

**WEINER
BRODSKY
SIDMAN
KIDER PC**

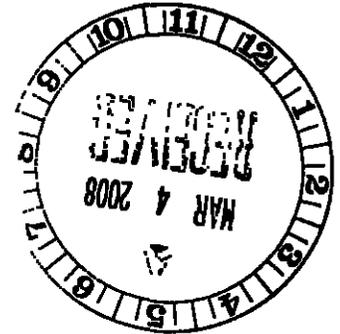
221747

March 4, 2008

BY HAND

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20423-001

ENTERED
Office of Proceedings
MAR 5 - 2008
Part of
Public Record



RE STB 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-referenced proceeding are eleven copies of the *Public Version* of the Comments in Opposition to Proposed Transaction of Twin Cities & Western Railroad Company and Minnesota Prairie Line, Inc Attached hereto is a Certificate of Service.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy and returning it to our messenger

Very truly yours,


Mark H Sidman

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March 2008, that a true and correct copy of Twin Cities & Western Railroad Company's and Minnesota Prairie Line, Inc.'s Comments in Opposition to Proposed Transaction is being served by hand on the following.

Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

I hereby certify that on this 4th day of March 2008, that a true and correct copy of Twin Cities & Western Railroad Company's and Minnesota Prairie Line, Inc.'s Comments in Opposition to Proposed Transaction is being served by first-class mail, postage prepaid, on the following:

Stacey L Drentlaw
Oppenheimer Wolff & Donnelly LLP
45 South Seventh Street, Suite 3300
Minneapolis, MN 55402

William C. Sippel
Fletcher & Sippel
29 North Wacker Drive
Suite 920
Chicago, IL 60606

William A. Mullins
Baker & Miller
2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037

T. Scott Bannister, Esq.
Iowa Northern Railway
Company
Paramount Office Building
305 Second Street, S.E.
Suite 400
Cedar Rapids, IA 52401

Richard H Streeter
Barnes & Thornburg LLP
750 17th Street, NW
Suite 900
Washington, DC 20006

Gerald W. Fauth III
President
G W Fauth & Associates Inc.
116 S Royal Street
Alexandria, VA 22314

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Robert P. Vom Eigen
Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W.
Suite 500
Washington, DC 20007

David K. Johnson
President
Iowa Traction Railroad Company
P O Box 309
Mason City, IA 50402

Thomas F McFarland
Thomas F McFarland, P C
208 South LaSalle Street
Suite 1890
Chicago, IL 60604

John Heffner
John D Heffner, PLLC
1750 K Street, NW
Suite 350
Washington, DC 20006

C. Dean McGrath, Jr.
Manatt, Phelps & Phillips LLP
700 12th Street, N.W.
Suite 1100
Washington, DC 20005

John V. Edwards
Senior General Attorney
Norfolk Southern Corporation
3 Commercial Place
Norfolk, VA 23510

Terry J Voss
Senior Vice President
Ag Processing Inc
P.O. Box 2047
Omaha, NE 68103

Andrew P. Goldstein
McCarthy, Sweeney &
Harkaway, PC
2175 K Street, N.W , Suite 600
Washington, DC 20037

Karla L. Engle, Esq
Office of Legal Counsel
South Dakota Department of
Transportation
700 East Broadway Avenue
Pierre, SD 57501

Crenna Brumwell
Assistant City Attorney
City of Dubuque
Harbor View Place, Suite 330
300 Main Street
Dubuque, IA 52001

William Gardner
Director of Freight, Rail and
Waterways
Minnesota Department of
Transportation
Mail Stop 470
395 John Ireland Blvd.
St. Paul, MN 55155

**Christopher A Mills
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036**

**Richard A. Allen
Zuckert, Scott &
Rasenberger, LLC
888 17th Street, N.W., Suite 700
Washington, DC 20006**

**Brendon P. Fowler
Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street, NW
Washington, DC 20036**

**Kathleen Chung
Wisconsin Department of
Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, WI 53707**

**John H LeSeur
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, DC 20036**

**Michael S Wolly
Zwerdling, Paul, Kahn & Wolly PC
1025 Connecticut Avenue, N.W.
Suite 712
Washington, DC 20036**

**Michael L Rosenthal
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004**

**Harry Bormann
CP 500 Iowa Minnesota
Shippers Association
P.O. Box 49
312 Third Street, NE
West Bend, IA 50597**

**James B Dougherty
709 3rd Street, S.W.
Washington, DC 20024**

**Nicholas J. DiMichael
Thompson Hine LLP
1920 N Street, NW, Suite 800
Washington, DC 20036**

**Paul Cunningham
Harkins Cunningham LLP
1700 K Street, NW, Suite 400
Washington, DC 20006**

**Terry L. Adkins
Rochester City Attorney
201 Fourth Street, S.E.
Room 247
Rochester, MN 55904**

**Mark A Ostrem
Olmstead County Attorney
151 4th Street, SE
Rochester, MN 55904**

**Stan Walk
Chair, Mitchell County
Board of Supervisors
508 State Street
Osage, IA 50461**

**Neil Volmer
Director of Planning, Programming,
and Modal Division
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010**

**Rod Nilsestuen
Department of Agriculture, Trade
and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708**

**Richard S Edelman
O'Donnell, Schwartz &
Anderson, P.C.
1300 L Street, N.W., Suite 1200
Washington, DC 20005**

**Michael F. McBride
Dewey & LeBoeuf LLP
1101 New York Avenue, N W
Suite 1100
Washington, DC 20005**

**Steven D Strege
North Dakota Grain Dealers
Association
118 Broadway N., Suite 606
Fargo, ND 58102**

**Joseph J Plaistow
L E. Peabody & Associates, Inc.
1501 Duke Street, Suite 200
Alexandria, VA 22314**

**Paul Samuel Smith
U S Department of
Transportation
1200 New Jersey Avenue, S.E.
Room W94-316 C-30
Washington, DC 20590**

**Peter J Shudtz
Federal Regulation &
Washington General Counsel
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202**

**Jeffrey O Moreno
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036**

**Karen Hardy Cardenas
Committee for a Safer
Brookings
316 17th Avenue, South
Brookings, SD 57006**

Gordon P MacDougall
1025 Connecticut Avenue, N.W.
Washington, DC 20036

Eric A. Von Salzen
Hogan & Hartson LLP
555 Thirteenth Street, N.W.
Washington, DC 20004

Jim Peterson
North Dakota Wheat Commission
4023 State Street
Bismarck, ND 58503

Barbara C. Robinson
U.S. Department of Agriculture,
Agriculture Marketing and
Service
1400 Independence Avenue, NW
Room 1098 South Building
Washington, DC 20250

Adrian L. Steel, Jr
Mayer Brown LLP
1909 K Street, N.W.
Washington, DC 20006



Rose-Michele Nardi

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35081

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

**TWIN CITIES & WESTERN RAILROAD COMPANY'S
AND MINNESOTA PRAIRIE LINE, INC.'S
COMMENTS IN OPPOSITION TO PROPOSED TRANSACTION**

**Mark H Sidman
Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
(202) 628-2000**

**Counsel for
Twin Cities & Western Railroad Company and
Minnesota Prairie Line, Inc.**

Dated March 4, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35081

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

**TWIN CITIES & WESTERN RAILROAD COMPANY'S
AND MINNESOTA PRAIRIE LINE, INC.'S
COMMENTS IN OPPOSITION TO PROPOSED TRANSACTION**

Twin Cities & Western Railroad Company ("TCW") and Minnesota Prairie Line, Inc ("MPL")¹ hereby submit their comments in opposition to the Application of Canadian Pacific Railway Company ("CPR") and Soo Line Holding Company ("Soo Holding") to control Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (CPR, Soo Holding, DM&E and IC&E are referred to collectively herein as "Applicants") As discussed below, TCW opposes the approval of the transaction proposed by Applicants in this proceeding unless

¹ TCW and MPL are under common control See STB Finance Docket No 34068, *Twin Cities & Western Railroad Company, Douglas M Head, Charles H Clay, Kent P Shoemaker and William F Drusch - Continuance in Control Exemption - Minnesota Prairie Line, Inc*, 2002 WL 1231499, served June 6, 2002

such approval is conditioned upon (i) the requirement that CPR enter into a haulage arrangement with TCW/MPL, at competitive rates, that would enable those carriers to price grain and ethanol from the Twin Cities to destinations served and interchanges reached by CP in and near Chicago, in Minnesota and in Canada, and (ii) the requirement that CPR waive restrictions under CPR's trackage rights agreement with CN (as successor to Wisconsin Central Ltd. ("WC")), so as to permit CN to handle grain and ethanol originated by TCW/MPL to all destinations and third party carrier connections to which CN has access in Chicago and Canada. At a minimum, the Board should condition approval of the proposed transaction on CPR's pledging to keep the Chicago and Canadian gateways open, by continuing to make competitive rates with TCW and MPL, for grain and ethanol traffic from the southern Minnesota markets served by TCW and MPL.

I. Background

TCW and MPL (together, the "Companies") are affiliated short line railroads. The rail line owned by TCW extends approximately 144 miles west Minnetonka, MN (near St Paul) to Appleton, MN, with an additional 25 miles of trackage rights in the Twin Cities to Pigs Eye Yard and to the river terminals at Camden and Savage. At the western end of its railroad, TCW has an additional 36 miles of trackage rights over BNSF from Appleton to Ortonville, MN and

Milbank, SD. TCW purchased its rail lines from Soo Line Railroad Co. ("Soo Line"), an affiliate of CPR, in 1991.

MPL operates an approximately 94-mile rail line from a connection with TCW at Norwood, MN, west to Hanley Falls, MN. As indicated on the map appended hereto as Exhibit A, the MPL line runs south of and largely parallel to, TCW. MPL operates the line under an agreement with its owner, Minnesota Valley Regional Railroad Authority (a political subdivision of the State of Minnesota).

The Companies' respective rail lines are parallel to and north of the DM&E line from Rapid City, South Dakota, east to Owatonna, Minnesota. The DM&E connects to CPR at Minnesota City, MN. See Exhibit A. The distance between stations on the TCW/MPL lines and the DM&E line is as little as approximately 17 miles between Sleepy Eye, MN on the DM&E and Fairfax on the MPL, with numerous competing stations less than 50 miles apart. See Exhibit B, Verified Statement of Craig Glaeser ("VS Glaeser"), Attachment 3. Today, TCW/MPL and CPR compete on an interline basis with DME/ICE for grain business. *Id.* at 5.

