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

**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 Petition Seeking Reopening & Imposition of Additional Mitigation Pursuant to the Board's Governing Regulations.

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
PETITION SEEKING REOPENING & IMPOSITION OF ADDITIONAL
MITIGATION PURSUANT TO THE BOARD'S GOVERNING REGULATIONS**

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**BEFORE THE
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**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
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PETITION SEEKING REOPENING & IMPOSITION OF ADDITIONAL
MITIGATION PURSUANT TO THE BOARD’S GOVERNING REGULATIONS**

Respondents Canadian National Railway Company and Grand Trunk Corporation (collectively, “CN”) respectfully reply to the “Petition Seeking Reopening & Imposition of Additional Mitigation Pursuant to the Board’s Governing Regulations” (“Petition” or “Pet.”) filed by Petitioner the Village of Barrington, IL (“Barrington”) on August 8, 2018.

SUMMARY

Barrington once again petitions the Board to reopen its 2008 Final Decision and order CN to pay for a grade separation between the EJ&E rail line and U.S. Route 14 (also known as Northwest Highway) in Barrington. The Board has explained at length in six prior decisions why Barrington’s requested relief was not appropriate.¹ The Board’s decisions dismissing

¹ See Final Decision (served Dec. 24, 2008); Decision served Nov. 8, 2012 (denying Barrington’s 2011 petition for reopening); Decision served May 15, 2015 (denying Barrington’s 2014 petition for reopening); Decision served Nov. 4, 2015 (denying Barrington’s petition for reconsideration); Decision served Apr. 26, 2017 (denying Barrington’s 2017 petition for reopening); Decision served Oct. 30, 2017 (denying Barrington’s petition for reconsideration).

Barrington's claims have been upheld against Barrington's three judicial challenges.² Like Barrington's prior petitions, its latest Petition provides no material new evidence that would mandate reopening the Board's 2008 Final Decision to impose a requirement that CN fund a grade crossing separation for Barrington.

Barrington's Petition reprises an old issue the Board has specifically addressed several times before: the risk that a train on the EJ&E line may delay an emergency vehicle at an at-grade crossing in Barrington. This risk is common to every road/rail at-grade crossing in the nation, and existed in Barrington before CN's acquisition of the EJ&E line ("the Transaction"). As part of its prior decisions, the Board analyzed the risk of added delays to emergency vehicles at CN's crossings after the Transaction and prescribed appropriate mitigation targeted to address that risk. CN has fully complied with those mitigation requirements.

In its Petition, Barrington offers as "new evidence" a once-in-a-decade example of this known risk. On June 12, 2018, two ambulances en route from a car accident to Advocate Good Shepherd Hospital ("AGSH") had to reroute away from the U.S. Route 14 crossing of the EJ&E line after a CN train stopped on the four at-grade crossings in Barrington due to an unexpected mechanical issue on one railcar.³ Barrington states that one ambulance arrived at AGSH 15 minutes after it stopped at the U.S. Route 14 crossing. This means that it was likely delayed for

² See *Village of Barrington, Ill. v. STB*, 636 F.2d 650 (D.C. Cir. 2011) ("*Barrington I*"); *Village of Barrington, Ill. v. STB*, 758 F.3d 326 (D.C. Cir. 2014) ("*Barrington II*"); *Village of Barrington, Ill., v. STB*, 892 F.3d 252 (7th Cir. 2018) ("*Barrington III*").

³ AGSH is one of three hospitals in the vicinity of Barrington. And like AGSH, the two other hospitals, Northwest Community Hospital and St. Alexius Medical Center, are equipped with Level II trauma units. Whereas AGSH is on the north side of the EJ&E line, both these other hospitals are on the south side of the EJ&E line. Thus, emergency vehicles responding to incidents on the south side of the EJ&E line (such as the June 12 car accident) can reach these other hospitals without any need to cross the EJ&E line.

less than 10 minutes, as Google Maps indicates that the additional drive time to AGSH using the Route 14 crossing during rush hour for a non-emergency vehicle is between 9 and 12 minutes.

These delays might have been reduced had Barrington used CN's Active Crossing System ("ACS"). ACS allows emergency dispatchers to see in real-time whether the gates are up or down at their local at-grade crossings on the EJ&E line so they can route emergency vehicles efficiently. CN offers this web-based technology to communities on the EJ&E line at no charge. CN offered ACS to Barrington pursuant to a 2010 Board decision entered after Barrington expressed its consent to substituting ACS for a CCTV system previously mandated by the Board. But for the last several years, Barrington has not been using ACS.

Barrington's Petition reprises complaints concerning the operation of CN's original ACS application that Barrington previously made in support of its unsuccessful 2014 petition for reopening. Those complaints are neither new nor material. Moreover, since Barrington chose to cease using ACS in 2015,⁴ and did not sign up to access the updated ACS application that CN implemented in 2016, Barrington has no experience with the current ACS application and thus can offer no new evidence concerning its experience with ACS.

Barrington also criticizes the response of CN's Communications Centre to a call Barrington made to the CN emergency line on June 12. That criticism is misplaced. CN's personnel responded swiftly and accurately to Barrington's questions and followed up appropriately.

CN remains ready to work with Barrington and its emergency responders on safety and communication measures. CN has responded to Barrington's recent expression of interest, in

⁴ See Village Of Barrington, IL Comments In Response To Reply Filed By Canadian National Railway Company and Grand Trunk Corporation, Verified Statement of Jim Arie at 3 (Jan. 5, 2015) ("2015 VS Arie").

obtaining access to CN's current ACS application. There is, however, no basis for reopening and compelling CN to pay most or all of the cost of a new grade separation at U.S. Route 14. The Board should deny Barrington's Petition.

FACTUAL BACKGROUND

CN takes a proactive approach to working with local communities and emergency responders. CN regularly engages with the over 8,000 emergency services located along its network, providing training and sharing information about CN's safety programs and its notification and response protocols. CN is committed to providing emergency responders with timely and accurate information when an incident occurs on CN's lines or when, as occurred in Barrington on June 12, 2018, emergency responders seek information about the status of CN rail/road crossings to determine whether to travel over an at-grade crossing or seek an alternate route.

1. CN's Communications Centre and Protocols

To coordinate its communication with local emergency responders, the CN Police Department maintains a Communications Centre with advanced technology that is staffed around the clock with trained emergency response dispatchers. Attachment 1 to this Reply is the Verified Statement of Bruce Power ("VS Power"), who is the supervisor of CN's Communications Centre. Mr. Power describes the operations of the Communications Centre, CN's resources and protocols for gathering and disseminating information about trains stopped due to mechanical failures, and CN's communications with Barrington on June 12, 2018.

CN has invested over \$3 million in new equipment and software for its Communications Centre since 2010, and is continuing to invest in new technology. CN's Communications Centre is equipped with a Computer Aided Dispatching ("CAD") system that allows its dispatchers to

quickly and accurately collect and disseminate information in response to reported incidents involving CN's rail lines or inquiries from local emergency responders. It is also equipped with CN's Right Time Business Intelligence ("RTBI") system to quickly gather information about trains, including location, speed, length, and consist.

Local emergency responders and members of the public can reach the Communications Centre by calling a toll-free number which CN provides to every local emergency dispatch center responsible for a community in which CN operates. CN also has posted that number at every at-grade CN road/rail crossing. Callers from the United States hear a recorded 24-second message that offers four options: press 1 to connect directly to the Rail Operations Center ("ROC") to report safety issues related to train operations such as unsafe track conditions or vehicles or persons on the track; press 2 to connect directly to a member of CN's signal department to report a problem with a crossing warning device, such as a problem with flashing lights, gates, bells, or signs; press 3 to connect directly to an emergency dispatcher at CN's Communications Centre; or press 4 for other matters. The emergency response lines of other Class I railroads use similar menus. Upon choosing an option, a caller is routed to a phone line staffed by a live person in the appropriate department. A caller who is familiar with the system can bypass the recorded message by pressing a selection immediately.

Local emergency responders can also call CN's Communications Centre prior to routing emergency vehicles over an at-grade crossing. Some communities in which emergency vehicles frequently use CN at-grade crossings have an established protocol that requires their emergency dispatchers to contact the CN Communications Centre before they do so. CN's emergency dispatchers can provide their local counterparts with advance information about current or future rail operations in the area and suggest alternate routes.

