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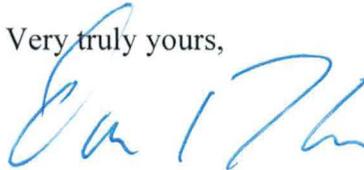
Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423-0012

**Re: Canadian National Railway Company and Grand Trunk Corporation –  
Control – EJ&E West Company (STB Finance Docket No. 35087)**

Dear Ms. Brown:

Enclosed for filing in the above referenced docket please find CN's Reply to Petition of Village of Barrington for Extension of Oversight (CN-66).

Very truly yours,



David A. Hirsh

Counsel for Canadian National Railway Company  
and Grand Trunk Corporation

Enclosure

cc: The Honorable Richard J. Durbin  
The Honorable Richard A. Hofeld  
W. Neely Mallory III  
Richard H. Streeter, Esquire

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Finance Docket No. 35087

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

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**CN'S REPLY TO PETITION OF  
VILLAGE OF BARRINGTON FOR EXTENSION OF OVERSIGHT**

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

September 16, 2014

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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STB Finance Docket No. 35087

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

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**CN'S REPLY TO PETITION OF  
VILLAGE OF BARRINGTON FOR EXTENSION OF OVERSIGHT**

Canadian National Railway Company and Grand Trunk Corporation (together "CN")<sup>1</sup> reply to the Petition Seeking Extension of the Oversight Period for Docket No. 35087 ("Petition") filed in this proceeding on August 27, 2014, by the Village of Barrington ("Barrington"). Attached in support of this reply is the Verified Statement of Jeff Liepelt, Senior Vice-President, Southern Region, for CN (Attachment 1).

Barrington's proposed extension would require the Board to reopen the proceeding to modify the Approval Decision. Barrington neither acknowledges that, nor addresses the criteria for reopening (which require showing material error, new evidence, or changed circumstances). And with good reason – those criteria are not met. Moreover, even if reopening were not required, Barrington has not provided a sufficient basis for extending oversight in this proceeding. Accordingly, its Petition should be denied.

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<sup>1</sup> CN incorporates by reference the short forms and abbreviations set forth in its Application (CN-2 at 8-11).

## **BACKGROUND**

### **A. The EJ&E Transaction and Its Significant Benefits**

In 2007, CN applied for authority to acquire the principal rail lines of the Elgin, Joliet and Eastern Railway Company (“EJ&E”), including a 120-mile arc around Chicago that connected CN’s five lines into Chicago. CN predicted, accurately, that the Transaction would (1) provide CN with a continuous route that would bypass congested lines and yards in and around Chicago; (2) reduce CN’s dependence on trackage rights over intermediate carriers within Chicago; and (3) provide significant public benefits by reducing rail traffic congestion in Chicago, which would increase rail capacity for carriers operating in Chicago, improve their operational fluidity, and advance, with wholly private money, the congestion-reducing objectives of the Chicago Region Environmental and Transportation Efficiency Project (“CREATE”).

In accordance with National Environmental Policy Act (“NEPA”), the Board spent over a year (assisted by over \$20 million of services of an environmental consultant paid for by CN) conducting the most extensive environmental review ever of a “minor” control transaction. That review process included site visits, consultations with local communities, governmental agencies, and other stakeholders, and extensive environmental analysis to determine the environmental impacts of the Transaction and reasonable alternatives. It resulted in a 3,600-page Draft Environmental Impact Statement (“EIS”) and a 2,500-page Final EIS, in which the Board’s environmental staff recommended imposition of 178 environmental conditions (including 108 voluntary mitigation conditions that CN had proposed).

The Approval Decision subjected the Transaction to 182 environmental conditions, based on those recommended in the Final EIS. It also (1) established a five-year oversight period (later extended one year by Decision No. 26), and (2) imposed reporting requirements on CN, including (a) monthly operational monitoring reports containing detailed information specified

by the Board, and (b) quarterly environmental monitoring reports describing CN's implementation of and compliance with the Board's environmental mitigation conditions.

CN consummated the Transaction effective February 1, 2009.<sup>2</sup> Since then, consistent with the Operating Plan CN submitted with its Application (*see* CN-2 at 207-48), CN has made major infrastructure investments, totaling about \$216 million, to implement the Transaction, and it has successfully integrated EJ&E into its system. *Liepelt V.S.* at 2. CN has:

- constructed track connections at Leithton, Matteson, and Griffith;
- integrated EJ&E's Western (now Leithton) Subdivision, Eastern (now Matteson) Subdivision, and other lines into CN's Chicago Division;
- created a new subdivision, the Waukegan Sub, embracing the former EJ&E line from Leithton to Waukegan;
- constructed a second connection at Griffith (replacing one planned at Kirk Yard between CN and CSXT lines);

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<sup>2</sup> The Approval Decision became effective on January 23, 2009. Shortly thereafter, Elgin, Joliet and Eastern Railway transferred most of its assets to EJ&EW, which was acquired by CN on February 1, 2009. Elgin, Joliet and Eastern Railway then changed its name to Gary Railway, and EJ&EW adopted the name of Elgin, Joliet and Eastern Railway Company ("EJ&E"). Effective January 1, 2013, EJ&E was merged into WCL, an operating subsidiary of CN. *See* letter from Thomas J. Litwiler (Counsel for WCL and EJ&E) to Cynthia T. Brown (Chief, Section of Administration, Office of Proceedings, STB) (filed Jan. 4, 2013), *Wisconsin Central Ltd. – Intra-Corporate Family Merger Exemption – Elgin, J. & E. Ry*, Docket No. FD 35630 (filed Jan. 4, 2013). As the Board has noted, CN remains fully subject to the conditions imposed by the Board in the Approval Decision, and to the extent that any obligations may have been imposed separately on EJ&E, those obligations have been inherited by WCL. *Wisconsin Central Ltd. – Intra-Corporate Family Merger Exemption – Elgin, J. & E. Ry*, Docket No. FD 35630, slip op. at 2 (STB served Sept. 5, 2012).

For sake of convenience, the lines of the former EJ&E that were acquired in the Transaction are referred to herein as "EJ&E."

- constructed various double-tracking and siding extension projects;<sup>3</sup>
- integrated EJ&E's car and locomotive fleet into CN's fleet;
- relocated EJ&E's crew management and train dispatching systems into CN's Homewood facility;
- rationalized its several prior interchanges with other railroads in Chicago by making Kirk Yard its principal interchange location in the Chicago area;
- constructed a new 62,000-square-foot state-of-the-art safety training facility adjacent to the Woodcrest Mechanical Shop at Homewood, which opened in July 2014 and when in full use will host approximately 250 students per week; and
- most significant, rerouted its trains, where possible, from its downtown Chicago lines to the EJ&E.<sup>4</sup>

*See* Attachment 2 (August Construction Status Report); *Liepelt V.S.* at 2-3.

At the same time, CN has kept its commitments to local communities and the environment, spending approximately \$70 million on environmental and safety mitigation measures. *See* *Liepelt V.S.* at 3. For example, CN has:

- made and faithfully implemented Voluntary Mitigation Agreements (VMAs) with 28 of the 33 communities potentially affected by anticipated traffic increases;<sup>5</sup>

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<sup>3</sup> The Transaction-related track connections and extensions that CN has either constructed or currently intends to construct are described in more detail in CN's monthly Construction Status Reports, the latest of which is appended hereto as Attachment 2.

<sup>4</sup> In addition to the specific projects included in CN's operating plan, CN has and expects as part of its normal operations to continue to make investments in EJ&E and its operations. For example, CN has constructed a new Joliet Intermodal Terminal ("JIT"), with a capacity for 650 containers, which opened in June 2013. *Liepelt V.S.* at 2-3. CN had noted at the time of its Application that it "would assess the capabilities of East Joliet yard and make changes there as appropriate to accommodate increased yard activity" (CN-2 at 218). The JIT was developed as a result of that assessment.

- constructed a bypass track at Joliet Yard, allowing trains to move around the Yard at 25 mph rather than through the Yard at 10 mph, reducing blockages of nearby highways; and
- provided \$2.5 million to the City of Joliet for a bypass connecting Woodruff Road and Collins Street that provides a route for highway traffic without crossing the CN tracks at grade, and makes it possible to close the grade crossing at Woodruff Road and eliminate what had been extensive vehicular delays at that crossing.

*Id.* at 6-7.

Finally, CN plans to spend approximately \$55.6 million for the major share of the expenses of grade separations at U.S. Route 34 (Ogden Avenue) in Aurora, Illinois, and U.S. Route 30 (Lincoln Highway) in Lynwood, Illinois, as required by Condition 14 of the Approval Decision (Approval Decision 45-48, 76). On December 23, 2013, CN and the Illinois Department of Transportation executed funding agreements and construction and maintenance

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<sup>5</sup> Upon execution of these agreements, the Board has reopened its Approval Decision to provide that CN’s obligation to comply with their terms will be in lieu of its obligations under site-specific mitigation conditions in the Approval Decision. *See* Decision No. 16 at 40 & n.87 (STB served Dec. 24, 2008); Decision No. 19 at 12-13 (STB served Aug. 5, 2009); Decision No. 20 at 2 (STB served Oct. 19, 2009); Decision No. 22 at 2 (STB served Mar. 10, 2010); Decision No. 24 at 4 (STB served Aug. 27, 2010); Decision No. 25 at 2 (STB served Dec. 20, 2010); Decision No. 28 at 2 (STB served Apr. 4, 2011); Decision No. 29 at 2 (STB served June 9, 2011); Decision No. 30 at 2-3 (STB served Apr. 15, 2013).

During its first audit of CN’s compliance, held in 2010, the Board’s consultant conducted a survey of all affected communities along the EJ&E arc, specifically asking them whether CN had complied with its obligations under the Board’s mitigation conditions or any applicable VMA. According to the Board, the audit “demonstrate[d] that CN has been working to comply with the obligations imposed by the Approval Decision and cooperating with affected communities to address local concerns related to the transaction.” Decision No. 26 at 11. It found “nothing to suggest that CN has failed to comply with the mitigation conditions imposed in the Approval Decision.” *Id.*

agreements regarding these two grade separations, clarifying their respective obligations so that IDOT can confidently proceed with construction.

As anticipated by CN's Application and the Board's Approval Decision, the public and private benefits from the Transaction have been significant. CN trains that had taken between 6 and 36 hours to cross Chicago now take between 4 and 6 hours, and movements across Chicago no longer require use of intermediate carriers such as IHB and BRC, eliminating interchange and trackage rights costs. *Id.* at 5. As a result, since 2009, CN's throughput speed has increased by 200%, and velocity has improved by 60%. *Id.* Meanwhile, because CN re-routed trains from its Elsdon Subdivision to the EJ&E, it was able to grant CSXT an operating easement over the Elsdon Subdivision which has enabled CSXT to improve its Chicago-area operations by reducing congestion on its other lines,<sup>6</sup> and because CN has taken most of its trains off lines (including those of IHB and BRC) used by other carriers, or that cross lines used by other carriers, it has effectively freed up additional capacity for other carriers. *Liepelt V.S.* at 5. The benefits of these congestion reductions were especially important during the winter of 2013-14, when Chicago-area rail operations were severely disrupted. *Id.* at 5-6; *see also* Hrg. Tr. 275, *United States Rail Service Issues*, Docket No. EP 724 (Apr. 10, 2014) (statement of Jeff Liepelt), appended hereto as Attachment 3; Letter from Michael Ward (Chairman, President, and CEO of

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<sup>6</sup> *See CSX Transp., Inc. – Acquisition of Operating Easement – Grand Trunk W. R.R.*, Docket No. FD 35522 (STB served Feb. 8, 2013). The Board found that this easement, which was only made possible by the EJ&E Transaction, “would likely create many public and private benefits.” *Id.* at 6. CSXT anticipated that the easement would enable it to reduce transit time of its trains through Chicago by at least 25 hours per day, and the Board found that the resulting efficiencies “would allow CSXT to provide better transit times, connection standards, and overall customer service,” while advancing the goals of CREATE. *Id.* Most recently, in his letter of September 15, 2014 to Chairman Elliot addressing fall peak issues, Michael Ward (Chairman, President, and CEO of CSX Corporation), noted that “[t]he Elsdon project offers enormous benefits to the capacity and fluidity of the Chicago interchange and CSX’s intermodal network . . . .”

CSX Corporation) to Chairman Elliot, at 4 (Sept. 15, 2014) (“The opening of the Elsdon line in early 2014 helped alleviate congestion over the Chicago gateway by creating an alternative interchange route as Chicago struggled to adapt to freezing temperatures and surging demand.”)

As required by the Approval Decision, CN has now submitted 66 months of operational reports (including 365 separate reports over that time detailing interchanges, interlocking delays, traffic volumes, accident and injuries, crossing blockages, and infrastructure improvements on the EJ&E), and 22 multi-part quarterly environmental reports, describing in detail its implementation of the Board’s environmental conditions.<sup>7</sup> Barrington’s Petition – without citing any concrete benefit – would burden CN by requiring it to file a further two years of such reports.

**B. Barrington’s Prior Challenges to the Approval Decision and Its Latest Petition**

Barrington has already twice challenged the Approval Decision in U.S. Court of Appeals for the D.C. Circuit. Both of its petitions for review were unsuccessful. In the first, Barrington claimed that the Board’s environmental review was flawed and its environmental conditions inadequate. In rejecting Barrington’s claims unanimously, the Court found:

The Board did all that NEPA required of it: it set out the purpose and need for the transaction, evaluated alternatives that would reasonably and feasibly accomplish that purpose and need, identified and took a “hard look” at the transaction’s environmental impacts, examined strategies for mitigating those impacts, fielded and responded to thousands of comments from local, state, and federal agencies and from the community.

