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BEFORE THE
SURFACE TRANSPORTATION BOARD

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WISCONSIN CENTRAL, LTD.—PETITION FOR DECLARATORY
ORDER—INTERCHANGE WITH SOO LINE RAILROAD COMPANY

STB FINANCE DOCKET NO. 36397

POST-REMAND BRIEF

Kathryn J. Gainey
Deputy General Counsel,
US Regulatory Affairs
CN
601 Pennsylvania Ave., NW
Suite 500, North Building
Washington, DC 20004
Kathryn.Gainey@cn.ca

Raymond A. Atkins
Matthew J. Warren
Tobias S. Loss-Eaton
Morgan B. Lindsay
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
mjwarren@sidley.com

Counsel to Wisconsin Central, Ltd.

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PUBLIC VERSION

CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	4
III.	STANDARD ON REMAND	10
IV.	ARGUMENT	10
	A. The BRC Operating Agreement requires each co-owner to pay the BRC's fees for the traffic it delivers to Clearing.	11
	B. Even looking beyond the Operating Agreement, requiring each party to pay for the traffic it delivers is fair and consistent with industry practice and long-standing precedent.	16
V.	CONCLUSION	21

PUBLIC VERSION

I. INTRODUCTION¹

CN respectfully submits this post-remand brief to address the sole question remaining in this case: Whether CP must pay the BRC's switching fees for the CN-bound interchange traffic that CP delivers to the BRC's Clearing Yard, just as CN pays those fees for CP-bound traffic delivered to the same yard. The answer is yes. CN and CP so agreed in the BRC Operating Agreement as co-owners of the BRC, and no grounds exist to override this voluntary contractual arrangement. But even if the Board looked beyond the Operating Agreement, industry custom and basic fairness would dictate the same result.

CN's April 2020 petition for a declaratory order asked the Board to resolve two questions: (1) Whether CN can designate the BRC's Clearing Yard to receive Chicago-area interchange traffic from CP, and if so, (2) whether each railroad must bear its own costs for those interchanges, including the BRC's switching fees.² The Board's October 2020 decision purported to answer only the first question, concluding "that CN cannot unilaterally designate Clearing Yard as the interchange point," in part because, by "forcing [CP] to pay [the BRC's] switching fee, CN would itself be 'providing' nothing" under the interchange statute.³ But the Seventh Circuit vacated this decision, holding that a receiving carrier can "designate a willing third party to receive traffic" and that the Board "erred" by "making an

¹ Defined terms have the same meaning here as in CN's earlier briefs.

² See CN's Petition for Declaratory Order at 1, FD No. 36397 (April 14, 2020) ("CN Pet.").

³ *Wisc. Cent., Ltd.—Pet. for Decl. Order—Interchange with Soo Line R.R.*, No. FD 36397, slip op. 1, 7 (STB served Oct. 30, 2020) ("2020 Board Decision").

PUBLIC VERSION

assumption about expense” to reject CN’s designation.⁴ The court thus held that Clearing Yard is within CN’s “power to provide” for interchange and remanded the matter, noting that “the Board did not resolve” the question of “who should bear the cost of Belt Railway’s services.”⁵

The Board should now resolve this remaining question by applying a principle it has repeatedly emphasized: An interchange arrangement—including “the payment scheme” for the “use of an intermediate switching carrier”—is typically “a matter for mutual consultation and agreement.”⁶ Here, the parties have already agreed on who should pay for traffic interchanged at Clearing Yard: The delivering carrier. The BRC Operating Agreement for the Class I co-owners of the BRC imposes “a charge for the transfer of cars,” including a switching fee for “traffic delivered” to Clearing Yard “by an inbound line haul carrier for an outbound line haul carrier.”⁷ No grounds exist to override this voluntary contractual arrangement from 1990. The Board should thus hold that the BRC Operating Agreement controls here, requiring each carrier to bear its own costs for interchanging this traffic.

⁴ *Wisc. Cent. Ltd. v. STB*, 20 F.4th 292, 294–95 (7th Cir. 2021).

⁵ *See id.* at 294, 295.

⁶ Joint Brief of Respondents 11 n.4, *Wisc. Cent. Ltd. v. STB*, 20 F.4th 292 (7th Cir. 2021) (No. 20-3507), 2021 WL 1584008, at 10 n.4 (“STB Br.”); *see* 2020 Board Decision at 5.

⁷ Exhibit A, BRC Operating Agreement § 1(a); Exhibit B, BRC Rate Sheet. Indeed, the BRC Operating Agreement also resolved many other commercial terms, including car hire.

PUBLIC VERSION

But even if the Board looked beyond the parties’ controlling contractual arrangement as co-owners of the BRC, the result would not change. The BRC Operating Agreement simply mirrors the long industry custom that delivering carriers must “make delivery on the rails of their connections, either direct *or by bearing the charges of the intermediate switching line.*”⁸ The Board’s prior decision held that this custom was overridden by “the separate obligations that apply when there is a physical intersection between two carriers.”⁹ However, the Seventh Circuit held that no such obligations exist—“the statute does not contain” a physical-connection requirement.¹⁰ There is thus no reason to treat this case differently from the usual rule that each carrier bears the costs of the traffic it delivers.

The usual rule is also the fair rule. Interchange is a mutual statutory obligation under 49 U.S.C. § 10742 that imposes duties on both forwarding carriers and receiving carriers. Requiring each carrier to pay the fees for traffic it delivers ensures a fair division of costs; any imbalance simply reflects the differing flows of traffic. By contrast, it would make no sense for the Board to impose under § 10742 all the costs for interchanging in *both* directions on just one carrier. And this case is no exception. Between adoption of the Interim Agreement in August 2019 and November 30, 2021, CN has paid a total of {{ Redacted }} in switch fees to the BRC for traffic being delivered to CP, plus {{ Redacted }} in reimbursements to

⁸ *Kan. City S. Ry. v. La. & Ark. Ry.*, 213 I.C.C. 351, 356 (1935) (emphasis added).

⁹ 2020 Board Decision at 7.

¹⁰ *Wisc. Cent.*, 20 F.4th at 294.

PUBLIC VERSION

CP for the BRC switch fees for traffic that CP delivers to CN. Permanently requiring that CN pay all switch fees in both directions would be plainly unfair, would contradict industry practice and the BRC Operating Agreement, and would effectively require CN's customers to subsidize CP's operations.

II. BACKGROUND

Because the Board is familiar with this dispute's history, CN provides only an overview of the developments relevant to the issue on remand.¹¹

From 2010 to 2019, CN and CP mainly interchanged Chicago-area traffic at Spaulding, near the Village of Bartlett, Illinois, with some traffic (especially TIH traffic) moving by the parties to Clearing Yard for interchange. But Spaulding grew unworkable—both for CN and for the surrounding communities. Because of the tracks' layout, interchanging traffic at Spaulding is impossible without repeatedly blocking several local roads, often for extended periods.¹² These operations also blocked CN's single-track main line nearly every day, sometimes for hours at a time.¹³

CN thus sought to move the Spaulding interchange traffic elsewhere. CN first designated Kirk Yard in Gary, Indiana, but CP objected and sought relief from the Board. CN also formally designated Clearing Yard as a second location to receive interchange traffic from CP. Pending the Board's decision, the parties

¹¹ For a full description of the background, see CN's April 2020 petition at 4–14.

¹² Verified Statement of William Albritton at 4–6, 9–11 (“Albritton V.S.”) (filed as an attachment to CN Pet.).

¹³ *See id.* at 4–8.

PUBLIC VERSION

signed the Interim Agreement in August 2019. The Interim Agreement moved the Spaulding interchange traffic to Clearing, with CN temporarily reimbursing CP for the BRC's switching fees for this traffic until a final decision from the Board.

Moving this traffic to Clearing greatly reduced the blocked crossings around Spaulding. Before the move, each month saw an average of almost 80 blocked crossings longer than ten minutes; after, that number dropped to around 18.¹⁴ Indeed, the Village of Bartlett sent several letters to the Board expressing “unequivocally . . . that the change has improved the daily life and overall public safety in the community.”¹⁵ “While train traffic has continued unabated, the reduction in the train stoppages has greatly improved traffic flow with a domino effect throughout the community.”¹⁶

In November 2019, the Board held that CN could not designate Kirk Yard for interchange because it was unreasonably far from CP's lines.¹⁷ The 2019 decision did not address whether Clearing was a reasonable interchange location.¹⁸

CN thus filed a new petition in April 2020, asking the Board to decide that (1) CN can designate Clearing Yard to receive interchange traffic from CP, and (2) each railroad must bear its own costs for those interchanges, including the BRC's

¹⁴ Albritton V.S. at 12–13.

¹⁵ Letter from Kevin Wallace, Village President, to Cynthia T. Brown, Chief, Section of Administration Office of Proceedings (entered July 10, 2020).

¹⁶ Letter from Kevin Wallace, Village President, to Cynthia T. Brown, Chief, Section of Administration Office of Proceedings (entered Oct. 7, 2020).

¹⁷ *See Soo Line R.R. Co.—Pet. for Decl. Order and Prelim. Inj.—Interchange with Canadian National*, STB Fin. Docket No. 36299 (served Nov. 29, 2019).

