

STATE OF ILLINOIS

**ILLINOIS COMMERCE COMMISSION
TRANSPORTATION DIVISION / RAIL SAFETY SECTION**

September 29, 2008

Phillis Johnson-Ball
Deputy Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

RE: STB Finance Docket 35087 - Canadian National Railway Company and Grand Trunk Corporation's Acquisition of Control of the EJ&E West Company

Dear Ms. Johnson-Ball:

Thank you for this opportunity to comment on the Draft Environmental Impact Statement (DEIS) that was prepared by the Surface Transportation Board (STB), through its Section of Environmental Analysis (SEA), for the proposed Canadian National Railway Company's (CN) acquisition of the EJ&E West Company (EJ&EW). Please accept these comments on behalf of the Illinois Commerce Commission (ICC).

Following a review of the DEIS document, ICC staff requests that the SEA consider the following comments as it moves forward with the Environmental Impact Statement process.

Chapter 2 - Proposed Action and Alternatives**Table 2-9 (Summary of Potential Environmental Impacts Due to Changes in Rail Operations)**

Safety/Freight Rail Safety - The DEIS addresses train accidents along the EJ&EW line and in EJ&EW yards, but does not discuss how the Proposed Action may impact railroad employee safety.

The ICC believes that the increased train volumes on the EJ&EW line and within EJ&EW yards makes it necessary for the STB to direct the Applicants to insure that employee safety is addressed at all rail facilities (CN and EJ&EW), so that employee working conditions meet all current state and federal rules and regulations.

Safety/Vehicle Safety - The DEIS indicates that the Proposed Action would cause a net decrease of predicted annual train/vehicles collisions on the CN and the EJ&EW rail lines.

The ICC believes that the EIS needs to identify what, if any, highway-rail grade crossings located on the EJ&EW rail line, or other non-EJ&EW owned crossings the EJ&EW utilizes to serve customers, will experience an increase in vehicular traffic backups over a public highway-rail grade crossing. The frequency and length of train movements is one of the contributing factors of this problem, especially at multiple track crossings where back-to-back train movements occur. Vehicle queues stopped over a crossing can compromise public safety and train operations. The FRA accident prediction model referred to in the EIS

does not address this matter. The need to investigate potential increases in traffic queuing was one of the recommendations submitted by the ICC in a letter to the STB, dated February 11, 2008. This has specific reference to locations where potential queuing from any downstream traffic feature (including traffic signal intersections, bus stops, driveways, delivery routes, other railroad mainline crossings, and industry track crossings) can become problematic with greater train volumes. Also, existing locations where traffic signals are already interconnected to railroad warning devices should be reviewed and needed modifications identified (increased warning time, modification to traffic signal equipment, pavement marking, or signs). To accurately define potential impacts, the analysis must consider the peak hour effects of increased train traffic at these locations, as well as the possible modification of customer shipping schedules by the Applicant (i.e. will the service schedule to businesses or industrial parks that are currently served in the early morning hours be modified).

Safety/Hazardous Materials Transportation Safety - The DEIS indicates that the Proposed Action would cause an increase in the likelihood of release of hazardous materials along the EJ&EW rail line and potential increase of derailments of cars carrying hazardous materials at Kirk and East Joliet yards. The DEIS indicates that the likelihood of a release would remain remote.

The ICC believes that the Applicants should be required to provide training for railroad employees on the proper handling and movement of rail cars carrying hazardous materials to minimize the potential for derailments and/or release of hazardous materials.

Safety/Pedestrian-Bicycle Safety - The DEIS indicates that the Proposed Action would potentially increase the risk at pedestrian-rail grade crossings on the EJ&EW rail line and decrease the risk at similar crossings on the CN rail line.

The ICC concurs with the STB that the Applicants need to participate in Diagnostic Reviews with local communities and state agencies to address safety improvements at pedestrian-rail grade crossings located along the EJ&EW rail line, and participate in the cost of any improvements determined to be necessary.

Table 2.16 Summary of Environmental Impacts - Double Track - The ICC believes Table 2.16 should be revised to address the impacts from the proposed second track. The ICC believes that, at a minimum, it should be recognized that the number of tracks are factors within the Crash Prediction and Quiet Zone equations.

Chapter 3 - Affected Environment

Section 3.2.5 Pedestrian/Bicycle Crossing Safety - This section of the DEIS addresses the crossing of the EJ&EW and CN rail lines by pedestrians, bicyclists, and non-motorized travelers. The ICC believes this section needs to be clarified. The ICC recommends that the following be added, as note or text revision, to account for current ICC guidelines:

"Illinois State Law provides for pedestrian grade separations outside the right-of-way of a roadway, but does not address pedestrian-rail grade crossings located outside the right-of-way of a roadway. Therefore, the ICC views existing and proposed pedestrian-rail grade crossings not located within the right-of-way of a roadway to be private crossings. In Illinois, private crossings are not under the jurisdiction of the ICC."