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<sup>7</sup> From time to time during the oversight period, CN has modified the format and content of those reports as directed by the Board and its staff. For example, monthly operational reports for October 2011 and succeeding months have included information on progress of construction of Transaction-related infrastructure improvements, as requested by the Board’s staff, and quarterly environmental reports for the fourth quarter of 2010 and succeeding quarters have included additional information on impacts of rail construction activities on highway crossing blockages in four areas and on crossings at which blockages have increased by 25% or more from the preceding quarter, as directed in Decision No. 26.

*Village of Barrington v. STB*, 636 F.3d 650, 672-73 (D.C. Cir. 2011).

Barrington next petitioned the Board to reopen this proceeding to impose additional environmental mitigation. The Board denied that request, finding that no new evidence warranted reopening.<sup>8</sup> Barrington sought judicial review, claiming abuse of discretion, but again lost before a unanimous panel of the Court of Appeals. *Village of Barrington v. STB*, No. 12-1485, 2014 U.S. App. LEXIS 13720 (D.C. Cir. July 18, 2014). And, on the same day Barrington filed the present Petition, it petitioned the D.C. Circuit for rehearing or rehearing *en banc*. The Court denied those requests on September 10, 2014. *Village of Barrington v. STB*, No. 12-1485 (D.C. Cir. Sept. 10, 2014).

In its latest effort to seek reopening of the Approval Decision, Barrington now asks the Board to extend the oversight period for two years, to an unprecedented total of eight years.<sup>9</sup> Its Petition rests entirely on the argument that (1) traffic volumes on the EJ&E are *lower* than CN projected in its Operating Plan,<sup>10</sup> (2) this indicates that the Transaction has not been “fully implemented,” and (3) oversight should not be allowed to end until two full years after “full implementation” has been achieved. Barrington calls for more oversight so the Board can determine (1) “whether the Board’s assumptions and expectations for environmental impacts as

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<sup>8</sup> *Canadian Nat’l Ry. – Control – EJ&E W. Co. [Barrington Pet. for Mitigation]*, Docket No. 35087 (Sub-No. 8) (STB served Nov. 8, 2012) (“Reopening Decision”).

<sup>9</sup> This eight-year oversight period, for a transaction involving acquisition of 158 route miles, would be three years longer than the oversight period for the acquisition by CSX Corporation and Norfolk Southern Corporation of the 10,500-mile Consolidated Rail Corporation, which entailed more extensive environmental impacts and projected traffic increases on 237 route-miles that exceeded those projected on any segment of the EJ&E.

<sup>10</sup> Barrington’s Petition provides incorrect figures for what it describes as CN’s “2007 Full Implemental Projections” for traffic on the EJ&E, apparently relying on the initial figures in CN’s Operating Plan filed in 2007 (CN-2 at 247), without the errata corrections filed on January 3, 2008 (CN-14). The correct figures are provided in CN’s “Comparison of Actual and Projected EJ&E Train Volumes,” which is appended hereto as Attachment 4.

detailed in the NEPA review for the transaction ... are proving accurate,” and (2) “whether the mitigation ordered [by the Board in this proceeding] is achieving its stated goals or should be supplemented by the Board,” Pet. at 4. Barrington’s Petition does not identify any further steps that it contends are necessary to achieve “full implementation,” any respect in which it claims the premises of the Board’s Approval Decision were not “accurate,” or any respects in which it claims the Board-ordered mitigation is failing to “achieve[] its stated goals.”

### **ARGUMENT**

To grant Barrington’s Petition the Board would have to reopen the Approval Decision. As Barrington knows,<sup>11</sup> reopening an administratively final decision requires that the petitioner “state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances” and “include a request that the Board make such a determination.” 49 C.F.R. § 1115.4. However, Barrington does not mention these standards; it does not assert or demonstrate “material error, new evidence, or substantially changed circumstances;” and it does not request such a determination. For those reasons alone, the Petition should be denied.

The only fact or evidence that Barrington cites is that traffic volumes on the EJ&E lines (as reported in CN’s monthly operational reports) have not risen to the levels projected in the Operating Plan. But the fact that CN’s traffic projections have not proven precisely accurate does not constitute “new evidence” or “substantially changed circumstances” justifying either reopening or an unprecedented extension of the oversight period. Projections are predictions of an uncertain future and cannot be expected to be precise. Traffic depends on factors, like freight

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<sup>11</sup> See Reopening Decision at 8-9 (denying Barrington petition to reopen to impose additional environmental mitigation).

demand, that an applicant railroad cannot control. Almost all traffic projections are, by their nature, somewhat inaccurate from the perspective of hindsight, but that does not mean that final decisions made by the Board after reading an applicant's traffic projections should be reopened willy-nilly, or that they should be subject to endless post-Transaction oversight.

Moreover, Barrington's position stands logic on its head. Because fewer trains are running on the EJ&E than projected, presumably, therefore, having *less* environmental impact than projected, Barrington is claiming that *more* environmental oversight should be added.

Not only does Barrington's position lack a legal and logical basis; acceding to it would do real and substantial harm. Extending oversight would require CN to incur substantial additional costs of reporting, and consume scarce personnel and other resources needed by both CN and the Board for more productive tasks. It is not in the public interest for the Board to oversee and require monthly reports on how CN conducts its business on the EJ&E lines for years and years, any more than it would be in the public interest for the Board to engage in long-term monthly oversight of the operation of any other private freight rail line. And a Board precedent for indefinite post-transaction oversight of private freight rail operations based on nothing more than traffic falling short of projections could have a significant and harmful chilling effect on future transactions.<sup>12</sup>

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<sup>12</sup>Senator Richard Durbin wrote the Board on September 11, 2014, supporting Barrington's Petition. He suggests that "concerns about increased rail traffic and blocked rail crossings along the EJ&E," and the fact "there have been 5,267 instances of crossings being blocked by trains for ten minutes or more in the first quarter of 2014 – the highest number since CN took ownership of the rail lines," warrant continued oversight.

This argument repeats points in Senator Durbin's letter of June 3, 2014, to Claude Mongeau, CN's President and CEO (appended as Attachment 5), to which Mr. Mongeau responded on June 9, 2014 (Attachment 6). Mr. Mongeau explained that the extraordinarily high number of blockages in the first quarter was the result of severe winter weather that adversely affected all rail operations throughout the Chicago area, and as the weather has improved, the incidence of blockages has decreased. CN's monthly reports show the number of blockages has

**I. THE TRANSACTION AND ITS IMPACTS HAVE BEEN THOROUGHLY EXAMINED, MAKING AN EXTENSION OF OVERSIGHT OR REPORTING UNNECESSARY.**

As the Board's rules reflect, when an applicant consummates a control transaction and invests substantial resources in reliance on the terms of the Board's decision approving the transaction, including a limited oversight period, the finality of the Board's decision should be respected, and the Board should consider reopening and extending oversight only if presented

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declined to 4,526 in the second quarter of 2014, and most recently to 1,414 in August (over 500 fewer than their peak in March). Mr. Mongeau also observed that almost half of the total number of blockages along the EJ&E occur at three locations – Joliet, IL, Gary, IN, and West Chicago, IL – where CN's trains must slow or stop to enter or leave EJ&E yards or interchange with UP, many of the blockages are in locations where there is very little vehicular traffic, and many are caused by other carriers.

In addition to its desire not to adversely affect the communities through which it operates, CN has ample motivation without regulatory oversight to minimize crossing blockages. A train that is blocking a crossing is likely stopped or moving slowly and thereby delayed from achieving CN's primary business objective: delivering freight efficiently. CN has invested heavily to keep its trains moving and off of crossings, and it has worked diligently on its own operations and those of other carriers to reduce blockages. For example, CN is presently upgrading its signal system in connection with a UP project to install a power switch near UD tower in Joliet, which upgrades should reduce blockages at three nearby at-grade street crossing (Collins Street, Royce Avenue, and Henderson Avenue) by expediting the passage of UP trackage rights trains through EJ&E's H-Yard in Joliet. *Liepelt V.S.* at 7. Similarly, CN has worked with UP to increase the speed of trains entering and departing UP's West Chicago Yard to reduce blockages at four additional crossings. *See* Letter from Karen Phillips (Vice President, Public and Government Affairs, CN) to Lucille Marvin (Director, Office of Public Assistance, Government Affairs & Compliance, STB) (August 15, 2014) at 2. Despite its best efforts, with the combination of other railroad's at-grade crossings of EJ&E, including lines carrying frequent priority trains such as Metra, and operational constraints posed by connections, adjacent yards, and local customers, CN will never be able to totally eliminate blockages for all of the many at-grade road crossings of EJ&E. Nonetheless, through infrastructure investments and disciplined operations CN has made substantial progress in managing blockages, and it will continue its efforts to reduce them.

Senator Durbin also expressed concerns about the need for increased freight service for grain shippers – concerns that have been the subject of recent Board proceedings, *United States Rail Serv. Issues – Grain*, Docket No. EP 724 (Sub-No. 2) (STB served June 20, 2014). Those concerns help highlight the benefits of the Transaction, which has directly added and indirectly freed up additional freight capacity for all shippers, including grain shippers. *See* Letter from W. Neely Mallory III (President, Mallory Alexander International Logistics) (Sept. 10, 2014) (discussing the benefits of the EJ&E for grain shippers) (included in Attachment 7).

with extraordinarily strong reasons for doing so. *See* 49 C.F.R. § 1115.4; Reopening Decision at 8-9 (denying Barrington’s previous petition for reopening for want of “new evidence, changed circumstances, or material error that ‘would mandate a different result’”) (quoting *Montezuma Grain v. STB*, 339 F.3d 535, 541-42 (7th Cir. 2003); citing *DesertXpress Enters. – Petition for Declaratory Order*, Docket No. FD 34914, slip op. at 6-8 (STB served May 7, 2010)).

Barrington provides no such reasons. It merely speculates that circumstances might arise over the next two years that would indicate to the Board a need to impose additional environmental mitigation. That speculation provides no basis for continuing to subject CN to the burdens of oversight reporting and extraordinary supervision of its ordinary operations.

The environmental analysis the Board conducted under NEPA six years ago was exceptionally thorough. It culminated in a detailed final Approval Decision that the D.C. Circuit has upheld twice against challenges by Barrington, and Barrington’s present Petition does not even claim that the Board erred in any way. That decision imposed 182 environmental mitigation conditions, including a five-year reporting and oversight condition, which the Board later extended for one year based primarily on a specific concern (about discrepancies in crossing blockage data) which was promptly fully remedied.

The Board has closely monitored CN’s compliance, the implementation of its infrastructure investments, and the effectiveness of the mitigation measures, having reviewed hundreds of reports from CN, conducted two audits, conducted site visits to EJ&E and local communities, and fully addressed numerous issues raised by Barrington. The Board’s monitoring – including an audit in which the Board’s consultant surveyed officials in all affected communities along the EJ&E arc – has confirmed that CN has met its obligations – both those it

voluntarily undertook in VMAs and those imposed by the Board. And Barrington offers no contrary evidence.

In the circumstances, there is no reason to reopen and change the Board's original decision by adding more years of oversight and reporting. NEPA does not require the Board to engage in further environmental review or monitoring, since the only "major Federal action" involved here, the Board's Approval Decision, occurred almost six years ago. *See Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 73 (2004). The Board's Approval Decision set a time limit on oversight and reporting which is about to expire, and there has been no material change that might justify reconsidering that time limit. CN has fulfilled its commitments and is, if anything, having less environmental impact than was anticipated because it is running fewer trains than were anticipated. And Barrington offers no reason – beyond its continued disagreement with the Board's final decision almost six years ago plus vague speculation about the future – for imposing years more of onerous obligations on CN.

## **II. CN'S LOWER-THAN-PROJECTED TRAFFIC ON THE EJ&E SHOWS THAT THE BOARD'S NEPA ANALYSIS CONSIDERED GREATER IMPACTS THAN NECESSARY AND UNDERCUTS BARRINGTON'S REQUEST TO EXTEND OVERSIGHT AND REPORTING.**

Barrington argues that the Board intended to continue oversight until two years after implementation of the Transaction, and then conflates projected post-Transaction traffic levels with "full implementation." But traffic levels, which are determined by demand and other factors beyond CN's control, are not the same as the implementation of the acquisition – *i.e.*, the integration of the acquired rail assets into CN's system – which CN does control. Projections of traffic levels several years into the future are inherently imperfect; as CN explained during the EIS process, "any attempt to predict rail traffic several years into the future, especially over

individual rail line segments, would be inaccurate and arbitrary.”<sup>13</sup> It would make no sense to tie oversight periods to projected traffic levels, with the potential for the incongruous result that if projected traffic levels are never reached, Board oversight and monthly reporting could potentially continue forever.

The Board’s Approval Decision took a much more sensible approach. To provide certainty and finality, the Board set a finite period – five years, later extended to six – for oversight. *See* Approval Decision at 25. That period was expected to provide sufficient time for CN to integrate EJ&E into its operations and for the Board to gauge the effects of it having done so, and the oversight period has proven sufficient for both. CN’s work to integrate EJ&E and improve its operations has been extensively documented for the Board in CN’s monthly “Construction Status Report” (latest such report appended hereto as Attachment 2), and was reviewed approvingly by the Board as part of its second audit of CN reporting. CN has already invested approximately \$216 million in Transaction-related capital improvements, far more than its \$100 million capital estimate at the time of its Application.<sup>14</sup> *Liepelt V.S.* at 2.

Although there are three relatively minor projects left to be completed, they raise no significant issues that could possibly justify continued oversight – their net impact on train traffic and on the environment will be *de minimis* and resulting projected traffic levels will remain at or below levels that formed the basis for the Board’s NEPA analysis. *See Liepelt V.S.* at 3-5;

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<sup>13</sup> Letter from Paul A. Cunningham (counsel for CN) to Victoria J. Rutson at 2 (May 15, 2008), *reprinted at* V DEIS, Attachment Q3. As the Board determined, given the many exogenous factors that can affect railroad operations over time, 2015 “represented the limit of what is reasonably foreseeable with regard to projected rail traffic on the EJ&E line, and projections beyond 2015 would be speculative,” Approval Decision at 41.

