



SIDLEY AUSTIN LLP  
1501 K STREET N.W.  
WASHINGTON, D.C. 20005  
(202) 736 8000  
(202) 736 8711 FAX

BEIJING  
BRUSSELS  
CHICAGO  
DALLAS  
FRANKFURT  
GENEVA  
HONG KONG  
LONDON  
LOS ANGELES  
NEW YORK

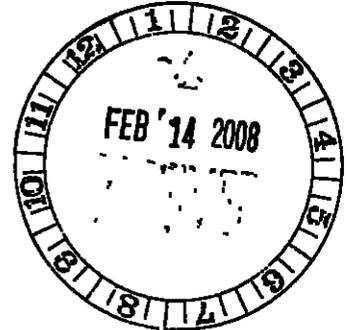
SAN FRANCISCO  
SHANGHAI  
SINGAPORE  
TOKYO  
WASHINGTON DC

thynes@sidley.com  
(202) 736 8198

FOUNDED 1866

221607

February 14, 2008



The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 F. Street, S.W.  
Washington, DC 20423

Re Finance Docket No. 35081, *Canadian Pacific Railway Company, et al --  
Control -- Dakota, Minnesota & Eastern Railroad Corp., et al*

Dear Secretary Quinlan

Enclosed for filing in the above-captioned proceeding are an original and 10 copies of the Emergency Motion of Applicants for Issuance of a Protective Order (CPR-10 DME-10), and a disk containing an electronic version of the Emergency Motion. Expedited action is requested.

Please acknowledge receipt of the Emergency Motion for filing by date-stamping the enclosed extra copies and returning them to our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,

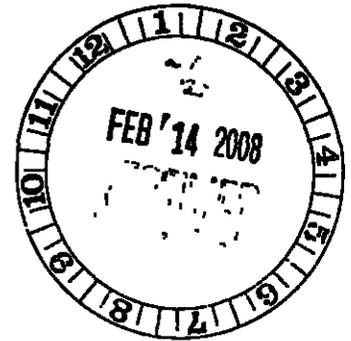
Terence M. Hynes

TMH:aat  
Enclosures

ENTERED  
Office of Proceedings

FEB 14 2008

Part of  
Public Record



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

\_\_\_\_\_  
Canadian Pacific Railway Company, et al -- Control --  
Dakota, Minnesota & Eastern Railroad Corp., et al  
\_\_\_\_\_

)  
)  
) Finance Docket No 35081  
)

**EMERGENCY MOTION OF APPLICANTS  
FOR ISSUANCE OF A PROTECTIVE ORDER**

**EXPEDITED ACTION REQUESTED**

**ENTERED  
Office of Proceedings**

**FEB 14 2008**

William C Sippel  
Fletcher & Sippel  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606  
(312) 252-1500

**Part of  
Public Record**

*Counsel for Dakota, Minnesota & Eastern  
Railroad Corporation et al*

Terence M Hynes  
G Paul Moates  
Jeffrey S Berlin  
Paul A Hemmersbaugh  
Matthew J Warren  
Sidley Austin LLP  
1501 K Street, N W  
Washington, D C 20005  
(202) 736-8000

*Counsel for Canadian Pacific Railway Company*

Dated February 14, 2008

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

Canadian Pacific Railway Company et al -- Control --	)	
Duluth, Minnesota & Eastern Railroad Corp , et al	)	Finance Docket No 35081
	)	

---

**EMERGENCY MOTION OF APPLICANTS  
FOR ISSUANCE OF A PROTECTIVE ORDER**

Pursuant to the Board’s regulations at 49 C F R § 1114 21(c), Canadian Pacific Railway Company, Soo Line Holding Company (“SOO Holding”), Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”) and Chicago, Iowa & Eastern Railroad Corporation (“IC&E”) (CPR, SOO Holding, DM&E and IC&E are referred to collectively herein as “Applicants”). hereby move for the entry of a protective order quashing the “Notice of Deposition of Kathryn B McQuade” served by Kansas City Southern Railway Company (“KCS”) on February 11, 2008 (the “McQuade Deposition Notice”) (A copy of the McQuade Deposition Notice is attached to this motion as Exhibit 1 )

