

LAW OFFICES
FRITZ R. KAHN, P.C.
1920 N STREET, NW. (8TH FL.)
WASHINGTON, DC 20036
Tel.: (202) 263-4152 Fax: (202) 331-8330
e-mail: xiccg@verizont.net

September 21, 2009

VIA ELECTRONIC FILING

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Dear Secretary Quinlan:

Attached for filing in STB Finance Docket No. 35087, Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company, is the Petition to Reopen of the Illinois Department of Transportation.

Please note that Lawrence D. Parrish, Esq. has withdrawn as counsel for the Illinois Department of Transportation in this proceeding and has been replaced by the undersigned as counsel for the Department in this proceeding.

Pursuant to 49 C.F.R. 1002.2(e)(1), payment of the filing fee is waived.

Copies of this letter have been served upon all parties of record together with the Petition to Reopen.

Sincerely yours,


Fritz R. Kahn

att.

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SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

STB Finance Docket No. 35087

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

PETITION TO REOPEN
OF
ILLINOIS DEPARTMENT OF TRANSPORTATION

Ellen J. Schanzle-Haskins
Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764
Tel.: (217) 782-0691

Richard A. Kabaker
Deputy Chief Counsel
Illinois Department of Transportation
100 West Randolph Street (Ste/ 6-600)
Chicago, IL 60601
Tel.: (312) 793-4838

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036
Tel.: (202) 263-4152

Attorneys for the

ILLINOIS DEPARTMENT OF TRANSPORTATION

Dated: September 21, 2009

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

STB Finance Docket No. 35087

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

PETITION TO REOPEN
OF
ILLINOIS DEPARTMENT OF TRANSPORTATION

Petitioner, Illinois Department of Transportation (“IDOT”), pursuant to 49 C.F.R. 1115.4, petitions to reopen the Decision of the Surface Transportation Board (“Board”), served December 24, 2008, on the grounds that there is new evidence that could not have been known at the time the Board rendered its Decision and that circumstances have changed substantially.

IDOT is the agency which will need to pay the entire cost of the grade separations of Ogden Avenue in Aurora, IL, and Lincoln Highway in Lynwood, IL, if construction is not begun by 2015.

At page 45-47 of its Decision, the Board determined that 67% of the cost of the grade separation of Ogden Avenue and 78.5% of the cost of the grade separation of Lincoln Highway should be borne by the Canadian National Railway Company (“CN”). If, however, IDOT by the end of the year 2015 will not have completed the preliminary engineering, the environmental analysis, the right-of-way acquisition, the utility

relocation, the final design, the letting of the construction contracts and begun construction of the overpasses, CN will be “automatically released from mandated financial responsibility related to these two grade–separation projects.”

Condition 14, at page 76 of the Board’s Decision, is even more explicit. There the Board said:

Once applicants have been notified that the required non-CN funds have been committed and obligated, applicants shall pay 67% of the cost of the grade separation at Ogden Avenue and 78.5% of the Lincoln Highway grade separation. Applicants shall pay this percentage of the cost of the preliminary engineering and environmental analysis, final design, ROW acquisition, utility relocation, and construction costs of these grade separations. However, applicants shall not be required to pay for more than one preliminary engineering study for each crossing. This obligation shall only be in effect for projects where construction is initiated no later than 2015. The Board anticipates that IDOT will be the lead agency for the development of these grade separations.

In other words, when the Board rendered its December 24, 2008 Decision and imposed its condition 14, it gave IDOT seven years to undertake the preliminary engineering, the environmental analysis, the right-of-way acquisition, the utility relocation, the final design, the letting of the construction contracts and the commencement of construction of the Ogden Avenue and Lincoln Highway overpasses.

At the time, the Board did not know and could not have known that its Decision would be subject to petitions for judicial review filed in the U.S. Court of Appeals for the District of Columbia Circuit by the Village of Barrington on January 5, 2009, and by CN on March 27, 2009.

The Board did not know and could not have known that the Illinois Commerce Commission on January 22, 2009, would file a petition for reconsideration of the December 24, 2008, Decision and that, as a result, a consent motion would be filed with

the Court of Appeals to stay the judicial review proceedings, which motion was granted by the court April 30, 2009.

The Board did not know and could not have known that the Village of Barrington and the City of Aurora, *et al.* on August 27, 2009¹, would file a petition to reopen the December 24, 2008 Decision and to have the Board conduct a supplemental environmental analysis and that, as a result, a consent motion would be filed with the Court of Appeals to continue the stay of the judicial review proceedings, which motion was granted by the court September 8, 2009.

The foregoing pleadings, motions and orders are new evidence and they have changed the circumstances substantially. IDOT no longer has seven years to 2015 to complete the preliminary engineering, the environmental analysis, the right-of-way acquisition, the utility relocation, the final design, the letting of the construction contracts and the commencement of construction of the Ogden Avenue and Lincoln Highway overpasses. Almost a year already has gone by, and the Board has yet to act on the pending petition to reopen the December 24, 2008 Decision and to conduct a supplemental environmental analysis. The Board's decision will be reviewable and, if a petition for judicial review of the Board's decision were filed, the case very likely would be consolidated with the cases currently being held in abeyance by the Court of Appeals.

When the litigation of the consolidated cases before the Court of Appeals will be finally concluded is anyone's guess, but it is not unreasonable to expect that it very likely will not be until the end of 2010. That would render it impossible for IDOT to meet the 2015 deadline that the Board set for the commencement of construction of the Ogden

¹ Will County, IL, joined the petitioners by petition filed September 10, 2009.

Avenue and Lincoln Highway overpasses. This is because IDOT cannot do any work on these grade separation projects (preliminary or otherwise) without being certain that the Board's ruling regarding the amount of CN's contributing to the projects will not be overturned, if IDOT cannot complete its preliminary work and start on these projects by 2015. IDOT would be penalized by having to bear the entire cost of the preliminary engineering, the environmental analysis, the right-of-way acquisition, the utility relocation, the final design, the letting of the construction contracts and the beginning of the construction of the overpasses itself. Moreover, CN, whose acquisition of the EJ&E West Company and the rerouting of its trains brought about the need for the Ogden Avenue and Lincoln Highway overpasses, would go Scott free and not have to pay a cent.

WHEREFORE, the Illinois Department of Transportation asks that the Board find that there is new evidence that could not have been known at the time the Board rendered its December 24, 2008 Decision, that circumstances have changed substantially and that the Illinois Department of Transportation be allowed seven years from the date of the final unappealable court order in this matter to commence construction of the grade separations of Ogden Avenue in Aurora, IL, and Lincoln Highway in Lynwood, IL.

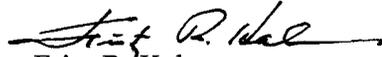
Respectfully submitted.

ILLINOIS DEPARTMENT OF TRANSPORTATION

By its attorneys,

Ellen J. Schanzle-Haskins
Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764
Tel.: (217) 782-0691

Richard A. Kabaker
Deputy Chief Counsel
Illinois Department of Transportation
100 West Randolph Street (Ste. 6-600)
Chicago, IL 60601
Tel.: (312) 793-4838


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Dated: September 21, 2009

CERTIFICATE OF SERVICE

I certify that I this day arranged for the service of the foregoing Petition to Reopen upon each of the parties of record as shown on the Board's Service List.

Dated at Washington, DC, this 21st day of September 2009.



Fritz R. Kahn