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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
- CONTROL -
EJ & E WEST COMPANY

**ARCELORMITTAL USA INC., ARCELORMITTAL BURNS HARBOR LLC,
ARCELORMITTAL INDIANA HARBOR LLC, ARCELORMITTAL KOTE INC.,
ARCELORMITTAL TEK INC., ARCELORMITTAL HENNEPIN INC., AND
ARCELORMITTAL RIVERDALE INC.'s COMMENTS AND REQUESTS FOR
CONDITIONS**

Surface Transportation Board

CN-EJ&E EIS - FD-35087

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INC., ARCELORMITTAL HENNEPIN
INC., and ARCELORMITTAL
RIVERDALE INC.**

Dated: January 28, 2008

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CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
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ARCELORMITTAL INDIANA HARBOR LLC, ARCELORMITTAL KOTE INC.,
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CONDITIONS**

I. INTRODUCTION

Pursuant to the Decisions served by the Surface Transportation Board on November 26, 2007 and December 21, 2007 in the above-captioned proceeding, ArcelorMittal USA Inc., ArcelorMittal Burns Harbor LLC, ArcelorMittal Indiana Harbor LLC,¹ ArcelorMittal Kote Inc., ArcelorMittal Tek Inc., ArcelorMittal Hennepin Inc., and ArcelorMittal Riverdale Inc. (collectively, "ArcelorMittal"), by their undersigned attorneys, hereby submits these comments and requests for conditions in response to the Railroad Control Application ("Application") filed by the Canadian National Railway Company ("CN") and the Grand Trunk Corporation ("GTC")(collectively, "CN") in the above-captioned proceeding (the "CN Transaction").

II. STATEMENT OF FACTS

ArcelorMittal is the largest steel producer in North America, and the largest integrated steel producer in the United States. All told, ArcelorMittal employs over 320,000 workers in

¹ Formerly known as ArcelorMittal Indiana Harbor Inc.

over 60 countries worldwide. ArcelorMittal operates some of the most modern and efficient steel plants in North America. Those facilities include the largest steelmaking complex in North America, which is located in East Chicago, Indiana, and includes the sister steel plants of Indiana Harbor East Plant and Indiana Harbor West Plant (“Indiana Harbor”).² Indiana Harbor has a total raw steelmaking capability of 10 million tons annually, and also contains a significant galvanizing facility near the Indiana Harbor West Plant. *See* Verified Statement of Leslie K. Moll (“Moll V.S.”), at 1.³

ArcelorMittal operates a steel plate mill located in the U.S. Steel Gary Works complex in Gary, Indiana (the “Gary Plate mill”). Another ArcelorMittal plant located near the Indiana border south of Chicago in Riverdale, Illinois is capable of producing an additional 750,000 tons of raw steel annually, and ArcelorMittal also operates a steel sheet finishing facility located on the Illinois River in Hennepin, Illinois, and two other state-of-the-art steel finishing plants near New Carlisle, Indiana, the latter as part of a joint venture with Nippon Steel. *See* Moll V.S., at 2.

ArcelorMittal’s expenditures on inbound, outbound, and inter-company rail movements in the United States are substantial, comprising approximately \$268 million annually. The facilities described above account for a sizeable percentage of ArcelorMittal’s rail transportation costs, and are largely dependent on rail transportation for both inbound materials and outbound finished products. For example, the Indiana Harbor complex ships by rail approximately 5 million tons of steel products per year, and receives by rail in excess of 2 million tons of inbound raw materials annually. *See* Moll V.S., at 2.

² The Indiana Harbor West Plant is served by the South Chicago & Indiana Harbor Railroad (“SCIH”), the Elgin, Joliet & Eastern Railway Company (“EJ&E”), and the Indiana Harbor Belt Railroad (“IHB”), except its galvanizing facility which is served by EJ&E and IHB.

³ Attached hereto as Exhibit A.

