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The Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, D C 20423

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

Dear Secretary Quinlan

We write on behalf of Applicant Canadian Pacific Railway Company ("CPR"), in response to a letter from counsel for the Kansas City Southern Railway Company ("KCSR") to the Board, which was served on CPR counsel today (April 8, 2008) See William Mullins Letter to Acting Secretary Anne Quinlan (dated April 7, 2008) ("KCSR Letter") KCSR's letter obscures two basic facts (i) Applicants have fully responded to the Board's recent Decision granting portions of KCSR's motion to compel, and (ii) responses to KCSR's belated supplemental discovery requests are not due until April 17, 2008 This response clarifies the record and shows that there is no basis to allow KCSR yet another chance to supplement its comments

KCSR's letter concerns three categories of discovery requests Applicants have fully responded to two of those requests, and response to the third is not due until April 17, 2008 at the earliest In response to the Board's March 27 order, Applicants promptly searched for and produced responsive information See Decision No 8, STB Dkt No. 35081 (March 27, 2008) As KCSR acknowledges, CPR supplemented its discovery responses as directed by the Board on April 1, 2008 See KCSR Letter at 1 Because DM&E had no additional documents covered by the Decision, it did not produce any further documents In response to an email inquiry from KCSR counsel, DM&E counsel confirmed that DM&E did not have documents responsive to KCS' Document Request to DM&E Nos 5(c) and (d) that were prepared in connection with this transaction See Email from W Sippel to W Mullins (April 3, 2008) (referencing Decision No

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8's directive that DM&E produce any such documents)¹, KCSR Letter at 1 (acknowledging this confirmation)

Applicants thus fully complied with the Board's Decision by promptly providing responsive information in their possession by April 1, 2008. The fact that "there is nothing more KCSR can currently say to supplement the record" based on Applicants' timely additional production demonstrates only that there is nothing more for it to say – it provides no basis for granting KCSR a further opportunity to supplement its comments. Cf KCSR Letter at 1

The remainder of KCSR's letter is devoted to information it requested in a supplemental set of discovery requests served on April 2, 2008. See KCSR Letter at 2-3 (describing its request for DM&E interline agreements and service and operational agreements between CPR and Union Pacific Railroad). In those requests, KCSR for the first time sought documents and information concerning alleged CP-UP operational and service agreements.² Under the Board's rules, responses to those discovery requests are not due until April 17, 2008. Given that only three working days elapsed between KCSR's service of its supplemental discovery requests and its April 7 letter to the Board, KCSR's concern that it might not receive information to which it is entitled is, at best, premature.

Moreover, KCSR counsel is well aware of Applicants' intention with respect to the categories of documents it mentions in its April 7 letter. On multiple previous occasions, Applicants' counsel had advised KCSR counsel that DME had no agreements with other carriers that were similar to its agreement with KCSR, and that CPR had no "alliance" agreement with UP that is similar to the KCSR-CN Alliance agreement.³ Thus, under the reasoning the Board adopted in Decision No. 8, Applicants are not obliged to produce the type or inter-carrier agreements requested by KCSR in its most recent round of discovery requests. Despite the fact that such documents are not relevant to subjects properly at issue in this proceeding, and the Board's recent Decision confirming that Applicants are not required to produce such documents, counsel for Applicants nonetheless advised KCSR in late March that – largely in response to baseless arguments made in KCSR's comments – Applicants will include documents concerning agreements with other carriers in their Response to Comments in this proceeding, due April 18, 2008.

¹ Contrary to KCSR's suggestion, the fact that DM&E had no responsive documents does not suggest that Applicants are taking "an extremely narrow view" of what is responsive. Rather, this is simply evidence that DM&E has limited resources and, as the seller in this transaction, it had little reason to expend those resources on the type of analyses described in KCSR's Request Nos. 5(c) and (d) in connection with this transaction.

² KCSR provides no argument or support for its speculation that such arrangements might have fallen within an unspecified previous discovery request.

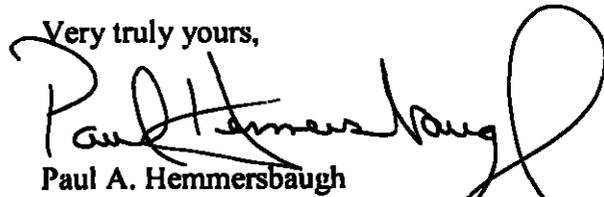
³ KCSR also had ample opportunity to explore its CP-UP "alliance" theory in the depositions it conducted in this proceeding, including its deposition of CP Executive Vice President and Chief Operating Officer Kathryn McQuade.

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On April 2, 2008, after Applicants counsel advised KCSR that they would be providing copies of certain agreements entered by DME or CPR with other carriers, KCSR nonetheless served supplemental discovery requests on both Applicants seeking, *inter alia*, the very documents that CPR had told KCSR it would submit as part of CPR's Response comments and evidence. See KCSR's Second Set of Discovery Requests Directed to Canadian Pacific Railway Company (April 2, 2008), KCSR's Second Set of Discovery Requests Directed to DM&E and IC&E (April 2, 2008). After Applicants file their Response, KCSR will have the full time provided by the Board's procedural schedule (30 days) to analyze that Response and prepare any Rebuttal comments they wish to file on May 19, 2008.

In sum, Applicants complied in a timely manner with Decision No. 8, and they will provide documents responsive to KCSR's April 2 requests on or before April 18, 2008. KCSR is subject to the same procedural schedule and the same discovery rules as every other party to this proceeding. If KCSR genuinely believed it needed more time to review the peripheral (and irrelevant) information it requested on April 2, it should have filed its supplemental discovery requests earlier. There is no basis for KCSR's prospective request for permission to file additional supplemental comments.

Very truly yours,



Paul A. Hemmersbaugh

Counsel to Canadian Pacific Railway Co

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