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BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**CLEVELAND-CLIFFS, INC.'S
COMMENTS AND REQUESTS FOR CONDITIONS**

CLEVELAND-CLIFFS, INC.

ENTERED
Office of Proceedings

JAN 27 2004

Part of
Public Record

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**CLEVELAND-CLIFFS, INC.'S
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PREFACE

Cleveland-Cliffs, Inc. ("Cleveland-Cliffs" or "Cliffs") opposes the Canadian National Railway Company's ("CN") application to acquire the Duluth, Missabe and Iron Range Railway Company ("DMIR"). The consolidation of these two carriers, in the manner proposed by CN, will cause substantial competitive harm to United Taconite LLC ("United Taconite"), a Minnesota Iron Range taconite mining operation indirectly majority owned by, and operated by, Cliffs. The substantial harm is United Taconite's loss of pre-merger 2 to 1 and build-in/build-out competition. If the STB approves CN's application, Cliffs requests the STB order CN/DMIR to adhere to conditions, summarized at pages 14-15 below, that preserve United Taconite's pre-merger competitive rail service options.

Cliffs presents two witnesses in support of its relief request, Mr. James A. Trethewey, Cliffs' Senior Vice President-Operations Improvement and Howard Hilshorst, the President of Eveleth Mines, LLC d/b/a EVTAC ("Evtac"), along with Counsel's facts summary and argument.

THE FACTS

In December of 2003, United Taconite purchased the principal assets of Evtac, and its affiliated companies. Cleveland Cliffs, via subsidiaries, indirectly owns 70% of United Taconite. Laiwu Steel Group, Ltd. ("Laiwu"), via subsidiaries, indirectly owns 30% of United Taconite. Cliffs manages United Taconite's day-to-day operations. (Verified Statement ("V.S.") Trethewey at 4).

The principal Evtac assets United Taconite acquired in December of 2003 are the Thunderbird North Mine and the Fairlane Plant. The Thunderbird North Mine is a source of raw taconite ore. That ore is used at the Fairlane Plant to make taconite pellets. The pellets are used to make steel. (V.S. Trethewey at 2). United Taconite plans to mine approximately 13.8 million tons of taconite ore annually at the Thunderbird North Mine. United Taconite's projected annual pellet production at Fairlane is 4.3 million tons. (V.S. Trethewey at 5).

DMIR transports taconite ore from the Thunderbird North Mine to the Fairlane Plant in unit train service. DMIR also transports United Taconite pellets from

Fairlane in unit train service. Since it opened, all of United Taconite's pellet shipments have moved to DMIR's Duluth Ore Dock. (V.S. Trethewey at 6).

DMIR's current service to United Taconite closely parallels the service DMIR provided to Evtac. For Evtac, DMIR transported large volumes of raw taconite ore, in unit train service, between the Thunderbird North Mine and Fairlane and DMIR transported large volumes of pellets, in unit train service, from Fairlane to DMIR's Duluth Ore Dock. DMIR also originated direct rail unit train shipments for Evtac. On these movements, DMIR transported the pellets to the Duluth/Superior area. DMIR's connections transported the pellets from there to AK Steel's Middletown, Ohio Steel Works. (V.S. Hilshorst, Exhibit No. __ (HH-4) at 4).

DMIR is currently the only rail carrier that has physical access to the Thunderbird North Mine. DMIR is also the only rail carrier that has physical access to the Fairlane plant ore unloading and pellet loading facilities. (V.S. Trethewey at 5). The CN north/south main line runs right past the Thunderbird North Mine and the Fairlane Plant. CN also has a spur that runs off its main line into the Fairlane plant. Evtac used that line to obtain limestone shipments, but the spur cannot be used now for ore or pellet shipments because it does not connect to the ore/pellet loop track. (V.S. Trethewey at 7).

In 1997/1998, Evtac carefully examined breaking its DMIR captivity by building a short track (just over a mile long) connecting the Thunderbird North Mine to the CN main line and by building a new loop track at Fairlane to connect to the existing

CN spur into the plant. (V.S. Hilshorst at 3). Evtac's examination included retention of project engineers. The engineers did extensive field work; prepared detailed drawings; put the construction work out for bids; and received bids. (Id.) Evtac's engineers worked closely with the CN engineers on the build-out project. CN also did extensive field work and its chief project engineer approved Evtac's site plans, and bid estimates, before Evtac bid the project. (Id. at 3-4). Based upon its detailed studies, Evtac concluded the build-out was physically feasible. (Id. at 3).

Evtac also conducted extensive commercial negotiations with CN, BNSF and DMIR in connection with its build-out plans. {

United Taconite faces the same transportation problems as Evtac – captivity to DMIR. United Taconite also retains Evtac’s build-out options at Fairlane and the Thunderbird North Mine. (V.S. Hilshorst at 15). Cliffs is particularly interested in retaining these build-out options in light of recent DMIR actions. When Cliffs obtained United Taconite, DMIR threatened Cliffs with draconian tariff prices {

. The tariff prices were so high that the payments over any extended period of time could have bankrupted United Taconite. (V.S. Trethewey at 9).

DMIR’s monopoly pricing tactics were particularly offensive under the circumstances presented. Evtac shut-down in May of 2003 and filed for Chapter 11 protection. DMIR’s actions threatened all of the hard work Cliffs, Laiwu, and Minnesota Congressman James L. Oberstar put in to create United Taconite and get the former Evtac facilities up and running again – efforts that benefitted the entire Iron Range in general and DMIR in particular since DMIR was able to call back to work many employees that it laid off when Evtac shut down. (V.S. Threthewey at 3-4).

United Taconite needed rail service urgently when it opened. It had no time to perfect any build-outs. However, United Taconite’s future depends on having a market-based method to respond to DMIR’s monopoly. Unless properly conditioned, the merger of CN and DMIR will forever remove United Taconite’s ability to break DMIR’s monopoly by accessing an independent carrier to haul United Taconite’s ore and pellet shipments. (V.S. Trethewey at 10).

ARGUMENT

United Taconite is entitled to relief under the STB's 2 to 1 and build-in/build-out merger precedents. Consistent with these precedents, Cliffs asks for relief that will preserve, not enhance, United Taconite's pre-merger build-in/build-out and 2 to 1 service options.¹

I. GOVERNING LAW PROTECTS BUILD-IN/BUILD-OUT AND 2 TO 1 SHIPPERS

The STB reviews proposed mergers between two or more rail common carriers under the public interest standards codified at 49 U.S.C. §§ 11321-28. "To determine the public interest, [the STB] balance[s] the benefits of the merger against any competitive harm that cannot be mitigated by conditions." Union Pac. Corp. – Control and Merger – Southern Pac. Rail Corp., 1 S.T.B. 233, 363 (1996)(“UP/SP”); CSX Corp. – Control and Operating Leases/Agreements – Conrail Inc., 3 S.T.B. 196, 245 (1998)(“Conrail”).

In all of its recent merger case decisions, the STB has recognized that unconditioned mergers can cause significant competitive harm to “2 to 1” and “build-in/build-out” shippers. See, e.g., Burlington Northern Inc. – Control and Merger – Santa Fe Pac. Corp. 10 I.C.C. 2d 661, 744-45; 781 (“BN/SF”) (build-in/build-out); UP/SP, 1 S.T.B. at 390-393 (2 to 1), 373, 420, 469, 479 (build-in/build-out); Conrail, 3 S.T.B. at

¹ CN acknowledges that Evtac is entitled some 2 to 1 and build-in/build-out relief. See Application at 11-12 n.14, 24, 56-57 (V.S. Rafloff). However, as discussed below, the relief CN offers is woefully inadequate.

319-20 (1998)(build-in/build-out).

“2 to 1” shippers are shippers served before a merger by the two merging carriers and, after the merger, by a single merged carrier. “Build-in/build-out” shippers are shippers that are served by one of the merging carriers but have “physically feasible”² access to the other merging carrier either by the carrier building a new line “in” to the shipper or by the shipper building a new line “out” to that carrier.

The significant competitive harm a merger can cause to 2 to 1 and build-in/build-out shippers is readily apparent. 2 to 1 shippers, pre-merger, enjoy the benefits of direct carrier-to-carrier competition for their business. Absent Board intervention, 2 to 1 shippers will lose this competitive option, post-merger. Similarly build-in/build-out shippers, pre-merger, can use the threat of a build-in/build-out as leverage in negotiations with the incumbent carrier or actually perfect the competition by building out to the second carrier or having the second carrier build-in to it. Absent Board intervention, build-in/build-out shippers also lose their competitive options, post-merger.

The STB has adopted general remedial conditions to protect both build-in/build-out shippers as well as 2 to 1 shippers. For build-in/build-out shippers, the STB has, upon the individual requests of impacted shippers, ordered that trackage rights be awarded to a carrier selected by the shipper to provide service over the build-out/build-in carrier’s lines in a manner that preserves the shipper’s pre-merger competitive service

² UP/SP, 1 S.T.B. at 373.

options via the competitive build-out routing.³ Similar forms of relief have been granted to 2 to 1 shippers, as well.⁴

The STB's main goal in granting 2 to 1 and build-in/build-out relief has been to preserve, not enhance, a shipper's pre-merger competitive rail service options. BN/SF, 10 I.C.C. 2d at 730. However, the STB has never required that post-merger service be identical to pre-merger service. For example, the STB has awarded shippers post-merger directional running rights in cases where, pre-merger, the lines it was using (or could access via build-outs) were not operated directionally. See, UP/SP, 1 S.T.B. at 471. Similarly, the STB has not required lock-step duplication of pre-merger routing and carrier options, post-merger. Id. at 430.

The relief procedure in build-in/build-out and 2 to 1 cases is also well established. If the STB finds an individual shipper request for 2 to 1 relief or build-in/build-out or similar forms of relief, to be meritorious, the STB typically issues an appropriate protective condition. The STB then directs the involved parties (including the shipper and the merged carrier), a designated amount of time to negotiate the implementing details (e.g., precise build-out points, interchange points, trackage rights compensation and dispatching protocols), subject to Board resolution of any

³ See, e.g., UP/SP, 1 I.C.C. 2d at 469, 473; Conrail, 3 S.T.B. at 319-20. BN/SF, 10 I.C.C. 2d at 744, 781-82.

⁴ See, e.g., BN/SF, 1 S.T.B. at 252-53.

implementation issues the parties cannot agree upon.⁵

II.
CLIFFS IS ENTITLED TO
BUILD-IN/BUILD-OUT AND 2 TO 1 RELIEF

A. Build-In/Build-Out Relief

Cliffs is entitled to build-in/build-out relief. Cliffs' evidence shows that United Taconite has a "physically feasible" build-out at its Thunderbird North Mine. UP/SP, 1 S.T.B. at 373. The build-out consists of building a short track (just over a mile) from its Thunderbird North Mine to CN's main line. The physical feasibility of this build-out is demonstrated by Cliffs' witness testimony, by Evtac's detailed engineering plans, and by CN's own approval of Evtac's build-out plans at the Thunderbird North Mine. (V.S. Hilshorst at 3-4).

Cliffs' evidence also shows that United Taconite has a "physically feasible" build-out at its Fairlane Plant. This build-out consists of constructing a new loop track to connect to an existing CN spur line into the plant. The feasibility of this build-out is demonstrated by Cliffs' witness testimony, by Evtac's detailed engineering plans, and by CN's own approval of Evtac's build-out plans at Fairlane. (V.S. Hilshorst at 3-4).

Cliffs' evidence of physical feasibility greatly exceeds the minimum evidentiary standards the Board has applied in prior merger cases. In prior decisions, the Board has accepted even "conflicting" evidence of feasibility as a predicate for granting

⁵ See, e.g., BN/SF, 10 I.C.C. 2d at 744-45, 781; UP/SP, 1 S.T.B. at 470-71, 473.

build-in/build-out relief. BN/SE, 10 S.T.B. 2d at 781. And, as the Board recognized in Conrail, “our consistent position has been that the ultimate test of feasibility of a build-out is whether the line is built.” Conrail, 3 S.T.B. at 319 n.179.

Cliffs’ evidence also demonstrates the commercial feasibility of the build-outs. {

—

B. 2 to 1 Relief

Cliffs is also entitled to 2 to 1 relief. Today, United Taconite can obtain competitive service from either CN or DMIR on traffic that does not need to traverse the Fairlane loop. (V.S. Trethewey at 7-8). Cliffs predecessor, Evtac, used the CN line for limestone shipments. (Id. at 8). If the CN/DMIR merger is approved, Cliffs will have only one choice for this service: CN/DMIR.

III.
CLIFFS’ REQUESTED REMEDIES

Cliffs opposes the CN/DMIR merger unless the Board grants to Cliffs appropriate conditions to protect its pre-merger build-out rights and competitive rail service options.⁶ For ease of reference, Cliffs sets forth its specific condition request and

⁶ The same remedies (e.g. trackage rights) the STB grants in major transactions to protect shippers are also available in minor transactions. See, CN – Control – Wisconsin

then discusses each component part.

