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August 31, 2009

BY E-FILING

Anne K. Quinlan, Esquire
Acting Secretary
Surface Transportation Board
Office of the Secretary
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Elgin, Joliet & Eastern Railway Company – Trackage Rights Exemption – Illinois Central Railroad Company (STB Finance Docket No. 35264)* 225642
Elgin, Joliet & Eastern Railway Company – Trackage Rights Exemption – Wisconsin Central, Ltd. (STB Finance Docket No. 35265) 225643
Elgin, Joliet & Eastern Railway Company – Trackage Rights Exemption – Grand Trunk Western Railroad Company (STB Finance Docket No. 35266) 225659
Illinois Central Railroad Company – Trackage Rights Exemption – Chicago, Central & Pacific Railroad Company (STB Finance Docket No. 35267) 225644
Illinois Central Railroad Company – Trackage Rights Exemption – Grand Trunk Western Railroad Company (STB Finance Docket No. 35268) 225645
Illinois Central Railroad Company – Trackage Rights Exemption – Wisconsin Central, Ltd. (STB Finance Docket No. 35269) 225646
Grand Trunk Western Railroad Company – Trackage Rights Exemption – Illinois Central Railroad Company (STB Finance Docket No. 35270) 225647
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*Chicago, Central & Pacific Railroad Company – Trackage Rights Exemption –
Illinois Central Railroad Company (STB Finance Docket No. 35275)* 225652

*Chicago, Central & Pacific Railroad Company – Trackage Rights Exemption –
Illinois Central Railroad Company (STB Finance Docket No. 35276)* 225653

*Chicago, Central & Pacific Railroad Company – Trackage Rights Exemption –
Wisconsin Central, Ltd. (STB Finance Docket No. 35277)* 225654

*Chicago, Central & Pacific Railroad Company – Trackage Rights Exemption –
Grand Trunk Western Railroad Company (STB Finance Docket No. 35278)* 225655

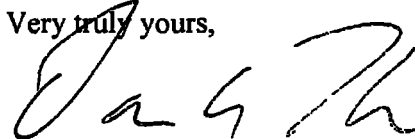
*Wisconsin Central, Ltd. – Trackage Rights Exemption – Illinois Central
Railroad Company (STB Finance Docket No. 35279)* 225656

*Wisconsin Central Ltd. – Trackage Rights Exemption – Grand Trunk Western
Railroad Company (STB Finance Docket No. 35280)* 225658

Dear Ms. Quinlan:

Enclosed for filing in the above referenced dockets please find the Reply of Canadian National Railway Company and its railroad subsidiaries to the Joint Petition For Stay of the Village of Barrington and the TRAC Coalition and the Petition to Stay of the United Transportation Union

Very truly yours,



David A. Hirsh

Enclosure

cc: Clinton M. Miller, III, Esquire (by e-mail)
Kevin M. Sheys, Esquire (by e-mail)
Richard H. Streeter, Esquire (by e-mail)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

* * * * *

STB Finance Docket No. 35264

Elgin, Joliet & Eastern Railway Company
– Trackage Rights Exemption –
Illinois Central Railroad Company

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STB Finance Docket No. 35265

Elgin, Joliet & Eastern Railway Company
– Trackage Rights Exemption –
Wisconsin Central, Ltd.

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STB Finance Docket No. 35266

Elgin, Joliet & Eastern Railway Company
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

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STB Finance Docket No. 35267

Illinois Central Railroad Company
– Trackage Rights Exemption –
Chicago, Central & Pacific Railroad Company

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STB Finance Docket No. 35268

Illinois Central Railroad Company
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

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STB Finance Docket No. 35269

Illinois Central Railroad Company
– Trackage Rights Exemption –
Wisconsin Central, Ltd.

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STB Finance Docket No. 35270

Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company
(Harvey to University Park)

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STB Finance Docket No. 35271

Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company
(Bridgeport to Belt Crossing)

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STB Finance Docket No. 35272

Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company
(Argo to Joliet)

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STB Finance Docket No. 35273

Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Wisconsin Central, Ltd.

