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April 30, 2019

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
U.S. Surface Transportation Board
395 E Street, Southwest
Washington, DC 20023

Re: **STB Finance Docket 36299**
Soo Line Railroad Company Petition for Declaratory Order and Preliminary Injunction - Interchange with Canadian National

Dear Ms. Brown:

Enclosed for filing in above referenced docket is Soo Line Railroad Company's d/b/a Canadian Pacific (CP) *Petition for Declaratory Order and Preliminary Injunction*.

Please take note that the Petition requests **expedited briefing and consideration**.

Please do not hesitate to contact me with any questions.

Respectfully Submitted,

/s/ David F. Rifkind

Counsel for Soo Line Railroad Company

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TRANSPORTATION BOARD

1775 Pennsylvania Avenue N.W., Suite 800, Washington, DC 20006

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April 30, 2019

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EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36299

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

PETITION FOR DECLARATORY ORDER AND PRELIMINARY INJUNCTION

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36299

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

PETITION FOR DECLARATORY ORDER AND PRELIMINARY INJUNCTION

As a result of Wisconsin Central Ltd.'s¹ d/b/a Canadian National (“CN”) termination of the existing interchange agreement with Soo Line Railroad Company d/b/a Canadian Pacific (“CP”) and CN's unilateral insistence on an unreasonable replacement interchange location solely to further its business interests, CP and CN will no longer have an agreed upon interchange location in the Chicago Terminal Area on May 10, 2019. The absence of an interchange agreement threatens irreparable harm to shippers whose cars will be stranded at Spaulding and in CP's Bensenville Yard. It also threatens irreparable harm to CP and other railroads who rely on efficient and fluid rail operations in the Chicago Terminal Area to provide timely rail service to our respective customers. The absence of an interchange agreement threatens to quickly cause congestion in CP's critical Bensenville Yard that will in turn cause congestion in the Chicago Terminal Area.

Currently, CP and CN interchange rail cars in Chicago at Spaulding where the two railroads physically connect. Interchange occurs pursuant to an interchange agreement (the “Spaulding Interchange Agreement”) that the parties entered into in August 2010. Previously, the railroads interchanged cars at several locations in the Chicago Terminal Area pursuant to seven separate agreements. These disparate interchange operations were inefficient for both railroads. In order to increase capacity and realize efficiencies, CN and CP agreed to consolidate interchange operations under one agreement and at one

¹ Wisconsin Central Ltd. is the successor in interest to the Elgin, Joliet and Eastern Railway Company.

location, Spaulding. This arrangement worked well for both CN and CP and has contributed to greater fluidity and efficiencies in Chicago. Nevertheless, on March 11, 2019, CN gave CP formal notice terminating the Spaulding Interchange Agreement effective May 10, 2019, and designating Kirk Yard in Gary, Indiana as the place where CN would accept cars in interchange.

Although the parties have discussed alternative locations, those discussions are at an impasse. The impasse is over CN's insistence on receiving cars at CN's Kirk Yard, rather than interchange at one of the two locations in the Chicago Terminal Area at which the two railroads physically connect. Kirk is not a reasonable interchange location for CP to deliver cars. It is located in Gary, Indiana on the opposite side of the Chicago Terminal from CP's Bensenville Yard. CP runs no trains to Kirk, or near there, and does not have a direct route there. To reach Kirk and return to Bensenville, CP would incur substantial costs. It would have to operate more than 200 miles including 168 miles on CN's rail line, use multiple crews, and dedicate a CP locomotive for the assignment. In doing so, CP would be doing the work that CN does today and that is properly work that CN should continue to do. Accordingly, CP seeks a declaratory order from the Board that Kirk is an unreasonable interchange location.

Termination of the Spaulding Interchange Agreement without agreement on a new interchange location threatens chaos for the two railroads and the customers that depend on CP-CN interline service, as well as threatens fluidity in the Chicago Terminal generally. Accordingly, CP asks the Board to issue a preliminary injunction that preserves the status quo. Specifically, CP asks that the Board order that CN continue to receive CP cars at Spaulding unless and until the parties agree upon a replacement location, CN designates a reasonable replacement location, or the Board prescribes a replacement location.²

BACKGROUND

As Nicholas Walker, CP's General Manager Operations, US East, explains, prior to CN's acquisition of the Elgin, Joliet and Eastern Railway Company ("EJ&E"), CP and CN were party to no less than seven agreements for the interchange of traffic in and around Chicago. Walker V.S. at ¶ 4. CN's

² This Petition is supported by the Verified Statement of Nicholas C. Walker ("Walker V.S.").

acquisition of the EJ&E presented an opportunity for the parties to rationalize and consolidate interchange operations at Spaulding, 17.2 miles west of CP's Bensenville Yard, where CN and CP's respective main lines intersect.³ *Id.* Accordingly, in August 2010, the parties executed an agreement that provided for interchange of loaded and empty freight cars (other than TIH/PIH) at Spaulding ("Spaulding Interchange Agreement"). This arrangement has worked well for the past eight plus years. *Id.*

CP and CN interchange cars at Spaulding every single day of the year. CP operates a daily train assignment between Bensenville and Spaulding. Between 2014 and the present, CP has averaged daily at Spaulding 35.9 cars delivered to CN and 47 cars pulled from CN. The traffic that CP delivers to CN typically consists of mixed manifest. The traffic that CP receives consists of mixed manifest and auto racks. *Id.* at ¶¶ 5-6.

Recently, CN raised the possibility of moving the interchange location but the parties have been unable to reach agreement on a new location. CN first proposed that CP both deliver and pull at Glenn Yard. However, CP accesses Glenn Yard via trackage rights. CN's suggestion would have shifted all of the costs of interchange to CP, as well as forced CP to exercise its trackage rights on CN's behalf and incur fees, which it is not required to do.⁴ Interchange at Glenn also raises congestion issues and likely would require that CP use multiple crews, particularly in winter months. This would erode CP's crew base and impose crew taxi costs. Accordingly, CP declined. *Walker V.S.* at ¶ 8.

Later, the possibility of CP taking CN's traffic to the Belt Railway of Chicago's ("BRC") Clearing Yard was broached. However, like Glenn Yard, CP accesses Clearing Yard via trackage rights. Although CP would have been using the trackage rights solely for CN's benefit—CP would receive no benefit over the current arrangement at Spaulding—CN refused to assume responsibility for the trackage rights fees. *Id.* CP also expressed willingness to receive traffic from CN via the Indiana Harbor Belt while

³ In addition to Spaulding, CP and CN physically connect north of Chicago at Rondout. *Walker V.S.* at ¶ 4; *see also* the Chicago Terminal District map attached as *Walker V.S. Ex. C.*

⁴ *See Burlington N. R.R. Co. v. United States*, 731 F.2d 33, 39 (D.C. Cir. 1984).

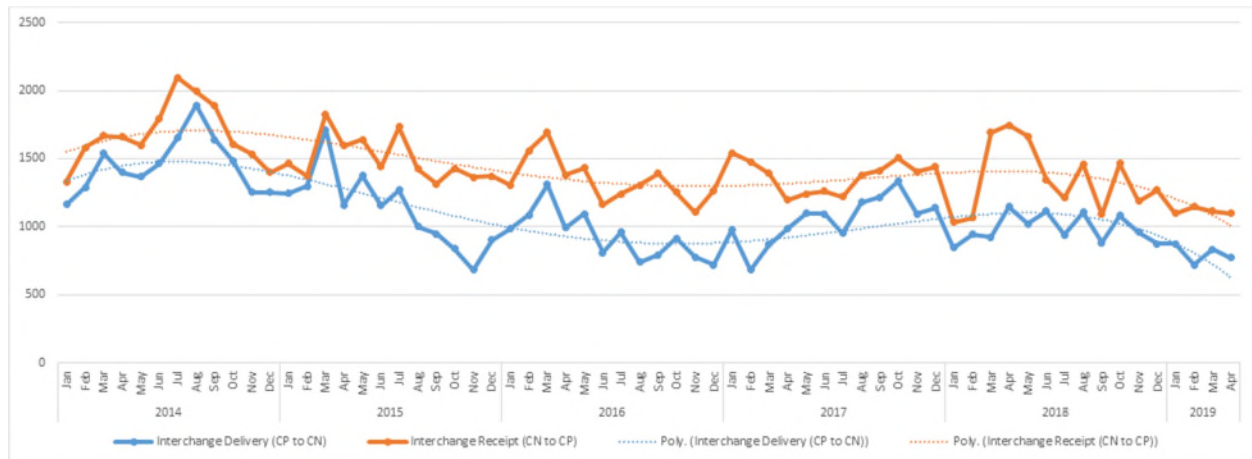
continuing to deliver CN traffic to CN at Spaulding. This would allow CN to pick up its traffic using one of its many trains passing Spaulding daily on the way to Kirk. *Id.*

