



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

September 30, 2008

Phillis Johnson-Ball
Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

RE: STB Finance Docket No. 35087

Dear Ms. Johnson-Ball:

The Environmental Law and Policy Center ("ELPC"), a not-for-profit Midwest environmental quality and economic development advocacy organization, hereby submits these comments on the draft Environmental Impact Statement for the Canadian National ("CN") Railway's purchase of the Elgin, Joliet and Eastern Railway's EJ&E West Company subsidiary ("EJE"), STB Finance Docket No. 35087.

As the Board is well aware, the Environmental Impact Statement (EIS) is a critical component of the record to be considered in the acquisition proceeding. 49 C.F.R. 1105.10(f). It guides the Board in determining what environmental conditions to impose on the proposed action; where an environmental issue is unresolved, the Board may either withhold approval or impose conditions as appropriate based on the EIS. *Id.* To this end, before approving the acquisition, the Board must take a "hard look" at the direct and indirect environmental effects of the proposed project in combination with the cumulative environmental impacts of all "past, present, and reasonably foreseeable future" actions in the project area. 40 C.F.R. § 1502.16, 1508.7, 1508.25(c). *See also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

ELPC is concerned that the comments we submitted on February 6, 2008 concerning the draft scope for this Environmental Impact Statement have largely been ignored. As a result, reasonably foreseeable impacts impact of the proposed federal action on Amtrak service to Chicago have not received adequate attention.

An agency must prepare an EIS that includes a discussion of the direct and indirect environmental effects of the proposed action and its alternatives. 40 C.F.R. § 1502.16 (2008). Indirect effects are effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). While it may be true that "the Applicants do not plan to abandon any rail lines as part of the Proposed

35 East Wacker Drive, Suite 1300 Chicago, Illinois 60601-2110
Phone: (312) 673-6500 Fax: (312) 795-3730 www.elpc.org elpc@elpc.org
Richard Day - Chairperson Howard A. Learner - Executive Director

Action¹, “the abandonment of the Air Line Route is a reasonably foreseeable consequence of the proposed action and thus requires analysis within the EIS.”

On page 222 of its application, CN states that once it ceases operations on the Air Line Route, the only “remaining regular user” of the route would be Amtrak. CN also states that it will seek to “formally abandon” the Air Line Route. Further, as the draft EIS notes, “BNSF recently filed a petition with the Board for authority to discontinue trackage rights on the portion of CN’s rail line that provides access to the Air Line.”² While “CN has agreed to cap the costs to Amtrak for CN to maintain the line at its current level”³ CN has repeatedly refused to share what those costs are.⁴ We also note that CN’s history of honoring its commitments in Illinois is less than stellar.⁵ CN and Amtrak have not reached an agreement on continued use of the Air Line Route, so CN’s assurances cannot serve as a substitute for an examination of the issue in the draft Environmental Impact Statement.

The City of Chicago has made clear on numerous occasions that its goal is to convert the Air Line to public use. In fact, in 2003, the Chicago Dept. of Transportation (CDOT) signed an agreement with CN “indicating the parties’ intent for CN to sell the St. Charles Air Line...to CDOT.”⁶

Thus the abandonment of the Air Line Route is inextricably tied to the EJE purchase as a clearly foreseeable event, and thus should be reviewed as a part of the EJE transaction at this time.

Closure of the Air Line Route will have direct, reasonably foreseeable, and significant negative impacts on the environment. Six Amtrak passenger trains each day use the Air Line Route. Without the Line, these trains, which serve key central and southern Illinois communities like Champaign and Effingham in addition to cities as far south as New Orleans, will have no route into downtown Chicago. The application asserts that the trains could simply move to a 5-mile segment of Norfolk Southern (NS) track on their approach into Chicago’s Union Station (Application, page 222). This statement blatantly ignores the fact that key intersection improvements at Grand Crossing, and five miles of additional track capacity north of Grand Crossing, would need to be planned, engineered, funded and built to make this routing a realistic plan. CN then states on page 222 of the application that moving the Amtrak trains to the NS line has “long been planned in connection with the CREATE project.” What CN does not state is that to date, CN, unlike all other partners in the CREATE endeavor, has not yet contributed to the project’s funding pool. In addition, about 80% of the CREATE project’s \$1.5 billion budget, including the approximately \$30-\$35 million in Grand Crossing and NS improvements, are not yet funded. Indeed, as the draft EIS acknowledges, “implementation of the Grand Crossing connection and routing of Amtrak trains off the CN Chicago Subdivision are not reasonably foreseeable future actions.”⁷

