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September 17, 2010

Mr. Matthew T. Wallen
Director
Office of Public Assistance, Governmental
Affairs & Compliance
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Dear Director Wallen:

As you know, in our organizing meeting with Board staff in February 2009 we agreed to file reports related to CN's EJ&E transaction, as required in the Board's final decision served December 24, 2008 approving this transaction, by the tenth day of the month following the relevant reporting period (or, when the tenth day fell on a weekend or holiday, the next business day). The reporting date of the tenth has applied to CN's monthly reports on operational matters and to its quarterly reports on environmental mitigation measures and conditions. For the reasons discussed below, CN hereby requests that it be permitted to file its future monthly reports by the fifteenth day of the month following the relevant reporting period, rather than the tenth day of the month.

Even before the Board's decision, served April 21, 2010, which ordered CN to report Remote Terminal Unit ("RTU") information and additional blocked crossing data, it was challenging for CN to produce its reports on operational matters by the tenth day of the month following each reporting period. The reporting process includes gathering the relevant information from numerous sources, verifying the information, putting it into the various appropriate report formats, reviewing those draft reports for completeness and accuracy, making any necessary changes, and obtaining senior management approval for the final submission. Some of the information necessary for the reports, for example a count of foreign trains on the EJ&E lines, is not generally available until a week or more after the close of a month, which leaves little time for CN to complete the final reports.

The additional reporting requirements imposed by the April 21 decision greatly increased the challenge of reporting on operational matters by the tenth day of the month. As CN has explained in various filings with the Board, collecting, interpreting, and integrating RTU information into reports is time consuming and complex, and depends on CN's vendor, Progress Rail, to process and provide necessary RTU information.¹ For example, delayed production of RTU data by Progress Rail this month forced CN to advise you that additional time would be needed to file its crossing blockage report covering the month of August.

A minor change in CN's reporting date from the tenth to the fifteenth day of the month should help address these problems and allow CN to timely file its monthly reports on operational matters with greater confidence in their quality and completeness, while not diminishing their value to the Board or the public. This additional time would be more consistent with the deadlines established by the Board for the Class I railroads to file other reports. For example, various financial and operating information must be filed by the Class I railroads 30 to 60 days after the close of reporting periods.² Extending CN's reporting deadline would also be more consistent with the longer deadline (30 days after the end of the month) provided by the Federal Railroad Administration for rail carriers to file monthly accident and injury reports.³

For these reasons, CN requests permission to begin filing its monthly reports on operational matters fifteen days after the end of the applicable reporting period (or the next business day when the fifteenth day falls on a weekend or holiday). Although CN does not require additional time for the filing of our quarterly reports on environmental mitigation measures and conditions, if the Board's staff prefers to receive both filings on the same day, we would, of course, have no objection to that.

¹ See Letter from D. Hirsh to M. Wallen, (Apr. 26, 2010); Letter from K. Phillips to M. Wallen at 2-5 (May 10, 2010); CN's Comments on the Compliance Support Verification Final Report of HDR Engineering, Inc. (CN-62) at 21-22, 27-29 (filed May 28, 2010); CN's Response to TRAC's Comments Pursuant to Board Decision No. 23 (CN-63) at 6-11 (filed June 25, 2010); Letter from D. Hirsh to M. Wallen (Aug. 3, 2010). As we have explained, the RTUs were not designed to measure the frequency and duration of automated crossing warning device activations, and efforts to use the RTUs to develop this information are new, challenging, and ongoing.

² See, e.g., 49 C.F.R. §§ 1243.1 (revenue, expense and income due 30 days after quarter ends); 1243.2 (condensed balance sheet due 30 days after quarter ends), 1243.3 (report of fuel cost, consumption and surcharge revenue due 30 days after quarter ends), 1244.5 (waybill data due 60 days after end of reporting period); 1245.2 (quarterly report of railroad employees, service, and compensation due 30 days after quarter ends); 1248.5 (quarterly commodity statistics due 60 days after quarter ends).

³ See 49 C.F.R. § 225.11.

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Thank you for consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Karen Borlaug Phillips". The signature is written in a cursive style with a large, prominent "K" and "P".

Karen Borlaug Phillips
Vice President – Public and
Government Affairs