On March 11, 2019, CN provided notice to CP terminating the Spaulding Interchange Agreement effective May 10, 2019. *See* March 11, 2019 letter from Michael Matteucci to Chuck Hubbard, Walker V.S. Ex. D. In its termination letter, CN unilaterally designated its “Kirk Yard in Gary, IN as the location to receive all interchange traffic destine[d] to CN from CP in Chicago.” *Id.* CN has advised CP that, after May 9, CN will neither accept nor deliver cars for interchange at Spaulding. Walker V.S. at ¶ 11. Despite elevating the dispute to the railroads’ respective Executive Vice Presidents for Operations, the railroads have been unable to resolve this interchange dispute. *Id.* at ¶ 12.

CN has since provided two reasons in writing for terminating the Spaulding Interchange Agreement—that volumes have outstripped capacity at Spaulding and that Spaulding places an unfair burden on CN. Both appear to be mere pretext for CN’s actual reason, a desire to make their main line more efficient. CP believes that if CN is successful at eliminating interchange at Spaulding, CN intends to close its facilities at Spaulding to reduce its maintenance expense and remove mainline turnouts to the interchange tracks, eliminating Spaulding as an interchange location. Walker V.S. at ¶ 13.

CN’s assertion that “Spaulding is no longer a suitable interchange location given that interchange traffic volumes have outgrown available facilities at that location,” (April 16, 2019 letter from Michael A. Cory to Robert Johnson, Walker V.S. Ex. F) is belied by the data. Interchange volumes at Spaulding have generally softened since at least 2014:

Monthly Interchange Volumes at Spaulding



Walker V.S. at ¶ 6. The most that could be said from CN’s perspective is interchange volumes have remained generally consistent. They certainly have not increased.

CN’s second claimed rationale for terminating the Spaulding Interchange Agreement is that it is somehow inequitable for the parties to interchange traffic at Spaulding even though that is where the two railroads physically connect and have been interchanging every day for nearly a decade. According to CN, Spaulding “places an unfair burden on CN” because “[m]anifest traffic interchanged between CN and CP are blocked and switched at Kirk Yard and then moved to Spaulding—a trip that is 84 miles one-way.” (April 16, 2019 letter from Michael A. Cory to Robert Johnson, Walker V.S. Ex. F). This reason also appears to be pretext as CN trains pass Spaulding several times daily on their way to and from Kirk. Walker V.S. at ¶ 10.

Rather than CN making the 84-mile trip on the CN (EJ&E) from Spaulding to Kirk or using one of its many Kirk-bound trains that pass Spaulding daily to pull cars at Spaulding, CN is insisting that CP bring the cars to Kirk over CN’s rail lines. Kirk is located on the opposite side of the Chicago Terminal from CP’s Bensenville Yard. Walker V.S. at ¶ 9; Ex. C. CP runs no trains there, or near there, and does not have a route there. To reach Kirk, CP would have to operate 17.2 miles on CP trackage to Spaulding. From there, CP would get on CN and operate an additional 84 miles on CN to reach Kirk. *Id.* at ¶ 9. After spotting the cars on the interchange track at Kirk, CP would then turn around and operate the 101.2 miles

over the same route back to Bensenville. *Id.* Due to hours of service regulations, the round trip would require two or more crews that must be taxied back and forth across Chicago at an approximate cost of \$165 each way every day of the year. Such operations would erode CP's crew base and would require a locomotive captive to providing that interchange service. *Id.*

Although CP has suggested alternative interchange arrangements that would not impose significant additional costs on CP, CN has thus far rejected them. Accordingly, as it stands today, on May 10, when CN's termination of the Spaulding Interchange Agreement becomes effective, there will be no agreed upon interchange location between CP and CN in the Chicago Terminal Area. CN-destined cars in transit will begin to pile up in Bensenville Yard at a rate of approximately 30 cars a day (based on the most recent data). This will quickly lead to congestion in Bensenville, CP's only major classification yard in the Chicago Terminal Area. Congestion in the Chicago Terminal would inevitably result. Shippers will not receive timely service. Further, without an agreement to amend the Railinc Interchange Service Agreement coupled with CN's refusal to pull at Spaulding, CP cannot quote rates over Chicago to CP/CN customers. In short, CN's refusal to continue to interchange at Spaulding or to name a reasonable replacement interchange location will be highly disruptive to rail operations in and around the Chicago Terminal Area and particularly to the parties' respective customers. Walker V.S. at ¶ 14.

ARGUMENT

A rail carrier must "provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivery of . . . property to and from, its respective line and a connecting line of another rail carrier." 49 U.S.C. § 10742. "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." *Burlington N. R.R. Co. v. United States*, 731 F.2d 33, 38 (D.C. Cir. 1984) ("*Burlington Northern*"). Although "the receiving carrier necessarily has the right to designate where it will accept cars in interchange from its connections," that right is not absolute. *Norfolk S. Ry. Co.—Petition for Declaratory Order—Interchange with Reading Blue Mtn. & N. R.R. Co.*, STB Docket No. 42078, slip op.

at 5 (STB served Apr. 29, 2003) (“*RBMN*”) “[I]n making such designation, the receiving carrier [may] not impose unusual, unreasonable, or impossible operating hazards or require the delivering carrier to do work which properly belongs to the receiving carrier.” *New York, C. & St. L. R. Co. v. New York Central R. Co.*, 314 I.C.C. 344, 345 (1961) (*New York, Chicago*) (quoting *Kansas City S. Ry. Co. v. Louisiana & A. Ry. Co.*, 213 I.C.C. 351, 359 (1935) (“*Kansas City*)). “A carrier cannot arbitrarily provide points of interchange which ignore the basic rights of others.” *Id.* Rather, the location of interchange is “a matter to be arranged between the parties . . . by consultation, exploration of mutual benefits, and negotiation of differences.” *Id.* If the parties are unable to agree, the STB has authority pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721(b)(4) to issue an order prescribing the interchange location.

A. Kirk Yard is an Unreasonable Interchange Location.

CN’s unilateral designation of Kirk to receive cars from CP is not reasonable. It would impose substantial costs on CP and would require CP to do work which properly belongs to CN. In order to deliver cars to Kirk, CP would be required to operate more than 200 miles roundtrip, 168 of those miles on CN’s rail lines. CP would incur the cost of multiple crews (for each round trip), crew transportation, fuel and other operating costs and would require CP to allocate a locomotive for the sole purpose of ferrying cars for CN from Bensenville to Gary, Indiana. *Walker V.S.* at ¶¶ 8-9.

The ICC rejected similar efforts by receiving carriers to force unilaterally the delivering carriers to operate over the receiving carriers’ lines. *See New York, Chicago* (holding that receiving carrier could not unilaterally designate interchange location that required delivering carrier to operate over receiving carrier’s line); *Kansas City*, 213 I.C.C. at 359 (same); *cf. RBMN*, STB Docket No. 42078, slip op. at 7 (receiving carrier could designate interchange location that delivering carrier had previously proposed and which the receiving carrier regularly ran its trains past). Notably, the distance involved in these cases was significantly shorter than the 84 miles CP would have to travel on CN’s rail line to reach Kirk. In *New York, Chicago*, the Central terminated its interchange agreement with the Nickel Plate and unilaterally designated a replacement location at which to receive cars. The new location would have required the Nickel Plate to “use some 8 miles of the Central’s track to make delivery” and “incur considerable

additional expense.” 314 I.C.C. at 345-46. The ICC acknowledged that the Central would save money by changing the location and that it had a contractual right to terminate the interchange agreement. However, the ICC rejected as “unjust and unreasonable” the Central's unilateral designation of the new location. Likewise, in *Kansas City*, the ICC rejected the receiving carrier’s efforts to impose a new interchange location that would have required the delivering carrier to operate less than four miles on the receiving carrier’s track. 213 I.C.C. at 354.

