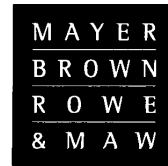


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January 26, 2004

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
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Washington, DC 20423-0001

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Re: Finance Docket No. 34424, Canadian National
Railway Company and Grand Trunk Corporation
- *Control - Duluth, Missabe and Iron Range
Railway Company, Bessemer and Lake Erie
Railroad Company, and The Pittsburgh &
Conneaut Dock Company*

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and twenty (20) copies of The Burlington Northern and Santa Fe Railway Company's Comments (BNSF-2). Also enclosed is a disk with the text of the pleading in a format compatible with Word Perfect 10.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.

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Public Record

cc: Paul A. Cunningham, Esq.
All Parties of Record

Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles Manchester New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete, Nader y Rojas, S.C.

Mayer, Brown, Rowe & Maw LLP operates in combination with our associated English limited liability partnership in the offices listed above.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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Public Record

Finance Docket No. 34424

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
- CONTROL -
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY,
BESSEMER AND LAKE ERIE RAILROAD COMPANY,
AND THE PITTSBURGH & CONNEAUT DOCK COMPANY

COMMENTS OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

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Dated: January 26, 2004

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34424

CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
– CONTROL –
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY,
BESSEMER AND LAKE ERIE RAILROAD COMPANY,
AND THE PITTSBURGH & CONNEAUT DOCK COMPANY

COMMENTS OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Pursuant to Decision No. 2 in this proceeding, The Burlington Northern and Santa Fe Railway Company ("BNSF") hereby submits its comments on the proposed Canadian National Railway Company and Grand Trunk Corporation ("CN")/Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company ("DM&IR") control transaction.

INTRODUCTION AND SUMMARY

BNSF's interest in the CN/DM&IR proceeding is to ensure that rail shippers are not competitively worse off as a result of the transaction. CN has made a number of pledges and commitments which partially address the competitive concerns raised by the transaction, including preserving certain "2-to-1" and build-in/build-out competition and maintaining open gateways on commercially reasonable terms. CN's pledges need

to be clarified to ensure that shippers' competitive options are preserved. Further, CN has not identified a carrier to provide the necessary replacement service, and, as set forth below, BNSF should be that carrier.

BNSF does not oppose the CN/DM&IR transaction, subject to the clarification of CN's pledges and commitments and to their inclusion as conditions in the Surface Transportation Board's final decision, and to the identification of BNSF as the replacement carrier.

BNSF's proposed clarifications are in accord with CN's agreement with the National Industrial Transportation League ("NIT League") in the CN/Wisconsin Central ("WC") transaction.¹ Under such an approach, CN would be required to maintain the existing DM&IR rates and services presently available for service to shippers in northeastern Minnesota and northern Wisconsin for a temporary period up to five years, subject to Unadjusted Rail Cost Adjustment Factor ("RCAF-U") increases, and to provide commercially reasonable rates and services thereafter subject to the jurisdiction of the Board.

Such an approach would provide a transitional time period for the development of effective interline routing and commercial relationships in light of the transaction. It would also reflect the Board's adoption of open gateway requirements in the revised merger rules² and would also be consistent with open gateway agreements in prior

¹ Canadian National Ry. Co. – Control – Wisconsin Central Transp. Corp., STB Finance Docket No. 34000.

² Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1) (served June 11, 2001).

merger proceedings, including agreements to which CN has been a party. Similarly, conditions requiring the preservation of the horizontal “2-to-1” and build-in/build-out competition that would otherwise be lost as a result of the transaction are fully consistent with the Board’s recent decisions and revised merger rules.

CONDITIONS REQUESTED

- **“2-to-1” Shipper Facilities**

BNSF will have the right to serve, via either trackage rights or haulage, any shipper facilities that are accessible to or open to only both DM&IR and CN, and no other railroad, whether via direct service, reciprocal switching, joint facility or other arrangements, regardless of how long ago the shipper or receiver at that facility may have shipped or received, or whether the shipper or receiver at that facility ever shipped or received, any traffic via either DM&IR or CN. The routing of any such trackage rights shall seek to minimize the operating inconvenience to CN, consistent with ensuring BNSF’s ability to provide competitive service.

