

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36299

ENTERED
Office of Proceedings
May 3, 2019
Part of
Public Record

**SOO LINE RAILROAD COMPANY—PETITION FOR DECLARATORY
ORDER AND PRELIMINARY INJUNCTION—INTERCHANGE WITH
CANADIAN NATIONAL**

REPLY TO PETITION FOR PRELIMINARY INJUNCTION

CP's¹ request for a preliminary injunction does not come close to meeting the high standards for such extraordinary relief. In the first place, it is simply not true that CP and CN² have been unable to agree on an operational arrangement to interchange traffic in Chicago. After over a year of discussions about the need to move CN-CP interchange operations from Spaulding—where they routinely blocked CN's main line and nearby road crossings—on March 11, 2019 CN exercised its contractual right to terminate the Spaulding CN-CP interchange agreement and its legal right to designate a different point on its lines to receive interchange traffic. CN and CP have discussed multiple options for alternative interchange points in recent months, and CP has stated that it is "willing"³ to use one of these options, in which CP would deliver CN-bound interchange traffic to the Belt Railway's

¹ Soo Line Railroad Company d/b/a Canadian Pacific ("CP").

² Wisconsin Central, Ltd. ("CN").

³ See CP Petition for Declaratory Order and Preliminary Injunction ("Pet.") at Ex. E p. 2 & Ex. G p.1.

(“BRC’s”) Clearing Yard. CN is willing to receive interchange cars at that location and is planning to implement that alternative on May 10.⁴ The only remaining dispute is a pure matter of money. CP wants CN to pay all trackage rights and switching fees associated with future CP-CN interchanges using the BRC (both CN’s fees and CP’s fees), and CP asserts that it will not carry out the agreed interchange arrangement unless CN meets CP’s financial demands.

Nothing about this situation justifies a preliminary injunction. If it were true that interchange operations between Class I carriers in Chicago were on the verge of shutting down because of a railroad’s intransigence, then the Board might be justified in using its 49 U.S.C. § 1321(b)(4) authority to stop that railroad from causing that harm. But the only railroad that is threatening to stop interchanging traffic is CP. CN will deliver interchange traffic to CP at its Bensenville Yard, and CN is prepared to begin receiving interchange traffic from CP at Clearing Yard. CP admits in its Petition that this solution is “acceptable” to CP as an operational matter,⁵ but it insists that CN agree in advance to reimburse CP for BRC fees⁶ associated with this solution.

⁴ CN is also willing to give CP free operating rights over its lines to deliver interchange traffic directly to CN’s Kirk Yard. But CN understands that CP prefers the BRC option to deliver CN-bound traffic to Clearing Yard.

⁵ See Pet. V.S. Walker at ¶ 10.

⁶ CP describes this as “the per-car cost to BRC required under the CP/BRC trackage rights agreement.” Pet. Ex. E at 2. CN has no visibility into whether these costs are switching fees, trackage rights fees, or both, and will refer to them as “BRC fees.”

CP may litigate the issue of who is responsible for paying BRC's fees if it wishes, but any short-term harm from CP paying such fees in the interim is plainly reparable. In the unlikely event that the Board agrees with CP that CN is responsible for 100% of the trackage rights and switching fees associated with the interchange of CP and CN traffic in Chicago, then CN can be ordered to reimburse CP for any such fees incurred during the pendency of this case. There is no basis for the Board to use its injunctive powers to forestall an acceptable operating solution simply because of a financial argument about whether CP will pay its fair share to deliver traffic to CN.

Indeed, CN's pleading turns the irreparable harm standard on its head. CP's position is that—unless CN agrees to CP's financial demands—CP will refuse to forward interchange traffic to CN; CP will refuse to quote interchange traffic to CN; and CP will cause all the cascading harms to the fluidity of the Chicago terminal that would be caused by its willful refusal to interchange traffic. CP cannot demonstrate irreparable harm by arguing that it will take action to cause harm to others unless it gets its way.

