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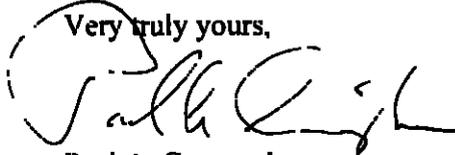
Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
Office of the Secretary
395 E Street, S.W.
Washington, DC 20423-0001

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

Dear Ms. Quinlan,

Enclosed for filing in the above referenced docket please find Applicants' Reply to
Petition for Stay of the Village of Bartlett (designated as CN-56)

Very truly yours,



Paul A. Cunningham

Counsel for Canadian National Railway Company
and Grand Trunk Corporation

Enclosure

cc All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No 35087

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

APPLICANTS' REPLY TO PETITION FOR STAY
OF THE VILLAGE OF BARTLETT

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CANADIAN NATIONAL RAILWAY COMPANY
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OF THE VILLAGE OF BARTLETT

Pursuant to 49 C F R § 1115 5(a), Canadian National Railway Company and Grand Trunk Corporation (collectively, "Applicants" or "CN")¹ hereby reply to the petition for stay filed by the Village of Bartlett ("Bartlett") on January 13, 2009, seeking a stay of Decision No 16 in this proceeding (served Dec 24, 2008)²

Bartlett's petition largely repeats arguments made by the Village of Barrington in its petition for stay (BARR-7), which CN has already responded to (CN-55) Bartlett's arguments regarding the alternatives analysis conducted by SEA, the evaluation of the benefits of the Transaction, and reasonably foreseeable consequences add nothing beyond what Barrington has already said, and they fail to establish a likelihood of success on the merits for the reasons set

¹ Applicants incorporate by reference the short forms and abbreviations set forth in the Table of Abbreviations at CN-2 at 8-11

² Bartlett also seeks a stay of the Board's decision not only pending judicial review and any petitions for reconsideration but (without elaboration, explanation or justification) pending "compliance with [NEPA]" (p 1), pending "full NEPA compliance" (p. 6), and "pending completion of the NEPA process" (p 7) Contrary to Bartlett's implications, the Board has fully complied with NEPA, and Bartlett has provided no support for such vague, apparently unprecedented relief

forth in CN-55. Likewise, the discussion of harm to other parties and public interest considerations raises no new points and does not meet Bartlett's burden for the reasons stated in CN-55.

Bartlett does raise two new arguments: (1) that the Board failed to respond to Bartlett's comment regarding traffic impacts at the Stearns Road at-grade crossing, and (2) that the Board failed to adequately address or mitigate impacts on Bartlett Fire Protection District Station No. 3. Neither argument is meritorious. First, SEA specifically responded to comments regarding ADT estimates at and impacts to the Stearns Road crossing (FEIS at 3-4-180-81) and updated its analysis to reflect the new information supplied by Bartlett and others (FEIS at 2-35, FEIS Appendix A at 103, 439, 483, 544, 550, 556, 564-65, 643-46),³ clearly meeting its obligation under NEPA (*see* 40 C.F.R. § 1503.4). Second, SEA discussed impacts to Fire Station No. 3 (FEIS at 2-52)⁴ and even recommended mitigation for that location (FEIS at 4-49), which the Board adopted (Decision No. 16 at 77). While Bartlett apparently believes the proposed mitigation is insufficient, the Board clearly met NEPA's requirements by reasonably considering possible mitigation measures. NEPA does not require that all adverse effects of a major federal action be mitigated. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352-53 (1989). Bartlett has thus demonstrated no likelihood of success on either claim.

Finally, Bartlett asserts that "numerous harmless [sic] will occur, including irreversible harm to the environment that flow from the numerous violations of NEPA," but fails to cite even

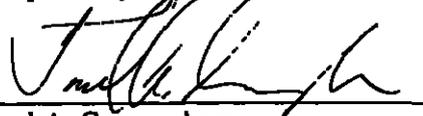
³ Contrary to Bartlett's assertion, the Board found that even considering the revised information regarding vehicle ADT at Stearns Road, exposure at Stearns Road would not exceed 1,000,000. *See* FEIS at 4-5 (finding that exposure would exceed 1,000,000 only at Ogden Avenue and Montgomery Road).

⁴ Bartlett misleadingly states that "[n]o alternative highway/rail grade separation exists for a length of nearly seven miles," but SEA noted in the FEIS the more-relevant fact that the nearest grade-separated crossing is only 1.5 miles away from Fire Station No. 3 (FEIS at 2-52).

one concrete example of harm. This is insufficient to meet its burden of proving irreparable harm in the absence of a stay.

For the foregoing reasons and the reasons set forth in CN's Reply to Barrington's stay petition, Bartlett's petition for stay should be denied.

Respectfully submitted,



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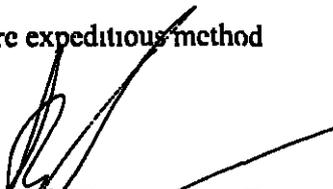
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*Counsel for Canadian National Railway Company
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January 14, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of January, 2009, served copies of Applicants' Reply to Petition for Stay of the Village of Bartlett (designated as CN-56) upon all known parties of record in this proceeding by first-class mail or a more expeditious method



Alexander D. Coon