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January 26, 2004

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423

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PROCEEDINGS

JAN 27 2004

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RE: STB Docket No. 34424, *Canadian National Railway Company et al. – Control – Duluth, Missabe and Iron Range Railway Company et al.*

Dear Secretary Williams:

Please find enclosed for filing the original and twenty (20) copies of Comments, Evidence and Request for Conditions of Ispat Inland Inc. (ISP-2) (*Public Version*) in the above referenced proceeding. Also enclosed is a diskette with the comments in WordPerfect format.

An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Jeffrey O. Moreno



209959
ISP-2

PUBLIC VERSION
HIGHLY CONFIDENTIAL AND CONFIDENTIAL MATERIAL REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34424

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

COMMENTS, EVIDENCE AND
REQUEST FOR CONDITIONS OF
ISPAT INLAND INC.

ENTERED
Office of Proceedings

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Public Record

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**COMMENTS, EVIDENCE AND
REQUEST FOR CONDITIONS OF
ISPAT INLAND INC.**

Pursuant to the Procedural Schedule adopted in Decision No. 2, served on December 1, 2003, Ispat Inland Inc. ("Ispat") submits its Comments, Evidence and Request for Conditions on the proposed acquisition and control of the Duluth, Missabe and Iron Range Railway Company ("DMIR"), Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company, all subsidiaries of Great Lakes Transportation Company ("GLT"), by Canadian National Railway Company and Grand Trunk Corporation ("CN"). Ispat specifically is concerned with the acquisition of DMIR. Ispat submits the Joint Verified Statement of Bruce A. Klimek, Ispat's Section Manager Purchasing, and Daniel J. Cornillie, Ispat's Manager Internal Logistics/Fleet ("Klimek/Cornillie V.S."), and accompanying Exhibits, in support of its Comments, Evidence and Request for Conditions.

Ispat opposes CN's proposed acquisition of DMIR. If the Board approves the transaction, however, Ispat requests that the Board impose a condition to protect Ispat from CN service reductions.

I. Statement of Identity and Interest.

Ispat, formerly Inland Steel Co., is the sixth largest integrated steel producer in the United States and accounts for approximately five percent of the nation's steel production. (Klimek/Cornillie V.S. at 3) Founded in 1893, today Ispat manufactures a range of high-value-added flat-rolled and bar products, which are rated among the most consistent and highest quality products by Ispat's customers. (*Id.* at 3) Ispat's flat-rolled products are used by virtually all automobile manufacturers in the U.S., and in appliances, office furniture, electrical motors, and other market segments. (*Id.* at 3) Ispat's bar products are used in the automotive, cold-finishing, fastener, forging, industrial machinery, off-highway, agricultural-equipment and service center markets. (*Id.* at 3)

A. The Indiana Harbor Facility.

All of Ispat's iron and steel production occurs at a single facility, the 1900-acre Indiana Harbor Works facility in East Chicago, Indiana. (*Id.* at 3) Ispat operates three blast furnaces at the Indiana Harbor facility, identified as the No. 5, 6, and 7 blast furnaces. These blast furnaces operate around the clock and throughout the year, except for planned and unplanned maintenance outages. (*Id.* at 3)

The No. 7 blast furnace is the largest in North America. (*Id.* at 3) Its average daily production of iron is 10,300 short tons, which accounts for two-thirds of the total production at Indiana Harbor. (*Id.* at 3) The No. 7 blast furnace consumes over 5.4 million long tons of taconite pellets annually (nearly 15,000 tons per day), mostly from Ispat's Minorca Mine on the Minnesota Iron Range. (*Id.* at 4) Additional taconite pellets come from the Empire Mine in Michigan's Upper Peninsula. (*Id.* at 5) Ispat currently is considering upgrades to the No. 7 blast furnace that would increase its production capacity. (*Id.* at 3)

The No. 5 and 6 blast furnaces will produce approximately 4400 short tons of iron per day in 2004. (*Id.* at 3) At the 2004 planned production schedule of 4400 short tons per day, these blast furnaces will consume over 2.5 million long tons of taconite pellets, 75% of which are produced at the Empire Mine. (*Id.* at 5) The balance of the pellets is from the Canadian Wabush Mine on the Gulf of St. Lawrence and a small portion from the Minorca Mine production. (*Id.* at 5) The No. 6 blast furnace was to have been retired from service in 2003, but Ispat has kept it on line due to strong world demand. (*Id.* at 3)

The continuous, uninterrupted operation of the Indiana Harbor facility is essential to Ispat's success. For example, if the No. 7 blast furnace were to experience an outage, Ispat estimates that its damages would approximate \$3 million per day. (*Id.* at 4) Therefore, it is critical that Indiana Harbor receive a steady and continuous supply of raw materials throughout the year. Ispat depends heavily on reliable rail transportation and dock operations to maintain a continuous flow of taconite pellets, its largest raw material stream, into the lake vessels that feed Indiana Harbor. (*Id.* at 3-5)

B. The Minorca Mine.

Ispat owns the Minorca Mine, near Virginia, Minnesota, which is a major source of the iron-ore used at the Indiana Harbor facility. (*Id.* at 4-5) The Minorca Mine manufactures taconite pellets from iron ore, which is the major raw material used in the production of steel. Over 95% of the Mine's taconite pellet production is used in the No. 7 Blast furnace at Indiana Harbor, and the physical and chemical characteristics of Minorca's taconite pellets are designed specifically to meet that furnace's special requirements. (*Id.* at 4) The balance is consumed by the No. 5 and 6 Blast furnaces. (*Id.* at 4)

The Minorca Mine has the capacity to produce approximately 2.9 million long tons of taconite pellets annually. (*Id.* at 4) Since 1999, the Mine has produced the following annual amounts of taconite pellets:

Table 1

Year	Quantity (Long Tons)
1999	2,871,000
2000	2,912,000
2001	2,826,000
2002	2,870,000
2003	2,826,000

(*Id.* at 4) Minorca has produced taconite pellets at full capacity since 1988. (*Id.* at 4) Virtually all of these pellets have been consumed by Ispat at Indiana Harbor. (*Id.* at 4)

C. Taconite Pellet Transportation Options.

Taconite pellets move from the Minorca Mine to Indiana Harbor all year round via a rail-water transportation combination. (*Id.* at 5) Taconite pellets also have moved via a mostly rail route in emergency situations.¹ The Mine is rail-served by both DMIR and The Burlington Northern and Santa Fe Railway Company ("BNSF"). (*Id.* at 5) BNSF, however, accesses the Mine via trackage rights over DMIR. (*Id.* at 5) The water portion of the transportation occurs in vessels that are chartered or contracted by Ispat. (*Id.* at 6)

Ispat's transportation options vary between the Navigation and Non-Navigation (*i.e.* Winter) seasons. The Winter season extends from the end of the shipping season on Lake Superior, when the locks at Sault Ste. Marie close, until the locks re-open in the Spring. This period covers most of the first calendar quarter of each year, typically from January 15 until March 25. (*Id.* at 6) The balance of the year is the Navigation season. (*Id.* at 7)

¹ This emergency rail route really is a rail-water route to Chicago, where the taconite pellets are transloaded onto barges or lake vessels in order to move the last few miles to Indiana Harbor.

