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June 18, 2019

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June 18, 2019
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Public Record

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

Re: **STB Finance Docket 36299**
Soo Line Railroad Company Petition for Declaratory Order and Preliminary Injunction - Interchange with Canadian National
Response to Public Comments from Residents of Bartlett, IL

Dear Ms. Brown:

Soo Line Railroad Company d/b/a Canadian Pacific ("CP") asks that the Board accept this submission in the interest of a full and complete record. CP submits this letter to address the public comments submitted by the residents of the Village of Bartlett, Bartlett Fire Protection District, School District U-46, Bartlett Area Chamber of Commerce and Hanover Township.

CP is sympathetic to, and takes seriously, the concerns of communities near active rail lines including those of the residents of Bartlett. In fact, CP has taken proactive steps to minimize any inconvenience to the Bartlett community. At least since approximately 2015, CP has scheduled its interchange operations at Spaulding to occur between the hours of 10 PM and 4 AM.¹ During these hours, CP crews encounter little or no vehicular traffic on either Spaulding Road or West Bartlett Road.

Notably, of the approximately 200 comments filed by the residents of Bartlett, only a few express concern with nighttime interchange operations. In fact, a majority of the specific comments submitted complain of blocked crossings during the day when CP is not

¹ CP crews need on average approximately 2.5 hours to complete their work, but must wait for authority from the CN dispatcher to enter and depart.

operating at Spaulding.² And many of those comments, complain that trains are blocking crossings multiple times a day and at all times of the day including during both the morning and evening commutes:

“The train stopping traffic in the morning is becoming excessive I take my daughter to SEHS in the morning and I have to leave extra early just in case there is a train...The were 2 days last month that I was stopped on the way there and then there was another train on my way back.” Debbie Starkey

“Sick and tired of getting stuck for over 15 minutes 3 times a day!”
Angela Matuszewski

“The Spaulding interchange is causing long delays, multiple times per day.” Jenni Jordan

“I’m constantly late to work, meetings, appts, kids practices.” Meghan Pacheco

“During prime commute times, residents are late to appointments, kids are being delayed getting to schools and emergency vehicles can be seen turning around in search of other routes.” Robert M. Skwarek

“I will run out at lunch time – and within an hour, I will catch a train on my way out of my house and again coming home.” Chauntelle LeClair

“I sometimes get stopped by the train on west bartlett road several times a day” Annie Galecki

“We endure so many stoppages each day/week.” Patrick Hartle

“The traffic it creates multiple times per day has created such havoc...it makes u and countless other Bartletters late for work, late for events, miss the Metra commuter train...” Brian Clary

“There are times I’ve left to run to the grocery store and caught a train, then on the way home caught another train 30 min later. April Filippelli

² If CP cannot accomplish interchange on a particular night for whatever reason, it waits until the next night to perform or complete interchange. In rare instances, CP has pulled interchange cars from Spaulding during the day, as distinct from delivering such cars.

“Since I live right next to these tracks on West Bartlett Rd I’m always getting blocked due to stopped trains!! It happens daily at LEAST sometimes 2-3x a day.” Jill Cousineau

As CP interchanges at night and CN interchanges once a day (typically around 5 PM according to CN data), it stands to reason that most of the blockages that are causing community frustration are not attributable to interchange operations at Spaulding. Rather, they are caused by CN main line operations and how CN chooses to operate its railroad.

According to CN’s monthly operational reports filed with the STB in the EJ&E oversight proceeding, interchange operations account for only a portion of the West Bartlett blockages in excess of ten minutes. A substantial portion of the extended blockages that occur during the day are due to CN “pacing” or stopping northbound CN trains waiting to cross the Metra main at Spaulding including for example blocking West Bartlett Road for 31 minutes at 7:36 AM in August 2016.³ The remainder of the extended daytime blockages are due to CN switching which, according to CN’s data, it typically performs during peak travel times.⁴ While in some months CN attributes most of the extended blockages to CP interchange, all or nearly all occurred in the middle of the night, primarily between the hours of 2 AM and 4 AM.⁵ These nighttime blockages are not the focus of the comments. Eliminating the interchange at Spaulding will not address the daytime blockages due to main line operations. Nor, as CP demonstrates, is it necessary to eliminate the interchange altogether in order to mitigate the impacts of CN’s daytime interchange operations.