The largest distance at issue in an interchange reasonableness proceeding was eleven miles, a fraction of the distance at issue here.⁵ *RBMN*, slip op. at 6 n.6. Although in *RBMN* the Board rejected the challenge to the receiving carrier’s designation of a replacement interchange location, that case is distinguishable on several grounds. In *RBMN*, the delivering railroad, Norfolk Southern (“NSR”), initially proposed the new interchange location, regularly ran trains past the new location, and the receiving road had upgraded the infrastructure of the new location to accommodate interchange. *Id.*, slip op. at 5. In finding that NSR failed to show that the new location was unreasonable, the Board held that these three facts undermined NSR’s argument that the new location was not operationally or commercially acceptable. *Id.* Here, the distances are nearly 10 times those at issue in *RBMN*. Moreover, unlike NSR, CP has never proposed moving the interchange to the location designated by CN, and CP trains do not run past that location. Notably, while CP trains do not run past Kirk, CN’s trains pass Spaulding several times a day on their way to Kirk. Walker V.S. at ¶ 10.

Indeed, CN has effectively acknowledged that Kirk would be an unreasonable interchange location. In a letter from its Chief Operating Officer, CN complains that the 84 miles one-way that it must travel between Kirk and Spaulding on its own line imposes an “unfair burden” on CN. (April 16, 2019 letter from Michael A. Cory to Robert Johnson, Walker V.S. Ex. F) But if it is burdensome for CN to operate 84 miles over CN’s own rail line, then it would be that much more burdensome to require that CP

⁵ Cf. *Canexus Chems. Canada L.P. v BNSF Ry. Co.*, Docket NOR 42131 (STB served Feb. 8, 2012), which arguably involved a dispute over interchange locations. However, because of the distances involved, the Board treated the proceeding as a routing dispute under 49 USC § 10705 rather than as an interchange reasonableness challenge under 49 USC § 10742. Slip op. at 9 n.48.

operate the 17.2 miles from Bensenville to Spaulding plus the 84 miles over CN's lines from Spaulding to Kirk, and then back again.

Like the Central in *New York, Chicago*, CN seeks to change the interchange point in order to realize economies but at the delivering carrier's "considerable additional expense." 314 I.C.C. at 345-46. These expenses include the substantial operating costs that CP would incur to make the 201.4 mile round trip to CN's yard including crew, crew transportation, fuel and equipment costs. Walker V.S. at ¶¶ 8-9. They also include the impact on CP's crew base, which would be eroded by the need to assign at least two crews and possibly more in winter, to make the daily run between Bensenville and Kirk. *Id.* Like the Central, CN's unilateral designation here is "unjust and unreasonable."

Accordingly, the Board should declare that CN's unilateral designation of Kirk Yard as the replacement interchange location for receiving cars from CP is unreasonable.

B. The Board Should Preserve the Status Quo By Issuing An Injunction.

As explained by Nick Walker, without agreement on a reasonable replacement interchange location, CN-bound cars will quickly cause undue congestion in CP's Bensenville Yard. In addition to disrupting rail service for CP-CN shippers, congestion at the yard will disrupt CP service via Chicago and threaten to disrupt rail operations in the broader Chicago Terminal Area. Without an agreed upon interchange agreement in Railinc, the parties will be unable to quote CP-CN service over Chicago. Without an interchange location, the disruption will begin to be felt immediately. Such disruption will cause immediate, irreparable harm and injuries to CP and its customers that would not be otherwise redressable at the conclusion of the Board's process. *See Walker V.S. at ¶ 14.*

CP requests only that the Board issue an order preserving the *status quo* until the parties reach mutual agreement on a replacement interchange location, CN designates a reasonable alternative, or the Board prescribes such a location. Such tailored relief will prevent CN from causing irreparable harm by imposing unreasonable interchange burdens upon CP and its customers while the parties or the Board resolves the dispute. Board action is necessary because there is no procedure under the Spaulding

Interchange Agreement for CP to protect the status quo pending resolution of the dispute. CP is also concerned that without an injunction, CN will take steps to remove its interchange facilities at Spaulding.

1. The Board Has the Authority to Issue a Preliminary Injunction.

Under 49 U.S.C. § 1321(b)(4), the Board has authority to issue an appropriate order, such as a preliminary injunction, when necessary to prevent irreparable harm. A party seeking a preliminary injunction must establish that (1) it is likely to prevail on the merits of any challenge to the action sought to be preliminarily enjoined, (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. *See, e.g., Wash. Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Union Pac. R.R. v. BNSF Ry. Co.*, FD 36197, slip op. at 3 (STB served June 29, 2018); *Am. Chemistry Council v. Ala. Gulf Coast Ry.*, NOR 42129, slip op. at 4 (STB served May 4, 2012). A preliminary injunction is an extraordinary remedy and the party seeking it “carries the burden of persuasion on all of the elements required for [such] extraordinary relief.” *BP Amoco Chem. Co. v. Norfolk S. Ry.*, NOR 42093, slip op. at 4 (STB served June 6, 2005) (quoting *San Joaquin Valley R.R.—Aban. Exemption—In Tulare & Kern Cty.s., Cal.*, AB 398 (Sub-No. 5X), slip op. at 4 (STB served Apr. 3, 1998)); *Middletown & New Jersey R.R.—Lease and Operation Exemption—Norfolk S. Ry.*, FD 35412 at 2 (STB served Oct. 6, 2010); 5 U.S.C. § 556(d).

2. CP Is Likely To Succeed On the Merits.

For the reasons discussed in Section A above, CP is likely to succeed on the merits. Longstanding Board precedent prohibits CN from unilaterally designating an interchange location that imposes substantial additional costs on CP. Here, CN seeks to force CP to operate the 84 miles on CN’s line between the railroads’ physical connection (and current interchange location) and Kirk Yard. CP would incur substantial additional costs to do so including crew, fuel, and equipment costs. The 84 miles is far in excess of the 8 miles that the I.C.C. ruled unjust and unreasonable in *New York, Chicago* and the fewer than 4 miles at issue in *Kansas City*. CP does not currently operate to or near Kirk Yard. On its face, CN’s

designation of Kirk Yard is an unjust and unreasonable location, and CN has implicitly acknowledged as much.

3. CN Will Cause Irreparable Harm.

Under Board precedent “[e]conomic losses that are substantial and unredressable can qualify as irreparable injury.” *Colorado Wheat Admin. Comm., et al. v. V and S Ry.*, NOR 42140, slip op. at 10-11 (STB served May 7, 2015). Likewise, actions that threaten railroad operational efficiency and fluidity have been held to constitute irreparable harm. See *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 673 (D.C. Cir. 2005) (finding irreparable injury where railroad was threatened with reduced operational flexibility and efficiency). CN’s actions here threaten both substantial and unredressable economic harm and harm to railroad operations.

Here, the economic harm to shippers will begin to be felt immediately and will be irreparable. If CN refuses to continue to pull cars from Spaulding, CN-bound traffic will be significantly disrupted. Approximately 30 cars a day will be stranded. Once Spaulding is full, CP will begin holding CP cars at Bensenville. Storing cars at Bensenville will quickly lead to congestion at Bensenville, which will impact CP’s operations more widely, and will have follow-on effects on the broader Chicago Terminal Area. See *Walker V.S.* at ¶ 14. Much of this harm, including both direct and indirect harm, will not be redressable. This includes harm to rail customers who rely on timely rail service to keep their factories running and meet their obligations to their customers.