As set forth in the verified statement of Craig Glaeser, during calendar years 2003 through 2007 (the "Traffic Period") TCW/MPL handled an annual average of _____ revenue carloads. More than 30 percent of this traffic (an

average of _____ annual carloads) consisted of corn, soybeans, wheat and barley ("Grain Traffic") handled on an interline basis with CPR (the "TCW/CPR Grain Traffic") Excluding the local grain markets, the grain moving to Chicago (and beyond Chicago) and to Canada constitutes, on average, almost 28 percent of TCW/MPL's Grain Traffic during the Traffic Period The TCW/CPR Grain Traffic is a critical component to TCW's ability to continue to provide its shippers with competitive service. VS Glaeser, at 3. In 2006 and 2007, TCW/MPL handled an average of _____ carloads of ethanol with CPR (the "TCW/CPR Ethanol Traffic")² VS Glaeser, Attachment 1 The TCW/CPR Ethanol Traffic constituted 65 percent of TCW/MPL's carloads in those two years. Thus, during the most recent five full calendar years, more than one-third of TCW/CPR's traffic consisted of TCW/CPR Grain Traffic and TCW/CPR Ethanol Traffic.

Neither TCW/MPL nor CPR has power of attorney from the other party to price interline moves of TCW/CPR Grain Traffic or TCW/CPR Ethanol Traffic Instead, this traffic moves by joint rates negotiated by the parties or by a combination of local rates established by each party.³ In the absence of any contractual constraint, CPR is free to establish its revenue requirements at any

² Prior to 2006, TCW served only one small ethanol plant, which did not tender significant volumes of rail traffic

³ TCW and MPL each are shown in the rate and route on traffic that is originated on their respective lines and that is handled on an interline basis with CPR Because MPL does not have a direct interchange with CPR, its originations are handed off to TCW and are then interchanged by TCW to CPR

level it deems appropriate. To the extent that CPR establishes revenue requirements that are not competitive, the TCW/CPR Grain Traffic is susceptible to diversion to other carriers or to trucks. VS Glaeser, at 2.

II. Summary of Position

The proposed transaction, if approved without the conditions requested by TCW/MPL, will enhance CPR's market power by giving CPR the ability to control rail traffic pricing for the only two competitive rail options for grain shippers in the market served by TCW/MPL. Today, CPR and TCW/MPL compete with DME/ICE for grain traffic originations; following approval of the proposed transaction, CPR will, in essence, be competing against itself in southern Minnesota, and there is every reason to believe that it will price traffic in a manner that will maximize its profit. This likely will result in an increase in rates for joint line service from TCW/MPL stations to encourage DME/ICE originations, and a reduction in the overall level of service. In addition, with TCW/MPL no longer being able to offer a competitive constraint to rates established for the DME/ICE traffic, these rates may significantly increase as well. The loss of the TCW/MPL Grain Traffic – almost one-third of TCW/MPL's revenue carloads – would adversely affect TCW/MPL's ability to provide essential service.

Applicants assert that the transaction proposed in this proceeding will not harm shippers or DME/ICE's short line connections.

As Applicant witness Williams demonstrates, no shipper that currently has access to both CPR and DM&E rail service will be left without at least two competitive rail options following the proposed transaction. Nor will the transaction have adverse impacts on short line carriers in DM&E's service territory.

Application at 4 (emphasis in original) In his analysis of the effect of the proposed transaction on short line railroads, witness Williams, "considered both the ability of [the short lines that connect to DME/ICE, including TCW] . . . to interchange traffic with carriers other than CPR or DME/ICE, as well as the potential divertibility as a result of the transaction of traffic which those carriers handle in conjunction with CPR or DME/ICE " See Application, Volume II, Verified Statement of John H Williams ("Williams VS"), at 20 Mr Williams concludes that TCW will not be adversely affected by the proposed transaction based on his findings that (i) neither CPR nor DME/ICE can serve any of the stations on TCW where traffic handled on an interline basis by TCW and CPR or IC&E is originated, and (ii) TCW has interchanges with several non-Applicant carriers V S Williams at 27 Mr Williams is silent with respect to the effect of the proposed transaction on MPL, presumably because MPL, despite its close proximity to DM&E and IC&E, does not connect with the lines of those carriers.

Mr Williams' analysis of the effect of the proposed transaction on TCW and MPL is flawed and incomplete. In reality, CPR's control of DM&E and IC&E would have serious anticompetitive effect in the grain markets served by TCW/MPL, and could threaten essential service to shippers in those markets. This is the case for several reasons.

First, as discussed in detail below, the Williams testimony fails to take into account that, for more than 30 percent of TCW's revenue carloads over the past five years (2003-2007), CPR is the *only* viable connection for the handling of that traffic. The fact that TCW has physical connections with Union Pacific ("UP"), BNSF Railway ("BNSF"), Canadian National Railway ("CN") and two short line railroads (in addition to IC&E) is irrelevant because none of those carriers provides a competitive option for any significant portion of the traffic in question.

Second, witness Williams fails to acknowledge that TCW and MPL compete directly with DM&E for grain originations. The TCW/CPR Grain Traffic accounted for more than 30 percent of TCW/MPL's carloadings during the Traffic Period. Accordingly, it is irrelevant that neither CPR, DM&E or IC&E actually serve the applicable TCW stations. If the proposed transaction were approved, CPR would have the power to drive that traffic to DME/ICE stations by increasing its revenue requirements on interline moves with TCW and/or by

lowering its rates on DME/ICE CPR, in effect, would be in a position of competing with itself for TCW/CPR grain traffic in the market served by TCW/MPL and DME/ICE, and there is every reason to believe that it would take pricing actions in its own self-interest. TCW/MPL witness McLaughlin demonstrates that the difference between the margins (*i.e.*, net revenue) that would accrue to CPR on traffic handled from DME/ICE stations on a single line basis, on the one hand, and the margins to CPR from handling that same traffic on an interline basis with TCW, on the other hand, will provide significant incentive to CPR to use its pricing power to divert grain traffic from TCW/MPL to DME/ICE DME/ICE will be able to establish a rate on such traffic without any competitive constraint by TCW/MPL, because CPR will always have the ability to establish a higher rate for the applicable TCW/MPL traffic In fact, CPR would be in a position to set prices on DME/ICE traffic and TCW/MPL traffic at levels that maximize its profit, even at the cost of driving considerable volumes of traffic off the rails.

Third, witness Williams fails to recognize that, as DME/ICE/CPR traffic grows and raises capacity concerns on CPR's main line routes to Chicago and Canada, CPR can easily de-market TCW's interline traffic in order to make room for its long haul traffic from DME/ICE origins. As confirmed by a recent study commissioned by the Association of American Railroads ("AAR"), there are

already capacity concerns on CPR's main line from the Twin Cities to Chicago. Despite Applicant's efforts to downplay the likely increase of traffic over its lines as a result of proposed transaction (perhaps in deference to the environmental thresholds set forth in 49 C F R 1105 7(e)(5)), the two trains that CPR intends to divert from DME/ICE to CPR's line from Minnesota City, MN to Chicago (Application at 21), the traffic from five new ethanol plants being built on DM&E (Exhibit 12, Market Analysis at 4), and the 5,000 carloads of "extended haul" traffic from DME/ICE (Application at 22) suggest that capacity may soon be an issue. TCW/MPL's vulnerability on account of capacity-related de-marketing would increase ten-fold if DM&E and/or IC&E becomes a "major player" in ethanol transportation (a possibility suggested in Applicant's market analysis) or if CPR builds the now-approved rail line into the Powder River Basin

Finally, Mr Williams' failure to evaluate the effect of the proposed transaction on MPL is a glaring omission in his competitive analysis. Despite the fact that MPL does not connect to DM&E, IC&E or CPR, MPL competes with those carriers for many of the same grain originations. Stations of MPL are as close as 17 miles to stations of DM&E and IC&E, and farmers and grain elevators will ship from the stations that provide the best pricing. If CPR were to control DM&E and IC&E, CPR would have every incentive to utilize a pricing strategy to maximize its single line service on DME/ICE to the detriment of MPL

As set forth in detail below, the proposed transaction, if approved without conditions, would put CPR in a position of enhanced market power, from which it could use unilateral pricing actions to divert to DME/ICE significant volumes of TCW/MPL's interline grain traffic with CPR to Chicago and beyond. Moreover, as CPR adds DM&E and IC&E grain and ethanol traffic to its system, TCW/MPL traffic will be vulnerable to de-marketing actions by CPR to ensure that its capacity is available for its own high contribution, long-haul traffic. The exercise of this market power would put more than one-third of TCW/MPL's traffic, and TCW/MPL's provision of essential services, in jeopardy, because none of TCW/MPL's other connections provide a competitive outlet for this traffic. Moreover, these actions would, in effect, remove a competitor – CPR/TCW/MPL – from the grain market in TCW/MPL's service territory. Ultimately, this would have a significant, adverse effect on shippers who today benefit from CPR/TCW's competitive presence.

III. The Board Should Impose the Conditions Requested By TCW/MPL to Address Potential Competitive Harm

In recent decisions, the Board has stated that “[w]herever feasible, [it would] impose conditions to ameliorate significant competitive harm that is caused by a merger”⁴ According to the Board, “[c]ompetitive harm would result

⁴ STB Finance Docket No 34342, *Kansas City Southern – Control – The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company*, 2004 WL

from a merger to the extent that the merging parties would gain sufficient market power to profit by raising rate and/or reducing service,” and to the extent that the harm resulted from or was exacerbated by the merger. In addition, the Board notes that its evaluation of claims of competitive harm considers the applicable transportation markets ⁵

Under the standard set forth above, the Board should impose the conditions requested by TCW and MPL in this proceeding. As these Comments discuss in more detail below, the proposed transaction would provide the Applicants with sufficient market power both to raise rates and/or reduce service.

The potential abuse of market power would result from the confluence of several factors: (1) the current CPR/TCW/MPL joint line route is a direct competitor with the DME/ICE route for grain traffic; (2) the grain traffic over CPR/TCW/MPL routes currently moves by joint rates negotiated by the parties, or by a combination of local rates established by each party, and there is no contractual constraint to prevent CPR from establishing its local rate at a level intended to drive the traffic to the new CPR/DME/ICE route, (3) if the

2700648, at * 11, served Nov. 29, 2004, 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*, 2004 WL 761035, at * 9, served April 9, 2004.

⁵ *Id.*

CPR/TCW/MPL route is de-marketed by CPR, there is no alternative rail route for grain traffic from southern Minnesota to Chicago that would provide viable competition for the CPR/DME/ICE route; and (4) motor carrier would not provide meaningful competition for the grain traffic handled by CPR/DME/ICE to Chicago or to Canada

Accordingly, abuse by Applicants of their newly-acquired market power would pose a significant competitive harm that is directly caused by the proposed transaction. If the Board does not approve the proposed transaction, the CPR/TCW/MPL route continues to offer viable competition to the DME/ICE route; if the transaction is approved without the conditions requested by TCW and MPL, the competitive route offered by TCW and MPL will no longer be available to constrain DME/ICE's potential abuse of market power. As a result, the Applicants will have the potential to raise rates and/or reduce service without fear of driving a significant amount of traffic away from its route.