Nor does CP have any likelihood of success on the merits. For eight years, CP enjoyed a one-sided interchange agreement in Chicago with CN. Under that agreement, CN performed the lion's share of work for traffic interchanged between CN and CP in Chicago. The traffic was formally interchanged at the Spaulding yard, but all classification for inbound and outbound traffic had to be performed at CN's Kirk Yard, and CN was solely responsible for hauling interchange traffic for

both railroads back and forth to Kirk Yard. But while Spaulding may have worked well for CP, it does not work well for anyone else. Each day of interchange, CN and CP interchange operations at the small Spaulding yards block CN's single-tracked main line, impairing fluidity on this important part of CN's network. And interchange operations similarly block grade crossings for lengthy periods on a near-daily basis, causing traffic problems in the community and a regular stream of complaints. With abundant notice and consistent with its rights under the interchange agreement, CN therefore exercised the right of any receiving carrier to select a different point of interchange. CP cannot carry its heavy burden to demonstrate that CN's exercise of its broad statutory rights to terminate the interchange agreement between the parties and designate an alternative point for receiving interchange traffic was unreasonable.

CN will reply to the Petition for Declaratory Order within the time set forth in 49 C.F.R. § 1104.13(a), and that Reply will demonstrate why the Petition for Declaratory Order should be denied. In the interim, the Board should not hesitate to deny CP's request for a preliminary injunction and to make clear to CP that it may not threaten to withhold deliveries of interchange traffic to CN to a point CP admits is "acceptable" and that it is "willing" to use, simply because CP wishes to use that threat as negotiating leverage to support its demand for reimbursement for BRC fees and to attempt to force an interchange agreement and location at Spaulding where CN bears most of the costs.

I. Factual Background

Railroads have a statutory duty to provide reasonable facilities for the interchange of traffic.⁷ In the ordinary course, interchange points are decided by mutual agreement among carriers. These agreements are made against a statutory and regulatory background that gives the receiving railroad the authority to designate a point on its lines where it wishes to receive interchange traffic so long as that point does not “impose unusual, unreasonable, or impossible operating hazards.”⁸ This default rule granting authority to the railroad receiving interchange traffic to select an interchange point encourages negotiated solutions. It is rare for a railroad to contest a receiving carrier’s designation of an interchange point, and rarer still for such an argument to be successful.⁹

In 2010, CP and CN entered an interchange agreement under which both CP-to-CN interchange traffic and CN-to-CP interchange traffic would be interchanged

⁷ 49 U.S.C. § 10742; *Norfolk So. Ry. Co.—Pet. for Declaratory Order—Interchange With Reading Blue Mountain & No. R.R. Co.*, STB Docket No. 42078, at 7 (Apr. 29, 2003) (“*RBMN*”) (holding that § 10742’s requirements are “compulsory” and that “parties must continue to provide facilities for interchange to ensure that service to shippers continues”).

⁸ *New York, C. & St. L. R. Co. v. New York Central R. Co.*, 314 I.C.C. 344, 345 (1961) (“*New York*”) (a “receiving carrier necessarily has the right to designate where it will accept cars in interchange from its connections, provided, in making such designation, the receiving carrier does not impose unusual, unreasonable, or impossible operating hazards or require the delivering carrier to do work which properly belongs to the receiving carrier”); see *RBMN* at 4 (“Custom requires the receiving railroad in a direct physical interchange to designate a point on its own line where it will receive traffic and to provide a free route over its tracks to that point for the delivering carrier.”).

⁹ See, e.g., *RBMN* at 7 (denying petition to declare that receiving carrier’s selection of interchange point was unreasonable).

at CN's Spaulding Yard. The 2010 Interchange Agreement provided that it could be terminated by either party upon 60 days written notice.

Three recurring problems at Spaulding have made it an unsuitable interchange point. First, CP and CN cannot pick up and drop off interchange traffic without occupying CN's single-track main line. CN's main line is completely blocked every time that CN delivers CP-bound interchange cars to Spaulding, every time that CP picks up CP-bound interchange cars from Spaulding, and every time that CN picks up CN-bound interchange cars at Spaulding. This regular blocking of CN's main line occurs on a daily basis. This causes congestion on CN's network and reduces fluidity on CN's lines in the Chicago area.¹⁰

Second, and relatedly, CN and CP trains regularly occupy the at-grade crossing at Spaulding Road during interchange operations. As illustrated on Exhibit B to the Petition, Spaulding Road runs directly across the track connecting CP and CN to facilitate interchange at Spaulding, and the at-grade crossing there is blocked for the entirety of CP and CN interchange operations. Interchange operations often affect other nearby crossings as well. For example, the crossings at West Bartlett Road and Stearns Road are often blocked when longer trains are interchanging traffic. These blockages typically last 30-45 minutes for each interchange event, and

¹⁰ For reasons that are not clear, CP does not include this operational problem in its purported summary of CN's "reasons . . . for terminating the Spaulding Interchange Agreement," even though CN has clearly explained verbally and in its April 16, 2019 letter that "CN-CP interchange operations at Spaulding regularly block CN's single-track main line leading into Spaulding, leading to congestion problems on CN's network." Pet. at 4; Pet. Ex. F at 1.

