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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. FD 36744

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
—CONTROL—
IOWA NORTHERN RAILWAY COMPANY**

COMMENTS OF THE CEDAR RAPIDS AND IOWA CITY RAILWAY

On January 30, 2024, Canadian National Railway Company and Grand Trunk Corporation (collectively “CN”) filed an application (“CN Application”) seeking authority to control Iowa Northern Railway Company (“Iowa Northern”) a Class III rail carrier that operates a total of approximately 218 route miles in the State of Iowa. Pursuant to the Decision served in this docket on February 29, 2024, Cedar Rapids and Iowa City Railway Co. (“CRANDIC”) submits these comments and the Verified Statement of Cory Hoffmann (“Hoffmann V.S.”) General Manager for CRANDIC in opposition to the CN Application.

INTRODUCTION

CRANDIC is a Class III railroad that operates approximately 100 miles of railroad extending southeast and southwest from Cedar Rapids, Iowa. CRANDIC is a subsidiary of Traverro Inc., which is a wholly owned subsidiary of Alliant Energy Inc. Hoffmann V.S. at Para 1.

Currently, CRANDIC interchanges traffic with both CN and Iowa Northern but as discussed below, CRANDIC interchanges significantly more traffic with Iowa Northern than with

CN. Hoffmann V.S. at Paras 3 and 6.

CRANDIC is a party to an interchange agreement with Iowa Northern dated January 12, 2005 (“Iowa Northern Interchange Agreement”), which calls for cars to be interchanged at CRANDIC’s yard. Hoffmann V.S. at Para 4. CRANDIC is also a party to an interchange agreement with CN dated January 9, 1998, which provides for traffic interchanges at CN’s yard in Cedar Rapids. Hoffmann V.S. at Para 5. At present, CRANDIC interchanges six times (6x) more traffic with Iowa Northern than with CN.¹ CRANDIC believes it has a solid working relationship with Iowa Northern. But as discussed below and in Mr. Hoffmann’s Verified Statement, CRANDIC has concerns about CN’s Application to acquire Iowa Northern as it has experienced occasions where CN personnel have attempted to strong arm CRANDIC basically stating, “here’s the deal...” or “here is what is going to happen...”.

In fact, this “big railroad” approach by CN is evident in the CN Application itself and demonstrates the reasons why CRANDIC is concerned that CN will be difficult to work with if it acquires the Iowa Northern as currently contemplated and that CN will manifest a “here is the deal” approach to the relationship.

1. The Statements in the CN Application and Associated Documents About New CN/Iowa Northern Operations with CRANDIC are Inaccurate

Pursuant to the Iowa Northern Interchange Agreement, interchange of CRANDIC and Iowa Northern traffic occurs on a daily basis at CRANDIC’s Cedar Rapids Yard.² However, the CN Application states that Iowa Northern outbound traffic will interchange at the CN Yard approximately five miles away from where Iowa Northern empties are currently received in the

¹ In 2023, CRANDIC interchanged approximately 14,535 cars with Iowa Northern and 2,068 cars with CN. Hoffmann V.S. at Para 6.

² Hoffmann V.S. at Paras 4 and 12.

CRANDIC yard:

“For example, in Cedar Rapids, Iowa Northern will now deliver both its own and CN interchange traffic to CRANDIC and Union Pacific, and CRANDIC will deliver interchange traffic to CN and Iowa Northern in CN’s Cedar Rapids Yard, which will streamline operations in downtown Cedar Rapids because the return interchange movements will be “light” (locomotives with no cars) which are faster and occupy grade crossings for less time.”

CN Application at pg. 17.

CRANDIC has not agreed to this arrangement. Hoffmann V.S. at Para. 8. This is also not what is contemplated in the current Iowa Northern Interchange Agreement. *Id.* The CN Application as proposed would cost CRANDIC thousands of dollars a day but CN has not offered any compensation for the additional resource expenditure it seeks to assign to CRANDIC. *Id.* The statement in the CN Application is, at best, what CN has said it *wants* to happen. But at the present time the statement as written is inaccurate. Notably, the Board has previously found a similar proposal by CN to be unreasonable. In *Wisconsin Cent., Ltd.-Petition for Declaratory Ord.-Interchange with Soo Line R.R. Co.*,³ CN attempted to unilaterally move interchange operations with Canadian Pacific Railway (“CP”) in Chicago but ultimately the Board determined that it was “unreasonable for CN unilaterally to move operations...and require CP to expend resources it would not otherwise be required to expend.”⁴

Any such unilateral decisions by CN about interchange with CRANDIC, such as what it proposed in its Application, could significantly impact CRANDIC, its employees and its customers. CRANDIC’s concern that CN will continue to make unilateral assignments is not unfounded. In addition to CRANDIC’s own experience, Mr. Sabin from the Iowa Northern was

³ FD 36397 (Jan. 29, 2024).

