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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Docket No. 36397: Wisconsin Central, Ltd. -- Petition for Declaratory Order
– Interchange with Soo Line Railroad Company

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Petition for Declaratory Order, filed on behalf of Wisconsin Central, Ltd. ("CN"). The required filing fee of \$1,400 has been paid via pay.gov.

CN is also filing a Motion for Protective Order to protect certain Confidential and Highly Confidential information filed in conjunction with the Petition. Because of the similar nature of the topic in the Board's earlier Docket FD. 36299, CN is serving the service list from that proceeding with the documents filed today as a courtesy.

Please do not hesitate to contact me with any questions.

FILED
April 14, 2020
SURFACE
TRANSPORTATION BOARD

Sincerely,

/s/ Matthew J. Warren

Matthew J. Warren
Counsel for Wisconsin Central, Ltd.

MJW:

Enclosures

cc: Service List from Docket FD No. 36299

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SURFACE
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**WISCONSIN CENTRAL, LTD. – PETITION FOR DECLARATORY
ORDER –INTERCHANGE WITH SOO LINE RAILROAD COMPANY**

STB FINANCE DOCKET NO. 36397

PETITION FOR DECLARATORY ORDER

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Dated: April 14, 2020

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Wisconsin Central, Ltd. (“CN”) respectfully submits this Petition for a Declaratory Order that would enable a permanent solution to the long-running dispute over CN’s right to designate a point to receive interchange traffic in Chicago from Soo Line Railroad Company d/b/a Canadian Pacific (“CP”). In this Petition, CN asks the Board to address the critical questions that it left unanswered in Finance Docket No. 36299¹:

- (1) Whether CN has the right to designate the Belt Railway of Chicago’s (“BRC’s”) Clearing Yard as CN’s point to receive interchange traffic from CP; and
- (2) Whether each railroad is required to bear its own costs for those interchanges, including fees for the BRC’s switching services.

CN believes that each of the answers is “yes.”

CN notes at the outset that this is not an emergency filing and that it does not plan to seek a preliminary injunction. CN is committing that it will continue operating under the Interim Agreement put in place in August 2019,² under which CP delivers its interchange traffic to CN at Clearing {{[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }}).³ The Interim

¹ *Soo Line R.R. Co. – Pet. for Declaratory Order and Preliminary Injunction – Interchange with Canadian National*, STB Fin. Docket No. 36299 (served Nov. 29, 2019) (“November 29 Decision”).

² See Joint Notice of Interim Agreement, STB Fin. Docket No. 36299 (filed Aug. 21, 2019); Interim Agreement Submission, STB Fin. Docket No. 36299 (filed Sept. 5, 2019) (enclosing Interim Agreement filed under seal).

³ Portions of this Petition that are marked in single braces (e.g., “{}”) are designated Confidential and portions that are marked in double braces (e.g., “{ }”) are

Agreement was not terminated by the Board's *November 29 Decision*, because by its terms it is to remain in effect until {{ [REDACTED]

[REDACTED]

[REDACTED] }.

The genesis of this dispute in 2019 was the pressing need for CN to move its Chicago-area interchanges with CP from Spaulding to a more workable location. As CN and multiple community interests showed in Finance Docket No. 36299, Spaulding interchanges caused increasing problems for CN mainline operations and created regular grade crossing blockages that impacted the surrounding communities.⁴ After months of unsuccessful discussions with CP, in early 2019 CN notified CP that it would cancel the Spaulding interchange agreement and designated CN's nearest classification yard (Kirk Yard) to receive interchange traffic from CP. CP objected to Kirk, arguing that it was unreasonably far from CP's lines. After further negotiations, CN and CP agreed that consolidating interchange operations at Clearing Yard would be an acceptable alternative from an operational perspective. While the parties were negotiating over who would pay the BRC's switching costs at Clearing, CP filed a petition with the Board seeking a

designated Highly Confidential under the proposed Protective Order CN is submitting today.

⁴ See CN Reply to Petition for Declaratory Order, STB Fin. Docket No. 36299, at 13-16 (filed May 20, 2019).

declaration that Kirk Yard was an unreasonable interchange location.⁵ CN responded by asking the Board to consider Clearing as a reasonable interchange location.⁶ In July 2019, CN officially designated Clearing as an alternative interchange received location to receive cars from CP.⁷

After multiple filings and an oral argument, the Board issued a decision declaring Kirk was an unreasonable interchange location for CP to deliver CN's cars in light of the circumstances. The Board then closed the FD 36299 proceeding without addressing CN's designation of Clearing or which party should be responsible for paying the switching fees for interchange traffic CP delivers to Clearing that was formerly interchanged at Spaulding. *November 29 Decision* at 4.

In the months since the *November 29 Decision*, CN and CP have been unable to resolve which party should be responsible for paying the switching fees for traffic CP delivers to Clearing that was formerly interchanged at Spaulding. CP's position is that interchange should revert to Spaulding unless CN pays both its own costs to interchange traffic with CP and CP's costs for BRC switching fees. CN's position is that it has the right under 49 U.S.C. § 10742 to designate reasonable alternatives to Spaulding that are within CN's "power to provide," and that, as a co-owner of the

⁵ *Soo Line R.R. Co. – Pet. for Declaratory Order and Preliminary Injunction – Interchange with Canadian National*, STB Fin. Docket No. 36299 (filed Apr. 30, 2019).

⁶ CN Reply to Petition for Declaratory Order, STB Fin. Docket No. 36299, at 21-22 (filed May 20, 2019).

⁷ Letter from CN to A. Davis, STB Fin. Docket No. 36299, at 2 (filed July 12, 2019) ("Exhibit 1 is a letter from CN to CP ... designating Clearing as an interchange location....").

BRC along with CP, CN plainly has the “power to provide” Clearing as an location to receive interchange traffic from CP. And it is equally plain that CP as a delivering carrier is responsible for paying the BRC for the switching services it is performing for CP’s interchange traffic, just as CN is responsible for switching fees for interchange traffic it delivers to CP at Clearing. A Board decision on the merits is required to resolve this fundamental difference between the parties. Accordingly, CN respectfully asks the Board to order that Clearing is a reasonable interchange location and that each carrier is required to pay its respective BRC switch fees.

Section I recounts the factual background and procedural history. Section II identifies the legal standard at issue in this proceeding. Section III explains why CN is entitled to a declaratory order confirming its right to designate Clearing as a point to receive interchange traffic from CP. Section IV details the reasons why CP is required to pay the BRC for its switching services.

I. FACTUAL BACKGROUND

While the Board is familiar with the facts and procedural history from the record in Finance Docket No. 36299, the most relevant facts are summarized below to ensure a complete record in this docket.⁸

⁸ CN also incorporates by reference the pleadings and evidence submitted to the Board in *Soo Line Railroad Company – Petition for Declaratory Order and Preliminary Injunction – Interchange with Canadian National*, STB Fin. Docket No. 36299.

A. Interchange Operations Between CN and CP in the Chicago Region Since 2010

In 2010, CP and CN entered into an interchange agreement under which traffic interchanged between the two carriers in the Chicago region would be interchanged at Spaulding. This agreement consolidated interchange operations that had previously occurred at numerous locations across the Chicago region. Spaulding was not the only Chicago-area interchange point between CN and CP; CP also delivered TIH and some non-TIH traffic to CN via the BRC's Clearing Yard, with CP paying the typical BRC switching fees for such deliveries. The 2010 Interchange Agreement provided that it could be terminated by either party upon 60 days written notice.

Nearly a decade later, recurring operational problems at Spaulding made it clear that it was no longer a suitable interchange point. For example, interchange activities at Spaulding would block CN's single-track main line, which often slowed and sometimes stopped traffic on CN's line in the busy Chicago area.⁹ The configuration of the small yards at Spaulding¹⁰ meant that CN's main line would be blocked several times during every interchange event. The length of these blockages was unpredictable, which meant that interchange operations at Spaulding sometimes required CN to hold trains on the single-track main line while waiting for interchange operations at Spaulding to be completed. These

⁹ These operations are described in detail in Mr. William Albritton's Verified Statement ("Albritton V.S."), appended hereto. *See* Albritton V.S., at 3-9.

¹⁰ *See* Albritton V.S., at Ex. 2 (map of Spaulding track configuration).

interchange-based interruptions to main line service exacerbated other uses of CN's main line that consume capacity, such as Metra and Amtrak operations, which cross and even operate over portions of CN's single-track main line.

In addition, interchange activity regularly required CN and CP trains to occupy the three at-grade crossings at Spaulding Road, West Bartlett Road, and Stearns Road. Spaulding Road was particularly impacted because it runs directly across the track connecting CP and CN that was used to facilitate interchange at Spaulding. This meant that Spaulding Road was blocked for each CP and CN interchange event, and it was typically blocked multiple times during a single interchange. Mr. Albritton's Verified Statement gives examples of the grade crossing blockages associated with a typical Spaulding interchange. *See* Albritton V.S. at 5, 7, 9-17.

These interchange activities at Spaulding resulted in significant complaints from the community. The Village of Bartlett has attested to the disruptions the community experienced as a result of these blocked crossings. *See* Letter from K. Wallace to C. Brown, STB Fin. Docket No. 36299 (filed May 17, 2019) (detailing the challenges of blocked crossings in the Village and the history of complaints regarding blockages at West Bartlett, Stearns, and Spaulding Roads). The disruption was so significant that the community requested that the Board "**DO NOT** require the railroads to continue interchanging at Spaulding." *Id.* at 1.

CN data shows that in 2016, Spaulding Road was blocked for 10 minutes or more 167 times as a result of interchange operations. West Bartlett Road and

Stearns Road were blocked 163 and 84 times, respectively, for more than 10 minutes, all because of interchange operations.¹¹ A comparison of blockages at these grade crossings before and after implementation of the Interim Agreement further illustrates that the blockages at these three roads were primarily attributable to interchange operations at Spaulding. Table 1 identifies the monthly total grade crossing blockages over 10 minutes at Spaulding, Stearns, and West Bartlett Roads from January through July 2019, before the Interim Agreement:

TABLE 1
Monthly Total Grade Crossing Activations Over 10 Minutes at
Spaulding Road, Stearns Road, and West Bartlett Road
January 2019 Through July 2019 (Before Interim Agreement)

Month	Spaulding Road	Stearns Road	West Bartlett Road	Total
Jan. 2019	24	19	38	81
Feb. 2019	16	18	28	62
March 2019	14	27	39	80
April 2019	20	30	42	92
May 2019	20	23	44	87
June 2019	20	18	41	79
July 2019	11	23	40	74
Average	17.9	22.6	38.9	79.2

¹¹ See *Albritton V.S.* at 9.

Table 2 shows that blockages have fallen precipitously after interchange operations were moved from Spaulding.¹² In the first seven months of operations under the Interim Agreement, blockages over 10 minutes decreased to an average of 0.7 per month at Spaulding Road, 8 per month at Stearns Road, and 9.4 per month at West Bartlett Road, a total decrease of more than three quarters from the amount when interchange was at Spaulding.

TABLE 2
Monthly Total Grade Crossing Activations Over 10 Minutes At
Spaulding Road, Stearns Road, and West Bartlett Road
September 2019 Through March 2020 (After Interim Agreement)

Month	Spaulding Road	Stearns Road	West Bartlett Road	Total
Sept. 2019	1	14	16	31
Oct. 2019	1	9	7	17
Nov. 2019	0	7	9	16
Dec. 2019	1	6	9	16
Jan. 2020	0	4	9	13
Feb. 2020	0	7	5	12
March 2020	2	9	11	22
Average	0.7	8.0	9.4	18.1

¹² August data is excluded from the averages because the Interim Agreement was implemented during the month of August 2019.

The improvements in traffic flow at these crossings were confirmed by the Village of Bartlett, which informed the Board in October 2019 that it had experienced a “noticeable decrease” in blocked crossing complaints since CP and CN relocated interchange operations from Spaulding to Clearing.¹³

B. CN’s Good Faith Negotiations for An Alternative

CN raised its interchange concerns with CP in 2018 and offered a variety of reasonable solutions. But CP showed little interest in relocating the interchange point from Spaulding. Following months of discussion that failed to reach an agreement, CN provided notice to CP on March 11, 2019 that it would terminate the 2010 Interchange Agreement pursuant to the terms of the contract and would exercise its right to designate a different reasonable interchange point.