A. Requested Conditions

Cliffs requests that if the Board approves the CN/DMIR merger it direct the merging carriers to adhere to the following merger conditions:

The Board's approval of the Application is conditioned upon the Applicants granting, at Cliffs' option, trackage or haulage rights, for routings referenced in this paragraph, to access a carrier or carriers to be selected by Cliffs between (i) an agreed upon build-out point at CN's line near the Thunderbird North Mine to the build-out point at CN's spur line into the Fairlane Plant; (ii) an agreed upon build-out point at CN's spur line into the Fairlane Plant and a CN/BNSF interchange in the Virginia, Minnesota area; and (iii) an agreed upon build-out point at CN's spur line into the Fairlane Plant and South Itasca, Wisconsin including the right to interchange with all current CN connections along the route (subject, for pellet shipments, to the removal of existing traffic restrictions applicable between Nopeming Junction and South Itasca, which restrictions will be removed either pursuant to the agreement of the parties or if no agreement is reached by further order of the Board if such an order is sought and granted in this or a separate proceeding). The Board's approval of this Application is further conditioned upon (iv) the Applicants and Cliffs establishing a rate cap on direct rail shipments originating from an agreed upon Fairlane build-out point to an agreed upon Stelco Lake Erie Steel Works build-in/build-out point and (v) the parties agreeing upon all

Central Transp. Corp., STB Finance Docket No. 34000, Decision No. 4, slip op. at 2 (STB served June 15, 2001).

necessary directional running rights to permit United Taconite's traffic to run directionally, at its option, for all routings referenced in this paragraph. We will allow the interested parties (Cliffs, CN, and the carrier(s) chosen by Cliffs) an opportunity to reach a negotiated settlement respecting the details of the condition we are imposing. Because time is not of the essence in this matter, we will allow these parties 120 days from the date of service of this decision to submit agreed-upon terms respecting implementation of this condition. If the parties are unable to agree to such terms, they shall submit, by such date, separate proposals respecting implementation of the condition, and we will establish the terms.

B. Ore Haul Relief

The CN Application does not expressly reference the Thunderbird North Mine ore haul build-out.⁷ {

}

In any event, the Board should award Cliffs its requested rights between the Thunderbird North Mine and Fairlane so that United Taconite can, if it builds the new access facilities at Thunderbird North Mine and Fairlane, obtain competitive ore service between the Thunderbird North Mine and Fairlane.

⁷ The Application focuses on Evtac's build-out option "at Fairlane." See Application at 56 (V.S. Radloff); CN – Control – DMIR, STB Docket No. 34424, Decision No. 2 at 8-9 (STB served Dec. 1, 2003).

C. Pellet Haul Relief

(1) Virginia Routing.

{

}, north from Fairlane on CN's main line to a CN/BNSF interchange in the Virginia, Minnesota area. BNSF could then access DMIR's tracks in the Virginia area and transport pellet trains, via joint facility rights, to Emmert Junction on BNSF track and from Emmert Junction to BNSF's Allouez Dock.

This is a circuitous route to BNSF's Allouez Dock (131 miles versus the 68 CN/BNSF miles via the direct Spirit Lake Line routing, discussed below). However, the route opens up opportunities to route pellet shipments via direct rail to steel mills throughout the United States. For the direct rail hauls, the extra mileage is not as significant, so the routings can be competitive. (V.S. Hilshorst, Exhibit No. __ (HH-4) at 3).

(2) Spirit Lake Line Routing.

The direct route from Fairlane via CN to the Duluth/Superior area is south via DMIR's Spirit Lake Line.⁸ Perfection of this route could set up equivalent distance competition between the CN/BNSF Fairlane to Allouez haul (68 miles) and the current DMIR to Fairlane Duluth Dock haul (59 miles). (V.S. Hilshorst, Exhibit No. __ (HH-4)

⁸ The Spirit Lake Line is a 17 mile section of DMIR track running between Nopeming Junction, Minnesota and South Itasca, Wisconsin. All CN north/south traffic going to and from the Minnesota Iron Range traverses this line. See Application at 9.

at 4).

DMIR permits CN to use the Spirit Lake Line to haul all commodities except iron ore. Section 1.D. of the DMIR/CN Spirit Lake Line trackage rights agreement states in pertinent part:

DWP shall not furnish transportation service over the joint tracks for iron ore, whether beneficiated or unbeneficiated, which originates south of Britt Station (Brittmount), Minnesota, without first obtaining the consent of DMIR, which consent may include, at DMIR's option, participation by DMIR in the tariff routing of such traffic.⁹

Pertinent pages from this Agreement are appended as Counsel's Exhibit No. __ (CE-1).

In its Application, CN's witness Radloff acknowledges that "it might be argued" that Evtac, or a successor, had a viable pre-merger build-out option "at Fairlane," (Application at 56) but argues that the STB should not permit any carrier obtaining STB-addressed remedial build-in/build-out trackage rights from using the direct routing to the Duluth/Superior area via the Spirit Lake Line. Mr. Radloff states in pertinent part:

Because CN's trackage rights agreement with DMIR prohibits CN from transporting iron ore (including taconite pellets) over the DMIR line between Nopeming Junction and South Itasca, CN should not be required to permit use of that DMIR line for transportation of iron ore

⁹ DWP is CN's wholly owned subsidiary and Britt Junction is a point north of the active Minnesota Iron Range mines.

except on commercial terms.

Id. at 57 n.12 (V.S. Radloff).

Mr. Radloff's observation concerning the Spirit Lake Line restrictions is correct. However, the issue neither Mr. Radloff, nor any other CN witness, addresses is whether these restrictions are lawful. {

Cliffs recognizes that the Spirit Lake Line restrictions pre-date the proposed CN/DMIR merger, did not arise due to the merger, and that their removal is best left to party negotiations or, if that fails, by Board order in an appropriate proceeding.¹⁰

¹⁰ {

In the instant case, Cliffs is not asking the STB to rule on the legality of the Spirit Lake Line restrictions. Cliffs' proposed merger condition simply requests that if the parties agree or the Board orders the restrictions removed, the rights Cliffs is requesting in this case to move pellets to the Spirit Lake Line will be extended to encompass service on and over the Spirit Lake Line.

(3) Direct Rail Routings To
Stelco's Lake Erie Steel Works

Evtac shipped substantial amounts of Fairlane pellets via DMIR to DMIR's Duluth Ore Dock for movement beyond, by vessel, to Stelco's Lake Erie Steel Works in Nanticoke, Ontario. (V.S. Hilshorst, Exhibit No. __ (HH-4) at 3).

In 2002, CN approached Evtac, and Stelco, proposing CN direct rail service from Fairlane to Stelco as a competitive alternative for the current DMIR/vessel rate service. CN opined that such access could be perfected by a build-out at Fairlane to CN and a build-in at Stelco. (V.S. Hilshorst at 12-13). As discussed above, the Cliffs Fairlane build-out is physically feasible. Stelco reports the build-in is also physically feasible. (Id. at 13).

Cliffs would like to keep a Fairlane to Stelco direct rail routing option open.

Cliffs' condition request reserves the right to seek a Board order in this case lifting the restrictions, if other remedies are unavailing. See, UP/SP Decision No. 63, slip op. at 10 n.31 (STB served Dec. 4, 1996)(STB may override terms of joint facility agreement if other forms of relief are unavailable).

Direct rail has two principal advantages to rail/water. It avoids transload charges and service can be provided year round. (V.S. Hilshorst, Exhibit No. (HH-4) at 3). And the route mileages are close (1010 miles direct rail versus 976 miles rail/water). Trackage rights may not be a viable remedy for a Stelco direct rail routing due to the length of haul (1000+ miles) and the need to provide train service in Canada. Accordingly, Cliffs asks that the Board direct the parties to negotiate a competitive rate cap for this service, from the Fairlane build-out point to the Stelco build-in or build-out point.

D. Cliffs' Selection of the
Trackage Rights Carriers

Cliffs requests that the Board permit (but not require) it to select more than one trackage rights carrier. Cliffs does so because it is not in a position today to know exactly what operations will work best for the multiple routes involved here or what carrier or carrier combination will provide the best fit for the involved ore and pellet haul routings. Cliffs is somewhat unique in that it manages several railroads, both in the Iron Range and elsewhere. (V.S. Trethewey at ___). One option Cliffs has is to use an existing, or new, Cliffs' subsidiary to conduct some or all of the trackage rights operations. However, Cliffs does not want to rule out any options at this point.

Cliffs also asks the Board not to impose CN's proposed arbitrary limits on Cliffs' rights to select trackage right carriers.

CN's first arbitrary limitation is on who can select the trackage rights carrier. CN's Witness Radloff states that CN expects to negotiate build-out trackage rights service "with the competing carrier." Application at 57 (V.S. Radloff). The inference here is that CN can select the trackage rights carrier. That, of course, is not the case. The STB's build-in/build-out conditions uniformly hold that the shipper, not the merging carrier, selects the trackage rights carrier.¹¹

CN's second arbitrary limitation involves dock ownership. CN's Witness Radloff states that the trackage rights carrier "should not be one that owns ... a dock" in the Duluth/Superior area. Application at 57 n.12 (V.S. Radloff). According to Mr. Radloff, permitting such a carrier to provide trackage rights service to Evtac's successor would put the successor in a "better" position post-merger. Id.

Mr. Radloff's assertions appear to be directed at BNSF – a carrier owning an "ore dock" in the Duluth/Superior area. Mr. Radloff's argument on the dock shipments appears to be that because, pre-merger, United Taconite's competitive Duluth/Superior routing would have been a two carrier (CN/BNSF) haul to BNSF's Allouez Dock, any post-merger trackage rights routing via a BNSF single line route will be "better service." However, that simply is not the case with unit train service. As the

¹¹ See, e.g., BN/SF, 10 I.C.C. 2d at 745, UP/SP, Decision No. 58, slip op. at 2, 4 (Decision served Nov. 20, 1996); Conrail, General Oversight Decision No. 3, slip op. at 7 (STB served Nov. 30, 2000). Shippers' options typically include existing Class I railroads, existing shortlines, or new shipper-created railroads. UP/SP, Decision No. 58, slip op. at 4.

STB observed in UP/SP, “[i]nterline movements do not significantly detract from the efficiencies of run-through coal unit trains.” UP/SP, 1 S.T.B. at 430. The same principles apply to run-through unit trains carrying taconite pellets.

CN’s dock ownership restriction also arguably encompasses Cliffs – since Cliffs indirectly owns, via its Cliffs Erie subsidiary, the Tac Harbor Dock. (V.S. Trethewey at 7). Cliffs dock ownership, however is simply not material in this context.

Finally, CN’s dock ownership restriction is also immaterial to the Thunderbird North Mine-to-Fairlane ore service since that service does not involve the dock.

E. Directional Running Rights

CN’s Application states that CN plans on instituting some form of “directional running” on the parallel DMIR and CN lines in Iron Range. See, e.g., Application at 168. The plan, as CN’s outlines it, calls for running trains over the CN main line in a northbound direction.

CN’s directional running plan obviously impacts United Taconite’s build-out routings because all involved trackage rights trains will move over the CN main line directionally, thus producing “against the flow” movements.

In its merger decisions, the STB has recognized the problems that may occur when a shipper’s pre-merger competitive service option is to a non-directionally run line that may be (or will be) run directionally after a merger. The STB’s solution has

been to grant additional trackage rights to permit the trackage rights carrier or carriers to run directionally, as well. See, e.g., UP/SP, 1 S.T.B. at 471 (awarding shipper "with the flow" option to perfect pre-merger competitive routing alternative); UP/SP, General Oversight Decision No. 19, slip op. at 7 n.15 (STB served Nov. 8, 2001).

Accordingly, Cliffs asks that it be permitted, at its option, to negotiate and obtain appropriate directional running trackage rights over the involved DMIR and CN lines to permit "with the flow" service.

CONCLUSION

Cliffs respectfully requests the Board to issue an appropriate order or orders in this proceeding granting the relief requested by Cliffs.

Respectfully submitted:

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Dated: January 26, 2004

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, made this 30th day of July, 1981, by and between DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY (hereinafter referred to as "DMIR"), a Minnesota corporation, and DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY (hereinafter referred to as "DWP"), a Minnesota corporation,

WITNESSETH:

WHEREAS, the Minnesota Department of Transportation (hereinafter referred to as "MNDOT") is preparing to extend Interstate 35 easterly of Mesaba Avenue in Duluth, Minnesota, under a plan which will necessitate the relocation of certain trackage, yards, interchange points and other facilities owned and operated by DWP, and

WHEREAS, DMIR owns and operates main line trackage extending from a point (hereinafter designated as Point A) in St. Louis County, Minnesota, near DMIR's mile post 5.78 on its Spirit Lake Branch, to a point hereinafter designated as Point H in Douglas County, Wisconsin, near mile post 21.7 on its Interstate Branch, all said trackage colored in red (hereinafter called the "joint tracks") and Points A through H being shown on the plan designated Exhibit I, attached hereto and made a part hereof; and

WHEREAS, DMIR is willing to allow DWP to relocate facilities and operations over and adjacent to said joint tracks; and

WHEREAS, DWP desires to acquire and DMIR is willing to grant to DWP trackage rights between Points A through H above referred

to, but only on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein stipulated to be kept and intending to be legally bound hereby, DMIR and DWP agree as follows:

1. GRANT OF TRACKAGE RIGHTS

A. DMIR grants to DWP, in perpetuity, the non-exclusive right to use and operate its trains, including but not limited to, locomotives, freight cars, passenger cars, cabooses, track inspection equipment, hrrail equipment and other work or wreck equipment necessary and convenient to DWP rail operations, on and over the joint tracks as shown on Exhibit I, attached hereto and made a part hereof.