During the Navigation season, all Minorca taconite pellets move via rail to Lake Superior ports. (*Id.* at 6) The DMIR can transport taconite pellets either to Two Harbors or Duluth, Minnesota. (*Id.* at 6) BNSF, the other possible origin carrier, can transport the taconite pellets to Superior, Wisconsin. (*Id.* at 6) At each port, the taconite pellets can be loaded onto lake vessels and transported directly to Indiana Harbor at the southern end of Lake Michigan. (*Id.* at 6) Taconite pellets can be unloaded from vessels within a matter of hours. (*Id.* at 6) Currently, all Navigation season pellet shipments move from Minorca to Duluth or Two Harbors via DMIR pursuant to a contract, DMIR-C-0125, [REDACTED]² (“DMIR Contract”).³ (*Id.* at 5)

During the Winter season, Ispat must find alternative means to ensure an uninterrupted supply of taconite pellets to Indiana Harbor. (*Id.* at 6) A continuous flow of taconite pellets out of the Minorca Mine also is important to the Mine’s operations, since it cannot store substantial quantities of taconite pellets on-site and since the year-round operation of the Mine is essential to ensure the production of sufficient quantities of taconite pellets for consumption at Indiana Harbor. (*Id.* at 6-7)

Prior to the early 1990’s, Ispat stockpiled Minorca’s winter taconite pellet production at the Lake Superior docks and stockpiled taconite pellets for winter consumption at Indiana Harbor. (*Id.* at 6) Stockpiling pellets at two locations is extremely expensive. There is extensive working capital absorbed in stockpiling enough pellets to support the No. 7 blast furnace for the entire Winter season. For each production day that the Minorca Mine does not have to stockpile pellets, Ispat saves approximately [REDACTED]. In addition, Ispat must pay approximately [REDACTED] per day in handling and storage costs for stockpiled pellets. (*Id.* at 7)

² Shaded text is “Highly Confidential” information that has been redacted from the public version.
³ Exhibit 1.

Beginning in the early 1990's, Ispat entered into a series of one-year contracts for a joint-line rail-water movement of taconite pellets via DMIR and the Wisconsin Central Railroad ("WC") to Escanaba, Michigan. This route by-passes Lake Superior and the locks at Sault Ste. Marie, thus allowing Ispat to take advantage of the potential for year-round shipping on Lake Michigan. (*Id.* at 6) Since then, during the Winter season, the taconite pellets have been loaded onto lake vessels at Escanaba for transport to Indiana Harbor. This movement, which allowed Ispat to reduce its taconite pellet stockpiles, has grown in importance over the years. (*Id.* at 7) WC aggressively pursued this traffic and made every effort to commit the equipment and crews necessary to meet Ispat's needs. (*Id.* at 7) By 2001, Ispat had significantly reduced its stockpiles and their associated costs. (*Id.* at 8)

In that same year, Ispat and WC entered into a multi-year contract, STB-SSM-0012, that is effective through [REDACTED], for the Winter season movement of [REDACTED] the taconite pellets produced at Minorca ("Winter Contract").⁴ (*Id.* at 8) An important consideration for Ispat's decision to enter into a multi-year Winter season contract, after a long series of one-year contracts, was WC's demonstrated commitment to Ispat's Winter season taconite pellet movements. (*Id.* at 8) The longer term of the Winter Contract also was intended to allow WC to include the Winter movement in its long-term planning, so that it could commit the resources necessary to satisfy Ispat's taconite pellet transportation needs and to improve upon its past performance. (*Id.* at 8) This allowed Ispat to reduce its taconite pellet stockpiles to operating subsistence levels. (*Id.* at 8) The DMIR Contract, discussed above for taconite pellet movements during the Navigation season, also governs DMIR's portion of the Winter season joint-line rail-water movement via DMIR and WC to the docks at Escanaba, Michigan.⁵ (*Id.* at 6)

⁴ Exhibit 2.

⁵ All routing references to "WC" include the "CN."

The only other option available to Ispat for either Navigation or Winter season transportation of taconite pellets is a prohibitively expensive all rail route via BNSF-direct,⁶ DMIR/BNSF or DMIR/WC. Ispat estimates that an all-rail route would cost at least [REDACTED] more than Ispat currently pays under its Winter season contract with WC to Escanaba. (*Id.* at 6) Moreover, Indiana Harbor is not configured to receive unit trains of taconite pellets and, thus, would require several days to unload a single train. (*Id.* at 6) As it has done in the past, Ispat would have to transload the railcars onto lake vessels or barges at the KCBX rail-to-water terminal in Chicago to move only a few miles to Indiana Harbor. (*Id.* at 6) The all-rail option, therefore, would only be used in an emergency to avoid an even more costly blast furnace shut down at Indiana Harbor. (*Id.* at 6)

II. Ispat Needs Protection From Service Reductions and Rate Increases After CN Acquires DMIR.

CN's acquisition of DMIR is the second proposed rail acquisition by CN since 2001 that will have a direct impact on the transportation of taconite pellets from the Minorca Mine to Indiana Harbor. The first transaction was CN's acquisition of WC, which the Board approved in STB Finance Docket No. 34000, *Canadian National Ry Co et al. – Control – Wisconsin Central Transp. Corp. et al.*, Decision No. 10 (served Sept. 7, 2001) (“CN/WC”). Ispat's experience with CN after its acquisition of WC is the source of Ispat's grave concern over the DMIR transaction.

Prior to CN's acquisition of WC in 2001, CN played no role at all in the transportation of taconite pellets from Minorca to Indiana Harbor. During the Navigation season, all taconite pellets moved via a DMIR-water route through docks at Two Harbors or Duluth; and during the Winter season, all taconite pellets moved via a DMIR/WC-water route through the docks at

⁶ The BNSF-direct option is not currently available to Ispat because all Minorca taconite production is committed to DMIR through [REDACTED], pursuant to the DMIR Contract.

Escanaba. (Klimek/Cornillie V.S. at 6) CN's acquisition of WC, however, made CN an essential link in the transportation of Ispat's Winter season taconite pellet movements.

