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Before the

SURFACE TRANSPORTATION BOARD

Finance Docket No. 35087 (Sub No. 8)

ENTERED
Office of Proceedings
May 16, 2017
Part of
Public Record

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK

CORPORATION – CONTROL – E J & E WEST COMPANY

**PETITION SEEKING RECONSIDERATION OF
DECISION OF THE SURFACE TRANSPORTATION BOARD**

SERVED APRIL 26, 2017

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Dated: May 16, 2017

**FILED
May 16, 2017
SURFACE
TRANSPORTATION BOARD**

**FEE RECEIVED
May 16, 2017
SURFACE
TRANSPORTATION BOARD**

The Village of Barrington, Illinois (Barrington), pursuant to 49 C.F.R. § 1115.3, files this petition for reconsideration of the Board's April 26, 2017 Decision that denied the joint petition to reopen filed January 13, 2017, by Barrington and Illinois Department of Transportation (IDOT). This petition for reconsideration also respectfully requests that the Board allow new traffic delay evidence -- that was performed in February 2017 -- to be introduced into the record of the proceedings to facilitate the Board's proper consideration of recent vehicle delay conditions on U. S. Hwy. 14 at the rail line. Although it disagrees with the Board's refusal to extend the oversight period, Barrington only requests the Board to reconsider its decision not to require CN to pay the remaining \$37 million cost to complete the construction of a grade separation at the intersection of U.S. Hwy. 14 and the EJ&E Line in Barrington.

Summary of Argument

Petitioner acknowledges that the record of these proceedings since 2008 is lengthy and complex, but it relies on the Board's interest in coming to a just and fair decision in this matter in urging it to dig into that record and respond with specificity to the matters addressed in this petition for reconsideration.

It is respectfully submitted that per the language of the Board's April 26, 2017 Decision, denial was hinged on the factually unsupportable conclusion that the intersection of U.S. Hwy. 14 and the EJ&E Line "did not meet the Board's criteria for a 'substantially affected' crossing or a grade separation mitigation condition, as any traffic issues would be primarily the result of

preexisting conditions.” That basic premise, which is traced to the Board’s *2008 Final Decision*, in F.D. 35087, slip op. at 45 & n.101, is repeated in the April 26 decision at slip op. at 2, 3, 5, and 9, constitutes current material error, and cannot be factually supported by the entire record of these proceedings.

The consequences of that error have been recognized by multiple Federal, State, and regional transportation authorities. These authorities include the U.S. Department of Transportation, the Federal Highway Administration, IDOT, and the Chicago Metropolitan Agency for Planning (CMAP). All have recognized that the need for a grade separation at U.S. Hwy. 14 is solely attributed to the Board’s approval of CN’s acquisition of the EJ&E Line and had nothing to do with preexisting traffic conditions at U.S. Hwy. 14. As they have recognized through their continuing efforts to secure taxpayer funds for the project, the need for a grade separation is based on CN’s actual freight operations that are creating regional vehicular congestion that is not driven by isolated instances of 10-minute delays, or by unusual occurrences. Instead, the need for the grade-separation is driven by the normal daily operations of CN freight movements and the current reality that the lack of a single grade crossing within Barrington is having a continuous, daily adverse impact that is not and cannot be attributed to preexisting roadway conditions.

In reviewing this matter, the Board is asked to note that no one is contesting the merits of the Board’s approval of the underlying transaction. Approval of the transaction has unquestionably facilitated CN’s ability to achieve record earnings and dramatically lower its operating ratio to the lowest

point in CN's long history. Moreover, all parties acknowledge the transaction has eased some rail congestion in the greater Chicago area.

However, the transportation and planning authorities recognize that while CN's operations have created the need for the grade separation, CN has not contributed a dime to mitigate the congestion at the intersection of U.S. Hwy. 14 and the EJ&E Line caused by its 2009 purchase transaction. As early as December 2011, CMAP advised the Board that there is a "very valid concern regarding the fairness of how costs for mitigation are being allocated between CN and the affected communities." Letter to Cynthia Brown from Randall S. Blankenhorn¹, Executive Director, CMAP, dated December 13, 2011. Because the Board has refused to address that concern, American taxpayers have been compelled to provide funding in excess of \$17.5 million to mitigate a problem that can only be attributed to the Board's approval of CN's transaction and CN's subsequent operations on the rail line.

