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THOMAS F. McFARLAND

January 28, 2008

By e-filing

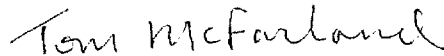
Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Finance Docket No. 35087, *Canadian National Railway Company and Grand Trunk Corporation -- Control -- EJ&E West Company*

Dear Ms. Quinlan:

Hereby transmitted is an Opposition Statement And Request For Conditions in behalf of Aux Sable Liquid Products, LP for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Opponent

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cc: All parties of record

Surface Transportation Board
CN-EJ&E EIS - FD-35087
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BEFORE THE
SURFACE TRANSPORTATION

CANADIAN NATIONAL RAILWAY	)	
COMPANY AND GRAND TRUNK	)	FINANCE DOCKET
CORPORATION – CONTROL – EJ&E	)	NO. 35087
WEST COMPANY	)	

**OPPOSITION STATEMENT AND
REQUEST FOR CONDITIONS**

AUX SABLE LIQUID PRODUCTS, LP
6155 East US Highway 6
Morris, IL 60450

Opponent

THOMAS F. McFARLAND
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Attorney for Opponent

Due Date: January 28, 2008

BEFORE THE
SURFACE TRANSPORTATION

CANADIAN NATIONAL RAILWAY	)	
COMPANY AND GRAND TRUNK	)	FINANCE DOCKET
CORPORATION – CONTROL – EJ&E	)	NO. 35087
WEST COMPANY	)	

**OPPOSITION STATEMENT AND
REQUEST FOR CONDITIONS**

Pursuant to the Board's procedural decision served November 26, 2007, Appendix A, AUX SABLE LIQUID PRODUCTS, LP (Aux Sable) hereby opposes the application of Canadian National Railway Company (CN) for authority to control EJ&E West Company (EJ&E) unless approval of that application is conditioned as follows:

1. During the 10-year period following consummation of CN's control of EJE, CN shall cause EJE to provide the same level of service as currently provided by EJE to Aux Sable's plant at Channahon, Illinois, unless there is a material decrease in rail-based customer demand at that plant during that period.
2. During the 5-year period following consummation of CN's control of EJE, CN will cause EJE not to cancel the agreement whereby Aux Sable leases 5,000 feet of trackage at East Joliet Yard from EJE.
3. CN will cause EJE to assess rates and charges that will ensure economic and non-discriminatory access to all rail carriers who connect with EJE.

APPLICABLE LEGAL STANDARDS

By virtue of 49 U.S.C. § 11324(c), the Board has broad authority to impose conditions to approval of railroad consolidations. Conditions are imposed to ameliorate effects of a consolidation that would be harmful to the public interest. Conditions must be operationally feasible and produce net public benefits. *See Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 418 (1996).

Most recent consolidations have involved two or more large Class I rail carriers, e.g., Union Pacific-Southern Pacific; Norfolk Southern-CSX-Conrail; Canadian National-Illinois Central. The principal potential harmful effect in such cases is loss of rail competition. Accordingly, conditions to approval of such consolidations most often involve action to replicate competition that otherwise would be lost.

The focus is different where, as here, a large and powerful Class I rail carrier seeks to control a much smaller regional rail carrier. The concern in such cases is whether the large carrier would be sufficiently motivated to provide the high quality of rail service and responsive rates that the smaller carrier provided to its shippers. Protection of service and rate levels for these shippers is every bit as much in the public interest as is protection of competitive opportunities. The Board has every bit as much authority and justification for imposing conditions to protect such service and rate levels as it does conditions to replicate lost competition.

It is also essential in such cases that the Board ensure that shippers located on the smaller carrier continue to have economic and non-discriminatory access to all rail carriers who connect

with that carrier. Otherwise, the large carrier can institute pricing and service that favor its own connecting route, thereby reducing rail competition.

BACKGROUND

Aux Sable's Channahon plant serves a vital function of providing propane that is essential for heating homes in harsh winter conditions, and for other purposes. Aux Sable invested approximately \$450 million in that plant in large part because of the availability of EJE's rail infrastructure. The natural gas liquids that Aux Sable ships by rail have a value of approximately \$120 million per year. Aux Sable has annual revenues of approximately \$1 billion.

