

December 13, 2018

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Via electronic filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

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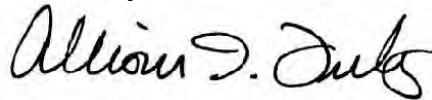
Re: *CSX Transportation, Inc. – Acquisition of Operating Easement – Grand Trunk
Western R.R. Co., STB Docket No. FD 35522*

Dear Ms. Brown:

Enclosed please find for filing in the above-captioned proceeding the comments of the Village of Evergreen Park.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Allison I. Fultz
Counsel for Village of Evergreen Park, Illinois

cc: All Parties of Record

Enclosures

CONTAINS COLOR ORIGINALS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35522

**CSX TRANSPORTATION, INC. – ACQUISITION OF OPERATING EASEMENT –
GRAND TRUNK WESTERN RAILROAD COMPANY**

COMMENTS OF THE VILLAGE OF EVERGREEN PARK

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Dated: December 13, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35522

**CSX TRANSPORTATION, INC. – ACQUISITION OF OPERATING EASEMENT –
GRAND TRUNK WESTERN RAILROAD COMPANY**

COMMENTS OF THE VILLAGE OF EVERGREEN PARK

INTRODUCTION

In its December 10, 2018, Decision in this proceeding (*Dec. 10, 2018, Decision*), this Board announced that it would take no action to compel CSX Transportation, Inc. (CSXT) to comply with the operating conditions to which it voluntarily agreed in order to obtain authority to operate on the Grand Trunk Western Railway Company's Elsdon Line (the Line). *Dec. 10, 2018, Decision* at 2. In her comments appended to the Decision, Chairman Begeman invited affected communities to comment on CSXT's filings. *Id.* at 3.

The Village of Evergreen Park (Village) welcomes Chairman Begeman's invitation and submits the following comments in this proceeding now that the monthly reporting period mandated by the Board has concluded, to respond to the Board's order dated July 28, 2018 (*July 28, 2018, Decision*), and to the *Dec. 10, 2018, Decision*, and to bring to the Board's attention CSXT's broad failure, particularly over the past two and a half years of enhanced reporting, to comply with the operating conditions governing CSXT's authority to conduct operations over the Line (*CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R.*, FD 35522, et

al. (Service Date Feb. 8, 2013)) (*Decision No. 5*).¹ Although those conditions have been amended over the course of this re-opened proceeding in Decisions issued by this Board on June 22, 2016 (*June 22, 2016, Decision*), October 7, 2016 (*October 7, 2016, Decision*), April 27, 2017 (*April 27, 2017, Decision*), July 27, 2017 (*July 27, 2017, Decision*), and December 14, 2017 (*December 14, 2017, Decision*), CSXT's non-compliance has endured.

CSXT has failed to comply with the Board's directive in the *July 28, 2018, Decision* to present a plan improve operations on the Line to mitigate previously-documented deficiencies, and to reverse CSXT's failure to comply even with the relaxed conditions this Board has established at CSXT's request. Instead of a plan for improvement, CSXT responded on August 23, 2018 (CSXT Aug. 23, 2018, Reply) that it had achieved as much improvement as it could on the Line. CSXT Aug. 23, 2018, Reply at 34 ("The data thus shows (sic) that after years of capital investment and operational changes, the Elsdon Line now has an operating profile similar to many other congested rail lines around Chicago"). The Village reminds the Board that an "operating profile similar to many other congested rail lines around Chicago" is not the standard the STB established for CSXT's operations in this densely-populated region of the greater Chicago area, with frequent at-grade crossings. CSXT must comply with the conditions established in **this** proceeding, specifically to address the unique conditions on the Line, and this it has failed to do.

Despite occasional improvement in some aspects, in many other respects CSXT's performance on the Line has not improved or has even deteriorated, and CSXT by its own

¹ To the extent the Village requires the Board's leave to file this comment in response to any filing in the record in this matter that predates this filing by more than twenty (20) days, in accordance with 49 C.F.R. 1104.13(a), the Village respectfully requests that the Board accept this filing in order to establish a complete record in this proceeding.

account has not met the performance parameters it voluntarily proposed and agreed to meet.² CSXT's most recent filing in response to the *July 23, 2018, Decision* provides no reassurance to the Village and obfuscates the damage CSXT's operations on the Line are causing to neighboring communities.

CSXT's efforts to adjust its operations and facilities on the Line to ameliorate significant harmful impacts to the Village and the neighboring communities in the City of Chicago (City) fall short of achieving material improvements or bringing CSXT into compliance with the conditions to which it voluntarily obligated itself. After closely examining CSXT's monthly reports, as well as reports of gate malfunctions by the Evergreen Park Police Department, and comments from residents of the City's 19th Ward, which is adjacent to Evergreen Park, the Village asserts that the documentation in this record reflects ongoing and persistent significant negative impacts of CSXT's operations on public safety and the surrounding community's quality of life. The Village wholeheartedly concurs with this Board's assessment that CSXT "has not been able to achieve the operational fluidity it promised in its application to acquire its operating easement over the Elsdon Line." *July 27, 2017, Decision* at 2.

The following at-grade crossings (Neighborhood Crossings) are located in Evergreen Park and the City's adjacent 19th Ward:

- 87th Street (Milepost DG 13.41)
- 91st Street (Milepost DG 13.95)

² This comment addresses CSXT's activities to date since the 24-month reporting period the STB established in the *June 22, 2016, Decision*, reopening this proceeding in response to the Petition to Reopen and Impose Sanctions filed by the City and the Village on February 12, 2016 (Petition to Reopen), and extended by the *July 27, 2017, Decision* and *December 14, 2017, Decision*. The Board directed CSXT to refine some of its reporting elements in its *October 7, 2016, Decision* and *December 14, 2017, Decision*. These comments focus on operations affecting the Village, and documented in part by CSXT's Monthly Reports, which ended in July 2018, and reports on at-grade crossing incidents from the Village Police Department.

- 94th Street/Kedzie (Milepost DG 14.40)
- 95th Street (Milepost DG 14.56)
- 99th Street (Milepost DG 15.10)
- 103rd Street (Milepost DG 15.60)
- 111th Street (Milepost DG 16.62)

For the reasons discussed more fully below, the bottom line for the Village is that CSXT is simply not meeting the conditions upon which it was granted authority to acquire and operate the Line. The Village strongly believes that in order to ameliorate the harm it is causing the public, CSXT must (a) ensure that all trains clear all at-grade crossings in not more than three (3) minutes; (b) improve or establish protocols with other railroads to ensure efficient operations on the Line; (c) limit operations during the morning and evening rush hours; (d) continue to report on its performance on the Line; (e) be subject to fines for each minute any blockage of any at-grade crossing exceeds ten minutes in length; (f) construct grade separations at key intersections to eliminate rail/vehicle conflicts; and (g) be subject to any other measures this Board may require as it deems necessary. The Village is not focused on the details of CSXT's operations, over which CSX has sole control, but on the serious impacts those operations have on the Village and other communities along the Line.