If customers are driven to CN, or stop shipping via rail due to CN’s unjustifiable actions, CP will be irreparably harmed by the loss of customer goodwill. See *BNSF Ry. Co. v. Tri-City & Olympia R.R. Co. LLC*, No. 09-5062, 2009 U.S. Dist. LEXIS 94920, 2009 WL 3149569, at *12-13 (E.D. Wash. Sept. 28, 2009); *Gateway E. Ry. Co. v. Terminal R.R. Assoc. of St. Louis*, 35 F.3d 1134, 1140 (7th Cir. 1994) (finding irreparable harm where railroad was threatened with loss of customer goodwill).

Further, CP is concerned that, in the absence of injunctive relief, CN will move quickly to eliminate its interchange facilities at Spaulding resulting in a *fait accompli*. Notably, because the Spaulding interchange tracks are switching side tracks exempted from Board abandonment authority

under 49 U.S.C. § 10906, CN could remove the interchange facilities without obtaining regulatory authority. Accordingly, CP's concern is well founded.

4. No One Will Be Harmed by Maintaining the Status Quo.

On the other hand, maintaining Spaulding as the interchange location harms no one. Spaulding has worked well for the last eight plus years. As volumes have softened over the last several years, CN's purported concern that volumes have outgrown capacity at Spaulding is specious. There is no harm to CN from being required to continue to interchange at Spaulding, a location CN originally agreed to in order to make its interchange operations more efficient and which has worked well for nearly a decade. Moreover, CP is asking to maintain the status quo only until the parties agree on, CN designates, or the Board prescribes, a "reasonable" replacement interchange location.

5. The Public Interest Supports Granting an Injunction.

It is axiomatic that protecting against threats to timely and efficient rail service and preserving fluid and efficient rail operations in the critical Chicago Terminal Area is in the public interest. An injunction protects against such threats by ensuring that CP and CN continue to interchange traffic and to do so efficiently and without disruption to rail operations. An injunction serves the public interest as defined by Congress in the Rail Transportation Policy. *See* 49 U.S.C. 10101. An injunction would, *inter alia*, ensure "fair and expeditious regulatory decisions" (§ 10101(2)); "promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues" (§ 10101(3)); "ensure the development and continuation of a sound rail transportation system" (§ 10101(4)); and "foster sound economic conditions in transportation" (§ 10101(5)).

6. CN Must Respond Quickly to Avoid the Threat of Imminent Harm.

CP requests the Board require CN to reply to this Petition by May 7, 2019. While this is less time than the Board normally allows, time is of the essence in light of the disruption that will ensue if CN refuses to interchange cars at Spaulding after May 9, 2019. *Richard Best Transfer, Inc. v. Union Pac. Ry. Co.*, NOR 42149 (STB served Nov. 8, 2016). CP also requests the Board issue a decision on this Petition as soon as possible following CN's response.

CONCLUSION

For the reasons stated above, the Board should issue an order (1) declaring that CN's unilateral designation of Kirk Yard as the interchange location for receiving cars from CP is unjust and unreasonable, and (2) enjoining CN from refusing to receive cars in interchange from CP at Spaulding unless and until the parties reach mutual agreement on a replacement interchange location, CN designates a reasonable alternative, or the Board prescribes such a location.

Respectfully submitted,

/s/ Charles W. Webster
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Attorneys for Soo Line Railroad Company

Dated: April 30, 2019

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2019, copies of the foregoing PETITION FOR DECLARATORY ORDER AND PRELIMINARY INJUNCTION have been served by email on:

Kathryn J. Gainey
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/s/ David F. Rifkind

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36299

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

Verified Statement of Nicholas C. Walker

1. My name is Nicholas Walker. I am employed by Soo Line Railroad Company d/b/a Canadian Pacific (CP) in the capacity of General Manager Operations, US East, officed in Chicago at Bensenville Yard. I have held this position since 2017. Prior to that, I served as Operations Superintendent at Bensenville and as Assistant Superintendent at CP's Winnipeg, Manitoba Yard, and at St. Paul, Minnesota. I began my railroad career in 2005 as a conductor with CP at Chicago. Of my 14 years of railroad service, 9 years have been in the Chicago Terminal.

2. My current responsibilities as General Manager include supervision of all rail transportation operations of CP in the greater Chicago Terminal, and specifically the trackage to and from Bensenville Yard and the other major rail yards within the Terminal, as well interchange with other Class I railroads including Canadian National (CN).

3. The purpose of my statement is to provide history and supply context regarding our interchange operations with CN at Chicago; to provide background regarding the recent discussions to change the interchange location; to describe the impact on CP and CP's customers of CN's proposed new interchange location; and describe the adverse impact on CP, CP's customers, and the larger Chicago Terminal if no agreement or status quo order is entered by May 10, 2019.

History and Practice of CP/CN Interchange at Chicago

4. As recently as 2009, CN and CP interchange at Chicago was made pursuant to 7 separate interchange agreements and took place at multiple locations. We eliminated these inefficient arrangements and consolidated interchange at one location, Spaulding Yard, in 2010 following CN's acquisition of the Elgin, Joliet and Eastern Railway Company (EJ&E). Spaulding is one of two locations (the other is Rondout) where CP and CN's trackage physically meet and connect with one another at Chicago. Spaulding has worked well for the last 8+ years.

5. Currently CP and CN interchange with one another every day (7 days a week, 52 weeks a year) at Spaulding. We have a daily train assignment, G35, which works from Bensenville Yard and delivers CP to CN traffic at Spaulding, and pulls CN to CP traffic back to Bensenville. Similarly, CN has a work assignment that delivers and pulls CN to CP/CP to CN traffic at Spaulding. Our traffic to CN is typically mixed manifest. CN's traffic to us is mixed manifest and auto racks.

6. Our interchange traffic volumes with CN have been remarkably consistent. Since January of 2014 and through April 25 of this year, the average CN to CP traffic at Spaulding has been 47 cars per day. The average volume CP to CN has been 35.9 cars per day over the same time period. (See the charts attached hereto as Ex. A, which show the average daily car counts per month per year 2014 - 2018 and through April 25 of 2019.) The data also shows our interchange traffic with CN, and CN's with us, while consistent has been softening since January 2014.

7. Operationally, Spaulding works, but like all locations in Chicago it has its idiosyncrasies. (A map of Spaulding is attached hereto as Ex. B. and a map of the Chicago Terminal Area is attached hereto as Ex. C). CP needs authority from the CN dispatcher to cross CN's mainline both at arrival and departure. As we ready for departure, we may have to double to put our train together. There are two ways to do this. The way that blocks the CN main line the least amount of time potentially blocks the Bartlett Road crossing, located to the south of CN's yard tracks at Spaulding. The CN dispatcher gives our crew the

amount of time to do our work. If there is sufficient time we double with the least impact to Bartlett Road. When the window we have been given by the CN dispatcher results in blocking of the road crossing, we have broken our train in the past to minimize impact to the road. I have received no complaints from the public or from local officials regarding any of our trains blocking the crossing at Spaulding. I do not know what CN's experience is with its own trains.

Recent Discussions to Move the Interchange Point and CN's Notice to Terminate

8. Since last summer, my counterpart at CN in Chicago, William Albritton, Jr., and I have occasionally had conversations where CN has expressed an interest in possibly moving our interchange point from Spaulding. At first, CN proposed that CP both deliver and pull from CN's Glenn Yard in Chicago. That would impose all the costs for the interchange on CP. CP would be doing all the work that CP and CN both do today, and it would require CP to pay the Indiana Harbor Belt (IHB) under the CP/IHB trackage rights agreement in order to get from CP's Bensenville Yard to CN's Glenn Yard and back. I declined. CN then suggested it might pick up part of the IHB trackage rights cost, but that would impose other burdens on CP. The other burdens spring from Glenn Yard's location and the traffic density of other railroads between Bensenville and Glenn. We would run the risk of our CP crews expiring on Hours of Service, especially in the winter, if they had to go to Glenn, which would impose an approximate cost of \$135 per day to taxi back and forth to Bensenville. It would also erode our crew base. And imposing all interchange responsibility on CP at Glenn also unfairly relieves CN of any interchange responsibility. CP has no assignments going to Glenn today and we have no reason to do so.

