



Robert T. Opal
General Commerce and FRA Counsel

February 15, 2008

Via E-Filing

The Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

**Re: Finance Docket No. 35087, Canadian National Railway Company, et.
al., -- Control -- EJ&E West Company**

Dear Secretary Quinlan:

Enclosed for filing in the above proceeding are the Environmental Comments of
Union Pacific Railroad Company.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert T. Opal".

Robert T. Opal

cc: (w/attachments)
Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35087

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK WESTERN CORPORATION
-- CONTROL --
EJ&E WEST COMPANY**

**ENVIRONMENTAL COMMENTS
OF
UNION PACIFIC RAILROAD COMPANY**

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Dated & Filed: February 15, 2008

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**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK WESTERN CORPORATION
-- CONTROL --
EJ&E WEST COMPANY**

**ENVIRONMENTAL COMMENTS
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UNION PACIFIC RAILROAD COMPANY**

Union Pacific Railroad Company ("UP") submits these Comments in response to the December 21, 2007 decision of the Board's Section of Environmental Analysis ("SEA") requesting comments on the scope of the environmental impact statement (EIS) to be prepared in this proceeding. UP's concern is not the specific subjects SEA is proposing to consider. Rather, UP's concern is how the Board will deal with the broadly defined environmental issues that are being raised. The way the Board handles these issues will have major implications, not only in the Chicago area, but in future proceedings throughout the nation. In projects requiring Board approval, it will determine whether railroads will be able to effectively add capacity to handle the traffic demands likely to be placed on them in the future, or whether the Board will allow these projects to be impaired by local interests opposed to additional train traffic.

UP takes no position on the underlying transaction, and these Comments should not be read as expressing a view on its transportation merits. UP is also not aware of voluntary environmental mitigation measures the applicants may have agreed to, or may

be discussing with other parties, and is expressing no view on the propriety of any such measures.

1. The Transaction

CN is proposing to obtain control of EJ&E, an underutilized belt railroad running around Chicago through an area which, until recent years, was largely rural.¹ CN intends to make improvements to EJ&E with private capital and reroute traffic from existing CN routes to EJ&E to address some of the capacity problems CN and other railroads are facing in the Chicago area. Based on the filings and public meetings to date, the transaction has generated substantial opposition by local interests who are concerned about the increased rail traffic that CN would eventually route over EJ&E, and who are seeking either to defeat the transaction or impose expensive environmental mitigation conditions on it.

2. The Environmental Standard

Under the National Environmental Policy Act, an agency is obligated to consider "every significant aspect of the environmental impact of a proposed action." It appears from SEA's December 21 decision that this is precisely what SEA and the Board intend to do. However, NEPA does not require an agency to elevate environmental concerns over all other appropriate considerations. It requires only that the agency take a "hard look" at environmental consequences before taking a major action. See, e.g., Baltimore Gas & Electric Co. v. National Resources Defense Council, 103 S. Ct. 2246, 2252 (1983). In other words, the Board is not required to deny a transaction because parties have raised

¹ As discussed in the comments filed by the Small Railroad Business Owners of America, EJ&E historically handled more train traffic than it does today.

environmental concerns, or adopt mitigation measures to address every such concern. All that is required is that the Board take a "hard look" at these concerns and make a considered decision as to what, if any, responsive action is warranted.

3. The Board's Obligation To Promote Adequate Rail Capacity

The Board has another statutory obligation. Among the directives of the Rail Transportation Policy is that the Board "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense", 49 U.S.C 10101(4); Ex Parte No. 671, Rail Capacity and Infrastructure Requirements, (decision served March 6, 2007, p. 2). In the current, capacity constrained environment the railroads now face, both on a national level and especially in the Chicago area, this means that the Board must be part of the solutions to rail capacity problems and not an obstacle to these solutions.

There is no question that railroads need to add substantial additional capacity if they are to be able to handle future traffic. As the Board itself has noted, railroads experienced a 50% increase increase in traffic between 1990 and 2003, Ex Parte No. 671, supra, pp. 1-2. The U.S. Department of Transportation forecasts that rail freight traffic will grow by 35% between 2005 and 2020 if highway traffic growth is unconstrained by congestion, and substantially more if highway congestion or public policy drives more freight from road to rail².

The capacity to handle that traffic does not presently exist. It must be added, it must make financial sense, and it must be paid for. Unlike capacity enhancements in other

² Ex Parte No. 671, Comments of U.S. Department of Transportation, April 11, 2007, p. 3.

transportation modes, rail capacity enhancements usually must be funded by the railroads themselves. While public-private partnerships have been successfully used for several important rail projects, they have, to date, been the exception rather than the rule. Because most rail capacity projects are funded by the railroads, there is no large pool of private capital available to pay for endless delays or expensive mitigation measures.³

Capacity improvements are especially important in the Chicago area. Chicago has been an important railroad center since the earliest days of the industry, and Chicago owes its status as one of the world's great cities to the web of railroads that serves it. Every Class I railroad except KCS has one or more main lines and major yard facilities serving the Chicago area. As discussed in the following section, most of these lines are heavily utilized, with far more train traffic than CN is proposing to route over EJ&E.

