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THOMAS F. MCFARLAND

January 28, 2008

By e-filing

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 1149  
Washington, DC 20024

Re: Finance Docket No. 35087, *Canadian National Railway Company and Grand Trunk Corporation -- Control -- EJ&E West Company*

Dear Ms. Quinlan:

Hereby transmitted is an Opposition Statement And Request For Conditions in behalf of the City of West Chicago, Illinois for filing with the Board in the above referenced matter.

Very truly yours,

*Tom McFarland*

Thomas F. McFarland  
*Attorney for Opponent*

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cc: All parties of record

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BEFORE THE  
SURFACE TRANSPORTATION

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

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**OPPOSITION STATEMENT AND  
REQUEST FOR CONDITIONS**

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CITY OF WEST CHICAGO, ILLINOIS  
HON. MICHAEL B. KWASMAN, Mayor  
475 Main Street  
West Chicago, IL 60185

Opponent

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Attorneys for Opponent

Due Date: January 28, 2008

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BEFORE THE  
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| WEST COMPANY                 | ) |                |

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**OPPOSITION STATEMENT AND  
REQUEST FOR CONDITIONS**

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Pursuant to the Board's procedural decision served November 26, 2007, the CITY OF WEST CHICAGO, ILLINOIS (the City) hereby opposes the application of Canadian National Railway Company (CN) for authority to control EJ&E West Company (EJE) unless approval of that application can be made subject to conditions that would adequately protect the interests of the citizens of West Chicago. Conditions that would protect the City would be of an environmental nature, relating to safety, noise control and the like. The City has not formulated specific conditions in that respect pending further development of an environmental record.<sup>1/</sup>

Attached hereto as Appendix 1 is a copy of West Chicago Resolution 08-R-0007, adopted on January 21, 2008, in which the City formally voted to oppose the Application.

CN's control of EJE would have enormous adverse effects on safety and noise in West Chicago. The increase in number and length of trains that would result from that control must surely be unprecedented. In the northern part of West Chicago, where 4.4 trains per day currently

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<sup>1/</sup> Board environmental staff is still considering the scope of the environmental review that will be undertaken. (See decision in this proceeding, served December 21, 2007).

move over EJE's tracks, there would be 24.4 trains per day after CN control, an increase of 455 percent. (Application at 247). Currently, an average of 14,397 tons of freight per day moves in EJE trains in that part of West Chicago; after control, that would increase to 184,969 tons per day, an increase of 1,185 percent, the greatest increase in the EJE system! In the southern part of West Chicago, the increases would be from the current 10.7 trains and 87,162 tons per day on EJE to 34.5 trains and 245,049 tons per day, increases of 222 percent and 181 percent, respectively!

Moreover, the proposed control would result in huge increases in dangerous hazardous materials traffic. From the current 21 carloads of hazardous materials per year over EJE in the north part of West Chicago, and 31 carloads per year in the south part of West Chicago, the number of hazardous materials carloads would increase to 265 per year in the north section and 301 per year in the south section, increases of 1,162 percent and 871 percent, respectively.

The City is aware of the Board's practice of separately processing issues involving (1) consistency with the public interest; and (2) environmental effects. However, that practice must give way when the adverse environmental effects of a proposed transaction can outweigh its public interest benefits, as may be the case in the matter at hand. In that respect, see Construction and Operation – Indiana and Ohio Ry. Co., 9 ICC 2d 783 (1993), wherein an application under 49 USC 10901 for construction of track was denied because "substantial adverse public safety concerns outweigh the transportation benefits of the proposed line." (at 783); Accord: Ozark Mountain Railroad – Construct. Exempt., Finance Docket No. 32204, decision served December 15, 1994.

Consequently, the City will:

- (1) participate in the development of the environmental record; and
- (2) submit relevant portions of that record into the record on the merits of the proposed control, so that the adverse environmental effects of the proposal can be weighed against the proposal's transportation benefits; and
- (3) supplement its position on the merits after the environmental record is completed, as either in favor of the transaction, opposed, or opposed unless specific environmental conditions are imposed.

