

Village of Wayne

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September 29, 2008

Ms. Phillis Johnson-Ball
Section on Environmental Analysis (SEA)
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

RE: STB Finance Docket FD 35087
Comments on Draft Environmental Impact Statement

Dear Ms. Johnson-Ball:

INTRODUCTION:

I represent the Village of Wayne, Illinois, ("Wayne") and its Village President, Eileen Phipps in connection with the above-captioned matter. The Elgin, Joliet & Eastern Railway ("EJ&E") line runs north and south bisecting Wayne. The EJ&E crosses two roadways, Army Trail Road and Smith Road, which provide the only access for east- and west-bound traffic in the Village. Stearns Road, near, but outside Village boundaries, also provides east/west access through the Village. Army Trail and Smith Roads are located less than one mile apart, while Stearns and Army Trail Roads are less than two miles apart. In that the Canadian National Railway Company ("CN") has stated in its application to the STB that trains as long as 10,000 feet would traverse the EJ&E line, at least two of these three roadways would be blocked simultaneously. This blockage, along with a host of other aspects of CN's proposed acquisition, would have severe impacts on Wayne, not the least of which would be the effect on emergency services. The fact that all of these roads run through or abut the Pratts Wayne Woods Forest Preserve owned by the Forest Preserve District of DuPage County, makes it legally impossible for property to be acquired for grade separations at any of these grade crossings.

COMMENTS ON DEIS:

Wayne has reviewed the Draft EIS prepared by SEA as well as the comments thereon submitted by the DuPage Mayors and Managers Conference, ("DMMC") of which the Village is a member. Wayne adopts many of the DMMC comments as set forth herein, and hereby submits its own comments supplementary thereto, generally organized by environmental impact category:

Purpose and Need:

1. Notwithstanding the Board's charge as an economic regulatory agency having oversight of railroad rate and service issues and rail restructuring transactions, Wayne objects to the narrow scope of the DEIS and the lack of consideration for the "public good" and the benefits and impacts to the entire Chicagoland region when determining the Purpose and Need for the Proposed Action. Wayne believes this narrow focus on CN's stated purpose and need led to the premature and unfounded elimination of what may be viable alternatives to the Proposed Action from further examination by SEA. Wayne urges SEA to reconsider alternative actions, such as full implementation of Chicago Region Environmental and Transportation Efficiency (CREATE) Program, in whole or in combination with the Proposed Action, for evaluation based on technical merits rather than their ability to meet the narrow purpose and need of the CN.

Transportation Systems:

2. SEA should perform some level of validation to justify the *estimated* existing vehicular traffic delays presented in Section 3.3.1.2 by obtaining actual existing vehicle delay during the peak hour at crossings throughout the study area, including those at Army Trail, Smith and Stearns Roads. As noted, these roadways provide the only east-west access in or near Wayne.
3. Further documentation is needed to justify the traffic growth rate assumptions presented in Table 3.3-2, including publishing the historic traffic counts used to determine the rates, along with supporting graphs and/or formulas used to calculate the growth rates. Validation of the rates and resulting future traffic volumes, using volumes predicted in the region's traffic model, also should be performed and documented. It is unclear if growth rates were determined based on county-wide traffic count data, village/city-wide data, or only data for roadways that cross the EJ&E or CN tracks.
4. Discussion and/or a table describing how intersection level of service ("LOS") is determined, and what thresholds are used, for at-grade crossing LOS should be provided.
5. Intersection LOS in the vicinity of at-grade crossings should be evaluated. The actual street that crosses the tracks may have an acceptable LOS of D or better, however intersection LOS near, up or down stream, or on cross streets (parallel to the tracks) also may be affected by delays at crossings.