¹⁸ *Id.* at 4.

PUBLIC VERSION

switching fees.¹⁹ CN also explained that “Clearing is a reasonable interchange location for CP to deliver[] CN’s interchange traffic” because interchanging at Clearing “does not ‘impose unusual, unreasonable, or impossible operating hazards’ on” CP.²⁰

In response, CP argued that “CN must designate a reasonable location on its own line where it will receive interchange traffic and must provide CP a free route over its line to the location,” and that, if the parties interchange at Clearing, requiring CN to pay *all* the costs of doing so “properly reflects the interests of each party.”²¹ CP did not contend that interchanging at Clearing impose unusual, unreasonable, or impossible operating hazards. On the contrary, CP has “re-iterate[d] [its] willingness” to interchange at Clearing, disputing only whether it should have to pay the BRC’s fees.²²

This is unsurprising, since the BRC exists mainly to facilitate this kind of interchange among its co-owner railroads. And the BRC has ample capacity for these operations. The BRC is “the largest intermediate switching terminal railroad in the United States,” “with more than 300 miles of switching tracks.”²³ As the

¹⁹ CN Pet. 1.

²⁰ *Id.* at 14, 22.

²¹ CP’s Reply to Petition for Declaratory Order at 1–2, FD No. 36397 (May 29, 2020) (“CP Reply”).

²² Exhibit 7 to CN Pet. (April 18, 2019 Letter from R. Johnson to M. Cory at 1); *see also* Exhibit 6 to CN Pet. (April 3, 2019 Letter from R. Johnson to M. Cory at 2) (“With respect to CN traffic moving from CP to CN, we are willing to take it from Bensenville to . . . Clearing Yard . . . if CN pays the per car cost to BRC required under the CP/BRC trackage rights agreement.”).

²³ BRC, *About*, <https://www2.beltrailway.com/about-2/>.

PUBLIC VERSION

Seventh Circuit observed, the BRC “dispatches more than 8,000 cars a day, enough to make up 40 to 50 miles of train.”²⁴ Nor is there any serious argument that interchanging at Clearing “require[s] the delivering carrier to do work which properly belongs to the receiving carrier.”²⁵ In fact, the BRC performs work the delivering carrier would otherwise have to do—which is why each delivering carrier is properly responsible for the BRC’s fees for that work.

The Board ruled for CP. It held that the interchange statute, 49 U.S.C. § 10742, does not apply at all unless two railroads share a direct, physical connection.²⁶ It also held that “[w]hen two carriers physically intersect, the receiving carrier is required 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.”²⁷ In so holding, the Board rejected CN’s argument that Clearing Yard is within its “power to provide” under § 10742, asserting that, if the parties interchanged at Clearing and CP had to pay the BRC’s switching fees, then CN “would itself be ‘providing’ nothing.”²⁸ The Board thus held that CN “cannot unilaterally designate Clearing Yard as an interchange point,” and concluded that it “need not decide” who should pay the BRC’s switching fees.²⁹

²⁴ *Wisc. Cent.*, 20 F.4th at 293; BRC, *About*, <https://www2.beltrailway.com/about-2/>.

²⁵ *See Kan. City S.*, 213 I.C.C. at 358–59.

²⁶ 2020 Board Decision at 9.

²⁷ *Id.* at 5.

²⁸ *Id.* at 7.

²⁹ *Id.* at 10.

PUBLIC VERSION

The Seventh Circuit vacated the Board’s decision. To start, the court explained, the “exchange of rail traffic is governed by statute, not by regulation or common law,” and a “rail carrier can have the ‘power to provide’ facilities”—as § 10742 requires—“as a result of contract.”³⁰ Likewise, § 10742 “does not contain” any requirement that “the two railroads have physically intersecting lines”; instead, “‘connecting line’ can include connection through an intermediary.”³¹

The court also rejected the Board’s reliance on “what amounts to a common-law tradition”—the supposed rule that a receiving carrier with a physical connection must provide free passage to an interchange point on its own line.³² “Whether [CP] can be required to tender its traffic [at Clearing] rather than at the Spaulding yard depends on the language of the statute, not on extra-statutory doctrines.”³³ And the court explained that an interchange dispute can involve “three distinct questions”: (1) whether a “receiving carrier [can] ever designate a willing third party to receive traffic on its behalf,” (2) whether the location is reasonable, and (3) “who pays the third party.”³⁴ “By mixing these up, and smuggling an assumption about the answer to Question 3 into its decision about Question 1, the Board erred.”³⁵ The court thus “remanded for further proceedings

³⁰ *Wisc. Cent.*, 20 F.4th at 294.

³¹ *Id.* (citing *Atchison, Topeka & Santa Fe Ry. v. Chicago*, 240 F.2d 930, 936–37 & n.17 (7th Cir. 1957), *aff’d*, 357 U.S. 77 (1958)).

³² *Id.*

³³ *Id.* at 295.

³⁴ *Id.* at 294–95.

³⁵ *Id.*

PUBLIC VERSION

consistent with this opinion.”³⁶ The court also noted that “the Board did not resolve” “who should bear the cost of [the BRC’s] services.”³⁷

The Seventh Circuit thus resolved the first question it noted: CN can designate Clearing Yard because CN, “the receiving line, is willing to accept traffic through the Belt Railway, and Belt Railway is willing to accept that traffic.”³⁸ The second question, whether Clearing is reasonable, was not disputed in this proceeding. Nor could it be: As the Seventh Circuit noted, the BRC is the nation’s “largest switching and terminal railroad,” dispatching “more than 8,000 cars a day.”³⁹ That traffic includes the TIH traffic CN and CP have interchanged at Clearing for years, and all the traffic they have successfully interchanged there under the Interim Agreement since 2019. But the third question—“who should bear the cost of Belt Railway’s services”—remains undecided.⁴⁰

The answer to this last question matters. It will govern the parties’ obligations going forward under the circumstances in this case for interchange at Clearing. And, under the Interim Agreement, CN has reimbursed CP’s switching-fee payments to the BRC since August 2019—subject to CP’s obligation to repay those amounts if the Board rules that each carrier must bear its own costs for interchanging at Clearing. Thus, for the reasons below, the Board should enter a

³⁶ *Id.* at 295.

³⁷ *Id.* at 294.

³⁸ *Id.* at 295.

³⁹ *Id.* at 294.

⁴⁰ *Id.*; *see* 2020 Board Decision at 10.

PUBLIC VERSION

declaratory order confirming that CN can designate Clearing for interchange and that CP must pay the BRC's fees for traffic CP delivers there, including reimbursing CN for the fees it has paid on CP's behalf since August 2019.

III. STANDARD ON REMAND

The mandate rule requires “an administrative tribunal” to “adhere to the commands of a higher court on remand.” *Delgado v. U.S. Dep’t of Justice*, 979 F.3d 550, 557 (7th Cir. 2020). The Seventh Circuit has explained that post-remand proceedings may address only (i) specifically remanded issues, (ii) “issues arising for the first time on remand,” and (iii) issues “timely raised” in prior proceedings that “remain undecided.” *See United States v. Morris*, 259 F.3d 894, 898 (7th Cir. 2001); *see also New Eng. Cent. R.R.—Trackage Rights Order—Pan Am S. LLC*, No. FD 35842, 2018 WL 1989070, at *4 (Apr. 24, 2018) (noting in the reconsideration context that “the Board will not consider arguments or evidence that should have been submitted at an earlier stage”).

IV. ARGUMENT

CP should pay the BRC's switching fees for CN-bound traffic it delivers to Clearing. Before explaining why that is so, we note two broader points.

First, the BRC's fees are not some burdensome toll. They are reimbursement for the valuable services the BRC provides to its Class I co-owners, like blocking cars and assembling trains. CP crews operating CP's daily trains to Clearing, which include cars to be interchanged with multiple Class I railroads, can essentially drop off trains there, letting BRC personnel break them up into blocks that will be assembled into outgoing trains for the various railroads CP

PUBLIC VERSION

interchanges with. Thus, ruling for CN here will simply require CP to pay for services it already receives.

Second, the real question here is whether the parties' payment obligations should be proportionate. CN recognizes that it is responsible, as the delivering carrier, for the costs of CP-bound interchange traffic CN delivers to Clearing, including the BRC's switching fees. So the question is whether CP must likewise pay the BRC's switching fees for the traffic it delivers, or whether the Board will conclude that—despite the BRC Owner's Agreement and industry practice—CN alone must pay for *all* of the interchange traffic in *both* directions. For the reasons below, CP should pay its fair share.

A. The BRC Operating Agreement requires each co-owner to pay the BRC's fees for the traffic it delivers to Clearing.

As CN's April 2020 petition explained, the BRC Operating Agreement that CP signed in 1990 makes CP responsible for the switching charges on traffic it delivers to Clearing.⁴¹ The parties are thus bound by a voluntary contractual arrangement, which there is no basis for the Board to disturb. The Board should therefore conclude this proceeding because the Operating Agreement requires each delivering carrier to pay its own fees.

