34000
et al.)

DEPOSITION OF JOHN ERNEST GILES,

taken pursuant to the Federal Rules of Civil
Procedure, before Sheila A. Rivers, Registered
Professional Reporter-Notary Public in and for the
Commonwealth of Pennsylvania, on Tuesday, July 17,
2001, at the offices of Great Lakes Transportation,
LLC, 135 Jamison Lane, Monroeville, Pennsylvania
15146, commencing at 9:00 o'clock a.m.

HIGHLY CONFIDENTIAL CONTENT

- - -

18

and Joe Schulte, my CFO.

2 Q. And when did the second meeting that you
3 recall take place?

4 A. I'd say -- again, I don't have the dates in
5 my mind, but I would say a few weeks after that.

6 Q. And who participated?

7 A. Jim Foote and Rusty Radloff from CN, and the
8 same people from Great Lakes, John Giles and Joe
9 Schulte.

10 Q. Did Jerry Vest participate in any of the
11 meetings?

12 A. No.

13 Q. What was Mr. Vest's role in negotiating this
14 agreement?

15 A. He had a series of conversations with
16 principals in my organization, gathering facts,
17 getting perspective, researching particular kinds of
18 things that got embedded in the final agreement and,
19 in turn, had a series of conversations with Rusty
20 Radloff about the particulars of the agreement. And,
21 to my knowledge, all over the telephone.

22 Q. What is Mr. Vest's expertise?

23 A. Jerry is a businessman, he has some

19

1 experience in mergers, regulatory proceedings.

2 Q. For what expertise did you engage him to
3 represent you in these negotiations with the CN?

4 A. I actually didn't retain him to negotiate
5 with the CN. I retained him and his firm to help
6 guide me through the process of the CN/WC merger, how
7 it relates to the STB and the range of roles and
8 options we had, Great Lakes had, available to it.
9 So, it was a big picture kind of perspective.

10 Q. Did you see any drafts of this June 22 letter
11 prior to this final version that is Attachment B to
12 Exhibit 1?

13 MR. MEYER: You know, at this point I
14 think I'm inclined to just cut this off. Again, if
15 you want to ask him about the June 22nd letter, you
16 want to ask him about the nature of the agreement
17 between CN and Great Lakes, that's fine. I'm not
18 going to limit that at all.

19 But I think going into the extent to which
20 there were drafts, presumably in order to glean
21 something about the substance of the negotiating
22 process and the back-and-forth subjects that are
23 covered in the June 22nd agreement, is something that

20

1 is not permitted under the Board settlement
2 privilege. And I don't think it's appropriate.

3 MR. MORENO: Are you directing Mr. Giles
4 not to respond to my question?

5 MR. MEYER: I think at this point, I am.

6 BY MR. MORENO:

7 Q. Why is Great Lakes concerned with the CN/WC
8 merger? Let me narrow this even more. What concerns
9 does Great Lakes have with the CN/WC merger that this
10 June 22nd letter is intended to address?

11 A. One of the benefits for us, and I think the
12 shipper, is that this institutionalizes an
13 arrangement where the principals, meaning shippers,
14 rail carriers and DM&IR, are actively engaged in
15 talking about the development of options and
16 alternatives and solutions for shippers. It creates
17 a forum where those conversations can take place.

18 Q. And was Great Lakes concerned that this
19 proposed merger would eliminate such a forum?

20 A. There was some concern.

21 Q. How did you believe that would occur?

22 A. We wanted to be sure that on DM&IR-origin
23 traffic, that we had an appropriate set of

21

1 arrangements with WC and CN to work together and
2 cooperate. And that's what this was designed to do
3 for us.

4 Q. If I can focus your attention on the second
5 paragraph of the letter, the last sentence of that
6 paragraph states, "Nevertheless, given that we are
7 incurring substantial costs to litigate your claims,
8 and that we expect to incur no economic loss from
9 meeting your goals, we offer the following for your
10 consideration." Then the next paragraph begins, "One
11 means to achieve your goal..."

12 What is your understanding of Mr. Radloff's
13 reference to "your goals," I assume meaning Great
14 Lakes' goals, in this letter?

15 A. One of the concerns we had coming out of our
16 closing in March was the need to be good stewards for
17 the assets and responsibilities we'd assumed taking
18 over the companies, the four companies. And as we
19 read the verified statements of Mr. Foote and Mr.
20 Schauer, we had a concern that on DM&IR origins, in
21 particular, that the CN/WC merger would target those
22 movements and put in a rate that would be not
23 sustainable in the long term, but be problematic in

22

1 the short term for us.

2 So, our intention was to, in a sense, bring
3 the process to light, make it visible, make certain
4 that people understood the implications and what was
5 really being said so that as that situation evolved,
6 we would be able to at least deal with it on top of
7 the table.

8 Q. What did you anticipate could be problematic
9 about a CN/WC rate after the merger?

10 A. Over the years, I've seen railroads with
11 significant aspirations for growth make some
12 significant mistakes in terms of approaching markets
13 and commodities. In instances, I've seen Class 1
14 railroads make initiatives into markets and
15 commodities in short term, come to realize that it
16 wasn't a sound economic decision in the long term,
17 and then withdraw from those markets. I've seen the
18 kind of harm that does, both to the infrastructure in
19 those areas, and also the harm to the shipper who is
20 then disadvantaged as they try to pick up the pieces
21 and go forward.

22 Q. So, was it your concern that the CN would
23 compete for taconite traffic in a way that would be

23

1 harmful to Great Lakes and its subsidiaries?

2 MR. MEYER: Object to the form.

3 THE WITNESS: What does that mean?

4 MR. MEYER: It means I objected to the
5 form of his question, because when he said, for
6 example, the word "compete," I think that's ambiguous
7 how he's using that term.

8 If you understand the question, you can
9 answer the question. If you need him to clarify the
10 question or restate the question, you're free to ask
11 him to do that as well.

12 THE WITNESS: Okay, thank you.

13 BY MR. MORENO:

14 Q. Did you understand my question?

15 A. Give it another go, would you, please.

16 MR. MORENO: Can you repeat my question?

17 (Question read.)

18 A. Yes.

19 Q. You referenced the verified statement of Mr.
20 Foote and Mr. Schauer in the application as giving
21 cause for some of your concerns, I believe. You have
22 excerpts of that statement in Exhibit 2, if I could
23 focus your attention on that. In particular, if you

24

1 could turn to page 170, which is near the back.

2 A. (Complying.)

3 Q. The paragraph on page 170 that begins: In
4 another case, we see a potential longer term
5 opportunity to develop a new all-rail taconite
6 service between Minntac, Minnesota, and U.S. Steel's
7 Edgar Thomson Works in Pittsburgh.

8 Is this the statements or the provisions of
9 Mr. Foote's and Mr. Schauer's verified statement as
10 giving Great Lakes concern in this merger proceeding?

11 A. Yes.

12 Q. The last sentence of that paragraph states,
13 "This option might also eventually provide more than
14 a seasonal choice, as steelmakers are showing a
15 growing interest in rail service and desire to move
16 away from multi-modal transportation, particularly
17 the combined use of water and rail."

18 Do you believe an all-rail movement of
19 taconite from the Minntac Mine to U.S. Steel's Edgar
20 Thomson Works is a viable transportation alternative
21 for U.S. Steel?

22 A. Yes.

23 Q. Does Great Lakes have any concerns about the

25

1 CN/WC merger that extends beyond the scope of this
2 paragraph on page 170 that we've been discussing?

3 A. I'm not sure I know what you mean.

4 MR. MEYER: You have all of Great Lakes'
5 submissions -- they're public record in this case --
6 that speak for themselves on the subject of scope of
7 Great Lakes' concerns.

8 MR. MORENO: Mr. Giles has indicated
9 that the verified statement of Mr. Foote and
10 Mr. Schauer is what gave rise to Great Lakes'
11 concerns, and I just want to explore whether this
12 statement is the only basis for Great Lakes'
13 concerns, or whether Great Lakes has an
14 independent -- has conducted any independent
15 analyses.

16 A. Independent analysis? I'm not sure.

17 Q. Has Great Lakes explored the possibility of
18 diversions to -- of taconite traffic from Minntac to
19 the Edgar Thomson Works from a rail-water move to an
20 all-rail move?

21 A. I've been told that all-rail movements have
22 occurred in the past. They haven't occurred while
23 I've been here, but I'm told that they have occurred

26

in the past.

Q. On that basis, you believe that they could occur in the future?

A. Sure. You asked me are they viable, and the answer -- I'm answering that in the context of, yes, there are rail tracks that cover that territory, there's rolling stock and there's locomotives and people to move the trains. So, I think it's absolutely viable.

Q. Can an all-rail move from Minntac to Pittsburgh compete effectively with the rail-water rail move that exists today?

MR. MEYER: Are you talking about a seasonal basis, or year-round basis, or emergency basis, or any other basis?

MR. MORENO: Well, let's break it out.
BY MR. MORENO:

Q. First, on a year-round basis.

A. I'd answer that in two ways. At the end of the day, the shipper's going to make a decision based on the total economics of the alternatives available to the company. So, if you're asking me is it possible to put together a rate and service package

27

that could convert the business to all-rail, the answer is theoretically, sure.

The history, however, is pretty clear that -- to me at least, that when a product has been moving over a certain route for, I don't know, pick a hundred years as a reasonable amount of time, it tells you something about the basic economics of that mode, and so, you know, all things are possible.

Q. Do you believe that a CN/Wisconsin Central merger would improve the economics of an all-rail movement from the Minntac Mine to Pittsburgh?

A. I want to answer that by going back and giving an example. I gave you a conceptual response earlier in our comments. And I want to give you a very critical example now of what I saw occur.

I was in the coal department back at the Chessie system back in the early '80s, and there are significant movements of coal that moved to the Ohio and Kentucky and Mississippi River, movements and beyond. And we at Chessie were greatly concerned that the truckers were making inroads and capturing more market share and competing very effectively. And, so, it was decided to become a more aggressive

28

competitor in our movements, coal movements, to the river. So, overnight, the rates were reduced by, I don't remember, 30 percent, 50 percent, some significant reduction in the rates.

The idea of the basic premise was sound, and that is, let's build up our critical mass, let's get our costs down, let's put ourselves in position to compete more effectively with the trucks. If you could do that, good for everybody.

The facts of the matter are that we weren't able to effectively get a cost of the control. In the short term, we did grow the business significantly in terms of market share and tonnage. But within a couple of years, we looked at what had been done, and we didn't like what we saw. And so at that time, the Chessie system railroads decided to withdraw from that particular effort and go back to where it could compete more effectively based on the costs it had in place.