CN subsequently designated Kirk Yard as its interchange location to receive CP-to-CN interchange traffic. *See Exhibit 5, March 11, 2019 Letter from M. Matteucci to C. Hubbard.* CN offered to tender interchange cars to CP at any reasonable location it designated. (CP subsequently designated its own Bensenville Yard.) CP objected to Kirk, arguing that it was an unreasonably far distance for CP crews to travel. *See Exhibit 6, April 3, 2019 Letter from R. Johnson to M. Cory.*

In light of CP’s objections, CN worked with CP to find a mutually agreeable alternative interchange location. CP made it clear that its preference was to continue interchanging traffic at Spaulding. However, CP also indicated that it

¹³ Oct. 7, 2019 Letter from Kevin Wallace, Village of Bartlett President, STB Fin. Docket No. 36299, at 1 (filed Oct. 24, 2019).

would be “agreeable” to delivering interchange traffic to Clearing Yard as an operational matter. CP’s agreement, however, was contingent upon CN reimbursing CP for the per-car switching fees that CP would pay to the BRC. *See* Exhibit 6, April 3, 2019 Letter from R. Johnson to M. Cory; Exhibit 7, April 18, 2019 Letter from R. Johnson to M. Cory.

C. CP’s Petition for Declaratory Order and Preliminary Injunction in FD 36299

While discussions were continuing, CP filed a petition for declaratory order and preliminary injunction with the Board, arguing that Kirk was an unreasonable location for CN to receive interchange traffic and that the Board should order CN to continue to receive cars from CP at Spaulding.¹⁴ CP did not ask the Board for a ruling on the reasonableness of Clearing or the parties’ dispute over who should be responsible for paying the BRC switching fees for CP traffic at Clearing.

CN’s first pleading in response to CP’s petition explained that the core dispute between the parties was not over the reasonableness of Kirk but rather over which carrier was responsible for paying BRC switching fees for interchange traffic that CP would deliver to Clearing.¹⁵ On May 9, 2019, the Board ordered the parties to participate in Board-sponsored mediation and to “maintain the status quo and

¹⁴ *See Soo Line Railroad Company – Petition for Declaratory Order and Preliminary Injunction – Interchange with Canadian National*, STB Fin. Docket No. 36299, at 2 (filed Apr. 30, 2019).

¹⁵ CN Reply to Petition for Preliminary Injunction, STB Fin. Docket No. 36299, at 8 (filed May 3, 2019) (“the only open dispute is about money”).

continue to interchange railcars at Spaulding while they mediate this dispute.”¹⁶

The parties participated in mediation through July 2019 while continuing interchange operations at Spaulding, but mediation proved unsuccessful.¹⁷

In July 2019, CN formally designated Clearing Yard as a second location for CN to receive interchange traffic from CP. Letter from CN to A. Davis, STB Fin. Docket No. 36299, at 2 (filed July 12, 2019) (“Exhibit 1 is a letter from CN to CP ... designating Clearing as an interchange location ...”). CN also asked the Board to “consider[] which party is ultimately responsible for paying Belt switching fees.” CN Reply, STB Fin. Docket No. 36299, at 7 (filed July 12, 2019).

In August 2019, after oral argument, CN and CP entered into an Interim Agreement whereby CN-to-CP interchange cars would be delivered to CP at the BRC’s Clearing Yard, with CN bearing all the costs for such deliveries. In turn, CP-to-CN interchange traffic would be delivered to CN at the BRC’s Clearing Yard, with CP delivering the cars to Clearing and CN picking up the cars from Clearing.

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁶ See Decision, STB Fin. Docket No. 36299, at 2 (served May 9, 2019).

¹⁷ See Letter from CN to A. Davis, STB Fin. Docket No. 36299 (filed July 12, 2019) (“CN submits this letter to inform the Board that the Board-mandated mediation that concluded on July 11, 2019 . . . was not successful.”).

[REDACTED]

[REDACTED] [REDACTED] }

{ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] }. Following completion of the

Interim Agreement, CN informed the Board that the only open dispute remaining between the parties was cost: CP demanded that CN agree to reimburse CP for all of its BRC fees for interchange cars CP delivers to Clearing that were formerly interchanged at Spaulding. Following the end of the mediation period, CN informed the Board of the status of negotiations and asked the Board to “consider[] which party is ultimately responsible for paying Belt switching fees.” July 12, 2019 letter from M. Warren to A. Davis at 7.

D. The Board’s Decision in FD 36299 Did Not Address CN’s Designation of Clearing or Which Party Is Responsible for Paying BRC Switching Fees for CP Interchange Traffic at Clearing.

The Board limited its *November 29 Decision* to finding that CN’s designation of Kirk Yard as the interchange point for CP to deliver interchange cars was unreasonable under the circumstances of the case and denying the preliminary injunction request as moot. *Nov. 29 Decision*, at 3. The Board declined to address the reasonableness of interchange at Clearing, stating that “it remains unclear whether CN has designated Clearing Yard as an interchange point” and noting that

“at least one party believes the issue has not been fully briefed.” *Id.* at 4.¹⁸ The Board concluded that “[o]ther interested parties may not have had notice that the Board might determine whether Clearing Yard is a reasonable interchange point. Accordingly, the Board will not address this issue.” *Id.*

The Board further declined to address the reasonableness of Spaulding (although it noted the community’s concern over grade crossing blockages at Spaulding). *Id.* at 5, 7. Instead, it narrowly held that CN could not designate Kirk Yard to receive interchange traffic from CP because Kirk Yard was too far from CP’s lines. *Id.* at 7-8. The Board emphasized its belief that CP crews might not be able to deliver interchange traffic to Kirk on a single shift and that the possibility that CP might have to use multiple crews to effectuate interchange showed that the distance was unreasonably long. *Id.* at 5.

E. The Parties Have Been Unable to Reach Agreement Regarding Payment of BRC Switch Costs for CP’s Interchange Cars Delivered to Clearing and Require a Decision from the Board.

Since the *November 29 Decision*, CN and CP have continued negotiations in an effort to resolve the dispute over the interchange location. In spite of these efforts, the parties have been unable to reach agreement. The parties continue to interchange per the Interim Agreement, but no resolution as to the payment of BRC fees has been reached.

¹⁸ *But see* CN Letter to A. Davis, STB Fin. Docket No. 36299, Ex. 1, at 1 (filed July 12, 2019) (“CN also designates Clearing Yard as a second location for CN to receive interchange traffic from CP.”).

Accordingly, a decision from the Board is required.¹⁹ Through this Petition for Declaratory Order, CN requests that the Board rule that Clearing is a reasonable interchange location for CP to delivery CN's interchange traffic. CN further asks the Board to rule that each party must bear its own BRC switching fees.

II. LEGAL STANDARD

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to begin a declaratory order proceeding to eliminate a controversy or remove uncertainty. *See CSX Transp. Inc. – Petition for Declaratory Order*, STB Docket No. 34662 at 5 (Mar. 14, 2005). There is a plainly a controversy for the Board to resolve here. CN and CP have attempted for over a year to resolve the dispute as to CN's rights to designate a location for CP to deliver interchange traffic in the Chicago region. Despite multiple rounds of negotiation, mediation, and an earlier Decision from the Board, no resolution as to CN's right to designate Clearing as a reasonable interchange point has been achieved. And the parties continue to disagree about whether each party must bear its own BRC switching fees.

Section 10742 sets forth the applicable legal standard for a carrier's duties and rights to choose an interchange point from which to receive another carrier's traffic. In particular, 49 U.S.C. § 10742 provides:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall provide reasonable, proper, and equal facilities *that are within its*

¹⁹ 5 U.S.C. § 554(e) (an “agency ... may issue a declaratory order to terminate a controversy or remove uncertainty”).

power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier or of a water carrier providing transportation subject to chapter 137.

49 U.S.C. § 10742 (emphasis added). Section 10742’s calibration to a carrier’s “power” to comply with interchange obligations has its roots in Section 3 of the Interstate Commerce Act of 1887, which provided:

Every common carrier subject to the provisions of this act shall, *according to their respective powers*, afford all reasonable, proper, and equal facilities for the interchange of traffic between the respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.²⁰

The ICC, Board, and federal courts have long recognized that a receiving carrier has the right to designate a reasonable location to receive interchange traffic. In particular, the ICC explained that a “receiving carrier necessarily has the right to designate where it will accept cars in interchange from its connections, provided, in making such designation, the receiving carrier does not impose unusual, unreasonable, or impossible operating hazards or require the delivering carrier to do work which properly belongs to the receiving carrier.”²¹

²⁰ Interstate Commerce Act, Ch. 104 § 3, 24 Stat. 379 (1887) (emphasis added).

²¹ *New York, C. & St. L. R. Co. v. New York Central R. Co.*, 314 I.C.C. 344, 345 (1961) (“*New York*”); *see also Norfolk So. Ry. Co.—Pet. for Declaratory Order—Interchange With Reading Blue Mountain & No. R.R. Co.*, STB Docket No. 42078, at 4 (Apr. 29, 2003) (“*RBMN*”) (“Custom requires the receiving railroad in a direct

The Board has also made clear that a railroad’s discretion to choose a point for receiving interchange traffic is broad. *See RBMN*, at 5-7. In fact, the Board has confirmed a receiving carrier’s statutory prerogative to designate a point of its choice for receiving interchange traffic even when: (1) a railroad is changing an interchange point purely for its own convenience or business reasons; (2) the existing interchange point remains operationally workable; and (3) the new interchange point entails more work for the other carrier.²² Moreover, the D.C. Circuit has explained that “[t]he courts have long recognized that when a carrier has the power to provide two or more options for interchanging traffic, each of which is independently reasonable, proper, and equal, it need not provide all such options to connecting lines but may instead offer only that option which best serves its own business interests.”²³

In addition, the interchange obligations in 49 U.S.C. § 10742 apply to *all* carriers—both receivers and forwarders.²⁴ Indeed, the ICC established that

physical interchange to designate a point on its own line where it will receive traffic and to provide a free route over its tracks to that point for the delivering carrier.”).

²² *RBMN*, at 7 (denying petition to declare that receiving carrier’s selection of new interchange point was unreasonable, where prior interchange point remained workable and where new point would require the delivering carrier to make new 30-mile hauls over the receiving carrier’s lines).

²³ *Burlington N. R.R. v. United States*, 731 F.2d 33, 40 (D.C. Cir. 1984) (“*Burlington Northern*”).

²⁴ *See, e.g., Missouri & Ill. Coal Co. v. Ill. Cent. R.R. Co.*, 22 I.C.C. 39, 46 (1911) (“[T]here can be no doubt as to the intent of Congress [in enacting interchange obligations and related provisions]. Our railroads are called upon to so unite themselves that they will constitute one national system[.]”).

forwarding carriers are obligated “to make delivery on the rails of their connections, either direct or *by bearing the charges of the intermediate switching line*, and this is the general practice of railroads throughout the country.”²⁵ In sum, forwarding carriers are obliged to abide by a receiving carrier’s reasonable designation of an interchange point and must bear their own costs for intermediate switching services.²⁶

III. CN HAS THE RIGHT TO DESIGNATE THE BRC’S CLEARING YARD TO RECEIVE INTERCHANGE TRAFFIC FROM CP.

The first question that CN asks the Board to resolve in this Petition for Declaratory Order is a simple one: does CN’s designation of Clearing Yard as its point for receiving interchange traffic from CP satisfy CN’s statutory responsibilities to provide reasonable interchange facilities? CP claimed in Finance Docket No. 36299 that the answer to this question was no, because CN supposedly is required to designate a point on CN’s own lines.²⁷ But CP’s theory has no basis in the statute, in past practice, or in common sense. The statute does not say a word

²⁵ *Chi., Rhode Island & Pac. Ry. Co. v. Baltimore & Ohio R.R. Co.*, 113 I.C.C. 681, 690 (1926) (emphasis added).

