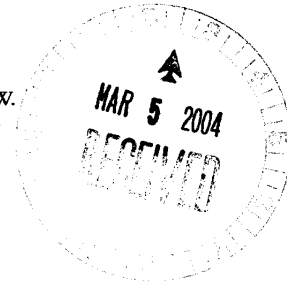


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March 5, 2004

BY HAND

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
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Part of
Public Record

210241

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

Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding are an original and 20 copies of the Notice of Settlement and Request for Condition by Applicants and The Burlington Northern and Santa Fe Railway Company (designated as CN-13/BNSF-5). Because the exhibit attached to this filing contains commercially sensitive compensation terms, the unredacted version of this document has been designated as HIGHLY CONFIDENTIAL pursuant to the Protective Order issued by the Board in Decision No. 1 in this proceeding and is being filed under seal, as provided in that Order.

Also enclosed, as required by Protective Order, are 21 copies of a version of this document from which commercially sensitive terms have been redacted, and which is submitted for filing on the public docket in this proceeding.

PHILADELPHIA
2800 One Commerce Square
2005 Market Street
Philadelphia, PA 19103-7042
215.851.6700

NEW YORK
One Penn Plaza
25th Floor
New York, NY 10119-2532
212.329.1750

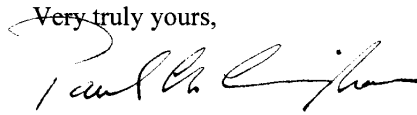
HARKINS CUNNINGHAM LLP

Attorneys at Law

Mr. Vernon A. Williams
March 5, 2004
Page 2

Also enclosed is a diskette containing the text of this pleading in WordPerfect
6/7/8/9/10 format, as required by Decision No. 2 in this proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul A. Cunningham", written over a horizontal line.

Paul A. Cunningham

Enclosures

cc: All Parties of Record

PUBLIC VERSION – 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

NOTICE OF SETTLEMENT
AND REQUEST FOR CONDITION BY APPLICANTS AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Jeffrey R. Moreland
Richard E. Weicher
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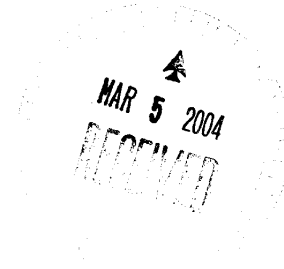
*Counsel for The Burlington Northern and
Santa Fe Railway Company*

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Company and Grand Trunk Corporation*



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Public Record**

March 5, 2004

PUBLIC VERSION – REDACTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34424

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



**NOTICE OF SETTLEMENT
AND REQUEST FOR CONDITION BY APPLICANTS AND
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

The Burlington Northern and Santa Fe Railway Company ("BNSF"¹) hereby withdraws its Comments filed with the Board on January 26, 2004 (BNSF-2). As announced at the oral argument in this proceeding, held before the Board on March 3, 2004, BNSF and CN have entered into a settlement agreement ("Agreement"). As a result of this Agreement, a copy of which is submitted as an exhibit hereto,² BNSF does not oppose the Application (CN-2) and does not seek or support any conditions to the Board's authorization of CN's acquisition of control of the GLT Railroads, other than those contained in the Agreement.

The Agreement, as fully detailed therein, will enable BNSF to provide competitive rail service to United Taconite's (formerly EVTAC's) mine at Thunderbird North,

¹All abbreviations not otherwise identified have the same meanings as those set forth in the Table of Abbreviations found on pp. v-viii of the Application (CN-2).

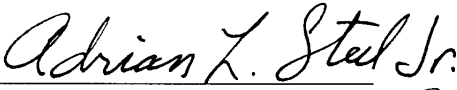
²The Agreement is filed in Public (redacted) and Highly Confidential formats, pursuant to the Protective Order issued in Decision No. 1.

MN and pellet plant at Fairlane, MN. It will thereby remedy the potential loss of competition at those points as a result of the Transaction, which loss was previously identified by CN and addressed in the conditions it proposed in the Application (CN-2 at 24) and modified in its Rebuttal (CN-7 at 6, 10-11).

WHEREFORE, BNSF and CN hereby request that the Board impose the terms of the Agreement as a condition on its approval of the Application, in lieu of the conditions previously proposed by CN.

