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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

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

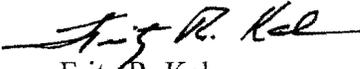
Dear Ms. Brown:

Attached are the Comments of the Illinois Department of Transportation.

If you have any question concerning this filing or if I otherwise can be of assistance, please let me know.

A copy of this letter and its attachment have been served on the Canadian National Railway Company, by e-mailing copies to its attorney, Paul A. Cunningham, Esq., at pac@harkinscunningham.com.

Sincerely yours,


Fritz R. Kahn

SURFACE TRANSPORTATION BOARD

Docket No. FD 35087

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

COMMENTS
OF
ILLINOIS DEPARTMENT OF TRANSPORTATION

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Attorneys for

ILLINOIS DEPARTMENT OF TRANSPORTATION

Dated: May 8, 2014

SURFACE TRANSPORTATION BOARD

Docket No. FD 35087

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

COMMENTS
OF
ILLINOIS DEPARTMENT OF TRANSPORTATION

The Illinois Department of Transportation (“IDOT”), in response to the Board’s announcement of January 20, 2010, inviting comments concerning the compliance by the Canadian National Railway Company (including, collectively and individually, its U.S. rail carrier subsidiaries, “CN”) with the several environmental conditions imposed by the Board in its Decision of December 24, 2008 (“Approval Decision”), states as follows:

Environmental Condition No. 14 of the Approval Decision required CN to coordinate with IDOT and other appropriate state and local officials for the expeditious implementation of the grade separation of the crossing of US Highway 30 (Lincoln Highway and the track of the EJ&E West Company (“EJ&E”) in Lynwood, Cook County, Illinois, and of the crossing of US Highway 34 (Ogden Avenue) and the tracks of the EJ&E in Aurora, DuPage County, Illinois. CN was directed to pay 78.5% of the cost of the grade separation in Lynwood and 67% of the cost of the grade separation in Aurora, provided that (1) the required non-CN funds for the remainder of the costs shall have been committed and obligated and (2) construction was initiated no later than 2015.

In view of the pending judicial review of the Board's Approval Decision, IDOT, by its Petition, filed September 21, 2009, requested the Board to reopen the proceeding and extend the 2015 construction deadline so that CN would retain its funding obligation for the grade separations at Lynwood and Aurora, if construction of the grade separations was begun within seven years from the date of a final unappealable court order in the review proceeding. By its decision, served October 23, 2009, the Board denied IDOT's request, deeming it premature and stating that, if reasonable progress has been made but construction is not likely to be initiated due to circumstances beyond IDOT's control, the Board would entertain a request to extend the time deadline of Environmental Condition 14 of the Approval Decision.

The Board's Approval Decision was upheld in *Village of Barrington, IL v. S.T.B.*, 363 F.3rd 650 (D.C. Cir. 2011).

IDOT filed reports with the Board on February 23, 2010, September 14, 2010, October 5, 2011, and March 8, 2013, to advise the Board of the status of the grade separation Projects and of the disparate views of IDOT and CN on certain critical issues which IDOT believed could negatively affect the ability to meet the 2015 deadline.

The Board, by its decision served May 30, 2013, encouraged IDOT and CN to continue their negotiations in good faith and, should they reach an impasse, to seek initial resolution through third-party mediation, arbitration or other form of alternative dispute resolution. To help facilitate this process the Board extended the deadline of Environmental Condition No. 14 by two years to December 31, 2017.

IDOT is pleased to advise the Board that, since its May 30, 2013 decision, significant progress has been made in resolving the disagreements which had existed

between IDOT and CN, and in December 2013 the two parties signed both a Funding Agreement and a Construction and Maintenance Agreement for the construction of the bridge in Lynwood and signed similar agreements relating to the construction of the bridge in Aurora.

In those Agreements, IDOT agreed to assume the ownership and the responsibility for the maintenance of the bridges over the tracks of what had been the EJ&E¹. In turn, CN agreed to include certain design elements in the plans which CN earlier had objected to because, in the opinion of CN, those elements unnecessarily increased the cost of the Projects; in addition to withdrawing its objections to those elements, CN further agreed not to contest such design elements before the Board or any court of competent jurisdiction.

IDOT has submitted invoices to CN for CN's share of the preliminary engineering costs for the Projects that IDOT has incurred so far. CN has agreed to pay those invoices once they have been submitted and are in acceptable form, and the parties have agreed that CN will reimburse IDOT for each Project's remaining costs when the construction on that Project has been substantially completed.

IDOT shall continue to file periodic Comments with the Board to keep it informed of how the Projects contemplated by Environmental Condition No. 14 of the Approval Decision are progressing.

¹ Effective January 1, 2013, EJ&E was merged into the Wisconsin Central Ltd., a wholly owned subsidiary of Grand Trunk Corporation, which is a subsidiary of Canadian National Railway Company.

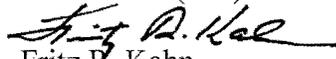
Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

By its attorneys,

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Dated: May 8, 2014

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing comments on Canadian National Railway Company by e-mailing a copy to its attorney, Paul A. Cunningham, Esq. at pac@harkinscunningham.com.

Dated at Washington, DC, this 8th day of May 2014.


Fritz R. Kahn