²⁶ *New York*, 314 I.C.C. at 345 (a “receiving carrier necessarily has the right to designate where it will accept cars in interchange from its connections, provided, in making such designation, the receiving carrier does not impose unusual, unreasonable, or impossible operating hazards or require the delivering carrier to do work which properly belongs to the receiving carrier”); *see RBMN*, at 4; *Kansas City Southern Ry. Co.*, 213 I.C.C. at 356 (if interchanging carriers cannot agree, “the receiving carrier is entitled as of right to establish a reasonably located place where cars may be delivered to it”); *Rates, Regulations, and Practices of Peoria & Pekin Union Ry. Co. at Peoria, Illinois, and Near-By Points*, 93 I.C.C. 3, 9 (1924)).

²⁷ *See* CP Reply, STB Fin. Docket No. 36299, at 2 (filed July 3, 2019); CP Reply, STB Fin. Docket No. 36299, at 2-3 (filed July 19, 2019).

about carriers needing to designate interchange receipt points on tracks that they own. On the contrary, it allows carriers to provide facilities that are within their “power to provide.” 49 U.S.C. § 10742. As set forth in the attached Belt Railway Operating Agreement, CN plainly possesses the power as a co-owner of the BRC to use Clearing Yard to receive interchange traffic. *See* Exhibit 9, BRC Operating Agreement, at 2-3. And the use of switching railroads or terminal railroads to effectuate interchange is commonplace in the rail industry. It would upset common practices throughout the nation for the Board to hold that carriers could only lawfully designate interchange receipt locations on tracks that they directly controlled. Indeed, a decision not to deem the BRC as a reasonable interchange point could have ripple effects through the industry, affecting many existing interchange agreements both in Chicago and at other interchange locations across the United States.

Moreover, there is no question that Clearing Yard has been and continues to be a reasonable interchange location that imposes no unusual, unreasonable, or impossible burdens on CP. Clearing was designed to accommodate interchange among the BRC’s co-owners, and it has readily accommodated the interchange volumes between CP and CN with no adverse impact to operations, fluidity in Chicago, or the surrounding community.

A. Carriers Have the Statutory Right To Designate a Reasonable Location to Receive Interchange Traffic.

CP’s claim that carriers are only allowed to designate interchange receipt locations on their own lines is undermined by the language of the statute. Section

10742 specifically discusses the “facilities” that carriers are required to provide for the interchange of traffic, but it tellingly does not require those facilities to be completely owned by the carrier. Instead, carriers are ordered to “provide reasonable, proper, and equal facilities that are within [their] power to provide.” 49 U.S.C. § 10742.

As CN has previously explained to the Board,²⁸ there is little case law interpreting the meaning of either the “within its power to provide” language of the current Section 10742 or the “according to their respective powers” language from the earlier Interstate Commerce Act. But in a statutory context, “power” has an ordinary meaning of “[t]he legal right or authorization to act or not act.”²⁹ Where a railroad holds legal rights to utilize a switching carrier’s facilities for interchange (whether through ownership, via contract, or both), the railroad plainly has the “power to provide” interchange facilities by utilizing those legal rights within the meaning of Section 10742.

In this instance, CN plainly has the power to provide Clearing Yard as an interchange receipt point as a co-owner of the BRC pursuant to the Belt Railway Operating Agreement. That Agreement {

[REDACTED] }

Exhibit 9, BRC Operating Agreement, at 2. The ICC has recognized that such owners are entitled to equal status. *Belt Railway of Chicago—Operation*, 324 I.C.C.

²⁸ See CN Reply, STB Fin. Docket No. 36299, at 17-19 (filed Nov. 12, 2019).

²⁹ Black’s Law Dictionary 1189 (7th ed. 1999).

597, 606 (1965) (recognizing that “in owner-to-owner operations each owner company has the right to use, and uses, the Belt Railway on equal terms” and that “the right and privilege [to use the Belt] is coequal for all owner lines”).

The Belt Railway Operating Agreement { [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] }

[REDACTED] In short, both CN and CP, as co-owners of the BRC, have authority to use the BRC to interchange traffic with each other or with other co-owners, pursuant to the terms of the Operating Agreement. Thus Clearing Yard is plainly a facility that is within CN’s “power to provide” for interchange.

While CP alleged in Finance Docket No. 36299 that CN’s designation of Clearing was trying to force CP to exercise its “trackage rights,” that allegation is a red herring. Neither CP nor CN pays “trackage rights fees” as co-owners to operate over the BRC. The fees that CP wants CN to pay are switching fees paid for the services that the BRC performs for interchanges (services that significantly reduce the work that would have to be performed by CP crews). More importantly, it is a matter of public record that CP uses trackage rights over Metra’s “West Line” both

for Spaulding interchanges (*i.e.*, trains moving from Bensenville to Spaulding) and for Clearing interchanges (*i.e.*, trains moving from Bensenville to Clearing).³⁰ This is not a case in which a carrier is being asked to exercise trackage rights to effectuate interchange rather than using lines it owns. It is rather a case in which CN-owned lines and CP-owned lines do not connect at Spaulding or at Clearing, and where CP actually must use the same Metra trackage rights to deliver to either Spaulding or Clearing.

Therefore, CP's claims in Finance Docket No. 36299 that the supposed "physical connection" between CN and CP at Spaulding had a special legal significance that precluded CN from designating Clearing is based on a false factual premise.³¹ In the same vein, CP is wrong that *Burlington Northern* does not control here because the railroads in *Burlington Northern* were "non-contiguous."³² There is no meaningful factual distinction between the facts here and the facts in *Burlington Northern*—where the court affirmed a receiving carrier's right to choose

³⁰ See *Canadian Pacific Ry. et al.—Control—Dakota, Minnesota & E. R.R. Corp., et al.*, STB Fin Docket No. 35081, at 13 (served Sept. 28, 2008) (noting that Metra "acquired" the West Line in 1989, and Soo Line operates over it "by virtue of a 1985 trackage rights agreement"); see Exhibit 10, Metra Comments in Opposition to Proposed Transaction and Request for Conditions, STB Fin. Docket No. 35081, at 2 (filed Mar. 4, 2008) ("Metra acquired the West and North Lines in transactions with the Trustee of the Milwaukee Road in 1989. CP's Soo Line subsidiary was granted trackage rights over each line with the right to dispatch those lines by the Trustee in 1985."); see also CP Response to Oral Argument Questions, STB Fin. Docket No. 35081, at 2-3 (filed Oct. 21, 2019) (includes CP's response to the Board's questions about the details of CP's compensation to Metra for use of the line).

³¹ CP Reply, STB Fin. Docket No. 36299, at 2 (filed July 19, 2019).

³² *Id.* at 2 n.3.

to receive traffic on an intermediate switch carrier, even though that would require the delivering carrier to pay the intermediate carrier's switching fees.³³

B. Clearing Is A Reasonable Interchange Location.

It is well settled that a receiving railroad has the authority to designate a point where it wishes to receive interchange traffic, so long as that point does not “impose unusual, unreasonable, or impossible operating hazards” on the delivering carrier.³⁴ There is no question that Clearing passes that test.³⁵

In the first place, in April 2019, CP admitted that Clearing was an “agreeable” interchange location and that CP is “willing” to interchange there as an operational matter.³⁶ Moreover, CN and CP have long interchanged TIH/PIH

³³ *Burlington Northern*, 731 F.2d at 40 (“[C]ourts have long recognized that when a carrier has the power to provide two or more options for interchanging traffic, each of which is independently reasonable, proper, and equal, it need not provide all such options to connecting lines but may instead offer only that option which best serves its own business interests.”).

³⁴ *New York*, 314 I.C.C. at 345 (a “receiving carrier necessarily has the right to designate where it will accept cars in interchange from its connections, provided, in making such designation, the receiving carrier does not impose unusual, unreasonable, or impossible operating hazards or require the delivering carrier to do work which properly belongs to the receiving carrier”); see *Norfolk So. Ry. Co.—Pet. for Declaratory Order—Interchange With Reading Blue Mountain & No. R.R. Co.*, STB Docket No. 42078, at 4 (Apr. 29, 2003) (“*RBMN*”) (“Custom requires the receiving railroad in a direct physical interchange to designate a point on its own line where it will receive traffic and to provide a free route over its tracks to that point for the delivering carrier.”).

³⁵ Though CN is filing this Petition to resolve the parties’ dispute, the burden of proof is on CP to prove that interchange at Clearing is “unusual, unreasonable, or impossible.” *RBMN*, at 5.

³⁶ See Exhibit 7, April 18, 2019 Letter from R. Johnson to M. Cory (“we re-iterate our willingness to voluntarily exercise our trackage rights on the Belt Railway of Chicago (BRC) and deliver CN’s traffic to the BRC at Clearing”); CP Petition for

traffic via Clearing, and both carriers operate trains to Clearing on a daily basis.

And there is nothing “unusual, unreasonable, or impossible” about interchange at a prominent Chicago yard whose primary purpose is to facilitate interchanges among its Class I owners.

The suitability of Clearing as a consolidated interchange location for CP and CN is confirmed by the parties’ experience in recent months. Since interchange operations at Clearing increased in mid-August 2019 to include traffic that was formerly interchanged at Spaulding, operations have been consistent and well executed. *Albritton V.S.* at 20-21. The interchange operations have worked well, with the BRC functioning as a switching carrier between two Class I co-owners, as intended. *See id.*

As CN reported to the Board in November 2019, blocked at-grade crossings at Spaulding have significantly declined since the interchange was re-located to Clearing Yard.³⁷ Prior to the Interim Agreement, the average total number of blocked crossings over 10 minutes at Spaulding, Stearns, and West Bartlett Roads was 79.2. Following implementation of the Interim Agreement, average blockages in excess of ten minutes fell to 18.1 per month—a decrease of over 75% as compared to when interchange operations occurred at Spaulding. *See supra*, Table 2.

Declaratory Order and Preliminary Injunction, STB Fin. Docket No. 36299, Walker V.S. ¶ 8 (filed Apr. 30, 2019).

³⁷ Wisconsin Central (CN) Reply, STB Fin. Docket No. 36299, at 2-3, 4-7 (filed Nov. 12, 2019).

While CP suggested that moving interchanges to Clearing could adversely impact transit times, that has not been CN's experience. Indeed, when CP was asked by the Board to provide data to support its claims of longer transit times through Clearing, it was unable to do so. *See* Wisconsin Central (CN) Reply, STB Fin. Docket No. 36299, at 2 (filed Nov. 12, 2019) ("In its October 21 letter, CP . . . indicates that data is 'inconclusive as to whether one routing on average is faster than the other.'"); *see id.* at 7-8.

IV. CP IS RESPONSIBLE FOR ITS SHARE OF BELT RAILWAY SWITCHING FEES.

The second question is whether CP is responsible for paying the BRC for the switching services it provides for the interchange traffic that CP delivers to Clearing. Fees for the traffic that CN delivers to CP are not at issue, as CN acknowledges its responsibility as a delivering carrier to pay costs for interchange traffic it delivers to CP (including BRC switching fees for CN-to-CP traffic delivered through Clearing). The question is whether CP is responsible for likewise paying fees for the traffic it delivers to CN through the BRC.

It should be noted at the outset that the BRC switching fees are not some burdensome toll that the BRC extracts from its owners. On the contrary, they are reimbursement for the valuable services that the BRC provides, such as blocking cars and assembling trains. CP crews that are operating CP's daily trains to Clearing can essentially "drop off" trains at Clearing and allow BRC personnel to break up the incoming CP trains into blocks that will be assembled into outgoing trains for the various railroads with which CP interchanges. In contrast,

interchange at Spaulding required time-consuming work for CP crews to pick up and drop off cars (which were often on multiple tracks due to the small size of the facilities at Spaulding).

