



ENVIRONMENTAL LAW & POLICY CENTER
ENVIRONMENT MIDWEST

February 6, 2008

Surface Transportation Board
395 E Street, N.W.
Washington, D.C. 20423

Attn: Phillis Johnson-Ball
Environmental Filing,
STB Finance Docket No. 35087

RE: Draft Scope of the EIS for *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*

Dear Ms. Johnson-Ball:

The Environmental Law and Policy Center (“ELPC”), a not-for-profit Midwest environmental quality and economic development advocacy organization, hereby submits these comments on the Draft Scope of the Environmental Impact Statement for the Canadian National (“CN”) Railway’s purchase of the Elgin, Joliet and Eastern Railway’s EJ&E West Company subsidiary (“EJE”), STB Finance Docket No. 35087.

As the Board is well aware, the Environmental Impact Statement is a critical component of the record to be considered in the acquisition proceeding. 49 C.F.R. 1105.10(f). It guides the Board in determining what environmental conditions to impose on the proposed action; where an environmental issue is unresolved, the Board may either withhold approval or impose conditions as appropriate based on the EIS. *Id.* To this end, before approving the acquisition, the Board must take a “hard look” at the direct and indirect environmental effects of the proposed project in combination with the cumulative environmental impacts of all “past, present, and reasonably foreseeable future” actions in the project area. 40 C.F.R. § 1502.16, 1508.7, 1508.25(c). *See also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

ELPC is concerned with the overall level of detail contained in the Draft Scope, which includes little project-specific discussion beyond a recitation of the Board’s regulations and policy/guidance. This lack of project-specific information contributes to ELPC’s primary concern, namely, that the Draft Scope of the EIS does not adequately account for a number of impacts that will result from one key aspect of the transaction: the planned closure of the St.

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Charles Air Line (“Air Line”). In these comments, we identify these impacts and discuss their consequences. Following a brief introduction and general comments, our comments match specific categories included in the Draft Scope’s outline.

I. Introduction - Closure of the Air Line

On page 222 of its application, CN states that once it ceases operations on the Air Line, the only “remaining regular user” of the route would be Amtrak. CN also states that it will seek to “formally abandon” the Air Line, presumably once its contract with Amtrak for the latter’s use of the Air Line expires late in 2010. The City of Chicago has made clear on numerous occasions that its goal is to convert the Air Line to public use.¹ In fact, in 2003, the Chicago Dept. of Transportation (CDOT) signed an agreement with CN “indicating the parties’ intent for CN to sell the St. Charles Air Line...to CDOT.”² Thus the abandonment of the Air Line is inextricably tied to the EJE purchase as a clearly foreseeable event, and thus should be reviewed as a part of the EJE transaction at this time.

Closure of the Air Line will have direct, reasonably foreseeable, and significant negative impacts on the environment. Six Amtrak passenger trains each day use the Air Line. Without the Line, these trains, which serve key central and southern Illinois communities like Champaign and Effingham in addition to cities as far south as New Orleans, will have no route into downtown Chicago. The application asserts that the trains could simply move to a 5-mile segment of Norfolk Southern (NS) track on their approach into Chicago’s Union Station (Application, page 222). This statement blatantly ignores the fact that key intersection improvements at Grand Crossing, and five miles of additional track capacity north of Grand Crossing, would need to be planned, engineered, funded and built to make this routing a realistic plan. CN then states on page 222 of the application that moving the Amtrak trains to the NS line has “long been planned in connection with the CREATE project.” What CN does not state is that to date, CN, unlike all other partners in the CREATE endeavor, has not yet contributed to the project’s funding pool. In addition, about 80% of the CREATE project’s \$1.5 billion budget, including the approximately \$30-\$35 million in Grand Crossing and NS improvements, are not yet funded.

Without these two major improvements, Amtrak’s six daily passenger trains have nowhere to go. Their disappearance would displace more than 400,000 riders per year, forcing them into cars. This in turn would worsen Chicago’s air quality, cause greater carbon dioxide emissions, and increase our dependence on foreign oil.

Our view is that full or significant CN funding of the Grand Crossing and NS track capacity projects must be made a condition of the approval. If this condition is included, we anticipate supporting the transaction.

