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September 29, 2008

Ms. Phillis Johnson-Ball
STB Finance Docket No. 35087
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

Transmitted via USPS Express Mail Service

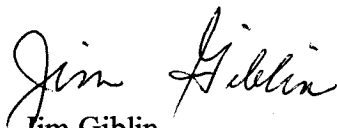
Dear Ms. Johnson-Ball:

Enclosed please find our written comments on various aspects of the Board's Draft EIS in the matter of STB Finance Docket 35087. Our extensive comments contain substantial supporting documentation and analysis.

I am a career freight transportation professional and long-time resident of Du Page County, Illinois. Additional professional background and biographical information is included in the first part of our written comments.

If you have any questions about any of the information presented please contact us.

Sincerely,


Jim Giblin
Downers Grove, IL

**WRITTEN COMMENTS SUBMITTED IN RESPONSE TO SURFACE
TRANSPORTATION BOARD'S DRAFT ENVIRONMENTAL IMPACT
STATEMENT IN THE MATTER OF STB DOCKET NO. FD35087**

Submitted on September 29, 2008

Introduction

My name is Jim Giblin and I'm an independent transportation and logistics consultant based in the Chicago area. My entire professional career has been spent in the freight transportation industry with extensive experience in both the rail and trucking sectors. I am a long-time resident of Du Page County, and am intimately familiar with the transportation geography of the Chicago Region.

I currently have no direct commercial or financial interest of any kind with or in Canadian National Railroad, or any of its affiliate companies.

My professional affiliations include,

- Council of Supply Chain Management Professionals
- Lexington Group in Transportation History
- Midwest Association of Rail Shippers
- The Traffic Club of Chicago
- Warehouse Education and Research Council

Since January 2008 I have served on the Citizens Advisory Committee of the Chicago Metropolitan Agency for Planning (CMAP). I have also been a guest lecturer on various transportation subjects at Northwestern University, Evanston, and the Illinois Institute of Technology, Chicago.

I have published numerous professional articles on various aspects of rail and intermodal transportation during the past decade, including full-length feature articles in the March 2007 and September 2008 issues of TRAINS Magazine.

My comments, with substantial supporting documentation and analysis, are broken down into six specific areas of concern:

- STAR Line Impact
- Impact on Other Metra Operations
- Impact on Amtrak Service
- Grade Crossings Delays and Analysis
- Analysis and Summary
- Conclusion

STAR LINE IMPACT

Metra's proposed STAR Line route, through Chicago's western suburbs, was in serious trouble long before Canadian National made their offer in September 2007 to purchase the Elgin, Joliet & Eastern Railway. And the source of this revelation is Metra's very own 1999 "***Outer Circumferential Commuter Rail Feasibility Study***" (referred herein as STAR Line Feasibility Study).

Consider these facts.

- The STAR Line concept has been under consideration for over 20 years now.
- While Metra already owns numerous rail lines in northeastern Illinois, we can find no evidence that they ever considered making a serious offer to purchase the Elgin, Joliet & Eastern Railway, even though EJ&E has been for sale several times during the past 10 years.
- During the past two decades Metra has chosen to obtain several hundred million dollars of Federal funding for improvements on a variety of existing radial routes rather than supporting the STAR Line.
- We're not aware of any negotiations between Metra and EJ&E for a Purchase of Service of Agreement (PSA).
- While EJ&E has graciously participated in several feasibility studies of the STAR Line, EJ&E management has never officially endorsed the concept or agreed to be a formal participant in it.
- For most of the past 20 years the STAR Line concept has been like the weather, everyone talks about it but no one ever does anything.

In 1999 Metra's outside consulting firm of T-Y-LIN International – Bascor completed a detailed engineering analysis of the entire Elgin, Joliet & Eastern Railway line within the state of Illinois, from Waukegan all the way around to Lynwood. Their final report was released in April 1999 and is a public document available as PDF file on Metra's website, www.metrarail.com, under the Rail Expansion New Starts/STAR Line tabs. We respectfully request that the Surface Transportation Board seriously consider including a copy of this document in both their environmental analysis and final published report.

Metra's report included a detailed analysis of current and projected freight operations and volumes on the EJ&E, as well as substantial published feedback from EJ&E management at the time on the subject of commuter rail service on their railroad. The report's findings are mixed at best, but we think they speak for themselves. Relevant excerpts are presented as follows.

The very first page of the report's ***Foreword*** contains this prophetic warning:

"Freight railroad operations and traffic volumes are subject to change at any time on any existing freight railroad. Growth of the national economy, improved competitive costs produced by railroads, or future railroad mergers could all have a major influence on the potential cost of implementing commuter service."

The report's *Executive Summary* (pg. ES-2) states:

"The EJ&E projects an increase in freight train traffic in the near future, consistent with the fairly recent resurgence of the railroad industry. EJ&E management indicated that specific long-term levels of freight traffic are difficult or impossible to predict at this time, but they will need to retain their existing trackage and other infrastructure to conduct their future business. This situation could require Metra to create its own parallel infrastructure in order to consider implementation of any potential new commuter service."

The *Executive Summary* (pg. ES-3) goes on to state,

"In addition, EJ&E management stated that their track capacity would be needed for present and future operations...allowing EJ&E exclusive use of their present physical plant without interference from Metra commuter operation."

Section 2.4, *Freight Operations* (pg. 16), states:

"It must be recognized that the primary responsibility of the EJ&E or any other freight railroad is their freight traffic."

