

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

Keith G. O'Brien
E-Mail: kobrien@bakerandmiller.com

Direct Dial: (202) 663-7852

February 28, 2008

VIA E-FILING

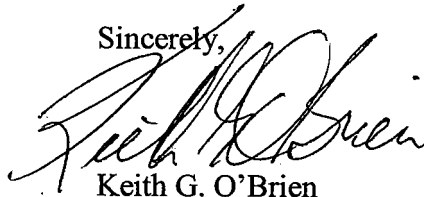
The Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Secretary Quinlan:

The Kansas City Southern Railway Company ("KCSR") hereby files, via e-filing, its Motion to Compel Responses to the First Set of Discovery Requests Directed to Canadian Pacific Railway Company and Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago, and Eastern Railroad Corporation in the above captioned matter. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7852 or by e-mail at kobrien@bakerandmiller.com.

Sincerely,



Keith G. O'Brien

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.
-CONTROL-
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO THE FIRST SET OF DISCOVERY
REQUESTS DIRECTED TO CANADIAN PACIFIC RAILWAY COMPANY AND
TO DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION**

**W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1303
Facsimile: (816) 983-1227**

**William A. Mullins
Robert A. Wimbish
Keith O'Brien
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Telephone: (202) 663-7820
Facsimile: (202) 663-7849**

**Attorneys for The Kansas City Southern
Railway Company**

Dated: February 28, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.
-CONTROL-
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
MOTION TO COMPEL RESPONSES TO THE FIRST SET OF DISCOVERY
REQUESTS DIRECTED TO CANADIAN PACIFIC RAILWAY COMPANY AND
TO DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION**

Pursuant to 49 CFR § 1114.31(a), The Kansas City Southern Railway Company ("KCSR") hereby moves the Surface Transportation Board to compel Canadian Pacific Railway Company ("CPR") and Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E")¹ to make full and complete responses to KCSR's February 6, 2008 discovery requests, as specified herein. KCSR offered opportunities to confer with counsel for CPR and DME to address and resolve the parties' any objections or other concerns, so as to facilitate the fullest degree of cooperation in the discovery process and so as to avoid the necessity of a filing such as this one. The Applicants have declined to resolve such issues through informal processes. Instead, the Applicants have done little more than rely upon pro forma objections at the last possible date that they could do so. Relatively little responsive information has been forthcoming, and so KCSR must pursue the subject Motion to

¹ The DM&E and IC&E will be referred to, collectively, as "DME." DME and CPR will be referred to as the "Applicants."

Compel. As explained below, the discovery requests for which KCSR is seeking to have the Board compel full responses seek relevant information regarding particular competitive affects of the Transaction. As appropriate, however, KCSR has in some cases herein narrowed the scope of a disputed discovery request to narrow the scope of information involved.

Background

On October 5, 2007, the Applicants filed an application for approval of the CPR acquisition of control over DME (the “Transaction”), presenting the Transaction as “minor” under the Board’s rules. The Board, in a decision served on November 2, 2007, determined that the transaction was “significant” under 49 CFR § 1180.2(b). STB Decision No. 2. The STB then allowed the Applicants to submit a supplemented application (containing all of necessary information pertaining to a significant transaction), which Applicants filed December 5, 2007.

On December 27, 2007, the Board accepted the Applicants’ supplemented application for approval of the Transaction. STB Decision No. 4. Pursuant to this decision, KCSR served first sets of discovery on CPR and DME, respectively, on February 6, 2008. CPR and DME sent their responses and objections to the first sets of discovery on February 21, 2008.²

² KCSR’s discovery requests to the Applicants and the Applicants’ responses thereto are attached as follows: Exhibit A – KCSR’s First Set of Discovery Requests to CPR; Exhibit B – KCSR’s First Set of Discovery Requests to DME; Exhibit C – CPR’s Response to KCSR’s First Set of Discovery Requests; and Exhibit D – DME’s Response to KCSR’s First Set of Discovery Requests.

Discussion

A. The Board's Discovery Rules Give Parties Broad Latitude To Obtain Necessary Information

The Board's discovery rules are set forth in 49 CFR § 1114, and generally provide that they are to be applied to ensure that necessary and proper evidence is produced conveniently, inexpensively and speedily. 49 CFR § 1114.1. Further, the Board's discovery rules are to be construed broadly and liberally.³ "[A]ny matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding," is open to inquiry through discovery. 49 CFR § 1114.21(a)(1).

B. The Information That KCSR Seeks Pursuant To This Motion To Compel Is Relevant To Issues In This Proceeding

As a general matter, the Applicants refused to respond to certain discovery requests by insisting that KCSR seeks the "production of information or data that is not relevant to the subject matter of this proceeding or is not reasonably calculated to lead to the discovery of admissible evidence." See CPR Response, General Objection 3; DME Response, General Objection 1; see also, e.g. CPR Response to Interrogatory 1 ("information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding[] any issue in this proceeding").

Although these are clearly boilerplate objections, it is worth addressing simply because they are inappropriate in their contexts and are used without regard to Applicants' actual responses. The Board defines relevant information as that which "might be able to affect the outcome of a proceeding." Waterloo Railway Company – Adverse Abandonment – Lines Of Bangor And Aroostook Railroad Company And Van

³ 49 CFR § 1100.3 (the Board's rules are to be liberally construed "to secure just, speedy, and inexpensive determination of the issues presented").

Buren Bridge Company In Aroostook County, Maine, STB Docket No. AB-124 (Sub-No. 2), et al. (served Nov. 14, 2003). By necessity, the parties are allowed to cast a reasonably broad net when requesting information. For example, the Board has granted a motion to compel the production of documents provided they “may be relevant to matters in dispute in this proceeding.” Illinois RailNet, Inc. – Acquisition And Operation Exemption – BNSF Railway Company, STB Finance Docket No. 34549 (served April 15, 2005) (emphasis added). Moreover, “[i]t is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 49 CFR § 1114.21(a)(2).

A central issue in any railroad consolidation is the transaction’s possible impact on competition. In this case, issues related to competition warranted classifying this Transaction as “significant,” and the Applicants were directed to “submit more detailed information regarding competitive effects, operating plans and other issues.” STB Decision No. 2 (citing 49 CFR § 1180.4(c)(2)). In particular, the Board noted:

Here, although Applicants’ submission states that no currently served shipper would become captive as a result of the transaction . . . it does not clearly establish that there would be no other anticompetitive effects that might result from the transaction. . . . Nor does it provide details regarding those stations that both Applicants could serve but at which only one Applicant derived revenue from originating or terminating traffic in 2005.

Id.

KCSR is very concerned about certain potential anticompetitive affects this Transaction, particularly with respect to the role DME plays in providing neutral access to important gateways and in moving grain to KCSR-served grain consumers. In KCSR’s view, the Transaction raises questions about whether KCSR-served shippers will

retain access to DME-origin grain, thereby preserving competition for shippers and receivers, or whether CPR would effectively eliminate KCSR-served shippers' access to such grain sources. In addition, KCSR is concerned about whether CPR would act to undermine KCSR's ability to compete for certain NAFTA traffic flows, particularly to and from the Chicago gateway. The information requested by KCSR through its First Set of Discovery Requests is directly related to gathering sufficient information to address and better understand issues such as these. For example, the Board has noted, "competition in grain transportation (and other sectors) . . . is clearly relevant to the proceeding." See STB Decision No. 7 (served February 20, 2008).⁴ Thus, the Applicants' objections regarding "relevance" and "calculated to lead to admissible evidence" fall flat throughout their responses.

C. The Information Sought Is Not Unduly Burdensome

General Objection 4 by CPR, as well as objections made by each of the Applicants to specific interrogatories and document requests throughout their responses, state that the requests are overly broad, vague, or unduly burdensome. As a general rule and as discussed throughout this Motion to Compel, KCSR is seeking information from which to provide a thoughtful and considered evaluation to the impacts of this Transaction, particularly as discussed above.⁵ With the exception of Interrogatories such as Interrogatory 1, which requests a specific list, the discovery requests do not require the

⁴ On this basis, the Board has already compelled CPR to produce one in-house witness for deposition. See STB Decision No. 7.

⁵ An important part of this evaluation is to understand what kind of alliances CPR and DME have with each other and with other rail entities; what discussions have been held between those entities and what, if any, agreements have been reached regarding the transport of grain.

Applicants to create or analyze data or documents anew, except to determine whether such items are responsive. Such requests are limited in time, as discussed below, and, often, quite limited in scope as well. The requests are not unduly burdensome.

D. The Time Periods For Which Information Is Sought Are Appropriate

Both DME and CPR have objected to the instruction that responses include information from October 5, 2004, through the present with the boilerplate objection of overbroad, burdensome and irrelevant to the proceeding. See, e.g., CPR Response, General Objection 12; DME Response, General Objection 6. The Board notes, in its November 2, 2007 Decision, that 49 CFR § 1180.4 requires Applicants to note the year to be used for impact analyses. The Board accepted and designated “2005 as the year to be used for impact analysis in the application.” *Id.* At a minimum, the time period for KCSR’s First Set of Discovery Requests must go back far enough to capture the data necessary to properly evaluate the designated year, here the 2005 calendar year, for impact analysis. KCSR respectfully requests that the Applicants be compelled to supplement their answers to KCSR’s First Set of Discovery Requests, in their entirety, so that the impact analysis can be properly viewed in the context established by the Board.

E. KCSR’s Instruction 1 Is Reasonable

In the instructions accompanying its discovery requests, KCSR, aware that Applicants’ delay would prejudice KCSR’s ability to file timely comments on the Application, sought responses and objections “in accordance with previously adopted discovery guidelines in other control or merger transactions.” KCSR First Set of Discovery Requests, Instruction 1. Applicants objected in their written responses; neither made any effort to contact KCSR to discuss the timing of the interrogatories and

document requests or the request made by KCSR to expedite the process. See CPR Response, General Objections 11; DME Response, General Objections 7.

KCSR has endeavored to work informally⁶ with the Applicants to effectively and efficiently resolve any objections or questions regarding discovery as directed by the STB. Indeed, it is KCSR's goal to provide a single, cohesive set of comments to the STB in a timely manner. Appropriate and timely responses to KCSR's First Set of Discovery Requests were deemed essential to producing a comprehensive response to the Application. Nonetheless, the Applicants have refused to engage in any discussion, have waited until the last date on which to file any response and have blatantly refused to answer completely the interrogatories and requests put to them.

F. Discovery Requests To Which KCSR Seeks Compelled Responses

Although KCSR finds compelling reasons to reassert almost every objected-to interrogatory and document request, it recognizes the need to move forward expeditiously and, thus, has chosen to focus on those interrogatories and requests it deems most relevant and most important to KCSR's upcoming comments on the Application.

The information that KCSR seeks to compel falls into the following three categories, each of which requests relevant information which is not unduly burdensome:

(1) Agreements. Documents which demonstrate the strategic alliances and marketing arrangements between the Applicants as well as those between the Applicants and other parties are vital to KCSR's competition analysis, and would shed light on the specific obligations and duties of the Applicants have undertaken with respect to traffic

⁶ KCSR "requested [the Applicants] to contact [KCSR] promptly to discuss any objections or questions . . . with a view to resolving any disputes or issues of interpretation informally and expeditiously." KCSR First Set of Discovery Requests.

routing. Such information will shed light on who the Applicants see as their competitors (and when and why) and who are their strategic partners (and when and why). KCSR is not asking Applicants to create documents, merely KCSR asks for the production of agreements in the possession of the Applicants and, thus, the request is not unduly burdensome.

(2) Studies and analyses. Marketing plans, strategic plans, diversions studies, market analyses, financial projections and all other studies, summaries and analyses are important in KCSR's understanding of the application and the efficiencies that that parties hope to create through the merger as well as the impact on routing, traffic and competition. Again, KCSR is not requesting that the Applicants create new studies and provide new analysis. KCSR is looking for existing documents, particularly those which may have influenced the Applicants in structuring and evaluating the proposed Transaction.

(3) Communications. Documents help KCSR to understand the reasoning behind the decisions made by the Applicants and the interpretation the Applicants have given to the other documents. KCSR is looking only for existing documents to aid its understanding and evaluation of the Transaction.

For the reasons discussed above, the Applicants' objections are primarily boilerplate and have no bearing on the interrogatories posed or the documents requested. Based on the general discussion above and any specific additional information provided hereunder, KCSR hereby requests that the Board compel discovery as to the following Interrogatories and Documents Requests.

Interrogatory No. 1 to both CPR and DME:

KCSR sought identification of both employees and consultants, and a description of the role each has played, in “developing marketing plans, analyses, memoranda, financial plans, and/or any other studies related to the Transaction.” See Exhibits A and B. KCSR seeks a limited amount of information concerning a select group of individuals. Generation of such a list is not unduly burdensome, nor does it require analysis or creation of substantial documents.

