

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 36299**

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**SOO LINE RAILROAD COMPANY—PETITION FOR DECLARATORY  
ORDER AND PRELIMINARY INJUNCTION—INTERCHANGE WITH  
CANADIAN NATIONAL**

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**REPLY TO PETITION FOR DECLARATORY ORDER**

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Wisconsin Central Ltd. (“CN”) respectfully submits this reply to Soo Line Railroad Company d/b/a Canadian Pacific’s (“CP’s”) petition for a declaratory order requiring CN to indefinitely receive interchange traffic at Spaulding after termination of the parties’ interchange agreement (“Petition”). CN recognizes that the Board has instructed the parties to mediate this dispute, and CN looks forward to participating in that process to seek a negotiated resolution. The Board has not stayed proceedings, however, and therefore CN is submitting this response to the Petition within the time frame set forth by 49 C.F.R. § 1104.13(a).

CP’s Petition misstates the facts and misunderstands the law, and it should be denied. In the first place, CP’s assertion that interchange at Spaulding has “worked well” for both parties is simply not true.<sup>1</sup> Every single interchange event at Spaulding blocks CN’s single-track main line, thus impeding fluidity of an

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<sup>1</sup> Pet. at 2.

important corridor—one on which CN’s operations are already confined to narrow windows in order to accommodate passenger operations in the area. Every single interchange event at Spaulding also blocks grade crossings in the area, leading to hundreds of blocked crossing events exceeding 10 minutes every year and a regular stream of community complaints to both railroads.<sup>2</sup> And every single interchange at Spaulding is one where the lion’s share of work in both directions is performed by CN crews. This arrangement does not work well for the community, for the rail network, or for CN.

CP’s Petition also misunderstands the law, which gives CN the prerogative as receiving carrier to designate a point on its lines to receive interchange traffic, and which does not allow CP to lock prior arrangements into place after expiration of the parties’ interchange agreement. CN does not have the burden of explaining why it wishes to designate Kirk Yard as an interchange received point. It is rather CP that has the burden of demonstrating that CN’s designation is “unusual, unreasonable, or impossible.”<sup>3</sup> That burden is particularly heavy here, where the evidence shows that Spaulding interchanges consistently block CN’s single-track main line and local roadways and impose an unfair burden on CN. CP has no contractual right to require CP to receive traffic at Spaulding, no statutory right to compel the continuance of an inequitable arrangement, particularly when CP’s

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<sup>2</sup> See Ex. 1, Letter from Village of Bartlett (May 17, 2019).

<sup>3</sup> *Norfolk So. Ry. Co.—Pet. for Declaratory Order—Interchange With Reading Blue Mountain & No. R.R. Co.*, STB Docket No. 42078, at 5 (Apr. 29, 2003) (“*RBMN*”).

desired point of interchange harms the fluidity of the rail network and the local road network.

In contrast to the indisputable problems of continuing the Spaulding interchange, CN's interchange designation that CP is challenging is reasonable on its face. CN will deliver CP-bound traffic directly to CP's Bensenville classification yard, and CP would be required in turn to deliver CN-bound traffic directly to CN's Kirk classification yard. If CP prefers, CN remains willing to compromise even further, by allowing CP to deliver all CN-bound interchange traffic to the parties' existing interchange in the Belt Railway's ("BRC") Clearing Yard. Clearing is already used to interchange all hazardous materials traffic, and CP also uses it to deliver some non-hazardous traffic to CN. For example, between March 22 and May 14, 2019, CP tendered 140 non-hazardous cars at Clearing for CN. Indeed, CP currently runs two trains between Clearing and Bensenville every day. CP has said that delivering CN-bound traffic to Clearing rather than Spaulding is "acceptable" and that it is "willing" to interchange there, but it has refused to shift Spaulding interchange traffic to Clearing unless CN agreed to pay for all of CP's fees to the BRC.<sup>4</sup>

As its price for dropping its opposition to CN moving its interchange received point from Spaulding, CP thus expects CN to pay for (1) all the costs of delivering CP-bound traffic to CP at Bensenville (including CN's out-of-pocket switching fees); (2) all CN's costs to access Clearing Yard (including CN's out-of-pocket trackage

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<sup>4</sup> Pet. at Ex. E p.2, Ex. G p.1; V.S. Walker ¶ 10.

rights fees); and (3) all of CP's out of pocket costs to the BRC (costs that CP historically has paid itself for traffic interchanged at Clearing). Indeed, CP has threatened to create massive disruptions if it does not get its way, from refusing to deliver CN-bound traffic<sup>5</sup> to refusing to quote through rates<sup>6</sup> to blocking interchange redesignations through Railinc.<sup>7</sup> CP cannot possibly meet its burden of proving that CN's exercise of its statutory rights is "unusual, unreasonable, or impossible," when CP's own demands are so patently unreasonable.

CN is willing to mediate this dispute with the assistance of the Board, as we have been seeking an amicable solution for over a year. But if mediation is unsuccessful, the Board should decide this case expeditiously. The Board has now effectively ordered continued interchange at Spaulding during mediation, despite the lack of any irreparable harm that could have justified an exercise of the Board's 49 U.S.C. § 1321(b)(4) powers, despite CP's stated "willingness" to interchange at Clearing,<sup>8</sup> and despite the community's desire for the Board to allow CN to move the interchange point.<sup>9</sup> It is not fair to the community and not in the best interest of the rail network for the Board to continue to force interchanges at Spaulding when CP has conceded that using Clearing is operationally acceptable.

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<sup>5</sup> Pet at 11; V.S. Walker ¶ 14.

<sup>6</sup> *Id.* at V.S. Walker ¶ 5.

<sup>7</sup> *Id.* at Ex. G p.2.

<sup>8</sup> *Id.* at Ex. E p.2, Ex. G p.1

<sup>9</sup> *See* Ex. 1.

## **I. Facts**

The relevant factual history and background are detailed in the Verified Statement of William Albritton and were recounted in CN's Response to CP's Petition for Preliminary Injunction. The key facts are as follows.

In 2010, CP and CN entered an interchange agreement under which both CP-to-CN interchange non-hazardous traffic and CN-to-CP interchange non-hazardous traffic would be interchanged at CN's Spaulding Yard. The 2010 Interchange Agreement provided that it could be terminated by either party upon 60 days written notice.

Over the last 8 years, it became evident that the Spaulding interchange is not an operationally feasible or equitable location for the interchange of CN and CP traffic for three primary reasons: (1) CN's single-track main line is blocked while interchanging traffic; (2) interchange operations block at-grade crossings at Spaulding Road, West Bartlett Road, and Stearns Road; and (3) CN classifies all of the traffic at Kirk Yard, resulting in an inequitable balance of work and cost between the railroads.

The first problem is caused by the basic geography of the tracks in the area. CN's main line is single-tracked at Spaulding, and the location of CP's and CN's interchange tracks make it impossible for interchange operations to be conducted without blocking the single-track main line. Specifically, each time CN delivers CP-bound interchange cars to Spaulding, each time that CP picks up CP-bound interchange cars from Spaulding, and each time that CN picks up CN-bound interchange cars at Spaulding, CN's single-track main line is blocked.

This problem is detailed in Mr. Albritton's Verified Statement and the supporting illustrations. Blocking the CN single-track main line for Spaulding interchange operations causes congestion on CN's network and reduces fluidity on CN's lines in the Chicago area. On occasion, interchange operations at Spaulding require CN to hold trains on the main line while waiting for interchange operations to be completed. This can require CN to idle trains on sidings adjacent to other communities while waiting for interchange operations at Spaulding to be completed.

As Mr. Albritton describes, these interchange blockages have a broader impact because CN's use of its single-track main line is already restricted. Because portions of CN's line are utilized by or crossed by Metra and Amtrak, there are increased trains during morning and evening rush hour when Metra operates commuter service, and fewer freight trains are able to get through. As a result, any additional operations that block the main line are cutting into already-narrow operating windows.

The second problem is that interchange operations at Spaulding regularly block local at-grade crossings. Because the track connecting CP and CN lines to facilitate interchange at Spaulding runs over Spaulding Road, the road is typically blocked for daily interchange operations. Interchange operations often block other nearby roads as well. The at-grade crossings at West Bartlett Road and Stearns Road are often blocked when longer trains are interchanging traffic. The train must also stop during interchange movements for crews to line hand-thrown switches before proceeding. In 2016, Spaulding Road was blocked for 10 minutes or more no

less than 167 times as a result of interchange operations. West Bartlett Road was blocked 163 times and Stearns Road was blocked 84 times for more than 10 minutes while crews were conducting interchange moves at Spaulding.