CN regularly receives complaints about the impact of these blockages on the community. The most effective way to address these community concerns is to move interchange operations to a more suitable location.¹¹

Third, using Spaulding for both CN-to-CP interchange traffic and CP-to-CN interchange traffic imposes unfair burdens on CN. CN blocks and switches this traffic at its classification yard at Kirk Yard, so both CN-to-CP interchange traffic and CP-to-CN interchange traffic must be hauled by CN to Kirk Yard for blocking and switching. CN has been doing this work in both directions, for both interchange received and interchange forwarded traffic, without any compensation from CP for more than 8 years.

CN has been discussing these problems and the need to reach a more equitable and commercially fair solution with CP for over a year. CN has offered to deliver CP-bound interchange traffic to any reasonable point CP designates in the Chicago area, including directly to CP's Bensenville Yard. And CN has proposed multiple locations where CP could deliver interchange traffic, such as CN's Glenn Yard, CN's Kirk Yard, and the BRC's Clearing Yard.

CP showed little interest in relocating the interchange point from Spaulding. In early 2019, CN informed CP that, if the parties could not reach agreement on an alternative, CN would be terminating the 2010 interchange agreement pursuant to

¹¹ While CN has regularly made CP aware of this problem and explained in its April 16, 2019 letter that interchange at Spaulding "regularly cause[s] several at-grade road crossings to be blocked," Pet. Ex. F at 1, CP also omitted this issue from its purported summary of CN's reasons for terminating the Spaulding interchange agreement. Pet. at 4.

the terms of the contract, and exercising its right to designate a different reasonable interchange point. CN provided that formal written notice on March 11, 2019.¹²

Operational discussions continued over the ensuing months, and the parties have been working toward a solution that is acceptable to both carriers. While CP made clear that its preference was to continue interchanging at Spaulding, it indicated that CP would be “agreeable” to delivering interchange traffic to Clearing Yard if CN would reimburse CP for its BRC fees.¹³ CP Executive Vice President Operations, Robert A. Johnson, later confirmed in an April 3, 2019 letter that CP was “willing” to deliver to Clearing Yard so long as CN would pay for CP’s trackage rights fees.¹⁴ Mr. Johnson reiterated this “willingness” in an April 18 letter, again with a demand that CN pay for CP’s BRC fees.¹⁵

CN has confirmed in writing with CP that it is ready and willing to accept this operational arrangement, as follows.¹⁶

- CN-to-CP interchange cars will be delivered directly to CP at its Bensenville Yard. CN will bear all costs for these interchange deliveries to Bensenville Yard—CN will deliver these cars to the IHB, and CN will pay the IHB switching costs to deliver cars to CP’s Bensenville Yard.¹⁷

¹² See Pet. Ex. D.

¹³ See Pet. V.S. Walker at ¶ 10.

¹⁴ See Pet. Ex. E.

¹⁵ See *id.* at Ex. G.

¹⁶ See Exhibit 1 (May 1, 2019 letter from M. Cory to R. Johnson).

¹⁷ On some occasions CN may elect to deliver interchange traffic directly to Bensenville in lieu of using the IHB, on a free operating rights route CP would have to provide.

- In turn, CP-to-CN interchange cars will be delivered to CN at the BRC's Clearing Yard. CP will take cars to Clearing using its BRC rights, and CN will pick up cars in Clearing (with CN additionally bearing the costs of trackage rights fees for CN to access Clearing using the CSX Elsdon subdivision).

CN is thus willing to perform 100% of the work to deliver CP-bound interchange cars to Bensenville, and CN is willing to split the work for CN-bound cars, with CP moving the CN-bound cars to Clearing Yard and CN taking them the rest of the way to Kirk Yard. Alternatively, CP can deliver interchange cars directly to Kirk Yard, and CN will offer CP a free route on its lines to access Kirk Yard.

The only open dispute is about money. CP is demanding that CN agree up front to reimburse CP for its BRC fees. CN believes that it is inequitable for CP to continue insisting that CN bear the lion's share of costs for interchanging at Chicago. But this financial dispute is no reason to delay the parties' willingness to implement the operational solution that is "agreeable" to both parties.