WHEREFORE, CN's application for authority to control EJE should be denied unless approval of that application can be made subject to environmental conditions that would adequately protect the interests of the citizens of West Chicago.

Respectfully submitted,

CITY OF WEST CHICAGO, ILLINOIS  
HON. MICHAEL B. KWASMAN, Mayor  
475 Main Street  
West Chicago, IL 60185

Opponent

Patrick K. Bond <sub>TM</sub>

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Attorneys for Opponent

Due Date: January 28, 2008

**RESOLUTION 08-R-0007****A RESOLUTION OBJECTING TO THE  
PROPOSED ACQUISITION OF THE EJ&E WEST COMPANY BY  
THE CANADIAN NATIONAL RAILWAY CORPORATION**

WHEREAS, on October 30, 2007, the Canadian National Railway Corporation, along with its U.S. subsidiary, Grand Trunk Corporation (collectively, "CN"), filed an application with the federal Surface Transportation Board ("STB") seeking approval to acquire the EJ&E West Company, a wholly owned subsidiary of the Elgin, Joliet and Eastern Railway Company (collectively, "EJ&E"); and,

WHEREAS, the proposed acquisition by CN would involve shifting a significant amount of train traffic that currently moves over CN's rail lines in the City of Chicago to sections of the EJ&E rail lines west and south of the City of Chicago, including a segment that runs through the City of West Chicago; and,

WHEREAS, the increase in freight train traffic resulting from the proposed acquisition by CN will create adverse impacts on the communities along the EJ&E rail line, including increased noise and vehicle travel delays; and,

WHEREAS, CN estimates that if the proposed transaction takes place, that the average number of daily trains that run along the segment of the EJ&E rail line that runs through West Chicago, north of the Union Pacific tracks, will increase from 4.4 to 24.4 trains per day, and that the gross tons of freight per day that run over that segment will increase from 14,397 tons to 184,969 tons, an increase of 1,185 percent which would be the greatest of all locations along the EJ&E (Attachment A.2 to CN Submittal to the STB); and,

WHEREAS, CN estimates that if the proposed transaction takes place, that the average number of daily trains that run along the segment of the EJ&E rail line that runs through West Chicago, south of the Union Pacific tracks, will increase from 10.7 to 34.5 trains per day, and that the gross tons of freight per day that run over that segment will increase from 87,162 tons to 245,049 tons, an increase of 294 percent (Attachment A.2 to CN Submittal to the STB); and,

WHEREAS, CN train lengths will be much longer than current EJ&E train lengths; and,

WHEREAS, hazardous materials' traffic in West Chicago, north of the Union Pacific tracks, would increase from the current 21 carloads per year to 265 carloads per year, an increase of 1,162 percent; and,

WHEREAS, hazardous materials' traffic in West Chicago south of the Union Pacific tracks, would increase from the current 31 carloads per year to 301 carloads per year, an increase of 871 percent; and,

WHEREAS, there are currently five at-grade crossings along the EJ&E tracks in West Chicago at Church Street; Ann Street, Washington Street, George Street (pedestrian only) and Hawthorne Lane; and,

WHEREAS, the projected increased volume of train traffic and rail related operations will result in more frequent blockage of the at-grade crossings in West Chicago and will negatively impact emergency vehicle access and result in longer emergency response times; and

WHEREAS, West Chicago Community High School is located one block from the at-grade crossing at Ann Street, a school that has a current student population of 2,160; and,

WHEREAS, traffic congestion around the high school is already very heavy, both during the morning peak hours and when school lets out in the afternoon, a problem that will be exacerbated by the increased train traffic on the EJ&E tracks; and,

WHEREAS, approximately 35 percent of Community High School's student population walks to school, with the highest percentage living west of the EJ&E tracks; and,