CN also has its own protocols designed to alert local emergency responders as quickly as possible when a train experiences a mechanical failure that causes it to stop. Once it is safe to do so, the train crew is required to radio the ROC, which houses CN's train dispatchers, who are referred to individually as Rail Traffic Controllers or RTCs. The train crew provides the ROC with the subdivision and approximate milepost where the train is stopped, plus any available information about the cause and estimated duration of the stoppage. The ROC is required to provide that information to the Communications Centre, which enters it into the CAD system. The CAD system displays a map of the CN rail line at the location of the stopped train, along with a list of contact information for local emergency responders that may be affected by the stopped train. The Communications Centre then contacts the appropriate local emergency responders and briefs them on the situation. As further information is received by the Communications Centre, it is conveyed to local emergency responders, until the mechanical failure is resolved and the train can proceed.

The Communications Centre sometimes receives calls about stopped trains from local authorities or citizens before it is contacted by the ROC. In that case, the Communications Centre works with the caller to determine the location of the stopped train, including whether it is on a CN line. Callers often confuse railroad lines and operations because railroads frequently share equipment and often run over each other's lines. Once the location is determined, the Communications Centre contacts the ROC to collect any available information, and communications proceed as described above.

2. CN's ACS Application

Barrington, like other communities along the EJ&E line, may access an additional system CN developed to provide real-time crossing status information to local emergency responders so

that they can anticipate and avoid blocked crossings. CN's ACS is a web-based application that allows emergency responders to see on a single screen, in real time, which EJ&E crossing gates in their area are activated. Attachment 2 to this Reply is the Verified Statement of Jim Kvedaras ("VS Kvedaras"), CN's Director, U.S. Government Affairs. Mr. Kvedaras describes CN's ACS application and the history of its development and deployment. CN developed ACS after consultation with local emergency response agencies, including Barrington's emergency dispatcher center. ACS displays a map of the CN rail line, with a green circle at each crossing where the gate is not activated and a red circle at each crossing where the gate is activated. Attachment 3 to this Reply is a screenshot of ACS showing the activation of two crossings in Barrington.

The Board required CN to make ACS available to specific communities, but CN has voluntarily made it available to all communities along the EJ&E line. CN wrote to the communities, inviting them to accept a no-charge licensing agreement and offering training and assistance and the opportunity to customize ACS by choosing the particular crossings displayed when they log onto the system. Barrington and seven other communities along the EJ&E line requested access to CN's original ACS, which CN provided beginning in 2011. Thereafter, CN continued to maintain and upgrade the system, offer training, and respond to technical issues raised by various communities. For example, in May 2012, CN hosted a series of three webinars, to which all EJ&E communities were invited, demonstrating ACS and inviting questions.

In a surreply in support of its 2014 petition for reopening, Barrington stated that it chose to stop using ACS.⁵ In response, CN offered to work with Barrington to determine the nature of

⁵ 2015 VS Arie at 3.

any issues it might be having with ACS and whether practical improvements could be made to improve Barrington's experience using ACS.⁶ The Board's decision denying Barrington's petition specifically encouraged Barrington to take CN up on that offer.⁷ Barrington did not do so.⁸

In 2016, CN replaced the original ACS system with an updated system based on new technology from a new vendor. As before, CN offered to provide access to the updated ACS free of charge to all EJ&E communities. In November 2016, CN wrote to several Barrington officials, including Mayor Karen Darch, Chief of Police David Dorn, and Fire Chief Jim Arie, to announce the updated version and describe the steps necessary to obtain access to it.⁹ Barrington promised to respond "shortly," but did not follow up.¹⁰ Because it did not opt in to the new system, Barrington no longer had access to the ACS following the switch to the updated version in 2016, which, with the switch to the new vendor, required a new login.¹¹ Eight other communities asked for and were provided access to the new ACS system.

CN continues to believe that the ACS is a valuable tool for emergency responders, and has remained willing to provide Barrington with access to ACS and to address any technical issues it may experience. Barrington has expressed renewed interest in ACS since the events of

⁶ CN's Response To Barrington's Surreply "Comments" To CN's Reply To Barrington's Petition Seeking Additional Mitigation (CN-5) at 20 n.34 (Jan. 26, 2015).

⁷ Decision served May 15, 2015, slip op. at 8 n.24.

⁸ VS Kvedaras at 3.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.*

June 12, 2018. CN has responded to Barrington's officials and again outlined the simple steps required to obtain access to the updated version of the ACS.¹²

3. The June 12, 2018 Mechanical Problem with an Air Brake Control Valve

At approximately 4:39 pm on June 12, 2018, as a southbound CN train was crossing the diamond with UP's rail line in Barrington, the air brake control valve on the ninth car failed. As a result, the train's emergency air brakes automatically activated,¹³ bringing the train to a stop at approximately 4:40 pm.

Almost immediately (still at 4:40 pm), a police officer at the Hough Street crossing saw the train stop. He notified Barrington's 9-1-1 Dispatch Center ("CenCom") and requested CenCom to contact CN to determine the cause.¹⁴ At 4:42 pm, CN's Communications Centre received a call from a dispatcher at Barrington's CenCom. Barrington's dispatcher introduced himself as "Mike from Barrington" and exchanged greetings with the CN emergency dispatcher. After asking the CN emergency dispatcher to "hold on," Barrington's dispatcher reported that there was "a train stopped on 14 in Barrington" and asked, "Do you know why or how long it's going to be there for?" He did not initially identify which of the several places called Barrington on CN's lines he was calling from or provide the unique DOT crossing number applicable to and prominently posted at each at-grade crossing on the EJ&E line. Further, he did not mention at

¹² *Id.*

¹³ Modern trains use a fail-safe air brake system that utilizes air pressure to charge air tanks on each car. The air brakes are released only when there is full air pressure. If there is a reduction or loss of air pressure (*e.g.*, due to a mechanical failure or other emergency), the brakes apply automatically, quickly stopping moving trains.

¹⁴ Petition at Appendix 2. Had Barrington's CenCom used ACS on June 12, it would have immediately seen that all four crossings in Barrington were blocked. With that information, and the knowledge the train was stopped, CenCom could have more efficiently routed the ambulances.

this time that there was an emergency or that there were emergency vehicles heading to a hospital.

The CN emergency dispatcher gathered information from the Barrington dispatcher to confirm that the train was stopped on the CN line and not the nearby UP line that runs through Barrington and crosses many of the same streets as the CN line. CN's emergency dispatcher then contacted the ROC for more information. A Chief Dispatcher at the ROC informed CN's emergency dispatcher that the RTC had just spoken with the crew, that the CN train had experienced a mechanical failure in Barrington, and the crew was in the process of walking the train to determine the nature of the problem and how to fix it. The CN emergency dispatcher relayed this information to Barrington's emergency dispatcher at 4:46 pm.

It was at this time – four minutes into the call – that Barrington's emergency dispatcher first mentioned that there were emergency vehicles trying to get to a hospital and first asked whether other at-grade crossings were open. The CN emergency dispatcher then launched CN's RTBI and promptly used it to determine and inform CenCom that the train was blocking the four Barrington at-grade crossings. That process took less than a minute and a half.

In accordance with CN's protocols, the Communications Centre kept in contact with the ROC for updates. At 5:24 pm, Barrington's CenCom called the Communications Centre for an update. The CN emergency dispatcher, who was a different dispatcher from the one that fielded the initial call from Barrington, consulted the information in CAD and at 5:26 pm informed CenCom that the crew believed it had identified the problem and was almost finished fixing it, and that once that problem was fixed the train would try to build up air pressure to release its brakes and proceed. This was an interim update, as it was uncertain at that time whether the crew would successfully fix the problem it identified and whether that problem would prove to

be the only problem that would have to be fixed in order for the train to proceed. In fact, the train was able to move and clear the crossings a few minutes later. The Communications Centre provided a final definitive update at 6:02 pm, when it called Barrington's CenCom and confirmed that the train had left the Barrington area.

LEGAL STANDARDS

The Board may reopen a final decision if it finds that "material error, new evidence or substantially changed circumstances" warrant reopening.¹⁵ Barrington does not allege material error in its Petition; instead, it alleges "new evidence and changed circumstances."¹⁶ To support reopening based on new evidence and changed circumstances, a petitioner must produce evidence that is (1) genuinely new, in the sense that it could not reasonably have been gathered and produced before a prior decision of the Board in the same proceeding,¹⁷ and (2) material, in the sense that it would "mandate a different result."¹⁸ Just as with Barrington's three prior petitions for reopening that have been denied by the Board, Barrington cannot meet this legal standard. This conclusion is reinforced by considerations of administrative finality and fairness to an applicant that made major and irrevocable investments in reliance on the Board's

¹⁵ 49 U.S.C. § 1322(c); 49 C.F.R. § 1115.4.

¹⁶ Pet. at 3.

¹⁷ See, e.g., Decision served Oct. 30, 2017, slip op. at 8-9; *Toledo, Peoria & W. Ry. v. STB*, 462 F.3d 734, 753 (7th Cir. 2006); *Tex. Mun. Power Agency v. Burlington, N. & S.F. R.R.*, STB Docket No. 42056, 2004 WL 2619767, at *5 (Sept. 24, 2004).

