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January 22, 2009

Victoria Rutson
Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

RE: STB Finance Docket 35087 - Canadian National Railway Company and Grand Trunk Corporation's Acquisition of the EJ&E West Company

Dear Ms. Rutson:

Please consider this letter as the Illinois Commerce Commission's (ICC) request that the Surface Transportation Board (STB) reconsider its decision in the subject docket. Following a review of the Final Environmental Impact Statement (FEIS) for the proposed Canadian National Railway Company's (CN) acquisition of the EJ&E West Company (EJ&EW) and the Decision of the STB (Decision), dated December 24, 2008, staff of the ICC's Transportation Bureau believes the STB should reassess certain oversights and errors contained in its Decision.

1) Traffic Queuing

The ICC is responsible for enhancing safety at the more than 8,000 public highway-rail grade crossings in the State of Illinois. When the subject acquisition was announced in the Fall of 2007, Rail Safety Section staff of the ICC's Transportation Bureau (ICC staff) gathered detailed highway-rail crossing data related to the transaction and submitted it to both the Applicants and the SEA, with hopes that a partnership between all parties would help enhance the safety of the highway-rail grade crossings involved in the transaction. Staff was initially encouraged that an environmental analysis of the subject transaction would provide the opportunity to ensure a detailed study took place of all affected crossings, particularly since there was to be a large number of people assigned to perform the analysis for the SEA. This in turn would help all parties involved make reasonable recommendations that would promote safety at the affected crossings. Unfortunately, ICC staff believes, this type of detailed study did not occur.

A major theme of both the DEIS and the FEIS was the repeated distinction of "pre-existing conditions" or "pre-existing traffic congestion" in the analysis of what effect the transaction would have in contributing to additional traffic congestion or delay.

In fact, the FEIS concluded that the transaction would "exacerbate the congestion" (Page ES-20 of the FEIS Executive Summary). However, this was never tied into the context of the actual safety of the grade crossings themselves. ICC staff recognizes that current accident prediction formulae and analyses do not account for queuing of highway vehicles on highway-rail grade crossings (caused by either "pre-existing" or "exacerbated congestion"). To this point, with comments on the Scoping Process, submitted to the STB on February 11, 2008, ICC staff stated *"We believe the EIS should look beyond the normal exposure risk analysis that is used to predict train/vehicle collisions whether grade crossings are deemed 'safe', and include the following analyses: Evaluate and summarize downstream roadway features and operational characteristics that may cause queuing through a crossing"*. ICC staff offered similar oral comments to SEA staff prior to the issuance of the DEIS. In addition, ICC staff reiterated these comments at subsequent stakeholder's meetings, as part of comments on the DEIS, submitted with a letter dated September 29, 2008, as well as during direct meetings between staff and the consultant preparing the DEIS and FEIS for the STB.

ICC staff understands that the STB uses certain criteria to determine if a highway-rail grade crossing is considered "substantially affected" (thresholds relating to train/vehicle exposure rates, total 24-hour vehicle traffic delay, major thoroughfare blocked by proposed action). However, as was stated in the ICC's comments on the DEIS, not only is public safety compromised by vehicles queued on highway-rail grade crossings, train operations are also compromised. We believe that identifying locations where queues exist, either by "pre-existing" or "exacerbated congestion", should have been a critical component of the FEIS. It is in the best interest of the all parties, including the STB and the Applicants, to at least identify these locations so that reasonable "interim" mitigation measures could be recommended.

ICC staff believes that the FEIS failed to accurately analyze how this critical issue will affect highway-rail grade crossing safety within the limits of the proposed transaction. Not only was the FEIS narrowly focused and flawed, the analysis contains many false statements that have very significant consequences to all future operational and safety issues related to the highway-rail grade crossings within the limits of the proposed transaction. More importantly, the SEA's Final Recommended Mitigation Measure Number 20 (page ES 37 of the FEIS Executive Summary) not only contains false statements, it places the responsibility of performing an extremely narrow, flawed task that has colossal ramifications on the Illinois Commerce Commission. It is strongly recommended that the Board's Final Mitigation Condition No. 17 (page 77 of the Decision) be revised in the Decision.

Since the FEIS did not address our concerns noted above, which ICC staff has requested since the first involvement with the transaction, we strongly recommend that the Board's Final Mitigation Condition No. 17 be revised to state: "As an interim mitigation measure, Applicants shall install and maintain solar powered highway amber flashing beacons mounted to regulatory highway signs advising motorists not to stop on the crossings at all public highway-rail grade crossings of the EJ&E's track.