CN has received numerous complaints from the adjacent communities about these blocked grade crossings. For instance, the letter filed with the Board from the Village of Bartlett details the disruptions the community experiences as a result of these interchange movements blocking West Bartlett, Stearns and Spaulding Roads. *See* Ex. 1. As the Village notes, it has complained to both CN and CP about the disruptions. *Id.* CN takes these complaints seriously, but it is not possible to conduct interchange operations at Spaulding without blocking at-grade crossings. These blocked crossings for interchange operations are readily avoidable by moving the interchange operations to more suitable locations. Indeed, the community has strongly expressed its desire that the Board allow the railroads to move their interchange operations to another location to alleviate at-grade crossing blockages. *See id.* (“On behalf of our residents, the Village of Bartlett is coming to you . . . to ask that you **DO NOT** require the railroads to continue interchanging at Spaulding.”) (emphasis in original).

The third problem is that use of the Spaulding interchange imposes an unfair burden on CN. Spaulding is limited to 4 CN siding tracks and 5 CP siding tracks, with Spaulding Road crossing between the two. As CN has explained, any movement of cars between the interchange tracks blocks CN’s single-track main line. Given the location of CN’s single-track main plus the limited siding tracks and

the nearby at-grade crossings, it is not feasible to classify, block, or switch cars at Spaulding. CN blocks and switches Spaulding interchange traffic at its closest classification yard, Kirk Yard. Kirk Yard is 80 miles from Spaulding, on the east side of Chicago. This results in CN having to haul both CN-to-CP interchange traffic and CP-to-CN interchange traffic around Chicago, to and from Kirk Yard, for blocking and switching. CN has to traverse track around Chicago twice to complete any interchange with CP. In addition to the time required to complete these operations, they result in additional crew expenses for which CN receives no compensation. CN has done this work for both interchange received and interchange forwarded traffic, without any compensation or reciprocation from CP for more than 8 years. The inequitable allocation of work and cost to complete these interchange activities is unfair to CN. CN must bear a disproportionate amount of the time and expense on a daily basis to complete these interchange activities.

CN has been discussing these problems and the need to reach a more equitable and commercially fair solution with CP for over a year. CN has offered to deliver CP-bound interchange traffic to any reasonable point CP designates in the Chicago area, including directly to CP's Bensenville Yard. And CN has proposed multiple locations where CP could deliver interchange traffic, such as CN's Glenn Yard, CN's Kirk Yard, and the BRC's Clearing Yard.

CP showed little interest in relocating the interchange point from Spaulding. In early 2019, CN informed CP that, if the parties could not reach agreement on an alternative, CN would be terminating the 2010 interchange agreement pursuant to

the terms of the contract, and exercising its right to designate a different reasonable interchange point. CN provided that formal written notice on March 11, 2019.<sup>10</sup>

Operational discussions continued over the ensuing months, and the parties have been working toward a solution that is acceptable to both carriers. One promising option is the Belt Railway's Clearing Yard, a spot that is already used to interchange CP-CN hazardous traffic and sometimes non-hazardous traffic. While CP made clear that its preference was to continue interchanging at Spaulding, it indicated that CP would be "agreeable" to delivering interchange traffic to Clearing Yard if CN would reimburse CP for its BRC fees (costs that CP historically has paid itself for traffic interchanged at Clearing).<sup>11</sup> CP Executive Vice President Operations, Robert A. Johnson, later confirmed in an April 3, 2019 letter that CP was "willing" to deliver to Clearing Yard so long as CN would pay for CP's trackage rights fees.<sup>12</sup> Mr. Johnson reiterated this "willingness" in an April 18 letter, again with a demand that CN pay for CP's BRC fees.<sup>13</sup>

Except for the issue of who will pay for CP's BRC fees, CN has confirmed in writing with CP that it is ready and willing to accept interchange as follows.<sup>14</sup>

- CN-to-CP interchange cars will be delivered directly to CP at its Bensenville Yard. CN will bear all costs for these interchange deliveries to Bensenville Yard—CN will deliver these cars to the IHB,

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<sup>10</sup> See Pet. Ex. D.

<sup>11</sup> See Pet. V.S. Walker at ¶ 10.

<sup>12</sup> See Pet. Ex. E.

<sup>13</sup> See *id.* at Ex. G.

<sup>14</sup> See Exhibit 3 (May 1, 2019 letter from M. Cory to R. Johnson).

and CN will pay the IHB switching costs to deliver cars to CP's Bensenville Yard.<sup>15</sup>

- CP-to-CN interchange cars will be delivered to CN at the BRC's Clearing Yard. CP will take cars to Clearing using its BRC rights, and CN will pick up cars in Clearing (with CN additionally bearing the costs of trackage rights fees for CN to access Clearing using the CSX Elsdon subdivision).

CN is thus willing to perform 100% of the work to deliver CP-bound interchange cars to Bensenville, and CN is willing to split the work for CN-bound cars, with CP moving the CN-bound cars to Clearing Yard and CN taking them the rest of the way to Kirk Yard. Alternatively, CP can deliver interchange cars directly to Kirk Yard, and CN will offer CP a free route on its lines to access Kirk Yard.

## **II. Argument**

### **A. CN Reasonably Exercised Its Broad Rights To Designate Where It Wishes To Receive Interchange Traffic.**

#### **1. CN has the Right to Designate Kirk to Receive Interchange Traffic from CP.**

The Board has correctly observed that, in the ordinary course, interchange points are decided by mutual agreement among carriers.<sup>16</sup> One reason why these disputes can be typically resolved without the Board's involvement is that the legal background clearly provides for what will happen if railroads cannot agree. In that situation, the receiving railroad has the authority to designate a point on its lines

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<sup>15</sup> On some occasions, CN may elect to deliver interchange traffic directly to Bensenville in lieu of using the IHB, on a free operating rights route CP would have to provide.

<sup>16</sup> *RBMN* at 4.

where it wishes to receive interchange traffic so long as that point does not “impose unusual, unreasonable, or impossible operating hazards.”<sup>17</sup>

This default rule of deference to the receiving railroad’s selection encourages negotiated solutions. If the Board were to interpose itself into operating decisions about what interchange point is the most “reasonable,” railroads would not have that background certainty and might try to obtain terms from the Board that they could not obtain in the market.

In the one case where the Board has addressed this question, it made clear that a railroad’s discretion to choose a point for receiving interchange traffic is broad and deep.<sup>18</sup> Even where a railroad is changing an interchange point purely for its own convenience, even when the existing interchange point remains operationally workable, and even when the new interchange point entails more work for the other carrier, the Board has declined to take away a receiving carrier’s statutory prerogative to designate a point for receiving interchange traffic.<sup>19</sup> As the

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<sup>17</sup> *New York, C. & St. L. R. Co. v. New York Central R. Co.*, 314 I.C.C. 344, 345 (1961) (“*New York*”) (a “receiving carrier necessarily has the right to designate where it will accept cars in interchange from its connections, provided, in making such designation, the receiving carrier does not impose unusual, unreasonable, or impossible operating hazards or require the delivering carrier to do work which properly belongs to the receiving carrier”); see *RBMN* at 4 (“Custom requires the receiving railroad in a direct physical interchange to designate a point on its own line where it will receive traffic and to provide a free route over its tracks to that point for the delivering carrier.”).

<sup>18</sup> See *RBMN* at 5-7.

<sup>19</sup> See, e.g., *id.* at 7 (denying petition to declare that receiving carrier’s selection of new interchange point was unreasonable, where prior interchange point remained workable and where new point would require the delivering carrier to make new 30-mile hauls over the receiving carrier’s lines).

D.C. Circuit has explained, “[t]he courts have long recognized that when a carrier has the power to provide two or more options for interchanging traffic, each of which is independently reasonable, proper, and equal, it need not provide all such options to connecting lines but may instead offer only that option which best serves its own business interests.” *Burlington N. R.R. v. United States*, 731 F.2d 33, 40 (D.C. Cir. 1984).

*RBMN* also makes clear that CN does not have the burden to show that its designation of Kirk Yard is reasonable. “Holding *RBMN*,” or here, CN, “to a standard where it would need to demonstrate that its proposal was reasonable would eviscerate the right to designate a point to receive cars, contradict precedent, and nullify the termination clause in the parties’ agreement.” *RBMN* at 5. The Board would “not impose such a standard on *RBMN*,” *id.*, and it should not impose it on CN.

Instead, the burden of proof is on CP to prove that interchange at Kirk is “unusual, unreasonable, or impossible.” *Id.* On the facts of this case, CP’s burden is far higher than that borne by the petitioning railroad in *RBMN*. In *RBMN*, there was no question about the suitability of the existing interchange point; the only question was whether the receiving carrier had the right as a business matter to select a different point on its lines to receive traffic. Here, however, there is substantial evidence that Spaulding is no longer a suitable interchange point, and CP has done nothing to overcome that evidence. Even if it had, CP cannot show that CN’s proposal to equally split interchange work with CP—by CN going to

Bensenville and CP going to Kirk—or that CN’s proposal to perform more than half of the interchange work—by CP going to Clearing and CN coming to Clearing—“impose[s] unusual, unreasonable, or impossible operating hazards.”<sup>20</sup>

## **2. Spaulding is Not a Reasonable Interchange Point.**

Over the past eight years of interchange operations, it has become clear that Spaulding is not a reasonable interchange point. The evidence is clear that interchanging traffic at Spaulding causes significant ongoing problems for network fluidity and the local communities.