CSXT'S OVERALL PERFORMANCE ON THE LINE HAS DETERIORATED IN THE PAST TWO YEARS

As the Village demonstrates below, performance in certain areas has deteriorated in the past two years, increasing the adverse impact of CSXT's operations on the Village and surrounding communities.

Hayford Junction is a source of intensifying delay.

Slow-moving trains approaching the Belt Railway of Chicago's (BRC) Clearing Yard through the Hayford Junction at the northern end of the Line (Clearing Yard) (see generally Exhibit 2-A to CSXT Monthly Reports) have become the most significant source of at-grade crossing blockages of more than ten minutes at the Neighborhood Crossings. The Village's analysis shows that, after a decrease in incidents between Oct. 2016 and June 2017, the number of grade crossing incidents at the Neighborhood Crossings jumped in July 2017. In addition, the percentage of blockages at these crossings attributable to Hayford Jct. increased dramatically beginning in Nov. 2017 and has remained high at about 80%. See **Exhibit A.**

The number of blockages at Neighborhood Crossings continues to increase.

Delays in Evergreen Park and the City's 19th Ward due to blocked at-grade crossings have increased dramatically in number in the past year and represent an increasing percentage of delays among all delays on the Line. Since October of 2016, the number of blockages at the Neighborhood Crossings exceeding 10 minutes has increased (even as the total number of at-grade crossing blockages on the whole Elsdon Line has decreased) going from a low of 14 per month on average from Nov 2016 to Apr. 2017 to an average of 72 per month from May 2017 to now. In addition, the percentage of blockages exceeding 10 minutes at the Neighborhood Crossings represents an increasing proportion of all Elsdon Line blockages, going from a low of 4% on average from Nov 2016 to Apr. 2017 to an average of 9.5% from May 2017 to now. See **Exhibit B.**

Crossing gate malfunctions remain a significant safety hazard.

Crossing gate malfunctions continue to occur at least once a month at the Neighborhood Crossings, and although overall numbers have decreased, the duration of gate malfunctions

remains significant. See Exhibit 1-A to CSXT Monthly Reports. Gate malfunctions present an ongoing public safety concern because of motorists' tendency to drive around gates if they believe no train is coming. The Village notes that, despite Chicago's famously windy and harsh winter conditions, CSXT characterizes malfunctions involving weather-related components as weather events rather than failures to maintain a state of good repair in anticipation of winter conditions.

CSXT has failed to improve operating protocols.

Despite CSXT's promises, and notwithstanding its statements to the Board in the CSXT Aug. 23, 2018, Reply, the evidence available to the Village indicates that CSXT has not instituted any changes in protocols with other railroads since its initial monthly report on Elsdon Line performance in July 2016. Notably, although the Verified Statement of John Parker attached to the CSXT Aug. 23, 2018, Reply states that CSXT is an active participant in the Chicago Transportation Coordination Office (CTCO), V.S. John Parker, at 4, the rest of the available record reflects a contrary story, despite this Board's specific direction. *December 14, 2017, Decision* at 3. For instance, in its Monthly Report No. 19 (Filed January 16, 2018), CSXT failed to respond to the Board's specific request (a) for information about whether CSXT participates in the CTCO, and (b) notice of any decision by CSXT not to participate. *Id.* At the public listening session the Board convened on October 11, 2017, CSXT's then-CEO represented that CSXT did not participate in the CTCO at that time and expressed significant skepticism that it would consider doing so in the future because of a perceived negative impact on CSXT's commercial competitiveness. *In Re: Public Listening Session on CSX Transportation, Inc.'s Rail Service Issues*, Surface Transportation Board, October 11, 2017, Transcript at 51-58, 142. CSXT's most recent statements to the Board do not align with this record.

The CSXT Aug. 23, 2018, Reply touts cooperation among the Chicago railroads. CSXT Aug. 23, 2018, Reply, at 24-27. However, CSXT's performance on the Elsdon Line clearly indicates that much room for improvement remains regarding coordination between CSXT and other railroads, and its own filings infer that stronger cooperation is needed. For instance, CSXT remarked in its January 2018 report that "at times there are disagreements" between CSXT and Union Pacific about how protocols at Thornton Junction should be applied. Docket No. FD 35522, CSXT Monthly Report No. 19 at 5-6. The Village respectfully suggests that robust operating protocols and participation in the CTCO would remedy such disagreements and might allow CSXT to operate more efficiently on the Line.

In sum, by not acting to improve its operating protocols with other railroads, CSXT has clearly failed to comply with one of the mechanisms this Board views as essential to the effective operation of the Line and the continuation of CSXT's operating authority.

SIGNIFICANT NEGATIVE IMPACTS ON THE VILLAGE AND SURROUNDING COMMUNITIES CONTINUE

The STB relied on CSXT's representations that its operations would not impose burdens on the communities surrounding the Line, particularly that CSXT would keep trains moving efficiently and would not allow trains to block at-grade crossings for extended periods of time. These commitments were and are crucially important to the communities on the south side of the City well beyond the immediate vicinity of the Line, since ambulances transporting emergency patients from those neighborhoods to the Advocate Christ Medical Center, a Level 1 trauma center, must cross the Line to reach the hospital. Additionally, Little Company of Mary Hospital is located just east of the Line, and vehicles have been delayed trying to approach that hospital

from the west due to blockages on the Line. Unimpeded access to both hospitals at all hours is critical.

Both hospitals are located on 95th Street. In June 2018, the at-grade crossing at 95th Street experienced more congestion than any of the other Neighborhood Crossings, with 21 trains stopped for more than 10 minutes (as compared to an average of 11 trains for the month for each of the remaining Neighborhood Crossings), and was blocked for 354 minutes, or 5.9 hours (compared to an average of 190 minutes, or 3.2 hours, roughly half as long, for each of the other Neighborhood Crossings).

The CSXT August 23, 2018, Reply is incorrect when it states that neighboring communities make a “sharp distinction” between obstructions caused by stopped trains and moving trains. *See* CSXT August 23, 2018, Reply at 4. *See also id.* at 38. The comments of community members filed in this docket on March 10, 2016 (First Community Submission), and December 12, 2018 (Second Community Submission), reflect, and common sense dictates, that the harm generally at issue is the *obstruction* of public ways for longer than reasonable periods (hence why the duration of blockages is the critical indicator). If there was any doubt in CSX’s mind, then the Village submits here that its constituents demand that obstructions that are unreasonably long must end.

