

The STB FD 35087 DEIS is based on the assumption by CN that they will have the unqualified entitlement to run as many trains as they want - in the absence of government intervention what would be the number, size, and type of cargo transported by those trains? CN has stated that their intention is to double track at a minimum all the EJ&EW - the train safety division of the IL ICC has run their model and has confirmed that over 200 daily trains would be probable. While CN claims a lower flat lined annual forecast and has omitted any non-CN carrier forecast. With the new six interchanges clearly CN has planned to serve any carrier for increased profits.

If CN is to be granted this entitlement to run as many trains as they want, then the STB should demand that any "Windfall Profits" received from related abandoned ROW should be used to make the EJ&E a complete "sealed safety corridor" as defined by the FRA and the US DOT. CN has actually created a real estate transaction that they believe will provide an offsetting profits that appear to be the unstated purpose and need. By eliminating this profit objective via the Windfall mitigation the true CN colors may be seen.

This should include immediately the provisions included in the (AMTRACK & Railroad Safety Legislation of September 2008). Because of the the intersection of the Metra and the other railroad carriers the STB must demand Positive Train Control Systems be implemented by CN. The Chatsworth, CA freight on passenger train incident on Sept 12, 2008 has a clear probability to be repeated by CN and Metra the only question is WHEN.? There will be 84 Metra Trains crossing the EJ&EW railroad by 1/1/09 along with multiple U.P. freight trains and Star Metra light rail. The STB and the FRA have clearly predicted that this matrix of dissimilar equipment interchanging with heavy surface traffic is an unsafe condition. The STB clearly states that separation of freight and passenger trains is the safest and best condition. Why would the STB allow this condition in 2009 to be approved?

The STB must impose those safety measure upon CN as part of this ruling. The protection of the community must not be compromised when clearly legislation is forthcoming. The Amtrack Rail Safety legislation has provisions for implementation over a longer time line than what should be imposed by the STB. Using known technology and management of work rules is possible concurrently with the CN conditional approval. Work rules and hours of work limitation clearly have a reduction of risk. The EJ&EW according to the DEIS analysis will have life threatening incidents. These mitigation option are necessary and mandatory to save lives of our families and children.

CN's previously purchased WC and IC network has the obvious bypass option via the Freeport, IL option. CN has described the EJ&EW railroad to their investors as the "high speed bypass" route to Memphis and the Gulf Coast. Their forecast that 90% of the cargo will have end points outside the Chicago Mega Region therefore allows various available options currently controlled by CN. FD35087 stated purpose and needs actually can be served via the CN rail network. Why would the STB not force CN to execute their plan via this underutilized railroad?

The STB study regarding the future of passenger and freight requirements must also be a condition on CN as part of the ruling that Metra STAR light rail will be provided priority over CN's railroad operations and any interline freight carrier railroad operations. The STB and the DEIS appear to have mistakenly agreed with CN that the Metra Star light rail will be able to share the EJ&EW ROW. The FAA has stated that the delays at O'Hare cause a ripple throughout the USA and beyond. The O'hare expansion and the development of the Lincoln International Airport are part of the cumulative effects of this FD35087 filing. Without passenger commuter rail service constructions workers, service employees and travelers will be forced to commute via Single Occupant Vehicles (SOV). With CN intentional blocking the Metra STAR option the carbon index impact must be added to the DEIS calculations.

The correct information is that a minimum of 25' centerline to centerline separation between tracks is required by railroad regulations. This is not possible within the 100 foot Right of Way. CN has therefore made an offer to Metra which will NEVER be realized.

With the December 31, 2009 retirement of the CEO his promise to work this out will be written off as a miscommunication, when in fact, CN knows now that the STAR line will be impossible within their ROW. CN has stated their goal to their investors is to operate where possible in exclusive freight rail corridors. This is their true intention. The STAR Metra offers must be officially part of any mitigation solution and the priority to the commuter service must be an ongoing obligation by CN.