First, the track geography at Spaulding makes it impossible to conduct interchange operations without blocking CN’s single-track main line. As explained in the Verified Statement of William Albritton, an interchange of cars between CN and CP at Spaulding actually consists of four discrete interchange events—(1) a CN train delivers CP-bound cars to CP’s tracks; (2) a CP train picks up those CP-bound cars; (3) a CP train delivers CN-bound cars to CN’s tracks; and (4) a CN train picks up those CN-bound cars. Three of those four events block CN’s single-track main line every time they are performed.<sup>21</sup> Because CN’s main line at Spaulding is single-tracked, each of these interchange events completely blocks traffic flows over the line. The problem is exacerbated by the fact that CN’s operations are already restricted to narrow time windows to accommodate commuter traffic.

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<sup>20</sup> *RBMN* at 5 (quoting *New York*, 314 I.C.C. at 345).

<sup>21</sup> Specifically, CN’s single-track main line is blocked whenever CN trains drop cars off or pick them up from CN’s tracks, and whenever CP drops CN-bound cars off on CN’s tracks. CP trains picking CP-bound cars up from CP’s tracks typically do not block CN’s main line.

Moreover, interchanging railcars is not a quick operation like a bus dropping off a passenger or a mail carrier picking up a parcel. Safely interchanging railcars requires a series of maneuvers, including sometimes cutting blocks of cars to set them out on several tracks (or picking cars up from several tracks), airing the cars, and conducting necessary brake tests and car inspection that require crews to walk both sides of the train before pulling cars. All this takes time, which creates regular blockages that impede the fluidity of CN's single-track main line under the very best of conditions. In the Chicago area—where operating conditions are often far short of the best—these regular blockages can significantly impede the fluidity and resilience of CN's network.

CP is well aware of these regular main line blockages, which CP has addressed through verbal and written communications before the Petition was filed.<sup>22</sup> But the Petition does not even mention them, let alone explain why they are not sufficient to justify moving interchanges from Spaulding.

Second, just as Spaulding interchanges cannot be conducted without blocking CN's main line, they also cannot be conducted without blocking at-grade crossings. Spaulding Road, which runs straight between CP's tracks and CN's tracks at Spaulding, is typically blocked during every interchange operation. Interchange operations regularly block other nearby at-grade crossings, such as West Bartlett Road and Stearns Road. These blockages often exceed 10 minutes. Indeed, data that

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<sup>22</sup> See, e.g., Pet. Ex. F at 1 (“CN-CP interchange operations at Spaulding regularly block CN's single-track main line leading into Spaulding, leading to congestion problems on CN's network.”).

CN was reporting to the Board in 2015 and 2016 show nearly 600 annual interchange-related blockages of 10 minutes or longer at these three crossings alone. It thus should come as no surprise that CN regularly receives complaints from the community about the interchange-related blockages at Spaulding. While blocked crossings are sometimes an unavoidable consequence of rail operations, the blockages here for interchange operations would come to an end if interchange operations were moved to a more suitable location. For these reasons, the community strongly supports CN's efforts to move the interchange point from Spaulding. *See* Ex. 1.

Again, CP is well aware of the grade crossing blockages created by interchanging at Spaulding.<sup>23</sup> The Village of Bartlett reports that it raised these issues with CP “on numerous occasions.” Ex. 1.<sup>24</sup> CN has discussed the problem of blocked grade crossings with CP on multiple occasions, and CN explained in its April 16, 2019 letter that interchange at Spaulding “regularly cause[s] several at-grade road crossings to be blocked.” Pet. Ex. F at 1. Nevertheless, the Petition has nothing to say about this problem with Spaulding either.

Third, continued interchange at Spaulding is inherently unequal. All traffic that is interchanged at Spaulding—both CP-bound traffic and CN-bound traffic—

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<sup>23</sup> *See, e.g.*, Pet. Ex. F at 1 (“CN-CP interchange operations at Spaulding regularly block CN’s single-track main line leading into Spaulding, leading to congestion problems on CN’s network.”).

<sup>24</sup> CP’s representation that it “received no complaints from the public or from local officials regarding any of our trains blocking the crossing at Spaulding” cannot be reconciled with the Village’s letter. *See* Petition, V.S. Walker at 3.

must be transported by CN back to Kirk Yard for blocking and classification. In other words, the work that CP claims would be too burdensome for it to perform in one direction is currently being performed by CN in both directions. It is not reasonable for CP to demand that it forever reap the benefits of this one-sided arrangement. Nor is it reasonable for CP to assert that performing half of the interchange work that CN has been performing is evidence that CN's designation is improper.

CP argues that overall interchange volumes between CP and CN have not substantially increased, but that is beside the point. The main line blockages, grade crossing blockages, and inherent inequity of Spaulding interchanges are not a function of traffic volume. They rather are a function of a physical geography that does not allow for interchange operations that do not block CN's single-tracked main line or nearby at-grade crossings. That problem has become more acute as CN works to improve network fluidity and respond to community concerns. And CP's assumption that CN has to identify some changed circumstance in interchange volumes to justify a cancellation of the Spaulding interchange agreement is fundamentally misguided. CN had an absolute contractual right to cancel the agreement and a clear legal right to designate a different, reasonable interchange point for receiving traffic from CP.

**B. CN's Designation of Kirk Yard Does Not Create "Unusual, Unreasonable, or Impossible Operating Hazards."**

Even if CP could prove that Spaulding remains a fair and suitable interchange point—and it cannot—CP has not carried its burden to show that

delivering CN-bound interchange traffic to Kirk Yard “imposes unusual, unreasonable, or impossible operating hazards.” CP’s objection to Kirk Yard boils down to a single claim—Kirk Yard is too far a distance from Bensenville to force CN to deliver traffic to it there. In the first place, CP’s representation in its Petition that it “runs no trains . . . [to Kirk], or near there, and does not have a route there” is not accurate.<sup>25</sup> CP operates trains past Kirk Yard on a near-daily basis. V.S. Albritton at 19. Specifically, CP trains operate over NS trackage rights within 100 yards of CN’s Kirk Yard. CN would be willing to offer CP rights over CN’s tracks between NS and CN’s Lakefront Subdivision to Kirk Yard to facilitate interchange, thereby all but eliminating the distance concerns CP has identified.

It is true that CP’s primary Bensenville Yard and CN’s Kirk Yard are not conveniently co-located so as to make interchange operations between the two carriers simple and short in either direction. But the answer cannot be that CN is expected to forever perform the lion’s share of the work to haul interchange traffic in both directions. Currently Spaulding interchange operations require CN crews to transport cars 84 miles one-way from Kirk to Spaulding; in contrast, CP crews only must travel 17 miles from Bensenville to Spaulding. Closing the yawning gap between the amount of interchange work that CN is performing and the amount that CP is performing will certainly mean that CP will be required to do more work than it is doing now. But there is nothing unreasonable about making an inequitable arrangement more equitable.

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<sup>25</sup> Pet. at 5.

Indeed, CN has proposed an equitable 50-50 split of interchange work. CN will deliver interchange traffic from Kirk Yard directly to CP's Bensenville Yard, and in turn CP will deliver interchange traffic from Bensenville directly to Kirk. That is reasonable under any definition, and CN is well within its rights to require CP to deliver interchange traffic to Kirk Yard.

Moreover, CN's reasonableness is shown by its continued willingness to entertain alternatives. CN initially proposed interchange at Glenn Yard, a yard that is substantially closer to Bensenville. CP refused, arguing that the route to Glenn Yard was too congested.<sup>26</sup> And CN remains willing to expand the parties' existing interchange at Clearing to handle all CP-to-CN interchange traffic. This approach splits the distance between Bensenville and Kirk (and indeed results in CN being responsible for the longer distance). As with past interchanges at Clearing, the parties should each pay their out-of-pocket costs to effect interchange at this location. CP's rejection of this compromise, and its insistence that CN be responsible both for the costs of delivering CP-bound traffic to Bensenville and for CP's costs of delivering CN-bound traffic to Clearing, demonstrates that CP is the only party that is not being reasonable.

The sparse caselaw cited by CP does not help its position. The two cited ICC cases, which date from the Roosevelt and the Kennedy administrations, offer little relevance here beside an affirmation of the general principle that a "receiving

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<sup>26</sup> Pet. Ex. E. Another rail carrier has since agreed to deliver its CN-bound interchange traffic to Glenn Yard. As a result, Glenn Yard no longer has the capacity to also accommodate CP interchange deliveries.

carrier necessarily has the right to designate where it will accept cars in interchange from its connections.” *New York, C. & St. L. R. Co. v. New York Central R. Co.*, 314 I.C.C. 344, 345 (1961) (“*New York*”).

In *New York*, the ICC ruled against a designating carrier solely on the ground that the parties had not made “any serious effort to negotiate their differences” and that the designation was made “unilateral[ly] . . . without consideration of or consultation with the interchanging carrier.” *Id.* at 346. That holding is inapplicable here, where CN has been engaging with CP about the need to move the Spaulding interchange for well over a year.