On March 10, 2016, over one hundred comments from citizens of the Village and the 19th Ward were filed in the record of this proceeding and docketed as document ID number 240278, along with accompanying photographs and videos docketed as document ID numbers 240278 and 240279. In June 2018, in anticipation of the June 30, 2018, termination of the Board-mandated monthly reporting requirement, 19th Ward Alderman Matt O’Shea solicited comment from 19th

Ward residents on impacts they might have experienced more recently.³ Alderman O'Shea's office received 56 unique comments within the space of approximately one week, which were submitted into this record separately as a consolidated packet of community comments comprising the Second Community Submission on December 12, 2018. In addition, State Senator Bill Cunningham and State Representative Kelly Burke have maintained logs of complaints their respective offices have received from area residents about CSXT's performance on the Line. *See* Verified statements from Senator Cunningham and Representative Burke about the information contained in these logs are attached as **Exhibit C** and **Exhibit D**, respectively.

As reflected in the Second Community Submission, current or former first responders who live in the 19th Ward submitted comments expressing significant concern about the impact of continued at-grade crossing blockages on the ability of police, ambulances, and fire fighters to respond to emergencies.

A representative sample of comments includes:

- A physician rushing to Christ Hospital to attend to a case of fetal distress was delayed for 15 minutes on the morning of June 20, 2018, by a blocked at-grade crossing, and described the current state of affairs as “truly a public health emergency.” Second Community Submission at A-40, A-55.
- A career fire fighter, describing at-grade crossing blockages that last more than ten minutes as “a public safety disaster waiting to happen,” explained, “every minute a cardiac arrest victim goes without CPR means a 10% decrease in

³ Communities in the 19th Ward, although outside of Evergreen Park, experience substantially similar issues to Evergreen Park residents with respect to operations on the Line, as indicated by their comments. The Village therefore relies on these comments as well as comments from its own residents.

survival rate. 10 minutes in those cases means zero chance to save a life.” *Id.* at A-9.

- On June 25, 2018, a resident reported that she was stopped for approximately 20 minutes at 94th and Kedzie waiting for stopped train to clear the crossing. “There was a fire truck ahead of me. A funeral procession was broken up attempting to go north on Kedzie.” *Id.* at A-4.

Also as reflected in the Second Community Submission, citizens continue to report significant impacts on their ability to conduct daily activities such as getting to work, school, or a doctor’s appointment, as the result of the unpredictability and severity of at-grade crossing blockages. Residents also observe that trains are much longer than they recall in the past. Recent comments from 19th Ward residents include:

- On June 18, 2018, a resident waited over 15 minutes for “the absolute longest train I ever encountered” to clear the at-grade crossing at 91st Street. *Id.* at A-44.
- Numerous instances of parents being late to drop off or pick up young children at daycare, with the result that they are fined for late pickup at the end of the day. *Id.* at A-11, A-39, A-49.
- One commenter described weekly extended efforts to detour around blocked at-grade crossings in order to get to work, and that she has taken to sending photos of the trains to her co-workers “so that they know I’ve once again been held hostage.” *Id.* at A-23.

Significantly, multiple residents report impacts that are beyond CSXT’s specific reporting obligations but that result directly from the continuing at-grade crossing blockages:

- Traffic backups of almost two miles or more along major thoroughfares (*Id.* at A-3, A-23);
- Drivers driving on the sidewalk or speeding on tertiary residential streets in order to detour around blockages (*id.* at A-43);
- Decreased customer traffic to local businesses (*id.* at A-17);
- Medical providers having to accommodate or reschedule multiple late patients (*id.* at A-66); and
- Schoolchildren climbing through trains in order to get to or from school (*id.* at A-24 and Evergreen Park Police Department Report, August 22, 2017, attached as **Exhibit E**).

TWO YEARS OF REPORTING DEMONSTRATES THAT ADDITIONAL MITIGATION IS REQUIRED

After two years of reporting by CSX and observation by the community, the necessary solutions, some of which derive directly from CSXT's own commitments, representations, and admissions, have become clear:

1. CSXT must ensure that trains clear grade crossings in not more than three (3) minutes, as the railroad originally represented would be a typical operating parameter in its Application for operating authority in this proceeding. CSX Transportation, Inc., Application, Finance Docket No. 35522, at 18 (Filed August 13, 2012); *April 27, 2017, Decision*, at 3.

2. CSXT must improve protocols with other rail operators that impact CSXT's operations on the Line, including through actual demonstrated participation in the CTCO, to eliminate at-grade crossing blockages, and must commit to a schedule for doing so. Among other measures, the Board should require CSXT to implement operating protocols with BRC that

Elsdon Line trains have access to the Clearing Yard without extended delays. CSXT's own reports reflect that it currently has no protocols in place with BRC.

CSXT offered, as a condition of its operating authority, the following voluntary mitigation (VM) measure:

VM 4. In order to minimize the number of trains being stopped by operators at locations that block grade crossings on the Elsdon Line, CSXT shall work with other railroads to establish reasonable and effective policies and procedures to prevent other railroads' trains from interfering with CSXT's trains on the Elsdon Line.

Initial Decision at 12, Appendix A.

As CSXT's own reports reflect, it has made no progress on this front in the two years this Board has required the railroad to report monthly on its performance.

3. The Village respectfully requests that the STB limit the hours during which CSXT may operate on the Elsdon Line through the Village, particularly during the morning and evening rush hours, as the Village and the City noted in the Petition to Reopen at p. 17.

4. Continued monitoring and reporting, in the manner that this Board currently requires, remain necessary to determine whether CSXT is improving its performance on the Line. Monitoring should continue for at least one year following the introduction into service of the new CSXT flyover to be constructed at 75th Street and Western Avenue as part of the 75th Street Corridor Improvement project on the CSXT line immediately east of the Line.⁴ It is possible that improvements elsewhere in the Chicago area rail network on lines that intersect the Line may alleviate some of the current blockages and resulting adverse effects.

⁴ Mary Wisniewski, *New rail and road projects will untie some tricky South Side knots*, CHICAGO TRIBUNE, July 16, 2018, at: <http://www.chicagotribune.com/news/columnists/wisniewski/ct-biz-create-changes-getting-around-20180709-story.html>.

5. Because of the unique impacts of blocked at-grade crossings in this particular community, this Board should impose fines on CSXT for each minute a train or malfunctioning equipment blocks an at-grade crossing beyond the previously-established ten minute threshold.

This would establish three clear categories of operating circumstances: (a) trains that clear at-grade crossings in not more than three (3) minutes; (b) trains or malfunctioning gates that may block an at-grade crossing for not more than ten minutes; (c) trains or equipment malfunctions that cause an at-grade crossing to be blocked beyond the ten minute threshold, for which fines will ensue for each minute the blockage persists at each crossing.

The railroad's demonstrated failures have resulted in precisely the harms that the community predicted would occur. The Village strongly disputes that, as CSXT claims, there is no basis to fine CSXT. CSXT Reply, STB Docket No. FD 35522 (Filed March 10, 2016), at 21. Given the significant and unpredictable public safety problems CSXT continues to cause, as reflected in the First Community Submission and Second Community Submission, by preventing first responders and other vehicles from accessing two major hospitals, blocking at-grade crossings near schools at times when children are arriving or leaving in large numbers,⁵ and creating extensive traffic backups, a permanent and enforceable solution is required.

