

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN NATIONAL RAILWAY	)	
COMPANY AND GRAND TRUNK	)	FINANCE DOCKET
CORPORATION – CONTROL – EJ&E	)	NO. 35087
WEST COMPANY	)	

COMMENTS OF RICHARD J. MISIOROWSKI
REGARDING DRAFT ENVIRONMENTAL
IMPACT STATEMENT ISSUED JULY 25, 2008

Richard J. Misiorowski (“Commenter”) respectfully submits these Comments on the Draft Environmental Impact Statement (“DEIS”) issued in the above captioned proceeding by the Surface Transportation Board (“STB”) on July 25, 2008.¹ Commenter is 73 years old. Commenter resides at 549 Aberdeen Road, Frankfort, Illinois 60423. In addition, Commenter is a Board Member of the Prestwick Homeowners Association with responsibilities for governmental issues. The Prestwick Homeowners Association is an organization representing over 300 residents in the Prestwick Subdivision of Frankfort, Illinois. Commenter is a retired Chemical Engineer who worked in the oil industry for 38 years.

The EJ&E West Company (“EJ&E”) railroad tracks cross through the city where Commenter resides. These railroad tracks are 400 feet from Commenter’s residence. Commenter is a natural person who will be adversely impacted by the proposal of a corporate

¹ See *Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company*, STB Finance Docket No. 35087, Draft Environmental Impact Statement, served July 25, 2008. (“DEIS dated July 25, 2008”)

person, the Canadian National Railway Company and the Grand Trunk Corporation (collectively referred to as “CN”), filed with the STB on October 30, 2007.²

Commenter entered his recorded appearance on January 15, 2008, in Matteson, Illinois when a Court Reporter formalized his statements. Commenter is on the STB’s service list for documents, and, as such, received his personal copy of the DEIS. As stated on page 2 of the folder containing the DEIS discs, “SEA appreciates the efforts of all interested parties who have participated in this environmental review to date. We look forward to receiving your comments”. Accordingly, Commenter is accepting that invitation.

Commenter’s quality of life will be negatively impacted due to the increase in the number of trains from 6.4 to 28.3³ (a 342% increase) that will move on the single track rail line that is just 400 feet south of his residence. The increase in the number of trains and the length of trains will cause almost 13 hours per day in crossing delays at the intersection of Harlem Avenue⁴ and the EJ&E rail line, generating a queue line of cars of approximately 726 feet,⁵ or almost twice the distance between Commenter’s residence on Aberdeen Road and the railroad track. Harlem Avenue is the only road that intersects with Aberdeen Road to allow Commenter to drive into and out of his home. This increase in train traffic will make it extremely difficult for Commenter to drive in and out of his residential street onto Harlem Avenue to access all necessities required to maintain his life. This is because his subdivision is not a grid pattern

² See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Railroad Control Application (October 30, 2007). (“October 30, 2007 Application”)

³ See DEIS dated July 25, 2008 at Table 4.3-4, page 4.3-14.

⁴ See DEIS dated July 25, 2008 at Table 4.3-4, page 4.3-14. This table shows there will be a Total Daily Traffic Delay of 748.8 minutes at Harlem Avenue. The over 13 hour figure was derived by dividing 748.8 minutes by 60 minutes, the number of minutes in an hour, or 12.48 hours.

⁵ See DEIS dated July 25, 2008 at Table 4.3-4, page 4.3-14.

designed to accommodate local access trips⁶ - Aberdeen Road is a dead-end street landlocked by a golf course.⁷

The additional train traffic will also increase the noise level at Commenter's home,⁸ as well as increase the possibility of train accidents by 28%⁹. The increase in accidents could be caused by train derailments of any type of train, including trains that carry the increased amounts of hazardous materials¹⁰ that will be transported on the EJ&E line if the CN proposal is approved. The EJ&E rail line 400 feet south of Commenter's home is a single track, just like the single track rail line where the Friday, September 13, 2008 accident in Los Angeles, California occurred. That accident killed 25 people and injured more than 130.¹¹ That accident was caused by the head-on collision of two trains running in opposite directions on a single track.¹²

The DEIS disclosed that CN did not include safety compliance plans in the October 27, 2007 Application relating to new safety regulations "applicable to the safe and secure transportation of hazardous materials" [in the United States, to include inspection] "of placarded hazardous materials for signs of tampering or suspicious items, including improvised explosive devices".¹³ However, the DEIS failed to state that the new regulations will also require railroads to "identify practicable alternative routes over which the carrier has authority to operate and

⁶ See DEIS dated July 25, 2008 at Table 4.3-4, page 4.3-8.

⁷ See DEIS dated July 25, 2008 at Appendix L, Figure L-1, and Sheet 98 of 139.

⁸ See DEIS dated July 25, 2008 at Table 4.10-2, page 4.10-3 and Chapter 3, Figure 3.1-1, page 3.1-1.

Commenter's home is included in the area designated as Segment No. 7 by the DEIS.

⁹ See DEIS dated July 25, 2008 at Executive Summary, page ES-12.

¹⁰ See DEIS dated July 25, 2008 at Executive Summary, page ES-13.

¹¹ See article entitled "Train Crash Investigators Confirm Engineer Was Text Messaging", published by the Wall Street Journal, Thursday, September 18, 2008 at page A10.

¹² See article entitled "Crash Highlights Risk on the Rails", published by the Wall Street Journal, Monday, September 15, 2008 at page A4.

¹³ See DEIS dated July 25, 2008 at page 6-17.

perform a safety and security analysis of the alternative routes for comparison to the currently used route, including the risk of a catastrophic release from a shipment traveling each route”.¹⁴ CN was aware of these regulations at the time it filed its October 30, 2007 Application with the STB, and ignored the requirement. CN discussed these regulations in its Form 6-K filed with the Securities and Exchange Commission on October 26, 2007, stating it expected the new regulations to be issued late in 2007.¹⁵ CN also disclosed in its Form 6-K filing of July 25, 2008 when it discussed these new regulation that it is supposed to “identify a commercially practicable alternative route for each used route; and select for use the practical route posing the least safety and security risk”.¹⁶

Commenter is concerned that CN plans to use the EJ&E line as the primary route through Chicago for hazardous materials, in contrast to its claim in its October 30, 2007 Application that the purpose of their request is to “promote the public interest in a more efficient and reliable rail transportation system”.¹⁷ Commenter believes CN should be required to disclose whether it wants the EJ&E rail line for the primary route for transport of the hazardous materials through Chicago before the final EIS is prepared in order to allow for review and comments on these plans.

CN has a documented poor safety record in Canada that includes train derailments and hazardous material spills, as well as employees who are afraid to report safety problems. This

¹⁴ See 73 Fed.Reg. 74 (April 15, 2008)

¹⁵ See Form 6-K Canadian National Railway Co., filed with the Securities and Exchange Commission, Washington, D.C. on October 26, 2007 at pages 46-47 of Management’s Discussion and Analysis. (“CN October 26, 2007 SEC Filing”)

¹⁶ See Form 6-K Canadian National Railway Co., filed with the Securities and Exchange Commission, Washington, D.C. on July 25, 2008 at page 45 of Management’s Discussion and Analysis. (“CN July 25, 2008 SEC Filing”)

¹⁷ See October 30, 2007 Application at page 23.

record has been documented by the House of Commons in Canada¹⁸ and CN's Canadian Regulator, Transport Canada.¹⁹ The House of Commons report stated that there is a "culture of fear" at CN among its employees, and the focus of CN management on such discipline "is counter to an effective safety management system".²⁰ Commenter believes that CN should not be allowed to export its poor safety record to the communities along the EJ&E line, especially since CN intends to transport more hazardous materials along this rail line.