On October 5, 2007, Applicants filed an Application pursuant to 49 U S C §§ 11323 *et seq* for approval of the acquisition of control of DM&E and IC&E by SOO Holding (and, indirectly, by CPR) In a Decision served November 2, 2007 (the “*November 2 Decision*”), the Board determined that the transaction proposed in the Application should be classified as a “significant” transaction under the Board’s regulations at 49 C F R 1180 2(b) The *November 2 Decision* instructed Applicants to perfect their Application by tendering the appropriate filing fee for a “significant” transaction, and by filing a revised proposed procedural schedule and (at Applicants’ discretion) supplemental information Applicants filed a revised procedural schedule on November 13, 2007, and a Supplement to the Application (including the prescribed filing fee for a “significant” transaction) on December 5, 2007 Thereafter, on December 27,

2007, the Board served a Decision (the "*December 27 Decision*") accepting the Application and adopting a procedural schedule to govern this proceeding. Under the schedule set forth in the *December 27 Decision*, requests for conditions, evidence and argument regarding the proposed transaction by KCS (and other interested parties) must be filed on or before March 4, 2008. See *December 27 Decision*, Appendix A. The *December 27 Decision* (at 10) stated explicitly that "[d]iscovery may begin immediately."

On February 11, 2008 – more than six weeks after the *December 27 Decision*, and more than four months after the Application was filed – KCS served notices seeking to take the depositions of DM&E's President, Kevin Schieffer, CPR's Vice President – Marketing & Sales (Merchandise), Ray Foot, CPR's Executive Vice President and Chief Operating Officer, Kathryn McQuade, and John H. Williams of The Woodside Consulting Group, Inc., Applicants' expert witness with respect to the competitive analysis of the proposed transaction. In each case, KCS' notice indicates that the stated subject matter of the deposition would be "the Application and other discoverable matters relating thereto." See Exhibit 1 at 1. Mr. Schieffer, Mr. Foot and Mr. Williams each submitted a Verified Statement on October 5, 2007 as part of the Application. Ms. McQuade has not submitted testimony in connection with this proceeding, nor was she otherwise personally involved in the transaction or the preparation of the Application.

KCS' deposition notices are untimely and unduly burdensome. Notwithstanding the Board's statement that parties should commence discovery "immediately" (*December 27 Decision* at 10) and the fact that KCS has had access to both the Application and the Verified Statements of witnesses Schieffer, Foot and Williams for more than four months, KCS has chosen to wait until February 19, 2008 – only two weeks before the date upon which its evidence is due – to commence depositions of Applicants' witnesses and Ms. McQuade. Moreover, KCS

did not provide notice of its desire to take these depositions to the prospective deponents (or to Applicants' counsel) until after the close of business on February 11, 2008, only a week before KCS proposes to commence the depositions.<sup>1</sup> KCS blithely assumes that Applicants' senior executives (including both DM&I's President and CPR's Chief Operating Officer) are readily available to be deposed at KCS' leisure. Moreover, ignoring the Board's regulation stating that "[u]nless otherwise ordered or agreed to by stipulation, depositions should be taken in the city or municipality where the deponent is located" (49 C.F.R. § 1114.23(a)), KCS proposes to require Mr. Schieffer and Mr. Williams to travel (on short notice) from Sioux Falls, South Dakota and Palo Alto, California, respectively, to Washington, D.C. for their depositions.<sup>2</sup>

KCS' unjustified delay in pursuing the depositions of Applicants' witnesses and Ms. McQuade, and the very short notice provided by KCS, would justify the issuance of a protective order quashing the Notices of Deposition for all four prospective deponents. Nevertheless, Applicants will produce for deposition Mr. Schieffer, Mr. Foot and Mr. Williams, each of which submitted a Verified Statement as part of the Application. Applicants have notified KCS' counsel of the time and place at which each of those depositions can be taken.

However, the Board should issue a protective order quashing the McQuade Deposition Notice. Unlike KCS' other prospective deponents, Ms. McQuade has not submitted a Verified Statement in connection with this control proceeding. Moreover, Ms. McQuade was not

---

<sup>1</sup> KCS served its First Set of Discovery Requests on both CPR and DM&E on February 6, 2008. While those discovery requests included both interrogatories and requests for production of documents, they made no mention of potential depositions of Applicants' witnesses. Applicants will serve their responses and objections to KCS' written discovery requests within the time prescribed by the Board's regulations.

