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January 28, 2008

By e-filing

Anne K. Quinlan, Esq
Acting Secretary
Surface Transportation Board
395 E Street, S W, Suite 1149
Washington, DC 20024

Re Finance Docket No 35087, *Canadian National Railway Company and Grand Trunk Corporation -- Control -- E.J.&F. West Company*

Dear Ms Quinlan

Hereby transmitted is an Opposition Statement And Request For Conditions in behalf of Metra for filing with the Board in the above referenced matter

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Protestant

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cc All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN NATIONAL RAILWAY)	
COMPANY AND GRAND TRUNK)	FINANCE DOCKET
CORPORATION — CONTROL —)	NO 35087
EJ&E WEST COMPANY)	

OPPOSITION STATEMENT
AND
REQUEST FOR CONDITIONS

NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORPORATION
AND
THE COMMUTER RAIL
DIVISION OF THE REGIONAL
TRANSPORTATION AUTHORITY,
BOTH d b a METRA
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Due Date January 28, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANADIAN NATIONAL RAILWAY) COMPANY AND GRAND TRUNK) CORPORATION — CONTROL —) EJ&E WEST COMPANY)	FINANCE DOCKET NO. 35087
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OPPOSITION STATEMENT
AND
REQUEST FOR CONDITIONS

Pursuant to the Board's procedural decision served November 26, 2007, Appendix A, NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION and THE COMMUTER RAIL DIVISION OF the REGIONAL TRANSPORTATION AUTHORITY, both doing business as METRA ("Metra"), hereby oppose the application of Canadian National Railway Company (CN) for authority to control EJ&E West Company (EJ&E) unless approval of that application is made subject to conditions that would adequately protect the interests of Metra

BACKGROUND

Pursuant to the Regional Transportation Authority Act (70 ILCS 3615/3B 01) The Commuter Rail Division of the Regional Transportation Authority ("Metra") is responsible for all transportation by commuter rail in the six counties of Northeastern Illinois. Metra currently operates on 11 different rail lines that run on a hub and spoke type system from Chicago, Illinois to various points in the six county Chicago region. Metra has long sought to connect these rail lines by creating an outer circumferential line using the existing EJ&E trackage. This proposed new service has the potential to greatly benefit the region, has the

support of the business and communities and is well on its way to becoming a reality. Metra is also in the planning stages to develop a new rail service line from Chicago Illinois to Crete, Illinois on the joint right of way of the Union Pacific Railroad and CSX Railroad. This line, named the Southeast Service, also has tremendous support amongst the business and local communities, and will cross the EJ&E at grade at Chicago Heights. Metra operates service directly through its separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation (also d/b/a Metra) and through Purchase of Service Agreements ("PSA's") with two Class 1 freight carriers, the Union Pacific Railroad Company and the BNSF Railway. Between the operations directly provided by Metra, and those under PSA's, Metra provided over 83 million passenger rail trips in calendar year 2007, and set numerous ridership records as demand for commuter rail service has reached its highest levels in its 24 year history. In fact, nearly one-half of all commuter trips from the suburbs to downtown Chicago are made on Metra. Metra is often regarded as the premier commuter rail system in the United States, if not the world, and in particular is known for its stellar on-time performance marks which have averaged in excess of 96% in each year of its existence. In addition to providing a safe, comfortable and price competitive service, Metra's overall efficiency has been the hallmark of its continued success in delivering this vital public interest function by offering dependable rail commuter service. Metra provides over 304,000 passenger trips each workday in the Chicago Metropolitan area, serving as a vital alternative to the automobile choked road network in this region that is today near gridlock. Metra also provides needed commuter rail service on weekends giving the tens of thousands of residents in northeastern Illinois the opportunity to travel to and from Chicago. Over decades of performance, Metra has a well-deserved reputation for on-time, reliable service. CN's proposed

increase in traffic and control of the EJ&E poses a serious potential challenge to Metra's continued ability to provide high-quality commuter service. Any diminution of this service would have dire consequences on the economy, the environment and the overall health of the region.