Section 3.1 of the Report covers *Projected Freight Operations*. On page 27 that section states:

"The freight railroad industry has enjoyed a resurgence in recent years. As the existing rail capacity through Chicago is becoming limited, there is interest by other railroads to bypass bottlenecks that delay freight movements in some classification yards closer to Chicago's downtown. The EJ&E has been actively pursuing railroad freight business that would utilize their right-of-way and consequently provide additional revenue from trackage-rights agreements."

According to the Report, in 1999 the EJ&E and Union Pacific Railroad negotiated the first phase of their current trackage rights agreement. UP had performed a study of their operation and identified numerous trains coming into their Chicago terminal that had the potential to utilize the EJ&E line. However, the EJ&E indicated to UP at the time that they did not have adequate capacity based on their current infrastructure to accommodate all of this potential demand.

As a matter of public record, EJ&E later successfully negotiated a trackage rights agreement with Canadian National, and today CN operates about half a dozen trains per day on various segments of the EJ&E. There are no regulatory limits or restrictions in place today on how many additional freight trains CN can operate over the EJ&E. The only question is which railroad funds any additional track capacity that might be required.

Several years later EJ&E also entered into a trackage rights agreement with the BNSF Railway for operations between Eola and Joliet, IL. As documented in the Draft EIS, BNSF currently operates six to seven intermodal/automotive trains per day on this section of track.

This use of the EJ&E as a Chicago bypass route by other railroads is entirely consistent with the railroad's historical reality. As late as 1970, EJ&E was still advertising itself as the "Chicago Outer Belt". In a full-page advertisement on page 296 of the August 1970 issue of The Official Guide of the Railways, EJ&E told rail shippers,

"The 'J' has direct connections with every railroad entering Chicago. Freight interchanges are made at outlying points away from city congestion. For careful, on-schedule handling of your traffic – specify EJ&E."

Under Section 4.4, ***Single Vs. Double Track*** (pg. 41) the report states:

"EJ&E management stated at the outset of the Study, and reiterated in subsequent discussions, that their existing track capacity would be required for present and future freight operations. This would require Metra to construct a separate and virtually exclusive track for commuter train operations."

Under Section 5.6, ***Additional Infrastructure*** (pg. 51) the report states,

"A lot will depend upon the levels of EJ&E freight traffic that are current (and projected) at the time when such a decision might be made."

From Metra's very own report it's obvious that the lack of capacity on the EJ&E due to rail freight operations was a major issue and concern as early as 1999. And from April 1999 until October 2007, as EJ&E's freight volumes increased the capacity problem only grew worse.

Tangible evidence of rail traffic growth on the Elgin, Joliet & Eastern Railway since April 1999 includes,

- Construction of a new connecting track between the Union Pacific and EJ&E at West Chicago, IL, in the northwest quadrant of the crossing.
- Construction of a new interlocked and remotely controlled passing siding between West Normantown (MP 16.1) and East Normantown (MP 14.7).
- Construction of a new 9,000-foot passing siding at Sutton (MP 43.83) between Spaulding and Barrington, IL.

In the matter of Finance Docket 34177, Iowa, Chicago & Eastern Railroad Corporation-Acquisition and Operation Exemption-Lines of I&M Rail Link, LLC, comments submitted by BNSF Railway on December 11, 2006, serve to further demonstrate the

high level of congestion on EJ&E today. In those written comments, BNSF's attorneys stated,

"The EJ&E lines currently have limited capacity. Shipments from BNSF and other rail carriers already tax that capacity to the point that, to minimize delays between Joliet and Eola, BNSF has funded additional capacity on the EJ&E corridor."

Freight operations on this same stretch of track are further complicated (and constrained) by what is arguably the most significant physical bottleneck on the entire EJ&E system, the single-track lift bridge over the confluence of the Des Plaines River and Chicago Sanitary and Ship Canal. The Sanitary and Ship Canal is a navigable waterway that sees considerable commercial barge traffic. Existing Federal law gives water carriers the right-of-way over rail carriers (freight and passenger) at locations such as this. Thus, the railroad's lift bridge (Bridge 198 at MP 1.7 near Joliet) normally remains in the raised position and is lowered only for the passage of trains. (This was a constraint/bottleneck specifically identified in both the STAR Line Feasibility Study and the STB's Draft EIS.)

It should also be noted that most of the proposed STAR Line service would operate over those sections of EJ&E track that already have the highest levels of daily train traffic and freight tonnage. Volumes today on those sections are as follows:

- West Chicago to East Siding (Eola): 10.7 trains per day
- East Siding (Eola) to Walker (Plainfield): 15.7 trains per day
- Walker (Plainfield) to Bridge Junction (Joliet): 18.5 trains per day
- Bridge Junction to Rock Island Junction (Joliet): 18.5 trains per day

- West Chicago to East Siding (Eola): 62,233 gross tons per day
- East Siding (Eola) to Walker (Plainfield): 87,162 gross tons per day
- Walker (Plainfield) to Bridge Junction (Joliet): 89,329 gross tons per day
- Bridge Junction to Rock Island Junction (Joliet): 78,157 gross tons per day

These sections of track also see the passage of the longest and heaviest trains on the EJ&E today, unit trains of coal received primarily from Union Pacific moving to Com Ed power generating plants at Joliet Generating, Will County Station and State Line, as well as a NIPSCO plant at Michigan City, IN. In the Draft EIS the SEA specifically identified coal train operations in the Joliet area as an existing factor "which limits the ability to add rail traffic on this portion of the EJ&E rail line."

As the Board knows, next to intermodal, coal is the single largest commodity on the rails today as well as one of the fastest growing. It is also the single largest commodity by tonnage handled by EJ&E today, representing about half of the railroad's total annual volume.