<sup>14</sup> As CN’s monthly Construction Status Reports note, two Transaction-related infrastructure improvements described in those reports (a connection and track upgrades in Joliet and a double-track project between Normantown and Liberty Street), which CN formerly was planning to make, have been placed on indefinite hold; CN does not now plan to construct them.

Attachment 4 (table comparing actual and projected traffic volumes on EJ&E). Those projects are as follows:

- CN intends to install two power switches (at Van Loon) to improve the fluidity of traffic between the EJ&E and NS lines; they will not affect the amount of traffic on EJ&E.
- CN intends to construct a track connection at Gary between an NS line and Kirk Yard. That connection is expected to cause a *decrease* in rail traffic of two trains a day between Griffith and Gary, because NS trains that now move over the EJ&E between Griffith and Gary on their way to and from Kirk Yard for interchange with CN (under temporary trackage rights granted by CN in 2013 in Docket No. FD 35715) will use NS's own line to the new connection.<sup>15</sup>
- CN intends to construct (and expects to complete in 2015) a track connection between CN's Freeport Subdivision and the EJ&E at Munger. That connection is expected to result in re-routing approximately 3.4 trains a day from CN lines within Chicago (2.2 would operate between Munger and Gary, and an additional 1.4 would operate between Munger and Matteson).<sup>16</sup>

Liepelt V.S. at 3-4.

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<sup>15</sup> See Verified Notice of Exemption, Ex. 2, at 2 (Temporary Trackage Rights Agreement § 3.1; limiting use of CN track to 1 train pair per day), *Norfolk S. Ry. – Temporary Trackage Rights Exemption – Grand Trunk W. R.R.*, STB Finance Docket No. 35715 (filed Jan. 28, 2013). NS has regularly operated two trains a day over this line, as authorized by the temporary trackage rights agreement, and those trains have been included in the train counts reported to the Board. Liepelt V.S. at 4 & n.3.

<sup>16</sup> Although the Operating Plan assumed that the trains re-routed onto the EJ&E following completion of the Munger connection would not move on EJ&E all the way to Gary, because of changes in CN's operations since that time, it is now anticipated they would move all the way to Kirk Yard in Gary. Liepelt V.S. at 4.

The Munger and Gary track connections are the only infrastructure projects CN has planned that would affect traffic volumes on the EJ&E line, and they will not result in either a conflict with CN's original traffic projections or any negative effects on petitioner Barrington. Attachment 4 compares CN's Operating Plan traffic projections to a new traffic projection derived by taking the train volumes CN reported for the most recent month, August 2014, then adding the additional trains projected from the Munger connection (3.4 trains between Munger and Matteson, and 2.2 between Matteson and Gary) and subtracting the trains that the Gary connection is expected to divert (2 trains between Griffith and Gary). Even with this adjustment, all affected EJ&E segments (*i.e.*, EJ&E Segment Numbers 1 to 12) remain below the Operating Plan projections. *See* Attachment 4.<sup>17</sup> Moreover, the traffic projected to be added by the Munger connection would not run through the petitioner Barrington's village. *See generally* Liepelt V.S. at 4-5 (the few remaining projects relating to the EJ&E acquisition "are not expected to require any significant changes in CN operations or cause any noticeable change in impacts on local communities, and, in fact, should cause no impact at all in Barrington, as the additional traffic would run entirely south of Barrington").

In sum, Barrington's speculative concerns about future issues related to the EJ&E transaction are unfounded. There is no support for its request to extend oversight and reporting.

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<sup>17</sup> CN traffic levels are also below projections for the remaining segments of EJ&E, with the one exception of Segment -2 (Hammond to South Chicago), which, due to local traffic, has been slightly above projections for several years. This segment is on the heavily industrial Lake Front Line, where there is little or no vehicular traffic at crossings.

### **III. CN'S INVESTMENT IN EJ&E IS HELPING TO REDUCE RAIL TRAFFIC CONGESTION THROUGH CHICAGO, AND ITS OPERATIONS SHOULD NOT BE BURDENED WITH SPECIAL OVERSIGHT OR REPORTING WITHOUT COMPELLING REASONS.**

CN's acquisition of EJ&E has secured the significant benefits projected by CN and anticipated by the Board. As described in Background, Section A, above, CN's acquisition of the EJ&E has reduced traffic congestion through Chicago and elsewhere, both on CN's lines and on other railroads. As a result, the railroad system is handling present traffic more efficiently, and it has more capacity to respond to strains like increasing demand and disruptive exogenous events, such as the winter of 2013-14. Many shippers, local businesspeople and local community officials have attested to the continuing public benefits of the Transaction.<sup>18</sup>

Reporting and oversight obligations impose a significant burden,<sup>19</sup> and efforts to meet those obligations tend to distract key personnel from the core task of running the railroad. In this case, where extending oversight is unnecessary, requiring more years of monthly reports,

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<sup>18</sup> See Letter from David W. Holt (Vice President, Operations and Business Development, Conexus Indiana), at 1 (Sept. 12, 2014) ("CN's acquisition of EJ&E has been good for the movement of cargo to and from Indiana[,] lowering business costs, creating efficiencies and lowering the time to and from market in Indiana. ... Additional oversight and reporting by CN is unnecessary, as CN has lived up to the commitments it made to shippers, local communities, and other rail carriers."); Letter from Chuck Hughes (President, Gary Chamber of Commerce), at 1 ("In the six years since [CN's acquisition of the EJ&E], the Chamber has watched CN invest in our community and bring much-needed jobs to Gary."); Letter from Cameron Carter (Vice President, Economic Development and Federal Relations, Indiana Chamber of Commerce), at 1 (Sept. 10, 2014) ("In the months leading up to CN's purchase of the EJ&E, the Indiana Chamber voiced its support for the acquisition as an investment in the transportation infrastructure of Northwest Indiana. We are pleased to see that CN has made those investments and brought jobs to the state of Indiana while strengthening our overall transportation network."); Letter from Richard A. Hofeld (Mayor, Village of Homewood), at 2 (Sept. 5, 2014) ("In the interest of maintaining a strong area transportation network, one that has adhered to the standards your Board has established, CN has proven their worth. The economic impact of their operation, as well as being responsive to neighboring communities is proven."). For the Board's convenient reference, the letters referenced in this Part III are appended hereto as Attachment 7.

<sup>19</sup> The direct costs to CN for additional staff, legal and consultant fees alone run into the hundreds of thousands of dollars per year. *Liepelt V.S.* at 7 n.5.

monitoring, and regulatory oversight would serve only to reduce the future public benefits of the Transaction. In addition, if oversight and reporting are unnecessarily extended in this proceeding, the precedent set by the Board would have damaging chilling effects. CN could be deterred from efficient innovation and investment if it fears that whatever it does will precipitate reporting obligations and may be cited as “changed circumstances” justifying further investigation and further conditions. And, other industry members could be deterred from entering into efficient new transactions by the fear that they may lead to onerous and indeterminate regulatory reporting and oversight.<sup>20</sup>

The public interest in avoiding such regulatory disincentives is reflected in the fundamental principles of administrative finality that should be applied here, and in Congress’s

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<sup>20</sup> As the Illinois Chamber of Commerce noted, in its letter to the Board urging it to allow oversight to terminate as scheduled:

The environment of regulatory and legislative uncertainty from Washington, DC, has resulted in delayed private investment in Illinois and across America. ... Additional administrative functions against CN will have a chilling impact on investment across the state. Instead of focusing on operations and job creation, businesses will hold back investment and instead focus on possible new and additional requirements. Imposing additional oversight without strong evidence necessitating it indicates to us and our members that the federal government will at times impose additional requirements on private transactions without justification, a chilling thought.

Letter from Benjamin J. Brockschmidt (Executive Director, Infrastructure Council and Director Federal Affairs, Illinois Chamber of Commerce), at 1 (Sept. 9, 2014); *see also* Letter from Ted Stalnos (President, Calumet Area Industrial Commission), at 1 (Sept. 12, 2014) (“[Extension of oversight] could have a very real dampening effect of discouraging other private investment in infrastructure, which is precisely the opposite of what is needed in the country today.”); Letter from David Hinderliter (Chicago Southland Chamber of Commerce), at 1 (Sept. 3, 2014) (“We want more business investment in this region and time is of the essence when private industry considers these types of growth. Please see that these oversight period sunsets as already determined and remove obstacles that prevent efficiencies and long term benefits to materialize.”); Letter from Joseph P. Schwieterman, Ph.D., Professor, School of Public Service and Director, Chaddick Institute for Metropolitan Development, DePaul University), at 1 (Sept. 12, 2014) (“Extending the oversight period would be akin to, in effect, ‘moving the goalposts at the last moment.’ This would not only be unfair, it would cast a shadow over [CN’s] capital investment program and those of other Class I railroads. ... Railroads need clear and predictable policies to prosper, and unfortunately, an extension would do precisely the opposite.”) These four letters are included in Attachment 7.

Rail Transportation Policy, which aims “to minimize the need for Federal regulatory control over the rail transportation system.” 49 U.S.C. § 10101. Oversight in a control proceeding should be “intended, absent evidence of ongoing problems, to be temporary, not permanent,” *see Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp. [Gen. Oversight]*, STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 21, slip op. at 5 (STB served Dec. 20, 2001). Its proper function is to permit the Board to oversee the transition from two separate systems to a single integrated system. It would violate these important public policy principles and create unnecessary regulatory costs if six years after the Transaction the Board were to modify its final Approval Decision to extend oversight when fewer trains are running than projected, just in case something meriting the Board’s attention might arise at some later date.

Barrington is no longer calling for continued supervision of a transition to an integrated system. It is calling for extraordinary supervision of normal EJ&E operations. That call should be rejected.

#### **IV. TERMINATING OVERSIGHT AS SCHEDULED WOULD LEAVE THE BOARD WITH SUFFICIENT AUTHORITY TO ADDRESS ANY SIGNIFICANT POST-TERMINATION ISSUES.**

If significant unanticipated issues were to arise after the oversight period ended, the Board could address them based on several sources of authority.

First, the Board can enforce conditions imposed on the merger that continue to apply. As the Board has noted, “the conclusion of the formal oversight process does not preclude any party from invoking [the Board’s] jurisdiction to address any merger-related concerns arising out of [its] conditions.” *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp. [General Oversight]*, STB Finance Docket No. 32760 (Sub-No. 21), Decision No. 21, slip op. at 5 (STB served Dec. 19, 2001) (citation omitted).

Second, the Board can issue supplemental orders under 49 U.S.C. § 11327.

Third, the Board retains its general regulatory authority over freight rail operations. That authority empowers it to address significant regulatory concerns, if and when they arise, whether or not they are Transaction-related. For example, the Board retains its general investigatory authority under 49 U.S.C. § 721. In addition, the Board's Office of Public Assistance, Governmental Affairs, and Compliance monitors the rail industry and can consider informal complaints from the public regarding rail operations anywhere in the national rail system, including CN operations on the EJ&E.

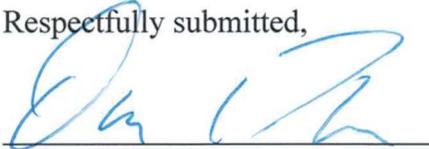
Extending oversight is not necessary as a precautionary matter; the Board already has the tools it needs to address any significant future problems.

### **CONCLUSION**

At the scheduled end of oversight, the Board will have closely monitored CN's integration of EJ&E for six full years. As CN's monthly and quarterly reports have shown in detail, and as the public comments opposing Barrington's motion have reinforced, the Transaction has worked well for the public interest, while adding fewer trains and raising fewer environmental issues on the EJ&E line than anticipated. Future traffic volumes on the EJ&E can be expected to continue to fluctuate, and CN can be relied upon to continue to invest in its rail network as appropriate. These are the normal conditions of railroading, and Barrington's highly speculative concerns about future traffic volumes or operations provide no basis for greater oversight of EJ&E than for any other railroad. Barrington has presented "no new evidence, changed circumstances, or material error that 'would mandate a different result'" justifying reopening, *see* Reopening Decision at 8-9, and it has presented no evidence justifying additional

monitoring or reporting obligations. Accordingly, CN respectfully urges the Board to deny the  
Petition.

Respectfully submitted,



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*Counsel for Canadian National Railway Company  
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September 16, 2014

## Attachments

- 1 Verified Statement of Jeff Liepelt
- 2 Construction Status Report (as of August 31, 2014)
- 3 Hearing Transcript, *United States Rail Service Issues*, Docket No. EP 724 (Apr. 10, 2014)
- 4 Comparison of Actual and Projected EJ&E Train Volumes (table)
- 5 Letter from the Honorable Richard J. Durbin to Claude Mongeau (President and CEO, CN) (June 3, 2014)
- 6 Letter from Claude Mongeau to Richard J. Durbin (June 9, 2014)
- 7 Letters to the Surface Transportation Board regarding Docket No. 35087, from:
  - Benjamin J. Brockschmidt (Executive Director, Infrastructure Council and Director Federal Affairs, Illinois Chamber of Commerce) (Sept. 9 2014)
  - Cameron Carter (Vice President, Economic Development and Federal Relations, Indiana Chamber of Commerce) (Sept. 10, 2014)
  - David Hinderliter (Chicago Southland Chamber of Commerce) (Sept. 3, 2014)
  - Richard A. Hofeld (Mayor, Village of Homewood) (Sept. 5, 2014)
  - David W. Holt (Vice President, Operations and Business Development, Conexus Indiana) (Sept. 12, 2014)
  - Chuck Hughes (President, Gary Chamber of Commerce) (Sept. 10, 2014)
  - W. Neely Mallory III (President, Mallory Alexander International Logistics) (Sept. 10, 2014)
  - Joseph P. Schwieterman, Ph.D (Professor, School of Public Service and Director, Chaddick Institute for Metropolitan Development, DePaul University) (Sept. 12, 2014)
  - Ted Stalnos (President, Calumet Area Industrial Commission) (Sept. 12, 2014)

# **Attachment 1**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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STB Finance Docket No. 35087

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

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**VERIFIED STATEMENT OF JEFF LIEPELT**

My name is Jeff Liepelt. I am Senior Vice-President, Southern Region, for Canadian National Railway Company and its U.S. subsidiaries (together, “CN”). I have been asked by CN to address in this statement the successful integration of the principal lines for the former Elgin, Joliet and Eastern Railway Company (“EJ&E”) into CN’s system, including CN’s related funding of infrastructure and environmental mitigation, and the significant benefits to freight transportation and local communities realized through CN’s acquisition in 2009 of EJ&E (“Transaction”).

