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March 10, 2016

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

240279
ENTERED
Office of Proceedings
March 10, 2016
Part of
Public Record

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

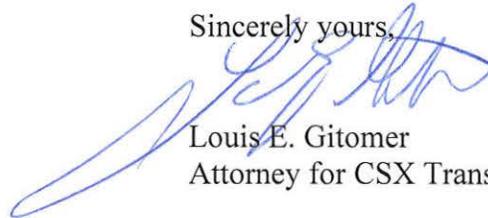
Dear Ms. Brown:

Attached is the CSX Transportation, Inc. Reply to the Petition of the City of Chicago and Village of Evergreen Park to Reopen and Impose Sanctions. CSXT Is efilng the Reply.

CSXT has been served at 3:48 pm on March 10, 2016, with a filing on behalf of citizens and community organizations supporting the Petition. CSXT reserves the right to respond.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35522

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

REPLY OF CSX TRANSPORTATION, INC. TO
PETITION OF THE CITY OF CHICAGO AND VILLAGE OF EVERGREEN PARK TO
REOPEN AND IMPOSE SANCTIONS

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Attorneys for: CSX TRANSPORTATION, INC.

Dated: March 10, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35522

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

REPLY OF CSX TRANSPORTATION, INC. TO
PETITION OF THE CITY OF CHICAGO AND VILLAGE OF EVERGREEN PARK TO
REOPEN AND IMPOSE SANCTIONS

Chicago is the hub of global rail traffic in North America, the only place where all six of the leading North American freight railways converge. CSX Transportation, Inc. (“CSXT”) is proud to be one of those, and proud to have operated in Chicago’s 19th Ward and Evergreen Park for decades on CSXT’s Blue Island Subdivision just west of Western Avenue.

During this time, CSXT has worked cooperatively to address residents’ concerns on many occasions, including the installation of the first Quiet Zone in the State of Illinois. CSXT moves approximately 140 trains per week over the Blue Island Subdivision with few incidents, and supports many local community institutions that help give this vibrant neighborhood its rich character. CSXT aims to safely and efficiently move cargo to its destination for ultimate use by consumers and businesses, contributing to Chicago’s economic success, with minimal impact on the communities where we operate, including the 19th Ward and Evergreen Park.

In 2013 CSXT acquired an operating easement over the Elsdon Line near Sacramento Avenue, which provides a critical alternative for freight throughout Chicago. Historic freight volume surges, old infrastructure, and record-breaking winter weather provided great challenges to CSXT’s new operations in the community, making for some difficult situations that CSXT

regrets. To correct these issues, CSXT has invested over \$12 million toward infrastructure to achieve better operations on the Elsdon Line. Some of these improvements include:

- New rebuilt grade crossings on major intersections on the Elsdon Line, including 127th Street, 119th Street, 115th Street, 111th Street, 103rd Street, 99th Street, 95th Street, 94th and Kedzie, 91st Street, and 87th Street;
- New mobile-based signal technology;
- New installation of 42,000 ties;
- New camera monitoring technology at the Evergreen Park Municipal Center to allow real-time monitoring of track operating conditions;
- New operating procedures and inspection procedures for the impacted communities; and
- New “double-wiring” of grade crossing signals at 94th & Kedzie and 95th Streets.

Each of these investments has improved crossing-signal performance and decreased blocked crossings. In fact, upon completion of these investments in 2014 and 2015, false signal activations have been dramatically reduced and nearly eliminated, blocked crossings at 95th Street have decreased significantly, and CSXT has steadily decreased the incidence of trains idling in the 19th Ward.

CSXT stresses that it has adhered to all conditions imposed by the Board on CSXT’s acquisition of the Elsdon Line and that there is no basis to reopen the proceeding that approved the acquisition.

INTRODUCTION

Three years after the Board denied the Village of Evergreen Park’s (the “Village”) requested conditions on CSXT’s acquisition of an operating easement over the 22.37 mile Elsdon Line between Munster, Indiana, and Elsdon, Illinois,¹ the Village has returned to the Board seeking the same conditions—plus an unspecified fine and a “suspension” of freight operations

¹ *CSX Transp., Inc.—Acquisition of Operating Easement—Grand Trunk Western R.R. Co.*, STB Docket No. FD 35522, at 3, 6 (served Feb. 8, 2013) (“*Approval Decision*”).

over this critical Chicago rail line.² Petitioners' requests for this relief are predicated on a misunderstanding of the *Approval Decision*, on erroneous reliance on the conditions imposed on the Board's approval of the *CN-EJ&E* transaction, and its non-recognition of the intensive efforts CSXT has taken to address the public's concerns about operations on the portion of the Elsdon Line between Ashburn and Blue Island Junction (the "Subject Line"), where CSXT operates approximately 45-50 trains per week. The record shows that CSXT has complied with every condition in the *Approval Decision* and that CSXT has worked assiduously to minimize disruptions to the community and to eliminate the causes of blocked crossings. CSXT seriously regrets the operational issues and signal malfunctions that have led to a number of blocked crossings on the Subject Line, and it is committed to working to correct them in conjunction with the community. But there is no basis for the relief that Petitioners seek, and the Petition should be denied.