CP is responsible for paying these BRC fees, for three independent reasons. First, in the rail industry these switching fees are customarily borne by the delivering carrier. The D.C. Circuit acknowledged this in *Burlington Northern*, noting that “[u]nder longstanding Chicago custom, the intermediate switching charges involved in [interchange] deliveries are normally borne by the forwarding carrier.”³⁸ And the ICC recognized it for many decades. *See Chicago, Rhode Island & Pacific Ry. Co. v. Baltimore & Ohio R.R. Co.*, 113 I.C.C. 681, 690 (1926) (forwarding carriers are obligated “to make delivery on the rails of their connections, either direct or by bearing the charges of the intermediate switching line, and this is the general practice of railroads throughout the country”); *Rates, Regulations, and Practices of Peoria & Pekin Union Railway Co. at Peoria, Ill. and Near-by Points*, 93 I.C.C. 3, 22 (1924) (switching charges should be “absor[bed] . . . by the line that delivers the traffic”). Indeed, this custom is reflected in the parties’ past practice at Clearing. CP historically paid the BRC switching fees for TIH and other non-TIH traffic that it interchanged with CN via the BRC. *See Albritton V.S.* at 3 (noting the “historic experience of the carriers, who had for years been interchanging CP-to-CN bound TIH traffic, as well as some non-TIH cars, at

³⁸ 731 F.2d at 35; *see also Baltimore & Ohio R.R. Co. v. United States*, 277 U.S. 291, 301 (1928) (“usually when interchange is effected by means of an intermediate carrier, the delivering carrier bears the cost of switching”).

Clearing, with CP paying the switching fees for the traffic it is delivering.”); *see also id.* at 1-2, 21.

Second, and independently, CP’s responsibility for switching charges is established by the Belt Railway Operating Agreement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Third, CP's demand that CN pay CP's switching fees would result in an unfair imbalance in the parties' interchange responsibilities. It may be true that railroads' interchange expenses need not be "precisely balance[d]," because circumstances may differ. *November 29 Decision*, at 6. But interchange is a mutual statutory obligation that imposes duties on both forwarding carriers and receiving carriers.⁴⁰ The Board has emphasized that a carrier cannot reasonably expect another railroad to bear all the costs of an interchange.⁴¹ A railroad's insistence

⁴⁰ *Chi., Rhode Island & Pac. Ry. Co.*, 113 I.C.C. at 690 (forwarding carriers are obligated "to make delivery on the rails of their connections, either direct or by bearing the charges of the intermediate switching line, and this is the general practice of railroads throughout the country").

⁴¹ *Minnesota N. R.R., Inc. v Canadian Nat'l Ry. Co.*, STB Docket No. 42080, at 6 (STB served Mar. 18, 2005) (railroad could not expect another railroad to pay all capital costs for establishing a new interchange connection, because "[i]nterchange is a mutual agreement that will benefit two carriers, not just one").

that its interchange partner pay virtually all of the costs associated with interchange—even to the point of reimbursement for its switching fees—is unreasonable on its face.

The unreasonableness of CP's position is confirmed by the fact that it is almost certainly reaping significant financial benefits from the consolidation of interchange traffic at Clearing. Since implementation of the Interim Agreement, CP has canceled its daily train to and from Spaulding. At oral argument in August 2019, CP estimated that each train start costs it \$4800.⁴² By CP's own estimate, therefore, it is saving approximately \$144,000 a month solely by virtue of canceling that daily Spaulding train start.⁴³ CP's crew cost savings would substantially offset the BRC switching fees at issue here. Indeed, it is a distinct possibility that CP's crew cost and other savings from canceling daily Spaulding trains actually outweigh the BRC switching fees for interchange cars CP delivers to Clearing for CN.⁴⁴

⁴² Aug. 6, 2019 Oral Argument Transcript, STB Fin. Docket No. 36299, at 49:18-50:17.

⁴³ Some of those savings could be canceled out by new trains to Clearing (if CP is unable to fit all the former Spaulding interchange traffic onto its existing trains to Clearing), but it is not clear that CP has needed to run any meaningful number of additional Clearing trains since implementation of the Interim Agreement.

⁴⁴ CN refers the Board to the cost analysis submitted in its November 12, 2019 filing for a discussion of how CP's crew cost savings might compare to the BRC fees at issue. See Wisconsin Central (CN) Reply, STB Fin. Docket No. 36299, at 8-12 (filed Nov. 12, 2019).

Nevertheless, CP continues to insist that CN permanently pay all of CP's BRC switching fees, using the threat of returning to Spaulding with all the associated adverse operational and community impacts as leverage for CP to avoid paying its share of interchange costs. The Board should put an end to these tactics and make clear that each party is responsible for paying its own share of BRC switching fees.⁴⁵

V. CONCLUSION

CN requests that the Board grant its Petition for Declaratory Order and find that interchange of CP-to-CN traffic at Clearing Yard via the BRC is reasonable and that each carrier must bear its own costs.

Respectfully submitted,

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Dated: April 14, 2020

⁴⁵ In making this ruling, the Board does not need to establish any general rules governing the appropriate division of interchange expenses or railroads' relative responsibilities. It would only need to rule that on the record before it in this proceeding, it is appropriate for CP to bear the switching costs associated with interchange deliveries to Clearing, as CP has historically done for its Clearing deliveries to CN, and as CN is doing for interchange traffic it delivers to CP.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April 2020, I caused a copy of the foregoing Petition for Declaratory Order to be served by U.S. Postal Service or more expeditious means upon:

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As a courtesy, the Petition has also been served on parties listed on the service list for Finance Docket No. 36299.

/s/ Hanna Chouest
Hanna M. Chouest

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36397

**WISCONSIN CENTRAL, LTD. – PETITION FOR DECLARATORY ORDER –
INTERCHANGE WITH SOO LINE RAILROAD COMPANY**

VERIFIED STATEMENT OF WILLIAM ALBRITTON

My name is William Albritton, and I am a General Manager at CN. I joined CN in 1990 and have over 14 years of senior management experience, serving as Superintendent and General Superintendent prior to my appointment as General Manager in 2014. I am responsible for overseeing CN rail operations in the Chicago area. I have served in a variety of terminals on the CN network, including at the Chicago Rail Traffic Control Center. I am particularly familiar with CN's interchange operations with Canadian Pacific ("CP") at Spaulding and the Belt Railway's Clearing ("BRC") Yard and have been involved in negotiations with CP regarding the movement of the CN-CP interchange in the Chicago area.

In 2010, CN and CP entered into an interchange agreement that set Spaulding as the primary location to interchange traffic in Chicago. The selection of Spaulding was intended to consolidate operations to facilitate interchange for both railroads in the complex Chicago region. Historically, CN and CP also interchanged traffic at Clearing Yard; all hazardous traffic that requires a secure handoff must be

interchanged at Clearing, and other nonhazardous traffic was occasionally interchanged there.

CN is continuously striving to improve network fluidity, which is imperative to promote efficient asset utilization and good customer service. One way in which CN can improve fluidity is by eliminating chokepoints on its system. The Spaulding interchange was one such chokepoint. By moving interchange activities from Spaulding to a more suitable location, CN's network is more resilient, and fluidity in the important Chicago area has improved.

When the interchange was active, CN and CP interchanged traffic at Spaulding on a near-daily basis. Each day on average, CN delivered 42 CP-bound interchange cars to CP and CP delivered 29 CN-bound interchange cars to CN at Spaulding. In March and April of 2019, CN delivered as many as 97 cars to CP in one day, and CP delivered a high of 86 cars to CN in a day.

Over the last 8 years, it became clear that the Spaulding interchange was not an operationally feasible or equitable location for the interchange of CN and CP traffic, for three primary reasons: (1) CN's single-track main line was blocked while CP or CN placed or pulled interchange traffic; (2) interchange operations blocked nearby at-grade crossings at Spaulding Road, West Bartlett Road, and Stearns Road; and (3) CN classified all of the interchange traffic at Kirk Yard, resulting in CN performing a significant portion of the work and incurring significantly more expense than CP, because CN traveled between Spaulding and Kirk Yard twice for each interchange.

Since August 2019, CN and CP have been operating under an Interim Agreement, under which CP delivers its interchange traffic to CN at the BRC's Clearing Yard { [REDACTED]

[REDACTED] } These operations have been smooth and consistent with the historic experience of the carriers, who had for years been interchanging CP-to-CN bound TIH traffic, as well as some non-TIH cars, at Clearing, with CP paying the switching fees for the traffic it is delivering. Thus the only outstanding issue is who should pay for CP to deliver CN's cars to Clearing.

In the following statement, I explain the operational challenges that made Spaulding an infeasible interchange location. I also discuss interchange operations under the Interim Agreement, which have continued to work smoothly for traffic interchanged at Clearing.

A. CP and CN Interchange Operations Regularly Blocked CN's Single-Track Main Line When Interchanging Traffic at Spaulding.

When CP and CN were interchanging traffic at Spaulding , these interchange operations blocked CN's single-track main line nearly every day. Blocking the single-track main line during interchange operations caused congestion problems on CN's network that radiated across Chicago and beyond.

Specifically, CN's single-track main line was blocked in each of these three moves that were required to complete interchange:

- each time CN delivered CP-bound interchange cars to Spaulding,

- each time CP picked up CP-bound interchange cars from Spaulding, and
- each time CN picked up CN-bound interchange cars at Spaulding.

As Exhibit 2 illustrates, the CN single-track main line crosses both Bartlett and Spaulding Roads. CN's sidings (where CN delivered and picked-up cars for interchange to CP) are located between Bartlett and Spaulding Roads. CP's siding tracks are accessed from the Spaulding West Wye, which connects to CN's single-track main line, or from Metra's tracks. Any time either railroad needed to place or pull cars from CN's sidings, or any time cars were pulled from CP's siding, CN's single-track main line was blocked. Blocking CN's single-line main nearly every day deteriorated CN's fluidity on adjacent track segments in its network across Chicago.

Interchange operations involve a number of consecutive train movements that take time. CN has included photos of some of these operations at Spaulding, which illustrate the extent to which the single-track main line was blocked during interchange.

When CN conducted an interchange move at Spaulding to drop off cars for subsequent CP pick-up, it was required to complete the following steps:

- CN train arrives at the CN Bartlett Road crossing and pulls through the crossing, as illustrated by the following photo:



- CN sets out cars on the siding south of Bartlett Road. This operation blocks the at-grade crossing at Bartlett Road.
- CN blocks the main line to shove additional cars onto a second siding.
- CN moves north on to the CN Main and crosses Spaulding Road onto the CP siding to pick up cars.
- CN ties onto cars set out in the CP siding and does a brake test. The conductor must walk both sides of the train to complete a safety inspection.
- CN requests permission from the dispatcher to enter the main line and then must line the hand-thrown switches.
- CN enters the main and shoves back onto a second CP siding to pick up additional cars. It takes approximately 45 minutes to compile a train from cars placed on 3 interchange tracks. During this time, the single-track main line is blocked.
- CN pulls forward onto the mainline until the last car is completely on the main line.
- CN airs the cars and must perform an air test.

Given space limitations on each individual siding track, depending on the number of cars to be set off for interchange, these operations sometimes needed to be completed two or three times to place cars on the individual interchange tracks. On May 14, 2019, CN completed a typical interchange operation. The CN train arrived at Spaulding at 17:57 and completed operations at 19:29. During that time, CN's single-track main line was blocked for a minimum of thirty minutes.

CP's operations at Spaulding are similarly complicated. On May 14, 2019, CP arrived at Spaulding at 22:10 and departed nearly 7 hours later at 04:54. Those operations included the following movements:

- CP train arrives at the Metra Spaulding Road crossing, and crosses the CN single-track main line, as illustrated by the following photo:



- CP must wait until the CN single-track main line is clear.
- CP shoves back into the CP siding tracks and sets out cars.

- CP again crosses the CN single-track main line and through the Spaulding Road crossing to switch onto another CP siding and wait again for the CN single-track main line to clear.
- CP shoves back through the CN Spaulding Road crossing onto the CN single-track main line and blocking Bartlett Road to shove back into the siding and pick-up CP-bound cars.
- CP performs an air test.
- CP again enters the CN single-track main line to couple with cars set out on additional sidings.
- CP pulls interchange cars north through the Bartlett Road crossing and onto the CN main line to connect to the Metra tracks and depart the location. During this particular operation, Bartlett Road was blocked for 18 minutes and the CN single-track main line was blocked for a minimum of 12 minutes.

The following photo illustrates the final operation, where CP must block the CN single-track main line as well as the at-grade crossing at Bartlett Road. As the photo shows, vehicular traffic is blocked during these CP operations:



Throughout each of these operations, CN's single-track main line was blocked. Blocking the CN main line for these operations caused congestion on CN's network and reduced fluidity on CN's lines in the Chicago area. In fact, at times, the interchange operations at Spaulding required CN to hold trains on the main line while interchange operations occurred. This required CN to idle trains on sidings adjacent to other communities while waiting for interchange operations at Spaulding to be completed.

