UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD
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HEARING

IN THE MATTER OF:	:	
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HEARING ON CN EJ&E REPORTING REQUIREMENTS,	:	Finance Docket No. FD 35087
	:	
CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION	:	
	:	
- CONTROL -	:	Decision No. 23
	:	
EJ&E WEST COMPANY.	:	

Wednesday,
April 28, 2010

Surface Transportation Board

Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on for hearing, pursuant to notice, at 1:00 p.m.

BEFORE:
DANIEL R. ELLIOTT, III Chairman
FRANCIS P. MULVEY Vice Chairman
CHARLES D. NOTTINGHAM Commissioner

APPEARANCES:

On Behalf of Canadian National Railway Company, and Grand Trunk Corporation:

GORDON T. TRAFTON, II

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A G E N D A

P R O C E E D I N G S

(12:58:57 a.m.)

CHAIRMAN ELLIOTT: Welcome, everyone to today's hearing. Welcome, Congresswoman Bean. Before I get started today, I just would like to express my condolences for the sad loss that we just recently had on the line at issue, Katie Lunn, a very young woman. It's always sad to see someone pass away, but especially someone so young and vibrant to pass away, in such a way. We just wanted to express our condolences, and assume that the CN and the FRA are working on ways to address these kinds of accidents hopefully not occurring in the future.

To get to the hearing at hand, as many of you know, in December of 2008 this Agency approved the acquisition of the Elgin, Joliet and Eastern Railway by the Canadian National Railway. In approving the deal, the Board imposed an unprecedented amount of mitigation measures on CN. While this merger was approved before my appointment as Chairman, it is one of my highest

priorities to ensure that CN adheres to the mitigation provisions.

To ensure compliance, the Board created a five-year oversight process to closely monitor various aspects of the transaction. CN must file monthly Operations Reports and quarterly Environmental Reports with the Agency. The reports must include information on daily train counts, accidents, and incidents, and, of relevance today, of blocked crossing delays.

In my first few months as Chairman, I heard a lot of concerns about the accuracy of the reports filed by CN. In January of 2010, I directed our independent third-party contractor to audit CN's reports for November and December of 2009. That audit identified a major discrepancy in CN's reporting. In November and December 2009, CN reported a total of 14 blocked crossings for longer than 10 minutes. Our auditors revealed over 1,400 occurrences. It appears that CN's monthly reports only include occurrences of blocked crossings for longer than

10 minutes when the train had completely stopped; whereas, the data from the audit includes not only stopped, but also blockages from slow-moving trains, or other causes.

We called this hearing for CN to explain why it failed to inform the Board of its ability to report blocked crossings due to slow-moving trains. We're not here to revisit our approval of the merger, or to decide what, if anything, this new information will show. We just received the information, and are processing it now, and we will receive public feedback at the end of May. Rather, the sole issue here is why CN failed to comply with our order, and to understand why it never revealed to the Board, or its staff, of the existence of all this very specific information about blocked crossings.

Now I will turn the floor over to Vice Chairman Mulvey for any opening remarks.

VICE CHAIRMAN MULVEY: Thank you, Chairman Elliott.

The Board approved this transaction

in December of 2008, only after a detailed analysis of the environmental impacts to communities located along the EJ&E lines. We recognize that, while this transaction offered the promise of relieving rail congestion in and around Chicago, a vital part of this nation's freight yard network, we also recognize that it would have negative environmental impacts on certain communities on the EJ&E lines. And due to the severity of these potential impacts, the Board conditioned its approval of the transaction on the requirement that CN comply with environmental mitigations designed to alleviate those adverse environmental impacts.

The Board established a five-year oversight period during which CN is required to collect and submit detailed information to the Board. The point of the oversight reporting is to allow the Board to determine on an ongoing basis whether the original conditions it imposed in the transaction are effective, or whether more are needed. If the information revealed in the

oversight that the original conditions are either not sufficient, or no longer appropriate, the Board has the power to adjust and tailor those conditions.

The importance of the accuracy of the data that CN is required to submit during the oversight cannot be overstated. In my separate statement that approved the transaction, I indicated that divergence from traffic projections should be closely scrutinized, and that the oversight data would permit the Board to assure that its conditions were appropriate. Without accurate and robust data, the Board's ability to monitor the impacts of the transaction is greatly hindered. And, as a result, the public would suffer.

I am deeply disappointed by even the possibility that CN failed to disclose information, in fact, an entire database in its possession that provides data responsive to one of the Board's monitoring conditions.

Our decision required the CN to

report "the frequency, cause, and duration of train blockages of crossings of 10 minutes in duration or greater, listing each delay, and including any notifications from persons affected by the blockage, and the time of the beginning and end of each delay." That implies that all kinds of blockages are important to us, not simply the ones where trains are stopped.

Without a doubt, the RTU data discovered during HDR's audit provides automated information that tracks both the frequency and duration of down crossing gates on the vast majority of crossings on the EJ&E lines. This information would appear to give CN the ability to quickly identify instances where a crossing is blocked for more than 10 minutes, allowing it to investigate contemporaneously whether the crossing was blocked by a train that was stopped, or slow-moving, why the blockage occurred, and what remedial steps CN was taking.

The difference in a blocked crossing reported by CN and the blocked crossings reported

by the RTU data is staggering. It is difficult to imagine that any railroad subject to a monitoring condition regarding blocked crossings would not consider the RTU data to be highly relevant to its reporting responsibilities, and capabilities.

Given this, it was incumbent on CN to disclose the existence of the RTU database to the Board's staff at the very earliest stages of the monitoring process, and to use the database to comply with the Board's conditions. It is, therefore, extremely unfortunate that the Board has learned of the existence of an entire database that tracks the frequency and duration of down crossing gates on EJ&E only through an audit.

In this hearing, I expect CN to explain when it became aware of the RTU data on the EJ&E line, and whether it fully disclosed the existence of these data to Board staff during the monitoring process, and explain what the data are used for by the CN.

Thank you, Chairman Elliott.

CHAIRMAN ELLIOTT: Thank you, Vice Chairman Mulvey, and now I turn the floor over to Commissioner Nottingham.

COMMISSIONER NOTTINGHAM: Thank you, Chairman Elliott. I share many of the concerns expressed by my two colleagues. In the interest of time, and we do have a distinguished member of the Congress with us, Representative Bean, I will keep my remarks very short. I do expect to have plenty of questions, and plenty of things to say once we hear a little more about what this full picture may look like as the hearing progresses. So, with that being said, I'll turn it over back to you, Mr. Chairman.

CHAIRMAN ELLIOTT: Thank you, Commissioner Nottingham.

Before we get started, as Commissioner Nottingham mentioned, and as I mentioned earlier, we have Congresswoman Melissa Bean here, who represents the 8th District of Illinois, who's been very involved throughout

this transaction. And Congresswoman Bean has asked to offer a few remarks, so we now offer you the podium.

REPRESENTATIVE BEAN: Thank you, Mr. Chairman, and thank you to the STB for putting this together, and for providing me an opportunity to testify before you today.

You had an opportunity to meet many of them even prior to this transaction being approved, and so I remind all that are present that I'm speaking not only on behalf of the thousands of my constituents, whose lives have already begun to be fundamentally altered by the increased freight traffic expected on the EJ&E rail lines, but also as a mom whose children cross these tracks every day.

There are over 40 communities along the EJ&E, including towns in my district, like the Barrington area, Mundelein, Hawthorn Woods, Lake Zurich, but also outside of my district in suburbs of Illinois, Bartlett, Naperville, Aurora, Plainfield, West Chicago, Frankfort, and

even northwest Indiana. These communities are expected to experience between 400 and 900 percent increase in terms of freight train traffic and train lengths, which is why there was bipartisan opposition to this merger in Illinois and Indiana, including Senator Durbin, Rep. Manzullo, Representatives Roskam, Foster, Biggert, and Visclosky, as well as myself.

We had expressed prior fears about the concerns and the impacts that our communities would experience, some of which your audit has already demonstrated are proving true. We were concerned about deadlocked traffic, and blocked crossings, increased emissions and pollution, noise levels, safety casualties, and the thousands of children that could be standing waiting in freezing weather to get to school every day.

What I'm really pleased to see from you having heard our concerns, is that the Transportation Board has continued to provide oversight and attention to our concerns. And,

particularly, I think this audit was a very positive and helpful step in response to the many complaints that you have heard from so many of our constituents, and I want to particularly thank Chairman Elliott for making this a priority. And you've seen firsthand, because you've made two site visits, how our communities are directly impacted by this transaction.

The reason I'm here is this audit follows the concerns we raised relative to CN's pattern of disregard for our laws, and an indifference to our communities. And recognizing that safety is our top priority, it's difficult for those in the communities that I represent to trust their promises to be cooperative, when they continue to sue our government to avoid minimal, if unprecedented levels of mitigation that you did require of them in this transaction; and they continue to provide inaccurate data to the STB on its operations, and the impacts that their operations are having on our communities. And that includes not just blocked crossings, but

accident reports, as well.

The blocked crossing reports from the CN showed 14 instances of crossing blocks for 10 minutes or longer in November and December 2009, when, in fact, there were over 1,400. My understanding is that the STB now will be requiring of CN that they provide all of this omitted data, as they should have in the first place. Operational accident reporting was also under-reported. And this is an issue that I know I've personally brought up with the STB, and so many of the families in my district raised, and we feel if there are any gaps in the law that caused miscommunication between the Agencies, Congress needs to know so that we can fix the problem. Why is it that they reported fewer accidents to the STB than they did to the FRA? And how can you properly provide oversight if you're not getting all the information that you need to do so?

Safety signage. HRD, who'd done the audit, found that the temporary signs had been

removed, but it could be many months before permanent signs would be installed, which leaves too long that residents won't be able to get information visibly posted at crossings, so they can report emergencies, or dangerous conditions, as required by the mitigation terms of your merger approval. CN's delayed response to this demonstrates its insufficient attention to meeting its most basic obligations in good faith.

I would urge the STB to use its full authority on this matter in moving forward to levy fines, and to always reassess the terms of the approval decision. And I would hope that in future audits, you'll work with the communities. I think we need enhanced coordination and support of community stakeholders as the oversight process moves forward.

As you know, there are concerns with the community survey, and I hope the STB will address those concerns moving forward. I know HDR's audit recommended an improved dialogue between CN, the communities, and STB. And while

we can all agree on the importance of communication, for communication to work, there has to be trust. Sadly, so far, CN's promises to work with the community in good faith, and keep their commitments have proven false. So, I hope as you continue to provide oversight moving forward, you'll continue to keep our citizens in mind as your top priority. Thank you.

CHAIRMAN ELLIOTT: Thank you, Congresswoman Bean. And we definitely will take your thoughts and concerns into consideration, and we thank you very much for taking time out of your busy schedule to address this important matter.

We will now hear from John Morton from HDR. And you have 10 minutes for any prepared remarks that you have, Mr. Morton.

MR. MORTON: Good afternoon, Chairman Elliott, Vice Chairman Mulvey, Commissioner Nottingham. I am John Morton, and on behalf of HDR Engineering, I'm here today to describe the activities that we undertook to complete an audit

of the CN's monthly Operations Reports submitted to the Board for the month of November and December of 2009.

On December 24th, 2008, the Board approved CN's application to acquire control of the EJ&E. The Board's approval was subject to quarterly reporting on compliance with environmental mitigation conditions, and monthly reporting on operations of the EJ&E and the CN rail lines through Chicago.

After CN started filing its reports, the Board received public comments asserting that, among other issues, CN was under-reporting instances for the highway rail at-grade crossings that were blocked by trains for 10 minutes or more on the EJ&E rail line. In order to verify the information in CN's reports on November 17th, 2009, the Board announced that they retained an independent third-party contractor, HDR Engineering, to conduct an audit. The Board directed HDR to complete a scope of services that included six tasks. Task one focused on CN's

compliance with the Board's environmental conditions that involved communities along the EJ&E. Task two involved citizen's complaints concerning train noise and vibration. Task three, the task that I'm here to report on today, concerned CN's reports on train volumes and crossing blockages. Task four analyzed vehicle delay at grade crossings, and highway traffic congestion. Task five reviewed CN's reports on accidents and injuries along the rail line. Task six involved CN's obligation to post warning and emergency notification signs at crossings.

HDR issued a report on April 14th, 2010, that summarized the findings of our audit. This afternoon I will focus on the grade-crossing blockage audit. To repeat, the objective of Task Three was to independently investigate the completeness and accuracy of the information CN reported in November and December 2009 monthly reports to the Board concerning the number of highway rail at-grade crossing blockages occurrence on the EJ&E rail line that exceeded 10

minutes in duration.

As part of the audit, HDR conducted the following activities. We reviewed the Board's Decision Number 16, reviewed the monthly reports as furnished by CN to the Board, reviewed the comment letters received by the Board related to street blockages, and met with CN at its North American Headquarters in Homewood, Illinois on February 5th, 2010 to ascertain the methods used by CN to determine the number and cause of blockages of highway rail at-grade crossings on the EJ&E rail line of 10 minutes, or longer, in duration. We observed the conduct of the train dispatching by the train dispatcher's desk for the EJ&E rail line at CN's Regional Operation Center in Homewood, Illinois. We met with CN on February 17th, March 5th, March 8th, March 10th, and April 9th at its Homewood headquarters to continue the review of CN's highway rail at-grade crossing data. We also conducted clarifying telephone conversations with CN several times.