Additionally, the Applicants shall install and maintain highway pavement marking cross hatching at all the aforesaid highway-rail grade crossings. These amber flashing beacons, signs, and pavement marking shall be in place within 6 months of the effective date of the Board's final decision, subject to the approval of the coordinating agencies. Any further permanent mitigation measures deemed necessary by the STB during its five year monitoring period shall be coordinated with appropriate state and local agencies."

2) Signalized Intersections

Chapter 2 of the FEIS includes a discussion of signalized intersections (Section 2.5.10) affected by the proposed transaction. ICC Staff believes that it is unclear what is meant by the term "potentially affected", which is included in the following passage:

(Page 2-47 of FEIS) *"Ten of the 17 roadways would have 2015 peak-hour queue lengths less than the distance from the tracks to the signalized intersection under the No-Action Alternative. These 10 locations would have a peak hour 2015 queue length greater than the distance from the tracks to the signalized intersection under the Proposed Action. Thus, these 10 intersections would only be potentially affected by the Proposed Action. These 10 roadways are:*

*Old McHenry Road, Lake Zurich, Illinois
Main Street, Lake Zurich, Illinois
Old Rand Road, Lake Zurich, Illinois
Ela Road, Lake Zurich, Illinois
Hough Street (IL 59), Barrington, Illinois
135th Street, Plainfield, Illinois
Plainfield-Naperville Road, Plainfield, Illinois
Main Street, Plainfield, Illinois
Western Avenue, Park Forest, Illinois
Lincoln Highway, Lynwood, Illinois"*

In addition, ICC staff believes that the FEIS did not include a complete analysis of signalized intersections. No other queuing factors (other than industry track) were mentioned. Even if there are no problems, ICC staff believes that bus stops, driveways, and other similar factors also need to be considered. For example, ICC staff believes that the FEIS and the Decision do not adequately explain why, in regard to signalized intersections, a 90-second cycle length is sufficient to clear a traffic queue when there

could be pedestrians, Emergency Vehicle Preemption, or other cycle lengths in use. ICC staff believes that this "solution" misses the basic point of why the interconnection of highway-rail grade crossing signals and highway traffic signals would be required or why other solutions would need to be considered.

It was noted in the FEIS that the proposed transaction would "exacerbate the congestion" on roadways that intersect with the EJ&E rail line. In addition, the proposed transaction will result in increased train volumes on the EJ&E line. Because of the increased congestion on the roadways and increased train volume on the EJ&E line, the opportunities for train/vehicle collisions to occur will increase. In order to warn highway users of the increased congestion and increased train volumes ICC staff believes that the Applicants should be required to install and maintain supplemental signs, flashing beacons, circuitry, and/or traffic signal upgrades at all highway-rail grade crossings of the EJ&E rail line.

The Board's Final Mitigation Condition No. 15 (Page 76 of the Decision) states *"Applicants shall coordinate with IDOT and the appropriate counties and affected communities to develop a program to install traffic advisory signs on roadway ROW at certain public highway/rail at-grade crossings along the EJ&E rail line. These signs shall clearly advise motorists not to block intersections, and the format and lettering of these signs shall comply with FHWA's Manual on Uniform Traffic Control Devices. These signs shall be in place within a year of the effective date of the Board's final decision, subject to the approval of the coordinating agencies, and shall be located near the following intersections:*

- a. Old McHenry Road/Midlothian Road, Hawthorn Woods, Illinois*
- b. Main Street/IL 22, Lake Zurich, Illinois*
- c. Hough Street (IL 59)/Northwest Highway (US 14), Barrington, Illinois*
- d. Plainfield-Naperville Road/IL 59, Plainfield, Illinois"*

ICC staff believes that the Applicants should be required to install traffic advisory warning signs at all public highway-rail grade crossings that are involved in the proposed transaction. The ICC strongly recommends that the Board's Final Mitigation Condition No. 15 (Page 76 of the Decision) be revised to state: "Applicants shall coordinate with IDOT and the appropriate counties and affected communities to develop a program to install traffic advisory signs on roadway ROW at all public highway-rail grade crossings along the EJ&E rail line. These signs shall clearly advise motorists not to block intersections, and the format and lettering of these signs shall comply with FHWA's Manual on Uniform Traffic Control Devices. These signs shall be in place within 6 months of the effective date of the Board's final decision, subject to the approval of the coordinating agencies."