Commenter also believes the DEIS must be revised to eliminate the illusionary environmental benefits that the DEIS uses to 'offset' the environmental detriments to the communities along the EJ&E rail line. CN's entire proposal rests on its assertion that the proposal merely shifts existing train traffic from one set of rails to another, and that CN will not be replacing these trains in the near future.²¹ The DEIS accepts this assertion. The logic in the DEIS analysis is flawed due to incomplete information. The DEIS failed to perform Due Diligence into several public documents showing that CN not only intends to bring new train traffic to Chicago in the form of intermodal container cars, but actually has already moved these container cars from Price Rupert to Chicago²², via a north/south route, and intends to increase the number of these trains.²³

¹⁸ See "Report of the Standing Committee on Transport, Infrastructure and Communities on Rail Safety in Canada", issued by Mervin Tweed, MP, Chair on May 2008, 39th Parliament, 2nd Session. ("May 2008 Canada Safety Report"), at page Available on the Internet at http://cmte.parl.gc.ca/Content/HOC/committee/392/tran/reports/rp3521696/392_TRAN_Rpt03/392_TRAN_Rpt03-e.pdf

¹⁹ See "Stronger Ties: A Shared Commitment to Railway Safety", Review of the Railway Safety Act, November 2007, issued by Transport Canada at pages 139-140. ("Transport Canada November 2007") This report is available at: http://www.tc.gc.ca/tcss/RSA_Review-Examen_LSF..

²⁰ See May 2008 Canada Safety Report, at page 16.

²¹ See DEIS dated July 25, 2008, Figure ES-2, at page ES-10. The entire DEIS analysis is erroneous because the analysis nets all detrimental effects on the EJ&E communities against the assumed beneficial effects of moving these trains from the current rails..

²² See http://www.rupertport.com/pdf/community_update/portnewsdecember2007.pdf.

²³ See <http://www.rupertport.com/pdf/54North/54%20north%20newsletter%20june%202008>.

Commenter specifically requests that the DEIS be revised to recognize that there will not be a reduction in environmental pollution due to reduced rail traffic on existing CN lines since there will not be a decline of rail traffic on the current rails being used by CN in the Chicago region.

I. BACKGROUND

The STB issued an order in this proceeding on November 26, 2007²⁴ (“November 26, 2007 Decision 2”) ordering the preparation of an Environment Impact Statement (“EIS”)²⁵ instead of the more limited Environment Assessment.²⁶ The STB explained the difference between an EIS and an EA in this Decision 2 at pp. 13-14 as follows:

“The thresholds differ depending on whether a rail line segment is in an area designated as in “attainment” or “nonattainment” with the National Ambient Air Quality Standards established under the Clean Air Act. Because the EJ&E lines that currently move through Chicago, and the lines of the proposed EJ&EW, are located in nonattainment areas, environment documentation typically is required where the proposed action would result in: (1) an increase of at least 3 trains per day; (2) an increase in rail traffic of at least 50 percent (measured in annual gross ton miles), or (3) an increase in carload activity at rail yards of at least 20 percent. See 49 CFR 1105.7(e)(ii)” (cite included in November 26, 2007 STB Decision 2)

The STB determined that a Draft EIS would be issued that would allow the public to comment and the Final EIS would then be issued that will “respond to the public comments, present the results of any further environmental analysis, and incorporate final environmental mitigation recommendations.”²⁷ The EIS was ordered to be prepared instead of the more limited EA “in view of the large projected traffic increases on certain line segments, and the potential impacts of the proposed transaction on a number of communities that would likely result from

²⁴ See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Decision No. 2, (November 26, 2007) (“November 26, 2007 Decision 2”)

²⁵ See 49 CFR 1105.4(f), 1105.10(a).

²⁶ See 49 CFR 1105.4(d), 1105.10(b).

²⁷ See November 26, 2007 Decision 2 at page 15.

the increased activity levels on rail lines segments and at rail facilities.”²⁸ This is because an EIS is prepared for “major federal actions significantly affecting the quality of the human environment.”²⁹ (emphasis added). The STB also pointed out the EIS process would insure that the STB “takes a hard look at environmental consequences”.³⁰ (emphasis added).

A. The STB proposed a Procedural Schedule that would allow a “hard look” at the Environmental Consequences of the Proposal

The STB adopted a procedural schedule³¹ in its November 26, 2007 Decision and stated its “proposed decision dates of April 25, 2008 with an effective date of May 25, 2008 would be extended as needed to complete the full environmental review process, including preparation of the EIS and public comment.”³² (emphasis added).

B. It Took CN Almost Six Months From the Date the STB Issued the Proposed Procedural Schedule to Advise the STB of a “Material Date” Between CN and the Seller of the EJ&E line that Was Not Even Disclosed in its Filings with the SEC

CN did not object to the proposed procedural schedule until May 13, 2008 – just 13 days shy of 6 months after the STB adopted the proposed schedule.³³ CN claimed the EIS process “should not be permitted to jeopardize”³⁴ the entire deal between itself and the Seller of the EJ&E rail lines because “the fallback deadline of December 31, 2008 . . . was the longest period to which [the seller] would agree”.³⁵ The October 30, 2007 Application included the entire

²⁸ See November 26, 2007 Decision 2 at p. 15.

²⁹ See November 26, 2007 Decision 2 at p. 15.

³⁰ See November 26, 2007 Decision 2 at p. 15.

³¹ See November 26, 2007 Decision 2 at pg. 11.

³² See November 26, 2007 Decision 2 at p. 15.

³³ See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Applicant’s Request for Establishment of Time Limits for NEPA Review and Final Decision, (May 13, 2008) (“ May 13, 2008 Request of CN”).

³⁴ See May 13, 2008 Request of CN at page 6.

³⁵ See May 13, 2008 Request of CN at page 2.

purchase/sale agreement between CN and the Seller as an attachment³⁶ but did not specifically point to the date in the body of the October 30, 2007 Application as being material to the entire transaction. Unfortunately, CN had also failed to inform the STB of this potential problem when CN filed its own proposed procedural schedule in a companion filing to its October 30, 2007 Application.³⁷ As a matter of fact, in that companion filing, CN indicated its proposed Date of Service for a final decision of April 3, 2008 could be later “if no environmental review is required and no oral argument is held” (emphasis added).³⁸

CN also forgot to tell its shareholders and the SEC of this “material date”. In CN’s October 26, 2007 Form 6-K filing with the Securities and Exchange Commission,³⁹ CN ignored the December 31, 2008 date it claims is material to the transaction when it stated the following about the purchase of the EJ&E line:

“In accordance with the terms of the agreement, the Company’s obligation to consummate the acquisition is subject to the Company having obtained from the U.S. Surface Transportation Board (STB) a final, unappealable decision that approves the acquisition or exempts it from regulation and does not impose on the parties conditions that would significantly and adversely affect the anticipated economic benefits of the acquisition to the Company.”⁴⁰

Both the October 30, 2007 Application that is the subject of this proceeding and the CN October 26, 2007 SEC Filing were attested to by the same individual, Mr. E. Hunter Harrison, President

³⁶ See Agreement (Exhibit 2) at page 259 of the October 30, 2007 Application.