¹⁸ See, e.g., *Barrington III*, 892 F.3d at 267; Decision served Oct. 30, 2017, slip op. at 5, 9; Decision served Apr. 26, 2017, slip op. at 4; *Montezuma Grain Co. v. STB*, 339 F.3d 535, 541-42 (7th Cir. 2003).

decisions.¹⁹ Barrington seeks to reopen a final decision that the STB issued almost a decade ago, and the Board's unprecedented 8-year oversight period concluded more than a year ago.

ARGUMENT

I. BARRINGTON'S CLAIMS ABOUT EMERGENCY VEHICLE DELAYS DUE TO CN TRAINS DO NOT WARRANT REOPENING BECAUSE THE BOARD PREVIOUSLY CONSIDERED AND ADDRESSED THAT RISK.

A. The Board Addressed in its Prior Decisions the Potential for Increased Delays to Emergency Vehicles at the Barrington/EJ&E Crossings After the Transaction.

When it issued its 2008 Final Decision and each of its subsequent decisions, the Board was well aware that emergency vehicles are sometimes routed over road/rail at-grade crossings. It also knew that trains occasionally stop and block at-grade crossings (*e.g.*, due to mechanical failure) and that this could delay emergency vehicles. Such delays occur at road-rail at-grade crossings nationwide. That issue is normally addressed through cooperation and efficient communication between railroads and local emergency dispatchers so that local emergency responders can adapt to situations as they arise and route emergency vehicles around blockages as appropriate. The Board's prior orders were consistent with and build on this approach.

The Board noted in its 2008 Final Decision that trains on the EJ&E line had blocked emergency vehicles in Barrington before the Transaction.²⁰ Even if the Board had not approved the Transaction, that would have continued to occur. Moreover, it could well have become more frequent without the Transaction, given increasing market demand for the rail capacity provided by the EJ&E line, which could have been met (albeit, less efficiently) without a Board-reviewable transaction.

¹⁹ See, *e.g.*, Decision served Oct. 30, 2017, at 5; *Union Pac. Corp.--Control & Merger--S. Pac. Rail Corp.*, 3 S.T.B. 1030, 1033 (1998).

²⁰ See Final Decision at 49.

As Barrington concedes,²¹ multiple Board decisions addressed the issue, including Barrington’s specific concerns about ambulances being blocked on their way to AGSH:

- In its 2008 Final Environmental Impact Statement (“FEIS”), the Board concluded that Barrington’s emergency responders in transit to AGSH would be “substantially affected” by the transaction because CN’s post-Transaction operations could increase the frequency of trains on the EJ&E delaying emergency vehicles at Barrington’s at-grade crossings.²² Accordingly, in its 2008 Final Decision, the Board ordered a specific mitigation condition (initially requiring a CCTV system) to address concerns regarding emergency responder routing to AGSH.²³
- In 2010, the Board revisited the issue when it amended that mitigation condition to require CN to provide and maintain ACS technology in response to a petition from CN that was supported by a letter from Barrington consenting to the amendment.²⁴
- In 2015, Barrington argued in support of its 2014 petition for reopening that the ACS application was ineffective as mitigation for the problem of blocked crossings impeding Barrington’s emergency vehicles. The Board rejected Barrington’s arguments and encouraged Barrington to accept CN’s offer to work together on ACS.²⁵

Both in 2008 and 2015, Barrington made and the Board rejected precisely the argument Barrington seeks to resurrect here — that CN should be required to pay for a grade separation to address the risk that Barrington emergency responders would be delayed on their way to AGSH.²⁶ Consistent with the treatment of at-grade crossings nationwide, the Board accepted

²¹ See Pet. at 2-8.

²² See FEIS at 2-49 — 2-55.

²³ See Final Decision at 49, 77 (Final Mitigation Condition 18).

²⁴ See Decision No. 24 (served Aug. 30, 2010) (amending Final Mitigation Condition 18, and noting Barrington’s letter). Barrington complains about the amendment (see Pet. at 2) and the ACS application installed pursuant to the amendment (see *id.* at 8-9) without acknowledging that Barrington consented to the installation of ACS.

²⁵ See Decision served May 15, 2015, slip op. at 8, n.24.

²⁶ The Village of Barrington’s Comments on the Draft Environmental Impacts Statement (BARR-6) at 41-46 (filed Sep. 30, 2008); Final Decision at 49, 77 (Final Mitigation Condition

that emergency responders would occasionally be delayed at grade crossings in Barrington or rerouted, and required CN to address the risk of increased delay from the Transaction by offering to cooperate and provide real-time information to Barrington's emergency responders.

B. Delays to Two Ambulances on June 12, 2018 Do Not Warrant Reopening the Board's 2008 Final Decision.

Barrington's Petition focuses on a single train that experienced mechanical issues in Barrington on June 12, 2018, when a rare confluence of events briefly created a challenging situation. A mechanical failure occurred on a railroad car causing the train to stop on the four at-grade crossings in Barrington. This is the first time since the Transaction almost a decade ago that Barrington has reported a train stopped on all four of its at-grade crossings. The timing of this rare event was unfortunate. It occurred during rush hour in Barrington, and just as two Barrington ambulances were en route from a car accident to AGSH. Since Barrington had neither accepted CN's offer of a free license to CN's ACS nor called ahead to CN to inquire about CN's rail operations in the area, Barrington's emergency dispatchers did not immediately know that the four EJ&E crossings were blocked. As a result, at least one of the ambulances proceeded to two blocked crossings before heading to a nearby open crossing.

CN cleared the blocked crossings in less than an hour. And, according to Barrington's Petition, it took only 15 minutes (4:41 pm to 4:56 pm) for the first ambulance to reach the hospital after it reached the CN crossing.²⁷ That means the total ambulance delay was likely less than 10 minutes, given that the direct route to the hospital from the crossing would have required

18); Barrington 2014 Reopening Petition at 24-26; Barrington 2015 Surreply at 21-25; Decision served May 15, 2015, slip op. at 8, n.24.

²⁷ Pet. at 10, 14. Barrington's evidence suggests that the second ambulance took a similar course about two minutes behind the first.

the ambulance to travel over 4 additional miles through Barrington peak-hour vehicular traffic.²⁸ Further, that delay might have been reduced had Barrington used the ACS and other resources CN made available to it.

In sum, after almost a decade, Barrington has identified just one exceptional instance of a risk the Board anticipated and for which the Board prescribed appropriate mitigation — the risk of Barrington emergency vehicles being delayed by a stopped CN train. And in that instance, the Barrington emergency vehicles were likely delayed for less than 10 minutes. Barrington's lack of evidence of more substantial problems reflects the efforts CN makes to avoid impeding emergency vehicles, and to partner with emergency responders. CN operates its trains through Barrington efficiently and strives to minimize stoppages and blocked crossings, and has made substantial investments in ACS and Communications Centre systems designed to provide swift and accurate information to emergency responders so they can avoid or minimize delays when crossings are blocked.

C. Barrington's Claims Regarding Other Emergency Vehicle Delays at EJ&E Crossings Provide No Basis for Reopening.

Barrington's Petition provides summary information about instances in 2016 and 2017 when it claims that its emergency vehicles were delayed by blocked crossings at one or more of the four Barrington/EJ&E at-grade crossings.²⁹ Its summary information merely illustrates the same known issue discussed above. The Board expected that Barrington's emergency responders would sometimes be impeded by blocked crossings and determined that measures such as the ACS — not a grade separation funding requirement — provided appropriate and

²⁸ *See id.* at 13.

²⁹ *See Pet.* at 23-25, 40-42 (VS Arie).

proportionate mitigation. Barrington provides no new, material evidence that significantly deviates from the Board's expectations or mandates a different result.

First, most of Barrington's evidence is simply not new. The 2016 instances and presumably some of the (undated) 2017 instances Barrington references occurred prior to its pleadings with respect to its 2017 petition for reopening, the latest of which pleadings was filed on October 19, 2017. Barrington should have submitted that evidence at that time, if at all.

Second, Barrington's summary information lacks sufficient detail or support to qualify or be evaluated as material evidence. Barrington does not state how the information was collected, and it provides no supporting data or documentation. Barrington characterizes its information as "showing when emergency responders were delayed by CN trains."³⁰ But it does not specify what functions emergency vehicles were performing at the relevant times, how they were delayed, what measures they took or options they had to minimize the amount or effects of the delay, or how the amount of delay was determined.

