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September 24, 2008

Ms. Phillis Johnson-Ball
Surface Transportation Board
395 E. Street SW
Washington, DC 20423

Re: STB Finance Docket No. 35087

Dear Ms. Johnson-Ball,

We are writing to comment upon the Draft Environmental Impact Statement (Draft EIS) in connection with the proposed Canadian National Railway (CN) acquisition of Elgin, Joliet & Eastern Railway (EJ&E). Our home is next to the EJ&E tracks so we have a very direct and immediate stake in the outcome of this proposed transaction. We recognize that the STB put a lot of effort into the Draft EIS but unfortunately we found it lacking in certain areas:

1) Time Frame – In assessing the impact of the proposed transaction, the Draft EIS considers a time frame of seven years. This time period is too short and ignores the true environmental impact that all stakeholders recognize will evolve over the foreseeable future. CN has publically stated their intention of shipping more goods via the EJ&E line over time as the Prince Rupert port becomes fully operational and as overall international trade levels increase. The EIS should consider the true long-term environmental impact that will develop as CN proceeds as intended. If the STB does not consider this, who will?

2) Alternatives Eliminated – we found it disconcerting that the STB found alternatives “to be unreasonable because they would not meet all elements of the Applicants’ purpose and need for the Proposed Action.” For the STB to retain its credibility as an independent adjudicatory body, it must not eliminate alternative solutions simply because these solutions do not meet the needs of CN. The STB role is to consider the needs of all affected parties. The Draft EIS further dismisses the alternatives as being unreasonable because they “would be more expensive or more environmentally damaging than the Proposed Action.” How can the STB make such a conclusion without doing the research and analysis? Moreover, if expense is the issue, then the no action option is clearly the best and only option given that there are no incremental costs associated with a no action outcome.

3) Accommodation – The Draft EIS frequently recognizes problems and conflicts but concludes that these problems and conflicts can be resolved by CN and the conflicted party working together to resolve the problem. While we believe in diplomacy and that corporations should have good community relations, what assurances are there that CN will be reasonable in making accommodations to affected parties? We are concerned that CN's profit incentives, and fiduciary duties to its shareholders, will continually trump any desire to be reasonable regarding resolving conflicts with local communities. Once the proposed acquisition is approved, there will be no real leverage for the affected parties in their dealings with CN. Accordingly, we encourage the STB to take a strong stance with respect to mitigation and other issues of local concern.

4) Safety and Property Values – The draft EIS concludes that accidents involving the release of hazardous materials would increase under the proposed action and that the likelihood of release would be less than once every year. We hope that the STB does not find this to be acceptable. We encourage the STB to analyze the likely type of spill and the likely impact upon local communities. Of special importance to us in our community is the fact that we obtain our drinking water from individual wells that draw upon a relatively shallow water table. Should CN have a toxic accident in our community, the short and long term impact would be catastrophic. We also encourage the STB to consider CN's own safety record in its analysis. Moreover, transferring the risk of a hazardous spill from one part of Chicago to another is patently unfair. The residents in areas where CN currently runs its trains were able to decide whether or not they wanted to live near CN railways. They had the opportunity to assess the "known condition" of the CN railroad, including the risk of a hazardous spill, noise, vibration and exhaust. The prices they paid for their homes (or rental rates) reflected these known risks and detractions. We, and the many other families who reside near the EJ&E tracks, do not have the same opportunity. In addition to the current national real estate crisis, the eminent mass transfer of the CN traffic to the EJ&E lines will depress the desirability of our home and permanently impair its value. In short, most likely we could not sell our home if we wanted to, so we have no choice but to incur the risk of the CN trains.

5) Land Use – the Draft EIS concludes that "the proposed increase in rail traffic along the EJ&E rail line would potentially cause increased noise on public lands adjacent to the line, affecting 17 forest preserves, natural areas and preserves, resource-rich areas, and land and water reserves." While it is important to consider the impact upon public lands why is there no mention whatsoever about private land? The increased noise will undoubtedly impact the quality of life of private property owners and we wonder why this was not addressed in the study.

6) Socioeconomics 16 – The Draft EIS is simplistic in its assessment of the impact upon property values. The conclusion that “the Proposed Action could result in potential adverse effect to individual property owners adjacent to or near the EJ&E rail line” is overly cautious and potentially naive. *There can be no doubt whatsoever that an increase from 3 trains a day to 30 trains a day will dramatically change property values in affected areas. Real estate buyers, especially those that are seeking open space and peacefulness in a suburban location do not desire to live near busy, noisy, polluted railroads. This fact should be clearly understood by the STB prior to making its decision.* We encourage the STB to expand its analysis of this issue by consulting with residential real estate experts. We also encourage the STB to include this very real and important issue in its mediation recommendations. This is the “white elephant” in the room and it demands to be addressed. Furthermore, we believe it is overly simplistic to assume that real estate depreciation in one area is OK because real estate may appreciate in another area. First of all, it is difficult to state that the net effect is favorable or unfavorable without a detailed study and consultation with experts on this matter. Secondly, those who are proponents of the deal because they believe that it will increase the value of real estate in their communities should think twice. If rail shipping is as beneficial as CN claims it to be, then it is only a matter of time before CN and other large railroads reclaim the capacity on CN’s existing lines. If such “net effect” logic were utilized consistently in urban planning then any project that is generally considered to be undesirable in residential areas (e.g. landfills, sewage treatment plants, nuclear power plants, hazardous waste disposal sites, and freeways) could be sited anywhere with the simple justification that it is OK to have it located in point A because it is not in point B. We also suggest that the STB consider the possibility of a “downward spiral” scenario for some communities along the EJ&E line. This scenario would play out as follows. The introduction of a dramatic increase in CN trains decreases the quality of life in affected communities, which in turn causes property values to decline, thereby depressing property tax revenues, thereby eroding public services including schools, thereby further eroding the attractiveness of the community, thereby further eroding property values, and so forth and so on. This scenario is not out of the questions until and our guess is it is not unprecedented in cases where a railroad, freeway system, landfill, nuclear power plant or other undesirable entity is located within an established community. These case studies should be considered by the STB in its analysis.