³⁷ See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Petition Suggesting Procedural Schedule, (October 30, 2007). (“Applicants October 30, 2007 Schedule”).

³⁸ Id. at page 2.

³⁹ See Form 6-K Canadian National Railway Co., filed with the Securities and Exchange Commission, Washington, D.C. on October 26, 2007. (“CN October 26, 2007 SEC Filing”)

⁴⁰ Id. Footnote 3, at page 10, and Management’s Discussion and Analysis at page 38.

and Chief Executive Officer of CN.⁴¹ The October 26, 2007 SEC Filing was also attested to by Mr. Claude Mongeau, Executive Vice-President and Chief Financial Officer of CN.⁴²

Furthermore, both Mssrs. Harrison and Mongeau certified in the “Statements of CEO Regarding Facts and Circumstances Relating to Exchange Act Filings” and the “Statement of CFO Regarding Facts and Circumstances Relating to Exchange Act Filings”, respectfully, the following:

“(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statement were made, not misleading with respect to the period covered by this report;”⁴³

The agreement between CN and the Seller is dated September 27, 2007.⁴⁴ September 27, 2007 is part of the period “covered by this report”.

C. CN Complained the \$15 Million CN Is Paying To Provide An EIS Complying with NEPA’s Requirements is Too Much Money Even Though CN’s 2007 Revenue was \$7,897 Million

CN requested the issuance of the DEIS by July 15, 2008⁴⁵, with a Final Decision on the entire request, not just the environmental issues, on December 1, 2008. CN attempts to justify its position that the time limits it proposed are both reasonable and feasible with an *“it’s all about the money”* argument that appears to be trying to fish for some sympathy for CN.⁴⁶

Pursuant to STB regulations, CN is funding the environmental inquiry that will result in a Final

⁴¹ See page 37 of the October 30, 2007 Application entitled “Signatures, Oaths, and Certifications of Applicant’s Executive Officers and Item 4 of the CN October 26, 2007 SEC Filing entitled “Statement of CEO Regarding Facts and Circumstances Relating to Exchange Act Filings”.

⁴² See Item 5 of the CN October 26, 2007 Filing entitled “Statement of CFO Regarding Facts and Circumstances Relating to Exchange Act Filings”.

⁴³ See Items 4 and 5 of the CN October 26, 2007 SEC Filing.

⁴⁴ See page 252 of the October 30, 2007 Application.

⁴⁵ See See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Applicant’s Request for Establishment of Time Limits for NEPA Review and Final Decision, (May 13, 2008) (“May 13, 2008 Request of CN “)at page 5.

⁴⁶ See May 13, 2008 Request of CN, at pages 6-7.

Environmental Impact Statement and it anticipates this will cost approximately \$15 million. CN compares this \$15 million cost to the entire STB budget of approximately \$26.5 million in its attempt to “put the \$15 million in perspective”.⁴⁷ However, in Commenter’s opinion, the figure CN should be comparing the \$15 million to is CN’s 2007 revenue of \$7,897 million.⁴⁸ In other words, when put into the *proper perspective*, the \$15 million is like a drop of water in the ocean when compared to CN’s 2007 revenue of \$7,897 million.

D. CN Brushes Aside Opponents’ Concerns Regarding Crossing Delays, Noise and Safety Because CN Asserts Controversy Provides No Basis for a Delay On the Part of the STB

CN ties its cries for relief to the controversy its proposal has caused in the affected communities. CN did this when it attempted to brush aside the tremendous amount of opposition to its October 30, 2007 Application by stating “the fact that the Transaction has engendered some controversy provides no basis for a longer process ” claiming the opponents “wish to wrest from a reviewing agency the decision of whether or not a propose project may go forward . . . and that the (STB) should not allow the mere fact of vocal opposition that present no novel or intractable analyses to frustrate (a proposal by a corporate entity, CN)”.⁴⁹

CN further states “(n)otwithstanding what one might infer from the vocal opposition of the suburban communities along EJ&E, the environmental impacts of (what a corporate entity, CN wants to do) are neither novel nor unusually extensive . . . such as, crossing delay, noise and safety...”,⁵⁰ showing what appears to be contempt of the legitimate concerns regarding the harm

⁴⁷ See May 13, 2008 Request of CN, footnote 11 at page 7.

⁴⁸ See Form 6-K Canadian National Railway Co., filed with the Securities and Exchange Commission, Washington, D.C. on February 12, 2008 (“CN February 12, 2008 SEC Filing”)

⁴⁹ See May 13, 2008 Request of CN at pages 7-9.

⁵⁰ See May 13, 2008 Request of CN at page 17.

the proposed actions of CN will cause to natural persons/residents and businesses that reside and do business in the suburban communities along EJ&E.

CN's contempt is also directed at the EIS process when it states "the rules promulgated under NEPA . . . which *at best permit* some accommodation of controversy . . . but explicitly reject the notion that controversy trumps the need to conduct efficient, professional analyses, and meet explicit statutory deadline." (emphasis added) ⁵¹ CN apparently thinks the process is to merely identify impacts and determine appropriate remedies. ⁵² Unfortunately, CN appears to be more concerned with meeting its clumsily set "material" deadline of December 31, 2008 than allowing the EIS process to be completed to the satisfaction of the STB and the affected communities and citizens, as well as in a manner that complies with NEPA.

Commenter's position is that the controversy is about the appropriate remedies and the pocketbook that has the responsibility to pay for the appropriate remedies. Commenter believes that pocketbook is the one that "but for" its proposed action, the remedies would not be needed – CN's pocketbook.

E. The House of Commons Has Documented CN's Poor Safety Practices and The Reluctance of CN Employees to Report Safety Violations Due to A "Culture of Fear"

Opponents along the EJ&E line are not the only ones concerned about the safety of CN's operations. The Canadian House of Commons issued a report entitled "*Report of the Standing Committee on Transport, Infrastructure and Communities on Rail Safety in Canada*", in May 2008. ⁵³ The House of Commons decided to look into rail safety due to the "frequency of rail

⁵¹ See: May 13, 2008 Request of CN at page 22.

⁵² See: May 13, 2008 Request of CN at page 22.

