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BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION -- CONTROL -- EJ&E WEST COMPANY	))))	FINANCE DOCKET NO. 35087

REPLY IN OPPOSITION TO REQUEST FOR DETERMINATION THAT THE PROPOSED CONTROL IS A MINOR TRANSACTION

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Replicant

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Date Filed: November 19, 2007

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Pursuant to 49 C.F.R. § 1104.13(a), AUX SABLE LIQUID PRODUCTS, INC. (Aux Sable) hereby replies in opposition to the request by Canadian National Railway Company (CN) in its Railroad Control Application filed on October 30, 2007, at 14-17, that the Board determine that its proposed control of EJ&E West Company (EJ&EW) is a minor transaction.

IDENTIFY AND INTEREST OF REPLICANT

Aux Sable owns and operates one of the largest natural gas liquids (NGL) extraction and fabrication plants in North America. The facility is located at Channahon, Illinois, about 50 miles southwest of Chicago, near the eastern terminus of the Alliance pipeline. Aux Sable's operations commenced on December 1, 2000 coincidental with the start-up of the Alliance pipeline. The facility is capable of processing 2,100 million cubic feet per day of gas, and can produce about 87,000 barrels per day of specification NGL products. Currently, all of the Alliance gas is processed at Aux Sable's Channahon NGL facility.

Aux Sable's Channahon, IL facility is located on Elgin, Joliet & Eastern Railway Company's (EJ&E) rail line between Walker and Goose Lake, IL. Aux Sable's facility is one of several large plants that are located in an industrial corridor along US Highway 6 southwest of

Joliet, IL, all of which are served by EJ&E.[1] Aux Sable makes extensive use of EJ&E's rail service to ship NGLs in tank cars. Aux Sable relies on EJ&E to provide quality rail service at reasonable rates. Aux Sable would be seriously harmed if that rail service and rate structure were to be compromised as a result of CN's acquisition of EJ&EW.

STATEMENT OF POSITION ON
CLASSIFICATION OF THE PROPOSED TRANSACTION

Aux Sable does not take a position at this time on the merits of the proposed control.

Procedurally, however, Aux Sable opposes classification of the proposed transaction as "minor" under 49 C.F.R. § 1180.2(c), as sought by CN. The transaction should be determined to be "significant" under 49 C.F.R. § 1180.2(b), for many of the same reasons that caused the Board to determine recently that a transaction involving Canadian Pacific Railway Company's (CP) proposed control of Dakota, Minnesota & Eastern Railroad Corp. (DM&E) is significant, not minor. *Canadian Pacific Ry. Co. -- Control -- Dakota, Minnesota & Eastern Railroad Corp.*, Finance Docket No. 35081, Decision No. 2, served November 2, 2007 (*CP-DM&E* case).

ARGUMENT - THE PROPOSED TRANSACTION
SHOULD BE FOUND TO BE SIGNIFICANT

In arguing that the transaction should be found to be minor, CP contends that the transaction would have no anticompetitive effect (Application at 14-15).

Aux Sable disagrees. EJ&E acts as a neutral switching carrier providing efficient, economical and non-discriminatory access to numerous Class I railroads and shortlines. EJ&E connects with six Class I railroads at 25 interchange points. EJ&E also connects with 15 Class II

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[1] It is likely that the owners of one or more of those plants will file notices of intent to participate in this proceeding in due course.

and Class III railroads at 19 interchange points. Shippers and receivers located on EJ&E's rail lines benefit substantially from that equal acccss to multiple rail carriers.

Neutral switching carriers have been established to prevent diminution of railroad competition as a result of consolidation of rail carriers. A recent example is thc creation of Conrail Shared-Asset areas when Norfolk Southern and CSX Transportation acquired Conrail.

If creation of a neutral switching carrier preserves railroad competition, it should follow that elimination of a neutral switching carrier diminishes competition. That would be the case in regard to CN's acquisition of the lion's share of EJ&E. Today, shippers on EJ&E have efficient and economical access to all major Class I rail carriers and multiple shortlines. However, if CN were to acquire EJ&E, that equal access would be jeopardized inasmuch as CN could operate EJ&E to favor CN's own routes rather than those of its competitors. There are many subtle ways that a origin or destination rail carrier can do so. That would be no less a reduction of competition than is experienced by "2 to 1" or "3 to 2" shippers.

That anticompetitive effect would <u>not</u> clearly be outweighed by public interest benefits. To be sure, CN and shippers and receivers located on CN may benefit from the transaction in the manner described at pages 15 and 16 of the Application.

However, there could be serious detrimental effects to shippers, receivers and communities located on EJ&E that would cancel out those benefits. At page 17 of the Application, CN contends that it would be a public interest benefit for EJ&E shippers and receivers to be served by a Class I rail carrier like CN, rather than a smaller regional rail carrier like EJ&E.

That contention stands reality and Board precedent on its head. The Board has consistently recognized that shortlines and regional rail carriers provide more efficient and economical rail service than Class I rail carriers. Thus, very recently, in *Review of Rail Access and Competition Issues - Renewed Petition of the Western Coal Traffic League*, Ex Parte No. 575, decision served October 30, 2007, the Board said (at 3):

> The benefits of this 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.[6] Offering better service, the short lines have been able to attract new traffic to the lines. 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).
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> [6] According to the chief operating officer of a short line holding company, "[o]ne car at a time is what we're all about." 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 to take the other steps needed to service a customer can be as high as $500,000 per year, but that, for a regional or short line, the threshold is one carload. 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).

In one rail line acquisition proceeding after another, the Board has emphasized the inherent advantages of smaller rail carriers vis-a-vis Class I rail carriers in the provision of efficient and economical rail service. CN surrenders all credibility in arguing to the contrary in the first paragraph on page 17 of the Application.

CONCLUSION

As demonstrated above, there is no rational basis for the Board to find that the CN-EJ&EW transaction clearly will not have any anticompetitive effects, nor that any anticompetitive effects of the transaction would be clearly outweighed by public interest benefits. Instead, the proposed transaction is shown to be significant from the standpoint of both potential adverse competitive effect and potential adverse effect on service and rates for shippers and receivers on EJ&E. Accordingly, the Board should determine that the proposed transaction would be significant, and should order the same procedural compliance required in significant transactions as ordered in the *CP-DM&E* case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2007, I served the foregoing document, Reply In Opposition To Request For Determination That The Proposed Control Is A Minor Transaction, by UPS overnight mail on the following parties:

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