During our initial meeting on

February the 5th, CN described their process for collection and reporting the data that makes up CN's monthly Operations Report to the Board. CN's discussion included a detailed description of the process used to assemble the information reported to the Board on street crossing blockages.

Based on CN's description, HDR asked CN for certain records, including the train dispatcher crossing blockage logs for November and December of 2009, CN's history and policies on how they deal with crossing blockages, CN's operational bulletins that concern crossing blockages, all of the RTU faxes for November and December of 2009. I'll discuss the RTU faxes in greater detail in a moment. HDR also asked for permission to observe the Dispatching Desk 11, the desk that controls the EJ&E rail line for a short period of time.

HDR made follow-up visits to review the documents provided by CN, and to observe the dispatching operations. CN answered all the

questions, and provided all the requested records. CN also provided HDR with access to their professionals, and to observe the EJ&E dispatching desk.

CN described the process they used to generate data for the monthly Operations Report related to grade crossing blockages. CN was clear that its report to the Board was assembled to report only crossings that were blocked by a train that was stopped for 10 minutes or more, and as discussed in our final report, our audit confirmed that based strictly on this definition, CN's reports were substantially complete.

Because the RTU data is central to our audit, and CN's methodology for tracking crossing blockages, I'll summarize some of the key points about RTUs that we learned. An RTU is a Remote Terminal Unit. It's a device that collects information about the operation of grade crossing signal systems and transmits that information via cellular telephone technology to a central location. The RTU can inform the host

railroad of a signal system malfunction, a power failure, or other operational issues. The RTU technology has one of several commercial types of technology used in the railroad industry to collect and transmit information about the status of grade crossing signal systems. And according to its vendor, the RTU technology has been available for about 10 years.

There are about 4,500 of its RTU devices installed in the United States. The RTU is not part of the mechanism that controls or activates the crossing gates or lights. Instead, it monitors information from the grade crossing signal controller, and reports certain information to the host railroad.

Our understanding is that on the EJ&E prior to CN acquisition, at least some of the RTU devices were configured to send an alert to the railroad when the gate had been down for 10 minutes. When an RTU at a specific crossing determines that the grade crossing protection system is activated for 10 minutes, the RTU,

using the cellular -- sends an alarm information to the vendor's central back office's computer located in Cincinnati, Ohio. The computer generates the actual fax and time stamp that is sent to the CN train dispatcher in Homewood, Illinois. The fax that is sent to the dispatcher provides only the information that the signal system has been active for 10 minutes. It does not provide any information on if a train is present, or if highway traffic is being delayed.

According to the Illinois Commerce Commission, the primary purpose of its RTU installation project was related to public safety, and not to monitor how long crossings were blocked. On the EJ&E main line from Mundelein to Gary, Indiana, 82 out of the 83 public crossings in Illinois, and 9 out of the 15 public crossings in Indiana are equipped with RTUs.

We understand that CN has two different approaches for data collection, one for crossings that are equipped with RTUs, and one

for crossings that are not equipped with RTUs. For RTU-equipped crossings, CN uses, as we understand it, the following approach. When the grade crossing signal system has been activated for 10 minutes, a time stamped fax is sent to the dispatcher's desk. When the grade crossing signal system transitions to the deactive state, a second fax is sent showing that time. When the dispatcher receives the fax notifying that the grade crossing signal system has been active for 10 minutes, the dispatcher may contact the train crew to determine the circumstances related to the crossing. The dispatcher also starts a new entry into his or her log capturing data from the RTU, as well as identifying the train that is occupying the crossing.

While the data is being entered, the dispatcher may contact the train by radio, if the dispatcher feels it's necessary to understand the reason for the blockage, and the action the train crew intends to take to reduce the duration of the blockage. The train dispatcher then

determines, to the best of his or her ability, how long the train was stopped at the crossing.

On crossings not equipped with RTUs, the dispatcher relies upon the train crew to contact him or her when the train has been stopped blocking a crossing for 10 minutes or more. CN generates the data for the monthly reports to the Board from the dispatcher's log.

In order to show the data in historic context, HDR asked CN to provide RTU data for November and December of 2008. This data was retrieved by the vendor of the RTU system, and it was provided to HDR by CN on April 9th, 2010. HDR entered the data from the RTUs and the dispatcher's logs into spreadsheets which were then used to generate the tables and schematic illustration in the reports on Task Three and Task Four. The reports were completed for our Task Three and Task Four, show where the delays occurred in November and December of 2009, and the total of the 10-minute delays reported from the RTUs, or dispatcher's logs.

In our final report, our recommendation was that the Board should clarify what constitutes a crossing blockage occurrence for the purposes of the Board's reporting requirements.

Mr. Chairman, I hope this discussion has been useful, and I'd be more than happy to answer any questions that you might have. Thank you.

CHAIRMAN ELLIOTT: Thank you, Mr. Morton, for your excellent report, and the excellent work you've been doing on the audit. The first question, I don't have many questions, because I think you covered how the RTUs work. Is there any issue with respect to RTUs about their accuracy that you're aware of?

MR. MORTON: Well, one of the important pieces of information is that the actual time stamp is put on by the central computer in Cincinnati, so they use cellular technology for the RTU to transmit its information to Cincinnati. And that's where the

time stamp comes on, so it's the same technology, as I understand it, that we would use for a cell phone conversation, so there may be a time delay in terms of the precise time when the gates went down, and the gates came up.

CHAIRMAN ELLIOTT: And were you aware of the ability to measure the slow-moving trains at blocked crossings throughout the process of the oversight?

MR. MORTON: No, sir. When we met with CN on February 5th, that was really the first time -

CHAIRMAN ELLIOTT: February 5th of?

MR. MORTON: I'm sorry. February 5th, this year. And they described the process. They went through the process for all the data that they were reporting to the Board, including the crossing delay information. And that was the first time that we understood that the RTU information existed, and that it was being used, at least sent to the train dispatcher.

CHAIRMAN ELLIOTT: Thank you. Vice

Chairman Mulvey.

VICE CHAIRMAN MULVEY: A couple of things. You mentioned about the RTUs recording data at blocked crossings because traffic is backed up and congested. But isn't it also a safety issue? I mean, one of the arguments made while we evaluated this case was that these crossings would be blocked, and that emergency medical vehicles, et cetera, would be unable to cross. So, it's a safety issue, as well as a congestion one. Correct?

MR. MORTON: I think from -- my understanding is, our discussions with the Illinois Commerce Commission, who actually helped pay for and install some of those, that safety was their primary motivation for installing the RTUs.

VICE CHAIRMAN MULVEY: You said there's 4,500 of these nationwide, and I would assume that these are mostly on the large railroads. And wouldn't the large railroads, and the large railroad operators be familiar with

these devices. You said they've been around now for about 10 years. I believe GE was the first one who was putting these out. Is that correct?

MR. MORTON: You know, I guess I really can't speak to what the railroads might be familiar with, or not. But the technology has been around for 10 years, that's correct.

VICE CHAIRMAN MULVEY: One of the concerns that we have is the completion of this project, it's only beginning, really. I mean, we have only begun to see a slight increase in the number of trains on former EJ&E tracks compared to what is proposed in the longer term. The economy has been down, so the growth of traffic has been less than we might have expected. But, ultimately, we are expecting, and I believe CN was expecting, that there would be 20, 30, or more trains per day, and that many of these trains, I would believe, are coming from the West Coast. They could be unit trains with 120 cars or so. This 10-minute requirement, are they going to be able to meet that, where the train --

let's say it's creeping through a neighborhood where there are schools, et cetera, and maybe it's moving through at 5 miles an hour, so a 120-car train is 7,000 feet long. It would seem that that train would not be able to get through a crossing in just 10 minutes. Isn't that going to be a problem over time?

MR. MORTON: I think you ask a very good question, but the one thing I could point out is that one of the conditions that the Board imposed was a voluntary mitigation condition that CN actually offered, that is, to comply with their U.S. Operating Rule that talks about the time frame that they block crossings, and what they would do. So, it might be best to -- I know that the railroad is -- since they have an Operating Rule in place, and they may be able to better talk about that issue.

VICE CHAIRMAN MULVEY: The railroad quotes an Illinois state law of a 10-minute delay, et cetera, but I believe that that law was superseded by federal regulation. Isn't that

correct, also, that the Illinois law is really not in effect, the 10-minute rule. It's really a federal imposition?

MR. MORTON: I'm certainly not a lawyer, but my understanding, Vice Chairman, is that I think in December of 2007, that the Illinois Supreme Court ruled that that particular statute was preempted by federal law.

VICE CHAIRMAN MULVEY: Thank you. That's all I have for the time being.

CHAIRMAN ELLIOTT: Thank you, Vice Chairman Mulvey. Commissioner Nottingham.

COMMISSIONER NOTTINGHAM: Thank you, Mr. Chairman. Mr. Morton, thanks for being with us. I do want to say at the outset that I have very high regard for HDR, as an engineering consulting firm. I've had the privilege of working with your firm and colleagues on many, many projects, primarily highway-related projects in my former two jobs at the Federal Highway Administration, and at the Virginia Department of Transportation. And I can say, I've always been

impressed with the quality of work, so thank you for being here, and for also doing what seems to be good work related to what we asked you to dig into in this audit. And I just want you to know we appreciate that.

MR. MORTON: Thank you, Commissioner.

COMMISSIONER NOTTINGHAM: It doesn't mean, though, I'm not going to have some tough questions, so bear with me. They're not meant to be tough, but they are important, I think.

The Chairman raised the question about the accuracy of the RTU data, and if I could paraphrase what I thought I heard you say, is that there probably is some brief, at least, time lag since we're talking about gates going down, a signal being somehow captured, transmitted by cellular technology to Cincinnati, received there, some type of document produced, date stamped, and then faxed to CN, in this case's, dispatching center. Assuming that that does create, probably, some brief interlude between when the gates actually go down on the

EJ&E line, and when CN actually receives the fax, wouldn't that delay be countered by, basically, the start and stop? There's two faxes. We could assume the first one arrives shortly, but there is a time lag, I would assume, after the gates go down, and the second fax is received shortly, with a similar time lag when the gates go back up. So, the reports, for our purposes, seem to me to be quite useful, and basically very much accurate enough for our business. We're not forensic accident re-creators, or anything. That's another matter, but for our purposes, it sounds like we ought to be able to rely on these. Is that consistent with your professional judgment?

MR. MORTON: Yes, Commissioner. My understanding is that the actual RTU, first RTU fax is generated after the gates have been down for 10 minutes, and then that signal -- the alarm is sent to the central office, and that fax is sent back to it. So, I think your position is correct. In terms of relative time, I believe

they are very useful.

COMMISSIONER NOTTINGHAM: Now, I know because I worked with you on it at the time, you were intimately involved in the Environmental Impact Statement work, and the traffic analysis, and the work that went into our legally binding merger approval, with conditions, decision of December 24, 2008. So, with that in mind, I'm going to read to you a couple of the legally binding provisions that are in our approval decision, and (a) ask if they sort of ring a bell with you, and then also ask if you find anything confusing, or unclear in these provisions.

First, I'll describe that our decision of December 24, 2008, which conditionally approved the merger, requires CN, as part of our oversight process to file quarterly reports on environmental mitigation, and monthly reports on certain operational matters. This has been touched on by others, but I want to make sure I get it in the record. Those monthly reports are to include, among other

things, "the date and descriptive information about each crossing blocking occurrence on the EJ&E rail line that exceeds 10 minutes in duration."

Next, several conditions imposed in our approval decision specifically refer to blocked crossings. You mentioned one that's sometimes referred to as CN's voluntary mitigation, because it was proffered up, initially, in a voluntary manner. It's very important for people observing this proceeding to understand that once we incorporate the many voluntary, and CN did offer up numerous voluntary mitigation offerings, once that's incorporated in our legally binding decision, it loses any sort of semblance of voluntariness. We, sometimes, will refer to it as one of the voluntary ones, but it's just as binding as anything else that's in our list of conditions in the decision.

So, Voluntary Mitigation Measure 35 requires that CN, "Shall operate under U.S. Operating Rule 526," which I'm told is a CN

corporate operating rule regarding public crossings. And I'm quoting here, "which provides that a public crossing must not be blocked longer than 10 minutes."

Later, in Condition 2, we required CN's quarterly Environmental Reports to include information "on the frequency, cause, and duration of train blockages of crossings of 10 minutes in duration or greater, listing each delay and including any notifications from persons affected by the blockage and the time of the beginning and end of each delay. [CN] shall summarize the cause of each type of blockage that [CN self-reports], and shall state how [CN intends] to reduce the incidence of all blockages not attributed to emergencies or weather-related incidents (sometimes called acts of God)."

Next, in Condition 3, that condition requires CN to distribute to communities adjacent to, or intersected by the former EJ&E line, the contact information for the railroad's community liaison to insure that the railroad is "aware of

highway/rail at-grade crossing blockages lasting 10 minutes or more."

Are any of those provisions, in your professional opinion, having worked with railroads and transportation departments on controversial projects, is there anything confusing in what I just read?