<sup>2</sup> KCS originally noticed the depositions of Mr. Foot and Ms. McQuade for Washington, D.C. as well. However, on February 13, 2008, KCS served revised deposition notices for those two deponents in which the designated location for the depositions would be CPR's offices in Calgary, Alberta.

personally involved in the negotiations which led to the agreement between CPR and DM&E, the due diligence by CPR which preceded the execution of that agreement, or the preparation of the Application. Thus, a deposition of Ms. McQuade regarding “the Application” and “other discoverable matters relating thereto” (see Exhibit 1 at 1) – is not reasonably calculated to lead to the discovery of admissible evidence. See 49 C.F.R. 1114.21(a)(2). KCS’ depositions of Applicants’ witnesses, and the written interrogatories and document requests that KCS has served on both CPR and DM&E, will afford it ample opportunity to pursue relevant discovery with respect to the Application.

The Board has previously issued a protective order prohibiting the deposition of a non-witness senior executive where the information sought via the deposition could be obtained in a less burdensome manner. In Docket No. WCC-102, *Ocean Logistics Management, Inc. v. NPR, Inc.* (Decision served July 27, 1999), 1999 WL 545380, the STB granted a motion for a protective order to quash the deposition of the chairman of the respondent’s board of directors. The STB granted the motion because, regardless of whether the chairman had any information relevant to the proceeding, the complainant could acquire the information from alternative sources.

While it is possible that Mr. Holt has information that is either directly relevant to this proceeding or may reasonably lead to the discovery of admissible evidence, we believe that complainant can, in fact, acquire any such information that might exist through other means less burdensome to the defendants. In particular, we agree with NPR that there are undoubtedly employees of Holt and NPR who, unlike Mr. Holt, have direct knowledge of the events surrounding the 1996 agreement. We will therefore grant defendants’ motion for a protective order to quash Mr. Holt’s deposition at this time.

*Id.* at \*3. See also *Ocean Logistics Management, Inc. v. NPR, Inc.*, Decision served January 14, 2000, 2000 WL 28235 (STB), at \*3 (“the Board’s rationale in granting the

protective order was that there may be other NPR employees who have more direct knowledge of the facts at issue and, therefore, deposing Mr Holt at the outset of discovery would have been unduly burdensome")<sup>3</sup>

Moreover, Applicants believe that KCS' intention is not to depose Ms McQuade with respect to the Application, but rather to question her regarding certain matters raised by KCS in recent correspondence with CPR. Specifically, on January 25, 2008, KCS wrote to CPR asking it to agree to extend the term of, and make certain modifications to, two agreements between KCS and IC&I: in order to assuage KCS' purported "concerns" regarding the proposed transaction (See Exhibit 2, Letter dated January 25, 2008 from D Reeves to P Guthrie ) CPR promptly responded to Mr Reeves' letter, explaining that, because CPR does not have authority to control DM&E/IC&E, CPR cannot, at this time, enter into any agreement that would purport to bind IC&I contractually (See Exhibit 3, Letter date January 29, 2008 from P Guthrie to D Reeves ) CPR expressed its unwillingness, as a condition to the proposed control transaction, to modify agreements that were negotiated on a voluntary basis by KCS and IC&E and which would not be affected by the transaction. *Id* Finally, CPR stated that KCS' request for a 99-year extension of the so-called "Grain Agreement" between KCS and IC&E is premature because that agreement will not expire for at least ten more years. *Id*<sup>4</sup> Because Ms McQuade participated in subsequent conversations with KCS business persons regarding the demands set forth in KCS' January 25, 2008 letter to Mr Guthrie, Applicants believe that KCS' desire to

---

<sup>3</sup> Courts have also granted protective orders when the person whose deposition is sought lacks first-hand knowledge of the subject matter, particularly where the party seeking the deposition can obtain the information from other sources. *See, e.g., Thomas v IBM*, 48 F 3d 478, 482-484 (10<sup>th</sup> Cir 1995), *Lewelling v Farmers Insurance of Columbus, Inc*, 879 F 2d 212, 218 (6<sup>th</sup> Cir 1989)

<sup>4</sup> KCS waited for nearly two weeks after receiving Mr Guthrie's letter replying to Mr Reeves before it served the McQuade Deposition Notice. KCS' failure to act promptly provides a further reason for granting the protective order sought by this motion.

modify its agreements with IC&L – and not the Application – would be the focus of KCS’ deposition of Ms. McQuade.