I began my railroad career in 1978, when I joined Illinois Central Railroad Company (“IC”) as a brakeman. I continued working for IC until it was acquired by CN in 1998, and have held positions of increasing responsibility at both those railroads. In my current position, which I have held since March 2013, I am responsible for CN’s operations on all of its U.S. lines, with the exception of certain lines adjacent to the Canadian border. This includes responsibility for CN’s lines in and around Chicago, including those of EJ&E that CN acquired in the Transaction. I am very familiar with CN’s operations on those lines, and with the benefits of CN’s acquisition of EJ&E and the investments CN has made in order to achieve them.

## **A. Integration and Investments**

Integration of EJ&E began shortly after consummation on February 1, 2009 and in all significant respects is complete. EJ&E's Western and Eastern Subdivisions (which have been renamed the Leithton and Matteson Subdivisions, respectively), and its other lines have been integrated into CN's Chicago Division. (That portion of the EJ&E arc between Leithton and Waukegan has been separated from the Leithton Subdivision and established as CN's Waukegan Subdivision, which is also part of the Chicago Division.) As provided for in CN's Operating Plan for the Transaction, which CN submitted as part of its Application, CN has merged EJ&E's car and locomotive fleets into its own, and relocated EJ&E's crew management and train dispatching systems into CN's Homewood, IL facility. CN has rationalized its interchanges with other railroads in Chicago, making Kirk Yard (which CN acquired in the Transaction) its classification yard and its principal interchange location, in place of several locations around the Chicago area, including facilities of IHB and BRC. CN has also re-routed the majority of its pertinent trains so that they move along the EJ&E rather than through congested lines in downtown Chicago.

To date CN has invested approximately \$216 million in Transaction-related capital improvements, an amount far in excess of its \$100 million capital investment estimate at the time of the Application. This infrastructure investment includes approximately \$122 million for track connections, double-tracking, and siding extensions, and an additional \$94 million in spending to date for renovation and expansion of Kirk Yard, a massive project that is eventually expected to cost a total of \$143 million.

In addition to these improvements, as part of CN's further commitment to the Chicago region, CN has built a new Joliet Intermodal Terminal ("JIT") at EJ&E's Joliet Yard. The JIT,

which opened in June 2013, consists of two working tracks and two support tracks, and has the capacity for 650 containers. Further, CN has built a state-of-the art safety training facility next to the Woodcrest Mechanical Shop at Homewood. This facility, which opened in July 2014, is part of the “CN Campus” training initiative, based on a comprehensive, uniform training program with dedicated staff at the Homewood facility and a similar facility in Winnipeg. The Homewood facility has 62,000 square feet of space. It presently hosts between 100 and 125 students per week, and when fully utilized should host roughly 250 students per week.

In addition to the investments in infrastructure and facilities described above, CN has spent approximately \$70 million on environmental and safety mitigation in compliance with the Board’s mitigation conditions and CN’s voluntary mitigation agreements (“VMAs”) reached with 28 of the 33 affected communities around the EJ&E arc.<sup>1</sup> In addition to this amount, CN expects to contribute nearly \$56 million to the cost of grade separations at U.S. Route 34 (Ogden Avenue) in Aurora, Illinois, and U.S. Route 30 (Lincoln Highway) in Lynwood Illinois, in accordance with the Board’s Approval Decision and CN’s funding agreements with the Illinois Department of Transportation

CN’s progress in completing Transaction-related infrastructure improvements is detailed in the Construction Status Report that CN submits monthly to the Board.<sup>2</sup> As that Report

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<sup>1</sup>This includes approximately \$16.5 million for construction of a bypass track at Joliet Yard, in accordance with CN’s VMA with the City of Joliet, enabling trains to move around the Yard at 25 miles per hour rather than through the Yard at 10 miles per hour, as they did prior to the Transaction. Construction of this track has reduced the time that road crossings near Joliet Yard are blocked by passing trains.

<sup>2</sup> In addition to these formal reports, CN participates in monthly conference calls with the Board’s staff regarding its operations, including its operations on EJ&E and its other Chicago-area lines. Even after oversight of the EJ&E acquisition ends, CN expects to continue to discuss with staff any noteworthy issues and incidents on the EJ&E, as it does for its broader U.S. network.

indicates, CN has completed nearly all of those improvements. All that remains to be completed are one set of power switches (at Van Loon) and two track connections (one at Gary (Kirk Yard) and one at Munger). These remaining improvements will help increase the speed and reliability of CN's trains, helping to reduce delays, but will have only a minor effect on EJ&E traffic volumes and no affect at all on traffic volumes through petitioner Barrington's village.<sup>3</sup>

Installation of the power switches at the track connection with NS at Van Loon would expedite the movement of traffic between CN's and NS's lines, but would not affect EJ&E traffic volumes at all. Construction of the track connection with NS at Kirk Yard (Gary, Indiana) would result in a decrease in traffic on the EJ&E between Griffith and Gary. NS, which has regularly been operating two interchange trains a day over the EJ&E between Griffith and Gary, would instead move those trains over its own line directly to Kirk Yard upon completion of the connection.<sup>4</sup> Finally, construction of the Munger Connection would result in the re-routing to the EJ&E of 3.4 trains per day that now operate on CN's Freeport Subdivision, of which 2.2 are merchandise trains that would operate between Munger and Kirk Yard (Gary), and 1.2 are unit trains that would operate between Munger and Matteson.

Together, whether they are added to EJ&E's latest train volumes (August) or to EJ&E's average train volumes for 2014, these small changes in traffic would leave train volumes for all segments of EJ&E below the projections that were in CN's Operating Plan and that formed the basis for the Board's environmental analysis and the mitigation conditions it imposed. These

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<sup>3</sup> As the Report also indicates, a few Transaction-related projects (*i.e.*, the Joliet, IL Connection; Gary, IN - CSX Connection; and Normantown to Liberty Street Double Track project) that CN formerly intended to build have been placed on indefinite hold, and CN now has no plans to complete them.

<sup>4</sup> CN has been including these NS interchange trains in its train volume reports to the Board, which it submits monthly in accordance with the Approval Decision.

few remaining projects are not expected to require any significant changes in CN operations or cause any noticeable change in impacts on local communities, and, in fact, should cause no impact at all in Barrington, as the additional traffic would run entirely south of Barrington.

**B. Benefits of the Transaction**

The EJ&E Transaction has brought substantial benefits to shippers, the public at large, to CN, and to other railroads. As planned, CN has shifted its trains from downtown Chicago to the EJ&E wherever possible, increasing its fluidity and freeing up additional capacity for other carriers on lines through downtown Chicago. Since 2009, CN's throughput speed in the Chicago area has increased by 200%, and its velocity has improved by 60%, so that CN trains which used to take between 6 and 36 hours to traverse Chicago now take between 4 and 6 hours.

Movements across Chicago no longer require use of intermediate carriers such as IHB and BRC, so CN has been able to eliminate interchanges and reduce trackage rights payments.

The Transaction has benefitted other railroads as well as CN. By allowing CN to re-route its trains off of downtown rail lines used by other railroads, or that cross lines used by other railroads, the Transaction has reduced the congestion affecting those railroads' traffic. In fact, by reducing CN's use of the Elsdon Subdivision, the Transaction made it possible for CN to transfer that line to CSXT through an operating easement approved by the Board in August 2013, and for CSXT to relieve congestion on its existing lines by shifting traffic to the Elsdon Subdivision.

The benefits of the Transaction were particularly evident during the service disruptions caused by exceptionally severe weather during the winter of 2013-14. Because CN had reduced its use of BRC and IHB lines and yards, those carriers were better able to handle the traffic that remained in Chicago. And the reduction of CN traffic from its own lines meant that other

railroads were less likely to be delayed by CN traffic on at-grade rail crossings. Bad as the disruption was during the past winter, it would have been much worse, and it would have taken the railroads much longer to remedy, if CN had not acquired EJ&E.

CN has also worked with local communities to implement the mitigation conditions included in the Approval Decision, as well as to carry out CN's VMAs and other agreements for the benefit of local communities. Indeed, in significant respects, CN has helped local communities in ways that helped them address rail traffic or conditions that exist apart from the Transaction. Some examples include:

- CN has worked with 22 communities on the EJ&E to establish quiet zones, or to make modifications to crossings in order to maintain existing crossing zones following increases in rail traffic.
- In accordance with the Board's Condition No. 18 (as modified in Decision No. 24 (served Aug. 30, 2010)), CN has made available its web-based, password-controlled Active Crossing System to selected communities, providing dispatchers for emergency service providers in those communities with real-time information on activation of warning devices (such as flashers and gates) at rail-highway grade crossings, notifying them about train movements that could interfere with passage of emergency vehicles.
- CN has provided \$2.5 million to the City of Joliet for a grade crossing road bypass, linking the eastern portion of Woodruff Road and Collins Street and providing area residents a road connection that does not cross the CN tracks. Construction of this bypass has made it possible to close the EJ&E grade crossing at Woodruff Road, eliminating extensive delays to vehicles using that highway.

- CN is installing, or has already installed, sound walls in three locations to reduce noise impacts, not only from additional traffic added by CN to the EJ&E, but from all traffic on the line.
- CN is presently upgrading its signal system in connection with a UP project to install a power switch near UD tower in Joliet; these improvements should reduce the number of lengthy activations at three nearby EJ&E at-grade street crossings (Collins Street, Royce Avenue, and Henderson Avenue) by expediting the passage through EJ&E's H-Yard in Joliet of non-transaction-related UP trackage rights trains.

Given CN's careful and thoughtful implementation of its acquisition of EJ&E, it is particularly gratifying that prominent business groups have written to the Board opposing an extension of oversight and reporting as unnecessary and wasteful.<sup>5</sup> These letters attest to the fact that CN has been able to realize the benefits of the Transaction for itself and the freight transportation community generally, while at the same time successfully working with and addressing the concerns and well-being of the local communities through which it operates.

## **CONCLUSION**

CN's significant investment in acquiring and improving the EJ&E lines has benefited our customers, the broader transportation network, and local communities. CN has been scrupulous and successful in smoothly implementing the acquisition and lived up to all of its related commitments. We anticipate no future operating or other issues that could justify continued STB oversight, and we look forward to focusing our efforts and resources on the safe, efficient operation of our trains, free of what would be unnecessary further oversight and reporting.

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<sup>5</sup> Extending oversight would prolong the burdens of CN's reporting obligations, which include, among many other, annual costs that run into the hundreds of thousands of dollars for added staff and legal and consultant fees.

## VERIFICATION

I, Jeff Liepelt, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to and authorized to provide this verification on behalf of Canadian National Railway Company and its subsidiaries.

Executed on September 15, 2014

  
Jeff Liepelt

## **Attachment 2**

**CONSTRUCTION STATUS REPORT**  
**(as of August 31, 2014)**

(Changes made since last report are noted in **bold** or ~~strikethrough~~)

<b>Project</b>	<b>Description</b>	<b>Status</b>
<p><b>NEW CONNECTING TRACKS</b></p> <p>1. Matteson IL Connection</p>	<p>At Matteson, the north-south Illinois Central Railroad Company (ICRR) tracks are grade separated from and pass over the east-west Elgin, Joliet and Eastern Railway Company (EJ&amp;E) tracks. Before the acquisition of EJ&amp;E by CN, a single interchange track, located in the southeast quadrant and extending south to a point just north of Stuenkel Road in University Park, connected the ICRR and EJ&amp;E tracks. After the acquisition, CN realigned the existing southeast connection to increase track speed from 10 to 25 mph and joined the realigned connection to the ICRR track at a point closer to the crossing of the ICRR and EJ&amp;E lines. (The pre-existing trackage south to Stuenkel Road, now known as the Stuenkel Connection, connects to the realigned southeast connection.) CN also constructed a new connection in the northeast quadrant. This new connection is double-tracked, permits train operations at 15 mph, and allows a train approaching Matteson on either ICRR or EJ&amp;E to leave Matteson in a head-on movement toward any of the other three directions.</p>	<p>In service 10/3/2011. Installation of CTC on EJ&amp;E line between Matteson and Chicago Heights was completed on March 30, 2012. Construction for upgrade of Stuenkel Connection to permit operations at 25 MPH began 5/29/2012, and all tie, rail and switch replacements are complete. Final surfacing was completed in early August 2012. Track speed has been raised to 25 MPH. <b>COMPLETED 2012.</b></p>