B. The right granted DWP in A. above is limited to bridge and overhead rights only and does not include the right to originate or terminate traffic at any point on the joint tracks including DWP's yard at Pokegama, Wisconsin, unless, as to the yard at Pokegama only (including facilities contiguous to said yard), otherwise mutually agreed upon by the parties. Such agreement will not be unreasonably withheld by DMIR. The joint tracks shall include, but not be limited to, right-of-way sidings, passing tracks, wye tracks, crossovers or appurtenances thereto now existing or which may be hereafter constructed, except that DWP shall not use or operate over the joint tracks to pick up or set out cars, except as provided in Section 13. herein.

C. DMIR shall have the right to grant to other carriers operating rights over the joint tracks or any portion thereof. At DWP's request, DMIR will grant trackage rights to other carriers

to enable said carriers to interchange with DWP at DWP's Pokegama Yard.

(1) In the event DMIR grants such rights at the request of DWP to enable such carriers to interchange with DWP at DWP's Pokegama Yard, the combined rental paid to DMIR shall not exceed the rental provided to be paid by DWP to DMIR, hereunder, and apportionment of said rental shall be negotiated among all participating carriers in compliance with the provisions of Section 6. of this Agreement.

(2) In the event DMIR grants such rights to any carriers for a purpose other than for the purpose of interchanging with DWP at DWP's Pokegama Yard, rental for such rights shall be established as determined solely between such carrier and DMIR.

D. DWP shall not furnish transportation service over the joint tracks for iron ore, whether beneficiated or unbeneficiated, which originates south of Britt Station (Brittmount), Minnesota, without first obtaining the consent of DMIR, which consent may include, at DMIR's option, participation by DMIR in the tariff routing of such traffic.

2. OPERATION OF TRAINS. DWP shall operate its trains over the joint tracks with its own crews under the applicable timetable, or portions thereof, operating rules and regulations of DMIR. DWP trains shall be afforded equal precedence and rights with DMIR trains, and all train movements over the joint tracks shall be made expeditiously and in order of readiness without priority under control of DMIR dispatchers.

3. DWP CONNECTION. Subject to location, design and engineering

**VERIFIED STATEMENT
OF JAMES A. TRETHEWEY**

My name is James A. Trethewey. I am Cleveland-Cliffs, Inc.'s ("Cleveland-Cliffs" or "Cliffs") Senior Vice-President – Operations Improvement. My business address is 1100 Superior Avenue, Cleveland, Ohio 44114-2589. I have served Cleveland-Cliffs for thirty-one years in a number of senior management positions. My current responsibilities include supervising the acquisition of rail transportation at Cleveland-Cliffs' mining and processing facilities.

Cleveland-Cliffs – Overview

At the start of 2003, Cleveland-Cliffs owned interests in, and operated, five iron ore mining operations in North America. They were:

<u>Mine</u>	<u>Location</u>
Empire Iron Mining Partnership	Palmer, Michigan
Tilden Mine	Ishpeming, Michigan
Hibbing Taconite Company – Joint Venture	Hibbing, Minnesota
Northshore Mining Company	Babbitt/Silver Bay, Minnesota
Wabush Mines	Wabush/Pointe Noire, Canada

At these mines, low-grade crude iron ore (called taconite) is mined. The taconite ore has an iron content of approximately 20% to 40%. The crude ore is then moved to industrial processing facilities. At these facilities, the crude ore is processed into hard, marble-sized pellets having an iron content of approximately 65%. Pellet properties depend upon the specific type of taconite mined and the specific processing practices employed.

Iron ore pellets are a basic raw material used to produce iron and steel. During 2002, the five Cliffs' mines produced 27.9 million tons¹ of pellets. Of this total, Cliffs owned 14.7 million pellet tons and sold those pellets to nine North American steel companies and one European steel company. The remaining pellet tons were owned and used by the steel companies who have ownership interests in the mines.

Cliffs also holds direct or indirect ownership interests in five railroads: four are private railroads and the fifth is a common carrier railroad. Two of the private carriers serve Minnesota Iron Range properties.

Cliffs' Acquisition of the Former Evtac Properties

In May of 2003, Eveleth Mines, LLC d/b/a Evtac ("Evtac") stopped production and filed for Chapter 11 bankruptcy protection in the Federal Bankruptcy Court in St. Paul, Minnesota. The principal assets of Evtac (and its affiliates) were situated in Minnesota's Iron Range. The assets included Evtac's Thunderbird North Mine, located near Virginia, Minnesota, and its Fairlane taconite processing plant, located near Eveleth, Minnesota. Between 1999 and 2002, Evtac mined approximately 13.8 million tons of crude ore annually and produced approximately 4.3 million tons of taconite pellets annually.²

¹ In the iron ore industry, the term "ton" commonly refers to a "long ton" of 2,240 pounds. References herein to "tons" are to "long tons" unless otherwise noted.

² On average, it takes approximately 3.2 tons of ore to produce one ton of pellets.

Shortly after Evtac filed for Chapter 11 protection, Cliffs began to study the acquisition of the Evtac assets. Cliffs saw a growing demand for pellets, both within North America and globally, especially in China. Cliffs believed that Evtac's production capabilities could be re-activated to meet this growing demand, if a proper deal could be structured. Thanks in large part to the efforts of Congressman James Oberstar, whose Congressional District includes the Minnesota Iron Range, Cliffs was able to put such a deal together.

Like Cliffs, Congressman Oberstar saw a potential market for American-produced pellets in China. To advance this opportunity, Mr. Oberstar helped arrange and coordinate meetings between Evtac officials and officials of Laiwu Steel Group, Ltd. ("Laiwu"), a large Chinese steel company. In September of 2003, Cliffs began discussions with Laiwu concerning the joint acquisition and reactivation of Evtac's assets. Congressman Oberstar actively participated in these discussions and worked tirelessly with Cliffs in crafting a joint Cliffs/Laiwu offer to purchase the Evtac assets.

In October of 2003, Cliffs and Laiwu tendered a joint offer to acquire Evtac's assets. The joint offer, as subsequently modified, was approved by the Bankruptcy Court on November 25, 2003. The accepted offer called for a new entity, United Taconite LLC ("United Taconite"), to acquire Evtac's principal assets, including the Thunderbird North Mine and the Fairlane processing plant. United Taconite is 70%

indirectly owned by Cliffs and 30% indirectly owned by Laiwu. The offer was consummated on December 3, 2003 when the principal Evtac assets were transferred to United Taconite. Cliffs now manages the day-to-day operations of United Taconite.

To lower the overall transportation cost of delivering pellets to our steel customers, Cliffs and Laiwu have entered into various pellet-trading arrangements. In these arrangements, pellets from the Wabush pellet processing plant, which is located on the Atlantic seaport coast and can receive large ocean-going vessels, will be sent to China. The United Taconite pellets will be shipped to various North American steel companies to replace the Wabush pellets that will now be shipped overseas.

In order for United Taconite to keep its pellets competitive against pellets from other sources, both domestic and international, it is critically important that United Taconite obtain low-cost, competitive transportation. The typical transportation required to move domestically produced pellets to a North American steel company involves two components: (1) rail transportation from the pellet processing plant to a dock on the Great Lakes and (2) vessel transportation to the steel company's Great Lakes' docks. Other pellet transportation arrangements include direct rail shipments from processing plants to steel companies. In all cases, rail transportation is a very large cost in the delivered price of the taconite pellets, including United Taconite's pellets. That rail cost must be kept at reasonable, competitive levels for United Taconite to survive as a going concern.

Cliffs currently projects that United Taconite will mine approximately 13.8 million tons of taconite ore and produce 4.3 million pellet tons annually.

United Taconite's Pre-Merger Competitive Options

My Exhibit No. ____ (JAT-1) shows the current location of the principal north/south Duluth Missabe and Iron Range Railway Company ("DMIR") and Canadian National Railway Company ("CN") lines in the Iron Range. As the Board can clearly see, these are parallel lines, which, after the merger, will be under the common control of a single carrier. This parallel combination will eliminate United Taconite's pre-merger competitive options. Each of these options is described briefly below:

Ore Haul: United Taconite obtains crude ore used at the Fairlane plant from the Thunderbird North Mine. At the present time, this mine is exclusively served by DMIR. DMIR currently transports the ore from Thunderbird North to Fairlane, a distance of approximately 10 miles, in unit trains of DMIR-supplied cars called ore jennies.³ Trains typically consist of approximately 86 cars. At Thunderbird North, DMIR moves empty trains through the mine load-out. After the cars are loaded, DMIR moves the trains to DMIR's main line. The trains then move over DMIR's main line to Fairlane, a distance of approximately 10 miles. At Fairlane, the trains exit the main line and move

³ DMIR's ore gennies are manually operated bottom-dump cars having a lading capacity of approximately 65 ore tons.

over a loop track to the Fairlane plant's unloading facility, where they are unloaded. Following unloading, the trains exit the loop track back to DMIR's main line, usually cycling back to the Thunderbird North Mine.

United Taconite currently has a viable competitive option for the DMIR ore movement. As described in greater detail in the Verified Statement of Howard Hilshorst, this option entails constructing a short segment of track at the Thunderbird North Mine to connect the mine to the nearby CN main line and constructing a new loop track at the Fairlane plant to connect to the existing CN spur line that now enters the plant from CN's main line.⁴ With the new facilities in place, CN could originate ore at Thunderbird North. CN would then transport the loaded trains over CN's main line to Fairlane, a distance of approximately 10 miles. The trains would next move over the new CN spur loop track for loading at the Fairlane plant pellet load-out. Following loading, the trains would continue along the loop track to the CN spur and return over the spur to CN's main line. I append a schematic of United Taconite's ore build-out option in my Exhibit No. ____ (JAT-2).

Pellet Hauls: Due to the current configuration of the Fairlane loop track, DMIR is currently the only carrier physically capable of hauling taconite pellets from the Fairlane facility. Since United Taconite opened in December of 2003, DMIR has transported all United Taconite pellet shipments in unit trains to DMIR's ore docks, a distance of approximately 59 miles. Other DMIR shipping options from Fairlane include

⁴ The spur line does not physically connect to the existing Fairlane loop track.

direct rail DMIR/connection routings (which Evtac used for approximately one-third of its shipments) as well as a potential DMIR/Cliffs Erie routing⁵ from Fairlane to Tac Harbor.⁶

United Taconite has viable competitive options for DMIR pellet service from Fairlane. As is described in greater detail in Mr. Hilshorst's Verified Statement, installation of a new ore loop track at Fairlane could also be engineered to permit CN to originate pellet deliveries. For these movements, CN would move empty pellet trains from its main line over its Fairlane spur to the new loop track. The trains would then move over the new loop track through the Fairlane pellet load-out. After loading, CN would transport the loaded trains via the loop track and spur back to CN's main line.

Accessing CN for pellet deliveries would open up the entire CN rail network for competitive CN direct and CN joint line routings from Fairlane. These routings are summarized in Mr. Hilshorst's Verified Statement.

⁵ Cliffs Erie LLC ("Cliffs Erie") is a subsidiary of Cliffs. Cliffs Erie owns a rail line running between Mesaba, Minnesota and its Lake Superior ore dock at Tac Harbor, Minnesota.

⁶ This is a 95 mile routing. It is not currently operational due to missing pieces of rail infrastructure (e.g., a useable physical rail connection between DMIR and Cliffs Erie at Mesaba, Minnesota). Cliffs is actively exploring DMIR/Cliffs Erie service to Tac Harbor and hopes that it will become operational in the next few years. This service is a key component in Cliffs' plan to obtain a competitive DMIR/Cliffs Erie rail service alternative at the Hibbing Taconite Plant. Hibbing Taconite is another Minnesota Iron Range taconite processing plant in which Cliffs has an ownership interest and manages. The Hibbing Taconite Plant is currently captive to Burlington Northern and Santa Fe Railway Company ("BNSF") for its pellet shipments, but can access DMIR once a build-out is in place.

Other Commodities: The CN spur line currently accessing the Fairlane plant was used by Evtac principally to haul inbound rail cars of limestone. DMIR and CN could directly compete for moving this traffic, which approximated 40,000 tons per year. The combination of CN and DMIR will eliminate competition for this general freight traffic.

Cliffs' Request for Relief

Cliffs requests that if the Board approves the merger of CN and DMIR, it require the merging carriers to agree to abide by specific protective conditions that preserve United Taconite's pre-merger competitive transportation options. The specific conditions Cliffs requests are set forth at pages 14-15 of our Counsel's Argument.

Cliffs' recent experiences "negotiating" with DMIR underscore the importance of preserving these options. Both before and after Cliffs acquired the Evtac properties, Cliffs attempted to negotiate fair and reasonable transportation arrangements for United Taconite's near-term transportation of crude ore from Thunderbird North to Fairlane and for near-term transportation of pellets from Fairlane to DMIR's Duluth ore dock. Cliffs needed to get these services in place ASAP after United Taconite acquired the Evtac properties to meet the urgent need for pellets by our steel company customers.

{

When Cliffs

objected, DMIR unilaterally posted even higher, punitive ore and pellet tariffs {

} As shown
in my Exhibit No. ____ (JAT-3) at 1, the tariff charges were over { } higher than
DMIR's 2003 contract charges to Evtac. If United Taconite had to pay the tariff rates for
any appreciable length of time, United Taconite would soon have followed its
predecessor, Evtac, into bankruptcy.