Ispat and WC entered into the Winter Contract shortly before CN acquired WC. CN, thus, has been in control of WC for every Winter season since the Winter Contract became effective, although the 2002 Winter season operating plan and resource commitments were made by WC. (*Id.* at 8) Since then, CN utterly has failed to sustain the service commitment made by WC on Winter season taconite pellet movements to Indiana Harbor by refusing to provide sufficient train sets, crews and motive power to meet Ispat's needs.⁷ (*Id.* at 10) For example, despite the [REDACTED] volume commitment in the Winter Contract, CN insists that Ispat cannot reasonably expect CN to haul any more taconite pellets than WC historically hauled. (*Id.* at 8; Ex. 4, 6) In actual practice, CN has not even committed sufficient resources to satisfy this reduced level of service, as illustrated by the fact that, in the 2003 Winter season, in which CN reduced the number of train sets for the Winter movement to four, CN transported only 52% of the tonnage it had transported in the 2002 Winter season. (Klimek/Cornillie V.S. at 8) CN's response to Ispat's concerns has been to suggest that Ispat return to its former stockpiling practices to satisfy the portion of its Winter taconite pellet needs that CN is unwilling to satisfy. (*Id.* at 10-11)

CN's service reductions have jeopardized Winter operations at Indiana Harbor, and especially the No. 7 blast furnace. But for unplanned outages at the No. 7 furnace during the 2003 Winter season, Ispat would have been forced to take costly mitigation measures to avoid a shut down due to CN's failure to transport sufficient quantities of taconite pellets under the

⁷ This is a commercial dispute between Ispat and CN that is not within the Board's jurisdiction to resolve, and Ispat is not asking the Board to do so. It is appropriate for the Board, however, to consider the existence and nature of the dispute as evidence of Ispat's grave concerns about the effect of this proposed transaction on Ispat, based upon Ispat's negative experience with CN following CN's acquisition of WC.

Winter Contract. (*Id.* at 10) Even then, there was no assurance that any mitigation options would have been available, or if available, would have been sufficient to prevent a shutdown. (*Id.* at 10) If CN were to acquire DMIR, CN would become the origin carrier at Minorca, extending CN's current service attitude on Ispat's Winter season movements to all taconite pellet movements throughout the year, causing problems for Ispat that would dwarf the problems that Ispat currently experiences with the Winter season moves.

As discussed in Part I.C., *supra*, the rail-water Winter season movement of taconite pellets via Escanaba has played an increasingly important role in Ispat's management of winter operations both at the Minorca Mine and at Indiana Harbor. This fact is illustrated in Table 2:

Table 2

Winter Season	Mine Production (Long Tons)	Rail Tonnage (Long Tons)	Rail Tonnage as % of Mine Production*
1Q99	732,741	381,193	52
1Q00	736,888	439,587	60
1Q01	684,756	480,545	70
1Q02	726,517	495,130	68
1Q03	585,184**	259,292	44

* This column understates the rail percent of Winter Season production because the Winter season is less than the entire first quarter.

** This 20% decline in first quarter production from the previous year is because Ispat moved its annual maintenance at the Mine from April into the first quarter, due to CN service reductions on Winter season movements. Although Ispat prefers to perform maintenance in the Spring, when repairs are easier, Ispat moved it to the Winter, since much of the Winter taconite pellet production otherwise would have sat idle in stockpiles due to CN's refusal to provide sufficient equipment for rail transportation. (Klimek/Cornillie V.S. at 9, 11)

(*Id.* at 9) Through the 2001 Winter season, the rail-water movement via Escanaba accounted for an ever-growing portion of the Minorca Mine's Winter production, both in nominal tons and as a percent of total tons produced. This had enabled Ispat to reduce the taconite pellet inventory for the No. 7 blast furnace at year-end 2000 (immediately prior to the 2001 Winter season) by

250,000 tons (one-third) from the year-end 1994 level (when the Escanaba movement began). (*Id.* at 7) In 2001, WC and Ispat entered into the Winter Contract, which expanded the commitment of both parties to tender and transport [REDACTED] Minorca's Winter season production over an extended period of time. (*Id.* at 7; Ex. 2 at §§ 1 and 4) CN, however, has failed to uphold WC's commitment by refusing to commit the resources necessary to satisfy its Winter Contract obligations.

Since acquiring WC, CN in fact has curtailed its Winter season rail service dramatically and has attempted to provide reduced service at increased rates, despite the existence of the Winter Contract. (Klimek/Cornillie V.S. at 9) CN now asserts that, while the Winter Contract requires Ispat to tender [REDACTED] Minorca's Winter production, CN has no reciprocal obligation to transport any amounts.⁸ (Ex. 4, 6) Significantly, CN reduced the number of train sets for the Winter season movement to four in 2003, with a further reduction to three train sets in 2004. (Klimek/Cornillie V.S. at 9; Ex. 3) This reduction in train sets corresponds with a reduction in the number of rail cars that CN has provided for Winter season movements. (Klimek/Cornillie V.S. at 9) Mathematically, even under the most optimistic of conditions, CN's resource commitment will not enable it to transport half of Minorca's projected 2004 Winter production. (*Id.* at 9; Ex. 3)

As illustrated in Table 2, above, the reduction in 2003 train sets caused the percentage of Minorca's Winter taconite pellet production hauled by rail to plummet to just 44%, which is even more significant since the total tons produced at Minorca from the previous Winter season also declined by nearly 20%. If CN had just hauled the same tonnage in 2003 as it did in 2002, it

⁸ This is the core of the commercial dispute between Ispat and CN. Ispat does not ask the Board to resolve this issue, but simply to take note of the prior service relationship between Ispat and WC, as compared to the current relationship between Ispat and CN for the same service. Ispat's requested condition does not require the Board to resolve this dispute, since the condition relates to the DMIR Contract, not the Winter Contract, which is the source of this dispute.

would have transported 85% of Minorca's 2003 Winter production. CN's actions since acquiring WC demonstrate that CN is unwilling to commit the resources necessary to meet Ispat's Winter season taconite pellet transportation needs, much less to comply with CN's contractual obligations.

CN has not been coy about its desire to avoid the Winter Contract that WC negotiated. CN has used every provision available to it under the contract to justify demands for rate increases. (Ex. 6) Ispat in fact agreed to [REDACTED] in 2003 based upon one such contract provision, and modified its facilities at its own expense, to accommodate CN's request to use alternative rail cars. (Klimek/Cornillie V.S. at 11; Ex. 5) This, however, did not satisfy CN. Having exhausted legitimate avenues within the contract, CN recently has threatened to terminate the contract unilaterally after the 2004 Winter season, unless Ispat agrees to even higher rates for reduced service levels, on the baseless allegation that Minorca's Winter production in recent years has been greater than its historical production. (Klimek/Cornillie V.S. at 12; Ex. 6) The specious nature of that claim, however, is evident in Table 2, above, which shows higher Winter season production levels in the two years preceding the current contract, which was negotiated in 2001, than in any subsequent year.

Apparently recognizing the dubiousness of its claim, CN also has sought to increase rates or void the Winter Contract by claiming that the contract rates are [REDACTED] below its long-term variable costs. (Klimek/Cornillie V.S. at 12; Ex. 6) CN has not provided Ispat with any information to evaluate the accuracy of this claim.⁹ (Klimek/Cornillie V.S. at 12) But, WC clearly believed that the Winter Contract was economically rational or it would not have entered

⁹ Even if correct, CN uses the wrong cost standard, since the Board long has recognized that it is rational for a rail carrier to accept traffic at rates that cover only its attributable costs and make any contribution, no matter how slight, to unattributable costs. See e.g., *Rate Guidelines – Non-Coal Proceedings*, Ex Parte No. 347 (Sub-No. 2), 1 S.T.B. 1004, 1016 (1996); *Texas Municipal Power Agency v. The Burlington Northern and Santa Fe Ry. Co.*, STB Docket No. 42056, Slip Op. at 31, note 73 (served March 24, 2003).

into the agreement. CN also presumably performed proper due diligence when it acquired WC and cannot now claim to have been unaware of the costs associated with this contract. Nevertheless, CN must be claiming that its costs of providing Winter season rail service are higher than WC's costs to provide the same service. If true, then it is reasonable to assume that CN's costs also are higher than DMIR's costs and that CN may attempt to extort similar rate and service concessions from Ispat on its contract with DMIR.