Aux Sable and EJE have had a very close and cooperative working relationship that has allowed both to grow and prosper. A primary, motivating factor in Aux Sable's decision to locate its manufacturing facility on EJE was EJE's proactive stance in developing new business associated with its connecting rail carriers. EJE treats those carriers in a non-discriminatory manner in regard to rail service and rates. That has provided Aux Sable with business growth access to EJE's connecting rail carriers and routes that has maximized the efficiency of its operation. CN's proposed control of EJE could jeopardize this very favorable arrangement because CN could price EJE's transportation and/or tailor EJE's service to favor CN's own connecting routes. The resulting reduction of rail competition would be contrary to the public interest.

JUSTIFICATION FOR CONDITIONS REQUESTED BY AUX SABLE

1. Same Level of Service

As set out in the attached verified statement of Aux Sable Commercial Manager Michael Van Winkle, Aux Sable is highly rail dependent. It is absolutely essential for the proper functioning of Aux Sable's Channahon, Illinois plant that Aux Sable continue to receive the frequent reliable rail service currently provided by EJE. Any significant reduction in this rail service would result in loss of rail-served customers, which would then lead to production curtailment.

CN has stated in its Operating Plan (Application at 216-217) that it would cause EJE to continue to provide the local train service currently provided by EJE, but only in "the near term." Thereafter, CN would put into place a different EJE local service plan (i.e., at 217). Aux Sable is deeply concerned that CN's new plan for local EJE service would involve a harmful reduction in local rail service for Aux Sable.

There is good reason for Aux Sable to be concerned in that respect. A recent instance of a Class I carrier's control of a regional railroad is CN's control of Wisconsin Central, Ltd. (WC) in 2001. *See Canadian National Ry., et al - Control - Wisconsin Central, Ltd.*, 2001 STB LEXIS 711. As set out in the attached verified statement of Aux Sable Transportation Consultant, Mrs. Sandra Dearden, shippers who had been served by WC prior to that control experienced very harmful reductions of rail service and increases in rates and charges when CN

controlled WC.^{1/} Aux Sable cannot afford to take a chance on the continued efficiency of rail service at its plant. Aux Sable must have a long-term commitment from CN that it will cause EJE to continue to provide frequent and reliable rail service going forward.

Accordingly, Aux Sable opposes CN control of EJE unless such control is conditioned as follows:

During the ten-year period following consummation of CN's control of EJE, CN shall cause EJE to provide the same level of service at Aux Sable's Channahon, Illinois plant as currently provided by EJE, unless there is a material decrease in rail-based customer demand at that plant during that period.

Current EJE service to Aux Sable is as follows:

- Aux Sable has service 365 days per year with at least 2 switches per day available (meaning the removal and replacement of cars allowing two full racks of cars available for loading per day - up to 32 cars). EJE works with Aux Sable to provide an additional switch as needed during periods of peak activity.
- EJE puts on extra crews to make sure Aux Sable is able to get two full switches daily (up to 32 cars). This has been necessary to handle the increased volume of cars from the spur line clientele.

^{1/} There was an agreement between CN and the National Industrial Transportation League (NITL) in that case to protect service and rate levels for WC shippers. That agreement was imposed as a condition to approval of CN control of WC. However, WC shippers were required to specifically request such protection. Many of these shippers were unaware of their opportunity to do so. There is no such CN-NITL Agreement in the case at hand.

- EJE provides Aux Sable with the ability to store up to 200 cars on average. This includes empty rail cars to be pulled in for loading (both customer and Aux Sable cars).
- Loaded cars pulled from the plant are available for long haul carrier switching within 54 hours.
- Aux Sable works with EJE as it gets low on specific cars (i.e., in C5+service). Within its system Aux Sable identifies cars about to hit an interchange point. EJE brings those cars into the plant rather than going through Joliet Yard, saving 24 hours. This helps Aux Sable avoid containment issues.
- If customers have last minute changes to a destination after the cars were pulled, but still within the EJE system, Aux Sable is able to send corrected bills of lading without charge.
- All service is between 5 a.m. and 5 p.m.

2. Continuation of Track Lease

Aux Sable requires the following condition:

During the five-year period following consummation of CN's control of EJE, CN will cause EJE not to cancel the agreement whereby Aux Sable leases 5,000 feet of trackage at East Joliet Yard from EJE.

That condition is essential in order to provide a transition period for storage of Aux Sable's fleet of leased tank cars. Aux Sable leases 175 rail tank cars. An agreement between Aux Sable and EJE permits Aux Sable to store those railcars on all or any portion of 5,000 feet of trackage at EJE's East Joliet Yard.