MR. MORTON: We, certainly, worked with your staff on the wording of many of those conditions, and we felt that as we were working with them, that they were clear, yes.

COMMISSIONER NOTTINGHAM: Thank you. Do they show, in your professional opinion, a repeated and strong interest by this Board in the overall subject of impacts on the community, and on traffic, and on safety of delays of all types lasting 10 minutes, or longer, at at-grade highway rail crossings?

MR. MORTON: We, certainly understood when we were working with your staff on mitigation conditions that that was a concern of the Board, absolutely.

COMMISSIONER NOTTINGHAM: And I'll get into a hypothetical here, but if you were -- and I know in other aspects of your firm's work, you advise clients. If you were advising a client on kind of what the Board was expecting in the way of information about blocked crossings of more than 10 minutes, would your advice be based on what I just told you, we reviewed in the legally binding decision, would it be that your client ought to be pretty forward-leaning, and err on the side of providing more information to the Board, or less?

MR. MORTON: You know, I think -- I mean, as we talked about in our final report, it certainly seems to us that there's a difference in that -- what the Board actually wants to be reported, does need some clarification. That seemed, based upon our discussions with CN, and what they were reporting, that there probably was a disconnect someplace.

COMMISSIONER NOTTINGHAM: Let me challenge you a little bit on that, because the

choice of words is important here. Your audit report does point out that there may need to be some type of clarification, or some type of correction, but you just said a few minutes ago that the legally binding decision, approving with conditions the merger, was clearly worded. And if I can not put words in your mouth, but pretty easy to understand. If there is any -- if you were advising a client about any possible confusion that the client might have, a railroad, or a highway department, or a private corporation, would you not recommend that they come to the Board at the earliest opportunity and say we have this, we're confused. Can you please set us straight, because we just want to, presumably, follow the law, and do the right thing. Is that -- would that sound like the kind of -- what you would recommend in a situation, if there truly was confusion?

MR. MORTON: That certainly seems to me like that would be prudent advice, yes.

COMMISSIONER NOTTINGHAM: Thank you.

Now, I want to get into a little bit to the details of your discovery of this RTU data, which was quite helpful, and I think will be quite useful going forward for the Board, and I wish we knew about it earlier.

If I understand your testimony, you were doing your audit job. You were in CN's headquarters, and in their Operations Center, and at some point in the process, you observed, or you became aware of the existence of RTU data. Walk me through that, exactly how that sort of came to pass.

MR. MORTON: We set up a, pretty much what I would describe as sort of a kickoff meeting with CN to talk to many of their professionals in a number of different fields, the professionals that are responsible for the accidents, and reporting, and operational professionals. And they went through, in detail, how they developed information to be responsive to the Board's request and their monthly reports. And during the discussion, they described the way

they build the information, or collect the information for the street crossing blockage report. And, as part of that, their discussion started with an explanation about the RTU data, and the availability of that data, and that the information is sent via fax to the dispatcher. And then what the dispatcher does, and walked through it. So, based upon that discussion, we asked to see the raw data, so that's how we became first aware that the RTU data existed, and that they could retrieve it, and we could audit it.

COMMISSIONER NOTTINGHAM: Did you have occasion to receive or look at any documents, any memorandum prepared by CN that actually appeared to show that CN had been using RTU data for business, and other purposes?

MR. MORTON: When they described their process to us, it became clear, at least for the November and December time period, that the RTU data is, at least, one of the first triggers for the dispatcher to start recording a

crossing blockage occurrence on his dispatcher log. It is then -- they determine on that log what the train is, the number of minutes the crossing was blocked, how many of those minutes, how many minutes the train was moving, how many minutes the train was stopped, and any corrective action, any cause, any descriptive information. So, the RTU data triggers the start of that process.

COMMISSIONER NOTTINGHAM: So, when you mentioned earlier that the reporting, the monthly and quarterly reporting that CN had been providing to the Board per our legally binding decision relied on dispatcher logs, at some point, at the latest, because you said you personally are aware of this by November/December, those dispatch logs actually incorporated all of the RTU data. In other words, the RTU data went into, and supported, and served as kind of the foundation of those dispatcher logs?

MR. MORTON: Yes, sir. That's

correct.

COMMISSIONER NOTTINGHAM: Did you have any occasion to observe any gleaning out or filtering of that raw data by CN personnel sort of later in the process, because we know what ended up coming to us, initially, of course, was reference to 14 blockages over two months lasting longer than 10 minutes. We now know, because the railroad was only defining long blockages as ones involving stopped trains, as opposed to all the other causes that can trigger one of those long blockages, but was there -- what point did that raw data evolve into 14, because the raw data showed what -- again, what numbers did the raw data show on 10 minute or longer blockages of all types?

MR. MORTON: I believe that the number would be -- there wasn't perfect harmony between the dispatcher's log and the RTU data, but when you combined them and looked at it, it appeared to us that there are about 1,457 occurrences. It's my understanding that CN

management then takes a look at the dispatcher's log. And the dispatcher does, in fact, record how many minutes the train was moving, and how many minutes the train was stopped. So, they look at that, and from that they glean how many of the blockages were caused by a train that was stopped for 10 minutes or more.

COMMISSIONER NOTTINGHAM: And that sounds to me like some type of sort of filtering, or editing process materialized by CN, where the raw data showing 1,400 plus 10 minute or longer delays at these crossings evolved into 14. Somebody actually had to go in there and manipulate it, do some cutting, pasting, editing, or whatever. I mean, they had to really go in and handle it, in other words, get into that data and sort through it. Would that be a fair statement?

MR. MORTON: Well, I think they extracted from that data set those crossings where the train was stopped for 10 minutes, or more.

COMMISSIONER NOTTINGHAM: So, they went through this extraction process.

MR. MORTON: I believe so, yes.

COMMISSIONER NOTTINGHAM: I think I'll just pause. I know I've been doing a lot of questioning. Do colleagues have questions for Mr. Morton?

CHAIRMAN ELLIOTT: I don't have any further questions.

VICE CHAIRMAN MULVEY: I want to ask a couple more questions. Do we have any data on the distribution of the 10-minute blocked crossings? In other words, there are about 90 or 100 public crossings on EJ&E. It's possible that you would have 1,200 blockages on three crossings, and then the other ones only a few. And I was wondering, can we get some data, some information on the distribution of these blocked crossings?

MR. MORTON: Absolutely. We have that information. We, actually, graphically presented it in the report that we prepared under

our Task Four. And what we did is, we have a schematic of the EJ&E as it goes around to each crossing. We didn't do it graphically, but that's certainly possible, because we certainly have all the information. I'd be happy to prepare a list like that.

VICE CHAIRMAN MULVEY: CN is claiming that while the data that they reported, and the data from the RTUs do differ, and differ substantially, they are trying to make the case that, in fact, as bad as things might sound right now, things were actually worse when the EJ&E was operating over the same lines. In fact, this chart that was put together, shows there's 2,500 to 3,000 crossings blocked each month under the EJ&E operation, which seems to be running around 1,000 or so each month. Could you comment on why there may have been these changes? Are things, in fact, getting better, or is this reflecting changes in the economy, or what have you?

MR. MORTON: I don't know that I'm qualified to comment on why there might be a

change, but we did look at the information from November and December of 2008, and CN asked the vendor if they could go back and generate that data, and provide it to us, and they did. And in those two months -- and there's a little difference in terms of the --we focused on just the part of the EJ&E rail line from Leithton, or Mundelein to Gary, where there were traffic changes. And it was -- that's the area that we focused on.

The data includes a lot of information on other parts of the EJ&E, including some of their branch lines, and some of the other ones, but we extracted just the information for that 105 miles from Leithton to Gary.

VICE CHAIRMAN MULVEY: So, these data that I'm looking at here just reflect the 105 miles, not all of EJ&E, or you're not sure about that?

MR. MORTON: I'm sorry, I'm not --the data that we presented in our -

VICE CHAIRMAN MULVEY: The data that

you presented. Okay.

MR. MORTON: Yes.

VICE CHAIRMAN MULVEY: And then these data may, in fact -

MR. MORTON: You'd have to ask them.

VICE CHAIRMAN MULVEY: I mean, there's an old saying in economics that figures don't lie, but liars figure. So, sometimes you don't know precisely what you're getting. We've got six months of data, or seven months of data here under EJ&E. I don't know what would happen if we were looking at say six or seven years of data.

MR. MORTON: Right.

VICE CHAIRMAN MULVEY: Maybe that was an outlying period, that was a period just before the merger, so I don't know if there's anything unique about this, which would make these numbers so high. So, perhaps I can address that later on to CN.

I wanted to also echo what Commissioner Nottingham said. HDR did a great

job on our Environmental Impact Statement, and we really appreciate the quality of your work. And I know also from experience that HDR is a very, very reputable, and a firm with a large number of talented people, so we want to thank you for your efforts.

MR. MORTON: Thank you, Mr. Vice Chairman.

CHAIRMAN ELLIOTT: Thank you, Vice Chairman Mulvey. Just to clarify the record, the document that we were -- Vice Chairman was referring to is an exhibit that was submitted by CN just today, so just for the record's sake.

I have just one other question, quick question. It's my understanding throughout this oversight process, at some point in time, the STB went to CN and asked about if it was possible to monitor slow-moving trains at grade crossings, and there was a pilot project using stopwatches, apparently, by CN employees put into effect at certain crossings. Are you familiar with that project?

MR. MORTON: We are only just becoming familiar. We were not part of that.

CHAIRMAN ELLIOTT: Okay. Then I'll save my question for CN. Commissioner Nottingham.

COMMISSIONER NOTTINGHAM: I was actually going to explore the same topic. Mr. Morton, when you were doing sort of your due diligence, and your work on the audit, is it fair to say that you came across the existence of the so-called June/July pilot at five intersections that was the result of ongoing Board concern about long blockages of intersections of all types and causes, and the development of a five intersection pilot. Does that ring a bell?

MR. MORTON: Commissioner, your staff actually briefed us on that pilot project while we were doing the audit, yes.

COMMISSIONER NOTTINGHAM: And when you got that information, were you able to check your information about the RTUs, and actually determine whether any of those five intersections

actually were covered by these RTU units?

MR. MORTON: No, sir, we have not done that cross-check.

COMMISSIONER NOTTINGHAM: Okay.

VICE CHAIRMAN MULVEY: Excuse me for a second. I believe the RTU program was one of the ones that was developed, the pilot program, anyway, while I was Acting Chairman, and I believe that at least a couple of them, the Ogden Avenue one, and the 127th Street crossing, both of them had RTU devices. I'm wondering why if they have RTU devices right there, and CN personnel are there with stopwatches, they wouldn't know that they have this automatic reporting at the same time, and they would sort of cross-check against them.

MR. MORTON: Mr. Vice Chairman --

VICE CHAIRMAN MULVEY: I'll save that question, also.

MR. MORTON: Yes. I'm not aware.

CHAIRMAN ELLIOTT: Thank you very much, Mr. Morton. We will now here from

representatives from CN. I would ask that everyone from CN introduce themselves, provide us with your title and position at CN, and I notice that you do have counsel in the room. I mean, your counsel is more than welcome to join you, but you now have 10 minutes for your prepared remarks. You may begin.

MR. TRAFTON: Good afternoon. My name is Gordon T. Trafton, II. I am here representing CN. I am a special advisor to the CN Leadership Team. With me at the table this afternoon is Karen Phillips, to my left, CN's VP, Public and Government Affairs, and Ted Kalick, CN's Senior Regulatory Counsel.

With the Board's permission, I'd like to begin with the following statement on behalf of CN.

With nearly 32 years of railroad experience, including nearly 14 years at Illinois Central and CN, where I served as Senior Vice President, Southern Region in charge of most of CN's U.S. operations, and most recently as a CN Vice President, Strategic Acquisitions and

Integration, leading the integration of CN and the EJ&E. Our President and CEO, Claude Mongeau, regrets that he could not be here for this important hearing. Like the rest of us at CN, he wants to be sure that we directly address the concerns expressed in your order regarding the nature of our oversight reporting, and our sharing of data related to grade crossing blockages.

The CN team has dedicated thousands of hours of our effort to provide you with the information you've requested to perform your oversight of the EJ&E integration. In that effort, we have sought to collect and report promptly information we believed that the Board required of us, and, otherwise, to comply fully with the Board's orders.

As you know, since acquiring the EJ&E, CN has been responsible for complying with 108 voluntary mitigation conditions proposed by the CN, and 74 mitigation conditions added by the Board. It has expended enormous amounts of time,

effort, and money in doing so. And, although the HDR audit of those efforts recommendations clarifications by the STB, and improved communication between the communities and the CN in some areas, we believe that overall the audit validates CN's compliance efforts.

CN fully understands that lengthy grade crossing blockages, whether from stopped or moving trains, are a significant public concern. We know the Board has made clear through statements and inquiries that it takes the concern very seriously, and we have worked hard to address this concern. Indeed, the available data suggests our operation of EJ&E may have caused fewer significant grade crossing blockages that were caused before the CN/EJ&E transaction. With respect to the data at issue here, we freely shared with HDR the fact that, in order to help prepare our monthly report to the Board of grade crossing blockages by stopped trains, CN had begun using automated crossing warning devices, or otherwise known as ACWD, activation notices

generated by Cellular Remote Terminal Units, otherwise known as RTUs, located at EJ&E's automated grade crossings. HDR did not have to dig to determine that fact, we volunteered it. When HDR asked us for the actual RTU data we had used for the two audit months, we provided it without delay or objection, and when HRD also suggested it wanted historical data for comparison purposes, we immediately went back to the vendor who stores the data, and had it retrieved for HDR.