6. CSXT must improve its infrastructure by creating grade separations at key intersections to eliminate train/vehicle conflicts, as the Village and the City noted in the Petition to Reopen at p. 17.

⁵ Over the past two years, school children have been observed climbing on and through trains that are stopped during morning arrival times or at afternoon dismissal. For example, on August 22, 2017, Evergreen Park police were called to 94th and Kedzie near Central Middle School at dismissal time to address a "group of kids jumping on and off the train on the tracks," and to assist the crossing guard with "crowd control" to keep other students from climbing on the train. See **Exhibit E**.

PRESCRIPTIVE SOLUTIONS MUST BE COUPLED WITH OBJECTIVE PERFORMANCE CRITERIA

The Village emphasizes that the objective performance criteria listed above permit CSXT the discretion to achieve the necessary results through whatever means the railroad believes will be effective. The Village also believes various prescriptive measures may enable CSXT to achieve these goals, but emphasizes that, as the record in this proceeding has reflected since CSXT began operating on the Line, prescriptive requirements alone are unlikely to produce significant benefits. Following is a brief discussion of one prescriptive measure that has not worked, and two others that may be worth implementing in conjunction with objective performance requirements:

- **Requiring CSXT to cut trains that block at-grade crossings for more than ten minutes.** This has been utterly ineffective because CSXT consistently failed to comply with this condition as originally imposed. Over the course of over three thousand instances of at-grade crossings being blocked for ten minutes or more (see Exhibit 2-A to CSXT monthly reports), CSXT has cut trains on fewer than five occasions. STB's relaxation of the requirements of VM 6 at CSXT's request in its *July 27, 2017, Decision* has had no impact, either beneficial or deleterious, on the community, for whom the requirement has become irrelevant in the face of ongoing blockages, some of which are caused by malfunctioning at-grade crossing signals and equipment rather than the presence of a train.
- **Establishing a minimum train speed.** If calibrated with other operating parameters, a minimum train speed may provide a means to ameliorate the impacts of blocked at-grade crossings. If a train is stopped, however, it does not matter how fast it was traveling until it stopped. The essential measure is how **fast**

trains clear at-grade crossings, and CSXT identified a reasonable three-minute metric in its original request for this exemption. CSXT Application at 18. CSXT has proved unable or unwilling to maintain the 40 mph operating speed it originally claimed would be typical over the Line, a factor which, candidly, is of minor import to the Village when taken alone. CSXT claims that the complexity of operations in the Chicago terminal and the need to accommodate movements, such as entry to and exit from yards, require lower speeds. *See, e.g.*, CSXT Monthly Report No. 12 at 1-2; CSXT Aug. 23, 2018, Reply at 3-4, 27. This is a condition CSXT certainly should have anticipated at the time it applied for operating authority, and thus is not a sufficient response now. Moreover, train speed is only one of many operational tools CSXT has at its disposal to ensure efficiency, which would be proven by consistently clearing at-grade crossings in three (3) minutes or less.

- **Train length.** This Board has required CSXT to report since January 2018 on the length of all trains operating on the Line. *December 14, 2017, Decision* at 2. It is undisputed that many freight railroads are running trains on the Line that are two and even almost three miles long, and these trains are often too long to fit into the yards for which they are bound, causing backups on the main line. Although requiring shorter trains might result in fewer blocked at-grade crossings, it is also possible that even more congestion would ensue if CSXT opts as a result to compensate by increasing the number of trains on the Line, particularly if operations remain poorly coordinated. Certainly, as members of the community have observed, when a longer train stops, it blocks more at-grade crossings.

If this Board contemplates imposing prescriptive requirements on CSXT, the Village urges that such requirements be coupled with clear, objective performance criteria such as those articulated above so that CSXT's adherence to any prescriptive requirements yields actual, measurable benefits. Because of the acknowledged complexity of conditions on the Line, a combination of strategies will likely be necessary to achieve the clear operating parameters that the Village has identified.

THE CSXT AUGUST 23, 2018, REPLY IS HIGHLY MISLEADING AND DOES NOT ADEQUATELY ADDRESS THIS BOARD'S DIRECTIVE

The CSXT August 23, 2018, Reply contains a number of statements that the Village believes are inaccurate or misleading regarding CSXT's operations on the Line and the resulting impact to neighboring communities. More broadly, CSXT's latest filing is completely inadequate with respect to addressing the Board's order in the *July 23, 2018, Decision*. The Village believes that its comments above help provide a more complete picture for the Board, but would also like to take this opportunity to address CSXT's latest comments directly.

Most fundamentally, in its August 23, 2018, Reply, CSXT tries to shift the focus of these proceedings from the question of whether it is complying with the conditions of its common carrier authority over the line (which it admits it is not) to how performance on the Line compares to the already poor operating conditions in the Chicago Terminal area generally. That simply is not the issue. The issue is that CSXT continues to fail to meet the promises it voluntarily made to the Board and to the citizens of Evergreen Park. The Village disputes that these conditions are too difficult for CSXT to meet, but even if that were the case, the fact is that CSXT's right to operate on the Line are dependent on them, and accordingly non-compliance should result in revocation of CSXT's operating exemption.

Along the way, CSXT makes a number of misleading statements in its August 23, 2018, Reply. These include:

- Stopped vs. moving trains. CSXT makes much of a supposed distinction between stopped and moving trains. See CSXT August 23, 2018, Reply, at 2, 4. For police and emergency responders, school children, pedestrians, drivers, and residents, the impact of the obstruction is largely the same – unreasonable blockages that may cause life-threatening delays and create dangerous circumstances – whether or not the train causing the hazard is stopped or moving. CSXT’s argument that moving trains are not the problem is rebutted by its own admission that “77% of the grade crossing occupancies in June 2018, were by trains that never stopped.” *Id.* at 40.
- “Foreign” vs. CSX trains. CSXT attempts to shirk responsibility by blaming “foreign” trains on the Line for some of the delays. *Id.* at 2. In response, the Village comments that CSXT is responsible for dispatching the Line, responsibility that includes coordinating operations of both its own trains and others who use the Line.
- Claims that CSXT’s measures to date are sufficient. CSXT argues that performance on the Line has improved. *Id.* at 6, 22, 36, 37. The Village’s analysis of the data show that in many critical respects, performance has not improved, or has even deteriorated. For example, the Village’s analysis shows that delays attributable to the Hayford Junction have increased significantly over the past year. See **Exhibit A**. More broadly, the Village’s analysis shows that serious blockages have generally increased. See **Exhibit B**.

CSXT also claims that operational changes have mitigated its impacts on the Village and other communities along the Line. *See id.* at 24-27. The Village asserts that CSXT's two years of reporting documents do not reflect any operational improvements. CSXT also offers that it has been involved with the CTCO, *see V.S. John Parker*, at 4. However, as described above, this statement directly contradicts earlier statements by CSX in the record. *See In Re: Public Listening Session on CSX Transportation, Inc.'s Rail Service Issues*, Surface Transportation Board, October 11, 2017, Transcript at 51-58, 142.