In response to Ispat's Interrogatory No. 2 to CN in this proceeding, CN attempts to explain away the Winter Contract service issues as unique to the facts of that contract:

[REDACTED]

CN Response to Interrogatory No. 2, p. 4 (attached as Ex. 7). Much of CN's response repeats claims that Ispat already has addressed herein. [REDACTED]

[REDACTED]

[REDACTED] (Ex. 2 at Exhibit A) CN's attempt to tie its expected performance under the contract to volumes that WC actually transported in prior years similarly is a smoke screen. The very purpose of this contract was to increase rail volumes, which is why the contract describes performance in terms of [REDACTED] Minorca's production. (Klimek/Cornillie V.S. at 7)

CN's Interrogatory response also claims that its extremely low tonnage in the 2003 Winter season was the result of [REDACTED]

[REDACTED] (Ex. 10 at 1) [REDACTED]

[REDACTED]

[REDACTED] (Klimek/Cornillie V.S. at 10 [REDACTED])

[REDACTED] (*Id.* at 10) [REDACTED]

[REDACTED] (*Id.* at 10) The real reason that CN failed to transport taconite pellets at volumes required by the Winter Contract is that CN refused to provide sufficient train sets, crews and motive power. (*Id.* at 10) CN could not have satisfied Ispat's service needs with the resources it provided even under the most optimistic transportation conditions. (*Id.* at 11) This is the behavior that concerns Ispat if CN acquires control of DMIR.

CN has made multiple representations in its Application that this transaction will not adversely affect rail service and more likely will improve it.¹⁰ CN even explicitly has singled out steel producers:

Finally, because GLT provides an important supply line for the North American steel industry, CN expects that acquisition of the GLT Carriers would allow it to develop closer and more extensive relationships with companies in and serving that industry.

* * *

Those enhanced relationships should thus enable CN to work together with companies in and serving the steel industry to develop transportation solutions to their needs, drawing on the resources of CN's network, applying CN's high standards of customer service, and improving their competitiveness in an increasingly global steel marketplace.

CN-2 at 47. While CN talks a good game to the Board, it simultaneously has been engaged in the course of action described above, and in Exhibits 3-7, with Ispat. In fact, Mr. Gerald P. Radloff, who made the statement above, has urged Ispat to increase its reliance upon taconite

¹⁰ CN-2 at 3 ("the Transaction would provide continuity and stability to [the acquired] railroads and enhanced service capabilities"), 38 ("The principal public benefits...would be...the assurance of reliable and more efficient service").

pellet stockpiles in lieu of Winter season rail-water movements, apparently oblivious to the time and cost required to build a stockpile and the adverse effect upon Ispat's competitiveness in the global steel marketplace. (Klimek/Cornillie V.S. at 11) Rather than finding transportation solutions to Ispat's needs, CN has attempted to turn back the clock by undoing the very solutions that WC and Ispat had developed together. If this in any way exemplifies CN's idea of (i) developing "transportation solutions" to the steel industry's needs, (ii) its "high standards of customer service," or (iii) "improving [the steel industry's] competitiveness," Ispat cannot afford to be a CN customer.

CN also made similar representations to the Board in the CN/WC transaction. In a Joint Verified Statement from the marketing executives of CN and WC, CN declared:

The post-Transaction standard by which our service can and must be measured is, at a minimum, the service that each railroad provides separately today. Our customers should expect no less.

CN/WC-2, Joint V.S. of James Foote and William R. Schauer, p. 148 [emphasis added].¹¹ The Board made a special note of this and other similar promises in the *CN/WC* decision: "CN has promised WC shippers that service levels will be the same or improved." *CN/WC* at 21. When it comes to Ispat, CN has not lived up to these promises. Ispat, therefore, cannot afford to accept CN's self-serving statements in this proceeding only to realize, after the fact, how little those statements really mean.

III. Request for Conditions.

Ispat's primary position is in opposition to CN's proposed acquisition of DMIR. Ispat does not want to see its service from DMIR degrade in the same way its service from WC

¹¹ See also, *CN/WC-2* at 11 (greater equipment utilization), 13 (no deterioration in quality of service), 16 (improved quality of service), 17 (increased equipment availability and velocity), 18 (more reliable service).

degraded upon acquisition by CN. Ispat gives no credence to the empty assurances provided by CN in its Application.

In the alternative, Ispat asks the Board to impose the following condition:

If CN/DMIR fails to provide cars and locomotives in quantities sufficient to transport all taconite tons tendered by Ispat at the Minorca Mine during any calendar quarter that Contract No. DMIR-C-0125 remains in effect, for reasons other than force majeure as defined in the contract, Ispat, within its sole discretion, may terminate DMIR-C-0125 at any time in the immediately following calendar quarter. If Ispat should decline to terminate the contract in the calendar quarter immediately following a quarter in which the above condition has been satisfied, Ispat shall have waived its right to terminate the contract only as to that quarter, but not as to future quarters in which the above condition may exist.

A. Explanation of Condition.

Ispat's request for condition is intended to give Ispat flexibility to shift its Minorca taconite pellet traffic to BNSF in response to post-merger CN service issues on DMIR. Ispat contracted with DMIR on the basis of DMIR's service history originating taconite pellets at Minorca. CN already has demonstrated either an inability, or unwillingness, to serve Ispat under the terms of the Winter Contract that Ispat negotiated with WC. Ispat has very real concerns that a similar problem could extend to the DMIR Contract. Because DMIR originates all taconite pellets from Minorca, the potential impact upon Ispat's operations at Indiana Harbor is many times greater than the impact of CN's service failures under just the Winter Contract alone.

As previously discussed, BNSF also serves the Minorca Mine via trackage rights over DMIR and can transport the taconite pellets to docks at Superior, Wisconsin. However, *all* of Minorca's taconite pellet production is under exclusive contract to DMIR through [REDACTED]. While BNSF could provide a competitive alternative to a CN-controlled DMIR, Ispat would be unable to turn to BNSF for at least [REDACTED], thus locking Ispat into a highly detrimental situation, not of its own making, for an extended period. As a consequence, Ispat would not have the option to shift traffic to BNSF in response to reduced CN service

commitments. Therefore, Ispat asks the Board to impose a condition upon CN's acquisition of DMIR that would allow Ispat the option to obtain BNSF service prior to expiration of the DMIR Contract, but only if CN fails to satisfy its commitments in Section 7.B. of that contract. (Ex. 1)

It is not a sufficient response to assert simply that Ispat has contract remedies if CN fails to perform. Ispat is in the business of producing steel, not litigation. The time and expense required for litigation is enormous and would be a major distraction from daily business matters. Moreover, monetary damages cannot make Ispat whole with its customers who have been inconvenienced and may have shifted their business elsewhere in order to receive more reliable service. If, instead, Ispat unilaterally elected to tender taconite pellets to BNSF, contrary to the DMIR Contract, in order to mitigate or avoid monetary damages, Ispat would be exposed to a breach of contract action by CN. Ispat's condition is designed to avoid this "Catch-22" by allowing Ispat to rely upon BNSF without fear of a breach of contract action by CN.¹²

Furthermore, just as Ispat contracted with WC based upon WC's service commitments, Ispat has contracted with DMIR for similar reasons. CN has demonstrated that it does not have the same service commitment as WC, at least insofar as Ispat is concerned, which means it likely lacks the same commitment as DMIR. Ispat had no role in deciding whether this merger would take place. Ispat, therefore, needs a preventive measure, rather than an after-the-fact band-aid, to protect it from the potential adverse effects of the proposed transaction.