The problem was that in that two-year period of time, coal shippers enjoyed mixed blessings, they enjoyed short-term benefits, but long-term or intermediate-term disadvantages, because the

29

infrastructure was damaged. Effective competitors were harmed in the short term, and in a sense, it was a false start for the rail industry for Chessie.

So, if you're asking me could CN/WC put together and mount an effective campaign, I would answer to you, if they wanted to behave like Chessie did in that instance, certainly they could do that. If you're asking me do I think they could do that on a long-term basis, I would say I don't think so. A hundred years of traffic moving in a certain mode, I think, tells us all about the basic economics of rail-water.

MR. MORENO: I'd like to have Giles Exhibit 3 marked.

(Giles Deposition Exhibit No. 3 was marked for identification.)

MR. MEYER: I don't know, before you get started on this line of questioning, could we take a short break?

MR. MORENO: Sure.

(Recess.)

BY MR. MORENO:

Q. Just before the break, I had introduced

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Exhibit 3, but before I get into that, I wanted to back up to the topic we discussed at the beginning regarding the timing in which you assumed your current position. In your response, you mentioned reference to, as of the closing on March 1.

What is that a reference to?

A. March 23. Is that right, 23?

MS. GREENWALD: Yes.

A. On March 23, a new company was created called Great Lakes Transportation, and that date represented the formal closing on that new business. It was the consummation of Blackstone purchasing from USX the four companies that you referred to earlier in the deposition.

Q. And my client, U.S. Steel LLC, is a part of USX; is that --

A. Correct. Correct. Right.

So, you know, back in -- let's say on March 22nd, U.S. Steel and -- DM&IR and U.S. Steel were partners.

Q. Also in describing your role, you referred to Blackstone as a steward of the assets.

Do you recall making that statement?

31

A. No, I don't.

Q. I was just trying to get some notion as to what you meant.

A. No, I would have said that my role as president is to be a steward of the business and the people and the assets, resources.

Q. As steward of the assets in your role, what does that entail, in your mind?

A. As president and CEO, I'm the guy responsible for virtually everything within the group of four companies.

Q. Would that responsibility include maximizing the total value of Great Lakes Transportation Company?

A. Yes.

Q. Including all the subsidiaries?

A. Yes. Among other things.

Q. Right.

Would a rail-water rail move of taconite that currently exists between the Minntac Mine and the Edgar Thomson facility in Pittsburgh provide a greater revenue stream for Great Lakes Transportation than an all-rail move would?

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A. Would the current mode -- I want to make sure I understand the question.

Would the current rail-lake rail system provide more revenue than an all-rail DM&IR movement?

Q. Yes.

A. Yes.

Q. Would that also translate to a greater net income for GLT?

A. Yes.

Q. Focusing now on Giles Exhibit 3, have you -- well, this document is entitled, "Applicants' Comments On The Status Of GLT Issues," and is dated June 19, 2001.

Have you seen this document before?

A. Yes, I have.

Q. When did you first see it?

A. Presumably, I got a copy shortly after it was filed. So, I probably read it within, you know, a short period of time after that.

Q. And was this document filed in the midst of GLT's negotiations with CN that led to the June 22nd letter?

MR. MEYER: I'm going to object to the

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form. This has been asked and answered. You established the parameters of when discussions started, and you have the June 22nd letter. So, anything else is, I think, out of bounds under the settlement privilege.

MR. MORENO: Is that a direction not to answer?

MR. MEYER: If you could explain to me what it is you're getting at, how it isn't asking about the back and forth of the negotiations, I'll consider it.

MR. MORENO: That's fine. As you pointed out, it's already been answered, so it's clearly not out of bounds.

BY MR. MORENO:

Q. Focusing your attention on page 2, in the first full paragraph, beginning, "In our negotiations..." CN states that "...GLT has clarified the scope of its concerns. GLT's basic fear is that 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..."

34

1 Is that a fair characterization of your
2 concerns?

3 MR. MEYER: I just want to be clear that
4 you're asking him about GLT's concerns and not about
5 anything that was communicated in negotiations. Is
6 that right?

7 MR. MORENO: The current question is
8 directed towards GLT's concerns in this proceeding.

9 A. I want to say that it is a concern, but this
10 paragraph doesn't capture it fully. The concern we
11 had -- concern I had was that the applicants would
12 compete in a manner that I characterized the way this
13 Chessie competed for a very short period of time on
14 coal movements to the river. So, I was concerned
15 that they would compete with more of an emphasis on
16 revenue growth than on cost and true economics.

17 Q. So, is your concern with self-destructive
18 competition?

19 A. "Self-destructive," what do you mean by that?

20 Q. Let's pass that question.

21 Turning to the next page, on page 3, the
22 first full paragraph, beginning "Nevertheless," the
23 second sentence states, "Allegedly, such shifts would

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1 imperil the existence of GLT and, by extension, the
2 continued viability of the Port of Duluth."

3 Does that more accurately reflect GLT's
4 concerns in this proceeding?

5 MR. MEYER: That being what?

6 MR. MORENO: That sentence that I just
7 read.

8 A. Let me read the footnote. (Reviewing
9 document.)

10 MR. MEYER: You know, I want to
11 reiterate an objection that I stated a short while
12 ago, which is, you have in the record in this case
13 several expressions of GLT's concerns, and by GLT,
14 which are considerably more lengthy than half of a
15 sentence quoted out of the middle of something filed
16 by the applicants in this case, not by GLT. So, I
17 think trying to get this witness to testify about
18 whether half a sentence accurately describes GLT's
19 concerns, when we have it in the record, and nothing
20 about any of it has to do with the agreement that was
21 reached and is the subject of this deposition, I
22 think, is inappropriate.

23 I'm not going to instruct him not to answer,

36

1 but I think this is an inappropriate line of
2 questioning.

3 MR. MORENO: Let me see if I can
4 rephrase this to be more helpful in all this.

5 BY MR. MORENO:

6 Q. Turning back to page 2, in the first
7 paragraph you were looking at, the paragraph begins,
8 "In our negotiations, GLT has clarified the scope of
9 its concerns," and then proceeds to characterize what
10 GLT allegedly represented to CN in those
11 negotiations.

12 MR. MEYER: I'm not going to let you ask
13 about what was discussed in those negotiations.
14 That's out of bounds under the settlement privilege.
15 And there's no conceivable need for you to ask about
16 that in order to find out what the settlement
17 agreement does or doesn't do, what it means or
18 doesn't mean and what effect it has or doesn't have.

19 MR. MORENO: It appears CN has placed,
20 subject to those negotiations, into the record in
21 this pleading, and I'm just seeking to determine
22 whether this is an accurate characterization to the
23 extent it is revealed.

37

1 MR. MEYER: Whether this is an accurate
2 description of anything or not is not a subject I'm
3 going to get into, and I don't think that this is at
4 issue in this proceeding. It certainly does not
5 constitute a waiver of the settlement privilege by
6 GLT. And we are not going to waive the settlement
7 privilege.

8 MR. MORENO: Just so the record is
9 clear, you're directing the witness not to respond?

10 MR. MEYER: I don't know that there's
11 even a question pending. I was responding to your
12 assertion about this paragraph and the context.

13 MR. MORENO: Well, there was a question
14 pending as to whether this characterization of what
15 GLT expressed to CN during the negotiations is
16 accurate.

17 MR. MEYER: Perhaps I misunderstood.
18 That question, I will not let him answer.

19 MR. MORENO: I would also adhere that
20 GLT is asserting that -- is asking that this
21 settlement agreement be imposed as a condition of
22 this merger as being in the public interest. I
23 believe that gives us a particularized need to

38

ascertain what GLT's concerns are regarding the public interest.

MR. MEYER: It certainly is appropriate for you to inquire about whether the agreement that is reflected in the June 22 letter and the agreement that's been reached between these parties is in the public interest. You're certainly entitled to inquire, and I've allowed you to inquire about the manner in which that agreement addressed GLT's concerns in this proceeding. The nature of those concerns is not only in the record in numerous filings by GLT, but it's something I've allowed you to ask this witness about.

The only thing I'm telling you that you can't inquire about with this witness is the back and forth of the discussions between GLT and CN, which under long-standing Board precedent are not properly in the scope of discovery in a Board proceeding. And there's nothing about the fact that we're seeking a condition in this case that in any manner upsets the nature of that settlement privilege. Indeed, the privilege has repeatedly been enforced, precisely in a situation where someone is seeking to find out

39

about the back-and-forth underlying agreement that the parties are seeking that poses a condition.

So, I'll just put that on the record, and the answer is still no. If you want to ask any question you want about the nature of GLT's concerns and about why this agreement is in the public interest, have at it.

MR. MORENO: That's fine. We reserve U.S. Steel's right to show a particularized need.

MR. MEYER: I haven't heard one articulated today, that's for sure.

BY MR. MORENO:

Q. I'm going to turn your attention back to Exhibit 1, the June 22nd letter. The third paragraph of that letter, starting out: 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, Indiana, Pittsburgh, PA, Nanticoke, Ontario, or Lorain, Ohio.

Who first proposed this arrangement that I've just read? GLT, or CN?

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MR. MEYER: I'm going to reiterate my objection regarding settlement privilege. And I know we have a standing agreement on this subject, which if you'll reaffirm as to this specific issue, I'll let the witness answer this specific question.

MR. MORENO: I'll reaffirm.

A. CN.

Q. Does the DMIR have any similar arrangement with Wisconsin Central currently or in the past?

A. Not to my knowledge.

Q. What concern of GLT's is this exclusive agency addressing?

A. Actually, it tends to address a number of concerns. One of the concerns is the importance that DM&IR and CN feel about keeping shippers on a DM&IR competitive. At the end of the day, if we don't cooperate and effectively knit together transportation solutions that serve DM&IR shippers well, they don't prosper, and we don't prosper. So, this arrangement with CN institutionalizes a cooperation and enhanced level of dialogue and additional options for those shippers. So, that's, if you will, one concern that it addresses.

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The other important consideration here is that, while this only deals with taconite producers on the DM&IR, it's important that we keep in mind that there are many other taconite producers up on the Iron Range and elsewhere, Michigan and other points in Canada, that are eager to sell their pellets to destinations we serve. So, this, in a sense, allows CN and DM&IR to be more effective suppliers for DM&IR origins, and then able to compete more effectively against taconite producers that originate their product on other Class 1 railroads in that area.

