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1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8198

WRITER'S E-MAIL ADDRESS
thynes@sidley.com

June 25, 2001

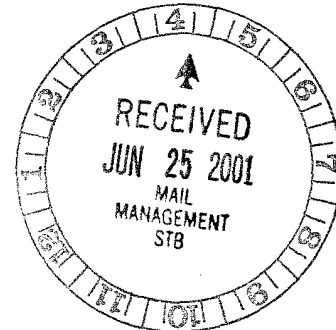
HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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Office of the Secretary

JUN 26 2001

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Re: 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.

Dear Mr. Williams:

Enclosed are the original and twenty-five (25) copies of Comments filed on behalf of Canadian Pacific Railway Company and its U.S. affiliates, Soo Line Railroad Company ("Soo") and Delaware and Hudson Railway Company, Inc. ("DHRC") (collectively "CPR"). Also enclosed is a computer diskette containing a copy in WordPerfect 6.1 format.

Please file stamp the two extra copies and return them via our messenger.

Thank you.

Sincerely yours,

Terence M. Hynes
Counsel for Canadian Pacific
Railway Company

TMH:aat

Enclosures

202751

CPR-3

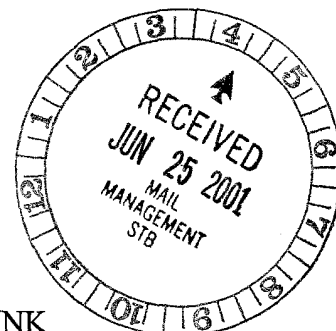
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**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

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.

COMMENTS OF CANADIAN PACIFIC RAILWAY COMPANY

Marcella Szel
Canadian Pacific Railway Company
401 9th Avenue, SW
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4Z4
CANADA
(403) 218-7474

Terence M. Hynes
Sidley Austin Brown & Wood
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for Canadian Pacific Railway Company

DATED: June 25, 2001

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34000

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK
CORPORATION, AND WC MERGER SUB, INC.

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SAULT STE. MARIE BRIDGE COMPANY, AND
WISCONSIN CHICAGO LINK, LTD.

COMMENTS OF CANADIAN PACIFIC RAILWAY COMPANY

Pursuant to the Board's Decision served in the above-captioned proceeding on May 9, 2001, Canadian Pacific Railway Company and its wholly-owned subsidiaries, Soo Line Railroad Company ("Soo"), Delaware and Hudson Railway Company, Inc. ("DHRC") and St. Lawrence and Hudson Railway Company Limited ("St.L&H") (collectively, "CPR") submit these comments concerning the proposed acquisition of control of the Wisconsin Central Transportation Corporation ("WC") by Canadian National Railway Company ("CN").

CPR'S POSITION

CPR takes no position as to whether the proposed CN/WC control transaction ought to be approved. However, if the Board decides to approve the proposed transaction, CPR requests that the Board impose two conditions on such approval to prevent a diminution in rail-

to-rail and source competition for freight traffic moving to and from points in WC's current service territory.

First, the Board should provide for an effective plan to preserve existing WC gateways by requiring Applicants to extend the "interchange protection" provisions set forth in the April 27, 2001 agreement between CN and the National Industrial Transportation League ("NITL") to connecting railroads. Specifically, the Board should require Applicants to quote "commercially reasonable contract through rates and charges" for the transportation of property originating or terminating at points on WC via existing active WC interchange point(s), at the request of a carrier (such as CPR) that currently interchanges traffic with WC via such interchange point(s). This proposed condition is essential to maintain effectively the rail-to-rail and source competition that currently exists for traffic moving to/from WC territory.

Second, the Board should require CN/WC to forgo the ability to cancel the existing haulage agreement between CPR and WC, pursuant to which CPR has access to Green Bay for intermodal traffic moving between Green Bay, on the one hand, and various points in the Northeastern United States served by CPR's affiliate, D&H, on the other hand, by extending that agreement for a term of 20 years. This condition will prevent Applicants from eliminating the only direct rail-to-rail competitive option to the merged CN/WC system that currently exists at Green Bay by canceling the CPR-WC haulage agreement.

DISCUSSION

The CN/WC Transaction involves the acquisition by CN, Canada's largest railroad, of WC, the nation's largest regional railroad and a carrier that provides the only rail service to/from many points within its service territory. Although the Application filed by CN and WC in this proceeding has nominally been classified by the STB as "minor," the transportation markets affected by the proposed transaction are highly significant. As CPR's

comments (and the accompanying Verified Statement of John H. Williams- *See* Exhibit 1) demonstrate, absent the limited conditions proposed by CPR, the CN/WC Transaction would result in a diminution in the level of both rail-to-rail and source competition that currently exists for shipments to and from points served by WC as an independent carrier today.

1. CPR's Proposed Gateway Preservation Condition

CPR competes actively with CN today for the transportation of a variety of commodities (most notably forest products, chemicals and fertilizer) moving between points in Canada and points served by the WC family of carriers. Likewise, shippers located at CPR-served facilities in Canada compete with CN-served shippers for sales of these and other products to customers served (often exclusively) by WC.

As CPR witness Williams explains, this existing competition takes two forms. In some instances, CN and CPR both serve the origin, and compete directly for the customer's shipments to a WC-served receiver via their respective interline routes with WC. For example, CN and CPR jointly serve a number of points in Saskatchewan from which potash is shipped to receivers located on WC.¹ CPR interchanges such potash shipments with WC at the Twin Cities gateway, while CN interchanges similar shipments via the Superior gateway. CN and CPR likewise compete directly at commonly-served Canadian origins for shipments of various other commodities (including wood pulp and other forest products, propane, chemicals and intermodal containers) that move to consignees served by WC.²

In other instances, commodities produced at a facility served exclusively by CPR move via a CPR-WC routing from origin to a destination served (often exclusively) by WC. For

¹ *See* V.S. Williams at 3.

² *Id.* at 3-5.

example, CPR currently delivers wood pulp from exclusively-served facilities at Terrace Bay and Marathon, ON to WC at the Franz, ON, gateway, for delivery to points throughout the WC system.³ CPR-served wood pulp producers compete (via CPR-WC interline routes) with producers served exclusively by CN (via CN-WC interline routes) for these and similar shipments. The current availability of competitive CPR-WC and CN-WC routings from different origins provides “source” competition for the product, which benefits receivers served by WC.