Aux Sable intends to explore alternatives for storage of those cars, including leasing track from other entities, constructing in-plant track, or a combination thereof. It will take considerable time to investigate and implement such an alternative. Accordingly, Aux Sable seeks a five-year transition period during which those railcars could continue to be stored in East Joliet Yard.

Imposition of this condition is especially required because the adverse effect on Aux Sable of denial of the condition would be unusually harsh. CN's demurrage charge for detention of empty privately-owned cars is \$40 per car per day, with no allowance for free time. (Virtually all cars stored by Aux Sable at East Joliet Yard are empty, awaiting loading). Thus, if CN were to cause EJE to cancel the East Joliet track lease agreement and EJE were to assess demurrage charges under the same terms as CN, Aux Sable would face the prospect of hundreds of thousands of dollars in demurrage charges that it would be powerless to avoid. That would be contrary to the public interest.

3. Economic And Non-Discriminatory Access To All EJE Connections

Aux Sable requires the following condition to adequately protect its interests.

CN will cause EJE to assess rates and charges that will ensure economic and non-discriminatory access to all rail carriers who connect with EJE.

Aux Sable requires that condition because its customers are located on a number of different rail carriers at locations throughout the United States and Canada. It is essential that Aux Sable have economic and non-discriminatory access to all of those rail carriers in order to distribute its products efficiently. EJE has proactively supported Aux Sable's drive to grow Aux Sable's rail-based business. However, without the condition requested by Aux Sable, CN may

cause EJE pricing and rail service to influence all traffic to CN's connecting route, and away from EJE's other rail connections. That would be anti-competitive and very much contrary to public interest.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, CN's application for authority to control EJE should be denied unless the following conditions to approval of that application are imposed:

1. During the ten-year period following consummation of CN's control of EJE, CN shall cause EJE to provide the same level of service at Aux Sable's Channahon, Illinois plant as currently provided by EJE, unless there is a material decrease in rail-based customer demand at that plant during that period;
2. During the five-year period following consummation of CN's control of EJE, CN will cause EJE not to cancel the agreement whereby Aux Sable leases 5,000 feet of trackage at East Joliet Yard from EJE; and
3. CN will cause EJE to assess rates and charges that will ensure economic and non-discriminatory access to all rail carriers who connect with EJE.

Respectfully submitted,

AUX SABLE LIQUID PRODUCTS, LP
6155 East US Highway 6
Morris, IL 60450

Opponent

Thomas F. McFarland

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mcfarland@aol.com

Attorney for Opponent

Due Date: January 28, 2008

VERIFIED STATEMENT OF MICHAEL VAN WINKLE

My name is Michael Van Winkle. I have been employed by Aux Sable Liquid Products, LP (Aux Sable) for the last seven years, most recently as Commercial Manager. By virtue of that employment, I have become familiar with rail transportation of commodities produced by Aux Sable.

Aux Sable owns and operates one of the largest natural gas liquids (NGL) extraction and fractionation plants in North America. That plant is located in Channahon, Illinois, about 50 miles southwest of Chicago, near the eastern terminus of the Alliance Pipeline. The Alliance Pipeline is a high-pressure, dense-phase system that involves over 2,000 miles of 36-inch mainline pipe and 280 miles of gathering pipe that is connected to 47 natural gas plants in northwestern Alberta and northeastern British Columbia, Canada.

Aux Sable commenced operations at its Channahon plant on December 1, 2000 coincidental with the start-up of the Alliance Pipeline. That plant is capable of processing 2,100 million cubic feet of natural gas per day, and can produce approximately 87,000 barrels per day of specification NGL products, such as propane and butane. Currently all NGLs from the Alliance Pipeline are processed at that plant.

Aux Sable's Channahon plant is located at a rail station known as East Morris, IL. The trackage that serves that plant is a lead track, approximately 750 feet in length, that is jointly owned by Elgin, Joliet & Eastern Railway Company (EJE) and the Trustee of the former Rock Island Railroad (Joint Lead Track). The Trustee's interest in the Joint Lead Track and adjacent main track is leased to CSX Transportation, Inc. (CSX) for a term of 50 years. The East Morris

Joint Lead Track connects with EJE's Illinois River Line. The Illinois River Line is a 20-mile branch line that extends from EJE's main track at Walker, Illinois to terminus at Goose Lake, Illinois. The Joint Lead Track also connects with CSX's Bureau-Joliet, Illinois rail line.

