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SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
+1 202 736 8000
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

+1 202 736 8996
MJWARREN@SIDLEY.COM

308404

ENTERED
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Via E-Filing

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

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

Dear Ms. Brown:

Pursuant to Decision No. 2 in the above-referenced proceeding, the record closed on June 13, 2024. Nevertheless, yesterday the Cedar Rapids and Iowa City Railway Co. (“CRANDIC”) submitted an “explanatory letter” responding to Applicants’ May 29 rebuttal filing. CRANDIC’s unauthorized and untimely surrebuttal should be rejected.

Congress has prescribed expedited timelines for the Board to consider and issue decisions on minor transactions.¹ And the Board establishes procedural schedules to ensure that it complies with these statutory timelines. The Board’s rail transportation policy also establishes a clear directive for the fair and expeditious handling of proceedings. 49 U.S.C. § 10101(2) & (15). As Member Fuchs observed, “the filing deadline requirements [are] critical for fair and efficient review,” especially in the context of merger proceedings. Decision No. 2 at 13 (Fuchs, concurring). Allowing parties to submit additional filings after the record has closed undermines these directives.

¹ 49 U.S.C. § 11325(d)(2) (“The Board must conclude any evidentiary proceedings by the 105th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 45th day after the date on which it concludes the evidentiary proceedings.”).

CRANDIC's stated excuse for submitting a surrebuttal after the close of the record is that Applicants' Rebuttal "was approximately 80 pages in length,"² but Applicants' response to CRANDIC's comment only covered a few pages.³ And CRANDIC's cursory claim that various regulations might justify its defiance of Decision No. 2's schedule is meritless. Section 1104.13(a)'s general rule allowing parties 20 days to reply applies only when the Board has not "otherwise provided" a different schedule. Decision No. 2 did just that—it provided that the final filing would be Applicants' rebuttal filing and that the record would close on June 13. Section 1104.7(b) is likewise no help to CRANDIC—it neither requested an extension of time before the deadline nor has it shown good cause. And the Board's expectation that practitioners exercise candor and fairness in dealing with other litigants (49 C.F.R. § 1103.27) provides no basis for accepting an unauthorized and largely repetitive surrebuttal.

In any event, the CRANDIC condition request to which its surrebuttal appears relevant—that the Board make clear that an approval decision would not alter CRANDIC's respective existing interchange agreements with CN and Iowa Northern—is a condition that **Applicants did not oppose**.⁴ Applicants explicitly stated in their rebuttal that they would maintain the status quo for interchange operations in Cedar Rapids after the Transaction while CN seeks to reach a mutually beneficial interchange agreement.⁵ Applicants have given CRANDIC what it was asking for on this point, but CRANDIC seemingly will not take yes for an answer.

For the foregoing reasons, CRANDIC's June 17, 2024 surrebuttal should not be considered.

² CRANDIC Letter at 1 (filed June 17, 2024).

³ See Applicants' Rebuttal at 61–62, 77–78; *see also id.*, Verified Statement of Derek Taylor ("Taylor V.S.") at 10–11.

⁴ Applicants' Rebuttal at 77.

⁵ *Id.* at 78 n.254 (citing Taylor V.S. at 10–11).

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Kevin M. Sheys

*Counsel for Iowa Northern
Railway Company*

Respectfully submitted,

/s/ Matthew J. Warren
Matthew J. Warren

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

June 18, 2024

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CERTIFICATE OF SERVICE

I certify that on this 18th day of June, 2024, a copy of the foregoing filing was served by email or first-class mail on the U.S. Secretary of Transportation, the U.S. Attorney General c/o Assistant Attorney General, Antitrust Division, and all parties of record on the service list for Docket No. FD 36744.

/s/ Matthew J. Warren

Matthew J. Warren