In the busy Chicago area, CN's single-track main line is in high demand. Portions of CN's line are utilized by Metra and Amtrak. There are increased Metra commuter trains during morning and evening rush hour, and fewer freight trains are able to operate during those times. CN's single-track main line also crosses the lines of other Chicago railroads, including CP. Because of various interlocking agreements,¹ CN's operating windows are already time-constrained. The Spaulding interchange operations further limited the number of runs CN could complete in a day because of the interference it caused on CN's single-track main line and thus further impaired the fluidity of CN's network in the Chicago area.

The nature of CN's largely single-line system also means that there are days in which CN could not allow interchange operations to occur at Spaulding, because of the priority that must be given to trains moving over the system. On other

¹ An interlocking system is a set of signals that prevents trains from conflicting movements through an arrangement of tracks, such as junctions or crossings, allowing trains to receive authority to proceed when routes have been detected to be safe. In the Chicago region, railroads have interlocking agreements that control when a railroad may cross the tracks of another railroad.

occasions, CN had to limit the amount of time CP could spend on the line conducting operations, which could result in CP only being able to pull a portion of the traffic slated for interchange on that day. This caused delays for the interchanged traffic.

The interference incurred on the main line as a result of interchange operations at Spaulding created a significant chokepoint on CN's system. By moving the interchange point for CN-to-CP and CP-to-CN traffic, significant improvement in network fluidity has been gained. Particularly in the busy Chicago area where each rail line seeks resiliency and improved fluidity, it is important to alleviate such chokepoints where possible.

B. CP and CN Interchange Operations at Spaulding Regularly Occupied the At-Grade Crossings at Spaulding Road, West Bartlett Road, and Stearns Road.

The tracks connecting CP and CN lines to facilitate interchange at Spaulding cross Spaulding Road at grade. As a result, Spaulding Road was blocked for daily interchange operations. Interchange operations often blocked other nearby roads as well. The at-grade crossings at West Bartlett Road and Stearns Road were often blocked when longer trains were interchanging traffic, because the crew had to make various forward and reverse moves over the crossings to set off or pick-up cars, as described above. The train must also stop during interchange movements to line hand-thrown switches before proceeding. In 2016, Spaulding Road was blocked for 10 minutes or more 167 times for interchange operations. West Bartlett Road was blocked 163 times and Stearns Road was blocked 84 times for more than 10 minutes while crews were conducting interchange moves at Spaulding. Interchange

operations accounted for the vast majority of blocked crossings at Spaulding, West Bartlett, and Stearns Roads in 2016, as illustrated by the table on the next page.

**Summary of 10 Minute Activations
at Crossings Near Spaulding²**

2015 - 2016

		Activations Caused by Interchange Operations			
Crossing	Total Activations	Total	Per Month	Per Day	% of total
Spaulding Rd.	434	402	16.8	0.6	92.6%
Stearns Rd.	295	154	6.4	0.2	52.2%
West Bartlett Rd.	458	279	11.6	0.4	60.9%
Total	1187	835	34.8	1.1	70.3%

2015

		Activations Caused by Interchange Operations			
Crossing	Total Activations	Total	Per Month	Per Day	% of total
Spaulding Rd.	251	235	19.6	0.6	93.6%
Stearns Rd.	137	70	5.8	0.2	51.1%
West Bartlett Rd.	211	116	9.7	0.3	55.0%
Total	599	421	35.1	1.2	70.3%

2016

		Activations Caused by Interchange Operations			
Crossing	Total Activations	Total	Per Month	Per Day	% of total
Spaulding Rd.	183	167	13.9	0.5	91.3%
Stearns Rd.	158	84	7.0	0.2	53.2%
West Bartlett Rd.	247	163	13.6	0.4	66.0%
Total	588	414	34.5	1.1	70.4%

² The data in this table was previously publicly reported to the Board in connection with *Canadian National Railway Co. & Grand Trunk Corp.—Control—EJ&E West Co.*, STB Fin. Docket No. 35087.

A comparison of blockages at these grade crossings before and after implementation of the Interim Agreement further illustrates that the blockages at these three roads were primarily attributable to interchange operations at Spaulding:

Monthly Total Activations Over 10 Minutes at Spaulding Road, Stearns Road, and West Bartlett Road

January 2019 Through July 2019 (Before Interim Agreement)

Month	Spaulding Road	Stearns Road	West Bartlett Road	Total
Jan. 2019	24	19	38	81
Feb. 2019	16	18	28	62
March 2019	14	27	39	80
April 2019	20	30	42	92
May 2019	20	23	44	87
June 2019	20	18	41	79
July 2019	11	23	40	74
Average	17.9	22.6	38.9	79.2

In the first seven months of operations under the interim agreement, blockages over 10 minutes decreased to an average of 0.7 per month at Spaulding Road, 8 per month at Stearns Road, and 9.4 per month at West Bartlett Road, a total decrease of more than three quarters from when interchange occurred at Spaulding:

Monthly Total Activations Over 10 Minutes At Spaulding Road, Stearns Road, and West Bartlett Road

September 2019 Through March 2020 (After Interim Agreement)

Month	Spaulding Road	Stearns Road	West Bartlett Road	Total
Sept. 2019	1	14	16	31
Oct. 2019	1	9	7	17
Nov. 2019	0	7	9	16
Dec. 2019	1	6	9	16
Jan. 2020	0	4	9	13
Feb. 2020	0	7	5	12
March 2020	2	9	11	22
Average	0.7	8.0	9.4	18.1

The following photos illustrate how interchange operations blocked nearby roads. First, the photo below illustrates how CP blocked Spaulding Road to reach the CN sidings in order to pick up CP-bound cars:



To leave the CN sidings with the coupled interchange traffic, CP blocked the Bartlett Road crossing:



CN's similar operations also blocked these crossings. Blockages could last as long as 30-45 minutes for each interchange event. Even in the early morning hours, upon completion of these interchange activities, vehicular traffic was waiting and would back up at the blocked crossings:



On 14 May, 2019, CN placed 63 cars on the EJE side tracks for CP interchange. It took the CN crew two and a half hours to complete the operation, during which West Bartlett Road was blocked for 12 minutes and Spaulding Road was blocked for eight minutes.

Before the Interim Agreement relocated the interchange operations to Clearing, CN received numerous complaints from the adjacent communities about blocked grade crossings. For example, the Village of Bartlett spoke to CN numerous times about the blockages at West Bartlett, Stearns, and Spaulding Roads. According to the Village's letter to the Board, the Village has complained not only to CN but to CP as well about the "prolonged backups on West Bartlett, Stearns and

Spaulding Roads.” *See* CN Reply to CP Petition for Declaratory Order, Exhibit 1, Fin. Docket No. 36299 (filed May 20, 2019).

It is not possible to conduct interchange operations at Spaulding without blocking at-grade crossings at Spaulding Road, West Bartlett Road, and Stearns Road. These blocked crossings are not necessary because there are suitable alternatives for interchange operations. Communities requested that the Board allow CN to move its interchange received point to another location to reduce these at-grade crossing blockages for interchange operations. *See id.* (“On behalf of our residents, the Village of Bartlett is coming to you . . . to ask that you **DO NOT** require the railroads to continue interchanging at Spaulding.”) (emphasis in original). And since the interchange has moved, communities have noted the “noticeable decrease” in blocked crossing complaints. Letter from Kevin Wallace, Village of Bartlett President, at 1, Docket No. 36299 (filed Oct. 7, 2019).

C. Use of The Spaulding Interchange Requires Significantly More Work for CN.

Use of the Spaulding interchange for both CN-to-CP and CP-to-CN interchange traffic requires significant operational and financial outlays by CN. Because of the limited size and location of the Spaulding interchange, no blocking or switching activity occurs at Spaulding.

Blocking is the process of coupling individual rail cars destined for the same location together into a “block,” which allows those cars to traverse the system together. Switching is the process of moving a rail car—or a block of rail cars—from one train to another, or from one train to a track in a yard, or from one track to

another track. Together, these activities result in the classification of cars— assembling cars destined for the same yard or location together to allow trains to be built efficiently. Classification activities, such as switching and blocking, typically occur at large yards that have tracks dedicated for this purpose. Some of the largest classification yards include a “hump” track, which facilitates efficient classification. A hump allows cars to be pushed up one side and then, with the assistance of gravity, pushed down the hump and into the appropriate classification track. A railroad employee utilizes remote control switching to control which classification track switch is set to ensure the car is blocked.

Spaulding is limited to 4 CN siding tracks and 5 CP siding tracks, with Spaulding Road crossing between the two. As CN has explained, any movement of cars between the interchange tracks blocks CN’s single-track main line. Given the location of CN’s single-line main plus the limited siding tracks and the at-grade crossing, it is not feasible to classify, block, or switch cars at Spaulding. To facilitate interchange at Spaulding, CN blocked and switched Spaulding interchange traffic at its closest classification yard, which is Kirk Yard. Kirk Yard is 80 miles from Spaulding, on the east side of Chicago. This resulted in CN having to haul both CN-to-CP interchange traffic and CP-to-CN interchange traffic across Chicago, to and from Kirk Yard, for blocking and switching. CN had to traverse Chicago twice to complete any interchange with CP. These operations required CN to incur not only the operational costs of doing the work, but also the financial crew costs. To complete these interchange movements, CN was responsible for 90% of the work

and 90% of the cost, while CP reaped the benefits of CN's work and expense. CN did this work for both interchange received and interchange forwarded traffic, without any compensation or reciprocation from CP for more than 8 years.

The allocation of work to complete these interchange activities fell primarily to CN. CN had to bear a disproportionate amount of the time and expense on a daily basis to complete these interchange activities. The solutions that CN proposed would still result in CN completing the bulk of the work, but would more equally share the burdens of interchange between the two carriers. For example, under the Interim Agreement, CN still blocks and switches CP-bound traffic at Kirk and hauls that traffic to the BRC for interchange with CP.

D. CN Cancelled the Interchange Agreement Designating Spaulding and Proposed Numerous Feasible Alternative Interchange Arrangements for CP to Deliver Cars to CN.

CN first raised these concerns about the use of the Spaulding interchange with CP more than one year ago. CN has been willing to be flexible and has offered multiple alternative solutions. CN's goal in moving the interchange has been to reach a more equitable, efficient, and commercially fair solution that does not have the same operational hurdles that are present at Spaulding. CP has been unwilling to finalize an agreement to alter operations for delivering traffic to CN, despite the many alternatives CN has proposed, unless CN would pay all costs.

Following a year of failed negotiations, CN elected to terminate the Spaulding Interchange Agreement, pursuant to its terms, which allow either party to terminate upon 60 days written notice. CN informed CP orally that it was going to terminate the agreement two weeks prior to tendering the 60-day written notice.

CN has consistently, and for over one year before CN terminated the Spaulding Interchange Agreement, aimed to have open communications with CP about the problems at Spaulding and its intent to close the interchange.

Unfortunately, CP did not maintain the same levels of open communication with CN. On May 2, 2019, just two days after CP filed its Petition with the Board in Docket 36299, CP informed CN of its intent to exercise its option to terminate a different interchange agreement at Cardigan Junction, near St. Paul, MN. *See* Exhibit 4, May 2, 2019 Letter from C.E. Hubbard to M. Matteucci. At no time prior to the cancellation had CP informed CN of any concerns about the feasibility of interchange operations at Cardigan Junction.

When CN cancelled the interchange at Spaulding, CN proposed multiple locations where CP could deliver interchange traffic to CN, including CN's Glenn Yard, CN's Kirk Yard, and the BRC's Clearing Yard. Each of these options would have resulted in a more equitable division of labor at an operationally feasible location. Following the Board's November 27, 2019 Decision in Docket 36299, finding that Kirk is not a reasonable interchange location under the specific circumstances of that case, Clearing remains a feasible interchange option.³ As operations under the Interim Agreement have illustrated as well as long-standing

³ During negotiations, CN offered CP the option of interchanging traffic at CN's Glenn Yard. CP rejected that offer. Since the time of that offer, another carrier agreed to begin delivering interchange traffic to Glenn Yard. As a result, Glenn Yard is no longer a feasible option for these interchange activities because the yard does not have the capacity for interchange operations for both CP and the other carrier.

operations for TIH traffic and other cars, interchange at Clearing has been consistent and well executed, with the BRC functioning as a switching carrier, as intended.