CPR insists that the persons who submitted verified statements in support of the Application were “the persons primarily responsible” for analyses and factual information. CPR Interrogatory Response 1. CPR does not make any effort to provide the description of any person’s role in the Transaction. Limiting its response to the individuals who provided verified statements is simply unreasonable, and is in keeping with the Board-rejected position that only those individuals who prepared and filed verified statements would be relevant. CPR presumes that no other persons, not even in-house personnel, assisted in preparing or evaluating the Transaction, and it attempts to eliminate the very purposes of discovery – acquiring additional information beyond the application from which to evaluate the Transaction. As the Board noted in responding to KCSR’s Motion to Compel Deposition, limiting depositions to its expert witnesses was unacceptable and “ignore[d] the possibility that an in-house business person may have information and perspectives on competition that are different from or more detailed than those of an expert witness.” STB Decision 7.

In response to Interrogatory No. 1, DME has provided limited information for five employees, but has failed to respond to this interrogatory with respect to its consultants.

KCSR requests that the Board compel DME to provide the requested information regarding any and all consultants who have assisted in the transaction, and describe their roles therein as requested.

DME Document Request No. 4/CPR Document Request No. 5

As noted above, KCSR is concerned with the competitive effects of the proposed Transaction. Communications between and among CPR, consultants, the Trustee, and/or DME regarding the pre and post-Transaction operation of DME is important to a full evaluation of the impact of the Transaction on grain traffic and NAFTA traffic flows. The Applicants' objection to the phrase "operation of DME" as vague, is without merit. Nonetheless, in an effort to work with the Applicants, KCSR requests that the Applicants focus on communications involving: (1) the manner in which DME handles the transport of grain pre-Transaction, (2) the manner in which it may handle the same transportation post-Transaction, (3) the manner in which DME works with other railroads pre-Transaction, and (4) the manner in which DME may work with other railroads post-Transaction. KCSR requests that the Board compel a proper response with respect to the movement of grain and with respect to KCSR's haulage rights agreements with DME.

DME Document Request No. 5

DME objects to this request because "'the transportation of grain' is overly broad, burdensome, oppressive and virtually limitless in scope." DME has failed to respond to subsections (c) and (d) regarding contemplated increases/decreases in grain traffic originated in DME for delivery by interchange with other carriers to points south of Kansas City and increases/decreases in contemplated grain traffic originating on DME that would be delivered to points on the CPR system. Again, "marketing plans, strategic

plans, diversions studies, market analyses, financial projections . . . and/or other studies related to the transportation of grain originating on DME lines” is vital to the evaluation of the competitive aspects of the transaction. Further, by its very nature, this request is limited in scope. It is limited to the transportation of grain. DME’s objection to the scope limitation is without merit. KCSR respectfully requests the Board compel a response to subsections (c) and (d).

CPR Document Request No. 11

CPR has incorporated both its objections and its responses from the previous request, but the limited response included therein is not applicable to this request. KCSR urges the Board to compel CPR to respond individually to this request and supply all responsive documents.

DME Document Request No. 11/CPR Document Request 12

The Applicants object to these requests for production as not relevant or calculated to lead to admissible evidence. Nothing could be further from the truth. Agreements of this kind sought here go to the heart of KCSR’s issues with the proposed transaction. Agreements could easily provide the basis to assuage KCSR’s concerns that once the Transaction is completed, the Applicants will implement new or modified traffic agreements that will impact traffic flows, encourage traffic routings to new markets, and discourage certain existing traffic flows. KCSR seeks to evaluate the affect this Transaction will have on competition, and identifying such agreements, whether they are now in place, contingent, or under negotiation, is vital to that evaluation. Moreover, the information requested is unquestionably within the possession of the Applicants and can,

as appropriate, be provided under terms of the Protective Order. Accordingly, KCSR requests the Board to compel the Applicants to fully respond to this request.

DME Document Request No. 12

DME objects to this document request on the basis that it is not relevant and that it is overly broad and would require a “special study involving review of DME files.” This objection is an overstatement. The studies, plans and analyses requested hereunder are specifically related to determining “whether DME would or should seek to terminate, to honor, or to extend any of” the agreements discussed in the previous document request. As noted above, these agreements are of paramount importance in the evaluation of this Transaction’s potential effects on competition. This request is quite limited in scope and is not asking for the creation of any documents or a “special study.” It merely requests that the production of any such documents for review by KCSR in evaluating the competitive aspects of the Transaction.

DME Document Request No. 16

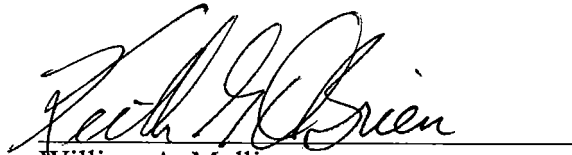
KCSR has requested communications between officials, representatives and consultants of DME regarding marketing the transportation of grain originating on DME to destinations on lines other than KCSR, but including CPR. DME objects that the request is too broad and overly burdensome. KCSR disagrees with this characterization. Again, in an effort to expedite the discovery, KCSR requests that the Board compel production of the documents requested which deal specifically with grain traffic.

Conclusion

Full and complete responses to the above-enumerated interrogatories and requests for documents are vital in order for KCSR to properly evaluate the proposed Transaction

and provide meaningful comments to the Board. KCSR respectfully moves the Board to compel the Applicants to (1) supplement each previous response so that it reflects all answers and documents back to and including the 2005 calendar year, (2) respond fully and completely to the interrogatories and requests for documents set forth in Section F, as modified therein, and (3) submit all responses and documents to counsel for KCSR within five (5) days of the date of an appropriate Board order.

Respectfully submitted,



W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1303
Facsimile: (816) 983-1227

William A. Mullins
Robert A. Wimbish
Keith O'Brien
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Telephone: (202) 663-7820
Facsimile: (202) 663-7849

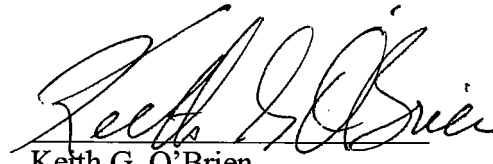
Attorneys for The Kansas City Southern
Railway Company

Dated: February 28, 2008

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Motion to Compel Responses to the First Set of Discovery Requests Directed to Canadian Pacific Railway Company and Dakota, Minnesota & Eastern Railroad Corporation upon all parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.

Dated: February 28, 2008



Keith G. O'Brien

Attorney for The Kansas City Southern
Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.
– CONTROL –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS DIRECTED
TO CANADIAN PACIFIC RAILWAY COMPANY**

Pursuant to 49 CFR §§ 1114.21 through 1114.31, The Kansas City Southern Railway Company ("KCSR") hereby directs the following discovery requests to Canadian Pacific Railway Company ("CPR").

Responses should be served as soon as possible, and in no event later than fifteen (15) days from the date of service hereof. CPR is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

THE RAILROAD ENTITIES

1. "Applicants" means any one or any combination of the following: Canadian Pacific Railway Company; Soo Line Holding Company; Dakota, Minnesota & Eastern Railroad Corporation; and Iowa, Chicago & Eastern Railroad Corporation; their parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

2. “CPR” means Canadian Pacific Railway Company, its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
3. “DM&E” means Dakota, Minnesota & Eastern Railroad Corporation.
4. “DME” means Dakota, Minnesota & Eastern Railroad and Iowa, Chicago & Eastern Railroad, collectively, as the term is used by Applicants in their Application in the above-referenced proceeding filed on October 5, 2007, and as supplemented on December 5, 2007.
5. “IC&E” means Iowa, Chicago & Eastern Railroad Corporation.
6. “KCSR” means The Kansas City Southern Railway Company.
7. “The Undersigned Party” means KCSR.
- 8. “Trustee” means the entity, individual, or group of individuals responsible for directing the activities of DME while under the control of the independent voting trust (pending Board approval of the proposed Transaction) referred to in the Application.
9. “You” means CPR, Applicants, and their predecessors, individually and/or collectively.

DEFINITIONS

1. “Application” means, collectively, the Railroad Control Application (“CPR-2/DME2”) filed by Applicants in Finance Docket No. 35081 on October 5, 2007 and the “Supplemental Application” (“CPR-7/DME-7”) filed in the same docketed proceeding on December 5, 2007.
2. “Board” or “STB” means the Surface Transportation Board and its predecessor agency, the Interstate Commerce Commission, if applicable.
3. “Consultant” means any entity, individual, or group of individuals, including but not limited to any advisors, investment bankers, financial analysts, industry analysts, and/or industry

experts, retained or otherwise consulted with by one or more of the Applicants for purposes of analyzing, promoting, or in any manner assisting with the proposed Transaction.

4. “Contemplate” means as contemplated by Applicants and/or any Consultant.

5. “Describe” when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

6. “Document” means any writing or other compilation of information (including electronically stored information and its metadata), whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to: intra-company communications; electronic databases; electronic mail (“e-mail”); correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs, charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term “document” includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from original version, including notes.

7. “Grain” means corn, wheat, and other grain products as interpreted and used by Applicants in their Application.
8. “Identify,”
- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
 - b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;
 - c. when used in relation to a document means to:
 - (1) state the type of document (*e.g.*, letter, e-mail, memorandum, report, chart);
 - (2) identify the author, each addressee, and each recipient; and
 - (3) state the number of pages, title, and date of the document;
 - d. when used in relation to an oral communication or statement means to:
 - (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - (2) state the date and place of the communication or statement;
 - (3) describe in detail the contents of the communication or statement; and
 - (4) identify all documents that refer to, relate to or evidence the communication or statement;

- e. when used in any other context means to describe or explain in detail.
9. “Including” means including without limitation.
10. “Person” means an individual, company, partnership, or other entity of any kind.
11. “Provide” (except where the word is used with respect to providing service or equipment) or “describe” means to supply a complete narrative response.
12. “Produce” means to make available to the Undersigned Party for copying and viewing.
13. “Relate to” a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
14. “Shipper” means a user of rail services, including a consignor, a consignee, or a receiver.
15. “Studies, analyses and reports” include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
16. “Transaction” means the series of transactions described in, and encompassed by the Application (CPR-2/DME-2) filed in this proceeding on October 5, 2007, and as supplemented on December 5, 2007 (CPR-7/DME-7).

INSTRUCTIONS

1. Any delay in production of requested documents or answers to interrogatories is certain to prejudice the Undersigned Party’s ability to present evidence to the Board. Discovery responses and objections should be in accordance with previously adopted discovery guidelines in other control or merger transactions, e.g. 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, STB Finance Docket No. 33556 (STB served Nov. 4, 1998). Accordingly, responsive documents should be produced to the undersigned counsel at Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, not later than fifteen (15) days after the date of service. Serial production of relevant documents during that fifteen (15) day period is encouraged and requested. Objections as to any discovery request to which you will be providing no affirmative response (i.e., no information or documents) shall be made within five (5) business days after the date of service of the requests. Other objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.

2. CPR should contact Alice G. Glass at (603) 863-5529, or Robert A. Wimbish at (202) 663-7824 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning October 5, 2004 and ending with the date of the response.

4. If you object to any document request or any part thereof, please state the reasons for such objection, including all information forming the basis for such objection.

5. If CPR has information that would permit a partial answer to any document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for CPR than for KCSR:

- a. state that fact;
- b. provide the partial answer that may be made with information available to CPR;

- c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and
 - d. as provided in 49 CFR § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the Undersigned Party to derive or ascertain a more complete answer.
- 6. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
 - a. identify the information or document (in the manner provided in Definitions 6 and 8 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
- 7. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
- 8. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.
- 9. If CPR knows or later learns that a response to any document request is incorrect, CPR is under a duty seasonably to correct that response.
- 10. Pursuant to 49 CFR § 1114.29, CPR is under a duty seasonably to supplement its responses with respect to any question.

INTERROGATORIES

Interrogatory No. 1 Identify any and all CPR employees and Consultants who have assisted in developing marketing plans, analyses, memoranda, financial projections, and/or any other studies related to the Transaction, and describe their roles in developing such materials.

Interrogatory No. 2 Identify all Trustees.

Interrogatory No. 3 As CPR is aware, KCSR has proposed extending the terms of an existing haulage and marketing agreement between IC&E and KCSR governing the transportation of grain originating on IC&E lines to KCSR via the Kansas City gateway. Please provide the facts and/or assumptions of CPR and/or its Consultants that caused CPR to decline to reach (and/or to recommend against reaching) an agreement with KCSR for an extension of this agreement beyond its current term.

Interrogatory No. 4 In connection with the negotiations for an extension of the KCSR-IC&E haulage and marketing agreement described in Interrogatory No. 3 above, identify the individual or individuals responsible for CPR's decision not to agree to an extension of the existing haulage and marketing agreement. Additionally, who at CPR is or would be responsible for directing/ordering the extension of this haulage and marketing agreement post-Transaction?

Interrogatory No. 5 Has CPR (or its Consultants') communicated or in any way indicated to a Trustee, DM&E and/or IC&E (or any of their Consultants) CPR's (or its Consultant's) views with regard to whether IC&E should terminate, honor, or extend its existing agreements with KCSR regarding use of IC&E/DME's lines? Describe all such communications or indications.

