



Illinois Department of Transportation

Office of Chief Counsel

69 West Washington Street / Suite 2100 / Chicago, Illinois 60602

February 22, 2017

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FILED ELECTRONICALLY

Ms. Cynthia Brown

Chief of the Section of Administration, Office of Proceedings

Surface Transportation Board

395 E. Street, S.W.

Washington, D.C. 20423

ENTERED

Office of Proceedings

February 22, 2017

Part of

Public Record

Re: Docket No. FD 36075

The Illinois State Toll Highway Authority – Petition for Declaratory Order

Dear Ms. Brown:

Attached please find for filing in the above-referenced proceeding a letter expressing the views of the Illinois Department of Transportation. If you have any questions, please feel free to contact me.

Respectfully,

A handwritten signature in black ink, appearing to be 'W. Barnes', with a long horizontal line extending to the right.

William M. Barnes
IDOT Chief Counsel

Tel: (312) 793-2255

William.M.Barnes@illinois.gov



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February 22, 2017

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The Honorable Ann D. Begeman
Acting Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

**Re: Docket No. FD 36075
The Illinois State Toll Highway Authority – Petition for Declaratory Order**

Dear Chairman Begeman:

The Illinois Department of Transportation (IDOT) respectfully submit its views in this proceeding, which was initiated on the Illinois State Toll Highway Authority's (Tollway's) Petition for a Declaratory Order, filed on November 23, 2016. IDOT was originally the lead state agency on the Elgin-O'Hare Western Access Project (EOWA) and worked with the Soo Line Railroad Company, d/b/a Canadian Pacific Railway (CPR) during the planning and evaluation stages of the Tier One and Tier Two Environmental Impact Statement (EIS). As a result, IDOT believes it has information that would be valuable for the Surface Transportation Board (STB) to consider in this matter. Given the importance to the public of moving forward with the construction of the Western Access Interchange, IDOT submits this letter to the STB in strong support of the Tollway's Petition as well as for the Tollway's request for expedited relief.

The Tollway needs to acquire a combination of permanent and temporary easements in order to construct bridges to cross above the CPR property. The Tollway's Petition for a Declaratory Order seeks a ruling that the Tollway's exercise of its eminent domain power in this case will not unreasonably interfere with railroad operations. IDOT agrees that, because the Tollway's exercise of eminent domain power will not unreasonably interfere with railroad operations, it is not preempted by the Interstate Commerce Commission Termination Act.

(1) CPR Never Raised Concerns That the Western Access Interchange Bridges Would Interfere with CPR's Operations

In the fall of 2007, IDOT and the Federal Highway Administration, as lead agencies on the EOWA Project, advanced a two-tiered EIS to identify and evaluate a broad range of alternative solutions to transportation issues faced by the area west of O'Hare International Airport in the Chicago metropolitan area. The Tier One EIS sought to

identify and analyze the general location and character of various transportation system improvements, taking into account the various benefits and costs of alternative concepts, and solicit input from a wide range of stakeholders.

IDOT initially identified 15 potential system strategies, ranging from improving existing systems to the construction of new limited access highways. Based upon stakeholder input, and evaluation of the travel and design performance, financial, socioeconomic and environmental criteria, IDOT and the FHWA narrowed the potential alternatives to ten and then to seven roadway system alternatives. The Tier One EIS culminated in a June 2010 Record of Decision identifying the preferred location for the project corridor as the Build Alternative. With the location of the project corridor determined, the Tier Two EIS commenced detailed engineering and environmental studies to refine the project concept within the project corridor. The Tier Two Record of Decision was completed and released in December 2012.

IDOT's process for developing and evaluating alternative alignments included extensive outreach to potential stakeholders, including the CPR. The CPR was a member of the Transportation Task Force established as part of the Tier One EIS and attended several 2008 sessions that analyzed the various system improvement strategies. In addition, IDOT representatives separately met with CPR representatives in August and December 2008 to review the seven roadway improvement design finalists. Meeting summaries are attached as Exhibits A and B to this letter.