The Board should bear in mind that the use of taxpayer funds to clean up the mess created by CN's expanded operations diverts critical funds from other transportation programs of national significance. As CMAP advised the Board in a letter dated December 22, 2008, it had significant concerns that the Board's decision would have an impact on the Chicago Region Environmental

¹ Mr. Blankenhorn is now the Secretary of the Illinois Department of Transportation.

and Transportation Efficiency (CREATE) Program. As CMAP explained, its concerns stemmed, in part:

from the diversion of scarce resources that will be necessary to mitigate the negative impacts on local communities of the CN's acquisition of the EJ&E. Additionally, regional resources for freight improvements and for improving the fit between rail services and local communities have been set aside for CREATE, not the EJ&E. Diverting state, regional and local resources on improvements to facilitate CN control of the EJ&E is not consistent with the 2030 Regional Transportation Plan for northeastern Illinois at this time.

The ultimate irony is the acquisition of the EJ&E has permitted CN to pull its funding for CREATE projects while avoiding much of the congestion through Chicago that other railroads must endure. However, by siphoning scarce public resources away from CREATE – as it already has -- CN is simultaneously harming the public and the railroads that benefit from the CREATE program.

No one is asking CN to reimburse U.S. taxpayers for the funds that have already been committed to the construction of the grade separation. As the Board noted in its decision of April 26, 2017, the commitment of public funds has allowed Barrington to reduce its request for funding from CN to construct the grade separation from \$60+ million in 2011, to \$47 million in 2015, to \$37.5 million currently. Plainly, CN is only being asked to contribute a fair share of the construction costs by covering the remaining 58% of costs to complete this \$68 million project. Such result is consistent with the Board's

requirement that CN pay a fair share of grade separations in Aurora and Lynwood, Illinois.

As Barrington and transportation planners have argued, the transaction and CN's subsequent operations adversely impact thousands of U.S. citizens who must daily cross the EJ&E line to get to their jobs, schools, hospitals, restaurants and stores. Because nearly 31,000 vehicles per day cross over the intersection of U.S. Hwy. 14 and the EJ&E track, there is no justification for the Board's repeated refusal to consider the interests of American citizens and taxpayers. By ignoring those interests, the Board has allowed CN to enrich itself at the expense and inconvenience of American citizens and taxpayers.

Finally, the Board is requested to note that its refusal to compel CN to contribute its fair share of the cost of the grade separation cannot be squared with the directive of the President of the United States that departments and agencies of the United States government are to ***"protect every last American and every last tax dollar."*** Because that directive was announced on February 22, 2017, while the Board was considering the latest series of pleadings, why was it ignored?

Without question, the Board's decision reflects an unwillingness to protect American citizens whose daily lives have been disrupted by lengthy queues and hundreds of hours of delay attributed to the absence of a grade separation involving a major Strategic Regional Arterial (SRA) in the northwest suburbs of greater Chicagoland. Clearly, by refusing to compel CN to pay a fair

share of the cost of constructing the grade separation, the Board's protection of CN's financial interests at the expense of American taxpayers is inconsistent with the President's directive.

1. The claim that U.S. Hwy. 14 did not meet the Board's three criteria for a "substantially affected" crossing or grade separation mitigation condition is based on multiple material errors repeated time and again by the Board both before and after approval.

Petitioners have no desire to rehash old evidence. However, they must respond to the Board's April 26, 2017 decision and state clearly that the record of these proceedings since 2008 demonstrates that Barrington's U.S. Hwy. 14 ***did and does*** satisfy two of the three threshold criteria to be considered "substantially affected." As a result, it is necessary to address the Board's erroneous contentions in the April 26, 2017 denial decision point by point.