Neither is it sufficient to say that Ispat can avoid damages by rebuilding its taconite pellet stockpile at Indiana Harbor. First, as a practical matter, it is impossible for Ispat to re-build its Indiana Harbor stockpile under existing market conditions. Currently, the Minorca Mine is producing taconite pellets at full capacity and Indiana Harbor consumes all the taconite pellets

¹² It also is not sufficient for CN to assert that Ispat is free to tender BNSF any volumes that CN declines, since Ispat must give BNSF sufficient advance and definitive notice of its anticipated needs so that BNSF can allocate equipment and crews to handle Ispat's traffic.

that the Mine produces. (Klimek/Cornillie V.S. at 4) Hence, virtually every ton of pellets produced at Minorca currently is consumed at Indiana Harbor. That does not leave much, if any, additional taconite pellets to build a stockpile. Second, the expense of re-building and maintaining the stockpile would be enormous at a time when the U.S. steel industry is struggling to survive against foreign competition. It is many times more costly to build and maintain a stockpile than it is to have a continuous flow of taconite pellets year-round. This extra cost would further erode Ispat's competitive position in world steel markets.

Neither can Ispat change its source of taconite pellets in response to rail service reductions by a CN-controlled DMIR. The No. 7 blast furnace consumes 95% of Minorca's taconite pellet production, which is specially formulated for it. (*Id.* at 4) The most likely alternative taconite pellet source would be the Empire Mine, of which Ispat owns a 21% share, but which also is under contract to CN. (*Id.* at 5) Minorca and Empire pellets are primarily compliments to each other in the No. 7 blast furnace, and can only act as substitutes within specific ranges. (*Id.* at 5) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (*Id.* at 5) Last, but perhaps most significant, it would be prohibitively expensive for Ispat simply to abandon its enormous investments in either the Minorca or Empire Mines solely to purchase taconite pellets from a non-CN served taconite source.

Approval of CN's proposed acquisition of the DMIR would complete CN's rapid dominance over the transportation of raw materials for a significant segment of the United States' steel industry that began with CN's acquisition of WC just three years ago. As this Board is aware, the U.S. steel industry has been under enormous competitive pressure in worldwide

markets and has been the focus of recent U.S. government policy to assist in maintaining the competitive position of the industry. Under these circumstances, the Board cannot simply assume that the policies of the CN are congruent with the needs of the industry, especially when faced with evidence, as here, of CN's desire to reduce its levels of service to Ispat, a major steel company and one of the few integrated U.S. steel companies that has not declared bankruptcy during the current crisis in domestic steel production. Under these circumstances, it also is not appropriate for the Board to assume that Ispat can effectively protect itself from the potential consequences of CN's new dominance through contract provisions negotiated with another carrier with a very different service philosophy and under different conditions. The Board's very action to approve this transaction would radically change the competitive landscape, and Ispat strongly believes that the Board should condition any approval to mitigate the possibility of harm to the public.

The requested condition is very narrowly tailored, both in time and in scope. Ispat's requested condition only covers the period from CN's acquisition of DMIR through [REDACTED], when the DMIR Contract expires. At that time, Ispat is willing to assume the risk that it will be able to negotiate with either CN or BNSF to obtain service conditions and prices that meet its needs. Moreover, unlike conditions granted in prior merger cases, Ispat's requested condition does not seek trackage rights or other fixes that could materially interfere with the applicant's operations. Finally, the condition requested by Ispat would only take effect if CN does not live up to the obligations that it would assume through its acquisition of the DMIR. Thus, the condition would only apply if and when the threatened harm occurs.

B. STB Authority to Grant Ispat's Condition.

The Board has ample authority to grant Ispat's requested condition. Pursuant to 49 U.S.C. § 11324(c), "The Board may impose conditions governing the transaction...." The Board has interpreted this authority broadly.¹³ If the transaction threatens harm to the public interest, conditions *should* be imposed if they are operationally feasible, ameliorate or eliminate the harm threatened by the transaction, and they are more beneficial to the public than they are detrimental to the transaction.¹⁴

The Board previously has used its authority to impose conditions involving contracts entered into pursuant to 49 U.S.C. § 10709. In *Union Pac. Corp. et al. – Control and Merger – Southern Pac. Rail Corp. et al.*, Finance Dkt. No. 32760, Decision No. 44 at 146 (served Aug. 12, 1995), the Board's predecessor, the Interstate Commerce Commission, imposed a condition that required the Applicants to modify any contracts with shippers at certain 2-to-1 points to allow BNSF to access at least 50% of the volume. In *CSX Corp. et al. – Control and Operating Leases/Agreements – Conrail Inc. et al.*, STB Finance Dkt. No. 33388, Decision No. 89 at 72-74 (served July 23, 1998), the Board held that it had the authority to override contract non-assignment clauses in order to divide Conrail contracts between CSX and Norfolk Southern. Although the Board used its exemption authority under 49 U.S.C. § 11321, rather than its conditioning authority to override the non-assignment clauses, the principle that Section 10709 contracts are not beyond the Board's authority for the purpose of reviewing mergers is the same.

For the reasons discussed herein, CN's proposed acquisition of DMIR threatens harm to Ispat. Ispat's concerns are the result of service reductions and attempted rate increases by CN on

¹³ *Burlington Northern Inc. et al. – Control and Merger – Santa Fe Pac. Corp. et al.*, Finance Dkt. No. 32549, Slip Op. at 55 (served Aug. 23, 1995); *Union Pac. Corp. et al. – Control – Missouri Pac. Corp. et al.*, 366 I.C.C. 462, 562 (1982) ("UP/MP Control").

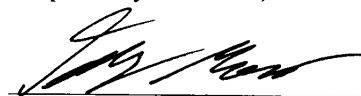
¹⁴ *UP/MP Control*, 366 I.C.C. at 564.

Winter season taconite pellet movements from the Minorca Mine after CN acquired WC. Ispat fears the extension of CN's behavior to DMIR, but with potentially greater consequences. In the long-term, these harms can be addressed through competition from BNSF at the Minorca Mine. But, because it is locked into a contract with DMIR [REDACTED] Ispat requires a condition to protect it in the near-term. Ispat has requested a condition that is narrowly tailored to address the threatened harm. The harm is measured by standards that are present in the DMIR Contract and the condition only would apply if and when the harm occurs. The condition has absolutely no impact on CN/DMIR's operations, since it does not require any new trackage rights or other operational changes. While protecting Ispat, the condition is not detrimental to the transaction.

