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July 31, 2001

GLT-19

ENTERED
Office of the Secretary

AUG 01 2001

Part of
Public Record

BY HAND

The Honorable Vernon A Williams
Secretary
Surface Transportation Board
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001



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

Dear Secretary Williams:

On behalf of Great Lakes Transportation LLC ("GLT"), we write to correct certain misunderstandings about the settlement agreement between GLT and Canadian National Railway Company (the "Settlement Agreement" or "Agreement") that are reflected in reply comments filed by United States Steel LLC, AK Steel Corporation, and the Department of Transportation.¹ While GLT's and Applicants' reply comments (GLT-18 and CN/WC-16) address some points made by these parties, GLT could not have anticipated many of the arguments. In order that the Board's decision in this case may be based on a full and accurate record, we offer the following corrections to misstatements about the Agreement and its effects.

¹ GLT seeks leave to file this reply to certain reply comments. While such replies are not ordinarily permitted, this is GLT's only opportunity to respond to numerous inaccurate allegations made for the first time in the reply comments.

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First, any suggestion that GLT's purpose in entering into the Settlement Agreement was to extinguish all-rail options for the movement of taconite is mistaken.² GLT acted for three interrelated reasons:

(1) GLT embraced the agency arrangement – initially proposed by CN – as an effective means of addressing GLT's concern about the prospect of diversions caused by below-cost pricing, and as a way to improve the ability of DM&IR and CN/WC to cooperate when customers desire all-rail movements.³ The arrangement is narrowly tailored to resolve GLT's concerns by, first, requiring that, for the limited group of movements as to which GLT had concerns,⁴ CN/WC not provide an "unprofitable" rate factor, and, second, confirming that CN/WC would work *with* DM&IR in pursuing all-rail opportunities, so that DM&IR could effectively monitor Applicants' compliance with their commitment not to price below cost. To put it more directly, the agency arrangement enables GLT not only to offer one-stop shopping for its customers, but to assure that any diversions of taconite from water carriage reflect underlying costs and economic efficiency, rather than below-cost pricing.⁵

(2) CN's commitment to provide a rate factor for rail-water movements via the Escanaba Docks on Lake Michigan significantly enhances GLT's ability to offer shippers a rail-water option during the several winter months when Lake Superior is closed to shipping.

² GLT has no interest in disabling viable all-rail routings that might benefit customers; it recognizes that its customers operate in intensely competitive markets in which there are numerous transportation and supply options. *See* GLT-18, at 11-12 n.28. The volume of traffic handled by GLT's subsidiaries obviously depends on the competitiveness of the taconite producers and steel mills that they serve.

³ DM&IR currently cooperates on all-rail movements when customers desire them. This includes winter movements to the Edgar Thompson works and year-round movements to AK Steel's Middletown, Ohio plant. *See* USS-3, Verified Statement of Richard K. Efke, at 13; AKS-10, at 3.

⁴ Contrary to suggestions made in the reply comments, CN and GLT do not intend to use Section IV.H. of the Agreement to expand the scope of the agency arrangement.

⁵ As CN's witness testified, the agency arrangement is very different from the hypothetical restriction on competition that Applicants described as anticompetitive in their June 19 "Comments on the Status of GLT Issues." *See* Deposition of G.P. "Rusty" Radloff, Transcript at 82-83 (copy included as Attachment 1 hereto).

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(3) The parties resolved several contentious issues that directly affect post-merger CN/WC operations in the Duluth/Superior area.

Second, the commenters are mistaken in claiming that the agency arrangement will harm competition:

- The agency arrangement has no effect on build-ins or build-outs. GLT expressly confirms that the arrangement *will not apply* unless DM&IR participates in the route.
- US Steel asserts that it will lose the benefit of a provision of its Transportation Services Agreement with GLT ("TSA") that sets DM&IR's revenue division of joint-line rail rates by reference to the division US Steel negotiates with other carriers in the route. This is supposedly because CN/WC will no longer be able to "set a price to U.S. Steel for its portion of the movement." USS-3, Argument, at 24. This is incorrect. The cap on DM&IR's revenue division under the TSA does not depend on an interline carrier quoting a price *directly* to US Steel. Instead, it is based on the level of interline carriers' revenue divisions on joint through rates.⁶ See TSA § 6(i) (copy included as Attachment 2 hereto). Under the Settlement Agreement, CN/WC will independently set its own revenue requirements for US Steel moves and will provide them to DM&IR. Those independently established revenue requirements will continue to be "determinative" of DM&IR's rate under the TSA. Under the agency arrangement, any shipper (including US Steel) will be free to discuss rates directly with CN/WC and to encourage it to lower its revenue requirement (consistent with the requirement that the movement be profitable for CN/WC). In addition, DM&IR will be required to arrange a joint-line all-rail move when a shipper requests it (Agreement § II.A.2).
- There is no basis for the suggestion that DM&IR's knowledge of CN/WC's rate factor might somehow reduce a shipper's ability to obtain a competitive all-rail rate because DM&IR would know how high to raise its own rate factor to favor a rail-water move. If defeating an all-rail option were DM&IR's goal, it is ignorance of the CN/WC rate factor (rather than knowledge) that would cause it to maximize its rate factor for an all-rail move so as to be certain the all-rail option would be more costly.

⁶ In the past the only rates provided to US Steel under the TSA have been joint through rates covering the entire movement from origin to destination.

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- The agency arrangement does not prevent shippers from challenging the reasonableness of "bottleneck" DM&IR rates.⁷ Three other rail carriers -- CP, UP, and BNSF -- may provide a contract for all-rail taconite movements beyond Duluth/Superior. A contract with any one of them would give a shipper the same right to seek bottleneck relief as a contract negotiated with CN/WC. In any event, CN/WC would have no obligation to enter into a contract for its segment, and WC in fact has not done so. Thus, the Settlement Agreement does not alter the status quo.
- Neither AK Steel nor US Steel could be significantly affected by the agency arrangement. As AK Steel acknowledges (AKS-10, at 3), it does not ship taconite to any of the destinations covered by the agency arrangement. US Steel would not be affected in any significant way because the TSA governs DM&IR's rate for 100% of the taconite shipments from US Steel's Minntac facility through 2008. *See* USS-3, Efke VS, at 16.

Third, the commenters disregard important reasons why the Board should impose CN's compliance with the Settlement Agreement as a condition.

- Failure to impose the Agreement as a condition would undermine the Board's strong policy favoring private settlements in merger proceedings. As Applicants' reply comments indicate (CN/WC-16, at 32 & n.30), CN would not have entered into the Agreement without an assurance that it would be free from collateral attacks based on spurious theories of competitive harm. Moreover, in view of the Agreement, GLT refrained from presenting evidence it otherwise would have submitted. In these circumstances, failure to impose the Agreement as a condition would be unfair to GLT and would discourage future settlements.
- Failure to impose the Agreement as a condition would sacrifice all of the benefits as to which no question has been raised, including CN/WC's commitment to provide DM&IR with an Escanaba rate factor and resolution of operational issues in the Duluth/Superior area.
- The Agreement addresses GLT's legitimate concerns in a manner that is far superior to other remedies the Board might have imposed to address these concerns. The Agreement establishes a framework under which DM&IR

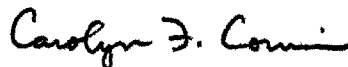
⁷ There is no prospect that US Steel could seek bottleneck relief until 2008, when the TSA expires.

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(which is uniquely positioned to monitor compliance) can ensure that Applicants live up to their representation that they will not attempt to divert traffic through unprofitable pricing. This privately negotiated commercial solution is inherently more efficient than *any* form of Board oversight, which would likely entail contentious evidentiary disputes about complex interline rail rates. And it is certainly preferable to, and far more effective than, the vague regime of STB monitoring that DOT proposes.

Respectfully submitted,



J. Michael Hemmer
Nicholas W. Fels
Carolyn F. Corwin
David L. Meyer
James R. Dean
Attorneys for
Great Lakes Transportation LLC

Enclosures

ATTACHMENT 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

CERTIFIED COPY

Finance Docket No. 34000

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

Washington, D.C.

Thursday, July 12, 2001

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

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

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

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

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

11 MR. CUNNINGHAM: Okay, second
12 paragraph.

13 MR. WOOD: Yes.

14 BY MR. WOOD:

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

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

1 noncompete issue.

