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September 26, 2008

BY E-FILE

The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
Office of the Secretary
395 E Street SW
Washington, DC 20423-0001

Re: STB Docket No. FD 35087 Canadian National Railway Company
and Grand Trunk Corporation's Acquisition of Control of the
EJ&E West Company

Dear Acting Secretary Quinlan:

Thank you for this opportunity for the Chicago Metropolitan Agency for Planning (CMAP) to comment on the draft Environmental Impact Statement (EIS) for the proposed Canadian National Railway Company's (CN) acquisition of the EJ&E-West Company (EJ&E).

Please note that this letter does not constitute our Board's formal decision regarding its support of the proposed acquisition. The Surface Transportation Board's (STB) EIS process does not fully allow the CMAP Board to understand all of the impacts, both positive and negative, of this transaction on the metropolitan Chicago region. Additional analysis will be required to address the regional economic, transportation and community impacts of such an acquisition. At a later date, the CMAP Board will take action regarding the merits of the CN acquisition and submit additional comments to the STB to support their decision-making process.

Our letter has three sections:

- CMAP Background
- Comments on the STB EIS Process
- CMAP's Requested Conditions

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CMAP Background

Formed in 2005, CMAP integrates planning for land use and transportation in the seven counties of northeastern Illinois which have an estimated population of 8.5 million people and includes 283 municipalities. The region is expected to grow by 2.8 million residents and 1.8 million jobs by 2040. We work closely with local governments, transportation providers (both public and private), environmental agencies, business leaders, and advocacy groups, among other interests. For more information, please see our website (www.cmap.illinois.gov) or contact the undersigned.

The movement of goods through metropolitan Chicago has major impacts on the regional economy, transportation, and quality of life. Our status as the nation's rail hub has significant economic advantages for the region. At the same time, freight congestion -- including current congestion and projected increases -- casts doubt on whether the Chicago region can maintain its enviable status and the economic advantages that go along with it. Being a freight hub can also result in economic costs to the region, along with quality-of-life impacts on our communities. There is a need to balance the advantages and disadvantages to achieve a result that benefits our region as a whole. The imperative of carefully weighing factors such as these is precisely why CMAP was formed.

Comments on the STB EIS Process

CMAP supported the STB's decision to require a full Environmental Impact Statement (EIS) regarding the impacts of CN's proposed physical and operational changes. Still, the draft EIS falls short in addressing many of the concerns outlined in our earlier comments on the EIS scope. Notably, these on-going concerns include the time horizon of the study -- which, at five years, we believe is still too short -- the capacity constraint analysis, the impacts on freight and passenger rail service, and the lack of required mitigation measures.

The STB's EIS process is relatively narrow in its focus as outlined in federal law and regulation. Simply put, the EIS process was not designed to accommodate the regional viewpoint. The draft EIS therefore does not provide the information necessary for thorough decision making by an agency such as ours to reach an informed decision as to what constitutes the region's "greater good." A thorough cost-benefit analysis of the transaction is needed.

Time horizon of study and capacity constraint analysis

The short-term analysis timeframe for EJ&E operations is not adequate. Proper analysis of this acquisition and its impacts is not feasible if we are only looking three to five years beyond the date of STB approval. CMAP's original recommendation was for the STB's time horizon to extend at least 10 years after the STB acts. We disagree with the STB's Section of Environmental Analysis (SEA) conclusion that the CN's Operating Plan reasonably predicts the likely future rail traffic growth through the year 2015.

It is commonly believed that the nation and metropolitan Chicago will see a significant increase in freight traffic over the next 20 years. Therefore, CN's assertions regarding future growth in its April 21 Applicant Response Letter are counter-intuitive.¹ Long-term growth is reasonably foreseeable in Chicago, whereas predicting that future growth will "flat-line" is much more speculative. While local traffic may vary substantially, the EJ&E will link Asia and the Canadian Prairie Provinces with the U.S. Midwest and South, so it will likely be subject to long-term freight growth trends. The EIS analysis is not nearly robust enough for us to accept its assertions about EJ&E traffic and should be reconciled with the commonly held projections regarding the future of rail traffic.

If future volumes exceed the CN's Operating Plan, there may be substantial, adverse consequences in the long term. In addition to local quality-of-life concerns, the reliability of other rail operations in metropolitan Chicago could be affected, potentially causing significant economic harm through reduced regional and national freight and commuter rail mobility. The EIS also contains no analysis of how service levels might be expanded on existing CN subdivisions that will see short-term train traffic decreases, given additional pressures to move freight through the region. In the long term, even communities with short-term decreases could find themselves with no recourse unless the STB explicitly reserves such authority. If it does not, the capacity and its impacts will be determined solely by market forces.

