



U.S. Department of
Transportation
Office of the Secretary
of Transportation

General Counsel

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

September 30, 2008

Hon. Anne K. Quinlan, Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Finance Docket No. 35087

Dear Secretary Quinlan:

Enclosed herewith for filing in the above-referenced proceeding please find the Comments of the United States Department of Transportation on the Draft Environmental Impact Statement (designated as DOT-6). Please contact me if you have any questions.

Respectfully,

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Enclosure

**Before the
Surface Transportation Board
Washington, D.C.**

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

**Comments of the
United States Department of Transportation
On the Draft Environmental Impact Statement**

Introduction

The acquisition of the Elgin, Joliet & Eastern Railway Company ("EJ&E") by the Canadian National Railway Company and the Grand Trunk Corporation (collectively, "Applicants" or "CN") would result in the shift of significant amounts of traffic from rail lines that traverse the central urban core of Chicago to lines that run through suburban and exurban communities and other areas in the region. That shift would yield significant benefits as well as burdens, which would fall unevenly over the metropolitan area.

In this portion of the proceeding the Surface Transportation Board ("STB" or "Board") considers the transaction's environmental effects. The National Environmental Policy Act ("NEPA") requires the agency to take a "hard look" at the environmental consequences of the proposed acquisition, but does not demand that environmental values outweigh all others. *Robertson v. Merthow Valley Citizens Council*, 490 U.S. 332, 350-51 (1989). The Board accordingly fulfills its statutory obligations overall by weighing

“the anticipated public benefits against the potential adverse effects to the national transportation system, interstate commerce, and affected regions and communities.” Draft Environmental Impact Statement (“DEIS”) at 6-2, 6-3; *see* 42 U.S.C. §§ 4321 et seq.; 49 U.S.C. § 11324(d).

The United States Department of Transportation (“DOT” or “Department”) has already expressed its view that the transaction warrants approval (subject to fairly minor conditions) pursuant to the underlying regulatory standard. 49 U.S.C. § 11324(d); DOT-4 (filed March 13, 2008). The Section of Environmental Analysis (“SEA”) has now prepared a comprehensive analysis of the environmental and related impacts of the proposed acquisition. DOT comments herein only on specified portions of the DEIS, notably the prospects for rail congestion on the EJ&E lines and its consequences. We offer as well recommendations on mitigation efforts and responsibilities appropriate to this case.¹

Before turning to the DEIS, however, DOT wishes to note a basic apprehension with the potential for processes like this one to impede clearly beneficial transportation projects because of very localized concerns.

The Uses of NEPA

Addressing the environmental concerns arising from this transaction raises a key issue vital to providing the rail capacity needed to meet growing transportation demands in an environmentally benign manner. That issue requires weighing potentially

^{1/} DOT takes no position with respect to matters covered in the DEIS that are not mentioned herein.

significant localized environmental impacts with a project's clear national and local environmental, economic, and other benefits.

Using EJ&E tracks to divert traffic currently passing through downtown Chicago, and investing to expand the capacity of the EJ&E, will provide significant benefits to businesses and consumers throughout the country, as well as to large numbers of residents in the Chicago area. On the other hand, as the DEIS indicates, the significant traffic shifts that make this merger beneficial from a national and regional transportation perspective negatively affect communities along the EJ&E.

The DEIS identifies a great many impacts of varying character and consequence, and lists mitigation options that might be implemented. The task at hand is to identify those impacts that are sufficiently meaningful to warrant mitigation, the most appropriate mitigation measure(s) in each case, and -- for those instances in which mitigation requires a financial (rather than, say, an operational) commitment -- sources of funding.

In commenting on the scope of the EIS earlier in this proceeding, DOT stressed that:

It is simply not possible as a financial or operational matter to mitigate, for example, all vehicular safety and delay issues by a grade-separation at every crossing, or all noise issues by barring the use of train horns within earshot of homes or offices. Moreover, such a narrow perspective tends to emphasize more parochial concerns at the expense of others who are similarly situated with interests no less legitimate. By contrast, a more inclusive focus allows for a more realistic and efficient approach to mitigate adverse effects in cases, like this one, involving large traffic flows, numerous communities and even more numerous grade crossings, and finite resources.

DOT-3 at 3-4 (filed February 15, 2008).

