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CN-15

January 16, 2008

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

22/286

**Re: Canadian National Railway Company and Grand Trunk Corporation –
Control – EJ&E West Company (STB Finance Docket No. 35087)**

Dear Ms. Quinlan:

By letter dated January 11, 2008 (the "January 11 Letter"), Aux Sable Liquid Products, LP ("Aux Sable"), American Chemical Service, Inc., and Reichhold, Inc. (collectively, "Aux Sable *et al.*"), "advise[d] the Board," through counsel, that they "continue to seek" reclassification of the Transaction proposed in the above-captioned proceeding as a "significant" rather than "minor" transaction, notwithstanding the withdrawal of the petitions for reconsideration of the Board's decision classifying the Transaction as minor. On January 14, 2008, the Environment Law & Policy Center ("ELPC") submitted a similar letter "in support" of recategorization. Both letters seek, in the alternative, an extension of the schedule established by the Board in Decision No. 2 (served November 26, 2007). CN hereby responds to these letters.

A party that wants the Board to reconsider a decision has a clear remedy – file a timely petition for reconsideration. None of these parties did so, and since Indiana Harbor Belt's ("IHB") petition for reconsideration was filed on the last day for filing, none of these parties can credibly claim to have withheld their own petitions in reliance and, in fact, none has made that claim. A party who instead of timely filing a petition purports to join in or endorse a timely petition filed by another party runs the well-known risk that the other party will withdraw its petition. Aux Sable *et al.* and ELPC have offered no excuse for not filing timely petitions of their own, and their now untimely requests provide no basis for requiring the Board to devote its resources to issuing an opinion on a petition that has been withdrawn.

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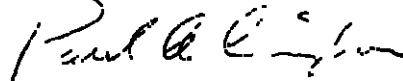
Page 2

The assertions of these parties in any event provide no basis for modifying the Board's Decision No. 2. In CN's response (CN-7) to Aux Sable's initial request to classify the transaction as "significant," and in CN's more recent response (CN-13) to Indiana Harbor Belt's petition for reconsideration, CN already addressed arguments challenging "minor" classification of its proposed transaction or otherwise seeking to extend the schedule established in Decision No. 2. Aux Sable *et al* and ELPC offer nothing new addressing the legal standards relating to classification.

As for their argument seeking reconsideration of the procedural schedule, it is based primarily on the unremarkable fact that the schedule includes a number of holidays. The well-known fact that the schedule would run through a holiday period is hardly a changed circumstance or material error warranting reconsideration by the Board. The Board was no doubt aware of the holiday calendar at the time it established the schedule. Moreover, to the extent ELPC (which is not a shipper or rail carrier) is claiming that it requires more time for itself, presumably to pursue environmental issues (as its name also implies), it has misdirected its comments at the Board's schedule for consideration of the transportation merits of the proposed Transaction rather than the Board's longer schedule for environmental review. Finally, ELPC's claim that more time is required for Amtrak and Metra is undercut by the fact that Amtrak and Metra themselves have not sought reconsideration of Decision No. 2 or even supported IHB's petition.

The Board properly categorized CN's proposed acquisition of EJ&E West Company as a "minor" transaction, and it has already set a procedural schedule at the maximum length permitted by statute. Late-filed requests such as those of Aux Sable *et al*. and ELCP do not require a further decision by the Board and certainly should not prompt the Board to question its prior decision.

Very truly yours,



Paul A. Cunningham

Counsel for Applicants Canadian National Railway
Company and Grand Trunk Corporation

cc: All parties of record

CERTIFICATE OF SERVICE

I certify that I have this 16th day of January, 2008, served copies of the foregoing letter, designated CN-15, upon all known parties of record in this proceeding by first-class mail or a more expeditious method.



Jared H. Powell