DMIR's monopoly pricing tactics come with particular ill-grace for two
reasons. First, as I noted above, Cliffs is currently studying a build-out at the Hibbing
Taconite Plant. The Hibbing Taconite Plant is now exclusively served by BNSF. This
build-out rail facility plan, when completed, will provide DMIR with a substantial new
business opportunity. Second, when United Taconite reopened, DMIR was able to restart
a shut down operation and recall a sizeable segment of its work force that had been laid-
off when Evtac shut down. The positive results of United Taconite's actions for both
DMIR, and others, have been widely reported. My Exhibit No. ____ (JAT-4) contains
copies of some of these reports.

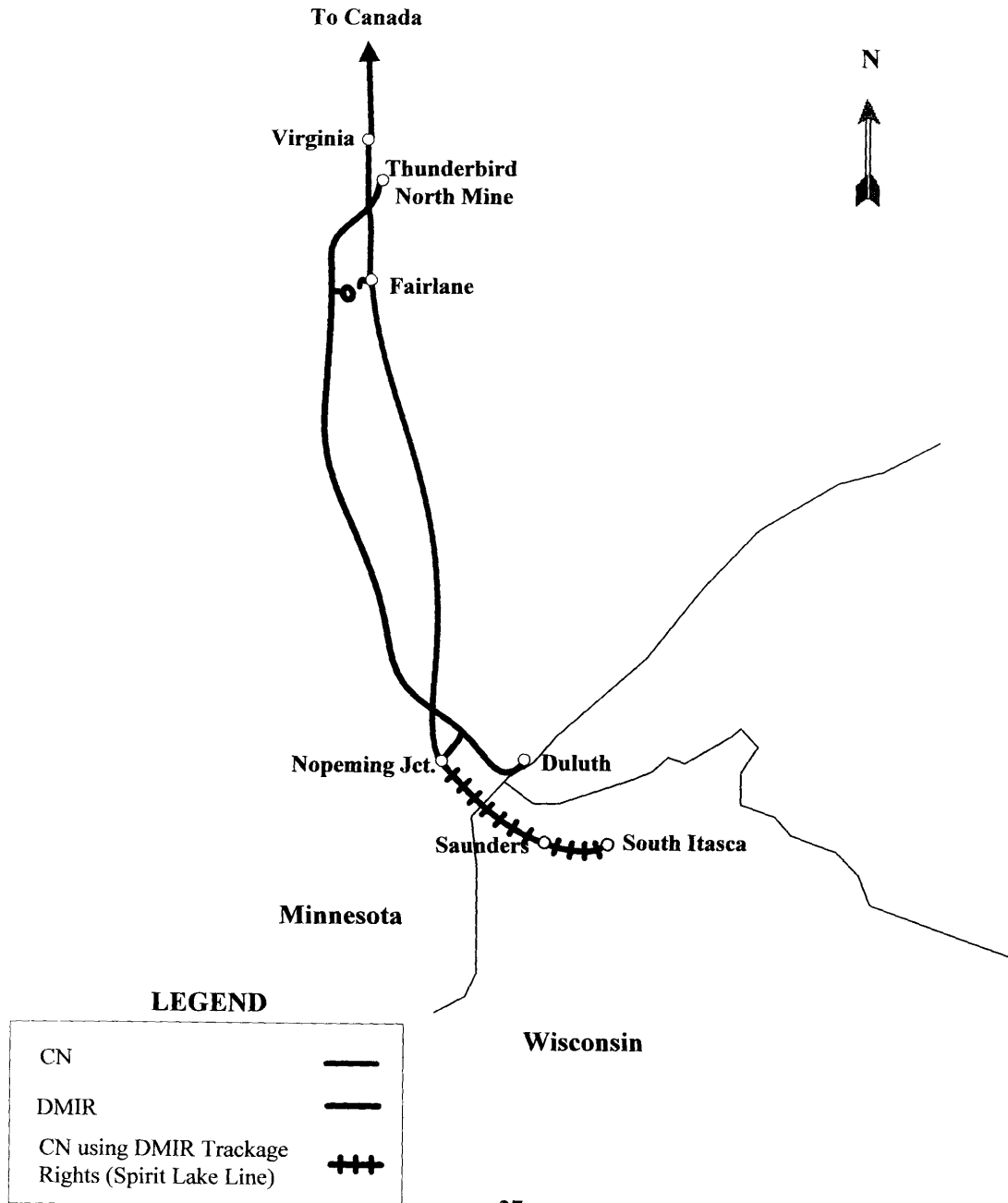
Cliffs fully expected that the actions under consideration by Hibbing
Taconite (creating new business opportunities DMIR) and at United Taconite (creating
what at the time was new business and new jobs for DMIR's employees) would produce a
commercially reasonable relationship between Cliffs and DMIR. Unfortunately, DMIR
management decided to go down a different path. They chose to exercise DMIR's current
transportation monopoly power.

The proposed merger of CN and DMIR will eliminate United Taconite's only long-term market solution to DMIR's transportation monopoly – building out to CN at Thunderbird North Mine and Fairlane. For this reason, Cliffs opposes the CN/DMIR merger unless the Board takes affirmative action to protect United Taconite's pre-merger competitive rail service options.

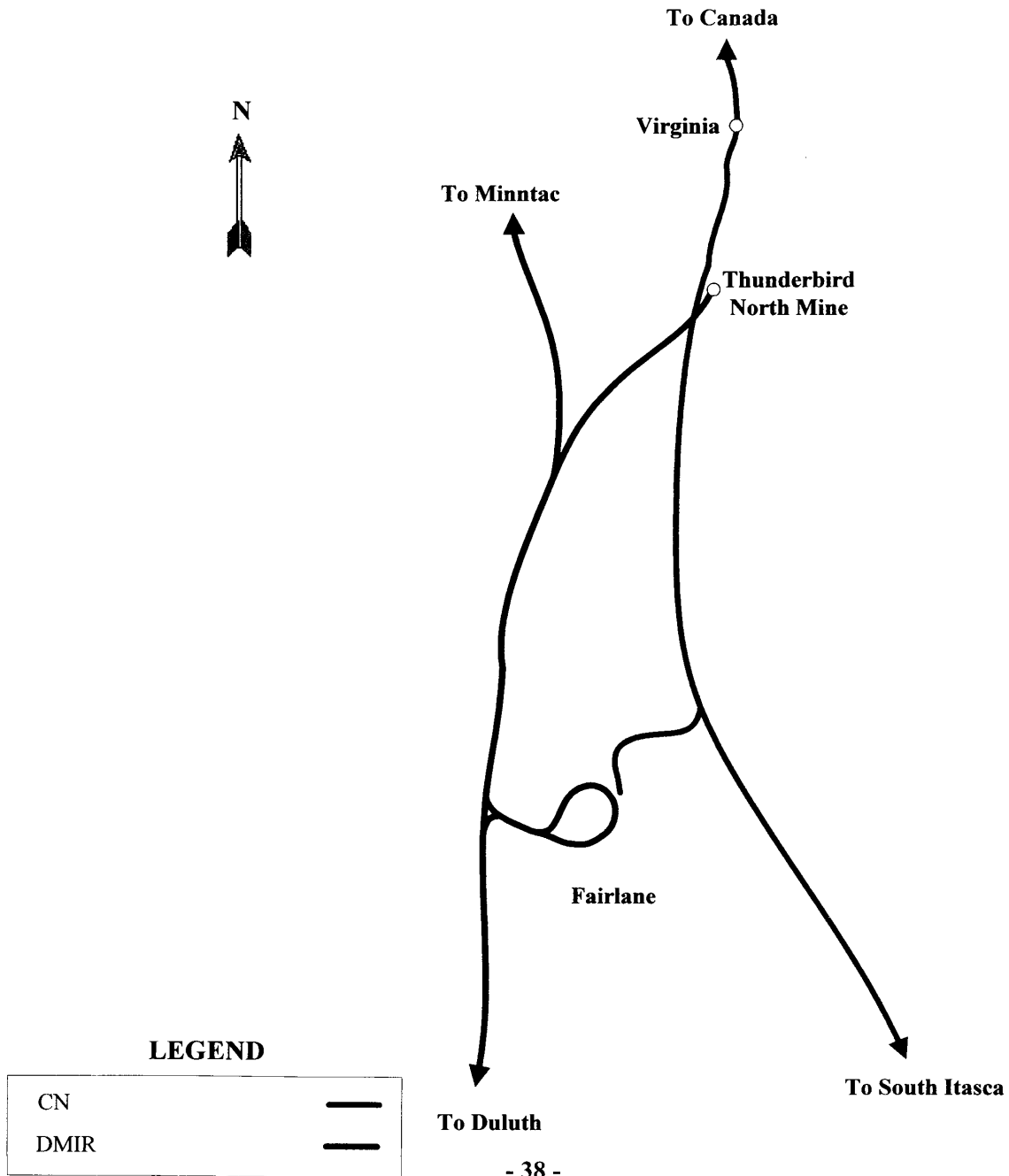
Conclusion

Cleveland-Cliffs appreciates the opportunity to present its comments and request for conditions for the Board's consideration.

United Taconite Pre-Merger
DMIR North/South and CN Iron Range Lines



United Taconite Pre-Merger
Fairlane - Thunderbird Area



United Taconite Pre-Merger
Fairlane - Thunderbird Area Build-Outs

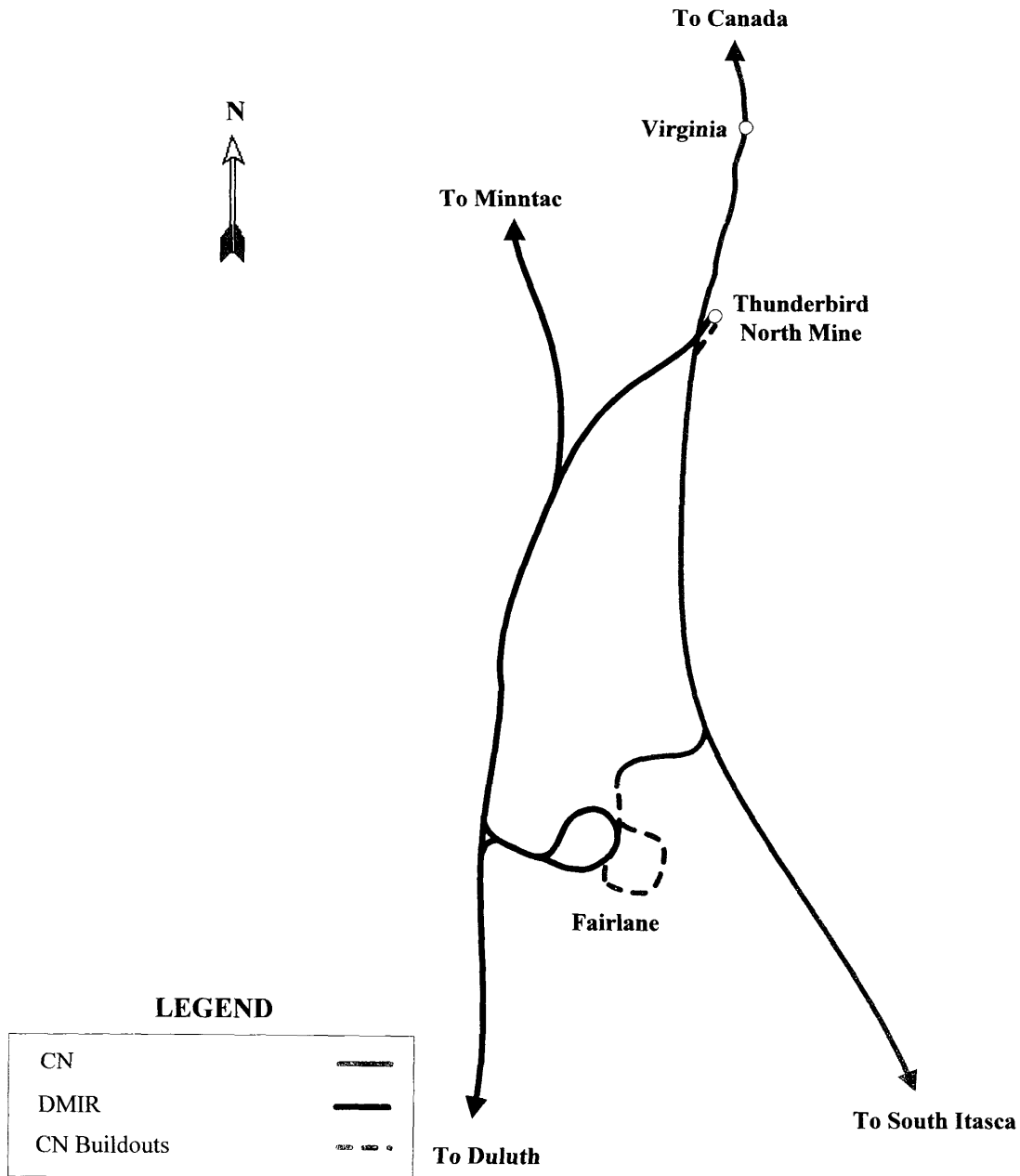


Exhibit No. ____ (JAT-3)

Pages 1 to 4 (of 10)