This broad perspective properly serves the Board and the public interest, and helps to avoid more narrowly based decisionmaking. *See, e.g., CSX Corp., et al., -- Control -- Conrail Inc., et al.*, 3 S.T.B. 196, at 356-59 (1998). We urge the Board to adhere to this perspective as it considers possible mitigation measures for impacts that cannot be resolved by agreement among the parties. Delays in approval and/or the imposition of overwhelming mitigation costs on participating carriers could also provide an unintended and unfortunate incentive to railroads to forego otherwise beneficial transactions or seek alternatives that do not require regulatory approval.²

In sum, the overarching standard for the STB in this proceeding should be to assure that the transaction has net positive benefits, that significant impacts are fully disclosed and addressed where feasible, and that the Applicants take what steps they can to minimize impacts for which they are responsible. The Department agrees with SEA that it would be unreasonable to impose on the Applicants all the burdens required to mitigate virtually every impact in this case. DEIS, at 6-17. NEPA does not require this,³ and sound public policy counsels against it, for it would frustrate the rationalization of the rail industry and deprive the public of the manifest benefits of that process -- higher efficiency, lower costs, reduced emissions, etc.

² For example, most of the traffic currently on the more congested parts of the EJ&E stems not from that carrier's own trains but from Union Pacific ("UP") and BNSF Railway ("BNSF") trains operating via trackage rights. DEIS, at 4.1-9. CN as well as these other railroads could potentially route additional trains over an independent EJ&E without need for STB approval. The impacts of any resulting increases in traffic over the line in that event would be neither studied nor mitigated.

³ *See Robertson*, 490 U.S. at 352 ("There is a fundamental distinction [] between a requirement that mitigation be discussed in significant detail to ensure that environmental consequences have been fairly evaluated, on the one hand, and a substantive requirement that a complete mitigation plan be actually formulated and adopted, on the other.")

CN should not be held responsible for mitigation measures that are beyond its authority to implement, nor should it alone bear the costs of mitigating impacts that arise from a combination of the proposed transaction and other sources. The Department sets forth below recommendations on both reasonable mitigation options for the impacts we address, and appropriate funding mechanisms.

The Transaction's Public Benefits

Chicago has long been the nation's single most important railroad center, where all major carriers on the continent come together. It is unfortunately also the country's principal rail bottleneck. Moving traffic through the metropolitan area can add more than one day to transit time, with attendant costs to railroads, shippers, consumers, and the environment. *Id.* at 1.2-5. In recent years major public and private sector stakeholders have joined to form the Chicago Region Environmental and Transportation Efficiency ("CREATE") project, a massive undertaking to enhance transportation efficiency and safety in the area by improving and maximizing use of certain rail corridors, constructing multiple grade separations and rail over- and underpasses, upgrading rail facilities, etc.⁴

A lack of adequate funding has impaired CREATE's progress, but the pending transaction would effectively relieve some of the problems CREATE was meant to resolve. The shift in rail traffic from the CN to the EJ&E would make greater use of and expand existing capacity, reduce rail congestion, increase transportation efficiency, and enhance safety. *See, e.g.*, CN-2 at 23, Operating Plan (Exhibit 15), Verified Statement ("VS") of David L. Novak. Benefits will accrue to CN, of course, but also to shippers in

⁴ For a fuller explanation, see www.createprogram.org.

the form of faster and more reliable service and lower logistics costs, and eventually to consumers in the form of lower prices.⁵

The transaction also will benefit the public by enhancing safety on a net basis even without any mitigation measures in place. The DEIS finds that both the rate and the number of train accidents overall will decline. DEIS, at 4.2-4; Table 4.2-3.⁶ Accidents between motor vehicles and trains at grade crossings would also decrease. *Id.* at 4.2-17. SEA found there would be a substantial reduction in the risk of release of hazardous materials on the CN lines and a potential increase on the EJ&E, but the possibility “would remain remote.” *Id.* at 4.2-38. Finally, the number of people exposed to the varied burdens of significant levels of rail traffic -- vehicular delays, risks to safety and air quality, etc. -- will be cut substantially, from more than 900,000 to about 335,000. *Id.* at 4.2-37.