The volume of traffic moving between the CPR and WC service territories is substantial. CPR and WC interchanged more than 42,000 carloads (or equivalent units) during the year 2000.⁴ The majority of these shipments were interchanged with WC at the Twin Cities or Chicago. This is not surprising – Chicago and the Twin Cities are the two most important cross-border gateways for rail traffic moving between Canada and the United States. CPR and WC also interchange thousands of cars annually at Franz, ON (which is the sole point of connection between CPR and WC’s affiliate, Algoma Central Railway), Milwaukee, WI, and Sault Ste. Marie, MI.

As the testimony of CPR witness Williams shows, if the combined CN/WC system were to take steps to render existing CPR-WC interline routes via these gateways noncompetitive, the current modal competition between CN and CPR interline routings for shipments to/from WC’s service territory would be severely impaired (if not eliminated). Such gateway closures would likewise extinguish the source competition which exists today between

³ *Id.* at 4.

⁴ *See* V.S. Williams at 2, Attachment B.

producers located at points served exclusively by CPR and CN, respectively, for shipments to WC destinations.⁵

As the STB has previously acknowledged, even an essentially end-to-end railroad consolidation such as the proposed CN/WC Transaction can generate anticompetitive effects (including the elimination of product and source competition) if the merging carriers take steps to thwart the effectiveness of competing interline routes.⁶ In order to prevent such effects, the STB's recently-announced regulations governing "major" rail consolidation cases require applicants "to present **an effective plan to keep open major existing gateways.**"⁷ The Board indicated that it "will impose conditions on any transaction that we approve to ensure that result."⁸ Given the importance of existing CPR-WC gateways to the preservation of effective rail-to-rail and source competition for products moving between points in Canada and points in WC territory, the Board should impose a similar requirement on Applicants in this proceeding.

Applicants should not object to such a requirement.⁹ In its comments in *Ex Parte No. 582*, CN itself argued that "[m]erger applicants should be required to propose some form of

⁵ Applicants' rail traffic diversion study indicates that Applicants have, in fact, targeted many of the shipments currently interchanged between CPR and WC at these gateways for diversion to the CN/WC system. Applicants would have little incentive to undermine this commercial objective by cooperating with CPR (or with shippers) in maintaining competitively attractive through rates via CPR-WC routings following consummation of the proposed transaction.

⁶ See, e.g., *Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures*, decision served June 11, 2001 at 23 (new §1180.1(c)(2)); decision served October 3, 2000 at 14.

⁷ *Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures*, decision served June 11, 2001 at 24 (emphasis added).

⁸ *Id.*

⁹ CPR's request that the STB require Applicants to adhere to an effective plan to preserve WC's gateways with other carriers is not foreclosed by the Board's classification of the CN/WC transaction as "minor" (rather than "major" or "significant"). As the Board held in *Decision No. 4*, "although we have accepted the CN/WC application as a minor transaction, every

commitment to the maintenance of open gateways.” Comments of Canadian National Ry. Co. filed May 16, 2000 at 34. *See also* Reply Comments of Canadian National Ry. Co. filed June 5, 2000 at 46 (“CN proposes that merging carriers should submit to the Board a proposal to protect shipper options through important gateways....”). Moreover, in their Application, CN and WC have repeatedly asserted their willingness to “keep all existing active gateways affected by the transaction open on commercially reasonable terms.” (Application at 14. *See also* Application at 106 (V.S. Tellier at 1); 150 (V.S. Foote/Schauer at 8.)) Applicants suggest that this pledge is sufficient to eliminate any concern about the potential loss of rail and source competition resulting from post-merger gateway closures.

However, Applicants’ highly-caveated representation does not constitute an “effective plan” for preserving important gateways, nor does it unequivocally assure that existing rail and source competition would be preserved following consummation of the CN/WC Transaction. By its terms, Applicants’ pledge applies only to “active” gateways that are “affected by the Transaction.” Applicants do not identify the specific gateways to which the pledge applies, nor does this representation describe the criteria that Applicants would use to determine which gateways were “active,” or whether a particular gateway was “affected by the Transaction.” In particular, it is not clear whether Applicants view interchange points such as the Twin Cities and Franz -- which are served today by WC, but not by CN -- as locations “affected by the Transaction.” Thus, based upon this representation alone, the Board cannot conclude that CPR’s existing gateways with WC, which provide important modal and sourcing

interested party must be given a full and fair opportunity to seek relief that the party contends is necessary to remedy the harms that the party believes would otherwise be caused by an unconditioned CN/WC transaction....” *Decision No. 4*, served June 14, 2001 at 3. The Board made it clear that, notwithstanding the “minor” classification of the CN/WC transaction, it may

competitive options to shippers and receivers of cross-border freight, would not be competitively impaired by the CN/WC Transaction.

Applicants' recent agreement with NITL provides some additional specificity with respect to these issues. That agreement appears to indicate that any interchange point over which traffic moved during the 12 month period preceding the date of the agreement (April 27, 2001) would be deemed an "active" gateway subject to the so-called "interchange protection" provisions of the CN/NITL Agreement. However, the "interchange protection" provisions of the CN/NITL Agreement are, in other respects, inadequate to assure the preservation of effective rail and source competition for traffic moving between points in Canada and points in WC's service territory following consummation of the CN/WC Transaction.

The CN/NITL Agreement extends such "interchange protection" only to a class of "Shippers" defined as "any shipper or receiver of property on CN and/or WC." It is unclear whether the highlighted language refers to any and all shippers who desire to transport freight on lines operated by CN and/or WC (regardless of whether their facilities are physically located on Applicants' lines), or only those shippers and receivers whose facilities are physically located "on CN and/or WC." If the latter interpretation is intended, the CN/NITL Agreement affords no protection at all to the many shippers whose facilities are located on the lines of other carriers (including CPR) but who currently ship products to customers served by WC. The exclusion of such shippers from the scope of the CN/NITL Agreement would, of course, result in the loss of source competition provided by those firms.¹⁰

impose any of the types of conditions provided for under its major rail consolidation procedures. Id.

