

**Before the
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 35087 (Sub No. 8)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION – CONTROL – E J & E WEST COMPANY**

**VILLAGE OF BARRINGTON'S SUR-REPLY TO
CN'S REPLY OF OCTOBER 2, 2017 REGARDING BARRINGTON'S MOTION TO
SUPPLEMENT ITS PETITION FOR RECONSIDERATION OF
STB'S APRIL 26, 2017 DECISION DENYING RE-OPENING**

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Dated: October 19, 2017

The Village of Barrington respectfully begs leave to reply to the CN Reply of October 2, 2017, which asked the Board to deny Barrington's September 12, 2017 "Motion to Supplement Petition Seeking Reconsideration the Surface Transportation Board, served April 26, 2017, and Request for Board to take further Action Based on Data in the 2015 Waybill Study."

Barrington respectfully requests the Board to note that CN has failed to refute the substance of the information provided by Barrington in seeking reopening and reconsideration. Instead of addressing the evidence of record that conclusively demonstrates the substantially increased hours of daily vehicular delays that are solely attributable to CN's operations and the documented increases in rail cars that move through Barrington, CN suggests that the new evidence that reflects the increases is "cumulative of evidence already in the record."¹

CN's position must be rejected for the simple reason that Barrington's new evidence is based on facts that were not previously available to Barrington or the Board. Furthermore, when this new evidence is properly considered it conclusively demonstrates the material error that underlies the Board's assertion in its April 26, 2017 Decision that the intersection of U.S. Hwy. 14 and the EJ&E Line "did not meet the Board's criterial for a 'substantially affected' crossing or a grade separation mitigation condition, as any traffic issues would be primarily the result of preexisting conditions."

¹ CN Reply at 2.

Simply put, **the transaction approved by the Board is the only thing that caused the hours of daily vehicular delay at the intersection of U.S. Hwy 14 and the EJ&E Line to increase from a mere 2.49 hours prior to 2008 to 118 hours!** *If that is not a material adverse impact that has substantially impacted the public, what is?*

While CN insists that an effort to do more than focus on outdated and misleading projections that focus on the number of trains, rather than on the vast increase in the number of cars in the trains, “would be a waste of the Board’s resources,” that is not the case. It is respectfully submitted that the Board has an obligation to correct factually unsupportable conclusions when new evidence is placed before it.

The Board should note that the failure to correct its error is having an unquestioned adverse impact on U.S. citizens who must face the reality that the Board’s decision is impacting their daily lives. What the Board has failed to appreciate is that 118 hours of daily vehicular delays result in total annual vehicular delays of 41,070 hours and 51,335 person-hours of delay.² In addition, the delays translate into the waste of 25,200 gallons of fuel per year. Because that waste will continue *ad infinitum*, there is no justification for the Board’s refusal to either consider the merits of Barrington’s new evidence or to employ tools, such as the 2015 Waybill Sample, that are at its disposal to reach a conclusion that can be sustained on the merits.

² The foregoing calculations are based on the methodology utilized by the Texas Transportation Institute in producing the Institute’s annual “Urban Mobility Report.”

In its October 2, 2017 Reply, CN claims that Barrington’s request that the Board “determine the actual number of carloads that have moved through Barrington”³ by utilizing the 2015 Waybill Sample “cannot be used for Barrington’s intended purpose.”⁴ CN does not challenge the statistical validity of the 2015 Waybill Sample nor does CN claim that sampling is not a reasonable surrogate for evaluating the universe of traffic. Rather, CN states that the 2015 Waybill Sample cannot be used because:

1. It does not contain every movement (CN Reply at 12);
2. It would require assumptions about routing (CN Reply at 12);
3. It provides no information about empty cars (CN Reply at 12); and
4. It does not reveal the actual number of intermodal cars, which therefore could not be used to determine train lengths (CN Reply at 12).