Questions have now arisen about why CN did not volunteer this RTU data prior to the audit. The answer is straightforward. We believed we were meeting the Board's reporting requirements. With respect to blocked crossings, we had a good faith understanding that the Board's expectation was for reports on blockages caused by stopped trains, and we diligently worked to meet that expectation. The Board has now ordered CN to report all known occurrences of street crossing blockages of 10 minutes or more,

as reflected in the RTU data, or any other source of information available to CN, as well as all historical data regarding such occurrences. We understand, and will comply with that order.

We regret that, as a result of our understanding of our reporting obligations, which has been the basis of our blocked crossing reports for the past year, we did not provide the Board all of the information it believes it requires to perform its oversight functions. We hope that the extensive data we provided on Monday, and the data we will be filing in the future will provide that information.

Before we began filing our various oversight reports, as required by the Board's order, we consulted with the Board personnel concerning the content and the format of these reports. We suggested that we comply with the Board's request for blocked crossing information by reporting crossing blockages of 10 minutes or more due to stopped trains. We thought this approach made sense for several reasons.

First, there are events that we must respond to immediately to provide relief, and assure that they will not likely happen again.

Second, lengthy ACWD activations caused by moving trains occur on all railroads operating in heavily developed areas like around the EJ&E. Some moving train delays are an unavoidable element of providing service to customers. For example, the fact that gates may be down at a crossing for 10 minutes or more due to slow-moving trains entering shipper facility would not ordinarily be a noteworthy event in terms of rail operations, or regulatory oversight. To the extent that moving train delays can be remedied, they are generally best addressed not as individual events requiring immediate particularized attention, but in the course of making systemic improvements to operations.

Third, blockages due to stopped trains are the types of blockages addressed in other mitigation conditions related to blockages.

VMs 31, 32, 42, and 35 either expressly or in a case implicitly addressed those types of blockages.

We recognize that a motorist is equally inconvenienced whether a blockage is from a stopped or a moving train. As railroad operators, however, it made sense to us to suggest that we report crossing blockages caused by trains stopped 10 minutes or more. Thereafter, following consultation with the Board personnel, we made our report on that basis.

The fact that we were reporting crossing blocked by trains stopped 10 minutes or more was well publicized, and well understood. The cover letter for every report has noted that we were reporting crossings blocked by trains stopped 10 minutes or more. For example, the cover letter to our very first report filed April 13th, 2009, stated on page 2 that the street crossing blockages "report provides data concerning each instance where a crossing was blocked by stopped train for 10 minutes or more."

Likewise, the title of each crossing blockage report made it clear that the report was limited to blockages caused by stopped trains. This limitation was also noted and commented on by opponents of the transaction.

The Board's hearing notice focused on the data collected by the RTUs that are deployed at grade crossings on the EJ&E that are equipped with ACWDs. These are otherwise known as gates, flashers, bells along the system, and not including the passive devices, such as crossbucks. These are units that were installed at these grade crossings under an agreement with the Illinois Commerce Commission, and that agreement is publicly available on their website.

As the ICC noted in the agreement with EJ&E concerning the installation of the RTUs, EJ&E's undertaking with respect to the RTUs was a limited one: to initiate health check messages for ACWD system in order to confirm the integrity of the system. They are not primarily intended or used to monitor delay to vehicles at

crossings. The RTUs generate messages that are received by EJ&E as faxes or emails concerning such things as gate irregularities, power failures, or jumpers in use, usually used during maintenance of the ACWD system. The data generated by the RTUs are also stored in digital form on servers maintained by an independent vendor for a total of 33 months.

The RTU's capacity to communicate warnings of possible crossing equipment irregularities can be programmed to provide notifications when ACWDs have been activated, for any reason, longer than a specific period of time. The EJ&E RTUs were programmed to provide such notices after 10 minutes.

ACWD activations of 10 minutes or more are not a new phenomenon on the EJ&E. In fact, the available data show that the number of reported instances of ACWDs being activated 10 or more minutes on the EJ&E has generally dropped under CN control. The HDR report showed that for the two audit months, there were 1,457 such

reports on the former EJ&E's Eastern and Western subdivisions, now known as CN's Leithton and Matteson subdivisions. By comparison, for November/December 2008, before CN controlled EJ&E, the number reported was 1,658. In order to expand the scope of the comparison, I'm submitting with my statement a table comparing the RTU data across the full 33 months for which it is available, which you should have a copy of. Even accounting for potential range of error, the data demonstrate that significant numbers of ACWD activations of 10 minutes or more are neither new, nor unusual on the EJ&E. And, based on my experience, they are typical of railroad operations in metropolitan areas.

ACWD activations for extended periods often occur as trains are required to stop and restart, or slow for a variety of reasons, including a training picking up or dropping off cars at a rail-served industry, a train pulling into or out of siding, a training waiting to enter or exit the railroad's lines, or a train

waiting for an Amtrak or commuter train to pass. Although less common, extended ACWD activations may occur due to signal failures, speed restrictions, maintenance, accidents, mechanical breakdowns, or employee error.

We work hard to keep our trains moving as safely, efficiently, and quickly as possible. That is the best way to serve our customers and run an efficient railroad. However, especially in the Chicago area, the only place in the U.S. where six Class I railroads meet, delays and slow trains are, unfortunately, often unavoidable.

This does not mean that CN passively accepts lengthy crossing blockages. If I could continue? We are continuing to make investments and improve operations in ways that not only benefit our customers, but also reduced extended ACWD activations. For example, improved line maintenance by CN has already reduced a number of slow orders, improved train speeds, and reduced crossing delays. In addition, as recognized by

the Board's FEIS, many of the locations where frequent blockages occur due to slow moving trains will experience fewer blockages once CN's planned infrastructure upgrades are complete.

Some of these blockages are due to trains either entering or exiting EJ&E, or moving between EJ&E's main line and its branch lines, or sidings. CN's investment in upgraded connections at places such as Leithton, which is in Mundelein, would allow trains to travel at 25 miles per hour instead of 10, and Matteson, where trains will be able to operate 15 instead of 5, should allow trains to move through faster through these connections, thereby reducing blockages at Illinois Route 60/83 and Diamond Lake Road in Mundelein, at Main Street in Matteson, and Western Avenue in Park Forest. Similarly, projects to add a power switch to the Illinois River Line at Illinois Route 26, to the connection at Munger, which is in Bartlett, and to the north switch at Sutton Siding in Hoffman Estates, have reduced or will reduce ACWD

activations on nearby roadways. Other blockages have significantly increased as a result of the very projects we are engaged in to enhance long-term fluidity. Once these projects, such as the Joliet Yard project, are complete, we expect these temporary increases to end.

At the other locations, CN is trying to address unnecessary blockages through improved operating practices. These primarily involve existing slow movements for trains that are connecting with other carriers, or serving particular customers. It may not be possible to completely eliminate delays due to these movements, but CN's constant efforts to improve train speed will help reduce them as much as practicable.

In response to the Board's order in Decision 23, on Monday we filed extensive data and revised reports. Once you've had time to review the data, and our updated reports, we will, of course, be available to work with you in answering any questions you may have.

With respect to historical RTU information, CN is largely dependent upon the vendor for RTUs, which is Progress Rail, which archives the RTU data. For purposes of responding to HDR's data request, and Decision 23, Progress Rail agreed to extract and present reports for the data. The vendor is in transition because Progress Rail purchased the RTU business from GE less than two months ago. Moreover, the extraction of relevant data from the full RTU database, which is stored in an old proprietary format that is well understood by only a few programmers, is a difficult process that has required a team of programmers, and the development of custom algorithms.

The Board should also understand that all RTU data have certain limitations. For example, because the RTUs rely on cellular technology to transmit information, the duration of ACWD activations of 10 minutes or more can be overstated. Similarly, because of the limits of the communication system through which the RTUs

report, a single ACWD activation may be reported as multiple activations. Morever, the 10-minute notices only identify the fact that an ACWD is activated; they do not distinguish among causes, such as moving trains, or stopped trains. Nor do these notices distinguish which railroads, trains caused the ACWD activation; for example, whether it was a trackage rights train of another carrier. In some cases, ACWDs are interconnected so that RTUs on the EJ&E pick up traffic moving on the adjacent tracks of other carriers. And the RTUs can only be installed at crossings with ACWDs; they provide no information where ACWDs have not been installed.

It appears, however, that some of these inherent limitations can be overcome by systematic review of the RTU data in the context of other information. CN has recently begun using an improved data collection process that should allow it more reliably to capture and more easily integrate blocked crossing notices provided by the RTUs with information provided by

train crews and dispatchers. Accordingly, CN expects that future crossing blockage reports based on RTU data, and other information, may be less difficult to develop, more reliable, and more useful.

In conclusion, ultimately, our challenge as a railroad is to reduce extended blocked crossings on the EJ&E without penalizing customers by reducing the efficiency of our rail operations. WE focus immediate initiatives specifically on blockages from stopped trains. We minimize moving freight train delays by constantly improving our railroad, so that it operates in the safest and most efficient way possible. Through both approaches, we seek to maximize benefits for our customers and our shareholders, while minimizing adverse impacts on our stakeholder communities.

Thank you again for the opportunity to be here today. With the Board's permission, I would like to submit a written statement for the record, and I would be glad to respond to any

questions or comments you may have.

CHAIRMAN ELLIOTT: Thank you, Mr. Trafton. You would be more than welcome to submit your written statement for the record, and also the exhibit that you've submitted today can be submitted as CN Exhibit 1.

I do have a few questions. I guess, really, the questions just focus on why we're here today. I wasn't here during this whole process, but my understanding is that STB staff throughout the oversight process had expressed to CN that they were interested in measuring slow-moving trains at grade crossings. Is that correct?

MR. TRAFTON: Yes, that's correct.

CHAIRMAN ELLIOTT: I know there was a meeting in February of 2009, and I think that was when it was first expressed. Is that your recollection?

MR. TRAFTON: I believe so, yes.

CHAIRMAN ELLIOTT: Okay. And with these expressions of a desire to -- let me step

back a second. When did CN first become aware that this RTU data was available to make these kind of measurements of slow-moving trains at grade crossings?

MR. TRAFTON: Obviously, the EJ&E people were aware of the existence of the data. As we began the integration process in early 2009, and throughout the middle of the year as were moving dispatchers into the Homewood office, and doing some of the integration efforts, and, also in trying to deal with some of the mitigation requirements, specifically as it relates to the CCTV cameras with some of the communities, that is when some of the information first became available, that there may be this information out there that might be useful in terms of dealing with some blocked crossing questions. That was the latter part of March, and into early April, I believe.

CHAIRMAN ELLIOTT: And my understanding is CN, in fact, did use the RTUs to measure crossings that were blocked due to

stopped trains based on an understanding that they had reached with the Board. Is that correct?

MR. TRAFTON: I'm not sure. What we did do, once we started learning of the data, and its availability, started doing a collection with the dispatchers. You would see in some of the records, the dispatcher records, that the information is less complete in the beginning, and, obviously, more complete as you get into the remainder of 2009.

During that process we were collecting the information, we didn't have a lot of confidence, let alone knowledge about the data, and it was through our Operations Center, that was working with the data to try to see if there's some way in which we could utilize it in answering or addressing questions, we were using it initially as audits to try to pick out incidents where, based on what our understanding was, that blockages of crossings 10 minutes or greater stopped trains, that when they showed up

in the report, that would be a flag for us to do more in depth in terms of what was happening in that particular incident.

CHAIRMAN ELLIOTT: And from previous questions, it sounds like CN understood that we were that we were interested in measuring slow-moving trains at crossings, and CN was aware of the ability to measure slow-moving trains as of, at least, March of 2009. I guess the only question I have left is, why didn't CN disclose that information at that point in time?

MR. TRAFTON: What we understood, and what we were providing, and we regret that we took it this way, that we were to provide information pertaining to blocked crossings greater than 10 minutes when a stopped train was involved. In some ways, we got into the mode of thinking of that in terms of what we were developing. As much as the information for the RTUs became available in terms of knowledge in March, but really didn't start formulating until April/May time frame, and even into June, it was

about the middle of the year, we were still, if you will, trying to understand the data, what some of the limitations are. I mean, we weren't, for instance, aware of the fact that the information existed for 33 months until the inquiry from the Board came up. And that occurred, obviously, here in the last few weeks. But we had not done a lot of work to try to understand what was available, and putting together that information, so we started collecting it, and using it, but it was, in our regret now, that we've given the Board the impression that the information was there, and we didn't provide it. That was not our intent.

CHAIRMAN ELLIOTT: So, I guess in response, I don't want to put the words in your mouth, but it was not, as you perceive, you know, I can't say what you're thinking, but it wasn't perceived to be an intentional omission to hide the ball from the Board, or the communities.