CN is planning to begin delivering interchange cars to CP at Bensenville on May 10, once the 60-day notice requirement in the terminated interchange agreement has elapsed, and it is planning to begin receiving interchange cars at Clearing Yard. CP has the option of either using CN's lines to deliver cars directly to Kirk Yard or of using the BRC option that the parties have discussed. If CP chooses the BRC option and continues to maintain that CN must pay for CP's BRC fees, then it can seek resolution of that question from the Board. In the unlikely circumstance that the Board determines that CN needs to reimburse CP for these expenses, CN will abide by any Board order requiring CN to pay any accrued expenses.

CP's speculation that CN will start removing interchange tracks at Spaulding unless a preliminary injunction is granted is baseless. CN commits to the Board that it will not remove any tracks or interchange facilities at Spaulding while this proceeding is pending before the Board.

II. CP Does Not Meet the High Standard for a Preliminary Injunction

CP's Petition presents no justification for the Board to exercise its authority to issue an injunction. The standard CP must meet is a high one. "A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion."¹⁸ As the movant, CP has the burden of showing that "(1) it is likely to succeed on the merits; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest."¹⁹ CP cannot meet a single one of these elements.

A. CP Has No Evidence of Irreparable Harm

Because the Board's statutory authority to issue injunctions is specifically limited to situations where an injunction is "necessary to prevent irreparable

¹⁸ *Muzarek v. Armstrong*, 520 U.S. 968, 972 (1997); see *B.P. Amoco v. Norfolk So. Ry. Co.*, STB Docket No. 42093, at 4 (June 6, 2005) (party seeking injunction "carries the burden of persuasion on all of the elements required for [such] extraordinary relief").

¹⁹ *Seminole Electric Cooperative, Inc. v. CSX Transp., Inc.*, STB Docket No. 42110, at 2 (Dec. 18, 2008); accord *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, NOR 42129, at 4 (May 4, 2012); *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

harm,” it is appropriate to begin with that factor.²⁰ And there is no question that CP’s alleged harm of paying BRC fees while this proceeding is pending is not irreparable harm under any definition. “[T]he Board has consistently held in the past [that] monetary or economic loss by itself does not constitute irreparable harm.”²¹ Economic losses are only irreparable if they are unrecoverable.²² If CP were to prevail here in persuading the Board to force CN to pay CP’s fees, those fees are certainly reparable.

No doubt recognizing that a mere financial dispute between the parties could not possibly be deemed to be “irreparable harm,” CP alleges that an injunction is necessary to prevent a series of escalating harms, from an alleged inability to deliver interchange traffic to CN to an inability to quote rates for CP-to-CN interchange traffic moving through Chicago. While consequences like that could indeed inflict harms on innocent customers and other stakeholders, those harms would be caused directly by CP. It is CP that is threatening to refuse to deliver interchange cars to CN at the agreed point of Clearing Yard and claiming that CP

²⁰ 49 U.S.C. § 1321(b)(4); *cf. Seminole*, Docket No. 42110, at 4 (denying injunction for failure to prove irreparable harm without addressing any other element).

²¹ *Edwin Kessler—Pet. for Injunctive Relief*, STB Fin. Docket No. 35206, at 5 (June 12, 2009); *see Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009) (“recoverable economic losses are not considered irreparable”).

²² *Clarke v. Office of Fed. Hous. Enter. Oversight*, 355 F.Supp.2d 56, 65-66 (D.D.C. 2004) (“Courts have recognized that economic loss may constitute ‘irreparable harm’ where a plaintiff’s alleged damages are unrecoverable.”); *Nat’l Min. Ass’n v. Jackson*, 768 F.Supp.2d 34, 53 (D.D.C. 2011) (“If a plaintiff has shown that financial losses are certain, imminent, **and unrecoverable**, then the imposition of a preliminary injunction is appropriate and necessary.” (emphasis added)).

will hold all such cars unless CN surrenders to CP's financial demands. It is CP that says it will refuse to agree to allow Railinc to change the interchange point and thus prevent both CP and CN from quoting rates for interline service over Chicago. And it is CP whose threatened actions would harm CN, rail customers, and other stakeholders who rely on the rail network.