During the August 2008 meeting, IDOT provided CPR with detailed information regarding the potential alternatives and the parties discussed the potential impact on CPR's operations. As the meeting summaries reveal, CPR's primary concerns focused on the phases of the EOWA Project that contemplated a crossing of CPR's Bensenville Yard. CPR representatives did not express any concerns regarding the Western Access Interchange or identify any potential impact this system of bridges might have on its operations.

(2) Within the Bensenville Yard, CPR Always Indicated Crossing the West Side Was Feasible

With regard to the Bensenville Yard, CPR noted that the west side of the yard did not raise operating concerns as significant as the east side. CPR also indicated it was agreeable to the relocation of any displaced facilities in the west yard. "The CP would want these facilities replaced in-kind on property that the yard currently owns or on property adjacent to the yard that would be purchased." Exhibit A, p. 1.

When IDOT and the CPR met again in December 2008, CPR indicated that three of the possible alignments were either fatally flawed or would cause unacceptable disruption of CPR's operations. Exhibit B, pp. 1-2. CPR offered the following further comments:

* "All options will impact the west end of the yard which will require relocation of the turntable. CP expressed that while the turntable is still used, relocation is a feasible option. Relocation or replacement of the affected shop building would be required as well."

* "CP stated that construction of the tunnel construction at the west end of the yard appears to be feasible if constructed in stages."

After thoroughly reviewing the seven alternative layouts, CPR recommended that IDOT pursue four potential alternatives. Attached as Exhibit C is CPR's letter of January 23, 2009, in which CPR states, "On a preliminary basis, CP encourages IDOT to pursue Options A-D." Ultimately, the Record of Decision for the Tier Two EIS selected Option D as the Build Alternative. At no point during the numerous meetings between IDOT and CPR representatives did the railway express any concern that the Western Access Interchange bridges would interfere with CPR's operations.

(3) CPR's opposition to the Western Access Interchange Bridges Raises Threats to Highway Construction in Illinois and Nationwide

IDOT is also concerned with CPR's objection to the construction of standard grade separation bridges. Historically, IDOT has always been able to cooperate with the Class One railroads to secure the construction of necessary bridges over railroad right-of-ways in a coordinated and safe manner. If CPR's current position presages a new position, and standard grade separations will be subject to standing or general objections, the impact on IDOT's roadway network (not to mention the country's entire transportation network) could be severely impacted. For example, over the previous 48 months, IDOT District One, operating in the six county metropolitan Chicago-area, has had 27 acquisitions required from railroads for roadway improvements exceeding \$2.5M. The total acquisition of the component roadway improvements exceeds \$250M. Adding approval from the Surface Transportation Board as a necessary step to either acquire right-of-way or accomplish grade separations would severely disrupt the Department's ability to execute its multi-year construction program. Notably, the construction value of District One's projects over the previous 48 months alone would exceed \$1B. It should be recognized that there are over 14,000 railroad crossings in Illinois, with over 3,100 in the Chicago Metropolitan region alone. Any finding of preemption in the present case could put undue pressure on all roadway improvements statewide where a grade separation or any acquisition of right-of-way from a railroad is necessary.

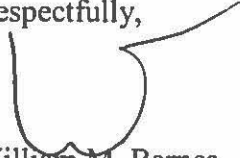
(4) Blocking Roadway Access to the West Side of O'Hare International Airport is Unacceptable

In addition, the CPR's present position and actions effectively assert complete control over any and all access to the western side of O'Hare International Airport. IDOT recognizes that the CPR's tracks run almost the entire length of the airport's western border. However, based on IDOT's comprehensive familiarity with the transportation activities occurring at the location of the future Western Access Interchange, IDOT considers it very unlikely that the new bridge complex could ever "unreasonably interfere" with CPR's rail operations. Given the importance of O'Hare to the region's transportation needs, IDOT considers the CPR's position to be unacceptable. Finally, further delays in the construction of the Western Access Interchange will be detrimental to the success of the project and to the public interest. Thus, given the construction schedules, the advanced state of work on this project, and the millions of dollars in

planning and actual construction costs that have already been committed to this project, IDOT supports the Tollway's request for expedited relief in order to prevent any further delays that could cost the public millions of dollars.