MR. TRAFTON: Not at all. From my standpoint, one, I view it as a reputation very

strongly, as does our CEO. Keeping in mind, we were going through a lot of change, and a lot of issues at that point in time with the EJ&E acquisition. We were having to put together reports, a two-month filing, initially, developing information and processes that we did not have in place, and dealing with a wide range of issues, not least of which is within the public in terms of the perception of the EJ&E acquisition. So, we had our hands on a lot of different efforts, and to the extent, we were not looking to hide information here, we were actually looking to find, and like I said, I indicated earlier, the RTU information was used as more of an audit to try to make sure we weren't missing things, so we were accurately reporting to the Board what we thought we were supposed to report, which were blockages greater than 10 minutes due to a stopped train.

CHAIRMAN ELLIOTT: And let me ask you just a couple of follow-up questions about your own internal rules. I know that you have, I

believe it's the GCOR US Rule 526, which limits, or attempts to deal with crossings that are blocked of over 10 minutes, or more. Do you have any internal procedures that, I guess, assess whether or not that is, in fact, happening, if the crossings are being blocked 10 minutes or more?

MR. TRAFTON: What happens today, it's both triggered now by some of the RTU information, but, typically, the crew, because of the sensitivity -- one of the things you have to also remember back on the EJ&E, there were some cultural changes that were happening in terms of how the railroad was operated versus how we would operate the railroad, how we now work towards operating the railroad. There was -- I would suggest to you that the sensitivity of blocked crossings became much more paramount because of the acquisition, and also because of the Board's orders in terms of what we had to produce.

From that standpoint, we put out orders to our train crews that if you do block

crossings, you need to notify the dispatcher right away so that corrective actions could be taken to immediately free-up the crossing. In some cases, we've had police departments that have told us because of other circumstances to stop a train, and when we asked to cut the crossing, they tell us not to, because they may be after a felon, or something in the area. There's circumstances where we're told not to do anything, just stand still.

In other situations, obviously, there's tradeoffs and judgments that have to be made as to whether or not the cutting of a crossing, for instance, is actually going to result in a longer blockage than it otherwise would have. So, there's those judgment calls that are made out there in the real world day-to-day on the operating side that we have to deal with. But, all in all, the procedures right now, even to this day, indicate that the train crews, particularly at crossings that don't have RTUs, train crews are to report if they are blocking a

crossing, and the dispatcher is supposed to then deal with that situation in terms of rectifying it, and determine what we have to do in order to clear it up.

CHAIRMAN ELLIOTT: So, that data is compiled through, I guess, between the dispatcher and the crew, the operating crew?

MR. TRAFTON: It's a note that's -a lot of times, in fact, you'll see it in some of the spreadsheets, it's indicated in there that such and such a blocked crossing, or where we've notified a police department, or something of that sort, there are notes of that.

CHAIRMAN ELLIOTT: Okay.

MR. TRAFTON: Whether it be in the spreadsheet, or they may be keeping individual notes as we would follow-up with them.

CHAIRMAN ELLIOTT: Okay. I am going to turn it over to Commissioner Nottingham. I believe you were here on the early stages, so I'll defer to you on some of the more particulars, since I wasn't here.

COMMISSIONER NOTTINGHAM: Thank you, Mr. Chairman.

Let's see. I wanted to go back again to what I view as, basically, the most important document, and the most legally significant document that relates to this whole discussion. That, of course, is our Conditional Approval Decision of the merger back on December 24, 2008.

Can any of the witnesses from CN point to words in that decision that refer to "stopped trains," in other words, when we talk about concern about reporting blockages of highway rail grade crossings for longer than 10 minutes, can you find the words "blockages caused by stopped trains?"

MR. KALICK: I would point out three, Commissioner Nottingham, VM 31.

COMMISSIONER NOTTINGHAM: I'm sorry. Is your microphone on? I want to make sure.

MR. KALICK: Yes, it is. We would point out VM 31, VM 32 -

COMMISSIONER NOTTINGHAM: Let's just

pause. VM 31, and where -

MR. KALICK: That's on page 63 of the Board's decision. VM 31 on the same page, VM 42 on page 64. VM 31 reads, "Applicant shall install power switches along EJ&EW where applicants determine that manual switches could cause stopped trains to block crossings for excessive periods of time."

VM 31, "In order to minimize the number of trains being stopped by operators at locations that block crossings on the EJ&E system, applicant shall work with other railroads to establish reasonable and effective policies."

VM 42, "Applicant shall notify emergency services dispatching centers for communities along the affected segments of all crossings blocked by trains that are stopped, and maybe unable to move for a significant period of time."

And then VM 35, which refers to the CN Operating Rule, which provides that "a public crossing must not be blocked longer than 10

minutes, unless it can be avoided." And then provides that, "If a blockage is likely to exceed this time, then the train shall be promptly cut to clear the blocked crossing, or crossings." And at least implied in that, for us, as railroad operators, you wouldn't cut a moving train. It wouldn't really be safe to, for any number of reasons, so that in terms of normal railroad operations, that would be referring to cutting a stopped train.

Now, all of these, in essence, were the reasons why we, in the February `09 meeting with Board personnel, that we raised the issue of what crossings the Board wanted us to report. Notwithstanding the language that you read before, which we concede reads as it reads, but because of these other VMs, because of our knowledge of railroad operations, we, in fact, raised the issue with the Board at that meeting in trying to come to some sort of an agreement of what it was that we were to report.

COMMISSIONER NOTTINGHAM: Mr. Kalick,

thank you. You've largely responded to my question. Let me ask it a slightly different way. Are you aware of provisions in our legally binding conditional approval decision that represent expressions of Board concern, and interest in wanting information about intersection blockages of more than 10 minutes where we don't limit that interest to stopped trains?

MR. KALICK: Certainly.

COMMISSIONER NOTTINGHAM: So, you would agree that there are provisions that --

MR. KALICK: Certainly.

COMMISSIONER NOTTINGHAM: Thank you. And, surely, as an experienced counsel, you are familiar with, I can think of at least two ways, one of which has already been availed by us, used by CN, two ways to correct, or change a formal Board decision that's legally binding, such as the one in December. Can you describe what the first two ways that we would normally think of to amend, or have changed the specifically legally

binding terms of a decision?

MR. KALICK: Well, the two I would characterize as really a variation of one, either a petition to reopen, or clarification.

COMMISSIONER NOTTINGHAM: Right. So there is established process to go in and address cases where the Board might have made a mistake, might have been a typo, might have inartfully explained something, because this is important, because there's lot of litigation surrounding this decision. Correct?

MR. KALICK: Yes.

COMMISSIONER NOTTINGHAM: Litigation that CN has instigated, litigation that citizens have chosen to take part in, and communities. So, it's not just about what might or might not have been said by CN officials to Board officials or staff. The reason we have these public decisions and put them out for the world to see, is they have great legal meaning. And if they need to be changed, or somebody thinks they should be changed, you referenced the process for

that to be done, or going to court, which is the other avenue that CN has decided to do on, I'll say, a very related and germane aspect of this decision, which is how much accountability and responsibility should CN be required to take for the most severely degraded highway rail crossings that the Board determined were going to be appreciably greater degraded, more degraded as a result of the merger. That's in court. You've decided to challenge that. I won't go into the detail. We'll let the court decide that, but, clearly, there's a record in the press, in the public court filings that this whole issue of Board concern about traffic impacts and intersection delays, and mitigation has been a point of some real conflict between CN and the Board.

I say that, because all the more reason why one would think that -- one would expect that the railroad would conduct itself with extreme care and caution when it comes to abiding by -- not only do you have these outside

litigants, you've got a lawsuit you've decided to bring yourselves against the Board on a related issue, and all of a sudden somewhere in March of 2009, right when you were just getting started operating this new section of railroad, EJ&E, and right when the reporting requirements that are obligated by our decision start to take effect, we now learn that you discovered the existence of this RTU data.

Let me pause there. When CN proffered that the sort of best way, or most efficient way, or I don't want to put words in your mouth, that CN felt that it was appropriate to report only stopped train blockages lasting more than 10 minutes, was one of the reasons for that limitation that it would be not reasonable to expect CN to come up with a monitoring process at all these many, many intersections, that that would be a burden on the railroad?

MR. KALICK: No, we would, of course, provide anything that was required by the Board. That was never an issue. I think the heart of

the discussion at the February meeting was really what to report, not the burdens of gathering data.

If I may, if I could just respond to -

COMMISSIONER NOTTINGHAM: Let me just, if I could, before we leave that point, would you surprised that there are extensive notes and recollections of people in that meeting that CN actually did raise the concern about how would we practically be able to report all these intersections when what we sort of know how to report, and usually do report, are the stopped train incidents? So, this whole issue of sort of reasonable expectations about what data -- my point is, it seems to me circumstances changed quite significantly in late March when the RTU data was discovered. All of a sudden it became, potentially, at least, recognizing maybe it took a little time to validate that information, check it out, but all of a sudden what was proffered to be a very difficult and burdensome legal mandate

by the Board, all of a sudden appears to have become around that time frame pretty darned easy to comply with.

MR. KALICK: I don't think I would characterize it as easy to comply with, because we didn't have the confidence in the data at the time. And, in fact, what I would suggest to you is that during 2009 that this process has evolved, we learned of deficiencies in terms of the reportings, we learned deficiencies within the data itself, some of which you've already discussed with Mr. Morton, but over time what we learned -- I mean, an example, you mentioned the June report earlier, where we actually put people in the field, if we had had a reliable source of data, at least as we viewed it at the time, we wouldn't have spent the hours and time of people sitting in a vehicle with stopwatches trying to get the accurate information there at the crossings that we measured, which were in Ogden Avenue and 127th Street. That was all done because we didn't have the confidence to provide

the information, as far as the RTU information, as a reliable source.

COMMISSIONER NOTTINGHAM: Mr. Trafton and Ms. Phillips, because you were at this February 2009 meeting that's been referenced, can I get you to each respond to whether or not one of CN's concerns about the Board's reporting requirements related to 10-minute or longer delays related to the feasibility of complying with that, the practicability, feasibility. I'll let you speak to that.

MS. PHILLIPS: Yes, that was definitely one of the concerns, was that -

COMMISSIONER NOTTINGHAM: It was one of the concerns. Okay.

MS. PHILLIPS: Well, it was from the standpoint that from a practical railroad perspective, we were looking at stopped trains. We knew that we could put together measurements for stopped trains. Keep in mind, as Mr. Trafton mentioned, we were very early on in the process in February, we had just assumed control of the

EJ&E. We really didn't know what we were looking at, so looking at it both from the standpoint of practical railroad operations, and also not knowing exactly what we were dealing with in terms of the overall property there, and what data were available, it did appear to be a very Herculean task. We did, certainly, want to do whatever the Board wanted us to do to be in compliance with the monitoring conditions, but at that time, it appeared that looking at stopped trains was a reasonable way to progress.

COMMISSIONER NOTTINGHAM: Mr. Trafton, is that consistent with your recollection?

MR. TRAFTON: It is. And from what I remember, we were scratching our heads trying to figure out how we would generate the information, and why we had the discussion with the Board in February, because we didn't have a process in place, and even to the extent that the RTU existed, and it was, obviously, generating some data at the time on the EJ&E, none of us at that

meeting at the time, nor actually for several weeks afterwards, was familiar with the information.

COMMISSIONER NOTTINGHAM: Thank you. Mr. Kalick, does any of this jog your memory at all. I'll give you a chance to amend your answer a few minutes ago when you said that feasibility didn't really play any role in -

MR. KALICK: Well, feasibility didn't play into my own participation at the meeting, which was really directed more toward the legal issue -

COMMISSIONER NOTTINGHAM: That makes sense, because you're not the rail operations person, you're the lawyer. Okay.

MR. KALICK: I was really looking at -

COMMISSIONER NOTTINGHAM: If we want to go into feasibility, we would tend to rely on the direct employees of the railroad. That makes some sense.

MR. KALICK: If I could just respond

to your former comment, previous comment, Commissioner Nottingham, regarding the processes available to CN to possibly seek clarification, or reopening. As you know, the Board's approval decision directed CN to work with Board personnel, specifically as to the oversight and monitoring reporting. And we worked with not just SEA, but STB, your staffs, general counsel at that meeting, and for intents and purposes, from our perspective, that was, essentially, a proxy for the Board to really resolve how we were going to go forward on the particulars of reporting. So, while I agree with you wholeheartedly about the description of the process, the process here actually had another layer to it.

COMMISSIONER NOTTINGHAM: Ms. Phillips, do you recall, regarding this February 2009 meeting, which was really kind of the kickoff meeting as we moved into implementation of the actual merger and oversight of it, as opposed to up until that point we had been not in

communication with the railroad. We were doing a very legally sensitive merger review. After that was finalized, and the appropriate period of time went by, we then had to kick in to do our job that we had committed to the public, and our stakeholders we would do of oversight, so, naturally we started opening up lines of communication to figure out how we could best oversee CN's compliance with the decision.

Do you recall anybody from the STB voicing concern about limiting reporting to only stopped blockages, and how that would be likely viewed in the community?

MS. PHILLIPS: There was definitely interest expressed by people at that meeting, including yourself, about the fact that the Board is interested in the impacts of the transaction overall on the communities. Having had that discussion, though, we then proceeded to talk about what are the data that are available, what did we know at the time, what made sense from the standpoint of conventional railroad operating

practices.