- **Build-Ins/Build-Outs**

BNSF will have the right to serve a new build-in/build-out line constructed to reach a facility that was solely served by either DM&IR or CN and which would have been open to new railroad service upon construction of the build-in/build-out line. BNSF access shall be via either trackage rights or haulage (i) to a point on lines owned or accessed by CN in the case of facilities solely served by DM&IR, or (ii) to a point on lines owned or accessed by DM&IR in the case of facilities solely served by CN. The routing of any such trackage rights shall seek to minimize the operating inconvenience to CN, consistent with ensuring BNSF’s ability to provide competitive service.

- **Open Gateway Commitment**

CN will maintain existing divisions and rates at all existing active gateways affected by the proposed CN/DM&IR transaction for a period of up to five (5) years, except for increases no greater than increases in RCAF-U. Thereafter, CN will establish and maintain in effect commercially reasonable through rates and charges at such gateways.

- **Service Guarantee**

Service provided by CN and DM&IR for shippers’ traffic shall be equal to or better than the service which DM&IR provided to the shippers prior to

the transaction for comparable movements and volumes of traffic. "Service" includes frequency of switching, average transit time, car supply and such other factors as may be agreed to between the parties.

ARGUMENT

I. **UNLESS PROPERLY CONDITIONED, THE PROPOSED CN/DM&IR TRANSACTION COULD POTENTIALLY HAVE ADVERSE HORIZONTAL AND VERTICAL EFFECTS ON SHIPPERS' COMPETITIVE OPTIONS**

A. **CN Has Recognized A Number Of Potential Adverse Competitive Effects In Its Application**

1. **Horizontal Effects**

CN has acknowledged in its Application that, prior to the cessation of operations in May 2003, the EVTAC Mining taconite plant at Fairlane, MN, which processed raw iron ore into taconite pellets, was open to general carload traffic service from both DM&IR and CN. Application at 11, n.14; Verified Statement of Gerald P. Radloff ("V.S. Radloff") at 54-55. The plant is thus a "2-to-1" point for such traffic.³

Further, while the United Taconite plant is open only to DM&IR for the movement of iron ore and taconite traffic, the plant has a potential build-in/build-out option to the nearby CN (Duluth, Winnipeg and Pacific ("DWP")) line. Such a build-in/build-out line could carry both raw iron ore originated at the Thunderbird North mine into the plant⁴ and processed taconite pellets from the plant. Mr. Radloff has acknowledged that this

³ At the time the Application was filed, the Fairlane plant remained inactive. United Taconite has since acquired the plant, and the plant is once again producing taconite pellets.

⁴ Although the Thunderbird North mine is currently exclusively served by DM&IR, CN has track very close to the mine, and a connecting track into the mine could readily be constructed.

option would be eliminated by the proposed transaction, absent access by a third party carrier. V.S. Radloff at 56-57.

2. Vertical Effects

CN has stated that, to guard against the risk of adverse vertical competitive effects resulting from the transaction, it will “keep all existing active gateways affected by the Transaction open on commercially reasonable terms.” Application at 12. CN has further pledged that the rail service it provides to customers after the transaction “will be as good as – or better than – the service they now receive from CN and the GLT railroads.” Verified Statement of E. Hunter Harrison at 40.

B. CN’s Pledges And Commitments Need To Be Clarified To Fully Protect Shippers’ Competitive Options

1. Horizontal Competition

a. “2-to-1” Customers

CN’s commitment with respect to the United Taconite plant is sufficient to preserve the existing “2-to-1” competition for general carload traffic to and from the plant, but the commitment should be made general in its application. Mr. Radloff analyzed seven other jointly-served locations and concluded that there would be no loss of existing “2-to-1” competition at any of those locations. See V.S. Radloff at 51-55. However, recent Board precedent and the Board’s revised merger rules suggest that it would be appropriate to impose a general condition preserving all “2-to-1” competition. See Union Pacific Corp. – Control and Merger – Southern Pacific Rail Corp., 1 S.T.B. 233, 390-93 (1996) (“UP/SP”); 49 C.F.R. §§ 1180.1(c)(2)(i) and 1180.7(b)(2). Such a general condition is appropriate in the event a shipper at one of those locations seeks to preserve two carrier service by establishing (through research into historical service