Today track capacity is also at a premium on the lines of Metra's two largest rail suppliers, BNSF Railway and Union Pacific Railroad. The current national resurgence in

rail traffic is causing capacity problems on virtually ALL of the lines that Metra shares with freight railroads.

We would further reference the Board's own public hearings in April 2007 in the proceeding entitled *Rail Capacity and Infrastructure Requirements*, STB Ex Parte No. 671. Testimony received in those hearings from a member of the Commuter Rail Committee of the American Public Transportation Association (APTA) stated, "rail freight traffic in many places has grown to the limits of capacity".

These remarks echoed similar testimony submitted by the President of APTA, before Congressional Committee hearings in April 2006 on the subject of "The U.S. Rail Capacity Shortage". In remarks that now seem eerily prophetic, William H. Millar testified that,

"as more trains are added to the same amount of track, scheduling and on-time performance becomes a greater challenge. Longer freight trains – as long as 2 ½ miles – makes sidings hard to utilize, and makes on-time performance and shared operations more difficult."

The capacity problem is NOT unique to either this transaction or this railroad, contrary to what opponents have claimed.

Based on the input and feedback provided by the management of the EJ&E to Metra in 1999 (as documented in the STAR Line Feasibility Study), as well as other public documentation, we respectfully submit that capacity congestion and constraints on the Western Subdivision of the Elgin, Joliet & Eastern Railway today constitute an **"existing environmental condition"** as a direct result of the effect of **"current railroad operations"**. It is obviously a problem that will continue to worsen with the expected continued growth in rail traffic nationwide, irrespective of any proposed merger or transaction.

Thus, as a condition of this merger we respectfully request that any conditions or requirements imposed on this transaction regarding Metra's proposed STAR Line service be subject fully to any precondition, condition, restriction or restraint previously recommended, specified or otherwise described by the management of the EJ&E Railway as documented in Metra's 1999 Outer Circumferential Commuter Rail Feasibility Study.

IMPACT ON OTHER METRA OPERATIONS

Many critics have complained about potential negative impacts from CN/EJ&E on Metra's proposed SouthEast Line Service. This is a proposed 33-mile route that would operate over a line of track between Chicago Union Station and Crete, IL, jointly owned by Union Pacific Railroad and CSX Transportation. Please refer to Union Pacific's filing to the Surface Transportation Board on March 13, 2008, Finance Docket 35087, Reply of

Union Pacific Railroad Company to Northeast Illinois Regional Commuter Railroad Authority, Et Al. (Metra).

We believe this detailed 10-page document dealt fully, completely, and successfully, with any and all potential impacts of CN/EJ&E on both the proposed SouthEast Line Service, as well as existing Metra service operated by Union Pacific on their lines through Barrington and West Chicago. Quoting directly from that document,

“The conditions (requested by Metra) appear designed to address Metra’s concerns that increased train traffic on EJ&E might interfere with the commuter service operating on the UP lines. While UP is sensitive to Metra’s concerns, we believe the conditions are unnecessary, and some of them could be counterproductive. Accordingly, UP opposes them and requests that they not be approved.”

We also note that most critics of this transaction have conveniently chosen to ignore the information contained in Union Pacific’s March 13th filing. We trust that the Board will not make the same mistake. We respectfully and strongly urge the Board to accept and implement Union Pacific’s recommendations as contained in their March 13, 2008 filing.

Ironically there are several significant potential benefits to Metra from this transaction that critics and opponents have chosen to overlook. Once this transaction is consummated about 17 freight trains per day will be removed from CN’s Waukesha Subdivision between Franklin Park and Leighton, IL. This is a portion of the route used by Metra’s existing North Central Service between Chicago and Antioch, IL. Thus, it is reasonable to assume that reduction of freight train interference on this line will improve the timekeeping of Metra’s existing North Central Service as well as creating capacity for additional Metra service on the same route. In fact, Metra has already publicly stated its intent to pursue this new capacity for additional commuter train service once it becomes available. We commend Metra for this creative and innovative position.

The rerouting of most CN freight trains off the Waukesha Subdivision will also remove a potential source of interference with Metra’s Milwaukee West District service at Tower B-12 in Franklin Park, IL.

While critics complain about the increased potential for interference from CN/EJ&E freight trains on Metra’s Union Pacific Northwest Route at Barrington, they fail to acknowledge the benefits from 17 fewer CN freight trains per day crossing the exact same route at Deval Crossing in Des Plaines, IL.

While critics complain about the potential for interference from CN/EJ&E freight trains on Metra’s proposed SouthEast Service at Chicago Heights, they fail to acknowledge the benefits from 18 fewer CN freight trains per day crossing the exact same route at Thornton Junction in the community of the same name. And removal of CN freight trains from both the St. Charles Airline trackage and CN’s Freeport Subdivision will reduce the potential for interference at the 16th Street Crossing just south of La Salle Street Station on Metra’s Rock Island route.

Finally, consider the impact of this transaction on Metra's SouthWest Service route. Metra recently doubled the number of trains it operates on this route from 16 to 30 per day, and extended service south to Manhattan, IL. Today CN freight trains cross this route at three separate locations:

- CN Freeport Subdivision at 21st Street (CN MP 2.6)
- CN Elsdon Subdivision at Ashburn (CN MP 12.8).
- IHB Mainline via trackage rights at CP Ridge (IHB MP 21.1)

This transaction will improve the reliability of Metra's expanded SouthWest Service by removing interference from CN freight trains at three specific locations. And the EJ&E mainline crosses under Metra's SouthWest service route at a location known as Brisbane (MP 8.22) totally removing this portion of CN traffic from any future potential for interference.

