



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

November 25, 2008

Ms. Victoria J. Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Canadian National Rwy Co., et al., -- Control -- EJ&E West Co.
STB Fin. Dkt. No. 35087

Dear Ms. Rutson:

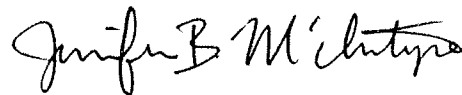
By letter dated October 16, 2008, Mr. Paul A. Cunningham wrote to the General Counsel of the U.S. Department of Transportation ("DOT" or "Department") in response to comments this agency had submitted on the draft environmental impact statement ("DEIS") in the above-referenced docket. DOT-6 (filed September 30, 2008). Based on analyses contained in the DEIS regarding the capacity of the Elgin, Joliet & Eastern Railway ("EJE") to absorb post-merger traffic from the Canadian National Railway ("CN"), DOT there expressed concern that the transaction would likely result in rail congestion and vehicular delays. Id. at 7-11. We concluded by urging that the final EIS be grounded on reasonable operating assumptions and that it fully address the true extent of congestion and its consequences. Id. at 11.

Mr. Cunningham's October 16 letter on behalf of CN outlined the railroad's view that the DEIS analysis of rail capacity was flawed, and that a proper examination of realistic capacity and post-merger rail operations on the EJE would demonstrate that there was no basis for concern about congestion or vehicular delays. Mr. Cunningham requested a meeting to discuss these matters. A meeting with DOT personnel took place on November 7, at which CN representatives provided additional information and analysis.

Mr. Cunningham also conveyed that material in a letter to the General Counsel dated November 14, 2008. You were copied on both of these letters.

I am writing to explain that the most recent data from CN demonstrates, *inter alia*, that the DEIS used practical capacity in the development of its Line Occupancy Index analysis, but then assumed the resulting Line Occupancy Indices were percentages of theoretical capacity rather than of practical capacity.¹ DOT accepts CN's contention that this was error, and that as a result of this error the DEIS understated the real, available capacity on the EJE. Consequently, if there is indeed adequate practical capacity on the EJE (which includes that to be gained by CN's proposed capital investments), this Department's concerns about CN's ability to implement its post-merger operating plan without undue rail and vehicular congestion are substantially reduced. DOT still supports the mitigation measures we previously recommended, in the event such problems nonetheless arise. These conditions would add nothing to the cost of implementing the transaction if CN is correct, yet would reduce the burdens on communities from congestion if CN is overly optimistic.

Sincerely,



JENNIFER B. McINTYRE
Deputy General Counsel

cc: Mr. Paul A. Cunningham

¹/ Theoretical capacity is the amount of train traffic that a rail line could accommodate under ideal conditions; a line's practical capacity is lower to reflect the inevitable interruptions to traffic flows that result from mechanical failures, adverse weather conditions, and other unplanned but realistic occurrences. Railroads always seek to operate close to the full practical capacity of their lines in the interests of maximizing productivity and efficiency. Thus, traffic amounting to a very high percentage of a rail line's practical capacity does not necessarily suggest that congestion is imminent.