



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

General Counsel

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

January 13, 2017

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FILED ELECTRONICALLY

Ms. Cynthia Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
January 13, 2017
Part of
Public Record

**Re: Docket No. FD 36075
The Illinois State Toll Highway Authority – Petition for Declaratory Order**

Dear Ms. Brown:

Attached please find for filing in the above-referenced proceeding a letter expressing the views of the United States Department of Transportation. If you have any questions, please feel free to contact me.

Respectfully,

CHRISTOPHER S. PERRY
Senior Trial Attorney

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The Honorable Daniel R. Elliott III
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

**Re: Docket No. FD 36075
The Illinois State Toll Highway Authority – Petition for Declaratory Order**

Dear Chairman Elliott:

The United States Department of Transportation (DOT or Department) and its operating administrations, including the Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), and Federal Aviation Administration (FAA), respectfully submit their views in this proceeding, which was initiated on the Illinois State Toll Highway Authority's (Tollway) Petition for a Declaratory Order, filed on November 23, 2016. The Department has important interests in this proceeding, as it involves matters relating not only to the operation of the railway system, but also, because it has significant implications for the highway system and the efficiency of air travel through O'Hare International Airport in Chicago (O'Hare or the Airport). In furtherance of those interests, the Department wishes to apprise the Board of its strong support for the project that is the subject of the Tollway's petition, as well as for the Tollway's request for expedited relief, given the importance to the public of moving forward with construction. In addition, as described in more detail below, DOT does not agree with the arguments set forth by the Soo Line Railroad Company, doing business as Canadian Pacific Railway (CP), about expanding the scope of this proceeding, which should be confined, in the Department's view, to the narrow issues raised in the Tollway's petition.

The Tollway seeks a declaratory order to confirm that its exercise of state law eminent domain authority is not preempted by the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 *et seq.* (ICCTA). The Tollway seeks to use such eminent domain authority to obtain permanent and temporary easements to build five bridges over railroad tracks in the vicinity of

O'Hare so as to construct two new highways that will facilitate access to the western side of the Airport and provide other transportation benefits for passenger and freight transportation in and around Chicago. The particular subject of this petition, the Western Access Interchange, is itself an important project that also forms a component of the broader O'Hare Western Access Project (EOWA), a major highway endeavor. As the Tollway explains, the highway ramp bridges for the Western Access Interchange are to be constructed over freight railroad tracks owned and operated by CP and the Union Pacific Railroad (UP). This highway project is at the point that it is ready to move forward with construction over these railroad tracks in the near future. The Tollway has advised that it expects to reach a negotiated resolution with UP, but that CP has refused to engage in further discussions and has raised objection to construction over their trackage, which is immediately adjacent to the UP tracks over which the bridges would also be constructed. Thus, the Tollway has filed its petition with the Board, seeking expedited relief. 49 U.S.C. § 721, 5 U.S.C. § 554(e).

DOT is submitting this comment because we believe that it is very important to proceed expeditiously on the construction of the Western Access Interchange. O'Hare is a major aviation hub for the nation and the world, both for passenger service and cargo movements. Indeed, O'Hare "is the third busiest airport in North America and seventh busiest airport in the world in terms of passenger traffic."¹ It is therefore critical to ensure that we continue to improve the highway system that links to this key aviation hub to enhance the service that is offered not only to the local community, but to those traveling from across the world who connect with O'Hare through the highway system. The EOWA endeavor, including the Western Access Interchange, is an important part of achieving those goals.

In addition, DOT agrees with the Tollway that further delays in construction would be detrimental to the success of the project and to the public interest. Specifically, FHWA has already engaged in an extensive and tiered environmental review and issued two separate Records of Decision relating to the project. Moreover, \$140 million of Federal-aid highway funds has already been spent with additional Federal-aid highway funds anticipated.² Thus, although DOT looks forward to hearing the views of other stakeholders, it is important to recognize that the Tollway's plans have been the subject of ongoing public dialogue for an extended period, and we are concerned about further impediments to their progress. DOT therefore supports the Tollway's request for expedited consideration and relief.

¹ Federal Aviation Administration, *NextGen, Chicago O'Hare International Airport*, available at <https://www.faa.gov/nextgen/snapshots/airport/?locationId=41> (last visited Jan. 12, 2017); see also DOT, Bureau of Transportation Statistics, *Chicago O'Hare International*, available at <http://www.transtats.bts.gov/airports.asp?pn=1> (providing statistical data about operations at O'Hare and showing that it is the second-ranked airport for U.S. flights in terms of scheduled passenger totals, under drop-down box for O'Hare) (last visited January 12, 2017).

² See <http://www.idot.illinois.gov/projects/Elgin-OHare> (last visited January 12, 2017).

Finally, DOT supports the Tollway's position regarding the appropriate scope of this proceeding, which is limited to a request for relief relating to easements for the construction of the Western Access Interchange, and should not be enlarged to address every potential issue that could arise in the future relating to Bensenville Yard or other aspects of the broader EOWA Project. Contrary to CP's arguments, the Tollway has explained that "[c]onstruction of the Western Access Interchange does not make a Bensenville Yard Crossing either imminent or inevitable," and notes that "the Bensenville Yard crossing may ultimately prove economically or politically unworkable."³ That assertion is entirely consistent with the decision reached by the federal district court in a recent lawsuit presenting similar issues, in which the court concluded that a dispute about the potential impact upon Bensenville Yard operations was not yet ripe.⁴ In all events, DOT agrees with the Tollway's assertion that the Western Access Interchange, the subject of the petition, "is a separate part of the overall [Elgin O'Hare Western Access Project] that is independently vital to the transportation needs of the metropolitan Chicago area."⁵ Although DOT appreciates and supports the Board's ongoing efforts to improve the flow of railroad traffic through Chicago,⁶ in our view, this proceeding should not be enlarged to address premature questions that could be appropriately resolved, if necessary, in a future case.

We hope that the Board finds this information helpful. As always, DOT remains ready to work with the Board and other parties on matters affecting the rail network, and we would be glad to provide any further assistance to the Board as it proceeds to consider the Tollway's petition.

Respectfully,



Molly J. Moran
Acting General Counsel

³ See Motion for Leave and Surreply to Limited Reply Statement of the Soo Line Railroad Company d/b/a Canadian Pacific at 3 (Dec. 21, 2016) ("Tollway Surreply").

⁴ *Soo Line R.R. Co. v. Ill. State Toll Hghwy. Auth.*, No. 15-10328, Memorandum Opinion and Order at 8 (N.D. Ill. Mar. 29, 2016) (see Exhibit A, Tollway Surreply); see also Tollway Surreply Ex. B, Order Denying Reconsideration (N.D. Ill. June 12, 2016).

⁵ Tollway Surreply at 3; see *id.* at 2 ("These improvements are essential whether or not the southern traffic eventually crosses under the Bensenville Yard or merely merges onto an existing state highway north of the Yard.").

⁶ See, e.g., *United States Rail Service Issues—Performance Data Reporting*, No. EP 724 (Sub-No. 4) (Nov. 29, 2016) (final rule establishing requirements for Class I railroads and the Chicago Transportation Coordination Office to report service performance metrics on a regular basis).

Certificate of Service

I certify that on this 13th day of January, 2017, I caused a copy of the foregoing to be served upon all Parties of Record.



Christopher S. Perry