We hope that the STB finds this information helpful, and we would be glad to provide any further assistance to the STB as it continues to consider the Tollway's petition.

Respectfully,

A handwritten signature in black ink, appearing to be 'William M. Barnes', written over a horizontal line.

William M. Barnes
IDOT Chief Counsel

FINAL MEETING SUMMARY**CH2MHILL**

Elgin O'Hare - West Bypass

MEETING SUBJECT: Canadian Pacific Railroad Meeting RECORDER: CH2M HILL/Larry Martin

MEETING DATE & TIME: August 5, 2008, 2:00 PM PREPARATION DATE: August 6, 2008

MEETING LOCATION: CH2M HILL Office

ISSUE STATUS: ☐ Draft for Review ☒ Final

ATTENDEE NAME	ORGANIZATION	E-MAIL
Ron Krall	SEC Group, Inc.	ronald.krall@illinois.gov
Larry Martin	CH2M HILL	martin@ch2m.com
Nate Schutte	CP Railroad	nate_schutte@cpr.ca
Jean-Alix Peralte	STV	jean-alix.peralte@stvinc.com

The meeting commenced with introductions and an overview of the project. The study area, transportation problems, and the multi-modal transportation solution were discussed, as well as the regional significance of the project. The introductory material included a discussion of the seven remaining roadway strategies. The balance of the meeting focused on the south bypass connections and specific comments that the railroad representative may have regarding operational or future uses at the Bensenville Yard. The following is a list of the issues, concerns, and comments raised by the Canadian Pacific Railroad (CPR) representative.

- On the west end of the yard, the location of the roadway would likely impact two unique facilities serving the yard...these include the roundhouse and the electrical shop. Although the alignment is in the tunnel passing under these facilities, the depth of the roundhouse pit and/or the cover over a tunnel may be issues, therefore causing its relocation. The CP is agreeable to the relocation of these facilities, preferably to the east end of the yard, which is closer to the center of activity. The CP would want these facilities replaced in-kind on property that the yard currently owns or on property adjacent to the yard that would be purchased. The relocation of these facilities would require study, and IDOT may be responsible for the cost of such study.
- Given that potential future uses of the yard would include an expanded intermodal operation, the CP representative suggested that any alignment on the south side of the west end should be located as far south in the yard as possible. This would give the yard maximum use of its properties to the north of the roadway and avoid land locking property. More detailed design work is needed in this area including further examination of the tunnel depth, profile, and length to determine if the existing uses (roundhouse and electrical workshop) can remain.
- The CP representative pointed out another issue in the west yard...an eight-foot high berm of considerable length and width present, and contains tainted or special waste material. No attempt by the railroad has been made to either assess or dispose of the material. Depending on the proposed preferred plan, the tainted soil may need to be addressed.
- It was noted that CPR is in the process of acquiring the IC&E (acquisition to be finalized ~ October 2008)...the rail line entering the west end of the yard. This acquisition will

likely impact future uses of the yard, however, the representative noted that any plans that would accommodate the IC&E traffic from the west are unknown and will remain confidential until the transaction is complete. The representative indicated that this acquisition, if approved, will shift a lot more emphasis to the west yard and could substantially affect what IDOT is able to do regarding roadway alignments and potential railroad ROW impacts to tie into I-294.

