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THOMAS F. McFARLAND

January 28, 2008

By e-filing

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re: Finance Docket No. 35087, *Canadian National Railway Company and Grand Trunk Corporation -- Control -- EJ&E West Company*

Dear Ms. Quinlan:

Hereby transmitted is an Opposition Statement And Request For Conditions in behalf of American Chemical Service, Inc. for filing with the Board in the above referenced matter.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Protestant

TMcF:kl:enc:wp8.0\1278\efstb3

cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN NATIONAL RAILWAY COMPANY)
AND GRAND TRUNK CORPORATION- CONTROL)
-EJ&E WEST COMPANY)

FINANCE DOCKET
NO. 35087

OPPOSITION STATEMENT AND
REQUEST FOR CONDITIONS

AMERICAN CHEMICAL SERVICE, INC.
P.O. Box 190
420 South Colfax Avenue
Griffith, IN 46319

Protestant

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Attorney for Protestant

DUE DATE: January 28, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN NATIONAL RAILWAY COMPANY)
AND GRAND TRUNK CORPORATION- CONTROL)
EJ&E WEST COMPANY)

FINANCE DOCKET
NO. 35087

OPPOSITION STATEMENT AND
REQUEST FOR CONDITIONS

Pursuant to the Board's procedural decision served November 26, 2007, AMERICAN CHEMICAL SERVICE, INC. (ACS) hereby opposes the application of Canadian National Railway Company (CN) for authority to control EJ&E West Company (EJE) unless approval of that application is conditioned as follows:

"CN shall grant trackage rights to ACS (or to a rail carrier created by ACS) and to Norfolk Southern Railway Company (NS) over EJE between Griffith and Hartsdale, Indiana (approximately 3 miles), or between Griffith and Van Loon, Indiana (approximately 4 miles), in order for ACS to connect with, and be rail-served by, NS."

That condition is warranted because CN's control of EJE would cause ACS, a shipper solely served by EJE, to lose the competitive leverage currently afforded by ACS' ability to build out a short distance of track in order to connect with CN.

If for any reason the foregoing condition were not to be imposed, the Board should impose the following conditions:

- " 1. CN shall cause EJE to continue to provide ACS with the level of service EJE currently provides, i.e. five days per week.

2. CN shall cause EJE to abide by all terms in EJE Transportation Contract EJE- C- 0003 between ACS and EJE for a period of five years from the date of consummation of CN control of EJE, and annually thereafter pursuant to an evergreen provision."

CONDITION TO APPROVAL OF RAIL CONSOLIDATION
WARRANTED WHEN CONSOLIDATION WOULD RESULT IN LOSS
OF BUILD- OUT OPTION FOR A SOLEY- SERVED SHIPPER

By virtue of 49 USC 11324 (c), the Board has broad authority to impose conditions to approval of railroad consolidations, including express statutory authority to grant trackage rights to alleviate anti- competitive effects of the consolidation. Conditions are imposed to ameliorate or eliminate effects of a consolidation that would be harmful to the public interest, such as loss of competition or reduction of rail service. Such conditions must be operationally feasible and produce net benefits. Union Pacific/ Southern Pacific Merger, 1 STB 233, 418 (1996).

The Board has recognized that " potential build- ins and build- outs provide important competitive leverage to solely served shippers in their negotiations with rail carriers". Canadian National, et al. - Control- Illinois Central, et al. , 4 STB 122, 150 (1999). Accordingly, when a shipper provides evidence that it would lose a particular build-out option as a result of a rail consolidation, the Board has imposed a condition to remedy that specific situation. CSX Corp., et al.- Control- Conrail, Inc., et al., 3 STB 196, 260 (1998).

CONDITION WARRANTED IN THE CASE AT HAND
TO REMEDY LOSS OF BUILD-OUT

In the case at hand, as appears in the attached Verified Statement of Mr. David Tarpo of ACS, CN's acquisition of EJE would cause ACS, a shipper solely served by EJE, to lose the competitive leverage that it has by virtue of its ability to build- out a short distance in order to connect with CN (Grand Trunk Western).

In that circumstance, Board practice is to impose a condition to remedy that loss of competition. An operationally feasible means for the Board to do so would be to require CN to cause EJE to provide trackage rights to ACS (or to a rail carrier that ACS may create) and to NS over EJE between Griffith and Hartsdale (approximately 3 miles) or between Griffith and Van Loon (approximately 4 miles) in order for ACS to connect with, and to be served by, NS. ACS opposes CN control of EJE unless that condition is imposed consistently with Board practice.

CONDITIONS WARRANTED TO PROTECT ACS' RAIL SERVICE
AND RATES IF THE TRackage RIGHTS CONDITION IS NOT IMPOSED

ACS strongly disagrees with CN witness Gerald P. Radloff's allegation that rail service to shippers presently served by EJE would improve as a result of CN's acquisition of EJE (Application at 64). As set out in Mr. Tarpo's statement, the opposite is much more likely. It stands to reason that shippers would be better served by a service- oriented local rail carrier, like EJE, than by a huge carrier, like CN, whose headquarters is located far away in another country. The Board has consistently recognized that short lines and regional railroads provide more efficient and economical rail service than large Class I railroads. In that respect, see Rail Access and Competition Issues, Ex Parte No. 575, decision served October 30, 2007, where the Board said (at 3):

"The benefits of growth in short lines have been substantial. Many short lines can operate their lines at lower costs than could the larger carriers from which they acquired or leased their lines. Reduced labor costs, which reflect a more flexible workforce and lower crewing requirements, contribute to the lower operating costs. Moreover, short lines can give specialized attention to the needs of the shippers on their lines, and they have an incentive to do so because, unlike the larger carriers that spun these lines off, short lines depend on small- volume traffic. Offering better service, the short lines have been able to attract new traffic to the lines.⁶ They have also been able to obtain government grants and tax benefits to rehabilitate their lines, assistance that was largely unavailable to the carrier that spun off the lines. (emphasis added)."

⁶ A regional railroad officer who had previously worked for Class I railroads echoed this view, saying that the threshold volume of business necessary to motivate a Class I railroad to provide equipment and to take the other steps needed to service a customer can be as high as \$500,000 per year, but that, for the regional or short line, the threshold is one carload. According to the chief operating officer of a short line holding company, "[o]ne car at a time is what we're all about." Tom Murray, "A Different Way to Run a Railroad: Regional Versus Network Carriers," J. of Transp. Law, Logistics and Policy (Vol. 71, No. 3, Spring 2004).(emphasis added)."