¹⁰ The STB should, at a minimum, require Applicants to confirm that the CN/NITL Agreement extends to any and all shippers or receivers that desire to transport freight originating or

Moreover, the CN/NITL Agreement contains a further limitation – i.e., that Applicants would quote commercially reasonable rates for interline shipments only “[a]t the request of a Shipper.” This restriction renders the CN/NITL Agreement ineffective as a means of preserving the existing level of rail and source competition for shipments to/from WC’s service territory, for several reasons:

First, the proposal to require shippers to negotiate directly with CN/WC for a “commercially reasonable” rate for WC’s portion of an interline movement with CPR (or another connecting carrier) is likely to diminish the effectiveness of the competition offered by such alternative routings. As CPR witness Williams explains, in most cases, the originating carrier performs this function today, obtaining the revenue requirements of connecting carriers and developing a “through rate” for the movement on behalf of the shipper.¹¹ This practice allows shippers to deal with a single railroad in establishing the price for most interline movements. By contrast, under the CN/NITL Agreement, a carrier such as CPR could not itself develop a “through rate” to present to a shipper for a movement to/from a WC-served point. Rather, a shipper considering a CPR-WC interline route would bear the burden of negotiating separately with CPR and the merged CN/WC system to determine the rate for their respective portions of the movement. At the same time, CN/WC would enjoy the ability to quote single-line rates for such shipments. The additional administrative burden and delay in obtaining a through rate for a CPR-WC routing would, in all likelihood, cause shippers to prefer to do business with CN/WC, rather than with CPR (or other connecting carriers). The resulting competitive handicap imposed on potential CPR-WC routings would weaken existing competition between CN and CPR for

terminating at a point on WC’s lines, without regard to whether the shipper/receiver’s facilities are located on the lines of CN, WC or a third carrier.

¹¹ V.S. Williams at 7-8.

shipments to/from WC's lines. It would also impair the ability of producers located on CPR's lines to offer effective source competition to producers served by CN for the business of receivers located in WC territory.

Second, shippers and receivers (particularly smaller companies) are less likely than a connecting carrier (such as CPR) to possess the information and resources necessary to negotiate "commercially reasonable rates" with CN/WC, or to utilize effectively the arbitration remedy set forth in the CN/NITL Agreement. Information regarding such cost elements as car hire, fuel and labor are likely to be more readily available to the connecting carrier than to a shipper or receiver, so that the carrier would be in better position to assess the "reasonableness" of a rate quoted by CN/WC for WC's portion of an interline movement. Moreover, were CN/WC to act unreasonably, the connecting railroad would have greater resources and expertise with which to pursue arbitration to establish a reasonable rate.¹²

Third, the arrangement proposed by Applicants could itself produce anticompetitive effects, by giving CN/WC the ability to "monitor" the efforts of CPR (or other carriers that interline traffic with WC today) to solicit shipments to/from points located on WC's lines. A request by a shipper for a rate quote under the CN/NITL Agreement would immediately alert CN's commercial personnel not only that CPR (or another connecting carrier) was attempting to bid for a traffic movement to/from WC territory, but also of the identity of the

¹² Indeed, the AAA arbitration remedy proposed by Applicants is likely to prove illusory for many shippers and receivers. For smaller shippers/receivers, the volume of traffic involved might not justify the time and expense of litigating with CN/WC. Shippers likewise might not be able (for commercial reasons) to delay their shipments pending the outcome of arbitration. By contrast, the expense of arbitrating an "unreasonable" rate quotation by CN/WC might be more readily justified by a connecting carrier such as CPR, as such a ruling might establish a precedent for a multitude of movements via a particular gateway.

customer involved.¹³ Such an “early warning” system would confer an undue (and potentially anticompetitive) advantage upon CN in competing with CPR and other connecting carriers. Having learned of the potential movement, CN/WC might act (in its self-interest) to delay or withhold a rate quote for the CPR-WC routing, in order to assist its marketing personnel to secure the business (or to supplant a proposed movement from a CPR-served origin with one from a CN origin).¹⁴

In order to provide a more **effective** plan to preserve existing rail and source competition via WC interline routings with carriers other than CN, CPR requests that the Board impose a condition requiring CN/WC to extend the “interchange protection” provisions of the CN/NITL Agreement to CPR and other connecting railroads. Such a condition would enable connecting carriers (such as CPR) to provide effective competition to the combined CN/WC system for traffic to/from points served by WC. It would alleviate the administrative burden that shippers and receivers would otherwise face in obtaining rate quotations for shipments to/from WC territory via the lines of carriers other than CN.¹⁵ It would enable carriers such as CPR to utilize their resources and expertise on behalf of shippers to secure “reasonable” rate quotations from CN/WC and, if necessary, to invoke arbitration to establish such rates and charges. In short, extension of the “interchange protection” provisions to CPR (and other connecting

¹³ By contrast, a rate request initiated by a connecting carrier would not necessarily reveal the shipper’s identity to CN/WC.

¹⁴ The “interchange protection” provisions of the CN/NITL Agreement do not establish any time period within which CN/WC would be required to provide a requested rate quotation. The Board should require Applicants to amend those provisions to provide for a prompt response to any such request.

¹⁵ Indeed, it would also appear to be administratively simpler for CN/WC to deal with a handful of connecting carriers (as they do in most cases today) in establishing interline rates, rather than negotiating separately with a multitude of shippers and receivers.

carriers) would more effectively ensure that the benefits of rail competition at CN-CPR competitive points will continue for traffic to/from WC's service territory, and that CPR-served shippers continue to be able to provide effective source competition for shipments of commodities to receivers served by WC.

2. Preservation of the CPR-WC Haulage Agreement.

Applicants acknowledge that "[t]he Green Bay BEA is sole-served by WC."¹⁶ Indeed, more rail traffic currently moves to/from Green Bay than from any other point served exclusively by WC.¹⁷ Nevertheless, CPR currently possesses the ability to provide direct rail-to-rail competition to WC for certain traffic moving to/from Green Bay. Specifically, pursuant to a haulage agreement between CPR and WC dated August 28, 1993, WC agreed to provide haulage services to CPR for intermodal traffic moving between Green Bay, on the one hand, and various points in the Northeastern United States served by CPR's affiliate, D&H, on the other hand.