Significantly, the Applicants offer the Board and the public no assurances that they will not abuse this market power by actively de-marketing the applicable traffic moving through the Chicago and Canadian gateways. Unlike several other applicants in recent significant and minor transaction proceedings, Applicants have provided the Board with no representations that, if the transaction were approved, it would keep major gateways open. See STB Finance

35087, *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, 2007 WL 4154766, at * 10, served November 26, 2007 (noting that “Applicants also state their commitment to keeping gateways open . . .”), STB Finance 34839, *Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Consolidation Exemption – Algers, Winslow and Western Railway Company*, 2007 WL 482682, at *9, served Feb. 15, 2007 (conditioning the grant of authority for the proposed transaction on the railroad’s adherence “to its pledge to preserve the Oakland City interchange...”); STB Finance Docket No. 34342, *Kansas City Southern – Control – The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company*, 2004 WL 2700648, at *18, 8 , served Nov. 29, 2004 (ordering applicants to “adhere to their five representations,” which includes the pledge to “keep the Laredo gateway open on commercially reasonable terms”); 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*, 2004 WL 761305, at * 11, served April 9, 2004 (noting that “[t]he Board will hold applicants to their pledge that they will keep all existing active gateways affected by the CN/GLT Transaction open on commercially reasonable terms”); STB Finance Docket No 34000, *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 Ltd, 2001 WL 1021920, at *8, served September 7, 2001 (conditioning approval of transaction on applicants’ adherence to their representation “that a unified CN/WC will not engage in ‘vertical foreclosure’ by closing efficient gateways,” but instead will “keep all existing active gateway affected by the Transaction open on commercially reasonable terms”).

In addition to imposing the conditions requested by TCW and MPL to ameliorate the anti-competitive effects described above, the Board also should impose the requested conditions to ensure essential services provided by TCW and MPL are preserved. *See* 49 C.F.R § 1180.1(c)(2)(ii) ⁶ As discussed in more detail below, if the proposed transaction is approved, without the requested conditions, TCW and MPL stand to lose more than 30 percent of their revenue carloadings. In reference to Class I mergers, the Board has expressly stated that it “will consider whether projected shifts in traffic patterns could undermine the ability of the various network links (including Class II and *Class III* rail carrier and ports) to sustain essential services.” *Id.* (Emphasis added)

⁶ Although the provisions under section 1180.1 technically apply only to control/merger proceedings involving two or more Class 1 rail carriers, the rationale concerning essential services should apply equally to significant transactions, such as this one

In contrast to the substantial losses TCW and MPL will incur if the Board unconditionally approves the proposed transaction, the conditions requested by TCW and MPL will not significantly affect the benefits expected to accrue to Applicants as a result of the transaction. The TCW/MPL/CPR Grain Traffic – an average of 5,803 carloads during the Traffic Period – is a mere fraction of the 2.6 million carloads of traffic and the 260,000 carloads of traffic that CPR and DME/ICE, respectively, handled in 2006. Protecting competition in the markets served by TCW and MPL is in the public interest and will have no material adverse effect on the proposed transaction.

IV. Applicants Have Incorrectly Concluded that TCW's Connections with Other Carriers Provide Meaningful Competitive Options

In their Application, the Applicants examine the effect the proposed transaction will have on short line carriers and conclude there will be none Application at 4. That conclusion, insofar as it applies to TCW, is based in part on Applicants' observation that the proposed transaction will not reduce the number of carriers with which TCW/MPL can interchange

Applicants' witness Williams points to TCW's connections with "five non-applicant railroads, including BNSF and CN," as part of his rationale for concluding that TCW would not be adversely affected by control of DM&E and IC&E by CPR. V.S. Williams at 27. Although Mr. Williams has correctly counted the number of carriers (other than Applicants) with which TCW connects, he has

incorrectly concluded that the mere existence of those connections would protect TCW from huge losses of traffic if the proposed transaction were approved. As set forth below, none of the five connecting carriers – BNSF, CN, UP, Minnesota Commercial Railway (“MCR”), or Sisseton-Milbank Railroad (“SMRR”) – provides a meaningful competitive alternative to CP as an interline partner for Grain Traffic

A. BNSF. TCW has interchanges with BNSF at Appleton, MN and in the Twin Cities terminal. Despite these physical connections, from 2003 through 2007, TCW handled just ____ carloads of Grain Traffic with BNSF. Of this traffic, ____ carloads were the result of a one-time sublease of TCW cars to BNSF in 2004. BNSF agreed to take the subleased cars loaded. Setting aside this aberrational transaction, TCW and BNSF handled just ____ carloads of Grain Traffic over the past five years – an average of just ____ cars per year. *See VS Glaeser, at 7*

The reason for the lack of TCW-BNSF interline movements of Grain Traffic is that BNSF is a western carrier that wants to maximize its long haul by moving unit trains from the shuttle facilities on its lines to the Pacific Northwest. Although BNSF does make rates with some short lines (*e.g.*, DM&E) for westbound traffic, it does not do so with TCW because BNSF views TCW as a competitor for the grain markets served by BNSF’s shuttle facilities at Holloway, MN, Clara City, MN, Hanley Falls, MN and Milbank, SD *See VS Glaeser, at 5*

BNSF has no interest whatsoever in moving grain to Chicago and beyond, especially if that traffic is handled on an interline basis with another carrier. This lack of interest is reflected in BNSF's rates. Today, BNSF's tariff rate for corn to Chicago (for beyond) from Maynard, MN is \$2,888 per car. The TCW-CPR joint rate for corn to Chicago (for beyond) from Renville, MN (and stations east of Renville on TCW) is \$1,315 per carload. The route mileage of the BNSF move and the TCW-CPR move is comparable, yet the BNSF rate is *more than twice* the TCW-CPR rate V.S. Glaeser at 6.

The same pricing situation exists for soybeans and wheat. The BNSF rate for soybeans from Clara City, MN to Chicago (for beyond) is \$2,950 per carload. The MPL/CPR rate for soybeans to Chicago (for beyond) from Fairfax, MN (and stations east of Fairfax) is \$1,458 per carload, half of the BNSF rate. For wheat, the BNSF rate from Holloway, MN to Chicago (for beyond) is \$2,037 per carload, which is one-third higher than the TCW rate from Appleton, MN to Chicago (for beyond) of \$1,504 per carload. *Id*

The BNSF rates cited above are representative of BNSF's grain rates for eastbound traffic from the Twin Cities, and involve distances that are comparable to the CPR/TCW/MPL routes. These examples underscore the fact that BNSF has no interest in moving Grain Traffic to Chicago and beyond. The few cars of Grain Traffic that TCW/MPL has handled with BNSF are occasional

spot market transactions that occur when buyers in the Pacific Northwest cannot meet their needs from BNSF or other western origins. If CPR were to de-market TCW and MPL Grain Traffic, BNSF would not provide a competitive outlet to the eastern United States for the TCW/MPL Grain Traffic. VS Glaeser, at 6-7

B. UP. Like BNSF, UP is a western carrier that has little or no interest in moving Grain Traffic east to Chicago or to handle Grain Traffic west on an interline basis. TCW/MPL handled just ____ carloads of Grain Traffic with UP from 2003 through 2007, or an average of approximately ____ carloads per year. In 2007, TCW/MPL and UP handled _____ on an interline basis VS Glaeser, at 7

UP's current published rates to Chicago for beyond confirm UP's lack of interest in that market. UP's rate for corn and soybeans from Minneapolis, MN to Chicago (for beyond) is \$2,698 per carload. The MPL/CPR rate for corn to Chicago (for beyond) from Fairfax, MN (and stations east of Fairfax) is \$1,343 per carload, while the TCW/CPR per carload rate for soybeans to Chicago (for beyond) from Renville, MN (and stations east of Renville) is \$1,431. The UP grain rates, like BNSF's, are almost double the CPR/TCW/MPL rate and involve comparable or shorter routes than the TCW/MPL/CPR routes. VS Glaeser, at 7, 8.

UP moves wheat from St. Paul, MN to Chicago, IL for beyond at a per carload rate of \$1,447, and TCW/CPR move wheat from Appleton, MN to

Chicago, IL for beyond at a per carload rate of \$1,504. These rates, on their face, are comparable, but the UP rate does not include a division for a connecting carrier, such as TCW. TCW currently receives a \$_____ division for the wheat it move in conjunction with CPR from Appleton, MN to Chicago for beyond.

Accordingly, it is unlikely that UP and TCW could negotiate competitive wheat rates VS Glaeser at 8

_____. UP's nearest grain gathering station is in Mankato, MN approximately 75 miles from the TCW-UP interchange. The distance between Mankato and TCW's stations makes it difficult for UP to provide rates from TCW/MPL stations that are comparable to the rates established by UP at Mankato. To the extent that TCW/MPL is able to handle grain on an interline basis with UP in the future, the overwhelming likelihood is that this will be spot market transactions involving modest volumes VS Glaeser, at 8-9.

C. CN TCW, via MCR, has a connection with the CN at New Brighton, MN. However, the connection with CN does not provide a feasible alternative route for the movement by TCW/MPL of Grain Traffic to Chicago and beyond. Over the past five years, CN has not handled any interline Grain Traffic

with TCW for handling to Chicago or beyond. This situation will not change following the consummation of the proposed transaction, absent the imposition of a condition by the Board, because CN is contractually restricted from handling TCW traffic over this route. VS Glaeser, at 9, 10.

The TCW-CN route extending from the Twin Cities to Chicago is via trackage rights over CPR. However, the applicable trackage rights agreement prohibits CN from using the trackage rights to move TCW traffic other than to or from stations located on WC. VS Glaeser, at 10.

These CN trackage rights were originally granted by the Soo Line to the WC, and use of these trackage rights expressly excludes overhead traffic. See *Wisconsin Central Ltd – Exemption Acquisition and Operation – Certain Lines of Soo Line Railroad Company*, Finance Docket No 31102, 1988 WL 224540, at *4, decided July 8, 1988 (“1988 WC/Soo Decision”).⁷ Overhead traffic, for purposes of these trackage rights, refers to “any traffic originating at, terminating at, or moving through ...[(1) Minneapolis/St. Paul, (2) Duluth/Superior or (3) Milwaukee] and not ultimately destined to or originating at (1) consignors or consignees physically located on trackage of . [WC] or (2) points in Ontario west of Sudbury, in Upper Michigan or in Wisconsin north of Soo’s main line between

⁷ In a decision served September 7, 2001, the Board approved CN’s acquisition of the WC. See *Canadian National Railway Company, Grand Trunk Corporation and WC Merger Sub, Inc – Control –*

LaCrosse and Milwaukee " *See Id.* No Grain Traffic was moved by TCW/MPL, on an interline basis with CN, to WCL locations in Chicago or to Ontario west of Sudbury during the Traffic Period

During the Traffic Period, TCW has handled a small volume of Grain Traffic with CN – an average of _____ carloads annually over the past 5 years – primarily to two Wisconsin ethanol plants. As explained by witness Glaeser, these plants first source corn in the local truck market and then from Wisconsin rail stations that CN serves. To the extent that the local corn crop in Wisconsin cannot satisfy the demand, TCW has obtained some of this business on an interline basis with CN. VS Glaeser, at 9.