Small and medium- sized shippers require Board protection by means of conditions when rail consolidation threatens the quality of rail service and rates provided to them by

short line and regional railroads. A case in point is CN's recent control of another regional railroad, Wisconsin Central, Ltd. (WC). As set out in the attached joint verified statement of ACS Transportation Consultants, Mrs. Sandra Dearden and Mr. John Bradshaw, shippers located on WC who were not protected by a service and rate agreement between the NIT League and CN that was imposed as a condition in that case, experienced substantial reductions in service levels and hefty increases in rates.

Accordingly, if for any reason the Board does not impose the trackage rights condition sought by ACS, the Board should impose the conditions set out earlier in this pleading to protect ACS' service levels and in-plant rates provided by EJE.

WHEREFORE, CN's application for authority to control EJE should be denied unless such approval is conditioned as follows:

"CN shall grant trackage rights to ACS (or to a rail carrier created by ACS) and to Norfolk Southern Railway Company (NS) over EJE between Griffith and Hartsdale, Indiana (approximately 3 miles) or between Griffith and Van Loon, Indiana (approximately 4 miles), in order for ACS to connect with, and to be rail-served by, NS."

If for any reason the foregoing trackage rights condition were not to be imposed, the Board should impose the following conditions:

- "1. CN shall cause EJE to continue to provide ACS with the level of service currently provided by EJE, i.e., five days a week,; and

2. CN shall cause EJE to abide by all terms in EJE Transportation Contract EJE - C- 0003 between ACS and EJE for a period of five years from the date of consummation of CN control of EJE, and annually thereafter pursuant to an evergreen provision."

Respectfully Submitted,

AMERICAN CHEMICAL SERVICE, INC.

P.O. Box 190

420 South Colfax Avenue

Griffith, IN 46319

Protestant

Thomas F. McFarland

THOMAS F. McFARLAND

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Attorney for Protestant

DUE DATE: January 28, 2008

STB FINANCE DOCKET NO. 35087

VERIFIED STATEMENT OF DAVID TARPO

My name is David Tarpo. I am Plant Manager of American Chemical Service, Inc. (ACS) located at Griffith, Indiana. I have been employed by ACS for 13 years. By virtue of my duties as Plant Manager, I am familiar with rail transportation of raw materials used by ACS and commodities manufactured by ACS.

ACS is a manufacturer of specialty chemicals. ACS relocated its manufacturing facility to its present site on Colfax Avenue in Griffith, Indiana in 1955. That site was chosen primarily because it was rural industrial- zoned property with the ability to build a railroad sidetrack connected to the main line of Chesapeake & Ohio Railway Company (now CSX Transportation) that ran through Griffith.

CSX abandoned its rail line through Griffith in 1981. At that time, ACS purchased approximately one mile of CSX's rail line to connect with Elgin, Joliet and Eastern Railway Company (EJE) near the east entrance to EJE's Griffith Yard. The track purchased by ACS is illustrated in figure 5 on page 520 of CN'S Application in the lower right portion of that drawing. Additionally, ACS purchased land and right-of-way in 1981 and deeded it to EJE for the sole purpose to provide ACS with regular rail service. CN will be acquiring the rights with the completion of this transaction. Since 1981, ACS has been solely served by EJE.

Attached to my statement as Appendix DT-1 is a copy of a Track Agreement between ACS and EJE dated July 1, 1981. Reference is made to a print that is the final page of that Track Agreement. That print shows the trackage purchased by ACS in more detail. The Track Agreement provides that EJE is to own and maintain the segment of track between Points A and C, and that ACS is to own and maintain the segment between Points C and D. (Appendix DT- 1 at 2).

The print shows another track extending between Point C and tracks marked "C + GT Ry." . The Track Agreement refers to that track as the "Chessie- Grand Trunk Interchange Track". (the Interchange Track) . The references to "C+GT Ry. " and Grand Trunk are to Grand Trunk Western Railroad, a affiliate of CN. It does not appear that there was regular interchange via that track in 1981 as the Track Agreement referred to a possibility that EJE might initiate regular operations over that track. (Appendix DT- 1 at 3). The Interchange Track was removed at an unknown time after 1981.

The ACS and CN tracks are separated by only 150 feet at their closet point. ACS, or a rail carrier that ACS could create, has the right to build out track to connect with CN. That build-out could be easily accomplished over the right-of-way of the former Interchange Track. It is less than 800 feet at that point between the tracks of ACS and CN. The grading of the right-of-way of the former Interchange Track remains distinctly visible. However, even if ACS does not own the right-of-way land of the former Interchange Track, ACS could create a rail carrier affiliate to condemn land between the ACS and CN tracks and to construct build-out trackage between those points.

I disagree strongly with the statement of CN witness Gerald P. Radloff at page 71 of the CN Application that there are no build-out opportunities that are presently constraining EJE's rate or service offerings at points where the rail lines of EJE and CN approach each other. In its rate and service negotiations with EJE over the past 27 years, ACS has consistently relied on its ability to build-out trackage easily and inexpensively to connect with CN.

CN's control of EJE would eliminate that competitive restraint. As a result, ACS should be entitled to an arrangement that would replace that lost competition.

An operationally feasible arrangement in that respect would be trackage rights for ACS (or for a rail carrier created by ACS) and for Norfolk Southern Railway Company (NS) over EJE between Griffith and Hartsdale, Indiana (approximately 3 miles), or between Griffith and Van Loon, Indiana (approximately 4 miles) in order to permit ACS to connect with, and to be rail served by, NS. EJE's operating timetable indicates that EJE's tracks cross NS tracks at grade at both Hartsdale (former Conrail Panhandle Line) and at Van Loon (former Nickel Plate Line). There is an active interchange between EJE and NS at Van Loon. I do not know whether traffic is currently interchanged between EJE and NS at Hartsdale.