- Generally, it was noted that the west side of the yard was not as important as the east side. However, this may change significantly depending on the approval of the IC&E purchase. The east side of the location of the primary operation and includes the yard "hump" used to assemble all trains, the car shop, cargo storage, truck entrance, Chicago Starter Headquarters Building, and more. Again, the unknown for the west side is the impact of the purchase of the IC&E. Future plans for incorporating this segment of traffic remains unknown.
- It was reiterated that the EO – WB project was re-initiated due to federal ear-mark funding and this project is deemed regionally significant and thus, it is a good idea to work cooperatively to implement each others' plans to best satisfy all users and the surrounding area.
- As the discussion moved to the center of the yard (vicinity of the Union Pacific crossing line) comments were made regarding options E, F, and G. The CP representative considered option E a show stopper. It's location in the yard, even though elevated, is impractical and potentially would limit options for reconfiguring the yard in the future. It would also impact the Service/Control Hdqts, the existing "hump" operation, impact revenue during construction and perhaps permanently, and would be most disruptive to underground utilities. Options F and G were less problematic to the railroad, but would not provide the same level of access as Options A, B, C, or D; therefore are considered having no value to an expanded intermodal operation at the yard and thus, the CP would be less likely to work to implement. It is also thought that the profile for "F" and "G" may not be possible to meet standards and/or interfere with the Runway Protection Zone.. Further, Option F has a southbound ramp located at the end of the yard which is the location of the highest train traffic in the yard; thus, construction in this location would be difficult, needing to accommodate frequent train movement through this area. Also, cargo storage is located in the vicinity of this ramp as well, and includes cranes and other elevated equipment that would require consideration in the design and construction of this ramp. The CP representation also mentioned that G and F would potentially involve the Metra line. The track is owned by CP and leased by Metra with lease-back provisions. Operational complications will require further discussion with the CP and Metra, and any type of construction staging would be difficult at best and very costly.
- The CPR representative indicated that options A, B, C, and D were workable solutions. The access afforded by these options to the area was viewed as very positive. The CPR representative noted that industries located east of the UP line are CP customers and industries to the west of the UP line are UP customers. Thus, displacements would have a direct impact on revenue.
- The reconnection of Taft Road was viewed by the CP representative as a workable feature. It was recognized that the connection would aid in the overall accessibility into and through the area. The CP representative mentioned that the OMP/UP and CP were developing an agreement that provides for the transfer of the abandoned UP R-O-W when the new bridge for the realigned UP line is constructed under the OMP program.

Whereas the CP would have ownership of much of the corridor required for the reconnection of Taft, IDOT may wish to consider involvement in the agreement to secure the necessary property for their use.

- A question was posed to the CPR rep regarding utilities through the yard. It was specifically asked if fiber optics are located in the yard. The CPR rep noted there is a large east/west run but the location is not known exactly. In addition, there is a lot of signal equipment and connections in the yard. Also, MCT has a large fiber optics run north/south near Taft. Lastly, there is a large (~48) storm sewer main that runs east/west through the yard.
- The EO-WB project team requested CPR to examine the south connections further with the various appropriate divisions and offices and assemble a comprehensive list of concerns and comments to be submitted in writing. It was requested that comments be received shortly after Labor Day, by September 5th.
- It was established at the meeting that Nate Schutte would be the primary contact for the CPR, unless it is directed otherwise. His contact information is as follows:
 - 612-904-5945 – office
 - 612-581-1420 – cell
 - Nate_schutte@cpr.ca
- The CPR representative was given a package of background information concerning the project, and the meeting was adjourned at 4:00 p.m.

FINAL MEETING SUMMARY**CH2MHILL**

MEETING SUBJECT: Elgin O'Hare - West Bypass
CP Railroad Conference Meeting **RECORDER:** CH2M HILL/Lisa
Sagami

MEETING DATE & TIME: December 10, 2008, 10:00 AM **PREPARATION DATE:** December 15,
2008

MEETING LOCATION: Conference Meeting

ISSUE STATUS: ☐ Draft for Review ☒ Final

ATTENDEE NAME	ORGANIZATION	E-MAIL
Nate Schutte	Canadian Pacific Railway	nate_schutte@cpr.ca
Pete Harmet	IDOT	pete.harmet@illinois.gov
Larry Wilson	IDOT	larry.wilson@illinois.gov
Ron Krall	SEC Group, Inc.	ronald.krall@illinois.gov
Pat Pechnick	SEC Group, Inc.	ppechnick@secgroupinc.com
Patrick Bryant	STV Group, Inc.	
Jean-Alix Peralte	STV Group, Inc.	peraltj@stvinc.com
Joanne Schroeder	VSA	jschroeder@vleclides-schroeder.com
Lidia Pilecky	CH2M HILL	lpilecky@ch2m.com
Larry Martin	CH2M HILL	lmartin@ch2m.com
Cheng Soong	CH2M HILL	csoong@ch2m.com
Lisa Sagami	CH2M HILL	lsagami@ch2m.com

A conference meeting was held between representatives of IDOT, the Elgin O'Hare – West Bypass project team, and the Canadian Pacific Railroad. The purpose of the meeting was to obtain input regarding impacts of the O'Hare Bypass South Alignment Options on freight rail operations, particularly on the Bensenville Yard. An exhibit depicting the alignment options was distributed to meeting participants. CH2M HILL provided a general description of alignment options A through G, including the potential refinement of options A through D west of the UP crossing of the Bensenville Yard.