records or otherwise) that the transaction caused it to lose the opportunity for such service.⁵

b. Build-Ins/Build-Outs

CN has acknowledged that the proposed transaction could eliminate build-in/build-out competition for inbound ore and outbound taconite movements at the United Taconite plant at Fairlane and indicates its willingness to provide competitive access via trackage rights to a second carrier. CN's witness Radloff concludes that only the Fairlane plant presents a possibly "feasible" build-in/build-out opportunity.⁶ However, if potential build-in/build-out options are available to other shippers located on DM&IR and CN's lines, those options should be preserved by imposing a general build-in/build-out condition, similar to that imposed in UP/SP. Ibid.

Further, as to the Fairlane plant taconite build-in/build-out opportunity, CN contends that it should not be required to permit the replacement carrier to use the DM&IR line between Nopeming Junction and South Itasca since CN purportedly cannot use that line for transporting taconite under its trackage rights agreement with DM&IR.

⁵ As BNSF's proposed condition (which is drawn from the "2-to-1" point access language of the Restated and Amended BNSF Settlement Agreement in the UP/SP merger) sets forth, a shipper would have the right to two carrier service "regardless of how long ago the shipper" may have shipped or received or whether the shipper "ever shipped or received" traffic via DM&IR or CN.

⁶ In this regard, CN's attempt to impose a feasibility requirement on any build-in/build-out relief and to thereby limit such relief should be rejected as the Board did in the UP/SP merger. See UP/SP, 1 S.T.B. at 420. There, the settlement agreement between UP/SP and the Chemical Manufacturers Association established an arbitration process for determining whether a proposed build-in/build-out would be feasible under applicable precedent. The Board held that a shipper seeking to take advantage of a build-in/build-out option "need not demonstrate economic feasibility; the only test of feasibility is whether the line is actually constructed." Ibid.

V.S. Radloff at 57 n.12. CN also contends that the replacement carrier should not be one that has an ore dock in the Duluth/Superior area since CN does not have such a dock. Ibid.

CN's proposed restrictions are not in line with the facts or Board precedent. First, Board precedent requires that the trackage rights awarded to the replacement carrier must enable that carrier to provide competitive service. See Section 8(l) of the Restated and Amended BNSF Settlement Agreement (UP/SP-393; BNSF-100), which provides that the routing of trackage rights to a build-in/build-out point "shall seek to minimize the operating inconvenience to UP, consistent with ensuring that BNSF can provide competitive service." CN's restrictions appear intended to preclude that from happening. If it is determined that the replacement carrier needs to make further use of the DM&IR line to provide competitive service, then the restrictions should be held inapplicable.⁷

Moreover, in 1998, BNSF and CN presented a proposal to EVTAC Mining that provided for a joint CN-BNSF movement of taconite from the plant utilizing CN's trackage rights over DM&IR and BNSF's dock in Superior, WI. Verified Statement of William R. Houston ("V.S. Houston") at 1-2 (Attachment 1 hereto). CN represented to EVTAC and BNSF in the parties' negotiations that the trackage rights restriction on the DM&IR line could be successfully challenged. Id. At 2. Thus, CN should not be

⁷ In this regard, Mr. Radloff qualified CN's position on the use of the DM&IR line by indicating that the replacement carrier could use the line "on commercial terms." V.S. Radloff at 57 n.12. Mr. Radloff fails to define what he means by "commercial terms", but it can be inferred that those terms would serve to limit the replacement carrier's ability to compete with CN/DM&IR for United Taconite traffic. As discussed above, any such limitation is impermissible under Board precedent.

permitted now to contend that the competitive build-in/build-out option which the CN line provides is hampered by the purported restriction on DWP's trackage rights. It did not believe that to be the case in 1998, and it cannot so contend now.

Similarly, the 1998 competitive opportunity which CN proposed contemplated using BNSF's Allouez Dock at Superior. V.S. Houston at 2. CN cannot now be heard to claim that its lack of a dock somehow circumscribes the competitive option being lost by the Fairlane plant as a result of CN's acquisition of DM&IR.