6. SEA should conduct additional analyses of peak hour roadway conditions, to determine if the mitigation option in Chapter 6.3.3.1 to impose "...operation curfews during hours of peak roadway vehicle traffic..." would in fact alleviate or reduce delays.
7. Queue length analysis should be performed not only for the roadway that crosses the railroad tracks, but also for side streets that are parallel to the railroad tracks. Often on roadways parallel to tracks, turn movements are restricted (directly with warning devices, or indirectly by queuing), causing queuing in turn lanes (or shared through/turn lanes). Such queuing often spills over into through lanes on the parallel roadway, lengthening the overall time for the roadway system near a crossing to return to "normal" conditions.
8. Traffic modeling or additional LOS analysis should be performed and documented on the traffic network in the area of at-grade crossings in order to support the vague statements regarding "mobility" in Appendix E. LOS on the entire network should be determined as, and consideration given to the impacts of, traffic diversion and changes in regional traffic patterns as a result of crossing delays.
9. SEA should conduct further examination of the effects of the proposed action on police response, taking into account the size of the police force. The broad conclusion in Chapter 4.3 that "The police responders are mobile units and can react to the increase in train traffic by changing their deployment strategy" is impossible for Wayne given the small number of police personnel. Typically, Wayne has two cars patrolling the Village at any one time making changes in deployment strategy practically impossible. While it is true other police agencies can be called to assist, reliance on such assistance was never intended for routine patrol and response.
10. The methodology as described in Section 4.3 used for determining emergency service providers potentially substantially affected under the proposed action is seriously flawed. According to HDR personnel at the Public Meeting held on August 28, 2008 at Bartlett High School, Fire and EMT agencies potentially substantially affected were identified by computing response times from the closest fire station as affected by the proposed acquisition and operation of the EJ&E as proposed by CN. This methodology completely disregards the geopolitical boundaries of the three fire protection districts which serve Wayne. Boundaries of the Bartlett, St. Charles, Countryside and West Chicago Fire Protection Districts are illustrated on Exhibit "A", attached hereto and

incorporated herein. As shown on Exhibit "A", the majority of Wayne is served by the St. Charles Fire Protection District ("SCFPD"). The EJ&E line runs through the easterly portion of the SCFPD. As noted in the Introduction hereto, the only two roads providing access to this easterly portion are Army Trail and Smith Roads, both of which would be blocked by one train having a length of only 5,000 feet. While Stearns Road could possibly be used as an alternate route, it too could be blocked by trains on the EJ&E. Moreover, the route from the nearest SCFPD station to this area has one Union Pacific Railroad grade crossing on Dunham Road and a CN grade crossing at Powis Road. The only route without any grade crossings would be via Illinois Route 64. That route would increase the distance by nearly two and one half miles (from 6.23 miles to 8.68 miles) or nearly 40%. While Route 64 is a multi-lane highway, it is also a heavily travelled highway. The increased distance could very easily mean deadly results for a heart attack, stroke or accident victims.

The West Chicago Fire Protection District ("WCFPD") could respond to the easterly portion of the SCFPD on a mutual aid basis, but, as previously stated the provision of regular service by the WCFPD is not the intent or purpose of mutual aid agreements. Despite the effect of the Proposed Action on the SCFPD and WCFPD, neither agency was included among the emergency service providers potentially substantially affected. HDR personnel conceded that the geo-political boundaries of fire protection districts were not considered; more alarmingly the HDR personnel admitted there were not even aware of such boundaries.

In addition, SEA should conduct further examination of delays to Fire and EMT services by conducting an inventory of roadway cross-sections near crossings that are critical to emergency response. Delays may be lengthened for emergency vehicles due to lack of an area for other vehicles to move into to clear the way for emergency vehicles. This is particularly true for the Army Trail and Smith Road grade crossings where no medians exist and road shoulders are nonexistent or insufficient to enable vehicles to be moved off the roadway. Particular attention should be paid to situations where large queues in both directions have occurred and the amount of time after "gates up" that all lanes in both directions may be blocked.

11. SEA should clarify the ability for the planned Metra STAR line to be accommodated within CN's Operating Plan, given that in Chapter 4.1.6 SEA concluded that "...the Applicants' Operating Plan the EJ&E rail line would be operated at or very near to capacity, and that there is little, if any, room for growth in the anticipated daily train volumes", but stated in Chapter 4.1.7 that "...the

Proposed Action would not adversely affect potential implementation of STAR Line Service on the EJ&E rail line". Additionally, as a condition of approval of the transaction, CN should be required to accommodate the planned STAR line service in its Operating Plan.

Safety:

12. SEA should evaluate and document CN's ability to respond to rail accidents, particularly those involving hazardous materials, in a safe and timely manner, based on historic evidence and plans presented in their application. This is of particular concern to Wayne. The only source of potable water to Wayne residents, businesses, schools and other institutions is private wells. Extending potable water service from adjacent municipalities would easily cost many tens of millions of dollars. Even if contamination from a hazardous materials spill would affect only a small number of properties, those properties would obviously be uninhabitable for my purpose. The consequent effect of such a contamination would have a very real affect on the value of property throughout Wayne. The effect on Wayne's ability to provide even essential services would be disastrous in that Wayne heavily relies on property taxes as a revenue source. HDR staff at the August 28, 2008 public meeting had no response to this concern.
13. SEA should evaluate and document the potential risk for passenger rail accidents where future passenger service is planned.
14. SEA is encouraged to not finalize any conclusions regarding rail safety until a final Safety Integration Plan is produced and fully evaluated.