At Pages 2 and 3 of the April 26, 2017 Decision, the Board insists that U.S. Hwy. 14 was not given a grade separation because "*vehicle delays were primarily attributable to preexisting traffic conditions.*" (Emphasis added). This claim flies in the face of the STB's own data from the NEPA process and all evidence that Barrington and Barrington/IDOT has raised prior to the Board's approval of the transaction and during the oversight period. The Board has never even attempted to explain that incredible contention in light of its own analysis presented in Appendix A (at page 482) of the 2008 FEIS that states that the minutes of delay at the U.S. 14 Hwy. crossing would be 149.4 minutes (2.49 hours) under the no action scenario and 1907.2 minutes (31.78 hours) under CN's control of the EJ&E rail line. Nor has the Board ever explained

why Barrington's 2008 traffic study or its 2011 traffic study (undertaken during the oversight period when CN actually controlled operations on the EJ&E) showing a delay of 98 hours at that crossing would not have *"materially altered the board's conclusions in the 2008 Final Decision regarding appropriate mitigation."* When projected delays at a specific crossing go from 2.49 hours under the no action scenario to 98 hours as a result of the action, it demonstrates that the vehicular delays are NOT "primarily" attributable to pre-existing conditions.

Despite ignoring Barrington's 2008 and 2011 traffic studies, the Board now states that *"while Petitioners question the accuracy of CN's original speed and train length projections, ... they do not quantify the operational data they have collected to show that U.S. 14 now meets the Board's criteria for a grade-separated crossing."* Slip op. at 8 (emphasis added). How many studies must Petitioners conduct? As the Board observed at n. 11, Petitioners' arguments were based on two different VISSIM studies conducted in 2008 and 2011, as well as a data collection effort detailing CN operations in 2015 and 2016 by Village staff and verified as accurate by Civiltech. These efforts conclusively prove that the 2008 assumptions that trains running through Barrington would average 6,829 feet in length and would travel at an average speed of 40 miles per hour, are erroneous.

In fact, in this Petition for Reconsideration, Petitioner proffers new evidence into the record of these proceedings that demonstrates that the hours of delay now experienced at the intersection of U.S. Hwy. 14 and the EJ&E has

increased to 118 hours of daily delay based on an extrapolation of the 2015/2016 data that was submitted in the original January 13, 2017 Barrington/IDOT petition for reopening. These calculations were made by two Illinois engineering firms (Civiltech and Transystems) after Barrington was notified by former IDOT staffer John Fortmann (who took the lead on this project prior to retiring from IDOT and moving to Transystems) that there were Illinois grant monies available under the CMAP FY 2017-2021 Congestion Mitigation Air Quality (CMAQ) grant program. Mr. Fortmann informed the Village planning staff that the U.S. Hwy. 14 grade separation project could likely qualify but that providing updated crossing delay numbers was advisable. Within a week, data extrapolations were made based on Barrington's 2011 VISSIM analysis but using the 2015 and 2016 data sets. These updated calculations show that the hours of delay at U.S. Hwy. 14 has increased from 98 hours in 2011 to 118 hours as of spring 2016. These calculations were performed at some point between February 8 and February 17, 2017 when the CMAQ grant application was submitted to CMAP.

Clearly, when Barrington and IDOT presented the 2015/16 CN operational data in its January re-opening petition, the Board could have used it in a new VISSIM analysis of its own, but chose not to do so. If it had done so, it would have been able to reach the same conclusions that were reached in February of this year in support of the CMAQ grant application. How is it credible to remain silent on this issue despite compelling 2008 and 2011 evidence based on VISSIM analyses showing that no action daily delays would

amount to under 3 hours, while CN operations result in markedly more hours of delay each and every day? The recent data sets prove that there is an 4639% increase in vehicular delay that would not exist absent CN's trains running through Barrington. As a point of comparison, the data from the FEIS (at pages 483 and 487 of Appendix A) showed that the two crossings that did receive grade separation relief had traffic delay crossing increases amounting to only 286% in Aurora at US Highway 34 and 668% in Lynwood at U.S. Highway 30, yet they were not penalized by the Board for existing traffic congestion when awarded grade separations.

