BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Finance Docket No. 35264
Elgin, Joliet & Eastern Railway Company
– Trackage Rights Exemption –
Illinois Central Railroad Company

AUG 27 2009
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STB Finance Docket No. 35265
Elgin, Joliet & Eastern Railway Company
– Trackage Rights Exemption –
Wisconsin Central, Ltd.

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STB Finance Docket No. 35266
Elgin, Joliet & Eastern Railway Company
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

STB Finance Docket No. 35267
Illinois Central Railroad Company
– Trackage Rights Exemption –
Chicago, Central & Pacific Railroad Company

STB Finance Docket No. 35268
Illinois Central Railroad Company
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

STB Finance Docket No. 35269
Illinois Central Railroad Company
– Trackage Rights Exemption –
Wisconsin Central, Ltd.

STB Finance Docket No. 35270
Grand Trunk Western Railroad Company

– Trackage Rights Exemption –
Illinois Central Railroad Company

STB Finance Docket No. 35271
Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company

STB Finance Docket No. 35272
Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company

STB Finance Docket No. 35273
Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Wisconsin Central, Ltd.

STB Finance Docket No. 35274
Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Chicago, Central & Pacific Railroad Company

STB Finance Docket No. 35275
Chicago, Central & Pacific Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company

STB Finance Docket No. 35276
Chicago, Central & Pacific Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company

STB Finance Docket No. 35277
Chicago, Central & Pacific Railroad Company

– Trackage Rights Exemption –
Wisconsin Central, Ltd.

STB Finance Docket No. 35278
Chicago, Central & Pacific Railroad Company
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

STB Finance Docket No. 35279
Wisconsin Central, Ltd.
– Trackage Rights Exemption –
Illinois Central Railroad Company

STB Finance Docket No. 35280
Wisconsin Central, Ltd.
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

JOINT PETITION FOR STAY

I. INTRODUCTION

The Village of Barrington, Illinois ("Barrington") and the TRAC Coalition[1] ("TRAC") (collectively, "Petitioners"), hereby file their petition for stay of the above-captioned proceedings, which consist of seventeen (17) notices of exemption for trackage rights in the Chicago area relating to various carrier subsidiaries of Canadian National Railway Company ("CN"). Concurrently, Petitioners are filing a related Joint Petition to Reopen the Final Decision and Issue a Supplemental Environmental Impact Statement in STB Finance Docket No. 35087 (the "Petition to Reopen"). Petitioners incorporate the contents of its Petition to Reopen by reference as if fully set forth herein.

[1] The TRAC Coalition consists of the Cities of Aurora and Naperville, Illinois, and the Villages of Barrington, Barrington Township, Barrington Hills, Lake Zurich, Bartlett, Hawthorn Woods, Plainfield and Wayne, Illinois, and DuPage County, Illinois.

Specifically, on or about August 5, 2009, "17 notices of exemption for trackage rights in the Chicago area [were] submitted simultaneously by carrier subsidiaries of the Canadian National Railway Company (CN)." *See, e.g., Elgin, Joliet & Eastern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company,* Finance Docket No. 35264 (STB served August 17, 2009), Slip Op. at 2. As the Board has since noted, "the involved lines of railroad were examined as part of the project area in Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company, Finance Docket No. 35087 (STB served Dec. 24, 2008)(CN--EJ&E)." *Id.*

Upon receipt of the notices, the Board noted that "[n]either CN nor any of the carriers submitting these notices has explained how the notices relate to each other, or how they would impact the operational information provided to the Board in CN-EJ&E." *Id.* Consequently, CN and its carrier subsidiaries were directed to submit responsive information by August 21, 2009, explaining in relevant part how the 17 notices related to one another, and how they would "impact the information provided to the Board in CN-EJ&E." *Id.* at 3.

In response to the Board's requirements, CN filed a "Supplement to Verified Notices of Exemption" (the "Supplement") on August 21, 2009 in each of the 17 dockets. In that Supplement, CN provided only cursory statements in regard to the Board's concerns, and baldly asserted that "[t]he trackage rights CN seeks here will not have any impact on the authority it received in CN-EJ&E, nor will they have any effect on the Board's review of CN's Operating Plan in that transaction was developed with the assumption that CN would be free to move any of its trains over any of its lines in the Chicago area." *See* Supplement at 6.