While Wayne remains opposed to the acquisition of the EJ&E by the CN, based on these comments and concerns, Wayne makes the following recommendations regarding mitigation measures proposed by SEA and by CN that should be considered if the Board approves the transaction:

15. VM 11: This mitigation should be completed prior to shifting of any transaction related train traffic to the EJ&E line.
16. VM 13, VM 22, VM 23 and SEA 9 and 10: These training programs and workshops should be required to be offered by CN at convenient locations throughout the region at least twice in the first 3 years following Board approval of the transaction, and "upon request" thereafter, for as long as

CN is operating freight trains on the EJ&E at or above 50% of the levels proposed in their Operating Plan.

17. VM 21: "Significant" should be defined as a specific amount of time, and not left up to the discretion of an individual at the time of a blockage. In addition to notification of fully stopped trains, CN should be required to notify Emergency Services of trains that are traveling at reduced speeds that will result in a doubling of normal crossing delay conditions, particularly in the areas where Emergency Services are "substantially" affected, and where crossing delays are "significant".
18. VM 22: Provide for training for dispatching personnel to interpret the train location monitors.
19. VM 34: The Community Liaison position should remain active until at least 2 years after the proposed operating levels are reached.
20. SEA 15: CN should fund Operation Lifesaver for 3 years following the full implementation of the proposed Operating Plan (assumed to be 6 years from the date of Board approval).
21. SEA 22: Wayne recommends at least 12 hours notification before open burning, as well as submission of a plan to ensure the burning is controlled.
22. SEA 25: CN should establish a toll-free hotline (or have as an option on existing hotline) for receiving noise and vibration complaints and should regularly report on the complaints received to identify where future mitigation, whether by CN, local governments, or private entities, may be needed. The hotline and reporting should be similar to that which has been established for O'Hare International Airport.
23. SEA 71 and 72: The time period should be extended to "three years beyond the implementation of the full Operations Plan" (assumed to be 6 years from the date of Board approval).

Regarding the eight mitigation strategies in Chapter 6.3.3.1:

24. At the very least, Wayne recommends for the 15 locations in Table 4.3 - 8 (and Table ES - 1), grade separations should be pursued and construction funded by the CN at a level of not less than 70%.
25. CN should be required to fund detailed traffic studies to determine if some combination of roadway, warning device or train operations modifications would improve vehicle delay and safety conditions at these locations, reducing or eliminating the need for grade separation. CN should be responsible for not less than 85% of funding for the construction or implementation of these improvements.
26. Wayne supports the concept of train operation curfews during peak hours on adjacent roadways as a general condition of approval, not just as mitigation for impacts at the 15 crossings identified in Table 4.3 - 8 (and Table ES - 1) as well as at the Army Trail Road and Smith Road crossings, given the importance of those routes for east-west travel in Wayne and the essential need that they remain available for emergency services response.
27. Wayne supports the establishment of an Impact Mitigation Fund, for use at the discretion of the Chicagoland region (including areas in IL and IN), for improvements that mitigate rail impacts related to this transaction. Wayne recommends that CN be required to contribute not less than \$30 million (10% of transaction) initially to the fund and to continue contributions to the fund in the future based on a share of profits realized as a result of the transaction.

Regarding the seven mitigation strategies in Chapter 6.3.3.2:

28. All mitigation options from "Training and Drills" to "Operational Improvements" should be required for the 11 Service Providers identified in Table ES-2, as well as those recommended herein to be added thereto prior to the implementation of CN's Operating Plan.

Wayne encourages SEA to address these comments, and comments from other agencies and the public, and to issue a revised Draft EIS for additional public review, prior to issuing a Final EIS.

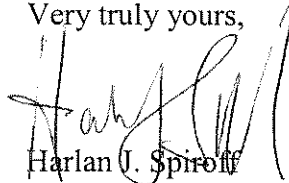
Ms. Phillis Johnson-Ball

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Finally, Wayne wishes to acknowledge the professionalism and even-handedness displayed by the SEA staff at the various Public meetings.

Very truly yours,



Harlan J. Spiroff
Village Attorney

HJS:sd

cc: President Phipps and Board of Trustees
Police Chief Daniel J. Callahan
Village Engineer Dan Lynch
St. Charles Fire Protection District
Bartlett & Fire Protection District
West Chicago Fire Protection District