The TCW/MPL Grain Traffic handled on an interline basis with CN likely will grow modestly if new ethanol plants are built in Wisconsin or if the local corn crop from time-to-time is insufficient to meet the demands of existing plants. However, those ethanol plants will always look to cheaper, local corn first, and this market would not be a likely candidate to replace any significant loss of TCW/CPR Grain Traffic as a result of the proposed transaction. VS Glaeser at 9-10.

Similarly, it is unlikely that other markets served by CN could absorb much TCW/MPL grain. This is because the CN trackage rights on the line from

the Twin Cities do not permit CN to handle overhead traffic to provinces west of Sudbury in Ontario See 1988 WC/Soo Decision, at *4. TCW/MPL

_____ Grain Traffic to Canada from 2003 through 2007. VS Glaeser at 10

D SMR. SMR is a small, low-density short line. It currently has just four elevators on its line From 2003 through 2007, TCW handled approximately _____ carloads per year of wheat and barley from SMR to the Twin Cities terminal, the river mills served by TCW and/or to Chicago via CPR. This traffic is unlikely to grow significantly in the future, particularly in light of the fact that SMR has to compete for grain originations with nearby BNSF shuttle facilities that offer better pricing, and SMR corn increasingly is consumed by local ethanol plants VS Glaeser, at 12.

E. Minnesota Commercial. TCW handled approximately _____ carloads per year of Grain Traffic to mills located on MCR in the Twin Cities terminal during the Traffic Period. These mills, collectively, generate limited demand for grain transported by rail. Moreover, these mills have access to several competing carriers. VS Glaeser, at 11.

As the foregoing indicates, none of TCW's Class I or short line connections provides access to a meaningful grain market for TCW/MPL BNSF and UP have

priced themselves out of the Chicago and beyond market and overwhelmingly favor long-haul moves from their own origins for westbound traffic. Although TCW/MPL does occasional business with those carriers in the spot market, those opportunities are infrequent and invariably involve small volumes.

TCW/MPL has enjoyed modest success shipping corn to ethanol plants in Wisconsin on an interline basis with CN. However, given the distance between the ethanol plants and the Twin Cities, this will never be a significant market for TCW/MPL. Moreover, the restrictions in CN's trackage rights agreements with CPR prevent CN from being an interline partner with TCW/MPL for traffic to Chicago or to western Canada.

The local market for TCW/MPL Grain Traffic, which goes to mills in the Twin Cities terminal or to river terminals when that market is active, accounted for an average of _____ carloads per year from 2003 through 2007 (Excluding traffic to the river terminals, the annual average carloads for local traffic to the Twin Cities terminal was _____ carloads, *i.e.*, the TCW/MPL carloads handled on an interline basis with MCR). TCW/MPL has worked hard to market this traffic because it can get very high equipment utilization on these short moves. The reality, however, is that demand at the mills in the Twin Cities terminal is limited. The river terminal market has not been a significant source of volume for TCW/MPL Grain Traffic over the past four years. (Accordingly, the average,

annual carload number of _____ noted above would be significantly lower without the _____ carloads in 2003 to the river terminals.) This lack of traffic reflects high barge freight rates at the Twin Cities and ocean freight rates currently favoring traffic out of Pacific Northwest ports over traffic out of ports in the Gulf of Mexico. It is unclear when this market will become active again or the traffic volume it could absorb. VS Glaeser, at 10-11

V. TCW/MPL's Grain Traffic to Chicago and Chicago For Beyond Is Subject to Diversion

During the Traffic Period, more than 16 percent of TCW/MPL's traffic was TCW/CPR Grain Traffic to mills or processors in Chicago or mills and processors east of Chicago. See VS Glaeser at 3-4. This traffic originates at stations on TCW/MPL that are in close proximity to competing stations of DME/ICE *Id.*, Attachment 3.

TCW/MPL witness John W. McLaughlin performed a diversion analysis of the TCW/MPL/CPR Grain Traffic to Chicago and beyond. He examined corn to Chicago, corn to Chicago destined for stations east of Chicago, soybeans to Chicago, soybeans to Chicago destined for stations east of Chicago, and wheat to Chicago destined for stations east of Chicago. See Exhibit C, Verified Statement of John W. McLaughlin ("VS McLaughlin"), Attachment 1. For each traffic category, Mr. McLaughlin took each of the TCW/MPL stations that originated one or more of the traffic flows in question in 2007. He then identified the closest

DME/ICE station where a DME/ICE-served grain elevator is located. These competing stations ranged from 17 to 99 miles from the TCW/MPL stations. Mr. McLaughlin removed from his analysis those pairs of stations that are more than 80 miles apart. VS McLaughlin, at 3.

For each pair of competitive stations, Mr. McLaughlin then computed the route miles on CPR of the TCW/MPL/CPR routing from Minneapolis/St. Paul to Chicago and the route miles on a single-line DME/ICE/CPR⁸ routing from the DM&E station to Chicago. He then computed the operating costs for CPR on each route, based on the system average operating costs reported by CPR's U.S. affiliates (Soo Line and D&H) in the AAR 2006 Class I Railroad Analysis.⁹ The AAR data indicate that CPR's system average operating costs are \$1.74 per loaded car-mile.¹⁰ Mr. McLaughlin multiplied those system average costs by the CPR mileage on each competing route to derive CPR's operating costs for these routes. *Id.*, at 4

⁸ Miles on DM&E and/or IC&E were treated as miles on CPR

⁹ This publication generally is released in July for the preceding year. Accordingly, the 2006 data is the most recent data currently available.

¹⁰ Although the costs on the DME/ICE system should initially be somewhat higher than those on the CPR system, once CPR completes its \$300 million capital improvement program on DME/ICE, and DME/ICE operations are fully integrated into CPR's systems, it is likely that the costs on DME/ICE will approximate the costs on the CPR's existing U.S. lines as a whole. TCW/MPL acknowledges that the costs on the subject traffic may differ somewhat from system averages, but the costs on the competing routes for the same class of traffic are unlikely to differ dramatically.

Once the costs for each route were computed, Mr. McLaughlin derived the per carload margin on the CPR portion of the interline moves by TCW/MPL and CPR by deducting the CPR operating costs from CPR's division of revenue on the interline moves from the TCW/MPL originating stations. For comparison purposes, he assumed that the rate at the competing DME/ICE station would be the same as the through rate for the CPR/TCW/MPL move. (In general, per carload grain rates from TCW/MPL stations are now approximately \$225 to \$336 lower than the published rates from the competing DME/ICE stations. VS Glaeser, at 4.) Mr. McLaughlin then computed the operating margins for CPR over the competing CPR/DME/ICE routes by deducting the operating costs from the assumed rate (i.e., the actual rate from the competing TCW/MPL station) VS McLaughlin, at 4-5.

Mr. McLaughlin's analysis demonstrates that, in every case, the CPR operating margins on traffic from DME/ICE origins will be dramatically higher than the operating margins on that same traffic coming off TCW/MPL stations. The differential ranged from \$_____ per carload (on corn traffic to Chicago for points beyond originating at Renville, MN on TCW as compared to corn traffic to Chicago for points beyond originating at Lambert, MN on DM&E), to \$_____ per carload (on soybean traffic to Chicago for points beyond originating at Milan, MN on TCW as compared to soybean traffic to Chicago for

points beyond originating at Tracy, MN on DM&E). The average differential was \$_____. *Id.*, at 5.

The magnitude of the average difference in CPR's operating margins between interline moves with TCW/MPL and single line service from DME/ICE stations, indicates that CPR will have strong incentive to divert TCW/MPL/CPR Grain Traffic to DME/ICE. At identical rates, the DME/ICE traffic will provide 160.3 percent more margin to CPR. Essentially, CPR would earn as much net operating revenue from handling five carloads originating at DME/ICE origins as it would from handling eight carloads originated at TCW/MPL origins. Accordingly, as a result of the proposed transaction, CPR's optimal pricing strategy could be at levels that cause as much as one-third of TCW/MPL's grain traffic to Chicago being driven from the rails¹¹. The incentive for CPR to take pricing action designed to divert TCW/MPL Grain Traffic to DME/ICE stations will be even greater to the extent that rates at DME/ICE stations are higher than the rates at competing TCW/MPL stations. CPR will have the ability unilaterally to cause such diversion because it will have the power both to set the rates from

¹¹ CPR's pricing power will be constrained to some degree by the fact that, if rail rates become excessive, grain will be trucked to local processors (However, it is generally not economical to move grain by truck over distances greater than 200 miles). Moreover, the demand of local processors is finite, and a lack of competition in the Chicago (and beyond) and Canadian markets will cause the processors to pay less. VS Glaeser, at 14

DME/ICE stations and to establish its revenue requirement on interline traffic with TCW/MPL. *Id.*, at 5-6.

In order for CPR to use its pricing power to drive grain from TCW/MPL stations to DME/ICE stations, some farmers and grain elevators will have to truck grain greater distances. The average distance between the competing stations is 47.66 miles. VS Glaeser, Attachment 3. TCW/MPL witness Glaeser states that, subject to a variety of market factors, it generally would take as little as a \$_____ per carload price advantage for corn and soybeans moving to Canada, Chicago or Chicago for beyond, and an approximately \$_____ per carload price advantage for wheat to Chicago for beyond, to cause a farmer located near TCW/MPL to truck grain to DME/ICE stations. Mr. Glaeser states that it would take an approximately \$_____ per carload price advantage to cause an elevator located on TCW/MPL to truck grain to DME/ICE stations. By manipulating the rates on DME/ICE and like revenue requirements on TCW/MPL, CPR will be able to drive Grain Traffic to its affiliated carriers. VS Glaeser, at 13-14.

As Mr. McLaughlin's and Mr. Glaeser's testimony demonstrates, CPR will have considerable incentive to cause the diversion of TCW/MPL Grain Traffic to DME/ICE stations. Single-line service from the competing stations will increase CPR's margins by the following amounts. \$_____ per carload on corn to Chicago; \$_____ per carload on corn to Chicago for points beyond; \$_____ per

carload on soybeans to Chicago for beyond; and \$_____ per carload for wheat to Chicago for beyond

CPR could establish rates on the DME/ICE at the highest level that keeps their current traffic. CPR could then increase its revenue requirement on TCW/CPR Grain Traffic so as to make the interline rates higher than DME/ICE rates by the amount that will cause shippers to truck grain to DME/ICE. Both the shippers and TCW/MPL will be harmed by such pricing control and action.

