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## VILLAGE OF NEW LENOX

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September 24, 2008

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

Ref: STB Finance Docket No 35087

Dear Ms. Johnson-Ball

The Village Board of Trustees approved the enclosed resolution voicing our opposition to the proposed acquisition of the E. J. & E. Railroad by the Canadian National Railroad. Our opposition to the proposal is based on the increase in the number of trains, the length of trains, the double tracking, the increase in the hazardous materials being transported, the increase in train vibrations, the increase in air and noise pollution, and the negative impact to emergency response times.

The enclosed resolution also outlines our concerns with the many flaws in the DEIS. These flaws begin with the Average Daily Traffic Counts used to determine affected at-grade crossings. Since the Village and County's projected ADTs took into consideration our projected growth, our ADTs are much higher than the numbers used by the STB's Section of Environmental Analysis (SEA). The life and death impacts are downplayed in the DEIS. The increased risk of hazardous material spills is minimized. The DEIS assumed that there would be state and federal money that would assist in paying for grade separations, which we do not have any confirmation of future monies. The DEIS concluded that there would be benefits to communities currently on the CN line, but failed to recognize that any decrease in rail traffic would be temporary as those lines would be backfilled. The impacts to residential housing were downplayed. The impacts to regional business and to local tax bases were ignored. The air quality analysis was flawed. Finally, the assumption that impacted communities could negotiate with the CN railroad is wrong.

Thank you for this opportunity to voice our concerns with this proposed acquisition.

Very Truly Yours

Village of New Lenox

Mayor Tim Baldermann



TREE CITY USA

RESOLUTION NO. 08-29

A RESOLUTION IN OPPOSITION OF THE SALE OF THE ELGIN, JOLIET, AND EASTERN  
RAILROAD TO THE CANADIAN NATIONAL RAILROAD

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WHEREAS the Canadian National (CN) Railroad has submitted an application to the U.S. Department of Transportation's Surface and Transportation Board (STB) to acquire the Elgin, Joliet, and Eastern (E.J. & E.) Railway; and

WHEREAS, the STB required an Environmental Impact Study (EIS) be conducted in connection with CN's proposed acquisition of the EJ&E; and

WHEREAS, the Draft Environmental Impact Study (DEIS) was released to the public in July, 2008; and

WHEREAS, The Regional Answer to Canadian National (TRAC), the consortium of communities that have banded together to fight the proposed acquisition has reviewed the DEIS and has outlined the flaws in the document; and

WHEREAS, after review of the DEIS, New Lenox shares the same concerns as outlined by TRAC; and

WHEREAS, the proposed Acquisition, if approved by the STB is projected to result in a significant increase in the number of daily trains from six trains to 28 trains a day; and

WHEREAS, such an increase in freight traffic would significantly contribute to increased traffic congestion, grade-crossing risk, blockages of bicycle and pedestrian crossings, air and noise pollution, and hazardous materials risk; and

WHEREAS, the train are projected to be up to 10,000 feet in length; and

WHEREAS, the quantity of hazardous materials is projected to increase from 51 carloads per year to 353 carloads per year, an increase of 692%; and

WHEREAS, the E. J. & E. line bisects the middle of the Village of New Lenox east and west for a length of six miles; and

WHEREAS, the E. J. & E line crosses the five major north/south roadways of Gougar Road, Nelson Road, Cedar Road, Spenser Road and Schoolhouse Road in New Lenox.

WHEREAS, Gougar Road and Cedar road are both major north/south arterial routes through the Village providing current and future roadway access to both I-80 and I-355.

WHEREAS, all five E. J. & E rail crossings are “at-grade” which will result in significant vehicle traffic congestion and back-up impacting north/south access through the Village;

WHEREAS, both Police and Fire responses will be significantly impacted by the increased railway traffic resulting in significant longer response times of emergency vehicles drastically affecting the health, safety, and welfare of New Lenox residents; and

WHEREAS, much of the E. J. & E. line through New Lenox abuts current and proposed residential development resulting adverse quality of life conditions for these residents; and

WHEREAS, the proposed improvements to the E. J. & E. railway will impact the development of the Metra Suburban Transit Access Route (STAR) Line; and

WHEREAS, the Village of New Lenox has filed as a formal Party of Record with the STB and intends to comment and provide written input to the STB directly and through a consortium of affected Will County governmental units regarding the proposed acquisition and the forthcoming EIS; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF NEW LENOX REQUESTS THE STB TO REJECT THE CN PROPOSED ACQUISITION OF THE EJ&E RAILWAY BASED ON THE MAJOR FLAWS IN THE DEIS AS LISTED IN THE ATTACHMENT:

PASSED THIS 22<sup>nd</sup> day of September, 2008

with five members voting AYE, with -0- members voting NAY, and with  
one members ABSENT, the Mayor voting aye; and said vote being BUTTERFIELD aye,  
TUMINELLO aye, BOWDEN aye, SMITH aye, DYE aye, and MADSEN  
absent.

