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Before the
Surface Transportation Board
Washington, D.C.

)
Canadian National Railway Company)
and Grand Trunk Corporation)
- Control - EJ&E West Company)
_____)

Finance Docket No. 35087

Surface Transportation Board

ON-EJ&E EIS - FD-35087

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Comments of the
United States Department of Transportation
on the Draft Scope of Study

Introduction

The Surface Transportation Board ("STB" or "Board") has asked for comment on the draft scope of study for the Environmental Impact Statement ("EIS") to be prepared in this proceeding. Notice of Intent to Prepare an Environmental Impact Statement, served December 21, 2007 ("Notice"). The United States Department of Transportation ("DOT" or "Department") hereby submits its comments on the draft scope.

The transaction before the Board would result in the shift of significant amounts of traffic from rail lines that traverse the central urban core of Chicago to lines that run through suburban and exurban communities and other areas in the metropolitan region. The draft scope proposes to study the potential impacts of the proposed transaction in eleven different categories. Notice, Appendix A at 7-13. The Department expects to focus its comments in this environmental process on a subset of these, and thus we take no position on the draft scope except as noted below. Nonetheless, DOT reserves the right to express its view on any portion of the EIS ultimately prepared.

Comments

With respect to safety, the Department strongly supports the study of prospective impacts on at-grade rail crossings and on commuter and intercity passenger rail service. *Id.* at 7. DOT also encourages the study of potential effects on the operational (non-safety) aspects of existing and proposed commuter and intercity passenger rail service, which should include the likely effect of this transaction on Amtrak's continued access to Union Station. *Id.* at 8. The volume of rail traffic projected to shift likewise makes it important to study not only the resulting noise and vibration, but also the impacts on vehicular delays at rail crossings and intermodal facilities *Id.* at 8, 11. There is but one other matter DOT wishes to bring to the Board's attention.

After years of study, including preparation of an EIS, DOT's Federal Aviation Administration ("FAA") in 2005 issued a Record of Decision approving a runway extension project at Gary-Chicago International Airport ("GCIA"). *See* http://www.faa.gov/airports_airtraffic/airports/environmental/records_decision/media/rod_gary.pdf . The project would implement Public Law No. 109-115, 119 Stat. 2401 (2006), *codified at* 49 U.S.C. § 44706 note, which requires that all commercial airports like GCIA comply with FAA runway standards by the end of 2015. This project would require the relocation of a line of EJ&E track now at the perimeter of the airport, at federal expense. The FAA has issued a Letter of Intent committing federal funds of \$58.7 million for the entire project, of which \$22.6 million pertains to the rail relocation. FAA has already made grants of approximately \$15 million to enable GCIA to begin to acquire the necessary land for the project, the majority of which is for the rail relocation. Reportedly, EJ&E and the airport had made substantial progress in negotiations on the subject, but since the announcement

of the pending transaction that may no longer be the case. The Department encourages the parties to continue to strive to reach a mutually beneficial private agreement that meets the transportation needs of the Chicago metropolitan area, both aviation and rail.

Beyond the specific categories included in the Notice, and consistent with the STB's own oft-expressed policy, DOT also wishes to urge the pertinent rail carriers and other participants in this process to discuss the issues raised and to make good faith efforts to resolve their differences via private agreements. They best know their true interests and can be far more flexible than any regulatory process.¹

Finally, it is noteworthy that the major traffic shift embodied in the proposed transaction will yield significant environmental benefits as well as burdens, and that these will fall unevenly over the metropolitan area. The Department therefore recommends that the EIS process here follow the course adopted when rail consolidations in the past presented similar circumstances: an approach that is not just site- or crossing- or even community-specific, but that embraces broader local and regional areas. *See, e.g., Conrail*, 3 S.T.B. at 356.

It is simply not possible as a financial or operational matter to mitigate, for example, all vehicular safety and delay issues by a grade-separation at every crossing, or all noise issues by barring the use of train horns within earshot of homes or offices. Moreover, such a narrow perspective tends to emphasize more parochial concerns at the

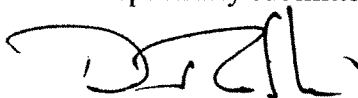
¹/ *See, e.g., CSX Corporation, Norfolk Southern Corporation – Control – Conrail, Inc.*, 3 S.T.B. 196, 357 (1998) (“*Conrail*”) (“We encourage the railroads and communities to negotiate private solutions to environmental issues. Generally, these agreements are more effective, and in some cases, more far-reaching, than environmental mitigation options we could impose unilaterally.”).

expense of others who are similarly situated with interests no less legitimate. By contrast, a more inclusive focus allows for a more realistic and efficient approach to mitigate adverse effects in cases, like this one, involving large traffic flows, numerous communities and even more numerous grade crossings, and finite resources.²

Conclusion

For the reasons given above, the Department supports the draft scope of study with respect to the categories of safety, transportation systems, and noise and vibration. We urge modification of the draft scope to encompass the effects of the consolidation on GCIA. DOT also encourages a broad, regional approach that both appreciates the transaction's benefits and appropriately addresses its adverse impacts.

Respectfully submitted,



D.J. GRIBBIN
General Counsel

February 15, 2008

²/ DOT's Federal Railroad Administration ("FRA") endorses such an approach when addressing railroad safety along a series or "corridor" of grade crossings. FRA gathers and assesses data on rail and vehicular traffic, sensitive noise receptors (*e.g.*, hospitals and schools), proximity to public safety service providers (*e.g.*, police, fire, and emergency medical units), etc. *not* with respect to each crossing or community in isolation, but on a broader geographic basis to evaluate the overall safety impact. In rail relocation projects, sensitive noise receptors (*e.g.*, hospitals and schools) should also be considered during the analysis. FRA has found that identifying the quantitatively and/or qualitatively more serious problems within a meaningful area, concentrating resources on resolving those, and encouraging flexibility, generally yields the greatest benefits overall. Involving an entity with broader responsibilities, such as a state or county transportation agency, can also prove helpful in keeping the focus on this more promising level.

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the Comments of the United States Department of Transportation on the Draft Scope of Study in Finance Docket No. 35087 to be served by first class mail, postage prepaid, upon all Parties of Record in this proceeding.


Paul Samuel Smith

February 15, 2008