But these benefits are not unalloyed. The shift in rail operations that is the driving force for the transaction often means that a benefit for one localized area entails a detriment for another. Simply put, a reduction in trains on the CN's urban tracks and the addition of trains on the EJ&E's suburban tracks commonly improves the quality of life for the former and decreases it for the latter. *Id.* at ES-12, -14. The significant adverse impacts must be addressed and mitigated to the extent feasible. In these times of strained rail capacity, DOT concentrates on the DEIS's treatment of rail congestion on the EJ&E and its consequences.

⁵ As it has since the Staggers Act, competition from other railroads and modes of transportation will ensure that much of the benefit will be passed on to consumers.

⁶ Rail accidents on the pertinent lines would decline by 8%, while accidents in rail yards would increase slightly because of increased switching activity because of the merger. DEIS, at 4.2-7. The SEA proposes mitigation conditions that should reduce the risk of such accidents.

Rail and Vehicular Congestion

The SEA measures the capacity of the EJ&E line to accommodate the train volumes projected by Applicants in their Operating Plan and finds that, even after completion of the proposed capital projects, such traffic levels would put the EJ&E “at or very near to capacity.” DEIS, at 4.1-39. On this basis SEA considers that the Applicants’ traffic projections “while optimistic, present a reasonable basis on which to conduct the environmental impacts analysis.” *Id.* The Department, however, believes that the DEIS finding depends to some degree upon unrealistic assumptions, and thus may understate the likely extent of rail congestion on the EJ&E and its consequences.

The DEIS assesses the capacity of the EJ&E using three different analytical techniques. The first is a “bottleneck analysis” of a line segment over which the capacity to add trains cannot be readily or inexpensively increased. DEIS, at 4.1-21. SEA chose to study an eleven mile segment between Walker (near Plainfield, IL) and Rock Island Junction (near Joliet, IL), which includes the Des Plaines River Bridge, the EJ&E’s East Joliet Yard, and other operational and physical constraints. SEA concluded that “the Applicants’ Operating Plan would consume all or nearly all of the main line capacity of this bottleneck.” *Id.* at 4.1-26.

This statement implies there will be no adverse impacts on the segment, but that will be the case only if pertinent assumptions hold true. However, consideration of just one of the factors included in the study -- the Des Plaines River Bridge -- leads DOT to believe that congestion and its consequences are virtually inevitable on this segment as a practical matter.

The bridge currently opens an average of 17 times a day, and river traffic has the right-of-way; if boats arrive when trains are approaching the bridge, those trains must be held. There are limited locations to hold trains on each side of the river that have sufficient length to park waiting trains without blocking highway grade crossings. *Id.* at 4.1-23. Given the Applicants' plan to operate 42 trains a day over this segment, and the other related problems noted in the DEIS, it is very likely that trains will be delayed, that the above sidings will prove inadequate, and that stopped trains will block roadway grade crossings. *Id.* at 4.1-21, -26

The second analytical technique SEA used to measure the adequacy of the EJ&E to absorb the traffic projected by the Applicants is the Line Occupancy Index ("LOI") Analysis, which compares a rail line's nominal capacity (involving train speed, methods of operation, etc.) with the actual number of trains that will occupy the line. *Id.* at 4.1-27. LOIs "between 70 and 100 indicate that the rail line segment has exceeded its practical capacity, and maintenance activities will likely result in interruption to train traffic, or rerouting of train traffic to other lines, or temporary reductions in rail service levels offered to shippers, or all three." *Id.*

The results of this analysis show a dramatic increase in LOIs with multiple EJ&E segments rising to or well into the 70 to 100 range. Figure 4.1-8. Although SEA again concludes that the Applicants' Operating Plan "would consume nearly all of the main line capacity" of the EJ&E (but only under ideal conditions), the DEIS also finds that the EJ&E "could have insufficient capacity to allow for non-interference with the existing trains of other railroads that cross the EJ&E rail line without incurring delays to Applicants' trains." DEIS, at 4.1-29. Clearly, it will be very difficult to operate the

number of trains CN proposes in a timely manner over these segments without adversely affecting vehicle travel.