9. In its March 11 Notice to Terminate and in the recent conversations, CN has designated CN's Kirk Yard as the location for CP to deliver interchange traffic to CN. Kirk Yard is located in Gary, Indiana, on the opposite side of the Chicago Terminal from Bensenville Yard, our principal classification yard in Chicago. We do not go to or near Kirk Yard today, nor do we have a route to get there. CN proposed a grant of operating rights on the EJ&E but for CP to go to from its Bensenville Yard to CN's Kirk

Yard (without exercising trackage rights through the City of Chicago), CP would have to traverse 17.2 railroad miles west from Bensenville to Spaulding, and then 84 railroad route miles southeast from Spaulding to Kirk for a total of 101.2 miles, one way. Given the distance, our crews would likely expire under the federal Hours of Service statute and have to be taxied back to Bensenville at an approximate cost of \$165 a day. If we were to pull from Kirk as well, then CP would have to taxi a crew over from Bensenville to Kirk at an additional taxi cost of approximately \$165, for a total of approximately \$330 per day. The back and forth taxiing of crews would erode our crew base, in particular in the winter when roadway transit times are extended in inclement weather. Also, such an arrangement would require captive locomotive power, imposing the cost of dedicating a locomotive for this one move only on CP.

10. In the course of a more recent conversation with Mr. Albritton, in March I believe, he suggested that CN could deliver CP traffic at Bensenville via the IHB and that CN would absorb the cost of IHB trackage rights fees. We also discussed under that scenario CP taking CN's traffic to the Belt Railway of Chicago's (BRC) Clearing Yard. I was agreeable to that but only if CN would pay the cost under our trackage rights agreement with BRC to get CN's traffic to Clearing. CN declined to do this. If CN is willing to deliver to us via IHB and pay those costs, but does not want to pay the BRC trackage rights cost for us to deliver their traffic to Clearing, we are willing to continue to deliver to Spaulding and any eastbound train on CN's mainline at Spaulding with time could add our cut to their train and go to Kirk. CN has many trains passing Spaulding every day on the way to Kirk. CN has shown no interest in this.

11. We received CN's Notice to Terminate the 2010 Interchange Agreement, effective May 10, 2019 (attached hereto as Ex. D), on March 11. Mr. Albritton did call me a couple of days before the Notice to Terminate was emailed to inform me it would be coming. In our subsequent conversations, Mr. Albritton has made it crystal clear that CN will not accept interchange at Spaulding and will not deliver CP interchange traffic at Spaulding after May 9.

12. The matter was elevated to CP's Executive Vice President of Operations, Robert Johnson, and CN's Executive Vice President and Chief Operating Officer, Mike Cory, following the Notice to Terminate. Mr. Johnson and Mr. Cory have spoken and exchanged correspondence but have not reached an accord. Their correspondence is attached hereto as Exs. E-G.

13. CN has stated to me that the reason they are terminating the 2010 Interchange Agreement and seek to change the interchange location from Spaulding is due to a desire to make their main line more efficient. I believe that is accurate. I also believe that if CN is successful in moving interchange from Spaulding, CN will close its facility at Spaulding to eliminate the maintenance expense, remove mainline turnouts, and thus eliminate Spaulding as an interchange location option. In its effort to move interchange from Spaulding and improve its operations, CN is unreasonably imposing additional cost and burdens on CP. Given the impacts to CP set forth above, we cannot agree to CN's unreasonable demands.

The Impact to Shippers and the Chicago Terminal if there is No Interchange Agreement on May 10

14. If CN persists and refuses to pull from Spaulding on May 10, approximately 30 CP to CN cars a day will be delayed and have to be stored. Our tracks at Spaulding will fill up quickly and we will then have to store these cars in the west end of Bensenville Yard. At approximately 30 cars a day, we will soon run out of track space. The impact on Bensenville Yard would be real and substantial. Shippers will not receive timely service. Congestion in the Chicago Terminal would inevitably result. Further, if there is no agreement to amend the Railinc Interchange Service Agreement and CN refuses to pull at Spaulding our rates to CN destinations cannot be quoted over Chicago.

VERIFICATION

I, Nicholas C. Walker, verify under penalty of perjury that the forgoing is true and correct. Further,
I certify that I am qualified and authorized to sponsor this Verified Statement. Executed on this ____ day
of April, 2019.

A handwritten signature in black ink, appearing to read "Nicholas C. Walker", is written over a horizontal line.

Nicholas C. Walker

EXHIBIT A

	Average Daily Interchange Delivery (CP to CN) at Spaulding (Chicago)						
Month / Year	2014	2015	2016	2017	2018	2019	Total
January	37.5	40.1	31.7	31.5	27.3	28.2	32.7
February	46.0	46.4	37.4	24.4	33.6	25.6	35.6
March	49.6	55.3	42.3	28.0	29.8	26.9	38.7
April	46.6	38.6	33.1	32.8	38.2	25.8	36.9
May	44.1	44.3	35.3	35.4	32.9		38.4
June	48.8	38.5	27.0	36.5	37.1		37.6
July	53.3	41.0	30.9	30.7	30.4		37.3
August	61.1	32.3	23.9	38.0	35.6		38.2
September	54.6	31.6	26.4	40.5	29.4		36.5
October	47.9	27.0	29.5	43.1	34.9		36.4
November	41.7	22.8	25.9	36.4	32.0		31.7
December	40.5	29.2	23.3	36.7	28.2		31.6
Total	47.5	37.1	30.5	34.5	32.4	27.8	35.9

	Average Daily Interchange Receipt (CN to CP) at Spaulding (Chicago)						
Month / Year	2014	2015	2016	2017	2018	2019	Total
January	42.9	47.2	42.1	49.7	33.3	35.4	41.7
February	56.6	48.9	53.7	52.8	38.0	40.9	48.5
March	53.8	59.0	54.6	44.8	54.6	36.0	50.5
April	55.3	53.2	46.0	39.9	58.1	36.6	49.5
May	51.6	52.9	46.2	40.0	53.7		48.9
June	59.9	48.0	38.7	42.0	44.8		46.7
July	67.6	55.9	40.0	39.4	39.0		48.4
August	64.3	46.0	42.1	44.5	47.1		48.8
September	62.9	43.8	46.4	47.1	36.4		47.3
October	51.9	46.0	40.4	48.5	47.3		46.8
November	51.2	45.5	36.9	46.8	39.6		44.0
December	45.2	44.3	40.8	46.5	40.9		43.5
Total	55.2	49.2	43.9	45.1	44.4	38.7	47.0