⁴ *Id.*

cited in an August 14, 2020 issue of “Trains” magazine as stating that CN has a “condescending attitude” and generally did not appreciate the value and importance of dealing with short lines.⁵

Further, evidence of CN believing it is the only voice that matters can be found in the statements in the CN Application about the time that crossings will be occupied under CN’s proposed operations:

“...CRANDIC will deliver interchange traffic to CN and Iowa Northern in CN’s Cedar Rapids Yard, which will streamline operations in downtown Cedar Rapids because the return interchange movements will be “light” (locomotives with no cars) which are faster and occupy grade crossings for less time.”

CN Application at pg. 17.

The statement that “streamline(d) operations” will “occupy grade crossings for less time” ignores the effort and operations that CN seeks to assign to CRANDIC, which would result in additional crossing light/gate activations than what currently occur under the current Iowa Northern Interchange Agreement. Under CN’s proposed plan, CRANDIC trains to the CN yard would more than double and the trains would be significantly longer. Hoffmann V.S. at Para 14. That is, under CN’s proposed operation, there would be more trains crossing over 4th Street in downtown Cedar Rapids, and more crossing gate activations, than under current operations, at a higher cost to CRANDIC. CN’s proposal in the CN Application is that Iowa Northern and CN loaded traffic will be brought to CRANDIC daily and then the CN/IANR locomotives return light, or without cars behind the locomotives. Under CN’s proposal, CRANDIC would then deliver the Iowa Northern empties and CN traffic daily to the CN Yard.

⁵ Cotey, Angela, “Panel looks at PSR impact on Class I, shortline railroads”, TRAINS, last updated Dec 30, 2020, <https://www.trains.com/trn/news-reviews/news-wire/panel-looks-at-psr-impact-on-class-i-shortline-railroads/> (last visited Mar 28, 2024).

Currently, Iowa Northern brings the loaded traffic to CRANDIC and returns with the empties on a daily basis. CRANDIC currently delivers and receives traffic from CN on Monday, Wednesday, and Friday. In addition to the increased costs to CRANDIC, the CN proposal would create additional signal activations in downtown Cedar Rapids on Sunday, Tuesday, Thursday and Saturday beyond what currently occurs. Additionally, the daily "light" moves in the CN proposal also create additional crossing activations each day. While these activations from the light locomotives would, admittedly, be shorter than for a train with cars, these activations are a further addition to the additional activations caused by CRANDIC trains moving to the CN Yard. Hoffmann V.S. at Para 14.

In summary, as CRANDIC understands the proposed operation in the CN Application, it contains inaccuracies and is inconsistent with the parties' current interchange agreements. Further, as described above and in the verified statement of Cory Hoffmann, the proposed operation would seemingly benefit CN at a considerable out of pocket cost to CRANDIC. It seems to be an example of CN telling a short line railroad, "Here's the deal..."

2. If the Board Approves the CN Application in its Current Form, it Should Expressly State that it's Decision Does Not Direct any Change in the Parties' Interchange Agreements

49 USC 11321 provides in part:

"A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws **and from all other law**, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction."

(emphasis added). In the past, the Board's predecessor determined that this authority to exempt a transaction from all other law has extended to contracts. *See e.g., Spaulding v. United Transp. Union*, 279 F.3d 901 (10th Cir. 2002) *cert. denied*, 537 U.S. 836 (2002).