In 2013, the Board approved CSXT's acquisition of an operating easement over the Elsdon Line, after finding that the transaction "would likely create many public and private benefits," would permit "more efficient CSXT operations in the Chicago area," and would "advance the goals of CREATE" by redirecting traffic from more congested rail corridors.³ The Office of Environmental Analysis ("OEA") conducted a detailed Environmental Assessment, which concluded that the transaction would have no significant environmental impact and

² Petition of the City of Chicago and Village of Evergreen Park to Reopen and to Impose Sanctions at 16-17, *CSX Transp., Inc.—Acquisition of Operating Easement—Grand Trunk Western R.R. Co.*, STB Docket No. FD 35522 (filed Feb. 12, 2016) ("Petition" or "Pet."). The Village was joined in its Petition by the City of Chicago. The City and the Village are collectively referred to herein as "Petitioners."

³ *Approval Decision* at 6. CSXT acquired an exclusive, perpetual, non-assignable railroad operating easement over the Elsdon Line from the Grand Trunk Western Railroad Company ("GTW"). Although GTW continues to own the Elsdon Line and operate over it pursuant to trackage rights, CSXT is responsible for the dispatching and maintenance of the Elsdon Line.

imposed certain mitigation measures to reduce potential adverse impacts to emergency response and noise/vibration.⁴ But OEA and the Board specifically rejected requests by the Village to take additional measures, such as capping the number of trains on the line, precluding train movements for a 3.5 hour time period every weekday morning and evening, and installing a grade-separated crossing at 95th Street.⁵

The Village is now seeking similar restrictions. The Petition asks the Board to reopen the *Approval Decision*, to impose the restrictive measures that it previously rejected, and to consider other actions such as fines and even a suspension of all CSXT operations on the Elsdon Line. But the Petition neither meets the high standard required to reopen a Board decision, nor demonstrates that CSXT has failed to comply with any of the conditions in the *Approval Decision*.

Petitioners' primary argument is that there have been an unacceptably high number of grade crossing blockages on the Elsdon Line. While CSXT takes grade crossing blockages seriously and has worked to minimize them, the record is clear that CSXT has not violated any *Approval Decision* condition related to grade crossing blockages. In the first place, almost all the grade crossing blockages that Petitioners cite are unrelated to the train operations at issue in the *Approval Decision*. Petitioners include differing counts of how many times a crossing was blocked more than 10 minutes. Pet. at 14.⁶ But Petitioners admit that "86 percent" of these

⁴ *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad Company*, STB Docket No. FD 35522 (served Jan. 9, 2013) ("*Final EA*").

⁵ *Id.* at 19-21; *Approval Decision* at 11-14.

⁶ The text of the Petition includes two differing counts of grade crossing blockages exceeding 10 minutes. *Compare* Pet. at 13 (asserting "128 instances . . . in which crossings were blocked for more than ten minutes") *with id.* at 14 (asserting "202 incidents, . . . [e]ighty six [of which] lasted for less than ten minutes"; 202 - 86 = 116). Exhibit C itself appears to show a still-different count of 129 such blockages.

incidents were caused not by trains, but rather by faulty signal equipment that activated gates while no train was at the crossing. The problems caused by this equipment (while serious and regrettable) were the result of aging signals equipment that CSXT inherited and have nothing to do with the underlying transaction or the *Approval Decision* conditions. Moreover, since it acquired its rights on the Elsdon Line, CSXT has invested millions of dollars to upgrade equipment and prevent these false signal activations, investments that are generating significant improvements in signals performance at crossings on the Line.⁷

Furthermore, no condition of the *Approval Decision* was violated by the relatively rare instances where a grade crossing blockage of longer than ten minutes was caused by a stopped train. Petitioners state that every blockage longer than 10 minutes violates Voluntary Mitigation Measure 6 because CSXT is obligated to cut trains to avoid any such blockage. This position misstates the condition. Voluntary Mitigation Measure 6⁸ provides that “a public crossing must not be blocked longer than 10 minutes *unless it cannot be avoided.*” *Final EA* at 5 (quoting VM 6) (emphasis added). The Board thus specifically recognized that sometimes a crossing blockage of over ten minutes will be unavoidable, particularly in the congested Chicago terminal. And while CSXT does cut trains where that is the best way to clear a blocked crossing, in many situations cutting trains would only make the situation worse. Cutting trains takes time—typically at least 30-35 minutes to cut the train and at least another 30-35 minutes to reassemble it—and grade crossings are blocked during most of the cutting and rebuilding process. Cutting trains thus only makes sense in instances when CSXT expects that a blockage will be lengthy. The only reasonable reading of Voluntary Mitigation Measure 6 is that trains should be cut to

⁷ Exhibits 3 and 4 detail CSXT’s post-transaction investments to improve the Elsdon Line and upgrade grade crossing equipment on the Line.

⁸ Potentially relevant mitigation measures from the *Approval Decision* are reproduced and attached in Exhibit 2.

relieve blockages where cutting will actually relieve the blockage. Petitioners' alternative claim that a train must be cut every time a crossing is blocked for ten minutes would unnecessarily lengthen many grade crossing blockages and is inconsistent with the purpose and intent of Voluntary Mitigation Measure 6.

Petitioners' suggestion that CSXT has failed to comply with the reporting condition of the *Approval Decision* (Voluntary Mitigation Measure 45) by not cataloging every time that a grade crossing is blocked more than 10 minutes is also inaccurate. The *Approval Decision* does not require CSXT to catalog grade crossing blockages. Unlike in the *CN-EJ&E* case⁹—in which the Board imposed a specific condition requiring a detailed accounting of crossing blockages—the only reporting condition in the *Approval Decision* was for “quarterly reports . . . on the progress of, implementation of, and compliance with the mitigation measures.” *Approval Decision* at 23 (quoting VM 45). There is no question that CSXT supplied those reports. Although the *Approval Decision* did not require CSXT to report the reason for blockages and the number of blockages, CSXT voluntarily provided information about blockages in the interest of transparency, to apprise the Board of the problems that CSXT was encountering in implementing operations over the Elsdon Line, and to demonstrate CSXT's compliance with the conditions imposed. CSXT's good-faith effort to provide public updates on grade crossing blockages—even though no such updates were required by the Board—is the polar opposite of a situation where a railroad failed to comply with a reporting obligation imposed by the Board.