Ideally, potential medium- and long-term consequences of additional volumes need to be understood at the time of the STB's decision. Thus, even if the exact trajectory of growth is unknown, a variety of possible scenarios could be simulated to assess potentially negative impacts. If systematic problems are revealed in such simulations, a plan for addressing those problems could be developed as conditions for approval or mitigation where appropriate. However, based on material in the Draft EIS record, there is a reticence on the part of the CN and on the part of the STB to engage in long-term forecasts.

Impacts on current, expanded and re-routed freight service

Our region's status as a major international freight hub is threatened by rail freight congestion. Northeastern Illinois clearly needs enhanced rail capacity. Work is now underway to implement such additional capacity in the form of the Chicago Region Environmental and Transportation Efficiency (CREATE) Program. CMAP has been among the most-vocal advocates of CREATE, the public-private partnership to reduce freight congestion in northeastern Illinois. The CREATE Program has been adopted as part of the Strategic Regional Freight System in our federally approved 2030 Regional Transportation Plan and Transportation Improvement Program. CREATE partners have demonstrated that the program will reduce freight delays in the region.

¹ http://www.stbfinancedocket35087.com/html/inforequest/request3/08apr21response/08apr21Response_Letter.pdf

While the proposed EJ&E acquisition appears to be consistent with CREATE's goals, this EIS process has, again, been a missed opportunity to involve stakeholders in the spirit of public-private partnership, which should include a careful analysis of how the public -- and not just the private sector -- stands to benefit significantly from infrastructure improvements that preserve and create jobs in rail, trucking, warehouse, and other industries. The lack of such analysis in the STB's process is an unfortunate omission.

Additionally, resources have already been set aside for at-grade enhancements to improve the flow of freight and to improve the fit between rail services and local communities across the region. Diverting state, regional, and local resources to facilitate CN control of the EJ&E would not be consistent with the 2030 Regional Transportation Plan for Northeastern Illinois.

CMAP also remains concerned that concrete action should be taken to assure the long-term viability of Amtrak service now using the St. Charles Air Line. This should include the connection at Grand Crossing proposed in the CREATE Program.

Impacts on current, expanded, and new passenger rail service

The draft EIS concluded that the acquisition would not have an adverse impact on existing Amtrak service. Additionally, it concluded that it would not preclude implementation of the STAR line or Southeast service, nor would it affect existing Metra passenger rail service. Because this seems to run counter to an earlier conclusion that the Operating Plan will reach capacity on the line, we would like to see further analysis and evidence that there will be no impacts.

We do not believe available information is sufficient to determine whether the CN control of the EJ&E will adversely affect the public interest in public transportation. Additional information is necessary and may require mitigation.

Mitigation

Our agency is eager to see CN's detailed commitments to mitigate anticipated negative impacts, and we believe that the STB's ruling should stipulate that those commitments are binding across at least the 10-year horizon that CMAP proposes. This is not evident in the draft EIS. CN's mitigation commitments should address real concerns about safety, noise, vibration, and traffic congestion, along with the quality of air, water, and other natural resources. Out of the 112 total at-grade crossings, the draft EIS lists 15 highway/rail at-grade crossing that require mitigation, but it does not specify any mitigation measures. Included in the draft EIS is a statement requesting assistance from agencies with a regional perspective to work with the CN and affected communities to develop shared mitigation measures. Although discussions regarding mitigation between communities and the CN will no doubt move forward, a fully enforceable mitigation plan must take a regional approach to best utilize public and private funds to resolve our most critical issues. CMAP's offer to provide assistance still stands.

Specifically, the Draft EIS identifies, in Table 6.3-1, fourteen at-grade highway crossings of the EJ&E in Illinois that require mitigation because of delay, queue blocks (spillback), crashes, or exposure. Of those, the following affect the Strategic Regional Arterial (SRA) System in our adopted 2030 Regional Transportation Plan²

- Ela Road (spillback on U.S. 12 SRA), Lake Zurich
- Hough Street (Illinois Route 59), Barrington
- Ogden Avenue (U.S. Route 34), Aurora
- Chicago Road (IL 1), Chicago Heights
- Lincoln Highway (U.S. 30), Lynwood

In addition, the Strategic Regional Arterials listed below were not included in Table 6.3-1. Since the Strategic Regional network was designed to provide regional mobility, the additional delay caused by the proposed action should be mitigated. For each of the Strategic Regional Arterials listed, with the exception of U.S. 14, substantial changes in capacity or connectivity have been planned or programmed:

- Stearns Road (New Bridge over Fox River in preliminary construction. Major construction is expected in 2009.)
- IL 83/IL 60 in unincorporated Lake County (Currently at-grade, 2-lane, skewed angle.)
- U.S. 14 in Barrington (Currently at-grade, 4-lane + median, skewed angle.)
- 119th Street in Plainfield

The SRA System facilitates regional mobility on our arterial highway system. Thus, extensive new delays by freight rail are inconsistent with our regional plan. None of these highways now warrants a grade separation. The grade separations would be unnecessary in the absence of the proposed acquisition. Therefore, some form of mitigation is required as appropriate.

Overall, we do not find the proposed traffic mitigation convincing. We don't have sufficient details to understand how the proposed mitigation will in fact mitigate the impact of the CN. Therefore, we cannot judge the merits of the proposed action.

Bicycle and Pedestrian Safety

The information in the Draft EIS is neither complete nor up-to-date. Many bikeways and pedestrian facilities will intersect or parallel CN and EJ&E rail lines. Bikeways and pedestrian facilities connect communities and, as a region, we have adopted policies encouraging bikeways and pedestrian facilities. However, historically, our partner agencies have not had good

² Map: <http://www.cmap.illinois.gov/WorkArea/showcontent.aspx?id=5584>; System Description: <http://www.cmap.illinois.gov/WorkArea/showcontent.aspx?id=8726> (p. 98 ff); System List: *ibid*, (p. 252 ff.)

cooperation from railroad companies in their efforts to construct such facilities. Such cooperation should be required.

CMAP's Requested Conditions

If CN's proposed acquisition of the EJ&E is ultimately approved, CMAP requests that the following five conditions be incorporated formally in the STB's ruling. It is important, in our view, for the STB to retain authority over each of these five issues in the event that volumes exceed CN's Operating Plan.

1. CN shall agree that increases in the total rail traffic operating above that outlined in the Operating Plan shall be analyzed in terms of the impact on communities, other rail operations and at-grade crossings of the highway network and shall participate in appropriate mitigation measures.
2. CN shall agree that increases in the total rail traffic operating above that outlined in the Operating Plan shall be consistent with commuter rail operations, including any commuter rail operations identified as the "preferred alternative" in the Southeast Service and STAR Line New Starts processes now under way.
3. The STB will require the CN to commit to a formal mitigation plan. The mitigation shall include appropriate measures and focus on intersecting Strategic Regional Arterials listed in Table 6.3-1 of the Draft EIS, plus Stearns Road, IL 83/IL 60, US 14 and 119th Street in Plainfield, and additional at-grade crossings as necessary. CN will work with CMAP and the communities to determine the impacts of mitigation strategies on the highway network in the vicinity of such mitigation. The implementation of all mitigation projects will be consistent with the planning and programming processes established in northeastern Illinois. Additional traffic mitigation shall be implemented as appropriate.
4. To demonstrate their commitment to addressing the mitigation plan, CN shall place in escrow \$150 million in a traffic impact mitigation fund to implement their share of these improvements. This figure assumes a roughly \$30 million cost for improvements at each SRA/CN intersection and a 50/50 public/CN responsibility for this mitigation. Selection and scope of mitigation projects should be determined through consultation between CN and the appropriate state, local, and regional governmental agencies. These escrowed funds shall be available for 10 years. Funds remaining after 10 years shall be returned to CN.

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5. The STB will require the CN to cooperate with efforts to develop sidewalk and trail crossings and shall respond to all communications regarding such sidewalk and trail development. Please contact us for the additional available resources.

To summarize, the CMAP Board has not yet taken a position regarding the acquisition of the EJ&E by the CN. In the event that the STB approves this acquisition, we respectfully request that the preceding conditions be required of the applicant. We also urge the STB to retain authority for ensuring these conditions are achieved if actual volumes exceed CN's plans.

We fully understand the limitations of the EIS process in federal law with regard to why your deliberations have not included a thorough cost-benefit analysis. Despite those limitations, we urge you to ensure that the regional perspective is not just incidental -- in CMAP's view, it should be paramount.

Our agency remains committed to helping all parties reach an outcome that maximizes benefits of the region's freight system while minimizing impacts on the region's communities.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall S. Blankenhorn". The signature is fluid and cursive, with the first name being more prominent.

Randall S. Blankenhorn
Executive Director

/stk