It bears repeating that there is no remaining disagreement between the parties about an effective operational solution. CN deliveries of CP-bound traffic to Bensenville and CP deliveries of CN-bound traffic to Clearing Yard are “agreeable”²³ to CP and to CN. CP's threat to cause irreparable harm to the interconnected rail network in the Chicago area unless CN also surrenders to its financial demands should be rejected. Preliminary injunctions are intended to protect a moving party from incurring irreparable harm threatened by others while a case is pending on the merits, not to allow a moving party to gain perceived negotiating leverage by threatening to inflict irreparable harm on others.

B. CP Has No Likelihood of Success on the Merits

To meet the likelihood of success on the merits element, CP would have to show that it is likely to obtain a final order from the Board granting the relief for which it seeks a preliminary injunction. Its petition falls far short of that requisite showing.

²³ See Pet. V.S. Walker at ¶ 10.

Here, CP is asking for a preliminary injunction that the Board require continued interchange at Spaulding,²⁴ so it must show a likelihood of succeeding on a final order that interchange must continue at Spaulding. But it is difficult to imagine that the Board would order CN to continue receiving interchange traffic at Spaulding when CP has said that it is “willing” to move the interchange received point to Clearing.²⁵ CP’s likelihood of succeeding on a claim that CN has to pay for all CP’s BRC fees associated with interchanging traffic is irrelevant—CP is asking for a preliminary injunction to keep the interchange point at Spaulding after the interchange agreement for that location has been terminated, and it must show a likelihood of ultimately succeeding on that claim to obtain this preliminary injunction.

CP has no likelihood of succeeding on this claim. As an equitable matter, the fact that CP is “willing” and “agreeable” to interchange CN-bound cars at the BRC Clearing Yard means that there is virtually no likelihood that the Board would instead order the parties to continue interchanging at Spaulding.

And as a legal matter, CN is well within its rights as a receiving carrier to terminate the interchange agreement and designate a different, reasonable interchange point for receiving traffic from CP. While the law does not require CN

²⁴ Pet. at 13 (seeking order “enjoining CN from refusing to receive cars in interchange at Spaulding”).

²⁵ See Pet. at Ex. E p.2 & Ex. G p.1.

to prove that its preferred point of interchange is superior to Spaulding,²⁶ the evidence is clear that Spaulding is not a reasonable point of interchange.

Interchanges at Spaulding interfere with CN's network and with the surrounding neighborhood streets, and CN has ample cause to designate a different point. As the D.C. Circuit has explained, "[t]he courts have long recognized that when a carrier has the power to provide two or more options for interchanging traffic, each of which is independently reasonable, proper, and equal, it need not provide all such options to connecting lines but may instead offer only that option which best serves its own business interests." *Burlington N. R.R. v. United States*, 731 F.2d 33, 40 (D.C. Cir. 1984).

CP's complaints that Kirk Yard is not a reasonable interchange point because it is too far from Spaulding lack any merit. In the first place, CN is already moving all CP-bound and CN-bound interchange traffic between Spaulding and Kirk. The idea that it is unreasonable to expect CP to do its fair share of the interchange work that CN is already doing does not pass muster. Moreover, CN has offered a BRC option under which CP and CN would share the workload of moving CN-bound cars to Kirk where CP is only responsible for delivering CP-bound interchange traffic to Clearing Yard, and CP has agreed that such an approach is operationally feasible. This is more than reasonable (particularly since CN has agreed to bear 100% of the work and expense for delivering CP-bound interchange traffic to CP).

²⁶ See *RBMN* at 6 ("The fact that interchange can be effected at Lehighton does not mean that we should preclude RBMN from selecting another reasonable interchange point.").

CN will respond more fully on the merits in its Reply to CP's Petition for Declaratory Order. But for present purposes, it is clear that CP has not met its burden of demonstrating a "strong likelihood" that it will succeed on the merits. In light of CN's legal right to designate a reasonable point to receive interchange traffic and the substantial accommodations it has made to offer solutions that CP is "willing" to implement, there is little likelihood that the Board will conclude this proceeding with an order that CN must continue interchanging traffic at Spaulding.

C. The Balance of Harms and Public Interest Weigh against a Preliminary Injunction

As detailed above, issuance of a preliminary injunction forcing the continued use of Spaulding to interchange traffic would not cause any irreparable harm to CP. But it would cause harm to others. CN would be prejudiced by being forced to use an inefficient interchange arrangement that causes congestion on CN's network and that puts an unfair burden of work on CN. And the community would be harmed by a Board order that would require continued interchanges at a location where such operations regularly block grade crossings, when an alternative is available. Under these circumstances, the public interest strongly weighs against the Board's issuance of a preliminary injunction.