¹ See Federal Railroad Administration, “The Chicago Region Environmental and Transportation Project (CREATE),” available at <http://64.233.167.104/search?q=cache:WbRzTQUCURcJ:www.fra.dot.gov/us/content/1486+%22st.+charles+air+line%22+%22mayor+daley%22&hl=en&ct=clnk&cd=2&gl=us>

² See Applicants’ Responses and Objections to the Village of Barrington’s First Discovery Requests, p. 41

II. Proposed Action

The EIS must acknowledge impacts from abandonment of the Air Line, and the EIS must “include appropriate mitigation measures not already included in the proposed action or alternatives,” 40 C.F.R. 1502.14(f). The DEIS scoping document identifies three general categories of “reasonable or feasible alternatives that will be evaluated in the EIS”, including “approval of the proposed transaction with conditions, including environmental mitigation conditions.” For the reasons set forth below, ELPC urges the Board to include in this third category a condition that the applicant fully fund, or provide a significant portion of funding for, both Grand Crossing intersection construction and capacity expansions of the 5-mile NS line north of Grand Crossing, as well as a requirement that the Air Line be maintained in its current operating condition at the current cost to Amtrak, until the Grand Crossing and NS line improvements have been completed. These conditions are both connected to the acquisition and otherwise reasonable and feasible. In addition, imposing these critical conditions will avoid and/or mitigate the negative environmental impacts that would otherwise accompany abandonment of the Air Line. Such environmental damage is a reasonably foreseeable impact arising from the transaction in the form proposed by the applicant.

We believe that these appropriate mitigating conditions related to the Air Line will prove to have the least environmental impacts at a reasonable cost, and anticipate supporting the Board’s ultimate approval of such a project with conditions.

III. Environmental Impact Categories.

A. Safety

Point C of the Safety category states that the EIS will “address potential effects of increased freight traffic on commuter and intercity passenger service operations.” As stated above, the Air Line abandonment that will occur following CN’s transfer of operations to EJE will affect six passenger trains per day:

- o the *City of New Orleans*, which operates a daily round trip between Chicago and New Orleans; and
- o the *Illini* and *Saluki*, funded primarily by the State of Illinois, which together provide two daily round trips between Chicago and Champaign/Carbondale.

CN states in its application that “Before the line can be formally abandoned, Amtrak trains would need to be re-routed to NS’s line.” However, the NS line is today inaccessible because, as Amtrak’s Mike Franke notes on page 3 of his verified statement, “There is no physical track connection between the grade-separated NS and CN lines at Grand Crossing.”³ Even if there were such a connection, Franke states that “NS’s line from Grand Crossing to downtown

³ Verified Statement of Michael W. Franke, Assistant Vice President, State and Commuter Partnerships – Central, in National Railroad Passenger Corporation’s Comments in Opposition to Proposed Transaction, January 28, 2008, Surface Transportation Board, Finance Docket No. 35087, available at [http://www.stb.dot.gov/filings/all.nsf/6084f194b67ca1c4852567d9005751dc/fe034deaf681adcb852573de0075dbac/\\$FILE/221421.PDF](http://www.stb.dot.gov/filings/all.nsf/6084f194b67ca1c4852567d9005751dc/fe034deaf681adcb852573de0075dbac/$FILE/221421.PDF)

Chicago would require capacity investments before it could accommodate six additional Amtrak trains reliably.”

In December 2007, a serious collision between an Amtrak train and a NS freight train injured more than 50 passengers and several crew members on the Amtrak train, some seriously. The collision occurred in the 5-mile segment in question when an Amtrak train collided with an NS train that was parked on the same track.⁴ While the cause remains under investigation, congestion on the track is all too obvious. As Amtrak’s Franke notes on page 13 of his verified statement, “This five-mile segment is NS’s primary route into Chicago from the East, and has significant freight traffic volume in addition to...[other] Amtrak trains. Occupancy of main tracks by freight trains waiting to get into NS’s 47th Street intermodal facility and Ashland Avenue yard often cause delays on his heavily-trafficked line segment.” The Board must discuss in the EIS the possibility of additional collisions on such a heavily-used corridor.

B. Transportation Systems

Point A of the Transportation Systems category states that the EIS will “Describe system-wide and localized effects of the proposed operational changes,” and “...evaluate potential impacts on commuter rail service and intercity passenger (Amtrak) service.”

The State of Illinois is clearly concerned about how the Air Line abandonment will affect operations statewide. The Illinois Department of Transportation has stated that any alternative route for Amtrak’s trains must satisfy two conditions:

- 1) There can be no increase in travel time to Amtrak’s schedule; and
- 2) There cannot be a net increase in operational uncertainty caused by excessive freight traffic, resulting in erratic operations.

To date, virtually all of the alternative routes being considered would require circuitous paths around the Chicago area. These, in turn, would necessitate “hand-offs” of trains from one railroad to another, leading inevitably to increased travel time and greater operational uncertainty. The one exception is the Grand Crossing/NS route, which all parties agree would not only avoid these negative impacts, but in actuality reduce travel times from those currently in Amtrak’s schedule, thus saving 10-15 minutes on each trip and making the train an even more attractive alternative to the automobile. These benefits only become reality, however, if the aforementioned improvements are undertaken prior to Amtrak moving to that route.

