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June 11, 2008

The Honorable Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

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

Dear Secretary Quinlan:

We write on behalf of Applicants Canadian Pacific Railway Company ("CPRC"), Soo Line Holding Company ("SOO Holding"); Dakota, Minnesota & Eastern Railroad Corporation ("DM&E"); and Iowa, Chicago & Eastern Railroad Corporation ("IC&E") (collectively, "Applicants") in response to a letter dated June 9, 2008 from counsel for the Mayo Clinic ("Mayo") to the Board (the "Mayo Letter") asking the Board to clarify that it will accept final briefs, and requesting that the Board schedule oral argument, in the above-captioned proceeding.

For the reasons set forth in Applicants' letter dated June 5, 2008, the Board's prior decisions do not require clarification with respect to the matter of final briefs. Those decisions clearly contemplate that the record will close with the filing of briefs on or before July 2, 2008. Moreover, the issues raised in the Mayo Letter provide no justification for the Board to schedule oral argument at this late date.

As an initial matter, Mayo's claim that the proposed transaction "raises significant issues about the safety and security threats posed by the rail transportation of hazardous materials — particularly poisonous by inhalation materials involved in this proceeding" (Mayo Letter at 1-2 (emphasis added)) is, at best, disingenuous. The record evidence has consistently shown that DM&E moved a grand total of *four (4) cars of PIH materials* through Rochester in each of the last two years. See Applicants' Response to Comments and Requests for Conditions and Rebuttal in Support of Application ("Applicants' Reply Comments") at 73-74; Reply V.S. Graham at 4. Applicants do not project any increase in PIH movements through Rochester as a result of the proposed transaction. See *id.* Reply V.S. Graham at 4. Mayo has not presented any evidence to the contrary. Rather, Mayo's expressed concerns relate to the prospective future transportation of ethanol, which is not a PIH commodity. The undisputed evidence shows that the volume of PIH traffic moving through Rochester would not increase as a result of the proposed transaction and is minuscule today. Accordingly, the proposed transaction does not

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give rise to any material "safety and security threat." In any event, as discussed below, other federal agencies are actively engaged in developing regulations to enhance the safety and security of PIH shipments.

Nor does the prospective handling of ethanol traffic by Applicants following the proposed transaction raise any issue that warrants oral argument before the Board.¹ The Mayo Letter makes reference to a number of rulemaking proceedings initiated by other federal agencies (including PHMSA and FRA) regarding the transportation of hazardous commodities. In the cited rulemaking proceedings, PHMSA and/or FRA are considering proposed new regulations governing, among other things, improved design standards for tank cars used to transport hazardous commodities, the routing of hazardous commodity shipments, and the benefits and costs associated with imposing speed restrictions on trains carrying PIH traffic. According to Mayo, "[t]he application of these latest regulatory requirements to the safe and secure rail transportation of hazardous materials in order to prevent a catastrophic release or explosion is clearly the type of issue that should be considered by the Board as part of a public hearing and/or oral argument [in this proceeding]." Mayo Letter at 2.

Contrary to Mayo's assertion, there is no need for the Board to interject itself into safety and security issues that are currently the subject of rulemaking proceedings before other federal agencies that have primary jurisdiction over such issues. Attempting to address in this *individual control proceeding* the same issues that are already the subject of *comprehensive safety and security rulemaking proceedings* before other federal agencies could produce outcomes inconsistent with the policy choices made by those agencies based upon their assessment of the effects of such regulations on the rail system as a whole. For example, in one pending rulemaking cited by Mayo, PHMSA is considering a proposed speed limit of 30 MPH for trains carrying PIH shipments over unsignaled rail lines, and a 50 MPH speed limit for PIH shipments generally. See Proposed Rule, "Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials," 73 Fed. Reg. 17818 (April 1, 2008). Mayo's request that the Board impose a condition in this proceeding setting a 10 MPH speed limit for hazardous shipments moving through Rochester, MN is fundamentally inconsistent with the rule under consideration by PHMSA. Indeed, as USDOT stated in opposing Mayo's proposed conditions

¹ Mayo's suggestion that Applicants' revised projections regarding the volume of ethanol likely to move through Rochester in the future "calls into question the applicants [sic] earlier submissions" (Mayo Letter at 10) is incorrect. As Applicants' reply evidence showed, the increase in projected post-transaction ethanol traffic since the original Application was filed is attributable to the substantial growth in ethanol production in DM&E's service territory generated by the market and public policy, not to the proposed transaction. See Applicants' Reply Comments, Reply V.S. Anderson at 7-10.

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Newly adopted rules will further enhance rail safety and security with respect to the routing of hazardous materials. *Special rules for the Rochester area that differ from nationally uniform rules would tend to impair rail safety and security*, because no one locale can be isolated from the overall flow of hazardous materials traffic and such rules would distort the analyses on which the new rules depend.

Id. at 5 (emphasis added).²

As USDOT's comments make abundantly clear, the issues raised by Mayo regarding the transportation of hazardous materials are more appropriately addressed by other agencies, including TSA, PHMSA, FRA, FHWA, and DHS. Moreover, as the Mayo Letter itself shows, those agencies are actively engaged in considering a variety of new safety and security regulations that would apply uniformly throughout the U.S. rail system. If the proposed transaction is approved, CPR/DME will comply fully with such regulations. It would be unwise for the Board to impose special rules, conditions or exceptions to address Mayo's individual concerns, because such exceptions could undermine the overall scheme of federal rail safety and security regulation.

In short, Mayo offers no compelling reason to hold an oral argument in this proceeding.

Sincerely,



Terence M. Hynes
Counsel for Canadian Pacific
Railway Company

cc: Parties of Record

² USDOT opposed Mayo's specific request for a 10 MPH speed limit on the grounds that "moving hazardous materials through an area as quickly as possible consistent with track standards in fact reduces the likelihood and consequences of accidents." We conclude that there is no legal or policy basis to order reductions in speed in this proceeding." DOI Reply Comments at 5 (emphasis added).