Third, neither the frequency nor the typical length of delays Barrington cites qualifies as material new information. Over a 24-month period (2016 and 2017), during which Barrington fielded approximately 1800 emergency calls,³¹ Barrington cites a total of 64 delays totaling about 235 minutes. That amounts to less than 10 minutes of total delay per month, and less than 4 minutes per delay.³² From Barrington's summary numbers, it appears that many of the delays about which it complains lasted less than a minute. Barrington emphasizes delays during 2017 at Route 14, but cites fewer than 2 such delays per month and the longest delay it cites is less than 9

³⁰ *Id.* at 23.

³¹ *See id.* at 21, 42 (VS Arie).

³² *See id.* at 24-25, 40-42 (VS Arie).

minutes.³³ Given the Board's recognition in 2008 that Barrington emergency vehicles would be (and already were, even before the Transaction) delayed occasionally by blocked crossings, Barrington's summary information does not imply a material change from expectations.

Neither Barrington's evidence relating to June 12, nor its summary information concerning briefer delays to its emergency responders, amounts to substantially changed circumstances or material new evidence mandating a change in the Board's 2008 Final Decision.

II. BARRINGTON'S COMPLAINTS ABOUT ACS DO NOT WARRANT REOPENING AS THEY ARE NOT ACCURATE, NEW, OR MATERIAL

In 2010, with Barrington's consent, the Board approved use of ACS to make real-time, single-screen information about the status of the four Barrington crossings available to Barrington emergency responders. Barrington subsequently complained to the Board about ACS, and the Barrington Fire Chief told the Board that his department stopped using it.³⁴

In responding to that complaint and denying Barrington's 2014 petition, the Board wrote: "To the extent that Barrington has suggestions for a more effective technology, we encourage Barrington to discuss this issue with CN, which has indicated a willingness to 'determine if there are practical improvements that can be made to ACS.'" ³⁵ However, Barrington did not follow up with CN as the Board suggested.³⁶

Barrington's Petition does not offer any new evidence regarding ACS. Nor could it. As noted, Barrington ceased using ACS in 2015. Further, Barrington did not respond to CN's offer to use CN's updated ACS application in 2016, so Barrington has not had access to ACS since

³³ See *id.* at 24-25, 40-42 (VS Arie).

³⁴ See 2015 VS Arie at 3.

³⁵ Decision served May 15, 2015, slip op. at 8, n.24.

³⁶ See VS Kvedaras at 3.

then.³⁷ Having never accessed the updated ACS application, Barrington can provide no meaningful evidence on its performance or utility.

Barrington states that on June 12, 2018, “[a] Barrington police officer . . . raced around the Village in an attempt to find an open crossing.”³⁸ That did not occur because of any failings in ACS; it occurred because Barrington did not avail itself of CN’s 2016 offer of free access to the updated ACS application. Had Barrington chosen to license the updated ACS application, its emergency dispatchers could have seen in their office in real-time which Barrington crossing gates were down. They could then have routed the ambulances accordingly, which might have reduced the delays about which Barrington complains.

Lacking new evidence — or any evidence pertaining to CN’s current ACS application — Barrington’s Petition instead relies on a rehash of old complaints it levelled in 2015 against CN’s former ACS application.³⁹ Those complaints are neither new nor material. The Board rightly rejected them as a basis for reopening in 2015, and should do so again in 2018.

CN has reiterated to Barrington both the offer CN made in 2016 to provide Barrington access to the new ACS application and the offer CN made, and the Board reinforced, in 2015, for Barrington to discuss with CN any concerns Barrington may have regarding the ACS application.⁴⁰ CN remains ready to partner with Barrington, as it has with other communities along the EJ&E line, to implement the ACS-based mitigation that the Board prescribed in 2010 to address the known risk of emergency responders potentially needing to adjust their routes when a crossing is blocked. There is, however, no basis for reopening.

³⁷ See *id.* at 4.

³⁸ Pet. at 10.

³⁹ See Pet. at 8-9, 32-33 (VS Dorn), 39-40 (VS Arie); compare 2015 VS Arie at 3.

⁴⁰ See VS Kvedaras at 3-4.

III. BARRINGTON'S COMPLAINTS ABOUT INFORMATION PROVIDED BY CN'S COMMUNICATIONS CENTRE ON JUNE 12, 2018 PROVIDE NO BASIS FOR REOPENING

As outlined in Section 1 of the Factual Background above and the Verified Statement of Bruce Power, CN has made substantial investments in sophisticated communications and tracking systems designed to efficiently gather and provide to emergency responders information about incidents and blocked crossings. CN maintains a toll-free emergency line that connects emergency responders to CN's Communications Centre, where CN's emergency response dispatchers are available 24-hours a day to provide prompt and accurate information to local emergency vehicle dispatchers. In addition, the Communications Centre follows its own proactive protocols under which it alerts and updates local emergency response dispatchers when a train experiences a breakdown that blocks an at-grade crossing for a substantial period of time.

These systems and CN personnel performed well on June 12, 2018. Less than a minute and a half from the time Barrington's CenCom asked CN's Communications Centre which crossings were blocked, CN provided it with an accurate and up-to-date response.⁴¹ When Barrington called for an interim update, further accurate and timely information was promptly provided to it.⁴² And once the train was able to depart Barrington and clear the crossings, CN followed up with a final call to Barrington's emergency dispatchers.⁴³

Of course, detailed information about why a train is stopped and how long it will remain stopped is not instantaneously available and cannot be instantaneously communicated when the train first stops. When an unexpected mechanical failure occurs and causes a strain to stop, the

⁴¹ VS Power at 6.

⁴² *Id.* at 6-7.

⁴³ *Id.* at 7.

train crew needs to gather information, typically by walking the train, to diagnose the problem and determine how long it will take to resolve. At the same time, information about the current status of multiple crossings is available instantly to Barrington through the ACS application, if Barrington chooses to license it.

CN's communication systems and protocols afford Barrington and other local communities prompt access to accurate information concerning the status of at-grade crossings. Barrington's complaints about the performance of CN's personnel and systems on June 12, 2018 are unfounded and provide no basis for reopening.

CONCLUSION

There is no basis for the Board to reopen its 2008 Final Decision. Barrington has adduced no new evidence that would materially change the outcome the Board reached in 2008 and in its subsequent decisions. The Board anticipated and prescribed appropriate and proportional mitigation for the known risk that Barrington's emergency vehicles would be delayed at at-grade crossings on the EJ&E line. CN has implemented that mitigation, and continues to work cooperatively with local emergency responders to assure that they receive prompt and accurate information so they can avoid and minimize any emergency vehicle delays.

Barrington and the State of Illinois may construct a grade separation at U.S. Route 14 if they decide to do so and secure the necessary funding. Like any other railroad, CN would be responsible for 5% of the costs of such a grade separation under 23 C.F.R. § 646.210. However, Barrington is not entitled to the order it seeks compelling CN to pay a larger share of costs.

The Petition should be denied.

Respectfully submitted,

Kathryn J. Gainey
CN
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 347-7840

/s/ David A. Hirsh
David A. Hirsh
Matthew W. Ludwig
DENTONS US LLP
1900 K Street, N.W.
Washington, DC 20006
(202) 496-7500

Counsel for Canadian National Railway Company and Grand Trunk Corporation

August 28, 2018

CERTIFICATE OF SERVICE

I certify that I have this 28th day of August, 2018, caused a true copy of the foregoing
Reply to Barrington's Petition Seeking Reopening and Imposition of Additional Mitigation
Pursuant to the Board's Governing Regulation to be served by e-mail upon:

Richard H. Streeter
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, DC 20016
rhstreeter@gmail.com

/s/ Matthew W. Ludwig

ATTACHMENT 1

**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]

VERIFIED STATEMENT OF BRUCE POWER

My name is Bruce Power. I have been the supervisor of the Communications Centre for Canadian National Railway Company and its U.S. subsidiaries (together, “CN”) and an Inspector with the CN Police since 2013, and a member of the CN Police force since 2001. I have overall responsibility for the operation of the Communications Centre, including the sixteen trained emergency response dispatchers who work at the Communications Centre.

The Communications Centre is a division of the CN Police Department. It is equipped with sophisticated software and communications equipment and staffed around the clock. Its responsibilities include communications with local emergency responders, including emergency train stops and blocked road crossings.

CN has asked me to describe the capabilities and procedures of the CN Communications Centre and review the communications between it and the Village of Barrington’s 9-1-1 Center (“CenCom”) concerning a CN train that stopped in Barrington on June 12, 2018, due to a failure of an air brake control valve on a railcar. Using our advanced dispatching and communications equipment, CN personnel followed protocols and acted promptly and appropriately to provide accurate information to Barrington’s CenCom on June 12, 2018.

CN is committed to providing emergency responders with timely and accurate information relating to train operations and crossings on CN's lines. For example, when a train on CN's lines experiences an emergency and stops on a grade crossing, the Communications Centre works to provide information expeditiously to local emergency responders so that they may make appropriate adjustments to the routes of any emergency response vehicle.