Meanwhile, the City of Chicago, in a letter signed by Mayor Richard M. Daley, shares the State’s concern. While Mayor Daley endorses approval of the transaction, the letter states that “...we have a concern regarding the impact of this acquisition on Amtrak and request the Board to join us in asking that CN work with Amtrak to identify and alleviate any negative operational impacts that may result from the acquisition.”⁵ The Mayor’s willingness to submit such a letter,

⁴ Jon Hilkevitch and Ryan Haggerty, “Amtrak crash a mystery,” Chicago Tribune, December 1, 2007, available at <http://www.chicagotribune.com/services/newspaper/printedition/saturday/chi-amtrakdec01,0,2089534.story>

⁵ Letter from Richard M. Daley, Mayor, City of Chicago, to Anne K. Quinlan, Acting Secretary, Surface Transportation Board (January 15, 2008).

despite the City's aforementioned clear interest in acquiring the Air Line, clearly underscores the City's concern. To ensure that this issue is resolved to the City's satisfaction, the Board needs to assess, and ultimately approve, an alternative requiring the CN to fully fund, or contribute a significant portion of funds toward, the cost of improvements to Grand Crossing and NS line.

Point C of this category says that the EIS will "[d]iscuss potential effects on proposed passenger rail service where such future rail operation inception or expansion is reasonably foreseeable." The Air Line abandonment becomes even more critical in the extremely likely event that there will be additional passenger trains running between Chicago and eastern/southern Illinois.

The likelihood of expansion is based on the 2006 service expansion which the State of Illinois funded through its contract with Amtrak. Formerly, Amtrak ran one round-trip per day between Chicago and Carbondale, as well as the City of New Orleans long-distance train. The increased State appropriation added another daily round-trip between Chicago and Carbondale. The goal was to make the schedule more convenient in the hope that more travelers would choose the train rather than the car, thus saving gas and reducing congestion.⁶

To say the least, as Illinois Dept. of Transportation statistics show, ridership has boomed on this route—as well as on the other two corridors whose schedules expanded in November 2006. In the first 12 months of the expansion, ridership on the Chicago-Carbondale state-supported trains soared 72%. Even more impressive is that ridership in November and December 2007, compared with the same two months of 2006—both periods being under the expanded schedule—jumped another 16%.

The statewide figures are even more impressive. For the first 12 months under the expanded schedule, total ridership on the state-supported trains skyrocketed 80%. Then there was another 20% growth spurt in November and December 2007. The inevitable conclusion is that the expansion has been an enormous success, one that sets the stage for further expansion in the future. State officials already are deliberating how best to make that happen.

The Air Line abandonment would make further expansion of passenger rail service along the Chicago-Carbondale route impossible unless a reasonable alternative is built prior to that abandonment. That alternative is the addition of the Grand Crossing and NS improvements as a condition of the Board's approval of the proposed transaction.

C. Energy

Point B of this category indicates the EIS will "[e]valuate potential changes in fuel use arising from the transaction." The Chicago-Carbondale ridership statistics are helpful for this analysis. In the 12-month period ending October 31, 2007, a total of 236,846 people rode the Illinois-only trains (i.e., excluding the *City of New Orleans* train).

Without any reasonable route other than the Air Line, the two round trips per day carrying these passengers would disappear, thus forcing these individuals to drive because air service is

⁶ Illinois Senator Jeff Schoenberg (October 16, 2006). "Expanded Amtrak Schedule Major Victory for Illinois Travelers." Press release, available at <http://jschoenberg.org/news.htm>

virtually unavailable. Assuming the U.S. Dept. of Transportation occupancy rate of 1.6 passengers per car, Amtrak's average trip length on the Chicago-Carbondale route of 175 miles, and Illinois' average miles per gallon in 2005 of 20.8, this would mean the following increase in use of gasoline every year:

- $236,846/1.6 \times 175/20.8 = 1,245,435$ more gallons of gasoline

At a time when the President of the United States is calling for a 20% reduction in the use of gasoline over the next decade, needing another 1.2 million more gallons because of an unconditional Board approval does not make sense.

The remedy is full consideration of the impacts on Amtrak associated with loss of the Air Line and approval of this transaction only with appropriate mitigating conditions requiring the Air Line to remain available for Amtrak use on current terms, and requiring the CN to fund or partially fund the required improvements to Grand Crossing and the 5-mile NS segment north of Grand Crossing.

D. Air Quality

Part A of the Air Quality category recognizes that increased numbers of vehicles resulting from the proposed action are impacts of concern, and commits to evaluate the emissions increases where the proposed post-acquisition activity would exceed the regulatory thresholds. (Draft Scope at p. 10 (citing 49 C.F.R. 1105.7(e)(5)(i)). However, it is not clear from the commitment and the cited regulations whether the evaluation will account for increases in *passenger* vehicles, which may also result in significant air emissions in the Cook County and surrounding nonattainment areas.