The fact that EJ&E has the "grandfathered" right over other freight railroad must remain with the owner of the EJ&E which in the FD35087 filing is the U.S. Steel corporation. The cloning of these right to the new EJ&EW is an abuse of a foreign owned corporation over the 5 U.S. Carriers crossing the EJ&EW. The grandfathered right should be eliminated for the new EJ&EW. A new railroad built today would be ranked at the bottom of the priority ranking. Since USS has retained the grandfathered company then they clearly understand that this is a very valuable right. Metra STAR and Metra must be provided curfew temporal separation as a part of the mitigation agreement with CN if the STB were to approve this transaction.

The importance of the financial market to Chicago requires Metra to start their commuter service earlier than most metro commuter lines. The opening of the financial markets require their employees to be on duty very early 6 to 7 AM. In the afternoon the market closes at 3 PM and the commuter trains begin service from Chicago around 3:15 PM. The Metra STAR line will support a distinct community of workers that have shifts around the clock as well as travelers catching flights at all hours. A temporal separation is not practical.

A STB mitigation to separate the freight and passenger on correctly separated track is a required condition for safety. This may limit the capacity for CN but retains the Mega Regional option to deploy the Metra Star light rail service.

The fact that CN has declared that for efficiency they will use DST (double stacked trains) along the EJ&EW. The height of this rail cars will require a distance greater than 25' centerline to centerline since this minimum is based on the single height rail cars normally used. When a derailment occurs the derailed CN rail car should not crush the passenger train and derail and kill and injure the commuters.

The need for a Metra curfew for temporal separation must be part of the STB ruling as a necessary mitigation. During the rush hours of the STAR line the CN trains must not operate. This is currently in place today between Metra and CN.

The MegaRegional growth of Chicago will be irreversibly impacted should CN be entitled to run as many trains as they wish without any restrictions. The historical pattern of Chicago has been a downtown hub with spokes radiating to the suburbs. The suburb to suburb transportation corridors via rail have been identified are are apart of the growth planning for the growing population of the MegaRegion see CMAP Go 2040 planning documents.

The expansion of O'hare and the development of Lincoln International Airport have been supported by new toll roads and expanded highways. The CTA has expanded the Blue Line to O'Hare for employees and travelers.

The 211,000 Latinos and other minority and low income residents that live adjacent to the EJ&EW will clearly benefit from the Metra Star line commuter service along the EJ&EW.

President Clinton's Presidential Order for social justice for new railroad service has not been applied correctly in this DEIS. The DEIS included 7.23% of the actual number of effected residents. Due Process has not been granted to this protected group of residents. Why has this group not been included ?

My 1/08 submission to the STB clearly showed this U.S. Government sponsored Norte Dame (ND) University Latino Population study. This study augments the U.S. Census of 2000 which is outdated and unfortunately these residents are fearful of any contact with Governmental Officials and may have not understood the benefits of being fully included a Census study. (per the ND study).

The ND study used a staff which was trained in the Latino culture and languages of this low income minority group(s). The CN data shows that 900,000 residents are impacted negatively vs 1.2M residents that are benefited by shifting their cargo to the EJ&EW.

This "ignored" Latino population represents 23.3% of the 900,000 residents. The Clinton Presidential Order does not cover any residents who living near the current CN rail line; it clearly **does cover** those currently living next to the EJ&EW line. The lowest cost housing is adjacent to the railroad line as documented by the Norte Dame study.

The Coase Theorem:

Efficiency: If property right being well defined, one party can compensate the other.

The evidence suggest that this is working on one side of the equation where it benefits CN but not on the other side where CN is required to compensate those communities that have a radical change from the status quo.

The CN plans as presented include discussions regarding a real estate transaction that appears to have an economic reward (Windfall) from the sale of soon to be abandoned downtown Chicago property. Clearly, CN, is intending to sell this property at comparable values to recent sales. The property in question has some unique attributes that will enhance the valuation. The City of Chicago has offered \$38 Million for the Reese Hospital site as a point of reference.