Interrogatory No. 6 Other than those communications described in response to Interrogatory No. 5, Describe any and all discussions or other communications between or among CPR, a Trustee, DM&E, IC&E and/or their Consultant(s) (including any discussions or communications

during CPR's due diligence related to the proposed Transaction) in which KCSR's existing agreements with IC&E regarding use of IC&E/DME's lines were discussed or disclosed, including any conversation relating to the advisability of terminating, honoring, or extending KCSR's existing agreements regarding use of IC&D/DME's lines.

Interrogatory No. 7 Is CPR willing to honor, and will it agree not to cancel, the existing agreements between IC&E and KCSR whereby KCSR possesses certain marketing and haulage rights over certain lines of IC&E?

Interrogatory No. 8 Related to Document Request No. 12 below, has CPR (and/or Consultants advising CPR on such matters) reviewed DME's existing agreements, tariffs, and/or rates governing the transportation of grain originating on DME lines? If so, what post-Transaction changes to DME grain transportation rates (a) has CPR and/or its Consultants recommended and/or (b) does CPR contemplate implementing?

Interrogatory No. 9 With respect to each agreement listed in response to Document Request No. 12 below, provide the assessment(s) of CPR (and/or of any Consultant(s) advising CPR or other Applicant on the matter) of the likelihood that CPR would or should, post-Transaction:

- (a) direct or otherwise cause the termination of any such agreement,
- (b) extend or otherwise cause the extension of any such agreement, or
- (c) honor the remaining term of any such agreement, but not renew or extend such agreement at the end of its term.

Interrogatory No. 10 Other than those communications described in response to Interrogatory No. 5, with respect to each agreement listed in response to Document Request No. 12 below, has CPR (or its Consultants) expressed or in any way indicated to a Trustee, DM&E and/or IC&E (or their Consultants) CPR's (or its Consultant's) views with regard to whether

DME should terminate, extend, or honor any such agreement? Describe all such communications or indications.

Interrogatory No. 11 Have officials, representatives, and/or Consultants of CPR conferred with officials, representatives, and/or Consultants of DME regarding the transportation of grain originating on DME lines to destinations on railroads other than CPR and DME via the Kansas City gateway? If so, describe the nature of those discussions, identify the individuals participating in such discussions, describe with particularity any strategies, plans, or conclusions about such traffic patterns that were reached as a result of such meetings/conferences.

Interrogatory No. 12 Have officials, representatives, and/or Consultants of CPR discussed, analyzed, developed plans, or otherwise addressed marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR, including CPR destinations. If so, describe the nature of those discussions, identify the individuals participating in such discussions, and describe with particularity any conclusions, whether preliminary or final, regarding such discussions, plans, or studies.

DOCUMENT REQUESTS

Document Request No. 1 Produce any and all documents (including information residing in any electronic database created or consulted during the course of due diligence related to this Transaction) related to, relied upon in making, or otherwise supporting your answers to the interrogatories above.

Document Request No. 2 To the extent not already produced pursuant to the requests of the letter of January 16, 2008 and the follow-up e-mail of January 18, 2008 from David C. Reeves, Associate General Counsel of KCSR to Terence M. Hynes, Counsel at Sidley Austin LLP,

produce in computer-readable format the 100% traffic waybill data for grain and grain products for CPR, IC&E and DM&E for 2005 and 2006, along with information necessary to read the data (e.g. record layout, field names and definitions, definitions of terms or abbreviations used in the fields). Please reference the letter and its attachment of February 1, 2008 from David C. Reeves, Associate General Counsel of KCSR to Terence M. Hynes, Counsel at Sidley Austin LLP for identification of the scope of the missing data.

Document Request No. 3 Produce IC&E and DM&E financial data for fiscal years 2005, 2006, and 2007, in whatever form it is that DME collects and maintains that information that most approximates the R-1 financial forms that Class I rail carriers, such as CPR and KCSR, compile and submit annually to the Surface Transportation Board.

Document Request No. 4 Produce all witness workpapers, and all documents (including information residing in any electronic database created or consulted in the course of due diligence related to the proposed Transaction) relied upon in preparation of those portions of the Application discussing rail transportation of grain by Applicants. If CPR has previously produced any such documents to counsel for KCSR, as an alternative to producing such documents again, CPR can confirm to counsel for KCSR that KCSR may use, for purposes of the proposed Transaction only, such documents previously produced by CPR in response to prior discovery requests associated with the Application. Any additional documents responsive to this Document Request will be produced forthwith.

Document Request No. 5 Produce all documents reflecting any communications between or among CPR (and/or its Consultants) and any Trustee regarding the operation of DME either pre- or post-Transaction.

Document Request No. 6 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the transportation of grain originating on DME lines, (including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants), including:

- (a) the potential impact of the Transaction on such transportation;
- (b) any contemplated diversion of grain currently transported via the Kansas City gateway to Pacific Coast facilities such as those located at or near Vancouver, British Columbia;
- (c) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be interchanged with other rail carriers for final delivery to points geographically south of Kansas City;
- (d) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be delivered to points (including export facilities) on the current CPR system;
- (e) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to interchange points with other railroads;
- (f) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to points (including export facilities) on the current CPR system.

Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 7 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the potential impacts of the Transaction upon KCSR and/or upon shippers served by KCSR, including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 8 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to the economics of overseas grain-consuming markets and CPR's strategic plans in connection with marketing, promoting, or transporting North American-produced grain to such markets. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 9 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) the impact of U.S. dollar fluctuations (and its current low value relative to other currencies) upon CPR's strategic plans to acquire control of DME; and (2) CPR's plans to recoup its investment in acquiring control of DME by marketing or otherwise promoting grain products originating on DME lines for overseas export via CPR-served Pacific Coast ports. This document production request includes any such plans, market

analyses, financial projections, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 10 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) CPR's anticipated post-Transaction revenue generated from the transportation of ethanol originating on DME lines, and (2) the impact and/or importance of this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 11 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) CPR's anticipated post-Transaction revenue generated from the transportation of grain originating on DME lines, and (2) the impact and/or importance of this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 12 Provide a list of all joint marketing agreements, haulage agreements, joint rate agreements, divisions agreements, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA") or other existing contracts between or among DME on one side and another rail carrier on the other,

which agreement governs or involves, in whole or in part, the transportation of grain originating on DME lines to destinations not located on DME lines.

Document Request No. 13 With respect to Document Request No.12, Produce all marketing plans, strategic plans, financial analyses, diversion studies, memoranda, e-mails, market analyses, and/or studies evaluating such agreements and/or discussing whether CPR would or should seek to terminate, to honor, or to extend any of these agreements or arrangements. This document production request includes any such plans, e-mails, memoranda, market analyses or studies prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 14 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda, and/or studies related to post-Transaction routing and/or marketing of grain originating on CPR and/or DME lines to destinations via the Kansas City gateway on carriers other than KCSR. This document production request includes any such plans, market analyses or studies, e-mails or memoranda prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 15 In connection with Interrogatory No. 3, produce any marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda (including internal memoranda), meeting notes, meeting summaries, and/or any other documents that CPR and/or any Consultant has relied upon or consulted in connection with

CPR's decision to decline to reach an agreement with KCSR for an extension of the subject marketing and haulage agreement post-Transaction.

Document Request No. 16 Produce all documents relating to communications between or among CPR (and/or its Consultants) on the one hand and DME (and/or its Consultants) on the other concerning KCSR's agreement with IC&E governing the rail transportation of grain originating on IC&E/DME lines to interchange with KCSR at the Kansas City gateway.

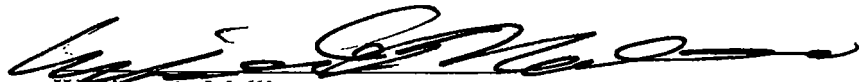
Document Request No. 17 Produce all documents relating to communications between or among officials, representatives, and/or Consultants of CPR discussing, analyzing, developing plans, or otherwise addressing marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR (including CPR destinations), including all documents describing any conclusions, whether preliminary or final, regarding such discussions, plans, or studies.

Document Request No. 18 Provide any and all studies, reports, communications, market summaries, memoranda, e-mails, meeting notes/summaries, and any other documents prepared by Mr. Tom Fitzgerald for the benefit of Applicants that deal in whole or in part with grain traffic flows originating in Iowa and/or southern Minnesota.

Document Request No. 19 Produce all joint marketing agreements, haulage agreements, joint rate agreements, divisions agreements, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA"), alliance, trackage rights, operating rights, interchange, interline, or other existing contracts or agreements between DME on the one hand and regional and/or Class I railroads with which DME connects on the other.

Respectfully submitted,

W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1303
Facsimile: (816) 983-1227



William A. Mullins
Alice G. Glass
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for The Kansas City Southern
Railway Company

Dated: February 6, 2008

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2008, a true copy of the foregoing "The Kansas City Southern Railway Company's First Set of Discovery Requests Directed to Canadian Pacific Railway Company" was served by hand and by e-mail on:

Terence M. Hynes
G. Paul Moates
Jeffrey S. Berlin
Paul A. Hemmersbaugh
Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

A handwritten signature in black ink, appearing to read "R. A. Wimbish", with a horizontal line drawn underneath it.

Robert A. Wimbish
Attorney for The Kansas City Southern
Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, ET AL.
– CONTROL –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.**

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS DIRECTED
TO DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION**

Pursuant to 49 CFR §§ 1114.21 through 1114.31, The Kansas City Southern Railway Company ("KCSR") hereby directs the following discovery requests to Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation (collectively, "DME").

Responses should be served as soon as possible, and in no event later than fifteen (15) days from the date of service hereof. DME is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

THE RAILROAD ENTITIES

1. "Applicants" means any one or any combination of the following: Canadian Pacific Railway Company; Soo Line Holding Company; Dakota, Minnesota & Eastern Railroad Corporation; and Iowa, Chicago & Eastern Railroad Corporation; their parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.

2. “CPR” means Canadian Pacific Railway Company, its parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
3. “DM&E” means Dakota, Minnesota & Eastern Railroad Corporation.
4. “DME” means Dakota, Minnesota & Eastern Railroad and Iowa, Chicago & Eastern Railroad, collectively, as the term is used by Applicants in their Application in the above-referenced proceeding filed on October 5, 2007, and as supplemented on December 5, 2007.
5. “IC&E” means Iowa, Chicago & Eastern Railroad Corporation.
6. “KCSR” means The Kansas City Southern Railway Company.
7. “The Undersigned Party” means KCSR.
8. “Trustee” means the entity, individual, or group of individuals responsible for directing the activities of DME while under the control of the independent voting trust (pending Board approval of the proposed Transaction) referred to in the Application.
9. “You” means DME, Applicants, and their predecessors, individually and/or collectively.

DEFINITIONS

1. “Application” means, collectively, the Railroad Control Application (“CPR-2/DME2”) filed by Applicants in Finance Docket No. 35081 on October 5, 2007 and the “Supplemental Application” (“CPR-7/DME-7”) filed in the same docketed proceeding on December 5, 2007.
2. “Board” or “STB” means the Surface Transportation Board and its predecessor agency, the Interstate Commerce Commission, if applicable.
3. “Consultant” means any entity, individual, or group of individuals, including but not limited to any advisors, investment bankers, financial analysts, industry analysts, and/or industry

experts, retained or otherwise consulted with by one or more of the Applicants for purposes of analyzing, promoting, or in any manner assisting with the proposed Transaction.

4. “Contemplate” means as contemplated by Applicants and/or any Consultant.

5. “Describe” when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.

6. “Document” means any writing or other compilation of information (including electronically stored information and its metadata), whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including but not limited to: intra-company communications; electronic databases; electronic mail (“e-mail”); correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs, charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term “document” includes:

- a. both basic records and summaries of such records (including computer runs); and
- b. both original versions and copies that differ in any respect from original version, including notes.

7. “Grain” means corn, wheat, and other grain products as interpreted and used by Applicants in their Application.

8. “Identify,”

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business;
- c. when used in relation to a document means to:
 - (1) state the type of document (*e.g.*, letter, e-mail, memorandum, report, chart);
 - (2) identify the author, each addressee, and each recipient; and
 - (3) state the number of pages, title, and date of the document;
- d. when used in relation to an oral communication or statement means to:
 - (1) identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - (2) state the date and place of the communication or statement;
 - (3) describe in detail the contents of the communication or statement; and
 - (4) identify all documents that refer to, relate to or evidence the communication or statement;

- e. when used in any other context means to describe or explain in detail.
9. “Including” means including without limitation.
10. “Person” means an individual, company, partnership, or other entity of any kind.
11. “Provide” (except where the word is used with respect to providing service or equipment) or “describe” means to supply a complete narrative response.
12. “Produce” means to make available to the Undersigned Party for copying and viewing.
13. “Relate to” a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs (*e.g.*, competition between carriers), its absence or potential existence.
14. “Shipper” means a user of rail services, including a consignor, a consignee, or a receiver.
15. “Studies, analyses and reports” include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.
16. “Transaction” means the series of transactions described in, and encompassed by the Application (CPR-2/DME-2) filed in this proceeding on October 5, 2007, and as supplemented on December 5, 2007 (CPR-7/DME-7).