The Communications Centre is equipped with a variety of state-of-the-art software tools, including a Computer Aided Dispatching ("CAD") system and CN's Right Time Business Intelligence ("RTBI") system.

- CN's CAD is similar to the systems used by emergency response dispatchers all over North America, and includes resources for taking and managing calls, verifying locations, dispatching, and managing unit status.
- RTBI is a locomotive telemetry system that provides a single integrated graphical view of the CN network, including information about the location, speed, and consist of trains that are equipped with the system. The RTBI system is based on hardware installed on locomotives that regularly "pings" or communicates with a CN server over the cellular network. However, the locomotive information in RTBI is not in real time, and it can lag behind real time by a few minutes.
- The Communications Centre also has emergency phone line connections with CN's Rail Operations Center ("ROC"), which houses CN's train dispatchers, referred to individually as Rail Traffic Controllers or RTCs. The Communications Centre has a dedicated line and speed dial to the desks of CN's Chief Dispatchers, who supervise the RTCs. If a Chief Dispatcher does not

answer a call from the Communications Centre within a certain number of rings, the call automatically rolls over to the desk of the appropriate RTC.

These systems work together to enable the emergency dispatchers in the Communications Centre to collect and disseminate information quickly and accurately to emergency responders in communities along CN's rail lines. CN has invested over \$3 million in new equipment and software for the Communications Centre since 2010, and CN is continuing to invest in the Communications Centre.

Local emergency responders, as well as members of the public, can reach the Communications Centre by calling a toll-free number. That number is provided to every local emergency dispatch center responsible for a community in which CN operates. The number is also posted at every at-grade CN railroad crossing. Callers from the United States hear a recorded 24-second message that offers four options:

- Press 1 to connect directly to the ROC to report safety issues related to train operations. This includes, for example, unsafe track conditions or vehicles or persons on the track.
- Press 2 to connect directly to a member of CN's signal department to report a problem with a crossing warning device. This includes, for example, problems with flashing lights, gates, bells, or signs.
- Press 3 to connect directly to a Police operator. This connects to the emergency dispatchers at CN's Communications Centre.
- Press 4 for other matters. This connects the caller to CN's Public Inquires line, which is maintained by CN's Public Affairs department and is answered by the CN Police on nights and weekends.

This menu is similar to the menus of the emergency response lines provided by other Class I railroads. Upon choosing an option, the call is routed to a phone manned by a live person in the appropriate department. A caller who is familiar with the system can bypass the recorded message by pressing a selection immediately, and callers who do not make a selection before the recording ends are automatically connected to a police operator (the same as pushing 3).

Local emergency responders can also proactively call CN's Communications Centre prior to routing emergency vehicles over an at-grade crossing. Some communities in which emergency vehicles frequently use CN at-grade crossings have an established protocol that requires their emergency dispatchers to contact the CN Communications Centre before they route an emergency response vehicle over an at-grade crossing on CN's rail line. CN's emergency dispatchers can provide their local counterparts with advance information about current or future rail operations in the area and suggest alternative routings as appropriate.

CN has protocols designed to alert local emergency responders as quickly as possible when a train experiences a mechanical failure that causes it to stop, as occurred on June 12, 2018 in Barrington.. Once it is safe to do so, the train crew is to radio the ROC and provide it with the subdivision and approximate milepost where the train is stopped, plus any available information about the cause and estimated duration of the stoppage. The ROC is to provide that information to the Communications Centre, where it is entered into the CAD system. The CAD system displays a map of the CN rail line at the location of the stopped train, along with a list of contact information for local emergency responders that may be affected by the stopped train. The Communications Centre then contacts the appropriate local emergency responders to provide information. As further information is received by the Communications Centre it is passed on to local emergency responders, until the mechanical failure is resolved and the train can proceed.

The Communications Centre sometimes receives calls about stopped trains from local authorities or citizens before it is contacted by the ROC. In that case, the Communications Centre works with the caller to identify the location of the stopped train and determine if it is on a CN line. Callers often confuse railroad lines and operations because railroads frequently share equipment and often run over each other's lines. Once the location is identified, the Communications Centre contacts the ROC to collect any available information, and communications then proceed as described above.

This latter scenario is what occurred on June 12, 2018 in Barrington. At 4:42 pm,¹ just after a CN train came to a stop in Barrington, our Communications Centre received a call from a dispatcher in Barrington's CenCom. Barrington's dispatcher introduced himself as "Mike from Barrington" and exchanged pleasantries with the CN emergency dispatcher. After asking the CN emergency dispatcher to "hold on," Barrington's dispatcher reported that there was "a train stopped on 14 in Barrington" and asked, "Do you know why or how long it's going to be there for?" Barrington's dispatcher did not initially identify which of the several places called Barrington on CN's lines he was calling from. Nor did Barrington's dispatcher provide the unique DOT crossing number applicable to and posted at each at-grade crossing on the former EJ&E. Further, he did not mention at this stage of the call that there was an emergency or that the issue involved emergency vehicles heading to a hospital.

The CN emergency dispatcher gathered information from the Barrington dispatcher to confirm that the train was stopped on the CN line and not the nearby UP line that runs through

¹ All references to time in my statement are based on Central Daylight Time, the time zone applicable to Barrington. Barrington's Petition Seeking Reopening and Imposition of Additional Mitigation Pursuant to the Board's Governing Regulations, dated August 8, 2018, states that Barrington called at 4:41pm. The one-minute discrepancy from CN's records may reflect time Barrington spent selecting the option for the Communications Centre.

Barrington and crosses many of the same streets as the CN line. CN's emergency dispatcher then contacted the ROC for more information. A Chief Dispatcher at the ROC informed CN's emergency dispatcher that the RTC had just spoken with the crew about the mechanical failure in Barrington. The Chief Dispatcher indicated that the crew was in the process of walking the train to determine the nature of the problem and how to fix it. The CN emergency dispatcher relayed this information to Barrington's dispatcher at 4:46 pm.

Barrington's dispatcher then mentioned for the first time – four minutes into the call – that its concern was emergency vehicles trying to get to a hospital and asked whether other at-grade crossings were open. In response, the CN emergency dispatcher launched the RTBI system, located the stopped train in RTBI, determined that four at-grade crossings in Barrington, from Main Street to Lake Zurich Road, were blocked, and advised Barrington of that fact. It took less than an minute and a half from the time Barrington first asked about crossings other than Route 14 for CN's emergency dispatcher to provide Barrington with complete and accurate information on which crossings were blocked. The CN emergency dispatcher further advised Barrington's CenCom that the train was southbound and that CN would monitor the situation and update Barrington.

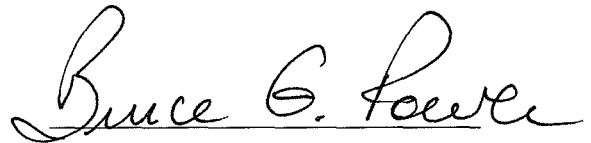
Thereafter, in accordance with CN's protocols, the Communications Centre kept in contact with the ROC for updates. Before CN was able to confirm a definitive time when the train would be moving, the Communications Centre received a call from Barrington's CenCom at 5:25 pm asking for an update. The CN emergency dispatcher, who was a different dispatcher from the one that fielded the initial call from Barrington, consulted the information in CAD and informed Barrington at 5:26 pm that the crew believed it had identified the problem and was almost finished fixing it, and that once the problem was fixed the train would have to build up air

pressure to release its brakes and proceed. This was an interim update, as it was uncertain at that time whether the crew's fix would resolve the problem or whether further steps would be required before the train could proceed. The train moved and cleared the crossings a few minutes later. A final definitive update was provided at 6:02 pm, when the Communications Centre confirmed to Barrington's CenCom that the train had departed from the Barrington area.

VERIFICATION

I, Bruce Power, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to and authorized to submit this Verified Statement in this proceeding.

Executed on August 27th, 2018.

A handwritten signature in cursive script that reads "Bruce G. Power". The signature is written in black ink and is positioned above the printed name.

Bruce G. Power

ATTACHMENT 2

**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]

VERIFIED STATEMENT OF JIM KVEDARAS

My name is Jim Kvedaras. I am Director, U.S. Government Affairs for the U.S. rail subsidiaries of Canadian National Railway Company (together, “CN”). I have held my current position since March 2009. I am responsible for outreach to local governments and municipalities generally, and I have acted as a liaison for the communities along the former Elgin, Joliet and Eastern Railway Company (“EJ&E”) lines acquired by CN, including the Village of Barrington. I was actively involved in CN’s development of the Active Crossing System (“ACS”), and I’ve been responsible for coordinating its use by local communities.