The CN property includes the St. Charles Airline and the lake front tracks previously owned by the IC. The fact is the McCormick Place facilities have been constructed above and around this CN ROW. A simple review of this facility on Google Maps show the proximity of the St. Charles Airline to the housing developments that have recently been constructed to the North (review the address of the Mayor of Chicago, Mr. Richard Daley, and it is clear that his NIMBY interest are being rewarded by elimination of the CN trains just 2 blocks to the the South.)

The McCormick's architects plans as filed with the building department of Chicago clearly show the anticipation of the removal of the CN rail traffic adjacent and thru the McCormick Place facility. Next, by reviewing the cost per square foot of the construction it is easy to show the fact that McCormick Place will be able to significantly increase the revenue generating space under roof. It is likely that the staging function for incoming and outgoing exhibits will take over a portion of this CN space. By shifting this staging function inside McCormick Place the parking lots, currently being used, will become prime lake frontage property for development. The near term CN ROW abandonment therefore increase the footprint of this development site without any of the related environmental disadvantages from the status quo use of this CN network.

Invariance: Through efficient bargaining the more profitable activity should occur.

In the STB FD 85087 case CN is hiding the fact that they have found a non railroad activity, sales of abandoned ROW, which will increase their profitability without having to bargain with anyone thus holding all the profits and not compensate the other side (EJ&E) communities and property owners who will loose property values and personal safety.

Why Might the Coase Theorem Fail

- Unclear property rights
- Large transaction costs
- More than two parties
- Credibility/Commitment problems

The facts appear that CN has consistently presented partial facts, delayed responses to the STB and provided incomplete and or confidential data. These provide a credibility/commitment problem. (The Star Line Metra is a perfect example.)

The effort of CN to suggest there are more than two parties is evident when CN attempts to divide those winners and losers. The fact the non-CN railroads currently serving Chicago have stated they will benefit from backfilling the potentially available CN trackage. The residents will in fact not see less trains at all. This is like stating that CN will empty half of a bucket of water from the left side of the bucket without any impact to the full right side of the bucket. The water in this example will seek all available space and if the growth projection for those carriers are correct they will quickly recreate the same congestion along this network.

CN has in the DEIS stated that once approved they will need three construction periods to complete their projected \$100M CAPEX projects and that they will continue to utilize the old IC lines. The earliest any impact would be observed is 2013 or 2014. The residents have been told that if they support CN they will “win” with the elimination of CN trains. This is a partial truth that happens in the out years not immediately. The CAGR of the Railroad carriers will occur over these years and asserted impact will zero out.

In contrast the CREATE proposal created a level playing field for all rail carriers serving the Chicago Market. CN (Canadian National) sent a letter from their management that they would not pay one cent toward CREATE even though it would provide huge benefits to CN (Canadian National) such as double stacked trains and increased efficiencies.

What CN (Canadian National) has also stated is that Congress has not funded CREATE and therefore they had to come up with a private enterprise solution. The fact that CN's will not pay any of the cost suggests that they continue to look to government subsidies that they always enjoyed as a Crown Company in Canada. (Canadian National).

By purchasing the U.S.S. railroad CN is committing a minimum of \$440 million dollars and may be required by the STB to include the CMAP mitigation requirements of another \$150M. There is another \$400M to 700M probable required mitigation being recommended by the local communities.

The base question is WHY would CN choose to ignore an option that by historical standards would have caused CN to pay \$75M for a industry supported solution - CREATE. 5% for the railroad and 95% for the community governments (local, state and federal)

Another option would be to proceed with the CREATE option and to have CN apply the St. Charles Airline Windfall Profits toward the CREATE project. This would allow Chicago to gain a 30% improvement in capacity and allow the proposed high speed passenger rail. CN will have their DST trains and will be able transit the 30 miles substantially faster due to the six fly-overs. The plan to abandon the St. Charles Airlines would therefore fund a significant portion of the \$1.5B projected costs.