Respectfully submitted,

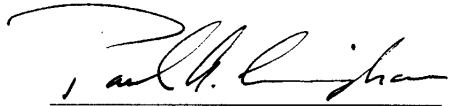
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*Counsel for Canadian National Railway
Company and Grand Trunk Corporation*

March 5, 2004

PRIVILEGED AND CONFIDENTIAL

March 2, 2004

CN-BNSF Settlement Agreement Terms

In consideration of The Burlington Northern and Santa Fe Railway Company's ("BNSF's") agreement not to oppose the transaction ("Transaction") by which Canadian National Railway Company ("CN") and Grand Trunk Corporation ("GTC") (collectively "CN") propose to acquire control within the meaning of 49 U.S.C. 11323-11325 of the Duluth, Missabe and Iron Range Railway Company ("DMIR"), the Bessemer & Lake Erie Railroad Company ("B&LE"), and The Pittsburgh & Conneaut Dock Company ("P&C Dock") (collectively, "the GLT Railroads"), and of other benefits that would result from this Agreement, CN and BNSF (collectively, "the Railroads") agree that:

- A. Upon consummation of the Transaction, BNSF will become the remedy carrier to preserve the competitive options available to shippers prior to the Transaction and described below, provided that BNSF shall be the only remedy carrier, and that the Railroads can arrive at such additional commercially and competitively reasonable terms as may be required to govern the rights granted BNSF herein.
- B. The United Taconite pellet plant at Fairlane, MN, formerly owned and operated by EVTAC and now by Cleveland Cliffs, is the only "2-to-1" facility resulting from the Transaction; that it is a "2-to-1" facility only for the movement of traffic other than iron ore and taconite pellets; and that, as defined in the Attachment to this Agreement, CN will afford BNSF access (via overhead trackage rights or haulage) to the plant over the existing CN line, on commercially and competitively reasonable terms to be negotiated, for the sole purpose of providing competitive service to United Taconite for such traffic as a replacement for the service provided by CN prior to the Transaction. The Railroads further agree that, for movements of iron ore and taconite pellets, the Fairlane plant is properly characterized as a "1-to-1" point (as it is now served exclusively by DMIR).
- C. As defined in the Attachment to this Agreement, CN will provide BNSF with overhead trackage rights from, on the one hand, build-in or build-out points on CN's existing line in the vicinity of Cleveland Cliffs' (formerly EVTAC's) United Taconite Thunderbird North Mine and the Fairlane pellet plant, to, on the other hand, a new connection from DMIR's existing line to BNSF trackage at a location to be jointly agreed to by the Railroads between Fermoy/Sax, MN and Albion, MN, for the sole purpose of permitting BNSF to provide by means of new rail lines (i) iron ore service from the Thunderbird North Mine to the Fairlane plant and/or (ii) taconite pellet service from the Fairlane plant. The Railroads agree that BNSF's movements of taconite pellets pursuant to these trackage rights from the CN line to the DMIR line shall be (at CN's one-time option) via a new mainline connection established at either Shelton Junction or Ramshaw, MN. CN will also provide BNSF with trackage rights over CN's existing line to permit BNSF to move empty equipment, for iron ore and/or pellet loading, from the existing DMIR/BNSF connection at Saunders, WI to the Fairlane plant and the Thunderbird North Mine.

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March 2, 2004

D. In order to effectuate the BNSF trackage rights contemplated by Paragraph C, the Railroads further agree:

- a. The build-in/build-out lines shall be built and/or owned at BNSF's or the customer's expense, and operated and maintained by BNSF. The expense of any other changes that must be made to CN's or DMIR's facilities at the Thunderbird North Mine and the Fairlane pellet plant (including upgrading CN's Fairlane spur to connect to CN or DMIR shall also be borne by BNSF and/or the customer.
- b. Four new facilities would be required for BNSF to utilize the trackage rights provided by Paragraph C: (i) a new mainline connection at either Shelton Junction or Ramshaw, MN; (ii) a new mainline connection at the Thunderbird Mine build-in/build-out; (iii) an upgrade to the existing mainline connection (northwest quadrant), and a new mainline connection (southwest quadrant), to the CN spur leading to the Fairlane pellet plant; and (iv) a new connection between DMIR trackage and BNSF trackage at a location to be jointly agreed to by the Railroads between Fermoy/Sax, MN and Albom, MN. When BNSF notifies CN of BNSF's intentions to commence operations over trackage rights provided by Paragraph C required to support the proposed BNSF operations, the facilities would be built (with powered switches) at BNSF's expense, but owned, controlled, and maintained by CN, with the exception that the facility described in (iv) would be jointly used by CN and BNSF, but owned, controlled, and maintained by BNSF for the portion not built on right-of-way owned by CN.
- c. The new mainline connection established at either Shelton Junction or Ramshaw, MN may be used by both Railroads.