IMPACT ON AMTRAK SERVICE

First, we would like to remind all involved in this process that operation of intercity rail passenger trains in the U.S. today are subject to the provisions of the Rail Passenger Service Act of 1970 (subsequently referred to as RPSA). This simple, obvious fact appears to have eluded most members of the Illinois Congressional Delegation starting with Senator Dick Durbin, as well as a number of local public agencies like the Chicago Metropolitan Agency for Planning (CMAP).

The RPSA specifically relieved America's freight railroads of the direct financial responsibility, and burden, for operation of the nation's intercity rail passenger service. The postwar development of the publicly financed national highway system, combined with the advent of government-subsidized air transportation, eliminated most of the historic demand for rail passenger service. Yet government regulators forced railroads to bear the burden of continuing to provide service that the marketplace no longer needed, wanted or was willing to pay for. Between 1950 and 1970, the rail industry's total losses on passenger service in some years were the dollar equivalent of fifty percent of the industry's total annual net income.

Passenger losses led to the complete collapse and subsequent total liquidation of two regional carriers, the Chicago, Aurora & Elgin and Chicago, North Shore & Milwaukee Railroads. Financial losses and deficits from passenger train operations help drive the Penn Central Railroad into bankruptcy among others, and put the nation's entire rail freight network at risk. The removal of this obscene burden by the Congress in 1970 was the first step in rebuilding America's rail freight network.

The controversy over the impact of CN/EJ&E on Amtrak passenger service centers on the future of a piece of track known the St. Charles Airline. Canadian National is a partial owner of this track along with BNSF Railway and Union Pacific Railroad.

However, it should be noted that no formal petition for abandonment of this portion of track has been filed with the Surface Transportation Board.

And when, or if, such abandonment petition is filed it must comply with a detailed regulatory process already in place, which includes identifying any impacts on existing customers including Amtrak. That process includes ample opportunity for public comment and input. It also includes the opportunity for any financially responsible party to purchase the line in question before it is actually abandoned. Conceivably, the railroads involved could even choose to “donate” the trackage in question to either Amtrak or the State of Illinois, and allow them to operate and maintain it themselves.

The real problem here is a total lack of leadership by local, state and Federal elected officials in Illinois to adequately fund intercity rail passenger service. State-supported intercity passenger trains in Illinois (so-called 403(b) trains) are funded from general revenues rather than a dedicated revenue source. Thus, they must compete with a variety of other important government services for adequate funding.

By contrast, the Chicago region’s excellent commuter rail service, now known as Metra, has been subsidized by a dedicated revenue source for over 30 years. The Regional Transportation Authority (RTA) sales tax was created in 1974 after a majority of residents of the six-county region of northeastern Illinois voted to authorize it in a special referendum. (It should be noted that Metra steadfastly refuses to expand service to any county where it lacks a funding source such as the RTA sales tax to financially support its operation.) Metra is also required by Illinois state law to recover a minimum of 50 percent of its operating costs from fares and other system-generated revenue.

The state of California has the most extensive intercity rail passenger network of any state in the nation. More than 20 percent of all Amtrak riders are in California. Yet according to Forrest Williams, Chair of California’s Capital Corridor Joint Powers Authority (CCJPA), **“California’s intercity passenger rail network success was accomplished with 100% voter-approved state funding.”** This voter-approved funding now totals over \$1.8 billion and California has another rail passenger funding initiative on the ballot this fall. To our knowledge no such funding initiative has ever been seriously proposed, or actually introduced, in the Illinois state legislature to support intercity rail passenger service in Illinois.

We understand that the current commercial contract between CN and Amtrak expires in 2010. Change is the only constant in the universe but critics of this transaction seem upset that CN may decide to change (i.e. raise) their rates for Amtrak’s use of the Airline route. Frankly this should not be surprising since rail freight rates have been increasing an average of 5-7 percent per year during recent years. Why should Amtrak get a better deal than the nation’s freight shippers?

It should also be noted that the elevated track structure of the Airline route is over 100 years old, and continues to deteriorate at an increasing rate with the passing of every Chicago winter. Several years ago the City of Chicago condemned part of a similar

elevated structure on CSXT's Altenheim Subdivision, located about two miles west of the Chicago River. That action forced the rerouting of CN freight trains previously operating over that line on trackage rights. Ironically, Amtrak could soon be faced with having to pay its share for a multi-million dollar repair job on St. Charles Airline viaducts.

Furthermore it should be noted that the St. Charles Airline route was not part of Amtrak's original nationwide network that began operations on May 1, 1971. Passenger service on the Airline was officially abandoned by Illinois Central Railroad in 1971 with the startup of Amtrak. Amtrak voluntarily returned to this freight-only line in March 1972 when it closed Central Station and consolidated all of its Chicago passenger operations at Union Station. Amtrak, and the state of Illinois, have had 35 years to fix the problem of using the Airline and have accomplished virtually nothing except to issue studies and publish reports.

We would submit that it is CN's legal right today to increase its rates subject to the provisions of the RPSA, irrespective of any proposed merger or acquisition. We would also point out that there is an existing mechanism under Section 402(a) of the RPSA, originally involving the Interstate Commerce Commission and subsequently the Surface Transportation Board, for resolving any pricing disputes or disagreements between Amtrak and its host freight railroads. Thus, there is ample protection under existing statute and regulation against any arbitrary or sudden disruption of service, and we see no obvious or apparent need for further conditions or regulation in this matter.