1. The BRC Operating Agreement establishes CP's responsibility for the switching fees. As the Board knows, "CN, CP, and four other Class I railroads co-own" the Belt, and the "co-owners' rights and privileges with respect to [the Belt]

⁴¹ See CN Pet. at 26.

PUBLIC VERSION

are defined in the [BRC] Operating Agreement.”⁴² And under the Operating Agreement, each co-owner has agreed to pay the BRC a charge for transferring cars: “Each of the Railway Companies shall pay to the Belt Company a charge for the transfer of cars between any of the Railway Companies through the facilities of the Belt Company.”⁴³

The Operating Agreement thus requires the BRC to “establish the charge or charges to cover services provided each Railway Company or Companies.”⁴⁴ And the BRC has done so, making the delivering carrier responsible for interchange transfer charges. The current BRC rate sheet sets forth “Intermediate Switch Rates” for “traffic delivered to the BRC at Clearing Yard by an inbound line haul carrier for an outbound line haul carrier.”⁴⁵ Consistent with the Agreement and rate sheet, the BRC bills switching charges to the delivering carrier. Indeed, the BRC has for years billed CP for the CN-bound TIH cars that CP delivers to Clearing. Likewise, the BRC has been billing CP directly for all CP-to-CN cars interchanged at Clearing under the Interim Agreement (with CN reimbursing CP while this case is pending).

Thus, the parties, as co-owners of the BRC, have already resolved the question presented here by contract. Interchange traffic that CP delivers for CN at Clearing is “traffic delivered . . . at Clearing Yard by an inbound line haul carrier

⁴² 2020 Board Decision at 1 n.2; *see also id.* at 10 (“the rights of the co-owner railroads are determined by the BRC Operating Agreement”).

⁴³ Exhibit A, BRC Operating Agreement § 1(a).

⁴⁴ *Id.*

⁴⁵ Exhibit B, BRC Rate Sheet.

PUBLIC VERSION

for an outbound line haul carrier.”⁴⁶ CP has contractually agreed to “pay to the Belt Company a charge for” this traffic; the Belt has set a fee schedule for these services and billed CP directly for those fees; and CP has paid the Belt. This existing contractual arrangement thus answers the payment question CN originally asked the Board to resolve: “Whether each railroad is required to bear its own costs for those interchanges, including fees for the BRC’s switching services.”⁴⁷ The answer is yes: CP must pay for the traffic it delivers for CN, just as CN must pay for the CP-bound traffic it delivers. CP should not be permitted to override this voluntary contractual arrangement.

2. The Board should thus hold that the Operating Agreement controls this issue. Respecting the parties’ contractual arrangement tracks the Board’s consistent approach to both interchange issues and railroads’ voluntary contractual agreements. It also obeys the Seventh Circuit’s instruction that interchange arrangements can properly be created “as a result of contract.”⁴⁸

First, the Board has often said that interchange arrangements should be set by mutual agreement. In this very case, the Board repeatedly emphasized its “longstanding preference” that interchange arrangements “be determined by agreement between the carriers, rather than by agency intervention.”⁴⁹ That

⁴⁶ *Id.*

⁴⁷ CN Pet. at 1; *see id.* at 26.

⁴⁸ *Wisc. Cent.*, 20 F.4th at 294.

⁴⁹ STB Br. 45; *see id.* (emphasizing the Board’s “clear preference for private resolution over agency involvement”); 2020 Board Decision at 5 (similar); *N.Y., Chi. & St. Louis R.R. v. N.Y. Cent. R.R.*, 314 I.C.C. 344, 346 (1961) (similar).

PUBLIC VERSION

includes not just location, but also payment. As the Board told the Seventh Circuit, “the payment scheme” for an interchange through “an intermediate switching carrier . . . is a matter for mutual consultation and agreement.”⁵⁰ Indeed, the Board “encourage[d]” the parties to agree on “financial terms” to “use BRC’s Clearing Yard to conduct interchange,”⁵¹ “preferably with the involvement of the Belt Railway.”⁵² In fact, CP and CN have already agreed—with the Belt’s participation in 1990—on how to pay for any interchanges at Clearing: The BRC Operating Agreement sets the financial terms for any interchanges conducted there. Respecting that contractual arrangement thus follows the Board’s oft-stated policy.

Second, the Board has held in the preemption context that “voluntary agreements must be seen as reflecting the carrier’s own determination and admission that the agreements would not unreasonably interfere with interstate commerce.”⁵³ Courts agree.⁵⁴ The same reasoning applies here. The BRC’s Operating Agreement was “freely negotiated between sophisticated business parties.”⁵⁵ Because “market actors have incentives to enter into efficient arrangements,” the Operating Agreement must therefore “reflect a market calculation that the benefits of [interchanging at Clearing] would be worth the cost

⁵⁰ STB Br. 11 at n.4.

⁵¹ 2020 Board Decision at 10–11.

⁵² STB Br. at 47.

⁵³ *E.g.*, *Joint Pet. for Decl. Order—Bos. & Maine Corp. & Town of Ayer*, 5 S.T.B. 500 (2001) (quoting *Twp. of Woodbridge v. Consol. Rail Corp.*, STB Docket No. 42053, slip op. at 5 (STB served Dec. 1, 2000)).

⁵⁴ *E.g.*, *PCS Phosphate Co. v. Norfolk S. Corp.*, 559 F.3d 212, 221 (4th Cir. 2009).

⁵⁵ *Id.*

PUBLIC VERSION

of paying” the Belt’s fees for those services.⁵⁶ This calculation—which, after all, tracks the ordinary industry practice—neither interferes with interstate commerce nor conflicts with any part of the Interstate Commerce Act. The Board should thus respect the parties’ own determination of who should pay the Belt for its switching services.

Third, the Seventh Circuit vacated the Board’s prior decision in part because the Board failed to give effect to the BRC Operating Agreement. As the court explained, the Board’s holding that CN must designate an interchange point on its own line rather than on the BRC’s line was erroneous because a “rail carrier can have the ‘power to provide’ facilities *as a result of contract*, just as it can have that power by ownership.”⁵⁷ And the contract in question—which establishes that Clearing “is within [CN’s] ‘power to provide,’” and under which the “Belt Railway is willing to accept [this] traffic”—is the BRC Operating Agreement.⁵⁸ Refusing to apply (or overriding) the Operating Agreement’s payment provisions would thus conflict with the Seventh Circuit’s focus on “contractual right[s]” in place of those “norm[s]” on which the Board mistakenly relied before.⁵⁹

The Board should thus hold that the parties’ contractual arrangement in the BRC Operating Agreement controls, so that each railroad is responsible for its own costs to interchange at Clearing Yard under § 10742. To be sure, the Board’s prior

⁵⁶ *Id.*

⁵⁷ *Wisc. Cent.*, 20 F.4th at 294 (emphasis added).

⁵⁸ *Id.* at 295.

⁵⁹ *See id.*

PUBLIC VERSION

decision noted that “[i]f there is disagreement about what the BRC Operating Agreement requires, such a dispute would be properly resolved by a court, not the Board.”⁶⁰ But no such disagreement exists here: CP agrees that “CP must pay the BRC a fee to use BRC’s facilities and services,” and “that the BRC Operating Agreement requires that the delivering carrier pay BRC’s fees.”⁶¹

Instead of disputing these points, CP simply argued that “nothing in the carriers’ agreements with BRC prohibits CN and CP from entering into a separate agreement that requires CN to reimburse CP for some or all of such fees.”⁶² That is true, but the only such agreement between CN and CP is the Interim Agreement, which is merely a stopgap to maintain the status quo pending resolution of this dispute—and which requires CP to repay CN if CN ultimately prevails on this issue. The only contract between these parties that actually reflects a voluntary, market-based calculation about these payments—and the only one that will outlive this litigation—is the BRC Operating Agreement from 1990, which requires CP to pay its fair share. The Board should hold that this contractual commitment controls here.

B. Even looking beyond the Operating Agreement, requiring each party to pay for the traffic it delivers is fair and consistent with industry practice and long-standing precedent.

Because the BRC Operating Agreement answers the question presented here, there is no basis for the Board to look beyond this voluntary contractual

⁶⁰ 2020 Board Decision at 11 n.11.

⁶¹ CP Reply at 15 n.12, 16.

⁶² CP Reply at 16.

PUBLIC VERSION

arrangement between CP, CN, BRC, and the other co-owners. But even if the Board adopted a broader inquiry, the proper result would not change: Requiring each delivering carrier to pay its own fees tracks industry custom and basic fairness.

First, the courts and the agency have long recognized that industry custom requires the delivering carrier to cover the costs of interchange, including third-party switching fees. The Supreme Court long ago noted that “usually when interchange is effected by means of an intermediate carrier, the delivering carrier bears the cost of switching.”⁶³ The ICC similarly recognized that forwarding carriers must “make delivery on the rails of their connections, either direct *or by bearing the charges of the intermediate switching line*, and this is the general practice of railroads throughout the country.”⁶⁴ Thus, switching charges should be “absor[bed] . . . by the line that delivers the traffic.”⁶⁵ And the D.C. Circuit has acknowledged the “longstanding Chicago custom” that “the intermediate switching charges involved in [interchange] deliveries are normally borne by the forwarding carrier.”⁶⁶

The parties’ past practice at Clearing reflects this custom. CP historically paid the BRC switching fees for both TIH and non-TIH traffic that it interchanged

⁶³ *Baltimore & Ohio R.R. Co. v. United States*, 277 U.S. 291, 301 (1928).