CN has stated in its Operating Plan (Application at 223) that it would work with Metra and the host freight operators to coordinate operations and adjust operating windows so that the needs of all users can be met. CN also stated that it would explore options to facilitate Metra's plan to institute commuter operations over a portion of EJ&E, commonly referred to as Metra's proposed STAR Line. CN and Metra have met to negotiate a potential resolution. Though talks were initiated, no resolution could be reached before the deadline for filing opposition evidence and/or requests for conditions. This filing is thus necessary to protect the interests of Metra's, its riders and all 8.4 million residents of northeastern Illinois who rely on Metra to remain an efficient operation.

NEED FOR CONDITIONS

CN's control of EJ&E has the potential for enormous adverse effects on the continued efficiency of Metra's commuter operations. There are two major locations of special concern: (1) at the West Chicago, IL Interlocking, where Metra commuter trains operating over Union Pacific Railroad Company's "West Line" cross EJ&E at grade, and (2) at the Barrington, IL Interlocking, where Metra commuter trains operating over Union Pacific's "Northwest Line" cross EJ&E at grade. These trains are operated by the Union Pacific Railroad pursuant to a PSA with Metra. To Metra's riding public however, there is no distinction between this service and any other Metra service that operates in the region. Metra has a profound interest in the commuter operations of its PSA carriers, and is compelled to protect the commuter

operations of the Union Pacific Railroad in this matter

Each weekday, the Union Pacific Railroad operates 52 Metra commuter trains across EJ&E trackage at the West Chicago Interlocking. As a result of an ever increasing demand for service, Metra is in the process of securing significant capital dollars thru the FTA's New Starts Process to upgrade the UP-West Line to allow greater flexibility that will enable Metra to expand commuter rail service on the UP-W Line. Metra contemplates that trains thru the West Chicago Interlocking on this line will increase to approximately 67 commuter trains each weekday when Metra's New Starts Project is implemented. Metra's UP-W Line provides approximately 25,000 passenger trips on an average weekday. The corresponding number of Metra commuter trains crossing EJ&E at the Barrington Interlocking on Metra's UP-NW Line is 56. Metra is also embarking upon securing significant capital investment on this line thru the FTA's New Start Process which will enable Metra to expand the numbers of trains thru the Barrington Interlocking to approximately 66 commuter trains each weekday when Metra's New Starts Project is implemented. Metra's UP-NW Line provides approximately 34,400 passenger trips on a weekday basis. Both of these New Start projects were authorized for funding under SAFETEA-LU and Metra is completing the necessary studies to be eligible for consideration by the Federal Transit Administration for Full Funding Grant Agreements in the near future.

EJ&E controls the Interlockings at West Chicago and Barrington. EJ&E and the Union Pacific Railroad have a history of decades of safe and efficient operation through those Interlockings under EJ&E control. EJ&E has been vigilant to make sure that there is minimal freight train interference with Metra commuter trains at those locations. As part of its efforts to minimize interference with the commuter operation, EJ&E has imposed a curfew on its freight train operations through those Interlockings during the peak periods of Metra's commuter

operations, i.e., during morning and evening rush hours. EJ&E also has provided for absolute priority for Metra commuter trains during non-peak hours. Another factor that bears additional consideration is the operation of the Union Pacific's freight train traffic on its UP-West and UP-Northwest lines. Any delays to UP freight trains crossing the interlockings at West Chicago and Barrington have the potential for dire consequences to Metra's commuter rail service as both lines rely upon intense coordination between commuter and freight train traffic to efficiently operate the system. The EJ&E has worked closely with Union Pacific to ensure efficient commuter and freight operations.