CSXT mentions the CREATE 75th Street Corridor Improvement Project in passing, noting that improvements there may benefit fluidity on the Line. CSXT August 23, 2018, Reply, at 29. The Village suggests that in order to determine whether this project will indeed improve fluidity on the Line, the Board should extend CSXT's mandatory monthly reporting to the Board for one year after these improvements have been completed and placed into service in order to determine whether the investments have actually resulted in fluidity improvements on the Line sufficient to mitigate CSXT's adverse impacts on the Village and other affected communities.

- No basis for making further improvements. Incredibly, CSXT states that “[t]here is no basis for the Board to conclude that the Elsdon Line needs material improvement.” *Id.* at 5. This is despite the fact that CSXT itself admits the “challenges” it has faced operating the Line. *Id.* at 15. The best evidence that CSXT can muster is that the performance on the Line is somewhat equivalent to the performance of other lines in Chicago, which is certainly not an adequate

response given the acknowledged problems facing Chicago's rail network. In any event, the fact that CSXT's poor performance on the Line tracks with poor performance in the Chicago Terminal generally is not evidence that there is no basis for this Board to require improvement on the Line. There is most certainly a basis for improving operations, notably the serious and dangerous obstructions that malfunctioning signals, or trains, whether moving slowly or stopped, create along the Line. CSXT may believe that there are no measures that it can feasibly take to improve operations, but that does not mean it can argue that things are fine on the Line. If, as CSXT states, there is no means of improving fluidity on much of the Line, *see id.* at 24, then CSXT is admitting that it cannot meet the conditions of its exempt acquisition, and therefore its operating authority on the Line should be revoked.

- Further improvements are not feasible. CSXT argues that there is nothing it can do to alleviate congestion, yet in the same breath provides an obvious solution: reroute trains. *Id.* at 5. CSXT argues that rerouting trains will have a “catastrophic effect on the overall Chicago Terminal” without supporting that claim with any quantitative data. *Id.* at 31, V.S. of John Parker, 3-4. Even if CSXT were correct that there might be worse congestion on other lines if trains were rerouted from the Line, CSXT has failed to demonstrate that those impacts outweigh the documented danger and harm to the residents of Evergreen Park and surrounding communities.⁶ The impact to densely populated neighborhoods with emergency

⁶ In supplemental comments to the *Dec. 10, 2018, Decision*, Boardmember Miller comments that rerouting trains off of the Line “would likely only create congestion elsewhere in the Chicago area.” *Dec. 10, 2018, Decision* at 4.

facilities and many at-grade crossings is very different than the impact in areas with many fewer residents, crossings, and competing land uses.

In any case, the fact that rerouting trains off the Line might potentially burden other lines is not the standard for making the determination that CSXT is failing to meet its obligations under **this** operating exemption.

- Characterization of public comments. CSXT attempts to characterize a lack of public comments about aspects of its operations on the Line as evidence that there is no impact. CSXT August 23, 2018, Reply. at 11-13. However, a lack of comments on some elements of CSXT's operation of the line does not undercut the objective demonstration of operational failures already present in abundance in the record of this proceeding.
- General lack of responsibility. Much of CSXT's response to the issues it claims to be unable to solve on the Line amount to passing the buck. CSXT states that it acquired the Line in a condition that was worse than anticipated, *id.* at 15, that some delays are caused by other railroads, *id.* at 2, the conditions on the Line are generally no worse than on many other lines in Chicago, *id.* at 32, and that "operational realities" are to blame, *id.* at 3. None of these excuses are adequate in response to the Board's directive to "establish and provide to the Board a plan detailing additional actions that CSXT will take to improve fluidity of operations." *July 27, 2018, Decision*, at 2. Rather than adequately responding to the Board's order, CSXT seeks to avoid the responsibility it signed up for when it sought operating authority over the Line.

The Board should not countenance CSXT's attempt to dodge responsibility in its latest filing, and it should hold CSXT accountable to the standards which the Board ordered and to which CSXT agreed, as a condition of CXST's exempt acquisition of the Line. CSXT owes it to the Board, and to the communities to which it made promises that have gone unfulfilled.

CONCLUSION

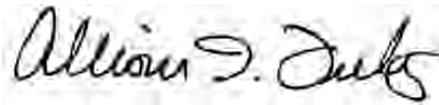
CSXT's efforts, and occasional successes, have not brought it into compliance with the conditions established to allow it to operate on the Line, even as this Board has relaxed some of those requirements. Additional measures, as described above, are necessary to achieve the minimum performance required of CSXT. The Village respectfully requests that the STB impose these further measures and sanctions on CSXT, with continued monitoring, until CSXT can demonstrate fully compliant performance for at least one year.

WHEREFORE, and in view of the foregoing, the Village respectfully requests that the Board:

- (a) Require that all trains clear all at-grade crossings in not more than three (3) minutes;
- (b) Require CSXT to (i) improve or establish protocols with other railroads to ensure efficient operations on the Line, (ii) participate in the CTCO, and (iii) provide a timeline by which CSXT will establish these coordination protocols;
- (c) Require CSXT to limit operations on the Line during the morning and evening rush hours;
- (d) Require CSXT to continue to report on its performance on the Line in accordance with the current framework, subject to additional or amended requirements the Board may impose, until at least one year after CSXT commences operations over the flyover to be constructed as part of the 75th Street Corridor Improvement project;

- (e) Levy fines on CSXT for each minute any blockage of any at-grade crossing exceeds ten minutes in length;
- (f) Require CSXT to construct grade separations at key intersections to eliminate rail/vehicle conflicts; and
- (g) Impose any other relief this Board deems appropriate, including revocation of CSXT's operating authority on the Line, to ameliorate the significant harmful impacts of CSXT's operations on surrounding communities and the railroad's demonstrated failure to comply with the Board's conditions in this proceeding.

Respectfully submitted,



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Counsel for the Village of Evergreen Park,
Illinois

Dated: December 13, 2018

Exhibit A

Hayford Junction Delays

[attached hereto]