INSTRUCTIONS

1. Any delay in production of requested documents or answers to interrogatories is certain to prejudice the Undersigned Party’s ability to present evidence to the Board. Discovery responses and objections should be in accordance with previously adopted discovery guidelines in other control or merger transactions, e.g. 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, STB Finance Docket No. 33556 (STB served Nov. 4, 1998). Accordingly, responsive documents should be produced to the undersigned counsel at Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, not later than fifteen (15) days after the date of service. Serial production of relevant documents during that fifteen (15) day period is encouraged and requested. Objections as to any discovery request to which you will be providing no affirmative response (i.e., no information or documents) shall be made within five (5) business days after the date of service of the requests. Other objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.

2. DME should contact Alice G. Glass at (603) 863-5529, or Robert A. Wimbish at (202) 663-7824 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these discovery requests cover the period beginning October 5, 2004 and ending with the date of the response.

4. If you object to any document request or any part thereof, please state the reasons for such objection, including all information forming the basis for such objection.

5. If DME has information that would permit a partial answer to any document request, but it would have to conduct a special study to obtain information necessary to provide a more complete response to that request, and if the burden of conducting such special study would be greater for DME than for KCSR:

- a. state that fact;
- b. provide the partial answer that may be made with information available to DME;

- c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit the undersigned parties to derive or ascertain a more complete answer; and
 - d. as provided in 49 CFR § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit the Undersigned Party to derive or ascertain a more complete answer.
- 6. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
 - a. identify the information or document (in the manner provided in Definitions 6 and 8 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
- 7. References to railroads, shippers, and other companies (including Applicants) include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
- 8. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.
- 9. If DME knows or later learns that a response to any document request is incorrect, DME is under a duty seasonably to correct that response.
- 10. Pursuant to 49 CFR § 1114.29, DME is under a duty seasonably to supplement its responses with respect to any question.

INTERROGATORIES

Interrogatory No. 1 Identify any and all DME employees and Consultants who have assisted in developing marketing plans, analyses, memoranda, financial projections, and/or any other studies related to the Transaction, and describe their roles in developing such materials.

Interrogatory No. 2 Identify all Trustees.

Interrogatory No. 3 As DME is aware, KCSR has proposed extending the terms of an existing haulage and marketing agreement between IC&E and KCSR governing the transportation of grain originating on IC&E lines to KCSR via the Kansas City gateway. Please provide the facts and/or assumptions of any one or combination of DME, DM&E, IC&E and/or its Consultants that caused any one or more of DME, DM&E, IC&E and/or its Consultants to decline to reach (and/or to recommend against reaching) an agreement with KCSR for an extension of this agreement beyond its current term.

Interrogatory No. 4 In connection with the negotiations for an extension of the KCSR-IC&E haulage and marketing agreement described in Interrogatory No. 3 above, identify the individual or individuals responsible for DME's, DM&E's, and/or IC&E's decision not to agree to an extension of the existing haulage and marketing agreement. Additionally, who at DME is or would be responsible for directing/ordering the extension of this haulage and marketing agreement post-Transaction?

Interrogatory No. 5 Has CPR (or its Consultants') communicated or in any way indicated to a Trustee, DM&E and/or IC&E (or any of their Consultants) CPR's (or its Consultant's) views with regard to whether IC&E should terminate, honor, or extend its existing agreements with KCSR regarding use of IC&E/DME's lines? Describe all such communications or indications.

Interrogatory No. 6 Other than those communications described in response to Interrogatory No. 5, Describe any and all discussions or other communications between or among CPR, a Trustee, DM&E, IC&E and/or their Consultant(s) (including any discussions or communications during CPR's due diligence related to the proposed Transaction) in which KCSR's existing agreements with IC&E regarding use of IC&E/DME's lines were discussed or disclosed, including any conversation relating to the advisability of terminating, honoring, or extending KCSR's existing agreements regarding use of IC&D/DME's lines.

Interrogatory No. 7 Is DME willing to honor, and will it agree not to cancel, the existing agreements between IC&E and KCSR whereby KCSR possesses certain marketing and haulage rights over certain lines of IC&E?

Interrogatory No. 8 Related to Document Request No. 11 below, has CPR (and/or Consultants advising CPR on such matters) reviewed, or requested to review, DME's existing agreements, tariffs, and/or rates governing the transportation of grain originating on DME lines? If so, what post-Transaction changes to DME grain transportation rates (a) has CPR and/or its Consultants recommended to DME and/or (b) has CPR indicated to DME it would or should implement?

Interrogatory No. 9 With respect to each agreement listed in response to Document Request No. 11 below, provide the assessment(s) of DME (and/or of any Consultant(s) advising DME or other Applicant on the matter) of the likelihood that DME would or should, post-Transaction:

- (a) direct or otherwise cause the termination of any such agreement,
- (b) extend or otherwise cause the extension of any such agreement, or
- (c) honor the remaining term of any such agreement, but not renew or extend such agreement at the end of its term.

Interrogatory No. 10 Other than those communications described in response to Interrogatory No. 5, with respect to each agreement listed in response to Document Request No. 11 below, has CPR (or its Consultants) expressed or in any way indicated to a Trustee, DM&E and/or IC&E (or their Consultants) CPR's (or its Consultant's) views with regard to whether DME should terminate, extend, or honor any such agreement? Describe all such communications or indications.

Interrogatory No. 11 Have officials, representatives, and/or Consultants of CPR conferred with officials, representatives, and/or Consultants of DME (or vice versa) regarding the transportation of grain originating on DME lines to destinations on railroads other than CPR and DME via the Kansas City gateway? If so, describe the nature of those discussions, identify the individuals participating in such discussions, describe with particularity any strategies, plans, or conclusions about such traffic patterns that were reached as a result of such meetings/conferences.

Interrogatory No. 12 Have officials, representatives, and/or Consultants of DME discussed, analyzed, developed plans, or otherwise addressed marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR, including CPR destinations. If so, describe the nature of those discussions, identify the individuals participating in such discussions, and describe with particularity any conclusions, whether preliminary or final, regarding such discussions, plans, or studies.

DOCUMENT REQUESTS

Document Request No. 1 Produce any and all documents (including information residing in any electronic database created or consulted during the course of due diligence related to this

Transaction) related to, relied upon in making, or otherwise supporting your answers to the interrogatories above.

Document Request No. 2 Produce IC&E and DM&E financial data for fiscal years 2005, 2006, and 2007, in whatever form it is that DME collects and maintains that information that most approximates the R-1 financial forms that Class I rail carriers, such as CPR and KCSR, compile and submit annually to the Surface Transportation Board.

Document Request No. 3 Produce all witness workpapers, and all documents (including information residing in any electronic database created or consulted in the course of due diligence related to the proposed Transaction) relied upon in preparation of those portions of the Application discussing rail transportation of grain by Applicants. If DME has previously produced any such documents to counsel for KCSR, as an alternative to producing such documents again, DME can confirm to counsel for KCSR that KCSR may use, for purposes of the proposed Transaction only, such documents previously produced by DME in response to prior discovery requests associated with the Application. Any additional documents responsive to this Document Request will be produced forthwith.

Document Request No. 4 Produce all documents reflecting any communications between or among CPR (and/or its Consultants) and any Trustee or DME regarding the operation of DME either pre- or post-Transaction.

Document Request No. 5 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the transportation of grain originating on DME lines, (including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants), including:

- (a) the potential impact of the Transaction on such transportation;
- (b) any contemplated diversion of grain currently transported via the Kansas City gateway to Pacific Coast facilities such as those located at or near Vancouver, British Columbia;
- (c) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be interchanged with other rail carriers for final delivery to points geographically south of Kansas City;
- (d) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be delivered to points (including export facilities) on the current CPR system;
- (e) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to interchange points with other railroads;
- (f) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to points (including export facilities) on the current CPR system.

Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 6 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the potential impacts of the Transaction upon KCSR

and/or upon shippers served by KCSR, including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 7 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to the economics of overseas grain-consuming markets and DME's strategic plans in connection with marketing, promoting, or transporting North American-produced grain to such markets. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 8 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to CPR's ability and/or plans to recoup its investment in acquiring control of DME by marketing or otherwise promoting grain products originating on DME lines for overseas export via CPR-served Pacific Coast ports. This document production request includes any such plans, market analyses, financial projections, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 9 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) the anticipated post-Transaction revenue generated from the transportation of ethanol originating on DME lines, and (2) the impact and/or importance of

this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 10 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) the anticipated post-Transaction revenue generated from the transportation of grain originating on DME lines, and (2) the impact and/or importance of this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 11 Provide a list of all joint marketing agreements, haulage agreements, joint rate agreements, divisions agreements, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA") or other existing contracts between or among DME on one side and another rail carrier on the other, which agreement governs or involves, in whole or in part, the transportation of grain originating on DME lines to destinations not located on DME lines.

Document Request No. 12 With respect to Document Request No. 11, Produce all marketing plans, strategic plans, financial analyses, diversion studies, memoranda, e-mails, market analyses, and/or studies evaluating such agreements and/or discussing whether DME would or should seek to terminate, to honor, or to extend any of these agreements or arrangements. This document production request includes any such plans, e-mails, memoranda, market analyses or

studies prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 13 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda, and/or studies related to post-Transaction routing and/or marketing of grain originating on CPR and/or DME lines to destinations via the Kansas City gateway on carriers other than KCSR. This document production request includes any such plans, market analyses or studies, e-mails or memoranda prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Document Request No. 14 In connection with Interrogatory No. 3, produce any marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda (including internal memoranda), meeting notes, meeting summaries, and/or any other documents that DME, IC&E and/or any Consultant has relied upon or consulted in connection with DME and/or IC&E's decision to decline to reach an agreement with KCSR for an extension of the subject marketing and haulage agreement post-Transaction.

Document Request No. 15 Produce all documents relating to communications between or among DME (and/or its Consultants) on the one hand and CPR (and/or its Consultants) on the other concerning KCSR's agreement with IC&E governing the rail transportation of grain originating on IC&E/DME lines to interchange with KCSR at the Kansas City gateway.

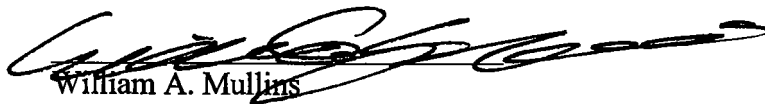
Document Request No. 16 Produce all documents relating to communications between or among any officials, representatives, and/or Consultants of DME discussing, analyzing,

developing plans, or otherwise addressing marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR (including CPR destinations), including all documents describing any conclusions, whether preliminary or final, regarding such discussions, plans, or studies.

Document Request No. 17 Produce all joint marketing agreements, haulage agreements, joint rate agreements, divisions agreements, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA"), alliance, trackage rights, operating rights, interchange, interline, or other existing contracts or agreements between DME on the one hand and regional and/or Class I railroads with which DME connects on the other.

Respectfully submitted,

W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
P.O. Box 219335
Kansas City, MO 64121-9335
Telephone: (816) 983-1303
Facsimile: (816) 983-1227



William A. Mullins
Alice G. Glass
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for The Kansas City Southern
Railway Company

Dated: February 6, 2008

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2008, a true copy of the foregoing "The Kansas City Southern Railway Company's First Set of Discovery Requests Directed to Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago & Eastern Railroad Corporation (collectively "DME")" was served by e-mail and overnight mail on:

William C. Sippel
Fletcher & Sippel
29 North Wacker Drive
Suite 920
Chicago, IL 60606

A handwritten signature in black ink, appearing to read "R. A. Wimbish", written over a horizontal line.

Robert A. Wimbish
Attorney for The Kansas City Southern
Railway Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Canadian Pacific Railway Company, <i>et al.</i> – Control –	)	
Dakota, Minnesota & Eastern Railroad Corp., <i>et al.</i>	)	
	)	
	)	Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY'S
RESPONSES AND OBJECTIONS TO
THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. Part 1114 and other applicable rules and authority, Applicant Canadian Pacific Railway Company ("CPR") responds as follows to Kansas City Southern Railway Company's ("KCS' ") First Set of Discovery Requests Directed to Canadian Pacific Railway Company (the "KCS Discovery Requests").

General Objections

CPR's General Objections, set forth herein, apply to each and every one of the specific interrogatories and document requests that follow. CPR's objections shall not waive, limit, or prejudice any objections it may later assert.

1. — CPR objects to any and all definitions and/or instructions to the extent that they either expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. CPR further objects to the KCS Discovery Requests to the extent that they seek to impose obligations on CPR greater than, or inconsistent with, those imposed under 49 C.F.R. Part 1114, Subpart B.

2. CPR objects to each and every Interrogatory and Document Request to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, protection, or exemption from discovery or disclosure. In the event that any such privileged, protected, or exempt information is

inadvertently produced or provided, such disclosure or production is not intended, and should not be construed, as a waiver of any applicable privilege, protection, or exemption.

3. CPR objects to each and every KCS Discovery Request to the extent that it seeks production of information or data that is not relevant to the subject matter of this proceeding or is not reasonably calculated to lead to the discovery of admissible evidence.