The nearly fourfold increase in EJ&E freight traffic under CN control could severely threaten that history of efficient commuter rail operations crossing this line. Currently, EJ&E operates an average of 10.7 freight trains per day through the West Chicago Interlocking, with an average of 62,233 tons. That would increase under CN control of EJ&E to an average of 34.5 freight trains per day, consisting of an average of 245,049 tons, resulting in increases of 222 percent and 294 percent respectively. EJ&E currently transports an average of 5.3 freight trains per day through the Barrington Interlocking, consisting of an average of 20,457 tons. Under CN control, that would increase to an average of 20.3 freight trains per day consisting of 158,701 tons, for increases of 383 percent and 777 percent, respectively.

Moreover, EJ&E trains under CN control will be much longer than EJ&E trains at present. CN's publicly-distributed responses to "frequently-asked questions," acknowledges average train lengths of approximately 8,800 feet. In one of its discovery responses, CN acknowledged that some of its trains will be approximately 10,000 feet long (trains to and from Port Rupert, British Columbia, Canada). That train length corresponds to nearly two full miles! At average train speed of 30 mph at West Chicago and 40 mph at Barrington on the EJ&E route,

it would take a train of that length more than four full minutes just to pass through a crossing under ideal train operations. As Metra well knows through experience, freight train operations often are not ideal. Current train lengths on EJ&E are much more modest. Thus, the massive increase in train length under CN control of EJ&E adds very substantially to the potential for harmful delays to Metra commuter trains. These are not minimal increases in traffic on the EJ&E line, they are very substantial increases. As a result, they have a corresponding potential for major disruptive delays in commuter rail service, which would have devastating effects on the riding public. For example, an outbound Metra commuter train delayed at the Barrington Interlocking will delay trailing commuter trains as far back as Arlington Park or Mount Prospect, IL. The ripple effect could impact an entire rush hour, causing serious delays to passengers going from or returning to their workplace. These delays would have a negative social and economic impact on the region and could affect the lives of tens of thousands of people each day. This is a result that simply can not be allowed to be a by-product of this transaction.

Moreover, Union Pacific's freight traffic that crosses EJ&E at West Chicago is extremely heavy. Thus, given the freight traffic on the UP-West Line, the congestion at the West Chicago interlocking has the potential to become a rail traffic nightmare. Freight train interference is of great concern to Metra as delays to UP freight service crossing the EJ&E can have the same devastating ripple effect upon commuter operations.

REQUEST FOR CONDITIONS

The following conditions are required in the public interest:

1. "CN shall cause EJ&E to grant trackage rights to Metra between Milepost Nos. 7.5 and 42.5 on EJ&E's Western Subdivision in order to implement Metra's STAR Line, and agree to work cooperatively to consider future grants of trackage rights as Metra seeks to develop the Star Line East.

- Segment from Joliet, Illinois to Lynwood, Illinois and the Star Line North Segment from Hoffman Estates, Illinois to Waukegan, Illinois "

For years, communities along the proposed Metra STAR Line have been clamoring for a transit solution to the ever-increasing problems of traffic congestion, lack of access, and a dearth of suburb-to-suburb connections. Proposals for commuter rail service along the EJ&E and the I-90 Northwest Tollway have been a part of the Chicago area regional transportation plans for decades. Both corridors were a part of Metra's Future Agenda for Suburban Transportation (FAST) plan, created in 1992. In the late 1980s and early 1990s, Metra and the communities along the EJ&E began to investigate the option of running commuter service on the EJ&E. After many years of effort, this culminated in the *Outer Circumferential Commuter Rail Feasibility Study* in 1999. In 2003, Metra announced the idea of connecting a portion of the proposed commuter rail service on the EJ&E with new commuter rail service in the median of the Northwest Tollway, collectively called the STAR Line. In 2005, Metra initiated an Alternatives Analysis (AA) study for the STAR Line corridor. This AA is the first official step in securing "New Starts" funding from the Federal Transit Administration. Metra anticipates completing the AA study in 2008 and securing federal approval to enter preliminary engineering, the next step in bringing the STAR Line to fruition.

