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VIA ELECTRONIC FILING

March 10, 2017

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

ENTERED
Office of Proceedings
March 10, 2017
Part of
Public Record

Re: *Illinois State Toll Highway Authority – Petition for a Declaratory Order,*
STB No. FD 36075

Dear Ms Brown:

On February 23, 2017 the Illinois Congressional Delegation submitted a letter in this matter to the Board in support of the positions taken by the petitioner Illinois State Toll Highway Authority, and in opposition to those of the respondent herein, Soo Line Railroad Company d/b/a Canadian Pacific (CP). CP did not receive a copy of the Illinois Delegation's letter to the Board until after we filed its substantive Reply Statement, which was due on that same day, February 23, 2017.

CP has replied directly to the Illinois Delegation and asks that a copy of that response, dated March 10, 2017 and attached hereto, be included in the record herein for the sake of completeness.

Sincerely,

/s/ Charles W. Webster
Counsel for Soo Line Railroad Company
d/b/a Canadian Pacific

cc (w/encl.): Lisa Madigan, Attorney General of Illinois
Molly J. Moran, Acting General Counsel, U.S. Department of Transportation
David Goldberg, General Counsel, Illinois State Toll Highway Authority
Christopher S. Perry, Senior Trial Attorney, U.S. Department of Transportation
Robert T. Lane, Senior Assistant Attorney General, Illinois State Toll Highway Authority
William M. Barnes, Chief Counsel, Illinois Department of Transportation
David F. Rifkind, Esq., Stinson, Leonard, Street
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The Honorable Tammy Duckworth
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The Honorable Raja Krishnamoorthi
United States House of Representatives
515 Cannon House Office Building
Washington, DC 20515

The Honorable Mike Quigley
United States House of Representatives
2458 Rayburn House Office Building
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The Honorable Bill Foster
United States House of Representatives
1224 Longworth House Office Building
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The Honorable Darin LaHood
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The Honorable Jan Schakowsky
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The Honorable Luis V. Gutierrez
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The Honorable Randy Hultgren
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The Honorable Danny K. Davis
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The Honorable Rodney Davis
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The Honorable Cheri Bustos
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The Honorable Robin L. Kelly
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The Honorable Daniel Lipinski
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The Honorable Bobby Rush
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2188 Rayburn House Office Building
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Re: Illinois State Tollway Authority/CP's Bensenville Yard

To the Honorable Members of the Illinois Congressional Delegation:

I am writing in response to your recent letter to the Surface Transportation Board (the Board) to offer our perspective regarding efforts of the Illinois State Tollway Authority (the Tollway) to take critical rail operating property in the heart of the national network.

CP¹ shares your concern regarding the future of the new expressway and western access to O'Hare Airport. We take an active interest in the communities where we operate and many of our customers are located. We also understand the importance of O'Hare Airport to the local economy and are familiar with road congestion in Chicago. The solution, however, is not to carve out a vital piece of the national rail network, creating even more rail congestion in the Chicago Terminal and undercutting the economic health of the network and in turn the national economy, which is what the Tollway is demanding. We see another way.

Rail is a key driver of both the national and the local economy. A recent university report found that rail created almost \$274 billion in economic activity, generated nearly \$33 billion in tax revenues and supported approximately 1.5 million jobs across the United States in 2014. And as you know, Chicago is the heart of the national rail system. Six of the seven Class I freight railroads interchange traffic at Chicago each day. Approximately 25% of all U.S. rail freight touches Chicago. In 2014, 15,000 cars each day were reportedly processed in yards in the greater Chicago Terminal. Daily, 500 freight trains and 800 passenger trains operate into and out of the Chicago Terminal. The ability of railroads to handle the large volume of traffic moving through the Terminal efficiently is critical to the national economy. Restriction of capacity in any of the major rail yards in Chicago, including Bensenville Yard, would have a profoundly adverse effect on fluidity in the Chicago Terminal, and correspondingly the national network. At a February 15, 2017 Senate Commerce Committee hearing, the Honorable Tammy Duckworth, in calling for improved rail infrastructure at Chicago, compared the Chicago Terminal to an artery, which when clogged causes the entire nation to suffer. We agree.

The problems observed by Senator Duckworth are not new, and as a result a variety of stakeholders have worked diligently for a number of years to address rail congestion and free up capacity at Chicago to meet the nation's current and future demand for rail service. The Class I freight railroads, including CP, have invested hundreds of millions of dollars in infrastructure improvements and thousands of hours in daily operational coordination. Further, the United States Department of Transportation, the State of Illinois, City

¹ Canadian Pacific (CP) is a trade name under which Canadian Pacific Railway Company's United States subsidiaries, Soo Line Railroad Company, Dakota, Minnesota and Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc. operate. Bensenville Yard and the trackage at York Road and Thorndale Avenue are owned and operated by Soo Line Railroad Company.

of Chicago, Metra, and Amtrak through the auspices of the Chicago Region Environmental and Transportation Efficiency ("CREATE") project have invested billions more dollars to improve rail infrastructure in Chicago. Many of you have been involved in supporting these efforts. The Tollway's singular alignment of a new expressway in our right of way and through Bensenville Yard runs counter to the concerted efforts, policies, and dollars that the public agencies and railroads involved in CREATE have spent and continue to spend to increase, not decrease, capacity at Chicago.