⁶⁴ *Kan. City S.*, 213 I.C.C. at 356 (emphasis added).

⁶⁵ *Rates, Regs., & Practices of Peoria & Pekin Union Ry.*, 93 I.C.C. 3, 22 (1924).

⁶⁶ *Burlington N. R. Co. v. United States*, 731 F.2d 33, 35 (D.C. Cir. 1984).

PUBLIC VERSION

with CN through the BRC.⁶⁷ And, of course, CN paid the fees for the traffic it delivered. Adhering to that historical practice would thus comport with industry custom.

The Board’s prior decision rejected CN’s reliance on this custom, asserting that the cases describing this practice do not “address[] or nullify[] the separate obligations that apply when there is a physical intersection between two carriers.”⁶⁸ But it is now clear that no such “separate obligations” exist. The Seventh Circuit held that the interchange statute “does not contain” a physical-connection requirement; instead, a “connecting line” under § 10742 “can include connection through an intermediary.”⁶⁹ The Board’s prior reason for failing to follow these precedents is thus unsound.⁷⁰

Second, requiring each party to pay for the traffic it delivers is fair, while requiring CN to pay for *all* traffic interchanged at Clearing Yard under § 10742 in both directions creates an unfair imbalance. Interchange is a mutual statutory obligation that imposes duties on both forwarding carriers and receiving carriers.⁷¹ Because interchanging “will benefit two carriers, not just one,” a railroad cannot reasonably expect another railroad to bear all the costs of interchanging in both

⁶⁷ See *Albritton V.S.* at 1–2, 3, 21.

⁶⁸ 2020 Board Decision at 7.

⁶⁹ *Wisc. Cent.*, 20 F.4th at 294 (citing *Atchison*, 240 F.2d at 936–37 & n.17).

⁷⁰ The Board also said the Supreme Court “disagreed with” the ICC’s description of this custom in *Chicago, Rock Island*, see 2020 Board Decision at 7, but the ICC later noted that this aspect of its decision “was not criticized by the Supreme Court” and relied on it again, see *Kan. City S.*, 213 I.C.C. at 359.

⁷¹ See *Kan. City S.*, 213 I.C.C. at 356.

PUBLIC VERSION

directions.⁷² That does not mean the two railroads must evenly split the switching fees for these interchanges; one may deliver more traffic (or different kinds of traffic) than the other, in which case it will pay more. But it does mean that CP cannot impair CN's exercise of its right to designate a reasonable interchange location by insisting that CN absorb all of these BRC switch costs.

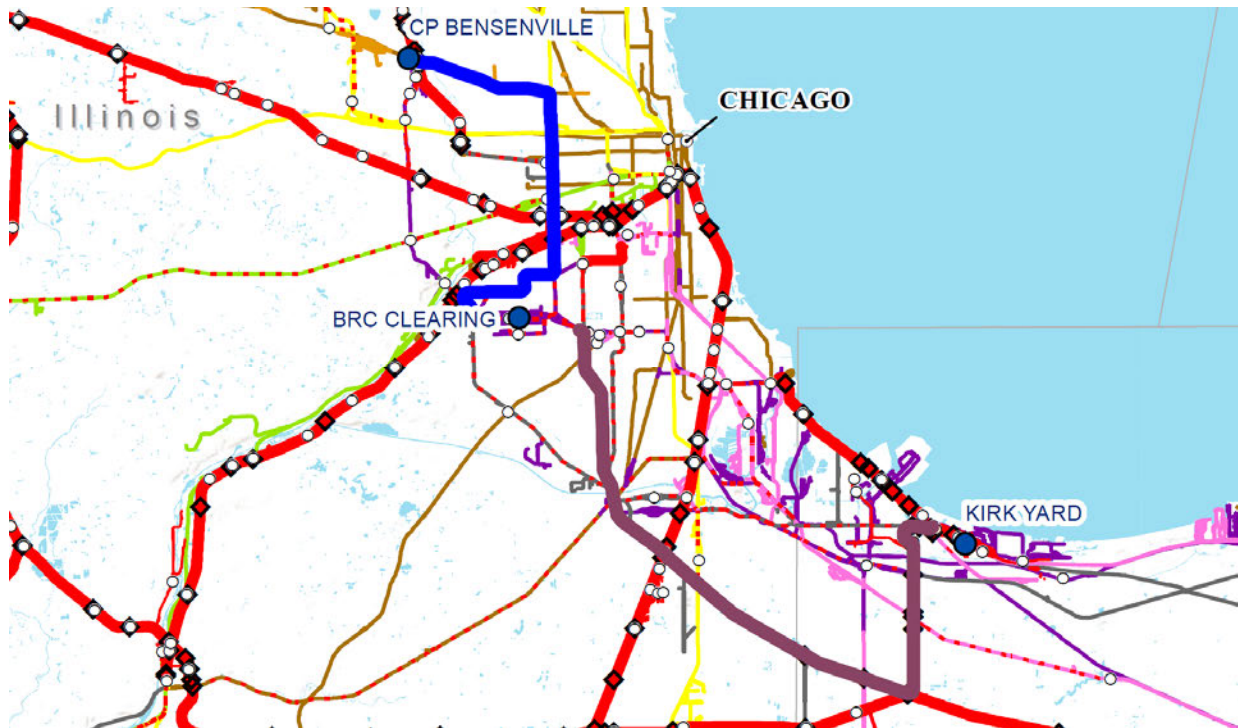
The parties' experience at Clearing confirms that requiring each railroad to pay for the traffic it delivers produces fair results. Since the parties signed the Interim Agreement in 2019, CN has reimbursed CP { **Redacted** } for the BRC's switching fees for traffic CP has delivered to Clearing under the Agreement.⁷³ During that same period, CN has paid the BRC {{ **Redacted** }} in switching fees for CP-bound traffic that CN has delivered to Clearing.⁷⁴ CP can hardly claim that these figures suggest an unfair burden on CP.

In the circumstances of this case, requiring each railroad to pay for the traffic it delivers is also fair because each carrier must exercise trackage rights to reach Clearing Yard—but CN must pay to do so, while CP need not. CN must also cover a greater distance:

⁷² See *Minnesota N. R.R., Inc. v Canadian Nat'l Ry. Co.*, STB Docket No. 42080, slip op. at 6 (STB served Mar. 18, 2005) (one railroad could not expect another to pay all capital costs for establishing a new interchange connection).

⁷³ See Exhibit C, Verified Statement of Michael Matteucci ("Matteucci V.S.").

⁷⁴ *Id.*



CP's route between its Bensenville Yard and BRC's Clearing Yard is marked in blue, and CN's route between its Kirk Yard and Clearing Yard is in purple.

To reach Clearing Yard from its Kirk Yard in Gary, Indiana, CN must travel over the Elsdon line operated by CSXT, paying a per-car trackage rights fee to do so.⁷⁵ This is total distance of 39 miles, roughly 17 of which are on CSXT's track.⁷⁶ By contrast, to reach Clearing from its Bensenville Yard—a total distance of 17 miles⁷⁷—CP travels roughly 7 miles over Metra's West Line to Cragin, which connects to the BRC's line to Clearing.⁷⁸ And CP does not pay a per-car trackage

⁷⁵ See Exhibit C, Matteucci V.S.

⁷⁶ See Albritton V.S. at 22.

⁷⁷ *Id.*

⁷⁸ Verified Statement of Charles E. Hubbard ¶ 7 (filed as an exhibit to CP Reply). CP is the freight rail common carrier operating over Metra's line, and CP even dispatches Metra's line. See *Can. Pac. Ry. Co.—Control—Dakota, Minnesota & E. R.R. Corp.*, Docket No. FD 35081 (STB served Sep. 30, 2008), slip op. at 34 (referring to CP as “dispatcher of the West Line” and explaining that “CPRC has the

PUBLIC VERSION

rights fee to Metra to do so.⁷⁹ So, to interchange at Clearing, CN must travel further and pay for doing so—in addition to paying the BRC’s switching fees for the traffic CN delivers there.

Thus, even if the Board looks beyond the BRC Operating Agreement, it should make clear that each party must pay its own share of the BRC’s switching fees.

V. CONCLUSION

For these reasons, the Board should grant CN’s petition and declare that each carrier must bear its own costs for interchanging traffic at Clearing Yard, and that CP must reimburse CN for the fees it has paid on CP’s behalf since August 2019.

Respectfully submitted,

/s/ Matthew J. Warren
Raymond A. Atkins
Matthew J. Warren
Tobias S. Loss-Eaton
Morgan B. Lindsay
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
mjwarren@sidley.com

Kathryn J. Gainey
Deputy General Counsel,
US Regulatory Affairs
CN
601 Pennsylvania Ave., NW
Suite 500, North Building
Washington, DC 20004
Kathryn.Gainey@cn.ca

Counsel to Wisconsin Central, Ltd.