⁵³ See "*Report of the Standing Committee on Transport, Infrastructure and Communities on Rail Safety in Canada*", issued by Mervin Tweed, MP, Chair on May 2008, 39th Parliament, 2nd Session. ("May 2008 Canada Safety Report"), at page Available on the Internet at:

accidents in Canada in the last few years that [led to a] concern that the rate of accidents is on the rise [and the] repercussion from these accidents have been severe in terms of human fatalities and environmental damage.”⁵⁴

The May 2008 Canada Safety Report stated the following regarding CN:

- CN was at the lowest level of compliance with regulations that were effective in 2001, leading to serious concerns regarding delays and the manner in which the regulations have been implemented by the railroads.⁵⁵
- CN’s employees are reluctant to report safety violations for fear of reprisals from management and this fear of discipline is a major deterrent to reporting safety violations.⁵⁶
- CN provided limited training for newly hired employees to operate and service trains.⁵⁷
- CN’s “strict adherence to a rules-based approach, focused largely on disciplinary actions when mistakes are made, has instilled a ‘culture of fear’ and discipline that is counter to an effective safety management system.”⁵⁸

The report also stated that “CN needs to acknowledge this method of discipline and take concrete steps to improve.”⁵⁹ However, CN has not disclosed these concerns in its SEC filings either, let

http://cmte.parl.gc.ca/Content/HOC/committee/392/tran/reports/rp3521696/392_TRAN_Rpt03/392_TRAN_Rpt03-e.pdf

⁵⁴ See May 2008 Canada Safety Report at page 1. Two of these accidents were described in a report that was the basis for the May 2008 Canada Safety Report occurred in August of 2005. They were both caused by derailment of two different CN trains and will be described in the Comments section of this pleading.

⁵⁵ See May 2008 Canada Safety Report at page 6.

⁵⁶ See May 2008 Canada Safety Report at page 8.

⁵⁷ See May 2008 Canada Safety Report at page 9. This report also discussed at this same page that “fatigue management was a significant problem in the railroad industry” and “the overriding issue should be to ensure that employees have the proper rest periods to ensure their safety and to provide for the safe operation of the railroad”.

⁵⁸ See May 2008 Canada Safety Report at page 16.

⁵⁹ See May 2008 Canada Safety Report at page 16.

alone told its shareholders and the SEC in these filings what concrete steps it intends to take to improve the morale of its employees and the safety practices of the company.⁶⁰

Finally, the Government of Canada also issued an emergency safety directive on June 13, 2008 ordering the recall of rail car wheels manufactured by CN, estimating that 10,000 to 12,000 of these wheels are still on freight cars even though they were supposed to have been removed in 2001,⁶¹ indicating “the safety and security of Canadians is our number one priority”. The NY Times reported on this recall, as follows: “Maryse Dureet, a Transport Canada spokeswoman, said the railroad’s statement that the wheels had largely been retired from service ‘does not correspond with the information provided by C.N. to Transport Canada’.”⁶²

F. The STB Adopts A New Procedural Schedule The Same Day It Issued the DEIS That Recognizes Controversy As An Important Consideration In Its Deliberations

In its Decision No. 13 served on July 25, 2008, the STB reminded all parties it had “indicated [in its Decision No. 2 served November 26, 2007] that no determination could be made regarding the time preparation of the EIS would take, but that, in the past, the EIS process has ranged from 18 months to several years”.⁶³ The STB stated there are eight factors that an agency must consider when setting a Procedural Schedule, one of which is the degree to which the action is controversial.⁶⁴ The STB determined “the ‘consequences of delay’ . . . do not warrant adoption of applicant’s proposed procedural schedule for this controversial case, which involves an unprecedented amount of public participation during the EIS process and a large

⁶⁰ See CN July 25, 2008 SEC Filing at page 45.

⁶¹ See “Government of Canada Issues Emergency Safety Directive Regarding Potentially Faulty Train Wheels”, News Release, Office of the Minister of Transportation, Infrastructure and Communities, issued June 13, 2008. www.tc.gc.ca.

⁶² See “Canada Orders the Recall of Some Rail Wheels”, by Ian Auaten, The New York Times, June 14, 2008.

⁶³ See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Decision No. 13 (July 25, 2008) (“July 25, 2008 Decision No. 13”).

⁶⁴ See July 25, 2008 Decision No. 13 at pages 3-4.

number of potential environmental issues that need time to be adequately assessed”.⁶⁵ The STB also declined to set a specific date for service of the Final Environmental Impact Statement because it would “not be appropriate to do so here since the Board cannot predict in advance the extent or types of comments that might be made on the Draft EIS”.⁶⁶

Comments on the DEIS are due September 30, 2008 and the STB has projected the issuance of its final EIS between December 1, 2008 and January 31, 2009. A specific date was not set for the final decision. In a separate concurring statement, Commissioner Buttrey pointed out that “it is hard for me to imagine how even the most far-reaching mitigation measures would be enough to offset or balance the environmental detriments that would flow from this proposal”.⁶⁷

G. CN Tried to “Railroad” the STB to Issue A Decision Before the Completion of the EIS Allowing CN to Start to Move Trains on the EJ&E Line

CN charged back with another lengthy document restating most of its prior arguments, along with a novel request: CN wanted the STB to issue an Interim order even before comments on the DEIS had been filed,⁶⁸ that would approve the sales transaction, subject to a condition that CN would preserve “the environmental *status quo* until completion of the Board’s ongoing environmental review”.⁶⁹ However, CN also stated it would take on new traffic that it classified as not being related to its proposal.⁷⁰

⁶⁵ See July 25, 2008 Decision No. 13 at page 6.

⁶⁶ See July 25, 2008 Decision No. 13 at page 6.

⁶⁷ See July 25, 2008 Decision No. 13 at page 9.

⁶⁸ See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Applicant’ Petition to Modify the Procedural Schedule to Provide for a Prompt Final Decision on the Merits Under 49 U.S.C.11324(d)(1) Subject to a Condition Preserving the Environmental Status Quo Pending Environmental Review, (August 14, 2008) (“CN August 14, 2008 Petition”)

⁶⁹ See CN August 14, 2008 Petition at page 2.

⁷⁰ See CN August 14, 2008 Petition at page 2, footnote 2.

CN threatened to “petition the U S Court of Appeals . . . for a writ of mandamus compelling the STB to issue a final decision in time to permit CN to close the sale by December 31, 2008”

⁷¹ if the STB does not issue the Interim order requested by CN.

H. The STB Refused to Be “Railroaded” by CN Or Trust CN To Maintain the Environmental *Status Quo*

The STB unequivocally denied CN’s request on September 8, 2008,⁷² a full seven days earlier than the September 15, 2008 date requested by CN, on two grounds: (i) “a procedure that gives CN control over EJ&EW before the Board rules on the environmental issues violates NEPA principles and regulations; and (ii) CN has failed to demonstrate that its proposal would be workable and would maintain the environmental *status quo*.”⁷³ CN’s “double speak” regarding this issue was pointed out by the STB by referencing CN’s own statements in CN’s “Comments on the Draft Scope of the Study filed February 15, 2008 [where CN stated] ‘the Board cannot authorize the Transaction on the merits until the EIS is complete’.”⁷⁴

The possibility that the entire application could be denied is also pointed out in this Decision, even though, per the STB, CN “appears to assume the Board either could not or would not deny the application in this case on environmental grounds.”⁷⁵ The STB in this Decision specifically refers to reply comments filed by the American Chemical Services opposing CN’s request where American Chemical Services “asserts not only that denial is possible, but that there is ‘much more than a possibility’ that this application would be denied due to adverse

⁷¹ See CN August 14, 2008 Petition at page 3.

⁷² See Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company, STB Finance Docket No. 35087, Decision No. 14, (September 8, 2008) (“September 8, 2008 Decision 14 ”)

⁷³ See September 8, 2008 Decision 14 at page 3.

