

HARKINS CUNNINGHAM LLP

Attorneys at Law

dhirsh@harkinscunningham.com
Direct Dial: (202) 973-7606

1700 K Street, N.W.
Suite 400
Washington, D.C. 20006-3804
Telephone 202.973.7600
Facsimile 202.973.7610

October 10, 2012

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

233157
ENTERED
Office of Proceedings
October 10, 2012
Part of
Public Record

Re: *Norfolk Southern Railway Company – Abandonment and Discontinuance
of Service Exemption – In Lake County, Ind. and Cook County, Ill.*

Dear Ms. Brown:

On October 1, 2012, Openlands filed a letter requesting, among other things, that the Board issue a public use condition (“PUC”) with respect to a rail line segment owned by Norfolk Southern Railway Company (“NSR”) between mileposts JH 12.80 and JH.19.10 for which NSR has sought abandonment authority in this proceeding (the “Eastern Line Segment”). On October 9, 2012, NSR filed a response to Openlands opposing imposition of the requested PUC, but asking that, if such a PUC is imposed, the Board make clear that it is not intended to conflict with or delay the potential use of a portion of the Eastern Line Segment for the construction of a grade separation of the Elgin, Joliet and Eastern Railway (“EJ&E”) crossing at U.S. Route 30 (Lincoln Highway) (the “Project”), which was one of the conditions imposed by the Board in its decision served December 24, 2008 (“Final Decision”), approving the acquisition of control of EJ&E by Canadian National Railway Company and Grand Trunk Corporation (collectively, “CN”).

CN supports NSR’s opposition and request. A chief purpose of the proposed NSR abandonment of the Eastern Line Segment was to allow the State of Illinois through the Illinois Department of Transportation (“IDOT”) to design and build an overpass of U.S. Route 30 that does not need to span the portion of the Eastern Line Segment that is adjacent to the EJ&E crossing, and also to make the right-of-way of the Eastern Line Segment in the Project area available for construction of the overpass and use for future maintenance. This plan is expected to result in significant cost savings for the State of Illinois and for CN (who are to share in the costs of the Project in accordance with the Board’s condition), and it is CN’s (and, CN understands, the State of Illinois’s and IDOT’s) preferred approach to the Project.

HARKINS CUNNINGHAM LLP

Attorneys at Law

Ms. Cynthia T. Brown

October 10, 2012

Page 2

Whether or not the PUC requested by Openlands would directly conflict with this use, CN is concerned that any uncertainty regarding the availability of the Eastern Line Segment for the Project could result in costly delays or adoption of a less efficient approach to the Project due to concerns about timely completion of the Project. The qualification or clarification that NSR has requested of the Board if it is to impose a PUC here would serve the public interest by helping to avoid such an unnecessary, costly, and inefficient result.

Accordingly, CN joins NSR in requesting that any PUC imposed by the Board be qualified or clarified to make clear that it does not conflict with and is not intended to delay the design or construction of the Project based on the availability and use of the portion of the Eastern Line Segment in the Project area.

Yours truly,



David A. Hirsh

*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

cc: Robert A. Wimbish (NSR)
Gerald W. Adelman (Openlands)