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June 14, 2001

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001



**Re: Canadian National Railway Company, Grand Trunk Corporation
and WC Merger Sub, Inc. -Control- Wisconsin Central Transportation
Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd.,
Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link, Finance
Docket No. 34000**

Dear Madam or Sir:

Enclosed for filing in the above-referenced docket are an original and 25 copies of Great Lakes' Opposition to AK Steel Corporation's Motion to Compel Production of Documents. A certificate of service is attached to the filing. We have designated this filing as GLT-10.

Also enclosed is a 3.5-inch diskette containing the pleading in Word 2000, which is capable of being read by WordPerfect for Windows 9.0.

Please file-stamp the enclosed copy of the pleading and return it to our messenger. Thank you for your assistance.

Very truly yours,

Nicholas W. Fels

Attorney for

Great Lakes Transportation LLC

Enclosures

ENTERED
Office of the Secretary

JUN 15 2001

Part of
Public Record

GLT-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34000



CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, AND WC MERGER SUB, INC.
- CONTROL AND MERGER -
WISCONSIN CENTRAL TRANSPORTATION CORPORATION,
WISCONSIN CENTRAL LTD., FOX VALLEY & WESTERN LTD.,
SAULT STE. MARIE BRIDGE COMPANY, AND
WISCONSIN CHICAGO LINK LTD.

GREAT LAKES' OPPOSITION TO AK STEEL CORPORATION'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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Dated: June 14, 2001

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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CANADIAN NATIONAL RAILWAY COMPANY,
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WISCONSIN CHICAGO LINK LTD.

GREAT LAKES' OPPOSITION TO AK STEEL CORPORATION'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Great Lakes Transportation LLC ("Great Lakes") hereby responds to AK Steel Corporation's Motion to Compel Great Lakes Transportation LLC's Production of Documents. The motion is without merit and should be denied.

BACKGROUND

In its Decision No. 2 in this proceeding, served on May 9, 2001, the Board accepted the application of Canadian National Railway Company and its affiliates ("CN") to acquire and merge with Wisconsin Central Transportation Company and its rail affiliates ("WC"). In that decision, the Board stated that discovery may begin immediately and encouraged the parties to resolve discovery matters "expeditiously and amicably." Decision No. 2, at 11.

On May 22, 2001, almost two weeks after Decision No. 2 was served, AK Steel Corporation ("AK Steel") served Great Lakes with 23 requests for production of documents and two interrogatories. The requests sought extensive information about a GLT subsidiary, the Bessemer and Lake Erie Railroad Company ("B&LE"), which serves AK Steel's facility in Butler, Pennsylvania. Among other things, AK Steel sought B&LE profit and loss statements and balance sheets, 31 types of traffic data, traffic and revenue forecasts, extensive real estate documentation for B&LE's lines, and various categories of contracts. AK Steel requested responses and production of documents by June 1, 2001.

Despite the breadth of the requested discovery and the intervening three-day weekend, Great Lakes provided objections and responses to the AK Steel requests and produced almost 700 pages of documents on June 1, as requested.¹ In response to most of the requests, Great Lakes provided information or documents, offered to make voluminous records available at its headquarters, or advised that no responsive documents exist. In a cover letter accompanying the responses, Great Lakes' counsel invited AK Steel's counsel to call if he wished to discuss the responses or if he had any questions.²

From the time it served the responses to the time it received the motion to compel, Great Lakes heard nothing from AK Steel. Counsel for AK Steel never contacted counsel for Great Lakes to discuss the responses or to question the scope of Great Lakes' document production. On June 12, AK Steel served its motion to compel, seeking production of (a) B&LE's contracts for transportation of taconite to U.S. Steel's Edgar Thomson Works in

¹ In addition to making documents available for inspection, Great Lakes delivered a courtesy set of the documents to AK Steel's counsel by messenger.

² A copy of the cover letter is Attachment A hereto.