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STB Finance Docket No. 35274

Grand Trunk Western Railroad Company
– Trackage Rights Exemption –
Chicago, Central & Pacific Railroad Company

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STB Finance Docket No. 35275

Chicago, Central & Pacific Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company
(Belt Crossing to University Park)

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STB Finance Docket No. 35276

Chicago, Central & Pacific Railroad Company
– Trackage Rights Exemption –
Illinois Central Railroad Company
(Bridgeport to Joliet)

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STB Finance Docket No. 35277

Chicago, Central & Pacific Railroad Company
– Trackage Rights Exemption –
Wisconsin Central, Ltd.

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STB Finance Docket No. 35278

Chicago, Central & Pacific Railroad Company
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

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STB Finance Docket No. 35279

Wisconsin Central, Ltd.
– Trackage Rights Exemption –
Illinois Central Railroad Company

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STB Finance Docket No. 35280

Wisconsin Central, Ltd.
– Trackage Rights Exemption –
Grand Trunk Western Railroad Company

REPLY TO PETITIONS FOR STAY

Canadian National Railway Company (CNR), on behalf of itself and its railroad subsidiaries operating within the Chicago metropolitan area,¹ hereby replies to the Joint Petition For Stay of the Village of Barrington and the TRAC Coalition (“Barrington/TRAC Petition”) and the Petition to Stay of the United Transportation Union (“UTU Petition”), each filed in these proceedings on August 27, 2009.²

As the Board has stated repeatedly, “[o]n a motion for stay, ‘it is the movant’s obligation to justify the ... exercise of such an extraordinary remedy.’” *E.g., Beaufort R.R. – Modified Rail Certificate*, STB Finance Docket No. 34943, slip op. at 5 (STB served July 21, 2009) (citing *Cuomo v. United States Nuclear Regulatory Comm’n*, 772 F.2d 972, 978 (D.C. Cir. 1985)). Moreover, “[p]arties seeking a stay carry the burden of persuasion on all of the elements required

¹ Illinois Central Railroad Company (“IC”), Grand Trunk Western Railroad Company (“GTW”), Chicago, Central and Pacific Railroad Company (“CCP”), Wisconsin Central Ltd. (“WCL”), and Elgin, Joliet and Eastern Railway Company (“EJ&E”). IC, GTW, CCP, WCL, and EJ&E are referred to collectively as “Applicants,” and CNR and Applicants are referred to collectively as “CN.”

² Although filed in all 17 dockets, UTU’s request for stay is only for the 3 dockets involving a grant of trackage rights to EJ&E (STB Finance Docket Nos. 35267 through 35280). Its request for stay should therefore be denied summarily in the remaining 14 dockets.

for such extraordinary relief.” *Id.* (citing *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)). The elements that must be satisfied in order to justify imposition of a stay are that: “(1) there is a strong likelihood that [the movant] will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public interest supports the granting of the stay.” *Grand Elk R.R. – Lease & Operation Exemption – Norfolk S. Ry.*, STB Finance Docket No. 35187, slip op. at 3 (STB served Jan. 29, 2009) (citing *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958)). As discussed below, Barrington/TRAC and UTU fail to establish any of these necessary elements for the extraordinary relief they seek.

I. THE BARRINGTON/TRAC PETITION

Barrington/TRAC argues that the trackage rights at issue will or are likely to have “highly significant” impacts on train volumes and operations and that those impacts cannot be adequately assessed absent a stay of the notices of exemption. Barrington/TRAC Petition at 6. It claim that the trackage rights “call into question” whether there will be reductions in CN traffic for communities along CN’s existing lines inside the EJ&E arc. *See* Barrington/TRAC Petition to Reopen the December 24, 2008 Final Decision at 4 (arguments referenced at Barrington/TRAC Petition, page 5). These arguments, however, are premised on a basic misunderstanding of the trackage rights at issue.