EXHIBIT A

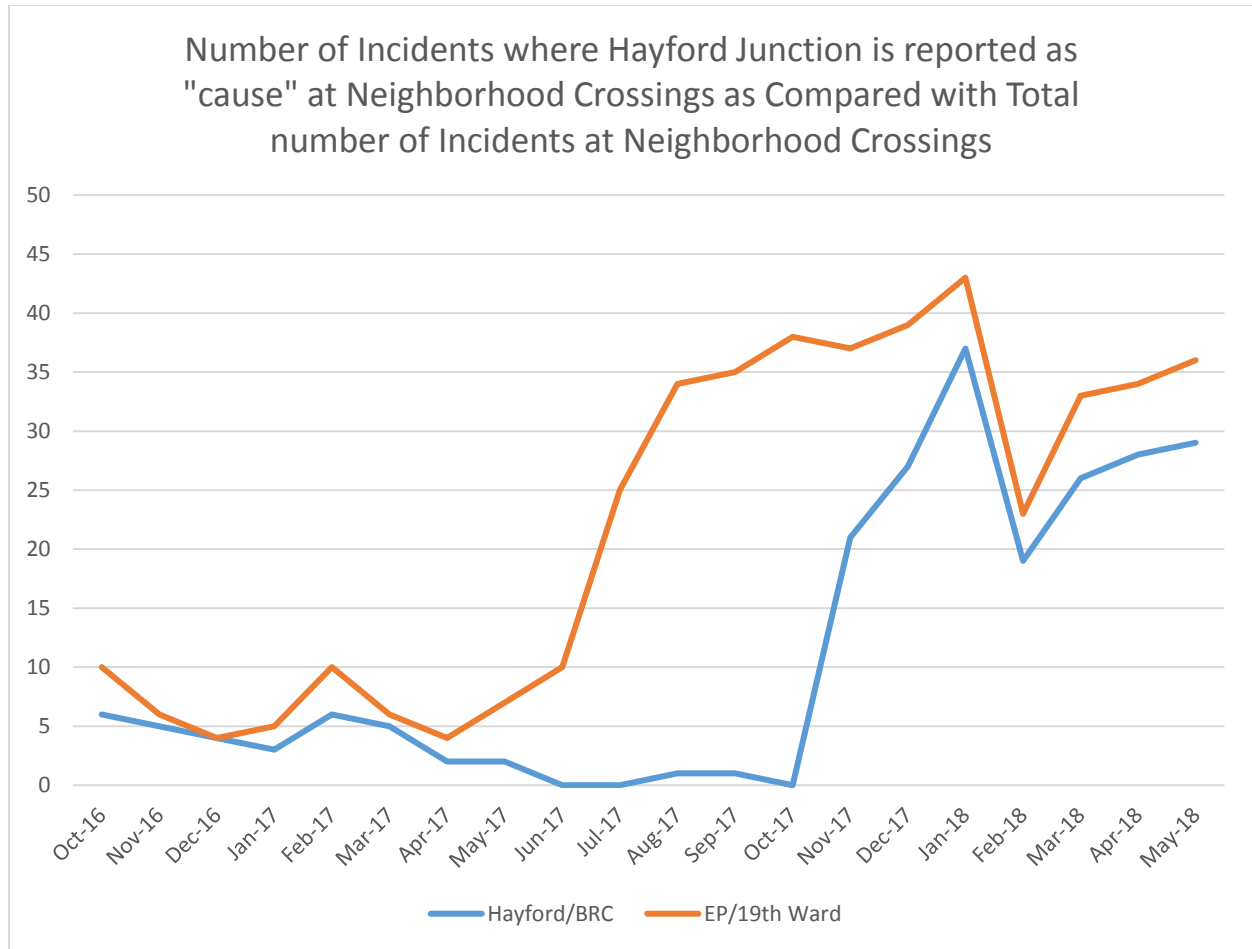


EXHIBIT A

Month	Hayford/ BRC	Total Neighborhood Crossings – CSXT Monthly Reports, Exhibit 2-A	Percentage of Incidents at Neighborhood Crossings EP/19th Ward Attributable to Hayford Jct.
<i>Oct-16</i>	6	10	60%
<i>Nov-16</i>	5	6	83%
<i>Dec-16</i>	4	4	100%
<i>Jan-17</i>	3	5	60%
<i>Feb-17</i>	6	10	60%
<i>Mar-17</i>	5	6	83%
<i>Apr-17</i>	2	4	50%
<i>May-17</i>	2	7	29%
<i>Jun-17</i>	0	10	0%
<i>Jul-17</i>	0	25	0%
<i>Aug-17</i>	1	34	3%
<i>Sep-17</i>	1	35	3%
<i>Oct-17</i>	0	38	0%
<i>Nov-17</i>	21	37	57%
<i>Dec-17</i>	27	39	69%
<i>Jan-18</i>	37	43	86%
<i>Feb-18</i>	19	23	83%
<i>Mar-18</i>	26	33	79%
<i>Apr-18</i>	28	34	82%
<i>May - 18</i>	29	36	81%
<i>June - 18</i>	71	86	83%

Exhibit B

At-Grade Crossing Blockages At Neighborhood Crossings

[attached hereto]