Pittsburgh; and (b) documents relating to agreements involving origination of taconite on another GLT subsidiary, the Duluth, Missabe and Iron Range Railway Company (“DM&IR”). Further, AK Steel requested “expedited consideration” of its motion.³

ARGUMENT

AK Steel’s motion to compel should be denied. The documents it seeks are not relevant to the issues in this proceeding.⁴

I. THERE IS NO BASIS FOR REQUIRING PRODUCTION OF THE CONTRACT WITH U.S. STEEL FOR TRANSPORTATION ON THE B&LE TO THE EDGAR THOMSON WORKS.

In its Request No. 16, AK Steel asked for “all contracts . . . relating to transportation over some or all of” the southern portion of the B&LE. AK Steel now states that it seeks only contracts relating to transportation of taconite to U.S. Steel’s Edgar Thomson Works in Pittsburgh, Pennsylvania.⁵ AK Steel insists that it needs to know B&LE’s contractual arrangements with U.S. Steel because those terms are relevant to the question of whether taconite

³ Motion at 1.

⁴ The motion to compel should be denied for the additional reason that AK Steel has not complied with the Board’s guidance regarding discovery in this proceeding. AK Steel waited almost two weeks before serving its discovery requests; it waited almost two weeks after receiving responses to file a motion to compel; and it failed to contact Great Lakes in an effort to resolve any disputes before filing the motion. At the very least, and ironically, in light of its request for “expedited consideration” of its motion, AK Steel has been less than diligent in pursuing its discovery.

⁵ Motion at 5. The fact that AK Steel’s interest is focused on the contractual arrangements of a major competitor at least raises suspicions about its motive in seeking discovery here.

shipments to the Edgar Thomson mill are likely to be diverted to an all-rail routing.⁶ However, it fails to explain why these contract terms would shed any light whatsoever on the likelihood of diversions.

In fact, the terms of current or past contracts with U.S. Steel would indicate nothing about whether a diversion of taconite covered by those contracts might occur following a CN/WC merger. The extent to which taconite traffic destined for the Edgar Thomson facility would be diverted to an all-rail move post-merger depends primarily on (1) whether such diversion is physically feasible, (2) the terms a combined CN/WC would choose to offer, and (3) the response of both the lake carrier and the B&LE to such offers.

Nevertheless, now that AK Steel has focused its request on U.S. Steel contracts, Great Lakes has been able to determine that there is only one such contract relating to transportation on the B&LE and that the body of that contract--exclusive of rate schedules-- has previously been filed with the U.S. Securities and Exchange Commission. Because it has determined that the body of the contract is on the public record, Great Lakes is now producing a copy to AK Steel.

The only portions of the U.S. Steel contract Great Lakes is not producing are the rate schedules. As explained above, rate information in the current contract is not relevant to whether future diversions will occur. Beyond that, however, disclosure of such information to any person who will play any role on behalf of a B&LE shipper in contract negotiations or other commercial dealings with Great Lakes would provide a clear-cut commercial advantage to that shipper, and a commensurate disadvantage to Great Lakes. That disadvantage would far

⁶ Motion at 6.

outweigh any possible relevance that the rate schedules might have to the issues in this proceeding. Indeed, the commercial sensitivity of the rate schedules is the very reason why they are not required to be placed, with the body of the contract, on public file at the SEC.

Moreover, such information is of even less significance now. Great Lakes has had an opportunity to review the B&LE traffic in greater depth and has concluded that, even if there were substantial diversions of taconite traffic to all-rail, B&LE would continue to serve customers on the southern part of its line. Thus, Great Lakes no longer expects to argue that AK Steel and other shippers on the southern part of the B&LE line are likely to lose rail service if the merger is approved.

In these circumstances, there is no basis for ordering production of the U.S. Steel rate information. If the Board should nevertheless conclude that the rate information must be produced, it should incorporate certain safeguards in its order. To provide assurance that Great Lakes will not suffer serious competitive disadvantage as a result of producing the rate information, the Board should order that any individual who reviews the information in this proceeding will be precluded from advising or representing any client in connection with contract negotiations or other commercial dealings with B&LE.