In addition, ICC staff reiterates its recommendation that the Board's Final Mitigation Condition No. 17 be revised to state: "As an interim mitigation measure, Applicants shall install and maintain solar powered highway amber flashing beacons mounted to regulatory highway signs advising motorists not to stop on the crossings at all public

highway-rail grade crossings involved in the transaction. Additionally, the Applicants shall install and maintain highway pavement marking cross hatching at all the aforesaid highway-rail grade crossings. These amber flashing beacons, signs, and pavement marking shall be in place within 6 months of the effective date of the Board's final decision, subject to the approval of the coordinating agencies. Any further permanent mitigation measures deemed necessary by the STB during its five year monitoring period shall be coordinated with appropriate state and local agencies."

3) New Bridges at Ogden Avenue in Aurora, Illinois (AAR/DOT #260 560X) and Lincoln Highway in Lynwood, Illinois (AAR/DOT #260 651D)

Although ICC staff believes additional train operations on the EJ&E line caused by the proposed transaction will require that more grade separations be built to replace existing highway-rail grade crossings, we agree with the Board's Final Mitigation Condition No. 14, which requires the Applicants to coordinate with the Illinois Department of Transportation (IDOT) and the ICC for the expeditious implementation of grade separations to replace the existing Ogden Avenue and Lincoln Highway highway-rail grade crossings of the EJ&E's track. However, the ICC is concerned about certain conditions that the Board has placed on construction of the grade separation structures.

ICC staff believes that requiring the proposed Ogden Avenue and Lincoln Highway bridges be under construction by 2015 is not practical. Both roadways are state highways and will require extensive planning (preliminary engineering, right of way acquisition etc.). ICC staff believes that the Board should allow additional time for IDOT to prepare both projects for construction.

In addition, ICC staff believes the Board's condition that absolves the Applicants of any project costs if the bridges are not under construction by 2015 is wrong. ICC staff believes that the additional rail traffic generated by the proposed transaction creates the need for the bridges to be built. The substantial effects of the transaction on traffic delay, regional and local mobility, and highway-rail grade crossing safety will occur as soon as rail traffic increases on the EJ&E line and will remain as long as train volumes exceed current levels. ICC staff believes that the Applicants' responsibility to participate in the cost of the two structures remains as long as the increased rail traffic continues to operate on the EJ&E line. The ICC strongly recommends that Final Recommended Mitigation No. 14 be revised to state:

"In addition to VM 28, Applicants shall coordinate with the following state and local officials for the expeditious implementation of a grade separation at:

- The highway/rail at-grade crossing of Ogden Avenue and the EJ&E rail line in Aurora (USDOT #260 560X). Coordinate with DuPage County, Illinois, and Aurora, Illinois, the Illinois Department of Transportation (IDOT), and the Illinois Commerce Commission.

• The highway/rail at-grade crossing of Lincoln Highway (US 30) and the EJ&E rail line in Lynwood (USDOT #260 651D). Coordinate with Cook County, Illinois, Lynwood, Illinois, IDOT, and the Illinois Commerce Commission.

The substantial effects of the transaction on traffic delay, regional and local mobility, and grade-crossing safety warrant an increase over the traditional railroad share of the cost of these grade separations if they are approved and funded. Once Applicants have been notified that the required non-CN funds have been committed and obligated, Applicants shall pay 67% of the cost of the grade separation at Ogden Avenue and 78.5% of the Lincoln Highway grade separation. Applicants shall pay this percentage of the cost of the preliminary engineering and environmental analysis, final design, ROW acquisition, utility relocation, and construction costs of these grade separations. However, Applicants shall not be required to pay for more than one preliminary engineering study for each crossing. This obligation shall only be in effect for projects where construction is initiated no later than 2020. The Board anticipates that IDOT will be the lead agency for the development of these grade separations."

In addition, ICC staff strongly recommends that the last paragraph on Page 47 of the Decision be revised to state: "The Board will not require CN to escrow these funds, nor will it require CN to be obligated indefinitely for its share of the cost of grade-separating the crossings at these intersections. The State of Illinois should notify the Board and CN once the non-CN funds (typically, public funding) necessary to design and construct the two grade separations have been committed and are available. Additionally, a construction contract must be signed and construction initiated no later than 2020."