4. CPR objects to each and every KCS Document Request to the extent that it is (a) overly broad; (b) vague and/or ambiguous; (c) fails to describe with reasonable particularity the information sought; (d) seeks information that is not within the possession, custody or control of CPR; or (e) would impose an undue burden or expense on CPR that outweighs any relevance or probative value the information sought may have in this proceeding.

5. CPR objects to each and every KCS Discovery Request to the extent that it requests information or material that it is: (a) already in the possession of KCS; or (b) is publicly available or is otherwise readily available or accessible to KCS.

6. CPR objects to the definition of the term "Applicants" as ambiguous and overbroad, as CPR does not presently have control of DM&E or IC&E or their respective officers, employees, or agents. CPR further objects to the definition of the term "You," as it seeks to incorporate all persons and entities included in the term "Applicants," including persons and entities over which CPR lacks control and about which it does not have complete knowledge. The KCS Discovery Requests are directed to CPR, and CPR responds only for itself, its employees and agents, and not for DM&E, IC&E or any other entity.

7. CPR objects to the definition of "Contemplate" as vague, ambiguous and circular. Because the term is used in several of the KCS Discovery Requests, CPR will use its reasonable interpretation of the term to formulate its responses. CPR interprets the term "contemplate" to

describe active consideration of an action or conduct that is set forth in a specific, concrete proposal by or to CPR management.

8. CPR objects to the definition of “Describe” as overbroad and unduly burdensome. Detailing the “locations” of all participants to a communication, such as an email, at the time of the communication would be extremely difficult if not impossible and the burden of ascertaining such information would far outweigh any possible relevance or probative value of that information.

9. CPR objects to the definition of “Document” to the extent it seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. CPR further objects to the definition of “Document” to the extent it seeks information or data that is privileged, protected by the attorney-client work product doctrine, or otherwise protected, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine. In these Responses, CPR will interpret the term “Document” as excluding any data or other information that is protected from discovery or disclosure by such privilege, protection, doctrine, or rule.

10. CPR objects to the definition of “relate to” as overly broad and unduly burdensome, and, with respect to the “absence or potential existence” of “any condition or state of affairs,” as ambiguous and incomprehensible.

11. CPR objects to Instruction 1 to the extent it seeks to impose obligations or requirements beyond, in addition to, or inconsistent with discovery obligations under 49 C.F.R. Part 1114. Discovery guidelines adopted at the request of the parties in a different proceeding do not apply to this case. CPR will respond to the KCS Discovery Requests in the time required by Part 1114 and other governing rules.

12. CPR objects to Instruction 3 as overbroad and unduly burdensome. CPR objects that the time period provided in the Instruction is overbroad, unduly burdensome, and seeks information that is not relevant to this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving this objection, unless otherwise indicated, CPR's responses will cover the period from October 5, 2006 to the present.

13. CPR objects to Instruction 8 as unduly burdensome, overly broad, unnecessary, seeking information that is not relevant to this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. CPR further objects to Instruction 8 insofar as it applies to documents, as the document itself will provide information "identifying" the document.

14. CPR does not concede the relevance, materiality, competence or admissibility as evidence of any of the information or documents requested in the KCS Discovery Requests. By producing responsive information or documents, CPR does not concede that such information or documents are relevant, material, or admissible into evidence, and any such production is not intended to waive any of CPR's objections to any of the KCS Discovery Requests. CPR reserves its right to object on any ground to the use of the responses provided herein, in this proceeding or any appeal thereof, or in any subsequent proceeding or action.

15. CPR's General Objections, Specific Objections, and responses are based upon information presently known to it. CPR reserves the right to rely upon facts, documents, or other evidence that it may develop or that may subsequently come to its attention; to assert additional objections; and to supplement or amend these responses at any time.

Specific Objections

In addition to the foregoing General Objections (which CPR hereby incorporates by reference into the following responses to each of the individual KCS Discovery Requests), CPR also asserts the following Specific Objections to specific KCS Interrogatories and Document

Requests. CPR preserves all of its General Objections set forth above, and none of the following Specific Objections limits the scope, breadth, generality or applicability of those General Objections.

INTERROGATORIES

Interrogatory No. 1 Identify any and all CPR employees and Consultants who have assisted in developing marketing plans, analyses, memoranda, financial projections, and/or any other studies related to the Transaction, and describe their roles in developing such materials.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to this Interrogatory as overbroad and unduly burdensome. CPR objects to the terms “any and all” and “any other studies related to the Transaction” as overbroad and unduly burdensome, and to the term “assisted” as vague, ambiguous and, to the extent it can be understood, overbroad and unduly burdensome. Subject to, and without waiving, its objections, CPR states that the persons primarily responsible for the analyses and factual information set forth in the Application are those persons who submitted verified statements in support of the Application.

Interrogatory No. 2 Identify all Trustees.

Response:

The Trustee of the independent voting trust controlling DM&E during the pendency of the Application is Richard N. Hamlin.

Interrogatory No. 3 As CPR is aware, KCSR has proposed extending the terms of an existing haulage and marketing agreement between IC&E and KCSR governing the transportation of grain originating on IC&E lines to KCSR via the Kansas City gateway. Please provide the facts and/or assumptions of CPRR and/or its Consultants that caused CPRR to decline to reach (and/or to recommend against reaching) an agreement with KCSR for an extension of this agreement beyond its current term.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to, and without waiving, its objections, CPR states that the reasons why CPR declined to reach an agreement with KCSR for an extension of the referenced agreement are set forth in the letter dated January 29, 2008, from CPR's Vice President – Law, Paul Guthrie to David Reeves of KCS, a copy of which was attached to Applicants' Emergency Motion for Protective Order filed February 14, 2008. CPR has not made any recommendation to DME with respect to whether IC&E should (or should not) agree to an extension of the referenced agreement.

Interrogatory No. 4 In connection with the negotiations for an extension of the KCSR-IC&E haulage and marketing agreement described in Interrogatory No. 3 above, identify the individual or individuals responsible for CPR's decision not to agree to an extension of the existing haulage and marketing agreement. Additionally, who at CPR is or would be responsible for directing/ordering the extension of this haulage and marketing agreement post-Transaction?

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects that Interrogatory 4 is based on a false and erroneous premise – i.e., that there have been “negotiations” between KCS and CPR concerning the extension of a “haulage and marketing agreement” between KCS and IC&E. Subject to and without waiving its objections, CPR states that CPR's Vice President – Law, Paul Guthrie, was responsible for the content of, and the decision to send, the January 29, 2008 letter referenced in response to Interrogatory No. 3 to Mr. Reeves. It has not yet been determined who at CPR may

have responsibility for future business decisions relating to any agreements between KCSR and IC&E following approval of the proposed transaction by the STB.

Interrogatory No. 5 Has CPR (or its Consultants) communicated or in any way indicated to a Trustee, DM&E and/or IC&E (or any of their Consultants) CPR's (or its Consultant's) views with regard to whether IC&E should terminate, honor, or extend its existing agreements with KCSR regarding use of IC&E/DME's lines? Describe all such communications or indications.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to and without waiving its objections, CPR states that it has not communicated or in any way indicated to a Trustee, DM&E or IC&E (or their Consultants) any views with regard to whether IC&E should terminate, honor, or extend its existing agreements with KCS.

Interrogatory No. 6 Other than those communications described in response to Interrogatory No. 5, Describe any and all discussions or other communications between or among CPR, a Trustee, DM&E, IC&E and/or their Consultant(s) (including any discussions or communications during CPR's due diligence related to the proposed Transaction) in which KCSR's existing agreements with IC&E regarding use of IC&E/DME's lines were discussed or disclosed, including any conversation relating to the advisability of terminating, honoring, or extending KCSR's existing agreements regarding use of IC&E/DME's lines.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to the term "advisability" as vague, ambiguous and susceptible of multiple interpretations. Subject to and without waiving its objections, CPR states that it has not had any discussions or other communications with the Trustee in which KCSR's existing agreements with IC&E were discussed, or relating to the advisability of

terminating, honoring or extending those agreements. Nor has CPR had any discussions or communications with DM&E, IC&E or their Consultants in which the advisability of terminating, honoring or extending IC&E's existing agreements with KCSR was discussed. The only non-privileged discussions or communications that CPR has had with DM&E, IC&E or their Consultants regarding IC&E's existing agreements with KCSR took place after KCSR counsel expressed KCSR's concerns regarding those agreements to representatives of CPR beginning in January 2008. CPR was not aware of the existence of KCSR's agreements with IC&E prior to that time. Those communications are set forth in documents being produced in response to KCSR's Document Requests.

Interrogatory No. 7 Is CPR willing to honor, and will it agree not to cancel, the existing agreements between IC&E and KCSR whereby KCSR possesses certain marketing and haulage rights over certain lines of IC&E?

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to, and without waiving, its objections, CPR states that it is not a party to the existing agreements between KCSR and IC&E, nor does CPR presently have authority to control DM&E and IC&E. Accordingly, CPR cannot agree to "honor" or "not to cancel" those agreements. Moreover, for the reasons set forth in the letter dated January 29, 2008, from CPR's Vice President – Law, Paul Guthrie to David Reeves of KCS, CPR does not currently possess knowledge sufficient to enable it to make an informed decision regarding whether it would be in the best interest of IC&E to extend or modify those agreements in the manner requested by KCSR.

Interrogatory No. 8 Related to Document Request No. 12 below, has CPR (and/or Consultants advising CPR on such matters) reviewed DME's existing agreements, tariffs, and/or rates governing the transportation of grain originating on DME lines? If so, what post-Transaction changes to DME grain transportation rates (a) has CPRR and/or its Consultants recommended and/or (b) does CPRR contemplate implementing?

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to the term "post-Transaction" as vague and ambiguous. CPR also objects to Interrogatory No. 8 to the extent it seeks information regarding private agreements or rates that do not involve KCS. Subject to and without waiving its objections, CPR states that, in connection with its due diligence review of the proposed acquisition of DME, CPR reviewed certain of DME's agreements and tariffs relating to grain transportation. However, neither CPR nor its Consultants has recommended any changes to those agreements or tariffs following approval of the proposed transaction, nor does CPR presently contemplate making such changes. *efalove*

Interrogatory No. 9 With respect to each agreement listed in response to Document Request No. 12 below, provide the assessment(s) of CPR (and/or of any Consultant(s) advising CPR or other applicant on the matter) of the likelihood that CPR would or should, post-Transaction:

- (a) direct or otherwise cause the termination of any such agreement,
- (b) extend or otherwise cause the extension of any such agreement, or
- (c) honor the remaining term of any such agreement, but not renew or extend such agreement at the end of its term.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to the term "post-Transaction" as vague and

ambiguous. CPR also objects to Interrogatory No. 9 to the extent it seeks information regarding private agreements or rates that do not involve KCS. CPR further objects to the phrase "assessment(s) of CPRR . . . of the likelihood that CPRR could or should," as vague, ambiguous, and incomprehensible. Subject to and without waiving its objections, CPR states that it is not a party to the existing agreements between DME and other rail carriers (other than those agreements between DME and CPR itself), nor does CPR presently have authority to control DM&E and IC&E. Accordingly, CPR cannot "direct or otherwise cause the termination of any such agreement," "extend or otherwise cause the extension of any such agreement", or "honor the remaining term of any such agreement, but not renew or extend such agreement at the end of its term." Neither CPR nor its Consultants has conducted any assessment of the agreements referenced in Document Request No. 12 for the purpose of determining whether CPR should recommend that DME honor, extend, or terminate those agreements following approval of the proposed transaction.

Interrogatory No. 10 Other than those communications described in response to Interrogatory No. 5, with respect to each agreement listed in response to Document Request No. 12 below, has CPR (or its Consultants) expressed or in any way indicated to a Trustee, DM&E and/or IC&E (or their Consultants) CPR's (or its Consultant's) views with regard to whether DME should terminate, extend, or honor any such agreement? Describe all such communications or indications.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to the term "post-Transaction" as vague and ambiguous. CPR also objects to Interrogatory No. 10 to the extent it seeks information regarding private agreements or rates that do not involve KCS. Subject to and without waiving its objections, CPR states that it has not expressed or in any way indicated to a Trustee, DM&E or

IC&E (or their Consultants), any views with regard to whether DME should terminate, honor, or extend any of the agreements referenced in Document Request No. 12.

Interrogatory No. 11 Have officials, representatives, and/or Consultants of CPR conferred with officials, representatives, and/or Consultants of DME regarding the transportation of grain originating on DME lines to destinations on railroads other than CPR and DME via the Kansas City gateway? If so, describe the nature of those discussions, identify the individuals participating in such discussions, describe with particularity any strategies, plans, or conclusions about such traffic patterns that were reached as a result of such meetings/conferences.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to, and without waiving, its objections, CPR states that, during the course of due diligence, Mr. Don Smith and Mr. Jarad Farmer of CPR discussed with Mr. Steve Milligan of DME the current transportation of grain by DME, in order to gain an understanding of DME's current grain business. Those discussions did not involve any "strategies, plans or conclusions" about current or future traffic patterns for DME originated grain via the Kansas City gateway or via other gateways.