Furthermore, the Board's suggestion that Barrington has solely relied on evidence showing that the U.S. Hwy. 14 has experienced levels of traffic that exceeded the threshold of 40 hours of additional delay ignores evidence of record that also reflects the adverse effects on queue lengths at other Barrington crossings, as well as on U.S. Hwy. 14 – the second Board criteria for defining a crossing as “substantially affected.” By focusing solely on the vehicular delay criterion in its April 26, 2017 Decision, the Board disregarded the 2008 findings of HDR, its own environmental consultant for the transaction, that readily acknowledged the excessive queues that are attributed to the transaction that would plague drivers who use U.S. Hwy. 14 on a daily basis. The *Village of Barrington Traffic Operational Analysis* (VOBTOA), prepared by the Board's consultant HDR and released on December 5, 2008 as part of Appendix A of the FEIS, specifically acknowledged the extensive queue lengths at U.S. Hwy. 14 resulting from CN's projected operations.

Recognizing the weakness of the simplistic methodology it employed during the NEPA process in evaluating crossings that would be considered “substantially affected,” HDR employed sophisticated VISSIM software to create the VOBTOA the Board released just three weeks before approving the transaction. However, the “peak-period” approach HDR employed narrowly focused on only four hours of the day and did not address the remaining twenty hours of the day. At page 82 of that report, HDR reasoned as follows:

Under the Proposed Action scenario, the maximum eastbound vehicle queue length at the railway/highway at-grade crossing increased zero to 700-feet or an increase of 700 feet over the No Action scenario. ...In the eastbound direction, queues caused by the blocked crossing dissipated after approximately six (6) minutes; however, queuing in the westbound direction remained for over twenty (20) minutes due to the high volumes traveling in this direction during the PM peak period and existing capacity constraints at the intersection of Northwest Highway (U.S. Highway 14) and Hough Street. Under the Proposed Action scenario, the average westbound vehicle queue length increased by from 1,600 feet to 3,700 feet for an increase of 2,100 over the No Action scenario.

Assuming that an average large passenger vehicle will be approximately 15 feet in length, a queue of 3,700 feet (or 7/10's of a mile) will contain about 246 automobiles. Because HDR failed to monitor the entire time it took to eliminate the P.M. queue because it existed outside of the “peak hours” study window, HDR understated the queue’s impact. Furthermore, by failing to study the entire day so that it could present a study that corresponded with the period used by the Board to evaluate substantive effects as it did at all other crossings on the EJ&E, HDR did not examine queues that develop during

periods other than peak hours. While the impact of queues that accompany trains that pass through Barrington during the major part of the day may not be as pronounced as those encountered during peak periods, lengthy queues happen throughout the day.

In its 2011 *CN Railway Traffic Impact Study Update* that by necessity addressed the Board's erroneous 2008 VOBTOA analysis, Civiltech, which was Barrington's consultant, noted at 5, that:

During peak hours, the analyses predicted queue length increases of 1,550 feet for the IL Route 59 crossing and 2100 feet for the U.S. Route 14 crossing* as a result of the Acquisition. In fact, at the U.S. Route 14 crossing, the VISSIM simulation showed that the queue created by a single train event in the P.M. peak hour failed to dissipate 20 minutes after the train passed, at which time the simulation was stopped.*
(* Foot notes omitted).

Civiltech's 2011 study also rebutted HDR's ***erroneous and unsupported*** conclusion that:

Construction of a grade separation at Hough Street and the EJ&E will not prevent traffic queues on Hough Street, Northwest Highway or Main Street/Lake Cook Street. Therefore construction of a grade separation alone at either the Hough Street or Northwest Highway crossings is not a feasible way to address regional congestion due to capacity constraints at existing signalized intersections.

As Civiltech explained at p. 22 of its study, based on its own VISSIM modeling that focused on 24 hours of the day:

The VISSIM modeling in Barrington predicted a substantial benefit to the Village roadway network as a result of grade separating the U.S. Route 14 crossing.