4) Pedestrian Safety (Section 2.4.1.1 Students Walking or Cycling)

ICC staff believes that the following statement acknowledges that multiple tracks are a hazard to pedestrians and cyclists who cross highway-rail grade crossings of the EJ&E's tracks: "Students need to have a clear understanding of when a train has passed and when it is safe to cross railroad tracks. Where trains run on two or more tracks through the crossing, communities should consider ensuring that there are sufficient visual sight lines and/or audible warning devices for students to make the appropriate decision that a second train is not following the first train." [Pedestrian Safety – Section 2.4.1.1 Students Walking or Cycling (Pages 2-28 thru 2-29 of the FEIS)].

It is strongly recommended that the Decision include a Mitigation Decision that requires the Applicants perform specific mitigation in those areas along the EJ&E tracks where pedestrian traffic currently exists at public highway-rail grade crossings and a second track is proposed. ICC staff strongly recommends that the following mitigation requirement be added to the Decision: "The Applicants shall install and maintain solar powered highway amber flashing beacons mounted to regulatory pedway signs advising pedestrians and cyclists of an approaching public highway-rail grade crossing, as well as the possibility of multiple train movements, at all crossings on the EJ&E where

pedestrian traffic currently exists at public highway-rail grade crossings and a second track is proposed. Additionally, the Applicants shall install and maintain pedway pavement marking cross hatching at all the aforesaid highway-rail grade crossings. These amber flashing beacons, signs, and pavement markings shall be in place within 6 months of the effective date of the Board's final decision, subject to the approval of the coordinating agencies."

5) Fencing

The Board requires the Applicants to provide fencing (Applicant's Voluntary Mitigation Measure No. 10; Board's Final Mitigation Condition No. 11) where school or parks are located within one-quarter mile of the right-of-way. ICC staff objects to the requirement that the Applicants only furnish and install standard 6-foot-high galvanized, chain-link fence at all locations where an effective fence does not exist. ICC staff experience has shown that chain-link fencing material is not durable and is easily vandalized, thereby providing an opportunity for trespassing on railroad right-of-way. In addition, the Applicants should be required to maintain the fencing instead of a community. The ICC strongly recommends that the Board's Final Mitigation Condition No. 11 be revised to state: "To supplement Applicants' VM 10, Applicants shall coordinate with each affected community prior to installation of this fencing and shall install fencing where the community deems appropriate. Applicants shall furnish, install and maintain at their sole expense a standard non-mountable 6-foot-high fence of materials that is resistant to vandalism at all locations where an effective fence does not currently exist. Upon completion of construction, the fence shall be owned and maintained by the Applicants. The community may decide to install fencing that differs from this standard, but Applicants shall only be obligated to provide funds sufficient to construct the standard fence."

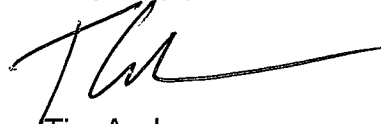
6) Crossing Blocking

The Applicant's Voluntary Mitigation Measure No. 35 indicates that "[a]pplicants shall operate under U.S. Operating Rule No. 526 (Public Crossings), which provides that a public crossing must not be blocked longer than 10 minutes unless it cannot be avoided and that, if possible, rail cars, engines, and rail equipment may not stand closer than 200 feet from a highway/rail at-grade crossing when there is an adjacent track (Applicants 2008a). If the blockage is likely to exceed this time frame, then the train shall be promptly cut to clear the blocked crossing or crossings." ICC staff experience has shown that railroads are resistant to "cut a train" in order to clear a blocked crossing or crossings. The effort required to cut a train, and then reconnect the train, is time consuming and counterproductive to railroad operations. ICC staff strongly recommends that the Board add the following Final Mitigation Condition to the Decision: "To supplement Applicants' VM 35, Applicants shall contact emergency services department of the affected community whenever a stopped train blocks a public highway-rail grade crossing on the EJ&E line for longer than 10 minutes. Applicants shall record every instance when a stopped train blocks a public highway-rail grade

crossing on the EJ&E line for longer than 10 minutes and report each instance to the SEA as part of the required quarterly reporting requirements outlined in the Board's Final Mitigation Condition No. 74."

Thank you for the opportunity to provide this request for reconsideration of the Decision regarding CN's acquisition of the EJ&EW. If you have any questions, please contact Michael Stead, Rail Safety Program Administrator, at (217) 557-1285 or mstead@icc.illinois.gov.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Tim Anderson', with a long horizontal flourish extending to the right.

Tim Anderson
Executive Director

cc: Service List
MES