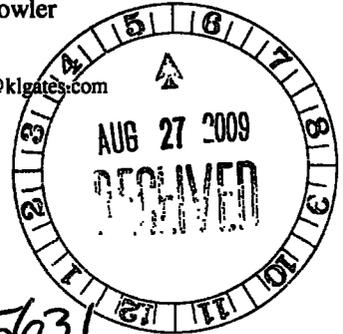


August 27, 2009

RECEIVED
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BY HAND

Ms. Anne Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

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

Dear Ms. Quinlan:

Enclosed for filing is the original and 11 copies of a Joint Petition to Reopen the December 24, 2008 Final Decision and prepare a supplement to the Final Environmental Impact Statement in the above-captioned proceeding. This Joint Petition is being served on all Parties of Record as provided in the Certificate of Service included therein.

Please acknowledge receipt of this letter by date-stamping the acknowledgement copy and returning it to our messenger.

Respectfully submitted,

Brendon P. Fowler

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

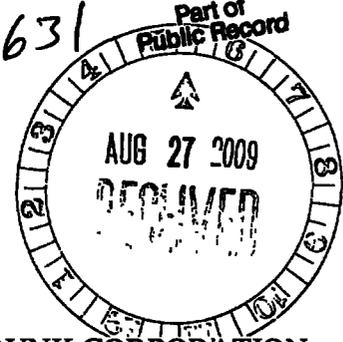
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STB Finance Docket No. 35087



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

**JOINT PETITION TO REOPEN FINAL DECISION AND ISSUE
A SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT**

The Village of Barrington, Illinois (“Barrington”) and the TRAC Coalition (“TRAC”) (collectively, “Petitioners”),¹ pursuant to 49 U.S.C. § 722, and 49 C.F.R. §§ 1115.4 & 1105.10(5), hereby file their Joint Petition Seeking Reopening of the Board’s Decision No. 16 (Board served December 24, 2008) (the “Approval Decision”) in the above-captioned proceeding, and supplementation of the related Final Environmental Impact Statement (“EIS”). As further set forth below, this petition is based on new evidence and materially changed circumstances, and supplementation of the EIS is warranted in order to address substantial changes in the proposed action, and significant new and relevant circumstances and information.

I. INTRODUCTION

This petition is prompted by the filing, on August 5, 2009,² of “17 notices of exemption for trackage rights in the Chicago area submitted simultaneously by carrier subsidiaries of the Canadian

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.

² Petitioners note that the notices of exemption were filed the very date that the Board served its Decision No. 19 in the instant docket denying the Illinois Commerce Commission’s (ICC) petition for reconsideration of the Board’s Approval Decision. By separate petition, Petitioners have concurrently sought stays of those notices of exemption pending the Board’s resolution of this petition.

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.* The Board further stated 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.* Given the noted deficiencies, 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.³ In that Supplement,

³ STB Finance Docket No. 35264, *Elgin, Joliet & Eastern Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company*; STB Finance Docket No. 35265, *Elgin, Joliet & Eastern Railway Company—Trackage Rights Exemption—Wisconsin Central, Ltd.*; 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 (Harvey to University Park)*; STB Finance Docket No. 35271, *Grand Trunk Western Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company (Bridgeport to Belt Crossing)*; STB Finance Docket No. 35272, *Grand Trunk Western Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company (Argo to Joliet)*; 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 (Belt Crossing to University Park)*; STB Finance Docket No. 35276, *Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—Illinois Central Railroad Company (Bridgeport to Joliet)*; STB Finance Docket No. 35277, *Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—Wisconsin Central, Ltd.*; STB Finance Docket No. 35278,

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. CN's Submissions Require a Reopening of the Approval Decision

Under 49 C.F.R. § 1115.4, a person may at any time file a petition to reopen any administratively final action of the Board. The Board may reopen its decision when, in relevant part, new evidence or changed circumstances warrant modification of the prior order. *City of Peoria and the Village of Peoria Heights, IL – Adverse Discontinuance – Pioneer Industrial Railway Co.*, STB AB-878, 2008 WL 1734149 (Board served April 15, 2008), at *1; *see also* 49 U.S.C. § 722 (Board may reopen a proceeding, grant reconsideration of Board action, or change an action of the Board at any time on its own initiative because of new evidence or substantially changed circumstances; interested parties may also petition to reopen and reconsider an action of the Board).

Here, both new evidence and changed circumstances warrant reopening the Approval Decision. The Board is rightly concerned that CN's 17 new trackage rights notices clearly relate to the subject matter of the Board's environmental review and decisions in Finance Docket 35087. There is no question that that is the case, and CN in fact argues that these extensive trackage rights constitute part of the "coordination" mentioned in its original Application. *See Supplement at 6.* However, CN utterly fails to explain to the Board why such "coordination" elements were not brought to the Board's attention during the Board's consideration of the transaction and environmental impacts. Similarly,

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; and STB Finance Docket No. 35279, Wisconsin Central, Ltd.—Trackage Rights Exemption—Grand Trunk Western Railroad Company.

