

June 26, 2019

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BY E-FILING

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

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Office of Proceedings
June 26, 2019
Part of
Public Record

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

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find CN's Reply to
Barrington's Request for Oral Argument.

Sincerely,

/s/ David A. Hirsh
David A. Hirsh

*Counsel for Canadian National Railway Company
and Grand Trunk Corporation*

Enclosure

cc: Richard H. Streeter

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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

[Barrington Petition for Mitigation]

**CN'S REPLY TO BARRINGTON'S
REQUEST FOR ORAL ARGUMENT**

Canadian National Railway Company and Grand Trunk Corporation (collectively, “CN”) respectfully reply to the Request for Oral Argument filed by the Village of Barrington, IL (“Barrington”) on June 6, 2019. The Request for Oral Argument should be denied.

The Board grants oral argument only in exceptional circumstances, when it finds the written record insufficient to allow it to decide the issue before it.¹ That is not the case here. Additional argument is not needed to decide Barrington’s fifth Petition to Reopen.

As CN explained in its Reply, Barrington’s Petition to Reopen contains nothing that would “mandate a different result” from the Board’s 2008 decision.² Barrington’s Petition to Reopen, as well as its proffered surreply, largely rehash old arguments the Board and reviewing

¹ See, e.g., *Lassen Valley Ry. – Acquisition & Operation Exemption – Union Pac. R.R.*, Docket No. FD 35306, slip op. at 2 (STB served Nov. 30, 2010) (denying a request for oral argument because “[e]xcept in a small number of proceedings where oral hearing at the Board’s discretion appears warranted, we rely on a written record to decide the cases before us.”); *Rapid City, Pierre & E. R.R.—Acquisition And Operation Exemption—Dakota, Minn. & E. R.R.*, Docket No. FD 35799, slip op. at 5 (STB served May 14, 2015) (a request for oral argument will be denied where “the record is sufficient for the Board to adjudicate [a] matter”).

² Reply to Petition to Reopen at 9-12 (filed Apr. 29, 2019).

courts have repeatedly rejected. The record developed in this proceeding over the past 11 years – including the many filings by the parties related to Barrington’s multiple petitions, and the decisions of the Board and two Courts of Appeals denying those petitions – is clear and adequate for the Board to decide Barrington’s present Petition to Reopen.

Barrington’s Request for Oral Argument demonstrates no need for oral argument on its most recent Petition to Reopen. It focuses instead on excerpts from a new CN investor presentation and on claims of error in prior Board decisions that were later upheld by Courts of Appeal.³

The investor presentation it cites, like CN statements and press releases previously cited by Barrington, discusses CN’s growth, investment, and network capacity. As CN has explained, the facts that its traffic and investments are growing and that the former EJ&E line represents a valuable addition to its network capacity are neither new nor in any way contrary to the premises of the Board’s 2008 decision.⁴

Barrington’s attacks on the Board’s and courts’ prior decisions are without merit. Barrington attempts to challenge a decade of Board decisions by misrepresenting the facts and record. For example, Barrington claims that the Board ignored or overlooked arguments and evidence that the Board, in fact, addressed substantively and thoroughly.⁵ Barrington also

³ Request for Oral Argument at 3.

⁴ Reply to Petition to Reopen at 9-10 (filed Apr. 29, 2019); *see also* Reply to Illinois Department of Transportation and the Village of Barrington’s Petition Seeking Additional Mitigation and Reopening at 3-5, 6-7 (filed Jan. 30, 2017).

⁵ *Compare* Request for Oral Argument at 10 (“no attempt was made to confirm or discredit Barrington’s 2008 or 2011 conclusions”), with October 2017 Decision at 7 (discussing Board’s response to Barrington’s 2008 and 2011 evidentiary submissions); *compare* Request for Oral Argument at 6 (“if substantial delays associated with preexisting conditions had existed, OEA would have been able to document them in the DEIS/FEIS. That it was unable to do so speaks for itself.”), with FEIS at 3.4-241 (describing pre-transaction levels of service on roads in Barrington and concluding that the “results confirm that the community is already experiencing

rehashes its discredited comparison between the Board’s measurement of 2.49 hours of pre-transaction delay and Barrington’s broader and different measurement of post-transaction delays produced using a different methodology.⁶ As the Board and courts have explained, the comparison is apples-to-oranges, “of extremely limited value,”⁷ and provides no basis for questioning the Board’s approval decision.⁸

For the foregoing reasons, CN respectfully requests that the Board deny Barrington’s Request for Oral Argument.

Respectfully submitted,

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June 26, 2019

undesirable levels of delay”); *and id.* at Appendix A-102 (“Results of this analysis show that the major source of congestion in Barrington is the excess vehicle demand at existing major thoroughfare intersections.”)

⁶ See Request for Oral Argument at 5-6.

⁷ October 2017 Decision at 10 n.10; *Village of Barrington v. STB*, 892 F.3d 252, 271 n.13 (7th Cir. 2018) (“*Barrington III*”).

⁸ *Village of Barrington v. STB*, 758 F.3d 326, 329 (D.C. Cir. 2014) (“[B]ecause the new evidence projected less delay than the original evidence, the Board did not abuse its discretion in concluding that such evidence would not have changed its ultimate decision about requiring a grade separation.”); *Barrington III*, 892 F.3d at 271 (“The Village’s new 118-hour figure falls directly within the scope of those prior computations, and is actually *less* than the Village initially projected in 2008.”).

CERTIFICATE OF SERVICE

I certify that I have this 26th day of June, 2019, caused a true copy of the foregoing Reply to Barrington's Request for Oral Argument to be served by e-mail upon all known parties of record in this proceeding.

/s/ Matthew W. Ludwig