IV. Conclusion.

Wherefore, Ispat requests the Board to use its authority to grant the requested condition.

Respectfully submitted,



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January 26, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34424

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

**JOINT VERIFIED STATEMENT OF
BRUCE A. KLIMEK AND DANIEL J. CORNILLIE**

I. Introduction

We are Bruce A. Klimek and Daniel J. Cornillie. We are employees of Ispat Inland Inc. ("Ispat") and possess direct knowledge of the issues raised by Ispat in the above-captioned proceeding and the facts presented herein.

Mr. Klimek is the Section Manager-Purchasing for Ispat. His business address is 3210 Watling St., East Chicago, IN 46312. In his current position, he has extensive familiarity with Ispat's Indiana Harbor Works facility in East Chicago, Indiana and with Ispat's wholly owned subsidiary, Ispat Inland Mining Company (Minorca Mine) in Virginia, MN. Mr. Klimek's primary responsibilities include the selection of transportation and transportation-related suppliers to meet Ispat's transportation needs. He also establishes the commercial relationships with these suppliers. Prior to his current position he held various purchasing and traffic management positions in the company. Mr. Klimek has a BA in Economics from Northern

Illinois University, an MBA from the University of Chicago, and a JD from the Valparaiso University School of Law.

Mr. Cornillie is the Manager-Internal Logistics/Fleet for Ispat. His business address is (MC 2-455) 3210 Watling St., East Chicago, IN 46312, in Ispat's Indiana Harbor Works. In his current position, Mr. Cornillie has extensive familiarity with Ispat's Minorca Mine operations, raw materials logistics (approximately 10 million tons per year) and the associated utilization of Ispat's time-chartered lake fleet, which are among his primary responsibilities. Other responsibilities include operation and maintenance of Ispat's in-plant railroad (over 100 miles of track, switching over 6000 cars per week), in-plant trucking, roadways, and shops for mobile equipment, locomotives, railcars, and pugh ladle. Mr. Cornillie has been employed by Ispat since 1984. Prior to his current position, he was Manager, Vessel Personnel at Oglebay Norton in Cleveland, which he joined after duty as an officer in the U.S. Coast Guard. He has an MS in Management from Purdue University and a BA from the University of Michigan.

The purpose of our Verified Statement is to provide the factual background behind Ispat's grave concerns over the acquisition of the Duluth, Missabe & Iron Range Railway ("DMIR") by the Canadian National Railway ("CN"). In this Verified Statement, we describe Ispat's operations at its Minorca Mine and its Indiana Harbor Works facility; explain the background behind and describe Ispat's options for transporting taconite pellets from the Mine to Indiana Harbor; and describe the actual transportation service that Ispat has received on taconite pellet movements from CN since it acquired the Wisconsin Central Railroad ("WC") in October 2001.

II. Description of Ispat Inland, Inc.

Ispat, formerly known as Inland Steel Company, was founded in 1893. Today, Ispat is the sixth-largest integrated steel producer¹ in the country, responsible for 5% of the steel made in the United States. Ispat manufactures high-value-added flat-rolled steel products and bar steel products, which its customers rate among the most consistent and highest quality products. The flat-rolled steel products are used in appliances, office furniture, electrical motors, and other products, and by almost all U.S. auto manufacturers. Ispat's bar steel products are used in agricultural equipment, automobiles, fasteners, industrial machinery, forging, and service centers. They are also used in the cold-finishing and off-highway markets.

Ispat's iron and steel production occurs entirely at the 1900-acre Indiana Harbor Works facility in East Chicago, Indiana. Ispat operates three blast furnaces at Indiana Harbor, known as the No. 5, 6, and 7 blast furnaces, which produce iron 24 hours per day throughout the entire year, except for planned and unplanned maintenance outages. The No. 7 blast furnace is the largest in North America and produces an average of 10,300 short tons of iron daily. This accounts for two-thirds of Indiana Harbor's total iron production. Ispat currently is considering an upgrade to the No. 7 blast furnace that would increase its production capacity. The No. 5 and 6 blast furnaces are older and less efficient than No. 7. Ispat recently considered retiring the No. 6 blast furnace in 2003, but strong world demand has caused Ispat to defer those plans. The No. 5 and 6 blast furnaces will produce approximately [REDACTED]² short tons of iron per day in 2004.

The primary raw material in steel production is iron ore. The Indiana Harbor facility consumes approximately 8 million long tons annually of taconite pellets, which are made from

¹ An integrated steel producer produces steel from iron ore, in contrast to mini-mills, which do not use a blast furnace and rely extensively on scrap steel.

² Shaded text is "Highly Confidential" information that has been redacted from the public version.

iron ore at the Mine. Therefore, a steady and consistent stream of taconite pellets is essential to the blast furnace operations at Indiana Harbor. If the flow of taconite pellets to Indiana Harbor is interrupted, Ispat would be threatened with a costly shut down of one or more of the Indiana Harbor blast furnaces. For example, an outage at the No. 7 blast furnace would cost Ispat approximately [REDACTED] per day.

Ispat owns and operates the Minorca Mine, near Virginia, Minnesota, where taconite pellets are produced from iron ore mined there. The Mine produces approximately 2.9 million long tons of taconite pellets annually. Minorca has produced taconite pellets at full capacity since 1988. Recent taconite pellet production at the Minorca Mine has been as follows:

Table 1

Year	Quantity (Long Tons)
1999	2,871,000
2000	2,912,000
2001	2,826,000
2002	2,870,000
2003	2,826,000

Ispat consumes the entire taconite pellet production of the Mine at the Indiana Harbor facility.³

The physical and chemical characteristics of the Minorca taconite pellets have been designed specifically to meet the special requirements of the No. 7 blast furnace, which consumes approximately 95% of Minorca's production. The balance of Minorca's taconite pellet production is consumed by the No. 5 and 6 blast furnaces. In total, from all sources, the No. 7 blast furnace consumes over 5.4 million long tons of taconite pellets annually (nearly 15,000 tons per day).

³ There have been isolated transactions, since the Mine opened in 1978, when other entities have bought or traded for shipments of Minorca taconite.

Indiana Harbor's other major taconite pellet source is Empire Mine, near Palmer, Michigan. Empire is also served by the CN. The remainder of the No. 7 Blast Furnace's pellet requirements are satisfied by this mine. However, it is important to keep in mind that Minorca and Empire pellets are primarily compliments to each other in the No. 7 blast furnace, and can only act as substitutes within specific ranges. Ispat owns 21% of the Empire Mine, which is operated by the Mine's majority owner, Cleveland Cliffs, Inc. [REDACTED]

[REDACTED] At the 2004 planned production schedule of [REDACTED] short tons daily, the No. 5 and 6 blast furnaces will consume over [REDACTED] long tons of taconite pellets, 75% of which are produced at the Empire Mine. The balance is from the Cleveland Cliffs' Wabush Mine on the Gulf of St. Lawrence and a small portion of the Minorca Mine production.