CONCLUSION

For the foregoing reasons, the Board should deny CP's request for a preliminary injunction.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Ray A.', is written over a horizontal line.

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Dated: May 3, 2019

VERIFICATION

I, Michael Matteucci, declare under penalty of perjury that I have read the foregoing Reply to Petition for Preliminary Injunction, that I know the contents thereof, and that the facts as stated are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.



Michael Matteucci

Executed on this 3rd day of May, 2019.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May 2019, I caused a copy of the foregoing Reply to Petition for Preliminary Injunction to be served by U.S. Postal Service or more expeditious means upon:

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Sam Follansbee

Exhibit 1



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May 1st, 2019

Mr. Robert A. Johnson
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Re: CN/CP Interchange at Chicago

Dear Mr. Johnson,

I am writing to respond to your April 18, 2019 letter regarding the designation of Kirk Yard as the point in the Chicago Terminal for CN to receive interchange traffic from Soo Line Railroad Company d/b/a Canadian Pacific (CP).

While we were disappointed to see that CP has filed a formal complaint at the STB in the midst of our continued commercial discussions, CN continues to believe that a fair commercial resolution can be reached that serves the interests of both our companies in moving traffic efficiently through the Chicago Terminal.

Continued use of Spaulding is not a reasonable option, however. CP's suggestion that Spaulding works well as an interchange point for both CP and CN to exchange interchange traffic ignores the communications that CN has had with CP for over a year about the problems caused by interchange operations at Spaulding. As CN has explained, interchange operations at Spaulding regularly block CN's single track main line, leading to congestion problems on CN's network and causing blockages at several at-grade road crossings. Moreover, as CN has explained, CN is currently transporting both CP-received interchange traffic and CP-bound interchange traffic from Spaulding to Kirk for blocking and switching. It is not fair for CP to expect CN to do the work in both directions.

What is fair is for CN and CP to share the operational costs and burden of interchanging traffic in Chicago. We believe that the following represents an appropriate compromise as has been discussed by our respective operating teams: CN would deliver interchange cars to CP at Bensenville using the IHB, paying the switching charge for IHB to deliver cars to CP. In turn, CP would deliver interchange cars to CN using BRC's Clearing Yard, bearing the switching charges for BRC. CP would bear the costs of trackage rights to move over Metra between B-12 and Craigin to deliver CN-bound cars to Clearing Yard.

When CN takes the cars from Clearing to Kirk, CN would in turn bear the trackage rights fees to move over the Elsdon subdivision to and from Clearing. This arrangement is more than fair to CP, in part because under it CN would be paying for more trackage rights miles than CP would have to pay to accomplish the interchange.

It is clear that this proposed arrangement will work for CP operationally—the Verified Statement filed with its STB complaint says that CP is “agreeable” to receiving interchange traffic at Bensenville and delivering CN-bound traffic to Clearing “if CN would pay the cost under [CP’s] trackage rights agreement with BRC to get CN’s traffic to Clearing.” While CN does not agree that it is required to pay for both its own trackage rights fees and CP’s trackage rights fees, that dispute is no barrier to CP and CN implementing this arrangement now, and reserving the question of who pays for CN’s exercise of its trackage rights for further negotiation.

Threats that CP will sabotage Chicago operations by refusing to agree to an interchange relocation in Railinc and by letting traffic pile up rather than deliver it to CN’s designated interchange point are not productive—particularly since the only current dispute between the parties is the pure financial question of whether CN is required to reimburse CP for its trackage rights costs. If CP wishes to have the STB adjudicate that question, it has that right. But there is no basis for CP to threaten to stop interchanging traffic altogether unless CN agrees in advance to pay for CP’s out-of-pocket costs for an interchange arrangement that CP otherwise finds to be “agreeable.”

We hope that CP will accept this reasonable compromise. If CP is unwilling to accept it, then CN will exercise its statutory right to designate Kirk as its point to receive interchange traffic from CP, effective May 11 per previous correspondence.

Sincerely,

A handwritten signature in black ink that reads "Mike Cory". The signature is written in a cursive, slightly stylized font.

Mike Cory

Executive Vice-President & Chief Operating Officer