In short, there is no basis for any of the relief sought in the Petition, and it should be denied. But the lack of legal merit to Petitioners' claims does not mean that CSXT is satisfied with performance on the Elsdon Line. We are not. CSXT prides itself on working well with its

⁹ *Canadian Nat'l Ry. Co. and Grand Trunk Corp.-Control-EJ&E West Co.*, STB Docket No. FD 35087 (served Dec. 24, 2008) (“*CN-EJ&E*”).

neighbors and being responsive to the concerns of the communities through which it operates. CSXT has responded to reported problems on the Elsdon Line by investing over \$12 million toward infrastructure improvements, including substantial signals and grade crossing upgrades. CSXT also is working with other railroads to ensure better communication practices to avoid future blockages. And throughout this process, CSXT has reported to local governments, elected representatives, and the Board about the steps it is taking. CSXT will continue working with all stakeholders to ensure that the Elsdon Line can continue to play its critical role in reducing Chicago rail congestion without unduly disrupting the community.

BACKGROUND

A. The *Approval Decision*

On August 13, 2012, CSXT filed a minor application under 49 U.S.C. § 11323(a)(2) seeking approval from the Board to acquire an exclusive, perpetual, non-assignable railroad operating easement over the Elsdon Line from GTW. The OEA served a Draft Environmental Assessment (“*Draft EA*”) on October 5, 2012. After receiving and analyzing comments, OEA served a Final Environmental Assessment (“*Final EA*”) on January 9, 2013, recommending that the Board impose 46 Voluntary Mitigation Measures and 4 Mandatory Mitigation Measures. The *Approval Decision* granted the application and imposed the mitigation measures recommended by OEA.

Both the *Final EA* (at 19-26), and the *Approval Decision* (at 11-14), rejected three conditions requested by the Village: (1) a grade separation at 95th Street; (2) a prohibition on train traffic in the Village from Monday-Friday from 6:30 - 10:00 am and 3:30 -7:00 pm, except on Friday from 3:00 -7:00 pm; and (3) a restriction on the number of trains CSXT operates through the Village.

B. CSXT's Quarterly Reporting

The *Approval Decision* (at 23) imposed a single reporting requirement, Voluntary Mitigation Measure 45, which provided that:

CSXT shall submit quarterly reports to the Board's Office of Environmental Analysis on the progress of, implementation of, and compliance with the mitigation measures for a period covering the first three years of operational changes associated with the Proposed Transaction.

Pursuant to this condition, CSXT has submitted 10 Quarterly Reports to OEA covering the entire period between June 30, 2013 and November 30, 2015.¹⁰ Each Quarterly Report lists all 46 Voluntary Measures and all four Mandatory Mitigation Measures and advises OEA on "the progress of, implementation of, and compliance with the mitigation measures" during the relevant quarter. In addition, CSXT has identified grade crossings that have been blocked by stopped trains and has continuously advised OEA of problems with false activations of grade crossing devices as part of each Quarterly Report, even though CSXT is not required to specifically report this information.

In addition, CSXT has been engaged in numerous meetings and contacts with the local communities and their elected representatives to identify and resolve issues since CSXT acquired the easement over the Elsdon Line. A summary is provided in Exhibit 5.

C. The Elsdon Line's Critical Role in Chicago Rail Transportation and the CREATE Project

As the Board recognized in the *Approval Decision*, CSXT's operations over the Elsdon Line are one facet of the overall rail system in Chicago, and the Line must be considered in the context of this operationally complex and critically important rail hub. When the Board

¹⁰ The Third Quarterly Report filed on March 31, 2014 covers the entire period between December 1, 2013 and February 28, 2014. The Petition's assertion that CSXT failed to submit a report covering the period of January 1, 2014 to February 28, 2014, is therefore flatly wrong. *See* Petition at 12.

approved the transaction it noted both that CSXT operations over the Elsdon Line would improve efficiency in Chicago and that approval would “advance the goals of CREATE” by redirecting traffic from more congested rail corridors.¹¹ The Chicago Region Environmental and Transportation Efficiency (CREATE) Program is a series of 70 projects that are designed to add capacity to the region’s railroad operations, enhance safety, and reduce conflict with the motoring public. CREATE is a formal partnership between USDOT, Illinois Department of Transportation, Chicago Department of Transportation, the Belt Railway of Chicago, the Indiana Harbor Belt, Metra, Amtrak, and all Class I freight railroads operating in Chicago. To date, 25 projects have been completed and another 11 are in final design.

Two CREATE projects involve the Elsdon Line, a connection from the Villa Grove subdivision to the Elsdon Line at Thornton Junction, and a newly installed crossover at Blue Island Junction. CREATE contemplates, therefore, that the Elsdon Line will provide some relief to higher-volume rail lines that travel through Chicago suburban communities such as Bridgeview, Chicago Ridge, Oak Lawn, Alsip, and Blue Island as well as north of Dolton Junction in many of Chicago’s wards. CSXT served as the lead railroad on both CREATE projects involving the Elsdon Line (as well as on many other projects throughout the Chicago region).