Without these improvements, Amtrak’s six daily passenger trains have nowhere to go. Their disappearance would displace more than 400,000 riders per year, forcing them into cars. This in turn

¹ Draft Environmental Impact Statement, section 2.2.4

² Draft Environmental Impact Statement, section 2.1.4.1

³ Draft Environmental Impact Statement, section 4.1.8.1

⁴ See Surface Transportation Board’s Decision No. 15 on Finance Docket 35087

⁵ See attached letter from Illinois’ Congressional Delegation to Mr. E. Hunter Harrison, dated October 24, 2006

⁶ See Applicants’ Responses and Objections to the Village of Barrington’s First Discovery Requests, p. 41

⁷ Draft Environmental Impact Statement, section 3.1.3.3

would worsen Chicago's air quality, cause greater carbon dioxide emissions, and increase our dependence on foreign oil. **Our view is that full or significant CN funding of the Grand Crossing and NS track capacity projects must be made a condition of the approval. If this condition is included, we anticipate supporting the transaction.**

Again, this condition is both connected to the acquisition, and is otherwise reasonable and feasible. In addition, imposing this critical condition will avoid and/or mitigate the negative environmental impacts that would otherwise accompany abandonment of the Air Line Route. Such environmental damage is a reasonably foreseeable impact arising from the transaction in the form proposed by the applicant.

The Environmental Law and Policy Center appreciates this opportunity to comment on the Draft Environmental Impact Statement. We request that the Board provide ELPC with a copy of the final Environmental Impact Statement and all other public materials that are subsequently issued. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Brubaker", written in a cursive style.

Kevin Brubaker
Deputy Director

Congress of the United States

Washington, DC 20510

October 24, 2006

E. Hunter Harrison
President and Chief Executive Officer
Canadian National Railway Company
935 de La Gauchetière Street West
Montreal, Quebec H3B 2M9

Dear Mr. Harrison:

We are writing to you regarding Canadian National's apparent decision to violate its agreement with Amtrak to operate additional Amtrak train frequencies in Illinois. Specifically, Canadian National (CN) and Amtrak finalized a series of agreements in July that would grant access to Amtrak along routes that begin in Chicago and end in St. Louis and Carbondale. That service is scheduled to begin October 30th.

In May, due to a double digit percent ridership increase on its intrastate Amtrak routes, the State of Illinois decided to add new trains to its Amtrak routes. The state doubled its Amtrak operating subsidies from \$12 to \$24 million, which would allow the State to operate two more roundtrip trains on its Chicago to St. Louis route, and one more roundtrip train on its Chicago to Carbondale route.

On behalf of the State of Illinois, Amtrak negotiated an agreement with CN along CN's 37 mile portion of the 284 miles on the Chicago to St. Louis corridor and along the whole 310 miles of track from Chicago to Carbondale. We were notified last week that CN will no longer agree to allow one of the additional roundtrips to St. Louis via Joliet, is threatening to withhold access to the Carbondale route, and may seek to terminate all of the newly added trains in Illinois after just one year. Such an action would violate the agreement between CN and Amtrak.

CN's actions are an affront to Amtrak, the State of Illinois, and the millions of rail passengers across Illinois. Amtrak has hired and trained employees, renovated train equipment, purchased advertising and mounted a series of public events - in some of which your railroad was a participant - supporting the new train frequencies. In addition, since the Carbondale service expansion was announced by the Governor at an event attended by CN on September 25, tickets have gone on sale for the additional frequencies and some trains have already sold out.

Amtrak has been in communication with CN officials since March and had amended its train schedule in order to accommodate CN. Agreements between CN and Amtrak were finalized in July. Therefore, we do not understand why CN has decided to violate its access agreement with Amtrak less than two weeks before the planned launch of the new state-supported roundtrip trains.

We hope that CN and Amtrak can resolve this issue before the October 30th start date for new Amtrak service. If this issue is not resolved by then, we request that you meet with us in Washington to discuss this issue the week of November 13th.

Please have someone from your office contact Mike McLaughlin in Senator Durbin's office at 202-224-2152 or Christa Fornarotto in Representative Costello's office at 202-225-5661 to let us know if the issue has been resolved or for a time and date to meet with us.

Sincerely,

Dick Durbin

Samuel Doe

John Walsh

Rahm Emanuel

Danny Davis

Fane Evans

Paul Ryan

Matt Lujan

Raymond

Mike T. Costello

John Sin. (2019)

Daniel Lipinski

Judy Biggert

Egy Wil

Donald A. Manzullo

Jim V. Guterrey

Timothy

Melissa L. Bean

Cc: Mary Peters, U.S. Secretary of Transportation
Members of the Surface Transportation Board