Nevertheless, Bartlett residents apparently have been led to believe that moving the interchange location will address the many blocked crossings that occur throughout the day, and will reduce or even eliminate train traffic in Bartlett:

³ CN reported that in the month of August 2016, it blocked West Bartlett Road for greater than ten minutes five times for mainline operations including once at 7:36 AM and once at 7:35 AM. In the month of July 2016 it similarly blocked West Bartlett Road for greater than 10 minutes five times for main line traffic including at 3:45 PM, 2:36 PM, 12:29 PM, 9:49 AM and 3:32 PM.

⁴ CN reported that in the month of July 2016, CN blocked West Bartlett Road for greater than ten minutes five times for interchange including at 5:35 PM, 3:47 PM, 4:21 PM, 5:08 PM, 6:45 PM and 11:08 PM.

⁵ CN reported that in the months of July and August 2016 combined, CP interchange blocked West Bartlett for greater than ten minutes 27 times, nearly all of which occurred between 2:30 AM and 4:00 AM (two occurred at approximately 11:30 PM and one at 4:35 AM).

"I am in favor of moving the Spaulding interchange to a location outside of Bartlett. There has been too much residential growth in this area to have freight and commuter trains go through this area as often as they do." Jeff Ottendorf

"Reducing the traffic at his crossing would help make our community a safer and happier place to live." Kim McAlpine

"Please consider reducing the amt. of trains crossing through our area, it is getting worse and worse..." Rosalle Pawlak

"Please move the train trucks^{sic} somewhere else" Anna Cukierski

"The trains are a constant disruption to traffic and ruins our town! I vote to get rid of those trains!" Judy Pecyna

CN's proposed movement of the interchange, however, is not calculated to reduce train traffic or the frequency of blocked crossings in Bartlett. In fact, moving the interchange may well exacerbate the crossing problem. CN seeks to eliminate interchange at Spaulding in order to increase the number of trains on its main line in this corridor.⁶ So, if CN succeeds, there likely will be more CN trains moving through Bartlett. More CN main line trains mean more blocked crossings, not fewer.

CP is also sympathetic with the concern that blocked crossings are delaying emergency vehicles. For its part, CP has instructed its crews to break their train in the event an emergency vehicle needs to pass. Typically, this can be done quickly. That said, CP's General Manager Nick Walker is not aware of any instance in which its trains delayed an emergency vehicle during interchange.

Finally, CP notes that in 2012, CN and the Village of Bartlett entered into a Memorandum of Agreement ("Agreement" attached hereto as Exhibit 1). Bartlett agreed that the commitments made in the Agreement "resolve all of Bartlett's outstanding concerns relating to [CN's acquisition of the EJ&E]". Among those concerns was the CP-CN interchange at Spaulding. The Agreement includes the following provision addressing the interchange:

GTC has instituted a process to coordinate switching operations for the interchange of trains with Canadian Pacific Railroad at GTC's Spaulding Yard, which is largely located between Spaulding Road and West Bartlett Road. This process has dramatically reduced the number of instances of

⁶ CN projects 4-5 trains per day growth from 3rd quarter 2018 to fourth quarter 2019. See CN's Reply to Petition to Reopen, *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, Docket No. FD 35087 (Sub-No. 8), at 7 (filed April 29, 2019).

trains on GTC tracks blocking West Bartlett Road for a period of ten (10) or more minutes. GTC agrees to continue to monitor the activities and work in good faith with Canadian Pacific (or its successors and assigns) with the intention of continuing to minimize blockages of West Bartlett Road due to train operations. Should Bartlett believe there has been an increase in the number of crossing blockages lasting ten (10) or more minutes at West Bartlett Road that in its judgment does not appear to be addressed by GTC, Bartlett shall notify GTC's Government Affairs personnel responsible for that territory of its concern, and such personnel shall raise and seek to address that concern with GTC senior management and report back to Bartlett within three (3) business days of receiving the initial notification.

From CP's perspective, what has changed since the Agreement was executed is that, at least since 2015, CP has performed its interchange in the middle of the night so as not to interfere with the daily lives of the surrounding community. It appears then that the interchange is being unfairly blamed for blockages caused by CN main line operations and CN's operating choices.

In sum, elimination of the interchange at Spaulding would do little to address the frustrations and concerns expressed in the comments submitted to the Board, and could potentially make things worse.