The third analytical tool used in the DEIS is the Rail Traffic Controller (“RTC”) Model, reportedly industry dispatching software which runs simulations based on a railroad’s physical plant, train characteristics, etc. *Id.* at 4.1-32. RTC model results are primarily expressed in “delay ratios,” which measure time lost in rail operations as trains wait for a clear track. *Id.* A delay ratio of 20 or higher is generally avoided in the industry. *Id.*⁷

Applying the RTC model to the Applicants’ Operating Plan yielded a delay ratio of 28; adding more trains from any source (such as Metra or UP) would multiply the ratio dramatically. *Id.*, Table 4.1-2. Another RTC output (“stringline diagrams”) confirmed that implementing the Applicants’ Operating Plan would produce “major delays at several locations” on the EJ&E. *Id.* at 4.1-33.

DOT believes even these findings and conclusions to be overly optimistic because of the assumptions employed in the study. For instance, in the RTC exercise SEA assumed: that freight trains crossing the EJ&E main line at grade are given precedence over trains on the EJ&E main line, that these trains are evenly spaced throughout each 24-hour period, that bridge lifts at Joliet operate 20 times per day at equal intervals over 24 hours, and that trains leaving the EJ&E would promptly be accepted by the CN and other railroads. *Id.* at 4.1-32.

⁷/ “High delay ratios indicate a rail system that is overloaded with trains, or that trains are of excessive length or insufficient horsepower for the system, or all three.” DEIS, at 4.1-32. They reflect a system operating close to capacity and thus very vulnerable to factors, like mechanical malfunctions or track maintenance, that commonly hinder trains. *Id.* at 4.1-33.

But such assumptions would make scheduling trains on the EJ&E much simpler than it really is, for they do not reflect the reality of more nearly random train arrivals, inconsistent times between bridge lifts, and delays due to connecting carriers failing to accept trains promptly. In other words, they do not recognize the inevitable clustering of events that would result in trains on the EJ&E main line having to stop for potentially longer periods than planned.

Naturally, the consequences of delayed trains are not limited to the CN. As already noted, a significant number of trains from other railroads (*e.g.*, BNSF, UP) now operate over the EJ&E and would likely feel the effect of operating “at or near capacity.” *Id.* at 4.1-3, -27, -33. Moreover, some Amtrak trains and significant numbers of Metra commuter trains cross certain of these potentially congested spots; if rail-to-rail crossings are blocked, passengers may face delays. Finally, there are only a very limited number of sidings with both sufficient length for the longer trains proposed and no highway grade crossings nearby. If major train congestion develops on the line, highway-rail grade crossings may be blocked, with resulting vehicular delays.

The SEA found that 15 at-grade highway crossings and 11 providers of emergency services would experience such considerable traffic delays as a result of the transaction as to be “substantially affected.” DEIS, at 4.3-2; Tables 6.3-1 and 6.3-2, at 6-18, -21.⁸ The SEA estimated that the proposed merger and incremental growth rates would impose a net increase of 475 vehicle-hour delays per day at these crossings by 2015. *Id.*, Table 4.3-3. It must be remembered that these calculations assume a particular

⁸/ A crossing is “substantially affected” if the proposed consolidation caused blockage or resulted in more than 40 hours of delay per day, or if the crossing would be at or over capacity. *Id.*

train speed; if trains must proceed more slowly because of congestion or some other factor, total delays will increase. If trains must actually stop when they are not at sidings, crossings may be blocked for more extended periods. Although such blockages can occasionally occur anywhere due to mechanical problems, accidents, or other unavoidable circumstances, it is unacceptable for rail carriers to block crossings routinely due to inadequate system capacity. DOT urges the SEA to ground the final EIS on reasonable operating assumptions and to ensure that it fully address the extent of rail congestion on the EJ&E and its consequences.

Mitigation – Funding

Virtually all rail consolidations entail adverse impacts of one sort or another. Demonstrable reductions in competition are relatively easily identified and resolved; negative environmental consequences on communities are more difficult to mitigate. Very often the best resolutions are those reached by agreements among the parties themselves, and DOT continues to encourage these. But in the absence of such agreements, the STB must choose appropriate conditions.

The Department believes that applicants in rail consolidation cases should adopt operational practices that are sensitive to local conditions, and should participate in the funding required to mitigate other transaction-related impacts. Pre-existing conditions are not the responsibility of such applicants, even though they may add to a merger's effects. That is the case here: there is already traffic congestion at rail crossings in many communities along the EJ&E, by no means all of it caused by EJ&E trains. DEIS, at 6-

17. Thus, remedial measures should be funded only partially by the Applicants and partially by affected communities.

SEA is considering a range of mitigation options for the highway/at-grade rail crossings and emergency service providers it identified as “substantially affected.” *Id.* at 6-19, -21. DOT agrees with the DEIS that the identified crossings and emergency service providers each warrant mitigation measures. One of the options listed is a “Traffic Impact Mitigation Fund,” which would require the Applicants to work with appropriate public agencies to establish a pool of money (including a one-time contribution from CN) to be administered by interested agencies to redress the delay and safety impacts of the proposed transaction. *Id.*, at 6-20.