The past approval by the STB for CN's purchase of Wisconsin Central (WC) and Illinois Central (IC) created an option using current CN assets. The WC line from northern Wisconsin to Madison connects to the IC line that runs thru Freeport, IL and then south to Memphis on the old IC tracks. This option is significantly shorter and would create less of carbon index per TEU for CN's projected North Asian to Memphis cargo and Non USA trans-shipments (which constitutes 90% of the stated forecast). The goal for CN to increase their speed would also be achieved via this route. Why would CN be allowed to ignore a previously approved STB transaction which may be satisfactory to meet their stated purpose and needs. A moratorium on FD35087 is necessary to have CN

Bringing Ethanol, Chemicals, Coal and HazMat into the Chicago MegaRegion is not consistent with the goals of the DEIS. The US DOT regulations that begin on Jan. 1, 2009 require that all carriers move specified cargo outside the centers of US population. The "Go 2040" CMAP and STB demographic studies of upcoming growth of U.S. MegaRegions forecast the upcoming problems. To allow CN to overlay their forecasted cargo on top of this region is inconsistent with the stated objectives of the STB considering CN currently has the control of an underutilized part of the their own rail network.

What is significant is CN's management appears to believe that their past practice of inserting railroad tracks in the wide open spaces of Canada without any regard to abandoning previous rail asset is not OK within the densely populated USA. The abandonment plans for the St. Charles Airline is a prime example of taking a very valuable railroad asset and discarding it for a CN Windfall Profit.

The past management of the Wisconsin Central cargo dispersed their cargo via some of these same routes vs CN's management style to hold all cargo for CN maximized profits via CN's network. Why should CN's profit goal of cargo retention be allowed to create congestion in Chicago that prior to the STB approval never was a problem. The cargo flows from Prince Rupert are forthcoming and are not part of the CN self induced inefficient operation. Mr Harrison of course has sent correspondence to the STB stating that CN would not operate in this self serving manner. They appear to have desired to recover their investment from the purchase of the WC and the IC as fast as possible without regard to the congestion created in Chicago.

The STB must enforce discipline over prior STB approved transactions and to insure that CN and other railroad manage these networks for the greater economic goods of the US citizens.

The use of the STB moratorium is respectfully requested for FD 35087. This will allow the definition of the social good to gain clarity.

One uncontroversial notion is Pareto Efficiency— Policy A Pareto Dominates Policy B if A makes at least one person better off and no one worse off.

If the STB can not determine the existence of 211,000 (EJ&EW community) Latinos, that are covered by the Clinton Presidential Order, it appears that clearly more than one person is worse off.

The upcoming 2010 U.S. Census will be available to the STB during the proposed 5 year moratorium.

The legal challenge by these minority and low income housing residents will be impacted adversely by the STB pro CN decision and may include significant litigation to challenge the lack of “Due Process” rights.

The fact that the Mayor of Chicago lives two blocks from the St. Charles Airlines and would increase his property value at the disadvantage of this Latino Presidential Ordered population. Should the Richard Daley friendly Chicago Developers gain Million/Billions of dollars in increased value due to this STB action over the U.S.A. Presidential Protect? Should CN be able to avoid compliance with US Social Justice regulations? Is the management of CN used to a less diverse populations in their native country and therefore they may be unaware of these important social justice issues along the EJ&EW line.

The DEIS process clearly has ignored this issue in their HDR provided analysis. In direct conversation with the HDR author of this section at the recent public hearing he confirmed that they did not avail themselves to this research.

More time is necessary to determine if the the Is the CN Acquisition is actually Hicks-Kaldor Efficient? The CN management has presented half truths, incomplete data (forecasts that ignore any impact of the Third Lock of the Panama Canal and understatement of any seasonality of their traffic, which leads one to a lack of credibility with the STB and public officials and the Chicago Tribune and the communities.