Interrogatory No. 12 Have officials, representatives, and/or Consultants of CPR discussed, analyzed, developed plans, or otherwise addressed marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR, including CPRR destinations. If so, describe the nature of those discussions, identify the individuals participating in such discussions, and describe with particularity any conclusions, whether preliminary or final, regarding such discussions, plans or studies.

Response:

CPR objects to this Interrogatory on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further specifically objects to the term "discussed" as overly broad and unduly burdensome, and to the term "otherwise addressed" as vague, ambiguous and

unduly burdensome. CPR also objects on the grounds that internal CPR discussions or analysis of future marketing of the transportation of DME origin grain to destinations on railroads other than KCS are not relevant to any cognizable objection to the proposed transaction that could be raised by KCS, that such information is proprietary and commercially sensitive. Subject to, and without waiving, its objections, CPR states that information responsive to this Interrogatory is set forth in documents that CPR is producing in response to KCSR's Document Requests. CPR has not conducted any additional studies or analyses or developed plans for marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR.

DOCUMENT REQUESTS

In addition to the General Objections set forth above (which CPR hereby incorporates by reference into the following responses to each of the individual KCS Document Requests), CPR also asserts the following Specific Objections to specific KCS Interrogatories and Document Requests. CPR preserves all of its General Objections set forth above, and none of the following Specific Objections limits the scope, breadth, generality or applicability of those General Objections.

Document Request No. 1 Produce any and all documents (including information residing in any electronic database created or consulted during the course of the due diligence related to this Transaction) related to relied upon in making, or otherwise supporting your answers to the interrogatories above.

Response:

CPR incorporates by reference to this response each of its specific objections to each of KCS' Interrogatories, set forth in full above. CPR further specifically objects to the term "any and all" as overbroad and unduly burdensome. CPR also specifically objects to the terms "relied upon," "related to," and "otherwise supporting" as vague, ambiguous, and overbroad. Subject to

and without waiving any of its objections, CPR is producing with these responses the documents referenced or relied upon in its responses to KCS' Interrogatories.

Document Request No. 2 To the extent not already produced pursuant to the request of the letter of January 16, 2008 and the follow-up e-mail of January 18, 2008 from David C. Reeves, Associate General Counsel of KCSR to Terence M. Hynes, Counsel at Sidley Austin LLP, produce in computer-readable format the 100% traffic waybill data for grain and grain products for CPR, IC&E and DM&E for 2005 and 2006, along with information necessary to read the data (e.g. record layout, field names and definitions of terms or abbreviations used in the fields). Please reference the letter and its attachment of February 1, 2007 from David C. Reeves, Associate General Counsel of KCSR to Terence M. Hynes, Counsel at Sidley Austin LLP for identification of the scope of the missing data.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. To the extent that it seeks the production of data (including 2006 data) in addition to that already produced to KCS at the request of Mr. Reeves, CPR further objects to this Document Request on the grounds that it is overly broad and unduly burdensome. As CPR counsel has advised KCS counsel, Mr. Reeves' letter requested 2005 traffic data in a format that is not maintained by CPR in the normal course of business. As an accommodation to KCS, CPR performed a special study involving the collection of the requested information from multiple data sources in order to provide the information regarding CPR's U.S. grain traffic in the format requested by KCS. CPR objects to performing any additional special studies in response to this Document Request.

what about in this form

Document Request No. 3 Produce IC&E and DM&E financial data for fiscal years 2005, 2006, and 2007, in whatever form it is that DME collects and maintains that information that most approximates the R-1 financial forms that Class I rail carriers, such as CPRR and KCSR, compile and submit annually to the Surface Transportation Board.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR specifically objects to the term “financial data” as vague, ambiguous, and unduly broad. CPR further objects that a request for financial information collected and maintained by DME is not properly directed to CPR, in part because CPR does not control DME or its financial information. Subject to, and without waiving, its objections, CPR states that it understands that DME will provide certain financial data in response to an identical Document Request directed by KCS to DME. //

Document Request No. 4 Produce all witness workpapers, and all documents (including information residing in any electronic database created or consulted in the course of due diligence related to the proposed Transaction) relied upon in preparation of those portions of the Application discussing rail transportation of grain by Applicants. If CPR has previously produced any such documents to counsel for KCSR, as an alternative to producing such documents again, CPR can confirm to counsel for KCSR that KCSR may use, for purposes of the proposed Transaction only, such documents previously produced by CPR in response to prior discovery requests associated with the Application. Any additional documents responsive to this Document Request will be produced forthwith.

Response:

CPR specifically objects to Document Request No. 4 as duplicative and redundant, because CPR has previously produced to KCS all workpapers supporting the Application, or (in the case of material designated Highly Confidential) to its outside counsel. Subject to, and without waiving, its objections, CPR states that KCS or its outside counsel may use the workpapers and other documents produced to it by CPR in this proceeding only in accordance with the requirements of the Protective Order issued by the STB in this proceeding.

Document Request No. 5 Produce all documents reflecting any communications between or among CPR (and/or its Consultants) and any Trustee regarding the operation of DME either pre-or post-Transaction.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to the term "regarding the operation of DME" as vague, ambiguous, overbroad and unduly burdensome.

Documents Request No. 6 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the transportation of grain originating on DME lines, (including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants), including:

- (a) the potential impact of the Transaction on such transportation;
- (b) any contemplated diversion of grain currently transported via the Kansas City gateway to Pacific Coast facilities such as those located at or near Vancouver, British Columbia;
- (c) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be interchanged with other rail carriers for final delivery to points geographically south of Kansas City;
- (d) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be interchanged with other rail carriers for final delivery to points geographically south of Kansas City;
- (e) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to interchange points with other railroads;
- (f) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to points (including export facilities) on the current CPRR system.

Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 6 on the grounds that it is excessively overbroad, unduly burdensome, and oppressive. CPR specifically objects to the undefined term "potential impact" as vague, ambiguous and overbroad. CPR further objects to the undefined term "other railroads," as vague and ambiguous, in part because it does not specify whether CPR or KCS are or are not considered "other railroads" within the context of this Request. To the extent KCS intends to exclude itself from the scope of the term "other railroads," CPR also objects to the request for information regarding contemplated changes to pricing or marketing of DME origin grain to interchange points with railroads other than KCS as irrelevant to any objection or concern KCS has standing to raise. Subject to, and without waiving, its objections, CPR responds to the subparts of Document Request No. 6 as follows.

- a. CPR is producing responsive documents. *See also* the workpapers previously produced to KCS.
- b. CPR does not presently contemplate any diversion of grain currently originating on DME lines and transported via the Kansas City gateway to Pacific Coast facilities.
- c. CPR is producing responsive documents. *See also* the workpapers previously produced to KCS.
- d. CPR is producing responsive documents. *See also* the workpapers previously produced to KCS.
- e. There are no responsive documents.
- f. There are no responsive documents.

Finally, CPR objects to the final sentence of Document Request No. 6 as vague, ambiguous, overbroad, unduly burdensome, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 7 Produce all marketing plans, strategic plans, divisions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the potential impacts of the Transaction upon KCSR and/or upon shippers served by KCSR, including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc. *revenue*

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 7 on the grounds that it is excessively overbroad. CPR objects to Request No. 7, including the terms "related to" and "potential impacts," as vague and ambiguous. Subject to, and without waiving, its objections, CPR states that has not conducted any studies or analyses to determine the effect of the proposed transaction on KCS or shippers served by KCS. To the extent that CPR has conducted studies or analyses of potential traffic flows on the CPR and DME systems generally, CPR is producing such documents. *See also* the workpapers previously provided to KCS.

Document Request No. 8 Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to the economics of overseas grain-consuming markets and CPR's strategic plans in connection with marketing, promoting, or transporting North American-produced grain to such markets. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 8 on the grounds that it is excessively overbroad, unduly burdensome and oppressive. CPR further objects to the terms "related to the economics," and "overseas grain-consuming markets" as vague and ambiguous. *overseas grain*

Documents Request No. 9 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) the impact of U.S. dollar fluctuations (and its current low value relative to other currencies) upon CPR's strategic plans to acquire control of DME; and (2) CPR's plans to recoup its investment in acquiring control of DME lines for overseas export via CPR-served Pacific Coast ports. This document request includes any such plans, market analyses, financial projections, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 9 on the grounds that it is excessively overbroad, unduly burdensome and oppressive. CPR further objects to Document Request No. 9 as vague, ambiguous, and susceptible to several different interpretations. Subject to, and without waiving, its objections, CPR states that it has not conducted any study or analysis of "the impact of U.S. dollar fluctuations (and its current low value relative to other currencies) upon CPR's strategic plans to acquire control of DME." Nor has CPR conducted any study or analysis directed at "plans to recoup its investment in acquiring control of DME by marketing or otherwise promoting grain products originating on DME lines

for overseas exports via CPR-served Pacific Coast ports." *See also* response to Document Request No. 6(b).

Document Request No. 10 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) CPR's anticipated post-Transaction revenue generated from the transportation of ethanol originating on DME lines, and (2) the impact and/or importance of this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 10 on the grounds that it is excessively overbroad. CPR further objects to the term "related to" as vague, ambiguous, and overbroad. Moreover, CPR objects that its "ability to finance its acquisition of DME" is not at issue in this proceeding. Subject to, and without waiving, its objections, CPR states that it has not conducted any study or analysis directed to "the impact and/or importance of [ethanol] revenue on CPR's ability to finance its acquisition of DME." Documents relating to anticipated future ethanol traffic and revenues are set forth in the workpapers previously provided to KCS, and additional documents are being produced.

Document Request No. 11 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) CPR's anticipated post-Transaction revenue generated from the transportation of grain originating on DME lines, and (2) the impact and/or importance of this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Response:

CPR repeats and incorporates by reference its response and objections to Document Request No. 10.

Document Request No. 12 Provide a list of all joint marketing, agreements, haulage agreements, joint rate agreements, divisions agreements, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA") or other existing contracts between or among DME on one side and another rail carrier on the other, which agreement governs or involves, in whole or in part, the transportation of grain originating on DME lines to destinations not located on DME lines.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 12 on the grounds that it is excessively overbroad. CPR states that it is not a party to the existing agreements between DME and other rail carriers (other than those agreements between DME and CPR itself), nor does CPR presently have authority to control DM&E and IC&E. Accordingly, CPR does not have right to disclose agreements between DME and other parties to KCS. Such a request should be directed to DME. Finally, to the extent that this Document Request seeks production of agreements between DME and KCS, CPR objects on the grounds that KCS already has in its possession copies of such agreements.

Document Request No. 13 With respect to Document Request No. 12, produce all marketing plans, strategic plans, financial analyses, diversion studies, memoranda, e-mails, market analyses, and/or studies evaluating such agreement and/or discussing whether CPR would or should seek to terminate, to honor, or to extend any of these agreements or arrangements. This document production request includes any such plans, e-mails, memoranda, market analyses or studies prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 13 on the grounds that it is excessively overbroad. Subject to, and without waiving, its objections, CPR states that it is not a party to the existing agreements between DME and other railroads (other than agreements between DME and CPR itself), nor does CPR presently have authority to control DM&E and IC&E. Accordingly, CPR cannot “seek to terminate, to honor or to extend” any agreements or arrangements of DME. Neither CPR nor its Consultants has prepared any marketing plans, strategic plans, financial analyses, diversion studies or other studies evaluating existing agreements between DME and other railroads, or “whether CPR would or should seek to terminate, to honor, or to extend any of these agreements” following approval of the proposed transaction.

Document Request No. 14 Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda, and/or studies related to post-Transaction routing and/or marketing of grain originating on CPR and/or DME lines to destinations via the Kansas City gateway on carriers other than KCSR. This document production request includes any such plans, market analyses or studies, e-mails or memoranda prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 14 on the grounds that it is excessively overbroad. CPR further objects to the phrase “related to post-Transaction routing and/or marketing of grain originating on CPRR and/or DME lines” as vague

and ambiguous and, to the extent it can be understood, overbroad. Subject to, and without waiving its objections, CPR states that responsive documents are being produced. *See also* the workpapers previously provided to KCS.

Document Request No. 15 In connection with Interrogatory No. 3, produce any marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda (including internal memoranda), meeting notes, meeting summaries, and/or any other documents that CPR and/or any Consultant has relied upon or consulted in connection with CPR's decision to decline to reach an agreement with KCSR for an extension of the subject marketing and haulage agreement post-Transaction.

Response:

CPR incorporates by reference its objections to Interrogatory No. 3. Subject to, and without waiving its objections, CPR states that it has no documents responsive to Request No. 15.

Document Request No. 16 Produce all documents relating to communications between or among CPR (and/or its Consultants) on the one hand and DME (and/or its consultants) on the other concerning KCSR's agreement with IC&E governing the rail transportation of grain originating on IC&E/DME lines to interchange with KCSR at the Kansas City gateway.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR incorporates by reference its responses (including all objections) to Interrogatory Nos. 3, 4, 5, and 6. Subject to, and without waiving, its objections, CPR states that responsive documents are being produced.

Document Request No. 17 Produce all documents relating to communications between or among officials, representatives, and/or Consultants of CPR discussing, analyzing, developing plans, or otherwise addressing marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR (including CPR destinations), including all documents describing any conclusions, whether preliminary or final, regarding such discussions, plans or studies.