Respectfully Submitted,

/s/ David F. Rifkind

Counsel for Soo Line Railroad Company

cc: Ray A. Atkins (via e-mail)
Matthew J. Warren (via e-mail)
Hanna M. Chouest (via e-mail)
Kathryn J. Gainey (via e-mail)
Nanette Gudenkauf, Bartlett Area Chamber of Commerce (via First Class Mail)
Kevin Wallace, Village of Bartlett (via First Class Mail)
James R. McCarthy, Bartlett Fire Protection District (via First Class Mail)
Tony Sanders, School District U-46 (via First Class Mail)
Bartlett Area Chamber of Commerce (via First Class Mail)
Brian P. McGuire, Hanover Township (via First Class Mail)

EXHIBIT 1

RESOLUTION 2012-87-R

A RESOLUTION APPROVING OF THE MEMORANDUM OF AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND GRAND TRUNK CORPORATION

BE IT RESOLVED by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

SECTION ONE: The Memorandum of Agreement dated December 4, 2012, between the Village of Bartlett and Grand Trunk Corporation (the "Agreement"), a copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

SECTION THREE: SEVERABILITY. The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

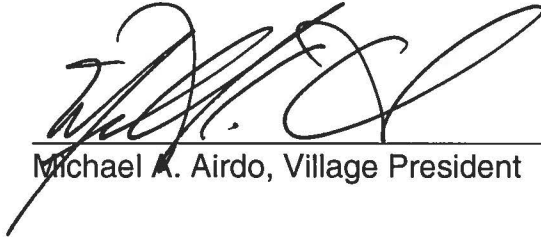
AYES: Trustees Kelly, Martin, Nolan, Shipman

NAYS: None

ABSENT: Trustees Arends, Napolitano

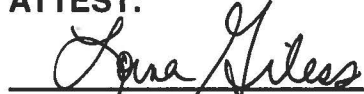
PASSED: December 4, 2012

APPROVED: December 4, 2012



Michael A. Airdo, Village President

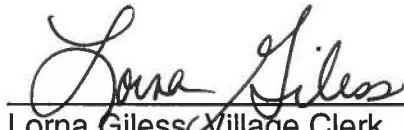
ATTEST:



Lorna Giles, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2012-87-R enacted on December 4, 2012, and approved on December 4, 2012, as the same appears from the official records of the Village of Bartlett.



Lorna Giles, Village Clerk



MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 12th day of December, 2012, by and between the **Village of Bartlett**, an Illinois municipal corporation ("Bartlett") and **Grand Trunk Corporation**, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company (collectively, "GTC"), and co-applicant in the application filed with the Surface Transportation Board ("STB") in STB Finance Docket No. 35087. This Memorandum sets out certain commitments GTC is prepared to make to address various issues between the parties related to existing train traffic and changes in train traffic anticipated as a result of the CN/EJ&EW transaction authorized by the STB by decision served on December 24, 2008 in STB Finance Docket No. 35087 ("Transaction"), and Bartlett's corresponding agreement that these commitments by GTC resolve all of Bartlett's outstanding concerns related to the Transaction. This Memorandum agreement will be effective upon its execution by the duly authorized representatives of Bartlett and GTC.

A.

I Noise and Safety Mitigation

GTC will pay up to a maximum cumulative total of \$1,000,000.00 for noise mitigation for the collective properties within Bartlett designated as adjacent impacted properties, provided the expenditures against that total are for projects or properties within 2500 feet of property owned by a GTC subsidiary. Bartlett may use these funds for any combination of noise mitigation elements constructed on non-Elgin, Joliet & Eastern Railway Company property. In addition or instead, Bartlett may utilize all or a portion of these funds to establish a noise mitigation fund for distribution of monies directly to adjacent property owners with noise mitigation needs. Bartlett or adjacent property owners will be responsible for the construction, ownership, and maintenance of all improvements; under no circumstance will GTC own or maintain, or pay for the ownership or maintenance of, the noise mitigation elements selected by Bartlett. Within 90 days from the effective date of this Memorandum, Bartlett shall submit to GTC a specific noise mitigation plan for use of the funds (the "Plan"), along with the criteria for disbursement if funds are to be distributed to individual property owners.

- A. If this Memorandum is executed by Bartlett on or before December 15, 2012, then GTC and Bartlett shall observe the provisions of this subsection A.

GTC will process payment of the full \$1,000,000.00 before December 31, 2012. On each six (6) month anniversary of Bartlett's receipt of GTC's \$1,000,000.00, until all of the \$1,000,000.00 is expended, Bartlett will forward to GTC a written report detailing its progress toward expenditure of the \$1,000,000.00, with sufficient detail to identify that the expenditures were made consistent with the requirements of this Memorandum and the Plan. Such reports shall identify, at a minimum, the location and nature of construction for which the funds are used (if any) and the name of each property owner to which direct payment is made (if any), as well as the address for such property owner that qualified the property owner for such direct payment.

