

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

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

**Preliminary Comments of the
United States Department of Transportation**

Introduction

The Surface Transportation Board ("STB" or "Board") in this proceeding is considering whether to approve the combination of the Canadian National Railway Company ("CN") and the Elgin, Joliet & Eastern Railway Company ("EJ&E").¹ *See* Decision No. 2, served November 26, 2007. Pursuant to the procedural schedule established herein, the United States Department of Transportation ("DOT" or "Department") hereby submits its preliminary comments on the transaction.

At this point the record consists for the most part of the application and related pleadings, as well as filings from parties seeking to have this transaction deemed "significant" rather than "minor."² Given the incomplete state of the record, DOT takes no position on the merits of the transaction or on any of the issues raised to date.

^{1/} Technically, the transaction before the Board is the acquisition by Canadian National Railway Corporation ("CNR") and Grand Trunk Corporation ("GTC") (collectively, "Applicants") of EJ&E West Company, a non-carrier wholly owned by EJ&E. There are also related notices of exemption involving an intra-corporate family transaction and the granting of trackage rights to CNR/GTC-owned rail carriers. *Id.*

^{2/} In fulfillment of its responsibilities under the National Environmental Policy Act ("NEPA"), the STB is preparing an environmental impact statement to assess the impact of this transaction on the human environment. *Id.* at 13-16; Decision served December 21, 2007. DOT will participate in the NEPA-related aspects of this proceeding as well.

Consistent with STB-recognized past practice, in these circumstances we will reserve judgment pending a review of the initial comments of other parties, and we anticipate expressing our substantive views on reply. *Id.* at 11-12.³ The Department looks forward to the development of a more complete legal and factual record in this regard.

The Application

CN has entered into an agreement to purchase all of the outstanding equity of the EJ&E for \$300 million. CN is a class I railroad that operates more than 14,000 route miles of track across Canada from Vancouver, British Columbia, in the west, to Halifax, Nova Scotia, in the east, serving every major metropolitan area in that country. Through its ownership of other railroads -- notably the Illinois Central, Wisconsin Central, and Grand Trunk Western -- CN also operates approximately 3,500 miles of track in the United States. The CN system in this country stretches from Buffalo, New York, and the port of Duluth, Minnesota/Superior, Wisconsin in the north, to the Gulf of Mexico in the south, and serves Detroit, Chicago, St. Louis, Memphis, and New Orleans as well. In 2005 CN also gained control of the Great Lakes Transportation Company LLC ("GLT"), a conglomerate of small railroads and a water carrier engaged in the delivery of iron ore to the steel industry. Finance Docket No. 34424; Decision No. 2 at 3.

The EJ&E is a class II railroad that operates over 198 miles of track in an arc around Chicago, from Waukegan, Illinois in the north to Gary, Indiana in the south and east. EJ&E serves approximately 100 industrial customers; it is owned by the United States Steel Corporation ("US Steel"). US Steel will retain EJ&E rail assets and operations associated with its steel plant in Gary. Decision No. 2 at 3-4.

³/ Reply comments are now due March 13, 2008.

The Applicants list three primary purposes for the transaction: (1) to improve CN's operations in the Chicago region by shifting traffic that now goes through the central urban core to EJ&E's continuous rail route around the city; (2) to consolidate car classification work in EJ&E's Kirk Yard (an automated facility in Gary, Indiana); and (3) to develop closer and more extensive relationships with the steel, chemical, and petrochemical industries. CN-2 at 22.

The Applicants submit that this combination would benefit the public interest in various ways. First, they contend it would have no anticompetitive effects because CN and EJ&E are complementary rather than competing carriers. Moreover, they assert that no shipper would lose rail transportation options, that all current gateways would remain open on commercially reasonable terms, and that there would be no loss of geographic competition. *Id.* at 23-25, and Verified Statements ("VS") of Radloff, Vellturo, and Kolbe.

The Applicants also urge that the combination would reduce rail congestion in Chicago by enabling CN to avoid operations in the central urban area; as already noted, CN would transfer substantial traffic to the EJ&E line and also use that line to interchange with other carriers. This would have the additional benefit of advancing a central goal of the Chicago Region Environmental and Transportation Efficiency ("CREATE") project, a massive public-private undertaking to enhance transportation efficiency and safety in the area by improving and maximizing use of certain rail corridors, constructing multiple grade separations and rail over- and underpasses, upgrading rail facilities, etc.⁴ The Applicants stress as well that this transaction would

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

expand single-line service and bring the safety, efficiency, and operational benefits that flow from additional investment in EJ&E and other rail facilities in the area. *Id.* at 23, Operating Plan (Exhibit 15), VS of Novak.

Preliminary Comments

The role of the Department in this proceeding is ultimately grounded both in the statutory provisions that govern this transaction, and in DOT's responsibilities as the Executive Department of the United States established by Congress "to provide general leadership in identifying and solving transportation problems," and to that end the Secretary of Transportation "shall provide leadership in the development of transportation policies and programs."⁵

As noted, the Department will not take a position on the merits of the application at this time. Neither will DOT now offer any views on the question of whether conditions should be required in the public interest as a condition to any approval by the Board. It is clear, however, that the proposed merger presents issues of importance to the public. Applicable statutory provisions require the STB to examine the transaction's true impact upon competition and upon the human environment, including safety, affected communities, and rail passenger operations. *See* 49 U.S.C. § 11324(d); 42 U.S.C. §§ 4321 *et seq.*

Several parties continue to raise questions about the appropriateness of treating this as a "minor" transaction. *E.g.*, Aux Sable Liquid Products, Inc. Others are concerned about the consolidation's effects upon the adequacy of rail service. *See*

^{5/} 49 U.S.C. §§ 101(b)(5) and 301(2), respectively.

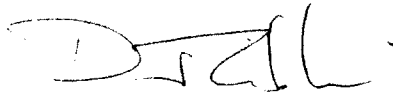
ArcelorMittal USA. Resolution of these and other issues requires consideration of the views of interested parties and, in most cases, additional information.

The Department also commends the Board for ordering the preparation of an Environmental Impact Statement to assess the consequences of the anticipated shift in significant volumes of rail traffic to the EJ&E line. Whatever its benefits in terms of reducing congestion or pollution, this operational change will doubtless have impacts on various suburban communities that warrant careful attention. It may also affect the rail passenger services of Amtrak and Metra on certain lines. Finally, safety is always a primary concern for DOT, and the Federal Railroad Administration ("FRA") has already worked with the Applicants on the preparation of a Safety Integration Plan ("SIP"). We will offer comments on the SIP and we will continue to participate actively in this aspect of the proceeding.

Conclusion

The Department appreciates this opportunity to participate in a proceeding of regional significance to railroads, shippers, and the general public. We look forward to development of the record and to contributing to a sound final decision.

Respectfully submitted,

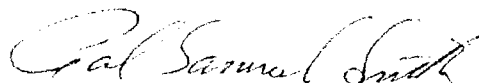
A handwritten signature in black ink, appearing to read "D.J. Gribbin", with a stylized flourish at the end.

D.J. GRIBBIN
General Counsel

January 25, 2008

CERTIFICATE OF SERVICE

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



Paul Samuel Smith

January 25, 2008

Surface Transportation Board

CN-EJ&E EIS - FD-35087

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