<b>Project</b>	<b>Description</b>	<b>Status</b>
2. Mundelein, IL Connection	<p>The Wisconsin Central Ltd. (WCL) crosses the EJ&amp;E at grade at Mundelein. Before the acquisition of EJ&amp;E by CN, a single interchange track was located in the northwest quadrant of the interlocking. This project replaced that track with two interchange tracks (new Main #1 and Main #2) and increased train speeds from 10 mph to 30 mph. New Control Point (CP) North Lake was established at point where new interchange tracks meet EJ&amp;E east-west line. EJ&amp;E line between CP North Lake and Waukegan has been redesignated as CN Waukegan Subdivision.</p>	<p>Utility relocations (water main, sanitary sewer, natural gas transmission pipeline, electrical service) are complete. One of the two new interchange tracks was placed into service on 12/12/2011. The second Main Track was placed into service on 10/4/2012. North end turnouts installed and new #1 Main cut over to permanent location on 5/31/2012. North End power up completed July 20, 2012. Tie upgrades completed on old connection (new #2 Main). South End track work for new Waukegan Main alignment was completed and placed into service on 8/26/2012. Track and signal work cleanup is complete; CP North Lake cut over on 10/4/2012. Entire project was completed and all tracks and signals in service on 10/24/2012. As-built plans have been submitted for review by Lake County storm water authorities in accordance with permit, and review is in progress.</p> <p>COMPLETED 2010.</p>
3. Griffith, IN Connection (Northeast Quadrant)	<p>At Griffith, the EJ&amp;E and Grand Trunk Western Railroad Company (GTW) main lines cross just east of Broad Street. Before the acquisition of EJ&amp;E by CN, a single interchange track was located south of the diamonds. After the acquisition, a new connection, located east of the diamonds, was constructed to allow westbound traffic on GTW's line to proceed north on the EJ&amp;E to Kirk Yard.</p>	
4. Gary, IN – NS Connection	<p>EJ&amp;E and Norfolk Southern Railway Company (NS) have been interchanging freight cars at Pine Yard, located immediately adjacent to EJ&amp;E's Kirk Yard. CN and NS have agreed to install a new connection (of which CN would build and maintain the portion on CN property, while NS would build and maintain the portion on NS and CSX Transportation, Inc. (CSX) property) that would allow NS to operate directly into or out of Kirk Yard from and to City Track at west end of the yard, eliminating the need for EJ&amp;E to retrieve the cars from Pine Yard for further handling at Kirk.</p>	<p>Design and construction agreement with NS executed in January 2013. NS and CN have executed reciprocal leases providing access to property needed for construction and maintenance of track embankments for the connection. Agreement remains to be executed with NS regarding occupation of land under interchange track, to replace agreement entered by NS and CN predecessors. Design of CN portion completed in April 2013. Contract awarded May 29, 2013, and construction begun in July 2013. Grading and sub-ballast completed. Track construction in progress. New interlocking (Dune), from CN City Track to NS Old Wabash Interchange, under construction, and new switch installed 4/8/2014. Clark Road was closed 5/17-19/2014 for renewal of existing at-grade public highway. CN portion of the connection to be completed by the end of 2014.</p>

Project	Description	Status
5. Wayne, IL Connection	EJ&E's main line track is grade separated from and crosses over the Chicago, Central & Pacific Railroad Company (CCP) main line near Munger. The existing connecting track is located in the northeast quadrant, making it difficult for eastbound CCP trains to proceed southbound on EJ&E. A new single-track connection is planned for the southwest quadrant to allow for this head-on movement.	The existing connection was upgraded and power switches installed to facilitate operations. The proposed new southwest connection has been designed, and all necessary permits have been received. Negotiations with the DuPage County Forest Preserve District (FPD) for an easement on its property for mitigation are complete and an agreement was signed on 11/20/2012. Contractor has hauled approximately 8000 cubic yards of fill and topsoil to material storage areas on FPD property from projects in Mundelein. Wetland permits for construction were issued in June 2013. Construction of compensatory wetland storage was completed in July 2014. Approximately 13,000 cubic yards of fill materials were made available for this project by construction of an adjacent compensatory storage pit on FPD property. Construction for mitigation for FPD <b>has begun and</b> will be completed in <del>August</del> <b>September</b> 2014. Bids for construction of the connection were received on 3/5/2014, and track construction is currently planned for 2015.
6. Joliet, IL Connection	EJ&E's East Joliet Yard has an existing slow-speed connection with Union Pacific Railroad Company (UP) that snakes west from the East Joliet Yard through a small former U.S. Steel finishing mill. CN's plan to install a new, higher-speed connection with UP was replaced by two alternative projects (the North Connection and East Wye Upgrades, described below) aimed at improving movement of trains between East Joliet and Glenn Yard and between East Joliet Yard and UP.	
a. North Connection and West Wye	CN's plan called for constructing a new northward connection for CN movements between East Joliet and Glenn Yards that would run between EJ&E's existing connection with UP (H Yard Lead) and CN's Joliet Subdivision, through the former finishing mill. Under the plan the West Wye would be upgraded to 20 MPH operation in conjunction with this work.	Preliminary design complete. As of July 2013, project placed on indefinite hold due to property acquisition issues with U.S. Steel. No further action anticipated.

Project	Description	Status
b. East Wye Upgrade	CN also planned to upgrade the East Wye (which is adjacent to East Joliet Yard and connects to H Yard Lead) in order to increase operating speed from 10 MPH to 20 MPH and to facilitate interchange movements with UP.	Preliminary design and permitting for the Joliet Yard East Wye upgrade have been on hold pending agreement with UP. Construction start has been awaiting agreement with UP and timely issuance of necessary permits. The UP traffic expected to use the upgraded connection has not materialized, however, so this upgrade is now on indefinite hold. No further action anticipated.
7.a. Gary, IN – CSX Connection	EJ&E and CSX use Curtis Yard for the interchange of freight traffic in Gary IN. CN originally planned construction of a new connection at Gary, similar to the one described above for a direct connection with NS, to allow CSX trains to operate directly from Barr Yard into Kirk and Curtis Yards at Gary, IN.	This plan was abandoned due to environmental and property acquisition issues. In lieu of that project, CN and CSX cooperated on construction of the new connection described in 7.b, below, which, among other things, facilitates movement of traffic from Barr Yard to Kirk and Curtis Yards. No further action anticipated.
b. Griffith, IN Connection (Northwest Quadrant)	CN constructed an additional new connection at Griffith, IN, located north of the diamonds, to allow eastbound trains on the GTW Elsdon Subdivision to proceed northward on the EJ&E line leading to Kirk and Curtis Yards.	Final design plans are complete. The 3 turnouts from the Elsdon Sub to the new connection were installed May 14-16, 2012; grading for new connection started on 5/29/2012 and has been completed. The new connection track was constructed through Broad Street, along with curb, gutter, and sidewalk replacements. Skeleton track for relocated #1 Main Line is complete. The EJ&E crossover turnouts were installed on October 24 and 25, 2012. The Main Track relocation and installation of the west turnout for the connection was completed on 11/7/2012. Project was placed into service on 1/30/2013; signal cleanup work is complete. COMPLETED 2013.
<b>DOUBLE TRACK, TRACK EXTENSIONS, AND TRACK UPGRADES</b>		
8. West Chicago Siding Extension	An existing 8,500-foot siding was extended to 13,000 feet to accommodate larger trains.	COMPLETED 2010.
9. Sutton Siding Extension	An existing 8,700-foot siding was extended to a length of 10,200 feet to accommodate larger trains.	In service 9/27/2011; final cleanup complete. COMPLETED 2011.
10. Normantown to Walker Double Track	A second main line track totaling 4.6 track miles was created by connecting two existing sidings with 2.7 miles of new construction.	In service 9/15/2011. Final seeding and stabilization was completed during the week of October 29, 2012. COMPLETED 2012.

<b>Project</b>	<b>Description</b>	<b>Status</b>
11. Diamond Lake Road to Gilmer Road Double Track	A second main line track totaling 4.0 track miles was created by extending the existing siding with 2.2 miles of new construction.	Final permitting received; clear and grub complete, culvert replacements and extensions and sheet piling complete. Grading and sub-ballast installation and skeleton track construction are complete. Crossing at Diamond Lake Road was closed on 8/27/2012 to add the second track and reopened on 9/8/2012. Crossing at Illinois Route 60/83 was closed on 9/10/2012 for addition of the second track and reopened on 9/18/2012. Track and signal work is complete. Second main was cut over into service 12/15/2012. Signal and communication clean up is complete. Reseeding was completed in May 2013, and final stabilization coverage is complete. COMPLETED 2013.
12. East Joliet to Nelson Road Double Track	A second main line track totaling 5.9 track miles was added by extending the existing siding with 4.2 miles of new construction. In addition, the existing siding (which had a maximum speed of 10 mph) was upgraded to allow operation at 45 mph, to facilitate its use as second main track.	2nd Main placed into service 12/13/11. Final seeding and stabilization are complete. Contractor completed warranty work on track at Mills Street that had settled or moved out of alignment since installation. Additional signal facilities have been installed at North Rowell, and final project cleanup is complete. COMPLETED 2013.

Project	Description	Status
13. Eola to East Siding Extension	An existing 5,500-foot connecting track between the EI&E and BNSF lines has been extended to 6,600 feet, and an existing 1,900-foot siding is to be connected to the connecting track by a new bridge over the BNSF main line and 2,100 feet of new construction, to create a siding with clearance length of 10,500 feet.	Contract (dated 12/30/2012) executed with BNSF for siding extension; permitting and mitigation planning are complete. New #20 turnout was installed at north end of siding (Diehl Road) on 4/30/2012, replacing #15 turnouts, and was powered up July 10, 2012. Contract for construction of new bridge over BNSF main tracks was awarded to McHugh Construction in July 2012; contract executed August 2012; pre-construction meeting with contractor held 9/6/2012; contractor began construction 6/4/2013, following utility relocation; bridge construction was completed in December 2013. Final permits for the siding extension were awarded in March 2013, #15 turnout was installed at south end on 11/21/2013, and new siding was placed into service on 12/20/2013, with minor seeding and clean-up completed in spring 2014. North end connection with BNSF (immediately to south of North Aurora Street bridge) was removed in October 2013 for realignment and regrading to meet alignment and elevation of new siding; connection was placed back into service on December 23, 2013. Project work is completed, other than final tasks to fulfill permit requirements (i.e., <b>vegetation growth</b> , installation of <b>meter on natural gas line</b> to backup generator for signal, <del>warranty track work</del> ).
14. Normantown to Liberty Street Double Track	CN plans to add a new second main track connecting the existing siding immediately to the north of Liberty Street with the existing siding at Normantown.	Wetland permitting in Will County is complete. Based on its limited utility at this time, the project has been placed on indefinite hold. Permit application to DuPage County has been allowed to expire, and permit application to U.S. Army Corps of Engineers has been withdrawn. No further action anticipated.
15. East Bridge Junction to Turner – Upgrade of #1 Main	Existing track on this segment had a maximum speed of 10 mph. CN upgraded the track to allow operation at 25 mph and is further upgrading the track to allow operation at 45 mph.	COMPLETED 2011.
16. Frankfort Siding Upgrade	Old siding track was extended and upgraded from 25 mph to 45 mph and converted to Main Track. Switches at each end were converted from spring switches to power operation.	COMPLETED 2011.

Project	Description	Status
17. Pequot Track Upgrade	Improvement of 1.5 miles of CN track between BNSF line at Plaines, IL and UP line at South Joliet, IL, to facilitate movement of BNSF trains moving from Plaines to South Joliet and then on UP to EJ&E's East Joliet Yard for interchange with CN.	COMPLETED 2010.
<b>INSTALLATION OF POWER-OPERATED SWITCHES</b>		
18. Illinois River Line	Installation of a power switch at the connection between the EJ&E's Leighton Subdivision and the Illinois River Line in Plainfield, IL.	COMPLETED 2009.
19. Existing Munger Connection	Installation of power switches at the existing connection (in the northwest quadrant) between the EJ&E Leighton Subdivision and the ICRR Freeport Subdivision near Munger, IL.	COMPLETED 2009.
20. North End Sutton Siding	Installation of a power switch at the north end of the Sutton Siding in Elgin, IL.	COMPLETED 2009.
21. Existing Matteson Connection	Installation of a power switch at the south end of existing connection (in the southeast quadrant) between the EJ&E Matteson Subdivision and the ICRR Chicago Subdivision in Matteson, IL.	COMPLETED 2010.
22. Existing Van Loon, IN Connection	Installation of power switches at the existing northeast and southwest quadrant connections and two crossovers between the EJ&E Matteson Subdivision and the NS line at Van Loon, IN.	Expenditures for signal and track designs have been approved, with the intent of completing the design in 2014. Projected project completion date has been postponed to end of 2015.
23. Hawthorne Lane	Installation of power switches at the CN Yard Lead and crossover at West Chicago Yard, south of Hawthorne Lane in West Chicago, IL.	COMPLETED 2010.
<b>YARD CAPACITY IMPROVEMENTS</b>		
24. East Joliet Yard Bypass Mains	CN has installed two main tracks through EJ&E's East Joliet Yard to allow trains to go around the Yard at 25 mph rather than through the Yard at 10 mph. CN is also upgrading motor controllers for the draw span of nearby EJ&E Bridge 198 to permit smoother, more reliable operation.	East Joliet Yard tracks in service September 2011 at 25 mph. Final cleanup completed in May 2012. Contract to upgrade motor controllers and renew the electrical system at Bridge 198 has been awarded and work has begun. COMPLETED 9/2013.
25. East Joliet Yard Run-Through Track Speed Initiatives	Track was upgraded from 10 mph to 20mph. Radio-controlled power switches were installed to facilitate faster train movements on East and West Wye switches.	Upgraded track completed 9/30/2011; power switch installation completed 2/3/2012. COMPLETED 2012.