The ability, or inability, of the state of Illinois to pay its fair share for the actual cost of providing intercity rail passenger service within the state is totally irrelevant under the terms of the RPSA. The fact that Illinois state government has been experiencing extreme fiscal distress for the past two years is neither the fault nor the responsibility of any of the nation's freight railroads. The STB must not allow the mistakes of history to be repeated again. The STB must not allow Illinois' financial burden to be placed onto the backs of the nation's freight shippers. Why should rail shippers be forced to accept a "hidden tax" in lieu of an open tax on Illinois residents?

It has also been suggested by some critics of this transaction that Canadian National be forced to assume full or partial financial responsibility for the restoration of an abandoned connection between CN and Norfolk Southern mainlines on the south side of Chicago, at a location known as Grand Crossing. This would provide Amtrak with a more direct, shorter route between Chicago Union Station and the former Illinois Central mainline.

Under the original CREATE Project Plan this connection was identified as Project P-4 in the Passenger Express Corridor. In the original Plan the price tag for completing this specific project was estimated at \$25 million in 2005. Recent increases in the costs of construction materials have undoubtedly driven this figure considerably higher.

We believe this is an unreasonable, unfair and excessive burden to force any freight railroad, including Canadian National, to assume simply because the Illinois Congressional delegation failed to get adequate funding for CREATE. Furthermore we would point out that substantial Federal funding for these kinds of projects has already been authorized under Sections 9001 and 9002 of SAFETEA-LU, and should be readily available to members of the Illinois Congressional delegation for completion of this project.

Furthermore, the recommendations of the Illinois Congressional delegation and CMAP on the whole issue of rail passenger service appear to be totally inconsistent with the findings and recommendations of the National Surface Transportation Policy and Revenue Study Commission. In 2005 one of the provisions of SAFETEA-LU called for the establishment of this Commission to help develop future national strategies for the funding of U.S. transportation infrastructure.

Led by U.S. Secretary of Transportation Mary Peters, the Commission released its final report in January 2008. On the subject of Intercity Passenger Rail, the Commission specifically recommended that,

- The public must pay for capacity to facilitate passenger rail.
- And affirmed that freight capacity and operations must not be injured by passenger rail.

GRADE CROSSING DELAYS AND ANALYSIS

Consider today's reality in the Greater Chicago Region:

- Chicago has been the railroad capital of North America for well over 100 years.
- Chicago is the only city in North America where six of the seven major freight railroads meet to interchange freight (think rail version of O'Hare International Airport).
- Every day about one-third of all rail freight traffic in the U.S. passes through the Chicago region.
- Metra, along with NICTD, operates the second largest commuter rail network in North America, and Chicago is the hub of Amtrak's nationwide passenger network.
- The Chicago Terminal remains the most serious rail chokepoint in the nation (think rail version that's twice as bad as O'Hare International Airport).
- An average of 1,200 freight and passenger trains per day operate over approximately 4,000 miles of railroad infrastructure spread across the six county region.
- The six county region has the largest number of railroad locomotive horn/whistle bans (quite zones) of any metropolitan area in the nation; almost half the national total.

- Illinois has the second largest rail system, and second highest number of public highway-rail crossings of any state in the nation.

In 1955 the state of Illinois empowered the Illinois Commerce Commission to begin a grade crossing safety program – two decades before the Federal government implemented a similar program under the 1973 Federal Highway Safety Act. Between 1955 and 1996, Illinois invested more than \$241 million into the grade crossing safety fund. Illinois was one of the very first states in the nation to recognize that grade crossing safety, like highway safety overall, was primarily a public responsibility rather than forcing the nation's railroads to assume the full burden.

In July 2002 the Research & Analysis Section, Transportation Division, of the Illinois Commerce Commission (ICC) completed a major study of the region's grade crossing problem, **"Motorist Crossing Delay at Public Highway - Rail Grade Crossings in Northeastern Illinois"**. This is the only comprehensive analysis of regional grade crossing delays conducted within recent history. It's a public document and still available as a PDF file on the ICC website at www.icc.illinois.gov, under the Industry/Railroad Safety tabs.

According to this study (released in 2002),

- The region had over 1,700 public at-grade highway-rail crossings.
- Approximately 464,000 motorists were delayed at these crossings on a daily basis.
- As a result about 11,000 hours of delay per weekday were being generated.
- Freight trains were responsible for about 60 percent of the delay while Metra and Amtrak passenger trains account for the remaining 40 percent.
- Eighty-one percent of this delay was located in Cook County, ten percent in Du Page and the balance in the counties of Kane, Lake, Mc Henry and Will.

The Study went on to state that, "congestion and other community impacts from rail operations are perceived to be a significant threat to the long term vibrancy of the (entire) region's economy as well as a daily threat to public safety".

Frankly, being shocked and surprised to find railroad grade crossing delays in the Chicago Region is like being shocked and surprised to find gambling in the back room of Rick's Café in Casablanca.

It should be noted that in the 2002 Study, the ICC found that 81 percent of motorist delay time, and 72 percent of number of vehicles delayed were concentrated in Cook County, even though the county contains only 57 percent of the region's total grade crossings. This is the very same county where most of Canadian National's rail lines and switching yards are located today, and subsequently where most of Canadian National's existing grade crossing delays are also concentrated.

Thus, one very positive impact of the CN/EJ&E transaction would be to substantially reduce grade crossing delays precisely in the very county that has the most critical regional grade crossing problem today. This is an important environmental benefit to this transaction that was virtually ignored in the SEA's Draft Environmental Impact Statement.