E. Compensation.

- a. The compensation to be paid by BNSF to CN for the trackage rights contemplated in this Agreement, shall be _____ per car-mile whether loaded or empty (each locomotive equals one car). This rate shall apply to all segments of CN/DMIR line used by BNSF for the United Taconite traffic described in Paragraphs B and C, irrespective of any rights BNSF currently has over CN/DMIR lines for other traffic. This rate shall also apply to any connections and CN's Fairlane spur.
- b. The compensation to be paid by BNSF to CN for the haulage service contemplated in this Agreement for traffic other than iron ore and taconite pellets, shall be i) _____ per loaded car to or from Superior (Pokegama Yard), WI, ii) _____ per loaded car to or from Duluth, MN, and iii) _____ per loaded car to or from Wilpen Jct., MN. The charges named herein, unless otherwise provided, shall cover the handling of cars loaded one way and empty the other between points provided for. If cars are loaded in both directions, rates named herein shall apply for each loaded movement. The compensation set forth in this Paragraph E(b) shall be for haulage provided as part of CN's otherwise existing, scheduled train service. The Parties also agree that up to twenty (20) cars of haulage traffic

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contemplated under this Agreement shall be moved between CN Pokegama Yard and BNSF 28th Street Yard by the existing interchange transfer move, provided that the haulage traffic shall be blocked separately from the interchange traffic by BNSF. Any haulage traffic in excess of twenty (20) cars shall be delivered and pulled by BNSF from CN's Pokegama Yard. The Parties also agree that car hire shall be the sole responsibility of BNSF, and that any agreement, pursuant to Paragraph L, shall contain standard liability provisions for haulage traffic.

- c. The compensation rates specified herein shall be subject to adjustment annually beginning on July 1, 2005 and each July 1 thereafter for the term of this Agreement to reflect _____ percent of the percentage increase or decrease in the Rail Cost Adjustment Factor ("Index"), not adjusted for changes in productivity ("RCAF-U"), published by the Association of American Railroads ("AAR") or successor agency or other organization. Calculation of this charge will be made by comparing the 2nd Quarter RCAF-U of the current year the adjustment is being made to the 2nd quarter RCAF-U of the previous year. Thus, the percentage change from the 2nd quarter of the calendar year 2005 to the 2nd quarter of the calendar year 2004 will be used to adjust the charge July 1, 2005. In no case shall the trackage rights or haulage rights be adjusted to a rate below the rates set forth herein.
- d. All dollar values quoted in this Agreement are expressed in the currency of the United States.
- F. With respect to the trackage rights contemplated by Paragraphs B and C of this Agreement, CN will provide BNSF trackage rights trains with equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable CN traffic. This Agreement by CN to provide non-discriminatory service will also apply to haulage service provided under the terms of this Agreement, as well as to DMIR-BNSF interchange traffic.
- G. In the event CN determines to institute or change directional operations over any line on which BNSF has trackage rights, CN will ensure that BNSF's traffic is not unduly affected, pursuant to Paragraph F.
- H. CN, pursuant to the representation in its STB Application, will keep all gateways affected by the Transaction open on commercially and competitively reasonable terms.
- I. BNSF will (i) immediately withdraw its comments filed with the STB on January 26, 2004; (ii) notify the STB that it does not oppose CN's Application for STB authorization of the Transaction; (iii) otherwise not file rebuttal comments in the proceeding established to consider CN's STB Application or seek or support any conditions to such approvals other than those conditions expressly stated herein; (iv) coordinate with CN all public statements with respect to the Transaction, CN's STB Application, and the settlement terms agreed to herein; and (v) not, other than with the consent of CN, initiate or support any effort by BNSF or any other person to secure in this proceeding and any

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March 2, 2004

related proceedings (including proceedings the STB may provide for oversight of the Transaction or, by petition to reopen or any other means, requests for supplemental remedies to the Transaction pursuant to 49 U.S.C. 11327), from the date of this Agreement, trackage or other rights over DMIR or CN (or any of CN's affiliates) for the purpose of providing service for any traffic to or from points served by DMIR on the date of this Agreement other than the Thunderbird North Mine and the Fairlane pellet plant.