ACS accounted for 167 rail carloads in 2007, as follows:

INBOUND

<u>Commodity</u>	<u>Origin</u>	<u>Carloads</u>
Vegetable Oil	Red Wing, MN	35
Vegetable Oil	West Fargo, ND	15
Modified Vegetable Oil	Taft, LA	80

OUTBOUND

<u>Commodity</u>	<u>Destination</u>	<u>Carloads</u>
Modified Vegetable Oil	Conover, NC	15
Modified Vegetable Oil	Verona, MS	6
Modified Vegetable Oil	Tupelo, MS	10
Modified vegetable Oil	Commerce, CA	3
Modified Vegetable Oil	Asheboro, NC	3
	Total	<u>167</u>

ACS is highly dependent on rail transportation. Virtually all of ACS' inbound raw materials are received by rail. A significant percentage of ACS' outbound shipments are also made by rail. Both ACS' overall rail shipments and the percentage of its outbound shipments made by rail are increasing substantially. ACS' commitment to rail transportation is evidenced by substantial expenditures that it has made for rail infrastructure. Thus, ACS has approximately 2,400 feet of private plant trackage and associated switches for storage of railcars. ACS has also constructed railcar loading platforms and heating systems, as well as chemical transfer lines, racks and pumps.

EJE provides frequent and dependable rail service to ACS by means of a local train that operates westbound from Gary, Indiana to Chicago Heights, Illinois and return, five days per week. CN's operating plan says that EJE local train service will remain as at present, but only "in the near term" (Application at 216- 217). I am very concerned that ACS' rail traffic will not be nearly as attractive to the huge CN as it is to EJE, with the result that under CN control, EJE would eventually reduce frequency and reliability of rail service or, worse yet, file for abandonment of the trackage serving ACS. That concern is heightened by the adverse affect on service to Wisconsin Central shippers under CN control, as recounted in the Joint Verified Statement of ACS' Transportation Consultants, Ms. Sandra Dearden and Mr. John Bradshaw.

Any such reduction of service or abandonment would be devastating to ACS. The current level of service that ACS receives from EJE is absolutely essential to the continued viability of ACS' business.

Accordingly, in the event that the trackage rights condition sought by ACS is not imposed for any reason, the Board should impose conditions protecting ACS' service and rates under CN control of EJE as follows:

- (1) CN shall cause EJE to continue to provide ACS with the level of service EJE currently provides, i.e., five days per week; and
- (2) CN shall cause EJE to abide by all terms of EJE Transportation Contract EJE- C- 0003 between ACS and EJE for a period of five years from the of consummation of CN control of EJE, and annually thereafter pursuant to an evergreen provision.

The Board should be aware that ACS attempted to negotiate that protection with CN before coming to the Board. CN, through Mr. Radloff, refused to agree to such protection.

STATE OF INDIANA)

COUNTY OF LAKE)

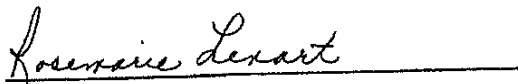
VERIFICATION

David Tarpo, being duly sworn, states that the facts asserted in the foregoing
Verified Statement are true and correct.

A handwritten signature in cursive script, appearing to read "David Tarpo", is written over a horizontal line.

David Tarpo

SUBSCRIBED and SWORN to before me,
a Notary Public in and for the above
State and County, on this
25th Day of January, 2008

A handwritten signature in cursive script, appearing to read "Rosemarie Lenart", is written over a horizontal line.

Notary Public

(SEAL)

12-78

8-1315-42-

THIS AGREEMENT, made and entered into this 1st day of July, 1981, by and between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, a Corporation (hereinafter termed the "Railway"), party of the first part and AMERICAN CHEMICAL SERVICE, INC., a Corporation (hereinafter termed the "Industry"), party of the second part;

W I T N E S S E T H

WHEREAS, the Industry is engaged in the operation of a Chemical plant located on Colfax Avenue, Griffith, Indiana; and

WHEREAS, the Industry desires that the Railway enter into an Agreement whereby provision will be made for railroad service on that certain trackage (hereinafter termed "Track") over, upon and across which the Railway shall move trains, engines and cars for the purpose of delivering freight to and receiving freight from the Industry,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto agree as follows, to wit.

FIRST: The term "Track", as used hereinafter in this agreement, includes all roadbed, drainage structures, track structures, crossings, signal facilities and appurtenances in connection with the maintenance, operation and use thereof. Track is located as indicated between points marked A, B, C and D and as shown colored in red and green on the print dated May 1, 1981 hereto attached, marked Exhibit "A", and made a part of this Agreement. It is understood and agreed that, without cost or expense to the Railway and to the entire satisfaction of the Chief Engineer of the Railway, the Industry shall secure and thereafter maintain in force, all necessary permits, licenses and permission and authority for the maintenance and operation of Track and the use thereof for the purposes herein provided.

The Track and right of way property shall be owned and the Track shall be maintained by the parties hereto as follows:

- A. The Railway at no expense to the Industry shall provide the right of way property shown between points A and B as marked on Exhibit "A".

- B. The Industry shall acquire the necessary property rights for right of way segment shown between points B and C on Exhibit "A" and shall convey, at no expense to the Railway, said property rights for the purpose of maintaining thereon that portion of Track lying between points B and C.
- C. The Industry shall acquire and convey to the Railway, at no expense to the Railway, the portion of Track lying between points B and C.
- D. The Railway shall own that portion of Track, shown in red on Exhibit "A" and lying between point A, the point of switch of the Railway's main line turnout, and point C, the north right of way line of Knotts Avenue, and shall maintain said portion of Track, including Broad Street crossing, at the sole cost and expense of the Industry, which shall be billed for said maintenance accordingly.
- E. The Industry shall own those portions of Track lying between Points C and D, as shown in green on the attached Exhibit "A". Said portions of Track shall be constructed, rehabilitated and maintained to the operating standards of the Railway and to the satisfaction of its Chief Engineer. All public street crossings and crossing protection lying southerly of aforementioned point C shall be constructed, rehabilitated and maintained by the Industry, at its expense, in accordance with the laws and regulations of the proper public authorities and to the satisfaction of the Chief Engineer of the Railway.

- F. Should the Industry construct additional trackage lying southerly of point "C", upon which the Railway is to operate, said trackage must have the prior approval of the Chief Engineer of the Railway before construction.
- G. The Industry, at its sole cost and expense, shall keep portions of Track, that lie southerly of point "C", clear of ice, snow and refuse for a distance of six (6) feet outside of the rails of said portions of Track.
- H. The Industry shall, without cost or expense to the Railway, maintain in good order and repair drainage on its premises to drain portions of Track owned by it.
- I. Should the Railway initiate regular operations over the former Chessie-Grand Trunk interchange track, shown in orange on the attached Exhibit "A", the Railway shall share equally with the Industry in the maintenance cost and expense of that portion of Track lying between point "A", and point of switch in the turnout of said interchange track.
- J. The Industry, at its sole cost and expense, shall provide sufficient trackage on or adjacent to its premises for the purpose of storing rail cars thereon.