Q. Why is it necessary for DM&IR to be the exclusive agent for CN on these taconite moves in order to accomplish the two objectives you've just outlined?

A. Would you repeat the question.

Q. Why is it necessary for DM&IR to be CN's exclusive agent?

A. I don't know that that's the case. This is what was proposed, and it was acceptable to us.

Q. What other options might be available, aside from this exclusive agency arrangement, to accomplish

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1 Q. Focusing again on the last sentence of that
2 paragraph, is the exclusive agency provision in the
3 June 22 settlement agreement designed to preclude the
4 applicant from competing for taconite movements
5 originated on the DMIR?

6 A. No. No. We've consistently said, and we
7 should say it again, that we at Great Lakes and we at
8 DM&IR don't mind competing. In fact, it's critical
9 that we do so. In fact, we like to do so.

10 The only competitive issues that we have
11 concerns with is that competition isn't on a
12 straight-up and forthright basis. Again I'll go back
13 to my coal to the river model, and there are others
14 I've witnessed over the years, having been vice
15 president of sales and marketing for a major Class 1.
16 So, it is not competing that gives us any angst at
17 all. In fact, the more effective competitor we are,
18 the better we serve U.S. Steel and the other shippers
19 on the Iron Range.

20 And, as I said, you know, this document, when
21 it came in, you know, startled would be the way to
22 kind of review how it was viewed and read. And, as I
23 said, it's got an incorrect context, it's not

51

1 reflective of the conversations. We never talked
2 about not competing for business. That's not
3 something we initiate, not something we talked about,
4 it's not how we behave.

5 I would actually -- it's too bad we don't
6 have the document in place now to give you, the
7 agreement, because I think you'll see that it's, in
8 our view, it's -- we think in yours, it's pro
9 competitive. It serves to not just maintain the
10 existing competitive options that shippers have, but
11 it increases the options available to them, and so, I
12 still don't know where this comes from.

13 Q. As the exclusive agent of CN under this
14 settlement agreement, is it fair to say that DM&IR
15 would have the sole ability to set a through-rail
16 rate to, say, the Edgar Thomson facility in
17 Pittsburgh?

18 A. No. Our role is not to set the total
19 through-rate. Our job is to manage and arrange the
20 pieces of the puzzle that originate, let's say, at
21 one of the DM&IR origins and terminates at, to use
22 your example, Edgar Thomson. Our job is to go out
23 and get in place the components of the rates, you

52

1 know, "CN, let's talk about all-rail to ET. How do
2 you think about equipment, how do you think about
3 transit time, service, your requirements, revenue
4 requirements, interchange points?" And, of course,
5 that just gets the business to Chicago.

6 From Chicago east, there are a range of
7 alternatives, CSX, Norfolk Southern, Wheeling Lake
8 Erie and others, that would then want to weigh in and
9 compete for that business. Again, our role, as I see
10 it, is to be the arranger, the orchestra leader, you
11 know, bringing in those components, making sure that
12 the service and the transit and the equipment,
13 etcetera, is all there and good. And to that, we
14 then add our component, and that's what goes to the
15 customer after all that work is done. So, the
16 characterization of -- you made an oversimplification
17 that I wanted to clarify in terms of how I see the
18 role.

19 Q. Let's say in my example what if U.S. Steel
20 desired to go out and assemble a through-rate on its
21 own with each of the railroads involved in the
22 movement, in the movement of taconite to Pittsburgh,
23 would this settlement agreement preclude CN from

53

1 negotiating separately with U.S. Steel?

2 A. Yes.

3 MR. MEYER: Object to the form and
4 suggest that you should clarify what you mean by
5 "negotiating."

6 BY MR. MORENO:

7 Q. Well, let's focus on specific language in the
8 June 22 letter. The last sentence of the third
9 paragraph states, "So long as DMIR was our agent for
10 these movements, CN would not independently solicit
11 such movements or set prices to shippers for its
12 portion of such movement unless required to do so by
13 law."

14 Does this provision preclude CN from
15 contacting U.S. Steel to set rates for an all-rail
16 move from Minntac to Pittsburgh?

17 A. It does not limit CN or U.S. Steel from
18 meeting and talking about anything that has to do
19 with all-rail movements to anywhere. It does
20 prohibit U.S. Steel -- excuse me, it does prohibit CN
21 from independently setting prices over their portion
22 of the route.

23 Q. So, CN could not give U.S. Steel a price for

54

1 just its portion of an all-rail move?

2 A. Correct.

3 Q. Could CN give a price for its portion of an
4 all-rail move if the contact was initiated by U.S.
5 Steel?

6 A. I don't think so.

7 Q. Could CN enter into a confidential contract
8 with U.S. Steel for just its portion of an all-rail
9 move from Minntac to Pittsburgh?

10 A. I don't think so.

11 Q. As the bottleneck origin carrier, the DM&IR
12 would participate in any movement of taconite from
13 the Minntac Mine, whether it be by rail, all-rail, or
14 rail-water; is that correct?

15 MR. MEYER: Object to the form of your
16 question.

17 BY MR. MORENO:

18 Q. If you understand the question.

19 A. I'm not sure. You made a...

20 Q. Let me rephrase it.

21 DMIR is going to -- won't the DMIR be a
22 participant in the transportation of taconite,
23 whether it be by an all-rail movement to Pittsburgh

55

1 or a rail-water movement?

2 A. Yes. We have contracts in place that provide
3 for that.

4 Q. Would the DM&IR have the ability to set a
5 through all-rail rate at a level at which it would be
6 uneconomic for shippers to use the all-rail rate
7 compared to a rail-water move?

8 MR. MEYER: Object to the form.

9 A. I want to be clear on the question. Would
10 you repeat it, please.

11 Q. I'll see if there's a way to clarify this.

12 Is it fair to say that this settlement
13 agreement gives DMIR the right to quote both its
14 portion and CN's portion of any through all-rail
15 movement of taconite to Pittsburgh?

16 A. It gives us the right to assemble and
17 organize all the components, not just DM&IR and CN's.
18 Now, they each -- each railroad along the route gets
19 to quote and offer up their own revenue requirement.

20 I don't get to quote, if that's what you
21 mean. I don't get to quote CN's -- I have no
22 intention of doing that -- or NS's or CSX's or
23 anybody else's along the way, including the Union

56

1 Railroad, which is needed to serve ET.

2 I don't know if -- I hope I answered your
3 question.

4 Q. Recognizing that DMIR doesn't have the right
5 to quote the revenue requirements that involve the
6 individual railroads --

7 A. Right.

8 Q. -- DM&IR does have the right to determine the
9 final through-rate, as long as those other railroads'
10 revenue requirements are satisfied?

11 A. Yes. We would tender the through-rate to the
12 shipper.

13 Q. What incentive does DM&IR have to quote a
14 through all-rail movement to Pittsburgh that would be
15 competitive with a rail-water move?

16 A. I think we have a number of incentives to do
17 so. One is, at the end of the day, economics
18 prevail. U.S. Steel's, ours, everybody's. And if
19 the all-rail mode proves to hold the best economics
20 for USX, U.S. Steel, and that traffic originates on
21 the DM&IR, we have to compete for it. We're not in a
22 position to torture rates in competing modes to serve
23 our best interests.

57

1 Q. What would preclude the DM&IR from quoting an
2 all-rail rate that is uneconomic compared to a
3 rail-water rate?

4 MR. MEYER: You mean assuming the
5 underlying rail economics were favorable?

6 MR. MORENO: Yes, that's a fair
7 assumption behind the question.

8 A. So, the question is again, it's...?

9 Q. Let's assume that an all-rail rate is
10 economical.

11 A. Okay.

12 Q. What would preclude DM&IR from quoting a
13 through all-rail rate at a level that would make the
14 all-rail route uneconomic compared to a rail-water
15 move?

16 A. There are specific provisions in our
17 agreement, our agency agreement, that binds both
18 parties to being both reasonable and competitive.

19 Q. Are you referring to provisions in this
20 June 22 letter?

21 A. The agreement that supports that.

22 Q. The agreement that we haven't seen yet?

23 A. Correct. I think those two important

78

80

something that's real positive that's come out of the
 2 dialogue with CN/WC and is something, I think, that
 3 will be able to be of real value to shippers.

4 Q. Could the rate factor to the Escanaba dock be
 5 implemented without being imposed as a condition upon
 6 this merger?

7 A. Well, could we knit together this without
 8 STB?

9 Q. Right.

10 A. Yes. I think so.

11 MR. MORENO: I don't have any other
 12 questions.

13 MR. MEYER: Let's take 30 seconds. I
 14 may have one or two.

15 Do you have anything for AK?

16 MR. PFOHL: No.

17 (Recess.)

18 MR. MEYER: Back on the record.

19 First, I'd just like to state for the record
 20 that we will designate this entire transcript as
 21 highly confidential, subject to our ability to
 22 examine the transcript and de-classify portions that
 23 don't require such treatment. There was discussion

79

1 various times about specific terms of contracts and
 2 the like, and we just need to be sure that the
 3 confidences are protected.

4 And next, I have a couple of questions about
 5 testimony that was given earlier today.

6 EXAMINATION.

7 BY MR. MEYER:

8 Q. First, within the last few minutes,
 9 Mr. Giles, you were asked about the aspect of this
 10 agreement that deals with CN's commitment to provide
 11 a rate factor for movements of DM&IR-originated
 12 taconite between Duluth superior and the Escanaba
 13 dock.

14 Do you recall that?

15 A. Yes.

16 Q. Is the agreement that CN has entered, the
 17 commitment it's made to provide a rate factor, part
 18 of the package of commitments that are conditioned by
 19 CN on the imposition of the entire settlement
 20 agreement as a condition by the Surface
 21 Transportation Board?

22 A. It is.

23 Q. So, unless the entire package of settlement

1 agreement imposes a condition, that commitment to
 2 provide a rate factor would go away, correct?

3 A. That's correct.

4 Q. I'd like to take you back to some testimony
 5 earlier today, I think this came up in the context of
 6 your being asked to describe what stewarding means,
 7 and you were specifically asked about the relative
 8 profitability to DM&IR -- or to Great Lakes
 9 Transportation, excuse me, I think was the question,
 10 of rail-water rail move as opposed to or as compared
 11 to an all-rail move. And I believe in response to a
 12 question that you were asked, you said, yes, a
 13 rail-water rail move provides greater net income to
 14 Great Lakes than an all-rail move.

15 Do you recall that?

16 A. I remember the question initially was in
 17 which do you derive the most revenue. And I answered
 18 rail-water rail -- I think the subsequent one was --
 19 was that the...?

