



April 29, 2016

**Via electronic filing**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re: *CSX Transportation, Inc. – Acquisition of Operating Easement – Grand Trunk  
Western R.R. Co., STB Docket No. FD 35522*

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding (a) the Motion for Leave to File a Reply and (b) the Reply of the City of Chicago and Village of Evergreen Park to Reply of CSX in the above-captioned proceeding.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Allison I. Fultz  
Counsel for City of Chicago, Illinois

cc: All Parties of Record

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD 35522**

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**CSX TRANSPORTATION, INC. – ACQUISITION OF OPERATING EASEMENT –  
GRAND TRUNK WESTERN RAILROAD COMPANY**

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**REPLY OF THE CITY OF CHICAGO and VILLAGE OF EVERGREEN PARK TO  
CSX’S REPLY TO PETITION OF CITY OF CHICAGO AND VILLAGE OF  
EVERGREEN PARK TO REOPEN AND TO IMPOSE SANCTIONS**

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Counsel for City of Chicago, Illinois

Dated: April 29, 2016

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Docket No. FD 35522**

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**CSX TRANSPORTATION, INC. – ACQUISITION OF OPERATING EASEMENT –  
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**REPLY OF THE CITY OF CHICAGO and VILLAGE OF EVERGREEN PARK TO  
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SANCTIONS**

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The Reply CSX Transportation, Inc., (CSX) submitted in this proceeding on March 10, 2016 (CSX Reply), fails to address how CSX will remedy its thoroughly-documented violations of the conditions this Board imposed in this proceeding. Accordingly, the City of Chicago (City) and Village of Evergreen Park (Village) (collectively, Petitioners) submit this brief Reply to address mischaracterizations in the CSX Reply. Petitioners have simultaneously filed a motion seeking the Board’s leave to file this reply to a reply in order for the STB to have before it a complete and accurate record.

First, CSX proposes what it describes as a “strengthened protocol” (but only for northbound trains) to coordinate in the future with other railroads, primarily Norfolk Southern and Metra, to confirm that the Elsdon Line is clear before sending a train over the line. CSX Reply at 11. CSX fails to note that in public presentations to communities along the Elsdon Line three and a half years ago, prior to seeking STB authority for its Elsdon Line operations, CSX promised to observe precisely this protocol, and did not then limit its representations to northbound trains:

Representatives stated trains will not run during the heavy traffic times of rush hours. . . . Trustee Marzullo questioned rush hour traffic and how the blocking of railroad crossings causing a massive traffic jam will be avoided. CSX answered they will not run trains during the rush hours of 5 to 7 pm **and they will not start a train until they can park in a destination yard** . . . CSX responded only a total mechanical failure could stop a train.

Village of Evergreen Park, Minutes of a Regular Meeting of the President and Board of Trustees, November 5, 2012, at 3-4, attached to comments of the Village of Evergreen Park, November 28, 2012, EI-19118, at:

<http://www.stb.dot.gov/ect1/ecorrespondence.nsf/public%20incoming%20by%20docket%20number?OpenView&Start=599&Count=300&Expand=644#644> (emphasis added).

CSX presented this procedure to the affected communities as the standard it would adhere to in operating the line. CSX's representations not to run trains during rush hour and to ensure that the line would be clear prior to proceeding were fundamental to Evergreen Park's acceptance of CSX's then-proposed operations. CSX's actual operations on the line have failed to reflect what CSX promised when it sought the support of the communities through which it planned to run (not park) trains. At a minimum, therefore, Petitioners respectfully request that the STB impose a condition requiring that, for trains traveling in either direction: (a) CSX confirm that the line is clear and will be accommodated at the receiving end before a train may proceed, and (b) that CSX report on its performance under this requirement in its quarterly reports.

Second, rather than acknowledge that, in accordance with condition VM-6, trains blocking a highway-rail at-grade crossing for more than ten minutes **must** be cut unless a sustained blockage "cannot be avoided", CSX goes to great lengths to explain, without reference to specific, documented instances, why it is just too difficult for it to comply with a condition to which it is subject. CSX Reply at 5-6, 10-13, 17. Condition VM-6 is not limited to blockages

caused by stationary trains, but requires that, if trains are the cause of the blockage, they must be cut. Furthermore, there is no requirement that a train causing a blockage immediately be reassembled, which might exacerbate the crossing delay. Once cut, a train can remain clear of any affected roadway crossings until vehicular traffic flow has subsided, and may be reassembled at a time when it is less likely to cause significant traffic backups.

The insufficiency of CSX's signal maintenance, operating and coordination procedures is not a credible rationale for characterizing an at-grade crossing blockage as "unavoidable". CSX has not disputed the evidence of extensive blockages presented in the Petition filed by Petitioners in this proceeding on February 12, 2016, or, indeed, offered any evidence of its own to support its assertion that conditions on the Elsdon Line have improved since the Petition was filed (*see, e.g.,* CSX Reply at 17 ("The only changes that have occurred are positive ones . . .").<sup>1</sup>

The heart of the Petition is this: This Board imposed conditions on CSX and by accepting the operating authority granted by the Board, CSX agreed to comply with them. Having done that, CSX is bound by the conditions the Board imposed in this proceeding. CSX had the chance during the STB's environmental review process to identify any conditions with which it could not comply. Furthermore, CSX itself proposed the conditions the Board imposed in this matter. Now, however, and by its own account, CSX claims it cannot muster the operational capacity to do what it promised to do. CSX must therefore eliminate its deficiencies, comply with the conditions the Board imposed, be held accountable for three years of operational and reporting failures, and provide facilities that will relieve the ongoing public safety threat its operations currently embody.<sup>2</sup>

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<sup>1</sup> The Petition underscores Petitioners' objection to CSX's mis-characterization of the nature of the changes wrought on the City and Village.

<sup>2</sup> In its quarterly report for the period December 2015 through February 2016, filed on March 30, 2016 (document EI-21773, available at

In view of the foregoing, Petitioners respectfully request that this Reply be entered into the record of this proceeding and, as set forth in detail in the Petition, that the Board impose sanctions on CSX for its failure to abide by the conditions it must meet in order to operate on the Elsdon Line.

Respectfully submitted,

 (A.P.)

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Counsel for City of Chicago, Illinois

Dated: April 29, 2016

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<http://www.stb.dot.gov/ect1/ecorrespondence.nsf/public%20incoming%20by%20docket%20number?OpenView&Sort=599&Count=300&Expand=644#644>) (CSX 11<sup>th</sup> Quarterly Report), CSX includes a list of idling trains that caused crossing blockages lasting more than 10 minutes between Dec. 1, 2015, and Feb. 29, 2016. CSX's report reflects 90 street blockages lasting for an aggregate of almost **22 hours** over the three-month reporting period. CSX 11<sup>th</sup> Quarterly Report, Exhibit A. We note that this listing only addresses stopped trains and does not include any roadway crossing blockages caused by slow trains, malfunctioning gates, or other causes.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served a copy of the foregoing REPLY OF THE CITY OF CHICAGO, IL, AND VILLAGE OF EVERGREEN PARK, IL, upon the following parties of record in this proceeding by first-class mail with postage prepaid and properly addressed:

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Allison I. Fultz

Dated: May 2, 2016