The ICC Study identified the top 30 cities in Northeastern Illinois with the greatest total number of vehicles delayed on a daily basis. 7 out of the top 10 cities ranked were also experiencing significant amounts of grade crossing vehicle delay generated by CN freight trains, operating either on CN-owned tracks or via trackage rights agreements on other railroads (BRC or IHB). These seven communities are:

Chicago, IL	Franklin Park, IL
Des Plaines, IL	Evergreen Park, IL
Blue Island, IL	Riverside, IL
La Grange, IL	

The ICC Study also identified the top 30 cities in Northeastern Illinois with the greatest amount of total hours of motorist delay on a daily basis. 8 out of the top 10 cities ranked were also experiencing significant amounts of grade crossing motorist delay generated by CN freight trains, operating either on CN-owned tracks or via trackage rights agreements on other railroads (BRC or IHB). These eight communities are:

Chicago, IL	Franklin Park, IL
Blue Island, IL	Evergreen Park, IL
Des Plaines, IL	La Grange, IL
Dixmoor, IL	Riverdale, IL

Thus, one very positive impact of the CN/EJ&E transaction would be to substantially reduce grade crossing delays (both vehicles and hours) precisely in those communities that have the most critical regional grade crossing problem today. This is an important environmental benefit to this transaction that was virtually ignored in the SEA's Draft Environmental Impact Statement.

The ICC Study also calculated the total motorist delay by individual railroads as well as individual railroad line segments. CN lines in the study were actually identified by their previous ownership. These ICC classifications were as follows:

Chicago Central & Pacific (CC)
Grand Trunk Western (GTW)
Illinois Central (IC)
Wisconsin Central (WC)

Elgin Joliet & Eastern Railway was identified in the Study as EJ&E. The ICC Study also identified the Belt Railway Company of Chicago (BRC) and the Indiana Harbor Belt Railroad (IHB) but did not break out delays on these lines between line owner and

trackage rights operations. Thus, it is not possible from the ICC Study to determine how much CN trains operating on the BRC and IHB via trackage rights contributed to grade crossing delays on those two railroads.

According to the Illinois Commerce Commission's 2002 Study, 11.9 percent of the region's total daily grade crossings delay hours were on lines owned outright by either Canadian National or the EJ&E. This figure does not include any trackage rights lines, and therefore slightly understates the actual amount.

The SEA used a factor of 3 percent per year to increase ADT counts from current to projected 2015 levels. If you apply the same annual increase factor to the ICC's total daily delay hours (10,982) you obtain an estimated 2015 daily delay hour figure of 16,611 hours for the entire region. (This is a very conservative calculation based on a 14-year time span that assumes no increase in train count.)

Thus, based on a combination of ICC actual data and SEA projections, in 2015 about 10.4 percent of the region's total grade crossing delay hours will still be on lines owned outright by Canadian National (including EJ&E). Thus, from a regional perspective it appears there will be no relative change in the amount of grade crossing delays by rail carrier, as a result of this transaction.

The SEA identified three EJ&E highway/rail at-grade crossings that would see a substantial increase in the number of highway vehicles that are exposed to freight trains (called exposure, or the number of trains per day multiplied by the number of vehicles per day). At these three locations (two in Aurora and one in Lynwood, IL), exposure would exceed one million, which is a threshold identified by the Federal Highway Administration (FHWA) at which construction of a grade crossing should be considered.

Using the same FHWA criteria, the 2002 ICC Study found several dozen similar locations with the same, or even greater, serious levels of vehicle exposure to freight trains. In addition to numerous locations within the City of Chicago, suburban locations included:

- 25th Avenue/Union Pacific, Bellwood
- Oak Park Avenue/BNSF, Berwyn
- Ridgeland Avenue/CSXT, Chicago Ridge
- Touhy Avenue/Union Pacific, Des Plaines
- Belmont Road/BNSF, Downers Grove
- 95th Street-US12/CSXT, Evergreen Park
- La Grange Road-US45/BNSF, La Grange
- Finley Road/Union Pacific, Lombard
- First Avenue/Union Pacific, Maywood
- Central Avenue/CSXT, Oak Lawn
- Harlem Avenue-IL43/BNSF, Riverside
- Roosevelt Road-IL38/Union Pacific, West Chicago
- Cass Avenue/BNSF, Westmont

The ICC Study identified the thirty grade crossings in the region that caused the greatest amount of daily motorist delay. Most of these crossings were located on the southwest side of Chicago (near Midway Airport) and adjoining suburbs like Blue Island, Dixmoor and Evergreen Park. Additional locations were found in Des Plaines, Dolton, Franklin Park, La Grange and Riverside.

The daily delay hours for these thirty crossings totaled 3,966 hours. The total daily delay hours for the entire Illinois portion of EJ&E in 2015 is projected by the SEA at 1,732 hours or less than half the amount just for the 30-worst crossings identified in 2002.

Based on projected delays in 2015, only three of the CN/EJ&E crossings would have even made the ICC's 2002 list of the 30-worst crossings. Those three locations on CN/EJ&E are:

- Washington Street, Joliet
- Woodruff Road, Joliet
- Chicago Road, Park Forest

Delays at the two crossings in Joliet would be truly excessive due primarily to their close proximity to CN/EJ&E's East Joliet Yard, and both of these crossings would have easily topped the ICC's 30-worst list.

But the Chicago Road crossing in Park Forest is projected in 2015 to look exactly like the La Grange Road (US Routes 12, 20, 45) crossing of the BNSF Railway mainline in La Grange, IL did in 2002 (and still does today based on this writer's personal observations). The hourly delay totals for both crossings are virtually identical.

