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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423



FINANCE DOCKET NO. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION,
AND GRAND TRUNK WESTERN RAILROAD INCORPORATED

- CONTROL -

ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD
COMPANY, CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, AND
CEDAR RIVER RAILROAD COMPANY

MOTION OF ATOFINA PETROCHEMICALS, INC.
TO STRIKE SUPPLEMENTAL REPLY OF
CANADIAN NATIONAL RAILWAY COMPANY

ENTERED
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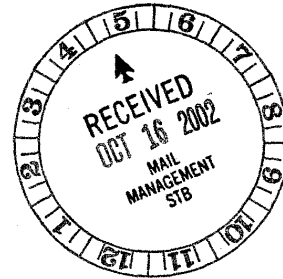
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**MOTION OF ATOFINA PETROCHEMICALS, INC.
TO STRIKE SUPPLEMENTAL REPLY OF
CANADIAN NATIONAL RAILWAY COMPANY**

ATOFINA Petrochemicals, Inc. ("ATOFINA") respectfully submits this Motion To Strike the Supplemental Reply submitted on October 11, 2002 by Canadian National Railway Company and Illinois Central Company ("CN") to the Petition For Reconsideration filed by ATOFINA with regard to Decision No. 39 in the above-captioned proceeding.

As reflected in the CN Supplemental Reply, ATOFINA filed a timely Petition for Reconsideration of Decision No. 39, which Decision rejected the joint request of ATOFINA and Kansas City Southern Railway Company ("KCS") for oversight, interpretation and enforcement of the CN/IC merger conditions. CN filed a reply to the ATOFINA Petition on September 20, 2002, ten days earlier than permitted under the Board's regulations.¹ On September 30, 2002, KCS filed a reply to the ATOFINA Petition. CN now files a Supplemental Reply,

¹ 49 C.F.R. §1104.13.

notwithstanding the Surface Transportation Board's ("Board") rules which provide that "A party may file a reply...." and that "A reply to a reply is not permitted."² CN violates the Board's rules in three respects: (i) CN's pleading is an unlawful reply to a reply, (ii) the Board's rules limit a party to filing "a reply," and thus do not contemplate multiple replies; and (iii) with its Supplemental Reply, CN has now filed 34 pages of argument, in addition to summaries, in violation of the Board's explicit limitation that replies, like petitions, may not exceed 20 pages in length.³

CN's premise, that it is entitled to file a reply to the KCS reply on the basis that KCS initially was a joint petitioner with ATOFINA, is unwarranted, and constitutes a seriously flawed reading of the Board's procedural rules. The Board's Decision No. 39 denied the ATOFINA/KCS request for oversight, interpretation and enforcement, and further rejected reopening the proceeding to consider the issue of the scope and extent of the "Geismar Condition." Thereafter, ATOFINA sought reconsideration, and in doing so addressed the Board's declination to reopen the CN/IC merger; and ATOFINA set forth the grounds for that reopening, as well as addressed related findings made by the Board in Decision No. 39.

The grounds asserted in the Petition for Reconsideration for reopening the CN/IC merger decision were those pertaining to circumstances specifically relevant to ATOFINA. The Petition for Reconsideration, accordingly, is readily distinguishable from the ATOFINA/KCS Joint Petition which addressed whether the CN/IC decision should have been interpreted, subject to

² 49 C.F.R. §1104.13(a) and (c). See, *Ocean Logistics Management, Inc. v. NPR, Inc., et al.*, STB Doc. No. WCC-102 (served Jan. 14, 2000).

³ 49 C.F.R. §1115.3(d). Additionally, the rule limits summaries to three pages in length, and CN has filed six pages of summary.

oversight and enforced, which issues affected KCS as well as ATOFINA.⁴ Indeed, CN argued in response to the ATOFINA/KCS Joint Petition that KCS did not have the right to seek remedial relief from the Board under the terms of the CN/KCS "Access Agreement."⁵ Having been admonished by both CN and implicitly by the Board that KCS could not seek reopening, ATOFINA in its own right submitted the Petition For Reconsideration. KCS filed a Reply to that Petition, as it clearly is entitled to do under the Board's regulations at §1104.13(a).

For all of the reasons stated above, the September 30, 2002 pleading by The Kansas City Southern Railway properly was a Reply to the ATOFINA Petition For Reconsideration; and the October 11, 2002 CN Supplemental Reply is an impermissible and unlawful pleading.

WHEREFORE, THE PREMISES CONSIDERED, ATOFINA Petrochemicals, Inc. respectfully urges the Surface Transportation Board to STRIKE the CN Supplemental Reply.

Respectfully submitted,



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⁴ See, Joint Petition at 7-8; *See also*, ATOFINA/KCS Correction and Opposition to Holding Proceeding in Abeyance (August 12, 2002).

⁵ See, Reply of Canadian National Railway, et al. to Petition of ATOFINA Petrochemicals, Inc. and The Kansas City Southern Railway Company at 37-38 (July 22, 2002). The Board took note of CN's argument and itself questioned whether KCS was entitled to file either a Petition to Reopen or a Request for Supplemental Order. *See*, Decision No. 39 at 5, n.12. Notably, the Board did not question the right of KCS to seek interpretation, oversight and enforcement of the CN/IC merger conditions.

CERTIFICATE OF SERVICE

This is to certify that I have this 16th day of October, 2002, caused the foregoing Motion of ATOFINA Petrochemicals, Inc. To Strike Supplemental Reply Of Canadian National Railway Company in Finance Docket No. 33556 to be served upon all known parties of record in this proceeding by first-class mail or a more expeditious method.

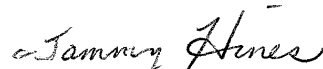
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