As the correspondence attached as Exhibits 2 and 3 makes patently clear, the pre-existing agreements that KCS freely negotiated with IC&L have no nexus whatsoever to the proposed control transaction. Accordingly, any questions that KCS might pose to Ms. McQuade regarding those agreements would be utterly irrelevant to any issue properly before the Board in this proceeding. At the same time, compelling Ms. McQuade to prepare for and participate in such a deposition would be highly burdensome. Given Ms. McQuade’s position as CPR’s Chief Operating Officer, and the fact that she has not submitted testimony in connection with the Application, it is simply not reasonable for KCS to demand her attendance at a deposition on such short notice.<sup>5</sup>

The Board’s regulations provide that a protective order prohibiting discovery may be entered to protect a party or person from “oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding.” 49 C.F.R. § 1114.21(c). KCS’ demand that Ms. McQuade appear for a deposition is untimely, and KCS’ apparent desire to question her about existing commercial agreements between KCS and IC&L – to which CPR is not a party and which have no relevance to this proceeding – is clearly inappropriate. The Board should not countenance KCS’ attempt to subject a senior officer of CPR who is not a

---

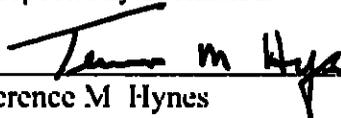
<sup>5</sup> Ms. McQuade’s current commitments make it infeasible for her to participate in a deposition at any time prior to the March 4 due date for KCS’ evidence. In light of KCS’ delay in seeking to depose Ms. McQuade, KCS should not be permitted to use her unavailability as a basis for seeking an extension of the due date for its evidence. The Board has previously rejected efforts by KCS to leverage eleventh-hour discovery disputes to gain more time to prepare its evidence (see Finance Docket No. 33877 (Sub-No. 1), *Illinois Central R. Co. – Petition for Crossing* (Decision served November 20, 2001)), and it should likewise do so in the instant case.

witness in these proceedings to interrogation about matters that have no nexus to the proposed transaction <sup>6</sup>

**CONCLUSION**

For the foregoing reasons, Applicants respectfully request that the Board enter a protective order pursuant to 49 C F R § 1114 21(c) quashing the McQuade Deposition Notice

Respectfully submitted.



---

Terence M Hynes  
G Paul Moates  
Jeffrey S Berlin  
Paul A Hemmersbaugh  
Matthew J Warren  
Sidley Austin LLP  
1501 K Street, N W  
Washington, D C 20005  
(202) 736-8000

William C Sippel  
Fletcher & Sippel  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606  
(312) 252-1500

*Counsel for Dakota, Minnesota & Eastern  
Railroad Corporation*

*Counsel for Canadian Pacific Railway Company*

Dated February 14, 2008

---

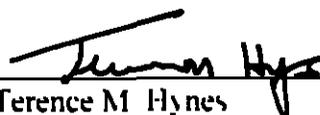
<sup>6</sup> Applicants likewise put KCS on notice that they will object to questions directed to Mr Foot, Mr Schieffer or Mr Williams regarding KCS' demand that Applicants agree to extend and/or modify the KCS-IC&E agreements, and if KCS persists in such questioning, the deponents will be instructed not to answer

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing Emergency Motion of Applicants for Protective Order to be served by first class mail, postage prepaid, this 14th day of February 2008, on all parties of record and the following persons as specified in the Board's Decision dated December 27, 2007

Secretary of Transportation  
1200 New Jersey Avenue, S E  
Washington, D C 20590

Attorney General of the United States  
c/o Assistant Attorney General  
Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, N W , Rm 3109  
Washington, D C 20530

  
\_\_\_\_\_  
Terence M Hynes

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**Finance Docket No. 35081**

---

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.  
- CONTROL -  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

---

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S  
NOTICE OF DEPOSITION OF KATHRYN B. MCQUADE**

**To: Parties of Record**

**PLEASE TAKE NOTICE** that pursuant to 49 CFR Part 1114, The Kansas City Southern Railway Company ("KCSR"), through its counsel, shall take the deposition upon oral examination of Kathryn B McQuade, Executive Vice President and Chief Operating Officer of Canadian Pacific Railway Company, business address Gulf Canada Square, 401 9<sup>th</sup> Avenue S.W., Calgary, Alberta, T2P 4Z4, Canada. The deposition will commence at 10 00 a m EST on February 21, 2008, and continue at a date or dates to be scheduled thereafter until completed. The deposition will be recorded stenographically and will be taken at the offices of Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W , Suite 300, Washington D C.