That grade separation would reduce 2015 total 24-hour vehicle delays on both IL Route 59 and U.S. Route 14 **to nearly the levels expected under the No-Acquisition scenario.** (Emphasis added).

It remains unclear to Barrington why the Board has always refused to acknowledge its consultant's 2008 conclusions on queue length or Barrington's 2011 VISSIM traffic delay analysis. Instead, the Board has ignored the queue lengths in Barrington that indicate a high level of transaction-related vehicular queuing that blocks two other intersections in the Village (Lake Zurich Road and Hough Street/IL 59) that also have grade level crossings over the EJ&E Line.

As the foregoing demonstrates, the U.S. Hwy. 14 crossing satisfies two of the three criteria to show that it is substantially affected. Having satisfied at least two of the threshold criteria, the Board is urged to reconsider the applicability of its statements (slip op. at 5) that "exceeding one of the threshold criteria was not by itself a basis for the Board to impose mitigation. Instead, the Board considered several factors in determining whether a given crossing received mitigation." In support of its reasoning, the Board wrongly identified preexisting congestion as the primary factor that caused it to deny grade-separation mitigation to Barrington at U.S. Hwy. 14.

Although the Board has repeatedly relied on the determination in the *2008 Final Decision* that the post-transaction traffic conditions that have plagued the U.S. Hwy. 14 crossing were caused by preexisting conditions, the Board has never explained the basis for that determination. As noted above,

the record demonstrates that prior to the transaction, OEA determined that the total vehicle traffic delay at the U.S. Hwy 14 crossing was a mere **2.49 hours** (or 149.4 minutes).

Because the expanded CN operations constitute the only changed variable that has affected U.S. Hwy. 14 since 2008, the assertion that the **current** U.S. Hwy. 14 crossing issues can be blamed on preexisting conditions cannot be supported. The simple fact of the matter is that the 2008 determination lacks plausibility, is irrational, and cannot withstand even casual scrutiny. There is no way that pre-existing delays totaling only 2.49 hours can be rationally linked to the increase of 118 hours of daily delays at the U.S. Hwy. 14 crossing absent CN's expanded operations. The only rational explanation for such a substantial increase in additional hours of delay and greatly expanded queue lengths must involve the transaction approved by the Board. In sum, the huge increase in delay, as well as greatly expanded queues during "peak periods" had nothing to do with preexisting conditions, but instead has resulted from CN's acquisition of the Class II EJ&E and its greatly expanded operations on the line.

Given that the threshold criterion for satisfying the total amount of delay criterion was only 40 hours, the 118 hours of additional delay presented to the Board now almost triples the threshold criterion of 40 hours of delay.

If the Board is to rely on its 2008 determination even in 2017, it should provide some explanation as to why neither Barrington's 2008 VISSIM traffic

study nor its 2011 VISSIM traffic study (undertaken during the oversight period when CN actually controlled operations over the EJ&E Line) would not have “materially altered” the Board’s determination in the *2008 Decision*. The Board should now accept and take into account these recent February 2017 traffic delay calculations as well. The failure to provide a reasoned explanation as to why three traffic delay calculations proffered by Barrington from 2008, 2011 and 2016 -- that all grossly contradict HDR’s calculations from 2008 -- constitutes material error, and appears to meet an arbitrary and capricious standard.

Petitioners respectfully contend that the Board cannot rationally explain why Barrington’s 2011 study, as well as its earlier 2008 study were never refuted as to their accuracy. In fact, both disproved the Board’s unsupported determination, upon which the Board continues to rely, that the traffic flow over U.S. Hwy. 14 in Barrington was primarily due to preexisting roadway capacity. Simply put, despite what the Board stated on April 26, 2017, there is no avoiding the conclusion that the transaction approved by the Board was the sole source of the additional vehicular delays now totaling 118 hours.

