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July 12, 2019

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Office of Proceedings
July 12, 2019
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Re: *Soo Line Railroad Company—Pet. for Declaratory Order and Preliminary Injunction—Interchange With Canadian National, STB Fin. Docket No. 36299*

Dear Ms. Davis:

CN submits this letter to respond to the two letters that CP filed in the above-referenced docket during the mediation period that expired yesterday. If the Board chooses to accept CP's June 18 and July 3 filings, CN asks that the Board also accept the respective responses below.

CN's Response to CP's July 3 Letter

CP's July 3 Letter appears primarily directed at reiterating its demand for a preliminary injunction requiring continued interchange at Spaulding. Tellingly, however, the letter never explains what irreparable harm could justify such an injunction—indeed, the words “irreparable harm” do not even appear. The Board has no statutory authority to issue a preliminary injunction in the absence of irreparable harm.¹ And CP's request for a preliminary injunction is plainly mooted by CN's acceptance of CP's May 6 proposal that CN front the payments for the Belt Railway's switch fees on an interim basis pending a final determination of payment responsibility by the Board.²

While CP's Executive Vice-President, Operations plus its General Manager Operations, US East are on record as saying that consolidating interchange

¹ 49 U.S.C. § 1321(b)(4).

² See CN Letter at 1-2 & Ex. 1, STB Fin. Docket No. 36299 (filed July 12, 2019).

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operations at Clearing is “acceptable” and that it is “willing” to consolidate interchange there,³ CP spends much of its July 3 letter suggesting that the Belt Railway’s Clearing Yard is somehow not an appropriate interchange point. The Board should not allow CP to disavow its repeated acknowledgements that Clearing is an operationally appropriate place to interchange CN-CP interchange traffic. Indeed, CP already delivers traffic to CN at Clearing, including hazardous and non-hazardous traffic.

As a legal matter, there is no merit to CP’s suggestions that CN is not allowed to designate the Belt Railway to receive interchange traffic because it is a “third party railroad” and that CN’s designation of the Belt is somehow “outsourc[ing] its statutory responsibility.”⁴ In the first place, the Belt is hardly a “third-party railroad”; CN and CP are co-owners of the Belt Railway (along with several other Class Is). The Belt’s core purpose in Chicago is to facilitate interchange traffic between Class I carriers. Indeed, CN and CP already use the Belt’s Clearing Yard to interchange traffic today. Moreover, 49 U.S.C. § 10742 plainly allows CN to designate the Belt as a reasonable interchange location. In *Burlington Northern Railroad Co. v. United States*, 731 F.2d 33, 39-40 (D.C. Cir. 1984), the D.C. Circuit held that a receiving carrier did not violate its § 10742 obligations by choosing to receive interchange traffic “through an intermediate switching carrier” rather than through “direct interchange under a trackage rights agreement.” CP cites *Burlington* for the irrelevant proposition that carriers ordinarily cannot be compelled to exercise trackage rights.⁵ However, CP fails to highlight for the Board the case’s primary holding: a receiving carrier has the right to designate a switching carrier to receive interchange traffic, even if the delivering carrier objects because it does not want to pay the switching charges.⁶

³ Petition for Declaratory Order at Ex. E p.2, Ex. G p.1, V.S. Walker ¶ 10, STB Fin. Docket No. 36299 (filed Apr. 30, 2019).

⁴ CP Letter at 2, STB Fin. Docket No. 36299 (filed July 3, 2019).

⁵ CP’s description of the Belt fees as “trackage rights fees” is incorrect and misleading. The fees at issue are not trackage rights fees, but rather the per-car switching fees paid by the Belt Railway co-owners (and paid by CP today for the CN-bound traffic that is currently interchanged at Clearing).

⁶ See *Burlington*, 731 F.2d at 39 (“[I]n interchanging traffic with western railroads in Chicago, the B&O has quite properly elected to utilize only one of the options available to it (intermediate switching via the B&OCT) and to forego exercising

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And as a factual matter, CP's assertion that moving the interchange point might worsen at-grade crossing blockages at Spaulding by increasing rail traffic on CN's single-track main line is wrong. CN terminated the Spaulding interchange agreement in part because it blocks CN's single-track mainline, which impairs network fluidity for CN's existing traffic. If volumes increase because of demand growth for traffic, they increase whether or not the Spaulding interchange is moved. The only question is whether CN will be allowed to move the interchange point so that its main line has the ability to accommodate existing traffic plus any future traffic without unduly impairing network fluidity and causing congestion.