*(REDACTED -- PAGES CONTAIN CONFIDENTIAL
AND HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER)*

Duluth, <i>MISSABE</i> & Iron Range Railway Company			DMIR 4811
FREIGHT TARIFF DMIR 4811			
TARIFF OF LOCAL RATES Applying on TACONITE IRON ORE (STCC 1011299) Containing not to exceed 40 percent natural iron content, in bulk.			
FROM		TO	
Thunderbird North, MN		Fairlane, MN	
RATES			
ITEM	FROM	TO	RATE PER CAR LOAD
100 (Continued on next page)	Thunderbird North, MN	Fairlane, MN	\$35.00 (N) (Subject to Notes 1-5)
	NOTES: Note 1* Equipment – Cars to be supplied by Railroad. Note 2* Train Size – Minimum of 84 cars or number of cars furnished by Railroad. Note 3* Rate applies to all cars furnished by Railroad for loading excluding idler cars. Note 4* No Weighing Note 5* Charges for terminal service at Thunderbird North and Fairlane will be billed in accordance with Item 200.		
The provisions published herein will, if effective, not result in an effect on the quality of the human environment.			
ISSUED: December 12, 2003		EFFECTIVE: December 15, 2003	

Issued by:
 C. M. PATTERSON
 Chief Commercial Officer
 DM&IR Railway Company
 227 West 1st Street Suite 500
 Duluth, MN 55802

Freight Tariff DMIR 4811

ITEM		
200	<u>TERMINAL SERVICE – TACONITE</u>	
	A. Rates include the placement of empty cars and the removal of loaded cars and terminal service by carrier at Thunderbird, limited to service that can be performed by Railroad train crews on duty at Thunderbird, for periods of time specified below. Time in excess of that specified below will be charged for at the rate of 388 cents per minute.	
	<u>Shipments in Carloads</u>	<u>Time in Minutes</u>
	Up to 72 cars	65
	73 to 84 cars	73
	B. Rates referred to include the placement of loaded cars, removal of empty cars and terminal service by carrier at Fairlane, limited to service can be performed by Railroad train crews on duty at Fairlane for periods of time specified below. Time in excess of that specified below will be charged for at the rate of 388 cents per minute.	
	<u>Shipments in Carloads</u>	<u>Time in Minutes</u>
	Up to 72 cars	90
	73 to 84 cars	105
	C. If such additional terminal service is required during periods when Railroad train crews are not on duty at Thunderbird or Fairlane, a special crew will be dispatched and charges will be assessed on the basis of \$233.00 per hour, or fraction thereof, a minimum of eight (8) hours. Time will begin when crew reports for service at plant and will terminate when released from duty by industry at plant.	
310	REFERENCE TO TARIFFS, ITEMS, NOTES OR RULES	Where reference is made in this tariff to tariffs, items, notes or rules, such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, or rules.
320	APPLICATION- LOCAL RATES	Rates named in tariff will apply only as local rates to stations named in Item 100.
330	Payments of freight charges are due within fifteen (15) days of receipt of invoice.	
340	Governed by Uniform Freight Classification, UFC 6000-Series, Uniform Freight Classification Committee, Agent Supplements, thereto or successive issues thereof.	
350	This tariff is subject to provisions of various Service Orders and General Permits as shown in National Service Order Tariff NSO 6100-Series.	
360	This tariff is also governed by the Official Railroad Station List, OPSL 6000-Series, for prepay requirements and restrictions as to the acceptance of freight.	
<u>Explanation of abbreviations and reference marks:</u>		
Thunderbird North – Thunderbird North, MN		Railroad – Duluth, Missabe and Iron Range Railway Company
Fairlane – Fairlane, MN		
Taconite – Taconite Crude Ore		(N) - New

DMIR 4812**Duluth, Missabe and Iron Range Railway Company****FREIGHT TARIFF DMIR 4812****LOCAL FREIGHT TARIFF****OF****TRAINLOAD RATES****Applying on****PELLETIZED IRON ORE, CARLOADS****containing not to exceed 73 percent****natural iron content, in bulk****(STCC 1011320)**

FROM	TO
Fairlane, MN	Duluth, MN (Ore Docks)

PELLETIZED IRON ORE TARIFF**NOTICE**

The provisions published herein will not, if effective, result in an effect on the quality of the human environment.

ISSUED: December 18, 2003**EFFECTIVE: December 22, 2003**

**Issued by:
C. M. Patterson
Chief Commercial Officer
227 West First Street, Suite 500
Duluth, Minnesota 55802**

RULES AND OTHER GOVERNING PROVISIONS																																																																								
GENERAL RULES AND REGULATIONS																																																																								
ITEM	SUBJECT	APPLICATION																																																																						
110	DEFINITIONS	The use of the words "ton," "tons," "tonnage" or "tonnages" in this tariff is restricted to mean gross tons of 2,240 pounds. The use of the words "carrier dock yards" in this tariff means carrier's dock yards at Duluth, Proctor and Two Harbors, MN. The use of the words "opening of navigation" in this tariff means the date of loading of the first vessel of the navigation season with a shipper's tonnage, which moved at rates in this tariff. The use of the words "close of navigation" in this tariff means the date of departure of the last vessel of the navigation season loaded with a shipper's tonnage, which moved at rates in this tariff.																																																																						
200	HANDLING, DIRECT (applicable only where specific reference is made hereto)	Rates referring to this item apply on all tonnage arriving at carrier dock yards during the period beginning with April 1 or opening of navigation each year, whichever date is earlier, through close of navigation that season, except as provided in Item 205 (Handling, Indirect), and include carrier unloading from cars to ore docks and loading from ore docks to vessel when handled directly from cars to vessel.																																																																						
205	HANDLING, INDIRECT (applicable only where specific reference is made hereto)	A. Rates referring to this item apply on all tonnage arriving at carrier dock from close of navigation to opening of navigation and on all tonnage that carrier places into storage facilities inclusive of carrier unloading from cars to storage facilities and subsequent recovery from storage facilities to ore docks and loading from ore docks to vessel. B. Shipments moving on rates referring to this item are subject to storage charges at rate of 7.0 cents per ton per calendar month to be assessed on the average daily tonnage of such shipments in storage during that month. Tonnage will be taken into storage inventory on date of arrival at carrier dock yards and released from storage inventory on date of loading into vessel, except that tonnage on hand at carrier dock yards at close of navigation will be taken into storage inventory on that date. See example below:																																																																						
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In computation of average daily tonnage and storage charges, fractions of 49 one-hundredths or less will be dropped and fractions of 50 one-hundredths or more will be increased to next full ton or cent.																																																																								

210	ALTERNATE DOCK	Rates in Item 310 will also apply on shipments to Two Harbors, MN, an Alternate Dock Facility, only when, in the judgement of the General Manager of this Railroad, such service cannot be provided at Duluth, MN.																					
215	SWITCHING, BLENDING OR MIXING	No switching will be performed for the purpose of blending or mixing.																					
220	RAILROAD HANDLING	A) Any train with dust emissions that exceed opacity level II for fugitive airborne emissions will not be unloaded at Railroad facilities. B) Trains exceeding opacity level II will be returned to origin and billed at \$9.50 per ton. C) Railroad does not accept any special handling requests of customer for shipments moving on rates referred to in Item 200 and 205. Shipments will be handled to destination by Railroad.																					
225	STORAGE PILES	On shipments moving on rates referring to Items 200 (Handling, Direct) and 205 (Handling, Indirect), where tonnage is physically handled to storage facilities, carrier will place Pelletized Iron Ore in a single ground storage pile for consignor without preserving the identity of each carload. Carrier will keep record of actual tonnage unloaded to consignor's storage pile and will keep record of tonnage recovered from each consignor's storage pile.																					
230	TERMINAL SERVICE – PELLETIZED IRON ORE AND TACONITE	A. Rates include the placement of empty cars and the removal of loaded cars by carrier and terminal service at Fairlane, limited to service that can be performed by railroad train crews on duty at origin for periods of time specified below. Time in excess of that specified below will be charged for at the rate of 388 cents per minute. <table><thead><tr><th>Shipments in Tons</th><th>Time in Minutes</th></tr></thead><tbody><tr><td>Up to 3,999</td><td>0</td></tr><tr><td>4,000 to 4,999</td><td>30</td></tr><tr><td>5,000 to 5,999</td><td>60</td></tr><tr><td>6,000 to 6,999</td><td>90</td></tr><tr><td>7,000 to 7,999</td><td>120</td></tr><tr><td>8,000 to 8,999</td><td>150</td></tr><tr><td>9,000 to 9,999</td><td>180</td></tr><tr><td>10,000 to 10,999</td><td>210</td></tr><tr><td>11,000 and Over</td><td>240</td></tr></tbody></table> Rates in Items 300 do not include terminal service at origin. Terminal service performed by railroad train crews on duty at origin for shipments moving at rates in Items 300 will be charged for at the rate of 388 cents per minute. B. If such additional terminal service is required during periods when railroad train crews are not on duty at origin, a special crew will be dispatched and charges will be assessed on the basis of \$233.00 per hour, or fraction thereof, minimum of eight (8) hours. Time will begin when crew reports for service at plant and will terminate when released from duty by industry at plant.		Shipments in Tons	Time in Minutes	Up to 3,999	0	4,000 to 4,999	30	5,000 to 5,999	60	6,000 to 6,999	90	7,000 to 7,999	120	8,000 to 8,999	150	9,000 to 9,999	180	10,000 to 10,999	210	11,000 and Over	240
Shipments in Tons	Time in Minutes																						
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9,000 to 9,999	180																						
10,000 to 10,999	210																						
11,000 and Over	240																						
300	TRAINLOAD RATES	Rates apply to pellets shipped in railroad-owned cars loaded to not less than 95% of marked capacity from Fairlane, MN to Duluth, MN when for points beyond via lake. <table><thead><tr><th>FROM</th><th>TO</th></tr></thead><tbody><tr><td>FAIRLANE, MN</td><td>DULUTH, MN (ORE DOCKS)</td></tr><tr><td>Handling, Direct (See Item 200)</td><td>Rate Per Ton \$4.75</td></tr><tr><td>Handling, Indirect (See Item 205)</td><td>\$5.25</td></tr><tr><td colspan="2">Subject to Note 1 - 5</td></tr></tbody></table> Note 1 - Equipment – Supplied by Railroad Note 2 - Train size – Number of cars furnished for loading by Railroad. Note 3 - Rate applied to all cars furnished for loading at minimum of 95% marked capacity. Note 4 - Customer will provide trainload weights Note 5 – Railroad weighing on request of customer over Railroad's automatic scale at an additional \$0.04 per ton.		FROM	TO	FAIRLANE, MN	DULUTH, MN (ORE DOCKS)	Handling, Direct (See Item 200)	Rate Per Ton \$4.75	Handling, Indirect (See Item 205)	\$5.25	Subject to Note 1 - 5											
FROM	TO																						
FAIRLANE, MN	DULUTH, MN (ORE DOCKS)																						
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Subject to Note 1 - 5																							

310	REFERENCE TO TARIFFS, ITEMS, NOTES OR RULES	Where reference is made in this tariff or tariffs, items, notes or rules, such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, note, or rules.
320	APPLICATION- LOCAL RATES	Rates named in tariff will apply only as local rates to stations named in Item 300.
330	PAYMENTS OF FREIGHT CHARGES	Payments of freight charges are due within fifteen (15) days of receipt of invoice.
340	CLASSIFI- CATIONS	Governed by Uniform Freight Classification, UFC 6000-Series, Uniform Freight Classification Committee, Agent Supplements, thereto or successive issues thereof.
350	PROVISIONS	This tariff is subject to provisions of various Service Orders and General Permits as shown in National Service Order Tariff NSO 6100-Series.
360	STATION LIST	This tariff is also governed by the Official Railroad Station List, OPSL 6000-Series, for prepay requirements and restrictions as to the acceptance of freight.
<u>Explanation of abbreviations and reference marks:</u> Fairlane – Fairlane, MN Customer – Taconite Pelletizing Plant Railroad – Duluth, Missabe and Iron Range Railway Company Pelletized Iron Ore – Processed Taconite		

NEWS RELEASE

CONGRESSMAN JIM OBERSTAR

8th District, Minnesota



Contact: Mary Kerr, 2365 RHOB, Washington, DC, 20515, (202)225-6211

October 8, 2003

OBERSTAR ANNOUNCES AGREEMENT TO PURCHASE EVTAC

WASHINGTON- Cleveland-Cliffs, Inc. and Laiwu Steel Group, Ltd., a company headquartered in Laiwu City, China, have signed a letter of intent to jointly purchase the Eveleth Mines LLC's (EVTAC) iron ore mining and pelletizing operation in Eveleth, Congressman James L. Oberstar announced today. He, along with EVTAC representatives, met with China's Ambassador to the U.S., Yang Jiechi, in July to discuss the specifics of a proposal to sell EVTAC pellets to the Laiwu Steel, one of the largest steel groups in China, located south of Beijing.