Table 3.2-13. Pedestrian Crossing Inventory

The ICC believes that the name of Table 3.2-13, "Pedestrian Crossing Inventory", is misleading and needs to be re-labeled. The Table lists all crossings (Highway-Rail Grade Crossings and Grade Separations) that have pedestrian access.

Table 3.2-13 lists crossing AAR/DOT #260698Y as a grade separation. The ICC's database shows this location to be a grade crossing, equipped with Cantilevered Automatic Flashing Lights Signals and Gates.

Table 3.2-13 lists crossing AAR/DOT #260695D as a grade separation. The ICC's database shows this location to be a grade crossing, equipped with Automatic Flashing Lights Signals and Gates. Both crossings are correctly listed in Appendix C1.

Table 3.2-13 lists crossings AAR/DOT #s 283186W, 283188K, 283191T, and 283193G as being located on the "Lancing" Route. The ICC believes that the correct name is the "*Lansing*" Route.

Chapter 4 - Environmental Consequences

4.2.1.1 Train Accidents - See the ICC comments provided for Chapter 2 - Safety/Rail Freight Safety.

4.2.2 Vehicle Safety - See the ICC comments provided for Chapter 2- Safety/Vehicle Safety.

4.2.5 Hazardous Materials Transportation Safety - See the ICC comments provided for Chapter 2 - Safety/Hazardous Materials Transportation Safety.

4.2.6 Pedestrian-Bicycle Safety - See the ICC comments provided for Chapter 2 - Pedestrian-Bicycle Safety.

Chapter 6 - Mitigation; and Appendix R - Applicant's Voluntary Mitigation Measures

Section 6.5 Monitoring and Enforcement - The STB proposes that the Applicants be required to submit quarterly reports to the SEA on the progress of, implementation of, and compliance with the mitigation measures for a period covering the first three (3) years of operational changes, or any period the STB imposes.

The ICC believes that the three-year period that the STB proposes for monitoring and enforcement of the mitigation imposed is too short. For example, if the STB requires that highway-rail or pedestrian-rail grade separations be built, it is unlikely that any actual construction will occur within three years from approval of the Proposed Action. The ICC believes that a more practical period for monitoring and enforcement of the mitigation is a minimum of five years, with ten years being the preferred time frame.

In addition, the ICC believes that the Applicants should be directed to conduct an analysis of predicted train/vehicle collisions for a minimum of five years, with ten years being the preferred time frame, following approval of the Proposed Action. Results of such an analysis should be submitted to the STB, the Illinois Commerce Commission, and the State of Indiana.

Appendix C - Rail Safety Analysis

The DEIS includes a summary of the SEA's analysis of public safety related voluntary mitigation measures proposed by the Applicants.

The ICC is aware that warning device upgrades have recently been installed at some public highway-rail grade crossings of the EJ&EW's track, but those improvements do not appear to

have been acknowledged in the DEIS. The ICC believes that those recent safety improvements need to be identified by the SEA and taken into account as part of the EIS. In addition, the following discrepancies in crossing information have been found by ICC Staff:

Crossing	Notes
260472M	Public highway-rail grade crossing; DEIS shows as open, but ICC shows as closed (4/9/2008)
260798D	Existing public highway-rail grade crossing not included in DEIS, but is an open side track grade crossing
261038R	Existing public highway-rail grade crossing not included in DEIS (Dresden spur)
261037J	Existing public highway-rail grade crossing not included in DEIS (Dresden spur)
261039X	Existing public highway-rail grade crossing not included in DEIS (GE spur)
260593K	Existing private highway-rail grade crossing; DEIS shows as open, but ICC shows as closed (11/29/2007)
260594S	Existing private highway-rail grade crossing; DEIS shows as open, but ICC shows as closed (11/29/2007)
260694W	Existing private highway-rail grade crossing; not included in DEIS
260820N	Existing private highway-rail grade crossing; not included in DEIS

[NOTE: None of the public grade crossings are located on the Applicants' or the EJ&EW's mainline tracks and the remaining locations are private grade crossings. The net result with respect to DEIS analysis is null, but ICC Staff believes the most accurate information should be included in the EIS.]

Appendix R - Applicant's Voluntary Mitigation Measures

VM 1 - The DEIS indicates that the Applicants shall consult with appropriate agencies to determine the final design and other details of the grade crossing protections or rehabilitations on EJ&EW's rail line. Implementation of all grade crossing protections shall be subject to the review and approval of the Federal Railroad Administration ("FRA") and the appropriate state Departments of Transportation.

The ICC believes that the Applicants should be required to submit all proposed crossing safety improvement plans to the ICC. Pursuant to Illinois law, all modifications to existing grade crossings and grade separations in Illinois must be approved by the Illinois Commerce Commission.

VM 2 - The DEIS indicates that where necessary for implementation of a Quiet Zone, and in consultation with the affected community, FRA, and the appropriate state Department of Transportation, the Applicants shall construct or install roadway median barriers to reduce the opportunity for vehicles to maneuver around a lowered gate.