I have been asked by CN to respond to some of the assertions that Barrington makes in its Petition Seeking Reopening and Imposition of Additional Mitigation Pursuant to the Board’s Governing Regulations, dated August 18, 2018 (“Petition”) regarding CN’s development and implementation of the ACS.

In the decision approving CN’s acquisition of EJ&E, the Board ordered CN to “consult with all appropriate agencies to implement a CCTV system with video cameras placed in locations so that the movement of trains can reasonably be predicted at [specified] highway/rail at-grade crossings.” Final Decision at 77 (FMC 18). CN was required to pay for the CCTV

equipment, its installation, and training of emergency response personnel, while the local agencies were required to pay for the ongoing maintenance and operation of the system. Final Decision at 77 (FMC 18).

In 2009, CN consulted with the specified agencies, including Barrington's emergency dispatch center, concerning the CCTV system. Based on the feedback CN received, it determined that a computer system that would allow emergency response dispatchers to quickly see the status of all rail crossings in their territory (*i.e.*, whether the crossing was activated or the gates were up) would be a more useful tool than the CCTV system. CN then set out to develop the ACS as a potential substitute for CCTV.

When CN acquired the EJ&E line, most crossings with active warning devices were equipped with specialized equipment called Remote Terminal Units, or "RTUs", which were capable of transmitting information about the crossing warning devices, such as whether the gates were down, to a computer server maintained by Progress Rail, the vendor of the RTUs. Working with Progress Rail, CN developed the ACS as an application, based on RTU data, which would allow emergency responders to view on an electronic map when EJ&E crossings were activated and when they were not. In addition, by viewing the sequence of activations, a user could easily discern the direction of a train. The only equipment required to use the ACS is a computer connected to the internet. Further, as part of its proposal to replace CCTV with the ACS, CN offered to maintain the RTUs and the ACS at its own expense.

Barrington agreed with CN's proposal to use the ACS in lieu of CCTV cameras in a July 1, 2009 letter from Mayor Karen Darch.¹ Soon thereafter, CN submitted an unopposed petition to substitute the ACS for the CCTV condition, which the Board granted in 2010. *See* Decision

¹ *See* Exhibit 1 (July 1, 2009 letter from Mayor Karen Darch).

24 (served August 30, 2010). CN offered the ACS to any EJ&E community, including its designated emergency response agencies, that signed up for access. The EJ&E community would need to sign a no-cost license agreement and provide CN with a list of the specific crossings it wanted to monitor. To protect the security of the system, CN required users to log in with a username and password, and required the communities to provide the IP address of the computer used to access the system.

In 2011, CN began distributing license agreements for the ACS and providing access to it. Eight communities, including Barrington, ultimately signed up for access to ACS. After installation, CN provided training on the system. For example, in May 2012, CN hosted a series of three webinars, to which all EJ&E communities were invited, demonstrating the ACS and encouraging all communities to ask questions. CN also maintained the system, provided upgrades from time to time, and responded to technical issues raised by various communities.

In a surreply in support of its 2014 petition for reopening, Barrington stated that it chose to stop using the ACS. In its reply to Barrington's surreply, CN offered to work with Barrington to determine if there were practical improvements that could be made to the ACS, and the Board encouraged Barrington to discuss the issue with CN. Barrington did not reach out to me, or, to the best of my knowledge, others at CN to discuss its concerns with the ACS or to explore if there were practical improvements CN could make to the technology.

In 2016, CN began replacing the RTUs with upgraded equipment from Siemens. CN worked with Siemens to develop a second generation ACS that would be compatible with the new equipment. As before, CN offered to provide access to the updated ACS to all EJ&E communities. On November 22, 2016, I emailed several Barrington officials, including Mayor Karen Darch, Chief of Police David Dorn, and Fire Chief Jim Arie, a copy of the letter

announcing the updated version and attaching CN's standard license agreement.² Barrington acknowledged receipt of my communication and promised to respond to my offer "shortly," but I have no record of a response from Barrington.

Eight local communities, but not Barrington, asked for and were provided access to the new system. The updated version of the ACS is based on different hardware and is hosted on a different server. Therefore, communities like Barrington that did not opt in to the new system no longer had access to the ACS following the switch over that was made in 2016.

Although Barrington did not sign up for access to the updated ACS system, following the mechanical failure of a CN train in Barrington on June 12, 2018, Barrington expressed interest in ACS. I have therefore recently reiterated the steps for Barrington to obtain access to the latest version of the ACS.³

Barrington alleges in its Petition that if the earlier version of the ACS was "left up running it would just time out." Petition at 9. I have received no similar complaints from other communities that have used the original or updated system. I am unaware of any feature or setting in the original or updated ACS that would cause a user to lose connectivity or cause the ACS to time out, but it is possible that Barrington's system configuration could cause it to terminate a connection after a certain amount of time. CN remains willing to work with Barrington to identify any settings or software issues with its computers that could interfere with its access to or use of the ACS.

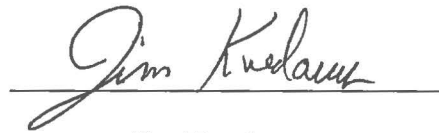
² See Exhibit 2 (November 22, 2016 letter to Barrington attaching license agreement for ACS version 2).

³ See Exhibit 3 (August 24, 2018 letter to Barrington officials).

VERIFICATION

I, Jim Kvedaras, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to and authorized to submit this Verified Statement in this proceeding.

Executed on August 28, 2018.

A handwritten signature in cursive script, reading "Jim Kvedaras", is written over a horizontal line.

Jim Kvedaras

Exhibit 1



VILLAGE OF BARRINGTON

July 1, 2009

First Class Mail

Mr. Jim Kvedaras
17641 South Ashland Avenue
Homewood, Illinois 60430

Re: Alternate web-based train notification system for EJ&E Line

Dear Jim:

Canadian National Railway has notified Barrington that it has a new web-based notification system for the EJ&E line. Barrington does not object to the replacement of the CCTV system outlined in Final Mitigation Measure No. 18 with the new web-based system developed by CN. It is Barrington's understanding that the costs for any necessary equipment, installation, and training would be borne by CN as previously outlined for the CCTV system. Barrington's support for changes to this single mitigation measure does not constitute a waiver of, or otherwise prejudice, its pending appeal or any related claims, and does not affect any other mitigation measures.

VILLAGE HALL
200 S. HOUGH ST.
BARRINGTON, IL 60010
(847) 304-3400

PRESIDENT & BOARD
MANAGER'S OFFICE
TEL (847) 304-3444
FAX (847) 304-3490

COMMUNITY &
FINANCIAL SERVICES
TEL (847) 304-3400
FAX (847) 381-7506

DEVELOPMENT SERVICES
TEL (847) 304-3460
FAX (847) 381-1056

PUBLIC WORKS
300 N. RAYMOND AVE.
BARRINGTON, IL 60010
TEL (847) 381-7903
FAX (847) 382-3030

PUBLIC SAFETY
400 N. NORTHWEST HWY.
BARRINGTON, IL 60010

POLICE
TEL (847) 304-3300
FAX (847) 381-2165

FIRE
TEL (847) 304-3600
FAX (847) 381-1889

Sincerely,

Karen Darch
Village President
Village of Barrington, Illinois

DC-1342683 v1

Exhibit 2



Corporate Services

Jim Kvedaras
Director U.S. Government Affairs
17641 South Ashland Avenue
Homewood IL 60430
T 708-332-3508
Jim.kvedaras@cn.ca

November 22, 2016

Village President Karen Darch, kdarch@barrington-il.gov
Mr. Jeff Lawler, jlawler@barrington-il.gov
Chief Jim Arie, jarie@barrington-il.gov
Chief Dave Dorn, ddorn@barrington-il.gov
policeadmin@barrington-il.gov

VIA EMAIL

Dear Village of Barrington officials:

You may recall that in late 2008 the Surface Transportation Board (STB) authorized CN to acquire the majority of the Elgin, Joliet & Eastern Railway Company (EJ&E). In approving that acquisition, the STB imposed numerous environmental and safety mitigation conditions. CN has complied with those conditions, many of which it had proposed itself.

As part of our integration of EJ&E into CN, we developed and implemented the "Active Crossing System," or "ACS," a notification system that allows authorized users to view a Google Maps-type display showing in real time when crossings are activated; that is, when gates are down and lights flashing. Our goal in developing the ACS was to provide a way for local emergency service dispatchers to route emergency responders to sites of incidents, avoiding EJ&E crossings that were blocked, thereby minimizing responder delays.

CN proposed and the STB ordered that the ACS technology be made available to a limited number of communities along the EJ&E, which we voluntarily expanded to other impacted communities on the EJ&E. At the time ACS was implemented, I stated that if technology were to advance to the point where we could offer an updated version of this system to all of the EJ&E communities, CN would do so.

