

July 3, 2019

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

248089
ENTERED
Office of Proceedings
July 3, 2019
Part of Public Record

Re: **STB Finance Docket 36299**
Soo Line Railroad Company Petition for Declaratory Order and Preliminary Injunction - Interchange with Canadian National
Response to CN's May 29, 2019 Letter

Dear Ms. Brown:

This letter is in response to CN's letter dated May 29, 2019. Soo Line Railroad Company d/b/a Canadian Pacific ("CP")¹ asks that the Board accept this submission in the interest of a full and complete record.

On May 9, 2019, the Board ordered mediation and expressed its expectation that CN will maintain the status quo in the interim, *i.e.*, that the parties would continue to interchange at Spaulding. On May 29, 2019, CN indicated its intent to comply with the Board's "expectation" that it maintain the status quo but asked the Board to reevaluate whether the expectation is appropriate going forward in the event that mediation proved unsuccessful. The mediation period ends on July 5, 2019. As of this letter, the parties have not reached an agreement either on the merits or on whether to extend the mediation period. While CP remains hopeful that the parties can resolve this dispute, in the event that they are unable to do so, CP respectfully asks that the Board reject CN's request to reevaluate its expectation and instead issue a preliminary injunction ordering CN to maintain the status quo pending resolution of this dispute.

¹ Canadian Pacific is a trade name under which Canadian Pacific Railway Company and its United States subsidiaries, Soo Line Railroad Company, Dakota, Minnesota and Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. operate.

Pursuant to 49 U.S.C. § 10742, CN is statutorily required to provide facilities for interchange of traffic. CN can meet this obligation by providing facilities where the two railroads connect or by designating a reasonable facility on its line and providing a free route to get there.² CN has done neither. Instead, CN now seeks to outsource its statutory responsibility to a third party railroad at CP's expense. Specifically, CN asks the Board to order, at least while this dispute is pending, that CP deliver CN's cars to the Belt Railroad of Chicago's Clearing Yard and that CP pay the trackage rights fees incident to Clearing. CN's request is contrary to both statute and precedent.³ In *Burlington*, as here, the receiving carrier sought to compel the delivering carrier to exercise its trackage rights to deliver cars to an intermediate terminal switching carrier. The U.S. Court of Appeals for the District of Columbia Circuit, affirming the ICC, held that a delivering carrier is under no obligation to exercise trackage rights on behalf of the receiving carrier to effect interchange; the exercise of trackage rights is permissive with their holder. Accordingly, CP cannot be compelled to exercise its trackage rights on the BRC in CN's favor.

Additionally, the reasons CN gives for why the Board should reevaluate are unsupported by the record and are pretextual. CN contends that the Board should reevaluate its status quo expectation based on the alleged harm that interchange at Spaulding is inflicting on the community as shown by a supposedly "full record." However, the record is by no means "full" as CN had presented blocked crossings data that is both stale and aggregated at such a high level so as to obscure the actual cause of the blockages that are of concern to the Bartlett community; namely blockages caused by CN's main line traffic and operational decisions. A full record would include more current and meaningful data, which CN has not provided. Nor does the record support CN's allegation that the Spaulding interchange is causing harm to the community or the proposition that removing the interchange will alleviate that harm.

As detailed in CP's June 10, 2019 response to the comments and letters filed by the Bartlett community, CN's main line operations and its operational decisions appear to be the predominant cause of the "harm" to the community. Over the past few years, interchange volumes have remained generally level and CP has switched to performing its interchange operations in the middle of the night when such operations are least likely to inconvenience the community. The vast majority of the specific comments received from the Bartlett community focus their ire on blocked crossings during the day. According to CN data, most of those blockages are due to CN mainline operations, e.g., trains waiting for a window to cross the Metra main line at Spaulding.

² *Norfolk So. Ry. Co.—Pet. for Declaratory Order—Interchange With Reading Blue Mountain & No. R.R. Co.*, STB Docket No. 42078, at 5 (Apr. 29, 2003) (citing *Burlington N. R.R. Co. v. United States*, 731 F.2d 33, 39 (D.C. Cir. 1984)).