The ICC believes that the Applicants should also be required to consult with the Illinois Commerce Commission for any Quiet Zones in Illinois. Pursuant to Illinois law, all modifications to existing grade crossings and grade separations in Illinois must be approved by the Illinois Commerce Commission. In addition, ICC staff has worked with communities all over the state in the establishment of Quiet Zones.

VM 3 - The DEIS indicates that the Applicants shall consult with affected communities to improve visibility at highway-rail grade crossings by clearing vegetation or installing lighting to illuminate passing or stopped trains.

The ICC believes that the Applicants should be required to maintain all public highway-rail grade crossings in Illinois to meet or exceed the minimum requirements of 92 Ill. Adm. Code 1535.

VM 4 - The DEIS indicates that where grade crossing rehabilitation is agreed to, the Applicants shall assure that rehabilitated roadway approaches and rail line crossings meet or exceed the standards of the State Department of Transportation's rules, guidelines, or statutes, and the American Railway Engineering and Maintenance of Way Association ("AREMA") standards, with a goal of eliminating rough or humped crossings to the extent reasonably practicable.

The ICC believes that where grade crossing rehabilitation is required, the Applicants should be required to assure that rehabilitated roadway approaches and highway-rail grade crossing surfaces in Illinois meet or exceed the requirements of the Commission's rules contained in 92 Ill. Adm. Code 1535.

VM 6 - The DEIS indicates that the Applicants shall work with school and park districts to provide fencing where schools or parks are adjacent to EJ&EW's right of way.

The ICC believes that the Applicants should be required to install and maintain fencing where schools or parks are adjacent to EJ&EW's right of way.

VM 17 - The DEIS indicates that the Applicants have identified two public highway-rail grade crossings located in Joliet (Woodruff Road and Washington Street) where traffic delays would likely require mitigation to reduce impacts below SEA's established criteria of significance. Applicants shall work in consultation with the City of Joliet to develop and implement appropriate mitigation, most likely the construction of railroad facilities to permit increased train speeds and reduced crossing delays.

The ICC believes that the Applicants should be required to work with the City of Joliet and the Illinois Commerce Commission to develop and implement appropriate mitigation, most likely the construction of railroad facilities, to permit increased train speeds and reduced crossing delays.

VM 18 - The DEIS indicates that although Applicants have not identified any other grade crossings that would require mitigation under SEA's established standards, Applicants shall, upon request, work with municipalities and counties in support of securing funding, in conjunction with appropriate state agencies, for grade separations where they may be appropriate under criteria established by relevant state Department of Transportation. Applicants shall contribute their statutorily required amount of funding to the cost of the grade separation.

The ICC believes that the Applicants should be required to work with municipalities and counties in support of securing funding, in conjunction with appropriate state agencies, for grade separations where they may be appropriate under criteria established by relevant state Departments of Transportation, and the Illinois Commerce Commission for grade crossings and grade separations of local roads and streets located in Illinois. All modifications to existing public highway-rail grade crossings, and public highway-rail grade separations and/or the construction of new public highway-rail grade crossings and public highway-rail grade separations, involving local roads and streets in Illinois must be approved by the ICC.

Further, as long as federal funds are not included as part of a funding package for grade separation projects involving local roads and streets in Illinois, the ICC believes that the Applicants shall be required to contribute an amount to be determined by the Illinois Commerce Commission following an administrative hearing.

VM 23 - The DEIS indicates that the Applicants shall make Operation Lifesaver programs available to communities, schools, and other organizations located along the affected segments.

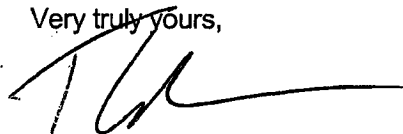
The ICC believes that the Applicants should be required to work with Illinois Operation Lifesaver and the Illinois Commerce Commission to make Operation Lifesaver programs available to communities, schools, and other organizations located along the affected segments.

VM 34 - The DEIS indicates that prior to initiation of Transaction-related construction activities, Applicants shall name a Community Liaison to: consult with affected communities, businesses, and agencies; seek to develop cooperative solutions to local concerns regarding construction activities; be available for public meetings; and conduct periodic public outreach regarding Transaction-related construction activities. The Community Liaison shall be available to consult with businesses and agencies until all Transaction-related construction activities are complete. Applicants shall provide the name and phone number of the Community Liaison to mayors and other appropriate local officials in each community where Transaction-related construction activities will occur.

The ICC believes that the Applicants should be required to consult with the Illinois Commerce Commission prior to the initiation of Transaction-related construction activities. Pursuant to Illinois law, all modifications to existing grade crossings and grade separations in Illinois must be approved by the Illinois Commerce Commission.

Thank you again for the opportunity to provide comments on the DEIS for the proposed CN acquisition of the EJ&EW. I encourage you to consider the comments provided as the EIS process moves forward. If you have any questions, please contact Michael Stead, Rail Safety Program Administrator, at (217) 557-1285 or mstead@icc.illinois.gov.

Very truly yours,



Tim Anderson
Executive Director

cc: Vicki Rutson, STB
Service List
MES