III. The Importance of Consistent and Reliable Transportation of Taconite Pellets

Ispat depends upon a reliable and economic means of transporting taconite pellets to Indiana Harbor. Due to geographic and economic considerations, all taconite pellets from the Minorca Mine must originate by rail. Both DMIR and The Burlington Northern and Santa Fe Railway ("BNSF") serve the Mine, though BNSF access is by trackage rights over the DMIR. Pursuant to contract DMIR-C-0125, which is effective until [REDACTED] ("DMIR Contract")⁴, all taconite pellets from the Minorca Mine must originate on the DMIR.

Virtually all transportation of taconite pellets from the Minorca Mine to Indiana Harbor is by a rail-water movement. The only alternative to rail-water transportation is a prohibitively expensive all-rail movement via DMIR/BNSF, DMIR/CN or BNSF-direct. However, numerous

⁴ Exhibit 1

obstacles make an all-rail option very expensive for Ispat. First, the all-rail option would cost Ispat at least [REDACTED] per ton than an rail-water movement. Second, Indiana Harbor does not have the ability to unload unit trains of taconite pellets.⁵ As it has done for past rail shipments, Ispat would have to transload the taconite pellets onto lake vessels or barges at the KCBX rail-to-water terminal in Chicago for transportation by water over only a few miles to Indiana Harbor. In sum, these all-rail options would only be used in an emergency, if there were no other means to avoid an even more costly blast furnace shut down at Indiana Harbor and if sufficient rail cars were available on short notice.

The predominant rail-water option follows a route that varies between two different seasons. During the Navigation season, typically from late March through early January, taconite pellets move on DMIR to either of two Lake Superior ports, Two Harbors or Duluth, Minnesota. There, the taconite pellets are loaded onto lake vessels chartered or contracted by Ispat. The vessels move directly to the Indiana Harbor facility, where they can unload in a matter of hours. BNSF also has the ability to transport taconite pellets from the Minorca Mine to a Lake Superior port at Superior, Wisconsin.

The Non-Navigation, or Winter, season accounts for the remainder of the year. By regulation, the locks at Sault Ste. Marie are closed from approximately January 15 to March 25 each year, although these dates can be altered by weather conditions. During the Winter season, taconite pellets move on a joint-line rail route via DMIR/WC⁶ to the port of Escanaba on Lake Michigan. At Escanaba, the taconite pellets are loaded onto lake vessels for transport down Lake

⁵ Installing a unit train unloading facility at Indiana Harbor would cost approximately [REDACTED].

⁶ Wisconsin Central was an independent railroad until the STB approved CN's purchase in October 2001.

Michigan to the Indiana Harbor facility. This route by-passes the locks at Sault Ste. Marie, thus allowing Ispat to take advantage of the potential for year-round shipping on Lake Michigan.

Ispat only began using this Winter season route through Escanaba in the early 1990's. Prior to that time, Ispat stockpiled sufficient taconite pellets at Indiana Harbor to keep the No. 7 blast furnace operating throughout the winter. Ispat also stockpiled the winter production of taconite pellets from the Minorca Mine at the Lake Superior docks during the winter. This additional stockpile was necessary because the Minorca Mine must operate year-round to produce enough taconite pellets for the Indiana Harbor facility, and sufficient storage space does not exist at Minorca to hold the winter production of the Mine until the Navigation season begins.

Stockpiling is extremely costly. There is extensive working capital absorbed in stockpiling enough taconite pellets to support the No. 7 blast furnace for the entire Winter season. For each production day that the Minorca Mine does not have to stockpile taconite pellets, Ispat saves approximately [REDACTED]. In addition, Ispat must pay approximately [REDACTED] per day in handling and storage costs for stockpiled taconite pellets.

Starting in the early 1990's, Ispat entered into a series of one-year contracts for a joint-line rail-water movement of taconite pellets with the then-independent WC and the DMIR. The WC aggressively pursued this traffic by making every effort to commit the necessary resources and crews to meet Ispat's needs during the Winter season. The Winter season movement has grown in importance to Ispat, allowing it to reduce taconite pellet stockpiles and their associated costs. For example, Ispat was able to reduce the taconite pellet inventory for the No. 7 blast furnace at year-end 2000 (immediately prior to the 2001 Winter season) by 250,000 tons (one-third) from the year-end 1994 level (when the Escanaba movement began).

In 2001, Ispat and WC entered into contract STB-SSM-0012, effective through [REDACTED], for the winter season movement of [REDACTED] the taconite pellets produced at the Minorca Mine.⁷ (“Winter Contract”) An important consideration for Ispat’s decision to enter this long-term contract, after a long series of one-year contracts, was because WC had demonstrated its commitment to providing reliable and consistent service to Ispat during the Winter season. The longer term of the Winter Contract was intended, among other things, to allow WC to include the Winter movement in its long-term planning, so that it could commit the resources necessary to satisfy Ispat’s taconite pellet transportation needs and to improve upon its past performance. Based on WC’s commitment, Ispat reduced the remainder of its taconite pellet stockpiles to operating subsistence levels.

IV. CN Performance Since Acquiring WC.

CN acquired WC In October 2001, after Ispat and WC had entered into the Winter Contract.⁸ Since the acquisition, CN has failed to sustain WC’s commitment to consistent and reliable service to Ispat for the Winter season movement of taconite pellets to Escanaba. Despite the [REDACTED] volume commitment in the Winter Contract, CN has refused to commit the resources needed to meet this commitment. Instead, CN asserts that Ispat should not expect CN to haul any more taconite pellets than WC historically hauled.⁹ However, CN has failed to meet even this goal. As evident in Table 2, below, during the 2003 winter season, CN hauled only 52% of the taconite pellets hauled in the previous year.¹⁰

⁷ Exhibit 2.

⁸ Even though the contract between Ispat and WC was not signed until Nov. 5, 2001, the material terms had been decided long before that time, without CN involvement. See Exhibit 7.

⁹ See Exhibits 4 and 6.

¹⁰ Even though CN was technically in control of WC during the 2002 winter season (January through March of 2002), the resource commitment decisions to Ispat’s Escanaba movement had already been made independently

Table 2

Winter Season	Mine Production (Long Tons)	Rail Tonnage (Long Tons)	Rail Tonnage as % of Mine Production *
1Q99	732,741	381,193	52
1Q00	736,888	439,587	60
1Q01	684,756	480,545	70
1Q02	726,517	495,130	68
1Q03	585,184	259,292	44

* This column understates the rail percent of Winter Season production because the Winter season is less than the entire first quarter (typically January 15 through March 25).