EXHIBIT B

SPAULDING MAP

GIFFORD

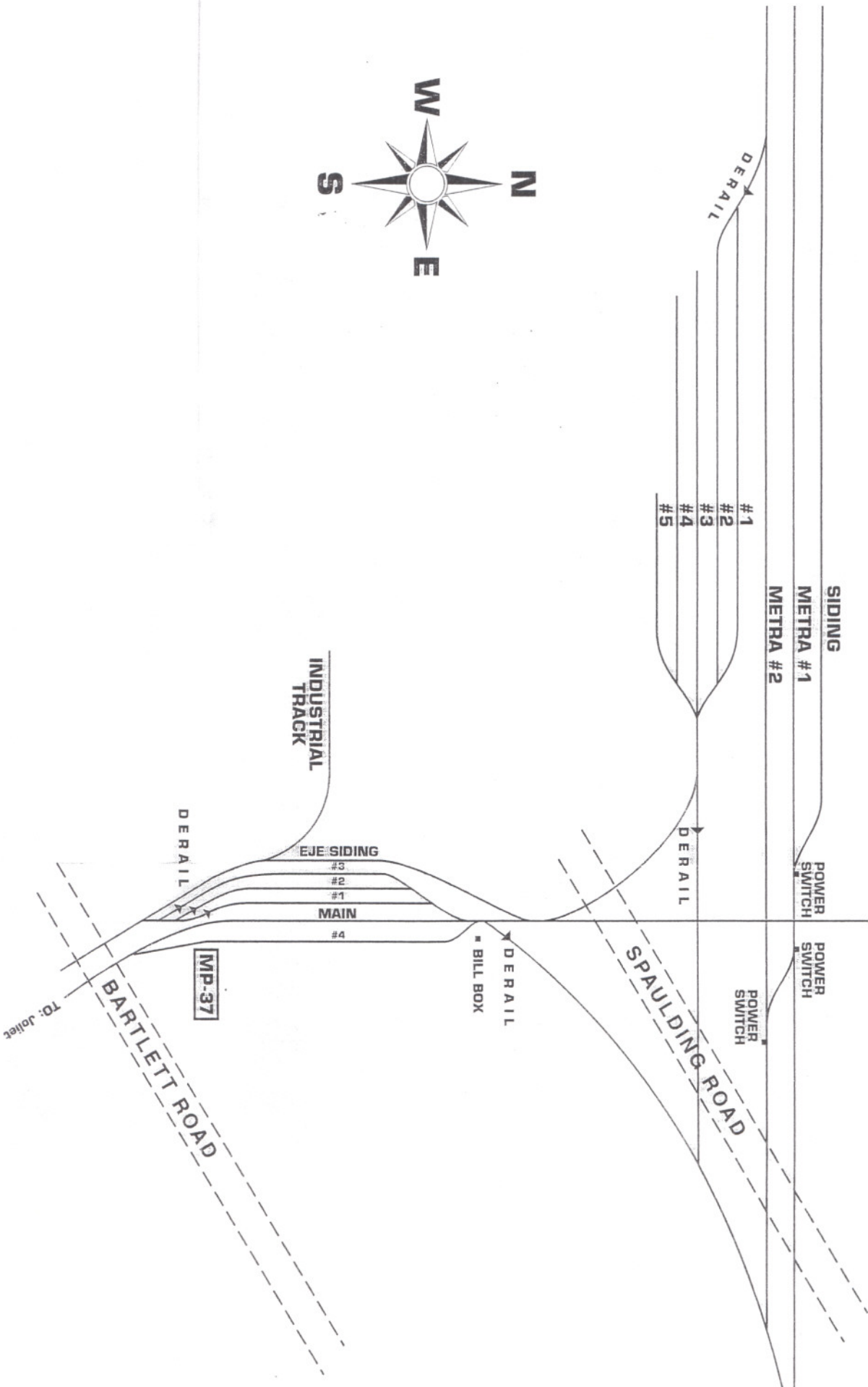
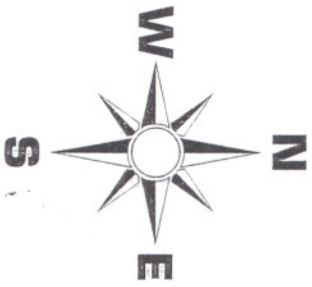
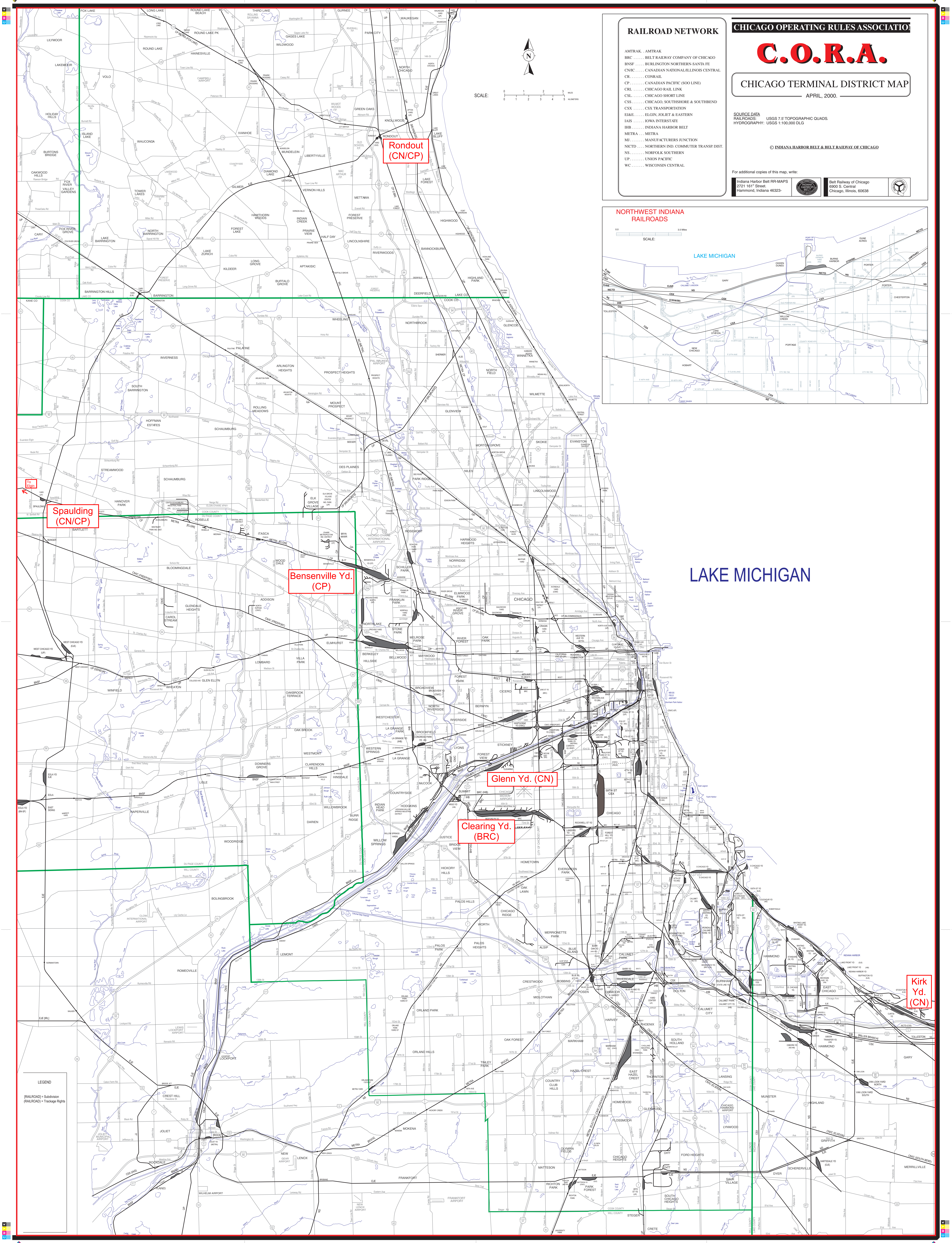


EXHIBIT C



RAILROAD NETWORK

AMTRAK.....AMTRAK
BRC.....BELL RAILWAY COMPANY OF CHICAGO
BNF.....BURLINGTON NORTHERN SANTA FE
CNIC.....CANADIAN NATIONAL ILLINOIS CENTRAL
CR.....CONRAIL
CP.....CANADIAN PACIFIC (500 LINE)
CRL.....CHICAGO RAIL LINK
CSL.....CHICAGO SHORT LINE
CSS.....CHICAGO, SOUTHWEST & SOUTHBEND
CSX.....CSX TRANSPORTATION
EAE.....ELGIN, JOLIET & EASTERN
IAIS.....IOWA INTERSTATE
IHB.....INDIANA HARBOR BELT
METRA.....METRA
MI.....MANUFACTURERS JUNCTION
NICTD.....NORTHERN IND. COMMUTER TRANSP. DIST.
NS.....NORTHERN SOUTHERN
UP.....UNION PACIFIC
WC.....WISCONSIN CENTRAL

CHICAGO OPERATING RULES ASSOCIATION

C.O.R.A.