And *Kansas City Southern* is plainly not good law.<sup>27</sup> In *KCS* the ICC concluded that it “doubt[ed]” its power to order a carrier to operate over a receiving carrier’s lines to the receiving carrier’s designated point to receive interchange traffic, even where the receiving carrier was offering “free use of its tracks” to accomplish that interchange. *Kansas City So.*, 213 I.C.C. at 360. That eighty-six-year-old holding is irreconcilable with the law as recognized in *RBMN*, where the Board did not hesitate to order a carrier to deliver interchange traffic to the receiving carrier’s designated interchange point, despite the delivering carrier’s protests that those deliveries required it to operate “30 miles over the receiving carrier’s own tracks.”

As discussed above, the one STB case in this area does not help CP at all. *RBMN* established in the modern context that a receiving carrier has broad rights

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<sup>27</sup> *Kansas City S. Ry. Co. v. Louisiana & A. Ry. Co.*, 213 I.C.C. 351, 360 (1935).

to designate an interchange received point, even if there are no operational problems with the original junction, and even if the receiving carrier is moving the point for its own business purposes. Indeed, the facts in *RBMN* are highly reminiscent of the facts here. After extended negotiations, the receiving carrier designated a new interchange received point at Penobscot which was more convenient for its operations but which was “40 miles to the north” and required the delivering carrier to operate over 30 miles of the receiving carrier’s tracks.<sup>28</sup> The Board disagreed that this was unreasonable, noting in part that the prior interchange had required the receiving carrier RBMN to travel 33 miles one-way to pick up interchange traffic.<sup>29</sup>

Here too, CN engaged in lengthy efforts to negotiate an agreeable solution before it was forced to designate a new interchange received point. And here too, CP’s objection to the new point is based solely on the distance that it would have to travel to the new interchange point—even though that distance is commensurate with the distance that CN already must travel to interchange at Spaulding and indeed with the distance that CN will continue to travel to deliver interchange cars to Bensenville. While the distance here (84 miles one-way) is longer than the

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<sup>28</sup> It is not clear why CP states that the distance at issue in *RBMN* was only “eleven miles.” Pet. at 8. The decision indicates that the delivering carrier was complaining about an interchange point “40 miles to the north” which required “hauling traffic 30 miles over the receiving carrier’s own tracks,” and that distance is consistent with a map of the lines at issue. See Reading & Northern Railroad System Map, available at <http://www.rbmnrr.com/system-maps> (accessed May 16, 2019).

<sup>29</sup> *RBMN* at 6 n.6.

distance at issue in *RBMN* (40 miles one-way),<sup>30</sup> the governing principle is the same, particularly because CN is bearing all the burdens and costs of delivering interchange traffic over a similar distance to CP's Bensenville Yard.

CN repeats once again that it is willing to interchange traffic at Clearing pursuant to the agreement that CP said was operationally "acceptable" to it. CP and CN already use Clearing Yard to interchange hazardous and some non-hazardous traffic with each carrier paying the BRC. It is plainly unreasonable for CP to expect CN to cover 100% of the costs of delivering traffic to CP and 100% of the costs of delivering traffic to CN. CN requests the Board not disrupt CN's reasonable offer to accept interchange traffic at Kirk Yard via a free movement over CN's lines or CN's compromise to meet CP at Clearing with each party paying its own expenses.

## CONCLUSION

For the foregoing reasons, the Board should deny CP's petition for a declaratory order. The Board should make clear in its order denying the Petition that CP is obligated to either deliver CN-bound interchange traffic to Kirk Yard or

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<sup>30</sup> *Id.* at 1 (noting that interchange point was moved "40 track miles to the north").

to deliver that traffic to the existing CN-CP interchange at Clearing Yard, with each railroad bearing its costs to effectuate that interchange.

Respectfully submitted,

/s/ Raymond A. Atkins

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Dated: May 20, 2019

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of May 2019, I caused a copy of the foregoing Reply to Petition for Declaratory Order to be served by U.S. Postal Service or more expeditious means upon:

David F. Rifkind  
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Charles W. Webster  
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Franklin Park, IL 60131  
Charles\_webster@cpr.ca

/s/ Hanna Chouest

---

Hanna Chouest

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**STB Finance Docket No. 36299**

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**SOO LINE RAILROAD COMPANY—PETITION FOR DECLARATORY  
ORDER AND PRELIMINARY INJUNCTION—INTERCHANGE WITH  
CANADIAN NATIONAL**

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**VERIFIED STATEMENT OF WILLIAM ALBRITTON**

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My name is William Albritton, and I am a General Manager at CN. I joined CN in 1990 and have over 14 years of senior management experience, serving as Superintendent and General Superintendent prior to my appointment as General Manager in 2014. I am responsible for overseeing CN rail operations in the Chicago area. I have served in a variety of terminals on the CN network, including at the Chicago Rail Traffic Control Center. I am particularly familiar with CN's interchange operations with Canadian Pacific ("CP") at Spaulding and the Belt Railway's Clearing ("BRC") Yard and have been involved in negotiations with CP regarding the movement of the CN-CP interchange in the Chicago area.

In 2010, CN and CP entered into an interchange agreement that set Spaulding as the primary location to interchange traffic in Chicago. The selection of Spaulding was intended to consolidate operations to facilitate interchange for both railroads in the complex Chicago region. CN and CP also interchange traffic at Clearing Yard; all hazardous traffic that requires a secure handoff must be

interchanged at Clearing, and other nonhazardous traffic is occasionally interchanged there.

CN is continuously striving to improve network fluidity, which is imperative to promote efficient asset utilization and good customer service. One way in which CN can improve fluidity is by eliminating chokepoints on its system. The Spaulding interchange is one such chokepoint. By moving interchange activities from Spaulding to a more suitable location, CN's network will be more resilient, and fluidity in the important Chicago area will improve.

CN and CP interchange traffic at Spaulding on a near daily basis. Each day on average, CN delivers 42 CP-bound interchange cars to CP and CP delivers 29 CN-bound interchange cars to CN at Spaulding. In the last two months, CN has delivered as many as 97 cars to CP in one day, and CP delivered a high of 86 cars to CN in a day.

Over the last 8 years, it has become clear that the Spaulding interchange is not an operationally feasible or equitable location for the interchange of CN and CP traffic for three primary reasons: (1) CN's single-track main line is blocked while CP or CN place or pull interchange traffic; (2) interchange operations block nearby at-grade crossings at Spaulding Road, West Bartlett Road, and Stearns Road; and (3) CN classifies all of the interchange traffic at Kirk Yard, resulting in an inequitable balance of work and expense between the railroads because CN travels between Spaulding and Kirk Yard twice for each interchange. In comparison, there are at least two other locations in the Chicago region—CN's Kirk Yard and the BRC's

Clearing Yard—that are both equitable and operationally feasible locations for CP to deliver interchange traffic to CN. CP has agreed that Clearing Yard is operationally feasible—and in fact already operates two trains between Bensenville and Clearing every day to deliver cars to CN at Clearing with CP paying BRC’s fees. CN has agreed to tender CP-bound interchange traffic to CP’s Bensenville Yard. Thus the only outstanding issue is who should pay for CP to deliver CN’s cars to Clearing.

In the following statement, I explain the operational and equitable challenges that make Spaulding an infeasible interchange location. I also explain how interchange operations for CP-to-CN bound interchange traffic at either Kirk or Clearing are both operationally feasible and equitable.

**A. CP and CN Interchange Operations Regularly Block CN’s Single-Track Main Line When Interchanging Traffic at Spaulding.**

Nearly every day, interchange operations between CN and CP block CN’s single-track main line at Spaulding. Blocking the single-track main line during interchange operations causes congestion problems on our network that can radiate across Chicago and beyond. Specifically, CN’s single-track main line is blocked in each of these three moves that are required to complete interchange:

- each time CN delivers CP-bound interchange cars to Spaulding,
- each time CP picks up CP-bound interchange cars from Spaulding, and
- each time CN picks up CN-bound interchange cars at Spaulding.

As Exhibit 2 illustrates, the CN single-track main line crosses both Bartlett and Spaulding Roads. CN’s sidings (where CN delivers and picks-up cars for

interchange to CP) are located between Bartlett and Spaulding Roads. CP's siding tracks are accessed from the Spaulding West Wye, which connects to CN's single-track main line, or from Metra's tracks. Any time either railroad needs to place or pull cars from CN's sidings, or any time cars are pulled from CP's siding, CN's single-track main line is blocked. Blocking CN's single-line main nearly every day deteriorates CN's fluidity on adjacent track segments in its network across Chicago.

Interchange operations involve a number of consecutive train movements that take time. CN has included photos of some of these operations, which illustrate the extent to which the single-track main line is blocked during interchange.