As CN discussed in its Supplement to Verified Notices of Exemption, filed on August 21, 2009 (“Supplement”), the purpose and effect of the new trackage rights grants is to permit CN to

operate the same trains over the same lines as it would operate without the new trackage rights, but to do so potentially more efficiently by providing it with additional flexibility in the crewing of those trains.³ The new trackage rights would not result in CN running additional trains or in CN rerouting trains differently than provided for in the Operating Plan reviewed by the Board (including the Section of Environmental Analysis) as part of CN's acquisition of control of EJ&E ("Operating Plan"). The free movement of trains between CN subsidiaries that would be facilitated by the trackage rights was assumed for purposes of the Operating Plan and is fully consistent with it.

Since the proposed new trackage rights will not result in different trains or different routings of trains, there is no need to study the potential environmental impacts of the proposed trackage rights as suggested by Barrington/TRAC. Given the purpose and nature of the trackage rights, additional analysis is not required to determine that they should have no impact on the Environmental Impact Study ("EIS") conducted in the EJ&E control proceeding or, more generally, on the communities along the EJ&E line or within its arc.

Barrington/TRAC's reference to their simultaneously filed Petition to Reopen adds nothing of substance.⁴ They fail to suggest in that document any way in which the subject intra-family trackage rights, none of which extends CN's reach, would lead to additional or rerouted traffic not accounted for by the Operating Plan. Instead, they argue by innuendo that CN must be hiding something that requires investigation. CN has hidden nothing. Barrington/TRAC

³ In the absence of a grant of trackage rights, a train passing from the line of one CN subsidiary to that of a second subsidiary must be interchanged between the two railroads. The most significant consequence of this requirement is that the train must stop, and the crew employed by the first railroad must get off the train and be replaced with a crew of the second railroad's employees. Trackage rights would improve train operations by eliminating delays caused by recrewing that can be inefficient when dictated by the unnecessary formality of an intra-family interchange.

⁴ CN intends to file separately a timely response to the Petition to Reopen.

criticize CN for supposedly failing to explain “why such ‘coordination’ elements were not brought to the Board’s attention during the Board’s consideration of the transaction and environmental impacts.” Petition For Reopening at 3. As noted in its Supplement, however, CN did tell the Board as part of its Application that such coordinations were possible.⁵ Minor coordinations (such as intra-family grants of trackage rights) are to be expected as parties integrate and gain operating experience with newly acquired rail properties, even though the details of those coordinations may not be predictable or known in advance.

Barrington/TRAC further suggest that CN may have been misleading in its Supplement and be attempting to reserve its rights at some future time to reroute new trains through use of the new trackage rights. Petition to Reopen at 4 (suggesting that CN’s representations are just “*for the time being*”). Barrington/TRAC’s argument, however, ignores practical reality – the trackage rights at issue provide CN with no new routes and thus create no new opportunities for rerouting traffic.

In short, there is no substance behind Barrington/TRAC’s rhetoric. They fail to demonstrate that the extraordinary relief they seek – a stay of the trackage rights notices of exemption – is warranted. Barrington/TRAC are not likely to prevail on the merits of their claim that the EIS must be supplemented; Barrington/TRAC cannot show that they will suffer serious irreparable harm absent a stay; a stay would instead harm CN and its operating subsidiaries by denying them increased operating efficiencies, and would also harm shippers and the public interest in more efficient rail operations.

⁵ Supplement at 6 (citing Railroad Control Application (CN-2) at 228, 230-55, Canadian Nat’l Ry. – Control – EJ&E West Co., STB Finance Docket No. 35087 (filed Oct. 30, 2007)).

II. THE UTU PETITION

As noted above, although the heading of UTU's petition included all 17 trackage rights exemption dockets, it seeks to stay only the three exemptions involving grants of trackage rights to EJ&E by other CN-family carriers (STB Finance Docket Nos. 35264, 35265, and 25266).⁶ UTU Petition at 6, 8. But even as to these three exemptions, UTU's arguments fail.