EXHIBIT B

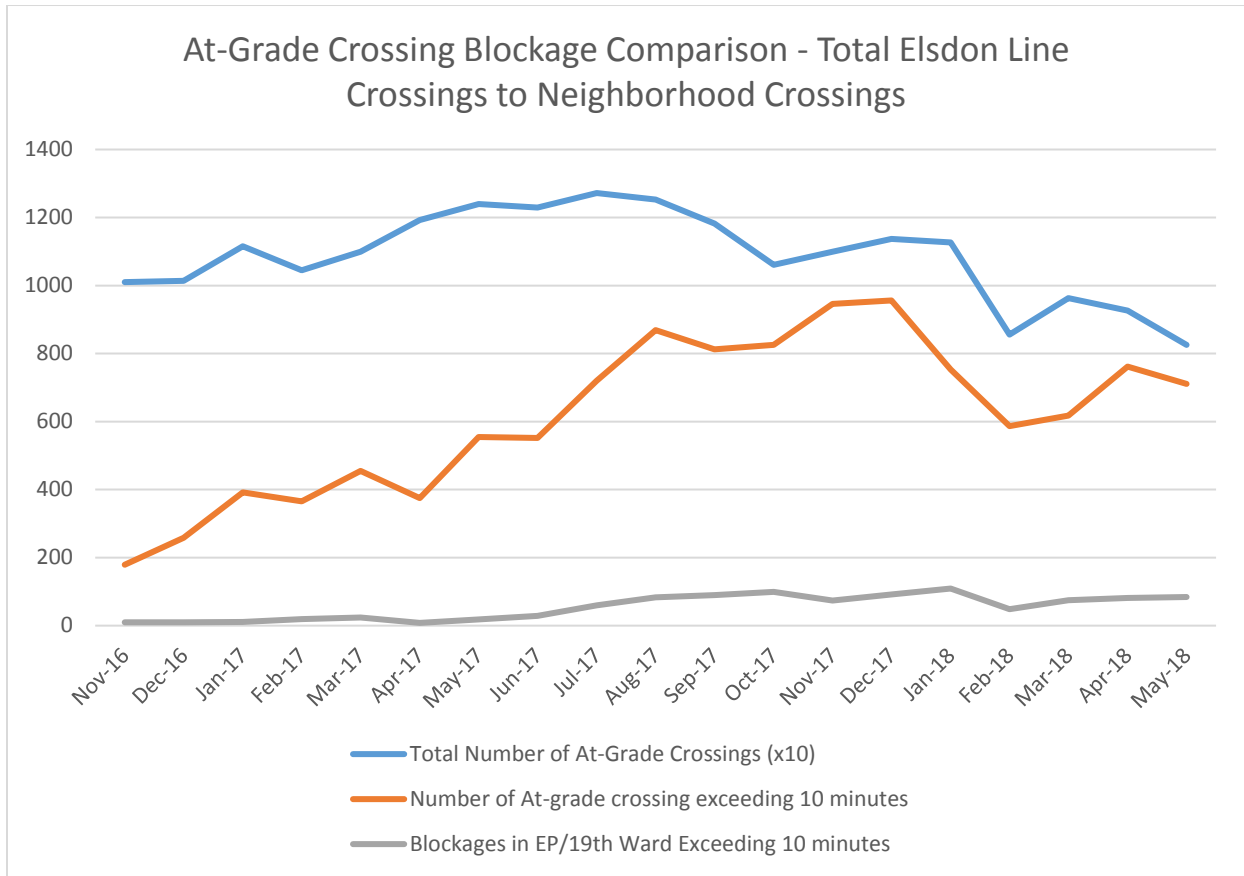


EXHIBIT B

Data from CSXT Monthly Reports – Exhibit 2				
Month	Total Number of At-Grade Crossings on Elsdon Line	Number of At-Grade Crossing Blockages Exceeding 10 Minutes	Number of At-Grade Crossing Blockages at Neighborhood Crossings Exceeding 10 Minutes	Neighborhood Crossings Blockages Exceeding 10 Minutes as Percentage of All Extended Blockages
<i>Nov-16</i>	10,096	179	10	5.5%
<i>Dec-16</i>	10,136	258	10	3.9%
<i>Jan-17</i>	11,151	392	11	2.8%
<i>Feb-17</i>	10,446	365	19	5.2%
<i>Mar-17</i>	10,995	455	24	5.3%
<i>Apr-17</i>	11,924	375	8	2.1%
<i>May-17</i>	12,393	555	18	3.2%
<i>Jun-17</i>	12,291	552	29	5.3%
<i>Jul-17</i>	12,719	720	60	8.3%
<i>Aug-17</i>	12,530	869	83	9.6%
<i>Sep-17</i>	11,822	812	90	11.1%
<i>Oct-17</i>	10,611	826	99	12%
<i>Nov-17</i>	10,997	946	74	7.8%
<i>Dec-17</i>	11,373	956	92	9.6%
<i>Jan-18</i>	11,271	753	109	14.5%
<i>Feb-18</i>	8,556	587	48	8.2%
<i>Mar-18</i>	9,630	618	75	12.1%
<i>Apr-18</i>	9,267	762	81	10.6%
<i>May-18</i>	8,254	711	84	11.8%
<i>June - 18</i>	9,434	632	89	14.1%

Exhibit C

Verified Statement of State Senator Bill Cunningham

[attached hereto]

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35522

**CSX TRANSPORTATION, INC. – ACQUISITION OF OPERATING EASEMENT –
GRAND TRUNK WESTERN RAILROAD COMPANY**

VERIFIED STATEMENT OF BILL CUNNINGHAM

1. I am Bill Cunningham, Illinois State Senator for the 18th Senate District. My District includes significant portions of Chicago's 19th Ward, as well as the Village of Evergreen Park.

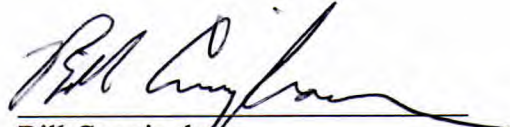
2. At-grade crossing blockages on CSX Transportation, Inc.'s (CSXT) Elsdon Line, which traverses my District, are a serious problem for my constituents. As a result, my office maintains a log of complaints about at-grade crossing blockages.

3. Since June 2017, my office has received 32 complaints about blocked at-grade crossings in the District and CSXT using the stretch of track between 103rd Street and 111th Street as a train yard to park trains for hours at a time. We receive complaints via e-mail and telephone and maintain a consolidated log.

4. Complaints in the past year have included at-grade crossings blocked for 30 minutes or more; trains operating in the middle of the night and then parking adjacent to residences for extended periods of time; and crossing gates down without a train present, causing drivers to drive around the gates to cross the tracks.

14. I verify under penalty of perjury that I have personal knowledge of the facts recited in this Verified Statement, and that the facts recited in this Verified Statement are true and correct.

DATED this 13 day of August, 2018


Bill Cunningham
Illinois State Senator
18th Senate District

Subscribed and sworn to
before me this 13 day of August, 2018.

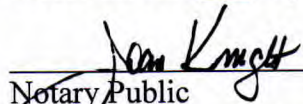

Notary Public
My commission expires: 10-18-19



Exhibit D

Verified Statement of State Representative Kelly Burke

[attached hereto]

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35522

**CSX TRANSPORTATION, INC. – ACQUISITION OF OPERATING EASEMENT –
GRAND TRUNK WESTERN RAILROAD COMPANY**

VERIFIED STATEMENT OF KELLY BURKE

1. I am Kelly Burke, Illinois State Representative for the 36th District. My District includes significant portions of Chicago's 19th Ward, as well as the Village of Evergreen Park.

2. At-grade crossing blockages on CSX Transportation, Inc.'s (CSXT) Elsdon Line, which traverses my District, are a serious problem for my constituents. As a result, my office maintains a log of complaints about at-grade crossing blockages.

3. Since the Fall of 2017, my office has received over 75 complaints about blocked at-grade crossings in the District. We receive complaints via e-mail and telephone and maintain a consolidated log.

4. Complaints in the past year have included those from constituents (a) repeatedly delayed for work, doctor's appointments for themselves or their children, or dropping off or picking up children from school; (b) who have experienced repeated instances of parked trains idling behind their houses for hours at a time at night; (c) who have observed cars driving around gates if motorists perceive there is no train; (d) who have observed drivers speeding through residential neighborhoods to get around blockages; and (e) who are concerned about the delays facing ambulances and first responders attempting to reach Little Company of Mary Hospital in

Evergreen Park and/or Advocate Christ Medical Center in Oak Lawn, which are located on either side of this train line.

14. I verify under penalty of perjury that I have personal knowledge of the facts recited in this Verified Statement, and that the facts recited in this Verified Statement are true and correct.

DATED this 15th day of August, 2018

Kelly Burke
Kelly Burke
Illinois State Representative
36th District

Subscribed and sworn to
before me this 15th day of August, 2018.

Susan Moriarty Kerwin
Notary Public

My commission expires: Nov 1, 2019



Exhibit E

Evergreen Park Police Report, August 22, 2017

[attached hereto]

INCIDENT/INVESTIGATION REPORT

Evergreen Park Police Dept

Case # 17-04129

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Rcecovered 6 = Seized 7 = Stolen 8 = Unknown

D R U G S	IBR	Status	Quantity	Type Measure	Suspected Type	

Assisting Officers

LEHNHARDT, T. (4113)

Suspect Hate / Bias Motivated:

NARRATIVE

REPORTING OFFICER NARRATIVE*Evergreen Park Police Dept*

Victim	Offense <i>TRAFFIC COMPLAINT</i>	OCA <i>17-04129</i> Date / Time Reported <i>Tue 08/22/2017 15:23</i>
--------	-------------------------------------	---

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

In summary on 08-22-17 at approximately 1515 hours, while working as SRO at Central Middle School, 9400 S. Sawyer ave, I observed a train blocking the intersection. I responded to 94th and Kedzie and assisted the Crossing Guard with crowd control due to the number of students waiting at the cross walk. The train moved slowly and stopped several times but cleared at about 1533 hours. All students were safely crossed and I left the scene.