"The joint ownership agreement will be welcome news for the 450 workers now on temporary layoff since May. They will have an opportunity to return to good-paying jobs here on the Iron Range. Throughout these lengthy negotiations, it became abundantly clear that EVTAC pellets are a world-class product and that its workforce can compete anywhere in the world marketplace," Oberstar said. "I am greatly appreciative of the role Ambassador Yang played as an intermediary with corporate and government decision-makers in China, who was critical in bringing this agreement to fruition. I also want to express my appreciation to Howard Hilshorst, President and CEO of EVTAC, for his day-to-day diligence in pursuing a market for EVTAC pellets. Also, my appreciation extends to Joe Strlekar, President of United Steelworkers Local 6860, for his vigorous representation of the interests of EVTAC's employees, and to John Brinzo, CEO of Cleveland-Cliffs, for his willingness to pursue this very complex arrangement and partnering with Laiwu to reach this positive outcome."

"I see this agreement as a long-term commitment by Laiwu Steel, as a consumer of EVTAC pellets, to serve their future expansion plans in the domestic Chinese market," Oberstar said. "There are still a number of technical steps to be implemented, but I am confident that the appropriate investments will be forthcoming to return the EVTAC facility to operational condition, along with capital investments to improve productivity so that pellets can begin to move in the international marketplace in the near future."

Oberstar has held several meetings in the past few months to encourage the Chinese government to sell Minnesota-made taconite pellets in the Chinese market, and through these efforts, Laiwu and Cleveland-Cliffs began discussions about the possibility of pursuing a joint venture. EVTAC filed bankruptcy in May 2003. It is expected that the Pension Benefit Guarantee Corporation will soon complete action to take over the EVTAC pension plan.



Closure affects DM&IR

DULUTH, Minn. -- As the EVTAC mine and processing plant prepares for closure, companies that serve it are bracing for the blow, according to a report by Peter Passi that appeared in the Duluth News Tribune.

The Duluth Missabe & Iron Range Railway (DM&IR) and Minnesota Power count EVTAC as a key customer. Both will face hard times if EVTAC doesn't find new customers. The mining company has only enough orders to remain running into May.

On Monday, DM&IR sent letters to 86 employees indicating they could be laid off if EVTAC ceases production. That amounts to 18 percent of the railway's 470-person work force.

(UTU-represented employees of the DM&IR are members of Local 1292 in Proctor, Minn.)

The letters will keep the transportation company in compliance with the federal Worker Adjustment and Retraining Notification Act. EVTAC distributed similar warnings to 440 of its workers on Monday, as well.

Peter Stephenson, DM&IR's president and general manager, said EVTAC accounts for about half of the tonnage annually hauled by the railroad.

DM&IR hauls crude taconite about 10 miles from EVTAC's mine pits to its processing plant in Forbes. Then, the railroad carries finished pellets on the first leg of their trip to steel mills.

Stephenson refers to EVTAC as DM&IR's second-largest customer in terms of total business, but it's first in total tonnage. Much of that tonnage is carried on the short haul from mine to plant; it takes about 3 tons of crude taconite to produce a single ton of pellets.

DM&IR jobs are highly sought. Even workers at the bottom of the wage scale earn the equivalent of more than \$30,000 annually, Stephenson said, adding that the jobs also provide a full range of benefits. Many DM&IR employees make tens of thousands more, on the basis of their skills and experience.

Even before DM&IR's recent warning of prospective layoffs, the

Even before Blandin's recent warning of prospective layoffs, the company had been working to scale back its work force. In February, DM&IR offered employees in its track, bridge and building departments a one-time payment of \$100,000 to relinquish their jobs. The deadline for accepting that offer is March 31.

Most taconite pellets produced by EVTAC flow through ore docks in Duluth, where they are loaded onto lake carriers bound for eastern steel mills. So EVTAC's fate could affect lake carriers and waterfront operations as well. Stephenson said DM&IR hauls more pellets to Duluth from EVTAC than from any other producer.

Davis Helberg, executive director of the Duluth Seaway Port Authority, said EVTAC has played an important role for decades in the overall viability of the DM&IR Railway, the ore docks and freighters. Any loss of tonnage, after the taconite industry has constricted in recent years, is bad news for the railroad, the port and the region, he said.

"It's continuing the downward trend for taconite," Helberg said.

Minnesota Power also is closely watching developments at EVTAC. It could lose a very important customer -- its fourth-largest -- if EVTAC closes.

When operating, the plant requires a steady electrical load of about 62 megawatts. That quantity of electricity typically would serve about 60,000 residential customers -- more than the population of St. Cloud.

"It would be a challenge to sell all that energy at the kind of price EVTAC has been paying us," said Jim Roberts, vice president of public relations for Minnesota Power, but he thinks there probably will be room for it on the wholesale market.

EVTAC isn't Minnesota Power's only large customer whose demand could diminish. Several paper producers, including Blandin and Sappi, have trimmed operations.

Minnesota Power leans quite heavily on large industrial customers, which, as a group, consume about half of all the electricity it produces.

Taconite producers alone buy about 30 percent to 35 percent of Minnesota Power's retail electricity, Roberts estimated.

Minnesota Power has cut about 50 people from its payroll in the past few months in an attempt to adapt to recent and threatened contractions in the Northland's industrial base.

Roberts doesn't expect Minnesota Power will need to cut many more jobs or reduce its generation if EVTAC shuts its doors. But it's not something he wants to see.

"Any time you lose a customer, especially a major customer, it's a blow not only for us, but for the area," Roberts said. "In the end, the impact it has on Minnesota Power is really secondary to the impact it has on individual families."

(The preceding report by Peter Passi appeared on the Duluth News Tribune's website Tuesday, March 11, 2003. Staff writer John Myers contributed to this story. Paragraph in parentheses added by UTU News editors.)

March 12, 2003

DuluthNewsTribune.com

Posted on Tue, Dec. 16, 2003

DM&IR starts hauling crude ore

UNITED TACONITE: More railroad workers will be recalled as the taconite plant gears up for pellet production next week.

**BY LEE BLOOMQUIST
NEWS TRIBUNE STAFF WRITER**

About 65 laid-off railroad workers will be back on the job on the Iron Range and in Duluth by spring to handle the transportation of taconite pellets from United Taconite, formerly EVTAC Mining Co.

Pete Stephenson, vice president and general manager of the Duluth Missabe and Iron Range Railway Co., said Monday that 20 DM&IR employees already have been recalled as the railroad and Iron Range taconite plant gear up for pellet production next week.

Another 45 employees are projected to return to work when the shipping season resumes in the spring.

DM&IR crews hauled the first trainloads of crude ore Monday from United Taconite's mine in Eveleth to its processing plant, about 10 miles south in Forbes.

Eight round trips will be made each day between the mine and processing plant to fill storage bins at United Taconite. The trips require four two-person DM&IR crews.

"That's essentially the full plan for hauling crude ore," Stephenson said. "We will be running a full complement of trains for the week. It's a terrific piece of news for us."

Officials of Cleveland-Cliffs and Laiwu Steel, which bought the taconite plant Nov. 25 in U.S. Bankruptcy Court, hope to begin producing taconite pellets at the 38-year-old facility Monday.

Through Monday, about 270 hourly workers have been called back to work at the taconite plant, said Joe Strlekar, president of United Steelworkers of America Local 6860 at United Taconite. A total of 320 hourly workers should be back at the plant next week, he said.

EVTAC Mining Co. employed 354 hourly workers when it shut down in mid-May because of a lack of pellet contracts. On May 1, EVTAC Mining Co. filed Chapter 11 bankruptcy.

Cleveland-Cliffs and Laiwu Steel plan to operate the plant at its 4.3 million ton per year capacity in 2004. That means good news not only for workers being recalled to the plant but also for railroad employees.

The DM&IR has served the taconite plant since it opened in 1965. Before closing, EVTAC was the DM&IR's second-largest customer in terms of revenue and largest in terms of sheer tonnage.

"We are putting our plans together for a full operation," Stephenson said. That would include hauling taconite pellets by rail to the DM&IR docks in Duluth.

The railroad does not yet have a formal transportation contract with Cleveland-Cliffs and Laiwu. However,

the DM&IR will haul crude ore from the mine to the taconite plant and transport United Taconite pellets to loading docks in Duluth under an interim agreement, Stephenson said.

The plant's pelletizing furnaces are scheduled to be fired up over the weekend and will be ready to make pellets on Monday, said Dana Byrne, a Cleveland-Cliffs spokesman.

Tours of the mine and taconite plant, a breakfast and midday news conference are set for Monday at Eveleth's Range Recreation Civic Center.

Initially, DM&IR trains will haul United Taconite pellets to docks in Duluth, Stephenson said. But, with the end of the Great Lakes shipping season approaching, it's not known whether any of the pellets will be shipped via ore carriers.

"We are fast running out of our shipping season," Stephenson said. "If it doesn't happen too fast, we might be able to load a boat or two, but much of what they make will be likely stockpiled."

When ore carrier loading operations resume in the spring, about 65 DM&IR workers will be back on the job, he said.

Re-starting the taconite plant is expected to help offset employment cuts planned next year under a takeover of the DM&IR by the Canadian National Railway Co. About 94 jobs in Duluth and Proctor were to be lost by mid-2004.

EVTAC's May closure also prompted the layoff of 86 DM&IR workers.

Canadian National officials have said that a reopening of the taconite plant would help retain some of the jobs.

LEE BLOOMQUIST covers the Iron Range taconite industry. He can be reached weekdays at (800) 368-2506, (218) 744-2354 or by e-mail at leebloom@cpinternet.com.

The deal is done

Exhibit No. __ (JAT-4)
(Page 7 of 10)

DuluthNewsTribune.com

Posted on Thu, Dec. 04, 2003

DuluthNewsTribune.com

The deal is done

IRON MINING: More than 300 workers are expected to return within weeks under new owners Cleveland-Cliffs and Laiwu Steel.

BY LEE BLOOMQUIST
NEWS TRIBUNE STAFF WRITER

The deal to reopen bankrupt EVTAC Mining Co. is sealed.

Officials of Cleveland-Cliffs Inc. and Laiwu Steel Group became new owners of the Iron Range taconite plant in an asset transfer closed Wednesday in Minneapolis.

Cleveland-Cliffs, which will manage and own 70 percent of the plant, hopes to have the United Taconite facility producing taconite pellets by mid-month. Laiwu Steel, a Chinese steelmaker, will own 30 percent of the taconite plant.

Last week, Cleveland-Cliffs and Laiwu Steel won an auction for the plant's assets for \$3 million cash and the assumption of \$40 million in long-term environmental liabilities.

The reopening of the taconite plant is some of the Iron Range's best news of the year.

Under Cleveland-Cliffs and Laiwu, the taconite plant is expected to employ about 320 hourly workers. Including management, employment at the plant would be almost 400.

As EVTAC, the plant's annual payroll was about \$36 million, with a yearly budget of about \$136 million. At its 4.3 million-ton capacity, annual taconite taxes generated by the plant would be about \$10 million.

The 38-year-old facility includes an iron ore mine at Eveleth and taconite-pellet processing plant about 10 miles to the south in Forbes.

Officials of Cleveland-Cliffs and Laiwu Steel are scheduled to be at the taconite plant today to meet with local managers.

So far, about 120 hourly workers are back on the job, preparing for a restart, said Joe Strlekar, president of United Steelworkers of America Local 6860 at EVTAC.

Running water and heat still need to be restored within the taconite plant. Starting up the facility, which had been winterized to prevent damage to equipment, is about a two-week process.

Within about 11 days, up to 320 hourly workers are scheduled to return to work, Strlekar said.

"They have not started to recall any more people at this time," Strlekar said. "As far as I know, the main body of workers will be back the week of Dec. 14."

- 56 -

The deal is done

Exhibit No. __ (JAT-4)
(Page 8 of 10)

About 354 hourly workers were employed at EVTAC when the plant shut down in mid-May because of a lack of 2003 pellet orders. On May 1, EVTAC filed for Chapter 11 bankruptcy.

Under the terms of an asset purchase agreement, Cleveland-Cliffs and Laiwu agreed to recall a minimum of 320 hourly workers.

Job applications and health questionnaires were sent to 320 hourly workers, Strlekar said. If some of the 320 decline to return to work, Cleveland-Cliffs and Laiwu Steel are not required to fill those positions, he said.

"If they only get 310 people that want to come back, they have the option of not hiring 320," Strlekar said. "I don't think they can run the plant that way, but they have that option."

Cleveland-Cliffs and Laiwu Steel may start operations with a reduced work force and add employees as the plant becomes operational, Strlekar said.

"I think they will probably call back as few as possible and run as lean as they can at first, but then they may add some more," Strlekar said.

Cleveland-Cliffs and Laiwu Steel plan to run the plant at capacity in 2004.

A contract for Cleveland-Cliffs to provide pellets to Laiwu Steel runs through 2012.

Pellets produced at United Taconite will be sold or traded to North American steelmakers. Pellets from the Wabush Mine in Newfoundland, managed and partly owned by Cleveland-Cliffs, will be shipped to Laiwu Steel in China.

EVTAC Mining Co., formerly known as Eveleth Taconite and later Eveleth Mines, was built in 1964 and opened in 1965 with a 1.6 million-ton capacity. The plant's initial cost was \$45 million. A mini-expansion occurred in 1968, and in the mid-1970s, capacity was increased to 6 million tons with two furnaces at a cost of \$275 million. Employment at the plant in the mid-1970s was about 1,450. The plant's pellet production reached an all-time high of nearly 5.9 million tons in 1981, but the plant's original No. 1 pelletizing furnace is no longer used.