VI. CPR Control of DME/ICE Will Raise Capacity Constraint Issues that Could Harm TCW/MPL and its Shippers

In September 2007, the Association of American Railroads ("AAR") released a report entitled the "National Rail Freight Infrastructure Capacity and Investment Study" (the "AAR Study") The AAR Study, which was issued prior to the filing by CPR of its Application in this proceeding, indicates that approximately two-thirds of CPR's St. Paul-Chicago main line will be "at capacity" in 2035. AAR Study at A-12-13 (cited pages attached hereto as Exhibit D). The term "at capacity" is defined by the AAR as "[v]ery heavy train flow with very limited capacity to accommodate maintenance and recover from accidents." Moreover, the study designates a short section of the CPR's St. Paul-Chicago main line located in Wisconsin as currently being "at capacity," and projects that the segment will be "above capacity" in 2035 The AAR Study

defined "above capacity" as "[u]nstable flows; service breakdown conditions "

Id

Against this backdrop – and perhaps mindful of the environmental threshold set forth in 49 C.F.R. 1105.7(e)(5) – Applicants claim "only small increases in annual gross ton miles as a result of the proposed transaction. . . ." They estimate an increase of 5,800 carloads of "extended haul" traffic on CPR lines east of Chicago and north of the Twin Cities. Application at 22. To the extent this incremental traffic ends up on CPR's line from the Twin Cities to Chicago or on CPR's line from the Twin Cities to Portal, this traffic will compete for available capacity with TCW/CPR Grain Traffic.

Moreover, Applicants also indicate that they will consolidate certain DM&E traffic from its current routing between Huron, SD and Chicago, into Soo Line trains that operate between the Twin Cities and Chicago. Application at 21. In its market analysis, CPR states that, "DME-served grain shippers will gain single system access to domestic end users in the U.S. Northeast and to Great Lakes export terminals at Duluth/Superior." Exhibit 12, Market Analysis at 4. At the same time, CPR's market analysis touts "the potential for . . . [IC&E] to be a major player in the transportation of ethanol," noting that "[a]ccess to efficient single line service will enhance the competitiveness of DME-served ethanol providers in this growing energy market " *Id*. CPR witness Foot states that the

majority of the new ethanol traffic “will be directed to end users in the Chicago area and points east of DM&E’s service territory.” Application, Volume II, Verified Statement of Ray Foot, at 4. Witness Foot estimates that IC&E could originate “more than 36,000 carload of ethanol annually by the year 2010,” and that, “by 2010, approximately 3,000 carloads of ethanol originating on DM&E are likely to move in extended hauls on CPR’s lines to points not served by DM&E today”. *Id.* at 4-5.

As the foregoing illustrates, despite the fact that CPR downplays the effect that the proposed transaction would have on the gross ton-miles handled on its system, it is in fact quite bullish about extending DME/ICE grain hauls to Chicago, extending grain hauls into Canada, and adding significant volumes of ethanol to Chicago and beyond. In order to take advantage of long hauls, a good bit of that traffic, by CPR’s own description, will end up on CPR’s lines between the Twin Cities and Chicago and between Chicago and Canada. These are the very lines that TCW/MPL/CPR Grain Traffic moves over today

When push comes to shove, CPR will favor its high margin, long haul grain traffic over grain traffic that CPR moves on an interline basis with TCW/MPL. The CPR main line between the Twin Cities and Chicago is already subject to choke points that raise capacity concerns. If ethanol traffic grows as planned, capacity constraint will loom large in marketing decisions and car

allocation CPR undoubtedly will act in its own interests and price interline traffic originating on TCW/MPL in a manner that will make capacity available for the highest contribution traffic it can haul

VII. Conclusion

As the foregoing indicates, the proposed transaction, if approved by the Board without the conditions requested in those Comments, will enhance CPR's market power by enabling it, in essence, to compete against itself for grain traffic in the southern Minnesota markets served by TCW/MPL and DME/ICE. This market power, if unchecked, likely will result in higher prices and reduced service for farmers and grain elevators in that region. In addition, as traffic volume from increased DME/ICE originations of grain, ethanol and other commodities, and perhaps from Powder River Basin coal, consumes scarce capacity on CPR's lines, traffic handled by TCW/MPL on an interline basis with CPR will be vulnerable to de-marketing.

The conditions requested by TCW/MPL herein would protect those carriers and the shippers they serve from competitive harm caused by the proposed transactions. None of the conditions requested by TCW/MPL would significantly affect the benefits Applicants expect to receive as a result of the proposed transaction. Accordingly, TCW/MPL urges that the Board to condition

any approval of this transaction on the imposition of the conditions described in these Comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark H. Sidman', written over a horizontal line.

Mark H. Sidman
Rose-Michele Nardi
Weiner Brodsky Sidman Kider PC
1300 Nineteenth Street, NW
Fifth Floor
Washington, DC 20036
(202) 628-2000

Attorney for
Twin Cities & Western Railroad Company and
Minnesota Prairie Line, Inc.

Dated March 4, 2008

REDACTED VERSION

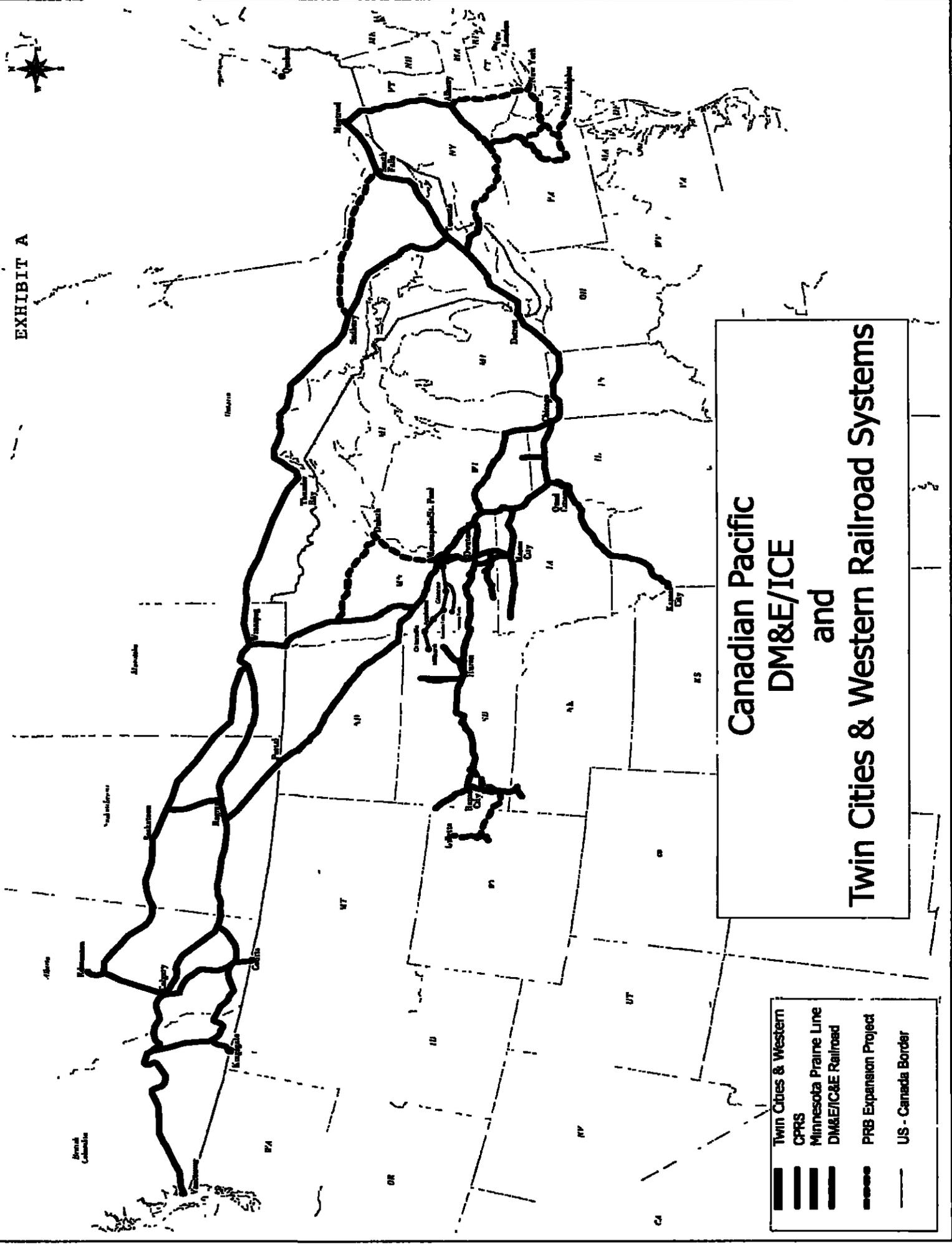
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35081

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

**EXHIBIT A
Map**

EXHIBIT A



Canadian Pacific
DM&E/ICE
and
Twin Cities & Western Railroad Systems

- Twin Cities & Western
- CPRS
- Minnesota Prairie Line
- DM&E/ICE Railroad
- PRB Expansion Project
- US - Canada Border

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35081

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

VERIFIED STATEMENT OF CRAIG GLAESER

My name is Craig Glaeser I am Director, Marketing and Sales of Twin Cities & Western Railroad Company ("TCW"). I hold that same position for Minnesota Prairie Line, Inc ("MPL"). My business address is 2925 12th Street East, Glencoe, MN 55336.

As Director, Marketing and Sales for TCW and MPL, I am responsible for pricing and marketing rail transportation services for those companies I began my career with TCW in 1992, as Assistant Accounting Manger. I subsequently was promoted to Manager, Revenue Accounting. In 2002, I became Director, Marketing & Sales.

I have primary responsibility for the marketing of grain and ethanol As part of my efforts to market interline traffic, I work closely with the marketing

departments of the seven railroads with which TCW and MPL interchange traffic Canadian Pacific Railway Company ("CPR"); BNSF Railway Company ("BNSF"), Canadian National Railway Company ("CN"); Union Pacific Railroad ("UP"); Minnesota Commercial Railway ("MCR"); Iowa, Chicago & Eastern Railroad ("ICE"); and Sisseton-Milbank Railroad ("SMRR").

TCW's most important connection for interline traffic is CPR. In marketing traffic on an interline basis, neither TCW/MPL nor CPR has authorized the other party to establish a rate for the entire CPR/TCW/MPL route. Rather, the parties negotiate a joint rate for traffic moving over this route, or the rate is calculated by totaling the local rate that each party to the move establishes. Accordingly, CPR may freely establish a local rate at any level. If CPR's local rate renders the total rate for the CPR/TCW/MPL move noncompetitive, the traffic in question is subject to diversion to other carriers or trucks.