When CN conducts an interchange move at Spaulding to drop off cars for subsequent CP pick-up, it must complete the following steps:

- CN train arrives at the CN Bartlett Road crossing and pulls through the crossing, as illustrated by the following photo:



- CN sets out cars on the siding south of Bartlett Road. This operation blocks the at-grade crossing at Bartlett Road.
- CN blocks the main line to shove additional cars onto a second siding.
- CN moves north on to the CN Main and crosses Spaulding Road onto the CP siding to pick up cars.
- CN ties onto cars set out in the CP siding and does a brake test. The conductor must walk both sides of the train to complete a safety inspection.
- CN requests permission from the dispatcher to enter the main line and then must line the hand-thrown switches.
- CN enters the main and shoves back onto a second CP siding to pick up additional cars. It takes approximately 45 minutes to compile a train from cars placed on 3 interchange tracks. During this time, the single-track main line is blocked.
- CN pulls forward onto the mainline until the last car is completely on the main line.
- CN airs the cars and must perform an air test.

Given space limitations on each individual siding track, depending on the number of cars to be set off for interchange, these operations sometimes need to be completed two or three times to place cars on the individual interchange tracks. On May 14, 2019, CN completed a typical interchange operation. The CN train arrived at Spaulding at 17:57 and completed operations at 19:29. During that time, CN's single-track main line was blocked for a minimum of thirty minutes.

CP's operations at Spaulding are similarly complicated. On May 14, 2019, CP arrived at Spaulding at 22:10 and departed nearly 7 hours later at 04:54. Those operations included the following movements:

- CP train arrives at the Metra Spaulding Road crossing, and crosses the CN single-track main line, as illustrated by the following photo:



- CP must wait until the CN single-track main line is clear.
- CP shoves back into the CP siding tracks and sets out cars.

- CP again crosses the CN single-track main line and through the Spaulding Road crossing to switch onto another CP siding and wait again for the CN single-track main line to clear.
- CP shoves back through the CN Spaulding Road crossing onto the CN single-track main line and blocking Bartlett Road to shove back into the siding and pick-up CP-bound cars.
- CP performs an air test.
- CP again enters the CN single-track main line to couple with cars set out on additional sidings.
- CP pulls interchange cars north through the Bartlett Road crossing and onto the CN main line to connect to the Metra tracks and depart the location. During this particular operation, Bartlett Road was blocked for 18 minutes and the CN single-track main line was blocked for a minimum of 12 minutes.

The following photo illustrates the final operation, where CP must block the CN single-track main line as well as the at-grade crossing at Bartlett Road. As the photo shows, vehicular traffic is blocked during these CP operations:



Throughout each of these operations, CN's single-track main line is blocked. Blocking the CN main line for these operations causes congestion on CN's network and reduces fluidity on CN's lines in the Chicago area. In fact, at times, the interchange operations at Spaulding require CN to hold trains on the main line while interchange operations occur. This can require CN to idle trains on sidings adjacent to other communities while waiting for interchange operations at Spaulding to be completed.

The capacity on CN's use of its single-track main line is already in high demand in the Chicago area. Portions of CN's line are utilized by Metra and Amtrak. There are increased trains during morning and evening rush hour when Metra operates commuter service and fewer freight trains are able to get through. CN's single-track main line also crosses the lines of other Chicago railroads, including the CP. Because of various interlocking agreements,<sup>1</sup> CN's operating windows are already very limited in terms of the times of day that trains can cross the Chicago region. The Spaulding interchange operations further limit the number of runs CN can complete in a day because of the interference it causes on CN's single-track main line and thus further impairs the fluidity of CN's network in the Chicago area.

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<sup>1</sup> An interlocking system is a set of signals that prevents trains from conflicting movements through an arrangement of tracks, such as junctions or crossings, allowing trains to receive authority to proceed when routes have been detected to be safe. In the Chicago region, railroads have interlocking agreements that control when a railroad may cross the tracks of another railroad.

The nature of CN's largely single-line system also means that there are days in which CN cannot allow interchange operations to occur at Spaulding, because of priority that must be given to trains moving over the system. On other occasions, CN must limit the amount of time CP can spend on the line conducting operations, which can result in CP only being able to pull a portion of the traffic slated for interchange on that day. This causes delays for the interchanged traffic.

The interference incurred on the main line as a result of interchange operations at Spaulding creates a significant chokepoint on CN's system. By moving the interchange point for CN-to-CP and CP-to-CN traffic, significant improvement in network fluidity would be gained. Particularly in the busy Chicago area where each rail line seeks resiliency and improved fluidity, it is important to alleviate such chokepoints where possible.

**B. CP and CN Interchange Operations at Spaulding Regularly Occupy The At-Grade Crossings at Spaulding Road, West Bartlett Road, and Stearns Road.**

The tracks connecting CP and CN lines to facilitate interchange at Spaulding cross Spaulding Road at grade. As a result, Spaulding Road is blocked for daily interchange operations. Interchange operations often block other nearby roads as well. The at-grade crossings at West Bartlett Road and Stearns Road are often blocked when longer trains are interchanging traffic because the crew must make various forward and reverse moves over the crossings to set off or pick-up cars, as described above. The train must also stop during interchange movements to line hand-thrown switches before proceeding. In 2016, Spaulding Road was blocked for 10 minutes or more 167 times for interchange operations. West Bartlett Road was

blocked 163 times and Stearns Road was blocked 84 times for more than 10 minutes while crews were conducting interchange moves at Spaulding. Interchange operations accounted for the vast majority of blocked crossings at Spaulding, West Bartlett and Stearns Roads in 2016, as is illustrated by the table on the next page.

**Summary of 10 Minute Activations  
at Crossings Near Spaulding<sup>2</sup>**

**2015 - 2016**

|                   |                              | <b>Activations Caused by<br/>Interchange Operations</b> |                      |                    |                       |
|-------------------|------------------------------|---------------------------------------------------------|----------------------|--------------------|-----------------------|
| <b>Crossing</b>   | <b>Total<br/>Activations</b> | <b>Total</b>                                            | <b>Per<br/>Month</b> | <b>Per<br/>Day</b> | <b>% of<br/>total</b> |
| Spaulding Rd.     | 434                          | 402                                                     | 16.8                 | 0.6                | 92.6%                 |
| Stearns Rd.       | 295                          | 154                                                     | 6.4                  | 0.2                | 52.2%                 |
| West Bartlett Rd. | 458                          | 279                                                     | 11.6                 | 0.4                | 60.9%                 |
| <b>Total</b>      | <b>1187</b>                  | <b>835</b>                                              | <b>34.8</b>          | <b>1.1</b>         | <b>70.3%</b>          |

**2015**

|                   |                              | <b>Activations Caused by<br/>Interchange Operations</b> |                      |                    |                       |
|-------------------|------------------------------|---------------------------------------------------------|----------------------|--------------------|-----------------------|
| <b>Crossing</b>   | <b>Total<br/>Activations</b> | <b>Total</b>                                            | <b>Per<br/>Month</b> | <b>Per<br/>Day</b> | <b>% of<br/>total</b> |
| Spaulding Rd.     | 251                          | 235                                                     | 19.6                 | 0.6                | 93.6%                 |
| Stearns Rd.       | 137                          | 70                                                      | 5.8                  | 0.2                | 51.1%                 |
| West Bartlett Rd. | 211                          | 116                                                     | 9.7                  | 0.3                | 55.0%                 |
| <b>Total</b>      | <b>599</b>                   | <b>421</b>                                              | <b>35.1</b>          | <b>1.2</b>         | <b>70.3%</b>          |

**2016**

|                   |                              | <b>Activations Caused by<br/>Interchange Operations</b> |                      |                    |                       |
|-------------------|------------------------------|---------------------------------------------------------|----------------------|--------------------|-----------------------|
| <b>Crossing</b>   | <b>Total<br/>Activations</b> | <b>Total</b>                                            | <b>Per<br/>Month</b> | <b>Per<br/>Day</b> | <b>% of<br/>total</b> |
| Spaulding Rd.     | 183                          | 167                                                     | 13.9                 | 0.5                | 91.3%                 |
| Stearns Rd.       | 158                          | 84                                                      | 7.0                  | 0.2                | 53.2%                 |
| West Bartlett Rd. | 247                          | 163                                                     | 13.6                 | 0.4                | 66.0%                 |
| <b>Total</b>      | <b>588</b>                   | <b>414</b>                                              | <b>34.5</b>          | <b>1.1</b>         | <b>70.4%</b>          |

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<sup>2</sup> The data in this table was previously publicly reported to the Board in connection with *Canadian National Railway Co. & Grand Trunk Corp.—Control—EJ&E West Co.*, STB Fin. Docket No. 35087.