SECOND: It is understood and agreed that the Railway shall have the right at all times to use Track for Railway purposes and the right at all times to run its trains, engines and cars over and upon said Track.

THIRD: Industry shall neither place nor permit to be placed any material, structure or obstruction of any nature which shall be situated closer than 23 feet above the level of the top of the rails in Track, nor within 8 1/2 feet from the centerline of Track provided, however, that if any statute or rule or regulation of any public authority having jurisdiction thereof shall require that a greater clearance be maintained, Industry promptly shall comply therewith. In the event that

the clearances hereinabove provided shall be reduced by order of any proper public authority, Industry agrees to indemnify and save Railway harmless from all liability, damages, costs and expenses growing out of or resulting from loss or damage to property or injury to or death of persons occurring by reason of the compliance with such reduced clearance by Industry. It is understood and agreed that any installation above and over said Track shall not be made without the prior written consent of the Chief Engineer of the Railway first being had and obtained.

FOURTH: In addition to all indemnity hereinabove provided in this Agreement, Industry hereby covenants and agrees to reimburse Railway for any and all loss or damage and to indemnify, save harmless and defend Railway from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees, by whomsoever asserted, including but without limitation all employees or agents of either party hereto and of any other person or corporation, in any manner caused by, arising from, incident to, connected with or growing out of this Agreement or the operation of trains, engines and cars over, upon and across portions of Track owned by it (between points C and D) except when such damage, loss or injury is caused by the sole negligence of the Railway its employees and/or agents.

FIFTH: It is covenanted and agreed by and between the parties hereto that this Agreement shall inure to the benefit of and shall be and remain binding upon their respective successors and assigns. Industry hereby agrees that it shall not assign this Agreement without securing the prior written consent of Railway and that if it shall fail to do so, Railway at its election may terminate this Agreement immediately and discontinue all operations over Track for the purpose of providing service to Industry.

SIXTH: No other railway company shall be permitted to use Track without consent of the Railway.

SEVENTH: This Agreement may be terminated and operations over, upon and across Track discontinued upon either party hereto giving not less than sixty (60) days written notice to the other party of its intention to terminate upon a date to be specified in said notice. Termination of this Agreement as provided shall not affect or impair the rights of either party to avail itself of such remedies as it may have at the date of termination for any breach of the terms and conditions of this Agreement or constitute a release from any liability which has accrued. Upon termination of this Agreement, the Railway

at its election may remove portion of Track installed between Points A, B and C as indicated on Exhibit "A".

IN WITNESS WHEREOF, the parties hereto have manually executed this Agreement, in duplicate originals, the day and year first above written.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

By: *W. J. Patrick*
Vice President - Operations

ATTEST:

R. J. Hruscoe
Asst. Secretary

AMERICAN CHEMICAL SERVICE, INC.

By: *James Tapp*

ATTEST:

James E. Murphy

STATE OF INDIANA)
COUNTY OF LAKE)

I, MICHAEL O. BURGE a Notary Public in
and for the county and state aforesaid, do hereby certify
that JAMES TARPO, personally known to me to
be the — President of AMERICAN CHEMICAL SERVICE, INC.,
AND JAMES T. MURPHY, personally known to me to be the
ASSISTANT Secretary of said corporation, and personally
known to me to be the persons whose names are subscribed to
the foregoing instrument, appeared before me this day and
severally acknowledge that as such — President and
ASSISTANT Secretary, they signed said instrument and
caused the corporate seal of said corporation to be affixed
thereto, as their free and voluntary acts and as the free
and voluntary act of said corporation, for the uses and
purposes therein set forth, and that they are the officers
of said corporation duly authorized to execute and acknowledge
said instrument.

WITNESS my hand and seal of office this 25TH day
of JUNE, 1981.

Michael O. Burge
Notary Public

My Commission Expires:

11-25-83

STATE OF ILLINOIS)
)
COUNTY OF WILL)

I, *Cheryl Kucer*, a Notary Public in and for said county, do hereby certify that F. A. FITZPATRICK, personally known to me to be the Vice President of ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, an Illinois and an Indiana corporation, and R. J. DRISCOLL, personally known to me to be the Assistant Secretary of said corporation and personally known to me to be the persons whose names are subscribed to the foregoing instrument, appeared before me this day and severally acknowledged that as such Vice President and Assistant Secretary, they signed said instrument and caused the corporate seal of said corporation to be affixed thereto, as their free and voluntary acts and as the free and voluntary act of said corporation for the uses and purposes therein set forth, and that they are the officers of said corporation duly authorized to execute and acknowledge said instrument.