LEE BLOOMQUIST covers the Iron Range taconite industry. He can be reached weekdays at (800) 368-2506, (218) 744-2354 or by e-mail at leebloom@cpinternet.com.

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Mine reopening brings DM&IR jobs back

DULUTH, Minn. -- The scheduled reopening of the bankrupt EVTAC Mining Co. isn't just putting out-of-work mine and factory workers back on the lines, according to this Associated press report.

About 65 laid-off Duluth Missabe and Iron Range Railway Co. workers are scheduled to get their jobs back by spring to handle the transportation of taconite pellets from United Taconite, formerly EVTAC.

With the closing of the plant in May, 86 workers were erased from the payroll at DM&IR. The company had served the taconite plant since it opened in 1965. EVTAC was the rail company's second-largest customer in terms of revenue and largest in sheer tonnage.

Pete Stephenson, DM&IR vice president and general manager, said Monday that 20 DM&IR employees have already been recalled as the railroad and Iron Range taconite plant gear up for pellet production next week. Another 45 employees were projected to return to work when the shipping season resumes in the spring.

DM&IR crews hauled the first trainloads of crude ore Monday from United Taconite's mine in Eveleth to its processing plant, about 10 miles south in Forbes.

Eight round trips will be made each day between the mine and processing plant to fill storage bins at United Taconite.

"That's essentially the full plan for hauling crude ore,"

Message

Exhibit No. __ (JAT-4)
(Page 10 of 10)

Stephenson said. "We will be running a full complement of trains for the week. It's a terrific piece of news for us."

Officials of Cleveland-Cliffs and Laiwu Steel, which bought the taconite plant Nov. 25 in U.S. Bankruptcy Court, hope to begin producing taconite pellets at the 38-year-old facility Monday.

Through Monday, about 270 hourly workers had been called back to work at the taconite plant, said Joe Strlekar, president of United Steelworkers of America Local 6860 at United Taconite. A total of 320 hourly workers should be back at the plant next week, he said.

The plant's pelletizing furnaces are scheduled to be fired up over the weekend, and will be ready to make pellets on Monday, said Dana Byrne, a Cleveland-Cliffs spokesman.

Restarting the taconite plant is expected to help offset employment cuts planned next year under a takeover of the DM&IR by the Canadian National Railway Co. About 94 jobs in Duluth and Proctor were to be lost by mid-2004.

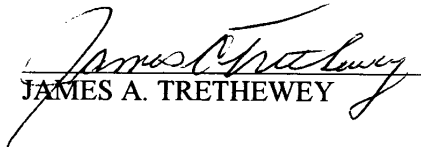
(The preceding Associated Press report was filed Tuesday, Dec. 16, 2003.)

December 16, 2003

VERIFICATION

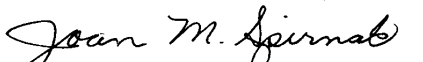
STATE OF OHIO)
) ss:
COUNTY OF)

JAMES A. TRETHEWEY, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.


JAMES A. TRETHEWEY

Subscribed and sworn to before me

this 22nd day of January, 2004.


Notary Public for the State of Ohio

My Commission expires

JOAN M. SPIRNAK, Notary Public
State of Ohio, Lake County
My Commission Expires Aug. 2, 2005

VERIFIED STATEMENT OF
HOWARD HILSHORST

My name is Howard Hilshorst. My business address is P.O. Box 180, Eveleth, Minnesota 55734. I currently serve as President of Eveleth Mines LLC d/b/a EVTAC ("EVTAC"). I joined EVTAC when the company was created in 1996 and served EVTAC as its Vice President of Operations prior to becoming President in July of 1999. As EVTAC's President, I was responsible for supervising all of the company's operations, including its acquisition of rail transportation. Prior to becoming President, I was also very actively involved in EVTAC's acquisition of rail transportation.

In December of 2003, United Taconite, LLC ("United Taconite") acquired EVTAC's principal assets including the Thunderbird North Mine and the Fairlane taconite processing plant. United Taconite's indirect majority owner is Cleveland-Cliffs, Inc. ("Cliffs"). I have been asked by Cliffs to address the transportation options EVTAC explored at the Thunderbird North Mine and at Fairlane.

BACKGROUND

The Thunderbird North Mine, and the Fairlane Plant, first opened for business in 1966. In January of 1997, EVTAC acquired these properties. EVTAC was owned by subsidiaries of three large steel companies: Rouge Steel Company ("Rouge"), AK Steel Company ("AK") and Stelco, Inc. ("Stelco"). EVTAC was a limited liability company that sold pellets on a contract basis to its owners as well as on the open market.

When EVTAC acquired the Thunderbird North Mine, and the Fairlane plant, our management mission was clear: reduce operating costs. At that time, we were one of the highest cost pellet producers on the Iron Range. To survive, we needed to aggressively cut costs. We carefully reviewed all of our major costs including our rail transportation costs. These costs were among the single highest costs we incurred. EVTAC's rail transportation bill at that time exceeded \$22 million annually.

We concluded that our rail costs were excessive when measured against cost, regulatory and competitive market standards. The reason for this was clear: the DMIR exerted monopoly-pricing power over both our ore and our pellet shipments. We then began to study what market and regulatory options we had to reduce our rail costs.

NON-RAIL OPTIONS

We quickly dismissed the use of transportation modes other than rail to haul our ore and pellet shipments, which in 1997 approximated 16 million ore tons annually and 5 million pellet tons annually. There are no navigable waterways serving the Thunderbird North Mine or the Fairlane plant. Trucking also was not a feasible option for many reasons: lack of infrastructure, community opposition, loading/unloading physical impracticabilities, and impractically high costs. Rail was our only viable transportation option.

RAIL OPTIONS

CN's¹ main north/south line from Canada into the United States runs right by the Thunderbird North Mine and the Fairlane plant. CN also has a spur line running off its main line to the Fairlane plant. That line, however, does not connect to the loop track used to unload ore trains and to load pellet trains.

Given the physical proximity of the existing CN lines at Thunderbird North and Fairlane, it appeared to us that accessing CN via track construction was physically feasible. This conclusion was confirmed by subsequent detailed studies we supervised in 1997 and 1998. Barr Engineering, our retained expert rail-engineering firm, conducted extensive site surveys and prepared detailed engineering plans. Barr's plans showed that EVTAC could access CN at Thunderbird by constructing a short set of tracks from the CN main line to the Thunderbird North Mine. The plans also showed that EVTAC could access CN at Fairlane, for ore and pellet service, by constructing a new loop track. Barr estimated the cost of these facilities at approximately { }.² Later bids met these estimates.

Barr worked closely with CN in preparing its engineering studies and cost estimates. EVTAC, Barr and the chief CN engineer assigned to the project met on many

¹ My references to CN includes CN's wholly owned subsidiary the Duluth, Winnipeg & Pacific Railway Company.

² { }.

occasions. CN's engineers also did extensive on-site engineering work and approved Barr's final engineering plans before Barr bid the project. EVTAC/CN coordination and communication was critical for the success of the project since EVTAC's new facilities were going to connect to existing CN facilities.

EVTAC also looked closely at land acquisition and environmental permitting issues. We did not find any "project stoppers" here. EVTAC did not need to acquire any land since all the proposed construction was on land it (or CN) owned or controlled.³ We also did not foresee any problems in obtaining required permits.

For the Board's background information, I refer the Board to the following exhibits:

- Exhibit No. ____ (JAT-2) contains a schematic illustrating EVTAC's CN access plan at Thunderbird North and Fairlane.
- Exhibit No. ____ (HH-1) contains Barr Engineering's detailed engineering site plans for the new CN access facilities.
- Exhibit No. ____ (HH-2) contains Barr Engineering's preliminary engineering cost estimates, bid documents, and responsive contractor bids to build the new access facilities.

³ {

}

- Exhibit No. ____ (HH-3) contains a letter from CN's principal engineer approving Barr Engineering's detailed site plans.

BUILD-OUT ROUTINGS

In conjunction with our build-out studies, EVTAC identified post-CN access competitive rail routings. These routings included the following:

- Thunderbird North-to-Fairlane Ore Haul. Accessing CN at Thunderbird North and Fairlane set up a competitive CN routings for EVTAC's ore haul.
- Fairlane Pellet Hauls. With CN access in place at Fairlane for pellet haul movements, EVTAC would have been able to transport its pellets via all routings open to CN and its connections. Among the potential routings we identified were: (i) CN/BNSF to BNSF's Allouez dock either north via Virginia, Minnesota or south via the Spirit Lake Line;⁴ (ii) CN-direct all rail routings to Stelco's Lake Erie facilities near Nanticoke, Ontario; (iii) CN/BNSF/Connecting Carrier direct rail routings (either via Virginia or the Spirit Lake Line); and (iv) CN/Connecting Carrier direct rail routings via the Spirit Lake Line

My Exhibit No. ____ (HH-4) contains a detailed description of each of these new competitive routing opportunities. The origin segments of these routes are also

⁴ The Spirit Lake Line is a line of DMIR track in the Duluth/Superior area that runs between Nopeming Junction and South Itasca.

illustrated in my Exhibit No. ____ (HH-5).

1997-1998 COMMERCIAL DISCUSSIONS

In 1997 and 1998, EVTAC engaged in extensive commercial discussions with CN, BNSF and DMIR. EVTAC focused these discussions on reducing its delivered ore/pellet prices to the Duluth/Superior docks. This focus was dictated by EVTAC's complex arrangements with its owners. These arrangements established EVTAC's pellet sales price, for owner sales, as EVTAC's delivered pellet price (including rail charges) to the Duluth/Superior docks.

In 1997-1998, EVTAC was paying DMIR, on average, approximately { } per pellet ton for DMIR's ore service to Fairlane and its pellet service to its Duluth dock.⁵ The price was set forth pursuant to the terms of an expired contract between DMIR and the prior owners of the EVTAC assets. That price was subject to adjustment using a complex formula.⁶ EVTAC's commercial goal was to reduce these prices.

- EVTAC/CN Ore Haul Negotiations.

{

⁵ The price fluctuated somewhat and, for ease of reference I refer here to EVTAC's Fall 1998 estimate. {

}. All my references to "tons" are to long tons of 2,240 pounds.

⁶ I append as my Exhibit No. ____ (HH-6) a copy of the pricing provisions in the contract, along with a representative rate adjustment notice.

-
- EVTAC/CN/BNSF Pellet Haul Negotiations.

EVTAC, CN and BNSF also engaged in extensive discussions concerning a CN/BNSF pellet haul to the BNSF's Allouez Dock in Superior, Wisconsin. {

The direct CN/BNSF route to Allouez is south via DMIR's Spirit Lake Line to Allouez. This route is approximately 68 miles long. {

} CN had trackage rights to operate over DMIR's Spirit Lake Line – portions of which they had to use for the direct route to Allouez – but the trackage right arrangements between DMIR and CN precluded CN (and its connections) from hauling pellets mined in the Iron Range over the Spirit Lake Line.

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- DMIR Negotiations.

EVTAC also engaged in extensive discussions with the DMIR. {

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- EVTAC Board Action.

In November and December of 1999, we presented the results of our studies, and negotiations to our Board. Our Board consisted of representatives from each

}

of EVTAC's three owners. {

The Board selected Option 1 – a deal with DMIR. {

POST-1998 DMIR DEVELOPMENTS

- DMIR Contract.

Following the Board's directive, EVTAC proceeded to complete negotiations with DMIR. In early 1999, EVTAC and DMIR executed a short term sheet for a new five year contract. The term of this deal was through February, 2004. {

EVTAC and DMIR later exchanged more detailed draft contracts, but none were executed.

- CN/EVTAC/Stelco Direct Rail Discussions.

In March of 2002, EVTAC was approached by Jerry Boland, a senior marketing executive with CN. Mr. Boland had actively participated in the 1997-1998

CN/EVTAC discussions. Mr. Boland met with members of my staff and informed them that CN was actively looking at moving Fairlane-produced pellets to Stelco's Lake Erie Steel Works, near Nanticoke, Ontario, on an all-rail CN movement. An EVTAC participant at that meeting summarized Mr. Boland's comments on March 4, 2002, as follows:

We had our CN meeting with Jerry Boland (VP of Marketing) and Bill Boukas (our area man). Jerry Boland indicated that CN has been in touch with Stelco. Jerry indicated that CN was willing to "invest \$15 to \$20 million to develop a rail unloading station" at Stelco. That certainly caught us by surprise. Jerry further indicated that CN (or at least Jerry) was interested in going after all of the pellet hauls in Minnesota and to make all of the hauls all-rail to their destination.

EVTAC had identified the Fairlane-to-Stelco direct rail routing in 1997 (see my Exhibit No. ____ (HH-4)). However, we did not pursue direct rail at that time because, as noted above, our contract with Stelco called for sales F.O.B. Duluth/Superior. We passed along Mr. Boland's 2002 direct rail proposal to Stelco.

For purposes of my statement, I contacted Stelco. They report that Mr. Boland did discuss a Fairlane-to-Stelco direct rail routing option with them. They also report that it appears physically feasible for Stelco to access CN in the manner proposed by Mr. Boland if a new rail line (approximately one mile in length) is constructed, a new loop track is constructed, and new unloading facilities are installed.

- EVTAC Bankruptcy/United Taconite Purchase.