As set forth on Attachment 1 hereto, over the past five years (2003-2007) (the "Traffic Period"), TCW and MPL have handled an average of _____ revenue carloads per year. More than 30 percent of this traffic – an average of _____ carloads per year – consists of corn, soybean, wheat and barley traffic ("Grain Traffic") that TCW/MPL interchanges with CPR (the "TCW/CPR Grain Traffic"). This traffic base is critical to TCW's ongoing ability to provide competitive service to the shippers it serves.

TCW/MPL's Grain Traffic falls into four basic categories: traffic to Chicago/beyond Chicago ("Chicago Grain"); traffic to Canada ("Canada Grain"); traffic to local mills in the Twin Cities ("Local Grain"); and traffic to river terminals ("River Terminal Grain"). Virtually all of the Chicago Grain and Canada Grain is handled by TCW/MPL on an interline basis with CPR. The Local Grain moves mostly to mills in the Twin Cities terminal. That traffic is handled by TCW/MPL direct to the customer or is interchanged to MCR for delivery. TCW/MPL handles River Terminal Grain to river terminals at Savage, MN and Camden, MN. Currently, Camden is not receiving grain by rail or truck.

Grain Traffic is highly sensitive to price and it moves where the market is from time to time. Thus, the relative volumes of each of the aforementioned categories of Grain Traffic change somewhat from year to year. During the Traffic Period, Chicago Grain and Canada Grain handled by TCW/MPL on an interline basis with CPR have constituted from 24 percent of TCW/MPL's total traffic (2004) to 33 percent of TCW/MPL's total traffic (2006). On average, the Chicago Grain and Canada Grain have been almost 28 percent of our traffic base. For the years 2003 through 2007, more than 16% of the TCW/MPL traffic was Grain Traffic that moved to Chicago mills or processors, or to mills and processors east of Chicago.

As described in the Verified Statement of John McLaughlin, if CPR were to control DME/ICE, virtually all of the TCW/CPR Grain Traffic would be at risk. Through a combination of increasing its revenue requirements for Grain Traffic handled in conjunction with TCW, and lowering its rates at DME/ICE stations, CPR could cause up to approximately _____ carloads per year TCW/CPR Grain Traffic handled to Canada and Chicago/ beyond to be diverted to single line service from stations on DME/ICE and/or lost to truck (where trucking offers a viable alternative). (Rates for Grain Traffic from TCW/MPL stations to Chicago (or beyond) currently have a carload rate that is approximately \$225 to \$336 less than competing DME/ICE stations.) In addition, as the volume of DME/ICE Grain Traffic grows, the CPR/TCW/MPL Grain Traffic to Canada and to Chicago will be susceptible to demarketing as CPR takes steps to favor long-haul traffic originated on its system.

CPR witness Williams provides two bases for his conclusion that the proposed transaction would not adversely affect TCW. *First*, he states that none of the origins or destinations served by TCW can be served directly by CPR or DME/ICE. V.S. Williams at 27. *Second*, he indicates that the availability of alternative interchanges will provide TCW with adequate competitive options.

Witness Williams is wrong on both points. The harm to TCW from CPR control of DM&E and ICE will result from CPR's use of pricing power to (i) cause

farmers and grain elevators to truck grain to stations on DME/ICE rather than stations on TCW/MPL, and (11) demarket TCW originated traffic in times of strained capacity. Neither of these potential losses of traffic depends on CPR or DME/ICE having physical access to TCW stations.

The fact that TCW has interchanges with BNSF, CN and UP will do little or nothing to protect TCW from the potential loss of CPR Grain Traffic because TCW and MPL are direct competitors with DM&E for grain originations. As shown on Attachment 2 hereto, none of those carriers provides TCW with viable competitive alternatives for this traffic. From 2003 through 2007, TCW handled just ____ carloads of grain traffic – less than 30 per year – on an interline basis with BNSF. This primarily reflects the fact that BNSF markets grain to the Pacific Northwest and favor shuttle facilities located on its lines in its pricing structure. It simply is not interested in moving grain to the Chicago and Chicago for beyond market, especially on an interline basis. Although BNSF has rates with some short line carriers, such as the DM&E, for traffic heading west, BNSF does not make rates with TCW because BNSF sees TCW as competing for grain traffic with BNSF's shuttle facilities at Holloway, MN, Clara City, MN, Hanley Falls, MN and Milbank, SD.

BNSF's current corn and soybean rates from the Twin Cities to Chicago and Chicago for beyond reflect BNSF's lack of interest in competing for grain

traffic moved by TCW/MPL. BNSF's current rate for corn to Chicago (for beyond) from Maynard, MN is \$2,888 per carload. Despite the fact that the route mileage of the move by BNSF and the move by TCW/CPR are comparable, the BNSF rate of \$2,888 is more than double the TCW/CPR joint rate of \$1,315 per carload for corn from Renville, MN (and stations east of Renville on TCW) to Chicago (for beyond). The BNSF's current per carload soybean rate from that same station (Clara City, MN) to Chicago (for beyond) is \$2,950, whereas the MPL/CPR rate of \$1,458 per carload for soybeans from Fairfax, MN (and stations east of Fairfax) to Chicago (for beyond). The BNSF rates make clear that BNSF has no interest in moving Grain Traffic east to Chicago or beyond

The pricing situation is the same for wheat. The BNSF rate from Holloway, MN to Chicago (for beyond) is \$2,037 per carload, while the TCW/CPR rate from Appleton, MN (for beyond) to Chicago is \$1,504 per carload. The BNSF rates described above for corn, soybeans and wheat are representative of BNSF's grain rates for eastbound traffic from the Twin Cities, and involve comparable mileages as the TCW/MPL/CPR routes

To the extent that TCW occasionally handles Grain Traffic with BNSF, it involves small numbers of cars serving the spot market (i.e., when receivers in the Pacific Northwest cannot obtain adequate supplies of grain from BNSF or other origins in the west). In fact, of the ___ carloads of Grain Traffic that TCW

handled with BNSF over the past five years, ____ of those carloads were the result of a one-time sublease of TCW cars to BNSF in 2004. BNSF agreed to take the subleased cars loaded, and this transaction accounts for all but ____ carloads of Grain Traffic handled by TCW and BNSF from 2004 through 2007.

Similarly, TCW handles virtually no Grain Traffic with UP. UP has little, if any, interest in TCW/MPL's movement of Grain Traffic east to Chicago or in interchanging with TCW/MPL for Grain Traffic moving west. During the Traffic Period, TCW/MPL moved just 184 carloads of Grain Traffic with UP (with no traffic at all in 2007). UP, like BNSF, is a western carrier that wants to move grain to the west coast from its own origins in the Plains. UP's rates to Chicago (for beyond) confirm that it has no interest in that market. UP's current per carload rate for corn and soybeans from Minneapolis to Chicago (for beyond) is \$2,698. This is in stark contrast to TCW/CPR's rate for soybeans to Chicago (for beyond) from Renville, MN (and stations east of Renville) of \$1,431 per carload, and to MPL/CPR's rate for corn to Chicago (for beyond) from Fairfax, MN (and stations east of Fairfax) of \$1,343 per carload. These rates are representative of UP's current rates for corn and soybeans from the Twin Cities to Chicago.

UP's wheat rate from St. Paul, MN to Chicago, IL for beyond is \$1,447 per car load, while the TCW/CPR rate from Appleton, MN to Chicago, IL for beyond is \$1,504 per car load. Although these rates are comparable, the UP rate does not

include a division for a connecting carrier. In light of the fact that TCW's division on wheat moves with CPR to Chicago (for beyond) from Appleton, MN is currently \$___, it is unlikely that UP and TCW could negotiate competitive wheat rates.

UP's Grain Traffic rates to Chicago and beyond, like BNSF's, are almost double TCW/MPL's interline rates with CPR and involve comparable or shorter routes than the TCW/MPL/CPR routes. It is unlikely that TCW/MPL will handle significantly higher volumes of Grain Traffic with UP in the foreseeable future

This underscores the fact that UP is not a competitive alternative for grain traffic originated on TCW/MPL.

It is approximately 75 miles from the point of interchange between UP and TCW, and Mankato, MN, the location of UP's closest grain gathering station. This distance means it is unlikely UP will be able to provide rates from TCW/MPL stations that are comparable to the UP rates at Mankato. The overwhelming likelihood is that any future Grain Traffic that TCW/MPL interchanges with UP will be modest volumes resulting from spot market transactions

Likewise, CN does not provide a meaningful outlet for TCW/MPL Grain Traffic to Chicago and beyond. TCW connects with CN, via MCR, at New Brighton, MN. No TCW/MPL Grain Traffic moved on an interline basis with CN to Chicago or beyond during the Traffic Period. The Grain Traffic TCW has moved with CN from 2003 through 2007 — an average of ___ carloads per year (approximately 2 percent of TCW/MPL's carloadings during the Traffic Period) — has gone primarily to two ethanol plants located in Wisconsin. Those plants source corn first in the local truck market and then from rail stations in Wisconsin that are served by CN. To the extent that Wisconsin corn crop cannot fill the demand, TCW has been able to market grain with CN to the Wisconsin plants. If additional ethanol plants are constructed in Wisconsin or if, from time-to-time, the local corn crop in Wisconsin does not satisfy the current plants' demand, the volume of TCW/MPL Grain Traffic interchanged with CN likely will grow modestly. However, this traffic is unlikely to increase significantly because ethanol plants located in Wisconsin — approximately 60 to 160 miles from the Twin Cities — will always favor local corn over corn from TCW origins, which will be more expensive due to greater transportation costs. Therefore, the Wisconsin market for Grain Traffic is unlikely to replace, to any significant degree, the volume of Grain Traffic TCW/MPL currently interchanges with CPR.

The CN route with TCW from the Twin Cities to Chicago would require CN to move, via trackage rights, over CPR. Similarly, the CN route with TCW from the Twin Cities to Canada would require CN to utilize trackage rights over CPR. As a practical matter, TCW/MPL cannot move Grain Traffic on an interline basis with CN from the Twin Cities to Chicago or west of Ontario because CN's trackage rights over CPR to Chicago and to Duluth/Superior are restricted. Traffic moving to Chicago is limited to destinations on the former Wisconsin Central Ltd ("WCL"). CN cannot use its trackage rights for traffic to points in Ontario east of Sudbury or to provinces other than Ontario. During the Traffic Period, TCW/MPL did not ship any Grain Traffic to WCL locations in Chicago or to Ontario west of Sudbury on an interline basis with CN.