Response:

CPR incorporates by reference its responses (including all objections) to Interrogatory Nos. 11 and 12. CPR further objects that this Document Request No. 17 is redundant and duplicative of other requests set forth above. Subject to, and without waiving, its objections, CPR states that responsive documents are being produced.

Document Request No. 18 Provide any and all studies, reports, communications, market summaries, memoranda, e-mails, meeting notes/summaries, and any other documents prepared by Mr. Tom Fitzgerald for the benefit of Applicants that deal in whole or part with grain traffic flows originating in Iowa and/or southern Minnesota.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to and without waiving its objections, CPR states Mr. Fitzgerald has not prepared any documents responsive to this Document Request.

Document Request No. 19 Produce all joint marketing agreements, haulage agreements, joint rate agreements, divisions, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA"), alliance, trackage rights, operating rights, interchange, interline, or other existing contracts or agreements between DME on the one hand and regional and/or Class I railroads with which DME connects on the other.

Response:

CPR objects to this Document Request on the grounds that the requested information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. CPR further objects to Document Request No. 12 on the grounds that it is excessively overbroad, duplicative, redundant, and vexatious. CPR is not a party to the existing agreements between DME and other railroads (other than agreements between DME and CPR itself), nor does CPR presently have authority to control DM&E and IC&E. Accordingly, CPR does not have right to disclose agreements between DME and other

parties to KCS. Such a request should be directed to DME. Finally, to the extent that this Document Request seeks production of agreements between DME and KCS, CPR objects on the grounds that KCS already has in its possession copies of such agreements.

William C. Sippel
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606
(312) 252-1500

*Counsel for Dakota, Minnesota & Eastern
Railroad Corporation*

Terence M. Hynes
G. Paul Moates
Jeffrey S. Berlin
Paul A. Hemmersbaugh
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel for Canadian Pacific Railway Company

Dated: February 21, 2008

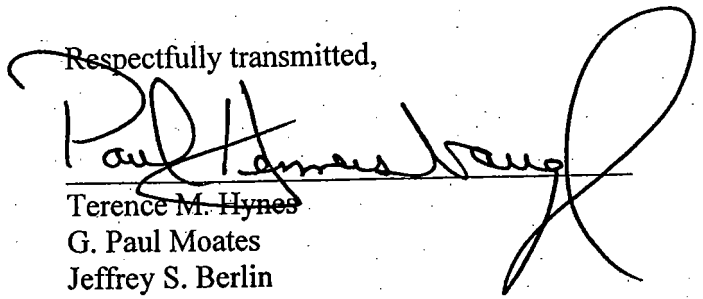
parties to KCS. Such a request should be directed to DME. Finally, to the extent that this Document Request seeks production of agreements between DME and KCS, CPR objects on the grounds that KCS already has in its possession copies of such agreements.

William C. Sippel
Fletcher & Sippel
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606
(312) 252-1500

*Counsel for Dakota, Minnesota & Eastern
Railroad Corporation*

Dated: February 21, 2008

Respectfully transmitted,

A large, stylized handwritten signature in black ink, which appears to read "Paul A. Hemmersbaugh". The signature is written over the printed name and extends to the right, with a long, sweeping tail.

Terence M. Hynes
G. Paul Moates
Jeffrey S. Berlin
Paul A. Hemmersbaugh
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

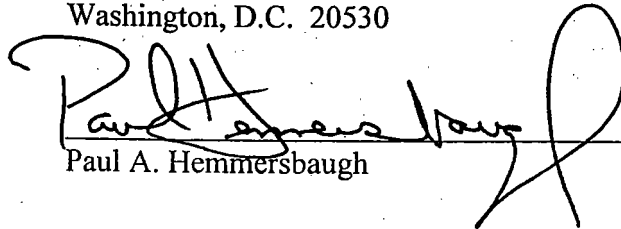
Counsel for Canadian Pacific Railway Company

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Canadian Pacific Railway Company's Responses And Objections To The Kansas City Southern Railway Company's First Set of Discovery Requests to be served by first class mail, postage prepaid, this 21st day of February 2008, on all parties of record and the following persons as specified in the Board's Decision dated December 27, 2007:

Secretary of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Attorney General of the United States
c/o Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, N.W., Rm. 3109
Washington, D.C. 20530



Paul A. Hemmersbaugh

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35081

CANADIAN PACIFIC RAILWAY COMPANY, ET AL.
-- CONTROL --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, ET AL.

RESPONSES OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
TO THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEYS FOR DAKOTA, MINNESOTA &
EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN
RAILROAD CORPORATION

Dated: February 21, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35081

CANADIAN PACIFIC RAILWAY COMPANY, ET AL.
-- CONTROL --
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION, ET AL.

RESPONSES OF
DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
TO THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
FIRST SET OF DISCOVERY REQUESTS

Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively, "DME") hereby submit these responses to the First Set of Discovery Requests propounded by The Kansas City Southern Railway Company ("KCS"):

GENERAL OBJECTIONS

The following general objections are made with respect to all of the discovery requests. Additional specific objections are stated in response to individual discovery requests.

1. DME objects to KCS's discovery requests to the extent those discovery requests seek information that is neither relevant to the Control Application and related matters pending before the Board in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

2. DME objects to KCS's discovery requests to the extent those discovery requests seek information or documents in KCS's possession or that are publicly available.

3. DME objects to KCS's discovery requests to the extent those discovery requests seek confidential or proprietary information or documents.

4. DME objects to KCS's discovery requests to the extent that KCS requests information or documents that are subject to the attorney-client privilege, the attorney work product doctrine or any other legal privilege.

5. DME objects to the definition of "You" (Item No. 9 under "The Railroad Entities") to the extent that it includes Applicants other than DM&E and IC&E. DME responds to KCS's discovery requests solely on behalf of itself. DME also objects to references to "Applicants" in contexts where DME is without knowledge as to Applicants other than itself, including without limitation references to Applicants in the definitions of "Consultant" and "Contemplate" and Instruction No. 7.

6. DME objects to Instruction No. 3 for the reason that, to the extent the instruction includes the period prior to October 5, 2006, it is overly broad, burdensome, and seeks information and documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence.

7. DME objects to Instruction No. 1 to the extent that it exceeds or alters the discovery responsibilities imposed on parties to Board proceedings pursuant to 49 C.F.R. § 1114, and to the extent that it states a legal conclusion.

8. DME objects to the definition of "Relate to" as vague, ambiguous, susceptible to more than one interpretation and, as to the "absence or potential existence" of "any condition or state of affairs," difficult to comprehend under any interpretation.

DISCOVERY REQUESTS

Subject to and without waiver of the General Objections set forth above, DME responds individually to the discovery requests propounded by KCS to DME as follows:

INTERROGATORY NO. 1.

Identify any and all DME employees and Consultants who have assisted in developing marketing plans, analyses, memoranda, financial projections, and/or any other studies related to the Transaction, and describe their roles in developing such materials.

RESPONSE:

DME objects to Interrogatory No. 1 for the reason that it is vague, overly broad and irrelevant to the extent that it seeks information beyond marketing subjects related to the Transaction. Without waiving its objections, DME responds as follows: Lynn Anderson, Senior Vice President, Marketing; Steven Milligan, Assistant Vice President-Agricultural Commodities; and Michael McDaniel, Director of Marketing Administration provided occasional oral fact-checking assistance to CP and/or its Consultants (such as confirming whether another railroad serves a specific location) and orally responded to occasional informational requests from CP seeking information on planned new on-line industries or current on-line industries undergoing expansion and the potential marketing opportunities related thereto. In addition, John Brooks, Assistant Vice President Marketing and Douglas Conway, General Manager Coal Marketing, provided information to CP regarding the DME's PRB Project.

INTERROGATORY NO. 2.

Identify all Trustees.

RESPONSE:

DME objects to Interrogatory No. 2 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably

calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: Richard N. Hamlin.

INTERROGATORY NO. 3.

As DME is aware, KCSR has proposed extending the terms of an existing haulage and marketing agreement between IC&E and KCSR governing the transportation of grain originating on IC&E lines to KCSR via the Kansas City gateway. Please provide the facts and/or assumptions of any one or combination of DME, DM&E, IC&E and/or its Consultants that caused any one or more of DME, DM&E, IC&E and/or its Consultants to decline to reach (and/or to recommend against reaching) an agreement with KCSR for an extension of this agreement beyond its current term.

RESPONSE:

DME objects to Interrogatory No. 3 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Interrogatory No. 3 for the reason that it is vague and misleading in its assumptions. Without waiving its objections, DME responds as follows: See letter of Lynn Anderson to Michael Bilovesky, Vice President - Marketing and Sales for KCS, dated February 21, 2008.

INTERROGATORY NO. 4.

In connection with the negotiations for an extension of the KCSR-IC&E haulage and marketing agreement described in Interrogatory No. 3 above, identify the individual or individuals responsible for DME's, DM&E's, and/or IC&E's decision not to agree to an extension of the existing haulage and marketing agreement. Additionally, who at DME is or would be responsible for directing/ordering the extension of this haulage and marketing agreement post-Transaction?

RESPONSE:

DME objects to Interrogatory No. 4 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Interrogatory No. 4 for the reason that it is false and misleading in its premise that the parties engaged in

"negotiations." Without waiving its objections, DME responds to the first sentence of Interrogatory No. 4 as follows: Lynn Anderson, Senior Vice President - Marketing and Kevin Schieffer, President and Chief Executive Officer. DME is without knowledge as to who would be responsible for making any decision whether to extend such agreements after CP acquires control of DME.

INTERROGATORY NO. 5.

Has CPR (or its Consultants') communicated or in any way indicated to a Trustee, DM&E and/or IC&E (or any of their Consultants) CPR's (or its Consultant's) views with regard to whether IC&E should terminate, honor, or extend its existing agreements with KCSR regarding use of IC&E/DME's lines? Describe all such communications or indications.

RESPONSE:

DME objects to Interrogatory No. 5 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Interrogatory No. 5 for the reason that it is vague and overly broad in seeking information on CP views "in any way indicated" to DME, and for the reason that KCS seeks information that is in the possession of KCS. Without waiving its objections, DME responds as follows: As to DME, no, except that DME received a copy of the January 29, 2008 letter from Paul Guthrie of CP to David Reeves of KCS. DME is without knowledge regarding any such communications by CP or its Consultants to the Trustee.

INTERROGATORY NO. 6.

Other than those communications described in response to Interrogatory No. 5, Describe any and all discussions or other communications between or among CPR, a Trustee, DM&E, IC&E and/or their Consultant(s) (including any discussions or communications during CPR's due diligence related to the proposed Transaction) in which KCSR's existing agreements with IC&E regarding use of IC&E/DME's lines were discussed or disclosed, including any conversation relating to the advisability of terminating, honoring, or extending KCSR's existing agreements regarding use of IC&D/DME's [sic] lines.

RESPONSE:

DME objects to Interrogatory No. 6 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Interrogatory No. 6 for the reason that it is vague and susceptible to more than one interpretation as to whether it seeks information on internal DME communications, and is overly broad and burdensome to the extent that it seeks any and all internal DME communications. Without waiving its objections, DME responds as follows: See documents provided in response to Document Request No. 15 regarding DME communications with CP relating to the KCSR agreements. In response to a request from CP, DME on January 16, 2008 provided a copy of the IMRL-KCS Marketing Agreement dated May 20, 1997 to CP. A copy of the Divisions and Equipment Agreement between I&M Rail Link, LLC and KCS dated July 18, 2002 was included in documents placed in the DME electronic "data room" to which CP has access. DME has had no discussions with the Trustee regarding the KCS agreements.

INTERROGATORY NO. 7.

Is DME willing to honor, and will it agree not to cancel, the existing agreements between IC&E and KCSR whereby KCSR possesses certain marketing and haulage rights over certain lines of IC&E?

RESPONSE:

DME objects to Interrogatory No. 7 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: See letter of Lynn Anderson to Michael Bilovesky of KCS, dated February 21, 2008. DME intends to honor its legal obligations under existing agreements.

INTERROGATORY NO. 8.

Related to Document Request No. 11 below, has CPR (and/or Consultants advising CPR on such matters) reviewed, or requested to review, DME's existing agreements, tariffs, and/or rates governing the transportation of grain originating on DME lines? If so, what post-Transaction changes to DME grain transportation rates (a) has CPR and/or its Consultants recommended to DME and/or (b) has CPR indicated to DME it would or should implement?

RESPONSE:

DME's existing agreements, tariffs and/or rates governing the transportation of grain originating on DME lines were placed in DME's electronic "data room" to which CP has access. With respect to the second sentence of Interrogatory No. 8, DME responds as follows: None.

INTERROGATORY NO. 9.

With respect to each agreement listed in response to Document Request No. 11 below, provide the assessment(s) of DME (and/or of any Consultant(s) advising DME or other Applicant on the matter) of the likelihood that DME would or should, post-Transaction:

- (a) direct or otherwise cause the termination of any such agreement,
- (b) extend or otherwise cause the extension of any such agreement, or
- (c) honor the remaining term of any such agreement, but not renew or extend such agreement at the end of its term.

