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February 7, 2008

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

Re: Environmental Filing, STB Finance Docket No. 35087 (CN/EJ&EW)

Dear Ms. Johnson-Ball,

Thank you for this opportunity to comment on the scope of the Environmental Impact Statement (EIS) for the proposed Canadian National Railway Company's acquisition of the EJ&E-West Company. These comments reflect the position of the Chicago Metropolitan Agency for Planning (CMAP) and the Metropolitan Planning Organization (MPO) Policy Committee as authorized at their January meetings. Formed in 2005, CMAP integrates planning for land use and transportation in the seven counties of northeastern Illinois which have an estimated population of 8.5 million people and includes 283 municipalities. The region is expected to grow by 2 million residents and 1.2 million jobs by 2030. We work closely with local governments, transportation providers (both public and private), environmental agencies, business leaders and advocacy groups, among other interests. For more information, please see our website (www.cmap.illinois.gov).

Regarding CN's acquisition of the EJ&E and related operational changes, CMAP's review must carefully balance anticipated transportation benefits along with impacts at the local, regional and national levels. Our agency is officially charged with safeguarding and enhancing the transportation system, including important interactions with the region's freight and passenger rail systems. We are concerned with the viability of our freight and passenger networks as a key part of the economy and overall transportation system that serves northeastern Illinois. CMAP intends to play an active role during the EIS process by analyzing the impacts and benefits from a regional perspective and by supporting our local partners' analysis and review of the impacts of this transaction on their communities.

The scope of analysis for the STB's environmental review of the proposal appears to be quite thorough. We would like, however, to make some overall comments and some specific ones related to the proposed scope are included in the attachment.

Time horizon of study

We understand that STB's interpretation of "reasonably foreseeable future" is based on the dynamic nature of rail activity and market-based decision making by the private rail interests. For purposes

of estimating levels of train traffic and carload activity, CN has described the "reasonably foreseeable future" as 3 to 5 years beyond the date of STB approval. This is not a reasonable time horizon for thorough analysis to evaluate how to mitigate impacts. We would like to see CN make rail activity estimates for at least 10 years after STB approval using 2030 projections. In this way, the EIS process could provide a projection of the impacts' magnitude adequate to address our concerns. To help you make these projections, CMAP will supply our population, land use, and transportation projections as detailed in the region's 2030 Regional Transportation Plan.

Mitigation commitments

Mitigation discussions and decisions need to consider the immediate post-implementation stage as CN suggests, but it should also accommodate mitigation beyond that 3- to 5-year "reasonably foreseeable future." This should instead be based on at least the same 10-year range that we propose for the EIS time horizon. This stepped mitigation could be tied to threshold levels of rail traffic and carload activity, rather than to a specified date. Firm commitments from CN and a process to ensure the fulfillment of the commitments must be incorporated in the STB's ruling.

STB oversight

Longer STB oversight will be necessary than the typical 3 to 5 years if mitigation for some impacts are built into particular thresholds of rail activity. STB oversight needs to be maintained either until the final rail activity levels are met and the agreed mitigation is in place or over an extended time horizon (in the event that those levels are never met). The STB's ruling needs to include some mechanism to ensure that the applicant does not artificially hold rail activity levels under the threshold just until STB oversight ends, and then increase traffic when the commitments are no longer in play. These should be binding commitments that are monitored carefully by the STB.

Thresholds of traffic analysis

The stated threshold of 2,500 vehicles per day for average daily traffic (ADTs) of roadway crossings should be changed to "2030 projected ADTs," not merely current traffic levels. The EJ&E is located in areas experiencing substantial increases of population, employment and travel activity. With the anticipated growth in our region, we need to accommodate the significant increases in rail activity on the current EJ&E line.

Process concerns (data availability and timeframes for public review)

We are encouraged to hear that the STB intends to make the data that you are requesting from CN for the EIS available to interested parties. This will be a crucial factor as CMAP and its partners consider alternative mitigation strategies and the magnitude of the impacts. Also, we are willing to provide the STB and your consultants with the region's data for expected population, employment, land use patterns and travel demand for the year 2030 and some shorter time frames as well.