⁷⁴ See September 8, 2008 Decision 14 at page 3 and footnote 6.

⁷⁵ See September 8, 2008 Decision 14 at page 2.

environmental impacts.”⁷⁶ The STB also declined to “trust” that CN would monitor itself appropriately to make sure it maintained what CN interprets as the environmental *status quo*.⁷⁷

CN followed through on its threat to petition the U. S. Court of Appeals. Two documents were filed by CN on September 18, 2008:

1. Petition for a Writ of Mandamus, and
2. Motion (1) For Expedited Consideration of Mandamus Petition and Entry of Abbreviated Briefing Schedule, and (2) Upon Consent, For Extension of Page Limits for Mandamus Petition.

II. COMMENTS

It is Commenter’s position that the proposed acquisition of the Elgin, Joliet & Eastern Railroad by Canadian National Railway and Grand Trunk Corporation should be denied by the STB. This proposal must be denied because it has the potential to bring environmental harm to the entire Chicago region. More specifically for Commenter, if the acquisition of the EJ&E by CN is approved, the quality of life of Commenter would be adversely affected.

However, if the STB approves the project, Commenter submits that CN should be required to pay any and all capital costs of mitigation for the entire Chicago region that are directly related to its request, as well as the mitigation specific to Commenter that has not been identified in the DEIS recommendations, such as a traffic light at the intersection of Harlem Avenue and Aberdeen Road and a noise barrier. It is also Commenter’s position that CN

⁷⁶ See September 8, 2008 Decision 14 at page 2.

⁷⁷ See September 8, 2008 Decision 14 at page 5.

should be required to make annual contributions to the cost of additional expenses in each affected community that would not be necessary “but for” CN’s proposal.

In addition, it makes no sense to Commenter that a large corporation like Canadian National could have made such an error regarding the material date of December 31, 2008. CN failed to inform all affected parties, as well as its shareholders and the SEC, of the materiality of this date when it made its October 30, 2007 filing and its SEC filings.

Commenter is concerned that CN may be in such a rush to obtain an order allowing it to purchase the EJ&E line for two reasons not disclosed by CN. First, the requirement in the new regulations at 49 CFR 172 and 174 regarding the transportation of hazardous materials mandating that CN analyze and “assess the safety and security of all available alternative routes over which they have authority to operate” and to “select the route posing the least overall safety and security risk”.⁷⁸ Commenter specifically requests that the STB not allow the proposed acquisition to occur until CN has disclosed its plans for compliance with these regulations.

The second reason is that container cars from Prince Rupert are lining up to use the Chicago rails.⁷⁹ **Commenter specifically requests that the DEIS be revised to recognize that there will not be a reduction in environmental pollution due to reduced rail traffic on existing CN lines since there will not be a decline of rail traffic on the current rails being used by CN in the Chicago region.** CN’s rail traffic is currently routed through rail lines further east of the EJ&E that run through other suburbs of the City of Chicago, as well as the City of Chicago. CN states they are trying to unload this traffic by acquiring and using the EJ&E line. Statements by the president of CN in September 2007 indicated that CN planned to either sell

⁷⁸ See 73 Fed. Reg. 74 (April 15, 2008)

⁷⁹ See <http://www.rupertport.com/pdf/54North/54%20north%20newsletter%20june%202008>.

these existing lines to other rail carriers or retain them for use for intermodal traffic by CN.⁸⁰ This was one month before CN filed its application that is the subject of this proceeding.

A. Commenter Will be Landlocked in His Subdivision

The only road Commenter can use for ingress and egress from his home is Harlem Avenue. As detailed in the DEIS dated July 25, the October 27, 2007 Application of CN proposes to substantially increase the number of trains and length of trains crossing Harlem Avenue. The number of trains per day crossing Harlem Avenue will increase from the current 6.4 to 28.3⁸¹ if CN's proposed action is approved by the STB. This is a 342% increase. This increase in trains will significantly affect the quality of life of Commenter.

The new trains are estimated to be almost twice as long as the current trains, going from 3,795 feet to 6,684 feet.⁸² The combination of the number of trains and the length of these trains will increase the traffic delay at Harlem Avenue from 88.4 minutes (approximately 1 hour and 47 minutes) to 748.8 minutes (twelve hours and 48 minutes)⁸³, for an increase in time for Commenter to be able to leave his home to go anywhere each and every day the additional and longer trains are crossing Harlem Avenue.

The DEIS' vehicular traffic back up calculations are based on a current train speed of a current 35 mph and a 41 mph in the proposed case at Harlem Avenue⁸⁴ and based on a 24 hour day.⁸⁵ The calculations do not reflect the actual facts of numerous train speed reductions due to safety concerns by EJ&E of road bed viability especially when there has been a heavy rainfall.

⁸⁰ See Conference Call Transcript from Thomson StreetEvents, dated September 26, 2007 at pages 3 to 7. <http://www.streetevents.com>.

⁸¹ See DEIS dated July 25, 2008 at Table 4.3-4, page 4.3-14.

⁸² See DEIS dated July 25, 2008 at Table 4.3-5, page 4.3-17.

⁸³ See DEIS dated July 25, 2008 at Table 4.3-4, page 4.3-14.

⁸⁴ See DEIS dated July 25, 2008 at Table 4.3-5, page 4.3-17.

⁸⁵ See DEIS dated July 25, 2008 at Table 4.3-4, page 4.3-14.

Heavy rainfalls result in increased water flow through the creeks passing under the tracks and/or the track road bed stability. For example, after the heavy rains experienced on the week end of September 14, 2008, the trains on the EJ&E tracks were moving at about 5 mph and continued to run at this slow speed for over one week.

Commenter therefore requests that the final EIS take into consideration the actual number of days per year that the EJ&E has historically required a reduction in train speed in the Frankfort area due to such reasons as rain soaked roadbed, creek crossings, or rail deformation from warpage in extremely hot weather. Inclusion of these historical-factual factors would greatly increase the EIS calculated time of traffic backups on Harlem Avenue and would therefore show the actual impact on the inability of Commenter's to enter or exit onto Harlem Avenue .

Commenter also feels it is critical to consider the importance of weather related speed reductions on their own and not let them become diluted, and/or their importance diminished, by including these data in overall averages. Their disastrous impact should be considered on a standalone basis. For example, a proposed two-mile long CN train running at a safe reduced speed of 5 mph would take approximately 20 minutes to cross Harlem Avenue, resulting in a traffic queue of over one mile! Now multiply this by the over 28 trains per day in the proposed CN acquisition. This would result in strangle-hold traffic back-ups that would make it impossible for Commenter and other residents of his street to leave or enter, and would greatly impede emergency services (fire, police, and ambulance) to Commenter's community.

In addition, the rail line in the Eastern portion of Frankfort would remain a single track. Since trains can only go one way on a single track,⁸⁶ per the DEIS, "if a train longer than 5,100 is moved west towards Joliet from the Frankfort area, it would be necessary to keep this train

moving without stopping”.⁸⁷ Accordingly, unless a traffic light is installed at the corner of Commenter’s street (Aberdeen Road) and Harlem Avenue, Commenter will be unable to have ingress or egress from his home for several hours each day. The DEIS has recommended traffic signals to manage long lines of waiting cars at railroad crossings.⁸⁸ The cost of this mitigation measure is the responsibility of CN because this problem would not occur “but for” CN’s proposal.