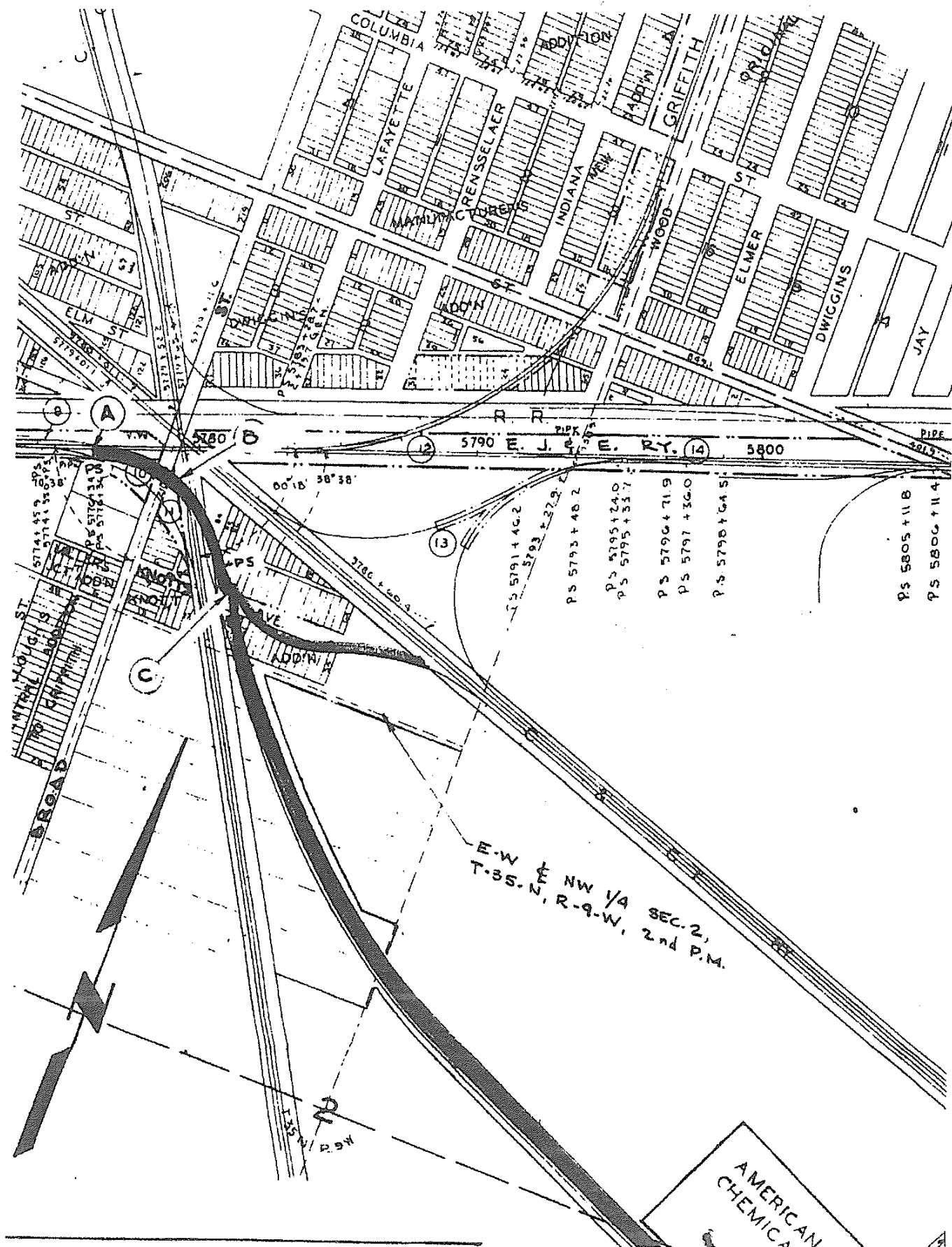
WITNESS, my hand and seal of office this *15th* day of *July*, 19*81*.

Cheryl Kucer

Notary Public

My Commission expires:

5/28/1982



BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket 35087

CANADIAN NATIONAL RAILWAY COMPANY AND
GRAND TRUNK CORPORATION -- CONTROL -- EJE WEST COMPANY

JOINT VERIFIED STATEMENT OF
SANDRA J. DEARDEN AND JOHN L. BRADSHAW
HIGHROAD CONSULTING, LTD.

Sandra J. Dearden and John L. Bradshaw of HIGHROAD Consulting, Ltd. (HIGHROAD), are pleased to submit their Verified Statement regarding the application of Canadian National Railway (CN) for authority to control EJ&E West Company (EJE).

Sandra J. Dearden is founder and President of HIGHROAD, a transportation and logistics consulting firm located in Chicago, Illinois. Prior to founding HIGHROAD in 1996, Ms. Dearden held a series of management positions over the course of a 26-year career in the marketing and sales departments of Illinois Central Railroad and the Chicago & North Western Transportation Company (North Western). During her tenure at North Western, she had profit and loss responsibility for a variety of transportation commodity groups, including commodities shipped and received by American Chemical Service.

During her career, Ms. Dearden has been involved in the negotiation of numerous rate and service agreements between rail carriers and purchasers of transportation service. Also, during her railroad career and as a consultant, she has participated in numerous proceedings before the Surface Transportation Board and its predecessor agency the Interstate Commerce Commission.

John L. Bradshaw is an Executive Consultant at HIGHROAD. Mr. Bradshaw has extensive experience in rail operations. Prior to launching a career as a professional consultant, John was Vice President and General Manager of Wisconsin Central Transportation Corporation from startup. In that role he directed and implemented the railroad's initial service design and operating plan. Finally, he represented Wisconsin Central on the Canadian National Merger Team, and assisted in preparation of the application to the Surface Transportation Board.

Mr. Bradshaw started his transportation career at the Chicago and North Western Transportation Company where he held various positions, including Assistant Vice President and Division Manager at St. Paul, MN, where he directed all transportation operations, yard operations, engineering, mechanical and administration forces.

Mr. Bradshaw has performed numerous consulting projects for HIGHROAD. He participated in a team of three expert witnesses who submitted rebuttal testimony on behalf of Canadian National Railroad, protesting the application of the Trustee for the Bangor & Aroostook Railroad for the adverse discontinuance of CNR trackage rights and haulage rights, and adverse abandonment of Waterloo Railroad's freight easement on the MMA. *STB Finance Docket No. AB-279 (Sub. No. 3), Canadian National Railway Company Adverse Discontinuance, Line of Montreal, Maine & Atlantic Railway Ltd. in Aroostook County, Maine.*

We have been retained by American Chemical Service, Inc. (ACS) to evaluate their current rail operation and agreements relative to CN's application to control EJE. Qualifications for Mrs. Dearden and Mr. Bradshaw are included in Attachment 1 hereto.

Statement of Sandra J. Dearden

In his statement, ACS' David Tarpo has described his current rail operation and the rate and service agreement between ACS and EJE that has been in effect

since 1981. Rail is an integral part of ACS' operation and continued rail access for shipments to and from the plant is crucial to the competitiveness and viability of the ACS operation.

Our initial objective when ACS asked us to evaluate their position relative to this proposed transaction was to work with CN and to negotiate an agreement that would secure continuation of current agreements and ensure reasonable, consistent, and reliable rail service for their shipments.

There has been a lot of press regarding the potential benefits of this transaction that appears to focus on improving the velocity of freight traffic around and through Chicago. The Chicago Tribune reported that, "the deal is designed to let the company by-pass much of the urban rail traffic that has long served as a choke point for railroad operators."¹ It appears that CN's primary objective in their plan to control EJE is on traffic that they plan to move through Chicago, with little or no mention regarding future service for customers currently served by EJE.

Based on our knowledge and experience regarding service cutbacks and increased costs experienced by a number of rail shippers formerly served by Wisconsin Central Transportation Company (WC), following CN's acquisition of WC, we scheduled a meeting with CN in an attempt to negotiate an agreement to protect ACS' current operation and the agreement that has been in effect since 1981. The outcome of the meeting was unsatisfactory as CN would not commit to any service plans or agreements.