Aux Sable is one of five major shippers who are served by the East Morris Joint Lead Track. The others are Equistar Chemical, A&R Distribution, Akzo Nobel and Alcoa. Although all of those shippers are able to be served by both EJE and CSX, virtually all of their traffic is transported by EJE. That is because EJE has provided frequent reliable rail service, while CSX's service has not been nearly as responsive to the shippers' needs. An EJE local train from East Joliet Yard switches shippers on the Joint Lead Track two or more times per day on a daily basis. EJE often adds a second local train from East Joliet Yard when production by those shippers is heaviest between October and March each year. EJE's rail service in that respect has been handsomely rewarded. The five shippers on the East Morris Joint Lead Track account for approximately 24,000 rail carloads over EJE per year. Of that amount, Aux Sable accounts for approximately 4,000 carloads per year over EJE. Aux Sable's shipments over EJE will increase by another 500 carloads or so this summer when Aux Sable begins to receive approximately 20 railcars per week during each six-month summer season.

Aux Sable is highly rail dependent. The commodities that it ships are transported in liquid form in tank equipment. Aux Sable's commitment to rail transportation is shown by its lease of a fleet of 175 rail tank cars for shipment of its commodities. Moreover, Aux Sable's shipments travel to distant destinations throughout North America, for which truck transportation is not economically feasible. The majority of Aux Sable's shipments of propane are transported by rail

to Albany, New York. Another major rail destination for Aux Sable's shipments is Edmonton, Alberta, Canada. Those major shipments must be made by rail.

It is absolutely essential for the proper functioning of Aux Sable's Channahon plant that it continue to receive the level of rail service currently provided by EJE. Consequently, Aux Sable requires a condition to approval of CN's control of EJE that CN cause EJE to provide the same level of service to Aux Sable as currently provided by EJE for a period of ten years after such control is consummated, unless there were to be a material decrease in rail-based customer demand at that plant. I recognize that CN has stated in the control application (at 216-217) that it will continue local rail service provided by EJE.

However, that statement covers only "(t)he near term." (*id.*, at 217). Moreover, testimony by Aux Sable's Traffic Consultant, Mrs. Sandra Dearden, that CN significantly reduced service levels and increased rates for Wisconsin Central shippers when CN acquired that carrier several years ago, is a cause for serious concern by Aux Sable. Aux Sable cannot afford to take a chance on the continued efficiency of its plant; Aux Sable must have a long term commitment from CN of high quality local EJE rail service going forward.

Aux Sable currently leases 5,000 feet of track in East Joliet Yard from EJE. That lease enables Aux Sable to store empty tank cars at East Joliet for maximum efficiency of operation.

Aux Sable requires a condition to approval of CN's control of EJE that EJE under CN control would not cancel that lease during a five-year period after consummation of such control. That would provide adequate time for Aux Sable to investigate and implement alternatives for storage of its cars, including lease of tracks from other entities, construction of in-plant trackage, or a combination thereof. In the absence of such a condition, CN could cancel that lease, and

begin to assess demurrage charges for detention of those cars in East Joliet Yard. CN's demurrage charge for empty privately-owned cars is \$40 per car per day, with no allowance for free time. That could easily result in assessment of hundreds of thousands of dollars in demurrage charges inasmuch as Aux Sable would not have sufficient alternative trackage for storage of those cars. The transition period provided for in the condition required by Aux Sable would ensure that Aux Sable would not be exposed to huge demurrage charges that it would not be able to avoid, while it investigated and implemented alternative means to solve the issue of car storage on a long-term basis.

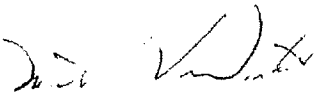
Aux Sable also requires economical and non-discriminatory rates and charges to provide access to all of EJE's connecting railroads. EJE's customers are located on a number of different railroads throughout the United States and Canada. EJE provides that economical and non-discriminatory access at present. A condition is required to ensure that Aux Sable continues to have that access under CN control of EJE. Otherwise, CN could prefer its own connecting routes in its rates and service, precluding access to other connecting carriers. That loss of rail access would have a drastic adverse effect on Aux Sable.

STATE OF ILLINOIS)

COUNTY OF ~~WILL~~ ^{of}
CLUNDY

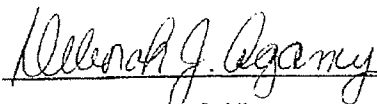
VERIFICATION

MICHAEL VAN WINKLE, being duly sworn, states that the facts alleged in the foregoing Verified Statement are true and correct.