We are now at that point. The equipment in the field that provides the backbone for the ACS had to be replaced with new equipment that communicates with a later generation wireless telephone technology. This new equipment has allowed us to create an enhanced version of ACS in the form of a web-based, password-controlled application that allows emergency responders with an internet-connected computer to view in real time if grade crossing warning devices are activated on the former EJ&E. The new system is now in place and can be made available for use by your community's authorized emergency responders.

As we did with the first generation of ACS, CN is making this system available to you at no cost. The readers and applications used to generate the real time crossing

information will all be maintained by CN at its own expense. The only user equipment required is a computer with internet access. We will require the IP address(es) of the computer(s) you will use to access the system. Like the original system, the upgraded ACS can accommodate multiple users.

When we first made this system available to communities, we requested that they complete and execute a no-cost license application form so that we may set your users up to access the system. It explains permitted uses of the system and who may use it, and provides for you to inform us of which crossings you want to view and which outside agencies you wish to authorize for access.

I do not have a copy of any such License Agreement from your community and request your consideration for executing one at this time, attached in this same email. Please print out TWO copies, fill out the required information and have an authorized person in the Village's Administration department execute both, sending both hard copies with original signatures to me. Once I receive both copies of your executed License Agreement, I will have them countersigned and I will then return one fully executed original to you for your files.

If you have questions about the technology or license agreement, please feel free to contact me. For those wishing to take advantage of this offer, our technical expert will contact you or your designee to set up access. Please let me know your point of contact, and provide me with an email address or give him/her my contact information and ask them to contact me so we can initiate your use of the enhanced ACS.

CN is pleased to offer this new version of ACS to the EJ&E communities and encourages you to take advantage of this offer.

Sincerely,

Jim

Jim Kvedaras
Director U.S. Government Affairs
Community Liaison
CN

Attached file

www.cn.ca

LICENSE AGREEMENT FOR ACCESS TO GRADE CROSSING DATA

This License Agreement for Access to Grade Crossing Data ("License") is made this ____ day of _____, 2016, by and between Wisconsin Central LTD (WCL), as the legal entity of the property formerly known as Elgin, Joliet & Eastern Railway Company and in itself an indirectly, wholly-owned subsidiary of Canadian National Railway Company ("Licensor") and _____, an Illinois municipal corporation ("Licensee").

WHEREAS, in a decision served in Finance Docket No. 35087 on December 24, 2008 (the "Decision"), the Surface Transportation Board ("STB") granted authority for Canadian National Railway Company ("CNR") and its wholly-owned subsidiary, Grand Trunk Corporation ("GTC"), to control Licensor; and

WHEREAS, CNR and GTC exercised control over Licensor effective February 1, 2009; and

WHEREAS, Licensor and Licensee have independently determined that a system allowing Licensee to determine whether active warning devices are operating at various railroad at-grade crossings in and around Licensee's boundaries would be beneficial to Licensee in directing emergency vehicles.

NOW, THEREFORE, intending to be lawfully bound, Licensor and Licensee, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. The preamble contained above is incorporated herein by reference.
2. Licensor hereby grants to Licensee a nonexclusive, nontransferable license to access the Data (as described below) in accordance with the terms and conditions of this License. Licensor will issue Licensee access protections for access to the Data.
3. As used in this License, "Data" shall mean a nearly real-time visualization reflecting whether the grade crossing warning devices at the following public at-grade roadway-railroad crossings are active or inactive: (list names of all rail-roadway crossings)

Licensor shall promptly amend the Data to include information reflecting the status of active warning devices at any at-grade roadway-railroad crossings that are established between _____ and _____ (list boundary roadways) subsequent to the date of this License.

4. Licensors shall also provide, at Licensors' sole cost and expense, technological expertise to help Licensee access the system. Licensors' viewing locations shall be limited to the minimum number necessary to provide efficient dispatching of emergency responders, with one per dispatch center or as mutually agreed to by the parties.

5. Licensee shall be solely responsible, at its sole cost and expense, for the internet connection, browser, and computer required to use the system.

6. Licensee may grant access to the data provided hereunder to the emergency response agencies listed below. Licensee agrees that such use shall be subject to all of the terms and conditions of this Agreement, and that the emergency response agencies listed below shall be treated under this Agreement for all purposes as Licensee hereunder.

7. Licensee shall limit access to the Data to employees and agents of Licensee with a need to know the Data in the course and scope of their employment or work for Licensee. Licensee shall protect the Data from disclosure beyond the rights granted herein using the same security and procedures it uses to protect other confidential or proprietary information. Under no circumstance may Licensee provide access under any terms or conditions to any person, agency or company not an employee or agent of Licensee needing access to the data in the course and scope of their employment or work for Licensee.

8. Licensee acknowledges that grade crossing warning devices are designed to operate in a "fail-safe" mode, meaning that they reflect an active status for a variety of circumstances, including the presence of a train or other railroad equipment on the tracks in the vicinity of the grade crossing, low power to the active warning devices, mechanical defects to the devices and associated facilities, etc. Licensors agree to use reasonable efforts to assure that the Data is continuously streamed on a real-time basis, but Licensors does not warrant that the information contained in the Data will meet Licensee's requirements or that the access to the Data will be uninterrupted or error free. The Data is provided "as is," and use of the Data shall be at Licensee's sole risk and expense.

LICENSOR MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF THE DATA, ITS FITNESS FOR LICENSEE'S PURPOSE OR ANY OTHER PURPOSE, OR THAT ACCESS TO THE DATA WILL BE FREE FROM INTERRUPTION. The entire risk as to the quality and performance of the Data, or any portion thereof, is with Licensee. Licensors shall not be liable for any loss or injury arising out of, or caused, in whole or in part, by Licensors's negligent acts or omissions in procuring, compiling, collecting, interpreting, reporting, communicating, or delivering information contained in Data.

9. Licensee acknowledges that it will use the Data only in real time for the purpose of dispatching emergency responders such as police, fire, and medical personnel. Any other use of the Data beyond that allowed herein is strictly prohibited and constitutes a material breach of this License. Licensee will not record, print, copy, modify, adapt, translate, alter, create derivative works, or otherwise make a record of all or any part of the Data or incorporate the Data into any other format or usage for any purpose whatsoever.

10. Licensee shall make reasonable efforts to provide users of the Data with appropriate notice of the terms and conditions under which access to this License is granted, and in particular, any limitations on access or use of the Data as set forth in this License.

11. The Data contains material proprietary to Licensor and other third parties. Except for the limited viewing rights granted herein, all rights, title and ownership in the Data, including all copyrights, patents, trade secrets, and trademarks therein, remain with Licensor as applicable.

12. This License shall terminate in the event that Licensee breaches any provision of this License and shall automatically terminate without notice if any such breach occurs. Licensee must promptly notify Licensor of any breach of this License. Upon termination, Licensee shall immediately cease using the Data. Licensee acknowledges that use of the Data beyond the strict limitations allowed in this License would cause irreparable harm and significant injury to Licensor that may be difficult to quantify. Accordingly, Licensee agrees that Licensor shall be entitled to immediate injunctive relief from breach or threatened breach of this License, in addition to any other rights and remedies it may have, without the posting of a bond.

13. All notices under this License shall be sent via U.S. First Class Mail, via email, or via an overnight delivery service. All notices are effective upon receipt. Notices shall be sent to:

If to WCL:

Rail Fusion Coordinator
Signals and Communications Dept
17641 S. Ashland Avenue
Homewood, IL 60430
Email: cnrailfusionsupport@cn.ca

If to : (Licensee name and contact information)

14. In no event shall Licensor be liable for any indirect special, incidental, punitive, or consequential damages, including lost profits, arising out of the use or performance of the Data even if Licensor has been advised of the possibility of such damages.

15. Licensee acknowledges that it has read this License, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the License, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this License. This License may not be modified or altered except by a written instrument duly executed by both parties.

16. This License shall be governed by and construed exclusively in accordance with the laws of the State of Illinois, regardless of choice of law requirements. The parties hereby consent to the jurisdiction of the state and federal courts of Cook County, Illinois for the purpose of any suit, action or proceeding arising out of or related to this License and expressly waive any and all objections they may have as to venue in any of such courts.

17. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

18. If any of the provisions of this License are held to be invalid by a court of competent jurisdiction the remaining provisions of this Agreement shall remain in full force and effect.

Intending to be legally bound hereby, the parties affix their authorized signatures below.