CHICAGO TERMINAL DISTRICT MAP

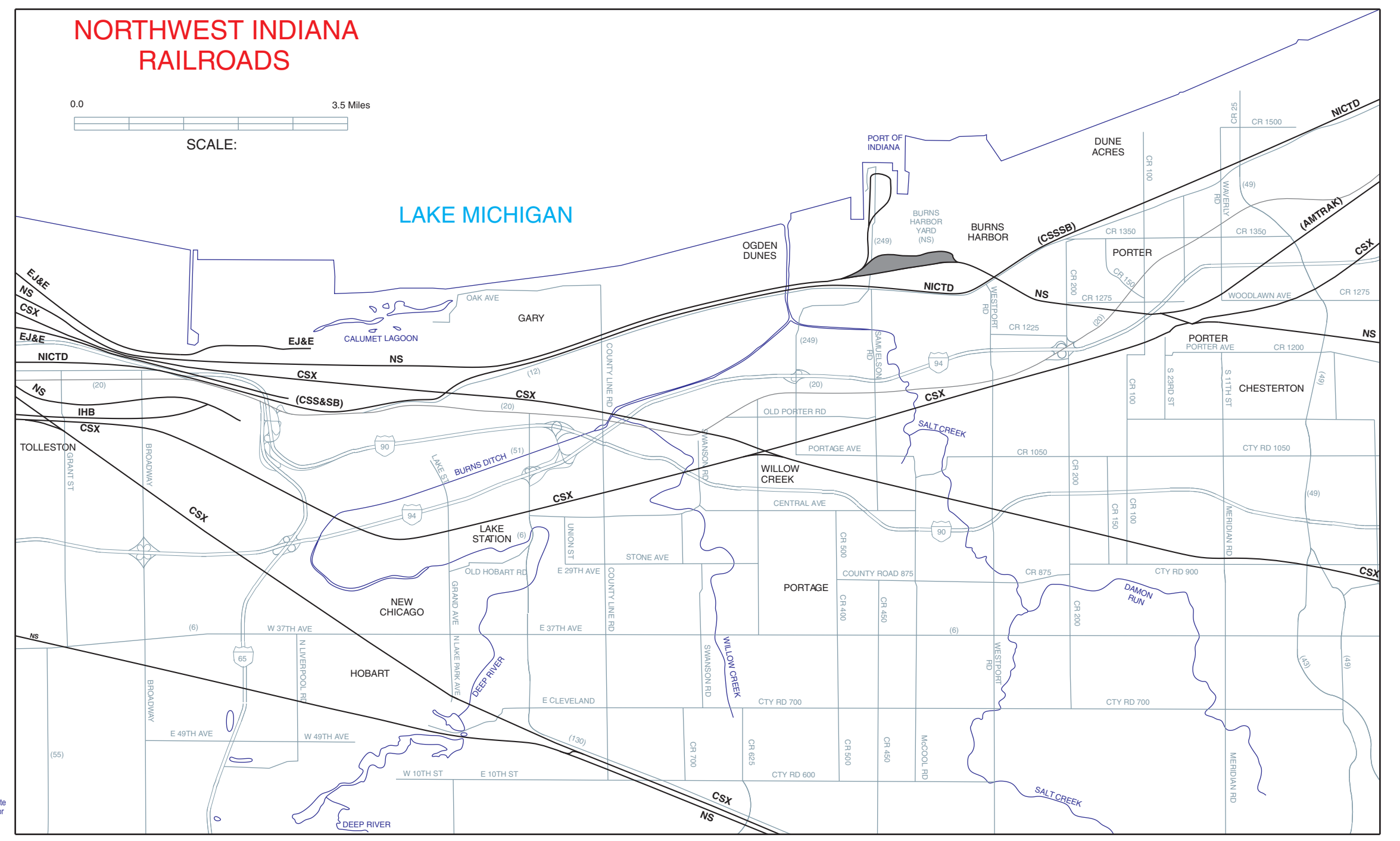
APRIL, 2000.

SOURCE DATA
RAILROADS: USGS 7.5 TOPOGRAPHIC QUADS
HYDROGRAPHY: USGS 1:100,000 DLG

© INDIANA HARBOR BELT & RAILWAY OF CHICAGO

For additional copies of this map, write:
Indiana Harbor Belt RR MAPS
2721 161st Street,
Hammond, Indiana 46323

Bell Railway of Chicago
6900 S. Central
Chicago, Illinois, 60638



LAKE MICHIGAN

Kirk Yd. (CN)

EXHIBIT D



www.cn.ca

Southern Region

Michael Matteucci
Region Director Contracts and Administration

17641 So. Ashland Avenue
Homewood, IL 60430-1345
T 708.332.3598
F 708.332.3673

March 11, 2019

VIA EMAIL

Mr. Chuck Hubbard
Director Interline, Joint Facilities
& Passenger West
Canadian Pacific
120 South 6th Street
Minneapolis, MN 55402

Dear Mr. Hubbard:

This is in regard to the agreement between Soo Line Railroad Company d/b/a Canadian Pacific ("CP") and the Wisconsin Central Ltd ("CN"), successor in interest to the Elgin, Joliet and Eastern Railway Company, dated August 12, 2010 ("Agreement"), which, among other things, provided for the interchange of loaded and empty freight cars between CN and CP at Spaulding in Bartlett, Illinois.

Please regard this letter as CN's sixty (60) day notice of termination pursuant to Section 14 of the Agreement.

CN designates CN's Kirk Yard in Gary, IN as the location to receive all interchange traffic destined to CN from CP in Chicago and shall provide CP any necessary operating rights, as may be required, to operate into Kirk Yard.

Sincerely,

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

Michael Matteucci

cc: File 6002560

EXHIBIT E



Robert A. Johnson
Executive Vice-President
Operations

7550 Ogden Dale Road SE
Calgary Alberta
Canada T2C 4X9

T 403 319 3600
C 612 760 1533
E Robert_Johnson@cpr.ca

April 3, 2019

Mr. Mike Cory
Executive Vice President and Chief Operating Officer
Canadian National Railway
935 de la Gauchetière Street West
Montreal, QC
Canada H3B 2M9

Re: CN/CP Interchange at Chicago

Dear Mr. Cory:

I am writing regarding Canadian National's sudden and unexpected notice to terminate, effective May 10, of the Interchange Agreement between the Elgin, Joliet and Eastern Railway Company (CN) and Soo Line Railroad Company d/b/a Canadian Pacific (CP) dated August 12, 2010, and the path forward to continue interchange of our respective traffic at Chicago.

The 2010 Agreement provided for mutual interchange of freight traffic (non-TIH/non-PIH) at Spaulding Yard, one of only two points of direct physical connection between our two railroads in the Chicago Terminal, the other being Rondout. Interchange at a single point of direct physical connection, Spaulding, provided and still provides efficient interchange for both our roads. It also enabled us to retire and consolidate seven separate sets of earlier, inefficient, interchange agreements. Whatever business reasons CN has to seek to change the Spaulding interchange point cannot be at CP's expense or detriment.

Notwithstanding a termination of the 2010 Agreement, CN will continue to have a legal obligation to effect reasonable interchange with CP at Chicago. As an alternative to Spaulding, CN has proposed to move our interchange to Kirk Yard in Gary, Indiana and provide CP with operating rights over the Elgin, Joliet and Eastern to get there. Interchange at Kirk Yard is unworkable and unreasonable. Kirk is located on the opposite side of the Chicago Terminal from CP's Bensenville Yard. CP has no assignment which goes there or near there. Given the distance to Gary, Indiana, were we to add an assignment our crew's tour of duty would likely expire under the Hours of Service law before they could return to Bensenville. In addition to the taxi cost to ferry the crew back, CP would lose the ability to use the crew on the return trip. In winter months, the length of time for the crew to return would likely extend and further erode our crew base. An assignment to Kirk would also require captive locomotive power, another costly inefficiency. Kirk Yard will not work.

CN has also suggested moving the interchange point to CN's Glenn Yard in Chicago, but this too is unreasonable. Given Glenn Yard's location and the density of traffic flows of the various roads in the Chicago Terminal, using Glenn Yard for interchange also runs the risk of our crews expiring on Hours of Service. Like Kirk, we do not go to Glenn today and have no reason to do so. Also, to get to Glenn Yard CP would have to exercise its trackage rights on the Indiana Harbor Belt Railroad (IHB). As I am sure you are aware, CP is under no obligation to exercise its trackage rights on CN's behalf. The exercise of trackage

Mike Cory
April 3, 2019
Page 2

rights is permissive with their holder. An assignment to Glenn would also require captive locomotive power, another costly inefficiency.

In the discussions between our operating officers, CN has suggested it would be willing to deliver CP interchange traffic at Bensenville via the IHB, and that CN would pick up the bridge carrier expense to get the cars there. That is fine as far as it goes.