B. The Additional Rail Traffic Will Inhibit Emergency Services to Commenter and His Neighbors

Commenter is concerned about the ability of Frankfort’s Emergency services, such as fire and ambulance, to access his home as well as the entire Prestwick Subdivision if CN is allowed to purchase the EJ&E line. Commenter is familiar with the Prestwick Subdivision in his capacity as a Board member of the Prestwick Homeowners Association. The Prestwick Subdivision straddles the EJ&E line: part of it is north of the EJ&E line and part of it is south of the EJ&E line.

Currently fire and ambulance services are provided to Commenter’s home, as well as the other Prestwick Subdivision homes north of the EJ&E tracks, by Frankfort’s Firehouse 2 which is located north of the EJ&E tracks. If Firehouse 2 is out on a call, then equipment is sent to Commenter’s home from Firehouse 1, the back up station. The primary route that is used by equipment sent from Frankfort’s Firehouse 1 to Prestwick home north of the tracks requires crossing the EJ&E tracks twice, (once at Sauk Trail and once at Harlem Avenue), even though this Firehouse is north of the tracks. The longer trains under CN’s proposal could block both of these crossings simultaneously, and thus block the emergency responders.

⁸⁶ See DEIS dated July 25, 2008 at page 4.1-9.

⁸⁷ See DEIS dated July 25, 2008 at page 4.1-15.

Commenter is concerned about the ability of Emergency equipment to respond to calls from his neighbors directly south of the EJ&E tracks. Prestwick Subdivision homes that are south of the tracks do not have a fire station located on their side of the tracks. Currently fire and ambulance services are provided to these homes by Frankfort's Firehouse 1 and the route that is used by equipment sent from Frankfort's Firehouse 1 to those neighbor's homes require crossing the EJ&E tracks at Sauk Trail. If that track is blocked, then back up equipment is called from Firehouse 2, which is located north of the EJ&E tracks. In order to get to these neighbors the equipment from Firehouse 2 must cross the EJ&E tracks at Harlem Avenue. The longer trains and increased number of trains under CN's proposal could block both of these crossings simultaneously, and thus block the emergency responders.

Commenter requests that the final EIS require that communication equipment be provided to the Frankfort Fire District and Frankfort Police Department that would provide real-time data as to train traffic length, direction, speeds, etc. so that emergency responders would be able to direct emergency response in an appropriate manner.

C. The Additional Noise Level Will Adversely Affect's Commenter's Occupancy, Use and Enjoyment of His Residence

The increase in trains will also increase the actual existing noise level at Commenter's home above the 65 dBA threshold described in the DEIS as "being adverse to human health and welfare".⁸⁹ Table 4.10-2 of the DEIS shows that there is an estimated increase in dBA of 6 for increases in trains volume from 6.4 to 28.3⁹⁰, as is occurring 400 feet from Commenter's residence. This will bring the dBA level to 71 dBA, which is a level that the DEIS determines is "noise-sensitive" and thus an area "where the intrusion of noise has the potential to adversely

⁸⁸ See DEIS dated July 25, 2008, "Roadway Modifications", at page ES-42.

⁸⁹ See DEIS dated July 25, 2008 at page 4.10-2.

affect the occupancy, use, or enjoyment of the environment [including] residences, schools, parks, and places of business requiring low levels of noise”.⁹¹

The DEIS listed the measuring point for Commenter’s area as being at 420 Aberdeen Road,⁹² and also stated that “measurements along the EJ&E line were all performed in adjacent residential backyards”.⁹³ There is no residence at 420 Aberdeen Road. Appendix L of the DEIS contains maps showing the route of the EJ&E line with lines indicating the measurements taken by the DEIS personnel for the “existing” dBA reading and the projected dBA reading. Commenter’s residence is on Sheet 98 of 139.

Commenter requests that new dBA readings be taken from his residence and adjoining properties to obtain the correct existing dBA levels. This will show that Commenter’s subdivision requires the installation of a noise berm and/or noise wall if the STB approves the proposal of CN. CN has volunteered to install this type of noise barrier⁹⁴ and the DEIS has recommended installation of this type of noise barrier.⁹⁵ The cost of this mitigation measure is the responsibility of CN because this problem would not occur “but for” CN’s proposal.

D. Commenter is Concerned that the DEIS Estimated 28% Increase in Train Accidents Will Be Larger Due to the Poor Safety Record of CN

The DEIS states that the proposed additional train traffic will also increase the possibility of train accidents by 28%⁹⁶. The increase in accidents could be caused by train derailments of any type of train, including trains that carry the increased amounts of hazardous materials⁹⁷ that

⁹⁰ See DEIS dated July 25, 2008 at page 4.10-3.

⁹¹ See DEIS dated July 25, 2008 at page 4.10-3.

⁹² See DEIS dated July 25, 2008 at Table 3.10-2 “24-Hour Monitoring Locations and Existing Noise Levels”, at page 3.10-4.

⁹³ See DEIS dated July 25, 2008 at page 3.10-5.

⁹⁴ See DEIS dated July 25, 2008, “Noise and Vibration”, VM 47 at page ES-31.

⁹⁵ See DEIS dated July 25, 2008, “Noise and Vibration” at page ES-47.

⁹⁶ See DEIS dated July 25, 2008 at Executive Summary, page ES-12.

⁹⁷ See DEIS dated July 25, 2008 at Executive Summary, page ES-13.

will be transported on the EJ&E line if the CN proposal is approved. An accident could be within 400 feet of Commenter's home, especially since the rail line 400 feet from Commenter's home is a single track, just like the Friday, September 13, 2008 accident in California caused by the head-on collision of two trains running in opposite directions on a single track,⁹⁸ killing 25 people and injuring more than 130.⁹⁹ Apparently, the crash could have been prevented if positive train control technology was required to be installed on all trains operating in the United States, instead of just those on the East Coast.¹⁰⁰ As noted in the DEIS, "Chicago has been the busiest rail gateway in the United States for more than 100 years and is expected to remain so for the foreseeable future".¹⁰¹ Commenter believes such technology must be installed on all trains in the Chicago region and should be included as a mitigation requirement in the final EIS..

CN has a documented poor safety record in Canada that includes train derailments and hazardous material spills, as well as employees who are afraid to report safety problems, that has been documented by the House of Commons in Canada¹⁰² and CN's Canadian Regulator, Transport Canada¹⁰³. The House of Commons report stated that there is a "culture of fear" at CN among its employees, and the focus of CN management on such discipline "is counter to an effective safety management system".¹⁰⁴ Commenter believes that CN should not be allowed to

⁹⁸ See article entitled "Crash Highlights Risk on the Rails", published by the Wall Street Journal, Monday, September 15, 2008 at page A4.

⁹⁹ See article entitled "Train Crash Investigators Confirm Engineer Was Text Messaging", published by the Wall Street Journal, Thursday, September 18, 2008 at page A10.

¹⁰⁰ See article entitled "Train-Safety Technology Could Take Years to Deploy Nationwide", published by the Wall Street Journal, Tuesday September 16, 2008.