The balance of TCW's Grain Traffic is the Local Grain Traffic and River Terminal Grain traffic, which together accounted for an annual average of 1,337 carloads during the Traffic Period. The Local Grain Traffic, alone, averaged only ____ carloads annually during the Traffic Period. TCW/MPL have aggressively marketed Local Grain Traffic because the short length of the move yields very high equipment utilization. Despite these marketing efforts, the volume of Local Grain Traffic is unlikely to increase significantly because those mills have limited capacity and are served by multiple carriers (either directly or via MCR). Grain has not moved through the river terminals in any significant volumes over

the past four years because of high rates for barge freight in the Twin Cities and the fact that ocean freight rates out of the Gulf of Mexico are relatively more expensive than ocean rates out of the Pacific Northwest. (Accordingly, the average ____ carload number referenced above is inflated, because it includes ____ carloads of River Terminal Grain Traffic in 2003.) Although River Terminal Grain traffic likely will become active at some time in the future, it is difficult to predict when and to what extent that will happen.

Accordingly, neither MCR nor SMR offers a competitive alternative for TCW/MPL Grain Traffic currently interchanged with CPR. During the Traffic Period, approximately, ____ carloads annually of Grain Traffic were moved by TCW/MPL to mill locations on MCR in the Twin Cities terminal. All together, these mills provide only a limited source of demand for railroad transportation of grain. In addition, several competing railroads have access to these mills.

SMR is a small short line railroad with only four elevators on its line. During the Traffic Period, TCW interchanged approximately ____ carloads of wheat and barley annually from SMR to the Twin Cities terminal, the TCW-served river mills and/ or to Chicago with CPR. The volume of this traffic is not likely to grow to any significant degree in the future, especially since SMR competes with nearby BNSF shuttle facilities for grain originations, and those

BNSF facilities are able to offer better rates, as well as the fact that local ethanol plants are increasingly consuming SMR corn.

Grain Traffic is extremely price sensitive. Farmers will decide which grain elevators or processors to deliver their crop to based on price. In my experience, a price differential as low as one cent per bushel will generally be enough incentive for a farmer to truck his grain an additional 15 miles. The greater the price differential, the further the farmer is willing to transport his crop. Rail rates are a significant component of the price that is offered for grain. In my experience, farmers generally will truck grain up to approximately 80 miles in order to obtain higher prices.

Similarly, grain elevators (or the grain marketing firms that are selling the grain stored in particular elevators) located on one rail line will truck grain to a loading facility located on another rail line if the price differential is large enough. In my experience, a price differential of 7 to 10 cents per bushel is generally enough incentive for an elevator or grain marketer to truck grain up to approximately 80 miles to another rail line. Based on a typical rail car capacity of 3500 bushels, a 7-cent differential is worth approximately \$245 per rail car. Here too, the greater the price differential the further the elevator or marketer is willing to transport the grain.

TCW/MPL serves grain elevators are located in close proximity to DME/ICE elevators. For example, the elevator at Fairfax, MN on MPL is approximately 17 miles from the DME-served elevator at Sleepy Eye, MN. Similarly, the MPL-served elevator at Redwood Falls, MN is just 23 miles from the DM&E-served elevator at Sanborn, MN. Attachment 3 hereto shows the mileages between all TCW/MPL stations that generated grain originations in 2007, and the closest DME/ICE station.

In my judgment, depending on a variety of market factors, for corn and soybeans going to Canada, Chicago or Chicago for beyond, CPR generally could cause a farmer located near TCW/MPL to divert that traffic to DME/ICE stations if the rates on TCW/MPL were as little as \$___ per carload higher than DME/ICE's rates, and a grain elevator on TCW/MPL generally would truck grain to DME/ICE stations for a per carload price advantage of \$___.

Depending on the rate levels and rates spreads, and a variety of market factors, some TCW/MPL corn and soybean traffic also could be lost to truck. However, in general, it is not cost effective to truck grain more than 200 miles. Accordingly, motor carriers are not an effective source of competition for grain moves from the Twin Cities to Chicago or from the Twin Cities to Canada. Most traffic diverted from TCW/MPL to truck would move to local processors. The diversion to DME/ICE or to truck as a result of the elimination of competitive

interline rates from CPR/TCW/MPL, is likely to be detrimental to local farmers and grain elevators. This is the case because there is a finite demand at local processors and those processors will pay less if they do not have the competition from the Chicago (and beyond) and Canadian markets.

For wheat to Chicago (for beyond), depending on a variety of market factors, CPR could divert much of that traffic from farmers or grain elevators by establishing a rate differential of approximately \$____. Depending on rate levels and spreads, and a variety of market factors, some TCW/MPL wheat traffic also could be lost to truck.

If CPR pricing actions caused all or some of the ____ annual carloads of Grain Traffic TCW/MPL currently interchanges with CPR to be diverted to the CPR/DME/ICE route, it is extremely unlikely that those losses would be replaced by business with BNSF, CN or UP, or by business in the local market. Any Chicago and beyond traffic diverted to DME stations would be irretrievably lost because there is no interline carrier that would take CPR's place. If CPR took pricing actions to de-market TCW/MPL Grain Traffic to Canada, it is unlikely TCW could market that traffic over BNSF or UP because those carriers source westbound traffic from their own origins and have little interest in interline moves with TCW.

The crucial point is that, if CPR can price both TCW/MPL grain originations and DME/ICE grain originations, competition will be reduced, CPR will be in a position to maximize its margins, and TCW/MPL and its customers (and potentially customers moving traffic on the CPR/DME/ICE route) are likely to suffer adverse effects

VERIFICATION

I, Craig Glaeser, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement


Craig Glaeser

Dated: March 4, 2008

	2007	2006	2005	2004	2003
Total carloads					
Total TCW/CPR Grain					
TCW/CPR Grain as % of Total Carloads	26%	37%	30%	29%	33%
Chicago Grain					
Canada Grain					
Local Grain					
River Terminal Grain					
Total TCW/CPR Ethanol					

NON-CP GRAIN TRAFFIC

<u>2007 (v. CP carloads)</u>		<u>Carloads</u>
BNSF	N/A	
UP	N/A	
CN	Corn to Boyceville, WI (ethanol plant) Corn to Stanley, WI (ethanol plant)	
Local	Corn/soybean to Savage, MN Corn- Buffalo Lake to Winthrop Wheat to TC Mills/Savage	
	Total carloads	

<u>2006 (v. CP carloads)</u>		<u>Carloads</u>
BNSF	Corn to Oregon/Washington over Appleton	
UP	Wheat to WI	
CN	Corn to Boyceville, WI (ethanol plant) Corn to Stanley/Wheeler, WI (ethanol plant)	
Local	Corn/soybeans to Savage/St Paul, MN Wheat to Savage/St Paul	
	Total carloads	

<u>2005 (v. CP carloads)</u>		<u>Carloads</u>
BNSF	Corn/soybeans to Washington over Appleton	
UP	Wheat to Mankato, MN Soybeans to Mankato, MN Wheat to New Prague, MN	
CN	Corn to Stanley, WI	
Local	Corn/soybeans to Savage, MN Wheat to TC mills on MCR	
	Total carloads	

<u>2004 (v. CP carloads)</u>		<u>Carloads</u>
BNSF	Corn/soybeans to PNW	
UP	Soybeans to Mankato, MN	
CN	corn to Stanley and Marshfield, WI (ethanol plants and feed mill)	
Local	Corn/soybeans to Savage, MN Wheat to Twin Cities Wheat to Savage, MN Barley to Twin Cities	
	Total carloads	

<u>2003 (v. CP carloads)</u>		<u>Carloads</u>
BNSF	N/A	
UP	Soybeans to Island Park, IA	
CN	N/A	
Local	Corn/soybeans to Savage/Camden MN Wheat to Savage, MN Barley to Twin Cities	
	Total carloads	

ATTACHMENT 3
V.S. Glaeser

<u>TCW/MPL</u>	<u>DME/ICE</u>	<u>Mileage Distance between TCW/MPL and DME/ICE Stations</u>
Appleton, MN	Tracy, MN	82
Bird Island, MN	Sleepy Eye, MN	41
Buffalo Lake, MN	New Ulm, MN	41
Danube, MN	Springfield, MN	46
Delhi, MN	Springfield, MN	38
Fairfax, MN	Sleepy Eye, MN	17
Hector, MN	Sleepy Eye, MN	31
Milan, MN	Tracy, MN	73
Milbank, SD	Brookings, SD	99
Montevideo, MN	Walnut Grove, MN	59
Olivia, MN	Springfield, MN	44
Redwood Falls, MN	Sanborn, MN	23
Renville, MN	Lamberton, MN	42
Sacred Heart, MN	Lamberton, MN	42
Stewart, MN	New Ulm, MN	37

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35081

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

VERIFIED STATEMENT OF JOHN W. MCLAUGHLIN

My name is John W. McLaughlin. I am Director, Market and Network Solutions for R L Banks & Associates, Inc. ("RBA"). My business address is 9 Navajo Road, Hi-Nella, NJ 08083.

As Director, Market and Network Solutions, I am responsible for analyzing and developing solutions in the areas of railroad operations, and customer usage of railroad and other logistics services. I began my 18-year career with Conrail in 1979 as an Operations Improvement Analyst. I subsequently was promoted within the Transportation Department to Supervisor – Train Movement where I coordinated region-wide train operations with system headquarters and division supervisors, and to Senior Operations Improvement Analyst where I was lead analyst on a wide variety of service design, cost

analysis, and field support projects. I applied my operations background to lead 24/7 service management of key accounts in Conrail's Intermodal Service Group, and then played a key marketing role in Conrail's penetration of the truckload motor carrier line of business.

During my ten years as Director of Market Research at Jevic Transportation, Inc , a \$300 million hybrid LTL motor carrier, I organized and led strategic, revenue development and sales support initiatives like market potential studies, new product roll-outs, and web content development.

In September 2007, I joined R L Banks & Associates, Inc , where I have evaluated intermodal terminal operations and railroad network operations

I have been asked by Twin Cities & Western Railroad ("TCW") and Minnesota Prairie Line, Inc ("MPL") to analyze the extent to which corn, soybean and wheat traffic ("Grain Traffic") handled on an interline basis by TCW/MPL and Canadian Pacific Railway Company ("CPR") to and beyond Chicago ("Chicago Grain Traffic") would be subject to diversion if CPR controlled Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Iowa, Chicago & Eastern Railroad ("IC&E"), as proposed by CPR in its application in Surface Transportation Board Finance Docket No. 35081.

According to TCW/MPL witness Glaeser, in the years from 2003 through 2007 (the "Traffic Period"), more than 16% percent of TCW/MPL's traffic was

Grain Traffic to mills and processors in Chicago or mills and processors located east of Chicago (the "Chicago Traffic"). The Chicago Traffic originates at stations on TCW/MPL that are in close geographic proximity to competing stations of DME/ICE. For purposes of this analysis, I examined corn to Chicago, corn to Chicago destined to stations east of Chicago, soybeans to Chicago, soybeans to stations east of Chicago, and wheat to stations beyond Chicago.