When CN acquired WC in 2001, CN negotiated an agreement with the National Industrial Transportation League (NITL), securing NITL's support for the CN/WC transaction. The Agreement established Service Protection Agreements, in addition to Interchange Protection which included protection of through rates and

¹ "Canadian National to buy EJE", by James P. Miller, Chicago Tribune, Business Section, pp 3, September 27, 2007.

charges during a five-year period and assurance that CN would not close any gateways subsequent to the expiration of the five-year term. However, those protective conditions were to be established in contracts upon the request of any shipper or receiver of property on CN and/or WC.² Many of the shippers that were previously served by WC have reported that they were not made aware of the CN/NITL agreement and, therefore, did not request contracts that would have established protective conditions that were available.

In 2000, prior to CN's acquisition of WC, twelve railroads operated in Wisconsin over 3600 route miles. Combined, they handled 2.5 million cars, 150 million tons of freight. Currently, four Class I railroads own 80% of the rail lines in Wisconsin, and CN owns 1800 miles, nearly half, of the track in the State.³

Soon after CN acquired WC and initiated plans to merge operations, a number of shippers experienced reductions in service. One example was the closing of the intermodal facilities in Green Bay and Neenah, WI.

On April 12, 2005, I attended a meeting for Wisconsin rail shippers in Green Bay, WI. Approximately fifty people attended the meeting; presenters included the Wisconsin Paper Council and a representative from the STB. Emotions were high as issues discussed focused on complaints regarding reductions in service and rate increases that occurred following CN's takeover of WC. Summarized below are a few examples that were cited at the meeting and others we know from experience working for clients:

- Jeffrey Landin, President of the Wisconsin Paper Council, recently advised that many of his members have experienced reductions in service and rate increases.

² Agreement between the National Industrial Transportation League and The Canadian National Railway Company, April 27, 2001.

³ Source, Patrick J. Schillinger, President, Wisconsin Paper Council, presentation, April 12, 2005.

- CN cancelled Appleton Coated's track lease agreement. The leased track was used to manage the movement of loaded and empty private cars and to prevent demurrage. The track was a key component of the paper mill's rail operation and was critical to Appleton Coated's ability to be competitive. Further, CN announced a plan to increase charges for switching by 150%.
- Ericson Logging had a good business relationship with WC; they had a standing order of fifteen (15) cars a day for loading shipments of logs. Since CN acquired WC, Ericson advised that at best, they might get 25 cars a week for loading, and the remaining car orders are never filled. Also, when WC served Ericson, they parked Ericson's loaded and empty cars on a staging track to manage efficient delivery and distribution of the cars. CN no longer allows Ericson to use the "house track". As a result, Ericson is required to use an alternative plan that adds inefficiency and additional mileage to their shipments.
- Cooperative Plus, Inc. (CPI), a farm supply co-op with several locations in southeastern Wisconsin, has seen its rates to ship grain to Chicago more than double since December 2003 due to rate hikes established on short notice. These increases have put the co-op at a substantial disadvantage because its rates with CN are more than twice those of some of its competitors that are served by other rail carriers.⁴
- Butch Johnson, owner and President of Johnson Timber Corporation, had his rates double on short notice and advised that Johnson Timber's logs deteriorate while waiting for cars for loading. "Our costs need to go down instead of going up because it will make us uncompetitive. As an example,

⁴ Congressman Mark Green's website, September 2005.

there was the closure of the pulp mill in Brokaw. That could just be the start of others to follow," said Johnson.⁵

As explained, on January 7, 2008, we represented ACS in a meeting with Gerald ("Rusty") Radloff, Assistant Vice President - Sales, CN Worldwide North America, and Vincent Greco, Commercial Manager of Facilities of Canadian National, with the objectives to negotiate an agreement to ensure the current agreement that has been in place with EJE since 1981 will be maintained, and to establish some protective conditions on rates and service.

Mr. Radloff started the meeting with a statement that CN has been very successful consolidating systems following mergers and they are not establishing any agreements with shippers relative to this proposed transaction. He further stated that CN did not reduce service and did not increase rates when they acquired WC, and they did not plan to do so against customers currently served by EJE. When I informed Mr. Radloff that in fact a number of WC customers experienced loss of rail service, or reductions in rail service, and significant increases in rates and charges, he offered an explanation that CN's commercial objectives did not match with WC's commercial objectives.

Statement of John L. Bradshaw

Ms. Dearden recently contacted me to review the rail operation and assess possibilities for additional rail access to the American Chemical Service, Inc. (ACS) facility at Griffith, Indiana. This facility is located less than one mile south and east of the junction and rail crossing of the EJE and the CN main lines.

ACS and another local industry, PACTIV Corporation (PACTIV), are presently served by the EJE. Both industries are located on short industrial spur tracks which

⁵ Ibid.

were previously on the main lines of the Erie Lackawanna (Erie) and the Chesapeake & Ohio (C&O). PACTIV is located just north and west of the rail crossing.

Over the years, the Erie, C&O, and Michigan Central (MC) abandoned their lines leaving the local service in the area to the EJE and the former Grand Trunk Western (GTW), now the Canadian National (CN). The CN main line is much closer to the ACS plant than the EJE connection. There are no road crossings or structures present that would prohibit a build out of industry track so CN could serve the ACS plant. Depending on how the internal ACS structures are laid out, it might even be possible to eliminate the existing at grade crossing on Colfax Avenue, which is now needed to serve ACS from the EJE.

In addition to building a new connection track off the existing CN main, other opportunities exist to assure ACS reliable and competitive rail service using the existing infrastructure. For example, currently the Union Pacific Railroad (UP) and the CN operate run-through trains on the EJE tracks through Griffith. There is a physical connection in place to serve industries on the industrial spur tracks. Ownership and maintenance of the spur tracks has not been confirmed, but the existing track layout would permit service to these industries by not only the EJE, but also the CN and UP by granting trackage rights and access to ACS facilities and other local shippers at Griffith.

Other alternatives for establishing competitive service these customers include Indiana Harbor Belt (IHB) and the Norfolk Southern (NS). The IHB connects to the EJE approximately seven miles north of Griffith. NS has two connections near Griffith, one approximately three miles to the north at Van Loon and another approximately two miles south and west at the Hartsdale Yard.