Today, Chicago has become a major chokepoint in the U.S. rail network. The Chicago rail infrastructure requires large investments to handle not only present and projected rail freight traffic, but also the commuter and intercity rail passenger services that operate over and across many of the key rail corridors. As the Board is aware, this has been recognized both by the railroads and by public authorities, and one of the solutions was to be the ambitious CREATE project. The project called for \$1.5 billion of private and public investment to revise and modernize Chicago's rail infrastructure. However, to date, only a small portion of the funding required for CREATE has been committed. Unless this

³ UP has itself experienced important capacity projects which have been defeated or delayed by local opposition, some of which are described in UP's Comments in Ex Parte 671 (April 4, 2007, pp. 19-22). One example is a recent "Rockview-Sikeston" project in Missouri for a "line swap" between UP and BNSF, which would have allowed UP increase capacity without extensive new construction. This project was killed because of objections to additional rail traffic by Sikeston, MO. Another example is our ongoing effort to double track our capacity-constrained "Sunset Route" through Arizona, which is being stymied by Arizona Corporation Commission processes and delays. Comments from some members of ACC make clear that they want to force UP to pay for multiple grade crossing separations along the route costing tens of millions of dollars, even where road traffic is light.

changes, the railroads themselves will have to find and fund their own solutions, and making better use of rail lines which are currently underutilized is an obvious approach.

The Board needs to be extremely careful not to prevent, delay or discourage solutions to Chicago's capacity problems simply because they increase rail traffic on particular rail lines. The alternative is that Chicago will eventually become gridlocked, and the effects will ripple throughout the regional and national rail network and economy.

4. How The Board Should Respond To Concerns About Increased Rail Traffic

As previously discussed, most of the environmental concerns being raised in this proceeding involve the effects of increased rail traffic on EJ&E's currently underutilized rail lines.⁴ There will, of course, be traffic increases on EJ&E (as well as offsetting traffic decreases on other Chicago area rail lines currently used for CN traffic). This increased traffic will likely have effects that many local residents see as undesirable, and they prefer that the status quo be preserved. But the ultimate question for the Board should be whether any of these effects are so unusual and severe that they require denial of the transaction, or expensive mitigation measures. Based on what UP knows about rail lines and traffic in the area, neither denial nor extensive mitigation appears to be justified.

According to its application, CN intends to operate roughly 20-45 trains a day over EJ&E (the amount varies by segment; roughly 20 trains per day would run through the

4 As the Board knows, railroads are normally free to increase train traffic on their lines without any regulatory approval, see, for example, Docket No. AB-33 (Sub-No. 183), Salt Lake City Corporation - Adverse Abandonment, decision served March 6, 2002, pp. 8-9 and cases cited. As such, even if this transaction does not go forward, there's no guarantee that the rail traffic on EJ&E will remain at current low levels. For example, using interline rates or haulage arrangements, EJ&E could add the same number of trains that CN is proposing to add without any environmental review.

Barrington area). It is this level of traffic which, according to some parties, will cause major disruptions all along the EJ&E corridor.

How does this compare to other rail lines in the area served by EJ&E? UP's Chicago-Omaha main line (which crosses EJ&E at grade at West Chicago) travels through the west side of Chicago and Chicago's western suburbs and handles over 100 trains per day. The portion of this line between River Forest and Geneva (about 25 miles) runs through a nearly continuous string of suburbs, at grade, and with numerous rail-highway grade crossings, many of which are heavily used by highway traffic. Many of these suburbs were developed in the late 19th and 20th centuries, and the railroad runs right through the centers of the towns. The area is far more built up than the EJ&E corridor.

A few miles south of the UP line is a major BNSF main line, which crosses under EJ&E at Eola. The BNSF line similarly runs at grade through a string of Chicago suburbs beginning at Berwyn, IL, and extending to Aurora, IL, with numerous, heavily used grade crossings. Some of these suburbs (e.g., Hinsdale) are very similar to Barrington. The BNSF line actually handles more rail traffic than the UP line - over 130 trains a day.⁵

Other rail lines in the Chicago area also handle heavy amounts of rail traffic. For example, the CP-NIRC (Metra) line running from Chicago northwest to Elgin handles 86 trains per day; the CP-NIRC (Metra) line from Chicago north to Roundout handles over 82 trains per day; the UP line running northwest from Chicago to Harvard handles over 66 trains per day through Barrington; the UP line running north from Chicago to Waukegan and Kenosha handles 55 trains per day. Again, all of these lines operate at grade beyond

⁵ Train counts derived from USDOT grade crossing inventory data on FRA Quiet Zone Calculator website, <http://safetydata.fra.dot.gov/quiet/>.

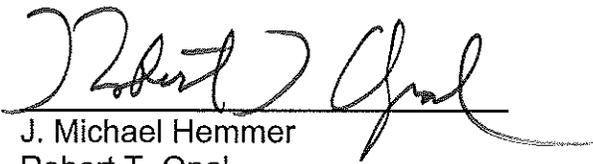
Chicago city limits, with numerous, heavily used grade crossings. The railroads and the communities along these lines, and others in the Chicago area, have coexisted for decades.

In short, in reviewing the EJ&E transaction, the Board should compare and contrast it to existing rail operations through the Chicago suburbs. The fact is that the number of trains CN intends to route on EJ&E is low compared to most other main lines serving the area. There may be special situations at some specific locations on the EJ&E route which require focused mitigation measures. If so, these should be addressed as SEA performs its analysis. But the Board should not impose extraordinary mitigation measures for the relatively low volumes of traffic involved in this proceeding, and the Board should carefully balance the costs of mitigation against the critical national and regional need for more rail capacity.

CONCLUSION

In the environmental phase of this proceeding, the Board must weigh the local concerns against the benefits of capacity improvement projects that require STB approval. That is a critically important issue to the nation's railroads and the shippers they serve. If the Board is serious about encouraging the creation of additional rail capacity, then the Board should use extreme caution in burdening capacity growth. The alternative is that an increasing share of the nation's freight traffic will be forced to move by truck rather than by rail.

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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon all parties of record, as listed in the Board's decision served January 25, 2008 in this proceeding. Service was made by first class United States Mail:

Dated at Omaha, Nebraska this 15th day of February, 2008.


Robert T. Opal