February 2, 2022

right to dispatch the West Line and North Line by virtue of a 1985 trackage rights agreement with the Trustee of the Milwaukee Road.”).

⁷⁹ CP Reply at 13.

PUBLIC VERSION

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February 2022, I caused a copy of the foregoing document to be served by U.S. Postal Service or more expeditious means upon the service list to Finance Docket No. 36397.

/s/ Matthew J. Warren

Matthew J. Warren

Exhibit A

BRC Operating Agreement

Canadian National Railway Company Has Withdrawn the
Highly Confidential Designation for This Document

6000794

THE BELT RAILWAY COMPANY OF CHICAGO

OPERATING AGREEMENT

THIS AGREEMENT, made by and between THE BELT RAILWAY COMPANY OF CHICAGO (hereinafter called the Belt Company), party of the first part; and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
BURLINGTON NORTHERN RAILROAD COMPANY
CSX TRANSPORTATION, INC.
CONSOLIDATED RAIL CORPORATION
GRAND TRUNK WESTERN RAILROAD COMPANY
ILLINOIS CENTRAL RAILROAD COMPANY
MISSOURI PACIFIC RAILROAD COMPANY
NORFOLK AND WESTERN RAILWAY COMPANY
SOO LINE RAILROAD COMPANY

(hereinafter collectively called Railway Companies, and singly called Railway Company), party or parties of the second part.

Made for full term of at least 5 years, running to April 1, 1995, and to continue in effect thereafter, until amended by agreement of the parties hereto.

WITNESSETH THAT:

WHEREAS, the Belt Company is the owner of the properties hereinafter referred to as "Belt Railway"; and

Whereas, each of the Railway Companies now is the owner of at least 2600 shares, of the par value of \$100 each, of the capital stock of the Belt Company and each of the Railway Companies has agreed to execute this Agreement; and

Whereas, at rates agreed upon between the Railway Company and the Belt Company, each of the Railway Companies desires to avail itself of the services of the Belt Company and of the use and enjoyment of the rights, privileges, property and facilities of the Belt Company, upon the terms and conditions in this Agreement stated.

ARTICLE ONE.

Grants.

Now, THEREFORE, in consideration of the premises, and of the sums to be paid by the Railway Companies, respectively, and subject to the terms and conditions of this Agreement, the Belt Company grants to each of the Railway Companies, to the extent that the Belt Company has the right and ability to do so, the right and privilege of running and operating the freight trains, locomotives and cars of such Railway Company over and upon, or to use and enjoy, for the purposes of freight traffic, in common with the Belt Company and with the other Railway Companies and with such other companies as hereafter may receive from the Belt Company grants of similar or other rights of use, the following described premises, rights and privileges (herein referred to as "Belt Railway"):

(1) The line of railway of the Belt Company situated in the County of Cook, in the State of Illinois, as shown on File No. 114.12-89 dated January, 24, 1990, marked Exhibit "A", attached to and made a part hereof, which line of railway, together with all rights, privileges, powers, estates and licenses thereto pertaining, is more fully described in that certain deed dated September 1, 1962 (as modified by subsequent Belt Company transactions), wherein Chicago and Western Indiana Railroad Company is Grantor and Belt Company is Grantee, and by this reference is made a part hereof.

(2) The right of way, tracks, bridges, switches and

turnouts, yards, lands, shops, engine house, turntables, structures of every kind, machinery, tools and all other property and appurtenances upon the real estate now owned or as may hereafter be acquired or constructed by Belt Company.

(3) Together with all the franchises, ordinance rights, licenses and other rights and privileges, at any time possessed by the Belt Company, in anywise belonging or appertaining to said property and facilities, or any enlargements thereof or additions thereto.

(4) Also the right and privilege of using the communication facilities owned or leased by Belt Company, subject, however, to the rights and conditions set out in any contracts with parties other than the parties to this Agreement.

(5) The Railway Companies may use the Belt Railway as a bridge for through movement of cars between portions of their own Railroad or between their yards and connections with other Railway Companies and any other railroads not party to this Agreement.

TO HAVE AND TO HOLD the said rights and privileges unto each of the Railway Companies, its successors and assigns, from the effective date of this Agreement, for and during the full term of at least 5 years, running to the first day of April, 1995, and to continue in effect thereafter until amended by the parties, as provided herein, each such Railway Company, its successors and assigns, yielding and paying, therefore, unto The Belt Company, its successors and assigns, or to or for its or their use, the payments established pursuant to this Agreement, and keeping and performing all and singular the covenants and agreements hereinafter set forth, to be by the Railway Companies severally kept and performed;

PROVIDED, that the Belt Company expressly reserves to itself, its successors and assigns, all its corporate franchises and powers in its own behalf to use and to operate, and to grant to other railroad companies the right to use and to operate the same, consistent with the rights and privileges by this Agreement granted to the Railway Companies, respectively; and,

PROVIDED further that, except with the written permission of the Belt Company and in accordance with its rules and regulations from time to time prescribed, the rights and privileges hereby granted shall not include the right to make up or break up trains or do

switching upon the Belt Railway otherwise than through the agency of the Belt Company; and PROVIDED further, that said rights and privileges of using the Belt Railway shall be exercised in common with the Belt Company, and with each of the Railway Companies, and with such other companies as may obtain from the Belt Company similar or other rights of user; and nothing herein shall abridge the corporate powers of the Belt Company to operate the Belt Railway on its own behalf, and to grant to other companies similar rights, consistent with privileges by this Agreement granted to the Railway Companies, respectively, and,

PROVIDED, Further that, notwithstanding any provision or language contained in this Agreement to the contrary, it is hereby expressly agreed that the Belt Company shall have the right to enter into separate agreements with one or more of the Railway Companies, or other companies not party to this Agreement, providing for, but not limited to, lease of tracks, servicing of locomotives and cabooses, repair of cars, switching services on and/or off Belt Railway, and use of office space. Such separate agreements shall not, at the time entered into, materially infringe the rights granted herein to Railway Companies.

And it is hereby expressly covenanted and agreed that the said rights and privileges hereby granted to the Railway Companies respectively, shall be held, used and enjoyed by each of the Railway Companies, subject to the following further covenants, conditions and provisions, and the Belt Company and each of the Railway Companies hereby covenant and agree to and with each other as follows to-wit:

ARTICLE TWO.

Covenants Of Belt Company.

Section 1. The Belt Company will pay all taxes, assessments and governmental charges imposed upon the Belt Railway, subject to reasonable contests as to the validity thereof.

Section 2. The Belt Company will pay or cause to be paid all rentals payable by it under leases covering any part of the Belt Railway, and will faithfully perform all of its obligations under such leases, and will not do or omit to do any act the doing or omission of which will cause any of the rights of the Belt Company under such leases to be forfeited.

Section 3. The Belt Company will pay or cause to be paid all interest on its debt, funded or otherwise, and interest at six per cent, or at such other rate as the Belt Company Board of Directors shall from time to time determine shall be paid to the Railway Companies on their respective advances.

Section 4. The Belt Company will pay or cause to be paid principal payments on its debt, equipment obligations and the cost of capital improvements.

Section 5. The Belt Company will not do or omit to do any act the doing or omission of which will operate, directly or indirectly, to forfeit any of the rights, privileges and franchises acquired under its charter, or howsoever acquired, or which will in any manner impair the value of any of the privileges, rights or property the right to use which is hereby granted to the Railway Companies, or impair its power or ability to perform all of its obligations under this Agreement; and it will, at the expiration of the present term of its corporate existence, cause the same to be renewed and extended in manner and form as may be provided by law, and will cause similar renewals and extensions to be made from time to time as the same shall be necessary to maintain during the full term of this Agreement the existence and powers with which it is now vested.

Section 6. The Belt Company will at all times, and from time to time during said term, when requested by the Railway Companies or any of them, put forth and exercise each and every corporate power, and do each and every corporate act which the Belt Company might now or may at any time hereafter lawfully put in force or exercise, to enable the Railway Companies and each of them to enjoy and avail themselves of and exercise every right, franchise and privilege hereby granted, in the proper management and operation of the Belt Railway, according to the terms of this Agreement.

ARTICLE THREE.

Mutual Covenants.

Section 1.

(a) Each of the Railway Companies shall pay to the Belt Company a charge for the transfer of cars between any of the Railway Companies through the facilities of the Belt Company. The Belt Company shall establish the charge or charges to cover services provided each Railway Company or Companies.

(b) The Belt Company shall establish contract charges and tariff rates for each and all of its services. Such charges and tariff rates shall, in total, be at least sufficient to cover all its expenses.

(c) For each calendar year that the Belt Company's accounts reflect net revenues from operations, such revenues shall be applied as directed by any mortgage or mortgages of the Belt Company then in effect. If the amount deposited pursuant to the provisions of the then existing mortgage or mortgages may be drawn down, or if there be no mortgage or mortgages, then such amounts available to Belt Company, subject to the affirmative vote of not less than two-thirds of the Belt Company Board of Directors, to be expressed by resolution, shall be distributed to the Railway Companies as a reduction of advances in the same manner and in the same order of time as advances were made unless otherwise provided by special agreements in effect at the time. If at any time there shall be no advances outstanding as provided by special agreement or agreements, such funds available, if distributed, shall be distributed in the form of repayment of Belt Company Account 795 - Other Capital balances by the affirmative vote of not less than two-thirds of the Belt Company Board of Directors. If at any time there shall be no balances outstanding in Belt Company Account 795, such funds available, if distributed, shall be distributed as directed by the affirmative vote of not less than two-thirds of the Belt Company Board of Directors.