Marcia Engert  
VILLAGE CLERK

APPROVED this 23<sup>rd</sup> day of September, 2008

[Signature]  
MAYOR

ATTEST:

Marcia Engert  
VILLAGE CLERK

## FLAWS IN THE DRAFT ENVIRONMENTAL IMPACT STUDY AS OUTLINED BY TRAC

1. List of Substantially Affected Crossings is Flawed: Analyzing the effect of major increases of freight on the EJ&E and the potential for vehicular delays at grade crossings requires that numerous variables be calculated. The basic variable is the projected Average Daily Traffic (ADT) count. We along with the county have done our own current ADT counts and have determined that the ADT numbers that are used as SEA's basis for projection of the 2015 ADT's don't reflect our ADT's. As a result, none of our five at-grade crossings made the list of impacted crossings. In addition, the train lengths and train speeds used by the SEA have been provided by CN and are highly questionable. It is doubtful that speeds provided to the SEA by CN can be achieved since this does not reflect the slower speeds that are now the norm on this line.
2. Life and Death Impacts Downplayed: The DEIS methodology for assessing emergency response impacts is incomplete as it makes arbitrary assumptions based on unknown rationales. The DEIS fails to take into account emergency response staffing levels at any given time for each of the impacted communities. If a village has limited personnel resources, an emergency response crew that is out on a call may deplete that community of EMS responders from the "right" side of the tracks if a subsequent call came in. Compounding this problem is the fact that all five of our crossings may be blocked at any one time. In addition, in some cases where both the patient and the EMS may be on the same side of the tracks, they may not get to the hospital located on the other side of the tracks. The DEIS analysis discards this problem by noting the "response to actual scene of an emergency is the most critical action, not the transport to the emergency medical facility." It seems astounding that SEA concludes getting the patient in an ambulance to a hospital quickly is not a "critical action", when timely access to a skilled medical team and life-saving equipment can mean the difference between life and death.
3. Increased Risk of Hazardous Material Spills Minimized: The DEIS concludes that despite the potential for an increase of hazardous material spills along the EJ&E that this acquisition would create, that "a hazardous material release would remain remote because the regulatory and other safeguards already in place." The disastrous reality of what communities along the EJ&E could experience if a train derailed and resulted in a hazemat spill cannot be overstated. With a huge increase in freight volume as well as an increase in hazardous cargo loads, the risk is very real. Increased transport of hazardous materials is compounded by CN's safety record in Canada that has led to intense scrutiny by the Canadian Government over the last several years. Unfortunately, SEA decided not to look at CN's Canadian safety record in developing the DEIS. This oversight needs to be rectified.
4. Failure to Access Likelihood of Taxpayer Investment in Mitigation Options: The DEIS states there are 15 highway / rail grade crossings in the Study area that require mitigation due to effects under the proposed action. None of the five at-grade crossings in New Lenox made this list. The 15 at grade crossings that made the DEIS list would require an

average of \$35 million in mitigation each. The total estimated cost for the 15 crossings is \$525 million. Since the STB's Section of Environmental Analysis (SEA) recommended that the STB mandate that CN only pay from 5% to 50% of these costs, it is a failure of the DEIS that SEA did not investigate the likelihood of whether the federal government, state government, county governments, and municipalities actually have the taxpayer funded resources available to make up the difference. At a recent Congressional field hearing both IDOT and ICC stated that Illinois does not have the funds to aid in the at grade crossing mitigation.

5. Capacity Examination Based on Applicant's Operating Plan Rather than a Full Right-of-Way Capacity Review: The DEIS states that "CN's operating plan would have the EJ&E operating at capacity by 2015 so the threat of additional trains beyond CN's current projections is unlikely." It is unclear whether this capacity analysis is based on an acceptance that the \$100 million in line upgrades CN lists in its operating plan is all the upgrading CN would ever do on the EJ&E line. Given that Create document project that there will be a near doubling of freight traffic through Chicago in the next 20 years, it would seem reasonable that some of it would likely be running on the EJ&E right-of-way. A realistic capacity analysis of the EJ&E would take into account the extent to which CN could add trackage and change operations within its existing right-of-way to meet this 88% growth in freight traffic as projected by the U.S Department of Transportation and highlighted in the American Association of Railroads' White Paper that presses the public investment in freight rail infrastructure. SEA's forecast of freight traffic growth along the EJ&E averages only about 2% annually despite an admission that most freight passes through the Chicago freight hub. It seems that the railroads are interested in maximizing growth when looking for public funding to support their industry, but want the opportunity to minimize growth projections in environmental impact studies when it better serves their interests.
6. Benefit to Current CN Line Communities Accepted at Face Value: Much of the DEIS analysis concludes that the environmental benefits to communities currently on CN rail lines would offset the negative impacts done to communities along the EJ&E. This is based on the unsubstantiated assumption that CN's shift if operations will mean a permanent reduction if freight traffic along those current lines of operation. Given the projected growth in freight traffic in Chicago, it seems inevitable that at least a portion of that increase will end up as backfill on the current CN lines. As a result, the DEIS analysis is flawed in that it fails to calculate the reasonably foreseeable reality that the negative environmental impacts will actually be compounded, rather than just shifted, throughout the greater Chicagoland area as a result of this acquisition.
7. Benefit to the Region is Accepted Without Proof: It is difficult to find any real benefits that the greater Chicagoland Region will derive from this acquisition. In its application, CN states that "rail jobs will be lost". This acquisition threatens to siphon public funds from the CREATE project which would have done more to ease congestion for the other Class I railroads that operate in the region; no shippers have come forward to guarantee that the reported cost savings they derive from CN operating efficiencies would accrue to

them or the end consumer. The DEIS failed to provide any specific substantiation to the claim that the acquisition would benefit the region and the nation.