Ms. Dearden stated that she was present at a meeting with local shippers formerly served by the WC, where complaints were aired about service and pricing policies of CN. As Vice President and General Manager of the WC, I was responsible

for all local and through freight operations. I spent considerable time working with WC market managers to develop local services in order to compete for business long lost to trucks. One of the many marketing initiatives that was successful was a service program designed to secure shipments of logs for local delivery to numerous pulp mills also served by WC. WC invested capital in storage yards and gondola freight cars and recaptured most of the log traffic, resulting in a significant reduction of log trucks operating on local streets and county roads in the WC service area. Cooperative and efficient use of storage tracks and freight cars is only one example of the programs developed by WC to provide competitive local service to rail customers. WC was also successful with overhead business, but excelled in daily service to local shippers.

Conclusions

ACS has a unique operation; the company has invested capital and is reliant on an agreement that has been in effect with EJE since 1981. Because of our knowledge of events that occurred following CN's acquisition of WC, and statements that the CN/EJE "deal" is designed to let the company by-pass much of the urban rail traffic in Chicago, we believe that American Chemical Service, Inc. is rightly concerned about the need to seek protective conditions from the STB.

STATE OF ILLINOIS)

COUNTY OF COOK)

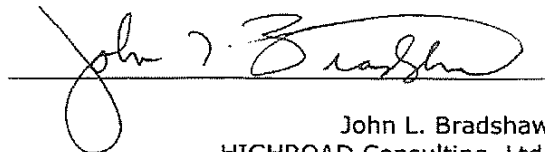
VERIFICATION

I, Sandra J. Dearden, being duly sworn, state that the facts asserted in the foregoing Verified Statement are true and correct.



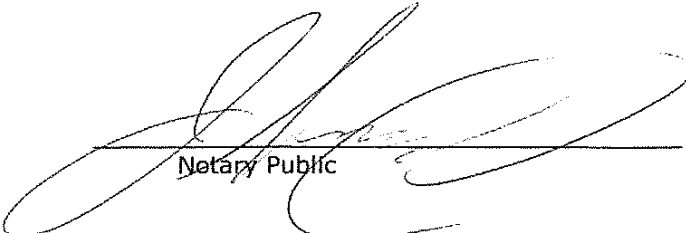
Sandra J. Dearden
HIGHROAD Consulting, Ltd.
55 East Jackson Blvd., Suite 625
Chicago, IL 60604

I, John L. Bradshaw, being duly sworn, state that the facts asserted in the foregoing Verified Statement are true and correct.

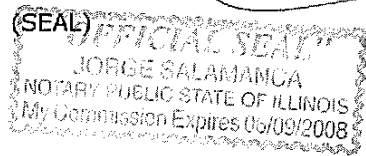


John L. Bradshaw
HIGHROAD Consulting, Ltd.
55 East Jackson Blvd., Suite 625
Chicago, IL 60604

Subscribed and sworn to before me,
a Notary Public in and for the above
State and County, on this 24 day
Of January, 2008.



Notary Public



**Sandra J. Dearden, President
HIGHROAD Consulting, Ltd.**

Attachment 1

Sandra J. Dearden is the founding President of HIGHROAD Consulting, Ltd. Prior to forming the firm in 1996, Sandra was General Manager – Sales & Marketing for a strategic business unit at Chicago & North Western Transportation Company; she brings more than thirty years of experience in strategic planning, contribution based management, business development, industrial development, regulatory and litigation support to the firm's engagements.

During her tenure at North Western, Ms Dearden used the consultative selling approach to build market share and has led strategic planning sessions with senior management teams of numerous shipping companies, which led to reengineering of their distribution systems to provide for more efficient management of inventories and JIT service to the retail customers, while reducing transportation costs. She was instrumental in developing the unit train distribution systems for Canadian potash and Florida phosphates to the U.S. She was North Western's project leader on development of numerous terminals for distribution of liquid and dry chemical fertilizers, from strategic site selection to start-up, including working with the shippers' representatives, contractors, rail operations and engineering personnel, on the facility designs and design of industry tracks, while confirming compliance with environmental laws. Subsequently, North Western received international recognition when the railroad was awarded the *Golden Freight Car Award* for distinguished marketing by Modern Railroads Magazine for its fertilizer marketing program.

Ms. Dearden participated in numerous proceedings before the United States Surface Transportation Board and the former Interstate Commerce Commission. She served as an expert marketing witness on North Western's acquisition of the former Rock Island Spine Line from Minneapolis to Kansas City, and on the anti-trust portion of North Western's application to acquire the Milwaukee Road. North Western received favorable rulings in all of those proceedings.

As a consultant, she also prepared the competitive impact study for Kansas City Southern to support its position to oppose the merger of Union Pacific Railroad's and Southern Pacific Transportation Company, **Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. And the Denver and Rio Grande Western Railroad Company, Comments of the Kansas City Southern Railway.** Although the Surface Transportation Board approved the merger, KCS received a favorable opinion from the Department of Justice, due to the competitive impact.

Under **STB Finance Docket No. 42060, North American Freight Car Association v. Burlington Northern and Santa Fe Railway Company, HIGHROAD** represented a client in the proceeding, opposing empty car storage charges. HIGHROAD was contacted by the railroad's outside counsel, an agreement was negotiated that was favorable to HIGHROAD's client, and HIGHROAD withdrew its complaint in the proceeding.

HIGHROAD reviewed financial data presented by Burlington Northern Santa Fe, **STB Docket No. AB-6 (Sub-No. 382X), Burlington Northern and Santa Fe Railway Company Abandonment within the city limits of Chicago in Cook County, Illinois.** HIGHROAD's consultant, representing the clients opposing the abandonment, prepared a verified statement noting errors in the BNSF filing, and the abandonment was denied.


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Ms. Dearden directed and led a team of HIGHROAD consultants that submitted rebuttal testimony for the complainant shipper, Wisconsin Power & Light, in a stand-alone rate case against the Union Pacific Railroad, **STB Finance Docket No. 42051, Wisconsin Power and Light Company v. Union Pacific Railroad, Defendant**. The Surface Transportation Board found that the defendant railroad had market dominance and that the challenged rates were too high. Maximum reasonable rates were prescribed and reparations were ordered. Union Pacific appealed the decision, which was upheld in the court of appeals.