20 Q. That's the set of questions I'm thinking of.

21 A. Yes, I do recall that.

22 Q. When you gave that answer, were you saying
 23 that it is always the case that Great Lakes

81

1 Transportation would be better off from a financial
 2 perspective from a rail-water rail move than from an
 3 all -- from participating in an all-rail move?

4 A. No. I was answering it from the viewpoint of
 5 the way the world operates today. I wasn't trying to
 6 project into the future in terms of how that could
 7 change with this agency.

8 Q. And are there circumstances that you could
 9 imagine under which, given the different relative
 10 underlying economics of water movement as opposed to
 11 all-rail movement, where Great Lakes Transportation
 12 would, in fact, be better off participating in an
 13 all-rail movement than participating in a rail-water
 14 rail movement?

15 A. It's conceivable.

16 MR. MEYER: That's all I have. Thank
 17 you.

18 MR. MORENO: I just have a couple
 19 follow-ups.

20 Before I get into that, just with respect to
 21 the confidentiality, the designation of the
 22 transcript as highly confidential, I would like to
 23 ask that this review be done promptly, given the

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

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.

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 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 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 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

PART II

ARGUMENT

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 and Western Ltd.,
Sault Ste. Marie Bridge Company, and
Wisconsin Chicago Link Ltd.*

REPLY COMMENTS

on behalf of

UNITED STATES STEEL LLC

PART II

ARGUMENT

On June 25, 2001, Great Lakes Transportation LLC ("GLT") submitted to the Board its Comments (GLT-14) on the application filed on April 9, 2001 by the Canadian National Railway Company, et. al ("CN") and the Wisconsin Central Transportation Company, et al. ("WC") in this proceeding (CN/WC-2). As part of those Comments, GLT requested the Board to impose, as a condition of the transaction, compliance by CN with a Settlement Agreement between the CN and GLT. That Settlement Agreement, by its terms, involves various operational and competitive relationships between CN and GLT, and thus is in the nature of a private settlement between GLT and CN. Nevertheless, GLT requested the Board to require compliance with the

Settlement Agreement as a condition of the transaction "in order to ensure that the conditions [of the Settlement Agreement] will be insulated from collateral attack." GLT-14 at 10.

It is very clear that the "collateral attack" obliquely referred to in GLT's June 25th Comments refers to a concern by GLT that the Settlement Agreement could be challenged under the antitrust laws of the United States. GLT-14 at 10. In order to forestall any such attack, GLT is seeking the assistance of this Board to "insulate" this private Settlement Agreement from the requirements of the antitrust laws by virtue of this Board's authority under 49 U.S.C. § 11321(a), under which a rail carrier or person participating in an approved transaction is exempt from the antitrust laws as necessary to permit that rail carrier or person to carry out the transaction. *Id.*

U. S. Steel strongly urges the Board not to permit its processes to be used to protect what is -- on its face, in its purpose and in its effect -- a blatantly anti-competitive arrangement between CN and GLT. Indeed, it is clear from a remarkable document filed by CN just three days before the settlement was reached, that CN entered into this Settlement Agreement not to cure an anti-competitive effect of the transaction, but rather solely to quiet the "litigation and political consternation stirred up by GLT's claims." *See*, Applicants' Comments on the Status of GLT Issues (CN/WC-13) at 5. As CN/WC-13 presciently states at page 4, in the Settlement Agreement at issue here, the Board is being asked "directly or indirectly . . . to preclude Applicants from competing . . ." for the movements encompassed by the Settlement Agreement. The Board, however, should firmly reject any attempt by a private party to misuse the agency's authority to protect the public interest, in order to further an anti-competitive arrangement to the detriment of shippers who would otherwise benefit from the basic rail consolidation transaction that the Board is being asked to approve.

I. Identity and Interest of U. S. Steel

U. S. Steel is the largest domestic integrated producer of iron and steel products. It manufactures and sells a variety of steel mill products, coke and taconite pellets. U. S. Steel's domestic production capacity totals approximately 12 million tons of steel per year. In the year 2000, U. S. Steel's domestic steel shipments totaled 10.4 million tons. Since each ton of finished steel requires approximately three tons of raw materials, U. S. Steel's dependence on the transportation industry, especially rail and water carriers, is vital to its continued ability to remain in business. As detailed in these Reply Comments, U. S. Steel has in the past utilized rail transportation provided by WC to transport material necessary for the production of steel, and therefore has a specific interest in the proposed consolidation of the CN and WC.

U. S. Steel supports the basic railroad control application, which it believes will provide significant transportation benefits. However, as detailed in this Argument, U. S. Steel will be particularly and significantly adversely affected by the Settlement Agreement entered into between GLT and CN. Therefore, U.S. Steel strongly opposes imposition of a requirement that CN comply with that Agreement as a condition of the transaction.

On July 6, 2001 U. S. Steel filed its Notice of Intent to Participate in this proceeding, accompanied by a Motion for Leave to file the Notice out of time. No response in opposition to that Motion has yet been filed, and the Motion remains pending.

II. U. S. Steel's Taconite Traffic Affected by the Proposed Transaction and CN/GLT Settlement Agreement

A. U.S. Steel's Minntac Taconite Production Facility

U. S. Steel's Minnesota Ore Operations Mine ("Minntac") is located in Minnesota on the Mesabi Iron Range. (Efkeman V.S., p. 4) Minntac mines and processes taconite, an iron ore-

bearing rock that contains anywhere from 15 to 30 percent magnetic iron particles, which are used to make steel. (*Id.*) Minntac currently ships approximately 16.4 million net tons of taconite per year. (*Id.*)

The Duluth, Missabe and Iron Range Railroad Company ("DM&IR") is the sole rail carrier accessing Minntac. DM&IR is a wholly-owned subsidiary of GLT.

Taconite production from Minntac is shipped to consuming locations via two general methods: (a) combined rail-water transportation; and, (b) all-rail transportation. (*Id.*) Under the combined rail-water method, Minntac normally ships pellets by train destined for lake transportation via the DM&IR to a DM&IR dock on Lake Superior (usually at Two Harbors, MN -- see schematic included with these Reply Comments), for transfer to lake vessel or for storage pending movement on the lakes. The pellets are then loaded onto ore freighters and shipped in two general types of rail-water movements. First, at the upper lake dock, taconite pellets are shipped direct to lower Great Lakes steel mills that are located on the lakes ("rail-lake" shipments). Pellets being shipped via combined rail-water transportation are also shipped by ore freighters from the upper lake to a lower lake transloading facility and storage at Conneaut, Ohio, for onward movement by rail to eastern steel mills not located on the lakes ("rail-lake-rail" shipments). (*Id.*)

Under the all-rail method, taconite production from Minntac is shipped from the mine directly to consuming locations via rail. Shipments using the all-rail method are transported to a variety of destinations, including U. S. Steel's Fairfield Works near Birmingham, AL; to a western customer of U.S. Steel; or, as indicated further in these Reply Comments, to other U. S. Steel locations, such as the Edgar Thomson Works near Pittsburgh.

B. U.S. Steel's Taconite/Ore Consuming Facilities Affected by the Settlement Agreement

There are three ore consuming facilities to which U.S. Steel ships taconite pellets from Minntac that are affected by the proposed Settlement Agreement between CN and WC. These are U. S. Steel's Edgar Thomson Works, near Pittsburgh, PA; U.S. Steel's Gary Works, in Gary, Indiana; and the Lorain Works, currently owned and operated by Republic Technologies International, which is supplied taconite by Minntac.¹

1. The Edgar Thomson Works

The most important facility in connection with the issues involved in this proceeding is the historic Edgar Thomson Works, near Pittsburgh. Edgar Thomson produces about 2.8 million tons of raw steel each year. (Efkeman V.S., p. 7) The taconite for the plant is supplied by Minntac. Over the past five years, Edgar Thomson has consumed between 2.8 million tons and 3.3 million tons of taconite per year, averaging nearly 3.1 million tons per year. (*Id.*)

As noted by U. S. Steel witness Efkenen, at the present time contractual commitments between U. S. Steel and GLT require that a minimum of 60% of Edgar Thomson's taconite requirements move through the Pittsburgh and Conneaut Dock facility ("P&C Dock") at Conneaut, Ohio, and thence via the Bessemer and Lake Erie Railroad ("B&LE"). (*Id.*) This traffic currently moves from the mine over the DM&IR, usually to Two Harbors, MN, where the taconite is transferred to lake vessels for a movement over water by USS Great Lakes Fleet ("Fleet"), a Great Lakes water carrier to the P&C Dock at Conneaut. From there, the taconite is

¹ Minntac also supplies pellets to U. S. Steel's Fairfield Works, located in Birmingham, AL. Fairfield is not the subject of the GLT/CN Settlement Agreement, and thus will not be discussed in any detail in these Reply Comments. However, Mr. Efkenen in his Verified Statement notes that the proposed CN/WC merger is pro-competitive for Fairfield's taconite requirements, because it offers a new competitive route to the plant. (Efkenen V.S., p. 10). This is confirmed in the Application, which states that movements to Fairfield could benefit from additional routing options that would result from a CN/WC merger. Application Volume 1 at 169-170.

carried by means of rail over the B&LE from Conneaut to Pittsburgh, PA, to the Edgar Thomson facility. (*Id.*, at p. 5.) It is important to note that Fleet, the P&C Dock, and the B&LE are, like the DM&IR, all wholly-owned subsidiaries of GLT.

Up to 40% of the plant's taconite requirements, or about 1.3 million tons per year, however, can be bid competitively. For this portion of U. S. Steel's requirements, there are two possible transportation options: (a) the "rail-lake-rail" movement described immediately above provided by the DM&IR, Fleet, and the B&LE; and, (b) an all-rail option from Minntac to Edgar Thomson. (*Id.*, at pp. 7-8) In the past, taconite shipped via the all-rail option has originated on the DM&IR at Minntac, moved via the DM&IR to South Itasca, WI where the DM&IR interchanges with the WC. The WC has then transported the taconite to Chicago, where it has been interchanged with eastern carriers for delivery to the plant. (*Id.*)

It is important to note that, during the winter months (January 15 to March 25), lake shipments cannot physically be made from Lake Superior ports to the lower lakes, since the Soo locks at Sault Ste. Marie between Lake Superior and Lake Huron are closed. (Efkemen V.S. at 12-13) Thus, if U. S. Steel's winter supply of taconite is to be carried by GLT subsidiaries, a winter stockpile of pellets must be built and maintained at Conneaut, since the Edgar Thomson facility has limited storage capacity. This, in turn, requires the plant to incur the considerable expense of building a large inventory of pellets well in advance of the time that they are actually needed. (*Id.*) In recent years, the WC has been the most aggressive competitor for the all-rail movement to Edgar Thomson, and all-rail taconite movements have moved via the DM&IR-WC-CSX to the plant. (*Id.*) Depending upon the demand for steel, all-rail movements have been as high as 600,000 tons during the last five years (*id.*), and have averaged close to 200,000 tons annually over that time period.