However, the CPR-WC haulage agreement, by its terms, may be terminated by either party by giving 90 days notice to the other party.¹⁸ As an independent carrier, WC has no apparent business incentive to terminate this arrangement, which presents an ongoing business opportunity for a stand-alone WC. However, as CPR's principal competitor, CN's post-consolidation motivations are likely to be quite different than those of WC today.

¹⁶ See Application at 225 (V.S. Bottorff at 31). See also Application at 247 (V.S. Vellturo at 15).

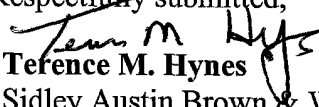
¹⁷ V.S. Williams at 9. The *Official Railroad Station List* identifies the Escanaba & Lake Superior Railroad Company ("E&LS") as also "serving" Green Bay. However, E&LS' lines connect only with the lines of WC and its affiliates. Therefore, E&LS cannot provide viable competition to WC.

¹⁸ Haulage and Terminal Services Agreement between CPR and WC, dated August 28, 1993, Section 12.

CN contends that the proposed CN/WC Transaction was motivated in large part by its concern that the potential acquisition of WC by a Class I competitor of CN might threaten CN's haulage arrangement with WC in the Superior-Chicago corridor.¹⁹ CN purportedly harbored this concern even though its haulage agreement with WC provided for a firm term of years (with many years left). The proposed acquisition of WC by CN – CPR's primary competitor – creates a more immediate threat to CPR's haulage arrangement with WC. Indeed, CPR believes it highly unlikely that the CPR-WC haulage agreement would survive consummation of the CN/WC Transaction.

In order to preserve the competitive option provided by the CPR-WC haulage arrangement, CPR requests that the Board impose a condition on any approval of the CN/WC Transaction that would preclude cancellation of the CPR-WC haulage agreement by Applicants following consummation of the proposed transaction. This can be accomplished by requiring WC to amend the agreement to provide for a term of 20 years. The requested condition will secure CPR's ability to offer intermodal services in direct competition with Applicants at Green Bay, thereby assuring that all existing competitive options to the CN/WC system at Green Bay will be available into the future.

Marcella Szel
Canadian Pacific Railway Company
401 9th Avenue, SW
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4Z4 CANADA
(403) 218-7474

Respectfully submitted,

Terence M. Hynes
Sidley Austin Brown & Wood
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Counsel for Canadian Pacific Railway Company

DATED: June 25, 2001

¹⁹ See Application at 109 (V.S. Tellier at 4).

Exhibit 1

**Verified Statement
of
John H. Williams**

My name is John H. Williams. I am President of The Woodside Consulting Group, Inc. My business address is 3000 Sand Hill Road, Building 4, Suite 140, Menlo Park, California 94025. My qualifications and experience, which encompass more than 35 years in the railroad industry and transportation consulting, are described in Attachment A.

The purpose of this Verified Statement is to describe potential adverse effects of the proposed acquisition of control of the Wisconsin Central Transportation Corporation ("WC") by Canadian National Railway Company ("CN") on competition for shipments to and from WC's service territory.¹ As my testimony will show, Canadian Pacific Railway Company ("CPR") currently competes with CN in the transportation of a variety of products moving between points on CPR, on the one hand, and WC's service territory, on the other hand. Likewise, shippers located on CPR compete with CN-served shippers for sales of those products to customers served (often exclusively) by WC. Unless the STB takes effective measures to assure that the merged CN/WC system does not close (commercially or otherwise) existing CPR-WC gateways over which these shipments currently move, this rail-to-rail and source competition could be reduced or eliminated by the proposed CN/WC Transaction.

The CN/WC Transaction involves the acquisition by CN, Canada's largest railroad, of WC, an important regional carrier that provides the only rail service to/from many points within its service territory. CPR, Canada's only other major railroad, competes actively with CN today for the transportation of a variety of commodities (including forest products, chemicals and fertilizer) moving between points in Canada and points served by WC. This existing competition takes two forms. In some instances, CN and CPR serve the same origin, and compete directly for the customer's shipments to a WC-served destination (via interline routings with WC). In other instances, commodities produced at a facility served exclusively by CPR move in interline service (via a CPR-WC routing) from origin to a destination served (often

¹ In this Verified Statement, I refer to the proposed transaction as the "CN/WC Transaction."

exclusively) by WC. CN can also participate with WC in joint line movements of the same commodity from a point served exclusively by CN to the same WC destination. In such instances, the availability of CPR-WC and CN-WC routings from different origins provides “source” competition for the product, which benefits the receiver served by WC.

The volume of traffic moving between the CPR and WC service territories is substantial. During the year 2000, CPR and WC interchanged more than 42,000 units via eight different interchange points.² Nearly 70 percent of these shipments moved via two of the CPR-WC gateways, Minneapolis/St. Paul (“Twin Cities”) and Chicago. This is not surprising – Chicago and the Twin Cities are two of the most important gateways for north-south traffic moving between Canada and the United States. Significant volumes of traffic were also interchanged between CPR and WC at Franz, ON – the sole point of connection between CPR and WC’s affiliate, Algoma Central Railway – Milwaukee, WI, and Sault Ste. Marie, MI.³

In order to assess the vulnerability of existing CPR-WC routings to anticompetitive gateway closures by the combined CN/WC system, I reviewed movement records for traffic flows in excess of 25 carloads annually for each of the existing CPR-WC gateways. Based upon that review, I conclude that, in virtually all instances, closure of the current gateway (either physically or through adverse pricing action) by CN/WC would diminish (or eliminate entirely) effective rail competition between CN and CPR for traffic moving between points served jointly by CPR and CN today, on the one hand, and points on WC, on the other hand. Likewise, such gateway closures would effectively extinguish source competition

² The number of carloads interchanged at each of these gateways is set forth in Attachment B. A list of the forty largest shippers (whose traffic accounted for 92 percent of the CPR-WC interchange traffic in the year 2000) is set forth in Attachment C.

³ CPR no longer physically operates to the Sault Ste. Marie gateway. Huron Central Railway, Inc. (“HCR”) provides haulage service for CPR shipments between Sudbury and Sault Ste. Marie, ON, and acts as CPR’s agent at the Sault Ste. Marie interchange with WC, pursuant to an agreement entered into by CPR and HCR in connection with the lease of CPR’s Sudbury-Sault Ste. Marie line to HCR in 1997.

between producers located at points served exclusively by CPR and CN, respectively, for shipments to exclusive WC destinations.