Air quality and natural resource considerations

The EIS scope should identify that precursors to ozone (volatile organic compounds (VOCs) and nitrous oxides (NOx)) will also be studied, rather than just actual pollutants as is common practice in

air-quality planning. Additionally, “hotspot” analysis” should be undertaken at rail yards and other places of concentrated rail activity. Regarding the stated threshold of 100 tons of pollutant by county, we feel that it is inappropriate to split up the project area (and the non-attainment area) by county for purposes of assessing the thresholds of pollutant study. The region as a whole is in non-attainment of air quality standards and needs to be analyzed at that level. We do, however, find value in the idea of reporting the results both by county and in the aggregate.

While 100 tons/years is a suitable analysis standard for most pollutants or precursors, for particulate matter (PM_{2.5}) it is unreasonably high. The PM_{2.5} estimate for the entire Chicago metropolitan area is 1635 tons per year in 2010. Therefore increases of less than 100 tons are a significant percentage of the region’s particulate matter emissions and should be subject to EIS analysis.

Biological Resource analysis should consider global, state, and local endangered species and designated critical habitats, not just those identified at the federal level. Additionally, water resource analysis should consider both federally and locally designated wetlands. It should also include water supply considerations, not just water quality, given the potential for contamination of the shallow aquifer system in the instance of a hazardous material spill that is not contained quickly and thoroughly. The EJ&E traverses residential and commercial areas that rely extensively on shallow wells for potable water.

Safety

We believe detailed analysis is required regarding potentially significant safety issues stemming from the increased level of rail activity. This analysis should include the potential for increased risk of grade-crossing collisions, whether vehicular, bicycle, or pedestrian; more blockages of roadway crossings that serve as essential links in emergency response by police, fire, and medical personnel; and an increased risk of derailment and hazardous material spills. Please see the attachment for our detailed comments on safety aspects of the EIS scope.

Noise and Vibration

We have concerns about expected increases in noise and vibration along the EJ&E line. It appears that your EIS scope will address those issues, but we would like to be assured that the CN will be required to take a central role in the planning and development of quiet zones where warranted, and in the construction of improvements to establish quiet zones where improvements are needed to qualify.

Impacts on current, expanded and new passenger rail service

CN’s proposal must be examined carefully in terms of impacts on the existing and planned passenger rail network. It has the potential to reduce or eliminate current freight conflicts that impact current and planned Metra passenger service on the North Central line and other Metra service leading into the Chicago loop, but it also has the potential to introduce additional conflicts at points where commuter rail service crosses the EJ&E line.

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Two commuter projects identified in the region's adopted 2030 Regional Transportation Plan may be impacted by this proposal. One is Metra's planned STAR line, 36 miles of which utilizes the EJ&E corridor from Hoffman Estates to Joliet. The other is Metra's planned SouthEast Service of passenger rail between Chicago's downtown and the south suburbs. The proposed Southeast Service route will intersect with the EJ&E line in Chicago Heights. The EIS needs to analyze and describe potentially positive or negative impacts that the proposed acquisition might have on the construction and operation of these proposed new services.

Impacts on current, expanded and re-routed freight service

The EIS should include a discussion of how CN's proposal will impact other freight rail and trucking activity in the region. It will be important to include analysis of the planned changes' impacts on metropolitan Chicago's freight rail network, on the current and future industrial/logistics businesses served by this network and on the CREATE project.

Attached is a marked-up draft scope of analysis with our suggestions for wording of these changes and additional comments. Because the additional changes are self-explanatory, they are not described in this transmittal letter. We appreciate this opportunity to comment on the proposed scope of the EIS and look forward to working with your office and the applicant throughout this process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Randall S. Blankenhorn". The signature is fluid and cursive, with the first name "Randall" and last name "Blankenhorn" clearly distinguishable.