RESPONSE:

DME objects to Interrogatory No. 9 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Interrogatory No. 9 for the reason that it is vague, ambiguous and overly broad, and requests wholly speculative information and information that is not in the possession of DME. DME further objects to Interrogatory No. 9 for the reason that a response would require a burdensome special study involving review and analysis of hundreds of agreements. DME has no existing assessment of the likelihood that DME, once controlled by CP, would or should take the

referenced actions. DME is without knowledge regarding assessments of "any Consultant(s) advising . . . other Applicant."

INTERROGATORY NO. 10.

Other than those communications described in response to Interrogatory No. 5, with respect to each agreement listed in response to Document Request No. 11 below, has CPR (or its Consultants) expressed or in any way indicated to a Trustee, DM&E and/or IC&E (or their Consultants) CPR's (or its Consultant's) views with regard to whether DME should terminate, extend, or honor any such agreement? Describe all such communications or indications.

RESPONSE:

DME objects to Interrogatory No. 10 for the reason that KCS requests information that is neither relevant to the Control Application before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Interrogatory No. 10 for the reasons stated in the response to Document Request No. 11. Without waiving its objections, DME responds as follows: With respect to DME, no. DME is without knowledge regarding any such communications by CPR or its Consultants to the Trustee.

INTERROGATORY NO. 11.

Have officials, representatives, and/or Consultants of CPR conferred with officials, representatives, and/or Consultants of DME (or vice versa) regarding the transportation of grain originating on DME lines to destinations on railroads other than CPR and DME via the Kansas City gateway? If so, describe the nature of those discussions, identify the individuals participating in such discussions, describe with particularity any strategies, plans, or conclusions about such traffic patterns that were reached as a result of such meetings/conferences.

RESPONSE:

DME objects to Interrogatory No. 11 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: No, except as indicated in the response to Interrogatory Nos. 1 and 6.

INTERROGATORY NO. 12.

Have officials, representatives, and/or Consultants of DME discussed, analyzed, developed plans, or otherwise addressed marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR, including CPR destinations. If so, describe the nature of those discussions, identify the individuals participating in such discussions, and describe with particularity any conclusions, whether preliminary or final, regarding such discussions, plans, or studies.

RESPONSE:

DME objects to Interrogatory No. 12 for the reason that KCS requests information that is neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Interrogatory No. 12 for the reason that it is overly broad, vague, burdensome, oppressive and virtually limitless in scope. DME further objects to Interrogatory No. 12 for the reason that it seeks extremely sensitive and confidential competitive information not appropriate for disclosure to competing interline connections under any circumstances. Without waiving its objections, DME responds as follows: With respect to the first sentence of Interrogatory No. 12, yes. The marketing of the transportation of grain originating on DME lines to destinations on other railroads is a daily responsibility and activity of DME's grain marketing personnel. With respect to the second sentence of Interrogatory No. 12, DME objects that a response would be extremely burdensome and oppressive. Grain is a major commodity handled by DME which interchanges traffic with 22 railroads other than KCS. The marketing of the transportation of grain originating on DME lines is a daily responsibility and activity of DME's grain marketing personnel.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1.

Produce any and all documents (including information residing in any electronic database created or consulted during the course of due diligence related to this Transaction) related to, relied upon in making, or otherwise supporting your answers to the interrogatories above.

RESPONSE:

DME objects to Document Request No. 1 for the reason that it is overly broad and unduly burdensome to the extent that it seeks "any and all documents" that are "related to" or "otherwise supporting" the responses to KCS's interrogatories. Without waiving its objections, DME responds as follows: Responsive documents are being produced.

DOCUMENT REQUEST NO. 2.

Produce IC&E and DM&E financial data for fiscal years 2005, 2006, and 2007, in whatever form it is that DME collects and maintains that information that most approximates the R-1 financial forms that Class I rail carriers, such as CPR and KCSR, compile and submit annually to the Surface Transportation Board.

RESPONSE:

DME objects to Document Request No. 2 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Document Request No. 2 for the reason that the request for financial information that "most approximates the R-1 financial forms" that Class I rail carriers submit annually to the Board is vague, ambiguous and susceptible to more than one interpretation. As Class II rail carriers, DM&E and IC&E do not prepare or file R-1 financial data with the Board. Without waiving its objections, DME responds as follows: DME balance sheets, income statements and cash flow statements for calendar year 2006, the study year in this proceeding, are being produced.

DOCUMENT REQUEST NO. 3.

Produce all witness workpapers, and all documents (including information residing in any electronic database created or consulted in the course of due diligence related to the proposed Transaction) relied upon in preparation of those portions of the Application discussing rail transportation of grain by Applicants. If DME has previously produced any such documents to counsel for KCSR, as an alternative to producing such documents again, DME can confirm to counsel for KCSR that KCSR may use, for purposes of the proposed Transaction only, such documents previously produced by DME in response to prior discovery requests associated with

the Application. Any additional documents responsive to this Document Request will be produced forthwith.

RESPONSE:

None.

DOCUMENT REQUEST NO. 4.

Produce all documents reflecting any communications between or among CPR (and/or its Consultants) and any Trustee or DME regarding the operation of DME either pre- or post-Transaction.

RESPONSE:

DME objects to Document Request No. 4 for the reason that the request's reference to the "operation of DME" is vague, ambiguous and susceptible to more than one interpretation. DME further objects to Document Request No. 4 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence and for the reason that the request is overly broad and burdensome.

DOCUMENT REQUEST NO. 5.

Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the transportation of grain originating on DME lines, (including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants), including:

- (a) the potential impact of the Transaction on such transportation;
- (b) any contemplated diversion of grain currently transported via the Kansas City gateway to Pacific Coast facilities such as those located at or near Vancouver, British Columbia;
- (c) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be interchanged with other rail carriers for final delivery to points geographically south of Kansas City;
- (d) any contemplated increases or decreases (by tonnage, number of carloads, number of trains, or by any other metric that may have been used) in the volume of grain traffic originating on DME lines that would be delivered to points (including export facilities) on the current CPR system;

- (e) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to interchange points with other railroads;
- (f) any contemplated changes in post-Transaction pricing and/or marketing of the rail transportation of grain originating on DME lines to points (including export facilities) on the current CPR system.

Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 5 for the reason that the request for all documents regarding "the transportation of grain" is overly broad, burdensome, oppressive and virtually limitless in scope. DME further objects to Document Request Nos. 5(c) and (d) for the reason that KCS requests documents unrelated and prior to the Transaction that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows:

With respect to Document Request Nos. 5(a), (b), (e) and (f), none.

DOCUMENT REQUEST NO. 6.

Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or other studies related to the potential impacts of the Transaction upon KCSR and/or upon shippers served by KCSR, including any such plans, analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 6 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: None.

DOCUMENT REQUEST NO. 7.

Produce all marketing plans, strategic plans, diversions studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to the economics of overseas grain-consuming markets and DME's strategic plans in connection with marketing, promoting, or transporting North American-produced grain to such markets. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 7 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: None.

DOCUMENT REQUEST NO. 8.

Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to CPR's ability and/or plans to recoup its investment in acquiring control of DME by marketing or otherwise promoting grain products originating on DME lines for overseas export via CPR-served Pacific Coast ports. This document production request includes any such plans, market analyses, financial projections, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 8 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: None.

DOCUMENT REQUEST NO. 9.

Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) the anticipated post-Transaction revenue generated from the transportation of

ethanol originating on DME lines, and (2) the impact and/or importance of this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 9 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Document Request No. 9 for the reason that the phrase "anticipated post-Transaction revenue" is vague and susceptible to more than one interpretation, and for the reason that the request is overly broad to the extent that the phrase is not limited to anticipated revenue of a prospective commonly-controlled CP-DME system. Without waiving its objections, DME responds as follows:

(1) None.

(2) None.

DOCUMENT REQUEST NO. 10.

Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, memoranda, e-mails, letters, meeting notes, meeting summaries, and/or studies related to (1) the anticipated post-Transaction revenue generated from the transportation of grain originating on DME lines, and (2) the impact and/or importance of this revenue to CPR's ability to finance its acquisition of DME. This document production request includes any such plans, market analyses, studies, etc. prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 10 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to

Document Request No. 10 for the reason that the phrase "anticipated post-Transaction revenue" is vague and susceptible to more than one interpretation, and for the reason that the request is overly broad to the extent that the phrase is not limited to anticipated revenue of a prospective commonly-controlled CP-DME system. Without waiving its objections, DME responds as follows:

(1) None.

(2) None.

DOCUMENT REQUEST NO. 11.

Provide a list of all joint marketing agreements, haulage agreements, joint rate agreements, divisions agreements, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA") or other existing contracts between or among DME on one side and another rail carrier on the other, which agreement governs or involves, in whole or in part, the transportation of grain originating on DME lines to destinations not located on DME lines.

RESPONSE:

DME objects to Document Request No. 11 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Document Request No. 11 for the reason that the request is overly broad.

DOCUMENT REQUEST NO. 12.

With respect to Document Request No. 11, produce all marketing plans, strategic plans, financial analyses, diversion studies, memoranda, e-mails, market analyses, and/or studies evaluating such agreements and/or discussing whether DME would or should seek to terminate, to honor, or to extend any of these agreements or arrangements. This document production request includes any such plans, e-mails, memoranda, market analyses or studies prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 12 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Document Request No. 12 for the reason that the request is overly broad, burdensome and oppressive, would require a special study involving review of DME files on hundreds of such documents.

DOCUMENT REQUEST NO. 13.

Produce all marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda, and/or studies related to post-Transaction routing and/or marketing of grain originating on CPR and/or DME lines to destinations via the Kansas City gateway on carriers other than KCSR. This document production request includes any such plans, market analyses or studies, e-mails or memoranda prepared by or developed with the assistance of Consultants. Also produce any documents related to and/or developed in connection with the creation of such marketing plans, studies, analyses, etc.

RESPONSE:

DME objects to Document Request No. 13 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: None.

DOCUMENT REQUEST NO. 14.

In connection with Interrogatory No. 3, produce any marketing plans, strategic plans, diversion studies, market analyses, financial projections, e-mails, memoranda (including internal memoranda), meeting notes, meeting summaries, and/or any other documents that DME, IC&E and/or any Consultant has relied upon or consulted in connection with DME and/or IC&E's decision to decline to reach an agreement with KCSR for an extension of the subject marketing and haulage agreement post-Transaction.

RESPONSE:

DME objects to Document Request No. 14 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: Responsive documents are being produced.

DOCUMENT REQUEST NO. 15.

Produce all documents relating to communications between or among DME (and/or its Consultants) on the one hand and CPR (and/or its Consultants) on the other concerning KCSR's agreement with IC&E governing the rail transportation of grain originating on IC&E/DME lines to interchange with KCSR at the Kansas City gateway.

RESPONSE:

DME objects to Document Request No. 15 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, DME responds as follows: Responsive documents are being produced.

DOCUMENT REQUEST NO. 16.

Produce all documents relating to communications between or among any officials, representatives, and/or Consultants of DME discussing, analyzing, developing plans, or otherwise addressing marketing the transportation of grain originating on DME lines to destinations on railroads other than KCSR (including CPR destinations), including all documents describing any conclusions, whether preliminary or final, regarding such discussions, plans, or studies.

RESPONSE:

DME objects to Document Request No. 16 for the reason that KCS request documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Document Request No. 16 for the reason that the request is overly broad, burdensome and

oppressive, encompassing essentially every internal document DME has involving grain, and would require a special study involving review of DME files of thousands of such documents.

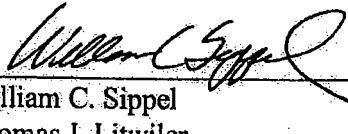
DOCUMENT REQUEST NO. 17.

Produce all joint marketing agreements, haulage agreements, joint rate agreements, divisions agreements, joint ventures, division of revenue agreements, volume incentive agreements, voluntary coordination agreements ("VCA"), alliance, trackage rights, operating rights, interchange, interline, or other existing contracts or agreements between DME on the one hand and regional and/or Class I railroads with which DME connects on the other.

RESPONSE:

DME objects to Document Request No. 17 for the reason that KCS requests documents that are neither relevant to the Control Application pending before the Board nor reasonably calculated to lead to the discovery of admissible evidence. DME further objects to Document Request No. 17 for the reason that the request is overly broad.

Respectfully submitted,

By: 
William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR DAKOTA, MINNESOTA &
EASTERN RAILROAD CORPORATION
AND IOWA, CHICAGO & EASTERN
RAILROAD CORPORATION**

Dated: February 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February, 2008, a copy of the foregoing
**Responses of Dakota, Minnesota & Eastern Railroad Corporation and Iowa, Chicago &
Eastern Railroad Corporation to The Kansas City Southern Railway Company's First Set
of Discovery Requests**, with produced documents designated as "highly confidential," was
served by electronic mail and overnight delivery upon:

William A. Mullins, Esq.
Baker & Miller PLLC
2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037



William C. Sippel