Bartlett will make every reasonable effort to complete the expenditure of the funds received from GTC hereunder within three (3) years of the date of execution of this Memorandum. Should it become apparent that circumstances beyond the reasonable

control of Bartlett or GTC make full expenditure of the \$1,000,000.00 impossible before the three (3) year anniversary of its receipt by Bartlett, upon request by Bartlett, GTC will consider a one-time extension of twelve (12) additional months for completion, not to be unreasonably withheld.

At the expiration of three (3) years from the date of execution of this Memorandum if no extension is requested (or four (4) years if an extension is granted), any unused funds shall be returned to GTC within sixty (60) days of the appropriate anniversary date.

- B. If this Memorandum is executed by Bartlett later than December 15, 2012, then GTC and Bartlett shall observe the provisions of this subsection B.

GTC shall reimburse Bartlett for noise mitigation expenditures made in accordance with this Memorandum and the Plan, up to a cumulative total of \$1,000,000.00, pursuant to invoices submitted by Bartlett, which invoices shall describe the expenditures in sufficient detail to demonstrate that they were made consistent with the requirements of this Memorandum and of the Plan. Such invoices shall identify, at a minimum, the location and nature of construction for which the funds are used (if any) and the name of each property owner to which direct payment is made (if any), as well as the address for such property owner.

GTC shall pay any invoice submitted in accordance with this paragraph B within 30 days of its receipt by GTC. The total time period for submitting said invoices to GTC shall not exceed twenty four (24) months from the date of execution of this Memorandum, after which GTC shall have no further obligation to pay any invoices received by GTC.

II Emergency Response and Training

GTC will at no cost to Bartlett provide training, both in-house and off-site, for Bartlett's emergency responders. All training is to be completed within one year of the effective date of this Agreement. Specialized training will be limited to qualified candidates submitted by Bartlett. This provision is not intended to preclude additional training in subsequent years for new employees or as a refresher.

III Communications

GTC will fund at its sole expense the establishment of an active railroad crossing system, which is client server based and allows for the display, on one or more monitors observable by personnel of Bartlett or its designated emergency response agency or agencies, of the status (activated or unactivated) of active warning devices at GTC railroad crossings in Bartlett. Upon execution of a separate License Agreement outlining the use of this system, GTC will coordinate with Bartlett or its designated emergency response agency or agencies to implement the system. Acceptance and use of this system is at Bartlett's discretion.

IV Operations

GTC has instituted a process to coordinate switching operations for the interchange of trains with Canadian Pacific Railroad at GTC's Spaulding Yard, which is largely located between

Spaulding Road and West Bartlett Road. This process has dramatically reduced the number of instances of trains on GTC tracks blocking West Bartlett Road for a period of ten (10) or more minutes. GTC agrees to continue to monitor the activities and work in good faith with Canadian Pacific (or its successors and assigns) with the intention of continuing to minimize blockages of West Bartlett Road due to train operations. Should Bartlett believe there has been an increase in the number of crossing blockages lasting ten (10) or more minutes at West Bartlett Road that in its judgment does not appear to be addressed by GTC, Bartlett shall notify GTC's Government Affairs personnel responsible for that territory of its concern, and such personnel shall raise and seek to address that concern with GTC senior management and report back to Bartlett within three (3) business days of receiving the initial notification.

B.

CONDITIONS FOR GTC'S OBLIGATIONS UNDER THIS MEMORANDUM OF AGREEMENT

I. The commitments of GTC set forth in this Agreement are conditioned upon the following:

A. Bartlett shall formally withdraw from the TRAC coalition and provide written evidence to GTC within 20 days of the execution of this Memorandum of having done same. Bartlett agrees that it shall not make further submissions in the STB proceeding or in appellate proceedings regarding the Transaction or its impacts without GTC's prior review and approval except in support of this Memorandum and/or the STB's decision approving the Transaction.

II. Sole Remedy

It is the intention of the parties to this Memorandum that the STB require GTC's compliance with this Memorandum in lieu of any additional or inconsistent mitigation that the STB might otherwise impose regarding environmental impacts in Bartlett. OEA has asked that GTC provide copies of any formalized agreements between GTC and affected communities, and the parties agree that GTC shall provide a copy of this Memorandum to OEA upon execution.

Agreed To:
Grand Trunk Corporation

By: V. J. Kline
Title: VP Senior Southern Region
Date: 12-12-12

Agreed To:
Village of Bartlett

By: [Signature]
Village President

Date: 12-10-12