I. DISCUSSION

A. A Stay of the Notices of Exemption is Appropriate in Light of The Extensive Environmental Implications

In its concurrently filed Petition to Reopen, Petitioners discussed how the notices of exemption and the cursory information provided in CN's Supplement raised significant operational and environmental concerns, and constituted new evidence and changed circumstances sufficient to warrant reopening the December 24, 2008 Decision in Finance Docket 35087 (the "Approval Decision"), as well as supplement the related Final Environmental Impact Statement ("EIS"). It is certain that upon further investigation and analysis, the Board would uncover additional significant information that would bear directly on both the Approval Decision and the underlying EIS, and require further consideration and supplementation of both.

In light of those matters, the instant Petition seeks to stay the 17 notices of exemption pending the Board's consideration of the Petition to Reopen, and its further review and environmental supplementation.[2] Permitting the exemptions to become effective while those other matters remain pending would permit CN and its subsidiaries to engage in the anticipated operations and cause related environmental impacts when full information on either has not yet been investigated or analyzed by the Board.

Indeed, the Board typically provides that it will "grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date." *See,*

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[2] The Board stated that stay petitions must be filed at least seven days before the individual exemptions become effective. *See, e.g., Grand Trunk Western Railroad Company – Trackage Rights Exemption – Illinois Central Railroad Company*, STB Finance Docket No. 35271 (STB served August 18, 2009), Slip Op. at 2. The instant Petition is timely.

e.g., Palouse River & Coulee City Railroad, Inc. – Abandonment Exemption – In Latah County, ID, STB Docket No. AB-570 (Sub-No. 3X) (Board served August 11, 2009), at n.3.[3]

The same logic is directly applicable here, where 17 separate but interrelated exemption notices were filed simultaneously, and where the notices (both individually and collectively) impact central matters in the Approval Decision and Final EIS in a manner that cannot be fully assessed at this time but is likely to be highly significant. Given the extensive geographical area involved as well as the numerous environmental issues relevant to the Approval Decision and the Final EIS, an informed decision on the environmental impacts of those extensive trackage rights agreements cannot be made prior to their effective date (and could not have been made within the 30-day period, even if commenced immediately upon filing of the notices of exemption). It is appropriate and necessary for the Board to stay those exemptions pending investigation of the environmental impacts and supplementation of the EIS.

CONCLUSION

For the foregoing reasons, the referenced proceedings and exemptions should be stayed pending consideration of the Petition to Reopen, and the Board's further environmental investigation.

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[3] To the extent the Board's usual stay standard under *Washington Metro. Area Transit Comm'n v. Holiday Tours., Inc.*, 559 F.2d 841 (D.C. Cir. 1977) and its progeny is otherwise applicable, that standard is also met. As more fully set forth in the Petition to Reopen, Petitioners have a strong likelihood of showing that reopening the Approval Decision and supplementing the EIS is appropriate under the Board's regulations and precedent. In addition, Petitioners will be irreparably harmed if the exemptions become effective and increased traffic and environmental impacts occur, particularly as those were not contemplated or assessed in the Approval Decision. The stay would not substantially harm CN or its subsidiaries, which have operated without the 17 trackage rights agreements for some time. Finally, the stay would be in the public interest because it would permit the Board to fully investigate and analyze all potential impacts on the public in and around the Chicago area and EJ&E arc, as well as comply with applicable laws and regulations.

Respectfully submitted,

Richard H. Streeter

Richard H. Streeter
Barnes & Thornburg LLP
750 17th Street NW
Suite 900
Washington, D.C. 20006

ATTORNEY FOR THE TRAC COALITION

Brendon P. Fowler

Kevin M. Sheys
Edward J. Fishman
Janie Sheng
Brendon P. Fowler
Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street NW
Washington, D.C. 20006
(202) 778-9000

**ATTORNEYS FOR
THE VILLAGE OF BARRINGTON,
ILLINOIS**

Dated: August 27, 2009

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2009, I caused the foregoing Joint Petition for Stay to be served via first class mail, postage prepaid, or by a more expeditious method of delivery, on all parties of record and on the following:

Thomas J. Healey
Counsel – Regulatory
Canadian National Railway Company
17641 South Ashland Avenue
Homewood, IL 60430

Paul A. Cunningham
Harkins Cunningham LLP
1700 K Street N.W., Suite 400
Washington, D.C. 20006-3804

Brendon P. Fowler

Brendon P. Fowler