Communities that are slated to host stations along the EJ&E portion of the STAR Line include Hoffman Estates, Bartlett, Elgin, West Chicago, Aurora, Warrenville, Naperville, Plainfield, and Joliet. In addition to these communities, eight communities on the Northwest Tollway are planning to host stations, and dozens more communities are within a short drive or bus ride of a proposed STAR Line station. All told, the STAR Line will provide an improved transportation option for nearly 100 communities throughout the Chicagoland region. Beyond the STAR Line corridor, the STAR Line will connect to four existing Metra

lines and one CTA Line, forming a new network for suburb-to-suburb rail travel in the region. This network will have the capability to expand in a number of directions to meet the growing needs of a changing region.

The communities that are slated to host stations have committed significant resources to the planning of the line. All of the communities along the EJ&E participated, with time, effort, and financial support, in the production of *STAR Line Phase 1 — EJ&E Portion Land Use and Community Planning Study* in 2005. This study outlines how the communities will work to bring about transit oriented development in each of their proposed station areas. The communities have also worked beyond these station area plans to create new comprehensive plans that reorient their communities towards the proposed train stations. Many of these efforts have manifested themselves in creating new zoning, securing land for stations and parking lots, and in at least one case, laying concrete today for a new parking lot in anticipation that it will be able to serve a future rail station. The communities in this corridor recognize that the STAR Line will make their villages and cities more attractive to new residents and new businesses. It will create new jobs and improve access to the existing jobs in their communities.

The impact of the STAR Line goes beyond the communities and residents along the line; it will serve as a major catalyst for economic development in the corridor. The business community recognizes this and has formed the STAR Line Business Alliance to advocate for the project and to capitalize on the benefits that the project will bring to their firms and their employees. The Alliance includes such prominent businesses as AT&T, Exelon, IKEA, Motorola, and Sears Holdings. Numerous hospitals, universities, and colleges as well as many medium-sized and smaller employers also strongly support this project. The STAR Line will

provide new access for thousands of employees, taking cars off the roads and providing a clean, safe, reliable alternative to sitting in traffic each day. In order to maintain its competitiveness, employers need to be able to access the dispersed job pool, and the STAR Line provides a new and improved way to do that. Employers also recognize the importance of connecting to O'Hare Airport, the region's economic engine, and providing a rail option to the airport from the suburbs makes doing business much easier.

As population and job demand growth continue to spread throughout the northeastern Illinois region, there will be an even greater demand to expand on the initial phase of the STAR Line. At least two additional segments involving the EJ&E have been identified by Metra and the Region for future expansion. The Star Line East Segment is envisioned to operate along the EJ&E right-of-way from Joliet, Illinois to Lynwood, Illinois. While the STAR Line North Segment is envisioned to operate along the EJ&E right-of-way from Hoffman Estates, Illinois to Waukegan, Illinois. These two additional segments would help expand the commuter rail network, linking all lines of Metra's current hub and spoke system, and greatly enhance the quality of suburb-to-suburb commuter rail service.

Accordingly, Metra must be assured that its STAR Line commuter trains can operate over EJ&E, under CN control, as has long been Metra's plan. The above condition will provide that assurance.

2. "CN shall agree to work cooperatively with Metra on the establishment of a commuter train schedule to accommodate the proposed New Start service commonly known as the Southeast Service. Once such schedule is established, CN agrees to respect the integrity of the schedule and shall grant commuter trains priority over the Chicago Heights interlocking.