(d) Proceeds from the sale or other disposition of property shall be applied as directed by any mortgage or mortgages of the Belt Company then in effect. If the amount deposited may be drawn down by Belt Company under said mortgage or mortgages, or if there be no mortgage requirements, then net proceeds of such sale or other disposition of property shall be distributed to the Railway Companies as a reduction of advances in the same manner and in the same order of time as advances were by them made. If at any time there shall be no advances outstanding as provided by special agreement or agreements, such proceeds, if distributed, shall be distributed in the form of repayment of Belt Company Account 795 - Other Capital balances by the affirmative vote of not less than two-thirds of the Belt Company Board of Directors. If at any time there shall be no balances outstanding in Belt Company Account 795, such proceeds, if distributed, shall be distributed as directed by the affirmative vote of not less than two-thirds of the Belt Company Board of Directors.

(e) Subject to the mutual agreement of the involved parties, interchange of cars between Railway Companies on the Belt Railway will be at Clearing Yard. Interchange of cars between the Belt Company and a Railway Company will be at Clearing Yard, unless other locations have been agreed to in writing by the parties.

Cars moving between Railway Companies via the Belt Company shall be taken into the car hire or mileage accounts of the Belt Company as follows:

- (i) Cars moving inbound to the Belt Company shall be taken into Belt Company Accounts at the time they are yarded on a designated delivery track and the engine of the delivering Railway Company is cut off from the train.
- (ii) Cars moving outbound to the Railway Companies shall be taken into the Railway Company accounts at the time the car is humped or placed on a designated classification track.
- (iii) Except as modified by this Agreement, the Rules of the Association of American Railroads regarding the interchange of cars between railroads shall govern.

Section 2. The several sums payable by each of the Railway Companies under the provisions of Section 1 of this Article, shall be payable to the Belt Company, or pursuant to its written order, at the office of the Belt Company at Chicago, Illinois, within ten days after a statement thereof shall have been mailed or delivered by the Belt Company to such Railway Company, stating the sum to be paid by it. At the expiration of said ten days the Belt Company is authorized to make sight drafts against any of the Railway Companies for any such sum. Any errors or omissions shall be adjusted in the statement for the month during which the error or omission shall have been located and agreed upon by the Belt Company and the other party or parties interested.

Section 3. Each of the Railway Companies, in respect of the exercise by it of the rights and privileges by this Agreement granted, shall do and perform to the public all the duties which now or hereafter, under the laws of the United States or of the State of Illinois, or under the ordinances of cities, towns or villages, or by other competent authority may be required of either of the parties hereto; and each of the Railway Companies shall and will indemnify and save harmless the Belt Company from any violation by such Railway Company of

any such law or ordinance.

Section 4. Outstanding capital stock of the Belt Company of 2,600 or more shares shall be held by each of the Railway Companies.

Section 5. The Board of Directors of the Belt Company shall always be composed of at least one nominee of each of the Railway Companies, and each Railway Company shall have one Director for each block of 2,600 shares of outstanding stock of Belt Company held by it.

Section 6. The President of the Belt Company shall be elected annually by the Board of Directors. When present, he shall preside at all meetings of the Board of Directors. He need not be a stockholder, and shall have no vote at meetings of the Board of Directors.

Section 7. The Belt Company shall have and exercise the exclusive management and control of the operation, maintenance, repair and renewal of the Belt Railway and every part thereof, and shall keep and maintain the Belt Railway at all times during said term in good order, condition and repair, and shall protect or cause the same to be protected by such insurance, if any, against loss or damage as, in the judgment of the Belt Company, may be necessary and adequate; and shall establish rules and regulations governing the operation of trains upon the Belt Railway, and the use and enjoyment thereof in all other respects; provided always, that such rules and regulations shall apply to all the Railway Companies. Train movements of the same class shall enter and exit Belt Railway on a first-come, first-serve basis, to the extent practicable. Belt Company shall not unduly restrict the length and speed of Railway Companies' trains. Each of the Railway Companies shall comply, and cause its employees to comply, with such rules, safety rules and special instructions. Should a dispute arise with or between any of the Railway Companies using the Belt Railway, as to the arrangement of trains, the use of the Belt Railway, or the time table or train schedule of such Railway Companies, the Belt Company expressly reserves the right and power to determine and enforce the arrangement and order of trains, the use of the Belt Railway and the arrangement of such train schedules or time tables, and to direct the adoption thereof.

Section 8. Except with the unanimous written consent of the parties hereto, no scheduled passenger train shall be regularly operated over any part of the Belt Railway by any of the Railway Companies.

Section 9. The plan, character and cost of any improvement, change or addition, to cost more than \$100,000, hereafter made to the Belt Railway, shall be determined by the affirmative vote of not less than two-thirds of the Board of Directors of the Belt Company.

Section 10. If any improvements or extensions of or additions to the Belt Railway, the expenditure for which has not received the affirmative vote required in Section 9 above, shall be desired by one or more of the Railway Companies, such Railway Company or Railway Companies, with the approval of a majority of the Board of Directors of the Belt Company to be expressed by resolution, may make or cause to be made such improvements, extensions or additions at its or their own expense, providing said Railway Company or Railway Companies shall pay rent to be fixed by the Board of Directors for Belt Company's property used for such improvements, extensions or additions. At any time during the term of this Agreement, the Belt Company may acquire the ownership of any such improvements, extensions or additions by payment to the Railway Company or Railway Companies which shall have constructed the same, at a price to be agreed upon by the owner or owners thereof and the Belt Company. Upon such acquisition thereof by the Belt Company, such improvements, extensions, or additions so acquired shall become parts of the Belt Railway. Until so acquired by the Belt Company, such Railway Company or Railway Companies shall have the exclusive use of such additions, extensions or improvements, and shall, at its or their own expense, maintain, repair, renew and operate the same and pay all taxes and assessments thereon and all expenses for demolition, removal, etc., whether caused by obsolescence or otherwise.

Section 11. For purposes of this Section 11, cars delivered to the Belt Company shall be deemed to be "in the possession" of the Belt Company after mechanical inspection has been completed and the cars have been accepted by the Belt Company. Cars delivered to a Railway Company by the Belt Company shall be deemed to be "in the possession" of the Railway Company after mechanical inspection has been successfully completed by the Belt Company. The responsibility of the parties as between themselves for injury to, or death of, any person or persons whomsoever, or for loss of, damage to, and destruction of any property whatsoever, resulting from, arising out of, incidental to, or occurring in connection with this Agreement shall be apportioned as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with any of the trains, locomotives, cars or other equipment of, or in the possession of, either the Belt Company or a Railway Company only being involved, the party hereto whose equipment is so involved shall defend and assume all liability therefore and all cost and expenses in connection therewith, regardless of considerations of fault or negligence.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with any of the trains, locomotives, cars or other equipment of or in the possession of the Belt Company and a Railway Company or more than one Railway Company being involved, the parties hereto whose equipment is so involved agree to separately assume all liability for loss or damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by or in the possession of each of them and for injury to or death of each of their sole employees and persons in each of their care and custody, and the Belt Company and the Railway Company or Railway Companies whose equipment is so involved further agree that injury to or death of any other person or persons whomsoever, and loss, damage or destruction of all other property (including without limitation the Belt Company trackage) so occurring, shall be borne equally by them, regardless of considerations of fault or negligence.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with any of the trains, locomotives, cars or other equipment of, or in the possession of, two or more parties to this Agreement (excluding the Belt Company), the parties hereto whose equipment is so involved agree to separately assume all liability for loss or damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by or in the possession of each of them and for injury or death of each of their sole employees and persons in each of their care and custody, and each party whose equipment is so involved further agrees that injury or death of any other person or persons whomsoever, and loss, damage or destruction of all other property (including without limitation the Belt Company trackage) so occurring, shall be borne equally by them, regardless of consideration of fault or negligence.

(d) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with any of the trains, locomotives, cars or other equipment of, or in the possession of a Railway Company or Railway Companies, and any other user of the Belt Company trackage (other than the Belt Company and another Railway Company) being involved, then any such other user shall be considered as the Belt Company for the purpose of determining between the parties to this Agreement the Belt Company's assumption and apportionment of liability, cost and expense under subparagraph (b) above.

(e) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with any of the trains, locomotives, cars or other equipment of, or in the possession of, a Railway Company or Railway Companies, and the Belt Company and any other user of the Belt Company trackage being involved, then the Belt Company and any such other user shall be considered as the Belt Company for the purpose of determining between the parties to this Agreement the Belt Company's assumption and apportionment of liability, cost and expense, pursuant to subparagraph (b) above, and the Belt Company's share shall then be a two-thirds portion.