With respect to CN traffic moving from CP to CN, we are willing to take it from Bensenville to the Belt Railway of Chicago's (BRC) Clearing Yard, and exercise our trackage rights on the BRC to do so, but only if CN pays the per car cost to BRC required under the CP/BRC trackage rights agreement. It is only reasonable for CN to pay to get CN's traffic to Clearing when the sole reason for the change is CN's business decision to move interchange from Spaulding Yard.

In a word, CN's unilateral imposition of an entirely new interchange point on CP in order to effect a business decision of CN should be at CN's expense, not CP's. If CN is not willing to shoulder the cost, then we will continue to interchange at Spaulding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert A. Johnson".

Robert A. Johnson,
Executive Vice President, Operations

cc: Tony Marquis

EXHIBIT F



**Executive Vice-President & Chief
Operating Officer**

**Vice-président Exécutif et Chef
de l'exploitation**

Michael A. Cory

Canadian National
935 de La Gauchetière Street West
Montreal (Quebec) Canada
H3B 2M9
Telephone: (514) 399-5311
E-mail: michael.cory@cn.ca

Canadien National
935, rue de La Gauchetière Ouest
Montréal (Québec) Canada
H3B 2M9
Téléphone: (514) 399-5311
Courriel: michael.cory@cn.ca

Mr. Robert A. Johnson
Executive Vice President, Operations
Canadian Pacific Railway Co.
7550 Ogden Dale Road, SE
Calgary, Alberta T2C 4X9

Re: CN/CP Interchange at Chicago

Dear Mr. Johnson,

I am writing to respond to your April 3, 2019 letter regarding the interchange of traffic in the Chicago Terminal area between certain of CN's U.S. operating subsidiaries (CN) and Soo Line Railroad Company d/b/a Canadian Pacific (CP).

For over a year, CN has advised CP that Spaulding is no longer a suitable interchange location given that interchange traffic volumes have outgrown available facilities at that location.

After numerous discussion on the matter, CN specifically told CP several weeks ago that CN would be forced to cancel the August 12, 2010 Interchange Agreement between CP and CN unless CP were willing to work with CN on a solution. Therefore, it is not accurate for CP to say that CN's notice of cancellation was "sudden and unexpected."

CN's March 11, 2019 letter gave CP the required notice as stated by Section 14 of the 2010 Interchange Agreement. Prior to that notification CN had communicated with CP the need for changes to the companies' interchange arrangements.

CN does not believe it is accurate for CP to say that Spaulding "still provides efficient interchange for both our roads." 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 and regularly cause several at-grade road crossings to be blocked.

Moreover, using Spaulding for both receiving and delivering interchange traffic places an unfair burden on CN. Manifest traffic interchanged between CN and CP are blocked and switched at Kirk Yard and then moved to Spaulding—a trip that is 84 miles one-way. CN is currently doing that work now for both interchange cars received from CP and for interchange cars delivered to CP.

Robert Johnson
April 16, 2019
Page 2

This is inherently inequitable. CP's objection that it would consume crew and locomotive resources for CP to have to move interchange cars from Bensenville to Kirk only highlights the unfairness of the current arrangements—CN is making similar movements between Spaulding and Kirk for both cars interchanged to CP and cars received from CP.

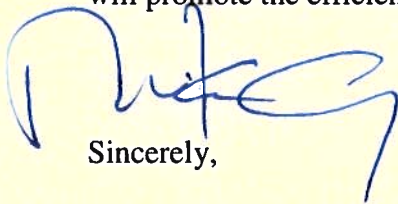
CN has therefore exercised its contractual right to terminate the 2010 Interchange Agreement. In accordance with the terms of that agreement and its legal right to designate a reasonable interchange point on its lines to receive traffic from CP, we view Kirk Yard as a reasonable interchange point in the Chicago Terminal.

In turn, CN is willing to deliver interchange cars received by CP to a reasonable interchange point that CP designates. CN understands from prior discussions and from CP's April 3, 2019 letter that Bensenville would be CP's preferred point for receiving interchange traffic from CN. CP's designation of Bensenville for receiving interchange traffic is acceptable to CN so long as CP provides CN with a free route to deliver CP-bound interchange traffic to that location.

CN feels there is no basis in the 2010 Interchange Agreement or in U.S. law for CP's suggestion that CN is responsible for reimbursing CP in the event that CP's operating costs of interchanging at Kirk are higher than its operating costs would have been to continue interchanging at Spaulding.

CN's only legal responsibility is to provide reasonable facilities for interchange and a free route over its tracks to that interchange point. CN's is fulfilling this responsibility through this exercise of its rights as a receiving carrier to specify an interchange point on CN's lines.

CN stands ready to discuss these issues and to develop interchange protocols with CP that will promote the efficient movement of traffic through the Chicago Terminal.

A handwritten signature in blue ink, appearing to read "Mike Cory", is written over the word "Sincerely,".

Sincerely,

Mike Cory
Executive VP and Chief Operating Officer
Canadian National Railway

EXHIBIT G



Robert A Johnson
Executive Vice-President
Operations

7550 Ogden Dale Road SE
Calgary Alberta
Canada T2C 4X9

T 403 319 3600
C 612 760 1533
E Robert_Johnson@cpr.ca

April 18, 2019

Mr. Mike Cory
Executive Vice President and Chief Operating Officer
Canadian National Railway
935 de La Gauchetière Street West
Montreal, QC
Canada H3B 2M9

Re: CN/CP Interchange at Chicago

Dear Mr. Cory:

I am in receipt of your letter of April 16. We do not intend to get into a letter writing battle, but a few things need to be said.

CN's claim that Spaulding is no longer a suitable interchange point because volumes have outgrown the facility is not supported by the data. CN/CP interchange volumes at Chicago have not materially changed in the last year as CN suggests. Rather those volumes have remained consistent. If anything, 2019 volumes have declined compared to 2018 and 2017. (A report of the CP/CN average daily interchange car count at Spaulding for 2017, 2018 and 2019 YTD is attached for reference.) We continue to view Spaulding as a suitable facility that has worked well for our two roads and our respective customers for the last eight plus years.

It is clear that for its own economic reasons CN wants to close Spaulding, move the interchange point, and change how it slots trains on its main line. CN is free to make such changes, but not at CP expense. A receiving carrier in a direct physical interchange has to designate a point on its own line and provide a free route to get there, without unreasonable conditions. For the reasons we explained previously, CN's designation of Kirk as the new location where it would receive traffic from CP is not reasonable. As CN now acknowledges, Kirk is unreasonable for distance, among other reasons, which for CP, Bensenville to Kirk, is further than CN, Kirk to Spaulding. As for CP designating a free route on its line, CN has one already at Spaulding (and Rondout) which is a point of direct physical contact on both our roads where we meet in the Chicago Terminal.

We re-iterate our willingness to voluntarily exercise our trackage rights on the Belt Railway of Chicago (BRC) and deliver CN's traffic to the BRC at Clearing, but only if CN pays the per car cost to BRC required under the CP/BRC trackage rights agreement. We would prefer to resolve this matter between ourselves, but if that is not possible we can take it to the Surface Transportation Board for resolution. Pending a decision by the Board we intend to seek a status quo order stipulating the existing interchange point of Spaulding for the benefit of our customers. That is only reasonable when viewed from our customers' perspective.

Mike Cory
April 18, 2019
Page 2

It should be mentioned too that CN's proposed termination of our commercial agreement is one matter, but the business rules administered by Railinc are another. Under those rules an interchange carrier cannot unilaterally change a bilateral interchange point, but rather both parties must agree. If we do not both agree, bills of lading cannot be issued and rates over Chicago at Spaulding cannot be quoted. Again for the benefit of our customers, status quo at Spaulding is what makes the most sense until this matter is resolved.

I am happy to discuss this with you face to face or on the phone, but must insist on a willingness of CN to shoulder the cost of moving the interchange point to further CN's business interest. That's only fair.

Sincerely,



Robert A. Johnson,
Executive Vice President, Operations

cc: Tony Marquis

CP/CN Spaulding Intechange Volumes - Average Cars Per Day			
Year	2019 YTD	2018	2017
CN to CP	38.4	43.9	44.9
CP to CN	27.6	32.6	34.1