Great Lakes does not request this protection lightly; it seeks such a condition because it anticipates that production of the U.S. Steel rate information is likely to result in significant competitive harm to B&LE and Great Lakes. Of course, Great Lakes would designate the rate information as Highly Confidential under the protective order (the highest available level of confidentiality), so that access would be restricted to outside counsel and outside consultants. However, this step alone does not provide adequate protection. As the Board may be aware, AK Steel's outside counsel, Slover & Loftus, frequently advises its shipper

clients in contract negotiations with railroads.⁷ Moreover, L.E. Peabody & Associates, which often works for shippers, including Slover & Loftus clients, in Board proceedings, also regularly advises these clients in rail contract negotiations. Great Lakes personnel who negotiate rail transportation contracts with AK Steel and other shippers have encountered both Slover & Loftus and members of the Peabody firm acting as advisers to the shipper in that setting.⁸

We do not suggest here that outside counsel and outside consultants who sign protective order undertakings will not make good faith efforts to abide by those undertakings. But if these individuals see in discovery the rates in a contract with U.S. Steel, it will be virtually impossible for them to ignore what they have learned and not to take those rates into account when later assisting a client in contract negotiations with B&LE. Knowledge of the U.S. Steel rates would undoubtedly give these individuals a strategic advantage over B&LE in future negotiations. Great Lakes has concluded that a provision barring individuals who review the U.S. Steel rates from providing future advice to clients in connection with their contract negotiations or other business relationships with B&LE is the only way to avoid severe competitive disadvantage for B&LE and Great Lakes.

Because it is not relevant to the issues in this proceeding, the Board should deny the motion to compel production of the rate information. At a minimum, any order to produce such information should be subject to the requested condition.

⁷ See http://www.sloverandloftus.com/c_trans.htm ("Slover & Loftus . . . specializes in representation of clients in commercial transactions with rail carriers. The firm has assisted numerous utilities and other major coal shippers in negotiating rail transportation contracts in a wide variety of different circumstances.").

⁸ See the Verified Statement of Elliott M. Hughes, III, provided as Attachment B hereto.

II. THE DOCUMENTS RELATING TO DM&IR THAT AK STEEL SEEKS ARE NOT RELEVANT TO ISSUES IN THIS PROCEEDING.

In its Request Nos. 19-22, AK Steel seeks production of several categories of documents relating to origination of taconite on the DM&IR. As AK Steel describes it, the focus of its requests is on possible contractual restrictions on the ability of other carriers to serve located on DM&IR lines (including restrictions contained in trackage rights agreements). AK Steel asserts that such restrictions are relevant to the question of whether DM&IR exercises routing control over taconite shipments.⁹

The documents AK Steel seeks are completely irrelevant to this proceeding. There is no dispute that DM&IR is the only carrier with the ability to originate taconite shipments at the taconite facilities on its lines, inasmuch as no other rail carrier has access to loading facilities at those mines. Great Lakes is prepared to stipulate to that. Thus, there is no need to explore any agreements or other documents that might address this subject.¹⁰

In connection with its argument on this point, AK Steel mischaracterizes Great Lakes' arguments, by suggesting that there is an issue as to whether taconite traffic would be diverted away from DM&IR as a result of a CN/WC merger.¹¹ That is not the concern. Great Lakes assumes that taconite traffic will remain on DM&IR, but will be diverted away from lake carriage, and also away from carriage on the B&LE. Documents relating to origination of taconite shipments at facilities on DM&IR lines or the terms of trackage rights DM&IR has

⁹ Motion at 7-9.

¹⁰ The fact that DM&IR is the only carrier with the ability to originate taconite shipments at facilities on its lines does not mean that it controls the routing of taconite moving from those origins. For transportation beyond Duluth/Superior, shippers are free to elect between water carriage and rail.

¹¹ Motion at 8-9.

granted on its lines have no relation to the proposed merger and the likelihood of resulting diversion of taconite traffic, because any such diversion will occur subsequent to the movement on the DM&IR.

