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July 12, 2019

By Electronic Filing

Allison C. Davis
Director
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
July 12, 2019
Part of
Public Record

Re: *Soo Line Railroad Company—Pet. for Declaratory Order and Preliminary Injunction—Interchange With Canadian National, STB Fin. Docket No. 36299*

Dear Ms. Davis:

CN submits this letter to inform the Board that the Board-mandated mediation that concluded on July 11, 2019, in the above-referenced proceeding was not successful. The mediation period was extended once at CN's request, but CN does not believe that further mediation can successfully resolve this dispute.

CN asks that the Board take the following two steps to move this proceeding forward: (1) establish an interim interchange arrangement at the Belt Railway Company's Clearing Yard on the terms CP itself proposed on May 6; and (2) set a procedural schedule for the parties to provide supplemental evidence.

First, the Board should promptly establish an interim interchange arrangement where CP will deliver all CN-bound interchange cars to the existing CP-CN interchange at Clearing Yard. CN's termination of the Spaulding interchange agreement was effective on May 11, 2019. For over two months interchange has been proceeding at Spaulding, pursuant to the Board's May 9 decision stating that the Board expected interchange at Spaulding to continue during mediation. As CN has explained, this expectation should be lifted. Moving the interchange would minimize the harm caused by continued interchange operations at Spaulding, including daily extended blockages of CN's single-track main line and of nearby at-grade crossings of Spaulding Road, Bartlett Road, and Stearns Road. And CP had already agreed as an operational matter to move the interchange of CN-bound traffic from Spaulding to the existing CP-CN interchange

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at Clearing.¹ The Board should not continue to require interchange at Spaulding while it resolves the purely financial dispute over which railroad is required to pay Belt Railway switch fees for interchanging at Clearing.

CN is willing to accept the interim terms proposed by CP in its May 6 letter to the Board, where CP said that as an “alternative[]” to its request for continued interchange at Spaulding, “CN can assume responsibility for the BRC trackage rights fees, or the Board can order CN to assume such responsibility at least for the pendency of the proceeding subject to such further relief as the Board may deem necessary and appropriate.”² Specifically, for the pendency of this proceeding, CN will agree to pay Belt Railway’s per-car switch fees for interchange traffic that is relocated to Clearing from Spaulding, pending a final ruling from the Board about which party is ultimately responsible for these switch fees. CP and CN, along with other Class I railroads, are co-owners of the Belt Railway. Exhibit 1 is a letter from CN to CP formally accepting CP’s May 6 proposal and designating Clearing as an interchange location for CN to receive these additional cars from CP.

CN’s acceptance of CP’s May 6 proposal plainly provides a reasonable framework for an interim arrangement, and the Board should establish the interim arrangement that CP itself proposed in May. When it does so, the Board also should deny CP’s pending motion for a preliminary injunction as moot. As CN has explained in prior filings, CP’s motion fails to meet the requirements for granting a preliminary injunction.³ In particular, CP cannot establish the irreparable harm that is a required statutory finding for any Board injunction.⁴ In the wake of CN’s agreement to front the payment for the Belt Railway switch fees pending a final Board determination, there is no justification for the Board to expect the carriers to continue interchange at Spaulding.

Second, the Board should set a procedural schedule for the parties to present evidence on the remaining issues in the proceeding. The primary remaining dispute in this case is whether CN is required to pay for Belt Railway switching fees for CP’s delivery of CN’s additional interchange cars at Clearing. But that issue has not

¹ See CN Letter at 1-2, STB Fin. Docket No. 36299 (filed May 29, 2019).

² See CP Letter at 2, STB Fin. Docket No. 36299 (filed May 6, 2019).

³ See CN Reply to Motion for Preliminary Injunction, STB Fin. Docket No. 36299 (filed May 3, 2019).

⁴ See *id.* at 10-12.

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been addressed in detail in either party's prior briefing, which focused on CP's preliminary injunction request and its request for an order "enjoining CN from refusing to receive cars in interchange from CP at Spaulding."⁵ CN believes it would be appropriate for each party to present its position on the remaining issues in this case in supplemental briefing. CN suggests that the Board order simultaneous supplemental briefs to be submitted on August 30, 2019.

Sincerely,

/s/ Matthew J. Warren

Enclosure

cc: Parties of Record on Service List

⁵ CP Petition for Declaratory Order and Preliminary Injunction, at 13, STB Fin. Docket No. 36299 (filed Apr. 30, 2019).

EXHIBIT 1



Southern Region

Michael Matteucci
Region Director Contracts and
Administration

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July 12, 2019

VIA EMAIL

Mr. Chuck Hubbard
Director Interline and Passenger – South
Canadian Pacific
1010 Shop Road
St. Paul, MN 55106

Dear Mr. Hubbard,

On March 11, 2019, CN terminated the Spaulding interchange agreement between Soo Line Railroad Company d/b/a Canadian Pacific (CP) and the Wisconsin Central Ltd (CN). On the same day, CN designated Kirk Yard in Gary, IN as the location for it to receive interchange traffic from CP. In response to CP's willingness to bring CN's cars to the Belt Railway Company's Clearing Yard rather than Kirk Yard, CN also designates Clearing Yard as a second location for CN to receive interchange traffic from CP. CN is willing to receive traffic from CP at either Kirk or Clearing. CN will deliver CP-bound interchange traffic to CP's designated interchange receipt point at CP's Bensenville Yard via the Indiana Harbor Belt at CN expense, or at CN's election, CN will deliver the cars to the BRC at Clearing and pay the BRC switch fees under the Owner's Agreement.

On an interim basis during the pendency of CP's proceeding at the Surface Transportation Board (STB), CN is willing to accept the terms CP set forth in its May 6 letter to the STB. Namely, CN will pay 100% of the BRC switch fees for cars CP delivers to CN at Clearing that would have been previously interchanged at Spaulding, with the understanding that CP will reimburse CN if the STB finds that CP is responsible for all or some of those BRC switch fees. This agreement does not include BRC switch fees for cars CP had previously been delivering to CN at Clearing—such as TIH/PIH traffic or other hazardous materials requiring secure handoff or traffic that a customer has requested to be delivered to Clearing. CN will maintain accounts of all fees paid to the BRC under this proposal and will tender a full accounting to CP at the close of this proceeding.

CN is contemporaneously filing a letter with the Board informing them of the failure of the parties to reach a mediated settlement. CN is appending this communication to that letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Matteucci', with a stylized, cursive script.

Michael Matteucci