Moreover, it is important to note that the proposed merger of CN with WC would create a very attractive new all-rail route to the Edgar Thomson plant for the future. The merger of CN and WC would substantially extend the current all-rail movement over the WC, whose lines now terminate in Chicago, all the way to Toledo, Ohio where the movement could be interchanged with the Wheeling and Lake Erie Railroad ("W&LE") for delivery to the plant. (*Id.* at p. 7, 14) This route would avoid an interchange for the all-rail movement in Chicago, and would provide a competitive alternative to the NS and CSX for the movement east of Chicago, thus potentially making the all-rail route even more attractive. (*Id.*)

2. Gary Works

Gary Works, located in Gary, Indiana, is U. S. Steel's largest manufacturing plant and the largest integrated steel plant in North America. It has the capacity to produce 7.7 million tons of raw steel annually. Taconite shipments to Gary Works arrive on self-unloading lake vessels which discharge directly into Gary Works' ore yard adjacent to its blast furnaces. Efkeman V.S., p. 8. Taconite consumption at Gary Works has averaged about 7.8 million tons per year over the last five years. (*Id.*, p. 9) Unlike Edgar Thomson, Gary Works' storage capacity can be used to maintain a winter storage pile sufficient to meet the plant's requirements for pellets during the period that lake transportation from Lake Superior is not available. Rail service to and from Gary Works is provided by the Elgin, Joliet and Eastern Railway Company, which connects to all major trunk lines serving the Chicago area, including CN and WC. (*Id.*)

3. Lorain Works

Lorain Works is currently owned by Republic Technologies International LLC and is located on Lake Erie at Lorain, Ohio, just west of Cleveland. Like Gary Works, Lorain Works is

configured to receive pellets directly via lake vessel. Minntac supplies taconite pellets to Lorain Works, which consumes about 2.4 million tons of pellets per year. (*Id.*, pp. 10-11)

III. Contents of the CN / GLT Settlement Agreement

In Comments filed with the Board on June 26, 2001 (GLT-14), GLT announced that it had reached an agreement with the Applicants on the terms of a settlement. The terms were set forth in a June 22, 2001 letter from G.P. "Rusty" Radloff, Assistant Vice President Marketing & Sales for CN/IC, to John E. Giles, President of GLT, which was attached to the comments as Attachment "B." Additional terms were set forth in Attachment "C." GLT represented that the terms of the agreement would be reduced to definitive form and submitted to the Board within ten days. The final definitive terms were not filed with the Board until more than three weeks later, on July 18, 2001 (GLT-16). GLT informed the Board that it would support the merger application if compliance with the terms of the settlement agreement were imposed as a condition upon the transaction.

Although the settlement agreement addresses multiple issues, including many that have little or no connection to the proposed merger, U. S. Steel's objection is to a single, albeit core, provision. In the June 22nd letter, the Applicants proposed "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" for a period of ten years. As noted in the previous section of these Reply Comments, Gary, Indiana (Gary Works); Pittsburgh, PA (Edgar Thomson Works); and Lorain, OH (Lorain Works) are each a destination whose taconite is supplied by U. S. Steel's Minntac facility. Under the CN/GLT arrangement described in the June 22 letter, the Applicants "would independently define CN/WC's revenue requirements" However, the Applicants

“would not independently solicit such movements or set prices to shippers for its portion of such movement unless required to do so by law.” For convenience, this provision will be referred to throughout the remainder of U. S. Steel’s Comments as “the exclusive agency provision.”

The final terms of the exclusive agency provision are set forth in Section II of the CN-GLT Settlement Agreement submitted to the Board on July 18th. The operative provisions, which are set forth in Section II.A.2., state:

DMIR, on its own behalf and as agent for CN and WC, may solicit and, upon the request of or pursuant to a contract with a shipper, shall make all necessary arrangements for the all-rail, joint-line movement of taconite and other forms of beneficiated iron ore (the “Commodity) originating at points served by DMIR (each an “Origin” and, collectively, the “Origins”) and moving over CN’s and/or WC’s lines to ultimate destinations at Gary or Indiana Harbor, IN, Pittsburgh/Braddock, PA, Nanticoke, ON, or Lorain, OH (each, a “Destination” and, collectively, the “Destinations”); provided that DMIR’s agency responsibility hereunder will extend only to all-rail, joint-line movements of the Commodity to a Destination that are commercially feasible, as reasonably determined by DMIR. So long as this Section II.A. remains in effect, neither CN nor any of its Affiliates as of the Operative Date or thereafter (including WC) will, independently of DMIR, solicit all-rail movements of the Commodity between an Origin and a Destination described in this paragraph or set prices to shippers for its portion of such a movement unless it is legally required to do so.

Section II.A.3. then elaborates on the application of the “commercially feasible” standard referenced in subpart 2:

For purposes of Section II.A.2., an all-rail joint-line movement is commercially feasible if DMIR reasonably determines that the aggregate revenue requirements of DMIR, CN/WC and any other participating rail carrier or carriers permit a through rate and a quality of service for such movement from an Origin to a Destination that are competitive with comparable through rate and service offerings otherwise available to the shipper, including any offerings involving maritime transportation.

Finally, apparently in an effort to preempt U. S. Steel's concerns, Part II.A.7. states that "[i]n establishing from time to time their respective revenue requirements for their respective portions of movements covered by this Section II.A., neither DM&IR and its Affiliates nor CN and its Affiliates (including WC) shall act unreasonably or anticompetitively." However, Section IV.I. unequivocally states that "This Agreement is intended for the sole benefit of the parties to this Agreement" and that the Agreement is not intended to give any entity other than the signatories "any legal or equitable right, remedy or claim under this Agreement."

IV. GLT and CN Have Admitted that There is Actual and Potential Competition Between the Rail-Water and All-Rail Movements of Taconite, and CN Has Admitted That An Agreement to Assure That GLT Does Not Face Such Competition Would Be Anticompetitive

The record in this proceeding contains a remarkable series of admissions and contradictions by both CN and GLT regarding key matters related to the issue presented by their request that compliance by CN with the Settlement Agreement be imposed as a condition to the proposed transaction.

On the one hand, CN, apparently in order to justify its entry into the Settlement Agreement, now appears to be arguing that there is no competition between an all-rail movement of taconite from the Upper Great Lakes and a rail-water movement. But this new CN contention runs headlong into CN's own prior statement in its Application that it believed that its proposed merger with WC would be a significant competitive opportunity for the all-rail movement of taconite from the Upper Great Lakes to eastern steel producers. In addition, CN's newfound "reason" to justify the Settlement Agreement -- that there is no competition -- is utterly

inconsistent with GLT's evidence in this proceeding that all-rail movements are now and will in the future be competitive with rail-water movements.

On the other hand, GLT appears to be attempting to justify the Settlement Agreement on the grounds that an all-rail movement of taconite via a merged CN/WC would represent too much competition for a rail-water movement. GLT contends that the Settlement Agreement is not anticompetitive, and in fact brazenly states that the Agreement would "yield competitive benefits" and "promot[e] competition." See GLT-14, pp. 5, 9. But this contention runs headlong into GLT's argument that the Board should impose compliance with the allegedly pro-competitive private Settlement Agreement as a public condition of the transaction in order to insulate it from the pro-competitive obligations of the antitrust laws. GLT-14, p. 10. In addition, GLT's argument is utterly inconsistent with CN's position expressed on June 19 to this Board, that an agreement precisely of the type that CN and GLT entered just days later would in fact be anticompetitive. CN/WC-13, p. 4.

Thus, in evaluating the issue of whether the Settlement Agreement should be imposed as a condition, U. S. Steel respectfully asks the Board to carefully consider the justifications and evidence advanced now by both CN and GLT to support the Settlement Agreement in light of both parties' representations to the agency. The fact is that *any* loss of existing competition or *any* impediment to achieving the merger-related benefits of improved competition is detrimental to U. S. Steel and the public interest as a whole.

A. In Their Application, CN/WC Accurately Described All-Rail Transportation of Taconite as a "Potential Longer-Term Opportunity" for CN/WC to Compete

In the application filed with the Board on April 9, 2001, the Applicants pointed out to the Board and to the parties that the proposed transaction would "bring enhanced competition and other public benefits." Tellier V.S. in CN/WC-2, Vol. 1 at 106. As stated by the Applicants' chief marketing and pricing officers, "CN and WC have identified how the Transaction will enhance our ability to meet our customers' needs and also how it will permit the merged system to become even more competitive with other rail carriers and modes of transportation." Foote/Schauer V.S. in CN/WC-2, Vol. 1 at 145.

Indeed, a specific "potential longer term opportunity" that Messrs. Foote and Schauer had in mind when they made that statement was the all-rail movement of taconite, both seasonal and non-seasonal, between U.S. Steel's taconite production facility at Minntac and its Edgar Thomson Works near Pittsburgh. *Id.* at 170. Specifically, they stated that an all-rail route to U.S. Steel's Pittsburgh facility "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." *Id.* [emphasis added]. They also noted the that for non-seasonal movements of taconite, there was a "growing interest in rail service" by steel producers as a way to move away from multi-modal transportation "particularly the combined use of water and rail." *Id.* A footnote to the statement noted that all-rail movement of taconite could reduce product loss caused by extra handling and reduce inventory costs associated with ground storage of taconite at rail-water transfer facilities. *Id.* at 170 and note 19.

B. GLT Confirmed the Competitive Nature of All Rail Versus Rail-Water Transportation of Taconite

Three weeks after the application was filed, GLT, relying in part on these very specific statements by the Applicants about the competitive benefits of the transaction to U. S. Steel, sought, *inter alia*, to have the Application dismissed as insufficient or to have the transaction classified as a "significant" transaction under the Board's railroad consolidation procedures, 49 C.F.R. Part 1180. The primary basis for GLT's request was that the Applicants had failed to recognize in the Application the "consequences of a significant diversion of water traffic to CN/WC." GLT-1 at 2. GLT believed that the transaction would result in "significant diversion" of taconite traffic from the rail-water routes provided by GLT's rail and water carrier subsidiaries to all-rail routes including the merged CN/WC. GLT-1 at 2-3; 6-7. One foundation for that belief was the Applicants' reference to the taconite movements to U. S. Steel's Edgar Thomson Works. GLT-1 at 6; Giles Dep. Tr. at 21-24.