Operationally, Clearing Yard has proved to be a reasonable and workable solution. Clearing Yard is a hump yard, which facilitates the classification of traffic that is tendered at that location. CP informed me that—even prior to the Interim Agreement—it had an existing two trains per day that operated between Bensenville Yard and Clearing Yard. Accordingly, CN believes that CP has often been able to include the approximately 30 cars per day destined for CN on one or both of those trains.⁴ CP would not even need to block the traffic—the BRC will hump the cars and classify them upon delivery at Clearing Yard.

Importantly, Clearing Yard has served as an existing interchange between CP and CN. Clearing has proven to be operationally feasible under the Interim Agreement and historically, as all hazardous interchange traffic was interchanged at Clearing rather than Spaulding, and CP tendered some non-hazardous traffic to that location. In 56 days, between March 22nd and May 14th, 2019, CP tendered 140 non-hazardous cars for CN at Clearing. Those cars amount to 69% of the traffic CP tendered to CN at Clearing during that period. At no time during this period

⁴ 30 cars was the average during peak volume times. With volumes lightening, it is all the more likely that CP can include those cars on one of the trains destined for Clearing. Even if volumes fluctuate and return to normal levels in the future, CP would still be able to put the interchange cars onto the existing trains.

were there congestion concerns at Spaulding that required this traffic to be delivered at Clearing.

Clearing Yard is also an equitable choice. Both railroads operate at Clearing already and interchange traffic there. Under the Interim Agreement, CP's workload has been alleviated because BRC classifies the cars, work that CP would otherwise have to do. Tendering traffic at Clearing also minimizes the distance that CP has to travel to effect the interchange. While CN still has to traverse more of the Chicago area than CP, the burdens are shared more equitably, as illustrated below:

Distance to Spaulding

Spaulding to Bensenville Yard (CP responsible)	17 miles
Spaulding to Kirk Yard (CN responsible)	84 miles

Distance to Clearing

Clearing Yard to Bensenville Yard (CP responsible)	17 miles
Clearing Yard to Kirk Yard (CN responsible)	39 miles

As the above tables illustrate, Clearing Yard is a more equitable solution, and does not require CP to travel additional mileage than it did to Spaulding. In comparison, CN still has to travel nearly twice as far as CP to accept the CN-bound traffic. But ultimately, this solution offers shorter routes, on existing trains, for both railroads and should be considered a win-win.

VERIFICATION

I, William Albritton, verify under penalty of perjury that the foregoing Verified Statement in support of Wisconsin Central, Ltd.'s Petition for Declaratory Order is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed on this 13 day of April, 2020.

A handwritten signature in black ink, appearing to read "William Albritton", is written over a horizontal line.

William Albritton

EXHIBIT 1



THE VILLAGE OF
BARTLETT

228 S. MAIN STREET
BARTLETT, ILLINOIS 60103
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FAX 630.837.7168
www.village.bartlett.il.us

VILLAGE PRESIDENT
Kevin Wallace

ADMINISTRATOR
Paula Schumacher

VILLAGE CLERK
Lorna Gilles

TRUSTEES
Michael E. Camerer D.C.
Vince Carbonaro
Raymond H. Deyne
Kristina Gabrenya, OD, FFAO
Adam J. Hopkins
Aaron H. Reinke

PUBLIC VERSION

May 17, 2019

Ms. Cynthia T. Brown
Chief, Section of Administration Office of Proceedings
U.S. Surface Transportation Board
395 E Street, Southwest
Washington, DC 20023

Re: STB Finance Docket 36299 Soo Line Railroad Company Petition for Declaratory Order and Preliminary Injunction - Interchange with Canadian National

Dear Ms. Brown:

In 2008, The Village of Bartlett wrote numerous letters to the STB on behalf of our residents in hopes of stopping CN's acquisition of the EJ&E rail line. The Village feared a significant increase in train traffic, considerably more at-grade crossings and an overall detriment to the public health and safety of our residents. Eleven years later, all of our fears have been realized. Over 1,300 Bartlett homes lie west of the CN rail line, often times cut off from Bartlett Fire Protection, Police, work and school for up to 45 minutes at a time because trains sit, stopped on the tracks crossing West Bartlett, Stearns and Spaulding Roads.

In an attempt to alleviate some of the hardship for our residents the village has discussed signaling options to vehicles on West Bartlett Rd., which could give an estimated time of when a train will clear the crossing, but CN informed us that the train schedules are unpredictable. Another option that has been considered is an overpass. This option wouldn't be viable for decades and comes with a massive cost to our residents.

Bartlett's earliest roots involve rail activity and we currently have three lines that crisscross our village. Our residents are no strangers to waiting for trains to pass, and all but a small handful of the railroad complaints we receive are in regards to the CN line and the prolonged backups on West Bartlett, Stearns and Spaulding Roads. The village has complained to CN and CP about this on numerous occasions. We understand that there is a proposal by CN to move the interchange operations from Spaulding and reduce at-grade blocked crossings. On behalf of our residents, the Village of Bartlett is coming to you, for a second time, regarding the CN/EJ&E line. This time, it is to ask that you **DO NOT** require the railroads to continue interchanging at Spaulding. The last ten years have greatly affected many of our residents. Moving the interchange would not only improve traffic flow, it would increase the safety of our residents west of the track, giving them better access to police, fire and ambulance services. We appreciate the opportunity to submit the village's concerns.

Sincerely,

Kevin Wallace
Village President

KW/sh

EXHIBIT 2

SPAULDING MAP

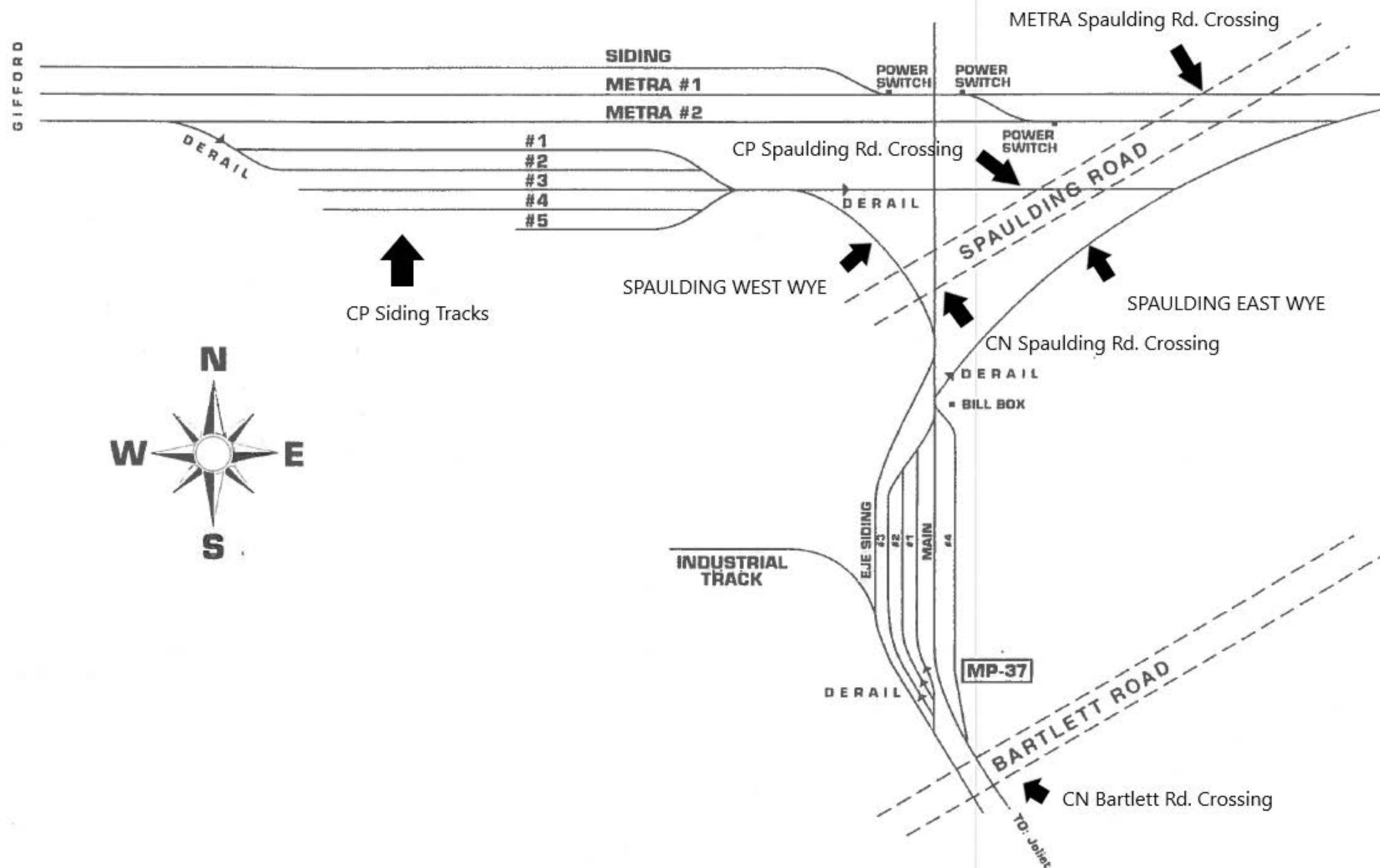


EXHIBIT 3



**Executive Vice-President & Chief
Operating Officer**

**Vice-président Exécutif et Chef
de l'exploitation**

Michael A. Cory

Canadian National
935 de La Gauchetière Street West
Montreal (Quebec) Canada
H3B 2M9
Telephone: (514) 399-5311
Facsimile: (514) 399-5240
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Télécopieur: (514) 399-5240
Courriel: michael.cory@cn.ca

May 1st, 2019

Mr. Robert A. Johnson
Executive Vice President, Operations
Canadian Pacific Railway Co.
7550 Ogden Dale Road, SE
Calgary, Alberta Canada T2C4X9

Re: CN/CP Interchange at Chicago

Dear Mr. Johnson,

I am writing to respond to your April 18, 2019 letter regarding the designation of Kirk Yard as the point in the Chicago Terminal for CN to receive interchange traffic from Soo Line Railroad Company d/b/a Canadian Pacific (CP).

While we were disappointed to see that CP has filed a formal complaint at the STB in the midst of our continued commercial discussions, CN continues to believe that a fair commercial resolution can be reached that serves the interests of both our companies in moving traffic efficiently through the Chicago Terminal.

Continued use of Spaulding is not a reasonable option, however. CP's suggestion that Spaulding works well as an interchange point for both CP and CN to exchange interchange traffic ignores the communications that CN has had with CP for over a year about the problems caused by interchange operations at Spaulding. As CN has explained, interchange operations at Spaulding regularly block CN's single track main line, leading to congestion problems on CN's network and causing blockages at several at-grade road crossings. Moreover, as CN has explained, CN is currently transporting both CP-received interchange traffic and CP-bound interchange traffic from Spaulding to Kirk for blocking and switching. It is not fair for CP to expect CN to do the work in both directions.

What is fair is for CN and CP to share the operational costs and burden of interchanging traffic in Chicago. We believe that the following represents an appropriate compromise as has been discussed by our respective operating teams: CN would deliver interchange cars to CP at Bensenville using the IHB, paying the switching charge for IHB to deliver cars to CP. In turn, CP would deliver interchange cars to CN using BRC's Clearing Yard, bearing the switching charges for BRC. CP would bear the costs of trackage rights to move over Metra between B-12 and Craigin to deliver CN-bound cars to Clearing Yard.

When CN takes the cars from Clearing to Kirk, CN would in turn bear the trackage rights fees to move over the Elsdon subdivision to and from Clearing. This arrangement is more than fair to CP, in part because under it CN would be paying for more trackage rights miles than CP would have to pay to accomplish the interchange.