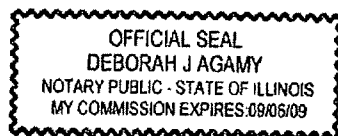
Michael Van Winkle

SUBSCRIBED AND SWORN to before me,
a Notary Public in and for the State and
County stated above, on this
28 day of January, 2008



Notary Public

(SEAL)



VERIFIED STATEMENT OF SANDRA J. DEARDEN

My name is Sandra J. Dearden. I am founder and President of Highroad Consulting, Ltd. (Highroad), a transportation and logistics consulting firm located in Chicago, Illinois.

Prior to founding Highroad in 1996, I held a series of management positions over the course of a 26-year career in the marketing and sales departments of Illinois Central Railroad and the Chicago & North Western Transportation Company (North Western). During my tenure at North Western, I had profit and loss responsibility for a variety of transportation commodity groups, including natural gas liquids shipped and received by Aux Sable Liquid Products, LP (Aux Sable).

During my career, I have been involved in the negotiations of numerous rate and service agreements between rail carriers and purchasers of transportation service. Also, during my railroad career and as a consultant, I participated in numerous proceedings before the Surface Transportation Board and its predecessor agency the Interstate Commerce Commission. My qualifications are included in Attachment 1 hereto.

I have been retained by Aux Sable to evaluate their current rail operation and agreements relative to CN's application to control EJE.

In his statement, Michael Van Winkle of Aux Sable described his current rail operation, which includes 5,000 feet of track at the East Joliet Yard leased from EJE. Aux Sable ships high volumes in private cars; the lease track operation is an integral part of Aux Sable's operation and continued rail access for shipments to and from the plant is crucial to viability of the plant and Aux Sable's ability to be competitive.

When CN acquired Wisconsin Central (WC) in 2001, CN negotiated an agreement with the National Industrial Transportation League (NITL), securing NITL's support for the CN/WC transaction. The Agreement established Service Protection Agreements, in addition to Interchange Protection which included protection of through rates and charges during a five-year period and assurance that CN would not close any gateways subsequent to the expiration of the five-year term. However, those protective conditions were to be established in contracts upon the request of any shipper or receiver of property on CN and/or WC.¹⁷ Many of the shippers that were previously served by WC have reported that they were not made aware of the CN/NITL agreement and, therefore, did not request contracts that would have established protective conditions that were available.

In 2000, prior to CN's acquisition of WC, twelve railroads operated in Wisconsin over 3,600 route miles. Combined, they handled 2.5 million cars, 150 million tons of freight. Currently, four Class I railroads own 80% of the rail lines in Wisconsin, and CN owns 1,800 miles, nearly half, of the track in the State.¹⁸

Soon after CN acquired WC and initiated plans to merge operations, a number of shippers experienced reductions in service. One example was the closing of the intermodal facilities in Green Bay and Neenah, WI.

On April 12, 2005, I attended a meeting for Wisconsin rail shippers in Green Bay, WI. Approximately, fifty people attended the meeting; presenters included the Wisconsin Paper

¹⁷ Agreement between the National Industrial Transportation League and The Canadian National Railway Company, April 27, 2001.

¹⁸ Source, Patrick J. Schillinger, President, Wisconsin Paper Council, presentation, April 12, 2005.

Council and a representative from the STB. Emotions were high as issues discussed focused on complaints regarding reductions in service and rate increases that occurred following CN's takeover of WC. Summarized below are a few examples that were cited at the meeting and others we know from experience working for clients:

- Jeffrey Landin, President of the Wisconsin Paper Council, recently advised that many of his members have experienced reductions in service and rate increases.
- CN cancelled Appleton Coated's track lease agreement. The leased track, which was used to manage the movement of loaded and empty private cars and to prevent demurrage, was a key component of the paper mill's rail operation and was critical to Appleton Coated's ability to be competitive. Further, CN announced a plan to increase charges for switching by 150%.
- Ericson Logging had a good business relationship with WC; they had a standing order of fifteen (15) cars a day for loading shipments of logs. Since CN acquired WC, Ericson advised that at best, they might get 25 cars a week for loading, and the remaining car orders are never filled. Also, when WC served Ericson, they parked Ericson's loaded and empty cars on a staging track to manage efficient delivery and distribution of the cars. CN no longer allows Ericson to use the "house track." As a result, Ericson is required to use an alternative plan that adds inefficiency and additional mileage to their shipments.
- Cooperative Plus, Inc. (CPI), a farm supply co-op with several locations in southeastern Wisconsin, has seen its rates to ship grain to Chicago more than double since December, 2003, due to rate hikes established on short notice. These

