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October 16, 2008

BY HAND

D.J. Gribbin IV, Esquire
General Counsel
United States Department of Transportation
1200 New Jersey Avenue, S.E., Room W92-300
Washington, D.C. 20590

Re: *Canadian National Railway Company and Grand Trunk Corporation – Control –
EJ&E West Company*, STB Finance Docket No. 38750

Dear Mr. Gribbin:

I am writing on behalf of Canadian National Railway Company and Grand Trunk Corporation (together, "CN") to express CN's appreciation for the comments which the United States Department of Transportation filed with the Surface Transportation Board ("STB") on September 30, 2008, regarding the Draft Environmental Impact Statement ("DEIS") in this proceeding.

CN especially appreciates DOT's acknowledgement that the proposed acquisition of EJ&E West Company ("EJ&EW") by CN, and the shift of CN traffic from congested lines within the Chicago terminal to the now-underutilized Elgin, Joliet and Eastern Railway Company ("EJ&E") line (which would be among EJ&EW's assets), "would make greater use of and expand existing capacity, reduce rail congestion, increase transportation efficiency, and enhance safety" and that it would confer benefits "to shippers in the form of faster and more reliable service and lower logistics costs, and eventually to consumers in the form of lower prices" (DOT-6 at 5-6). In addition, CN whole-heartedly agrees with DOT's conclusions that "the transaction warrants approval (subject to fairly minor conditions)" and that requiring CN to mitigate virtually every adverse impact identified in this proceeding "would frustrate the rationalization of the rail industry and deprive the public of the manifest benefits of that process – higher efficiency, lower costs, reduced emissions, etc." (*id.* at 2, 4).

We would like to call to your attention, however, our concerns with the conclusions drawn by DOT from its examination of the three capacity analyses of the EJ&E rail line that were described in the DEIS (DEIS at 4.1-20—4.1-38, B-3; *id.* App. B, Attachment B4), and the recommendations it made based on that examination. DOT apparently did not conduct its own

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capacity analysis, but rather made a critique of the analyses done by STB's Section of Environmental Analysis ("SEA"). According to DOT, the SEA used unreasonably optimistic assumptions about CN's operations on the EJ&E line (DOT-6 at 7). DOT therefore concluded that "implementation of the Applicants' Operating Plan under current and projected circumstances will produce congestion on the EJ&E beyond that forecast by SEA, and that vehicular delays will increase commensurately" (*id.* at 13-14), and called for the SEA to "ground the final EIS on reasonable operating assumptions and to ensure that it fully address[es] the extent of rail congestion on the EJ&E and its consequences" (*id.* at 11).

While we agree that SEA must "ground its [Final Environmental Impact Statement ("FEIS")] on reasonable operating assumptions" and "ensure that it fully address[es] the extent of rail congestion on the EJ&E" and any consequences of that congestion, we have every reason to believe on the basis of our analyses and operating experience that SEA's capacity analyses – a "bottleneck analysis," a "Line Occupancy Index" ("LOI") analysis, and a Rail Traffic Controller analysis – were not based on over-optimistic assumptions, but were very conservative. Accordingly, while we understand the critique that led DOT to a contrary conclusion, we do not believe it is a good indicator of how CN would operate the EJ&EW, and therefore see no need to delay this proceeding any further in order to conduct new analyses using different assumptions.

We set forth the bases for our conclusions below. CN would welcome the opportunity for its operations experts to visit or hold a conference call with you and the relevant DOT staff to review these matters further.

Bottleneck Analysis

SEA's "bottleneck analysis" was a qualitative examination of the EJ&E line, as it would be configured following CN's proposed investment in infrastructure improvements, to determine where the most important chokepoints for traffic on the line would be found. On the basis of that examination, SEA determined that the 11-mile segment of EJ&E's line between Walker and Rock Island Junction would be a bottleneck effectively limiting the capacity of the entire EJ&E line. SEA identified several factors on this segment that would limit its capacity, most notably the moveable bridge over the Des Plaines River, which opens an average of 17 times per day for vessels on the river.