The following is a list of the issues, concerns, and comments raised during the meeting.

- CP understood the rationale for realigning A-D in the vicinity of Green Street to provide a 300' frontage for commercial development. The displacement of the turntable and machine shop was not a major issue if they are relocated or replaced in kind.
- CP indicated that operations at the east end of the Bensenville Yard are most important and that any construction within the yard could cause major disruptions to their operations and to the region's freight movement. Much of the regions' freight passes through this area.
- CP agreed that Option F which crosses the freight yard three times should be considered a fatal flaw. The ability to maintain freight operations in this scenario is not a feasible or a reasonable assumption. Further the volume of rail traffic entering the east end of the yard and the management of rail traffic to construct the SB ramp to I-294 would be unworkable.
- CP agreed that Option E which crosses the freight yard twice should also be considered a fatal flaw for the same reasons as those stated above. Further Option E interrupts the nerve center of the operation (the hump yard operation) which would cause intermittent shut down of the hump

during construction. Cars would have to be flat switched and reduce the capacity of the yard by more than 50%. This is an unacceptable condition.

- CP noted that Option G crosses the yard in at least two locations which would cause a major reduction in the yards capacity because of temporary track and signal modification in numerous locations. Further, CP noted that elevated sections of this alignment would require extensive staging, further disrupting their operations.
- CP offered that any roadway which straddles the UP tracks (such as with Option C) would be very disruptive to freight operations along this heavily used corridor; however, they deferred to the UP RR for their input.
- All options will impact the west end of the yard which will require the relocation of the turntable. CP expressed that while the turntable is still used, relocation is a feasible option. Relocation or replacement of the affected shop building would be required as well.
- CP stated that construction of the tunnel construction at the west end of the yard appears to be feasible if constructed in stages.
- CP noted that any option that spans across the freight yard, especially long spans, will severely limit options for potential reconfiguration of the Bensenville Yard.



**CANADIAN
PACIFIC
RAILWAY**

January 23rd 2009

Larry Martin
CH2M Hill
8501 W. Higgins Rd.
Chicago IL 60631

Mr. Martin,

Attached are revised minutes from the meeting of December 10th, 2008. While Canadian Pacific (CP) is in general agreement with the revised minutes, nothing contained herein shall be construed as explicit endorsement or acceptance of any of the proposed alignments or associated work.

As currently proposed, Alignments E, F, and G are unacceptable to CP. These alignments would result in severe disruption to railway operations and are therefore not acceptable to CP.

Proposed Options A, B, C, and D may be considered by CP provided construction results in zero impact to railway operations and all CP property impacted is replaced, relocated, or otherwise compensated for. Any consideration of these options must be reviewed by all departments within CP and may include additional requirements not otherwise noted.

On a preliminary basis, CP encourages IDOT to pursue Options A-D. When IDOT has selected a preferred alignment the following individuals should be contacted to develop formal agreements:

David S. Drach
Director, Real Estate Marketing, U.S.
Canadian Pacific
501 Marquette Ave. S., Suite 1525
Minneapolis, MN 55402
612-904-6139

James H. Krieger
Engineer, Public Works
Canadian Pacific
501 Marquette Ave. S., Ste 1510
Minneapolis, MN 55402
612-904-5994

If you have any questions or comments please contact me.

Sincerely,

Nate Schutte, P.E. (MN)
Project Engineer
Canadian Pacific
501 Marquette Ave. S., Suite 1510
Minneapolis, MN 55402
612-904-5945

ENC: CP Notes - 081210_MM_CPRRConfMtg_D.doc

Certificate of Service

I certify that on this 22nd day of February, 2017, I caused a copy of the foregoing to be served upon all Parties of Record.



William M. Barnes