WHEREAS, these students currently need to cross the EJ&E tracks at either Ann Street, Church Street, Washington Street or George Street; and,

WHEREAS, the exorbitant increase in train traffic on the EJ&E tracks will significantly increase the likelihood of an accident between trains and students; and,

WHEREAS, where before the volume of train traffic along the EJ&E tracks did not necessitate the need for West Chicago to make the necessary public improvements to create a "Quiet Corridor", the increased traffic voids that decision, at a time when the money is no longer available; and,

WHEREAS, the EJ&E tracks currently divide the City, and when combined with the existing Union Pacific tracks, serves to "wall off" the southwestern portion of West Chicago, making it more difficult to provide public safety and other services to that portion of our community; and,

WHEREAS, the increased amount of train traffic will interfere with the motoring public and the commercial truck traffic vital to the City's major industrial parks in West Chicago; and

WHEREAS, the proposed acquisition will have significant secondary and cumulative effects on West Chicago and the northwest and west suburban region in that the planned Metra Suburban Transit Access Route (the "Star Line") that proposes to utilize the EJ&E railroad corridor to provide north-south commuter rail service to connect the northwest suburbs to other existing Metra commuter lines will likely be jeopardized and the future opportunity to provide a new dynamic mobility for residents, workers and visitors in the suburban region will likely be lost if the proposed acquisition takes place; and

WHEREAS, the City has been an active participant in the creation of the Star Line since its introduction by Metra in January 2003, and has provided joint funding for the analysis of the Star Line and has included it in its future land planning, and all the effort toward creating the first commuter rail line in northeastern Illinois designed specifically to address suburb-to-suburb commutes will likely become a casualty of the proposed CN acquisition, if it takes place;

NOW, THEREFORE, BE IT RESOLVED ~~BY THE CITY COUNCIL~~ <sup>BY THE CITY</sup> RESOLVED by the City Council of the City of West Chicago, in regular session assembled, as follows:

Section 1. That the City of West Chicago asks that the Section of Environmental Analysis (the "SEA") of the Surface Transportation Board (the "STB") include and incorporate the issues, concerns and comments of the City of West Chicago set forth in this Resolution in the scope of study for the draft Environmental Impact Study and final Environmental Impact Study (collectively, the "EIS"), and that said comments and concerns be considered and addressed in the EIS, and the STB.

Section 2. The City of West Chicago does hereby formally object to the proposed acquisition of the EJ&E by CN, and urges the Surface Transportation Board to disapprove of the proposed transaction based on the negative impact it will have on the City of West Chicago, its residents, its business customers and the region.

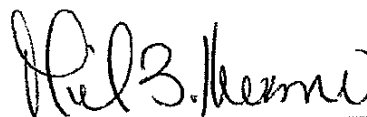
Section 3. The various provisions of this Resolution are to be considered as severable, and if any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

Section 4. All prior Resolutions and Ordinances in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

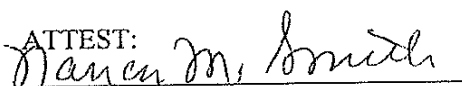
Section 5. This Resolution shall be in full force and effect upon its passage and approval.

APPROVED this 21st day of January 2008.

|          |           |
|----------|-----------|
| AYES:    | <u>13</u> |
| NAYES:   | <u>0</u>  |
| ABSTAIN: | <u>0</u>  |
| ABSENT:  | <u>1</u>  |



Mayor, Michael B. Kwasman

ATTEST:  
  
City Clerk, Nancy Smith

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2008, I served the foregoing document, Opposition Statement and Request for Conditions, by overnight mail on counsel for Applicants, i.e., Paul A. Cunningham, David A. Hirsh, and James M. Gunivan, Harkins Cunningham, 1700 K Street, N.W., Suite 400, Washington, DC 20006-3804, and by first-class, U.S. mail, postage prepaid, on all other parties of record.

*Thomas F. McFarland*

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Thomas F. McFarland