Section 12. Each party to this Agreement shall pay for all loss, damage and expenses, both as to person and property, the risk of which it has assumed under Section 11 of this ARTICLE THREE, and shall forever indemnify and save harmless the other parties hereto and each of them, and the successors and assigns of each, from and against all liabilities, claims and judgments therefor or by reason thereof, and each such party shall pay, satisfy and discharge all costs, charges, attorneys' fees and other expenses incidental thereto, including the expenses of investigating both valid and invalid claims, and all judgments which may be entered or rendered by reason thereof.

In case a claim or suit or suits shall be commenced against any party to this agreement for or on account of damage or injury for which any other party hereto is liable under Section 11 of this ARTICLE THREE, the party against whom the claim or suit is brought shall give to such other party reasonable notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume the defense of such claim or suit, and shall save and hold harmless the party against whom

the claim is brought or the suit is instituted, from all loss, cost, expense and liability by reason thereof. If the party so notified shall fail to assume the defense of such claim or suit, such party so notified shall be concluded by the settlement or judgment as to all matters which could have been compromised or litigated in such settlement negotiations or suit.

It is recognized that for purposes of provisions under Section 11 of this ARTICLE THREE, pilots furnished by the Belt Company for a Railway Company shall be considered the employee of the Railway Company from such time as the pilot starts his tour of duty until he concludes his tour of duty at the Belt Company's designated point of starting and concluding such tour of duty.

Section 13. The Belt Company and each of the Railway Companies agree that incidents have occurred whereby sums will be payable by the parties hereto at a future date as a result of the application of the liability clauses in the Amended Operating Agreement made as of September 1, 1962, effective January 1, 1967, and as amended by Agreement dated as of October 1, 1966, and supplemented by the Agreement dated as of November 1, 1977.

The apportionment to be used in the settlement of these liabilities between the parties will be the working expense ratios, as defined in aforesaid Amended Operating Agreement, as of the date the incident occurred.

Section 14. By the affirmative vote of two-thirds of the Board of Directors of the Belt Company, any other railroad company (not named herein as one of the Railway Companies) owning, leasing or controlling any railroad which connects with the Belt Railway, by direct connection or under lease or trackage rights over other lines, may become a party of the second part to this Agreement, on the following conditions, viz.:

- (1) That such company shall acquire or purchase not less than the required number of par value shares of the capital stock of the Belt Company; and payment of a proportionate amount of other contribution of capital at such date of acquisition.
- (2) That such company shall execute this Agreement or a counterpart thereof, or supplement thereto, or such other agreements as may be specified by the Board of Directors of the Belt Company, as one of the Railway Companies, parties of the second part; and

- (3) That there shall be obtained the authorization or approval of the appropriate governmental regulatory body or bodies before such company's becoming a party to such agreement or agreements or counterparts thereof if such authorization or approval is required by law.

Section 15. All covenants of the Railway Companies under this Agreement are several and not joint, and in no event shall any of the Railway Companies be liable for any default under this Agreement of any other of the Railway Companies.

Section 16. Except as provided in Article Seven hereof, this Agreement shall not be altered or amended except by the consent of all of the parties hereto, to be expressed in writing.

Section 17. The by-laws of the Belt Company shall be so amended as to make them consistent with the provisions of this Agreement.

ARTICLE FOUR.

Rights and Remedies in Case of Default.

Section 1. If any of the Railway Companies shall fail to pay any sum by it payable under this Agreement, on or before the date when the same shall become due, or shall fail to perform and comply with any other covenant or condition by it to be performed or complied with under this Agreement, and such default shall continue for a period of sixty days after written demand for such payment, performance or compliance shall have been made upon such Railway Company by the Belt Company, or if at any time during the term of this Agreement, any of the Railway Companies in any manner shall cease to be beneficial owner of at least 2600 shares of the capital stock of the Belt Company, then and in any such case the Belt Company shall have and is hereby given the right, at its election, to exclude such Railway Company from the use of the Belt Railway, and upon giving notice in writing to such Railway Company of such election, all rights of such Railway Company to use the Belt Railway or any part thereof, and all other rights of such Railway Company under this Agreement shall then and there by such notice be terminated, and the Belt Company may wholly exclude such Railway Company from the Belt Railway; but such termination shall not relieve such

Railway Company from any liability which may have accrued prior, or shall accrue subsequent, to the date of such termination, or deprive the Belt Company of the right to enforce such liability. Nevertheless, if such Railway Company, within sixty days after receipt of any statement rendered to it under this Agreement by the Belt Company, shall give notice in writing to the Belt Company that it contests the correctness of any specified item or items in such statement, and shall pay to the Belt Company all sums then due to the Belt Company, other than the item or items so specified, and also, if demanded by the Belt Company, shall furnish adequate security for the contested item or items, then, so long as such Railway Company in good faith shall contest the correctness of the item or items specified in such notice, the right of such Railway Company to use and enjoy the Belt Railway shall not be terminated under this Section by reason of the failure of such Railway Company to pay in full such item or items so contested. But no such notice, exclusion or termination shall relieve such Railway Company from the payments to be made by it as in ARTICLE THREE of this Agreement provided; it being understood and agreed, as a part of the consideration for this Agreement, that each of the Railway Companies binds itself to make such payments absolutely and at all events.

Section 2. In case any of the Railway Companies shall be excluded from the use of the Belt Railway under Section 1 of this Article, such Railway Company shall be entitled, at any time within the period of one year thereafter but no longer, to be reinstated in its rights and privileges under this Agreement, upon payment to the Belt Company within such period of all sums then in arrears with interest thereon from the respective dates when the same became due, at the rate of six per cent per annum, payable semi-annually, and upon compliance with such other conditions as the Board of Directors of the Belt Company may impose.

ARTICLE FIVE.

Successors and Assigns.

Section 1. The rights by this Agreement granted to each of the Railway Companies shall extend to and inure to the benefit of and may be enforced by any railroad company whose railway at the time shall be leased, operated or controlled by such Railway Company or its successors, and any railroad company which shall lease or purchase all, or substantially all, of the properties of a Railway Company, and any railroad company which at the time shall own a majority of the capital stock of

such Railway Company, and any railroad company a majority of whose capital stock at the time shall be owned by such Railway Company, and any railroad company a majority of whose capital stock at the time shall be owned by any company which shall then own a majority of the capital stock of such Railway Company.

Section 2. The covenants of this Agreement are made for the exclusive benefit of the Belt Company and the Railway Companies, their successors and assigns, and no other party shall be entitled to enforce any of the said covenants. Said covenants shall be binding upon the successors, and assigns of the respective parties hereto, but no such assignment shall release the assigning company from its obligations under this Agreement. If any of the Railway Companies shall be consolidated with other companies, the company formed by such consolidation shall be entitled to all the rights and privileges under this Agreement of any of its constituent companies and shall be liable for all payments obligatory thereunder upon any of its constituent companies.

ARTICLE SIX.

Assignment.

The Belt Company may assign this Agreement to the trustee or trustees in any mortgage or mortgages of the Belt Company which, at the time of such assignment, shall be existing liens upon the Belt Railway, or any part thereof, as and for further security for the payment of the obligations secured by any such mortgage or mortgages. Any such trustee or trustees to which the Belt Company may assign this Agreement shall have the right to enforce every provision of this Agreement which might be enforceable by the Belt Company.

In consideration of such assignment of this Agreement, each of the Railway Companies, so long as it shall not be in default under this Agreement and shall faithfully perform all its obligations under said Agreement, shall be entitled to all of the protection afforded to it under the provisions of this Agreement, in respect of the quiet and peaceable possession and enjoyment of the rights herein granted to each of the Railway Companies, notwithstanding any default of the Belt Company or any Railway Company or Railway Companies, or any sale of the property of the Belt Company under any such mortgages or otherwise.

ARTICLE SEVEN.

Alteration or Amendment.

Section 1. This Agreement shall not be altered or amended during the initial term hereinafter specified in Article Eight, except by the consent of all parties hereto.

Section 2. Any party to this Agreement wishing to alter or amend any of its provisions after April 1, 1995 may serve all other parties hereto with written notice of such desire, setting out in specific detail what alterations or amendments it seeks. Within thirty days of the date of such notice, the parties hereto shall meet for the purpose of reviewing the proposed amendments and shall negotiate, in good faith, to resolve any issues which those proposals create.

Section 3. If the parties are unable to resolve the issues raised by said proposed amendments within one year from the date of the written notice referred to in Section 2 of this Article Seven, the parties hereby agree that the unresolved issues will be submitted to binding arbitration, upon written demand by any party to this Agreement.

Section 4. All unresolved issues shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. However, if they fail to select such arbitrator within thirty days after demand for arbitration is made by any party hereto, then they shall jointly submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so selected or appointed shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation and expenses of the arbitrator, if any, shall be borne equally by the parties.

ARTICLE EIGHT.

Term and Execution.

Section 1. This Agreement shall be for a full term of at least five (5) years commencing upon the unanimous acceptance and execution of the Railway Companies, and upon the date chosen for execution and implementation by the Belt Company, which date shall be no later than April 1, 1990, and running to April 1, 1995. This Agreement shall thereafter continue in full force and effect until altered or amended as provided above in Section 2 of Article Seven.