COMMISSIONER NOTTINGHAM: What was feasible.

MS. PHILLIPS: What was feasible, and that's how we got to where we were with the initial monitoring reports, and the monitoring reports that we've been doing thereafter.

COMMISSIONER NOTTINGHAM: I'll pause here. I do have some more questions. I'm going to let my colleagues have a chance.

CHAIRMAN ELLIOTT: Thank you, Commissioner Nottingham. I'll turn the floor over to Vice Chairman Mulvey.

VICE CHAIRMAN MULVEY: Thank you. I feel a little bit like I'm at the Senate Finance Committee hearings.

I have to say that in some ways some of the testimony does sound a little disingenuous. I mean, it seems to me it was clear that the concern the Board had was over the impacts on the community, and the community doesn't care whether your train is stopped, or

slow-moving, or whether the gate has failed. The point is whether or not the crossings were going to be closed for a significant amount of time. It's been referred to over, and over, and over again, and I know that, Mr. Kalick, you mentioned some of the voluntary mitigation procedures where the words "stopped trains" were, in fact, used, but our decision required CN, I'm going to quote this again, to report "the frequency, cause, and duration of train blockages at crossings of 10 minutes duration or greater." Now, the cause, obviously, a stopped train, what caused a stopped train, or what caused a slow train, what caused it to be blocked for 10 minutes? Not that the train was stopped, but that the train was slow, and it does strike me that it was clear from the outset that we were interested in monitoring not only stopped trains, but slow trains.

Now, when I was Chairman, Acting Chairman back in June of 2009, CN did put together a pilot program. In fact, I give CN credit for suggesting it, and it was an attempt

to monitor crossing delays due to moving trains. And can you explain exactly what was done during that pilot program, and how did you identify the crossings that you were going to study in the pilot program?

MR. TRAFTON: The pilot at that time came as a result of a meeting because of some concerns with some blocked crossings, that we had a meeting with the Board, actually, with members of the staff to sit down and talk through how we might address those concerns. It was suggested at that time that we look at a pilot that we would actually put people in the field on site in vehicles with stopwatches watching and observing trains. The information is not totally perfect, as I indicated at the time to some of the staff when we got it back, but it was throughout different times of the day. And the actual locations were ones that were agreed to in consultation with the staff, itself.

I believe that one of the drivers at the time, I remember some of the comments along

the lines of the complaints that were coming in. One of the points that we made at that time, though, too, was give us something that we can go to work on to try to identify if there are certain areas that you're seeing focus, or issues by the community in terms of what we see out there. We weren't -- and, again, at that point in time, the RTU data was still in its early stages from a reliability standpoint. Frankly, I don't believe we started really using it until sometime around midyear, even though our numbers would show that you had information as far back as April, but we also had information in May and June.

As I said earlier, we wouldn't have put people that would otherwise have been running the railroad, spending time with our crews, trying to operate the railroad safely and efficiently, at a crossing in a vehicle for hours on top of hours with stopwatches trying to collect information on trains. In some cases, we were actually booted off property because it

turned out it was owned by ComEd or somebody, and we had to take extra efforts over a weekend in order to get permission to do these observations. But we completed the observations, I believe it was from, don't hold me to this, but I believe it was from -- it was in June, the month of June that the observations were conducted. And it was approximately for about a two, to two and a half-week time period that we collected that information, different trains, different times of the day, different types of trains themselves, whether they be unit trains, or merchandise trains, locals, whatever it might be. The whole objective was to try to get some data that we held as far as confidence in that we could say that this is what we actually saw out there, somebody was there.

One of the things, and maybe I'm -I'm sorry if I'm taking longer to respond, one of the concerns we've had from the beginning with the RTU is the number of people that handle the RTU data before it actually gets into what we call

the spreadsheet. And in that process, faxes can be lost, transcripts or information being transcribed can be misstated, corrections that have to be made with everything from street names to locations, to time of day, that's part of what we've been struggling with over the past year that we believe now we've got a way in which to capture better, that just actually went on line here over a week ago, that we're starting to use to collect it. Again, we're going to be able to provide, we believe, more accurate information.

Long-winded answer to your question, but I think that the point there is we didn't have all that knowledge of the information at the time, which is why we put people out in the field.

VICE CHAIRMAN MULVEY: Well, several times you mentioned the reliability of the RTU data, and it was asked earlier to the HDR representative as to whether or not there were any technical problems with the RTU reporting devices, and I believe he said that he was not

aware of any. And neither are you, so you're saying that any problems in the reliability of the data are more human factors, rather than technical-related.

MR. TRAFTON: Yes, more human factor, but also technically related. What was made -- a point that was made earlier is, yes, you can have a situation where the initial event when it's transmitted by the cellular network can say that, let's say it's off a minute in terms of the transmission, that you can assume that at the tail end when the activation is continued, that there's a minute, but that's not always the case, because it has to do with the cellular network.

The testing that we've done over time is that it's not to say that just because you have a minute on one end, you're going to get a minute on the other, or vice versa. So, there's some question in terms of the timing of the data, in terms of how it's stamped, but there's also in cases where we've seen, where we've got multiple messages coming from the same site, which could

indicate that through the cellular network something gets lost, not unlike what you would have in your cellular phone, only to be reconnected maybe a second or two, or so later, or in the case of the RTU, the information not getting transmitted, having to be re-transmitted. There have been examples of that, as well. So, yes, more on the human side, but also some also on the technical side.

VICE CHAIRMAN MULVEY: In your review of the RTU data, which I assume you've been doing now, are you finding that certain crossings are more often affected than other crossings? Is there a pattern, or is it pretty widely distributed over the entire EJ&E network?

MR. TRAFTON: No, there are definitely some locations that are typically ones that stand out. From what we've seen over time, they're not ones that are real surprises, Leithton where there's a new connection that's going to be built as part of our plan that will increase the train speeds, as I've indicated in

my statement today. Mundelein, which is affected by the Leithton cutoff would be a benefit of that. Down around the West Chicago area, where we have a connection with another railroad, down around the Eola area, another connection with another railroad. That's typically where we're seeing it, where trains are entering and exiting the railroad from either some other railroad, or our own railroad up at Leithton. Also, down in the Matteson area, Main Street stands out because if you were to look at a map in Google, you would see, actually, we cross Main Street twice with two different tracks, one where we're going across with EJ&E, and the other one where there's a connection back to the Illinois Central side of the railroad. So, you wind up with double activations, if you will, or longer activations sometimes, depending upon the types of moves that are occurring, and what kind of train traffic you have there. Broad Street over in Griffith is another area. If you were again to look at a Google map of the area around Griffith, you'll

see that Broad Street intersects different lines of not only our railroad, but also the fact that there are some other lines that operate through there, as well. So, it's not as though what we're seeing is any different than what we had expected, but what we have seen -- and the Joliet area, I should also mention that. Joliet is a switching yard, and, therefore, you have trains entering and exiting, you have trains or switch crews that are switching cars, and as a result, there are some longer blockages that are due there, as well.

VICE CHAIRMAN MULVEY: You mentioned that in your experience with railroads, these numbers of reported blockages were not unusual for an urban area; although, Chicago is an unusual area with regard to railroading, but there are a few other places that also have lots of crossings. I think of the Tower 55 area around Dallas, and Kansas City, and others. Are there any data, say from RTU's, available that indicate how often roads are blocked on other

railroads and at other locations that would support your statement that this is not atypical for a railroad operating in an urban setting?

MR. TRAFTON: We explored that opportunity, but there wasn't a lot of interest by others to assist us with that.

VICE CHAIRMAN MULVEY: Even on a confidential basis?

MR. TRAFTON: Actually, what we had suggested is to generalize the information and to try to give us something so that we can show, but I think the best thing to go back to is what the EJ&E was experiencing prior to CN acquisition, not only in terms of the times, but also the number of events that they were having. And, in fact, I was talking to the former chief engineer who's with the CN still to this day just here about a week ago, and he was commenting that one of the big changes under CN is we don't have near the slow orders that the EJ&E used to have. Slow orders are typically put out for engineering purposes, because of track condition, weather, or

some other circumstances. We have a very tight process within CN about slow orders, because we're looking at velocity and speed.

I mean, when you get down to what we're trying to do, we're trying to run a railroad safely and efficiently in serving the customers, and when you look at what might have been happening prior to CN's acquisition, there were -- it's not as though the EJ&E was not somewhat of the same mind set, but they didn't -- they were making choices at the time that from a slow order standpoint would have affected how the trains operated, and, therefore, had issues and impacts on the grade crossings.

VICE CHAIRMAN MULVEY: We know that as I said earlier, this is a project that's still being consummated. And with the economy and everything else, the rate at which it's been consummated has been slowed, one presumes.

How many trains so far of the total number of trains that you eventually expect to shift on to the EJ&E and out of the interior of

Chicago have now been shifted, and how many more do you expect to be shifted? And if you can hazard a guess as to how much longer in length those new trains are going to be compared to the ones that were traversing the EJ&E lines beforehand?

MR. TRAFTON: I'd have to give you a written response on that, because I can't --I don't have the numbers off the top of my head. We definitely have shifted some trains over. I mean, I could think of four off the top of my head.

VICE CHAIRMAN MULVEY: But to ball park this for a second, four seems to be a relatively small fraction, certainly well under 20 percent of the total amount that was envisioned at the time of the acquisition. Correct?

MR. TRAFTON: Right. I think when you -- in order to answer your, we've shifted over at least four trains, two each direction. And I'd have to go back to get the actual numbers, but,

ultimately, we would expect at some point, although we believe now delayed because of the economic downturn that occurred, that we will get up to the numbers that we're talking about. And, if anything, what we believe is going to occur is that we will likely get infrastructure in place that will help mitigate the impact of those much sooner than we otherwise would have, if the economy had stayed at the levels that it was before.

VICE CHAIRMAN MULVEY: Part of the infrastructure in place might involve grade separations, and one of the ways of moving trains through quickly, and not having 7,000 foot trains taking 15 minutes to get through a crossing and blocking traffic, whether it's EMV vehicles or regular traffic, would be with full grade separations. But then the question, of course, becomes who pays for that? And, as you know, I pushed very, very hard to get the mitigation that we got, and I understand that the railroad still feels that that was still more than was typical,

and more than was fair. But would you accept that one way of solving this problem might be for more grade separations, and, perhaps, more agreements between the cities and CN about cooperating on getting these separations in place to improve the flow?

MR. TRAFTON: Yes. Grade separations is certainly one aspect of it, but there are many other things that we're doing, as well, that are going to speed trains up. And I believe that in a lot of respects, if you think about the time, the cost, money, and even the impact to the communities in terms of grade separations, that there are a lot of other things that can be done, not least of which are the things that we've already started accomplishing by installing power switches, by improving turnouts to connecting railroads, all those before you'd be talking to the millions of dollars for grade separations, let alone the impact it has on the community in that very local area.

VICE CHAIRMAN MULVEY: One concern,

we do have a large number of trains 30, 40, 50 trains a day, and they're 7,000 feet long, and for safety sake, the trains need to be relatively slow-moving. You can either do grade separations, which is going to cost a lot of money, and we argue over who should pay for it. You could cut the trains, but if you cut the trains, that means you need more crews, more operations, and that affects the overall economics of the project. You could change the standard and say well, 10 minutes is too short a time. We need to have more time before we begin to consider these blockages to be a concern. I mean, none of those are particularly desirable, but if we're not going to have serious problems affecting the suburban areas of Chicago, we're going to need to come up with a solution to this, it strikes me.

MR. TRAFTON: Well, there's other mitigation. Obviously, some of the things we're talking about already, like I said, the investments that we've made that can actually

speed up those connections. That's part of our plan today. I mean, one of the connections at Eola, for instance, is going to speed up the connection to another carrier that will, I believe, go to 25 mph from the current 10. But those are -- there's a lot of different options that are open to dealing with that.

But to your point, I mean, when you get down to it, it's not as though that there's a silver bullet here for anything, because there's impacts all along the way. And if you also think about grade separations, the timing in terms of how long it takes to get something like that eventually built is into the years beyond. Something more probably indicative would be what we could do more in the next two to three years, I think, which is very possible with the construction plans that we have right now on the EJ&E.

VICE CHAIRMAN MULVEY: Do those include four quadrant gates, as well?

MR. TRAFTON: No, I haven't explored

more the four quadrant gates as an alternative. I don't know.

VICE CHAIRMAN MULVEY: Thank you.

CHAIRMAN ELLIOTT: Thank you, Vice Chairman Mulvey. Commissioner Nottingham.

COMMISSIONER NOTTINGHAM: Thank you, Mr. Chairman. I have a couple of more questions.

I guess, I want to make sure while we're together here we end any future potential for miscommunication, or misunderstanding. Let me ask the panel, are there any other examples of provisions in our legally binding approval decision of December 24, 2008 that -- let me give you opportunity now just to sort of speak now or forever hold your peace. We just heard about, leading up to this hearing and today, about this issue of different definitions of what a blocked crossing is. Is there anything else out there that we need to be aware of while we're together here, where CN believes it has a different view or definition, than seems to be clearly enunciated in the -

MR. TRAFTON: I don't believe so, and I think that based on the filings that we've had to-date, we're assuming that what the Board is receiving is, in fact, what it's looking for. If not, we would be the first to stand up and say if there's something else we need to do, please tell us what it is.