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

6 MR. CUNNINGHAM: Asked and answered.

7 BY MR. WOOD:

8 Q. You could answer.

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

11 Q. In what way is it different?

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

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

ATTACHMENT 2

TRANSPORTATION SERVICES AGREEMENT

DATED JULY 1, 1998

BY AND BETWEEN

USX CORPORATION - U. S. STEEL GROUP

and

TRANSTAR, INC.

level, the Base Rate and adjusted Base Rate in effect on January 1, 2005 ever falling below their January 1, 2005 level and the Base Rate and adjusted Base Rate established during the Additional Term ever falling below their originally established level. During the Initial and Additional Term of this Agreement, per car rates reflected in this Agreement for single-line and/or in-plant coke movements may be adjusted upward proportionally to the increase in car carrying capacity or cube size whenever such car carrying capacity or cube size increases by more than 5%. During the Additional Term, such adjustments may be sought for movement of any other commodities but may be implemented if mutually agreed upon by the parties or, failing such agreement, pursuant to the dispute resolution procedures set forth in Sections 15 and 16 of this Agreement. Any arbitrator considering a request for such an adjustment shall attempt to follow prevailing practice in the rail industry.

(i) Adjustments to Joint-Line Rates. Sole Service Carrier earnings on existing joint line rates may be adjusted up or down by an amount not to exceed the same percentage increase or decrease as implemented by the trunk line for its portion of earnings on the through rate, provided the Sole Service Carrier's earnings shall never fall below its earnings under the joint-line Initial Base Rate as may be

adjusted as set forth in Section 6(j) and provided Sole Service Carrier's earnings shall never fall below its earnings under the originally established joint-line Base Rates as may be adjusted as set forth in Section 6(j). The dollar amount of Sole Service Carrier earnings shall equal the dollar amount of its earnings under the joint-line Initial Base Rate or the joint-line Base Rate, as may be adjusted as set forth in Section 6(j), while the adjusted Initial Base Rate is equal to or lower than the joint-line Initial Base Rate or the adjusted Base Rate is equal to or lower than the originally established joint-line Base Rate. Once the adjusted rate exceeds the Initial Base Rate or Base Rate, Sole Service Carrier earnings shall be the same percentage of the adjusted joint-line Initial Base Rate or the adjusted joint-line Base Rate as Sole Service Carrier percentage under the Initial Base Rate or the originally established Base Rate except as may be adjusted as set forth in Section 6(j). (See examples in Exhibits XX and XXI attached to this Agreement.) If there is more than one other line-haul carrier included in the joint rate with the Sole Service Carrier, Sole Service Carrier earnings may be adjusted by an amount not to exceed the weighted average percentage of the other participating carriers. With respect to new joint line rates, Sole Service Carriers shall not seek requirements that are higher than earnings on existing rates.

for movements of the same commodities from the same or a comparable junction point to the same or comparable destination in similar quantities and equipment. USS shall have the right to audit Sole Service Carrier records to ensure compliance with this provision, provided however, such audit shall be conducted by an independent auditor to be nominated by USS, subject to written approval by the Transtar Unit to be audited, which approval shall not be unreasonably withheld. The auditor shall only certify to USS whether Sole Service Carrier was in compliance and shall keep all information confidential. Sole Service Carriers shall notify USS whenever a division of a joint-line rate deviates from the percentage division in effect at the time the Initial Base Rate or Base Rate was established. Transtar and Sole Service Carriers hereby consent to USS requesting, and trunk line carriers advising, only whether the division has changed or whether the Transtar Unit has priced its division on a new movement in accordance with existing rates for movement of the same commodities from the same or a comparable junction point to the same or comparable destination in similar quantities and equipment. Under no circumstances do Transtar or the Sole Service Carriers consent to the trunk lines disclosing the amount or the percentage of the divisions or of USS requesting the same.

CERTIFICATE OF SERVICE

I, Carolyn F. Corwin, certify that, on this 31st day of July, 2001, I caused a copy of the foregoing letter to be served as indicated below:

By Hand:

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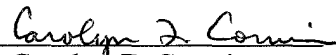
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Paul Samuel Smith
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By Overnight Mail:

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Two Prudential Plaza
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I further certify that on this 31st day of July, 2001, I caused a copy of the foregoing letter to be served by first-class mail, postage prepaid, on all other parties of record listed on the official service list, as modified, issued as Appendix A to Decision No. 3 in Finance Docket No. 34000.


Carolyn F. Corwin