¹⁰¹ See DEIS dated July 25, 2008 at page ES-3 of the Executive Summary.

¹⁰² See "Report of the Standing Committee on Transport, Infrastructure and Communities on Rail Safety in Canada", issued by Mervin Tweed, MP, Chair on May 2008, 39th Parliament, 2nd Session. ("May 2008 Canada Safety Report"), at page Available on the Internet at http://cmte.parl.gc.ca/Content/HOC/committee/392/tran/reports/rp3521696/392_TRAN_Rpt03/392_TRAN_Rpt03-e.pdf

¹⁰³ See "Stronger Ties: A Shared Commitment to Railway Safety", Review of the Railway Safety Act, November 2007, issued by Transport Canada at pages 139-140. ("Transport Canada November 2007") This report is available at: http://www.tc.gc.ca/tcss/RSA_Review-Examen_LSF..

¹⁰⁴ See May 2008 Canada Safety Report, at page 16.

export its poor safety record to the communities along the EJ&E line, especially since CN intends to transport more hazardous materials along this rail line.

CN must not be given the opportunity to export its poor safety practices and accidents to the affected communities along the EJ&E line because, if given this opportunity, the increase in accidents will most likely be more than 28% due to their poor safety record. For instance, one accident that CN admits was caused by “the derailment of a CN train on August 3, 2005” is disclosed by CN in its Form 40-F report to the Securities and Exchange Commission for the fiscal year ended December 31, 2007.¹⁰⁵

CN is being sued for specific damages of \$500 million and \$50 million in punitive damages as the result of what CN describes as an “oil spill” caused by the derailment that occurred on August 3, 2005 at Wabamun Lake, Alberta.¹⁰⁶ These appear to be only costs specified in a lawsuit – not the costs of cleanup. CN is quick to reassure its shareholders that CN is only liable for “the self-insured retention of \$25 million” because CN’s insurance carriers covered substantially all expenses related to this derailment above the \$25 million.¹⁰⁷

This was more than an “oil spill”. Transport Canada issued a report in November 2007 that described the Wabamun Lake incident, as well as another:¹⁰⁸ Worthy of note is the fact that CN only disclosed three law suits in the CN Fiscal year 2007 SEC filing because they were the only ones “involving claims for damages in excess of 10% of its current assets”.¹⁰⁹ This makes

¹⁰⁵ See Form 40-F Canadian National Railway Co., Dated February 11, 2008, filed with the Securities and Exchange Commission, Washington, D.C. (“CN Fiscal year 2007 SEC Filing”)

¹⁰⁶ See CN Fiscal year 2007 SEC Filing at page 16. CN refers to this incident as the “Paul Band Litigation” and states the lawsuit was filed February 6, 2006.

¹⁰⁷ See CN February 12, 2009 SEC Filing at page 69. This filing includes the financial statements and Management Discussion for Fiscal 2007. These fiscal results are not included in the CN Fiscal year 2007 SEC Filing.

¹⁰⁸ See “Stronger Ties: A Shared Commitment to Railway Safety”, Review of the Railway Safety Act, November 2007, issued by Transport Canada at pages 139-140. (“Transport Canada November 2007”) http://www.tc.gc.ca/tcss/RSA_Review-Examen_LSF.

¹⁰⁹ See CN Fiscal year 2007 SEC Filing at page 15.

one wonder how many lawsuits there are against CN for environmental damages that do not make the 10% threshold. The Transport Canada discusses a couple of these accidents, including the Lake Wabamun Accident, as follows:

- Section 8.2.3 Lake Wabamun Accident: “On August 3, 2005, 43 cars derailed on a CN freight train. . . . Twenty-five of the cars were loaded with Bunker C (heavy fuel oil), and one contained pole-treating oil. As a result, approximately 700,000 liters of Bunker C and 88,000 litres of pole-treating oil were spilled, some of which found its way into the lake, and resulted in property and environmental damage. The cause of the accident was determined to be a broken rail.”¹¹⁰
- Section 3.2.2 Cheakamus River Accident: “On August 5, 2005, nine cars were derailed on a CN freight train proceeding north, adjacent to the Cheakamus River. Eight of the cars were empty and one was loaded with sodium hydroxide (also known as caustic soda). Approximately 40,000 litres of caustic soda spilled into the river, causing extensive environmental damage and killing thousands of fish. . . . The contributing factors that led to the unfortunate accident included training issues, the operation of longer trains in mountainous terrain, the marshalling of rail cars, and the impact of distributed locomotive power on braking.”¹¹¹

This same report also pointed out that “the accidents rates for both CN and CP increase, if only the U. S. portion of their operations is considered.”¹¹² (emphasis added)

¹¹⁰ See Transport Canada November 2007 at pg. 140.

¹¹¹ See Transport Canada November 2007 at page 139.

¹¹² See Transport Canada November 2007 at page 18.

E. CN Should Pay for 100% of Mitigation Costs Since the Costs Would Not Be Required “But For” CN

The expectation of CN that it would only have to fund \$40 million for mitigation appears to have been somewhat naïve in view of the fact that CN should have been aware of the impact of its proposal on the environment and the communities through which the EJ&E line travels. This \$40 million is only a pittance of the true required estimated capital costs of mitigation, and does not even recognize the additional burdens on all of the affected communities for ongoing expenses of, for example, emergency responder training. CN, however, believes it is appropriate to compare the \$40 million to the purchase price it agreed to of \$300 million when determining the adequacy of its offer.

First, how in the world does the cost of mitigation have any logical or reasonable connection to a capital expenditure? And second, 100% of mitigations costs should be paid by CN using the same logic that the STB rules shift 100% of the cost of the EIS to the applicants who are requesting the change. This is not a privately funded transaction as stated by CN at page 18 of the May 13, 2008 Request of CN when it cites to Mayor Daly that no public funds are required. Their definition of public funds appears to be “governmental funds” – but Commenter’s definition of public funds is “funds derived from the public” and Commenter is one of the public. The public provides these funds through taxes, fees and whatever other assessments governments come up with to transfer money from its citizens to the government’s pockets.

The “drop of water” \$40 million mitigation offer by CN does not meet the standard set by the STB in its footnote 14 to the November 26, 2007 Decision stating: “(t)he Board’s general practice has been to mitigate only impacts resulting directly from a proposed transaction, and not to require mitigation for existing conditions and existing railroad operations (citing to 49 CFR

1180.1(f)(1)”. All costs of mitigation and potential environmental damages caused by the proposal that is the subject of this proceeding are, and would be, a direct result of the action of CN.

F. CN Must Be Required to Disclose If It Really Wants Ownership Control of the EJ&E Line So It Has The Alternate Hazardous Material Route Required by the Regulations Effective June 2008

Commenter is concerned that CN plans to use the EJ&E line as the alternative route through Chicago required by the new regulations referenced by the DEIS at page 6-17. Commenter believes CN should be required to disclose whether it wants the EJ&E rail line for an alternative route for transport of the hazardous material through Chicago before the final EIS is prepared in order to allow for review and comments on these plans.