There are a number of misconceptions floating around in this matter which should be addressed. The proposed eminent domain taking of CP's right of way to build the Western Access Interchange would not, as the Tollway apparently claims, have little or no impact on CP operations. Quite the opposite. The right of way there is a vital part of a key rail corridor for us. It is also one of our few operating properties in the Chicago Terminal available for capacity expansion, and given its proximity to Bensenville Yard, is ideally suited for expansion. The Tollway's plans call for the complete shutdown of CP's rail operations for up to 14 hours on 19 different occasions which would cause significant and unacceptable operational disruption. As important, the Tollway's plans also call for temporary and permanent takings of CP's right of way which would deprive us of any ability to expand capacity within the right of way during construction, and severely limit or entirely prevent us from doing so after construction.

In addition to impact on us, the proposed takings for the Western Access Interchange are not as has been suggested, uncontroversial. In the course of my railroad career I have seen the federal government recognize the importance of protecting and preserving the national rail network and establish a strong federal policy to do just that. When the Interstate Commerce Commission was sunsetted, the federal government created the Surface Transportation Board and expressly preempted the type of state law action that is now being advanced by the Tollway. It's my understanding and experience that the courts and the Board have consistently decided that takings of rail right of way for another conflicting use, even rail right of way that is not in active use, are categorically preempted. In light of this, the Tollway request to take active rail right of way is extraordinary and, if allowed to proceed, would establish precedent that would undermine an important and longstanding federal policy. The larger policy issue aside, the proposed takings for the Western Access Interchange would cause significant disruption to operations on our railroad and interfere with our ability to meet demand for rail service now and in the future.

Next, if the Western Access Interchange is built as planned, CP will not, as the Tollway is counting on as it presses ahead with construction, change its position with respect to allowing an expressway to run through Bensenville Yard. Bensenville Yard is our only major rail yard in Chicago and is crucial to our operations as well as the operations of the larger national rail network. The proposed takings of nearly a tenth of CP's yard property along with the massive reconfiguration on a smaller footprint would be enormously disruptive and could have disastrous consequences for the Chicago Terminal and beyond. Further, such a reduction of capacity would significantly diminish CP's ability to meet future demand for rail service. Negotiating away irreplaceable rail capacity is not an option, nor is it a solution that serves the national interest.

In addition, completing the Western Access Interchange as planned is not, as the Tollway claims, in the public interest and will not protect federal investment in the project. Once built, the Western Access Interchange will lock alignment of the southern leg of the new expressway through Bensenville Yard in order to connect to I-294 south of the airport. If the Tollway proceeds with construction of the interchange as planned, either it will waste hundreds of millions, if not billions, of dollars more in building a project that cannot be completed, or it will harm CP's rail operations and the national rail network and jeopardize the

billions of dollars in public and private funds that have been spent to address rail issues in the Chicago Terminal. Neither outcome serves the public interest. If, however, the Tollway were to pursue an alternative alignment now, the public could realize the full benefits of the project, minimize delay, and perhaps even reduce project construction costs. For these reasons, we believe that the only responsible action, and the action that best serves the public interest and protects public money, is for the Tollway to pursue the alternative alignment.

I want to correct the record as to CP's participation in discussions with the Tollway. Our concern for the communities in which we live and work is why, when we were approached by the Illinois Department of Transportation in 2009, we offered at least to consider whether we could accommodate the Tollway's plans. But all discussions with the Tollway were premised on there being zero disruption to rail operations and no interference with our ability to expand capacity to meet demand for rail service. Throughout those discussions, CP identified numerous concerns, several of which are referred to in the Environmental Impact Statement issued in 2012 and in the Tollway's meeting minutes. These concerns have never been addressed to our satisfaction and therefore there has never been an agreement for CP to sell the Tollway the property it seeks to build either the Western Access Interchange or to complete the expressway through Bensenville Yard. It is unfortunate that the Tollway decided to forge ahead with construction without first securing the property rights needed to complete the project.

Lastly, CP is not, as the Tollway has asserted, standing in the way of western access to O'Hare Airport. Although the current proposed access is not acceptable, we believe that there are solutions which could provide airport access without disrupting rail operations, and without interfering with our ability to add capacity in our rail right of way, or setting the Tollway on a collision course with Bensenville Yard. Thus far, however, the Tollway has refused to consider such solutions and is asking the Surface Transportation Board to sanction that refusal.

We continue to believe that the Tollway should develop alternative designs, and if it did the project could move toward completion. I would be happy to discuss these issues further with you at a mutually convenient time if you think that would be helpful.

Sincerely,



Keith Creel,
President and Chief Executive Officer

cc: Honorable Bruce Rauner, Governor of Illinois
Robert Schillerstrom, Chairman Illinois State Toll Highway Authority
Cynthia T. Brown, Office of Proceedings, United States Surface Transportation Board