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BEFORE THE
SURFACE TRANSPORTATION

CANADIAN NATIONAL RAILWAY	)	
COMPANY AND GRAND TRUNK	)	FINANCE DOCKET
CORPORATION – CONTROL – EJ&E	)	NO. 35087
WEST COMPANY	)	

REPLY IN OPPOSITION TO APPLICANTS'
REQUEST FOR ESTABLISHMENT OF TIME LIMITS
FOR NEPA REVIEW AND FINAL DECISION

CITY OF WEST CHICAGO, ILLINOIS
HON. MICHAEL B. KWASMAN, Mayor
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Replicant

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Due Date: June 2, 2008

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Pursuant to 49 C.F.R. § 1104.13(a), the CITY OF WEST CHICAGO, ILLINOIS (the City) hereby replies in opposition to Applicants’ Request for Establishment of Time Limits for NEPA Review and Final Decision (Request) filed on May 13, 2008.^u

Reply in Opposition

The City is hereby adding its voice to very persuasive replies in opposition to the Request that have already been filed in behalf of:

- (1) the Village of Barrington, Illinois;
- (2) United States Senator Richard Durbin (IL) and United States Congresswoman Melissa L. Bean (IL), jointly;
- (3) United States Senator Richard G. Lugar (IN), United States Senator Evan Bayh (IN), and United States Congressman Peter J. Visclosky (IN), jointly; and
- (4) United States Congressman Peter Roskam (IL), United States Congresswoman Judy Biggert (IL), United States Congressman Bill Foster (IL); United States

^u This Reply is also directed at the pleading filed by the Association of American Railroads on May 27, 2008 in support of the Request.

Congressman Donald Marzullo (IL), Congresswoman Bean, and Congressman Visclosky, jointly.

It is noteworthy that the affected Congressional delegations are unanimous in their insistence on the complete and thorough procedure that this highly controversial transaction requires.^{2/}

The City's voice should weigh heavily in opposition to the artificial time limits advocated in the Request.^{3/} The City has the unwanted distinction of suffering the greatest increase in rail freight tonnage of any location on the EJ&E system if the proposed acquisition were to be approved. Rail freight tonnage on the EJ&E would go from the current 14,397 tons per day to 184,969 tons per day. That would be an increase of 1,185 percent. That is not a misprint. Traffic would increase nearly 12-fold! A trickle of EJ&E traffic would become a flood. Gargantuan traffic increases of that magnitude are diametrically inconsistent with the accelerated procedure requested by the Applicants.

Applicants' Request is undermined by their failure to have diligently pursued resolution of environmental issues in this matter. Applicants have met with the City on only one occasion. Applicants did not make an offer of environmental mitigation at that meeting. Indeed, there was no representative of Applicants at that meeting who had authority to bind Applicants to any

^{2/} United States Senator Barack Obama (IL) has come out strongly against the proposed transaction. *See* ChicagoTribune.com, May 20, 2008, "Sen. Barack Obama Opposes Canadian National Railway Deal In Chicago Suburbs."

^{3/} The proposed time limit is artificial because it is self-imposed by Applicants and their counterpart in the transaction. Applicants' desire for expedition must give way to the broader public interest in adequate review of legitimate safety and congestion concerns.

agreement. That leisurely pace on the part of Applicants is wholly inconsistent with their request for time limits for decision at an early date.

The City does not wish to duplicate arguments against the Request that have been articulated so ably by the Village of Barrington and the elected Federal officials. The City merely supplements those argument in limited respects.

Applicants have incorrectly alleged, in the summary of their Request at page 1, that “(t)he Board is required, on request, to impose time limits.” The Board’s duty in that respect is actually qualified in important particulars omitted by Applicants. Thus, 40 C.F.R. § 1501.8(a) provides as follows (emphasis added):

The agency shall set time limits if an applicant for the proposed action requests them: Provided, that the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

For reasons persuasively argued in opposing replies filed to date, the time limits requested by Applicants are not consistent with the purposes of NEPA and other essential considerations of national policy. Therefore, contrary to Applicants’ contention, the Board is not required by law to set time limits in response to Applicants’ request.

The City vehemently disagrees with Applicants’ contention at page 16 of their Request that the environmental process is unreasonably disproportionate to the issues being reviewed. The City’s 1,158-percent increase in EJ&E traffic, although the largest, is but one of many huge increases in EJ&E traffic in heretofore peaceful Chicago Suburbs. The thorough environmental review being undertaken by the Board is no more than the massive shift of rail traffic onto the EJ&E requires.

WHEREFORE, the Request should be denied.

Respectfully submitted,

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Due Date: June 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2008, I served the foregoing document, Reply In Opposition To Applicants' Request For Establishment Of Time Limits For NEPA Review And Final Decision, by e-mail on Paul A. Cunningham, *pac@harkinscunningham.com*, Harkins Cunningham, 1700 K Street, N.W., Suite 400, Washington, DC 20006-3804, and Theodore K. Kalick, *ted.kalick@cn.ca*, Canadian National Railway Company, Suite 500 North Building, 601 Pennsylvania Avenue, N.W., Washington, DC 20004, by fax (514) 399-4854 to Sean Finn, Canadian National Railway Company, P.O. Box 8100, Montreal, QC H3B 2M9, and by first-class, U.S. mail, postage prepaid, on all other parties of record.

Thomas F. McFarland

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