The Board’s attention is once again invited to Civiltech’s 2011 study that was submitted in totality in the record of the proceedings, which accurately anticipated the current situation. In that study, Civiltech assumed that 20 trains a day would pass through Barrington at a speed of 32 miles per hour. The trains would average 5,500 feet. Petitioner respectfully submits that the Board could have rationally anticipated that if twenty 5,500-foot long train

were projected to generate 98+ hours of additional daily vehicular delay in 2011, the hours of delay would necessarily be even longer under the scenario in which CN operates twenty trains that are 7,500 feet in length (or longer), *and* that move at speeds under 30 miles per hour (consistent with CN's 2017 recent revelation that it has placed a speed limit of 30 mph on trains moving through Barrington.)

2. The Board's focus on 20.3 trains as the only causative factor in traffic delay assumptions is overly narrow.

Petitioner must also contest the Board's unsubstantiated statement "that the traffic volumes on the EJ&E line have been and continue to be lower than the projected levels relied upon by the Board in its *2008 Decision*." That statement ignores the fact that even if the "magic" number of 20.3 trains has not yet been reached, the total number of rail cars that currently are daily pulled through Barrington has greatly expanded during the Board's oversight period. In 2008, it was projected that the average number of cars in a 6,829-foot train would be 112 cars that averaged 60.97 feet each in length. As discovered in the course of the 2015/2016 data collection effort, 75% (or 288) of the CN trains that were observed moving through Barrington in April 2016, were longer than 6,800 feet, while 19% (or 72.96) of the trains were longer than 10,000 feet. Assuming the same average length of 60.97 feet per car, each of the 10,000 foot trains would have contained 164 cars.

In other words, 72 trains that were at least 10,000 feet in length would have involved approximately 11,808 cars. Given the projected level of 112

projected cars per train in April 2008, it would have required an additional 33 trains that were 6,800 feet long to move those 3,744 additional rail cars. As this demonstrates, the Board's assumption that the number of trains operating through Barrington is lower than the levels projected in 2008 must be viewed with extreme skepticism and reconsidered. If the Board had conducted its own study during the oversight period in response to the 2017 Barrington/IDOT petition and compelled CN to provide information regarding the length of the trains that it operated during the past year on a daily basis, Petitioners submit that the Board would have no choice but to revise its conclusion regarding the actual volume of freight cars operating through Barrington and its impact on vehicular traffic.

At the same time, the reduction of the 2008 projected operating speed from 40 mph to 30 mph – a 25% decrease in speed-- when coupled with longer trains, would necessarily increase the hours of daily vehicular delay at the U.S. Hwy. 14 crossing attributed to the transaction. For the Board to irrationally refuse to accept the simple fact that preexisting daily delays were only 2.49 hours prior to the transaction and nothing else has changed, other than CN's expanding use of the EJ&E track to avoid the congestion in Chicago, there is but one reason for a 4639% vehicle delay increase, namely the transaction.

Because Civiltech's 2011 analysis assumed only 20 daily trains, the adverse impact can be expected to increase when CN finally decides to increase its daily number of trains. Of course, because CN was aware of the Board's focus on the projected 21.3 trains per day, it made sense for CN to run fewer

trains and, whenever possible, extend the average length of each train by several thousand feet. From a purely business perspective, that approach would also lower CN's average cost per train by eliminating labor and other operational costs associated with the movement of multiple shorter trains. As Michael A. Cory, CN's COO and Executive V.P., stated during CN's Q1 2017 Earnings Call on April 25, 2017, "We're trying to run the biggest heaviest train in line with meeting customer demand." That statement plainly applies to the movements over the EJ&E.