COMMISSIONER NOTTINGHAM: And in that spirit, let me do that, because I'll speak as one Commissioner. I don't want to assume to speak for the Board. But as one Commissioner, I just would say we expect you to be forward-leaning and bring issues like this to our attention sooner, rather than later. It would have been okay, in my mind, had you come to us and said we're not sure what we've got here, but it sure looks like it's something of interest to the Board. And we need some time to assess it, this RTU information. We're not sure of the accuracy, but it's out there, and we don't want the Board stumbling across it, or finding out about it many months or years later, and then wondering why

they didn't know about it. That's the type of corporate culture and responsibility we're looking for. Is that clear to everybody?

MR. TRAFTON: Yes, it is. And, Commissioner, again, we regret that it's gone down this path. In some ways, we're thankful that we found it -- we came across this with you at this point in time, as opposed to further down the stream.

COMMISSIONER NOTTINGHAM: Well, that's another point. I mean, good grief, what if we had -- we're busy around here. We have other major projects. This is one of our most important, for sure, but if we had not done this oversight, and if HDR had not such a thorough job, I hazard to guess how many more months or years could have drifted by where we would have been oblivious, and the community would have been oblivious to the existence of this very real and meaningful data about events that impact the community in the most real and jarring, and sometimes in a safety-related manner. But

there's not really a question there. I just wanted to flag that it's unfortunate, because it is unclear that we ever would have gotten this information had we not been diligent, and our consultant auditor diligent.

But there's been some reference today here to cultural change, and indirect reference to the culture of operating a railroad, and different railroads sometimes have different cultures. You also had a comment in here, the so-called culture of the EJ&E, and I just want to make sure that in that sort of cultural discussion, we don't lose track of something that's very important to this Board member, which is we recognize, I believe, as a Board, that it's difficult running a railroad. It's complicated, and you are running into conflicts, and interference, and human error, and weather problems, and a whole host of challenges that prevent any railroad from running a 100 percent seamless, perfect speed at all times operation. We recognize that. We spent enough time out in

the field, and working with communities and the railroad. I've walked the tracks, and flown over them with the Mayor of Houston, other cities that are somewhat similarly burdened. The Chicago region is certainly way up there on the scale of burden with interference between roadway and rail traffic, but there are other places that are extremely burdened, too. So, we get that, but I want to make sure we understand today, if it hasn't been understood before, that we're not really -- when we're talking about the EJ&E, especially for the duration of our oversight period, which currently is five years, we're not talking about any old section of the CN's rail.

In other words, what you're doing in Canada, or what you're doing on a section of line that might be slowing trains down, or causing some delays along your track that's not the subject of a Board order pursuant to a merger, not the subject of hundreds of mitigation conditions, is of much less concern to us. I'm not saying we would never be concerned, but we

are -- I need to hear that CN understands this section of railroad is a very different -- a bird of a very different feather. It's something that we are thoroughly monitoring, and on top of, and the reason I say this is because, Mr. Trafton, with all due respect, I heard you mention in your testimony that some blockages just, from the railroad's perspective, are "not noteworthy." Well, I take a little exception to that. I want you to work with us, and let us, when it comes to the EJ&E line during the duration of the oversight process, let us help determine what's noteworthy, or not, because having the railroad just tell us what's noteworthy is -- you can imagine the concern that triggers to regulators.

It puts a total premium on trust, and, frankly, there's been some degradation of that trust, at least from my perspective. And we need the -- I need the railroad to understand that we need to be involved in the decision about what's noteworthy, when it comes to conditions

out on that railroad. Can I get some kind of -

MR. TRAFTON: That's understood.

COMMISSIONER NOTTINGHAM: All right. Thank you.

I guess what I'd like -- I hope to see in the future, because this hearing has been interesting, but what I really care about as an individual Board member is, what's going to happen in the future? Is this going to get worse? I heard some encouraging things today about your commitments, and your previous commitments to do some construction, and other mitigation, and that's going forward. I've heard that traffic is actually significantly less now than was anticipated during the merger, when the economy was still roaring, going great guns. But I've also -- I'm looking at the chart proffered by CN just today, and this is very recent information. This came to the Board in the last couple of days, and we'll certainly make it available, I'm sure, to the public. It will be in the record, but we know about December and

November. That's been in the press, and in a report, the so-called 1,400 plus delays from November-December `09, but what the public and stakeholders might not yet know, but they will soon, is that ramps up. In January alone, we're looking at 1,156 events of 10 minutes or longer. In February, 1,239, in March, 1,804, and then dropping to 1,193, so I worry that this is possibly a worsening situation. And while we're in the middle of this oversight period, we've got to be convinced that we're on track working with CN to see improvement here, and how we can measure that.

And I'll ask you to respond to that, but before I do, let me just say, we need your help, I believe, in -- we have people analyzing these intersections, and the data, but we need help making sure we can sort these intersections into priority buckets, do kind of what I'll call the so-called stacking and racking of which ones can really be improved, which ones are just, unfortunately, endemically burdened because of

the location of a shipper, where you have a common carrier obligation to serve, and the communities' development decisions over the years that have boxed you in, perhaps, and there are things that there may well -- I accept the locations where, unfortunately, sadly, we might not expect to see much improvement. But I really believe in my heart that there are a number of locations along this line where we should expect and demand, and that it's reasonable to expect and demand to see real improvements. I'll let the railroad respond to that.

MR. TRAFTON: Yes. One thing I want to point out in the chart that you're referring here, is that the numbers here in April are estimated, and it's noted at the bottom, so I don't want to mislead anybody here, trying to be up front here with everything. But we believe, too, that the numbers are erratic. If you go back in the history, you're going to see quite a variation, so we're going to -- we track this information. We'll be glad to work with the

Board going forward, as you indicated, to try to maybe point out these areas of concern, and to identify what types of things that we've got in place, whether it be through construction, or other operating practices, that would assist us in trying to minimize the number of gates down time greater than 10 minutes, for whatever reason, stopped train, or not stopped train.

COMMISSIONER NOTTINGHAM: I appreciate that, because we're going to need, I think, to rely on, and also verify, and validate independently from the railroad's perspective, because you do have, obviously, the most information about your property, and your operation.

Let me just wrap up my questions and comments by just suggesting that one of my real sources of frustration about this whole episode, and what led to this hearing, what we've heard at this hearing, is the lost time. I really feel that we could have gotten to work far earlier on some real solutions at some of these

intersections, some real operational analysis and changes had we known about the extent of the problem earlier. And, yes, some might say well, that's spilt milk, and you can't do anything about it, but I think we can. I think one way to address, I'll just commend this to my colleagues' consideration, we don't need to decide it today, obviously, but we have a five-year oversight period. I, frankly, feel, and I was the driving force behind putting together as then Chairman, the conditional approval and all of the -- what went into the decision. Commissioner Mulvey certainly played a key part in that, too, but I feel like we've lost, basically, a year, and I really feel the Board should consider extending for a year our oversight period, so that we don't give this railroad, or any other railroad the idea that they can benefit somehow from either negligently, accidentally, or whatever the excuse is, not being forthcoming. And I'm not characterizing it right now today. I'm going to take this under advisement, and look at the

record, and consult with staff and our lawyers, but, at the least, I feel we've lost a year of doing the kind of robust oversight that I envisioned when we started this project, and that we ought to add a year, and make up for that. But I just mention that here on the public record, so people aren't shocked to hear later that's something that the Board is possibly considering. Thanks.

CHAIRMAN ELLIOTT: Thank you, Commissioner Nottingham, for your insightful comments and questions.

First of all, in conclusion, I'd like to thank everyone for coming today, CN, Mr. Morton on behalf of HDR, and Congresswoman Bean on behalf of some of the communities that have been affected by this transaction. Today's hearing, to me, has revealed a very troublesome failure by CN to be entirely forthcoming with the Agency, as it appears on the record, based on the record before us today.

Our regulatory process relies on

honest and truthful production of information held by the carriers who regulate. When carriers believe they can decide what information to reveal, and what to conceal, it undermines the integrity of our entire process.

I am thankful to HDR for its excellent work in this audit. As a result, we now have better data, as Commissioner Nottingham mentioned, to carefully monitor the impact of this deal going forward on delays at grade crossings, and we'll be analyzing that information carefully over the next few months.

We will consider the explanations that were offered here today by CN. We do ask you, and I know that you have counsel in the room, to put a litigation hold on all records that relate to the matter at this time. And the consequences, as mentioned, for failure to report to the Board this information regarding the RTUs will be taken under advisement.

I thank you again, and the hearing is concluded.

(Whereupon, the proceedings went off the record at 2:57 p.m.)

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STB Finance Docket No. 35087

Statement
Of
Gordon T. Trafton, II

STB Hearing
April 26, 2010

Good afternoon. My name is Gordon T. Trafton, II. I am Special Advisor to the CN Leadership Team. I have nearly 32 years of railroad experience, including nearly 14 years at Illinois Central Railroad and then CN, where I served as Senior Vice President Southern Region, in charge of most of CN's U.S. operations, and, most recently, as the Senior Vice President Strategic Acquisitions and Integration, leading the integration of the CN and EJ&E.

Our President and CEO, Claude Mongeau, regrets that he could not be here for this important hearing. Like the rest of us at CN, he wants to be sure that we directly address the concerns expressed in your order regarding the nature of our oversight reporting and our sharing of data related to grade crossing blockages.

The CN team has dedicated thousands of hours to our effort to provide you with the information you have requested to perform your oversight of the EJ&E integration. In that effort, we have sought to collect and report promptly the information we believed that the Board required of us and otherwise to comply fully with the Board's orders.

As you know, since acquiring the EJ&E, CN has been responsible for complying with 108 voluntary mitigation conditions proposed by CN and 74 mitigation conditions added by the Board. It has expended enormous amounts of time, effort, and money doing so. And although the HDR audit of those efforts recommends clarifications by the STB and improved

communication between communities and CN in some areas, we believe that overall the audit validates CN's compliance efforts.

CN fully understands that lengthy grade crossing blockages, whether from stopped or moving trains, are a significant public concern. We know that the Board has made clear through statements and inquiries that it takes that concern very seriously. And we have worked hard to address this concern. Indeed, the available data suggest our operation of EJ&E may have caused fewer significant grade crossing blockages that were caused before the CN/EJ&EW Transaction. With respect to the data at issue here, we freely shared with HDR the fact that, in order to help prepare our monthly report to the Board of grade crossing blockages by stopped trains, CN had begun using automated crossing warning device (or ACWD) activation notices generated by Cellular Remote Terminal Units (or RTUs) located at EJ&E's automated grade crossings. HDR did not have to dig to determine that fact, we volunteered it. When HDR asked us for the actual RTU data we had used for the two audit months, we provided it without delay or objection, and when HDR also suggested it wanted historical data for comparison purposes, we immediately went back to the vendor who stores the data and had it retrieved for HDR.

Questions have now arisen about why CN did not volunteer this RTU data prior to the audit. The answer is straightforward. We believed we were meeting the Board's reporting requirements. With respect to blocked crossings, we had a good faith understanding that the Board's expectation was for reports on blockages caused by stopped trains and we diligently worked to meet that expectation. The Board has now ordered CN to report all known occurrences of street crossing blockages of 10 minutes or more, as reflected in RTU-data or any other source of information available to CN, as well as all historical data regarding such occurrences. We understand and will comply with that order.

We regret that, as a result of our understanding of our reporting obligation, which has been the basis of our blocked crossing reports for the past year, we did not provide the Board all of the information it believes it requires to perform its oversight functions. We hope that the extensive data we provided on Monday and the data we will be filing in the future will provide that information.

A. CN's COMPLIANCE WITH THE BOARD'S CROSSING BLOCKAGE REPORTING REQUIREMENTS

Before we began filing our various oversight reports, as required by the Board's order (*see* Decision No. 16 at 26), we consulted with Board personnel concerning the content and format of those reports. We suggested that we comply with the Board's request for blocked crossing information by reporting crossing blockages of 10 minutes or more due to stopped trains. We thought this approach made sense for several reasons.

First, these are the events that we must respond to immediately to provide relief and assure that they will not likely happen again.

Second, lengthy ACWD activations caused by moving trains occur on all railroads operating in heavily developed areas like that around the EJ&E. Some moving train delays are an unavoidable element of providing service to customers. For example, the fact that gates may be down at a crossing for ten minutes or more due to a slow moving train entering a shipper facility would not ordinarily be a noteworthy event in terms of rail operations or regulatory oversight. To the extent that moving train delays can be remedied, they are generally best addressed not as individual events requiring immediate particularized attention but in the course of making systemic improvements to operations.

Third, blockages due to stopped trains are the types of blockages addressed in other mitigation conditions related to blockages.