CN asserts that its operations pursuant to those trackage rights would be “subject to continuing scrutiny under the monitoring and oversight conditions provided by the Board when it approved the CN-EJ&E transaction,” Supplement at 6-7, yet fails to explain why those operations were not deserving of the same Board review that lead to those monitoring and oversight conditions for other operations.

As a consequence, the Board is now confronted with 17 additional trackage rights that call into question numerous basic premises of its approval of CN’s application, including that operations over the EJ&E lines will allegedly ease the burden on the “communities along CN’s existing lines [that] will experience environmental benefits from the reduction in rail traffic as CN reroutes traffic around Chicago over the EJ&E line.” *Approval Decision*, at 38. As numerous parties noted during the environmental process, any purported “environmental benefits” from speculated reductions in traffic appear fleeting at best.

Nor will communities on the EJ&E line be spared. In an apparent effort to minimize the ramifications of these new developments, CN simply asserts that, *at least for the time being*, it has “no plans” to use the trackage rights to reroute any train whose rerouting was not already taken into account in the CN-EJ&E Operating Plan. Supplement, at 6. However, CN’s own Supplement admits that “[w]hen these agreements become effective, all of the Applicants will have the contractual right and regulatory authority to operate on any CN line on or within the EJ&E arc.” *Id.* (emphasis added). It is difficult to imagine that CN’s plans in that regard will not change, given how CN has already sought to create 17 additional trackage rights as part of its claimed “coordination” efforts. Moreover, even if CN’s current plans somehow do not change with regard to its traffic flows under the new trackage rights regime, the Board simply cannot know the full extent of the impacts of CN’s operational changes under those new trackage rights absent additional inquiry, scrutiny, and analysis.

In short, although CN’s Supplement appears purposefully vague as to its actual planned operations and activities, what information it does convey related to its exemption notices establishes

more than sufficient new evidence and significantly changed circumstances to reopen the Approval Decision. Absent further detailed scrutiny of this new information and changed circumstances, the Board's Approval Decision simply does not take into account relevant and significant operational changes as well as related environmental effects.

B. CN's Submissions Also Require a Supplementation of the EIS

In light of the new evidence and substantially changed circumstances, supplementation of the EIS is also warranted. The Board's regulations provide that an EIS may be supplemented where "necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information." 49 C.F.R. § 1105.10(5). The Council on Environmental Quality ("CEQ") further provides that agencies "[s]hall prepare supplements to ... final environmental impact statements" if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii). The Board has noted that these CEQ rules implementing NEPA advise Federal agencies to prepare supplements to an EIS "where new information that is relevant to environmental concerns is presented after a Final EIS has been prepared." *See Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment Tongue River III – Rosebud and Bighorn Counties, Montana*, STB Finance Docket No. 30186 (Sub-No. 3), 2004 WL 2619770 (Board served October 15, 2004), at *19.

CN's Supplement and related trackage rights exemptions raise significant new circumstances and information that are relevant to environmental concerns and which bear on the actions contemplated in the Approval Decision. For example, CN's proposed trackage rights and related activities directly implicate one of SEA's central findings in the EIS, namely that:

The Proposed Action would result in environmental benefits to communities located along the five CN rail lines leading into and out of Chicago. Communities along the EJ&E rail line would experience adverse impacts. The potential benefits from the reduction in train operations near the communities along the five CN rail lines inside the EJ&E arc include

decreased vehicle traffic delay, reduced noise, reduced air emissions, and fewer shipments of hazardous materials by rail.

See Final EIS, Executive Summary (December 5, 2008), at *i (emphasis added). The trackage rights agreements established by CN encompass the subject area of the Final EIS, and CN asserts they were created to “further increase the operating flexibility for all CN railroads within the arc of the EJ&E.” Supplement, at 5-6. Thus the anticipated activities will bear directly on the environmental impacts analysis SEA undertook for the greater Chicago area, including inside and along the EJ&E arc.

Given the dearth of specific information on CN’s planned or likely activities under those trackage rights agreements, the full scope and impact of those trackage rights and related operations cannot be known without a Supplemental EIS. However, more than sufficient information and changed circumstances exist to support the investigation and preparation of a supplement to the EIS.

CONCLUSION

For the foregoing reasons, the December 24, 2008 Approval Decision should be reopened, and a supplement to the Environmental Impact Statement prepared.

Respectfully submitted,



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

Dated: August 27, 2009

CERTIFICATE OF SERVICE

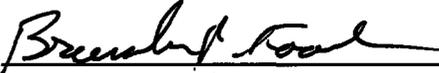
I hereby certify that on August 27, 2009, I caused the foregoing Joint Petition to be served via first class mail, postage prepaid, or by a more expeditious method of delivery on all parties of record and on the following:

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