³ See *Burlington*, 731 F.2d at 39 (citing, *Chicago, Rock Island & Pacific Railway v. Denver & Rio Grande Railroad*, 143 U.S. 596, 609, 12 S.Ct. 479, 483 (1892)).

In fact, the May 17, 2019 letter from Bartlett's Village President in addition to faulting CN for refusing to install signals that could "alleviate some of the hardship for [Bartlett] residents," identifies the principal cause of Bartlett residents' distress as the "significant increase in train traffic." This increase is borne out by the data. According to CP dispatch data (CP dispatches the Metra main line that crosses the CN mainline at Spaulding) and data CN previously reported to the STB in the Elgin, Joliet & Eastern Railway ("EJ&E") oversight proceeding, CN main line traffic has grown significantly. In June 2019, CN operated on average 23.3 trains daily through Bartlett, with a high of 30 trains in one day.⁴ CN reported an average volume of 18 trains for the same month in 2016 as compared to 5.5 trains moving through Bartlett when CN acquired the EJ&E.⁵ Further, CN recently forecasted an increase of four to five additional daily trains by the fourth quarter 2020 (previously, in December 2018, CN forecast nine additional trains in a U.S. Army Corps of Engineers permit application).⁶ CP believes that this forecasted increase in daily train volumes is the real reason that CN seeks to move the interchange location from Spaulding. Thus, if the interchange is moved from Spaulding, the result will be more trains and more blocked crossings through Bartlett, not fewer.

Lastly, CN ignores the implications for the fluidity of the Chicago Terminal of moving the interchange from just outside the Chicago Terminal at Spaulding to Clearing Yard within the Terminal. When the Terminal is fluid, interchanging at Clearing Yard should have little impact. However, the Chicago Terminal remains fragile. On those days when the Terminal is experiencing congestion, forcing even a relatively modest amount of cars into the Terminal will add to the congestion and could have catastrophic consequences for the rail system. Indeed, the Board approved CN's acquisition of the EJ&E based in part on CN's representation that the transaction would help to relieve congestion in the Chicago Terminal by enabling CN traffic to bypass Clearing Yard and the Chicago Terminal area.⁷ CN's current request that the Board compel interchange in the Chicago Terminal is inconsistent with CN's representations in that proceeding.

In sum, neither the law nor the record supports CN's request that the Board order CP to deliver cars to CN by delivering to the BRC at CP's expense. Rather, the law supports an

⁴ See attached Appendix A.

⁵ See Letter from Theodore K. Kalick to Lucille Marvin dated July 15, 2016, *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, STB Finance Docket No. 35087.

⁶ See CN's Reply to Petition to Reopen, *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 8), at 7 (filed April 29, 2019).

⁷ See *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, STB Finance Docket No. 35087, Slip op. at 5, 10 (served Dec. 24, 2008).

injunction maintaining the status quo unless and until CN designates a reasonable alternative interchange location and provides CP a free route to get there.

Respectfully Submitted,

/s/ David F. Rifkind

Counsel for Soo Line Railroad Company

cc: Parties of Record

APPENDIX A

CN DAILY TRAIN VOLUMES AT SPAULDING

JUNE 2019

Date	Trains
1-Jun	21
2-Jun	26
3-Jun	27
4-Jun	15
5-Jun	19
6-Jun	20
7-Jun	23
8-Jun	25
9-Jun	30
10-Jun	22
11-Jun	21
12-Jun	19
13-Jun	24
14-Jun	21
15-Jun	27
16-Jun	26
17-Jun	24
18-Jun	18
19-Jun	25
20-Jun	24
21-Jun	22
22-Jun	28
23-Jun	26
43640	16
25-Jun	23
26-Jun	24
27-Jun	23
28-Jun	24
29-Jun	27
30-Jun	28