DOT cites that bridge as its reason for concluding "that congestion and its consequences are virtually inevitable on this segment as a practical matter" (DOT-6 at 7). While it is true, as DOT notes, that Des Plaines River bridge is opened an average of 17 times a day, requiring two minutes to raise the bridge and two minutes to lower it, in addition to the time necessary for the vessel to pass, DOT should be aware that CN planned capacity improvements to the line on the conservative assumption that the bridge would be unavailable for train movements for a total of four hours each day, which provides a comfortable margin that would accommodate all the traffic projected to move over the bridge.

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Moreover, in case of delay resulting from a bridge opening, there is double track (mainline and service/siding track) immediately north of the bridge up to and including Turner Siding. From the bridge to Oakland Street is 7,000 feet, which can hold one train of just under that length (or two trains if the main line is also used, with the intention that one follow immediately after the other once the bridge becomes available). From Oakland Street to the end of double track at Turner is over 12,000 feet, which provides a second spot to hold a train (two trains if the main line is also used), in the event the bridge is not available. Beyond Turner eastbound trains can hold at Renwick Road (2.1 miles away, with 7,390 feet between road crossings), at 111th Street (9.13 miles away; 8,290 feet between crossings), at Ogden Ave (13.55 miles away; 8,242 feet between crossings), or at Liberty Street (15.13 miles away; over 11,000 feet between crossings). East Joliet Yard, to the east of the bridge, can accommodate trains of up to 8,120 feet without blocking crossings. Also, although SEA claimed that westbound trains of 5,000 feet or longer would have no places west of School House Road to stop, without blocking road crossings, in case of congestion on the 11-mile bottleneck segment, EJ&E track charts indicate that there are five locations between School House Road and East Joliet Yard where there are more than 5,000 feet of track between road crossings.

SEA cited the slow main track speed through East Joliet Yard as an additional constraint on the capacity of the EJ&E line. CN has since entered into a voluntary mitigation agreement with the City of Joliet to address the issue of vehicular delay at Woodruff Road and Washington Street, and expects to implement this agreement by making alterations to the configuration of the yard track that would permit faster train movements.

SEA also cited the fact that UP coal trains and BNSF intermodal trains operate on the 11-mile segment as additional constraints on the capacity of the line. CN took account of those trains in both its pre-Transaction and post-Transaction train count. There is every reason to believe that, after acquiring the line, CN will be able to dispatch it in a manner that ensures fluid operations for trackage rights trains, just as it does today in other places where multiple railroads operate over CN lines.

LOI Analysis

SEA calculated a "Line Occupancy Index" ("LOI") for each of 20 affected EJ&E segments to determine what percentage of the segment's post-acquisition capacity would be taken up by trains, and concluded that, following CN's shift of traffic to the EJ&E line, two segments would operate at nearly 100% of capacity, and four would operate at over 70%, which according to SEA is the limit of a rail line's practical capacity.¹

¹ While Figure 4.1-8, in the body of the DEIS (p. 4.1-31), showed segments at no more than 98.0% and 98.1% of capacity, Appendix B contained a table purporting to show that those segments would be at 102.8% and 103.6% of capacity (DEIS, App. B, Attachment B2 at 14).