The Department supports this option. A regional mitigation fund, with monies from the Applicants and other local, state, and federal sources, could finance those mitigation measures and projects that make the most sense from the proper (broader) perspective. We acknowledge that between the townships, counties, and states involved in this proceeding, developing and implementing such a fund would not be simple, but we share SEA’s hope that such an approach offers an attractive opportunity for effective solutions. *Id.* at 6-19. Since most of the environmental benefits from reduced traffic through Chicago occur in the same state as the negative impacts on the suburban counties, one obvious participant in and potential contributor to a Traffic Mitigation Fund would be the Illinois Department of Transportation.

DOT also wishes to suggest a possible means to determine the approximate appropriate size of a fund insofar as it is devoted to vehicular delays. This approach would determine the present monetary value of the annual cost of delays over the

foreseeable future by multiplying the annual cost by an appropriate discounting factor.⁹

The Applicants' share of that amount would depend upon the STB's view of the extent to which CN's post-merger operations contributed to the delays.

The Department also suggests imposing a time restriction on the use of Applicants' money in any mandated general mitigation fund. If that money cannot be committed to particular projects within a certain period (*e.g.*, five years), it should revert to the Applicants. Reaching agreement among the various entities on allocating the fund will be difficult. The threat of loss of a significant amount of money will give them an incentive to work cooperatively. It will also assure that the mitigation is provided in a timely manner, as the impacts are felt.

Mitigation – Operational Limits

The Applicants have made the fairly standard representation that they can operate the merged railroads efficiently and without untoward consequences. CN-2 at 209-211, Operating Plan (Exhibit 15). Nonetheless, operational problems have resulted from past mergers, and these can reduce or defer the anticipated public benefits from a given transaction. Moreover, the Department has indicated its expectation that implementation of the Applicants' Operating Plan under current and projected circumstances will produce

⁹/ We do not advocate any particular value, but simply to illustrate this concept one would accept the DEIS estimate that total net delays would increase by 475 vehicle hours per day by 2015 as a result of the proposed merger and incremental growth. Table 4.3-3. Assuming (1) that each vehicle has one person (the average is probably higher), and (2) that the value of that person's time on an hourly basis is \$21.69 (the approximate average wage rate), yields a delay cost of \$10,302 per day, or about \$3.86 million a year. The present value would of course depend on discount rate used. A ten percent rate over a twenty year period would produce a present delay value of nearly \$33 million. Use of 2015 projections in the DEIS (at the request of various parties) supports adjusting the discounting to take into account when delays actually begin and when mitigation measures are funded.

congestion on the EJ&E beyond that forecast by the SEA, and that vehicular delays will increase commensurately.

Applicants in rail consolidation proceedings should generally be held to their representations. But even when they make none, such carriers should not be permitted to implement their mergers in a way that results in persistent roadway blockages or other substantial vehicular delays. In these circumstances, if delays materially in excess of SEA's projections occur with any consistency, DOT proposes that the Board adopt a condition that would require CN to limit its train operations over the EJ&E to the level necessary to redress transaction-related delays.¹⁰

CN could readily divert trains to its existing lines in the Chicago area to relieve problems beyond those foreseen in the DEIS. The prospect of this sanction and its operational disadvantages vis-à-vis use of the EJ&E line should provide a clear incentive to the Applicants to align traffic shifts more carefully with the capacity available on the EJ&E at any given time.

Mitigation - West Chicago

Departmental personnel visited several of the areas studied in the DEIS and noted that the City of West Chicago in particular is apt to face considerable impacts that may not be easily mitigated. Specifically, the fact that the EJ&E crosses the main line of the UP in West Chicago at grade, where both railroads also cross a number of roadways.