The Illinois Department of Transportation and the Illinois Commerce Commission have identified 25 grade-separation projects as part of CREATE. These projects were selected because of their relative importance to improving transportation fluidity in Chicago. One of these grade separations is slated for Evergreen Park on CSXT’s Blue Island Subdivision at 87th

¹¹ *Approval Decision* at 6.

Street. Neither 95th Street nor any other Elsdon Line crossings has been identified as a candidate for grade separation in the CREATE initiative.

D. CSXT's Efforts to Reduce Grade Crossing Blockages

As discussed above, the vast majority of grade crossing blockages on the Elsdon Line have been the result of signal malfunctions—not stopped trains. When CSXT assumed operation of the Elsdon Line, significant work was required to restore it to proper operating condition, including the reconstruction of numerous at-grade road crossings. Once CSXT became aware of the amount of work required, it expended over \$12,200,000 repairing the Elsdon Line since acquiring the easement in 2013. *See* Exhibit 3. The completion of work that resurfaced and rewired grade crossings in 2014 also improved the signaling system for grade crossings. In addition, in 2015 CSXT spent more than \$650,000 to correct the false activation of signals. *See* Exhibit 4. This investment has helped to significantly reduce the problems created by false activation of signals.

CSXT also has worked to reduce train-related grade crossing blockages. A fluid railroad system relies on moving trains. It is not in CSXT's interest to stop trains on its railroad unnecessarily. However, CSXT sometimes must stop trains for safety reasons, such as when one of the railroads that the Elsdon Line crosses informs CSXT of potential train interference. To put matters simply, sometimes CSXT is given a green light to proceed onto the Elsdon Line, and then the green light turns red. For example, at Ashburn the Elsdon Line crosses a line used by the Norfolk Southern Railway Company ("NS") and Metra. On some occasions CSXT trains traveling north to Ashburn have been given clearance to proceed, but subsequently have been stopped on the Elsdon Line because of interference with Metra trains using the NS line through Ashburn. (Metra trains have priority over the freight trains on the Elsdon Line, due to the Chicago Operating Protocol.) To reduce the instances of this problem, CSXT recently has

reexamined its operating protocols and has worked to identify operating windows on the Elsdon Line that will avoid blockages caused by Metra trains operating on schedule over Ashburn. In the future, before a CSXT train proceeds northbound on to the Elsdon Line CSXT will communicate with NS both about immediate clearance to proceed and about whether Metra trains are operating per schedule. This strengthened protocol should alleviate delays to northbound trains on the Line because of conflicts with Metra trains at Ashburn.

Another situation occurs with trains traveling southbound on the Line, which run into conflicts at Blue Island Junction where CSXT trains, other trains using the Elsdon Line, and IHB trains must cross. CSXT is working with these other railroads to establish protocols to eliminate delays caused by the large number of crossings at Blue Island Junction. Other trains are delayed because of congestion in Barr Yard or other connecting lines. CSXT is working to ensure that Barr Yard has adequate capacity to accommodate trains dispatched over the Line to avoid future delays.

Operations in Chicago are complex and inter-related. Operational changes on one railroad line have repercussions throughout the Chicago rail network and require cooperation among railroads. To that end, in December 2015 the Chicago railroads established the Chicago Integrated Rail Operations Center (“CIROC”). This continuously manned office is staffed by representatives from eight of the Chicago railroads, including CSXT. The office is charged with monitoring the overall Chicago terminal and facilitating operational coordination to reduce and limit inter-railroad congestion within the terminal. The office is equipped with communications and data systems that enable overviews of the entire Chicago terminal. CIROC has helped to coordinate Chicago terminal operations that reduce delays and adverse impacts on the Elsdon Line.

As CSXT has consistently reported in its Quarterly Reports, it has only cut one train that was stopped on the Elsdon Line. There is a good reason for this. CSXT does not cut trains when it determines that it will take longer to cut a train and then rebuild it than it will to just let a train sit, because otherwise crossings would be blocked even longer. When a CSXT train enters the Elsdon Line it has a clear signal to the point where it will leave the line. However, while en route, the train may be advised that the route is no longer clear and that it must stop because of a conflict. At that time, the crew inquires as to the length of the delay, which informs the decision on whether to cut the train. If the delay is less than the length of time necessary to cut and rebuild the train, the crew will wait for the delay to clear. Most blockages (even those that exceed ten minutes) are shorter than the time necessary to cut and rebuild the train, and thus in most situations the best way for CSXT to clear the blocked crossing is to stand ready to move the train once it has clearance to proceed.

Cutting a train would be counterproductive unless a crew knows from the outset that a delay is likely to be unusually long. To cut a train at just one crossing, the conductor must climb down from the locomotive and walk to the back of the train on the uneven ballast. It usually takes about 20 minutes to walk from the locomotive to the end of a one-mile long train, and even more time for a longer train (or at night or in inclement weather). The conductor must protect the backward shove of the train so that the location of the cut of the train is at least 200 feet from the at-grade crossing.¹² The train is then shoved backwards and stopped, taking about five minutes. It then takes the conductor about five to ten minutes to cut the rear section of the train and set the hand brakes. It thus usually takes a minimum of 30-35 minutes to cut a single section

¹² See Voluntary Mitigation Measure 6.

of a train on the Line. If more than one crossing is blocked, the process must be repeated for each blocked crossing, taking another 30-35 minutes per crossing.¹³

But cutting a train is not the end of the process. The train must be rebuilt in order to move again. To rebuild a train, the conductor must walk to the crossing and set flares at the grade crossing to warn traffic that the grade crossing cannot be used during the rebuilding process. The train must then back-up to the cars that have been cut, recouple the cars to the train, release the hand brakes, ensure that there is air going to the brakes, and conduct a brake test. Then the conductor must walk back to the locomotive. This is also a 30-35 minute process. If there is more than one cut necessary the amount of time required can roughly be multiplied by the number of cuts and builds. Weather and darkness only lengthen the amount of time necessary to cut and rebuild a train.