Despite CN’s attempt to mislead the Board with the above four statements, the Board can utilize the 2015 Waybill Sample for Barrington’s intended purpose, which is explained in further detail below. Barrington acknowledges that the 2015 Waybill Sample does not contain the universe of shipments but it was not designed to do so. Rather, it is a representative sample of the universe of traffic and can legitimately be used as that surrogate. The 2015 Waybill Sample can be utilized when performing the requested study,

³ See, Motion to Supplement Petition Seeking Reconsideration of Decision of the Surface Transportation Board Served April 26, 2017 and Request for Board to Take Further Action Based on Data in the 2015 Waybill Study filed Sep. 12, 2017 (“Barrington 9/12/17 Motion”) at page 11.

⁴ See, CN’s Reply to the Village of Barrington’s Motion to Supplement its Petition for Reconsideration of STB’s April 26, 2017 Decision Denying Reopening filed October 2, 2017 (“CN 10/2/17 Reply”) at page 12.

as the Board already knows based on its extensive use and review of the waybill sample data in various STB/ICC proceedings spanning decades.

Barrington proffered the use of the 2015 Waybill Sample as a surrogate for the most accurate data available, i.e., CN's own traffic data. CN could easily provide Barrington and the Board access to its own traffic data. Absent CN's own traffic data, however, the use of the 2015 Waybill Sample provides Barrington, and the Board, the best data available for review of CN trains traveling through Barrington. Ideally, CN would make its own traffic data available for Barrington's and/or the Board's review, which would nullify the arguments CN made regarding the inaccuracy and reliability of the 2015 Waybill Sample for the requested study.

Assuming CN will not make its traffic data available for review in this proceeding, the 2015 Waybill Sample is an appropriate surrogate to determine the number of trains and train lengths crossing U.S. Highway 14 in Barrington, IL, despite CN's claims to the contrary. Legitimate assumptions and adjustments can be made to the 2015 Waybill Sample data to obtain a reasonable estimate of the number of trains and train lengths traveling through Barrington.

CN's claim that the 2015 Waybill Sample "does not contain every movement"⁵ is correct, as explained in the RAILINC Reference Guide, which notes that the Waybill Sample is "generally referred to as the "one percent"

⁵ *Id.*

Waybill Sample, the overall sampling rate today is close to three percent.”⁶ However, the Waybill Sample can be expanded to represent all carload movements as noted in the Cambridge Systematics Study that CN references in its 10/2/17 Reply. In the Cambridge Systematics Study “[t]he sample data are statistically expanded to represent 100 percent of the loaded revenue railcar moves in a year.”⁷ This expansion is completed using the expansion factors provided in the Waybill Sample. The RAILINC Reference Guide section titled “STB Waybill Data Element Descriptions” notes that the Waybill Sample contains both a “Theoretical Expansion Factor”⁸ and an “Exact Expansion Factor”⁹ which are utilized to bring the statistics contained in the sample to 100% levels. In regards to the Exact Expansion Factor the RAILINC Reference Guide notes that “[c]omparison of the population count (from which the Sample was chosen) and the total number of records in each strata enable the user of the Sample to calculate the specific sampling rate rather than using the theoretical sampling rate which might lead to non-sampling bias when investigating small subsamples of the data.”¹⁰ Therefore, results based on an

⁶ See, Railinc – Business Services Division, 2015 Surface Transportation Board Carload Waybill Sample Reference Guide, at 184 (2017) (“Railinc Reference Guide”).

⁷ See, Cambridge Systematics, Inc., National Rail Freight Infrastructure Capacity and Investment Study: Final Report, at 4-2 (2007) (“Cambridge Systematics Study”).

⁸ “The theoretical expansion factor is the inverse of the sampling rate, as indicated by the stratum identification in item 26, and is used to expand the car, ton, trailer/container and revenue statistics to 100% levels.” See, Reference Guide at 57.

⁹ “The exact expansion factor is calculated for each waybill, according to the formula shown below, and is used to expand the car, ton, trailer/container and revenues statistics to 100% levels. The format of this factor is ‘nnn.nn’ with an implied decimal point. Factor = (Population count/Sample count).” See, Railinc Reference Guide at 73.

¹⁰ See, Reference Guide at 185.

accepted sampling procedure are not limiting factors in Barrington's requested 2015 Waybill study.