Randall S. Blankenhorn
Executive Director

Attachment

CMAP Attachment

Draft Scope of the EIS

Proposed Action and Definition of Alternatives

Applicants' proposed acquisition of the EJ&E would result in shifting of rail traffic from rail lines in Chicago to rail lines on the EJ&E. Rail traffic on CNR lines inside the EJ&E arc would generally decrease. These decreases in rail traffic would be offset by substantial increases in the number of trains operated on the EJ&EW line outside Chicago. The increase in train traffic on the EJ&E would vary from approximately 15 to 27 additional trains per day. Applicants state that the proposed transaction would not impair CNR's ability to handle commuter trains, passenger trains, or trackage/haulage trains currently operating on its lines. Finally, on the integrated CNR/EJ&EW system, four train pairs would be added to EJ&E terminals: three inbound and three outbound switch trains at Kirk Yard, and one inbound and one outbound switch train at East Joliet Yard. Applicants' projections for the changes in rail operations as a result of the acquisition are set forth in the Application, available on the Board's website.

The proposed transaction also includes construction of seven rail connections, siding extensions, and installation of second track (double-tracking).

Reasonable or feasible alternatives that will be evaluated in the EIS are (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction in whole (No-Action alternative); or (3) approval of the proposed transaction with conditions, including environmental mitigation conditions.²

Alternative configurations of proposed connections [shall](#) be considered. Proposed modifications to the proposed transaction as requested by other parties in their inconsistent or responsive applications will also be addressed in the EIS.

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. Existing rail operations are the baseline from which the potential environmental impacts of the proposed transaction will be evaluated. SEA will evaluate only the potential environmental impacts of operational and physical changes that are directly related to

² The Board has broad authority to impose conditions in railroad control transactions under 49 U.S.C. 11324 (c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, and the condition imposed must be reasonable. *See United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

the proposed transaction. SEA will not consider environmental impacts relating to existing rail operations and existing railroad facilities.³

The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (e.g., an increase in average trains per day) for those rail line segments that meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7.
2. Proposed changes in activity at rail yards to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7.
3. Proposed physical construction of improved rail connections, siding extensions, and installation of second rail track (double-tracking).

Environmental Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, socioeconomic effects related to physical changes in the environment, environmental justice, and cultural and historic resources, as described below.

1. Safety

Utilizing existing and future (2030) traffic and transportation network data contained in the Chicago Metropolitan Agency for Planning (CMAP) 2030 Regional Transportation Plan (2030 RTP), and other transportation and transit agency short and long term regional plans, the EIS will:

- A. Consider at-grade rail crossing accident probability and safety factors. This will generally include grade crossings with existing or forecasted (2030) average daily traffic levels of 2,500 or more trips.
 - (1) Accident probability analysis will address the potential for rail and vehicle accidents;
 - (2) Identify the sufficiency of warning devices at all crossings under current and future loadings;

³ In proceedings similar to this proposed acquisition, the Board's practice consistently has been to mitigate only those environmental impacts that result directly from the transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy preexisting conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the merger (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

- (3) [Address the potential for increased rail and bicycle and rail and pedestrian accidents, with focused analysis conducted at crossings located near schools, libraries, parks, and other uses that attract bicycle or pedestrian activity;](#)
 - (4) [Consider applicants' relevant safety data on derailments and accidents.](#)
- B. Consider increased probability of train accidents and derailments due to increased traffic on a system-wide basis.
- C. Address potential effects of increased freight traffic on [existing and planned](#) commuter and intercity passenger service operations.
- D. [Address](#) the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:
 - (1) Changes in the types of hazardous materials and quantities transported or re-routed;
 - (2) Nature of the hazardous materials being transported;
 - (3) Applicants' safety practices and protocols;
 - (4) Applicants' relevant safety data on derailments, accidents and hazardous materials spills;
 - (5) Contingency plans to address accidental spills;
 - (6) Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements; and
 - (7) Location and types of hazardous substances at hazardous waste sites or hazardous materials spills on the right-of-way of any proposed connection or rail line abandonment site.
- E. Address local truck traffic increases attributable to increased intermodal activities.
- F. Address safety issues associated with the integration of differing rail operating systems and procedures.
- G. [Address potential effects of increased freight traffic on emergency response times throughout the region.](#)

2. **Transportation Systems**

[Utilizing existing and future \(2030\) traffic and transportation network data contained in the CMAP 2030 RTP, and other transportation and transit agency short and long term regional plans,](#) the EIS will:

- A. Describe system-wide and localized effects of the proposed operational

changes, construction of improved connections, siding extensions, and installation of second track, and evaluate potential impacts on [existing and planned](#) commuter rail service and intercity passenger (Amtrak) service.