In a response to GLT-1 filed on May 2, the Applicants, in a seeming contradiction of the verified statement of Messrs. Foote and Schauer, first characterized the possibility of major diversion of taconite traffic to all-rail service as "implausible." CN/WC-5 at 2-6. However, Applicants then went on to contend that, even if such diversions should occur, they would be pro-competitive in nature, and would not cause any harm to competition that would be appropriate for action by the Board. CN/WC-5 at 6-8 (citing ICC Finance Dkt. No. 32133 *Union Pacific Corp. - Control - Chicago and North Western Transp. Corp.*, slip op. served March 7, 1995, at 76).

In Decision No. 2 in this proceeding, the Board agreed with this characterization. The Board said that it did not appear "that there would be anticompetitive effects that would

outweigh the transaction's anticipated contribution to the public interest" It also noted that GLT's own evidence showed that "this taconite traffic can already move in all-rail service, whether or not the application is approved." Decision No. 2, at 8. Nonetheless, the Board included sufficient opportunity in the procedural schedule to allow "consideration of the position of Great Lakes." *Id.*

C. In Its June 13 Environmental Comments, GLT Again Confirmed That There Is and Will Be Competition Between All-Rail and Rail-Water Movements of Taconite

In accordance with the procedural schedule, Applicants served their environmental appendix on May 14, 2001. Both Applicants and GLT submitted comments on the environmental appendix. GLT reiterated its contention that the transaction would result in significant diversion of taconite traffic to the all-rail routes that competed with the rail-water routes served by GLT. GLT-9 at 7-9 and Hughes V. S. at 2-9. It stated unequivocally that "[r]ecent history has discredited the conventional wisdom that all-rail cannot compete against lake vessel shipments of taconite." Thus, any argument by CN now that would contradict the statements in the Application regarding the competitive opportunities on taconite traffic available to the merged CN/WC, must run directly counter to GLT's own unequivocal statements in this proceeding that all-rail shipments of taconite can now and will in the future compete with rail-water movements of taconite.

D. CN's June 19 "Comments on the Status of GLT Issues" Makes Clear That a CN Assurance That GLT Would Not Face Competition from an All-Rail Transportation of Taconite Would Be Anticompetitive

On June 19 (six days before the date specified for filing comments set by Decision No. 2), Applicants filed an extraordinary pleading entitled "Applicants' Comments on the Status of

GLT Issues" (CN/WC-13). In those Comments, Applicants stated that GLT "*has sought to put pressure on Applicants to settle*, through the specter of time-consuming environmental proceedings and possibly onerous environmental conditions." *Id.* at 4 [emphasis added]. The Applicants went on to state that, in order to avoid the burden of further litigation with GLT over this issue, they might be forced to forego competing for this traffic. Applicants plainly recognized that such an action would be "anticompetitive" and would require the antitrust immunity provided by a Board-imposed condition. *Id.* at 4-5. They suggested that such action would raise serious public policy concerns. *Id.* at 3-4.

Notwithstanding this recognition of the anticompetitive purpose and effect of an agreement not to compete with GLT, just three days later CN entered into just such an agreement. Despite the fact that CN witnesses had told this Board under oath in Verified Statements included in its Application that CN expected to compete for the movement of taconite traffic to U. S. Steel's Edgar Thomson facility, CN entered into the Settlement Agreement because it wanted to avoid time-consuming, expensive and embarrassing litigation, on the newly-discovered grounds that it would "expect to lose nothing" by entering into a blatantly anticompetitive agreement. *Id.* at 4.

The Board must not permit CN's private interest in facilitating its proposed merger with the WC by "removing" an opponent of the transaction (but at the expense of U. S. Steel); and GLT's private interest in avoiding competition for at least ten years, to affect the Board's determination of the public interest in deciding whether the CN/GLT Settlement Agreement should enjoy the extraordinary protections afforded by the imposition of compliance with the Settlement Agreement as a condition of the proposed transaction.

V. The Board Should Reject GLT's Request to Impose the Terms of the CN/GLT Settlement As a Condition of the Transaction

In its Comments filed on June 25 submitting the letter agreement with CN, GLT requested that the Board impose a condition on its approval of the CN/WC transaction that requires CN to comply with the terms of the agreement. GLT-14 at 11.² U. S. Steel urges the Board not to impose this condition because there has been no showing that the proposed merger between CN and WC causes any harm to competition that requires the condition; and because the Settlement Agreement that is the subject of the requested condition itself causes harm to competition. Moreover, the Settlement Agreement should not be imposed as a condition on the transaction because it is contrary to the agency's policies regarding traffic-protective conditions, and because it unfairly shifts to U. S. Steel the anticompetitive consequences of the Settlement Agreement.

A. The Statute Requires That Any Condition to an Approved Merger Be in the Public Interest

The overall standard for approval by the Board of a transaction involving the control and merger of one rail carrier by another is that the transaction be "consistent with the public interest." 49 U.S.C.A. § 11324(c). In the case of an application for approval of a consolidation that does not involve the merger or control of two or more class I railroads, the specific public interest criteria are set forth at 49 U.S.C.A. § 11324(d):

... [T]he Board shall approve an application unless it finds that—
(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in surface freight transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

²

Similar language is contained in the definitive agreement filed on July 18. GLT-16, Agreement at 2.

In applying this statute and its predecessor (former 49 U.S.C.A. § 11344(d)), the Board and the ICC have reached the second prong only after finding "significant anticompetitive effects" of the proposed transaction. *Norfolk and Western Railway Co.—Purchase—Illinois Terminal Railroad Company*, 363 I.C.C. 882, 886 (1981) ("Only if we find *significant anticompetitive effects* is it necessary to review the traditional public interest factors to determine whether 'the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.'" [emphasis added]). See, ICC Finance Docket No. 31360, *South Carolina Central Railroad, Inc.—Purchase and Lease—CSX Transportation*, (Decided April 28, 1989), at *9 ("In minor transactions subject to section 11344(d), it is *only where significant anticompetitive results can be found* that public interest factors will be considered. [citation omitted] *Any adverse competitive impact must be both 'likely' and 'substantial.'*" [emphasis added]). Even if the Board finds significant anticompetitive effects, "the transaction may not be disapproved unless the anticompetitive effects outweigh the public interest factors and cannot be mitigated through conditions." ICC Finance Docket No. 31693, *Gulf & Ohio Railways, Inc.—Purchase and Lease—CSX Transportation, Inc. Line Between Thomasville and Sylvester, GA*, (October 24, 1990), at *8. See, STB Finance Docket No. 32892, *CSX Corp. and CSX Transportation, Inc.—Control—The Indiana Railroad Co.*, served November 7, 1996.

The policies embodied in the antitrust laws serve as a guide to the public interest considerations in railroad merger and control proceedings. In *McLean Trucking Co. v. United States*, 321 U.S. 67, 87-88 (1944), the Supreme Court noted the proper weight to be accorded to antitrust policy in carrier control proceedings:

In short, the Commission must estimate the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operations, lower costs, etc.,

to determine whether the consolidation will assist in effectuating the overall transportation policy. "The wisdom and experience of that Commission," not of the courts, must determine whether the proposed consolidation is "consistent with the public interest."

As the Supreme Court has observed, the antitrust laws give "understandable content to the broad statutory concept of 'the public interest,'" *FMC v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238, 244 (1968).

B. CN Compliance with the CN/GLT Agreement Should Not Be Imposed as a Condition of Approval of the CN/WC Transaction Because There Is No Evidence That the Transaction Has an Anticompetitive Effect

The record in this proceeding is utterly devoid of evidence that the proposed CN/WC transaction has any, much less "significant," anticompetitive effect, or that it causes any harm to the competition provided by GLT for the transportation of taconite to U. S. Steel and other receivers. All that GLT has demonstrated is that the competition that exists today for such movements of taconite might become more meaningful if the transaction is approved. But the Board, like its predecessor, has long recognized that harm to a competitor from new or heightened competition is not the same thing as harm to competition.

As the ICC recognized in Finance Docket No. 32133, *Union Pacific Corp. - Control - Chicago and North Western Transp. Corp.*, Decision 25 (served Mar. 7, 1995) at 76, if traffic diversion "occurs through natural rivalry between competitors leading to lower rates or improved service on diverted traffic, it is not anticompetitive." The Board's role is to protect competition, not competitors. STB Finance Docket No. 33388, *CSX Corp. et al.—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corp.*, Decision No. 96, Slip op. at 19 (Served October 19, 1998); *Wisconsin Central Transportation Corp., et al.—Continuance in Control—Fox Valley & Western Ltd.*, 9 I.C.C. 2d 729, 745 (1993); Finance Docket No. 31412,

Washington Corporations—Control Exemption—Western Transport Crane and Rigging, Inc., and Montana Rail Link, Inc., at *15, (served August 18, 1989) (citing *Union Pacific Corp. et al. - Control. - MKT Co. et al.*, 4 I.C.C.2d 409, 460 (1988)); and *Rio Grande Industries, Inc., SPTC Holding, Inc., and the Denver and Rio Grande Western Railroad Co.—Control—Southern Pacific Transportation Co.*, 4 I.C.C. 2d. 834, 918 n.66 (1988). Unless there can be a finding that the transaction causes harm to competition, and that the condition would mitigate that harm, the requested condition cannot be imposed.

C. The CN/GLT Agreement Itself Is Anti-Competitive

As discussed extensively in Section IV of these Reply Comments, there is no doubt that CN/WC (both before and after the proposed merger) and GLT are competitors for U. S. Steel's taconite traffic. Moreover, as Mr. Efke has testified, WC has been aggressively competing, seeking to participate in all-rail movements of taconite that directly compete with the rail-water movements that Great Lakes Fleet provides. *Efke V.S.* at p. 7, 11-14.

Even to the extent such movements have been primarily seasonal movements in the recent past, U. S. Steel has to give serious consideration, when economic circumstances permit, to using competitive all-rail movements of taconite.³ *Efke V.S.*, at p. 14. Moreover, non-seasonal all-rail movements of taconite compete with seasonal rail-water movements to the extent those all-rail movements are made to avoid the expense of building and carrying a winter inventory of taconite during the Great Lakes shipping season.