It is clear that this proposed arrangement will work for CP operationally—the Verified Statement filed with its STB complaint says that CP is “agreeable” to receiving interchange traffic at Bensenville and delivering CN-bound traffic to Clearing “if CN would pay the cost under [CP’s] trackage rights agreement with BRC to get CN’s traffic to Clearing.” While CN does not agree that it is required to pay for both its own trackage rights fees and CP’s trackage rights fees, that dispute is no barrier to CP and CN implementing this arrangement now, and reserving the question of who pays for CN’s exercise of its trackage rights for further negotiation.

Threats that CP will sabotage Chicago operations by refusing to agree to an interchange relocation in Railinc and by letting traffic pile up rather than deliver it to CN’s designated interchange point are not productive—particularly since the only current dispute between the parties is the pure financial question of whether CN is required to reimburse CP for its trackage rights costs. If CP wishes to have the STB adjudicate that question, it has that right. But there is no basis for CP to threaten to stop interchanging traffic altogether unless CN agrees in advance to pay for CP’s out-of-pocket costs for an interchange arrangement that CP otherwise finds to be “agreeable.”

We hope that CP will accept this reasonable compromise. If CP is unwilling to accept it, then CN will exercise its statutory right to designate Kirk as its point to receive interchange traffic from CP, effective May 11 per previous correspondence.

Sincerely,

Mike Cory

Executive Vice-President & Chief Operating Officer

EXHIBIT 4



C. E. Hubbard
Director
Interline & Passenger - South

Battle Creek Building
1010 Shop Road
St. Paul, MN
55106

PUBLIC VERSION

T (612) 904-5964
C (612) 201-2527
E chuck_hubbard@cpr.ca

Mr. Michael Matteucci
Regional Director Contracts & Administration
Canadian National Railway Company
17641 South Ashland Avenue
Homewood, IL 60430-1345

May 2, 2019

**VIA EMAIL
AND U.S. MAIL**

Re: CP/CN Agreement for Interchange of Freight Traffic

Dear Mr. Matteucci:

SOO Line Railroad Company, d/b/a Canadian Pacific (CP) and Wisconsin Central LTD, d/b/a Canadian National (CN) are parties to a certain Interchange Agreement dated September 16, 2014 ("Agreement") which provides for interchange between CP and CN upon CP trackage located at Cardigan Junction in the vicinity of St. Paul, MN.

Section 16 of the Agreement provides for both term and termination of the Cardigan Junction interchange operation. Specifically Section 16 (a) states:

This Agreement commences on the Effective Date and remains in effect (hereinafter referred to as the "Term") until and/or unless terminated earlier pursuant to terms and conditions set forth herein.

Section 16 (c) of the Agreement further provides:

Either Party may, at any time and for any reason whatsoever, terminate this Agreement upon sixty (60) days written notice to the other Party.

Pursuant to Section 16 (c) of the September 16, 2014 interchange agreement, kindly consider this letter as CP's notice of termination effective July 1, 2019. Accordingly, June 30, 2019 will be the last day the parties will conduct interchange at Cardigan Junction. During the sixty-day notification period, CP looks forward to discussing a new interchange location with CN.

Sincerely,

C. E. Hubbard
Director Interline and Passenger - South

Cc: Robert A Johnson, EVP Operations
Tony Marquis, SVP Operations
Nicholas C. Walker, GM Operations
Adolph Gameiro, Director, Interline Agreements

EXHIBIT 5

**March 11, 2019 Letter from M. Matteucci
to C. Hubbard**



www.cn.ca

Southern Region

Michael Matteucci
Region Director Contracts and Administration

17641 So. Ashland Avenue
Homewood, IL 60430-1345
T 708.332.3598
F 708.332.3673

March 11, 2019

VIA EMAIL

Mr. Chuck Hubbard
Director Interline, Joint Facilities
& Passenger West
Canadian Pacific
120 South 6th Street
Minneapolis, MN 55402

Dear Mr. Hubbard:

This is in regard to the agreement between Soo Line Railroad Company d/b/a Canadian Pacific ("CP") and the Wisconsin Central Ltd ("CN"), successor in interest to the Elgin, Joliet and Eastern Railway Company, dated August 12, 2010 ("Agreement"), which, among other things, provided for the interchange of loaded and empty freight cars between CN and CP at Spaulding in Bartlett, Illinois.

Please regard this letter as CN's sixty (60) day notice of termination pursuant to Section 14 of the Agreement.

CN designates CN's Kirk Yard in Gary, IN as the location to receive all interchange traffic destined to CN from CP in Chicago and shall provide CP any necessary operating rights, as may be required, to operate into Kirk Yard.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Matteucci', is written over a blue horizontal line.

Michael Matteucci

cc: File 6002560

EXHIBIT 6

**April 3, 2019 Letter from R. Johnson
to M. Cory**

April 3, 2019

Mr. Mike Cory
Executive Vice President and Chief Operating Officer
Canadian National Railway
935 de la Gauchetière Street West
Montreal, QC
Canada H3B 2M9

Re: CN/CP Interchange at Chicago

Dear Mr. Cory:

I am writing regarding Canadian National's sudden and unexpected notice to terminate, effective May 10, of the Interchange Agreement between the Elgin, Joliet and Eastern Railway Company (CN) and Soo Line Railroad Company d/b/a Canadian Pacific (CP) dated August 12, 2010, and the path forward to continue interchange of our respective traffic at Chicago.

The 2010 Agreement provided for mutual interchange of freight traffic (non-TIH/non-PIH) at Spaulding Yard, one of only two points of direct physical connection between our two railroads in the Chicago Terminal, the other being Rondout. Interchange at a single point of direct physical connection, Spaulding, provided and still provides efficient interchange for both our roads. It also enabled us to retire and consolidate seven separate sets of earlier, inefficient, interchange agreements. Whatever business reasons CN has to seek to change the Spaulding interchange point cannot be at CP's expense or detriment.

Notwithstanding a termination of the 2010 Agreement, CN will continue to have a legal obligation to effect reasonable interchange with CP at Chicago. As an alternative to Spaulding, CN has proposed to move our interchange to Kirk Yard in Gary, Indiana and provide CP with operating rights over the Elgin, Joliet and Eastern to get there. Interchange at Kirk Yard is unworkable and unreasonable. Kirk is located on the opposite side of the Chicago Terminal from CP's Bensenville Yard. CP has no assignment which goes there or near there. Given the distance to Gary, Indiana, were we to add an assignment our crew's tour of duty would likely expire under the Hours of Service law before they could return to Bensenville. In addition to the taxi cost to ferry the crew back, CP would lose the ability to use the crew on the return trip. In winter months, the length of time for the crew to return would likely extend and further erode our crew base. An assignment to Kirk would also require captive locomotive power, another costly inefficiency. Kirk Yard will not work.

CN has also suggested moving the interchange point to CN's Glenn Yard in Chicago, but this too is unreasonable. Given Glenn Yard's location and the density of traffic flows of the various roads in the Chicago Terminal, using Glenn Yard for interchange also runs the risk of our crews expiring on Hours of Service. Like Kirk, we do not go to Glenn today and have no reason to do so. Also, to get to Glenn Yard CP would have to exercise its trackage rights on the Indiana Harbor Belt Railroad (IHB). As I am sure you are aware, CP is under no obligation to exercise its trackage rights on CN's behalf. The exercise of trackage

rights is permissive with their holder. An assignment to Glenn would also require captive locomotive power, another costly inefficiency.

In the discussions between our operating officers, CN has suggested it would be willing to deliver CP interchange traffic at Bensenville via the IHB, and that CN would pick up the bridge carrier expense to get the cars there. That is fine as far as it goes.

With respect to CN traffic moving from CP to CN, we are willing to take it from Bensenville to the Belt Railway of Chicago's (BRC) Clearing Yard, and exercise our trackage rights on the BRC to do so, but only if CN pays the per car cost to BRC required under the CP/BRC trackage rights agreement. It is only reasonable for CN to pay to get CN's traffic to Clearing when the sole reason for the change is CN's business decision to move interchange from Spaulding Yard.

In a word, CN's unilateral imposition of an entirely new interchange point on CP in order to effect a business decision of CN should be at CN's expense, not CP's. If CN is not willing to shoulder the cost, then we will continue to interchange at Spaulding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert A. Johnson".

Robert A. Johnson,
Executive Vice President, Operations

cc: Tony Marquis

EXHIBIT 7

**April 18, 2019 Letter from R. Johnson
to M. Cory**

April 18, 2019

Mr. Mike Cory
Executive Vice President and Chief Operating Officer
Canadian National Railway
935 de La Gauchetière Street West
Montreal, QC
Canada H3B 2M9

Re: CN/CP Interchange at Chicago

Dear Mr. Cory:

I am in receipt of your letter of April 16. We do not intend to get into a letter writing battle, but a few things need to be said.

CN's claim that Spaulding is no longer a suitable interchange point because volumes have outgrown the facility is not supported by the data. CN/CP interchange volumes at Chicago have not materially changed in the last year as CN suggests. Rather those volumes have remained consistent. If anything, 2019 volumes have declined compared to 2018 and 2017. (A report of the CP/CN average daily interchange car count at Spaulding for 2017, 2018 and 2019 YTD is attached for reference.) We continue to view Spaulding as a suitable facility that has worked well for our two roads and our respective customers for the last eight plus years.

It is clear that for its own economic reasons CN wants to close Spaulding, move the interchange point, and change how it slots trains on its main line. CN is free to make such changes, but not at CP expense. A receiving carrier in a direct physical interchange has to designate a point on its own line and provide a free route to get there, without unreasonable conditions. For the reasons we explained previously, CN's designation of Kirk as the new location where it would receive traffic from CP is not reasonable. As CN now acknowledges, Kirk is unreasonable for distance, among other reasons, which for CP, Bensenville to Kirk, is further than CN, Kirk to Spaulding. As for CP designating a free route on its line, CN has one already at Spaulding (and Rondout) which is a point of direct physical contact on both our roads where we meet in the Chicago Terminal.

We re-iterate our willingness to voluntarily exercise our trackage rights on the Belt Railway of Chicago (BRC) and deliver CN's traffic to the BRC at Clearing, but only if CN pays the per car cost to BRC required under the CP/BRC trackage rights agreement. We would prefer to resolve this matter between ourselves, but if that is not possible we can take it to the Surface Transportation Board for resolution. Pending a decision by the Board we intend to seek a status quo order stipulating the existing interchange point of Spaulding for the benefit of our customers. That is only reasonable when viewed from our customers' perspective.

It should be mentioned too that CN's proposed termination of our commercial agreement is one matter, but the business rules administered by Railinc are another. Under those rules an interchange carrier cannot unilaterally change a bilateral interchange point, but rather both parties must agree. If we do not both agree, bills of lading cannot be issued and rates over Chicago at Spaulding cannot be quoted. Again for the benefit of our customers, status quo at Spaulding is what makes the most sense until this matter is resolved.

I am happy to discuss this with you face to face or on the phone, but must insist on a willingness of CN to shoulder the cost of moving the interchange point to further CN's business interest. That's only fair.

Sincerely,



Robert A. Johnson,
Executive Vice President, Operations

cc: Tony Marquis

CP/CN Spaulding Intechange Volumes - Average Cars Per Day			
Year	2019 YTD	2018	2017
CN to CP	38.4	43.9	44.9
CP to CN	27.6	32.6	34.1

EXHIBIT 8

Interim Agreement

REDACTED

EXHIBIT 9

BRC Operating Agreement

REDACTED

EXHIBIT 10

**Metra Comments,
STB Fin. Docket No. 35081
(Excerpt)**



FOLEY & LARDNER LLP

March 4, 2008

PUBLIC VERSION

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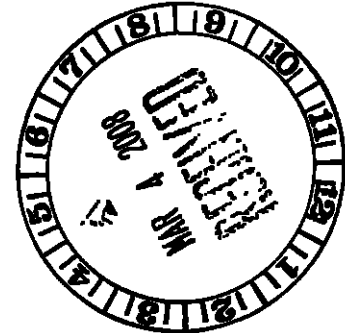
BY E-FILING AND BY HAND

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Suite 101
Washington, D.C. 20423-0001

221744
ENTERED
Office of Proceedings

MAR 4 - 2008

Pct of
Public Record



Subject: Finance Docket No. 35081 – *Canadian Pacific Railway Company, et al. – Control – Dakota Minnesota & Eastern Railroad Corporation, et al.*

Dear Acting Secretary Quinlan:

Enclosed for filing in the above proceeding are an original and ten copies of the Public Version of Metra's Comments in Opposition to Proposed Transaction and Request for Conditions, and ten copies of the Highly Confidential Version of Metra Comments to be filed under seal pursuant to the terms of the Protective Order issued by the Board in this proceeding. Also enclosed is a disc containing an electronic copy of the Public Version of Metra's Comments.