- B. Evaluate [existing and planned](#) commuter rail line segments [and junctions](#) that would experience increased freight traffic as a result of the proposed transaction for the capability of the rail line segments to accommodate the reasonably foreseeable addition of commuter trains.
- C. [Evaluate](#) potential effects on proposed passenger rail service where such future rail operation inception or expansion is [contained in officially adopted plans](#).
- D. [Evaluate rail and highway congestion resulting from](#) potential diversions of freight traffic from trucks to rail and from rail to trucks.
- E. Address vehicular delays at rail crossings, intermodal facilities [and on the surrounding existing and future roadway network](#) due to increases in rail-related operations as a result of the proposed transaction. Estimates of typical delays at grade crossings will be made for crossings that have [existing or forecasted \(2030\)](#) vehicle traffic levels of 2,500 ADT or more and that exceed train traffic increases of three trains per day for non-attainment areas or eight trains per day for attainment areas.
- F. Discuss potential effects of increased train traffic on railroad bridges that cross navigation channels to the extent that such bridges allow only one mode of transportation to pass at a time.
- G. [Propose mitigative measures to minimize or eliminate potential adverse impacts to the transportation system](#).

3. Land Use and Socioeconomics

[Utilizing existing and future \(2030\) land use and transportation network data contained in local government and regional comprehensive plans, the CMAP 2030 RTP, and other transportation and transit agency short and long term regional plans, the EIS will:](#)

- A. Describe whether the proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) are consistent with existing [and future](#) land use plans.
- B. Describe environmental impacts associated with the proposed [changes in freight activity](#), construction of improved rail connections, siding extensions, and installation of second track (double-tracking) as to acres of prime farmland potentially removed from production.

- C. Discuss consistency of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) with applicable zoning requirements.
- D. Address socioeconomic issues related to changes in the physical environment [and changes to train traffic](#) as a result of the proposed transaction.
- E. Propose mitigative measures to minimize or eliminate potential project adverse impacts to social and economic resources, as appropriate.

4. Energy

The EIS will:

- A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities to the extent that such information is available.
- B. Evaluate potential changes in fuel use arising from the transaction.

5. Air Quality

The EIS will:

- A. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), for air quality nonattainment areas as designated under the Clean Air Act. Thresholds are as follows since the Chicago Metropolitan area is a nonattainment area⁴:
 - (1) A 50 percent increase in rail traffic (measured in gross-ton miles annually) or an increase of three trains a day on any segment of rail line affected by the proposal; or
 - (2) An increase in rail yard activity of at least 20 percent or more in carload activity (rail car switching and block swapping).
 - (3) Increase in truck traffic greater than 10 percent of ADT or 50 trucks per day.

⁴ Nonattainment areas are areas that do not comply with one or more ambient air quality standards. Ozone non-attainment areas are further classified as Marginal, Moderate, Serious, Severe, or Extreme Areas. These classifications are based on the level, in parts per million (ppm), of ozone measured for each area. Moderate areas are defined as .092 to .107 ppm, Serious Areas are defined as containing 0.107 ppm to 0.120 ppm, and Severe Areas are defined as containing 0.120 to 0.187 ppm. The Chicago area is currently classified as moderate non-attainment for ozone and non-attainment for PM 2.5.