The Twin Cities gateway is a critical interchange point for traffic moving from CPR origins in Western and Central Canada to points on WC's lines. For example, during the year 2000, CPR handled 1,273 carloads of potash from several Saskatchewan origins (including Norco, Kalium, and Yarbo, all of which are also served by CN) to the exclusively-served WC destination of Owen, WI. Similarly, CPR delivered 456 carloads of propane originating at Fort Whyte, MB (which is also served by CN) to WC at the Twin Cities for movement to consignees at Green Bay⁴ and Crandon, WI (both of which are served exclusively by WC).⁵ If the combined CN/WC system were to take steps to render the existing CPR-WC routing via the Twin Cities noncompetitive, the current competition between CN and CPR for all of these shipments would be extinguished.

The Twin Cities gateway is also used as an interchange point between CPR and WC for shipments of wood pulp from Western and Central Canada to WC destinations in Wisconsin. For example, during the year 2000, CPR delivered 578 carloads of wood pulp and printing paper originating at Dryden, ON (which is served solely by CPR) to WC at the Twin Cities, for movement to receivers at Stevens Point and Rothschild, WI (both of which are served exclusively by WC). An additional 125 carloads of wood pulp moved via the same CPR-Twin Cities-WC routing from Prince Albert, SK (which is also served by CN) to Green Bay, WI. Commercial closure of the Twin Cities interchange by CN/WC would eliminate modal competition between CN and CPR for the Prince Albert movement. Such action would also

⁴ The *Official Railroad Station List* shows the Escanaba & Lake Superior Railroad Company ("E&LS") as serving Green Bay. However, E&LS' lines connect only with the lines of WC and its affiliates. Therefore, E&LS does not constitute a viable competitive option to WC.

⁵ Applicants' rail traffic diversion study indicates that they have targeted the propane shipments from Fort Whyte to Green Bay and Crandon for diversion from CPR – indeed, Applicants' stated objective is to divert 100 percent of these movements. Following consummation of the proposed transaction, CN/WC would have no commercial incentive to undermine this objective by cooperating with CPR in maintaining competitive through rates for movement of this traffic via the current CPR-WC routing.

effectively eliminate the existing source competition between the CPR-served producer at Dryden and CN-served wood pulp producers.

Among the largest movements interchanged between CPR and WC in the year 2000 was 3,051 units of container traffic originating at the CAST and Racine terminals in Montreal (both of which are open to both CPR and CN) and destined to Green Bay, WI, via an interchange with WC at Chicago. If CN/WC took steps to close (or to render commercially noncompetitive) the existing CPR-WC route via Chicago, future competition between CN and CPR for this traffic would be impaired.⁶

Closure of the CPR-WC (ACR) interchange at Franz, ON would have similar consequences. During the year 2000, CPR handled 2,730 carloads of wood pulp originating at Terrace Bay, ON to the Franz gateway, for subsequent movement by ACR/WC to a variety of WC exclusively-served destinations (including Neenah, Marinette and Stevens Point, WI).⁷ CPR handled an additional 382 carloads of wood pulp originating at Marathon, ON via the same routing to Green Bay, Kimberly and Park Falls, WI (all of which are served exclusively by WC). Shipments originating at Terrace Bay and Marathon (both of which are located on CPR's line east of Thunder Bay, ON) can efficiently access WC's service territory only via the Franz gateway. Thus, if the combined CN/WC system were to take steps to render the existing CPR-WC routing via Franz noncompetitive, the source competition provided by these wood pulp producers would effectively be eliminated for shipments to WC's service territory. CN could then supplant these shipments with wood pulp movements from CN-served origins.

CPR also participates, via the Franz gateway, in movements of wood pulp originating at Thunder Bay, ON (which is also served by CN) to Green Bay and Kimberly, WI,

⁶ Applicants' rail traffic diversion study indicates that the combined CN/WC system has also targeted these intermodal shipments for diversion. Indeed, Applicants project that they will divert 25 percent of these shipments, even if the Chicago gateway remains open. In my opinion, Applicants would have a strong incentive to close the gateway and attempt to divert all of this traffic from CPR.

⁷ E&LS physically serves Marinette, but has no access to any connecting carrier outside the WC corporate family.

and Menominee, MI. By closing (or taking pricing action to render noncompetitive) the CPR-WC route via Franz, the CN/WC System could eliminate the only competitive rail alternative for this traffic.⁸

Applicants also identify the Sault Ste. Marie gateway as a “major interchange” for WC today. (Application at 22.) Indeed, CPR interchanged more than 4,000 carloads with WC at Sault Ste. Marie during the year 2000. This traffic included shipments of wood pulp from Thurso and Temiscaming, PQ (both of which are served exclusively by CPR) to Menominee, MI and Kimberly, WI (both WC exclusive points), as well as shipments of chemicals from Falconbridge, ON (which is served by both CN and CPR) to the exclusively-served WC destination of Saukville, WI. A decision by CN/WC to close the Sault Ste. Marie gateway would result in the loss of rail and/or source competition for these and other shipments interchanged between CPR and WC today.

CN and WC have suggested that the STB need not be concerned about such a loss of modal and source competition because Applicants have pledged to “keep all existing active gateways affected by the Transaction open on commercially reasonable terms.” (CN/WC Application at 14.) However, this statement alone does not assure that existing rail and source competition would be preserved following consummation of the CN/WC Transaction. By its terms, this representation applies only to “active” gateways that are “affected by the Transaction.” Applicants do not identify the particular gateways to which their pledge applies. Nor does the Application provide any indication of the criteria that Applicants would use to determine which gateways were “active,” or whether a particular gateway was “affected by the Transaction.”⁹ Likewise, it is not clear whether Applicants view points such as the Twin Cities

⁸ Applicants’ rail traffic diversion study indicates that CN/WC plan to divert 75 percent of the Thunder Bay-Green Bay and Thunder Bay-Menominee wood pulp shipments. Closure of the Franz gateway would, in my opinion, enable CN/WC to divert all of this traffic.