In the rare event of a blockage caused by mechanical failure, cutting the train may be impossible until the mechanical failure is corrected. As described above, cutting a train requires both a backward shove of the rear section of the train past the crossing and then moving the rest of the train forward to clear the crossing. If a mechanical issue precludes those movements, it must be corrected before the train can clear the crossing.

For these reasons, Petitioners' assertion that a train should be cut every time a grade crossing is blocked for more than 10 minutes is antithetical to the objective of clearing crossings as soon as possible. If CSXT were to take that approach, grade crossing blockages would be even longer.

¹³ While this process is occurring, other crossings may be blocked while the train makes the necessary moves to free the initial blocked crossing.

ARGUMENT

The Petition seeks reopening of the *Approval Decision* for the imposition of additional conditions and the imposition of sanctions. However, the Petition has failed to meet the criteria of 49 C.F.R. § 1115.4 or Voluntary Mitigation Measure 46.

A. This is Not *CN-EJ&E*.

The Petition does its best to make this case look like *CN-EJ&E*. But it isn't. In *CN-EJ&E*, a majority of the Board fined a railroad for knowingly violating a Board order imposing a specific reporting condition. No such condition exists in this case, and there is no evidence that CSXT knowingly violated anything.

Indeed, Petitioners' desire to make this case look like *CN-EJ&E* is so strong that they quote language from *CN-EJ&E* as if it were from the *Approval Decision*. For example, the Petition (at 4) states that:

Significantly, STB's Office of Environmental Analysis (OEA) concluded that 'even with all of SEA's final recommended conditions, the Proposed Action still would have adverse environmental effects that could not be fully mitigated. For example ... there could be vehicle delays at highway/rail grade crossings...' [Final EA] at 4-3 (emphasis added)

None of that quoted language is from the *Final EA*.¹⁴ Rather, the language the Petition attributes to the *Final EA* actually is on page 4-3 of the Final Environmental Impact Statement served in *CN-EJ&E* on December 5, 2008. The Petition's reference to a "Final Environmental Impact Statement" that supposedly concluded that "the proposed transaction would adversely affect . . . emergency response" also refers to *CN-EJ&E*—not this case. Pet. at 4. In this case there was an EA—not an EIS—and that *Final EA* concluded that "our preliminary finding of no

¹⁴ The Petition's references to "SEA" (OEA's predecessor), the "Proposed Action" (the term used in the *Draft EA* and *Final EA* is "Proposed Transaction"), and the citation to page "FEA at 4-3" (there is no page 4-3 in the *Final EA*) all appear to be references to the *CN-EJ&E* Final EIS.

significant environmental impact and our preliminary conclusions in the Draft EA were correct.”
Final EA at iii.

Moreover, the quarterly reporting requirement in the *Approval Decision* is significantly different than the reporting requirements in *CN-EJ&E*. Condition 2 imposed by the Board in *CN-EJ&E* (at 73), provides:

As part of the Applicants’ quarterly reports that will be required under VM 101, VM 36, and Condition 74, Applicants shall report quarterly to SEA and communities adjacent to or intersected by the EJ&E rail line on the frequency, cause, and duration of train blockages of crossings of 10 minutes in duration or greater, listing each delay and including any notifications from persons affected by the blockage and the time of the beginning and end of each delay. Applicants shall summarize the cause of each type of blockage that the Applicants self-report and shall state how the Applicants intend to reduce the incidence of all blockages not attributed to emergencies or weather-related incidents (sometimes called Acts of God) in the quarterly report.

CN-EJ&E thus required a specific and detailed catalog of all crossing blockages exceeding 10 minutes. No such condition was imposed here, and CSXT never purported that its Quarterly Reports would list every single crossing blockage.

In short, this case is not *CN-EJ&E*.

B. The Petition Does Not Justify Reopening the *Approval Decision*.

The Board does not reopen decisions lightly. To qualify for reopening under 49 C.F.R. § 1115.4, “[a] petition to reopen must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Board make such a determination.” The Board recently explained that circumstances justifying reopening must be material—*i.e.*, they must be circumstances that would materially affect the decision:

Where, as here, a petitioner alleges material error, it must do more than make a general allegation. It must substantiate the claim of material error. *See Canadian Pac. Ry.—Control—Dakota, Minn. & E. R.R.*, FD 35081,

slip op. at 4 (STB served May 7, 2009) (denying petition for reconsideration where petitioner did not substantiate its claim of material error, but instead restated arguments previously made and cited evidence previously submitted). The alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected. *See Montezuma Grain v. STB*, 339 F.3d 535, 541-42 (7th Cir. 2003); *DesertXpress Enters.—Pet. for Declaratory Order*, FD 34914, slip op. at 6-8 (STB served May 7, 2010).¹⁵

Here, the Petitioners seek reopening “on the basis of materially changed facts and circumstances,” but they do not explain why anything in their Petition would materially affect the *Approval Decision*. Pet. at 1. This does not meet the criteria of § 1115.4.