Therefore, contrary to Mr. Radloff's argument (V.S. Radloff at 57 n.12), providing BNSF with the right to serve a build-in/build-out line to the United Taconite plant via the DM&IR line between Nopeming Junction and South Itasca does not put the plant in a better position than it was before the transaction. As discussed, CN itself advised the plant owners and BNSF that the restriction could be voided, and the 1998 proposal contemplated the use of BNSF's dock in Superior.⁸

c. BNSF Should Serve as the Replacement Carrier

In its Application, CN has not identified a carrier to serve as the replacement carrier to preserve the horizontal competition which would be lost by the proposed transaction. CN proposes instead to negotiate with other carriers in order to provide for the necessary competitive access by a second railroad. The Board should require that the replacement carrier be identified before the transaction is approved so that shippers

⁸ In addition, CN does have a dock at Escanaba, MI which it can and does use for the movement of taconite from this area, and thus CN itself provides a competitive build-in/build-out option that would utilize a lake dock.

can determine whether the identified carrier can provide the competitive rates, routes and service necessary to preserve competition.

BNSF is the best positioned carrier to preserve the existing competition. BNSF has substantial experience in moving taconite efficiently and on schedule to meet customer demands. V.S. Houston at 2. BNSF also has the equipment, both car and locomotive, to move the taconite tonnage required, and BNSF has a dock (Allouez Dock) at Superior to handle rail-to-water movements. Id. At 2-3. In the absence of a dock, the existing competition between the rail-water routes and the all-rail routes would be adversely affected. BNSF also has an extensive route system that provides single line service to the West Coast and to all major eastern interchanges. Id. at 3.

2. Vertical Competition

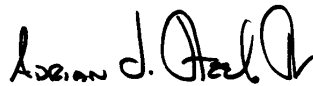
CN's witness Radloff sets forth the carrier's position that there will be no adverse vertical competitive effects as the result of the transaction. V.S. Radloff at 60-61. Nonetheless, CN pledges to "keep all existing active gateways affected by the Transaction open on commercially reasonable terms." Id. at 61. CN's general commitment should be more specific so that shippers will be certain of the definitive rate and service terms that will be in effect after the transaction. Indeed, in CN/WC, CN agreed in a settlement agreement with NIT League to specific rate and service protections. (A copy of the CN/WC settlement agreement with NIT League is attached hereto as Attachment 2.)

CN should agree to the same protections here. This is especially so in light of the fact that the CN/WC rate and service protections apply to the former WC lines which connect to DM&IR on the south.

CONCLUSION

For the reasons set forth above, BNSF respectfully submits that, should the Board find that the proposed CN/DM&IR control transaction is in the public interest and determine to approve the transaction, then it should condition its approval of the transaction by imposing the conditions described herein. Those conditions would fully preserve the competitive options of shippers that would otherwise be lost as a result of the transaction, but they would do so without unduly affecting the Applicants' ability to offer shippers the benefits of the proposed transaction.

Respectfully submitted,



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Dated: January 26, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all parties of record in Finance Docket No. 34424 by first-class mail or a more expeditious manner.

Lonnie J. Steel

ATTACHMENT 1

**VERIFIED STATEMENT
OF
WILLIAM R. HOUSTON**

1. My name is William R. Houston. I am Market Manager Industrial Products for The Burlington Northern and Santa Fe Railway Company ("BNSF"). My business address is 2650 Lou Menk Drive 3rd Floor, Fort Worth, TX 76131. I received a bachelor degree in Business Administration from the University of Nebraska in May of 1973. I was hired by the Burlington Northern Railroad ("BN") in June of 1973. I started my career at Burlington Northern in the operations department. I worked in both line and staff positions in the operations department before going to the marketing department in July 1986.
2. In my position as Market Manager Industrial Products, I am responsible for the marketing for the commodities of taconite, iron ore, coal coke, metallurgical coal and anthracite coal. These commodities are generally used as raw materials for the integrated steel industry. I was responsible for the marketing of taconite transportation on BN from July 1986 until the merger creating The Burlington Northern and Santa Fe Railway Company, and I have subsequently been responsible for these commodities.
3. The purpose of this Verified Statement is to describe the circumstances surrounding a proposal in 1998 pursuant to which the Canadian National Railway Company ("CN") would provide rail service in conjunction with BNSF to the EVTAC Mining taconite plant located at Fairlane, MN. At the time, the EVTAC plant was exclusively served by the Duluth, Missabe and Iron Range Railway Company ("DM&IR") for inbound raw iron ore traffic from EVTAC's Thunderbird North mine near Virginia, MN and for outbound processed taconite pellets. The taconite pellets generally moved south on DM&IR to the

Duluth/Superior area where they were loaded onto lake vessels at DM&IR's dock or were interchanged with connecting long haul carriers such as CN, BNSF, UP and CP, or their predecessors.