This means that in 2002 the Illinois Commerce Commission found at least 27 specific grade crossings that each had individual amounts of delay hours GREATER than anything projected at any crossing (outside of the three previously mentioned) in 2015 along the EJ&E.

Let's look at the situation along one of the region's great thoroughfares, **Western Avenue**. The **Western Avenue/EJ&E** crossing in Park Forest, IL is identified by SEA as one of 15 crossings projected to have "substantially affected vehicle delay", as a direct result of the acquisition.

Yet the **Western Avenue/CSXT** crossing in Blue Island, IL was identified in 2002 as having twice as much daily motorist delay hours as Park Forest's projected hours. And the **Western Avenue/IHB** crossing in Dixmoor, IL was identified by the ICC as having four times as much daily delays hours as the 2015 projected number for the same road in Park Forest.

Consider the example of West Chicago, located in western Du Page County. Chicago's first railroad, the Galena & Chicago Union, arrived here in 1849 and the community has

been a rail hub (dealing with congestion issues) ever since. The actual town, originally named Turner Junction, was founded in 1855 by John B. Turner, president at the time of the G&CU. The West Chicago city seal still has a steam locomotive on it. The CN/EJ&E deal is projected to increase total grade crossing delays for five grade crossings located in or near West Chicago from 9 to 78 hours per day, by the year 2015.

Yet the single most congested grade crossing in that community will still be the Roosevelt Road/IL Route 38 crossing of the Union Pacific/Metra mainline, on the west side of town. According to the ICC's 2002 report, this one crossing was delaying 3,833 vehicles per day, with 52 total hours of motorist delay per day. Based on current trends one can only imagine how congested this grade crossing will be by the year 2015.

Based on these figures we believe that it's an entirely legitimate question to ask whether projected delays along the EJ&E in the year 2015 are really excessive or simply consistent with most other communities in the Chicago Region?

It must also be asked if communities along the EJ&E really deserve special treatment when grade crossing delays are CLEARLY a regional problem that impacts virtually everyone in the region (much like highway congestion does)?

The 2002 ICC Grade Crossing Delay Study was completed as part of a regional rail operations analysis originally requested by the Illinois Congressional Delegation in the 107th U.S. Congress (which included Senator Dick Durbin and 13th District Congresswoman Judy Biggert). The resolution authorizing that analysis declared,

"The conferees are aware of significant delays currently affecting railroad freight in and around Chicago, Illinois. The conferees direct the (Federal Railroad) Administrator, in cooperation with the **Surface Transportation Board**, to prepare a comprehensive analysis of the railroad freight congestion problems in the Chicago region, including possible administrative and legislative solutions, and report back to the House and Senate Committees on Appropriations no later than January 15, 2002."

At the conclusion of their 2002 Study, the Illinois Commerce Commission issued this prophetic warning (apparently in vain),

"Neither IDOT, ICC, the railroads or the affected communities alone, or in combination, have the financial resources necessary to make a significant improvement in the amount of delay currently being experienced at grade crossings. As highway and train traffic continues to increase at a steady rate, the grade crossing delay problem is likely to worsen. A new program that does not take away from the current improvement programs of ICC and IDOT is necessary in order to reduce delays at grade crossings in northeastern Illinois."

We are all aware of the CREATE Project and the 25 grade crossing separation projects that were originally part of that program. CREATE also included the Canadian National

bypass route, identified in the Project as the Central/Green Corridor, that would have made acquiring the EJ&E unnecessary.

As a so-called project of national significance, it was originally estimated that most of CREATE's improvements would be completed within 6 to 10 years. Yet as of this month only two of CREATE's 78 total projects have been completed, with only four additional projects actually under construction. Current funding is estimated to run out at the end of 2008, with future funding from both the Federal and state governments problematic at best. In a bizarre twist of circumstances, CREATE's best hope for future funding may ultimately depend on which city hosts the 2016 Summer Olympic Games. (Isn't that a great way to make national transportation policy.)

On June 3, 2008, Chicago Public Radio/WBEZ aired a story on rail congestion in Chicago containing an interview with Jim LaBelle, deputy director of Chicago Metropolis 2020. According to LaBelle, "at this pace, unfortunately, CREATE is on schedule to take 25 years to complete, and these are improvements that are needed now."

We are also all aware of the monumental failure of leadership by the Illinois Congressional Delegation that led to CREATE receiving almost nothing in the way of Federal funding. It remains a sad fact that if CREATE had been fully funded in 2005 we would not be having this debate.

However, it's worth noting that while funding for CREATE was going down in flames, U.S. House Speaker Dennis Hastert was securing a \$7 million earmark (in SAFETEA-LU) for a grade crossing separation project in Elburn, IL (pop. 4,800) with an estimated cost of about \$9.5 million. (Now, that's my kind of congressman!)

A number of Speaker Hastert's former colleagues have complained about spending hundreds of millions of "taxpayers dollars" to mitigate grade crossing delays resulting from this transaction. Yet in 2005 most of them also voted for passage of SAFETEA-LU, which actually contained over \$1 billion in earmarks and line items for specific grade crossing separation projects across the county (in addition to Elburn). Section 1401 of this same legislation included an additional \$220 million per year for the life of the authorization for grade crossing safety improvements.

This transaction is not CN's first or only attempt at solving congestion and delay problems in the Chicago Terminal. One of its earliest efforts was the ill-fated attempt to merge with the BNSF Railway. It should be noted that the Surface Transportation Board effectively demolished that solution.