³ The record already shows that AK Steel, one of U. S. Steel's competitors, is already moving about 75% of its taconite from Minnesota to Middletown, Ohio, via an all-rail route. This traffic previously moved via a rail-water route. GLT-9 at 9.

Thus, any agreement that gives GLT the exclusive right to determine whether to set a joint DMIR/CN rate and at what level has both an anticompetitive purpose and effect.

1. The Clear Purpose of the Exclusive Agency Provision Is Anticompetitive

The clear purpose of the exclusive agency provision is to protect GLT and its subsidiaries from competition after the CN/WC merger. The provision covers all taconite origins on the DM&IR, including U.S. Steel's Minntac Mine. However, it is crafted to cover certain destinations that today are served by other GLT subsidiaries, including the Great Lakes Fleet, the P&C Dock, and the B&LE. CN/WC-13 at 2. These destinations include the two U.S. Steel facilities located at Gary, Indiana and Pittsburgh, Pennsylvania, and one destination (the Lorain Works, at Lorain, OH) that is supplied taconite pellets from U. S. Steel's Minntac facility. No other destinations are included in the exclusive agency provision.

The only rational reason for the scope of the exclusive agency is to protect GLT as a competitor. Indeed, GLT admits this purpose. The June 22nd letter from Mr. Radloff to Mr. Giles introduces the exclusive agency provision as "One means to achieve your goal" See June 25 GLT Comments, GLT-14, Attachment B. When asked on deposition what his "goal" was, Mr. Giles stated:

A. One of the concerns we had coming out of our closing in March was the need to be good stewards for the assets and responsibilities we'd assumed taking over the companies, the four companies [Great Lakes Fleet, DM&IR, P&C Dock, B&LE]. And as we read the verified statements of Mr. Foote and Mr. Schauer, we had a concern that on DM&IR origins, in particular, that the CN/WC merger would target those movements and put in a rate that would be not sustainable in the long term, but be problematic in the short term for us

Q. What did you anticipate could be problematic about a CN/WC rate after the merger?

A. Over the years, I've seen railroads with significant aspirations for growth make some significant mistakes in terms of approaching markets and commodities. In instances, I've seen Class 1 railroads make initiatives into markets and commodities in short term, come to realize that it wasn't a sound economic decision in the long term, and then withdraw from those markets. I've seen the kind of harm that does, both to the infrastructure in those areas, and also the harm to the shipper who is then disadvantaged as they try to pick up the pieces and go forward.

Q. So, was it your concern that the CN would compete for taconite traffic in a way that would be harmful to Great Lakes and its subsidiaries? [Objection and subsequent discussion omitted]

A. Yes.

Giles Dep. Tr. at 21-23 [emphasis added]; *see also* at 27-29, 34 and 50 [emphasis added]. But it is simply improper for GLT, an avowed competitor of WC (and by extension the merged CN/WC), to take upon itself to determine, for the railroad and its customers, what is a "sound economic decision." As admitted by Mr. Giles, GLT's fundamental concern was to protect GLT as a competitor. But as noted above, this agency has found that where traffic diversion occurs through natural rivalry between competitors leading to lower rates or improved service on diverted traffic, it is not anticompetitive.

The Applicants similarly have described GLT's goal to be to obtain protection from competition. In CN/WC-13, filed only three days before the June 22nd letter, the Applicants informed the Board that

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 GLT and, by extension, the continued viability of the Port of Duluth.

* * *

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.

CN/WC-13 at 3-4 [footnotes omitted, emphasis added]. The Applicants further recognize that "antitrust principles might prevent us from entering into such an agreement with GLT." *Id.* at 4.

Indeed, the Applicants' concern with antitrust principles would explain why the Settlement Agreement is contingent upon being imposed as a condition of the proposed merger. If imposed as a merger condition, the Applicants and GLT would acquire antitrust immunity for any anticompetitive effects of the exclusive agency provision. 49 U.S.C.A. § 11321(a). Otherwise, as both Messrs. Radloff and Giles recognize, the benefits of the agreement could just as easily be realized through a private agreement between the Applicants and GLT, without asking the Board to impose it as a condition. Giles Dep. Tr. at 41; Radloff Dep. Tr. at 92-93.

2. The Effect of the Exclusive Agency Provision Is Anticompetitive

In addition to having an anticompetitive purpose, the exclusive agency provision clearly has an anticompetitive effect. The Applicants have given pricing authority over movements to the designated destinations to their competitor, GLT. Under the exclusive agency provision, the Applicants are precluded from soliciting this traffic independent of DM&IR or from quoting a rate for only their portion of an all-rail movement from DM&IR origins to these locations. No such prohibitions exist today.

GLT is a direct competitor of the Applicants because the GLT subsidiaries are participants in the current rail-water transportation alternative to an all-rail movement of taconite from DM&IR origins to at least some of the destinations named in the exclusive agency

provision. The USS Great Lakes Fleet transports taconite via water from the DM&IR directly to U. S. Steel's Gary, Indiana facility. It also transports taconite via water from the DM&IR to the P&C Dock, where taconite either is transported by the B&LE to U. S. Steel's Edgar Thomson facility near Pittsburgh or is stored until needed by that facility. Any diversion to an all-rail movement would eliminate the USS Great Lakes Fleet, P&C Dock, and B&LE from either or both of these movements. That would reduce GLT's total revenue and net income. Giles Dep. Tr. at 31-32.

Through the DM&IR, however, GLT has bottleneck control over these taconite movements because DM&IR is essential to both the rail-water and all-rail routes. GLT, through DM&IR's ability to consent to a through rate and to set that rate under the Settlement Agreement, has both the ability and incentive to set the combined DMIR/CN rate factor on all-rail movements at a level that would render the all-rail option uneconomic for U. S. Steel. This would force the taconite traffic over the rail-water alternative, to the financial benefit of GLT, even if the all-rail option was truly more competitive and efficient.

Under the Settlement Agreement, GLT is given an exclusive agency by CN to set the overall price for any all-rail movement of taconite to the destinations in the Agreement. Moreover, the Agreement expressly precludes CN from soliciting any traffic from or quoting any prices to U. S. Steel for CN's portion of any competitive all-rail movement to these destinations. In their depositions, the principal negotiators for both CN and GLT confirmed that this was exactly their intent. Radloff Dep. Tr. at 66-67; Giles Dep. Tr. at 52-54. Although the Applicants may set their own rate factor under the exclusive agency provision, they are restricted from quoting to a shipper their portion of a through rate. Moreover, they have given DM&IR the sole

and exclusive right to set the final through rate. Radloff Dep. Tr. at 87-88; Giles Dep. Tr. at 52-53, 56.

These provisions cause serious anticompetitive effects. As noted by Mr. Efkenman, at the present time U. S. Steel is party to a contract with GLT that provides that DM&IR's division of joint line rail rates shall increase or decrease (subject to a minimum rate) by the same percentage increase or decrease which U. S. Steel negotiates with other carriers in the route. Efkenman V.S., p. 16. Thus, U. S. Steel can and does today directly negotiate with trunk line railroads, which have an interest in promoting all-rail options. Moreover, those negotiations are in fact determinative of DM&IR's rate. *Id.* But since the Settlement Agreement provides that the CN may not even solicit an all-rail movement of taconite for the account of U. S. Steel to Pittsburgh, PA or Gary, IN, and may not set a price to U. S. Steel for its portion of the movement, the Settlement Agreement turns CN into an utterly passive participant, rather than an aggressive competitor, not only in the case of competition between all-rail and rail-water movements, but also vis-à-vis alternative rail routes.

Moreover, upon expiration or termination of U. S. Steel's current contract, it would have the right to negotiate separately with each carrier in an all-rail route for a contract rate for the through movement of taconite from DM&IR origins to its Gary and Pittsburgh facilities. This would allow U. S. Steel to maximize its ability to obtain a competitive all-rail rate because DM&IR, the bottleneck carrier, would not know the rate factors of the other participating carriers and therefore would not know at what level it must set its own rate factor in order to favor a rail-water move. But the exclusive agency provision will preclude the CN from entering into a contract with U.S. Steel for just its portion of the movement. Neither the CN nor GLT deny this

effect. Radloff Dep. Tr. at 66-67; Giles Dep. Tr. at 52-54. Indeed, this effect is essential in order to accomplish GLT's objectives.

Under these conditions, the statute does not permit the Board to approve the CN/WC merger with the Settlement Agreement as a condition. Section 11324(d) specifically states that the Board cannot approve a minor transaction if it finds that: "there is likely to be substantial lessening of competition ... or restraint of trade in freight surface transportation." Both of these effects clearly would occur if the sought condition is applied to the transaction. As the ICC noted in a similar situation: "Such a condition would protect only the competitor, not competition. In fact, it would reduce the beneficial effects of the new, stronger competition." *Rio Grande Industries, Inc., SPTC Holding, Inc., and the Denver and Rio Grande Western Railroad Co.—Control—Southern Pacific Transportation Co.*, 4 I.C.C. 2d. 834, 918 (1988).

Under the public interest standard of the statute that governs the Board's approval of this transaction, the Board must also give consideration to the policies of the antitrust laws. In this case, those policies have an important bearing on the CN/GLT agreement. In April 2000, the U.S. Department of Justice and Federal Trade Commission issued ANTITRUST GUIDELINES FOR COLLABORATIONS AMONG COMPETITORS ("GUIDELINES").⁴ GLT and the merged CN/WC would clearly be actual or potential competitors for the transportation of taconite for U. S. Steel, as shown above. The CN/GLT agreement explicitly gives the DM&IR control over the price to be offered in conjunction with CN for the portion of all-rail movements of taconite over the lines of DM&IR and CN/WC.

As stated in the section 2.2 of the GUIDELINES, at 6:

⁴ Holmes, et al., Antitrust Law Sourcebook (2001) at I-441. The Guidelines are also available at <<http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>>.

Competitor collaborations may harm competition and consumers by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement. Such effects may arise through a variety of mechanisms. Among other things, agreements may limit independent decision making ... regarding price, output, or other competitively sensitive variables, or may otherwise reduce the participants' ability or incentive to compete independently. [emphasis added]

The CN/GLT agreement expressly forbids CN, "independently of DMIR," from "solicit[ing] all-rail movements" of taconite or "set[ting] prices to shippers for its portion of such a movement" to the specified destinations. Agreement, Section II.A.2. Under the Antitrust Guidelines, this clearly is regarded as causing anticompetitive harm.