- J. The Railroads will request, in an appropriate filing shortly after execution of this Agreement, that the STB impose the terms stated herein as a condition of the agency's authorization of the Transaction.
- K. This Agreement will become effective upon execution, but the rights conferred upon BNSF shall only become enforceable upon the STB's authorization of the Transaction and CN's consummation thereof.
- L. The Railroads will enter into such written agreement or agreements as may be required to govern further the haulage and trackage rights and other arrangements contemplated by Paragraphs B, C, and D of this Agreement. Such agreement or agreements will contain commercially and competitively reasonable terms and conditions as are customarily utilized by and mutually satisfactory to the Railroads.
- M. Any dispute that the Railroads are unable to resolve with respect to the formation of any subsequent agreement contemplated by this Agreement shall be submitted to the STB for resolution in a manner consistent with the terms of this Agreement and the orders of the STB approving the Transaction.
- N. Except as provided in Paragraph M, in the event that a dispute arises between the Railroads under this Agreement, or under any agreement or agreements contemplated by Paragraph L of this Agreement, the parties agree to submit the dispute to the arbitration of a three-person Arbitration Board. Any request for arbitration shall be made by notice in writing from one party to the other party, and the notice shall describe the issue(s) to be arbitrated. CN and BNSF shall then, within five (5) working days after receipt of such notice, each select one member of the Arbitration Board, and the two members thus chosen shall select a third, neutral member who shall serve as Chairman. Should the two members be unable to agree on the appointment of the neutral member within five (5) working days, either party may request the American Arbitration Association (AAA) to furnish a list of five persons from which the neutral member shall be selected. The parties shall meet and in turn eliminate one of the five persons until only one person remains, who shall become the neutral member of the Arbitration Board. The provisions of the Commercial Arbitration Rules shall apply to the arbitration, and the decision of the Arbitration Board shall be final and binding upon each of the parties. Regardless of the outcome of the arbitration, each party shall pay its own costs, fees and expenses of counsel, and the expenses of the Arbitration Board will be shared equally by the parties. The arbitration shall be decided no more than ninety (90) days from the selection of the Arbitration Board.

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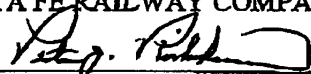
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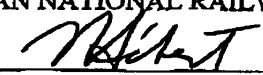
- O. Neither party hereto may assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, or an affiliate, without the prior written consent of the other party. Any transfer, assignment, or delegation of this Agreement, or of any rights or duties herein granted or imposed, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and at the option of the party whose written consent should have been obtained, this Agreement may be terminated. Subject to this Paragraph, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
- P. This Agreement (including the exhibits and schedules attached hereto and the documents referenced herein) constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties with respect to the subject matter contained herein, and supersedes all prior understandings or agreements between the parties. Neither party has been induced to enter into this Agreement by, nor is either party relying on, any representation or warranty outside those expressly set forth in this Agreement.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: 

Dated: March 3, 2004

CANADIAN NATIONAL RAILWAY COMPANY

By: 

Dated: March 3, 2004

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March 2, 2004

ATTACHMENT

The specific trackage rights to be provided by CN to BNSF pursuant to Paragraph B of the Agreement shall be as follows:

Overhead trackage rights over existing CN line between DMIR-Saunders and CN-Fairlane for access to United Taconite's pellet plant at Fairlane for the movement of traffic other than iron ore or taconite pellets.

The specific trackage rights to be provided by CN to BNSF pursuant to Paragraph C of the Agreement shall be as follows:

1. Overhead trackage rights over the existing CN line between CN-Fairlane and Ramshaw or Shelton Junction; over a new connection between CN and DMIR at Ramshaw or Shelton Junction; and over the existing DMIR line between Ramshaw or Shelton Junction and Alborn (new DMIR-BNSF connection). These rights are for the movement of (1) crude ore between United Taconite's Thunderbird North Mine and its Fairlane pellet plant, and (2) the movement of taconite pellets outbound from the Fairlane plant.
2. Overhead trackage rights over the existing CN line between DMIR-Saunders and Shelton Junction (including the proposed build-in/build-out connections to the United Taconite facilities at Thunderbird North Mine and Fairlane). These rights are for the movement of empty equipment, for iron ore and/or pellet loading, at Thunderbird North Mine and Fairlane.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of March, 2004, served the foregoing Notice of Settlement and Request for Condition by Applicants and The Burlington Northern and Santa Fe Railway Company (CN-13/BNSF-5) on all parties of record in this proceeding by first-class mail or a more expeditious method of delivery.


Amanda L. Hollander