8. Unsubstantiated and Un-sourced Data: The DEIS is filled with unsubstantiated claims based on un-sourced data. As an example, the DEIS uses analysis and mitigation thresholds for noise and hazardous materials that are unsubstantiated and have been sharply criticized by the U.S. Environmental Protection Agency and the U.S. Department of Transportation in previous Environmental Impact Studies prepared by SEA. The public perception of validity for this DEIS must be based on an acceptable level of data validity and transparency, elements which are missing in this DEIS.
9. Assumption that Impacted Communities Know What Can/Should be Mitigated and Have Negotiating Power With Respect to CN: The DEIS urges impacted communities to negotiate directly with CN to reach suitable mitigation agreements with inference that these negotiations can achieve more than an STB-mandated mitigation. However, the DEIS provides a broad range of mitigation possibilities without clearly indicating which measures the STB would likely impose on CN for specific levels of impact. "The SEA concluded that requiring mitigation for all the noise-sensitive receptors predicted to experience an Ldn of 70 dBA or greater may unreasonably burden the applicants." How would any community know that the Ldn of 70 dBA is an unsubstantiated threshold that no other agency uses and the U.S. EPA has criticized in other SEA environmental impact studies? Most municipalities don't have the technical resources necessary to make bargaining equations.
10. False Assurances on the STAR Line: SEA concluded that the acquisition would not preclude implementation of the STAR line, but would just add some complexities. The DEIS seems to accept the CN's voluntary mitigation offer that it "shall work with Metra to explore all options" through a commitment to continuing discussions actually constitutes real mitigation. If this acquisition would not endanger the STAR Line Project as the DEIS states, why did CN's March 13<sup>th</sup> filing to the STB object to Metra's request of the STB that approval for this acquisition be conditioned on immediate grant of trackage rights over the EJ&E, calling it an "unwarranted attempt to use the Board's powers to address a pre-existing issue"? CN continues by stating in its filing, "Metra has never been in a position to enter into serious negotiations concerning such rights because the service it hope to place on that line is undefined and still far from becoming a reality." Future assurances that would not have to be honored after the deal is approved are meaningless unless the DEIS mandate that when the STAR line is funded, CN will allow it to run on the current EJ&E rail line and give the commuter trains priority over its freight trains into perpetuity.
11. Residential Housing Impacts Ignored: Although the DEIS admits that "some homes within 250 feet of a rail line with 20 additional trains could experience a decrease in property value" it concluded that this would have "only minor, negligible effects" if the acquisition were to be approved. There is no attempt by SEA to actually determine how many homes along the EJ&E are within 250 feet of the line and then calculate the potential property value loss in any way, so it is hard to understand how SEA came to the

conclusion that it is a non-issue. This is particularly problematic given that state of today's housing market and the fact that much of the residential growth along the EJ&E has been recent. How many homes along the EJ&E will become negative equity situations if their values drop by a significant percentage? That the DEIS failed to take a hard look at this possibility when the federal government is enacting programs to prevent home foreclosures is unacceptable.

12. Regional Business Impacts Ignored: The DEIS concludes that the only jobs impact – direct, indirect, or induced – would be in the rail industry, and that the 280 rail job losses would minimally impact the greater Chicagoland economy. This overly narrow focus on business impacts completely ignores the business and job losses that will likely occur in communities along the EJ&E. If consumers cannot easily get to their local businesses, these businesses will close in the communities adjacent to the EJ&E with only those having the financial resources having an option to relocate to other areas. This analysis omission must be addressed and rectified in the Final Environmental Impact Study.
13. Local Tax Base Harms Ignored: The fiscal health of the communities located along the EJ&E is based on revenues derived from property and sales taxes. That revenue is used to support school districts, and maintain first responder capabilities in the area. The DEIS is wholly inadequate in examining the economic consequences that are likely to occur along the EJ&E if the acquisition is approved.
14. Air Quality Analysis Flaws: The data provided by the CN and used in the DEIS for fuel consumption and air quality analysis failed to provide an accounting for changes in fuel consumption that would result from changes in idling times by EJ&E and other trains on the EJ&E lines. Based on the delay information presented in the Rail Operations segment of the DEIS it would seem that delay on EJ&E lines would increase for both EJ&E and other trains thus increasing their fuel use and air emissions.