More fundamentally, CP's assumption that operating a few more through trains through Spaulding would cause more or longer blocked crossings than those caused by multiple hours of daily interchange operations is ludicrous. An average through train operating at the track speed of 30 mph will typically occupy the grade crossings at Spaulding for approximately three or four minutes as it moves over the track. Such a brief interruption for a moving through train would not approach the instances of blocked crossings in excess of ten minutes while CP and CN conduct interchange operations.

In the same vein, CP's suggestion that consolidating its delivery of interchange cars to CN at Clearing might create unacceptable congestion at Clearing is nonsense. CP delivers an average of 30 cars a day to CN at Spaulding. On some days, it seems that these additional cars could be added to existing CP trains going to Clearing, and on others they would require only one additional short train if CP chooses to deliver the cars to Clearing that day. This will not create any congestion problem at Clearing, and it will improve network fluidity on CN's main line.

CN's Response to CP's June 18 Letter

The central assertion of CP's June 18 letter is that the communities that have asked the Board to allow CN to move the interchange point from Spaulding do not really understand what they are requesting, and that their real complaint is about "CN main line operations and how CN chooses to operate its railroad."⁷ That

another (direct interchange under a trackage rights agreement)."); *see also id.* at 35 ("Under longstanding Chicago custom, the intermediate switching charges involved in such deliveries are normally borne by the forwarding carrier").

⁷ CP Letter at 3, STB Fin. Docket No. 36299 (filed June 18, 2019).

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is a serious mischaracterization of the concerns expressed by the communities. Community organizations including the Village of Bartlett, the Bartlett Fire Protection District, the Bartlett Area Chamber of Commerce, and Hanover Township specifically discussed the benefits of moving interchange operations and knew exactly what they asked for:

- Village of Bartlett: 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.⁸
- Bartlett Fire Protection District: On behalf of the residents of the Bartlett Fire Protection District, I sincerely ask that you give strong consideration to moving the interchange operations from Spaulding Road in Bartlett. Relocating the interchange would allow our fire service personnel to be more effective in their efforts to save lives and property.⁹
- Hanover Township: On behalf of the Hanover Township Board of Trustees, I am requesting that you do not require Canadian National and Canadian Pacific to continue interchanging at Spaulding Road in the Village of Bartlett. 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.¹⁰
- Bartlett Area Chamber of Commerce: 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 the Bartlett area businesses and residents affected by lengthy delays and safety

⁸ Letter from Village of Bartlett at 1 (May 17, 2019) (filed as Ex. 1 to CN Reply to Petition for Declaratory Order).

⁹ Letter of Bartlett Fire Protection District at 2, STB Fin. Docket No. 36299 (filed June 4, 2019).

¹⁰ Letter of Hanover Township at 1, STB Fin. Docket No. 36299 (filed June 3, 2019).

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concerns when cut off from emergency police and fire services, the Bartlett Area Chamber is in support of this request.¹¹

CP tries to support its assertion that the communities are not actually opposed to interchange operations by cherry-picking from 16 of the 200-plus individual citizen comments. It is true that these and some other individual comments express generalized concerns about rail operations that do not specifically refer to interchange operation. But CP ignores multiple individual comments that very specifically describe problems caused by interchange operations. A few examples include the following:

- As it currently stands, using the Bartlett IL area as a rail yard doesn't work because the trains inevitably block West Bartlett Rd for a considerable amount of time. And because of the way the roads are constructed in the area, there is not a viable way to go around the blockage. The area was never intended to be a railyard and it is detrimental to the community.¹²
- I'd like to take this opportunity to speak in favor of limiting the train stoppages and car/track changes at the West Bartlett Road intersection . . . I implore CN to find a location to stop/switch that does not block an intersection. The car switching during overnight hours causes unnecessary noise as well.¹³
- These trains just don't move along like most train crossings, the trains here[] actually stop for 20 minutes at a time to do the track and train changes done at interchanges. . . . Please let CN move their interchange so that Bartlett residents can be free of the inconvenience and safety hazard for good.¹⁴
- [F]reight trains frequently block traffic for 10+ minutes while the trains complete their operations. If these switching operations could be

¹¹ Letter of Bartlett Area Chamber of Commerce Letter at 1, STB Fin. Docket No. 36299 (filed June 3, 2019)

¹² Comment of John Wojciechowski, STB Fin. Docket No. 36299 (filed June 7, 2019).