LICENSOR:

LICENSEE:

WISCONSIN CENTRAL LTD

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Exhibit 3



Jim Kvedaras
Director U.S. Government Affairs
17641 South Ashland Avenue
Homewood IL 60430
T 708-332-3508
Jim.kvedaras@cn.ca

August 24, 2018

Village President Karen Darch, kdarch@barrington-il.gov
Mr. Jeff Lawler, jlawler@barrington-il.gov
Chief Jim Arie, jarie@barrington-il.gov
Chief Dave Dorn, ddorn@barrington-il.gov
policeadmin@barrington-il.gov

VIA EMAIL

Dear Village of Barrington officials:

On November 22, 2016, I sent you information about and offered you access to our updated version of what we refer to as the "Active Crossing System" or "ACS." The ACS is a notification system that allows an authorized user with a computer connected to the internet to view a Google Maps-type display showing in real time when crossings in your community are activated -- that is, when gates are down and lights flashing. The new ACS replaced CN's original version of ACS, which I understand Barrington had decided to stop using several years ago. You acknowledged receipt of my offer to provide free access to the new version of ACS, but, unlike other communities along the EJ&E line, Barrington did not sign up for access.

After June 12, 2018, when a CN train experienced a mechanical failure in Barrington, you expressed concern about your ability to obtain real-time information about the status of gate activations at the former EJ&E crossings in Barrington so that emergency response vehicles can be routed efficiently. The ACS was specifically developed to address that concern, and I understand this experience has sparked renewed interest in the ACS by Barrington.

I would therefore like to reiterate CN's 2016 offer to provide Barrington's emergency response center with access to the latest version of the ACS, including information and training on its use, immediately and free of charge. The only requirement for Barrington to access the ACS is to execute two copies of the attached no-cost License Agreement and to identify to CN's Dave Witt (the Rail Fusion Coordinator listed in the License Agreement) the specific crossings you would like to monitor and the specific agencies you wish to authorize for access to the system.

We would also be happy to address any questions or concerns you might have about the ACS. I understand you expressed concerns with a "timing out" issue based on your experience several years ago using the prior version of the ACS. Those issues may have been specific to the devices you used to access the ACS, rather than the system itself. In any event, to the best of my knowledge, no such issues have arisen with the current version of the ACS. However, our technical staff stands ready to work with you to address any technical or compatibility issues you may experience.

If you have questions about the technology or license agreement, please feel free to contact our technical representative as shown in the License Agreement, so that he may contact you or your designee to set up access.

As a reminder, CN's emergency line at 800-465-9239 is also an effective means to obtain and communicate critical information about the operation of our rail lines. Please note that when calling the emergency line, you can: press 1 to connect directly to the CN train dispatch center to report safety issues related to train operations (for example, an unsafe track condition, or a vehicle or person on the track); press 2 to connect directly to a member of the CN signal department to report a problem with a crossing warning device (e.g., a problem with flashing lights, gates, bells, or signs); press 3 to connect directly to a CN Police dispatcher at CN's Communications Centre; or press 4 for other matters. Selecting an option connects callers to a live person in the appropriate department, you do not need to wait for the recorded options to finish playing before making your selection.

Barrington might also consider adopting as a protocol having your emergency response provider call a CN Police dispatcher at CN's Communications Centre before routing emergency vehicles to an at-grade CN rail crossing. Other communities near CN's lines have adopted that protocol. It allows CN's Police dispatchers to provide advance information about present or approaching trains, offer suggestions for alternative routings, and help proactively manage the situation.

CN can use various information and means to identify the exact location of reported issues. If you are calling with respect to an at-grade crossing, however, please keep in mind that one of the fastest and most efficient ways to positively identify the location is to provide the unique DOT crossing number that CN has posted at every rail crossing in Barrington. Using that number will help our emergency dispatchers identify and respond to the issue as expeditiously as possible. For your convenient reference, the DOT crossing numbers for the four CN crossings in Barrington are:

- Lake Zurich Road: 260 513P
- Northwest Highway (US 14): 260 514W
- Hough Street (IL 59): 260 515D
- Main Street: 260 516K

Respectfully,

A handwritten signature in cursive script, appearing to read "Jim Kredars".

LICENSE AGREEMENT FOR ACCESS TO GRADE CROSSING DATA

This License Agreement for Access to Grade Crossing Data ("License") is made this ____ day of _____, 2018, by and between Wisconsin Central LTD (WCL), as the legal entity that owns the purchased property formerly known as Elgin, Joliet & Eastern Railway Company and is in itself an indirectly, wholly-owned subsidiary of Canadian National Railway Company ("Licensor") and _____, an Illinois municipal corporation ("Licensee").

WHEREAS, in a decision served in Finance Docket No. 35087 on December 24, 2008 (the "Decision"), the Surface Transportation Board ("STB") granted authority for Canadian National Railway Company ("CNR") and its wholly-owned subsidiary, Grand Trunk Corporation ("GTC"), to control Licensor; and

WHEREAS, CNR and GTC exercised control over Licensor effective February 1, 2009; and

WHEREAS, Licensor and Licensee have independently determined that a system allowing Licensee to determine whether active warning devices are operating at various railroad at-grade crossings in and around Licensee's boundaries would be beneficial to Licensee in directing emergency vehicles.

NOW, THEREFORE, intending to be lawfully bound, Licensor and Licensee, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. The preamble contained above is incorporated herein by reference.
2. Licensor hereby grants to Licensee a nonexclusive, nontransferable license to access the Data (as described below) in accordance with the terms and conditions of this License. Licensor will issue Licensee access protections for access to the Data.
3. As used in this License, "Data" shall mean a nearly real-time visualization reflecting whether the grade crossing warning devices at the following public at-grade roadway-railroad crossings are active or inactive: (list names of all rail-roadway crossings)

Licensor shall promptly amend the Data to include information reflecting the status of active warning devices at any at-grade roadway-railroad crossings that are established between _____ and _____ (list boundary roadways) subsequent to the date of this License.

4. Licensors shall also provide, at Licensors' sole cost and expense, technological expertise to help Licensee access the system. Licensors' viewing locations shall be limited to the minimum number necessary to provide efficient dispatching of emergency responders, with one per dispatch center or as mutually agreed to by the parties.

5. Licensee shall be solely responsible, at its sole cost and expense, for the internet connection, browser, and computer required to use the system.

6. Licensee may grant access to the data provided hereunder to the emergency response agencies listed below. Licensee agrees that such use shall be subject to all of the terms and conditions of this Agreement, and that the emergency response agencies listed below shall be treated under this Agreement for all purposes as Licensee hereunder.

7. Licensee shall limit access to the Data to employees and agents of Licensee with a need to know the Data in the course and scope of their employment or work for Licensee. Licensee shall protect the Data from disclosure beyond the rights granted herein using the same security and procedures it uses to protect other confidential or proprietary information. Under no circumstance may Licensee provide access under any terms or conditions to any person, agency or company not an employee or agent of Licensee needing access to the data in the course and scope of their employment or work for Licensee.

8. Licensee acknowledges that grade crossing warning devices are designed to operate in a "fail-safe" mode, meaning that they reflect an active status for a variety of circumstances, including the presence of a train or other railroad equipment on the tracks in the vicinity of the grade crossing, low power to the active warning devices, mechanical defects to the devices and associated facilities, etc. Licensors agree to use reasonable efforts to assure that the Data is continuously streamed on a real-time basis, but Licensors does not warrant that the information contained in the Data will meet Licensee's requirements or that the access to the Data will be uninterrupted or error free. The Data is provided "as is," and use of the Data shall be at Licensee's sole risk and expense.

LICENSOR MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF THE DATA, ITS FITNESS FOR LICENSEE'S PURPOSE OR ANY OTHER PURPOSE, OR THAT ACCESS TO THE DATA WILL BE FREE FROM INTERRUPTION. The entire risk as to the quality and performance of the Data, or any portion thereof, is with Licensee. Licensors shall not be liable for any loss or injury arising out of, or caused, in whole or in part, by Licensors's negligent acts or omissions in procuring, compiling, collecting, interpreting, reporting, communicating, or delivering information contained in Data.

9. Licensee acknowledges that it will use the Data only in real time for the purpose of dispatching emergency responders such as police, fire, and medical personnel. Any other use of the Data beyond that allowed herein is strictly prohibited and constitutes a material breach of this License. Licensee will not record, print, copy, modify, adapt, translate, alter, create derivative works, or otherwise make a record of all or any part of the Data or incorporate the Data into any other format or usage for any purpose whatsoever.

10. Licensee shall make reasonable efforts to provide users of the Data with appropriate notice of the terms and conditions under which access to this License is granted, and in particular, any limitations on access or use of the Data as set forth in this License.

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LICENSOR:

LICENSEE:

WISCONSIN CENTRAL LTD

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

ATTACHMENT 3

Screen Shot of ACS Showing US 14 (Northwest Hwy) and Lake Zurich Road Crossings Activated