As explained above, displacing several hundred thousand riders to passenger vehicles will result in significant new emissions of carbon dioxide and criteria pollutants. At the U.S. Energy Information Administration carbon dioxide emissions rate of 19.594 lbs. per gallon, the 1.2 million gallons of gasoline cited above mean an additional 12,202 tons of global warming pollution reaching our atmosphere each year.

Cars pollute the air in other ways, too. In 1997, the U.S. EPA's National Vehicle and Fuel Emissions Laboratory issued a fact sheet showing that an average car, which is driven 14,000 miles per year, emits 606 lbs. of carbon monoxide, 41 pounds of nitrogen oxides, and 80 pounds of hydrocarbons. Again assuming an occupancy rate of 1.6 passengers per car and a 175-mile average trip length, the displacement of 236,846 passengers from just the state-supported trains would mean 25.9 million more miles driven each year. This is the equivalent of 1,850 more cars driving 14,000 miles, producing each year:

- 1.1 million more lbs. of carbon monoxide;
- 75,865 more lbs. of nitrogen oxides; and
- 148,029 more lbs. of hydrocarbons

In sum, the increases in vehicular traffic from the action as proposed would worsen Chicago's air quality, cause greater carbon dioxide emissions that contribute to climate change, and increase our dependence on foreign oil. All of these impacts must be considered in the EIS, and ultimately should weigh against the Board approving the action as proposed.

E. Secondary and Cumulative Effects

Point A of this category states the Board will "Address secondary and cumulative effects of environmental impacts that have regional or system-wide ramifications." Throughout this filing, we have identified numerous direct impacts, with additional cumulative effects, caused by the CN's stated intention to abandon the Air Line.

To summarize those impacts:

- Displacement of more than 400,000 passenger per year on Amtrak's routes serving eastern and southern Illinois, and points south to New Orleans
- With no improvements to the Grand Crossing intersection and Norfolk-Southern's 5-mile segment north of Grand Crossing, tracks that become impassably congested with freight and passenger train traffic
- Increased risk of collisions similar to the 2007 incident in which more than 50 passengers were injured
- Unresolved concerns expressed by both the State of Illinois and the City of Chicago on the fate of Amtrak trains and passengers
- Inability for the State of Illinois to serve its citizens' growing demand for train travel by further expanding service on the Chicago-Carbondale route
- From just the loss of the Illinois trains alone, a potential increased use of gasoline of more than 1.2 million gallons each and every year
- Again from solely the loss of the Illinois-only trains, more than 12,000 additional tons of carbon dioxide pollution each and every year

These impacts are vast and far-reaching, but the Board has at its disposal a remedy that would address all of them: attaching a condition to the transaction's approval requiring the CN to fully fund, or provide a significant portion of funding for, the improvement of Grand Crossing and the addition of capacity to the 5-mile Norfolk Southern segment north of Grand Crossing.

IV. Additional Concerns

While not explicitly addressed in the Draft Scope, the timeframe for assessing impacts in the EIS is of concern. It is our understanding that the Board typically looks at impacts on a three- to five-year horizon. This timeframe, while generally adequate for transactions with less complex implications for the transportation system, is wholly inadequate for the current transaction. We urge the Board to employ a ten-year horizon for assessing impacts in the EIS.

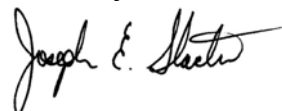
Finally, we are concerned not only about the scope as proposed, but also about the apparent lack of consultation the Board has had with key federal and state agencies on the impacts of the

proposed transaction. The Board has not identified a consulting agency with which to work on the passenger transportation impacts of the project, the logical choice being the Chicago Metropolitan Agency for Planning (CMAP), which intends to prepare a full report on the regional impact of the EJE purchase and is the region's designated Metropolitan Planning Organization.

V. Conclusion

The Environmental Law and Policy Center appreciates this opportunity to comment on the Draft Scope of the EIS. We request that the Board provide ELPC with a revised scope of the Environmental Impact Statement and all public materials that are subsequently issued. Thank you for your consideration.

Sincerely,



Joseph E. Shacter, Senior Policy Advocate



Meleah Geertsma, Staff Attorney

Verification:

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Signature:



Name: Meleah Geertsma

Date: February 6, 2008

Certificate of Service:

I hereby certify that I have served this document upon all known parties of record by first class mail, postage prepaid, and that of this date, all filings by the Environmental Law & Policy Center in this matter have been served upon all known parties of record, as identified in Finance Docket No. 35087, STB Decision No. 3, January 18, 2008, and as amended by STB Decision No. 5, January 25, 2008.

Signature:



Name: Meleah Geertsma

Date: February 6, 2008