- VM 31 provides that "Applicants shall install power switches along EJ&EW where Applicants determine that manual switches could cause stopped trains to block grade crossings for excessive periods of time and that power switches would increase the speed of rail traffic and reduce the likelihood of such blockages."
- VM 32 provides that "In order to minimize the number of trains being stopped by operators at locations that block grade crossings on the EJ&EW system, Applicants shall work with other railroads to establish reasonable and effective policies and procedures to prevent other railroads' trains from interfering with Applicants' trains on EJ&EW."
- VM 42 requires notification to Emergency Services Dispatching Centers "of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time."
- VM 35 requires that CN not block crossings for longer than 10 minutes unless it cannot be avoided, and provides for cutting the train if a blockage is likely to exceed that time. These references are clearly to stopped trains, as one cannot cut a moving train, and it would make no sense to stop a train just to cut it. In fact, the Illinois state law concerning railroad crossing blockages of more than 10 minutes provides an exception for moving trains.

We recognize that a motorist is equally inconvenienced whether a blockage is from a stopped or a moving train. As railroad operators, however, it made sense to us to suggest that we report crossing blockages caused by trains stopped ten minutes or more. Thereafter, following consultation with Board personnel, we made our reports on that basis.

The fact that we were reporting crossings blocked by trains stopped ten minutes or more was well publicized and well understood. The cover letter for every report has noted that we were reporting crossings blocked by trains stopped ten minutes or more. For example, the cover letter to our very first report, filed April 13, 2009, stated (at page 2) that the street crossing blockages "report provides data concerning each instance where a crossing was blocked by a stopped train for 10 or more minutes." Likewise, the title of each crossing blockage report made it clear that the report was limited to blockages caused by stopped trains. This limitation was also noted and commented on by opponents of the Transaction.

B. EJ&E'S RTUs AND THE DATA THEY GENERATE

The Board's hearing notice focused on the data collected by the RTUs that are deployed at grade crossings on the EJ&E that are equipped with ACWDs (that is, devices such as gates, flashers, and bells, not simply passive devices such as crossbucks). These are units that were installed at these grade crossings under an agreement with the Illinois Commerce Commission (or ICC). That agreement is publically available on the ICC website.

As the ICC noted in its agreement with EJ&E concerning the installation of the RTUs, EJ&E's undertaking with respect to the RTUs was a limited one: to initiate "health check messages" for the ACWD system in order "to confirm the integrity of the system" (ICC-EJ&E Agreement, April 8, 2002). They are not primarily intended or used to monitor delay to vehicles at crossings. The RTUs generate messages that are received by EJ&E as faxes or emails concerning such things as gate irregularities (stuck up or down), power failures, or jumpers in use (which generally means the ACWD is undergoing maintenance). The data generated by the

RTUs are also stored in digital form on servers maintained by an independent vendor for a total of 33 months.

The RTUs' capacity to communicate warnings of possible crossing equipment irregularities can be programmed to provide notifications when ACWDs have been activated, for any reason, longer than a specific period of time. The EJ&E RTUs were programmed to provide such notices after 10 minutes.

C. ACWD ACTIVATIONS LASTING 10 MINUTES OR MORE ARE AN INEVITABLE FACT OF RAILROADING IN METROPOLITAN AREAS

ACWD activations of 10 minutes or more are not a new phenomenon on the EJ&E. In fact, the available data show that the number of reported instances of ACWDs being activated 10 or more minutes on the EJ&E has generally dropped under CN control. The HDR report showed that for the two audit months (November and December, 2009) there were 1,457 such reports on the former EJ&E's Eastern and Western subdivisions (now CN's Leithton and Matteson subdivisions). By comparison, for November/December, 2008, before CN controlled EJ&E, the number reported was 1,658. In order to expand the scope of the comparison, I am submitting with my statement a table comparing the RTU data across the full 33 months for which it is available. Even accounting for a potential range of error, the data demonstrate that significant numbers of ACWD activations of 10 minutes or more are neither new nor unusual on the EJ&E. And, based on my experience, they are typical of railroad operations in metropolitan areas.

ACWD activations for extended periods often occur as trains are required to stop and restart or slow for a variety of reasons, including: a train picking up or dropping off cars at a rail-served industry, a train pulling into or out of a siding, a train waiting to enter or exit another railroad's lines, or a train waiting for an Amtrak or commuter train to pass. Although less

common, extended ACWD activations may also occur due to signal failures, speed restrictions, maintenance, accidents, mechanical breakdowns, or employee error.

We work hard to keep our trains moving as safely, efficiently and quickly as possible. That is the best way to serve our customers and run an efficient railroad. However, especially in the Chicago area, the only place in the U.S. where six Class I railroads meet, delays and slow trains are, unfortunately, often unavoidable.

This does not mean that CN passively accepts lengthy crossing blockages. We are continuing to make investments and improve operations in ways that not only benefit our customers, but also reduce extended ACWD activations. For example, improved line maintenance by CN has already reduced the number of slow orders, improved train speeds, and reduced crossing delays. In addition, as recognized by the Board's FEIS, many of the locations where frequent blockages occur due to slow moving trains will experience fewer blockages once CN's planned infrastructure upgrades are complete.

Some of these blockages are due to trains either entering or exiting EJ&E, or moving between EJ&E's main line and its branch lines or sidings. CN's investment in upgraded connections at places such as Leithton (Mundelein) (allowing trains to travel at 25 mph instead of 10 mph) and Matteson (15 mph instead of 5 mph) should allow trains to move faster through those connections, thereby reducing blockages at IL Route 60/83 and Diamond Lake Road (Mundelein), at Main Street (Matteson), and at Western Ave. (Park Forest). Similarly, projects to add a power switch to the Illinois River Line at IL Route 26, to the connection at Munger (Bartlett), and to the north switch at Sutton Siding (Hoffman Estates) have reduced or will reduce ACWD activation on nearby roadways. Other blockages have significantly increased as a result

of the very projects that we are engaged in to enhance long term fluidity. Once these projects, such as the Joliet Yard project, are complete, we expect these temporary increases to end.

At other locations, CN is trying to address unnecessary blockages through improved operating practices. These primarily involve existing slow movements for trains that are connecting with other carriers, or serving a particular customer. It may not be possible to completely eliminate delays due to these movements, but CN's constant efforts to improve train speed will help to reduce them as much as practicable.

D. CN's SUBMISSION ON MONDAY, APRIL 26, 2010

In response to the Board's order in Decision No. 23, on Monday we filed the following three items:

(1) summary sheets and complete raw RTU data relating to notifications of ACWDs activated for 10 minutes or more for the entire EJ&E line and for the full period for which such data has been retained (July 20, 2007 to April 9, 2010);

(2) all prior blocked crossing reports (February 2009 to March 2010) restated to include added RTU data drawn from the raw data; and

(3) CN's dispatcher spreadsheets from April 2009, when CN first began to use those spreadsheets to prepare monitoring reports, through its last report, covering March 2010, which show RTU information reviewed by CN in preparing its monthly report of crossing blockages caused by trains stopped 10 minutes or more.

As noted in our cover letter to that filing, the data we filed differ from the RTU data summarized by HDR because our data cover the entire EJ&E, whereas HDR's data were limited to the former EJ&E Eastern Subdivision and Western Subdivision. Once you have reviewed the

data and our updated reports, we will of course be available to work with you in answering any questions you may have.

E. THE LIMITATIONS AND LIKELY FUTURE USES OF THE RTU DATA

With respect to historical RTU information, CN is largely dependent upon the vendor for the RTUs – Progress Rail – which archives the RTU data. For purposes of responding to HDR's data request and Decision No. 23, Progress Rail agreed to extract and present reports from the data. The vendor is in transition because Progress Rail purchased the RTU business from GE less than two months ago. Moreover, the extraction of relevant data from the full RTU database, which is stored in an old proprietary format that is well understood by only a few programmers, is a difficult process that has required a team of programmers and the development of custom algorithms.

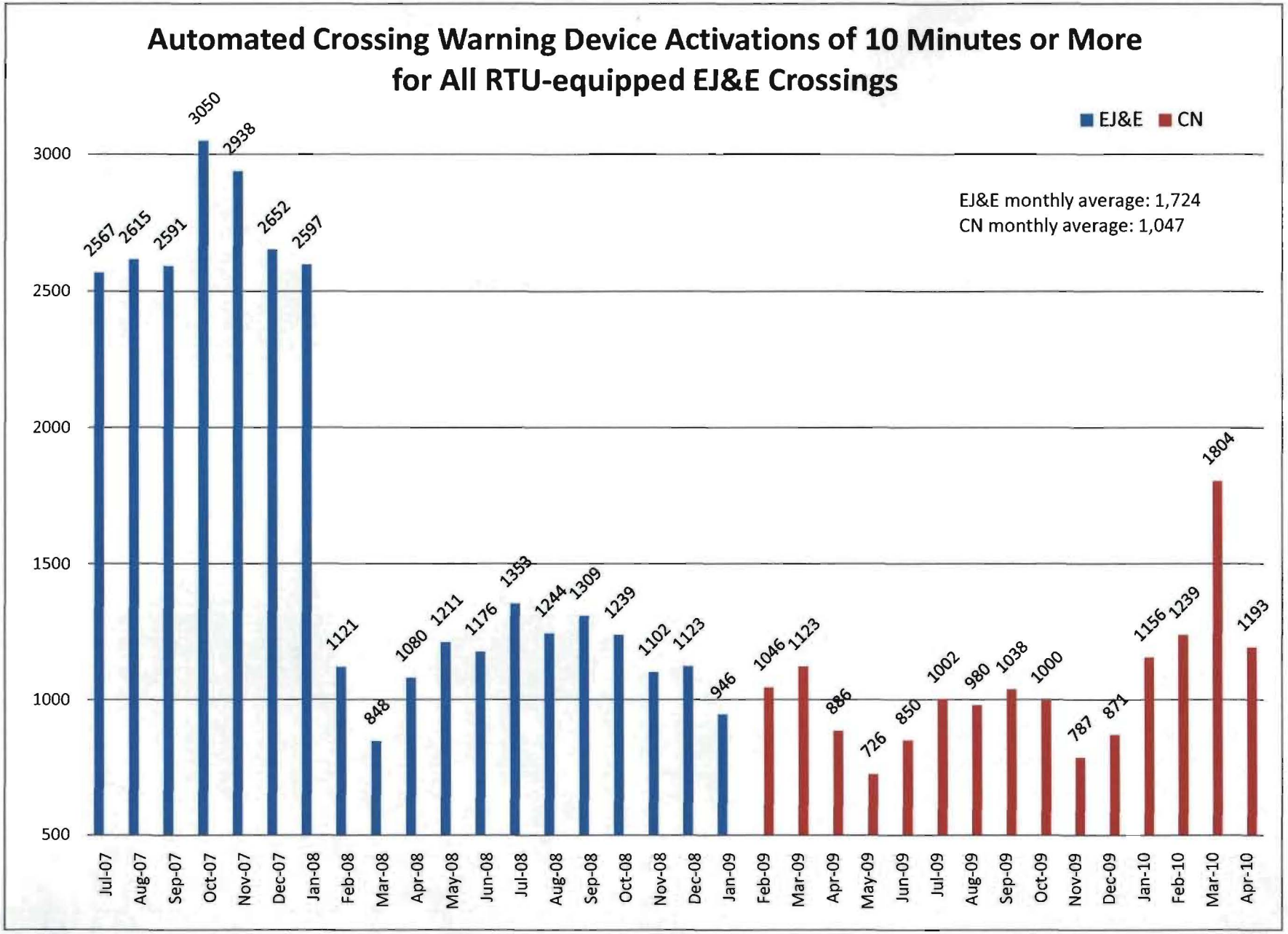
The Board should also understand that all RTU data have certain limitations. For example, because the RTUs rely on cellular technology to transmit information, the duration of ACWD activations of 10 minutes or more can be overstated. Similarly, because of the limits of the communication system through which the RTUs report, a single ACWD activation may be reported as multiple activations. Moreover, the 10-minute notices only identify the fact that an ACWD is activated; they do not distinguish among causes, such as moving trains or stopped trains. Nor do these notices distinguish which railroad's train caused the ACWD activation (for example, whether it was a trackage rights train of another carrier). In some cases, ACWDs are interconnected so that RTUs on the EJ&E pick up traffic moving on the adjacent tracks of other carriers. And the RTUs can only be installed at crossings with ACWDs; they provide no information where ACWDs have not been installed.

It appears, however, that some of these inherent limitations can be overcome by systematic review of the RTU data in the context of other information. CN has recently begun using an improved data collection process that should allow it more reliably to capture and more easily integrate blocked crossing notices provided by the RTUs with information provided by train crews and dispatchers. Accordingly, CN expects that future crossing blockage reports based on RTU data and other information may be less difficult to develop, more reliable, and more useful.

CONCLUSION

Ultimately, our challenge as a railroad is to reduce extended blocked crossings on the EJ&E without penalizing customers by reducing the efficiency of our rail operations. We focus immediate initiatives specifically on blockages from stopped trains. We minimize moving-train delays by constantly improving our railroad so that it operates in the safest and most efficient possible way. Through both approaches, we seek to maximize benefits for our customers and our shareholders, while minimizing adverse impacts on our stakeholder communities.

Thank you again for the opportunity to be here today. I would be glad to respond to any questions or comments you may have.



Notes: Jul. 2007 & Apr. 2010 estimated based on daily average of partial month data that was available. Only partial readings were taken in Mar. 2008, and possibly Feb. & Apr. 2008, as RTUs were transitioned from analog to digital.