- increases have put the co-op at a substantial disadvantage because its rates with CN are more than twice those of some of its competitors that are served by other rail carriers.^{3/}
- Butch Johnson, owner and President of Johnson Timber Corporation, had his rates double on short notice and advised that Johnson Timber's logs deteriorate while waiting for cars for loading. "Our costs need to go down instead of going up because it will make us uncompetitive. As an example, there was the closure of the pulp mill in Brokaw. That could just be the start of others to follow," said Johnson.^{4/}

^{3/} Congressman Mark Green's website, September, 2005.

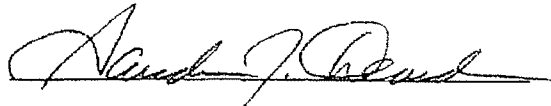
^{4/} *Ibid.*

STATE OF ILLINOIS)

COUNTY OF COOK)

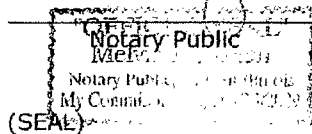
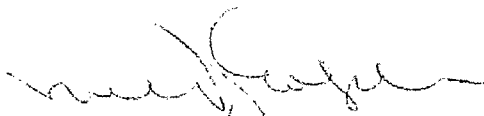
VERIFICATION

I, Sandra J. Dearden, being duly sworn, state that the facts asserted in the foregoing Verified Statement are true and correct.



Sandra J. Dearden
HIGHROAD Consulting, Ltd.
55 East Jackson Blvd., Suite 625
Chicago, IL 60604

Subscribed and sworn to before me,
a Notary Public in and for the above
State and County, on this 24TH day
Of January, 2008.



**Sandra J. Dearden, President
HIGHROAD Consulting, Ltd.**

Attachment 1

Sandra J. Dearden is the founding President of HIGHROAD Consulting, Ltd. Prior to forming the firm in 1996, Sandra was General Manager - Sales & Marketing for a strategic business unit at Chicago & North Western Transportation Company; she brings more than thirty years of experience in strategic planning, contribution based management, business development, industrial development, regulatory and litigation support to the firm's engagements.

During her tenure at North Western, Ms Dearden used the consultative selling approach to build market share and has led strategic planning sessions with senior management teams of numerous shipping companies, which led to reengineering of their distribution systems to provide for more efficient management of inventories and JIT service to the retail customers, while reducing transportation costs. She was instrumental in developing the unit train distribution systems for Canadian potash and Florida phosphates to the U.S. She was North Western's project leader on development of numerous terminals for distribution of liquid and dry chemical fertilizers, from strategic site selection to start-up, including working with the shippers' representatives, contractors, rail operations and engineering personnel, on the facility designs and design of industry tracks, while confirming compliance with environmental laws. Subsequently, North Western received international recognition when the railroad was awarded the *Golden Freight Car Award* for distinguished marketing by Modern Railroads Magazine for its fertilizer marketing program.

Ms. Dearden participated in numerous proceedings before the United States Surface Transportation Board and the former Interstate Commerce Commission. She served as an expert marketing witness on North Western's acquisition of the former Rock Island Spine Line from Minneapolis to Kansas City, and on the anti-trust portion of North Western's application to acquire the Milwaukee Road. North Western received favorable rulings in all of those proceedings.

As a consultant, she also prepared the competitive impact study for Kansas City Southern to support its position to oppose the merger of Union Pacific Railroad's and Southern Pacific Transportation Company, **Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. And the Denver and Rio Grande Western Railroad Company, Comments of the Kansas City Southern Railway.** Although the Surface Transportation Board approved the merger, KCS received a favorable opinion from the Department of Justice, due to the competitive impact.

Under **STB Finance Docket No. 42060, North American Freight Car Association v. Burlington Northern and Santa Fe Railway Company, HIGHROAD** represented a client in the proceeding, opposing empty car storage charges. HIGHROAD was contacted by the railroad's outside counsel, an agreement was negotiated that was favorable to HIGHROAD's client, and HIGHROAD withdrew its complaint in the proceeding.