4. The proposal to EVTAC provided that the taconite traffic would move south from the plant over the Duluth, Winnipeg and Pacific line (which is owned by CN) to a point where the DWP line connected with DM&IR's line between Nopeming Junction and South Itasca. As the result of the 1981 closing of DWP's yard in Duluth due to an interstate highway relocation project, DWP secured trackage rights over the DM&IR line so that it could access a new yard and continue to interchange with connecting carriers in the Superior, WI area. The trackage rights agreement between DM&IR and DWP purportedly contained a restriction excluding DWP's use of the trackage rights for taconite traffic. DM&IR had offered BNSF a similar trackage rights agreement for movement by BNSF over DM&IR to interchange with DWP in the Superior, WI area.
5. CN advised EVTAC and BNSF during their 1998 negotiations that this purported restriction could be voided and would not prevent the movement of taconite traffic over the trackage rights line. CN agreed to undertake the responsibility to have the restriction removed.
6. After traversing the DM&IR line, the taconite traffic was to be interchanged to BNSF and then loaded on to lake vessels at BNSF's dock in Superior.
7. BNSF has had substantial experience over the years in moving taconite efficiently to the market on schedules that meet customer demands. BNSF has both the car and locomotive equipment to move the taconite tonnage that would be produced at the Fairlane plant (which is now owned and operated by United Taconite) and other plants.

BNSF also operates the Allouez Dock at Superior, which is one of the largest vessel loading terminals on the Great Lakes. The competition which currently exists between the rail-water routes and the all-rail routes would be adversely affected in the absence of a dock. BNSF provides extensive single line system to the West Coast and to all major eastern interchanges.

VERIFICATION

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

Executed on January 23, 2004.


William R. Houston

ATTACHMENT 2

Agreement between the National Industrial Transportation League
And
The Canadian National Railway Company

This Agreement is made this 27th day of April 2001 between The National Industrial Transportation League ("League"), and the Canadian National Railway Company and its affiliated rail carriers ("CN").

Whereas,

CN and Wisconsin Central Transportation Corporation ("WC") (together, "Rail Carriers"), have filed an Application before the Surface Transportation Board ("STB") seeking the STB's approval of the acquisition of control of WC by CN ("Transaction");

The League and CN desire to record the terms on which the League, having reviewed the Application, has agreed to support the Transaction and the treatment of the Transaction before the STB as a "minor transaction;" and

The League and CN desire to record the promises given by CN to the League for the benefit of the members of the shipping public in exchange for the League's support,

Now, therefore, in consideration of the mutual covenants contained herein, CN and the League agree as follows:

1) **League Support.** The League agrees to support STB approval of the Transaction. Within a reasonable time after the execution of this Agreement and no later than April 27, 2001, the League will submit a statement to the STB supporting the Transaction and the treatment by the STB of the Rail Carriers' Application for approval of the Transaction as one for approval of a "minor transaction" as that term is used in 49 C.F.R. §1180.2(c).

2) **Service Protection Agreements.** Upon the request of any shipper or receiver of property on CN and/or WC ("Shipper"), the Rail Carriers shall make a good faith offer to enter into an agreement with that Shipper with respect to that Shipper's traffic affected by the Transaction that, at a minimum:

a) Identifies that Shipper's base service level as the average transit time during each base period for each of the commodities shipped or received by that Shipper between each pertinent origin/destination pair affected by the Transaction. The base periods will be the twelve calendar months preceding the month in which the Transaction is consummated, or such other specific time periods agreed to by the Rail Carriers and that Shipper.

b) Assures that average transit-time at the base service level will not be adversely affected by the Transaction.