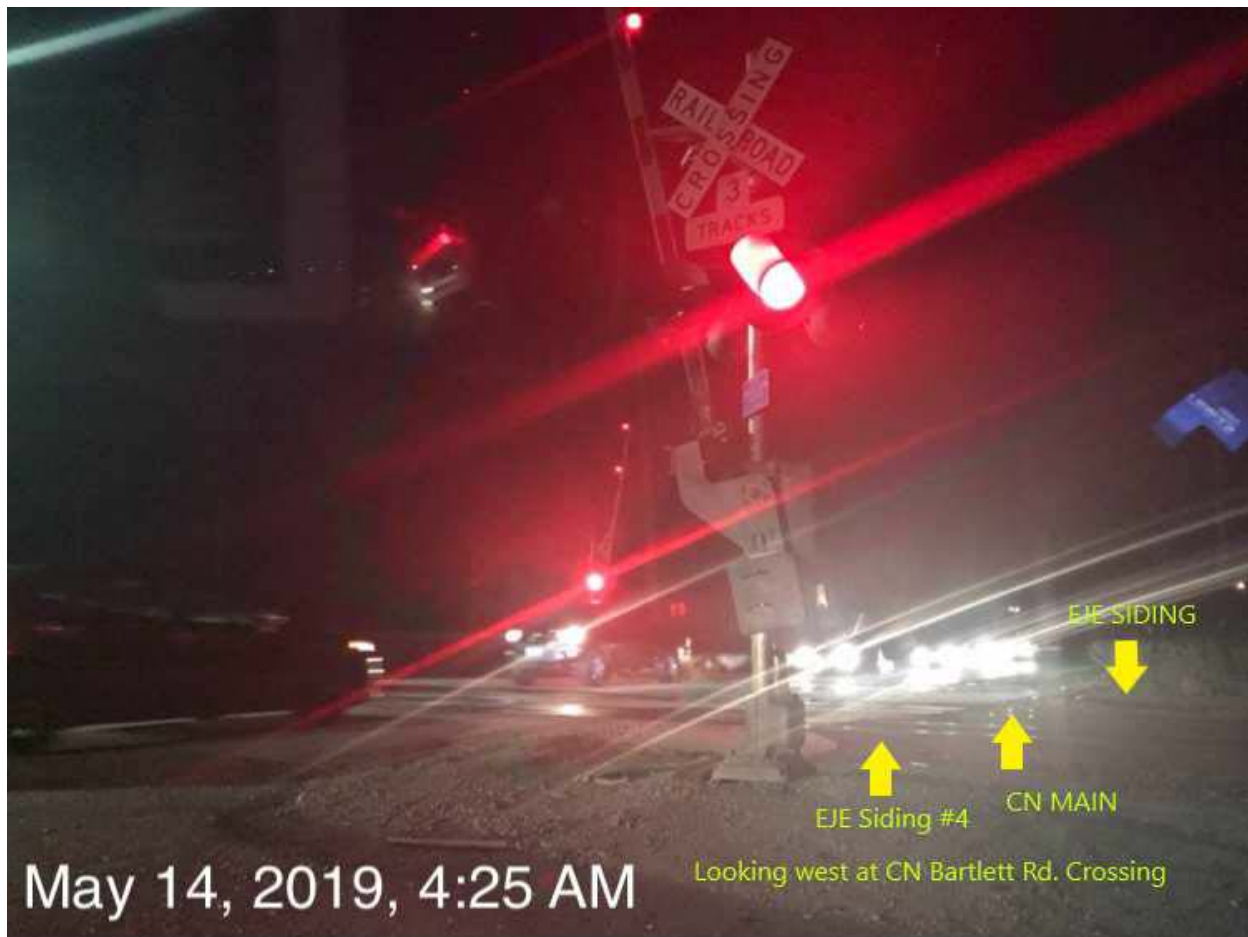
The following photos illustrate how interchange operations block nearby roads, specifically, the following photo illustrates how CP must block Spaulding Road to reach the CN sidings in order to pick up CP-bound cars:



To leave the CN sidings with the coupled interchange traffic, CP blocks the Bartlett Road crossing:



CN's similar operations also block these crossings. Blockages can last as long as 30-45 minutes for each interchange event. Even in the early morning hours, upon completion of these interchange activities, vehicular traffic is waiting and has backed up at the blocked crossings:



On 14 May, 2019, CN placed 63 cars on the EJE side tracks for CP interchange. It took the CN crew two and a half hours to complete the operation, during which West Bartlett Road was blocked for 12 minutes and Spaulding Road was blocked for eight minutes.

CN has received numerous complaints from the adjacent communities about blocked grade crossings. For example, the Village of Bartlett has spoken to CN numerous times about the blockages at West Bartlett, Stearns, and Spaulding Roads. According to the Village's letter to the Board, the Village has complained not only to CN but to CP as well about the "prolonged backups on West Bartlett, Stearns and Spaulding Roads." See Exhibit 1.

It is not possible to conduct interchange operations at Spaulding without blocking at-grade crossings at Spaulding Road, West Bartlett Road, and Stearns Road. These blocked crossing are not necessary because there are suitable alternatives for interchange operations. Communities have requested that the Board allow CN to move its interchange received point to another location to reduce these at-grade crossing blockages for interchange operations. *See id.* (“On behalf of our residents, the Village of Bartlett is coming to you . . . to ask that you **DO NOT** require the railroads to continue interchanging at Spaulding.”) (emphasis in original).

**C. Use of The Spaulding Interchange Imposes an Unfair Burden on CN.**

Use of the Spaulding interchange for both CN-to-CP and CP-to-CN interchange traffic imposes an unfair operational and financial burden on CN. Because of the limited size and location of the Spaulding interchange, no blocking or switching activity occurs at Spaulding.

Blocking is the process of coupling individual rail cars destined for the same location together into a “block,” which allows those cars to traverse the system together. Switching is the process of moving a rail car—or a block of rail cars—from one train to another, or from one train to a track in a yard, or from one track to another track. Together, these activities result in the classification of cars— assembling cars destined for the same yard or location together to allow trains to be built efficiently. Classification activities, such as switching and blocking, typically occur at large yards that have tracks dedicated for this purpose. Some of the largest

classification yards include a “hump” track, which facilitates efficient classification. A hump allows cars to be pushed up one side and then, with the assistance of gravity, pushed down the hump and into the appropriate classification track. A railroad employee utilizes remote control switching to control which classification track switch is set to ensure the car is blocked.

Spaulding is limited to 4 CN siding tracks and 5 CP siding tracks, with Spaulding Road crossing between the two. As CN has explained, any movement of cars between the interchange tracks blocks CN’s single-track main line. Given the location of CN’s single-line main plus the limited siding tracks and the at-grade crossing, it is not feasible to classify, block, or switch cars at Spaulding. CN blocks and switches Spaulding interchange traffic at its closest classification yard, which is Kirk Yard. Kirk Yard is 80 miles from Spaulding, on the east side of Chicago. This results in CN having to haul both CN-to-CP interchange traffic and CP-to-CN interchange traffic across Chicago, to and from Kirk Yard, for blocking and switching. CN has to traverse Chicago twice to complete any interchange with CP. These operations require CN to incur not only the operational costs of doing the work, but also the financial crew costs. To complete these interchange movements, CN has been responsible for 90% of the work and 90% of the cost, while CP reaps the benefits of CN’s work and expense. CN has done this work for both interchange received and interchange forwarded traffic, without any compensation or reciprocation from CP for more than 8 years.

The inequitable allocation of work to complete these interchange activities is unfair to CN. CN must bear a disproportionate amount of the time and expense on a daily basis to complete these interchange activities. The solutions that CN has proposed will still result in CN completing the bulk of the work, but would more equitably share the burdens of interchange between the two carriers.

**D. CN Cancelled the Interchange Agreement Designating Spaulding and Has Proposed Numerous Feasible Alternative Interchange Arrangements for CP to Deliver Cars to CN.**

CN first raised these concerns about the use of the Spaulding interchange with CP more than one year ago. CN is willing to be flexible, has offered multiple alternative solutions, and has agreed to deliver CP-bound interchange traffic to CP's Bensenville Yard. CN's goal in moving the interchange is to reach a more equitable, efficient, and commercially fair solution that does not have the same operational hurdles that are present at Spaulding. Although CP is willing to receive traffic at Bensenville, CP was unwilling to agree to alter operations for delivering traffic to CN, despite the many alternatives CN has proposed, unless CN would pay all costs.

Following a year of failed negotiations, CN elected to terminate the Interchange Agreement, pursuant to its terms, which allow either party to terminate upon 60 days written notice. CN informed CP orally that it was going to terminate the agreement two weeks prior to tendering the 60-day written notice.

CN has consistently, and for over one year, aimed to have open communications with CP about the problems at Spaulding and its intent to close the interchange. Unfortunately, CP has not maintained the same levels of open

communication with CN. On May 2, 2019, just two days after CP filed its Petition with the Board in this matter, CP informed CN of its intent to exercise its option to terminate a different interchange agreement at Cardigan Junction, near St. Paul, MN. *See* Exhibit 4, May 2, 2019 Letter from C.E. Hubbard to M. Matteucci. At no time prior to the cancellation had CP informed CN of any concerns about the feasibility of interchange operations at Cardigan Junction.