III. COMMENTS ON THE APPLICATION AND REQUESTS FOR CONDITIONS

The daily operations at each of the Chicago-area ArcelorMittal facilities described in the section above depend on the continuation of smooth, efficient, and locally tailored rail service. In addition to transportation contracts, published rates and tariffs, and other written agreements governing freight rates and service, ArcelorMittal and the EJ&E have an established course of dealing governing vital elements of the rail transportation service provided at these facilities, including car ordering and car supply; intraplant switching and classification; storage of empty and loaded cars; and communications. Accordingly, ArcelorMittal read the Application, including the Operating Plan, with great interest soon after it was filed with the Board. Unfortunately, the Application does not contain any relevant information regarding local operations in and around ArcelorMittal's various Chicago-area facilities. *See Moll V.S.*, at 2-3.

ArcelorMittal's twin facilities at Indiana Harbor are presently served by the IHB and EJ&E. Both railroads have locally tailored service and compete head to head for business to/from the Indiana Harbor Facilities. The Application describes how CN will use the EJ&E lines it will acquire to complete its international rail network, but lacks any specifics with regard to Chicago-area operations. This speaks volumes about CN's interest and future focus and, in stark contrast, its lack of interest in or focus on local rail customers such as ArcelorMittal. The acquisition will fill in a missing link in CN's North American rail network, but will transform the EJ&E from a locally focused rail competitor into a Chicago by-pass route of a trunk-line carrier. It is unclear how CN intends to serve the Indiana Harbor facilities following the CN Transaction, or whether CN will have any incentive to provide competitive service on par with the head-to-head competition that currently exists between the IHB and the EJ&E. ArcelorMittal's greatest concern is that CN's North American network focus will leave the Indiana Harbor East Plant

facilities with IHB as the only rail carrier interested in efficient local operations, effectively foreclosing ArcelorMittal's competitive options from two to one. *See Moll V.S.*, at 3.

ArcelorMittal's Gary Plate mill is only served by the EJ&E. Following the CN Transaction, the Gary Plate mill will be served by the Gary Railway. At first glance, this would not appear to be a significant change. Although owned by U.S. Steel, EJ&E has dozens of rail customers besides its parent and fully functions as a typical short line railroad, with adequate resources and generally good service. After the CN Transaction, the Gary Railway will have only a handful of unaffiliated customers. ArcelorMittal's concern is that the Gary Railway will be focused on the needs of U.S. Steel and have no incentive to provide good service to the Gary Plate mill. *See Moll V.S.*, at 3. CN, the Gary Railway's connecting carrier, will be focused on its trunk line operations and exploiting the EJ&E lines that it acquires as a Chicago by-pass and will not have time, resources or incentive to make sure the Gary Railway performs well for the Gary Plate mill.⁴ The Application describes the current EJ&E as a "subsidiary of a major integrated steel producer, whose operations are oriented primarily to the needs of that producer." Application at 17. This does not accurately describe today's EJ&E but it certainly fits what is coming to ArcelorMittal in the form of the Gary Railway. The scaled-down Gary Railway will be oriented to the needs of its parent, U. S. Steel.

Other areas of concern to ArcelorMittal include:

- Changes in interchange locations or practices, including the manner in which CN/EJ&E will interchange with the Gary Railway.

⁴ Once again, neither the Application nor any other information provided by CN or the EJ&E address the foreseeable impacts of the CN Transaction on ArcelorMittal's Gary Plate mill.

- Changes in inbound or outbound service on the EJ&E Line and/or the Gary Railway relative to ArcelorMittal's facilities.
- Changes in ArcelorMittal's current arrangements with the EJ&E, including demurrage, charges for cars loaded or unloaded within the same plant, private car storage and fleet management, and areas of specialized switching.
- Changes to current rates, tariffs, or other authorities currently in place between ArcelorMittal and the EJ&E.
- The impact of the CN Transaction on trackage rights agreements related to ArcelorMittal facilities that are either in existence or under discussion.
- Changes to current arrangements for car hire and car supply.
- Processes by which CN's customers (including ArcelorMittal) will order cars from the other Class I railroads.
- The logistical, administrative, or electronic capabilities CN will expect of its customers relative to the EJ&E Line or the Gary Railway, such as switching requirements.
- CN's plans for the current EJ&E fleet of owned, leased, or operated railcars.
- CN's plans for changes or capital improvements to rail yards and similar facilities, as well as yard operations.
- CN's plans for the implementation of the CN Transaction, including timelines and key events.