AK Steel has failed to show why the documents it seeks have any relation to the issues in this proceeding. Its effort to obtain these documents amounts to a fishing expedition and should be rejected.

CONCLUSION

For the reasons stated above, the motion to compel should be denied.

Respectfully submitted,

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Dated: June 14, 2001

ATTACHMENT A

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June 1, 2001

Andrew B. Kolesar, III, Esq.
Slover & Loftus
1224 Seventeenth Street, N.W.
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Re: CN/WC STB Finance Docket No. 34000

Dear Andrew:

Enclosed is Great Lakes Transportation LLC's Response to AK Steel's First Set of Document Production Requests and Interrogatories. Responsive documents are available in Great Lakes' depository. However, as a courtesy, also enclosed are copies of documents currently available in the depository.

Some of the documents are classified as confidential or highly confidential under the protective order previously issued in this case. I understand from my telephone conversation with you earlier today that any Slover & Loftus attorneys involved in reviewing the documents will have signed the appropriate confidentiality undertakings under that order, as will any consultants or other individuals to whom documents are provided.

Please let me know if you would like to discuss the Response or if you have any questions.

Sincerely,



Nicholas W. Fels

Enclosures

ATTACHMENT B

VERIFIED STATEMENT**OF****ELLIOTT M. HUGHES, III**

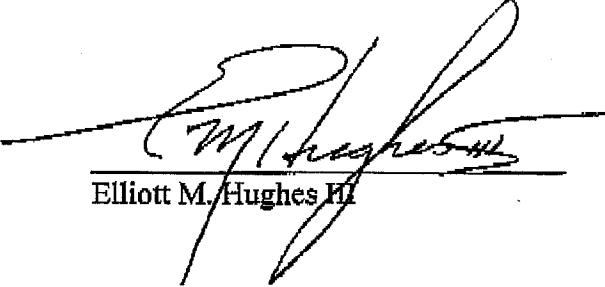
My name is Elliott M. Hughes III. I am Vice President of Sales and Marketing for Great Lakes Transportation LLC (GLT), a position I have held since March 28, 2001. My responsibilities at GLT include all sales, promotional, pricing and commercial development efforts of the companies owned by GLT, including the Duluth, Missabe and Iron Range Railway Company (DMIR), Bessemer and Lake Erie Railroad Company (BLE), USS Great Lakes Fleet, Inc. (GLF) and Pittsburgh and Conneaut Dock Company (P&C Dock). Prior to assuming my current position, I was Senior Director - Marketing for Transtar, Inc. (the predecessor parent company to the current subsidiaries of GLT). In both this position and my current position, I have had responsibility for negotiation of transportation service agreements with shippers.

In the course of my participation in contract negotiations with certain shippers, I have observed that the law firm of Slover & Loftus and the consulting firm of L. E. Peabody & Associates act as advisers to the shipper in connection with these negotiations. I have encountered Slover & Loftus and members of the Peabody firm acting as advisers to AK Steel Corporation and other shippers.

In my experience, knowledge of rates in a railroad's contract with one shipper would be valuable to other shippers negotiating rates with that railroad. I believe that if advisers to a shipper were aware of rates GLT has negotiated with U.S. Steel, it would provide that shipper with a significant strategic advantage over GLT carriers, including BLE and DMIR, in future contract

negotiations.

I, Elliott M. Hughes III, Vice President-Sales and Marketing, Great Lakes Transportation LLC, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on June 14, 2001.



Elliott M. Hughes III

CERTIFICATE OF SERVICE

I, Nicholas W. Fels, certify that, on this 14th day of June, 2001, I caused a copy of Great Lakes' Opposition to AK Steel Corporation's Motion to Compel Production of Documents to be served as indicated below:

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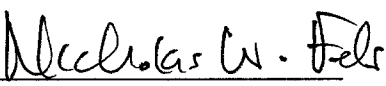
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