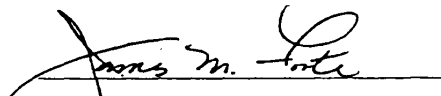
- c) Provides for (i) Shipper notice to CN if that Shipper's average transit-time for any calendar month after consummation of the Transaction is adversely affected relative to that Shipper's average transit for the corresponding base period calendar month and (ii) a period of not more than 30 days after the date of receipt of such Shipper notice for CN to bring the average transit-time for the movement or movements in question up to the base service level for the corresponding base calendar month..
- d) Provides remedies if that Shipper's average monthly transit-time continues to be adversely affected by the Transaction for more than 30 days after the date of such notice. Such remedies, to be applied during the period of degraded service, will include, at a minimum, on-the-ground management flexibility and top-level backing with whatever resources are necessary to effect a complete and timely resolution. The Shipper and Rail Carriers may agree to remedies for service level declines in addition to or in lieu of the remedies provided for in this Agreement. During the two year period after consummation of the Transaction, if a Shipper's average transit time calculated over a calendar month for a particular movement exceeds that for the corresponding base period calendar month, the Rail Carriers shall have the burden of showing that the adverse effect was not a result of the Transaction.
- e) The Shipper and Rail Carriers may agree to provide for a sliding scale of charges based on the Rail Carrier's performance for that Shipper after the Transaction relative to that Shipper's base service levels.
- f) Unless otherwise agreed to by the Shipper and the Rail Carriers, any agreement made pursuant to this section 2 shall expire five years after the consummation of the Transaction.

3) Interchange Protection.

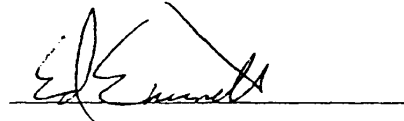
- a) At the request of a Shipper, subject to any necessary concurrence of Rail Carriers' connections, Rail Carriers will establish and maintain in effect commercially reasonable contract through rates and charges that are applicable to the transportation of property for that Shipper originating on or destined to points on WC over any existing interchange between WC and any other rail carrier that was active during the 12 months prior to the date of this Agreement.
- b) Within the five year period subsequent to the consummation of the Transaction, Rail Carriers, except as provided below, will not increase their portion of common carrier through rates that are in effect upon the date of the consummation of the Transaction and that are applicable to the transportation of property via interchanges to or from origin or destination points on WC and have been used to ship the commodity in question in the prior 12 months. The Rail Carriers' portion of such existing common carrier through rates may be

increased by no more than the change, if any, in the Unadjusted Rail Cost Adjustment Factor ("RCAF-U") or, if the Rail Carriers so choose, the change in the RCAF-U minus any fuel cost element of the RCAF-U plus any cost-based fuel surcharge applied by the Rail Carriers.

- c) After the expiration of the five-year period subsequent to the consummation of the Transaction, Rail Carriers will not close, by any commercially unreasonable means, any interchange between WC and any other rail carrier then in active use.
- 4) **Applicability of this Agreement.** This Agreement was negotiated on the expectation that CN will consummate the acquisition of control of WC. Other than the League's obligations under paragraph 1 hereof, the rights and obligations set forth in this Agreement are contingent upon and will become effective only on the date of such consummation. This Agreement will have no continuing force or effect if the STB does not authorize or CN does not consummate the Transaction. However, if CN does consummate the transaction, then any individual Shipper over CN or WC affected by any of the provisions of this Agreement shall be a third-party beneficiary of this Agreement. No party other than such a Shipper, the League and the Rail Carriers shall be a beneficiary of this Agreement.
- 5) **Dispute Resolution.** If a dispute arises under this Agreement or any agreement formed pursuant to this Agreement, the exclusive means by which any party to or beneficiary of this Agreement or any agreement formed pursuant to this Agreement may unilaterally seek third party dispute resolution shall be arbitration as provided in an agreement between a Shipper and the Rail Carriers or, if no such provision has been made, under the Commercial Arbitration Rules administered by the American Arbitration Association. In any case, arbitration shall be decided no more than 90 days from the selection of the arbitrator.
- 6) **Governing Law.** This agreement will be governed by the law of the District of Columbia, without regard to rules pertaining to choice of law.



James M. Latta
Canadian National Railway Company



Edward M. Emmett, President
The National Industrial
Transportation League