⁹ Applicants’ agreement with the National Industrial Transportation League (“NITL”) does suggest that any interchange over which traffic moved during the 12 month period prior to the date of that agreement (April 27, 2001) would be deemed an “active” gateway for purposes of that agreement. However, as I explain below, the “interchange protection” provisions of the CN/NITL Agreement are, in other respects, inadequate to assure the preservation of existing

and Franz -- which are served today by WC but not by CN -- as locations “affected by the Transaction.” Thus, based upon the information provided in the Application, the Board cannot conclude that existing gateways with WC, which provide important rail and sourcing competitive options to shippers and receivers, would not be competitively impaired by the CN/WC Transaction.

Applicants’ recent agreement with NITL likewise does not effectively preserve vigorous modal competition between CPR and CN for traffic moving to/from WC’s service territory, nor does it unequivocally assure that shippers served exclusively by CPR would be able to provide ongoing source competition for products moving to WC destinations. The CN/NITL Agreement purports to provide “Interchange Protection” to a defined class of “Shippers.” At the request of such a “Shipper,” Applicants would “establish and maintain in effect commercially reasonable contract through rates and charges” for the Shipper’s traffic originating on, or destined to, a WC-served point via any existing interchange with another carrier that was “active” during the 12 months prior to the date of the CN/NITL Agreement.¹⁰ In addition, Applicants would agree not to increase their portion of “common carrier through rates” that are (i) in effect on the date of consummation; and (ii) are applicable to interchanges that were used to ship the commodity in question in the 12 months prior to consummation. *Id.*

This Agreement is ineffective, for several reasons. As an initial matter, it is unclear which “Shippers” would have the right to invoke the Agreement. The definition of “Shippers” to which the Agreement applies includes “any shipper or receiver of property on CN and/or WC.” It is unclear whether the highlighted language includes any and all shippers who may desire to transport freight on lines operated by CN and/or WC (whether or not their facilities are located on Applicants’ lines), or only those shippers and receivers whose facilities are physically located “on CN and/or WC.” If the latter interpretation were intended by Applicants, the CN/NITL Agreement would afford no protection at all to the many shippers (including, for

modal and source competition for traffic moving to/from WC’s service territory following consummation of the CN/WC Transaction.

¹⁰ See Agreement Between NITL and CN dated April 27, 2001, paragraph 3.

example, the wood pulp producers located on CPR's lines at Terrace Bay and Marathon, ON) who are not physically located on CN/WC's lines, but who currently ship products to customers served by WC. The exclusion of such shippers from the scope of the CN/NITL Agreement would, of course, lead to the loss of source competition provided by those firms.

Moreover, the provision that would require CN/WC to quote a commercially reasonable contract rate only "[a]t the request of a Shipper" is likely to diminish the vigor of competition between CN and CPR for shipments to/from WC territory. Under this provision, CPR could not itself develop a "through rate" to present to a shipper for a movement to/from a WC-served point. Rather, CPR would only be able to quote a rate for its portion of the through movement – the shipper would have the burden of separately negotiating a "commercially reasonable rate" with Applicants for that portion of the movement beyond the CPR-WC gateway.

Such a procedure is likely to diminish the effectiveness of the competition offered by competing interline routes, in several ways. First, imposing such a requirement would make it administratively more burdensome for shippers to deal with CPR (or other connecting carriers) than with CN on traffic to/from WC territory, by requiring them to participate directly in negotiating the rate for movement over WC's lines. Conversely, today, in most cases, an originating carrier develops a through rate for an interline movement by obtaining the revenue requirements of each connecting carrier prior to quoting a rate to the shipper. Thus, the shipper can deal with a single rail carrier to establish the through rate for most interline movements. However, under the CN/NITL Agreement, a shipper desiring to use a CPR-WC interline route following the CN/WC Transaction would be required to negotiate separately with CPR and the merged CN/WC system to determine the rate for their respective portions of the movement. Given the additional administrative burden imposed by that arrangement, and the limited logistics resources available to most shippers, I believe it is likely that shippers would prefer to do business with CN/WC, rather than with CPR. This would impose a distinct competitive disadvantage on CPR – WC routings (and upon shippers located at CPR-served facilities) for business to/from WC territory. This competitive disadvantage would be starkly contrasted with the ability of a newly-combined CN/WC system to quote single-line rates for such shipments.

Furthermore, CN/WC's proposed arrangement would give CN/WC the ability to "monitor" the efforts of CPR (or other carriers that interline traffic with WC today) to solicit shipments to/from points located on WC's lines. The requirement that a shipper (or receiver) contact CN/WC to request a rate for the WC segment of a CPR-WC routing would immediately alert CN's commercial personnel to any initiative by its competitors to bid for traffic to/from WC territory. Such an "early warning" system would confer an undue (and anticompetitive) advantage upon CN in competing with CPR and other connecting carriers for such traffic. Moreover, self-interest would likely motivate CN/WC to delay or withhold a rate quotation requested by a shipper in order to permit the CN/WC system's own marketing forces to secure the business (or, in the case of a shipment from a CPR exclusive origin, to supplant the proposed movement with one from a CN origin). The effect of this arrangement would be to enable CN/WC to reduce substantially the existing rail competition for traffic to/from WC's service territory.

In order to provide an effective plan to preserve effective modal and source competition via CPR-WC interline routings, I recommend that the Board impose a condition on any approval of the proposed CN/WC Transaction that would require Applicants to extend the "interchange protection" provisions of the CN/NITL Agreement to all connecting railroads. Under such a condition, carriers such as CPR would be able to request from CN a "commercially reasonable" rate quotation for that portion of an interline movement beyond the point of interchange with WC. This would enable competing carriers to develop through rate quotations for such shipments (in competition with CN/WC) without imposing any additional administrative burden on the subject shipper/receiver. Such an extension of the "interchange protection" provisions is essential to maintain a level playing field between CN and CPR for traffic to/from WC territory. I cannot envision that any competitive harm would result from such an extension of the CN/NITL Agreement's "interchange protection" provision, as connecting carriers would be unlikely to request a rate unless one or more shippers were expected to use the interchange in question. The proposed condition would ensure that the benefits of rail competition at CN-CPR competitive points will continue for traffic to/from WC's service

territory, and that CPR-served shippers will continue to have effective commercial access to WC's service territory.