7) Air quality and climate – While the analysis states “emissions would increase,” the report seems to try to minimize the environmental impact by placing the increased pollution in the larger context of the greater Chicago-land area and the United States. The analysis fails to assess the impact upon the air quality of local communities and residents. Moving a problem from one area to another area does not solve or reduce the problem. We understand that an increase in train emissions in our community and others near the EJ&E line will not materially impact the greater Chicago area or the United States as a whole. However, the good people of the communities most immediately impacted by the proposed transaction deserve to know how the air they breathe each and every day will be impacted by the proposal.

8) Noise and Vibration and Biological Resources - The Biological Resources section of the Draft EIS states that "the Proposed Action would lead to increased noise that would be experienced by wildlife species living ...along segments of the EJ&E rail line." It further states that "bird populations within 500 feet of the rail line could experience behavioral and/or psychological effects and or masking of communication signals because of the increased noise." The draft EIS concludes that the increased noise is negative to birds and other wildlife. However, the Noise and Vibration section of the draft EIS as it pertains to humans makes no such conclusion. It seems to explore the issue and recognize that noise (and vibration) levels will increase but it stops short of making any conclusions regarding the effect of the increased noise (and vibration) on humans. We suggest that the EIS analysis include an assessment of the impact upon humans at least to the same extent that the impact upon wildlife has been considered. Furthermore, CN has stated its intention of running 10,000 foot long, double-level container trains on the EJ&E tracks. These trains are estimated to be 3 to 4 times longer (and likely 3- 4 times heavier) than the trains that EJ&E currently runs on the tracks. This will make a sizeable difference in the loudness and duration of noise and the magnitude and severity of vibrations. As such, we encourage the STB to assess how these larger, longer and heavier trains will influence noise and vibration levels and how this will impact humans and structures inhabited by humans.

9) Transportation Systems and Mitigation – While the SEA appears to recognize that the proposed transaction would create traffic problems, the SEA minimizes these problems as "pre-existing" conditions. As such, the Board concludes that the local entities should bear the brunt of any mitigation and CN's responsibility for mitigation should be minimal ("5 to 10 percent"). This logic is flawed. The vast increase in the volume of trains that CN proposes to run on the EJ&E lines - an increase of 8 to 10 fold over current volumes – and the increased length of the CN trains, is a massive change from the current condition. The small number of relatively short EJ&E trains is tolerable but the huge number of long CN trains will not be tolerable. The economic benefits of the proposed transaction will accrue to CN, EJ&E and their current owners US Steel, and perhaps some of CN's customers located in China, Canada and the Southern United States. There are no economic benefits accruing to the local communities or to the state of Illinois. To the contrary, the proposed transaction will cost local jobs, increase noise and pollution, decrease worker productivity due to traffic delays, and likely erode the tax base due to declining property values and deterioration in local communities. Asking (or requiring) local entities, and the local tax payers, who are most directly and severely aggrieved by the transaction, to bear the burden of mitigation is patently unfair. Should the STB decide to approve the proposed transaction, it must require the economic beneficiaries of the transaction (CN and US Steel) to shoulder most, if not all, of the mitigation expense.

In summary, we believe the Draft EIS falls short in several areas and that the STB has more work to do. Specifically, we suggest the following

1. The study should consider a longer time horizon beyond 7 years in line with CN's stated ambitions for the EJ&E line beyond 7 years;
2. For the STB to retain its credibility as an independent adjudicatory body, it must not eliminate alternative solutions simply because these solutions do not meet the needs of CN;
3. We encourage the STB to take a strong stance regarding mitigation because local communities will have little or no leverage after the STB has made its ruling.
4. We encourage the STB to consider the impact that a toxic spill would have on communities that rely on well water drawn from a relatively shallow water table;
5. The Draft EIS needs to more fully explore how increased noise levels will impact local communities;
6. The Draft EIS should more thoroughly analyze the specific impact of the proposed transaction upon local property values;
7. The study should analyze how increased emissions would impact local communities within the context of the local area rather than within the context of the greater Chicago-land area;
8. The draft EIS should assess how CN's larger, longer and heavier trains will influence noise and vibration levels and how this will impact humans and structures inhabited by humans;
9. The STB should consider that CN and EJ&E are the sole economic beneficiaries of the proposed transaction and as such, it is reasonable to require them to bear at least a majority of the cost of mitigation.

Thank you for your consideration. Feel free to contact us if we can provide any assistance.

Sincerely,

Michael E. Harrington
Anne R. Pramaggiore

P.S. We can attest that CN has already begun using the EJ&E tracks. Why are they able to do this prior to the STB's completion of the EIS and without any effort to mitigate the problems that have been clearly identified and even recognized by CN?

Cc:
Senator Richard J. Durbin
Congresswoman Mellissa Bean
Congressman Don Manzullo