¹³ Comment of John Gura, STB Fin. Docket No. 36299 (filed June 7, 2019).

¹⁴ Comment of Bobby Patel, STB Fin. Docket No. 36299 (filed June 7, 2019).

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moved to an area with less impact on residents and vehicle traffic, it would represent a significant improvement in quality of life. . . .¹⁵

It is thus simply not accurate for CP to claim that communities were complaining about “CN main line operations” rather than the problems caused by CN and CP interchange operations on CN’s single-track mainline that blocks at-grade crossings at Spaulding Road, Bartlett Road, and Stearns Road. The community organizations and many individual commenters directly expressed concerns about continued interchange operations at Spaulding.

Indeed, even commenters who expressed concern about grade crossing blockages not directly caused by interchange operations are right to think that moving interchanges could help to reduce those blockages. When Spaulding interchange operations occupy CN’s single-track main line, they narrow the windows of time that through trains can move over that main line (windows that are already narrow due to the need to accommodate Metra commuter trains as Metra crosses CN’s mainline in four locations, including the tracks CP uses for interchange at Spaulding).¹⁶ Indeed, CP dispatches the interlocking at Spaulding, meaning CN has to wait for a green signal from CP’s dispatching before its through trains can proceed. If interchanges were moved to Clearing, CN would have the ability to move through trains during the time currently dedicated to interchange operations. The interchange operations at Spaulding require CN to deliver CP’s cars to Spaulding and pull CN’s cars from Spaulding, and also require CP to pull its cars from Spaulding and deliver CN’s cars to Spaulding. For these reasons, CP’s repeated claims that its moves in the interchange operations at night do not inconvenience the community are plainly wrong. Both CN and CP interchange operations tie up CN’s single-track main line, block at-grade crossings, and limit

¹⁵ Comment of Karen Wojciechowski, STB Fin. Docket No. 36299 (filed June 7, 2019); *see also, e.g.*, Comments of Robert Fitzpatrick, Jenny Loewenstein, Susan Sliwoski, Laurie Ordoqui, Terry Witt, & Krystle Moser, STB Fin. Docket No. 36299 (filed June 7, 2019).

¹⁶ CN’s Reply to CP’s Petition for Declaratory Order detailed typical CN and CP interchange operations at Spaulding and the reasons why these daily interchange operations create regular and lengthy blockages of CN’s single-track main line and local road crossings. *See Reply to Petition for Declaratory Order*, V.S. Albritton at 3-9, STB Fin. Docket No. 36299 (filed May 20, 2019).

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CN's ability to operate through trains at times when they will cause less community inconvenience.

CP's suggestion that many community comments are actually concerned with "CN switching" is meaningless.¹⁷ The only switching that CN is doing at Spaulding is interchange switching to deliver cars to CP and pick up cars from CP. This is exactly the sort of activity that will no longer occur at Spaulding as soon as CN is permitted to move the interchange location.

It is true that moving the interchange from Spaulding will not alleviate every community concern or eliminate every blocked crossing due to railroad operations. But it plainly will increase network fluidity on the route for through trains by moving the interchange operations to Clearing and Bensenville and thus remove a major source of delays both on CN's single-track main line and for the community from blocked at-grade crossings for interchange operations.¹⁸ CP's insistence on continued Spaulding interchange harms the fluidity of the interstate rail network and causes unnecessary congestion on local streets because these blocked crossings for interchange operations are avoidable. The communities are right to believe that moving the interchange point will lessen rail network interference by eliminating interchange operations at Spaulding.

As CN explained in its letter filed earlier today informing the Board of the expiration of the mediation period, CN is willing to agree to CP's May 6 proposal to move CN's interchange received point to Clearing with CN paying Belt Railway switching fees in the interim, pending a final Board order on payment responsibility. A Board order establishing this interim arrangement would respond to the many requests it has received from the public to allow the interchange point to be moved, and it would create a reasonable temporary solution while the Board considers which party is ultimately responsible for paying Belt switching fees.

¹⁷ CP Letter at 3, STB Fin. Docket No. 36299 (filed June 18, 2019).

¹⁸ See CN Reply to Petition for Declaratory Order, V.S. Albritton at 11, STB Fin. Docket No. 36299 (filed May 20, 2019) (showing that interchange operations caused approximately 70% of blockages over ten minutes on Bartlett area grade crossings).

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Sincerely,

/s/ Matthew J. Warren

cc: Parties of Record on Service List