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June 4, 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 Acting Secretary Quinlan:

The Kansas City Southern Railway Company ("KCSR") requests that the Board promptly clarify whether the agency will accept final briefs in connection with the above-captioned proceeding. The record in this proceeding appears to be sufficiently well-developed and adequately focused that such briefs are not needed. However, the Board's orders are somewhat unclear regarding whether such briefs will be accepted. If the Board intends to accept final briefs, KCSR respectfully requests that the Board clarify that intent as soon as possible, to permit all interested parties adequate time to prepare such final briefs.

In Decision No. 3 (Notice of Proposed Procedural Schedule and Request for Comments) and in Decision No. 4 (Notice of Acceptance of Application; Issuance of Procedural Schedule) served in this proceeding on November 26 and December 27, 2007, respectively, the Board stated that final briefs "if any" would be due by July 2, 2008 (emphasis added). The Board did not, in either decision, elaborate upon what was meant by "if any." Decision No. 3, however, suggests that the Board may have meant that it would decide later - possibly after oral argument, if one was scheduled - upon the necessity or usefulness of final briefs. If this interpretation of Decision Nos. 3 and 4 is correct, then the Board's use of the term "if any" in connection with

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final briefs reflects the agency's intention to not allow final briefs unless the Board, after oral argument, deems them necessary.¹

As stated above, the record appears sufficiently developed at this stage to allow the Board to exercise its discretion to dispense with the necessity of oral argument and the filing of final briefs. If, on the other hand, the Board deems the filing of final briefs to be helpful for summarizing the record or clarifying parties' positions, KCSR requests that the Board promptly inform the parties so as to allow sufficient time to develop those briefs. In doing so, the Board should make clear that final briefs are not to be used to file rebuttal evidence or additional witness statements. *Final briefs containing such evidence would, intentionally or unintentionally, allow parties to engage in unnecessary surrebuttal and would simply add to the complexity of this proceeding; engendering motions to strike or other motions and requests.* The Board has been presented with narrowly-focused issues to address as it weighs the merits of the Application on the record before it. Final briefs, if any, should not be used as the means by which parties are able to add to the evidentiary record.

For the foregoing reasons, KCSR respectfully requests that the Board quickly clarify whether it desires the parties to submit final briefs in this proceeding. If the Board decides to accept final briefs, KCSR urges the Board to make very clear that final briefs not contain new evidence or additional witness statements.

Sincerely,



William A. Mullins

cc: Parties of Record

¹ This approach to final briefs is consistent with recent Board practice. See Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc., STB Docket No. 42104, et al., (STB served Apr 15, 2008) ("[t]he Board is not calling for the filing of briefs at this time but a due date for briefs can be established, if warranted, at a later date"); cf. APL Land Transport Services, Inc. v. The Burlington Northern and Santa Fe Railway Company, STB Docket No. 42003 (STB served Nov. 17, 1997) (wherein the Board adopted a procedural schedule allowing for the filing of briefs, but then stated that the parties could "seek relief from this requirement") In fact, it would appear that by not having scheduled an oral argument by this date, the Board seems to be implicitly stating that it deems the record sufficiently developed so as to not require oral argument or the filing of final briefs.