^{10/} The affected communities could document such instances and petition the Board in the oversight period we have previously recommended to impose this measure. See *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 515-518 (1996), in which the STB did not permit the level of rail operations through the city of Reno, Nevada, called for in the Operating Plan in order to preserve the environmental status quo while studies were underway to determine the precise number and location of grade separations. Here, such a limit would be put in place only after other mitigation measures failed to prevent substantial vehicular delays beyond those estimated in the DEIS.

makes any solution difficult. We urge careful attention to address the complex potential problems at this location when more trains will be using the EJ&E line.

DOT is especially concerned that the pedestrian crossing at West Chicago High School (south of the crossing between UP's main line and the EJ&E) may be blocked by standing trains waiting to proceed across the UP line. Students and others may be tempted to cross under the standing EJ&E trains, a particularly dangerous activity. Yet this crossing is not even mentioned in the DEIS inventory of pedestrian crossings. DEIS, at 4.2.-35. We recommend a specific condition here, such as a lit pedestrian underpass, to avoid a tragedy.

Mitigation – Gary/Chicago International Airport

The EJ&E line is immediately adjacent to the end of the main runway at Gary/Chicago International Airport (“GCIA”). The Federal Aviation Administration has previously studied and agreed to fund an extension of that runway to enable GCIA to meet federal airport safety standards, which project would require the relocation of the EJ&E track. DEIS, at 3.3-94, -96. The SEA observes that the merger would not affect existing operations at GCIA, and that as a result of a Preliminary Memorandum of Understanding (“PMOU”) that CN has committed to honor, the transaction would not affect the runway extension project. Id. at 4.3-91.

The PMOU was entered into by the airport, EJ&E, and two other rail carriers involved in the relocation (CSX and Norfolk Southern). By its terms it is “non-binding” on the parties (and thus on CN), but it establishes a clear framework leading to “future binding agreements” by which the parties clearly anticipate successful completion of the

runway project and relocation of the EJ&E and related rail facilities. PMOU at 2-7.

Through the PMOU the rail carriers have expressed their willingness to accommodate the project so long as their operations and legal interests are not affected and GCIA provides the funding. *E.g., id.* at 13, 16. The FAA has already committed funds to relocate the rail line and issued a letter of intent to reflect its preliminary support for additional financing in the amount of roughly \$20 million. DOT-3 at 2. If more is necessary, GCIA is responsible for that funding; it may return to the FAA and/or seek other sources.

Particularly insofar as the Applicants have voluntarily agreed to comply with the PMOU, DOT fully anticipates that CN would use its good faith best efforts in carrying out this undertaking. Although the PMOU does not itself guarantee the completion of the rail line relocation/runway project, with no apparent operational or financial reason for opposition, there would be every reason to expect that the parties could resolve any remaining issues. The Board would of course be available during the oversight period we have recommended to consider documented complaints that the Applicants are not abiding by their representations in this regard.

Metra Star Line

Specific mitigation action at this point with respect to Metra's planned "Star Line" is premature. If that line comes to pass, however, the Department will be concerned with the addition of a substantial number of trains to the EJ&E line during rush hours. They will be running more or less at right angles to the large numbers of existing Metra commuter trains during those same periods. DOT for now will continue

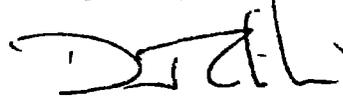
to monitor developments through its directly concerned program offices, the Federal Railroad Administration and the Federal Transit Administration.

Conclusion

The pending transaction promises both substantial public benefits and significant adverse environmental burdens. The Board should consider its overall responsibilities under both applicable regulatory standards and NEPA and approve the consolidation of the CN and EJ&E subject to conditions addressing competitive and environmental impacts.

Those conditions that are appropriate here are familiar. They proceed from a broader rather than a narrower perspective. They also require the Applicants to maintain the status quo and, where that is not feasible (as it is not with respect to certain environmental matters), to work in good faith with affected parties and to contribute financially to mitigate impacts that threaten serious disruptions. If and when these efforts fail to prevent substantial vehicular delays beyond those projected, the train volumes that give rise to such impacts should be reduced.

Respectfully submitted,



D.J. GRIBBIN
General Counsel

September 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused a copy of the Comments of the United States Department of Transportation on the Draft Environmental Impact Statement in Finance Docket No. 35087 to be served by first class mail, postage prepaid, upon all Parties of Record in this proceeding.



Paul Samuel Smith

September 30, 2008