After that fiasco Canadian National tried unsuccessfully to implement other private-sector solutions involving the Belt Railway Company of Chicago and the Indiana Harbor Belt Railroad, while also becoming a participant in the public-sector solution known as CREATE. After patiently waiting for this public-sector solution that will now take who knows how long to arrive, CN finally decided to act on its own in order to keep both its and the region's rail network fluid. Canadian National, as a private company with limited

resources, is attempting to solve well-documented regional public policy problems, because government leaders and politicians in Illinois failed us all.

We believe that it's an entirely legitimate question to ask if Canadian National is now being made the scapegoat for the well-documented incompetence and ineptitude of the region's elected leaders and public planning agencies in dealing with these serious problems.

ANALYSIS AND SUMMARY

Opponents of the acquisition of EJ&E by Canadian National act like freight railroads have unlimited financial resources for merger-related mitigation projects. **Nothing could be further from the truth.** Freight railroads remain the ONLY transportation mode that must pay the full costs of building and maintaining their right-of-ways. And they must compete against other privately owned, for-profit transport modes that operate on right-of-ways built and maintained by Federal and state governments.

But according to RTA Director Jan Carlson (Kane County), the idea of government funding of grade crossing separation projects is “archaic” and that “the whole idea railroads should depend on government to subsidize their profitable operations is wrong”. Who’s kidding whom here?

According to the Association of American Railroads, freight railroads are at or near the top among all U.S. industries in terms of capital intensity. From 1997 to 2006 (the most recent year data is available), the average U.S. manufacturer spent, or reinvested, 3 percent of revenue on capital expenditures. The comparable figure for U.S. freight railroads was a whopping 17 percent, or more than five times higher, just to stay in business.

One of the best-known measures of long-term rail industry profitability is the Surface Transportation Board’s annual calculation of the industry’s cost of capital and the determination of how many rail carriers are able to earn this cost of capital. For 2006, the STB determined that only three of seven Class One railroads were able to earn their cost of capital. The STB determined that only two of seven Class One railroads were able to earn their cost of capital for 2007.

The US-owned lines of Canadian National did not earn their cost of capital in either 2006 or 2007, ironically due at least in part to the high cost of congestion and delay in the Chicago Terminal. Thus, we believe that failure to approve this transaction, without excessive or unreasonable conditions, will negatively impact Canadian National’s ability to earn its cost of capital in future years. That outcome hardly seems consistent with the purpose and goals of the Staggers Rail Act of 1980 and the ICC Termination Act of 1995.

In its written response to the STB, submitted on 9-26-08, the Chicago Metropolitan Agency for Planning (CMAP) requested as a condition for approval, that Canadian

National be required to provide \$150 million for grade crossing separation projects along the EJ&E. This amount represents fully one-third of total capital expenditures, road and equipment, for all of CN's U.S. operations in 2006, and over one fourth of total net railway operating income from all of CN's U.S. operations for the same year. Who's kidding whom here?

Failure to approve this transaction could also have a direct, negative impact on both the region's and the nation's economy. Consider two specific examples. First, a great local institution, The Chicago Tribune, is struggling to survive and remake itself into a 21st century communications medium. This great paper is printed on newsprint produced in Canada and shipped to Chicago via Canadian National. An efficient, low-cost supply chain is absolutely critical to the Tribune's long-term survival.

Second, Canadian National serves a large number of Ford and GM assembly plants in Ontario and Michigan. Both automakers are struggling to survive and transform themselves in these difficult economic times. About two-thirds of all new motor vehicles are delivered by rail. At this critical time Ford and GM can ill afford a rail-based supply chain burdened with excessive transit delays and congestion in the Chicago Terminal. There are real world consequences to not approving this transaction.

My own representative, Congresswoman Judy Biggert (IL-13), has publicly complained about the actions of what she calls "giant rail companies". Yet in 2006, both UPS, Inc. and FedEx Corporation each individually grossed about as much as the seven U.S. Class One railroads combined. Who's kidding whom here?

As a result of rising fuel costs and increased environmental concerns, demand for rail freight service is the highest it's ever been, and is projected by the U.S. Department of Transportation to almost double by 2035. But according to a Cambridge Systematics study released in September 2007, the railroad industry is currently facing a capital-funding shortfall of approximately \$1.4 billion per year needed to provide additional capacity for this increased demand. Yet the exotic local grade separation solution being demanded by Mayor Karen Darch of Barrington, IL as a condition of this deal has been estimated to cost over \$1 billion just by itself. Who's kidding whom here?

CONCLUSION

As this important process continues, we would ask the Board to consider the following commentary from several relevant sources.

In its formal recommendations released in January 2008 the National Surface Transportation Policy and Revenue Study Commission called for a "rational regulatory policy". According to the Commission,

“Ensuring the necessary free flow of capital into the rail industry and other private sector providers of transportation requires that regulatory policies promote efficient operations and encourage investment.”

On March 5, 2008, of this year the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, held hearings regarding “Investment in the Rail Industry”. Before that Committee one *Charles D. Nottingham, Chairman of the Surface Transportation Board* testified that,

“Given the magnitude of rail infrastructure needs and the lack of alternative sources of funding, Congress and the STB should be very careful to avoid sending signals to the financial markets that we do not welcome and encourage investment in the privately-owned rail system. Freight railroads in the U.S. are attracting investors of all types and sizes. The rail industry’s ability in future years to continue this trend will largely determine whether the rail sector will have the resources needed to meet growing demand for rail service.”

In the same hearings, *STB Vice Chairman Francis P. Mulvey* concluded his own sworn testimony by saying,

“We as a nation need to find ways of encouraging, not discouraging, investment in the rail plant to ensure our continued mobility.”

Thank you.