If, despite the erroneous statements in the CN Application that are identified above, the Board decides to approve or exempt the CN Application, it should specifically state that its decision does not alter or change the existing interchange agreements involving CRANDIC, Iowa Northern and CN. The interchange operation, as proposed in CN's Application, would have direct negative financial consequences for CRANDIC. These financial consequences are not simply lost revenues, but direct costs to CRANDIC from additional crew time, additional locomotive usage (including but not limited to fuel costs), and additional wear and tear on CRANDIC track and related facilities. CRANDIC is also likely to lose revenue on account of this transaction, but it certainly should not be expected to subsidize the transaction by performing work to benefit CN without compensation or by performing interchange in a way that is operationally more difficult for CRANDIC. To avoid any misunderstanding, any decision approving or exempting the proposed transaction should make clear that its decision does not alter or change the parties' existing interchange agreements.

3. A Process Should be Required for Coordinating any Changes to the Parties' Interchange Operations and for Escalating Unresolved Issues

For the reasons discussed above, CRANDIC has concerns about its current healthy relationship with Iowa Northern turning into a servile relationship with CN. CRANDIC requests that the Board direct CN to adopt some type of process for changes to operations under interchange agreements with CRANDIC that are intended to be on anything other than a temporary or ad hoc basis. That is, the Board should require CN and CRANDIC to meet and confer about proposed changes to operations under the parties' Interchange Agreements and, if not successfully resolved, either party could promptly raise the issue to a higher level within the counter-party's organization. If not resolved at that level, either party could then pursue its lawful prerogatives. But such a

process would allow both parties to at least be advised of proposed changes and their issues would, at least, be heard by decision makers on the other side.

4. CN Should be Required to Provide More Certainty in the Open Gateways Commitment that is Made throughout the CN Application

CRANDIC understands that if the Board were to impose conditions on the proposed transaction, CN's so-called "open gateways" commitment is primarily directed at shippers. However, CRANDIC participates in some of the gateways CN has said it will protect and CRANDIC works with shippers on a daily basis to provide viable and competitive routing options. As such, CRANDIC requests that the Board condition any approval or exemption on CN being directed to provide more specificity to its "commitment" to keep existing gateways open on commercially reasonable terms.

CRANDIC currently participates in certain "Rule 11" or similar movements with Iowa Northern which, CRANDIC believes, could shift to CN or otherwise off of CRANDIC depending on the commercial terms offered by CN/Iowa Northern following consummation of the pending acquisition. Specifically, this includes, but is not limited to, shipments of dried distiller's grains, ethanol and corn destined to CRANDIC served industries or for connection with Iowa Interstate Railroad.

As part of the "open gateways" commitment, the IANR portion of any current Rule 11 traffic involving CRANDIC or where CRANDIC and IANR have interchanged traffic in the past six (6) months, whether such portion is to be marketed as "CN" or "IANR" or otherwise in the control of CN, should be conditioned at maintenance of current rates with upward adjustments no more than quarterly provided that such adjustments do not exceed the rate of inflation as evidenced by the Bureau of Labor Statistics Midwest Region Consumer Price Index for All Urban Consumers

(CPI-U). However, this commitment should not be written or construed to preclude CRANDIC and CN/Iowa Northern from developing interline rates pursuant to 49 U.S.C.A. § 10706 or interline contracts under 49 U.S.C.A. § 10709.

CONCLUSION

As stated above, the CN Application contains erroneous or misleading statements about interchange with CRANDIC. Such statements should not be the basis for the Board's decision as they raise additional concerns for CRANDIC as to how CN will operate if its control transaction is exempted or approved. CRANDIC requests that the Board thoughtfully consider its concerns before approval or exemption of this control transaction and impose conditions identified above to ensure these gateways continue to remain operationally and commercially "open" as CN has committed.

Respectfully submitted,

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Counsel for the Cedar Rapids and Iowa City Railway

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2024, I served a copy of the foregoing document by electronic mail upon all parties of record on the official service list for Docket No. FD 36744.

/s/Charles W. Shewmake
Charles W. Shewmake

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**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
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IOWA NORTHERN RAILWAY COMPANY**

VERIFIED STATEMENT OF CORY HOFFMANN

1. My name is Cory Hoffmann. I am currently General Manager for the Cedar Rapids and Iowa City Railway Co. (CRANDIC). The CRANDIC is a Class III railroad that operates approximately 100 miles of railroad extending southeast and southwest from Cedar Rapids, Iowa. CRANDIC is a subsidiary of Traverco Inc., which is a wholly owned subsidiary of Alliant Energy Inc.
2. I started my career as a conductor for CRANDIC in 2007. I worked for a rail transload operator from 2009 to 2015. In 2015, I returned to CRANDIC as Manager Maintenance of Way, and in 2019 I was promoted to my current position as General Manager.
3. Currently, CRANDIC interchanges traffic with both Canadian National Railway (“CN”) and Iowa Northern Railway (“Iowa Northern”).
4. CRANDIC is party to an interchange agreement with Iowa Northern dated January 12, 2005, which calls for cars to be interchanged at CRANDIC’s yard and we currently interchange daily.
5. CRANDIC is also a party to an interchange agreement with CN dated January 9, 1998, which provides for traffic interchanges at CN’s yard in Cedar Rapids, which is approximately five miles from the CRANDIC yard.