Applicants describe Green Bay, WI as "a WC bottleneck."¹¹ Indeed, Green Bay, WI, is the largest rail traffic origin/destination point that is served exclusively by WC today.¹² However, CPR does currently possess the ability to provide rail-to-rail competition to WC for intermodal traffic moving between Green Bay, on the one hand, and various points in the Northeastern United States served by CPR's affiliate, D&H, on the other hand. This competitive capability is provided through a haulage agreement between WC and CPR that was entered into in 1993. However, the CPR-WC haulage agreement can be cancelled by either party on 90 days notice. As an independent carrier, WC would have no business incentive to terminate this haulage agreement (which would present an ongoing business opportunity for a stand-alone WC). However, as CPR's principal competitor, I expect that CN's motivations will be quite different.

In order to preserve the competitive option provided by the CPR/WC haulage arrangement, I recommend that the Board impose a condition on any approval of the CN/WC Transaction that would require CN/WC to forgo the ability to extinguish the CPR-WC haulage agreement, by extending it for a firm term of 20 years. Such a condition will secure CPR's ability to offer a competitive alternative to Applicants' intermodal services at Green Bay. As Applicants state, the North American economy is integrating, and NAFTA is causing trade flows between Canada, the U.S., and Mexico to grow rapidly. I can see no reason why the Green Bay area should not be positioned to the maximum extent to share in that traffic growth (and any other) by ensuring that all current competitive options to the CN/WC system will be available into the future.

¹¹ See Application at 247 (V.S. Velturo at 15).

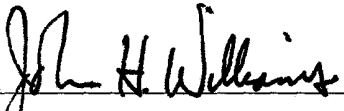
¹² While Green Bay was once served by three railroads (C&NW, GB&W, and the Milwaukee Road) that connected to other Class I railroads, today only WC remains.

Verification

State of California)

City of Menlo Park)

John H. Williams, being duly sworn, deposes and says that he has read the foregoing verified statement, knows the contents thereof, and that the same are true as stated.



John H. Williams

Executed by me on this 22nd day of June, 2001.

A

Attachment A

Qualifications of John H. Williams

I am President of The Woodside Consulting Group, Inc., 3000 Sand Hill Road, Building 4, Suite 140, Menlo Park, California 94025, a firm which specializes in railroad transportation consulting.

I was educated at the University of Illinois, where I received an A.B. in Liberal Arts and Sciences in 1962, with a major in economics, and an M.B.A. in 1963, with finance as my area of specialization; my educational training included courses in these fields as well as in marketing and operations. Although transportation was not a recognized area of emphasis for either degree, that was my interest throughout college; as a result, I completed almost every transportation course, either in the College of Commerce and Business Administration or in the Department of Civil Engineering, offered by Professors D. Philip Locklin (transportation economics), W. W. Hay (railway engineering), and K. U. Flood (distribution).

In 1963, I joined the Southern Pacific Transportation Company as a Transportation Analyst in the Bureau of Transportation Research. Following a year of introductory training, I was transferred to the Total Operations Processing System ("TOPS") project, which was responsible for designing and obtaining the adoption of a real-time, computerized information system for planning, controlling, and evaluating railroad operations. This was a pioneering project in computerized management and control of railroads, which was subsequently adopted by numerous other carriers.

In 1966, I joined the Operating Department of Southern Pacific, working initially

as a brakeman on the Western Division and subsequently as an Assistant Trainmaster in El Centro, California. In early 1967, I was promoted to Trainmaster at Lordsburg, New Mexico, where I was responsible for supervising train operations over some three hundred miles of Southern Pacific's main line track, plus branch lines, between Tucson and El Paso.

In 1968, I was granted a three-year leave of absence to join the Department of Transportation's newly formed Federal Railroad Administration in Washington, D.C. As a Transportation Specialist in the Office of Policy and Planning, I provided economic and operational analyses, and evaluated, proposed, and assisted in the development of various public policies affecting the railroads. I specialized in rail network restructuring (where I developed FRA's first rail network model) and mergers, freight car supply, and other rail operational issues, in addition to formulating FRA's economic research and development program. During that time, I also represented FRA as a member of Assistant Secretary Charles D. Baker's interdepartmental team which proposed deregulation of the railroads; many of the concepts and policies that we debated then have now been implemented through the 4-R Act, the Staggers Act, and through subsequent Interstate Commerce Commission and Surface Transportation Board initiatives.

In 1972, I returned to Southern Pacific as a Special Assistant in the Executive Department, with responsibility for coordinating the preparation of Southern Pacific Company's corporate ten-year financial plan. Later that year, I was promoted to Manager of the Bureau of Transportation Research, the organization in which I began my railroad career in 1963. In that capacity, I managed a staff of some twenty individuals, reporting directly to the senior executive management of Southern Pacific. We were responsible for analyses of commodity and route profitability, cost-of-service calculations, evaluations of possible line abandonments, and analyses of prospective investments and

acquisitions- -both railroad and non-railroad. In addition, we were responsible for presentations before regulatory authorities; I appeared before the Interstate Commerce Commission on several such issues.

In late 1977, I was promoted to the position of Assistant to the Vice President in the Executive Department of Southern Pacific. In that position, I managed the Office of Special Projects, which was created in order to permit me to concentrate on those matters of particular importance to the senior executive management of Southern Pacific. At that time, those special projects included Southern Pacific's prospective acquisitions of the Chicago, Rock Island & Pacific's Tucumcari Line and of the Seaboard Coast Line System - - the latter now being a part of CSXT.

In August 1980, I left Southern Pacific to become Assistant Vice President - Strategic Analysis for Consolidated Rail Corporation in Philadelphia. I reported directly to the Chairman, Mr. Edward G. Jordan, and my responsibilities continued to be focused in the merger and acquisition area. I directed the preparation of Conrail's position on the Norfolk Southern merger - - and testified before the Interstate Commerce Commission in that case - - as well as the preparation of Conrail's merger studies and policy position in the Union Pacific/Missouri Pacific/Western Pacific merger case. In both instances, I participated in the negotiated settlements that resulted. I was also responsible for designing and evaluating structural alternatives to Conrail as a corporate entity.

In late 1981, I returned to San Francisco as Vice President/Land Transportation of Manalytics, Inc., a transportation consulting firm. There, I was responsible for the business development and conduct of land transportation activities.