The subject matter of the examination shall be the Application by Canadian Pacific Railway Company, et al., to acquire control of Dakota, Minnesota & Eastern Railroad Corporation, et al., pursuant to 49 U.S.C. §§ 11323 et seq., and 49 CFR Part 1180, and other discoverable matters relating thereto

The deponent is directed to produce at the deposition any and all documents and records maintained by the deponent and her company including, but not limited to, all correspondence,

documents, workpapers, office notes, handwritten notes, internal and/or external memorandums, reports, records, diagrams, drawings, and photographs, relating to the above referenced proceeding.

The examination shall be conducted before an officer duly authorized to administer oaths by the laws of the jurisdiction in which the deposition occurs.

Respectfully submitted,

W. James Wochner  
David C. Reeves  
THE KANSAS CITY SOUTHERN  
RAILWAY COMPANY  
P.O. Box 219335  
Kansas City, MO 64121-9335  
Telephone: (816) 983-1303  
Facsimile: (816) 983-1227



William A. Mullins  
Alice G Glass  
Robert A. Wimbish  
BAKER & MILLER PLLC  
2401 Pennsylvania Ave., N.W.  
Suite 300  
Washington, D.C. 20037  
Tel: (202) 663-7820  
Fax: (202) 663-7849

Attorneys for The Kansas City Southern  
Railway Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing "The Kansas City Southern Railway Company's Notice of Deposition of Kathryn B. McQuade" was served this 11th day of February, 2008 by facsimile and U.S. Mail upon the following persons:

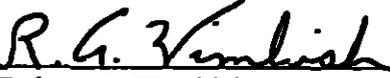
**Kathryn B. McQuade**  
**Canadian Pacific Railway Company**  
**Gulf Canada Square**  
**401 9<sup>th</sup> Avenue, S.W.**  
**Calgary, Alberta, T2P 4Z4**  
**Canada**  
**(403) 319-7000 (phone)**  
**(403) 319-6770 (fax)**

**Terence M. Hynes**  
**G. Paul Moates**  
**Jeffrey S. Berlin**  
**Sidley & Austin LLP**  
**1501 K Street, N.W.**  
**Washington, D.C 20005**  
**(202) 736-8000 (phone)**  
**(202) 736-8711 (fax)**

**Counsel for Canadian Pacific Railway Company**

**William C Sippel**  
**Fletcher & Sippel**  
**29 North Wacker Drive**  
**Suite 920**  
**Chicago, Illinois 60606**  
**(312) 252-1500 (phone)**  
**(312) 252-2400 (fax)**

**Counsel for Dakota, Minnesota**  
**& Eastern Railroad Corporation**

  
\_\_\_\_\_  
**Robert A Wimbish**  
**Attorney for The Kansas City Southern**  
**Railway Company**

## KANSAS CITY SOUTHERN

MAILING ADDRESS P O BOX 218335 • KANSAS CITY, MO 64121-9335



FOUNDED 1887

OFFICE AND EXPRESS DELIVERY ADDRESS.  
427 WEST 12<sup>TH</sup> STREET  
KANSAS CITY, MO 64105

DAVID C REEVES  
ASSOCIATE GENERAL COUNSEL  
(816) 983-1387  
FAX (816) 983-1227  
E-MAIL. DREEVES@kcsouthern.com

January 25, 2008

VIA E-MAIL, - paul.guthrie@cpr.ca

Paul Guthrie, Esquire  
Vice President Law  
Canadian Pacific Railway Company  
Suite 500 Gulf Canada Square  
401 9<sup>th</sup> Avenue, S.W.  
Calgary, Alberta, Canada T2P 4Z4

Re: Canadian Pacific Railway Company, et al. – Control – Dakota, Minnesota & Eastern  
Railroad Corp., et al.  
STB Finance Docket No. 35081

Dear Paul:

Thank you for your recent calls inquiring about the concerns of The Kansas City Southern Railway Company ("KCSR") with the proposed acquisition by Canadian Pacific Railway Company ("CPR") of control of Dakota, Minnesota & Eastern Railroad Corp. ("DM&E") and its affiliate Iowa, Chicago & Eastern Railroad Corporation ("IC&E") This letter summarizes those concerns

KCSR has two agreements with IC&E, one covering grain and the other covering movements to Chicago. Basically, KCSR wishes to extend these agreements. Specifically, we are currently pursuing the following:

- Grain agreement. We want to extend the term of the agreement to 99 years and change the charge if the transit standard is not met.
- Kansas City - Chicago agreement: We want to make it a haulage agreement, remove the exclusion of intermodal traffic, institute transit standards, and apply the same agreement between Kansas City and Minneapolis/St. Paul.