In addition, CN states that "[a]ny conclusions about movements through Barrington would require assumptions about routing, because the Waybill Sample only includes general origin, destination, and carrier interchange information."¹¹ This statement by CN is limited to the four corners of the Waybill Sample. By utilizing an industry-accepted rail mileage program, PC Miler/Rail, the routings of any train in the Waybill Sample can be determined with a large degree of certainty. The use of PC Miler/Rail will allow a user to calculate the route of movement for a specific commodity based on the rail carrier, origin and destination found in the 2015 Waybill Sample. Therefore, this is not a limiting factor in Barrington's requested 2015 Waybill study but rather requires the use of an additional evaluation tool that is readily available to both parties.

CN also states that the 2015 Waybill Sample provides "no information at all about empty cars."²⁶¹² Empty direction car/train rail movements generally follow loaded direction car/train rail movements. The STB addresses the movement of empty cars for a particular movement based on the use of the empty-return ratio calculated in the Uniform Rail Costing System ("URCS"). In fact, the Cambridge Systematics Study that CN references to support its claim that no empty cars exist in the 2015 Waybill Sample explains how this

¹¹ *Id.*

¹² CN 10/2/17 Reply at 12 (n 26 Cambridge Systematics Study at 4-2.)

estimation of empty cars can be made. Specifically, the Cambridge Systematics Study states that empty cars “were estimated using information from the Uniform Rail Costing System (URCS) on empty-return ratios by railroad, car type, and car ownership. The number of empty, non-revenue-producing railcar movements were added to the number of loaded, revenue-producing railcar movements to estimate total railcar movements.”¹³ The handling of empty cars/trains is not a limiting factor in Barrington’s requested 2015 Waybill study.

Finally, CN’s claim that the 2015 Waybill Sample provides only “information on intermodal units (trailers and containers)” but does not provide information on the “number of intermodal cars carrying those units” is not correct. The pages of the RAILINC Reference Guide cited by CN when making this claim explicitly state: “Intermodal traffic records captured in the Waybill Sample contain the number of intermodal units (boxes) and the number of cars for the waybills sampled.”¹⁴ The RAILINC Reference Guide further explains that while the Waybill Sample overstates the number of intermodal cars moved during the sample period, one can address this overstatement with logical adjustments. The RAILINC Reference Guide even explains the methodology behind this adjustment based on a test of 1992 traffic. Specifically, the RAILINC Reference Guide states: “In order to address the overstatement of intermodal cars in the sample, a logical adjustment should be made for

¹³ See, Cambridge Systematics Study at 4-2.

¹⁴ See, Railinc Reference Guide, at 188-189.

restating the number of intermodal cars in the sample before analysis is undertaken.”¹⁵ Therefore, the correct count of intermodal cars is not a limiting factor in Barrington’s requested 2015 Waybill study.

Barrington has no desire to waste the Board’s resources. It must however, challenge the Board’s continuing refusal during the course of its oversight to get beyond worthless, discredited and misleading projections. Because Barrington is acutely aware that every other agency of government that has considered the matter has accepted the fact that the 4639% increase in daily vehicular delay, which has resulted from the Board’s approval of CN’s acquisition of the EJ&E, has materially impacted the crossing at U.S. Hwy. 14, Barrington cannot understand the Board’s refusal to take a hard look at the current situation.

In conclusion, Barrington requests the Board to carefully note that in its April 25, 2017 decision, the Board did not reference either CN or Barrington’s 2015/16 train lengths of approximately 7,700 feet. Instead, the Board pointed to its original 2008 study with an average train length of 6,829 feet and glossed over the updated train lengths submitted. At a minimum, Barrington requests the Board to provide guidance as to **what length (either in terms of feet or in terms of time crossing the road) needs to occur in order to meet the Board’s standard that Barrington is “substantially affected” or conditions are “materially different”?** As a matter of fundamental fairness, the Board should provide meaningful guidance. To date, it has not done so.

¹⁵ *Id.*

Respectfully Submitted,

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Dated: October 19, 2017

Certificate of Service

I, Richard H. Streeter, do hereby certify that all parties of record have been served by e-mail, this 19th day of October, 2017.

/s/ Richard H. Streeter