The DEIS disclosed that CN did not include safety compliance plans in the October 27, 2007 Application relating to new safety regulations “applicable to the safe and secure transportation of hazardous materials” [in the United States, to include inspection] “of placarded hazardous materials for signs of tampering or suspicious items, including improvised explosive devices”.¹¹³ However, the DEIS failed to state that the new regulations will also require railroads to “identify practicable alternative routes over which the carrier has authority to operate and perform a safety and security analysis of the alternative routes for comparison to the currently used route, including the risk of a catastrophic release from a shipment traveling each route”.¹¹⁴ The discussion regarding these new regulations discloses that a railroad could use an alternative route that it does not control through trackage rights obtained from the owner of the line, but this type of arrangement would not allow the party leasing the track the same type of

¹¹³ See DEIS dated July 25, 2008 at page 6-17.

¹¹⁴ See 73 Fed. Reg. 74 (April 15, 2008.)

control it would have it if owned the track.¹¹⁵ CN seeks to own the EJ&E line, instead of merely leasing its use from the current owner by the use of trackage rights.

CN was aware of these regulation at the time it filed its October 30, 2007 Application with the STB, and ignored the requirement. CN discussed these regulations in its Form 6-K filed with the Securities and Exchange Commission on October 26, 2007, stating it expected the new regulations to be issued late in 2007.¹¹⁶ CN also disclosed in its Form 6-K filing of July 25, 2008, when it discussed these new regulation that it is supposed to “identify a commercially practicable alternative route for each used route; and select for use the practical route posing the least safety and security risk”.¹¹⁷

G. CN Does Plan to Move More Trains To Chicago From Canada

Commenter also believes the DEIS must be revised to eliminate the illusionary environmental benefits that the DEIS uses to ‘offset’ the environmental detriments to the communities along the EJ&E rail line. CN’s entire proposal rests on its assertion that the proposal merely shifts existing train traffic from one set of rails to another, and that CN will not be replacing these trains in the near future.¹¹⁸ The DEIS accepts this assertion. The logic in the DEIS analysis is flawed due to incomplete information. The DEIS failed to perform Due Diligence into several public documents showing that CN not only just intends to bring new train traffic to Chicago in the form of intermodal container cars, but actually has already moved

¹¹⁵ See See 73 Fed. Reg. 74 (April 15, 2008).

¹¹⁶ See Form 6-K Canadian National Railway Co., filed with the Securities and Exchange Commission, Washington, D.C. on October 26, 2007 at pages 46-47 of Management’s Discussion and Analysis. (“CN October 26, 2007 SEC Filing”)

¹¹⁷ See Form 6-K Canadian National Railway Co., filed with the Securities and Exchange Commission, Washington, D.C. on July 25, 2008 at page 45 of Management’s Discussion and Analysis. (“CN July 25, 2008 SEC Filing”)

¹¹⁸ See DEIS dated July 25, 2008, Figure ES-2, at page ES-10. The entire DEIS analysis is erroneous because the analysis nets all detrimental effects on the EJ&E communities against the assumed beneficial effects of moving these trains from the current rails..

these container cars form the north to the south through Chicago ¹¹⁹ and intends to increase the number of these trains. ¹²⁰

Most telling was CN's President, E Hunter Harrison statements in a conference call on September 26, 2007 that this "should be good news for the other rails in that we will be taking our capacity off the [Chicago rails and] free up this capacity". Mr. Harrison went on to state that these "assets" will either be sold or will be continue to be used "to expand intermodal and/or some projects with CN Worldwide . . . but there is substantial value in the potential sale of assets". ¹²¹ In other words, the rails in Chicago will continue to be used – either by CN or by another rail road company. There will not be any offsetting environmental benefits.

Instead, the DEIS did its best to justify the illusion that previously existing train traffic will merely be shifted. The DEIS dismisses the truth that intermodal container train cars are in fact running south to Chicago from its northern neighbor Canada on CN owned rails. ¹²² Statements of CN in its SEC filings contradict that assumption, as CN specifically identifies Prince Rupert, Canada as a new route for Asian goods destined for Chicago and Memphis, with its first major customer being COSCO Container Lines Americas, Inc. (COSCO Container). ¹²³ COSCO Container is "the national flag carrier of the People's Republic of China". ¹²⁴

The Prince Rupert Port Authority issued a report dated "Winter 2007" stating the following:¹²⁵

¹¹⁹ See http://www.rupertport.com/pdf/community_update/portnewsdecember2007.pdf.

¹²⁰ See <http://www.rupertport.com/pdf/54North/54%20north%20newsletter%20june%202008>.

¹²¹ See Conference Call Transcript from Thomson StreetEvents, dated September 26, 2007 at pages 3 to 7. <http://www.streetevents.com>.

¹²² See DEIS dated July 25, 2008 at page 4.1-17 and page ES-10 of the Executive Summary.

¹²³ See Form 40-F for the fiscal year ended December 31, 2007, Canadian National Railway Company, filed with the Securities and Exchange Commission, Washington, D.C. on February 13, 2008, at pages 5-6 under the heading "Strategic Initiatives and Capital Spending". ("CN 40-K SEC filing for the Year 2007").

¹²⁴ See <http://www.cosco-usa.com/about/aboutCCLA.htm>.

¹²⁵ See http://www.rupertport.com/pdf/community_update/portnewsdecember2007.pdf.

“The first train from Prince Rupert to Chicago completed the opening of the new express trade corridor on November 25 [2007] in a record transit time of 92 hours and only 12 days after the containers left Asia.”

The Port of Prince Rupert Newsletter dated June 2008 also reported that COSCO Container has doubled its weekly calls to Prince Rupert.¹²⁶

The DEIS does recognize that the EJ&E lines will be at capacity if the CN proposal is approved¹²⁷ and then fails to recognize that additional trains coming to the Chicago region will then be required to utilize the very same train rails CN claims will see a reduction in train traffic. This failure on the part of the DEIS occurs even though the DEIS notes the proposal by CN would have generalized indirect socioeconomic effects “on the northeast Illinois and northwest Indiana region by enhancing the region’s competitive position in the worldwide marketplace”.¹²⁸ This appears to be double-speak on the part of the DEIS.

Accordingly, Commenter believes the DEIS must be revised to recognize that train traffic will not be reduced on any of the CN controlled track in the greater Chicago region, and thus detail the actual harm that will be caused to the human environment by the CN proposal. This harm will occur because there will not be a reduction in train traffic in the Chicago region. Rather, there will be an increase in train traffic and an increase in associated environmental impacts.

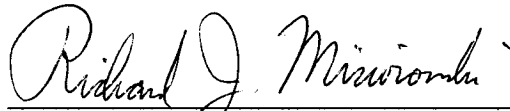
III. CONCLUSION

For the foregoing reasons, the Surface Transportation Board’s Draft Environmental Impact Statement for the proposed Canadian National acquisition of the EJ&E rail line must be

¹²⁶ See <http://www.rupertport.com/pdf/54North/54%20north%20newsletter%20june%202008>.

¹²⁷ See DEIS dated July 25, 2008 at page ES-10 of the Executive Summary.

revised to conclude that the acquisition is not in the public interest. Furthermore, Commenter incorporates and adopts the comments and concerns of Amada Ralson as if they were set forth in their entirety herein.

A handwritten signature in cursive script, reading "Richard J. Misorowski". The signature is written in black ink and is positioned above a horizontal line.

Richard J. Misorowski

Dated: September 23, 2008