When CN cancelled the interchange at Spaulding, CN proposed multiple locations where CP could deliver interchange traffic to CN, including CN's Glenn Yard, CN's Kirk Yard, and the BRC's Clearing Yard. Each of these options would have resulted in a more equitable division of labor at an operationally feasible location. Two of those options—Kirk Yard and Clearing Yard—remain both operationally feasible and equitable.<sup>3</sup> Importantly, both Kirk and Clearing yards are grade separated, meaning that moving the interchange point to either location would not result in a disruption to the local communities from interchange operations because CP could deliver and CN could receive cars without blocking crossings for interchange.

Kirk Yard is CN's classification yard in the Chicago area. CN has the capacity and the crew staffing available at Kirk to accommodate the CP-to-CN interchange traffic. CN already classifies this traffic at this yard, making it a simple

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<sup>3</sup> During negotiations, CN offered CP the option of interchanging traffic at CN's Glenn Yard. CP rejected that offer. Since the time of that offer, another carrier agreed to begin delivering interchange traffic to Glenn Yard. As a result, Glenn Yard is no longer a feasible option for these interchange activities.

and feasible location for the interchange. CN is willing to grant CP access over its lines to reach Kirk Yard.

CP operates a minimum of one daily train in each direction past Kirk Yard. CP trains destined for Michigan and Eastern Canada operate from Bensenville, over the IHB with an IHB crew to CP 502, located north of Kirk on the Chicago lakefront. A CP crew takes over at that location and operates via trackage rights over the NS line to Detroit. The same operations occur for trains arriving from eastern locations destined for Bensenville Yard. The NS track is located within 100 yards of Kirk Yard. CN would willingly give CP operating rights over CN's track that connects Kirk Yard to the NS via CN's Lakefront subdivision.

CN understands that, despite the fact that CP operates trains past Kirk on a daily basis, CP believes that Kirk is too far from CP's Bensenville Yard and that CP does not want to agree to tender cars to CN at Kirk. Accordingly, CN has offered a compromise, whereby CP tenders traffic to CN at the BRC's Clearing Yard. *See Ex. 3.* CN has offered CP a free route over its lines to deliver traffic directly to Kirk Yard. CN is prepared to honor its agreement to deliver CP-bound interchange traffic to Bensenville Yard and to share the burden of going to Kirk Yard by accepting CN-bound interchange traffic at Clearing Yard. CN would still incur a crew charge, as well as CSX trackage rights charges, to accept interchange traffic at Clearing. CN is willing to undertake those expenses, but CP needs to pay for its charges to get to Clearing as it does with current traffic CP delivers to CN at Clearing.

Operationally, Clearing Yard is a reasonable choice. Clearing Yard is a hump yard, which facilitates the classification of traffic that is tendered at that location. CP has informed me that it has an existing two trains per day that operate between Bensenville Yard and Clearing Yard. Accordingly, CP could include the approximately 30 cars per day destined for CN on one or both of those trains. CP would not even need to block the traffic—the BRC will hump the cars and classify them upon delivery at Clearing Yard.

Importantly, Clearing Yard is an existing interchange between CP and CN. Clearing has proven to be operationally feasible because CP has tendered cars for CN at that Yard as recently as May 10th, 2019. All hazardous interchange traffic is interchanged at Clearing rather than Spaulding, and CP tenders some non-hazardous traffic to that location. In 56 days, between March 22nd and May 14th, 2019, CP has tendered 140 non-hazardous cars for CN at Clearing. Those cars amount to 69% of the traffic CP tendered to CN at Clearing during that period. At no time during this period were there congestion concerns at Spaulding that required this traffic to be delivered at Clearing.

Clearing Yard is also an equitable choice. Both railroads operate at Clearing already and interchange traffic there. If CP tenders additional CN-bound traffic at Clearing, BRC would classify the cars, which would alleviate work that CP would otherwise have to do. Tendering traffic at Clearing would also minimize the distance that CP would have to travel to effect the interchange. While CN would

still have to traverse more of the Chicago area than CP would, the burdens would be shared more equitably than they are currently, as illustrated below:

**Distance to Spaulding**

|                                                |          |
|------------------------------------------------|----------|
| Spaulding to Bensenville Yard (CP responsible) | 17 miles |
| Spaulding to Kirk Yard (CN responsible)        | 84 miles |

**Distance to Clearing**

|                                                    |          |
|----------------------------------------------------|----------|
| Clearing Yard to Bensenville Yard (CP responsible) | 17 miles |
| Clearing Yard to Kirk Yard (CN responsible)        | 39 miles |

As the above tables illustrate, Clearing Yard is a more equitable solution, and would not require CP to travel additional mileage than it does today. In comparison, CN will still have to travel nearly twice as far as CP to accept the CN-bound traffic. (CN will also still traverse a distance of 72 miles in the Chicago area to Bensenville to tender CP-bound interchange traffic). But ultimately, this solution offers shorter routes, on existing trains, for both railroads and should be considered a win-win.

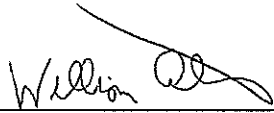
In comparison to these feasible alternatives, Spaulding is not feasible for the many reasons I have identified above. In CP's Petition, it claims that Spaulding is feasible because "CN trains pass Spaulding several times daily." Pet. at 5. However, the number of CN trains that pass Spaulding on CN's single-track main line on a daily basis shows precisely why this interchange location is not feasible. Trains must pass Spaulding because Spaulding is located directly on CN's main line. Anytime a train would need to access the Spaulding interchange tracks, the operations needed to do so block that main line and prevent any other CN train from passing that location. The fact that this is a busy line where numerous trains a

day pass by highlights the reasons why CN is appropriately trying to eliminate the interchange chokepoint at Spaulding—to increase fluidity and minimize congestion along CN's single-track main line so the trains more efficiently operate in the Chicago area to reach their destination.

## VERIFICATION

I, William Albritton, verify under penalty of perjury that the foregoing verified statement in support of Canadian National Railway Company's Response to Canadian Pacific's Petition for Declaratory Order is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed on this 20th day of May, 2019

A handwritten signature in black ink, appearing to read "William Albritton", is written over a horizontal line.

William Albritton

# **EXHIBIT 1**



THE VILLAGE OF  
**BARTLETT**

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Kevin Wallace

ADMINISTRATOR  
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TRUSTEES  
Michael E. Camerer D.C.  
Vince Carbonaro  
Raymond H. Deyne  
Kristina Gabrenya, OD, FAAO  
Adam J. Hopkins  
Aaron H. Reinke

May 17, 2019

Ms. Cynthia T. Brown  
Chief, Section of Administration Office of Proceedings  
U.S. Surface Transportation Board  
395 E Street, Southwest  
Washington, DC 20023

Re: STB Finance Docket 36299 Soo Line Railroad Company Petition for Declaratory Order and Preliminary Injunction - Interchange with Canadian National

Dear Ms. Brown:

In 2008, The Village of Bartlett wrote numerous letters to the STB on behalf of our residents in hopes of stopping CN's acquisition of the EJ&E rail line. The Village feared a significant increase in train traffic, considerably more at-grade crossings and an overall detriment to the public health and safety of our residents. Eleven years later, all of our fears have been realized. Over 1,300 Bartlett homes lie west of the CN rail line, often times cut off from Bartlett Fire Protection, Police, work and school for up to 45 minutes at a time because trains sit, stopped on the tracks crossing West Bartlett, Stearns and Spaulding Roads.

In an attempt to alleviate some of the hardship for our residents the village has discussed signaling options to vehicles on West Bartlett Rd., which could give an estimated time of when a train will clear the crossing, but CN informed us that the train schedules are unpredictable. Another option that has been considered is an overpass. This option wouldn't be viable for decades and comes with a massive cost to our residents.

Bartlett's earliest roots involve rail activity and we currently have three lines that crisscross our village. Our residents are no strangers to waiting for trains to pass, and all but a small handful of the railroad complaints we receive are in regards to the CN line and the prolonged backups on West Bartlett, Stearns and Spaulding Roads. The village has complained to CN and CP about this on numerous occasions. We understand that there is a proposal by CN to move the interchange operations from Spaulding and reduce at-grade blocked crossings. On behalf of our residents, the Village of Bartlett is coming to you, for a second time, regarding the CN/EJ&E line. This time, it is to ask that you **DO NOT** require the railroads to continue interchanging at Spaulding. The last ten years have greatly affected many of our residents. Moving the interchange would not only improve traffic flow, it would increase the safety of our residents west of the track, giving them better access to police, fire and ambulance services. We appreciate the opportunity to submit the village's concerns.