While Petitioners do not specify what “materially changed facts and circumstances” they believe justifies reopening, presumably they are referring to their concerns about blocked crossings. Exhibit C to the Petition contains reports by Village police of crossing blockages of varying lengths reported between July 3, 2013, and November 30, 2015. But Petitioners admit that 86% of them involved faulty gate activation when a train was not present. Pet. at 14. These incidents are not “changed circumstances” that could have materially affected the *Approval Decision*. Indeed, they have nothing to do with CSXT train operations on the line and are rather the result of equipment malfunctions on preexisting signals equipment. And CSXT has responded to these issues by rebuilding major grade crossings (including those at 127th Street, 119th Street, 115th Street, 111th Street, 103rd Street, 99th Street, 95th Street, 94th and Kedzie, 91st Street, and 87th Street); by double-wiring grade crossing signals at 94th & Kedzie and 95th Streets in 2014; and by investing over \$650,000 in 2015 to stop the false activation of signals. *See* Exhibit 4. CSXT’s reports indicate that its investment has led to a significant decrease in the false activation of signals.

¹⁵ *Canadian Nat’l Ry. Co. and Grand Trunk Corp.—Control—EJ&E West Co.*, STB Docket No. 35087 (Sub-No. 8) at 3-4 (served Nov. 4, 2015).

The instances in which a train caused a grade crossing blockage are also not changed circumstances that could materially alter the decision. The Board's decision recognized that there would be "unavoidable" crossing blockages on the busy Chicago network, and it created mitigation measures that were specifically contemplated to work around such blockages. For example, pursuant to Mandatory Mitigation Measure 2, CSXT installed closed circuit camera monitoring systems to allow emergency responders to have real-time information on relevant grade crossings to allow rerouting of emergency vehicles in the event of a blockage. And the Board has been aware throughout the monitoring proceeding of crossing blockages and CSXT's efforts to reduce them. As detailed above, CSXT has worked to improve its operating protocols to reduce delays for both northbound and southbound trains.

In sum, circumstances have not changed to warrant reopening. CSXT is operating in a difficult environment caused by reliance on other railroads and the general difficulty of operating in the Chicago area. The only changes that have occurred are positive ones, such as the physical improvement to the Elsdon Line as a result of an investment of over \$12 million on improvements, and an addition of over \$650,000 in the signal system to eliminate false signal activations caused by old and worn out equipment. Finally, CSXT is making changes to operations along the Elsdon Line between Ashburn and Blue Island Junction to address the crossing conflicts that have affected optimal operations over that portion of the Line.

Nor has the Petition met the requirements of Voluntary Mitigation Measure 46. That provision requires "a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions" for the Board to "review the continuing applicability of its final mitigation." The environmental analysis included a hard look at traffic effects, including potential delays. For example, the data used to calculate Traffic and

Grade Crossing Delay in Section 3.1.1 of the *Draft EA* were based on average numbers that included significant delays. The Petition does not address how the calculations in Table 3.1-5 of the *Draft EA* would be affected, if at all, by any information in the Petition or if any changes would warrant a different conclusion. And the relatively rare instances of a grade crossing blockage caused by train operations authorized by the *Approval Decision* suggests that the real-world experience of delays on the line has not been much different from what OEA measured.

C. The Conditions Requested in the Petition Should Be Denied.

The Petition does not explain how the proposed conditions will resolve the purported problems it describes, or why the conditions would not increase the problems and spread them to other areas of the complicated Chicago rail system. The Petition seeks the imposition of the following five conditions on CSXT: (1) require a grade separation at 95th Street, (2) limit the hours of CSXT operation on Elsdon Line, (3) require a train entering the Elsdon Line to have a clear path to exit, (4) require CSXT to suspend operations over the Elsdon Line until plans for compliance are prepared, and (5) fine CSXT an undetermined amount for violating the mitigation measures.¹⁶

Under the Board's rules, "[t]he Board may impose conditions that are operationally feasible and produce net public benefits, but will not impose conditions that undermine or defeat beneficial transactions by creating unreasonable operating, financial, or other problems for the combined carrier." 49 C.F.R. § 1180.1(d). The Petition has failed to demonstrate facts justifying the conditions sought, and it has failed to address the Board's requirements for imposing

¹⁶ Petitioners also suggest that the Board should "conduct an audit" of CSXT's reporting, but it is not clear what they think should be "audited." Pet. at 3, 7, 16. As demonstrated above, Petitioners are mistaken that the *Approval Decision* required CSXT to catalog grade crossing delays in Quarterly Reports. "Auditing" those reports doesn't change the fact that the *Approval Decision* does not contain such a reporting condition. If the Board wishes to further review CSXT's past Quarterly Reports, CSXT will gladly cooperate in such further review.

conditions. The Petition does not address whether the conditions are operationally feasible or why the requested conditions would not create unreasonable operating problems on the Elsdon Line and throughout Chicago.

A grade separation at 95th Street has not been justified. The *Draft EA*, *Final EA*, and *Approval Decision*, all found no justification for the construction of a grade separation at 95th Street. The Petition provides no new evidence justifying the construction of a grade separation at 95th Street.

No new evidence supporting a limit to CSXT's hours of operation on Elsdon Line has been submitted. The Village previously sought to limit CSXT's hours of operation. The *Final EA* and *Approval Decision* concluded that there was no justification for such a restriction, and the Petition does not include any new evidence supporting such an operationally intrusive condition.