6. At present, CRANDIC interchanges significantly more traffic with Iowa Northern than with CN. In 2023, CRANDIC interchanged approximately 14,535 cars with Iowa Northern and 2,068 cars with CN.
7. I understand that the CN application for its control transaction with Iowa Northern states that Iowa Northern traffic will interchange at the CN Yard approximately five miles away from the CRANDIC yard.

“For example, in Cedar Rapids, Iowa Northern will now deliver both its own and CN interchange traffic to CRANDIC and Union Pacific, and CRANDIC will deliver interchange traffic to CN and Iowa Northern in CN’s Cedar Rapids Yard, which will streamline operations in downtown Cedar Rapids because the return interchange movements will be “light” (locomotives with no cars) which are faster and occupy grade crossings for less time.”

CN Application at pg. 17.

8. This is not what is contemplated in the current interchange agreement with Iowa Northern and, if implemented, would cost CRANDIC thousands of dollars a day. CN approached CRANDIC on January 18, 2024 and discussed this proposed change, but CRANDIC did not agree to it. CN has not offered any compensation for the additional resource expenditure and work involved in taking Iowa Northern empties to the CN Yard. The statement in the application is, at best, what CN has said it *wants* to happen. But at the present time the statement as written is inaccurate.
9. I met with representatives from CN again on April 9, 2024, including James Andersll, Joshua Crossin, and Dennis Anderson. It was about a 15-minute conversation where I explained the difficulty for CRANDIC from their proposed operation. Mr. Andersll said that he (CN) gets to pick where his cars get delivered and CRANDIC gets to pick where its cars are getting delivered. This in turn would have us passing each other lite engine. Mr. Andersll shared at the end of the conversation that he hopes we will think about the proposal, as it is too difficult for them to deliver and pull the same job. The meeting ended after that.
10. I again met with representatives of CN on April 22, 2024. While it seemed CN was willing to perhaps consider keeping operations closer to the current operation, there was no actual commitment from CN and nothing was decided. Indeed, CN discussed some new blocking

it would like to see CRANDIC perform for east and westbound movements and I asked for some follow up information about that. While I have gone back and asked several times about the requested data I still have not heard back from them.

11. The interchange operation, as currently proposed in CN's control application, would have direct negative financial consequences for CRANDIC. These financial consequences are not simply lost revenues, but direct costs to CRANDIC from additional crew time, additional locomotive usage (including but not limited to fuel costs), and additional wear and tear on CRANDIC track and related facilities. The cost would likely be several thousand dollars per day.
12. Under the current operating plan, on a daily basis the Iowa Northern delivers loaded traffic to CRANDIC and departs the CRANDIC Cedar Rapids Yards with empties.
13. Under the current operating plan and the existing interchange agreement, CRANDIC travels to the CN Yard to deliver and pickup the CN traffic on Mondays, Wednesdays and Fridays; which on average, consists of 13 railcars per trip.
14. Under the CN proposal, CRANDIC would incur increased operational costs and downtown Cedar Rapids would encounter additional grade crossing occupancies and signal activations during the days of the week CRANDIC is not currently delivering to the CN Yards. With the proposed CN plan, both the Iowa Northern and CRANDIC are making "light" engine moves across the 4th Street Corridor every day of the week, which would admittedly be shorter than a train with cars (which the Iowa Northern currently does on a daily basis), but this proposed plan doubles the number of crossing occupancies and signal activations on Sunday, Tuesday, Thursday, and Saturday.

I, Cory Hoffmann, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 29th of April, 2024.


Cory Hoffmann

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2024, I served a copy of the foregoing document by electronic mail upon all parties of record on the official service list for Docket No. 36744.

/s/ Charles W. Shewmake
Charles W. Shewmake