

HARKINS CUNNINGHAM LLP

Attorneys at Law

Paul A. Cunningham
pac@harkinscunningham.com
Direct Dial: 202-973-7601

1700 K Street, N.W.
Suite 400
Washington, D.C. 20006-3804
Telephone 202.973.7600
Facsimile 202.973.7610

April 23, 2010

BY E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423-0012

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

Dear Ms. Brown:

Enclosed for filing in the above referenced docket please find Applicants' Petition to Reopen Decision No. 16 for the Limited Purpose of Modifying Final Mitigation Condition No. 18 (CN-61).

Very truly yours,



Paul A. Cunningham

Counsel for Canadian National Railway Company
and Grand Trunk Corporation

Enclosures

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' PETITION TO REOPEN DECISION NO. 16 FOR THE LIMITED
PURPOSE OF MODIFYING FINAL MITIGATION CONDITION NO. 18**

Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430

Paul A. Cunningham
David A. Hirsh
Matthew W. Ludwig
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

April 23, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35087

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

**APPLICANTS’ PETITION TO REOPEN DECISION NO. 16 FOR THE LIMITED
PURPOSE OF MODIFYING FINAL MITIGATION CONDITION NO. 18**

Pursuant to 49 C.F.R. §§ 1115.4 and 1117.1, Canadian National Railway Company and Grand Trunk Corporation (together “CN” or “Applicants”)¹ hereby petition the Board to partially reopen Decision No. 16 for the limited purpose of modifying Final Mitigation Condition No. 18 (“FMC 18”), which requires CN to install a closed-circuit television (“CCTV”) system at specific at-grade crossings in certain communities to assist emergency service provider (“ESP”) dispatchers in determining whether that crossing’s warning devices are active. CN has developed, for signalized crossings on the EJ&E line, a web-based, password-controlled Active Crossing System that can be used by emergency responders to obtain real-time information. CN respectfully submits that this system is superior to and provides more dependable and useful information than what a CCTV system can provide, and should be required in lieu of the CCTV system.

¹ Applicants incorporate by reference the short forms and abbreviations set forth in the Table of Abbreviations in the Railroad Control Application in this proceeding (CN-2 at 8-11).

Argument

FMC 18 requires CN to “consult with all appropriate agencies to implement a CCTV system with video cameras placed in locations so that the movement of trains can reasonably be predicted at [specified] highway/rail at-grade crossings.” Decision No. 16 at 77. FMC 18 further requires that CN “work with all appropriate agencies to determine specifications and scheduling for the installation of this system.” *Id.* Working with outside consultants, at its own expense, CN has developed an alternative to a CCTV system called Active Crossing System (“ACS”). As part of its coordination with the communities subject to FMC 18, CN met in the summer of 2009 with representatives of the affected ESPs and discussed the relative merits of ACS as an alternative to the CCTV system.

The CCTV system would require video cameras to be placed in fixed locations so that the movement of trains can be observed at each affected grade crossing. In contrast, ACS would provide the ESP with an electronic map of its service area, in which each at-grade crossing with active warning devices would be symbolized with a dot. The dot would change colors as the warning devices at the crossing are activated – a green dot would indicate that the warning devices are not activated (and that the crossing is therefore clear) while a red dot would indicate that the warning devices are activated.

ACS is designed to provide additional information that is more reliable and useful than a simple CCTV system. It allows a dispatcher to view multiple crossings on a single screen and see locations where the warning devices are activated and the order in which they are activated, thereby providing a greater sense of the timing and position of approaching trains than can be achieved with a CCTV system. It is easier to implement (because it is designed to work with

existing systems), less expensive to maintain,² and far more reliable because its function would not be affected by weather and lighting conditions (which adversely affect performance of a CCTV system). The system can be used on a dedicated computer or accessed by the ESPs' existing systems, and would be made available to communities through a no-cost license.

CN resolved this issue in its voluntary mitigation agreements signed with three of the five communities listed in FMC 18 – West Chicago, Lake Zurich, and Plainfield – and the Board has already modified FMC 18 to remove those communities. *See* Decision No. 19, slip op. at 13 (STB served Aug. 4, 2009) (removing the reference to West Chicago in FMC 18); Decision No. 22 (STB served March 9, 2010) (removing the references to Lake Zurich and Plainfield in FMC 18). Thus, FMC 18 currently applies only to ESPs in Barrington and Bartlett.

Barrington accepted CN's proposal in a letter dated July 1, 2009 (attached as Exhibit A). While Bartlett has not yet responded either to CN's initial inquiry, or to a follow-up letter sent on January 15, 2010 (attached as Exhibit B), CN has had positive discussions with Bartlett regarding the use of the ACS in lieu of CCTV, and is hopeful that it will soon receive a letter from Bartlett accepting ACS.

² CN has also offered to maintain ACS after it has been installed, effectively relieving the communities of FMC 18's requirement that they bear the burden of ongoing maintenance.

In light of the affected ESPs' expressed preference for CN's computer-based application, CN respectfully requests the Board reopen Decision No. 16 and modify FMC 18 to allow CN to install its system in lieu of the required CCTV system.