The GUIDELINES go on to state that an agreement between competitors not to compete on price or output would be regarded as a per se violation of the antitrust laws. Section 3.2. *See also FTC v. Superior Court Trial Lawyers Ass'n* 493 U.S. 411, 432-36 (1990). The Guidelines would not apply such per se treatment to an agreement that reflects "an efficiency-enhancing integration of economic activity." However, the "mere coordination of decisions on price, output, ... and the like is not integration" *Id.* Moreover, the Applicants and GLT are so concerned about the risk of antitrust exposure that they have agreed that the agreement would not go into effect unless CN's compliance is made a condition of the merger. GLT-16, Section IV.A.(2). Wholly apart from the dubious merits of the agreement, the inclusion of that understanding highlights the anticompetitive effect of the agreement.

3. The CN/GLT Agreement Establishes an Anticompetitive Traffic-Protective Condition.

GLT is seeking to compel compliance by CN with an agreement that contains the type of traffic protective condition that the Board and the ICC now regard as anticompetitive. In *Traffic*

Protective Conditions, 366 I.C.C. 112 (1982), *aff'd* in part and remanded in part, *Detroit, T. & I. R. Co. v. United States*, 725 F.2d 47 (6th Cir. 1984), the Commission decided that it would no longer apply general traffic protective conditions (referred to as the "DT&I conditions") to approval of rail consolidation proceedings. The ICC found that such conditions, which restricted the ability of consolidated carriers to offer new competitive rate and service packages to their shippers, were anticompetitive and no longer in the public interest.

The ICC was particularly troubled by the effect of the DT&I conditions to require that rate equalization be provided by merged carriers over existing gateways, because:

Barring a newly consolidated railroad from reducing its rate relative to competing routes may prevent the route from meeting intermodal competition, resulting in a traffic shift to a mode requiring more resources to handle the traffic. *** Indeed, rate equalization under these circumstances works against the congressional policy of reliance on competition, intermodal and intramodal, to revitalize the railroad industry.

366 I.C.C. at 123. *See also DT&I v. U.S.*, 725 F.2d at 50 and cases there cited. The absence of DT&I conditions frees the merged carriers to respond to the demands of the market place.

The CN/GLT agreement at issue in this proceeding is an obvious effort to protect GLT's rail-water (i.e. intermodal) transportation service from competition by the merged CN/WC. The grant of exclusive agency by CN forecloses the merged CN/WC from being an active participant in developing rate and service packages for all-rail movements of taconite for U.S. Steel and other shippers. Today, U.S. Steel's experience has been that WC is "the most aggressive competitor" for U.S. Steel's all-rail taconite traffic. *Efkeman V.S.*, p. 13. After WC is merged into CN, and if the GLT Settlement Agreement is in effect, CN will be reduced to a passive partner that merely provides its revenue requirements to GLT to be included (or not, if GLT declines to compete) in a rate or service offering to a taconite shipper. GLT, and its rail

subsidiary, will be plainly positioned to protect its intermodal transportation service from any competition that might be offered by the merged CN/WC. This is no different, in purpose and effect, from the DT&I conditions to require "rate equalization," because CN/WC would have no ability to pursue the competitive opportunity identified in its application.

The validity of CN's apparent belief that it has "no hope" of competing for this traffic "unless DMIR consents," GLT-14, Att. B at 1, is irrelevant. The Board should not impose a condition on approval of the merger that forecloses the merged carriers from offering competitive rail services that might benefit from the efficiencies provided by the merger. The condition sought by GLT and CN would provide U. S. Steel with "no hope" of realizing any competitive benefits from the merger simply for the purpose of protecting GLT's traffic.

4. Last-Minute Additions to the Agreement Do Not Cure Its Anticompetitive Effects.

In an apparent attempt to preempt U. S. Steel's objections to the exclusive agency provision of the Settlement Agreement, the Applicants and GLT have added two provisions to the final agreement that were not referenced in the June 22nd letter. These additions are contained in Sections II.A.2, 3 and 7. Neither of these provisions, however, alleviate any of the competitive harm to U. S. Steel from the exclusive agency provision.

In Section II.A.2, DM&IR's exclusive agency is restricted "only to all-rail, joint-line movements of the Commodity to a Destination that are *commercially feasible, as reasonably determined by DMIR.*" [emphasis added] Section II.A.3 provides that a movement

is commercially feasible if DMIR reasonably determines that the aggregate revenue requirements of DMIR, CN/WC and any other participating rail carrier or carriers permit a through rate and a quality of service for such movement from an Origin to a Destination that are competitive with comparable through rate and

service offerings otherwise available to the shipper, including any offerings involving maritime transportation.

This standard of "commercial feasibility" would not protect U. S. Steel for a variety of reasons.

First, the standard is premised upon the aggregate revenue requirements of all the participating rail carriers. This denies U. S. Steel its right, upon expiration of its contract with GLT, to negotiate a separate contract with CN or to separately challenge the reasonableness of DM&IR's bottleneck rate factor under the contract exception in the Board's "Bottleneck Decisions." Rather, this standard of commercial feasibility reiterates that DM&IR's rate factor can only be reviewed for reasonableness in the context of the entire through rate.

Second, the standard requires the through rate to be competitive with comparable through rates available to the shipper. Upon expiration of its present contract with GLT, this would preclude U. S. Steel from any comparison of the DM&IR rate factor for all-rail movements with its rate factor for rail-water movements to determine if DM&IR is discriminating in favor of rail-water moves, and hence the other GLT companies. Moreover, the agreement does not define a "comparable through rate and service offering," nor does it indicate how the parties will obtain comparable through rates for comparison purposes, particularly to the extent such rates are in confidential contracts.

Finally, and most importantly, this standard of commercial feasibility does not give any shipper the right to challenge DM&IR's determination. The determination is placed within the sole discretion of DM&IR. The only potential challenge could be made by CN, which would be subject to arbitration under Section IV.C. of the agreement. In fact, Section IV.I. expressly provides that the agreement "is intended for the sole benefit of the parties" and that nothing in the

agreement "is intended or may be construed to give any [other entity] any legal or equitable right, remedy or claim under this Agreement."

In Section II.A.7., the Applicants and GLT also provide that "[i]n establishing from time to time their respective revenue requirements for their respective portions of movements covered by this Section II.A., neither DMIR and its Affiliates nor CN and its Affiliates (including WC) shall act unreasonably or anticompetitively." This provision similarly is insufficient to address U. S. Steel's objections because it still is subject to the through rate standard of commercial feasibility and it does not give a shipper any private right of action to challenge the reasonableness or anticompetitiveness of DM&IR's bottleneck rate factor.

D. Applicants and GLT Desire to Shield Themselves from Antitrust Scrutiny by Shifting to U.S. Steel the Anti-Competitive Consequences of the Settlement Agreement

GLT has effectively coerced the Applicants into entering into the Settlement Agreement.⁵ From the outset, the Applicants have labeled GLT's competitive concerns as unfounded. Even in their June 22nd letter proposing the terms of the agreement, the Applicants stated that their

⁵ GLT also appears to be attempting to coerce shippers and the Board by tying the pro-competitive elements of the Settlement Agreement to the anti-competitive exclusive agency condition. On Direct Examination by his own counsel, Mr. Giles testified as follows:

Q. Is the agreement that CN has entered, the commitment it's made to provide a rate factor [to the Escanaba Dock], part of the package of commitments that are conditioned by CN on the imposition of the entire settlement agreement as a condition by the Surface Transportation Board?

A. It is.

Q. So, unless the entire package of settlement agreement imposes a condition, that commitment to provide a rate factor would go away, correct?

A. That's correct.

Giles Dep. Tr. at 79-80. However, the difficulty is of the parties' own making: any pro-competitive benefits of the Settlement Agreement can be obtained via private agreement without making them part of an anti-competitive package that the parties seek to have imposed by the Board as a condition of the transaction.

willingness to enter into the Agreement was based on their belief that they "expect to incur no economic loss from meeting your [GLT's] goals" and that they "are incurring substantial costs to litigate" GLT's claims. See GLT June 25 Comments (GLT-14), Attachment B; *see also*, Radloff Dep. Tr. at 58-59. Thus, even today, the Applicants do not believe that the agreement addresses any remediable harm to GLT, and certainly no harm to competition, resulting from the merger.

Nevertheless, the Applicants have stated that there may 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 consequences to the Great Lakes rail-water transportation system as a result of the Transaction." CN/WC-13 at 3-4.

At the present time, there is a dispute between the Applicants and GLT regarding the competitiveness of all-rail taconite movements after the merger. GLT cited statements in the merger application that an all-rail route to U. S. Steel's Pittsburgh facility "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." Foote/Schauer V.S., CN/WC-2 at 170. In addition, the Applicants asserted that "[t]his 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." *Id.* [footnote omitted] Rather than develop this issue in comments to the Board, however, the Applicants have short-circuited the process by acquiescing to GLT's demands that it be protected from all-rail competition.

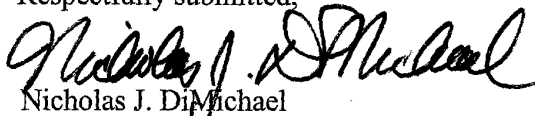
The Applicants now seek "cover" from the potential antitrust consequences of their settlement with GLT by making it effective only if the Board imposes it as a condition, thereby obtaining immunity from the antitrust laws. The Applicants only need antitrust immunity, however, if they are or will be a competitor to GLT. Indeed, the very fact that CN is seeking antitrust immunity for the Settlement Agreement is a tacit admission by CN that it is in fact a competitor to GLT. But if the Applicants are or will be a competitor, then the Settlement Agreement forces U. S. Steel to bear the consequences of any reduced competition for its taconite movements under the exclusive agency provision without any assessment of the need for such a drastic condition.

In essence, the Applicants are seeking to avoid the antitrust risks of their settlement with GLT by shifting the risk of reduced competition to U. S. Steel. This is not justified. The decisions to enter into this transaction and the Settlement Agreement were the Applicants' and GLT's alone. Therefore, it is not fair to absolve the Applicants and GLT of the antitrust consequences of their agreement by saddling U. S. Steel with the anticompetitive consequences of those decisions.

VI. Conclusion

For all of the foregoing reasons, U. S. Steel respectfully requests the Board to deny the request of GLT to impose compliance with the CN/GLT Settlement Agreement as a condition of the proposed transaction between CN and WC.

Respectfully submitted,



Nicholas J. DiMichael
Frederic L. Wood
Jeffrey O. Moreno
Michael H. Higgins
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 25, 2001

Certificate of Service

I hereby certify that I have, on this 25th day of July, served a copy of the foregoing on all parties of record, in accordance with the Board's decision in this case and its Rules of Practice.