Our Board's decision at the end of 1998 to cut-back production was a major blow to EVTAC. In light of this decision, we were forced to begin to cut our work force. Following the cut-back, we continued to aggressively try to cut costs. As part of those efforts, we engaged in periodic discussions with all of our major vendors and asked them to reduce their prices. Many made good faith efforts to help. DMIR was not among that group. DMIR gave us some proposals but all involved, at best, wash transactions from our perspective. DMIR simply was unwilling reduce its prices and, in the end, we had to resort to self-help (not paying some rate increases).

In December of 2002, our owners announced additional cut-backs in their pellet purchases. These cut-backs, as a practical matter, meant that EVTAC had to line-up new customers by the end of April, 2003, or go out of business. We tried very hard to find new customers, but could not. Sadly, in May of 2003, EVTAC had to shutdown. The shutdown required us to lay off approximately 430 people. Since EVTAC was a major Iron Range employer, the shutdown also had huge negative ripple effect throughout the Iron Range.

Immediately prior to the EVTAC shutdown, I decided the best course of action for the company, its creditors and its former employees, was to file for Chapter 11 protection. EVTAC kept on a skeletal management staff. We then went to work to find a buyer (and a market) for our pellets. I am pleased that these efforts were successful. In

December of 2003, United Taconite bought the EVTAC properties. Today, both the Thunderbird North Mine and the Fairlane plant are running again. And, best of all, most of the workers EVTAC had to let go are now back on the job.

I continue to work for EVTAC to wind-up our remaining Chapter 11 affairs. My office is at the Fairlane plant. Though I am not involved in the United Taconite operations, I can report that United Taconite's purchase of EVTAC has not resulted in any material changes impacting EVTAC's prior build-out studies. United Taconite, like EVTAC, remains captive to DMIR but retains the same build-out options that EVTAC had.

CONCLUSION

Based upon EVTAC's experience, I conclude that:

- CN and DMIR are competitors for the Thunderbird North-to-Fairlane ore shipments.

- CN/BNSF and DMIR are competitors for the Fairlane-to-Duluth/Superior pellet shipments.

- {

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- {

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- Had EVTAC built the CN access tracks, EVTAC would have enjoyed other competitive rail routings, including potential direct rail routings to Stelco and direct rail routings to other domestic steel mills.

I also conclude that the proposed merger of CN and DMIR will eliminate this pre-merger competition, unless the Board adopts a condition that preserves United Taconite's pre-merger competitive options.

Exhibit No. ____ (HH-1)

Pages 1 to 4 (of 4)

*(REDACTED -- PAGES CONTAIN CONFIDENTIAL
AND HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER)*

Exhibit No. ____ (HH-2)

Pages 1 to 10 (of 10)

***(REDACTED -- PAGES CONTAIN CONFIDENTIAL
AND HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER)***

Exhibit No. ____ (HH-3)

Page 1 (of 1)

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COMPETITIVE BUILD-OUT ROUTINGS

EVTAC determined that accessing CN at Thunderbird North and Fairlane would create a new ore haul routing and a host of new competitive pellet haul routing opportunities.

A. Ore Routing.

After accessing CN, EVTAC would have had two competitive ore routings from the Thunderbird North Mine to Fairlane: a 9.8 mile DMIR route and a 9.85 mile CN route.

B. Pellet Routings

- CN/BNSF to Allouez Dock Via The Spirit Lake Line. DMIR hauled EVTAC pellets via the Port of Duluth to points beyond by vessel. The DMIR route distance between Fairlane and DMIR's Duluth Dock is approximately 59 miles. The shorter CN/BNSF competitive route from Fairlane to Duluth is 68 miles.

The shorter routing required CN/BNSF to use a portion of a DMIR track segment between Nopeming Junction and South Itasca, called the Spirit Lake Line. CN was effectively precluded from using this Line to haul pellet traffic by the terms of its trackage rights agreement with DMIR. These restrictions needed to be removed before CN/BNSF would provide pellet service on the line.

This new CN/BNSF routing, if perfected, would have permitted equivalent distance competition between DMIR and CN/BNSF for EVTAC's Duluth/Superior port shipments. The new BNSF/CN route had other advantages, as well, including the use of high capacity rail cars. On the existing EVTAC-to-Duluth dock movements, DMIR was supplying ore gennies, which cars hold approximately 72 tons of pellets per car. DMIR had to use these small cars because its dock was not equipped to load larger cars. However, the BNSF Allouez Dock could handle larger 100 ton cars. Use of larger cars would have reduced EVTAC's costs since fewer train movements would be needed.

- CN/BNSF to the Allouez Dock Via A Virginia Area Routing. A second routing to Allouez was as follows: CN/BNSF could move pellet trains north to the Virginia, Minnesota area, then west over the DMIR track between Shelton Junction and Emmert (over which BNSF had running rights), and then back on the BNSF to the Allouez Dock. The routing totaled approximately 131 miles. {

}, unlike the Spirit Lake Line routing, there was no legal impediment to CN/BNSF using the Virginia routing, once EVTAC constructed its CN pellet access facilities.

- CN Direct to Stelco's Lake Erie Steel Works. Stelco was one of EVTAC's three owners and purchased (either directly or by trade) a substantial portion of EVTAC's pellet output. DMIR originated these pellets at Fairlane and delivered them to

its Duluth dock. At the dock, the pellets were transloaded into vessels and transported by water to Stelco's Lake Erie plant, near Nanticoke, Ontario, where they were unloaded at Stelco's Lake Erie dock. The total rail/water mileage for this movement is approximately 976 miles.

Accessing CN opened up a potential new competitive direct rail routing. That routing was south to Saunders, WI on CN, then over BNSF trackage rights to Chicago. From Chicago, the CN traverses the rail line of its subsidiary the Grand Trunk Western to Port Huron, MI. From Port Huron, MI, the CN uses its own tracks to Nanticoke, Ontario, to the Stelco Lake Erie facility. CN cars would then have to access Stelco through construction of a short access line, and a new loop track/car dumping system. This routing is approximately 1010 miles.

Direct rail from Fairlane has two principal advantages over a rail/water movement. First, transloading charges are eliminated. Second, direct rail service can be run year round, eliminating winter storage and handling charges. This was particularly significant for EVTAC (and now United Taconite) since the Fairlane plant has no winter storage capacity. All winter-produced pellets going to Stelco via Duluth, must be stored at DMIR's ore dock – at significant premiums.¹

¹ {
}

- CN/BNSF Direct Rail Routings Via Virginia. The CN/BNSF Virginia routing also opened up the entire BNSF system for competitive direct rail routings. For example, starting in 1998, AK Steel, another of EVTAC's owners, began to route most of its pellet deliveries to its Middletown, Ohio Steel Works via direct rail unit train shipments. DMIR is the only carrier that could originate this traffic, but AK could obtain competitive rail service for the remaining segment of the haul, as follows:

<u>Origin Leg</u>	<u>Duluth Area to Chicago</u>	<u>Chicago to Middletown</u>
DMIR	Wisconsin Central or BNSF	CSX or NS

The one-way mileage between Fairlane and Middletown using the DMIR-Wisconsin Central – CSX routing is approximately 872 miles. Substituting CN/BNSF, via Virginia to Chicago and NS to Middletown produces a competitive routing of 1015.8 miles.

- CN/BNSF and CN/Other Connecting Carrier Direct Rail Routings Via the Spirit Lake Line. If the Spirit Lake Line pellet service restrictions were removed, the distance of competitive CN/BNSF direct rail routings to midwest steel plants (e.g., AK) would be reduced. Also, CN would have the ability to interchange with its other major rail connections in the Duluth/Superior area (including UP and CP).

United Taconite Pre-Merger Buildout Routes

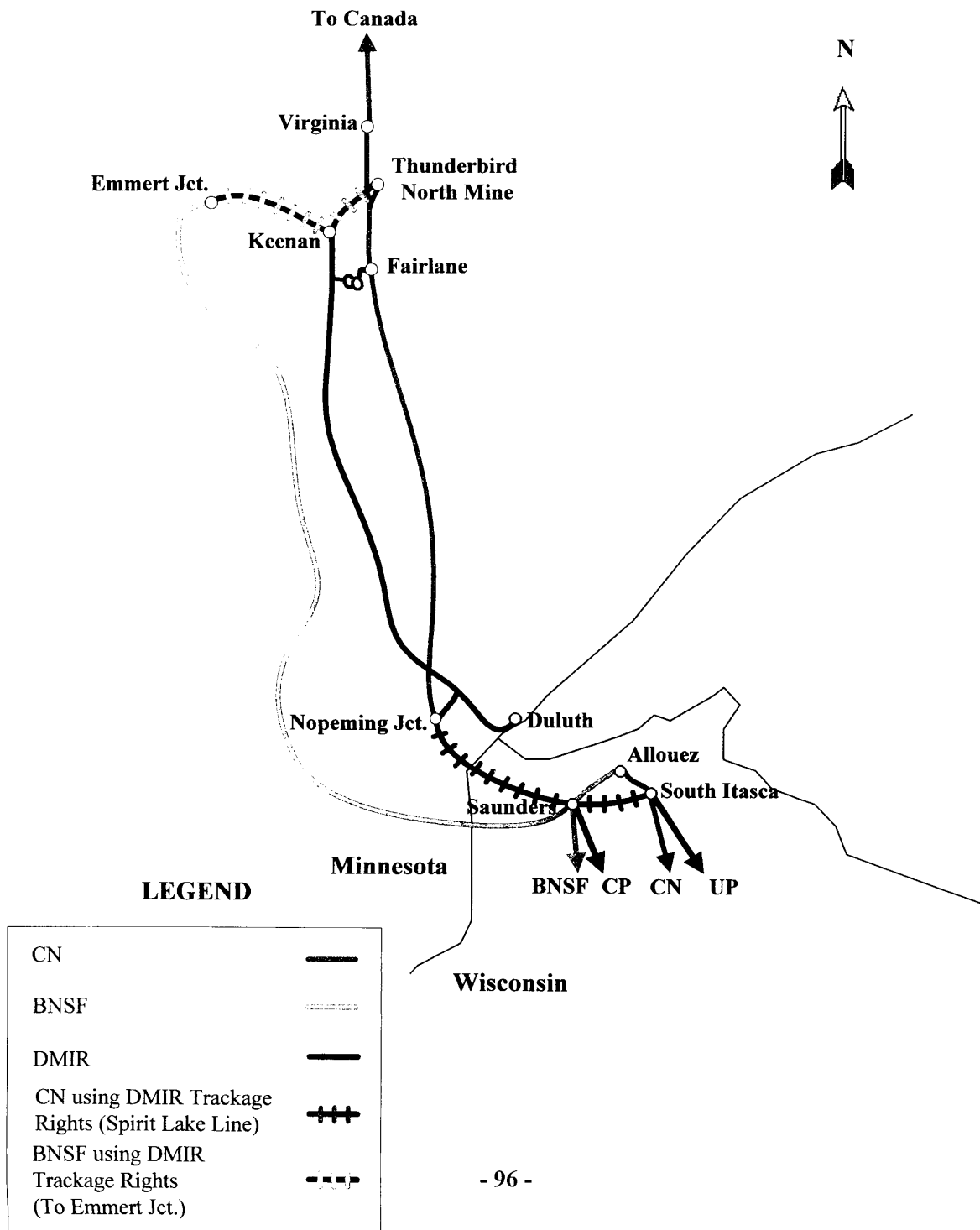


Exhibit No. ____ (HH-6)

Pages 1 to 22 (of 22)

*(REDACTED -- PAGES CONTAIN CONFIDENTIAL
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Exhibit No. ____ (HH-7)

Pages 1 to 8 (of 8)

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Exhibit No. ____ (HH-8)

Pages 1 to 5 (of 5)

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Exhibit No. ____ (HH-9)

Pages 1 to 2 (of 2)

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Exhibit No. ____ (HH-10)

Pages 1 to 13 (of 13)

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SUBJECT TO PROTECTIVE ORDER)*

VERIFICATION

STATE OF MINNESOTA)
) ss:
COUNTY OF)

HOWARD W. HILSHORST, being duly sworn, deposes and says that he has read the foregoing Verified Statement, knows the contents thereof, and that the same are true as stated except as to those statements made on information and belief, and as to those, that he believes them to be true.

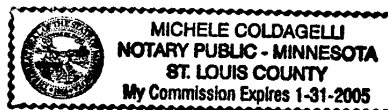


HOWARD W. HILSHORST

~~Subscribed~~ and sworn to before me
this 22 day of January, 2004.



Notary Public for the State of Minnesota

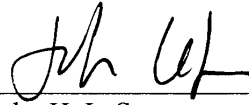


My Commission expires 1/31/2005

CERTIFICATE OF SERVICE

I hereby certify that I have served by first class mail copies of the Highly Confidential version of Cleveland-Cliffs, Inc.'s Comments and Requests for Conditions ("Comments") on outside counsel for parties of record as set forth in the Board's January 14, 2004 order who are entitled to see Highly Confidential information and who are known to have signed the underlying protective order governing this proceeding. I have served by first class mail a Public version of the foregoing Comments on all parties of record. Counsel for Applicants have been hand served with copies of both versions.

Dated this 26th day of January, 2004, at Washington, D.C.

A handwritten signature in black ink, appearing to read "John H. LeSeur", written over a horizontal line.

John H. LeSeur
An Attorney for Cleveland-Cliffs, Inc.