As the Application does not address any of these points, ArcelorMittal made an immediate effort to obtain information from CN. In early November 2007, ArcelorMittal managers contacted CN to ascertain CN's local Chicago plans so that they could assess the changes that likely would arise from approval of the Application. On November 27, 2007,

ArcelorMittal sent CN a detailed list of questions designed to elicit the same information.

Representatives of ArcelorMittal and CN finally met last week to discuss the likely changes.

Although ArcelorMittal believes CN will be willing to discuss these issues with ArcelorMittal in the future, CN presently does not have any specific information about EJ&E's current service to ArcelorMittal's various Chicago-area facilities and has not yet developed any specific plan regarding how it will serve ArcelorMittal. Therefore, CN was not in a position last week to outline any specific changes in freight rates and service.⁵ ArcelorMittal cannot simply wait for CN to develop and then reveal its service plans and hope that those plans will not harm the company. Accordingly, ArcelorMittal respectfully requests the conditions listed below in the event that the Board approves the CN Transaction.⁶

In order to ensure that ArcelorMittal is not competitively harmed by the CN Transaction, ArcelorMittal requests that the Board condition approval of the CN Transaction on the following requirements:

1. Gary Plate Mill. Trackage rights for a third party carrier⁷ from that railroad's point of connection with the EJ&E Line to a point of connection with ArcelorMittal's Gary Plate facility, on terms negotiated by CN and the third party carrier (and approved by the Board) or, failing agreement, on terms set by the Board.

⁵ In addition to these efforts, ArcelorMittal has served interrogatories and document requests on CN and EJ&E. CN made a timely response on February 25; as of the date of this filing EJ&E has not substantively responded, and instead asserts that it is not a party to any of the transactions related to the Application.

⁶ If CN could provide ArcelorMittal with the information it needs, it is possible that the requested conditions could be more narrowly tailored to address the adverse impacts on ArcelorMittal. As things stand, narrower conditions would not necessarily remedy the harms of the CN Transaction.

⁷ The potential third party carriers include the Chicago South Shore & South Bend Railway, the Indiana Harbor Belt Railway, or any Class I railroad, at CN's election.

2. Indiana Harbor. Trackage rights for ArcelorMittal's railroad subsidiary, SCIH, (i) to provide service between ArcelorMittal's twin facilities at Indiana Harbor and access to the Indiana Harbor East Plant by way of EJ&E's bridge linking the two plants, and (ii) on the EJ&E trackage in and through Whiting Yard to a point of connection with ArcelorMittal's galvanizing facility, on terms negotiated by CN and the SCIH or, failing agreement, on terms set by the Board.
3. Status Quo Agreement. For a period of five (5) years from the effective date of CN's acquisition of control of EJ&EW, a condition requiring CN and EJ&EW to honor any rate, other service price or practice offered by EJ&E at any of the Chicago-area ArcelorMittal facilities, provided that ArcelorMittal can reasonably demonstrate that such rate, other service price or practice existed as of the date of filing of the Application, but regardless of whether such service price or practice constituted an enforceable contractual obligation of EJ&E.

Respectfully submitted,

By: Brendon P. Fowler

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RIVERDALE INC.**

January 28, 2008

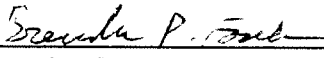
CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Decision No. 4, on January 28, 2008 I caused the foregoing Comments and Requests for Conditions to be served via first class mail, postage prepaid, or by a more expeditious method of delivery, this 28th day of January 2008 on all official Parties of Record and on the following:

Paul A. Cunningham
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Secretary of Transportation
1200 New Jersey Avenue, S.E.
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Attorney General of the United States
c/o Assistant Attorney General
Antitrust Division, Room 3109
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001



