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June 5, 2008

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

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

Dear Secretary Quinlan:

We write on behalf of Applicants Canadian Pacific Railway Company (“CPRC”); Soo Line Holding Company (“SOO Holding”); Dakota, Minnesota & Eastern Railroad Corporation (“DM&E”); and Iowa, Chicago & Eastern Railroad Corporation (“IC&E”) (collectively, “Applicants”) in response to a letter filed in the above-captioned proceeding on June 4, 2008 by counsel for the Kansas City Southern Railway Company (“KCSR”). See Letter dated June 4, 2008 from William Mullins to Acting Secretary Anne Quinlan (“KCSR Letter”). The KCSR Letter asks the Board to “clarify” whether the agency will accept final briefs in this proceeding. KCSR Letter at 1. KCSR opines that the record is such that (in KCSR’s view) final briefs are not necessary. Applicants disagree.

Applicants do not agree with KCSR that the Board’s prior orders leave any doubt as to whether parties would have the opportunity to submit final briefs in this case. In its Decision served November 26, 2007 (the “November 26 Decision”), the Board invited comments on a proposed procedural schedule which, the Board indicated, “[was] the same as the Applicants’ proposed procedural schedule, except that the record would close with the filing of briefs on July 2, 2008, and that the Board’s proposed procedural schedule would provide for a possible oral argument or public hearing to be held on a date in June 2008 to be determined by the Board.” *November 26 Decision* at 2 (emphasis added). The schedule set forth in the *November 26 Decision* explicitly included the entry “July 2, 2008 . . . [a]ll briefs due.” *Id.* This language indicates that, while the Board was reserving a decision with respect to whether it would hold an oral argument or public hearing, it clearly contemplated that the record would

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close with the filing of briefs on July 2, 2008.¹ The Board's observation that its proposed schedule was essentially "the same as the Applicants' proposed procedural schedule" provides a further indication that the Board did, in fact, intend to afford parties an opportunity to file final briefs, because Applicants' proposed schedule explicitly provided for the filing of briefs. Viewed in the context of the *November 26 Decision*, the Board's statement in the *December 27 Decision* that "final briefs, if any, will be due by July 2, 2008" indicates that the Board's intention was to authorize briefs to be filed on or before July 2, 2008 while leaving the decision whether to file a final brief to the discretion of each party.

Moreover, whether or not the Board chooses to hold an oral argument or public hearing in this case, final briefs will provide an important opportunity for the parties to summarize and highlight key points and to apply the Board's precedents to the evidence of record in this proceeding. Indeed, the final brief will be the only opportunity Applicants have to address the legal significance and credibility of the comments filed by KCSR (and other parties) on May 19, 2008.² The Board – like the ICC before it – has customarily provided for the filing of final briefs in non-minor railroad consolidation cases.³ KCSR offers no persuasive reason for the Board to depart from this longstanding practice.

¹ This interpretation of the *November 26 Decision* is consistent with the remainder of the proposed schedule. That schedule provides for issuance of the Board's final decision on or before September 30, 2008, which is exactly 90 days after the July 2, 2008 due date for briefs. The statute governing Board proceedings in control cases (49 U.S.C. § 11325(c)(3)) requires the Board to issue a final decision within 90 days following the conclusion of evidentiary proceedings. If, as KCSR suggests, the Board intended not to provide an opportunity for parties to submit briefs, the evidentiary proceedings would have effectively concluded with the filing of rebuttal evidence on May 19, 2008, in which case the Board's decision would be due on or about August 19, 2008 (rather than the September 30, 2008 date contemplated by the procedural schedule).

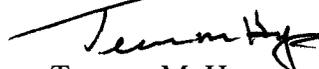
² KCSR's apparent desire to shield its rebuttal submission from any type of response or legal analysis by Applicants is not surprising. As Applicants' brief will demonstrate – without any need for "additional witness statements" (KCSR Letter at 2) – KCSR's rebuttal submission is replete with alleged "facts" that are, at best, highly misleading.

³ The two cases cited by KCSR for the proposition that "recent Board practice" has been "not to allow final briefs unless the Board, after oral argument, deems them necessary" (KCSR Letter at 2) are inapposite. Neither case involved a rail consolidation proceeding under 49 U.S.C. § 11323. Rather, one of the cases involved a supplier complaint against a carrier alleging failure to pay proper compensation for use of flat cars (*see APL v. BNSF Railway Co.*, STB Dkt. No. 42003 (served Nov. 12, 1997)), and the other was an unreasonable practices complaint case (*see Entergy Arkansas et al v. Union Pacific Railroad Company, et al.*, STB Dkt. Nos. 42104m,

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In summary, Applicants do not believe that the Board's prior decisions require clarification with respect to the matter of final briefs. Rather, those decisions provide for the completion of the evidentiary phase of this case with the filing of briefs on or before July 2, 2008. Of course, if KCSR does not perceive a need to submit a final brief in support of its position, it can choose not to do so.

Very truly yours,



Terence M. Hynes
Paul A. Hemmersbaugh
Counsel for Canadian Pacific Railway Company.

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cc: Parties of Record

32187 (served April 15, 2008)). In both cases, the procedural schedule adopted by the Board at the outset made it clear that the Board would decide whether briefs were necessary at a later date.