I documented this incident and returned to the school.

Event Report

Event ID: 2017-134190

Call Ref #: 838

Date/Time Received: 08/22/17 15:24:11

Rpt #:	Call Source: PHONE	Prime 2930 Unit: GUZMAN, RIGOBERTO	Services Involved			
			LAW			
Location: W 94TH ST/S KEDZIE AVE						
X-ST:		Jur: OAK	Service: LAW	Agency: EPPD		
		St/Beat: EP	District: EPD1	RA: EP3		
Business:		Phone: () -		GP: EP1		
Nature: JUVENILE PROBLEM		Alarm Lvl: 1	Priority: 1	Medical Priority:		
Caller: FRONT DESK				Alarm:		
Addr:		Phone: () -		Alarm Type:		
Vehicle #:	St:	Report Only: No	Race:	Sex:	Age:	
Call Taker: KSMITH		Console: DIS5				
Geo-Verified Addr.: Yes		Nature Summary Code:	Disposition: 210	Close Comments:		
Notes: dt212 [08/22/17 15:41:23 Unit:EP87] Train cleared. All kids walking home from school dispersed without incident. [08/22/17 15:32:04 Unit:2930] KIDS STILL ON SCENE [08/22/17 15:27:10 KSMITH] DESK CALLED BACK / TRAIN STOPPED AGAIN / AT THE CROSSINGS OF 95/TROY - 94/KED - 91/TRUMBULL [08/22/17 15:27:03 KSMITH] NOTHING FURTHER [08/22/17 15:25:00 KSMITH] GROUP OF KIDS JUMPING ON AND OFF THE TRAIN ON THE TRACKS [08/22/17 15:24:45 KSMITH]						

Times

Call Received: 08/22/17 15:24:11	Time From Call Received		
Call Routed: 08/22/17 15:24:56	000:00:45	Unit Reaction: 000:00:28	(1st Dispatch to 1st Arrive)
Call Take Finished: 08/22/17 15:27:40	000:03:29	En-Route: : :	(1st Dispatch to 1st En-Route)
1st Dispatch: 08/22/17 15:27:19	000:03:08 (Time Held)	On-Scene: 000:04:22	(1st Arrive to Last Clear)
1st En-Route: 08/22/17 15:27:19	000:03:08		
1st Arrive: 08/22/17 15:27:47	000:03:36 (Reaction Time)		
Last Clear: 08/22/17 15:32:09	000:07:58		

Radio Log						Close Code	User
Unit	Empl ID	Type	Description	Time Stamp	Comments		
2945	4211	E	En-Route	08/22/17 15:27:19	Stat/Beat: EP		THUDSO
2945	4211	D	Dispatched	08/22/17 15:27:19	Stat/Beat: EP		THUDSO
2945	4211	X	Canceled	08/22/17 15:27:41	Cancelled by Exchange Command		THUDSO
2930	4196	D	Dispatched	08/22/17 15:27:41	Stat/Beat: EP		THUDSO
2930	4196	E	En-Route	08/22/17 15:27:41	Stat/Beat: EP		THUDSO
2930	4196	A	Arrived	08/22/17 15:27:47			THUDSO
2930	4196	C	Cleared	08/22/17 15:32:09		210	Unit:2930

Event Log						Close Code	User
Unit	Empl ID	Type	Description	Time Stamp	Comments		
		TR	Time Received	08/22/17 15:24:11	By: PHONE		KSMITH
		ENT	Entered Street	08/22/17 15:24:15	W 94TH ST/S KEDZIE AVE		KSMITH
		ARM	Added Remarks	08/22/17 15:24:45			KSMITH
		ENT	Entered Nature	08/22/17 15:24:48	JUVENILE PROBLEM		KSMITH

Unit	Empl ID	Type	Description	Time Stamp	Event Log	Close Code	User
					Comments		
		ENT	Entered	08/22/17 15:24:55	FRONT DESK		KSMITH
		CHG	Changed CallerAddress	08/22/17 15:24:55	W 94TH ST/S KEDZIE AVE -->		KSMITH
		FF	Fast Forward to LAW	08/22/17 15:24:56	LAW		KSMITH
		ARM	Added Remarks	08/22/17 15:25:00			KSMITH
		ARM	Added Remarks	08/22/17 15:27:03			KSMITH
		ARM	Added Remarks	08/22/17 15:27:10			KSMITH
		FIN	Finished Call Taking	08/22/17 15:27:40			KSMITH
		ARM	Added Remarks	08/22/17 15:32:04			Unit:2930
		ARM	Added Remarks	08/22/17 15:41:23			Unit:EP87

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing
COMMENTS OF THE VILLAGE OF EVERGREEN PARK, IL, upon the following
parties of record in this proceeding by first-class mail with postage prepaid and properly
addressed:

Honorable Kelly Burke
State Representative
Capitol Office 266-S Stratton Office
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Springfield, IL 62706

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Chicago, IL 60643-2939

Hanna M. Chouest
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Wardella Reese
10324 South Church Street
Chicago, IL 60643-2939

Honorable Richard J. Durbin
United States Senate
Washington, DC 20510-1304

Gerald J. Roper
Chicagoland Chamber Of Commerce
410 N Michigan Avenue Suite 900
Chicago, IL 60611-4241

Louis E. Gitomer
The Adams Building, Suite 301
600 Baltimore Avenue
Towson, MD 21204

Matthew J. Warren
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

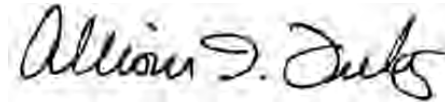
Honorable Mark Kirk
United States Senate
Washington, DC 20510

Douglas L. Whitley
Illinois Chamber Commerce
300 S. Wacker Drive, Suite 1600
Chicago, IL 60606

Honorable Daniel Lipinski
Congress Of The United States
2346 Rayburn House Office Building
Washington, DC 20515-1303

Michael S. Wolly
Zwerdling Paul Leibig Kahn & Wolly
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Washington, DC 20036

Edward N. Siskel – Corporation Counsel
David J. Seery – Deputy Corporation
Counsel
City of Chicago
121 North LaSalle Street, Suite 600
Chicago, IL 60602

A handwritten signature in black ink, reading "Allison I. Fultz". The signature is written in a cursive, flowing style with a large initial 'A' and a distinct 'F'.

Allison I. Fultz

Dated: December 13, 2018