HIGHROAD has been an industry leader, addressing fuel surcharges assessed by the railroads. In 2003, HIGHROAD released a white paper with cost evidence that revealed the railroads were over-recovering with their fuel surcharge programs. In May 2006, the Surface Transportation Board responded to shipper complaints and conducted a hearing on the fuel surcharges, **STB Ex Parte 661**. HIGHROAD prepared cost evidence for four shippers that filed statements into the proceeding that revealed the surcharges were 4 – 5 times higher than the total cost of fuel in the lanes analyzed. In its decision, the STB ruled fuel surcharges based on a percentage of rates constitute an unreasonable practice and ordered the railroads to change their fuel surcharge programs on regulated traffic to reflect actual fuel cost increases.

STB Finance Docket No. AB-279 (Sub. No. 3), Canadian National Railway Company Adverse Discontinuance, Line of Montreal, Maine & Atlantic Railway Ltd. in Aroostook County, Maine. Ms Dearden coordinated development of testimony for three expert witnesses who submitted rebuttal testimony on behalf of Canadian National Railroad, protesting the application of the Trustee for the Bangor & Aroostook Railroad for the adverse discontinuance of CNR trackage rights and haulage rights, and adverse abandonment of Waterloo Railroad's freight easement on the MMA. HIGHROAD consultants' testimony focused on the market plan, and the projected cost impact on rail operations as presented by the Trustee. The STB ruled in favor of Canadian National.

Most recently, Ms. Dearden presented testimony and directed a consulting team that developed cost evidence for Marquette Rail, **STB Finance Docket NO. 35063, Michigan Central Railway, LLC – Acquisition and Operation Exemption – Lines of Norfolk Southern**. The "Watco Decision" issued by the STB was favorable to Marquette Rail.

HIGHROAD's project work covers all modes and all functional areas of domestic and international transportation and logistics, including strategic planning, supply chain planning, industrial development, transportation operations, transportation management, asset utilization, and activity based costing. Through Tera International, Inc., for the United States Trade & Development Agency and the Ministry of Railways, Peoples Republic of China, HIGHROAD performed a six-month study in China to determine the number of intermodal yards to be constructed to accommodate projected growth. As a result of this study, 18 stand-alone intermodal terminals and 37 container handling yards are being constructed in China.

Ms. Dearden is respected as a seminar speaker. Topics include: Rail Fuels Surcharges – Rail Fuel Impact Study; Integrating Activity Based Costing into Distribution Planning and Market Based Pricing; Logistics Tools, Midwest Advisory Board; and at a NAFTA Seminar in Toronto, ON, Impact of Department of Commerce Surcharges on Canadian Potash on U.S. Farm Economy. In 2007, she was invited to give a presentation on Rail Fuel Surcharges at the annual meeting of the Association of Transportation Law Professionals, and

Sandra Dearden is a member of the Intermodal Advisory Task Force, Chicago Metropolitan Agency for Planning (CMAP); a former Officer, Board of Directors, Traffic Club of Chicago; Rail Committee, National Industrial Traffic League; and she served on the Board of Directors, Midwest Association of Rail Shippers.



**John L. Bradshaw, Executive Consultant
HIGHROAD Consulting, Ltd.**

John L. Bradshaw, Executive Consultant, is a professional consultant with extensive senior management experience, managing rail operations in the United States and internationally. John has performed numerous projects for HIGHROAD, and will lead the project team.

Prior to initiating a consulting career, John was part of the senior management team at Wisconsin Central Transportation Corporation. He was Vice President and General Manager of the railroad from startup. In that role he directed and implemented the railroad's initial service design and operating plan. Under his leadership, Wisconsin Central achieved the lowest operating ratio in the industry and he integrated leading edge technology, the first in the industry, by utilizing remote control technology. John was also involved in the creation of the new commuter rail service on the North Central line to Antioch, Illinois.

John was subsequently assigned as Group General Manager – Operations of Wisconsin Central's New Zealand Operation, Tranz Rail, where he managed all transportation operations, yard operations, engineering, mechanical and administration activities on the national system. Within the first three years, he reduced the operating ratio from 90% to 78%. Accomplishments include reorganization and restructuring of the system-wide operations group, including major shops, resulting in 750 headcount reduction and 10% decrease in man-hours. Also, he improved car cycle times by 35% with a 30% increase in tons handled.

Because of his accomplishments, John was promoted to Vice President Corporate Development, where he directed corporate due diligence for domestic and international expansions in North America, Great Britain, Australia, Jordan, South Africa, Estonia, and Poland. He led operations due diligence for V-Line, Westrail, National Rail, and Freight Corporation in Australia. His responsibilities included evaluation of operations and market analyses, knowledge of system and regulatory requirements, and he championed transportation privatization proposals and executed implementation. Under his direction Tasrail reduced its operating ratio from 131% to 79%, and he secured flexible work rules enabling capture of a 10-year unit grain train contract. Finally, he represented Wisconsin Central on the Canadian National Merger Team, and assisted in preparation of the application to the Surface Transportation Board.



John started his transportation career at the Chicago and North Western Transportation Company where he held various positions, including General Manager of Commuter Operations. His last position with the railroad was Assistant Vice President and Division Manager at St. Paul, MN. where he directed the daily operations of all transportation operations, yard operations, engineering, mechanical and administration forces. In that position he improved service reliability on shipments of fertilizer, grain and coal in Wisconsin and Minnesota by 50%. Also, he implemented division consolidation plans, including a significant line sale to the Dakota, Minnesota & Eastern, and a sale of the Minnesota Transfer Railway, which generated significant savings to the Class I owners.

As a consultant, John has performed numerous projects, including a study of locomotive requirements for the Indiana Harbor Belt Railroad. The project involved review of current operations and development of a plan to rationalize the locomotive fleet and fleet requirements. Also, he was Project Manager on a project for The Village of Oak Park, Illinois. He was successful at developing and implementing a plan to achieve the project objectives to address environmental issues relative to the parking of trains, including engine noise and air quality.

John is currently completing a B.A Program, Business Improvement and Change Management, at DePaul University. Other coursework includes *Achieving Breakthrough Service*, Harvard Business School; *Transportation Service Seminar*, University of Wisconsin at Madison; and *Transportation Management Program*, sponsored by the UMTA and RTA at Northeastern University at Boston.



CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2008, I caused the foregoing document, Opposition Statement and Request for Conditions, to be served by overnight mail on counsel For Applicants, i.e., Paul A. Cunningham, Esq., David A. Hirsh, Esq., and James M. Guinivan, Esq., Harkins Cunningham, LLP, 1700 K. Street, NW, Suite 400, Washington, DC 20006- 3804; and by first- class mail on all other parties of record.

Thomas F. McFarland

Thomas F. McFarland