Brendon P. Fowler

EXHIBIT A

VERIFIED STATEMENT

OF

LESLIE K. MOLL

My name is Leslie K. Moll. I am the Manager of Logistics and External Processing Procurement for ArcelorMittal USA ("ArcelorMittal"). My job is to procure transportation services and external processing services for all ArcelorMittal affiliates in the United States, including those who are Parties of Record in this proceeding. My responsibilities include purchasing transportation services to handle inbound, outbound, and inter-company shipments of raw materials and steel products to and from ArcelorMittal's plants in the United States. In support of ArcelorMittal's comments and requests for conditions in this proceeding, I attest as follows:

ArcelorMittal is the largest steel producer in North America, and the largest integrated steel producer in the United States. All told, ArcelorMittal employs over 320,000 workers in over 60 countries worldwide. ArcelorMittal operates some of the most modern and efficient steel plants in North America. Those facilities include the largest steelmaking complex in North America, which is located in East Chicago, Indiana, and includes the twin steel plants of Indiana Harbor East Plant and Indiana Harbor West Plant ("Indiana Harbor"). Indiana Harbor has a total raw steelmaking capability of 10 million tons annually, and also contains a significant galvanizing facility near the Indiana Harbor West Plant. The Indiana Harbor West Plant is served by the South Chicago & Indiana Harbor Railroad ("SCIH"), Elgin, Joliet & Eastern Railway Company ("EJ&E"), and Indiana Harbor Belt Railroad ("IHB"), except its galvanizing facility which is served by the EJ&E and IHB. The Indiana Harbor East Plant is served by EJ&E and IHB.

ArcelorMittal operates a steel plate mill located in the U.S. Steel Gary Works complex in Gary, Indiana (the "Gary Plate mill"). Another ArcelorMittal plant located near the Indiana border south of Chicago in Riverdale, Illinois is capable of producing an additional 750,000 tons of raw steel annually, and ArcelorMittal also operates a steel sheet finishing facility located on the Illinois River in Hennepin, Illinois, and two other state-of-the-art steel finishing plants near New Carlisle, Indiana as part of a joint venture with Nippon Steel.

ArcelorMittal's expenditures on inbound, outbound, and inter-company rail movements in the United States are substantial, comprising approximately \$268 million annually. The facilities described above account for a sizeable percentage of ArcelorMittal's rail transportation costs, and are largely dependent on rail transportation for both inbound materials and outbound finished products. For example, the Indiana Harbor complex ships by rail approximately 5 million tons of steel products per year, and receives by rail in excess of 2 million tons of inbound raw materials annually.

The daily operations at each of the Chicago-area ArcelorMittal facilities described in the section above depend on the continuation of smooth, efficient, and locally tailored rail service. In addition to transportation contracts, published rates and tariffs, and other written agreements governing freight rates and service, ArcelorMittal and the EJ&E have an established course of dealing governing vital elements of the rail transportation service provided at these facilities, including car ordering and car supply; intraplant switching and classification; storage of empty and loaded cars; and communications. Accordingly, ArcelorMittal read the Application, including the Operating Plan, with great interest soon after it was filed with the Board.

Unfortunately, the Application does not contain any relevant information regarding local operations in and around ArcelorMittal's various Chicago-area facilities.

ArcelorMittal's twin facilities at Indiana Harbor are presently served by the IHB and EJ&E. The Indiana Harbor West Plant is served by the SCIH as well. The IHN and the EJE both have locally tailored service and compete head to head for business to/from the Indiana Harbor Facilities. ArcelorMittal's greatest concern is that CN's North American network focus will leave the Indiana Harbor East Plant facilities with IHB as the only rail carrier interested in efficient local operations, effectively foreclosing ArcelorMittal's competitive options from two to one.

ArcelorMittal's Gary Plate mill is only served by the EJ&E. Following the CN Transaction, the Gary Plate mill will be served by the Gary Railway. After the CN Transaction, the Gary Railway will have only a handful of unaffiliated customers. ArcelorMittal's concern is that the Gary Railway will be focused on the needs of U.S. Steel and have no incentive to provide good service to the Gary Plate mill.

It is because of these concerns that ArcelorMittal seeks the protections set out in the accompanying Comments and Requests for Conditions.

VERIFICATION

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

Executed on January 28, 2008



Leslie K. Moll