- 3- "Control of the West Chicago and Barrington Interlockings shall be transferred from EJ&E to Metra as of the date of consummation of CN's control of EJ&E "

That is the best way to ensure the continued efficiency of the essential commuter rail operations on Metra's Union Pacific West and Northwest lines. Metra would best be able to coordinate commuter and freight operations at those locations. Moreover, as a non-freight railroad, Metra's control of those Interlockings would be the best way to ensure that there would be no undue discrimination at those locations between CN - EJ&E freight trains and Union Pacific freight trains. Metra currently controls the interlocking where its Rock Island District service crosses the EJ&E, so it is intimately familiar with their operation, and is well positioned to take on this added responsibility. Control of all three important Interlockings will allow for a more coordinated route, thereby enhancing the overall efficiency of the traffic on the EJ&E and minimizing any disruption with the public's commuter rail service. Metra would also suggest that control of these Interlockings be transferred to the Union Pacific and this would also satisfy Metra's concerns.

In the event that control of those Interlockings is not transferred to Metra, the following additional conditions are required in the public interest:

- 4 "CN shall cause EJ&E dispatchers in control of the Interlockings at West Chicago and Barrington to impose a curfew for freight train operation over those Interlockings during peak periods of Metra's commuter operations (i.e., between 5:00 AM and 8:30 AM, and between 4:30 PM and 7:40 PM at West Chicago, and between 5:00 AM and 8:20 AM, and between 4:30 PM and 7:30 PM at Barrington), and
- 5 CN shall cause EJ&E dispatchers in control of the Interlockings at West Chicago, IL and Barrington, IL to give priority to Metra commuter trains over EJ&E freight trains at those Interlockings during all non-peak hours and avoid any undue interference with the commuter service, and
- 6 CN shall cause EJ&E dispatchers in control of the Interlockings at West Chicago, IL and Barrington, IL to take due account of Union Pacific

- freight traffic in protecting Metra commuter trains at those crossings "

The above requested conditions are required to be more protective of Metra's commuter operations than EJ&E's current practice because EJ&E's light current freight traffic volume does not require stringent conditions. The quadruple increase in EJ&E freight traffic under CN control makes the foregoing conditions imperative in the public interest. To do otherwise, jeopardizes the vital interests of the more than 60,000 passenger trips provided on the UP-W and UP-NW on a daily basis.

The following additional condition is required in the public interest:

- 7 "CN shall cause EJ&E to report to the Surface Transportation Board regarding the effect of the foregoing conditions on delay of Metra commuter trains at West Chicago and Barrington. Such reports shall be filed at six-month intervals for a period of ten years beginning six months after the date of consummation of CN control of EJ&E. Metra shall have the right to reply to any such report. The Board shall retain jurisdiction over the subject matter of the foregoing conditions during that 10-year period in order to take any action thereon that might be required in the public interest."

The potential adverse effect on Metra of CN control of EJ&E is so severe as to warrant continued monitoring by the Board of the conditions imposed to alleviate that effect. The public interest requires that there be a swift and effective means of enforcing those conditions if CN were to fail to fully abide by them. The condition set out above is essential to provide for that avenue for swift and effective relief.

POTENTIAL FOR ADDITIONAL CONDITIONS

Metra intends to participate in the development of the environmental record in this proceeding. Based on that participation, Metra intends to submit relevant portions of that environmental record into the record on the merits of the proposed control, so that the adverse environmental effects of the proposal can be weighed against the proposal's transportation benefits. Metra reserves the right to supplement its position on the merits.

after the environmental record is completed, as either in support of the proposed control, in opposition to it, or in opposition to it unless the conditions stated above and additional conditions are imposed to alleviate its adverse environmental effects

WHEREFORE, the Application for authority to control EJ&E should be denied unless approval of that application is made subject to conditions that would adequately protect the interests of Metra, its over 83 million riders and the entire 8 4 million residents of northeastern Illinois

Respectfully submitted,

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Due Date January 28, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2008, I served the foregoing document, Opposition Statement and Request for Conditions by overnight mail on counsel for Applicants Paul A Cunningham, David A Hirsch and James M Guinivan, Harkins Cunningham, 1700 K Street, NW, Suite 400, Washington D C 20006-3804, and by first-class mail on all other parties of record

Thomas F McFarland

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