Please acknowledge receipt of the above identified filings by date stamping the extra copies provided and return same to our messenger for our files.

Sincerely yours,

Robert P. vom Eigen

RVE: dmo
Encls:

cc. Michael C Noland (w/Highly Confidential and Public Versions of Metra's Comments)
Parties of Record (w/ Public Version of Metra's Comments)
Counsel for Applicants (w/Three Copies of Highly Confidential Version of Metra's Comments)

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

221744

Finance Docket No. 35081

CANADIAN PACIFIC RAILWAY COMPANY, *ET AL.* – CONTROL –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., *ET AL*

**METRA COMMENTS IN OPPOSITION TO PROPOSED TRANSACTION AND
REQUEST FOR CONDITIONS**

NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORPORATION
AND
THE COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY,
BOTH d.b.a. METRA
547 West Jackson Boulevard
Chicago, IL 60661

ENTERED
Office of Proceedings

MAR 4 - 2008

Part of
Public Record

Protestant

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General Counsel
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Robert P. vom Eigen
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E-mail: rvomeigen@foley.com

Attorneys for Protestant

Due Date: March 4, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, *ET AL.* – CONTROL –
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., *ET AL***

**METRA COMMENTS IN OPPOSITION TO PROPOSED TRANSACTION AND
REQUEST FOR CONDITIONS**

The Northeast Illinois Regional Commuter Railroad Corporation and The Commuter Rail Division of the Regional Transportation Authority, both doing business as Metra, hereby oppose the application of Canadian Pacific Railway Company ("CP") for authority to control the Dakota, Minnesota & Eastern Railroad Corp. ("DM&E") and the Illinois, Chicago & Eastern Railroad Corp. ("IC&E") unless the Board conditions approval of the transaction upon measures that will protect Metra's commuter rail service.

Background and Summary of Position

Metra provides commuter rail service in the six counties of Northeastern Illinois. Metra service currently operates on 11 different rail lines that link suburban communities with downtown Chicago. A map depicting the 11 routes is attached as Exhibit A to these comments. In 2007, Metra provided 83 million passenger rail trips, and set numerous ridership records as demand for commuter rail service reached its highest level in Metra's 24 year history. Metra prides itself on its on-time performance, which on a system-wide basis was 95.7% on-time within a 5 minute level of tolerance during 2007, one of the highest on-time performance records

in the United States. Over the last six years, the average on-time performance for the system has been 96.5%.

The quality of Metra service over two of those rail lines, the Milwaukee District West Line ("West Line") and the Milwaukee District North Line ("North Line") (depicted MD-W and MD-N on the map attached as Exhibit A), will be threatened should this transaction be approved without conditions. Metra acquired the West and North Lines in transactions with the Trustee of the Milwaukee Road in 1989. CP's Soo Line subsidiary was granted trackage rights over each line with the right to dispatch those lines by the Trustee in 1985. The North Line extends between Fox Lake, Illinois and Chicago Union Station, and the West Line extends between Alton (or Big Timber), Illinois and Tower A-5 in Chicago, where it joins the North Line (between the Healy and Western Avenue stations) for movement to and from Chicago Union Station.

The North Line has considerable daily traffic, and currently is operating at capacity during the peak commuter periods on weekdays. On weekdays, there are 60 Metra trains, 16 Amtrak trains,¹ and an average of 17.3 CP trains,² and two Wisconsin & Southern Railroad ("WSOR") trains. WSOR is contractually limited to one round trip per day over Metra

¹ Amtrak is proposing to add six additional trains on the North Line.

² From June 1, 2006 through May 31, 2007, CP operated 6320 trains past Rondout, which is the point along the North Line where the branch to Fox Lake leaves the main Chicago – Milwaukee or "C&M" CP route. That averages 17.3 trains for a 365 day year, but train frequencies fluctuate monthly. For instance, during July 2006 there was an average of 18.9 trains per day, as contrasted with 15.4 trains per day during April 2007. Only one local CP freight train and one WSOR train in each direction operates over the Rondout to Fox Lake branch in addition to Metra's service.

property.³ The North Line has 5.2 miles of triple track, 27.0 miles of double track and 17.5 miles of single track on the Fox Lake subdivision. The single track section has one passing track, 0.83 miles in length. The North Line has a Centralized Traffic Control ("CTC") signal control system on the triple and double track segments and is Automatic Block System ("ABS") on the single track segment.

The West Line also has considerable daily traffic. On weekdays, Metra operates 79 trains, CP an average of 11.2 trains,⁴ IC&E operates an average of 6 trains,⁵ CN operates an average of 4.5 trains over the six-mile segment between Tower B12 in Franklin Park and Cragin and WSOR operates the same two trains per day over the two-mile segment between Tower A5 and the connection with the Belt Railway of Chicago at Cragin. Starting at Tower A5, where the West Line diverges from the North Line, the West Line has 5.2 miles of triple track, 27.6 miles of double track and 0.3 miles of single track. The entire West Line has a CTC signal control system.

³ WSOR has recently obtained rights from CP to operate unit grain trains over the C&M route between Milwaukee and Rondout, but Metra has not granted WSOR rights to operate any additional trains over its North or West Lines. Nevertheless, Metra's Jack Bauer learned last Fall from an article in a trade magazine that WSOR had, indeed, operated at least one additional grain train over the North and West Lines. Mr. Bauer complained to his counterpart at CP, Jim Bender, that this additional service was unauthorized, and Mr. Bender blamed the incident on WSOR. To Metra's knowledge no additional WSOR unit grain trains have been permitted to operate over the North and West Lines, but it has no ability to monitor that because CP dispatches these lines.

⁴ Using the same period from June 2006 to May 2007, CP operated 4,081 trains through the segment between Tower B-12 (Franklin Park) and Tower A-5, which averages to 11.2 trains during a 365 day year. That traffic fluctuated between 9.6 trains per day in July 2006 and 13.2 trains per day during March of 2007.

⁵ IC&E operated 2,190 trains from June 2006 to May 2007 through the Alton to Elgin section of the West Line which yields the average of six trains per day for a 365 day year. The monthly figures fluctuated between 4.9 trains in April 2007 and 7.1 trains in August and October 2006.

While Metra owns the North and West Lines, the 1985 Trackage Agreement between CP and the Milwaukee Trustee, as supplemented and amended from time to time ("Metra/CP Trackage Agreement"), grants CP the right to dispatch these lines subject to the requirement to provide priority to Metra's schedules and operations, and to insure that there be no material interference with that service. CP dispatches these lines from the Soo Line building in Minneapolis, MN.

The on-time performance average on the two CP dispatched Metra routes over the period of 2007 has been worse than Metra's system-wide average, and worse than each of the four lines Metra dispatches. The North Line has the third worst on-time performance record over that period of any of Metra's lines. The average number of "delayed" trains, defined as trains 6 or more minutes late, on the North Line are the second highest on the Metra system.

Average On-time Percentage 2002-2007⁶

Metra System-Wide	- 96.5%
Metra Electric – ML	- 97.9%
Metra Electric – BI	- 98.7%
Metra Electric – SC	- 96.4%
CP – North Line	- 94.3%
CP – West Line	- 95.7%

Metra dispatches lines under its control through its Consolidated Control Facility ("CCF") located at 1501 South Canal Street in Chicago. Constructed in the early 1990's, this facility was intended to house personnel from Metra to dispatch lines over which Metra trains operate and for tower operators from those lines. At the CCF, Metra currently dispatches the two lines of the Rock Island District, the three lines of the Electric, and the North end of Metra's Southwest Service (between 21st Street and 74th Street). The CCF also houses the operator of

⁶ These data are derived from the Table, attached hereto, as Exhibit B to these Comments, captioned "Annual Train Delays and On-Time Performance."

PUBLIC VERSION

METRA-2
PUBLIC VERSION

EXHIBIT A

System Map

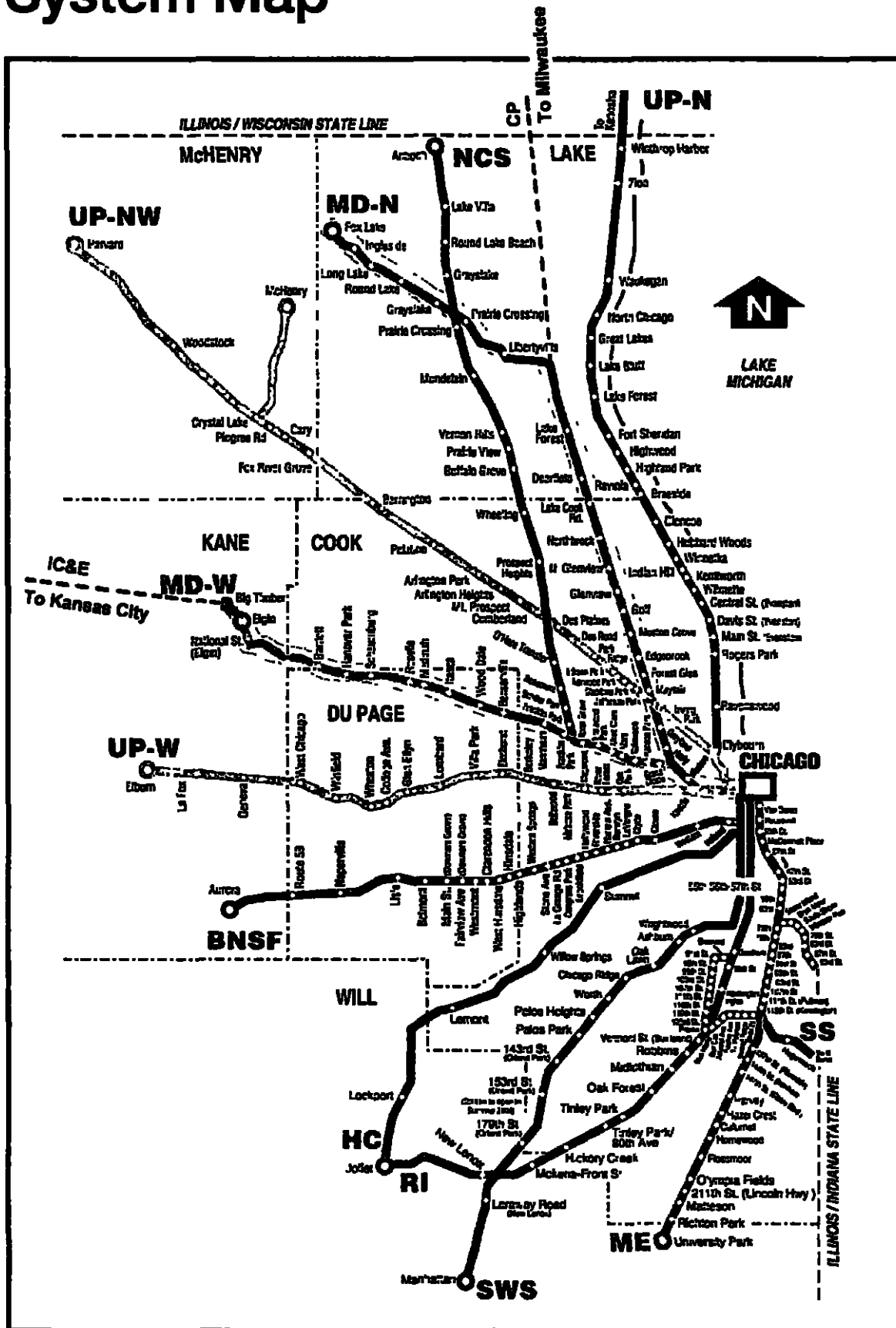


EXHIBIT 11

BRC Rate Sheet

REDACTED