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June 5, 2019

BY E-FILING

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

ENTERED
Office of Proceedings
June 5, 2019
Part of
Public Record

**Re: Canadian National Railway Company and Grand Trunk Corporation – Control –
EJ&E West Company [Barrington Petition for Mitigation] (Docket No. FD 35087
(Sub-No. 8))**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find CN's Reply to Barrington's Motion for Leave to File Comments in Response to Reply Filed by Canadian National Railway Company and Grand Trunk Corporation.

Sincerely,

/s/ David A. Hirsh

David A. Hirsh
Counsel for Canadian National Railway Company
and Grand Trunk Corporation

Enclosure

cc: Richard H. Streeter

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35087 (Sub-No. 8)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION — CONTROL — EJ&E WEST COMPANY**

[Barrington Petition for Mitigation]

**CN'S REPLY TO BARRINGTON'S MOTION
FOR LEAVE TO FILE COMMENTS IN RESPONSE TO
REPLY FILED BY CANADIAN NATIONAL RAILWAY
COMPANY AND GRAND TRUNK CORPORATION**

Canadian National Railway Company and Grand Trunk Corporation (collectively, "CN") hereby reply to the "Motion of the Village of Barrington, IL for Leave to File Comments in Response to Reply Filed by Canadian National Railway Company and Grand Trunk Corporation" filed on May 16, 2019. Barrington's motion should be denied.

The Board's rules are clear. Under 49 C.F.R. § 1104.13(c), a reply to a reply (*i.e.*, a surreply) is not permitted. Where a surreply "is not necessary to provide the information [the Board] need[s]" to rule on an issue, it is to be rejected.¹ At a minimum, a movant has the burden to make a "persuasive showing that an exception to Rule 1104.13(c) should be made."²

¹ *Cal. High-Speed Rail Auth., Petition for Declaratory Order*, FD 35861, slip op. at 5 (STB served Dec. 12, 2014); *see also Adrian & Blissfield R.R. Co.—Petition For Declaratory Order*, FD 36148, slip op. at 3 (STB served Jan. 30, 2018) (denying a reply to a reply that contained only "rebuttals to the arguments made [in the reply,] none of which are necessary to develop a more complete record").

² *Ocean Logistics Mgmt., Inc. v. NPR, Inc. and Holt Cargo Sys., Inc.*, WCC-102, slip op. at 3 (STB served Jan. 14, 2000).

Barrington makes no argument in support of its motion, much less the required “persuasive showing” that its surreply is necessary.

Barrington’s proffered surreply would add nothing new, material, or of value to the record. It offers nothing to cure the defects in Barrington’s position that the Board and CN have repeatedly highlighted: train volumes alone did not merit grade separation relief under the Board’s Approval Decision,³ train volumes after 2015 are beyond the period for which the Board considered projections and thus not material to the Board’s Approval Decision,⁴ and any changes in train volumes more than 10 years after the Transaction are not likely to be related to the Transaction.⁵ Instead, the surreply:

- Rehashes arguments contesting the Board’s prior decisions (*e.g.*, old material error claims about traffic studies and preexisting traffic conditions).⁶
- Makes unfounded claims about increased train volumes⁷ based on a projection in the US Army Corps of Engineers permit application,⁸ when, in fact, actual train volumes have grown only marginally, from a daily average of 21.0 (2017), to 21.5 (2018), to 21.7 (2019, through April).
- Includes documents that are cumulative, old and irrelevant: a 2018 email that refers to CN running “20-odd” trains along the former EJ&E line, a page of the 2008 Draft Environmental Impact Statement, and a press release similar to previously submitted press releases that address CN’s overall capacity investments.

³ See April 2017 Decision at 4-5.

⁴ See CN Reply at 9-12.

⁵ See April 2017 Decision at 7.

⁶ See Barrington Surreply at 1-8, 19-26; *see also* October 2017 Decision at 2-3 (summarizing arguments previously made by Barrington and rejected by the Board).

⁷ See, *e.g.*, Barrington Surreply at 29.

⁸ See CN Reply at 7, 10.

- Renews requests that the Board has repeatedly denied — that the Board reopen the proceeding, compel CN to submit new evidence, and re-assess environmental impacts.⁹

The proffered surreply does not qualify for an exception to the Board’s established rule prohibiting a reply to a reply. Accordingly, CN respectfully requests that the Board deny Barrington’s motion.

Respectfully submitted,

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/s/ David A. Hirsh
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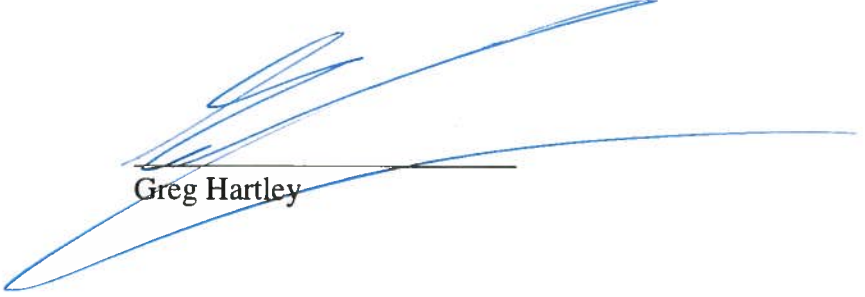
June 5, 2019

⁹ May 2015 Decision at 5, n.9 (rejecting Barrington’s request to require CN to report train lengths); April 2017 Decision at 5-6 (rejecting Barrington’s request to extend the oversight reporting requirement).

VERIFICATION

I, Greg Hartley, declare under penalty of perjury that I have read the foregoing Reply to Barrington's Motion, that I know the contents thereof, and that the facts as stated regarding train volumes through Barrington are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Dated: June 5, 2019



Greg Hartley

CERTIFICATE OF SERVICE

I certify that I have this 5th day of June, 2019, caused a true copy of the foregoing Reply to Barrington's Motion for Leave to File Comments in Response to Reply Filed by Canadian National Railway Company and Grand Trunk Corporation to be served by e-mail upon all known parties of record in this proceeding.

/s/ Matthew W. Ludwig