Section 2. After this Agreement has been executed by all the shareholder Railway Companies and prior to Belt Company execution and implementation, the Belt Company shall have full authority to solicit new business and to enter into any new agreements, as if this Agreement were in full force and effect.

Section 3. Except as specifically provided herein, this Agreement amends, cancels, and supercedes the existing Belt Company Amended Operating Agreement dated September 1, 1962 and all supplements thereto.

This Agreement may be executed in any number of counterparts, all of which, collectively, shall be held to constitute one instrument.

In Witness Whereof, the parties hereto have caused these presents to be signed by their respective Presidents or Vice-Presidents, and their respective corporate seals to be hereunto affixed and to be attested by their respective Secretaries or Assistant Secretaries.

THE BELT RAILWAY COMPANY OF CHICAGO,

BY (signed) James E. Martin

President

DATE: March 30, 1990

(Corporate Seal)

Attest:

(signed) Ruth A. Taylor

Secretary

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

BY (signed) A. W. Rees

Vice President - Operations

DATE: March 12, 1990

(Corporate Seal)

Attest:

(signed) Michael W. Blaszak
Assistant Secretary

BURLINGTON NORTHERN RAILROAD
COMPANY,

BY (signed) W. W. Francis

DATE: March 17, 1990

(Corporate Seal)

Attest:

(signed) Victoria Hanel

CSX TRANSPORTATION, INC.,

BY (signed) J. R. Davis

DATE: February 22, 1990

(Corporate Seal)

Attest:

(signed) David M. Yearwood
Assistant Secretary

CONSOLIDATED RAIL CORPORATION,

BY (signed) H. W. Brown

DATE: February 26, 1990

(Corporate Seal)

Attest:

(signed) Allan Schimmel

THE BELT RAILWAY COMPANY OF CHICAGO
OPERATING AGREEMENT

GRAND TRUNK WESTERN RAILROAD
COMPANY,

BY (signed) G. L. Maas

President

DATE: February 26, 1990

(Corporate Seal)

Attest:

(signed) W. J. McKnight

ILLINOIS CENTRAL RAILROAD COMPANY,

BY (signed) E. H. Harrison

DATE: March 5, 1990

(Corporate Seal)

Attest:

(signed) P. F. Healy, Jr.

Assistant Secretary

MISSOURI PACIFIC RAILROAD COMPANY,

BY (signed) R. K. Davidson

DATE: February 27, 1990

(Corporate Seal)

Attest:

(signed) C. W. Saylor

NORFOLK AND WESTERN RAILWAY
COMPANY,

BY (signed) C. M. Irvin

DATE: February 26, 1990

(Corporate Seal)

Attest:

(signed) Dezora M. Martin

Assistant Secretary

THE BELT RAILWAY COMPANY OF CHICAGO
OPERATING AGREEMENT

SOO LINE RAILROAD COMPANY,

BY (signed) E. V. Dodge

DATE: March 30, 1990

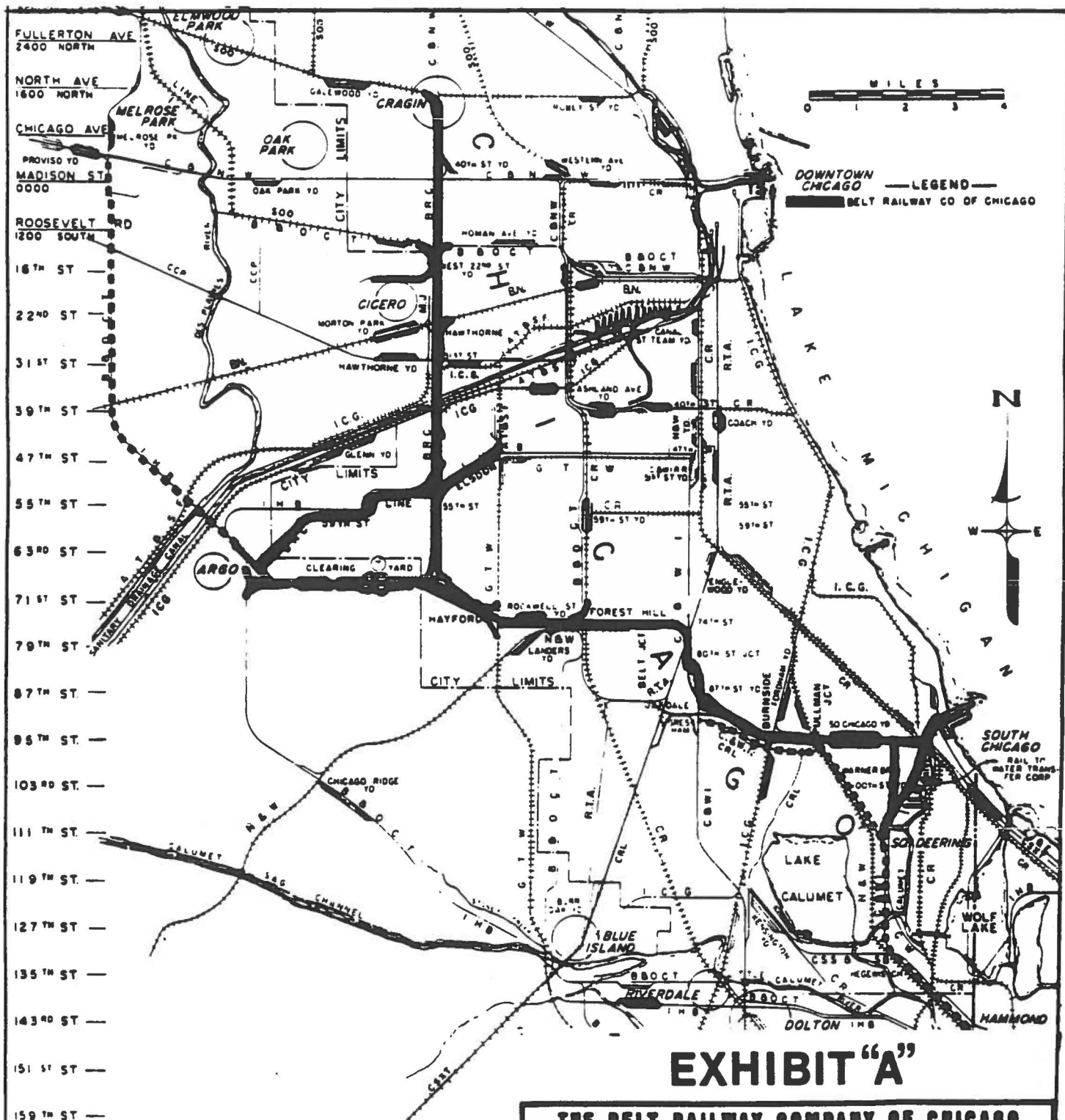
(Corporate Seal)

Attest:

(signed) Teresa M. Keener

Assistant Secretary

THE BELT RAILWAY COMPANY OF CHICAGO
OPERATING AGREEMENT



THE BELT RAILWAY COMPANY OF CHICAGO
OFFICE OF THE CHIEF ENGINEER

MAP OF
 THE BELT RAILWAY COMPANY
 OF
 CHICAGO

DRAWN
TRACED
CHECKED
SCALE

WGT

FILE NO.
 114.12-89

APPROVED:

DATE 1-24-90

MANNHEIM RD

25TH AVE

9TH AVE

DESPLAINES AVE.

8000 WEST

HARLEM AVE.

7200 WEST

MARRAMSETT AVE.

6400 WEST

CENTRAL AVE.

5600 WEST

CICERO AVE

4800 WEST

PULASKI RD

3000 WEST

MEDIE AVE

Exhibit B

BRC Rate Sheet

Contains Highly Confidential Information
Completely Redacted

Exhibit C

Verified Statement of
Michael Matteucci

Highly Confidential Information Redacted

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**WISCONSIN CENTRAL, LTD.—PETITION FOR DECLARATORY
ORDER—INTERCHANGE WITH SOO LINE RAILROAD COMPANY**

STB FINANCE DOCKET NO. 36397

VERIFIED STATEMENT OF MICHAEL MATTEUCCI

My name is Michael Matteucci, and I am Director, Region Contracts and Administration at CN. I joined CN in 2010.

1. Based on a review of CN's records, I can confirm that, since CN and CP signed the Interim Agreement in 2019, CN has reimbursed CP {{ Redacted }} for the BRC's switching fees for traffic CP has delivered to Clearing under the Agreement, and CN has paid the BRC {{ Redacted }} in switching fees for CP-bound traffic that CN has delivered to Clearing during that same period.

2. To reach Clearing Yard from its Kirk Yard in Gary, Indiana, CN must travel over the Elsdon line operated by CSXT, paying a per-car trackage rights fee to do so.

VERIFICATION

I, Michael Matteucci, verify under penalty of perjury that the foregoing Verified Statement is true and correct. Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed on this 2nd day of February, 2022.

A handwritten signature in blue ink, appearing to read "Michael Matteucci", is written over a horizontal line.