With respect to each traffic category, I identified each of the TCW/MPL stations that originated one or more of the subject traffic categories in question in 2007. In connection with each such TCW/MPL station, I then identified the closest DME/ICE station where a grain elevator is served by that competing rail carrier. As set forth in Attachment 1 hereto, the distance to competing DME/ICE stations ranged from 17 miles (the distance from Sleepy Eye, MN on DM&E to Fairfax, MN on TCW) to 99 miles (the distance from Brookings, SD on the DM&E to Milbank, SD, which is reached by TCW via trackage rights) Based on TCW/MPL witness Glaeser's observations regarding the distances that farmers and grain elevators typically will truck grain, I concluded that there would be no diversion of TCW/MPL grain traffic from stations that are more than 80 miles from the nearest competing DME/ICE stations.

For each pair of competitive stations, I then computed the route miles on CPR of the TCW/MPL/CPR routing to Chicago and the route miles on CPR of a

DME/ICE/CPR¹ routing to Chicago. For purposes of my analysis, I assumed that the distance on CPR from Minneapolis/St. Paul to Chicago is 346 miles.²

Next, I computed the operating costs for CPR on each route, based on the system average costs shown for CPR's U S affiliates (Soo Line and D&H) in the AAR 2006 Class I Railroad Analysis.³ The AAR data indicate that CPR's system average operating costs per loaded car-mile are \$1.74. By multiplying those system average costs by the applicable mileage, I was able to compute the operating costs that CPR would incur on each traffic flow.

With respect to the current TCW/MPL/CPR through route originating from TCW/MPL stations, I deducted CPR operating costs from CPR's division of this through rate. The difference is CPR's operating margin per car on that flow of interline traffic. For comparison purposes, I assumed that the CPR single-line rate at the DME/ICE station would be the same as the TCW/MPL/CPR through rate. (According to CTW/MPL witness Glaeser, grain rates from TCW/MPL stations to Chicago for destinations east of Chicago are now, in general, approximately \$_____ to \$_____ per carload lower than the rates from competing DME/ICE stations.) I then computed the operating margins for CPR over the

¹ Miles on DM&E and/or IC&E were treated as miles on CPR

² 1988 Rand McNally Handy Railroad Atlas

³ This publication generally is released in July for the preceding year. Accordingly, the edition based on traffic handled in 2006 is the most recent edition available

competing single-line route from the competing DME/ICE station by deducting the operating costs from the assumed CPR/DME/ICE rate.

My analysis demonstrates that, in every case, CPR's operating margin on traffic from DME/ICE origins will be substantially higher than the operating margins on that same traffic originating at competing TCW/MPL stations. The differential ranged from \$_____ per carload on corn traffic to Chicago and points beyond originating at Renville, MN on TCW as compared to corn traffic to Chicago and points beyond originating at Lambertson, MN on DM&E, to \$_____ per carload on soybean traffic to Chicago and points beyond originating at Milan, MN on TCW as compared to soybean traffic to Chicago and points beyond originating at Tracy, MN on DM&E. The average differential was \$_____ (excluding carloads originated at Milbank, SD and Appleton, MN, which were not considered in my conclusion, because the competitive stations on DME/ICE are more than 80 miles away). On average, the DME/ICE originations provided 160.3 percent more margin to CPR than the respective competing interline move with TCW/MPL.

The magnitude of the difference in CPR's operating margins between interline moves with TCW/MPL and single line service from DME/ICE stations – an average of \$_____ per carload – indicates that CPR will have every economic

incentive to divert Chicago Traffic to DME/ICE. Moreover, to the extent that a DME/ICE rate is higher than the TCW/MPL rate at a competitive station, the margins would be increased by the rate differential, giving CP even greater incentive to take steps to divert the traffic. If the proposed transaction were approved, CPR would have the unilateral ability to cause such diversion because it will have the power both to set the rates from DME/ICE stations and to establish its revenue requirement on interline traffic with TCW/MPL.

VERIFICATION

I, John W. McLaughlin, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.


John W. McLaughlin

Dated: March 4, 2008

**Margin-based Diversion Analysis for TCW / MPL
Summary of Key Data
R. L. Banks & Associates, Inc.**

REDACTED VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35081

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

**EXHIBIT D
AAR Study**

National Rail Freight Infrastructure Capacity and Investment Study

final
report

prepared for

Association of American Railroads

prepared by

Cambridge Systematics, Inc.

Table A.5 Volume-to-Capacity Ratios and Level of Service (LOS) Grades

LOS Grade	Description	Volume/Capacity Ratio
A	Below Capacity	Low to moderate train flows with capacity to accommodate maintenance and recover from incidents
B		0.2 to 0.4
C		0.4 to 0.7
D	Near Capacity	Heavy train flow with moderate capacity to accommodate maintenance and recover from incidents
E	At Capacity	Very heavy train flow with very limited capacity to accommodate maintenance and recover from incidents
F	Above Capacity	Unstable flows, service breakdown conditions

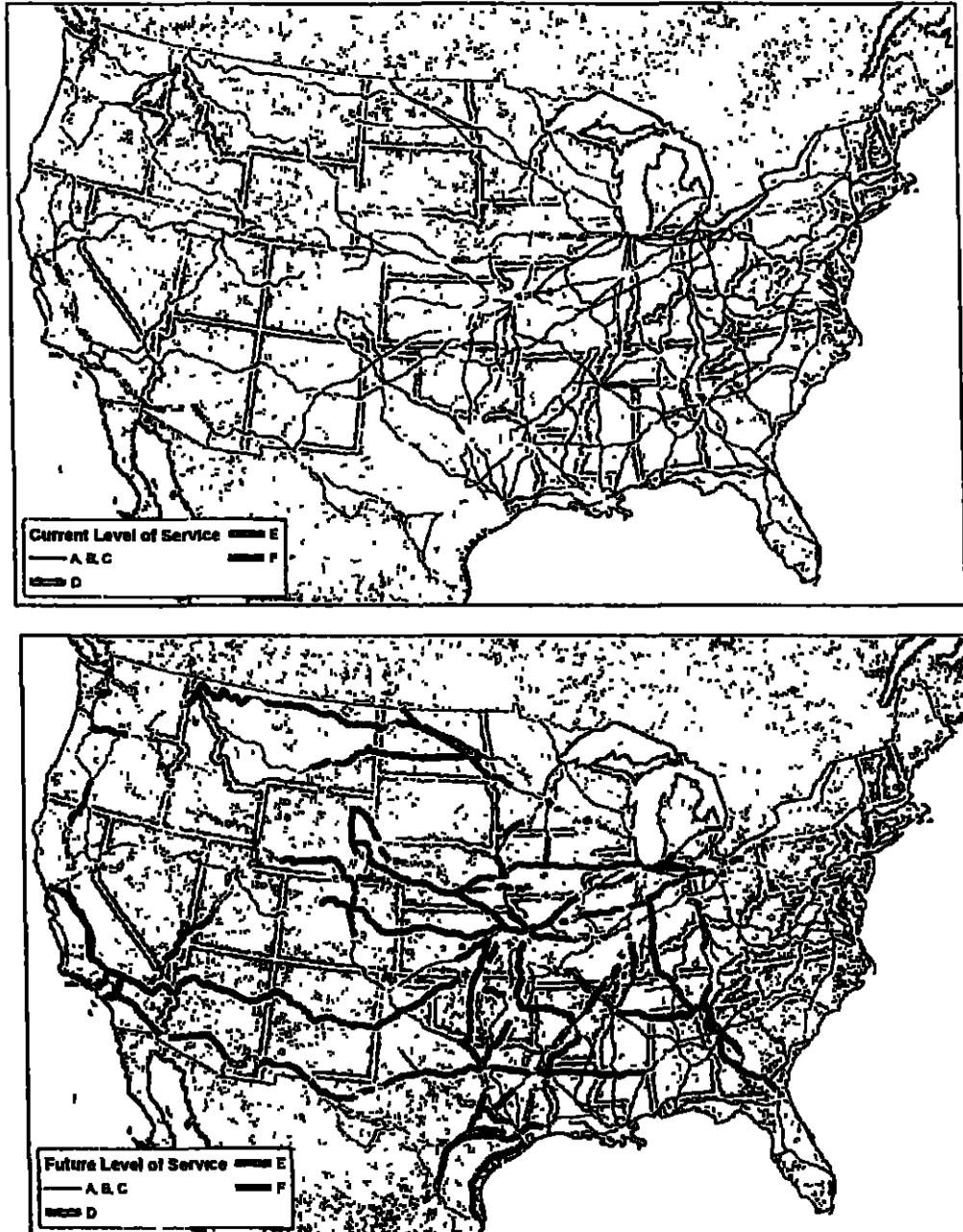
Source Cambridge Systematics, Inc

Rail corridors operating at LOS A, B or C are operating below capacity, they carry light to moderate train flows with sufficient unused capacity to accommodate maintenance work and recover quickly from incidents such as weather delays, equipment failures, and minor accidents. Corridors operating at LOS D are operating near capacity, they carry heavy train flows with moderate capacity to accommodate maintenance and recover from incidents. Corridors operating at LOS E are operating at capacity, they carry very heavy train flows and have very limited capacity to accommodate maintenance and recover from incidents without substantial service delays. Corridors operating at LOS F are operating above capacity, train flows are unstable, and congestion and service delays are persistent and substantial. The LOS grades and descriptions correspond generally to the LOS grades used in highway system capacity and investment requirements studies.

Maps of the volume-to-capacity ratios, expressed as LOS classes, for the primary rail corridors are shown in Figure A.2. Rail corridors operating under capacity (at LOS A, B, or C) have been mapped in green, corridors operating near capacity (LOS D) have been mapped in yellow, rail corridors operating at capacity (LOS E) have been mapped in orange, and rail corridors operating over capacity (LOS F) have been mapped in red. Current volumes are those reported in the 2005 STB Waybill Sample (factored for empties and using an 85th percentile day). These volumes do not reflect fully recent trends, such as the increase in coal shipments moving from the Powder River Basin in Wyoming and Montana to Eastern utilities, nor the recent increase in intermodal containers delivered to East Coast marine ports and transferred to rail for inland delivery. Current capacity is the capacity as of 2007, and does not represent planned expansion.

National Rail Freight Infrastructure Capacity and Investment Study
Appendix A

Figure A.2 2005 and 2035 Train Volumes Compared to Current Train Capacity



Source Cambridge Systematics, Inc

Rail capacity line expansion improvements were estimated by identifying the upgrades to current capacity needed to accommodate future train volumes. To avoid double-counting improvements that are currently programmed or