

June 17, 2024

Via e Filing and U.S. Mail

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

Re: Docket No. FD 36744, Canadian National Railway Company and Grand Trunk Corporation—Control—Iowa Northern Railway Company

Dear Ms. Brown:

In light of the regulations and responsibilities in 49 CFR § 1103.27, the Cedar Rapids and Iowa City Railway Co. (“CRANDIC”) submits this short letter to correct any false factual premises that the Board or other readers might have based on the sequence of certain Verified Statements by CRANDIC and CN or based on the contents of those same Verified Statements.

CRANDIC fully recognizes that the record in this matter closed on June 13, 2024. However, Canadian National Railway Company and Grand Trunk Corporation’s (collectively “CN/IANR” or “Applicants”) May 29, 2024 Response and Rebuttal (“Response”) pleading was approximately 80 pages in length, including attached exhibits the submission was over 400 pages (which may seem incongruous with the Applicants’ repeated claim that their proposed transaction is a “minor” transaction). In any event, in looking at the CN/IANR materials, counsel for CRANDIC observed that the content and sequence of certain representations in the Verified Statements filed by CRANDIC and CN could easily give rise to incorrect factual impressions or lead the reader to draw incorrect factual inferences concerning an important assertion in this matter. Whether under 49 CFR § 1104.7 (Extension of time), 49 CFR § 1104.13 (Responses within 20 days of pleadings) or the general duties of factual accuracy and candor in 49 CFR § 1103.27, CRANDIC submits this explanatory letter and respectfully requests that the Board include it in the Board’s evaluation of the pending Application.

In its Application, CN claimed a new method for interchanging traffic between the combined CN/IANR and CRANDIC, which it represented would reduce train traffic and signal activations in downtown Cedar Rapids. CN Application at pg. 17. In its April 29th comments and the accompanying Verified Statement of Cory Hoffmann, the CRANDIC explained how these statements in the Application were incorrect or misleading. CRANDIC Comments at pg. 2-3; Hoffmann V.S. at ¶¶ 7-11.

And as stated in CRANDIC's April 29th Comments, CRANDIC has not agreed to this arrangement and this arrangement is not what is contemplated in the current Iowa Northern Interchange Agreement. The statements at page 17 of the Application were inaccurate or, at the very least, potentially misleading. The CN/IANR Response filed May 29, 2024, does not address the inaccuracy of these statements about operations with CRANDIC and does not address the fact that CN's proposed (and apparently still preferred) interchange with CRANDIC would *increase* signal activations and train traffic in downtown Cedar Rapids that CN said would be reduced.

While the Applicants' primary Response does not address these factual inaccuracies, the CN does make a passing reference to post transaction interchange operations with CRANDIC in the Verified Statement of Derek Taylor dated May 29, 2024. That portion of the Taylor V.S. reads as follows:

CN Stands By Its Proposed Operational Changes In Cedar Rapids With CRANDIC.

CN believes the changes outlined in the Operating Plan reflect the best approach to improving efficiency, fluidity, and capacity in Cedar Rapids. ***CN has worked to engage with Cedar Rapids and Iowa City Railway ("CRANDIC") regarding future interchange in Cedar Rapids, and will continue to dialogue with the CRANDIC*** regarding how to improve interchange operations in Cedar Rapids post-Transaction. However, given the concerns expressed by CRANDIC in its comments on the Application, CN plans to maintain the status quo with respect to interchange operations with CRANDIC in Cedar Rapids while CN seeks to reach a mutually beneficial agreement.

Taylor V.S. at pg. 10-11 (emphasis added). This statement does not acknowledge or even attempt to explain the inaccurate or potentially misleading nature of the statements in its Application. Rather, CN/IANR attempts to sweep these inaccuracies under the rug by ignoring them in its Response and by characterizing the inaccuracies as mere "concerns expressed by CRANDIC in its comments on the Application." *Id.*

Based on the statements in the verified statement of Derek Taylor, it could be inferred that CRANDIC and CN are currently engaged in ongoing dialogue about post-transaction interchange between CN and CRANDIC on the former IANR. That inference would not be accurate. Rather, the quoted text from Paragraph 10 of Mr. Hoffmann's Verified Statement was and still is accurate. As of the date of this filing, CRANDIC has not heard back from CN as to CRANDIC's questions about CN's proposed interchange operation. While the Taylor Verified Statement indicates that the CN will maintain the "status quo", these statements about maintaining the status quo are not very reassuring to CRANDIC given that contrary to the described effort to "continue to dialogue," CN has not even responded to CRANDIC's repeated inquiries.¹

¹ The accuracy of these statements should also be read in the context of statements attributed to Iowa Northern's Daniel Sabin as was cited in an August 14, 2020, issue of "Trains" magazine where Mr. Sabin was cited as stating that CN has a "condescending attitude" and generally did not appreciate the value and importance of dealing with short lines. The CN/IANR Response does not even

One last factual contention in CN's Response concerns the few dozen support letters it received of which only nine were from actual shippers. "No individual customer has submitted comments expressing concerns about the Transaction." CN then extrapolates that the transaction is "overwhelmingly supported" supported by shippers and that, "...strong support for single-line service that shippers have expressed in this proceeding is a compelling affirmation..." CN Response pgs. 12-13 41-42. To support the contention that this support is overwhelming and compelling the Applicants' cite to *Norfolk S. Ry. Company Acquisition & Operation of certain Rail Lines of the Delaware & Hudson Ry. Co., Inc.*, No. FD 35873 #FN;B1#FN1", 2015 WL 2360282, at *2 (May 15, 2015). In that case another class I railroad was seeking to acquire a short line of comparable size to the IANR (218 miles for IANR vs. 282.5 miles for the D & H). However, unlike the thirty (30) support letters with only nine (9) from shippers supporting the CN acquisition of the IANR, in the NS/D&H case the Board received 127 additional supporting comments filed by various parties including comments from 82 shippers. The situations are factually dissimilar.

If there are any questions concerning this e-filing, please contact me by telephone at (214) 969-2122 or via email at Charles.shewmake@hklaw.com.

Sincerely,

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

Charles W Shewmake
Counsel for the Cedar Rapids and Iowa City
Railway.

cc. Parties of Record

attempt to put a spin on this reported statement from the Iowa Northern's own Daniel Sabin even though they were highlighted in the CRANDIC comments at pages 3-4.