HIGHROAD reviewed financial data presented by Burlington Northern Santa Fe, **STB Docket No. AB-6 (Sub-No. 382X), Burlington Northern and Santa Fe Railway Company Abandonment within the city limits of Chicago in Cook County, Illinois.** HIGHROAD's consultant, representing the clients opposing the abandonment, prepared a verified statement noting errors in the BNSF filing, and the abandonment was denied.

Ms. Dearden directed and led a team of HIGHROAD consultants that submitted rebuttal testimony for the complainant shipper, Wisconsin Power & Light, in a stand-alone rate case against the Union Pacific Railroad, **STB Finance Docket No. 42051, Wisconsin Power and Light Company v. Union Pacific Railroad, Defendant.** The Surface Transportation Board found that the defendant railroad had market dominance and that the challenged rates were too high. Maximum reasonable rates were prescribed and reparations were ordered. Union Pacific appealed the decision, which was upheld in the court of appeals.

HIGHROAD has been an industry leader, addressing fuel surcharges assessed by the railroads. In 2003, HIGHROAD released a white paper with cost evidence that revealed the railroads were over-recovering with their fuel surcharge programs. In May 2006, the Surface Transportation Board responded to shipper complaints and conducted a hearing on the fuel surcharges, **STB Ex Parte 661.** HIGHROAD prepared cost evidence for four shippers that filed statements into the proceeding that revealed the surcharges were 4 - 5 times higher than the total cost of fuel in the lanes analyzed. In its decision, the STB ruled fuel surcharges based on a percentage of rates constitute an unreasonable practice and ordered the railroads to change their fuel surcharge programs on regulated traffic to reflect actual fuel cost increases.

STB Finance Docket No. AB-279 (Sub. No. 3), Canadian National Railway Company Adverse Discontinuance, Line of Montreal, Maine & Atlantic Railway Ltd. in Aroostook County, Maine. Ms Dearden coordinated development of testimony for three expert witnesses who submitted rebuttal testimony on behalf of Canadian National Railroad, protesting the application of the Trustee for the Bangor & Aroostook Railroad for the adverse discontinuance of CNR trackage rights and haulage rights, and adverse abandonment of Waterloo Railroad's freight easement on the MMA. HIGHROAD consultants' testimony focused on the market plan, and the projected cost impact on rail operations as presented by the Trustee. The STB ruled in favor of Canadian National.

Most recently, Ms. Dearden presented testimony and directed a consulting team that developed cost evidence for Marquette Rail, **STB Finance Docket NO. 35063, Michigan Central Railway, LLC - Acquisition and Operation Exemption - Lines of Norfolk Southern.** The "Watco Decision" issued by the STB was favorable to Marquette Rail.

HIGHROAD's project work covers all modes and all functional areas of domestic and international transportation and logistics, including strategic planning, supply chain planning, industrial development, transportation operations, transportation management, asset utilization, and activity based costing. Through Tera International, Inc., for the United States Trade & Development Agency and the Ministry of Railways, Peoples Republic of China, HIGHROAD performed a six-month study in China to determine the number of intermodal yards to be constructed to accommodate projected growth. As a result of this study, 18 stand-alone intermodal terminals and 37 container handling yards are being constructed in China.

Ms. Dearden is respected as a seminar speaker. Topics include: Rail Fuels Surcharges - Rail Fuel Impact Study; Integrating Activity Based Costing into Distribution Planning and Market Based Pricing; Logistics Tools, Midwest Advisory Board; and at a NAFTA Seminar in Toronto, ON, Impact of Department of Commerce Surcharges on Canadian Potash on U.S. Farm Economy. In 2007, she was invited to give a presentation on Rail Fuel Surcharges at the annual meeting of the Association of Transportation Law Professionals, and

Sandra Dearden is a member of the Intermodal Advisory Task Force, Chicago Metropolitan Agency for Planning (CMAP); a former Officer, Board of Directors, Traffic Club of Chicago; Rail Committee, National Industrial Traffic League; and she served on the Board of Directors, Midwest Association of Rail Shippers.

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2008, I served the foregoing document, Opposition Statement and Request for Conditions, by overnight mail on counsel for Applicants, i.e., Paul A. Cunningham, David A. Hirsh, and James M. Gunivan, Harkins Cunningham, 1700 K Street, N.W., Suite 400, Washington, DC 20006-3804, and by first-class, U.S. mail, postage prepaid, on all other parties of record.

Thomas F. McFarland

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