In October 1983, I became President of The Woodside Consulting Group, Inc. In this capacity, I am responsible for all of the business conduct and policy decisions of our firm. We offer a broad range of transportation consulting services, both to public agencies and private sector clients, dealing primarily with railroad transportation issues.

In March 1985, representing both the California Public Utilities Commission (CPUC) and the California Department of Transportation, I presented testimony before the Interstate Commerce Commission in the Southern Pacific/Santa Fe merger proceeding. My testimony - - which was cited in the Commission's *Decision* - - analyzed the market impacts of that proposed merger on California and its shippers, and recommended the imposition of conditions in order to mitigate the anticompetitive effects of that merger, as proposed.

In May 1988, representing the Kansas City Southern, I presented testimony before the Interstate Commerce Commission, including a substantial portion of the required Exhibit 12 - - Impact Analysis, in support of that carrier's application for control of the Southern Pacific Transportation Company. My testimony analyzed the market impacts of a consolidated Kansas City Southern/Southern Pacific System on shippers, competition, efficiency, and other carriers. I also submitted testimony in opposition to the proposed Denver and Rio Grande Western/Southern Pacific combination, in which I characterized those applicants' Exhibit 12 - Impact Analysis as being unrealistic in the marketplace.

During 1996, I provided consulting advice and analyses to the CPUC with regard to the Union Pacific's proposed acquisition of Southern Pacific. My recommendations toward ensuring the preservation of adequate and effective competition were included in the CPUC's presentation to this Board

During June 1997, in support of Norfolk Southern's application to acquire control of certain portions of Conrail, I presented a Rail Traffic Diversion Study to the Surface Transportation Board. See Finance Docket No. 33388, *Conrail Transaction*, Williams VS, CSX/NS-19 at 61-96 (June 1997). The Board accepted the results of that Study in its *Decision* approving the Conrail Transaction.

In October 1998, I provided a Market Impact Study to the Surface Transportation Board concerning the effects on Norfolk Southern of the proposed consolidation of the Canadian National Railway and the Illinois Central Railroad Companies.

As a part of our consulting practice during the past decade, The Woodside Consulting Group has undertaken more than three dozen regional railroad analyses, including due diligence studies, the preparation of Business Plans, and assessments of the operating entities when the Business Plans were not being met. Included among the railroads we have studied are MidSouth Rail Corporation, Paducah & Louisville Railways, Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Montana Rail Link. For each such analysis, my responsibility has been either to prepare a marketing plan or to evaluate whether the marketing plan being presented was realistic. I also served, on a part-time basis, as Chairman of the Board of Directors of the Dakota, Minnesota & Eastern Railroad Corporation.

During my thirty-four year career at Southern Pacific, Conrail, the Federal Railroad Administration, Manalytics, and The Woodside Consulting Group, my work has required me to consider many aspects of railroading, including marketing, operations, finance, economics, planning and public policy. At FRA, the economic research and development program I developed included marketing studies of grain and perishable produce. At Southern Pacific, I conducted and directed numerous marketing studies of

both deficit and highly profitable railroad commodities (including lumber, wood chip, automotive, chemical, intermodal, perishable, sugar beet, and iron ore traffic), as well as of competing modes. At the higher corporate levels my positions entailed beginning in 1972, the types of work for which I was responsible required me to consider all aspects of railroading, including the three basic functional areas of marketing, finance, and operations. As a consultant, I have provided services to clients encompassing most aspects of railroading - - including primarily marketing, finance, operations, economics, and public policy.

B

Attachment B
Units by CPR-WC Gateway
Year 2000

	<u>CPR-WC Gateway</u>	<u>Units</u>	<u>Percent of Total</u>
1.	Minneapolis/St. Paul, MN	16,653	39.0%
2.	Chicago, IL	13,084	30.7%
3.	Sault Ste. Marie, MI	4,087	9.6%
4.	Franz, ON	3,959	9.3%
5.	Milwaukee, WI	3,865	9.1%
6.	La Crosse, WI	557	1.3%
7.	Superior, WI	343	0.8%
8.	New Lisbon, WI	<u>115</u>	<u>0.3%</u>
	Total	42,663	100.0%

Source: CPR

C

Attachment C

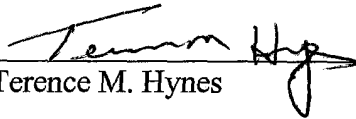
CPR-WC CUSTOMERS – Year 2000

1. Thunder Basin Coal Co.
2. Cast Line Ltd.
3. Koch Carbon Inc.
4. Canada Maritime Ltd.
5. Omya (Canada) Inc.
6. Kimberly-Clark Inc.
7. Koch Materials Co.
8. Construction Aggregates Corp. of Michigan
9. Weyerhaeuser Canada Ltd.
10. Georgia Pacific Corp.
11. Badger Mining Corp.
12. Unimin Corp.
13. IMC Global Operations Inc.
14. American Colloid Co.
15. Kimberly Clark Forest Products
16. IMC Kalium Canada Ltd.
17. OOCL
18. Fort James Corp.
19. International Paper Co.
20. Meakin Forest Enterprises Ltd.
21. IMC Salt Inc.
22. IMC Central Canada Potash Inc.
23. North Antelope Coal Co.
24. Marathon Pulp Inc.
25. Crestbrook Forest Industries.
26. Koch Petroleum Group Ltd Partnership
27. Celgar Pulp Co.
28. Falconbridge Ltd.
29. Conoco Canada Ltd.
30. BL & S Coal Co Inc.
31. Bowater Pulp & Paper Canada Inc.
32. Perry Judd's Inc.
33. Temcell Inc.
34. Weyerhaeuser Saskatchewan Ltd.
35. Quad Graphics Inc.
36. Webster Wood Preserving Co.
37. West Publishing Co.
38. American Tissue Mills of NY Inc.
39. Mc Forest Products Inc.

40. Domtar Inc.

CERTIFICATE OF SERVICE

I hereby certify on this 25th day of June, 2001, that I caused copies of the foregoing Comments of Canadian Pacific Railway Company to be served, by hand-delivery on Applicants' counsel, and by first-class mail, postage prepaid, on all other Parties of Record.


Terence M. Hynes

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