CN's performance in the 2003 winter season was no fluke. In that season, CN reduced the number of train sets committed to Ispat's winter season movement to only four, despite Ispat's warnings that only four trains would not be sufficient.¹¹ Now, in the 2004 Winter season, which is just beginning, CN has notified Ispat that it will commit only three trainsets.¹² With only three trainsets firmly committed to Ispat's Escanaba service, it will be mathematically impossible for CN to meet even half of Ispat's winter transportation needs in 2004, even under the best of conditions.¹³ In addition to reducing trainsets, CN has stressed that it wants to receive higher rates for the Escanaba service, disregarding the established rates in the Winter Contract.¹⁴

CN's service reductions on the winter season movement are alarming to Ispat. Ispat has already reduced winter Minorca production as far as possible. As demonstrated in Table 2, above, the Minorca Mine's 2003 production levels were 20% below its 2002 levels. This

by WC. Thus, CN did not exercise effective control until the 2003 Winter season.

¹¹ See Exhibit 3.

¹² See Exhibit 7. In addition, despite its commitment to 77-car train sets, CN averaged only 72 cars per train.

¹³ See example in Exhibit 3.

¹⁴ See Exhibit 6.

reduction resulted from annual Minorca maintenance being performed in the winter in 2003, while it was in April in previous years. Despite this dramatic reduction in the amount of taconite pellets produced at Minorca from the previous winter, CN still only transported 44% of that substantially reduced taconite pellet production in 2003. CN's failure was so severe that Ispat narrowly avoided a costly shut-down of the No. 7 blast furnace. Only unplanned maintenance outages of the blast furnace relieved Ispat from having to attempt various mitigation measures.¹⁵ CN's further reduction in train sets for 2004 means that CN's service almost certainly will be below the record-low 2003 levels.

We have reviewed CN's response to Ispat's Interrogatory No. 2,¹⁶ in which CN asserts that its low volume performance in 2003 was due to [REDACTED]

[REDACTED] These are smoke screens thrown up by CN to distract the Board from the real reasons. First, [REDACTED]

Second, [REDACTED]

Lastly, [REDACTED]

¹⁵ Ispat has several mitigation options to avoid a shutdown, but at substantially greater costs. In addition, all options are not necessarily available at all times and/or may not be capable of completely mitigating the harm. For example, Ispat would attempt to buy taconite from other sources before resorting to an extremely costly blast furnace shut down, but, (i) substitute taconite would be much more expensive, (ii) there are limits to how many taconite pellets that the No. 7 blast furnace can consume from alternative sources, and (iii) there is only a limited world-wide supply of taconite pellets fit for consumption in the No. 7 blast furnace. Furthermore, Ispat's primary taconite alternative to Minorca is the Empire Mine, which also relies upon CN rail service to Escanaba.

¹⁶ Exhibit 7.

The major reason CN transported greatly reduced tonnages in the 2003 winter season is that CN's car, crew, and locomotive commitments to the service were insufficient. Ispat informed CN, in a November 14, 2002 letter, that CN's proposed operating plan for the 2003 winter season was inadequate, but CN did nothing to rectify the shortcoming.¹⁷ Ispat observed that, even under the most optimistic operating scenario, CN's operating plan would not meet Ispat's Winter season requirements.

Ispat repeatedly has expressed its need for better and more frequent service from CN. However, CN has been completely indifferent to the Winter season movement. CN's Assistant Vice President Marketing and Sales, Mr. Gerald P. Radloff, even has stated that Ispat should return to stockpiling taconite pellets to compensate for CN service reductions.¹⁸ But stockpiling taconite pellets is not a viable solution. The Indiana Harbor facility currently consumes all of the taconite pellets produced by the Minorca Mine, which is producing taconite pellets at its full capacity and has done so since 1988. Thus, there are no extra taconite pellets to re-build Ispat's stockpiles for the foreseeable future. Moreover, even if rebuilding the stockpiles were feasible, the higher costs of stockpiling are detrimental to Ispat's ability to compete effectively against foreign steel producers.

Ispat has attempted to work with CN, within much more realistic parameters, to make the Escanaba movement more efficient. For example, Ispat agreed to CN's request for a [REDACTED] in 2003. Ispat also renovated, at its own expense, its unloading facilities to accommodate CN's desire to use different rail cars.¹⁹ In addition, Ispat altered its mining

¹⁷ See Exhibit 3.

¹⁸ See Exhibit 6.

¹⁹ See Exhibits 3 and 4.

schedule at Minorca in 2003 by moving the annual maintenance period to the Winter season, which decreased Minorca's Winter season taconite pellet production, as shown in Table 2, above. Although Ispat would prefer to do this maintenance in April, when warmer weather makes repairs easier to perform, CN's performance has forced Ispat to make this change in order to minimize its Winter season stockpile costs from accumulating Minorca production that CN has failed to transport.

CN has responded by threatening to unilaterally cancel the contract after the 2004 Winter season, claiming that Ispat is requesting service far in excess of what historically has been provided.²⁰ This statement is not true, as shown in Table 2, above. Moreover, the contract refers to [REDACTED] Minorca's production, not historical levels of rail transportation. CN also has attempted to justify increases in the Winter Contract rate by asserting that the contract rates are [REDACTED] below its long-term variable costs.²¹ No documentation in support of this claim has been provided. Furthermore, CN should have performed its due diligence, prior to acquiring WC, to determine whether it could perform the Winter Contract profitably.

V. Conclusion

An uninterrupted flow of taconite pellets from the Minorca Mine to the Indiana Harbor facility is crucial for Ispat. The efficiencies provided by the continuous and regular transportation from Minorca to Indiana Harbor are vitally important to Ispat's ability to compete with steel from foreign producers. Based on our experience with CN over the past two years, since CN acquired WC, we are concerned that unfettered approval of CN's purchase of the DMIR could have dire consequences for Ispat. If CN attempts to implement service reductions

²⁰ See Exhibit 6.

²¹ See Exhibit 6.

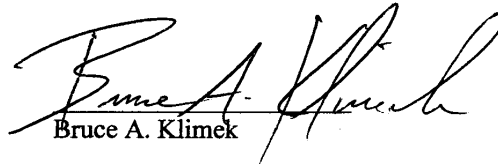
and rate increases on DMIR, similar to what it has done since its acquisition of WC, Ispat could suffer tremendous harm, because unlike WC, which participates only in Winter season movements, DMIR originates all taconite pellets at Minorca and will continue to do so until the DMIR Contract expires on [REDACTED]. Any extension of CN's service reductions on WC to DMIR will impact Ispat year round.

Verification of Bruce A. Klimek

I, Bruce A. Klimek, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.

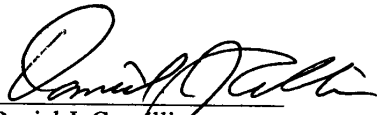
Executed on 1/24/04


Bruce A. Klimek

Verification of Daniel J. Cornillie

I, Daniel J. Cornillie, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on 1/26/04


Daniel J. Cornillie

EXHIBITS 1–7

REDACTED

CERTIFICATE OF SERVICE

This is to certify that a copy of the Comments, Evidence and Request for Conditions of Ispat Inland, Inc. has been served on this 26th day of January, 2004, by hand, upon the following:

Paul A. Cunningham
Harkins Cunningham LLP
801 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004

And by first class mail, postage-prepaid, upon all parties of record.



Jeffrey O. Moreno