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SEA, however, does not use a consistent definition of practical capacity. At one point, SEA describes LOI as the “ratio between the theoretical train capacity of a line segment and [its] projected actual use,” with an LOI of 60 (*i.e.*, 60% of theoretical capacity) being the “upper end of practical capacity.” DEIS at 4.1-27. Elsewhere, SEA suggests that “the rail line has exceeded its practical capacity” at LOIs of 70 or above. *Id.* And in the tables in which SEA reports its LOI calculations, it calculates practical capacity as being at 66.7% of theoretical capacity. *Id.*, App. B, Attachment B4 at 17, 20 (Tables B4-1, B4-2). Moreover, SEA defines LOI itself inconsistently. The text of the DEIS defines LOI as the percentage which actual use of a rail line bears to its theoretical capacity, as noted above, while the supporting tables show LOI as a percentage of “capacity,” which turns out to be lower than either theoretical capacity or practical capacity (however the latter is defined).² *Id.* at 4.1-27; *id.* App. B, Attachment B4 at 17, 20 (Tables B4-1, B4-2). SEA concludes that the trains CN plans to move over the EJ&E line following its acquisition “would consume nearly all of the main line capacity” of that line, and suggests that the line therefore “could have insufficient capacity to allow for non-interference with the existing trains of other railroads that cross the EJ&E rail line without incurring delays to Applicants’ trains.” *Id.* at 4.1-30. But it is a fallacy to conclude that train volumes close to practical capacity are an indication that any deviation from ideal operating conditions is likely to cause unacceptable congestion, as the use of practical rather than theoretical capacity is itself an allowance for the fact that actual operations will not be at ideal conditions.

Moreover, SEA appears to regard practical capacity as an absolute threshold, and LOIs approaching practical capacity as a warning sign of potential congestion. CN’s operating experience, however, is that practical capacity is not an upper threshold, beyond which railway operations will be degraded by uncontrollable train stops and delays, as suggested by SEA, but rather a practical level that maximizes service reliability in relation to operating costs. A line operating near practical capacity, in CN’s experience, is not one facing unacceptable congestion, but rather one on which the available infrastructure is neither inadequate nor excessive for the traffic it must handle.

Finally, SEA appears to have made exceptionally conservative assumptions about the capacity that would practically be available to CN, leading to unreasonable conclusions. If the methodology and assumptions SEA used to calculate LOI, as set forth in Tables B.4-1 and B.4-2 of the DEIS, are applied to CN’s core lines, they result in LOIs of over 70 on most of CN’s system, of over 80 on its Chicago-to-New Orleans line, and of over 200 on one of its key Montreal

² “Capacity” is computed, on Tables B4-1 and B4-2, by reducing theoretical capacity (“Available Track Minutes per Day”) by one-third (“Theoretical vs. Practical”), then making a further reduction of 20% (on segments governed by CTC) or 40% (on segments governed by TWC). DEIS App. B, Attachment B4 at 17, 20 (Tables B4-1, B4-2). Thus, the “capacity” used by SEA for computation of LOI is 53% of theoretical capacity on CTC segments and 40% of theoretical capacity on TWC segments.

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to Toronto lines. It would be a fallacy, however, to conclude that these lines are congested, or that CN's traffic on them adversely affects vehicular traffic on highways that cross them. Any such conclusions with respect to the EJ&E line, based on SEA's calculations, would be equally unwarranted.

RTC Analysis

SEA's third capacity analysis used the Rail Traffic Controller ("RTC") software package to model the performance of trains on the EJ&E line following its acquisition by CN. According to SEA, "[t]he essential output of the RTC model is a 'delay ratio,'" ³ which SEA calculated would be at least 28, and could be even higher under different assumptions than those in CN's Operating Plan (DEIS at 4.1-33). In its comments, DOT stated that "[a] delay ratio of 20 or higher is generally avoided in the industry" and concluded, on the basis of string diagrams generated by RTC and reported in the DEIS, "that implementing the Applicants' Operating Plan would produce 'major delays at several locations'" (DOT-6 at 9 (quoting DEIS at 4.1-33)).

The creator of the RTC model, however, Eric Wilson of Berkeley Simulation Software, informs CN that the delay ratio is not an "essential output" of the model, and is unaware of any consensus in the rail industry that a ratio of 20 indicates that the line is at capacity. In addition, CN finds that, far from indicating that CN's Operating Plan would result in "major delays at several locations," the string diagrams generated by RTC (*see* DEIS at 4.10-34—4.10-38 (Figure 4.1-9); *id.* App. B, Attachment B4 at 24-28 (Figure 4.1-9)) show a railroad whose operations are fairly fluid, as indicated by the relatively small number of horizontal lines (which would show trains that are stopped), and the relatively short length of those lines (which would correspond to short time the trains are stopped).