Project	Description	Status
<p><b>SYSTEM UPGRADES</b></p> <p>26. Miscellaneous Safety Improvements</p>	<p>CN has taken various miscellaneous measures to improve safety and reduce train noise, including three new Wheel Impact Load Detector sites (WILD), five additional Wayside Inspection Sites (WIS), and 17 track lubricator locations.</p>	<p>COMPLETED 2009-2010.</p>

# **Attachment 3**

UNITED STATES OF AMERICA

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SURFACE TRANSPORTATION BOARD

+ + + + +

PUBLIC HEARING

+ + + + +

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UNITED STATES RAIL SERVICE : Ex Parte No.  
 : 724  
 ISSUES :  
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Suite 120  
395 E Street, S.W.  
Washington, D.C.

Thursday,  
April 10, 2014

The above-entitled matter came on  
for hearing, pursuant to notice, at 8:30 a.m.

BEFORE:

DANIEL R. ELLIOTT III Chairman  
ANN D. BEGEMAN Vice Chairman

1                   MR. LIEPELT: Chairman Elliott,  
2 Vice Chairman Begeman, thank you for the  
3 opportunity to appear today. I am Jeff  
4 Liepelt, Senior Vice President of Southern  
5 Region Operations for the CN and I am  
6 responsible for managing the CN's U.S.  
7 operations.

8                   As Jeff Harris outlined, there is  
9 little question that the carriers operating in  
10 and through Chicago have had a difficult  
11 winter, one of the most difficult in decades  
12 and one that compromised service severely.

13                   Further, given the volumes of  
14 traffic moving to, from and through the area,  
15 the issues in Chicago radiated outward to  
16 servicing areas beyond Chicago.

17                   Through our networks, the issues  
18 on other parts of the respective networks that  
19 faced similar winter conditions and concerns,  
20 if not worse, impacted Chicago also.

21                   In Chicago we have worked together  
22 and individually this winter to confront the

1 problems presented to minimize as best we  
2 could service disruptions to our customers and  
3 the public. It was impossible in the  
4 circumstances to avoid all, and not every  
5 customer was pleased.

6 But speaking for CN, where there  
7 were issues in service, we had policies in  
8 place designed to treat customers fairly,  
9 generally assigning power and crews, for  
10 example, to shipments that had waited the  
11 longest.

12 One of the lessons those of us in  
13 Chicago know is good weather and bad, but  
14 especially in extreme winter conditions like  
15 those in the past months that will cause  
16 locomotive breakdowns, strained crews, shorter  
17 trains and greater congestion, is the  
18 importance of maximizing the use of available  
19 assets and area rail capacity as well as  
20 improving and growing that capacity to meet  
21 ever increasing customers' demand and safe and  
22 efficient rail service.

1                   Even with the EJ&E, CN did not  
2                   escape the conditions of the past several  
3                   months, but the EJ&E has allowed CN to absorb  
4                   most of its trains that would otherwise have  
5                   had to move through the central Chicago core  
6                   which, in turn, has taken our trains off the  
7                   BRC and the IHB and allowed other railroads to  
8                   take those spots to benefit all the other  
9                   carriers.

10                   Another example, the improvements  
11                   being undertaken in CREATE to improve and  
12                   expand rail capacity will likewise produce  
13                   efficiencies that should help mitigate the  
14                   conditions that severe winters such as the  
15                   past one presented.

16                   No improvements are inexpensive.  
17                   After acquiring the EJ&E, CN has invested over  
18                   \$270 million in added improvements on the  
19                   line, including close to an expected \$60  
20                   million of our share of the two grade  
21                   separations imposed by this Board.

22                   The infrastructure we added and

1 the improvements we have made to the EJ&E have  
2 allowed the fast recoverability when there are  
3 disruptions such as those we experienced this  
4 winter.

5           And while you can't spend your way  
6 out of winter, dealing with winter is  
7 expensive too. CN spent more than \$4.3  
8 million in Chicago alone directly related to  
9 snow removal this past winter. That's five  
10 times more than the normal winter.

11           Large locomotives cannot just run  
12 through heavy snow and when it comes to  
13 switches and rail yards it takes very little  
14 snow to impact the rollability on a hump or  
15 the automatic switches to move.

16           We make these investments and  
17 expenditures to improve our ability to serve  
18 our customers and to help them succeed in  
19 their markets.

20           And without those investments,  
21 both ours and our fellow carriers in Chicago,  
22 the ability to deal with problems this winter

1 in Chicago could have been considerably worse.

2 There is still more work to be  
3 done and we will continue to identify  
4 opportunities to make Chicago more fluid and  
5 deal with the winter in other ways.

6 With spring arriving, the service  
7 is returning to normal levels. CN will be  
8 debriefing shortly while this winter  
9 experience is still fresh in our minds to  
10 determine how we can be more resilient next  
11 winter. It is about mitigating impact as  
12 winter will always come and there will always  
13 be issues.

14 We are committed to prepare better  
15 to reduce the recovery time so that the impact  
16 to our customers is as minimal as possible.

17 Thank you for this opportunity to  
18 speak. I will be happy to answer any  
19 questions you may have. Thank you.

20 CHAIRMAN ELLIOTT: Thank you.

21 MS. BROWN: We have a  
22 presentation. If we could put it up on the

# **Attachment 4**

## Comparison of Actual and Projected EJ&E Train Volumes

Rail Segment Description		Monthly Average Trains per Day									
EJE Segment Number	From Station	To Station	STB Filing Projection	2014 YTD Average	Comparison 2014 YTD average to projection	August 2014	Effect of Munger connection	Effect of NS connection	Adjusted August 2014	Comparison of adj. August 2014 to projection	
15	Rondout	Leighton	3.2	1.3	(1.8)	1.0	0	0	1.0	(2.2)	
14	Leighton	Spaulding	20.3	17.5	(2.8)	17.3	0	0	17.3	(3.0)	
13	Spaulding	Munger	22.5	19.5	(3.0)	19.6	0	0	19.6	(2.9)	
12	Munger	West Chicago	23.4	19.1	(4.3)	19.3	3.4	0	22.7	(0.7)	
11	West Chicago	East Siding	31.6	21.7	(9.9)	22.6	3.4	0	26.0	(5.6)	
10	East Siding	Walker	39.5	26.4	(13.2)	27.4	3.4	0	30.8	(8.8)	
9	Walker	Bridge Junction	42.3	29.6	(12.7)	30.4	3.4	0	33.8	(8.5)	
8	Bridge Junction	Rock Island Jct	42.3	34.2	(8.1)	35.4	3.4	0	38.8	(3.5)	
7	Rock Island Jct	Matteson	28.3	22.2	(6.1)	22.9	3.4	0	26.3	(2.0)	
6	Matteson	Chicago Hts	31.6	24.0	(7.6)	23.7	2.2	0	25.9	(5.6)	
5	Chicago Hts	Griffith	34.2	25.5	(8.6)	25.3	2.2	0	27.5	(6.7)	
4	Griffith	Van Loon	28.6	26.4	(2.3)	26.8	2.2	-2.0	27.0	(1.7)	
3	Van Loon	Ivanhoe	29.7	27.4	(2.3)	27.9	2.2	-2.0	28.1	(1.6)	
2	Ivanhoe	Cavanaugh	29.8	25.9	(3.9)	26.3	2.2	-2.0	26.5	(3.2)	
1	Cavanaugh	Gary	31.8	27.8	(3.9)	28.2	2.2	-2.0	28.4	(3.3)	
0	Gary	Indiana Harbor	3.5	2.4	(1.1)	2.2	0	0	2.2	(1.3)	
-1	Indiana Harbor	Hammond	1.8	2.1	0.3	1.7	0	0	1.7	(0.1)	
-2	Hammond	South Chicago	0.9	2.2	1.3	1.7	0	0	1.7	0.9	

Notes: Due to rounding, some numbers may not appear to sum correctly. YTD average through August, 2014.

# **Attachment 5**

RICHARD J. DURBIN

ILLINOIS

ASSISTANT MAJORITY LEADER

United States Senate  
Washington, DC 20510-1304

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON FOREIGN RELATIONS

COMMITTEE ON THE JUDICIARY

COMMITTEE ON RULES  
AND ADMINISTRATION

June 03, 2014

Claude Mongeau  
President and CEO  
Canadian National Railway Company  
P.O. Box 8100  
Montreal, QC H3C 3H4

Dear Mr. Mongeau:

I am writing regarding CN's poor communication and cooperation with Illinois passenger and freight rail stakeholders. We met last year to discuss local community concerns with CN operations over the Elgin, Joliet & Eastern Railway (EJ&E) and new Amtrak service between Chicago-Rockford-Galena. Since that time, several of the issues we discussed then remain unresolved, and I encourage you move expeditiously to address them.

The State of Illinois and Amtrak have been trying to negotiate an agreement with CN to bring new passenger rail service from Chicago to Rockford and Galena. Last month, the State of Illinois announced it is pursuing an alternate route between Chicago and Rockford along Union Pacific tracks. This decision was due largely to the lack of cooperation from CN, which owns the originally selected route between those two cities. Unfortunately, the only feasible rail route West from Rockford to Galena runs along the CN. The State of Illinois and Amtrak will not be able to provide service to Galena as long as CN slow walks negotiations and makes unreasonable capital demands.

Secondly, several communities have contacted my office with concerns about increased rail traffic along the EJ&E. The Village of Barrington and City of Aurora have been vigilant in promoting increased rail safety, especially for trains carrying crude oil and ethanol. These large unit trains and other freight trains are blocking crossings and increasing delays throughout the EJ&E corridor. In fact, despite CN's claims that track upgrades would decrease the number and duration of blocked crossings, there have been 5,267 instances of crossings being blocked by trains for ten minutes or more in the first quarter of 2014 – the highest number since CN took ownership of the rail line.

Even minor safety issues are being dismissed out of hand. For example, Richton Park recently requested a very small easement from CN to install safety fencing with a grant it received from the Illinois Commerce Commission. These easements were required by the Surface Transportation Board (STB) in several locations along the EJ&E, but CN summarily rejected Richton Park's and has been unresponsive to appeals from our office and the local community to reconsider.

The STB placed CN under an unprecedented six year monitoring period after your railroad completed the controversial purchase of the EJ&E. The monitoring period is in place to ensure CN fully complies with the promises it made when CN acquired the EJ&E. That monitoring period expires at the end of this year, but it may be prudent to extend this period while the problems outlined above remain.

I hope CN can resolve these issues as soon as possible. I stand ready to work with you to improve the safety and availability of passenger and freight rail service along CN routes in Illinois.

Sincerely,



Richard J. Durbin  
U.S. Senator

# **Attachment 6**



[www.cn.ca](http://www.cn.ca)

**Claude Mongeau**  
President and  
Chief Executive Officer

935 de La Gauchetière Street West  
Montreal, Quebec H3B 2M9  
Canada  
T 514 399-2963

Président-  
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June 9, 2014

The Honorable Richard J. Durbin  
Assistant Majority Leader  
United States Senate  
SH-711 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Durbin:

I am responding to your June 3, 2014 letter on rail freight and passenger issues in Illinois. You raise concerns regarding a number of important matters on which we would like to comment.

#### EJ&E Update

When we filed our application at the Surface Transportation Board (STB) in October 2007 for authority to purchase the major portion of the Elgin, Joliet and Eastern Railway Company (EJ&E), we projected that, once fully implemented, the transaction would enable CN to reduce congestion in the Chicago-area rail network by taking CN trains off overloaded lines in the heart of Chicago and moving them to the EJ&E lines outside of Chicago. We also maintained that streamlined rail operations and reduced congestion would benefit our customers, the Chicagoland community, and the Chicago-area rail network, and that CN's investment in the EJ&E would complement the CREATE public/private infrastructure initiative, enabling attainment of CREATE objectives more quickly.

I am pleased to report that the benefits CN envisioned have indeed been realized. CN has spent roughly \$200 million to date constructing connections, installing safety equipment, and making other infrastructure investments along the line to improve efficiency and address mitigation concerns. This includes roughly \$60 million spent to date pursuant to Voluntary Mitigation Agreements (VMAs) we reached with 28 of the 33 communities along the EJ&E, along with additional mitigation that the STB attached to its final decision on the acquisition. In addition, we have invested more than \$100 million in our Kirk Yard facility in Gary, IN to make this a major CN yard for interchanging traffic outside of downtown Chicago and bringing jobs to the region, and we have opened a new intermodal facility in Joliet, IL. By moving traffic from congested rail lines through Chicago to the EJ&E tracks that arc around the metropolitan area, the transaction has been overwhelmingly beneficial for Illinois citizens and businesses.

Most recently, the Chicago region and much of CN's service territory experienced an unprecedented combination of extremely cold weather and heavy snow. These extraordinary conditions caused major disruptions in operations and fluidity for all rail carriers in the Chicago area and throughout the upper Midwest. During this challenging period, integration of and improvements to the EJ&E line were especially important as they enabled CN to continue to provide service to our customers in Chicago and beyond far more effectively than we could have if we had been required to operate through severely congested central Chicago. CN's use of the EJ&E line also left more of the Chicago area's limited rail capacity open for use by other rail carriers who were also trying to manage the challenging winter conditions.

#### Chicago to Rockford Amtrak Service

I must question your suggestion that the State of Illinois' decision to pursue a route between Chicago and Rockford along Union Pacific (UP) and Metra tracks for new Amtrak service rather than the route on CN's tracks was due to a lack of cooperation from CN. When you and I met last year, the importance that you placed on this new passenger service was clear, and I directed my staff to ensure that CN was cooperating fully with the Illinois Department of Transportation (IDOT) and Amtrak. Once issues related to the confidentiality of CN's data were successfully addressed, CN made available to IDOT all of the documentation requested, opening this documentation to IDOT and its engineering firm for scrutiny, and CN staff made themselves available to meet with IDOT as requested. CN also agreed to allow IDOT to operate a hi-rail car equipped with Ground Penetrating Radar to assess ballast conditions and to host IDOT and its engineering firm on a hi-rail trip over the proposed route. In addition, as part of this process, CN's Chief Operating Officer, Jim Vena, held discussions with IDOT Secretary Schneider on numerous occasions to address concerns raised by IDOT.