UTU claims first that "it is evident" the trackage rights grants to EJ&E will cause "irreparable harm" to its members because they "stand to be displaced as a result of the operation of these trackage rights, and it will be nearly impossible to unscramble the egg of seniority rights, and perhaps residence changes, once the trackage rights go into effect." UTU Petition at 6. But UTU has not explained how these factors are any more pressing in these proceedings than in the typical grant of trackage rights, for which the Board has provided the summary class exemption procedure that CN has invoked here. The Board's *Norfolk & Western* labor protective conditions, which are applicable to all trackage rights grants,⁷ require the railroads involved in a grant of trackage rights to follow procedures for arriving at an implementing agreement, precisely in order to deal with issues regarding "rearrangement of forces" or "assignment of employees," 354 I.C.C. at 610, which include seniority issues of the kind described by UTU. UTU has provided no reason for expecting those issues to be less

⁶ See footnote 2, *supra*. UTU's Petition for Stay should therefore be summarily dismissed as to the remaining 14 dockets (STB Finance Docket Nos. 35267 through 35280).

⁷ See *Norfolk & W. Ry. – Trackage Rights – Burlington N. Inc.*, 354 I.C.C. 605 (1978), modified, *Mendocino Coast Ry. – Lease & Operate*, 360 I.C.C. 653 (1980). UTU also seems to suggest that the mere fact that CN is not required and has not committed to concluding an implementing agreement before consummating its proposed trackage rights transactions for EJ&E could require a stay. UTU Petition at 6. That suggestion, however, is directly contrary to the conclusion and policy adopted by the Board's predecessor in establishing the *Norfolk & Western* conditions applicable to grants of trackage rights. As UTU itself concedes, those conditions explicitly contemplate and provide for the implementation of trackage rights without an advance implementing agreement. *Id.*

amenable to resolution through the implementing agreement procedure than they are in the typical trackage rights case.⁸

UTU further asserts that CN's Supplement does not "fully address the Board's orders of August 17, 2009 and August 18, 2009 to provide 'an explanation of how [each] notice relates to the 16 other notices filed simultaneously by carrier subsidiaries of CN[R], [and] an explanation of how these notices would impact the information provided to the Board in [Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company, STB Finance Docket No. 35087 ('CN-EJ&E')." UTU Petition at 6-7. UTU, however, does not indicate any respect in which the Supplement fails to satisfy the Board's directive or suggest any additional information that could plausibly show that the subject trackage rights will, absent a stay, cause irreparable harm to its members. It therefore provides no basis for staying the exemptions

Finally, UTU claims that CN "do[es] not explain the logic of having the right to implement the three EJ&E trackage rights transactions on 20 days' notice under the applicable conditions, where they have implementing agreements with the operating unions on the fourteen (14) other trackage rights transactions." UTU Petition at 7. But no special logic is required. The timing of CN's petitions follows the Board's ordinary rules, which permit consummation of a trackage rights transaction 30 days after the filing of a notice of exemption (not 20 days, as suggested by UTU). As UTU agrees, the *Norfolk & Western* conditions do not require a railroad to arrive at an implementing agreement before it may begin operations pursuant to a grant of trackage rights. The fact that some of CN's railroad operating subsidiaries did reach advance

⁸ UTU's suggestion that the trackage rights involved in these proceedings could require "residence changes" is unrealistic, as may be determined simply by reference to the short distances of the trackage rights involved in these cases.

agreements for other trackage rights transactions does not render the ordinary rule permitting trackage rights to take effect in advance of an implementing agreement inapplicable to the grants of trackage rights to EJ&E. Certainly UTU cites no rule, precedent, or logic dictating such a result. If it has any relevance at all to the three exemptions challenged by UTU, CN's success in negotiating other implementing agreements only underscores CN's reasonableness and willingness to work with employee unions, facts that should weigh in CN's favor, not against it.

CONCLUSION

For the reasons set forth above, the stay petitions filed by Barrington/TRAC and UTU should be denied.

Respectfully submitted,



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Dated: August 31, 2009

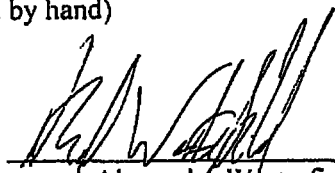
CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of August, 2009, served copies of the foregoing
Reply to United Transportation Union's Petition to Stay upon the following as indicated below:

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