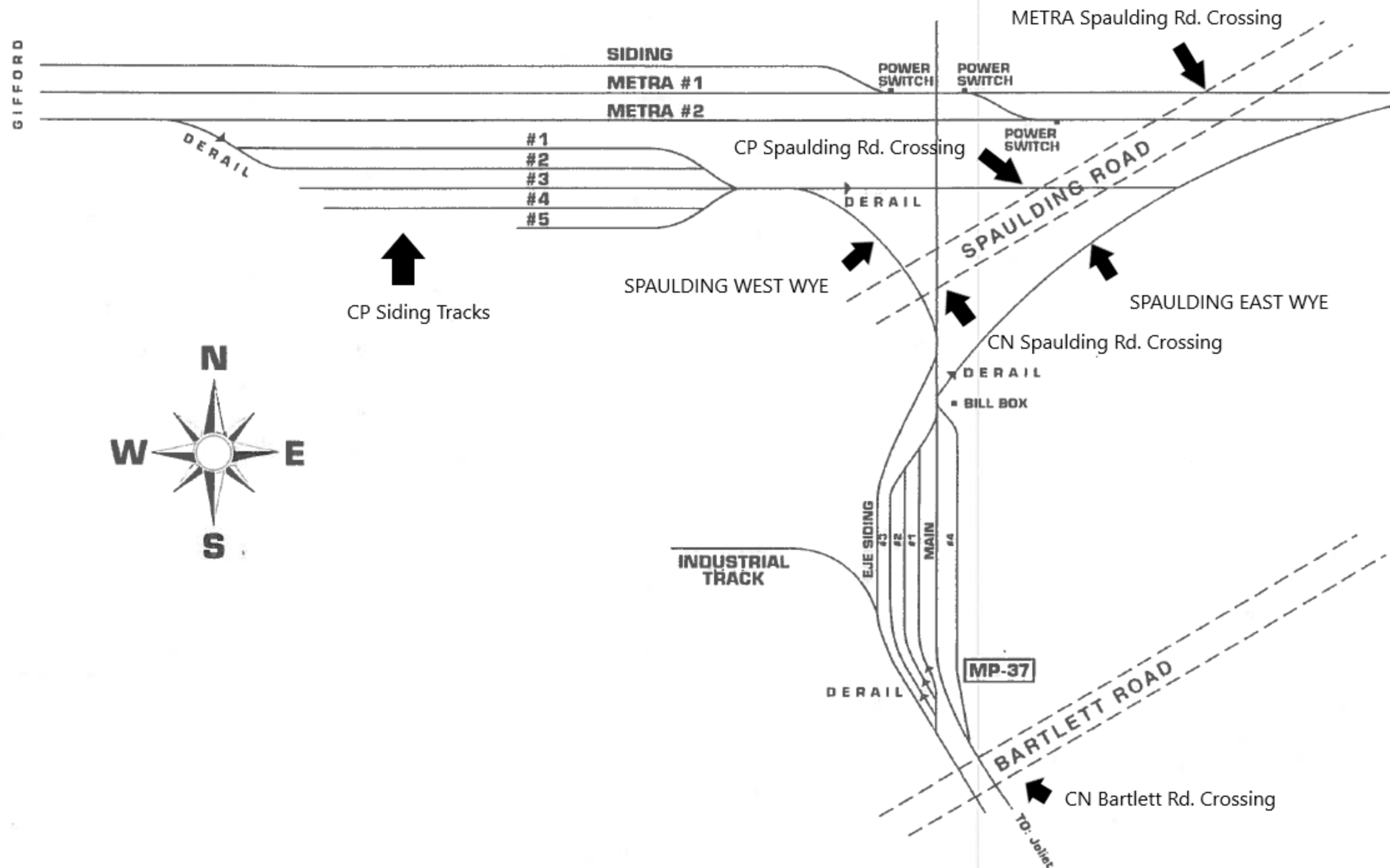
Sincerely,

Kevin Wallace  
Village President

KW/sh

## **EXHIBIT 2**

# SPAULDING MAP



## **EXHIBIT 3**



**Executive Vice-President & Chief  
Operating Officer**

**Vice-président Exécutif et Chef  
de l'exploitation**

**Michael A. Cory**

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May 1<sup>st</sup>, 2019

Mr. Robert A. Johnson  
Executive Vice President, Operations  
Canadian Pacific Railway Co.  
7550 Ogden Dale Road, SE  
Calgary, Alberta Canada T2C4X9

**Re: CN/CP Interchange at Chicago**

Dear Mr. Johnson,

I am writing to respond to your April 18, 2019 letter regarding the designation of Kirk Yard as the point in the Chicago Terminal for CN to receive interchange traffic from Soo Line Railroad Company d/b/a Canadian Pacific (CP).

While we were disappointed to see that CP has filed a formal complaint at the STB in the midst of our continued commercial discussions, CN continues to believe that a fair commercial resolution can be reached that serves the interests of both our companies in moving traffic efficiently through the Chicago Terminal.

Continued use of Spaulding is not a reasonable option, however. CP's suggestion that Spaulding works well as an interchange point for both CP and CN to exchange interchange traffic ignores the communications that CN has had with CP for over a year about the problems caused by interchange operations at Spaulding. As CN has explained, interchange operations at Spaulding regularly block CN's single track main line, leading to congestion problems on CN's network and causing blockages at several at-grade road crossings. Moreover, as CN has explained, CN is currently transporting both CP-received interchange traffic and CP-bound interchange traffic from Spaulding to Kirk for blocking and switching. It is not fair for CP to expect CN to do the work in both directions.

What is fair is for CN and CP to share the operational costs and burden of interchanging traffic in Chicago. We believe that the following represents an appropriate compromise as has been discussed by our respective operating teams: CN would deliver interchange cars to CP at Bensenville using the IHB, paying the switching charge for IHB to deliver cars to CP. In turn, CP would deliver interchange cars to CN using BRC's Clearing Yard, bearing the switching charges for BRC. CP would bear the costs of trackage rights to move over Metra between B-12 and Craigin to deliver CN-bound cars to Clearing Yard.

When CN takes the cars from Clearing to Kirk, CN would in turn bear the trackage rights fees to move over the Elsdon subdivision to and from Clearing. This arrangement is more than fair to CP, in part because under it CN would be paying for more trackage rights miles than CP would have to pay to accomplish the interchange.

It is clear that this proposed arrangement will work for CP operationally—the Verified Statement filed with its STB complaint says that CP is “agreeable” to receiving interchange traffic at Bensenville and delivering CN-bound traffic to Clearing “if CN would pay the cost under [CP’s] trackage rights agreement with BRC to get CN’s traffic to Clearing.” While CN does not agree that it is required to pay for both its own trackage rights fees and CP’s trackage rights fees, that dispute is no barrier to CP and CN implementing this arrangement now, and reserving the question of who pays for CN’s exercise of its trackage rights for further negotiation.

Threats that CP will sabotage Chicago operations by refusing to agree to an interchange relocation in Railinc and by letting traffic pile up rather than deliver it to CN’s designated interchange point are not productive—particularly since the only current dispute between the parties is the pure financial question of whether CN is required to reimburse CP for its trackage rights costs. If CP wishes to have the STB adjudicate that question, it has that right. But there is no basis for CP to threaten to stop interchanging traffic altogether unless CN agrees in advance to pay for CP’s out-of-pocket costs for an interchange arrangement that CP otherwise finds to be “agreeable.”

We hope that CP will accept this reasonable compromise. If CP is unwilling to accept it, then CN will exercise its statutory right to designate Kirk as its point to receive interchange traffic from CP, effective May 11 per previous correspondence.

Sincerely,

A handwritten signature in black ink that reads "Mike Cory". The signature is written in a cursive, slightly stylized font.

Mike Cory

Executive Vice-President & Chief Operating Officer

## **EXHIBIT 4**



C. E. Hubbard  
Director  
Interline & Passenger - South

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St. Paul, MN  
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Mr. Michael Matteucci  
Regional Director Contracts & Administration  
Canadian National Railway Company  
17641 South Ashland Avenue  
Homewood, IL 60430-1345

May 2, 2019

**VIA EMAIL  
AND U.S. MAIL**

Re: CP/CN Agreement for Interchange of Freight Traffic

Dear Mr. Matteucci:

SOO Line Railroad Company, d/b/a Canadian Pacific (CP) and Wisconsin Central LTD, d/b/a Canadian National (CN) are parties to a certain Interchange Agreement dated September 16, 2014 ("Agreement") which provides for interchange between CP and CN upon CP trackage located at Cardigan Junction in the vicinity of St. Paul, MN.

Section 16 of the Agreement provides for both term and termination of the Cardigan Junction interchange operation. Specifically Section 16 (a) states:

*This Agreement commences on the Effective Date and remains in effect (hereinafter referred to as the "Term") until and/or unless terminated earlier pursuant to terms and conditions set forth herein.*

Section 16 (c) of the Agreement further provides:

*Either Party may, at any time and for any reason whatsoever, terminate this Agreement upon sixty (60) days written notice to the other Party.*

Pursuant to Section 16 (c) of the September 16, 2014 interchange agreement, kindly consider this letter as CP's notice of termination effective July 1, 2019. Accordingly, June 30, 2019 will be the last day the parties will conduct interchange at Cardigan Junction. During the sixty-day notification period, CP looks forward to discussing a new interchange location with CN.

Sincerely,

C. E. Hubbard  
Director Interline and Passenger - South

Cc: Robert A Johnson, EVP Operations  
Tony Marquis, SVP Operations  
Nicholas C. Walker, GM Operations  
Adolph Gameiro, Director, Interline Agreements