As to the capital requirements for utilizing the CN line for the Chicago to Rockford portion, CN's modeling effort, which was based on IDOT/Amtrak's requested train schedules, frequency, and speed, identified what would be necessary, including infrastructure, to handle this service without undue impacts on CN's freight service. In doing so, CN had to account for the heightened performance standards for Amtrak trains adopted under the Passenger Rail Infrastructure Investment and Improvement Act (PRIIA), which on this segment allow for only 16.3 minutes of "host-responsible" cumulative delay. (As you know, although the PRIIA standards have been held to be unconstitutional by a U.S. Court of Appeals, the government is seeking U.S. Supreme Court review of that decision.) Undoubtedly, less infrastructure would have been required and discussions would have proceeded more quickly if the parties had not needed to concern themselves with the stringent PRIIA requirements.

The Honorable Richard J. Durbin  
June 9, 2014  
Page 3 of 6

Nevertheless, in the end, the capital requirements identified by CN were comparable to the amount identified for the Chicago to Rockford route ultimately selected by the State of Illinois: CN estimated a \$235 million capital requirement (or \$2.9 million per mile for the 80-mile segment) compared to the \$223 million (or \$4.2 million per mile for the 50-mile UP segment) reported in the public announcement of the selection of the Union Pacific/Metra route for line and station upgrades. I understand from press accounts that the UP/Metra route will serve more densely populated areas than the CN route, which should encourage ridership on this new Amtrak service.

As you note, CN's line between Rockford and Galena will be required for the remainder of the route proposed for Amtrak service. CN is willing to continue discussions with IDOT and Amtrak on use of this segment for the proposed service. I note, however, that since our last meeting with IDOT on January 8, 2014, CN has not heard from IDOT on the Chicago – Rockford – Galena Amtrak service. In fact, CN was made aware of the selection of the UP/Metra route only through Governor Quinn's press release announcing the selection of the alternative route. CN stands ready to meet with IDOT and Amtrak should they wish to pursue this matter.

#### Rail Traffic/Blocked Crossings on the EJ&E

You note that several communities (including specifically the Village of Barrington, IL and the City of Aurora, IL) have raised concerns regarding rail traffic on the former EJ&E.<sup>1</sup> I would point out, however, that the levels of traffic are still below the projections used by the STB in the proceeding approving CN's acquisition and that, in particular, they are 10 to 15 percent lower for Barrington and approximately 33 percent lower for Aurora.

We nevertheless understand the concerns of local communities regarding crossing activations of 10 minutes or longer. As you note, the first quarter of 2014 saw the highest number of such activations since CN assumed control of EJ&E, but this high number was a result of the extreme winter weather I referred to earlier. Fortunately, as the weather has improved, so have our operations. As compared to March levels, activations of 10 minutes or longer were 14 percent lower in April and 21 percent lower in May. We will continue our efforts to contain crossing delays, and the trend is heading in the right direction.

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<sup>1</sup> The EJ&E was merged pursuant to STB authorization into another CN rail operating affiliate, the Wisconsin Central Ltd., effective January 1, 2013. For STB oversight purposes and to minimize confusion, we continue to refer to and report information on the line to the STB as the EJ&E.

It is important to note that almost half of the total number of blockages along the EJ&E occurs at just three locations – Joliet, IL, Gary, IN, and West Chicago, IL – where our trains must slow or stop to enter or leave our two major yards or to interchange with UP. Many of the blockages are actually in locations where there is very little vehicular traffic. Further, many of the blockages on the line, while still frustrating for motorists, are caused by other carriers, some operating on adjacent lines. As an example, most of the crossing blockages in the Village of Barrington are at Cuba Road, and are caused by CN being delayed by Metra as it approaches downtown Barrington.<sup>2</sup>

#### Richton Park

You assert that CN dismisses safety issues, and cite the example of the request of the Village of Richton Park for an easement from CN to install fencing with a grant the Village received from the Illinois Commerce Commission. Let me assure you that CN has an unwavering commitment to safety. Safety is embedded in our culture and aligned with our business interests. We cannot provide service or run a fluid network if we are not the safest possible railroad. Safety is core to our business agenda, and our results demonstrate it. Over the last 10 years, CN has reduced the number of main track accidents throughout our system by about 55 percent, despite volume increases. I have enclosed a copy of a speech I made last month in Edmonton, Alberta on CN's safety commitment, which describes our corporate philosophy and key safety-related initiatives.

With respect to Richton Park specifically, CN entered into a Memorandum of Agreement (that is, a VMA) with the Village in 2009, and the Village agreed at that time that the VMA resolved all outstanding concerns it may have regarding CN's acquisition of the EJ&E and that CN's obligations under the VMA would be in lieu of any site-specific mitigation ordered by the STB. Noise or security fencing in this area was not one of the issues Richton Park chose to address as part of its negotiations with CN for inclusion as a voluntary environmental mitigation measure. CN has provided the considerable mitigation benefits promised to Richton Park and satisfied all of our commitments under that agreement.<sup>3</sup>

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<sup>2</sup> With respect to the Village of Barrington and the City of Aurora, their communities experience relatively few crossing activations of 10 minutes or more. During the first quarter of 2014, only 0.68% of these activations occurred in Barrington (less than one total activation per day), and 3.80% of the total occurred in Aurora (just over 2 total activations per day, including activations at heavily traveled Ogden Avenue that will be eliminated by the planned grade separation at that location). Almost three quarters of the total activations of 10 minutes or more in Aurora are at Liberty Street, where they are caused by trains entering or exiting BNSF's Eola Yard

<sup>3</sup> These include funding 1,800 feet of safety fencing in Glaeser Park; providing \$75,000 to the Village for purchase of safety or emergency response equipment; funding and installing constant

Granting the particular easement that Richton Park is now requesting in order to install a fence would be contrary to CN's general rule against allowing outside parties to place encumbrances on railroad property, and would create unnecessary safety issues of its own. It is important that we maintain an ability to use our property to meet the needs of our customers for safe and efficient transportation services. Allowing the placement of this fence would create an ongoing situation where an outside party would need to come onto CN property to inspect and maintain the fence. As you can appreciate, for safety reasons, we need to limit the circumstances where non-railroad parties will have to access railroad property.

Also troubling from an operational standpoint is that the proposal we received from the Village indicated that the fence would have to be installed at track level which would be close to the middle of our right-of-way. Constructing a fence at this location would, in effect, bifurcate our property, dramatically limiting our ability to use our property now and in the future. Further, it would create a potential safety hazard by drawing non-railroad personnel much closer to live tracks for their inspection and maintenance activities.

Finally, it is my understanding that two other parties have property rights between the EJ&E right-of-way and the portion of property owned by Richton Park homeowners closest to the proposed fencing location. It seems that a fence on the property of either of these other parties should be able to give the community what it seeks in a safer context.

In closing, CN has taken very seriously the mitigation requirements imposed by the STB in its decision approving our EJ&E acquisition in 2008 as well as the commitments we made to the communities with which we reached VMAs. We have implemented this transaction diligently, it has been a success and, importantly, CN has met all its commitments to the STB, to the EJ&E communities, and to our customers.

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warning time circuitry on the EJ&E line necessary for a Quiet Zone covering three crossings in the Village and providing and funding technical support for the Village's Quiet Zone application to the Federal Railroad Administration; integrating Wheel Impact Load Detectors and other similar safety-protective devices into operations on the EJ&E line; providing training locally and at the Transportation Technology Center, Inc. in Pueblo, Colorado for emergency responders who serve Richton Park; and funding and providing an emergency protocol and dispatching view capability to the Village. We also note that even without this voluntary agreement between CN and Richton Park, the STB's Environmental Impact Statement did not identify that area as exceeding allowable noise tolerances, warranting noise mitigation.

The Honorable Richard J. Durbin  
June 9, 2014  
Page 6 of 6

I would like to make note of another important investment CN is making in Illinois, in our Homewood Training Center, which is part of CN's revitalized company-wide employee training program to meet the learning needs of CN's current and future railroaders. The Homewood facility will host state-of-the-art training for new hires and existing employees working in a range of jobs; we plan to train 100 to 125 employees each week at our Homewood center. As I mentioned to you in our meeting, we would be honoured if you could join us and other senior government officials this fall for our official opening ceremony. My office will provide you with more details shortly.

I sincerely hope we have addressed all of your concerns regarding our operations in Illinois, specifically in the Chicago area. I trust you will let us know if you need any additional information. Please do not hesitate to contact me or Karen Phillips, CN's Vice President, Public & Government Affairs.

Sincerely,



Claude Mongeau  
President and  
Chief Executive Officer

Enclosure

# **Attachment 7**



ILLINOIS CHAMBER  
OF COMMERCE

September 9, 2014

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington Dc 20423

Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp. –Control—  
EJ&E West Co.

Dear Ms. Brown:

As the broadest and largest business association in Illinois, the Illinois Chamber of Commerce strongly recommends that the Surface Transportation Board (STB) allow the oversight period of Canadian National's (CN) acquisition of the Elgin, Joliet & Eastern (EJ&E) to expire as scheduled at the end of January 2015. We believe that there has been sufficient oversight and it is now time for CN to invest in their Illinois assets while running a safe and efficient railroad.

We strive to work alongside our state, local, and federal government toward a safe environment while remaining concerned about issues that negatively impact the ability of Illinois businesses to compete. We recently became aware of a filing submitted to the STB by a local party encouraging extended oversight of the CN/EJ&E transaction in addition to the previous six years of strong oversight.

The environment of regulatory and legislative uncertainty from Washington, DC, has resulted in delayed private investment in Illinois and across America. At a time when businesses need certainty to contribute to our economy and put people back to work, their energy and resources are spent navigating red tape. However, it is far more problematic when private parties try to impose their vision on the broader business community by asking governmental agencies to take action that suits their purposes.

This minor transaction has been under stringent oversight far longer than oversight for any acquisition of this size and many larger ones. Applying the potential impacts of this issue beyond its local focus, the ability to extend oversight despite the relative size of the transaction casts a troublesome precedent on private investments overall in Illinois. Additionally, it is our understanding that at any time the STB has the full authority to revisit any of its previous decisions.

Businesses across Illinois continuously evaluate the risks vs. rewards of capital investment. Additional administrative functions against CN will have a chilling impact on investment across the state. Instead of focusing on operations and job creation, businesses will hold back investment and instead focus on possible new and additional requirements. Imposing additional oversight without strong evidence necessitating it indicates to us and our members that the federal government will at times impose additional requirements on private transactions without justification, a chilling thought.

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ILLINOIS CHAMBER  
OF COMMERCE

Ms. Cynthia T. Brown  
September 9, 2014  
Page 2

Illinois faces many challenges today, including an increase in the amount of freight moving through state by truck, waterways, and rail. At a time when public investment in our aging infrastructure is constrained, government should work with—not against—private companies including CN that want to invest in capital projects to improve our transportation networks.

We strongly recommend that the Surface Transportation Board allow their current oversight period for CN's acquisition of the EJ&E railroad to expire at the end of January, 2015, as currently scheduled. Thank you for your consideration of our concerns and your attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Benjamin J. Brockschmidt', written over a horizontal line.

Benjamin J. Brockschmidt  
Executive Director, Infrastructure Council  
Director Federal Affairs

cc: Richard H. Streeter, Esq.  
Paul A. Cunningham, Esq.  
David A. Hirsh, Esq.



September 10, 2014

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington Dc 20423

Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp. –  
Control—EJ&E West Co.

Dear Ms. Brown:

I am writing today on behalf of the Indiana Chamber of Commerce to encourage the Surface Transportation Board to allow the six-year oversight of CN's EJ&E acquisition to expire as scheduled. In the months leading up to CN's purchase of the EJ&E, the Indiana Chamber voiced its support for the acquisition as an investment in the transportation infrastructure of Northwest Indiana. We are pleased to see that CN has made those investments and brought jobs to the state of Indiana while strengthening our overall transportation network.

This year CN expects to finish its \$141 million investment in its Kirk Yard facility in Gary, Indiana, an expansion that has led to CN bringing approximately 100 additional jobs to Northwest Indiana. CN's investments have gone beyond the EJ&E as demonstrated by its partnership with the Indiana Railroad in the 2013 opening of a new intermodal terminal in Indianapolis. As Governor Mike Pence said at the opening of that intermodal terminal, that investment has elevated "the Indiana brand in the eyes of global manufacturers, retailers and logistics companies."

Oversight of this successful acquisition has now continued for six years during which time CN has fulfilled its commitments to Indiana. Oversight should be allowed to end so CN can keep its focus on future investments and providing quality rail service to companies across Indiana.

Sincerely,

Cameron Carter  
Vice President, Economic Development and Federal Relations

cc: Richard H. Streeter, Esq.  
Paul A. Cunningham, Esq.  
David A. Hirsh, Esq.

**Indiana Chamber of Commerce**  
115 W. Washington St., Suite 850S  
Indianapolis, IN 46204

**p** 317-264-3110  
**f** 317-264-6855  
[www.indianachamber.com](http://www.indianachamber.com)



September 3, 2014

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

Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp. - Control - EJ&E West Co.

Dear Ms. Brown;

As the president of the Chicago Southland Chamber of Commerce, a regional business organization representing 85 communities in Cook and Will Counties, Illinois, I am reaching out to you concerning the STB oversight of CN/EJE merger in our region.

I respectfully ask that this oversight should end as scheduled noting that this oversight has already been extended once.