There is no evidence that CSXT allows trains to enter the Elsdon Line without the availability of a clear route over it. CSXT's trains only are allowed to enter the Elsdon Line when they have been offered a clear route to the point of exit. However, railroads operate in a fluid environment with conditions affecting train movements changing all the time. Even if there is a clear route when a train enters the Elsdon Line, once on the line there may be an incident requiring the train to slow or stop. For example, NS trains operate over the Ashburn at-grade crossing of the NS line and the Elsdon Line, as do Metra commuter trains. The commuter trains are given priority over freight trains at Ashburn. If a commuter train is running late, it will be allowed to pass over Ashburn, while a CSXT train is delayed a sufficient time for safe operation. At Blue Island Junction, CSXT and B&OCT/Indiana Harbor Belt cross, as do trains from the other railroads that have rights over the lines including BNSF, CN, UP and IAIS. After a

CSXT train enters the Elsdon Line with a clear route, another train may have been delayed or expedited to reach Blue Island Junction, eliminating the clear route that CSXT had. Destination yards or connecting lines that were expected to have capacity to receive a train from the Elsdon Line may not have worked through congestion problems, requiring delay of a train on the Elsdon Line. There are also situations where a train may have a clear route, but then suffers a mechanical failure, as occurred to the locomotive of a GTW train on the Elsdon Line earlier in 2016.

It is CSXT's protocol to require trains entering the Elsdon Line to have a clear route to the point of exit at the time the train enters the line. However, a condition requiring that CSXT ensure a clear route at the time trains enter the Elsdon Line and that the clear route remain as long as the train is on the Line is operationally infeasible and would have an adverse impact on other railroads throughout the Chicago area, including commuter trains. It would also limit the options and fluidity of railroad operations throughout Chicago.

CSXT should not be required to suspend operations over the Elsdon Line. The request that CSXT suspend operations is unjustified. CSXT is in complete compliance with the conditions in the *Approval Decision*, and no "plan for compliance"¹⁷ is required. Moreover, there is no precedent for such a "suspension," which not only would redirect CSXT traffic onto other congested Chicago lines, but also would force rerouting of several trains of other carriers that operate over the Elsdon Line pursuant to trackage rights. This condition would cause both significant adverse operating conditions for CSXT and cascading problems throughout the Chicago area as a result of the rerouting of these trains.

¹⁷ *Id.* at 5.

There is no basis to fine CSXT. CSXT is in complete compliance with the conditions imposed in the *Approval Decision*, and this case is not *CN-EJ&E*. *CN-EJ&E* included a specific reporting condition requiring a tally of each grade crossing blockage; the *Approval Decision* did not. The Board found in *CN-EJ&E* that the railroad had knowingly failed to provide complete reports. Here, CSXT's Quarterly Reports provide both the information required by the *Approval Decision* and additional detail on crossings blocked by trains and faulty gate activations. The Petition does not justify the highly unusual sanction of a fine.

In short, there is no basis for any of the conditions that Petitioners request

CONCLUSION

CSXT is focused at the highest levels of its organization on the challenges of operations over the Elsdon Line and the impacts of those operations on the citizens of Chicago's 19th Ward and the Village of Evergreen Park. As explained in this Reply, CSXT has made significant investments in the Line, including to the signaling systems that were not in good condition when CSXT took control of operations on the Line in 2013. Challenges remain, and CSXT is very cognizant of the concerns of the public and the public's elected representatives with problems on the Elsdon Line. CSXT is working hard every day to continue addressing those issues, and we are gratified that our efforts have begun to show significant, palpable improvements, including a significant reduction in the number of false signal activations, in the frequency of blocked crossings at 95th Street, and in a reduction in the amount of train idling in the 19th Ward. There is more to be done, and CSXT pledges to continue working diligently to minimize the impacts of its operations on the Petitioners and their citizens. However, the predicate for relief upon which the Petitioners rely – namely that CSXT has not complied with conditions that were imposed not on it but on CN in the unrelated EJ&E transaction – is simply wrong.

The Petition fails to meet the criteria for reopening under 49 C.F.R. § 1115.4 and Voluntary Mitigation Measure 46. There is no new evidence justifying the conditions sought in the Petition. CSXT has worked diligently since it acquired the Elsdon Line on June 27, 2013, to improve the physical condition of the Line, including through the expenditure of over \$12 million and the review of protocols to improve the flow of traffic through Evergreen Park and the 19th Ward. CSXT has and continues to engage with the local communities to identify and resolve problems, and CSXT will continue to file the Quarterly Reports as required by the Board.

CSXT respectfully requests that the Board deny the Petition.

Respectfully submitted,

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Dated: March 10, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Reply of CSX Transportation, Inc., in Finance Docket 35522, *CSX Transportation, Inc.—Acquisition of Operating Easement—Grand Trunk Western Railroad Company*, to be served electronically (noted by (E) next to the name) or by first class mail, postage pre-paid (noted by (M) next to the name) on the following parties of record.



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EXHIBIT 1 – MAP

ILLINOIS

FRANKLIN PARK

PROVISO YARD

FOREST PARK

GLOBAL 1 UP

CICERO BN

CORWITH BN

Lake Michigan

BENSENVILLE

59TH ST CSXI

MCCOOK CLEARING

CANAL CLEARING BRC

CHGO BEDFORD PARK

FORESTHILL

WILLOW SPRINGS

BEDFORD PARK CSXI

HAYFORD

CHICAGO 59TH STREET RAMP

FOREST HILL

80TH ST

Ashburn

Chicago

RIDGE

100TH STREET

WILDWOOD BARR CN

BOCT

BLUE ISLAND JCT.

BLUE ISLAND IHB

DOLTON

MICHIGAN AVENUE YARD

Illinois

ISLAND YARD BARR YARD

GIBSON IHB

CN JCT.

MARKHAM CN

YARD CENTER THORNTON JCT.

Cook Co.