CN credibility is questionable with their following tactical statements. The first point is valid since the economics are purely for their shareholders and management’s huge compensation bonuses (Mr. E. Hunter Harrison extended employment contract expires on 12/31/09 and includes SEC documented stock options that he will exploit should the STB approve FD 35087.

- Winners (in order of directness)
- Owners of CN and the EJ&E

The following are assertions that are not based on demographic data and ignore that CN and the other rail carriers fully have declared they will continue to use the old IC network.

These railroads continue to assert that their ROW and tracks are private property and that the ICC provisions of the U.S. Constitution allows them to utilize those asset as fully as they so choose. This is in absolute contradiction that the following winners would in fact define winning as not being impacted by a train with CN logos vs one of the other 5 U.S. Rail Carriers.

Winning is not seeing a different logo.

CN without abandoning the old IC network can not make a claim that one group wins and there are 350,000 more people in that group over the losers.

CN with this STB approved transaction will wins with an network controlled fully by their management running North/South and East/West from Chicago. Since 1863 Congress has consistently not wanted a single railroad to have this level of competitive advantage according to Steven Ambrose's book on the building of the U.S. Transcontinental Railroad. This legislation in fact is why a hub like Chicago came into existence. St. Louis attempted to win this hub positions but the Chicago machine politics prevailed.

The following CN assertions regarding winners and losers are therefore false and misleading.

- 1.25 million residents of city neighborhoods (These residents will see non CN logos)
- 1.2 million suburban residents with reduced (These residents will see non CN logos) traffic
- The region and nation (By CN using their Freeport route= better, cheaper & faster)
- Losers
- 900,000 suburban residents with increased (Less citizen KILLED or injured by CN) traffic

The assertion by CN that differing demographics exist via their well compensated lobbying presence is meaningless. The effort to create a class war to win the STB approval is another example of the lack of credibility and commitment to fairly deal with those U.S. Citizens and residents. The past status as a Crown Company in Canada appears to have influenced Canadian National Railroad to believe that they have a royal status and CN can "railroad over" any community that gets in their way.

City Residents that Benefit

- Median income: \$46,000
- Demographics: 70% minority

• Suburban Residents that are Hurt

- Median income: \$76,000
- Demographics: 67% white

The Norte Dame Latino study correctly represents that the household income for the 211,000 residents is between \$13,000 and \$14,750. These residents are located by this study along the EJ&EW railroad. A few individuals in Chicago or along the EJ&EW within the top 1% of the U.S. should not offset the low income and minority protected residents. Mr. Sam Zell lives within the Chicago community CN describes and is a Multi- Billionaire.

By including Mr. Henry Paulson income , Secretary of the Treasury of the USA, who maintains his permanent legal residence in Barrington, IL near the EJ&E the statistics are clearly slanted. Mr. Paulson has a net worth of \$700 million dollars and an annual income of close to \$100M. How slanted is CN's data by including a few local Barrington residents who have created companies like Motorola, Otis Elevator, and Illinois Tool Works. The Median income is inaccurate and the STB should not be influenced by CN's misleading data.

The CN Public Relations effort via the lobbying efforts claim that Mobilization is a factor related to related to equalized gains and loses of their self described winner and loser segments of the class warfare. CN asserts that South side city residents have bigger issues to petition and the 211,000 Latino residents may not since they live in the communities along the EJ&EW rail line - CN describes this as Opportunity Costs.

CN asserts that Prospect theory means that people tend to be more motivated by losses than gains.

The fact that Non English speaking residents are disadvantaged in this STB filing since all the press reports have been documented to be in English language newspapers and there has been no foreign language radio or TV reports regarding the immigrant community along the EJ&EW.

The STB responses appear to have excluded, except with less than .5% of the responses, this disadvantaged demographic group. The use of paid U of I and University of Chicago university research sponsored by CN has in fact disadvantaged the EJ&EW community.

Thank you

Regards
Richard D. Burkhart