From attending the Senate hearing on the Kohl antitrust bill and from other indications, KCSR believes that the STB intends to apply at least the spirit of the revised major merger rules to reviewing the CPR-DM&E/IC&E transaction. Those regulations call for applicants to show enhancements to competition in seeking to justify a transaction. KCSR believes that the modifications that we are pursuing with respect to the above-referenced IC&E agreements will be a positive enhancement to competition that CPR can argue to the Board in support of the proposed transaction

Sincerely,

David C. Reeves  
Associate General Counsel  
The Kansas City Southern Railway Company

cc: W. James Wochner, Esq  
Larry Lawrence  
Mike Bilovesky  
Terrence M. Hynes, Esq



**CANADIAN  
PACIFIC  
RAILWAY**

Paul A Guthrie, Q.C.  
Vice President - Law  
and General Counsel

Suite 500  
Gulf Canada Square  
401 - 9th Avenue SW  
Calgary Alberta  
T2P 4Z4

Tel (403) 319-6184  
Fax (403) 205-9000

paul\_guthrie@cpr.ca

January 29, 2008

Mr. David C. Reeves  
Associate General Counsel  
The Kansas City Southern Railway Company  
P. O. Box 219335  
Kansas City, MO 64121-9335

David:

Thank you for your letter dated January 25, 2008 setting out your client's position vis-à-vis CP's proposed acquisition of the Dakota Minnesota & Eastern Railroad Corp ("DM&E") and its affiliate Iowa, Chicago & Eastern Railroad Corporation ("ICE"). While CP is always interested in exploring cooperative arrangements with our interline partners, we are not, at this time, agreeable to extending or modifying the two existing KCS-ICE agreements referenced in your letter. Candidly, we are somewhat confused as to why your client believes that this is an appropriate time to address these issues. As you know, CP does not yet have authority to control ICE, or to enter into agreements that bind ICE contractually. Moreover, while CP has some understanding of the nature of the agreements between your client and ICE, we do not have access to certain details of those agreements, including their history and the possible commercial implications of your client's requests for ICE.

We understand that the agreement described in your letter as the "grain agreement" has an initial term that runs until December 31, 2017 and will automatically renew thereafter for one-year terms unless it is terminated in writing by either party. Given these facts, why is it necessary even to consider a further extension of this agreement at this nascent stage? Assuming the STB approves the proposed transaction, CP will discuss renewal of this agreement on such terms and conditions as are appropriate at a time closer to the expiration of the initial term. At this time, neither party can possibly be aware of facts that might be highly relevant to such renegotiations 10 years from now. In any event, we do not believe that it would be prudent to commit ICE (or CP) to an essentially permanent (99 year) agreement as your letter requests.

We further understand that the other agreement described in your letter -- the "Kansas City-Chicago agreement" -- is, in essence, a one-year haulage agreement that contains an "evergreen" renewal provision. We also understand that little (if any) traffic has moved under this agreement in the years since ICE acquired the Kansas City-Chicago line from IMRL. For the same reasons discussed above in connection with the "grain agreement," CP is not willing at this time to enter into discussions regarding modification or expansion of an essentially dormant agreement between KCS and ICE.

With all due respect, we do not see how the proposed transaction implicates either of these agreements. Both are pre-existing voluntary arrangements between KCS and ICE. We do not believe that the STB can or will, as a condition upon its approval of the proposed transaction, require CP (or ICE) to renegotiate or to extend indefinitely commercial arrangements that were negotiated on a voluntary basis between sophisticated parties. Nor do we agree with your suggestion that the proposed transaction can in any way be characterized as "major" in nature, or that the STB will require the applicants to comply with the vague provisions regarding "enhanced competition" set forth in the Board's rules governing "major" transactions.

As always, we look forward to continuing our commercial relationship with your client to our mutual benefit and the benefit of the industry as a whole.

Yours truly,

A handwritten signature in black ink, appearing to read 'Paul Guthrie', with a stylized, cursive script.

Paul Guthrie  
Vice-President, Law & General Counsel