Lake Co.

EAST CHICAGO BUCKET

IHB

GIBSON IHB

CURTIS CSXT

PINE

Cook Co. Ill Co.

THORNTON

CN

MUNSTER

GRIFFITH

Indiana

2 4

Miles



Major Yard/Terminal



Other Rail Yard



Station

CSXT/B&OCT Rail Network

CSXT/B&OCT Trackage Rights

CN Elsdon Sub

EJ&E/CN

Other Railroads

Project Location

Existing Travel Flow

EXHIBIT 2 – MITIGATION MEASURES

Five mitigation measures imposed by the Board are cited as most relevant to the issues addressed by the Petition:

VM 6. CSXT shall operate under U.S. Operating Rule No. 526 (Public Crossings), which provides that a public crossing must not be blocked longer than 10 minutes unless it cannot be avoided and that, if possible, rail cars, engines, and rail equipment may not stand closer than 200 feet from a highway/rail at-grade crossing when there is an adjacent track. If the blockage is likely to exceed this time frame, then the train shall then be promptly cut to clear the blocked crossing or crossings.

VM 37. CSXT shall notify Emergency Services Dispatching Centers for communities along the affected segments of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time. CSXT shall work with affected communities to minimize emergency vehicle delay by maintaining facilities for emergency communication with local Emergency Response Centers through a dedicated toll-free telephone number.

VM 45. CSXT shall submit quarterly reports to the Board's Office of Environmental Analysis on the progress of, implementation of, and compliance with the mitigation measures for a period covering the first three years of operational changes associated with the Proposed Transaction.

VM 46. Within three years of the acquisition by CSXT, if there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions, and upon petition by any party who demonstrates such material change, the Board may review the continuing applicability of its final mitigation, if warranted.

MM 2. In addition to VM 37, to further assist with the timely response of emergency service providers for the Advocate Christ Medical Center and the Little Company of Mary Hospital, CSXT shall consult with all appropriate agencies and hospitals to install a closed-circuit television system (CCTV) with video cameras (or another comparable system or acceptable option) so that the movement of trains can be predicted at the 95th Street highway/rail at-grade crossing. CSXT shall pay for the necessary equipment, the installation of the equipment, and equipment training for up to two individuals from each affected hospital. CSXT shall work with all appropriate agencies and hospitals to determine specifications and scheduling for the installation of the CCTV system. CSXT shall be responsible for the ongoing maintenance and operation of CCTV after the system is installed and operational.

EXHIBIT 3-EXPENDITURES INCURRED ON THE ELSDON LINE

Capital Management Department	Capital Group Management Project	Natural Accounting Type	Fiscal Year				Grand Total
			2013	2014	2015	2016	
Buildings	Switch Heaters	CAP			\$22,146		\$22,146
Line Capacity	Strategic Capacity -All Other	CAP	\$717,639	\$207			\$717,846
PTC	Wayside Signals	CAP		\$77,221			\$ 77,221
Signals	Signal Reliability-Grade Crossing Warning Devices	CAP		\$122,995	\$1,454		\$124,449
Track Program	Track Program (TSC)	CAP	\$5,820,554	\$4,098,068	\$1,277,317	\$10,083	\$11,206,022
		OE		\$41,429	\$23,095		\$64,524
Grand Total			\$6,538,193	\$4,339,920	\$1,324,012	\$10,083	\$12,212,208

EXHIBIT 4-GATE CROSSING EXPENDITURES IN 2015

Elson 2015	SPEND
Design & Engineering (XORAIL)	\$180,476.68
Double Bonding Initiative Material Only	\$ 23,359.12
GCWD Recorders, Key Downs Material Only	\$ 26,798.83
OE Labor	\$380,000.00
OE Material	\$ 32,000.00
2015 Heavy Maintenance Gate MECHS	\$ 7,000.00
2015 Maintenance Switch Rollers	\$ 3,000.00
TOTALS	\$652,634.63

EXHIBIT 5-COMMUNITY OUTREACH

CSXT has been accessible to the public and elected officials since it acquired the Elsdon Line as summarized below.

2013

Fall Jason Holder as CSXT Community Liaison makes contact via letters and visits Schools.

2014

January CSXT participates in a meeting with elected officials in Evergreen Park at the request of Senator Durbin.

Spring Evergreen Park puts the direct phone number of Tom Livingston, CSXT Regional Vice President Midwest Government and Community Affairs, on the marquee at 94th and Kedzie Municipal center.

Summer Regular emails advise public officials and agencies of the massive crossing rebuild program.

August CSXT hosts tour of Elsdon Line and surrounding area for government officials and participates in local resident meeting in 19th Ward.

October CSXT hosts tour of Elsdon Line and surrounding area for government officials.

November CSXT requests meeting with regional elected officials and provides a status update with those officials in the 19th Ward.

December CSXT board of directors is updated on operations in Chicago. CSXT meets with elected officials concerning proposed legislation, which was ultimately filed.

2015

Summer CSXT meets with Little Company of Mary Hospital.

August CSXT hosted a community meeting at Mt. Greenwood Library. Three individuals (including a husband-wife household) attend despite outreach efforts.

September CSXT hosts tour of Elsdon Line and surrounding area for government officials.

October Cindy Sanborn, Executive Vice President and Chief Operating Officer, participates in a conference call with elected officials representing Evergreen Park and Chicago.

November Ms. Sanborn outlines work undertaken on the Elsdon Line and future plans to improve service to Representative Lipinski.

Mr. Livingston communicates the results of the meeting with Representative Lipinski to local elected officials.