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May 15, 2009

By e-filing

Ms. Phillis Johnson-Ball
Environmental Section
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: Finance Docket No. 35087, Comments on Quarterly Environmental Report filed
by Canadian National Railway Company on April 10, 2009

Dear Ms. Johnson-Ball:

This constitutes Comments in behalf of the Northeast Illinois Regional Commuter
Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority,
both doing business as, and hereinafter referred to as, Metra, in regard to certain "Comments to
STB" contained in the first Quarterly Environmental Report (QER) filed by Canadian National
Railway Company (CN) on April 10, 2009.

1. **COMMENTS ON CN COMMENTS TO STB ON VM 40**

At page 7 of the QER in regard to Voluntary Mitigation Measure No. 40 (VM 40), under
the heading "Comments to STB", CN stated:

During AND AFTER construction. This is a discrepancy with p. 50 of
Dec. 24 decision, para. 3, where 'access' is stated but not 'maintenance'. (words
in all capital letters added in CN Comments).

Voluntary Mitigation Measure No. 40 (VM 40) provides as follows (Board decision
served December 24, 2008, Appendix A, VM 40; QER at 7):

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During and after construction, Applicants shall maintain the pedestrian tunnel from the Metra Park-n-Ride lot to the Metra train station on the east side of the Chicago Subdivision rail line at Matteson (Applicants 2008l).

In the third paragraph on page 50 of the decision served December 24, 2008, the Board, citing VM-40, said:

There is . . . mitigation providing for continued access to the pedestrian tunnel between the Metra Park-n-Ride lot and the Metra Matteson train station.

There is such mitigation that provides for continued access to the pedestrian tunnel at the Matteson train station, but it is provided for in the Board's final Mitigation Condition No. 39, not in VM 40 as indicated by the Board's citation at page 50 of the December 24, 2008 decision. Condition 39 is not inconsistent with VM 40 but is in addition to VM 40, nor does Condition 39 purport to provide that Applicants are not required to maintain that pedestrian tunnel after construction. Thus, Condition 39 provides as follows (Board decision served December 24, 2008, Appendix A, Board's Final Mitigation Conditions, No. 39; QER at 23, emphasis added):

In addition to VM 40, Applicants shall maintain access to the pedestrian tunnel from the Metra Park-n-Ride lot to the Metra train station on the East side of the Chicago Subdivision at Matteson, Illinois. Construction of the Applicant's proposed connection shall not interfere with the public's access along Front Street in Matteson. Prior to the proposed construction, Applicant shall consult with Metra to devise reasonable requirements pertaining to coordinating tunnel access, track construction and existing pedestrian safety.

It is clear, therefore, that the requirements of Condition 39 are in addition to the requirements of VM 40, and that when Condition 39 and VM 40 are read together, they require that Applicants take the following action in regard to construction of their proposed connection as it may affect the pedestrian tunnel from the Metra Park-n-Ride lot to the Metra train station on

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the east side of the Chicago Subdivision rail line at Matteson, Illinois:

- (1) Prior to such construction: consult with Metra to devise reasonable requirements pertaining to coordinating tunnel access, track construction and existing pedestrian safety; and
- (2) During such construction: maintain the tunnel and ensure that the construction does not interfere with the public's access along Front Street; and
- (3) After such construction, maintain the tunnel.

Metra is filing these Comments in order to be assured that Applicants do not use the Board's citation of VM 40 (instead of Condition 39) when referring to Applicant's obligation to maintain access to the pedestrian tunnel set forth at page 50 of the decision served December 24, 2008 as a means to avoid their explicit obligation in VM 40 to maintain the tunnel itself both during and after construction of Applicants' connection. Applicants appear to be attempting to do so in their "Comments to STB" at page 7 of the QER in regard to VM 40 by calling into question their obligation to maintain the pedestrian tunnel after construction of their connection. The Board should clarify that such obligation is clearly provided for in VM 40 and when VM 40 and Condition 39 are appropriately read together.

2. COMMENTS ON CN COMMENTS TO STB ON CONDITION 39

Condition 39 is a Board-imposed condition in response to Metra's Comments on the Draft Environmental Impact Statement. Condition 39 has been quoted earlier in these Metra Comments. As here pertinent, Condition 39 provides as follows (Decision served December 24, 2008, Appendix A, Condition 39, emphasis added):

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... Prior to the proposed construction, Applicants shall consult with Metra to devise reasonable requirements pertaining to coordinating tunnel access, track construction and existing pedestrian safety.

In their "Comments to STB" regarding Condition 39 at page 23 of the QER, Applicants stated:

Specifies that we 'devise reasonable requirements' with Metra. This is in conflict with other parts that say we shall maintain tunnel during and after construction. Need clarification with STB.

As was made clear earlier in Metra's Comments, there is no conflict between Condition 39 and VM 40. It is explicitly provided in Condition 39 that its requirements are in addition to the requirements of VM 40. The requirement of Condition 39 to "devise reasonable requirements" referred to in Applicants' Comments relates to consultation with Metra prior to the proposed construction to ensure safe pedestrian tunnel access during construction. The requirement of VM 40 is to maintain the tunnel itself during and after construction. Thus, Condition 39 and VM 40 are harmonious and complementary, not contradictory. They relate to different activities to be undertaken at different times. The Board should declare that they are not in conflict, as erroneously alleged by Applicants.

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Respectfully submitted,



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