* * * * *

For these reasons, while CN would face challenges in operating the EJ&EW, it is more than equal to those challenges, which are far less than those it faces every day in operating through Chicago over its present lines. CN is confident that the capacity improvements it has planned for the EJ&E line would be sufficient, while not excessive, to ensure that the line would operate fluidly.

We therefore believe that there is no reason to believe that the DEIS "may understate the likely extent of rail congestion on the EJ&E" (DOT-6 at 7), much less that the acquisition of EJ&E line would cause "vehicular delays [to] increase commensurately" (*id.* at 14). Moreover, whatever vehicular delays may be expected as a result of the acquisition would not require the

³ SEA explains that "[t]he delay ratio captures the lost time in a rail operation – the time trains spend waiting for a clear track ahead" – as compared to the time the trains would take to operate unimpeded. DEIS at 4.1-32.

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extensive, unprecedented mitigation that would be necessary according to the DEIS.⁴ As CN demonstrated in its comments on the DEIS (at 90-92), even under SEA's new "exposure" and "total delay" standards, if reasonable assumptions were made regarding vehicular and train volumes, only five grade crossings would require mitigation, two of which are already the subject of CN's voluntary mitigation agreement with the City of Joliet. CN further explained that the "high incidence of predicted accidents" standard, which SEA purported to have based on Federal Highway Administration guidelines, would not apply to any of the 15 crossings, and that, because SEA's new queue length standard has no relationship to the number of trains, it is an inappropriate ground for requiring any mitigation of vehicular delay. In summary, CN demonstrated that, under standards applied by the STB in previous proceedings, the proposed transaction would not cause delays to vehicular traffic that would warrant mitigation at any grade crossing other than the two already addressed by CN's agreement with the City of Joliet.

We would appreciate an opportunity for CN operating and technical personnel who are familiar with the proposed operations to meet with your technical personnel in the next week or two, either in person or by telephone, to explain in greater detail how CN plans to operate the EJ&E line after its acquisition and why there is no reason to believe that the infrastructure improvements CN has proposed would be insufficient to ensure fluid operations and prevent blockages of road or rail crossings other than those accounted for in the DEIS. We believe that such a meeting would help assure DOT that the proposed transaction would not lead to unforeseen congestion, and that no additional environmental analysis is needed for the STB to

⁴ SEA claimed that mitigation of vehicular delay (potentially involving any of a wide variety of measures, up to and including grade separation) would be warranted at 15 highway-rail at-grade crossings. It identified these crossings by applying, not only the level of service ("LOS") criterion previously used by SEA to identify grade crossings for which grade separation should be considered in order to mitigate vehicular delay, but also four additional criteria (total delay exceeding 40 hours per day, vehicle queue blocking major thoroughfare, "exposure" (i.e., product of average daily vehicular traffic and average number of trains), and high incidence of predicted accidents), that had never before used as a basis for requiring mitigation of delay.

These mitigation measures, it should be noted, have been proposed to address the consequences of adding no more than 22, and in some cases as few as 13, trains per day to the affected rail segments. By way of comparison, only three grade separations were ordered in the DM&E Construction case, where an increase of up to 34 trains a day was projected, and in the Conrail Acquisition case, although there were many at-grade crossings that would experience increases in volume of more than 22 trains per day, only 13 grade crossings were found to exceed SEA's criteria of significance, and grade separation was ordered at only one of those (Randolph Street in Garrett, De Kalb County, where the transaction was expected to lead to the addition of 26.3 trains per day to the affected CSXT line).

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comply with any requirements of the National Environmental Policy Act of 1969 that might apply to this transaction.

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul A. Cunningham". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul A. Cunningham

cc: Joseph H. Boardman (Administrator, FRA)
Paul Samuel Smith, Esquire (Senior Trial Attorney, OGC, DOT)
S. Mark Lindsey, Esquire (Chief Counsel, FRA)
Victoria J. Rutson (Chief, SEA, STB)
Phillis Johnson-Ball (Deputy Chief, SEA, STB)