Respectfully submitted,



Sean Finn
CANADIAN NATIONAL RAILWAY
COMPANY
P.O. Box 8100
Montréal, QC H3B 2M9
(514) 399-5430

Paul A. Cunningham
David A. Hirsh
Matthew W. Ludwig
HARKINS CUNNINGHAM LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
(202) 973-7600

Theodore K. Kalick
CANADIAN NATIONAL RAILWAY
COMPANY
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 347-7840

*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

April 23, 2010

EXHIBIT A



VILLAGE OF BARRINGTON

July 1, 2009

First Class Mail

Mr. Jim Kvedaras
17641 South Ashland Avenue
Homewood, Illinois 60430

Re: Alternate web-based train notification system for EJ&E Line

Dear Jim:

Canadian National Railway has notified Barrington that it has a new web-based notification system for the EJ&E line. Barrington does not object to the replacement of the CCTV system outlined in Final Mitigation Measure No. 18 with the new web-based system developed by CN. It is Barrington's understanding that the costs for any necessary equipment, installation, and training would be borne by CN as previously outlined for the CCTV system. Barrington's support for changes to this single mitigation measure does not constitute a waiver of, or otherwise prejudice, its pending appeal or any related claims, and does not affect any other mitigation measures.

VILLAGE HALL
200 S. HOUGH ST.
BARRINGTON, IL 60010
(847) 304-3400

**PRESIDENT & BOARD
MANAGER'S OFFICE**
TEL (847) 304-3444
FAX (847) 304-3490

**COMMUNITY &
FINANCIAL SERVICES**
TEL (847) 304-3400
FAX (847) 381-7506

DEVELOPMENT SERVICES
TEL (847) 304-3460
FAX (847) 381-1056

PUBLIC WORKS
300 N. RAYMOND AVE.
BARRINGTON, IL 60010
TEL (847) 381-7903
FAX (847) 382-3030

PUBLIC SAFETY
400 N. NORTHWEST HWY.
BARRINGTON, IL 60010

POLICE
TEL (847) 304-3300
FAX (847) 381-2165

FIRE
TEL (847) 304-3600
FAX (847) 381-1889

Sincerely,

Karen Darch
Village President
Village of Barrington, Illinois

DC-1342683 v1

EXHIBIT B

Southern Region



January 15, 2010

Ms. Valerie Salmons
Village Administrator
228 S. Main Street
Bartlett, IL 60103

Jim Kvedaras

Director - U.S. Government Affairs
17641 South Ashland Avenue
Homewood IL 60430
T 708-332-3508
F 708-332-4361

Dear Ms. Salmons,

At public hearings and meetings held during 2008 in connection with the Surface Transportation Board's (STB) review of Canadian National's (CN) proposal to acquire the major part of Elgin Joliet & Eastern Railway Company (EJ&E), a number of emergency response agencies, including yours, expressed concern about the potential impact of the acquisition on their ability to dispatch and route personnel in response to emergencies. These agencies expressed a particular interest in whether CN could provide them with real time information showing when warning devices at grade crossings have been activated by train traffic.

The STB's final approval decision imposed a condition requiring CN to notify affected communities of certain blocked crossings and, if requested, to install dispatching monitors that allow Emergency Response Center dispatching personnel to see real-time train locations. In addition, for the Bartlett area, the Board also provided in Final Mitigation Condition 18 (FMC 18) for implementation of a closed circuit television (CCTV) system with video cameras so that train movements at specific grade crossings could be shown.

As we have explained to Bartlett Fire and Police department representatives in prior discussions, CN has developed for signalized crossings on the EJ&E line a web-based, password-controlled application that can be used by emergency responders to obtain real time information showing street crossings with colored indicators to show when a warning device is active or clear. We and other emergency response agencies that have reviewed this technology believe it not only meets general real-time train monitoring requirements, but is actually superior to and provides even more dependable and useful information than a monitoring system based on closed circuit television (CCTV) cameras. This technology is an alternative to the CCTV system prescribed by the STB in FMC 18. I currently have no written correspondence from the Village of Bartlett indicating your preference for this system over the CCTV system, and request a confirmation about your position on this issue.

CN has previously announced that it would make this system available to you at no cost, and it is now ready for installation. It can be used on a dedicated computer or accessed by your existing systems, and CN will maintain the software for you at its own expense. For those communities wanting this system, acceptance is simple. Should you wish to pursue this, I have enclosed two copies of a no-cost license application form for you to fill out. It explains what the system may be used for and who may use it. If after your review you have questions about the agreement, or if your technology expert has questions, please feel free to contact me for more information.

Once I receive both copies of your executed License Agreement, I will have it executed on behalf of CN and return one fully-signed original for your files, and will put our technical expert in contact with yours to begin implementation. Please either let me know who that individual is, or give him/her my contact information and have them contact me so we can get this installed.

If there is some other factor that prevents you from indicating which system you prefer, please let me know, and also let me know if there is some additional information that I can provide to alleviate any concerns or answer any outstanding questions you may have.

Sincerely,

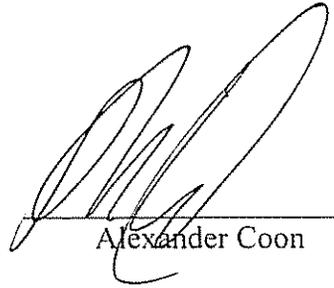
A handwritten signature in black ink that reads "Jim Kvedaras". The signature is written in a cursive, flowing style.

Jim Kvedaras
Director U.S. Government Affairs
708-332-3508 office
jim.kvedaras@cn.ca

Enclosure

CERTIFICATE OF SERVICE

I certify that I have this 23 day of April, 2010, served copies of Applicants' Petition To Reopen Decision No. 16 For The Limited Purpose Of Modifying Final Mitigation Condition No. 18 upon all known parties of record in this proceeding by first-class mail or a more expeditious method.



Alexander Coon