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Office of Public Inquiry

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December 23, 2003

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006



Re: **Docket No. 42080**
Minnesota Northern Railroad, Inc. v.
Canadian National Railway Company

Dear Secretary Williams:

Canadian National Railway Company ("CN") hereby seeks leave to file this limited surrebuttal to the Rebuttal Statement filed herein on December 5, 2003 by complainant Minnesota Northern Railroad, Inc. ("MNN"). In that filing, MNN submits for the first time a partially completed "Junction Interchange Update Form" that MNN faxed to CN in June of 2001. MNN Rebuttal, LaPray Reply V.S., Appendix GL-1. MNN claims that "[t]he Junction Interchange Update Form formally substituted MNN for BNSF as CN's interchange rail carrier at Warroad." MNN Rebuttal, Reply Argument at 3 (emphasis in original).

But as the Junction Interchange Update Form -- a standard industry form maintained by RAILINC -- expressly indicates, any such revision or addition of an interchange requires the signatures of both of the involved rail carriers. LaPray R.V.S., Appendix GL-1, Instruction Guide at 5. CN never executed the Junction Interchange Update Form proffered by MNN, and RAILINC continues to list the interchange at Warroad as CN-BNSF. See Exhibit 1 hereto. As the record in this proceeding demonstrates, CN remained in 2001 and continues to remain ready to establish an interchange at Warroad with MNN on mutually beneficial terms. Far from demonstrating the existence of a current CN-MNN interchange, however, the partially completed Junction Interchange Update Form filed with MNN's rebuttal proves just the opposite.

The Board's regulations generally prohibit the filing of a reply to a reply. 49 C.F.R. § 1104.13(c). In this instance, however, it is unclear why MNN did not include the Junction Interchange Update Form -- which relates directly to the theory of MNN's case-in-chief -- with MNN's opening statement filed on October 3, 2003. The previously unproduced document also could be construed as responsive to CN's discovery requests to MNN, which asked MNN to "produce any contracts, agreements, joint facility agreements or similar

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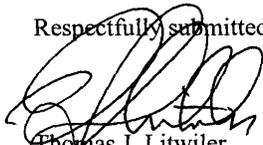
Mr. Vernon A. Williams
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documents relating to: a) the interchange of traffic between CN (and its predecessors) and MNN/BNSF (and their respective predecessors) at Warroad, Minnesota; and b) interchange facilities at Warroad, Minnesota." Discovery Requests of CN to MNN, August 4, 2003, at 5-6 (Document Request No. 1). CN does not seek to strike the Junction Interchange Update Form from MNN's rebuttal, but believes the record should reflect that the form was never executed by CN and that accordingly no CN-MNN interchange was ever effectuated by RAILINC or otherwise.¹

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope. I certify that a copy of this letter has been served by overnight delivery on counsel for MNN.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Canadian National
Railway Company

TJL:tl

Enclosures

cc: Thomas F. McFarland, Esq.

¹ As the RAILINC instructions provide, substituting MNN for BNSF at the Warroad interchange in June, 2001 also would have required CN and BNSF to file an update form "expiring" the obsolete former interchange. See LaPray R.V.S., Appendix GL-1, Instruction Guide at 2-3. That did not occur either.

Thomas J. Litwiler

From: Ted.Kalick@cn.ca
Sent: Tuesday, December 23, 2003 1:11 PM
To: tlitwiler@fletcher-sippel.com
Subject: RE: Warroad

----- Forwarded by Ted Kalick/KALICK01/IL/CNR/CA on 12/23/2003 02:10 PM -----

"Hobb, Rick"
<Rick.Hobb@railinc.com> To: <Ted.Kalick@cn.ca>
cc:
Subject: RE: Warroad
12/18/2003 01:48 PM

Ted here is the record out of our in-house Interchange Junction File.
In the future you can get this same kind of information by contacting
Rick Murphy on CN in Montreal at (514) 399-5568.

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      ,Row 34 to 44 o
      ,
      ,GCRF ONLINE SYSTEM
      ,
      , TRAIN II SPLC/JUNCTION QUERY BY ROAD
      , (PRESS PF3 KEY TO EXIT, ENTER PRINT TO PRINT SCREEN, ENTER REPORT FOR
      REP
      ,ROAD: ,
      ,
      ,----- ROAD-A DATA -----
      ,SPLC LOCATION INTERCHG REPORT INTERCHG INTERCHG REPORT INTERCHG
      ,NUMBER NAME ROAD ROAD FLAGS ROAD ROAD FLAGS
      ,-----
      ,398118,, SESSER ,, BNSF, , BNSF, , , O, , , , CN , , , CN , , , O
      ,399660,, METROPLIS ,, BNSF, , BNSF, , , O, , , , CN , , , CN , , , O
      ,439900,, MEMPHIS ,, BNSF, , BNSF, , , N, , , , CN , , , CN , , , N
      ,472600,, BIRMINGHAM, BNSF, , BNSF, , , N, , , , CN , , , BNSF, , , N
      ,479800,, MOBILE ,, BNSF, , BNSF, , , N, , , , CN , , , CN , , , N
      ,503017,, WARROAD ,, BNSF, , BNSF, , , N, , , , CN , , , CN , , , N
      ,503136,, NOYES , BNSF, , BNSF, , , N, , , , CN , , , CN , , , N
      ,504428,, NEW BRIGHTON, BNSF, , BNSF, , , N, , , , CN , , , CN , , , N
      ,504450,, ST PAUL , BNSF, , BNSF, , , N, , , , CN , , , CN , , , N
      ,504452,, MINNESOTA TRA, BNSF, , BNSF, , , N, , , , CN , , , CN , , , N
      ,504600,, MINNEAPOLIS ,, BNSF, , BNSF, , , V, , , , CN , , , CN , , , V

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