3. The Board's treatment of future traffic volumes is shortsighted.

Although the Board has chosen to accept CN's claim that expansion of the Port of Prince Rupert (PPR) terminal is uncertain, recent press releases overwhelmingly have pointed to a continuing increase in CN movements through both the Port of Prince Rupert and the Port of Mobile. In particular, the Board's reliance on CN's claim that the expansion of a terminal at Prince Rupert is uncertain is repudiated by an article entitled *British Columbia ports expand to attract more US cargo*, published May 7, 2017. That article reports that Prince Rupert is taking the lead in expanding its physical capacity and "in August will officially open its second container berth." With that expansion, the capacity at Prince Rupert's container terminal will be increased by 1.35 million TEUs by the third quarter of 2017. As the article also notes:

The port also is receiving three new super-post-Panamax cranes for its new berth, which will allow it to handle mega-ships holding containers 25 rows wide. The new berth also will have direct access to the on-

dock rail operation that receives two inbound trains each day and sends two trains outbound for 14 intermodal train call each week.

Those trains will all be CN trains because CN is the only Class I railroad serving the Port of Prince Rupert.

CN's claim before the Board that Prince Rupert expansion is uncertain is further undermined by comments made in CN's April 25, 2017 Earnings Call.

As Jean-Jacques Ruest, CN's CMO and Executive Vice-President noted:

By the time we get to summer, Deltaport and Dubai Port and Rupert will have their expansion come in. So you're roughly talking in both cases 0.5 million TEU rail capacity in both cases available for us to **go and grow**. Along that, we are expanding our terminal in the U.S., we're expanding our terminal in Memphis, the one in Detroit, and we're also expanding Joliet. (Emphasis added).

The Board should be aware that to reach Joliet and Memphis from the north, CN trains would most likely go through Barrington. Later in the call, Mr. Ruest commented that CN is experiencing a lot of great long-haul business success, including "crude to the Gulf." This clearly indicates that CN is looking to the future in terms of the upswing in Canadian shipments of crude oil.

Moves to the Gulf are only part of the equation. As other recent articles and previous CN earnings calls have highlighted, since 2015, CN has been actively marketing both Mobile and New Orleans as gateways for shipments to U.S. Midwest locations. See, <https://seekingalpha.com/article/4064139-wal-marts-new-distribution-center-alabama-eventual-boon-canadian-national>.

Because movements to and from the Gulf move through Barrington, the Board should also note the candid comments of Ghislain Houle, CN's CFO and EVP, during the April 25, 2017 Earnings Call. "Remember, you hear a lot of our peers complaining about congestion in Chicago, and this is where our EJ&E line, which is fully connected with our network is helping. So we love Chicago, we like it, and that we're very fluid, and we'll be fluid for the next 50, 75 years in Chicago." The Board can rest assured that the CN love is not for the congested rail system in Chicago, but rather for the beautiful bypass of Chicago known as the EJ&E Line.

Mr. Ghislain's candid assessment of the importance of the EJ&E to CN's future speaks volumes in terms of the future impact on Barrington. The Board must address the harm that will only intensify as CN takes full advantage of the great bargain that it cut by purchasing the EJ&E Line from U.S. Steel.

Conclusion

In the final analysis, and wholly aside from its failure to adhere to the President's directive, the Board's refusal to take a hard look at the actual consequences of its action and proactively correct the adverse impacts of its decision on U.S. citizens and taxpayers that are contrary to the public interest is inexplicable. The Board materially errs by continuing to adhere to the implausible conclusion that the intersection of U.S. Highway 14 and the EJ&E Line "did not meet the Board's criteria for a 'substantially affected' crossing or a grade separation mitigation condition, as any traffic issues would be primarily

the result of preexisting conditions.” For this reason, Petitioners must respectfully request the Board to accept the new February 2017 calculations based on 2015/2016 CN operational data, and right a long-standing wrong by reconsidering and reversing its April 26, 2017 Decision which forces American citizens and taxpayers to fund the construction of a grade separation that, had it not been for the Board’s approval of CN’s acquisition of the EJ&E, would not be needed.

Respectfully submitted,

/s/ Richard H. Streeter

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Dated: May 16, 2017

CERTIFICATE OF SERVICE

I, Richard H. Streeter, certify that I have this 16th day of May, 2017, served a true copy of the Petition for Reconsideration filed by the Village of Barrington, IL, by e-mail, upon:

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All other parties of record were served by first-class, postage prepaid mail.

Richard H. Streeter /s/

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