At a time in our nation's history where private investment in infrastructure is so critical to the balance of growth and development verses decay and stagnation this merger seems to be a strong plus for our fiscal health. Canadian National is an important partner in this region providing many advantages which we so dearly need. Encouraging companies such as CN to make investments that benefit so many seems only prudent. We need more support of these types of projects letting free enterprise work for the benefit of many not just in our immediate area but in the Midwest in general.

We want more business investment in this region and time is of the essence when private industry considers these types of growth. Please see that these oversight period sunsets as already determined and remove obstacles that prevent efficiencies and long term benefits to materialize.

Respectfully,

David Hinderliter, IOM, ACE  
Chicago Southland Chamber of Commerce  
Homewood, IL.



# Village of Homewood

2020 CHESTNUT ROAD  
HOMWOOD, ILLINOIS 60430-1776  
708-798-3000

September 5, 2014

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

Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp.  
-Control-EJ&E West Co.

Dear Ms. Brown:

I have been advised that the Surface Transportation Board has received a filing that proposes to extend your oversight on CN with regard to their purchase of the Elgin, Joliet & Eastern Railroad.

The Village of Homewood is proud to be the home of CN's U.S. headquarters. Homewood is located on the CN mainline, not on the EJ&E line, and we enjoy a very professional and productive relationship with CN. I feel this is important to share with you as you consider the petition to extend your oversight of the EJ&E transaction. I am aware of criticism of CN by some elected officials. This effort to continue to discredit CN and this transaction reminds me of the folks who move to the O'Hare airport area and then complain about the planes. Homewood has always been "on the CN's tracks" (and its predecessor the I.C.) and we have found CN to be an exemplary, co-operative neighbor and corporate partner. It is important for you to know how responsive, reliable and caring they are to the community. In Homewood alone:

- CN employs over 800 persons
- CN was courted to move to Indiana but chose to stay and EXPAND their operations in Homewood.
- CN just completed a 75,000 square foot, state-of-the-art training center in Homewood.

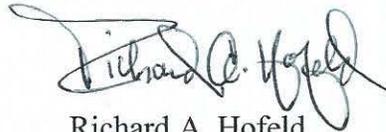


- Over 100 employees per week, from throughout the United States, are brought here for training. These new employees, plus the new training staff, all eat, sleep and shop in Homewood and the south suburbs.
- CN is an active, willing participant and contributor in and to local south suburban events and projects.

Our residents and businesses consider CN to be a great corporate neighbor, and in the south suburban area, where jobs are so important, CN is a key employer. We have both worked to establish a mutual relationship of trust and cooperation, which is evident in their everyday operations.

In my work as Mayor in Homewood, as well as my interaction with other communities and through the South Suburban Mayors and Managers Association (which includes communities where the EJ&E operates), I hear examples of how CN is living up to what they said they would do. It appears that those efforts to extend your oversight are misdirected and somewhat self-serving. In the interest of maintaining a strong area transportation network, one that has adhered to the standards your Board has established, CN has proven their worth. The economic impact of their operation, as well as being responsive to neighboring communities is proven. In light of the above, I request that you allow the pre-existing oversight deadline to expire. The standards have been met or exceeded.

Sincerely,



Richard A. Hofeld  
Mayor

C: Richard H. Streeter, Esq. (rhstreeter@gmail.com)  
Paul A. Cunningham, Esq. (pac@harkinscunningham.com)  
David A. Hirsh, Esq. (dhirsh@harkinscunningham.com)

# CONEXUS

I N D I A N A

September 12, 2014

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington Dc 20423

Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp. –Control—  
EJ&E West Co.

Dear Ms. Brown:

Conexus Indiana, an advanced manufacturing and logistics think tank, has worked years to develop a west coast intermodal access to Indiana by bypassing the Chicagoland area. This was accomplished and made possible by CN's 2009 acquisition of the former Elgin, Joliet & Eastern (EJ&E). CN's acquisition of EJ&E has been good for the movement of cargo to and from Indiana lowering business costs, creating efficiencies and lowering the time to and from market in Indiana. It has been very positive for Indiana's logistics community.

Since the acquisition, CN's EJ&E operations have been subject to Surface Transportation Board (STB) reporting and oversight requirements that have imposed significant costs and distractions for CN (which in turn add additional costs for Indiana cargo shippers). It is our understanding that these requirements end January 23, 2015.

CN smoothly implemented the acquisition and has made substantial improvements to operations over the EJ&E. Among other things, CN invested roughly \$200 million constructing connections, installing safety equipment, and making other infrastructure investments along the line to improve efficiency and mitigate environmental impacts. The transaction and related investments have allowed CN to reduce transit times and congestion for the benefit of shippers, the Chicagoland community, and the Chicago-area rail network.

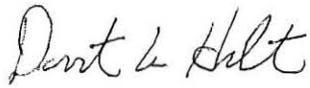
Rail traffic levels on the EJ&E are below the projected levels that were used by the STB to assess potential environmental impacts for communities along EJ&E and to impose environmental mitigation. Nonetheless, the Village of Barrington, IL, one of the few communities that refused a VMA, has petitioned the STB to extend oversight and reporting for at least two additional years. Barrington's petition is based on the premise that 6 years of oversight is inadequate since additional traffic volumes may eventually flow along the EJ&E arc.

The public interest would best be served by allowing CN to re-direct resources consumed by the added costs, burdens, and distractions of unnecessary regulatory reporting or oversight to the efficient and safe operation of its railroad. Additional oversight and reporting by CN is unnecessary, as CN has lived up to the commitments it made to shippers, local communities, and other rail carriers.

A perfect example of this commitment is prevalent with the recently established service in partnership between CN and Indiana Rail Road Company to the West Coast giving Indiana faster and cheaper intermodal access for our cargo shippers. This facility has been extremely positive for Indiana companies. Ending oversight as scheduled would allow CN to focus its energies on running a safe and efficient railroads providing even more efficiencies. It could also lower shipping rates because the current reporting and oversight costs are shifted to the customers and ending this would be a positive for cargo shippers in Indiana.

Thank you for your serious consideration of this matter. Please contact me at (317) 638-2108 or [dholt@conexusindiana.com](mailto:dholt@conexusindiana.com) if you have any further questions or concerns.

Respectfully,



David W. Holt  
Vice President, Operations and Business Development

cc: Richard H. Streeter, Esq. ✓  
Paul A. Cunningham, Esq.  
David A. Hirsh, Esq.



September 10, 2014

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, Dc 20423

Re: STB Finance Docket No. 35087, Canadian National Railway &  
Grand Trunk Corp. –Control—EJ&E West Co.

Dear Ms. Brown:

On behalf of the Gary Chamber of Commerce, I am writing to you about the CN acquisition of the EJ&E railroad and to request that the six-year oversight of the acquisition be allowed to expire as scheduled in January 2015.

The Gary Chamber of Commerce has worked with CN since before the EJ&E acquisition. In the six years since, the Chamber has watched CN invest in our community and bring much-needed jobs to Gary. CN's \$141 million expansion of Kirk Yard is more than just a railroad project; it signals the company's long-term commitment to our community.

As they said they would, CN has also worked diligently with the city of Gary, the Gary/Chicago Airport Authority and several other parties to move toward relocation of the former EJ&E mainline track near the airport. That complex track relocation will allow the Gary/Chicago Airport to complete its runway expansion project. The runway expansion is a vital economic development project in the city of Gary and CN has been involved in it since the purchase in 2009.

Since acquiring the EJ&E and coming to Gary, CN's investments have gone beyond railroad infrastructure as the company for years has supported community events and organizations. I and the Gary Chamber of Commerce are thankful for CN's contributions.

Three of the country's largest railroads, including CN, run through Gary. I am grateful that CN has invested so much in Gary and made our community the heart of its U.S. operations. Oversight of this successful acquisition has lasted six years and should be allowed to end as CN has lived up to its commitments to Gary and Northwest Indiana.

Sincerely,

A handwritten signature in black ink that reads "Chuck 'Chuck' Hughes". The signature is written in a cursive, slightly slanted style.

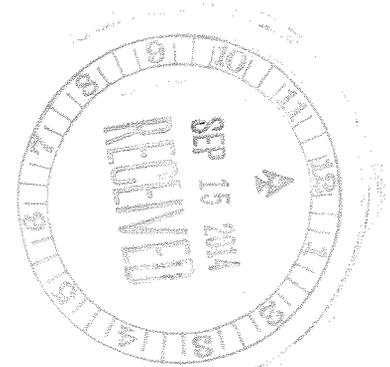
Chuck Hughes  
Gary Chamber of Commerce  
President

cc: Richard H. Streeter, Esq.  
Paul A. Cunningham, Esq.  
David A. Hirsh, Esq.

September 10, 2014

Surface Transportation Board  
Office of Proceedings  
Attn: Ms. Cynthia T. Brown  
Chief, Section of Administration  
395 E Street, S.W.  
Washington, DC 20423

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Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp. —Control—EJ&E West Co.

Dear Ms. Brown:

CN's acquisition of the EJ&E line has had a tremendous impact on Mallory Alexander International Logistics business. Many of our grain customers are serviced from our Chicago office and regularly depend on this line to export their product. The improvements made by CN to both the operation and the equipment have greatly improved the quality of service on this line.

I believe extending the STB's oversight beyond the original deadline of January 23, 2015 places an unnecessary burden on CN, whose resources should be more focused on internal improvements and remaining competitive with the UP and BN.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Neely Mallory III".

W. Neely Mallory III  
President

cc: Richard H. Streeter, Esq.  
Paul A. Cunningham, Esq.  
David A. Hirsh, Esq.



# DEPAUL UNIVERSITY

## Chaddick Institute for Metropolitan Development

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

September 12, 2014

Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp. –Control—EJ&E West Co.

Dear Ms. Brown:

I am writing this letter in response to the petition to extend the Surface Transportation Board period of oversight over the Canadian National Railway Company (CN) acquisition of the Elgin, Joliet and Eastern Railway Company (EJ&E) by at least two years. That oversight is set to expire on January 23, 2015.

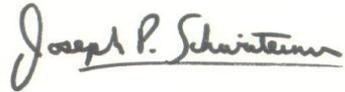
As someone who has studied the transportation industry for more than 20 years, I understand that the CN/EJE integration has been complex and that the volume of freight being shipped on the former EJ&E has risen sharply. I also believe that the motives for those seeking the extension are well intended.

I nevertheless strongly believe that the extension is unwarranted. The conditions placed on CN during the acquisition were already extraordinary in a historical context. CN has made nearly \$200 million in investments and adjusted operating practices to mitigate issues in ways unprecedented among Class I railroads after the acquisition of a relatively short-distance rail line. These investments have been made in good faith with large benefits to shippers, communities, and the public, as a whole. Extending the oversight period would be akin to, in effect, “moving the goalposts at the last moment.” This would not only be unfair, it would cast a shadow over its capital investment program and those of other Class I railroads. It could have a chilling effect on the industry’s willingness to embark on activities involving the STB. Railroads need clear and predictable policies to prosper, and unfortunately, an extension would do precisely the opposite.

Second, in my view, the STB does not have the mandate, or the appropriate staff, to take on the role of “policemen” for a period lasting more than a few years after a transaction. An extension violates the spirit of what STB was envisioned upon its creation. Extensions of this kind risk undermining the benefits of deregulation by interjecting a strong element of politics into the oversight process.

Our railroad industry has sharply increased its investments to assure safe and efficient operations over the past few years. It has thrived with clearly articulated rules regarding emissions, safety, and other matters of public concern. An extension risks fostering an unpredictable and politicized environment with negative consequences for an industry working to modernize its physical plant for everyone's benefit.

Sincerely,

A handwritten signature in black ink that reads "Joseph P. Schwieterman". The signature is written in a cursive style with a horizontal line underneath the name.

Joseph P. Schwieterman, Ph.D.  
Professor, School of Public Service  
Director, Chaddick Institute for Metropolitan Development  
jschwiet@depaul.edu

cc: Richard H. Streeter, Esq.  
Paul A. Cunningham, Esq.  
David A. Hirsh, Esq.



September 12, 2014

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington Dc 20423

Re: STB Finance Docket No. 35087, Canadian National Ry. & Grand Trunk Corp. –  
Control—EJ&E West Co.

Dear Ms. Brown:

On behalf of the Calumet Area Industrial Commission, an industry association comprised of business people from varying industries on the south side of Chicago, I would like to share some of my perspective of your ongoing oversight of CN railroad as they work to complete your oversight of their acquisition of the Elgin, Joliet & Eastern Railway.

CN acquired the E J&E in an effort to make far better use of the underutilized resource in an effort to speed their traffic through the Chicago region. A side benefit of that was that by getting their own traffic out of the inside of Chicago, they were able to free up some space for other railroads' trains to operate, thereby relieving at least some of their own capacity challenges across the city.

At the time of your approval, many of us in Industry, myself included, were amazed at the amount of oversight that was initially required, and we took note of what seemed to be an unduly long time of oversight.

Please consider what your actions, if undertaken, will do to the private sector as they weigh their own decisions to invest or not in infrastructure needs. Many of our members are also regulated industries, and they watch carefully to be aware of what the mood of government is as changes are proposed in their sector. I can think of no other example of an industry taking on a (relatively) modest investment themselves, using their own funds, just to be additionally burdened by myriad reporting requirements over more years than warranted. My fear is that our members will see any extension of your oversight on CN not in a vacuum, but as an example of the dark side of federal involvement. It could have a very real dampening effect of discouraging other private investment in infrastructure, which is precisely the opposite of what is needed in the country today.

Please leave the current terms of your oversight as is and allow the natural course of business to take effect, rather than add even more useless requirements to what is already an over-the-top project.

Sincerely,

Ted Stalnos  
President

**CERTIFICATE OF SERVICE**

I certify that I have this 16th day of September, 2014, served copies of CN's Reply to Petition of Village of Barrington for Extension of Oversight upon all known parties of record in this proceeding by first-class mail or a more expeditious method.



Marissa A. Robertson