- B. Discuss the net increase in emissions from increased railroad operations associated with the proposed transaction. Net emissions changes will be calculated for [individual counties](#) [and the Chicago non-attainment area](#) with projected transaction-related emissions increases of 100 tons per year or more of any pollutant [and the precursors of ozone](#).
- C. Discuss the following information regarding the anticipated transportation of ozone depleting materials (such as nitrogen oxide and freon):
 - (1) Materials and quantity;
 - (2) Applicants' safety practices;
 - (3) Applicants' safety record (to the extent available) on derailments, accidents, and spills;
 - (4) Contingency plans to address accidental spills; and
 - (5) Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.
- D. Discuss potential air emissions increases from vehicle delays at rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above in Section 5(A) for attainment and maintenance areas, and in Section 5(B) for non-attainment areas, and which have an [existing or future](#) average daily vehicle traffic level above 2,500. Such increases will be factored into the net emissions estimates for the affected area.
- E. Examine local impacts from the transaction caused by increases or decreases in diesel particulate emissions.
- F. [Examine potential air emissions increases or decreases from diversion of freight from trucks to rail and rail to trucks, as identified in sections 1.E and 2.D.](#)

6. Noise and Vibration

The EIS will:

- A. Describe potential noise and vibration impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in Section 5A of the Air Quality discussion.
- B. Identify whether the proposed transaction-related increases in rail traffic will cause an increase to a noise level of 65 decibels L_{dn} or greater. If so, an estimate of the number of sensitive receptors (e.g., schools, residences, [parks and hospitals](#)) within such areas will be made.
- C. Identify transaction-related activities that have the potential to result in an increase in noise level of 3 decibels L_{dn} or more which occur in areas exposed to

less than 65 dBA L_{dn}.

D. Assess potential impacts on existing and proposed Quiet Zones.

E. Assess potential vibration effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors (e.g., schools, residences, parks and hospitals) within or immediately adjacent to the railroad right of way.

7. Biological Resources

The EIS will:

- A. Discuss the potential environmental impacts of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on federal, state and local endangered or threatened species or designated critical habitats.
- B. Discuss the effects of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on federal, state and local wildlife sanctuaries or refuges, and national or state parks or forests.
- C. Discuss the effects of air quality, noise and vibration changes due to increased freight rail traffic, as identified in sections 5 and 6, on federal, state and local endangered or threatened species, designated critical habitats, wildlife sanctuaries or refuges, and national or state parks or forests.

8. Water Resources

The EIS will:

- A. Discuss whether potential impacts from proposed construction of improved rail connections, siding extensions, installation of second track (double-tracking), and increased train traffic may be inconsistent with applicable federal, state or local water quality standards.
- B. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 U.S.C. 1344) for any proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking), and whether any such projects have the potential to encroach upon any federal state or locally designated wetlands or 100-year floodplains.

9. Environmental Justice

The EIS will:

- A. Report on the demographics in the immediate vicinity of any area where major activity such as construction of improved rail connections, siding extensions, and

installation of second track (double-tracking) is proposed.

- B. Report on the demographics in the vicinity of rail lines with projected rail traffic increases above eight trains per day.
- C. Evaluate whether such activities potentially have a disproportionately high and adverse health effect or environmental impact on any minority or low-income group.

10. Cultural and Historic Resources

The EIS will:

- A. Address potential impacts from proposed construction of improved rail connections, siding extensions, installation of second track (double-tracking), [and increased train traffic](#) on cultural and historic resources that are on, or immediately adjacent to, a railroad right-of-way.

11. Secondary and Cumulative Effects

The EIS will:

- A. Address secondary and cumulative effects of environmental impacts that have regional or system-wide ramifications. This analysis will be done for environmental impacts that warrant such analysis given the context and scope of the proposed transaction. The environmental effects to be analyzed include air quality, [water quality](#) and energy.
- B. Evaluate secondary and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction, where information is provided to the Board that describes (1) those other projects or activities, (2) their interrelationship with the proposed transaction, (3) the type and severity of the potential environmental impacts; and SEA determines that there is the likelihood of significant environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis within the schedule for the preparation of the EIS.
- C. Discuss the potential environmental impacts of construction or facility modification activities within railroad-owned property affected by the proposed merger, and additional environmental impacts related to the proposed transaction but not subject to Board approval, in order to identify secondary and cumulative impacts.