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BY ELECTRONIC MAIL

Ms. Victoria Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Attention: Ms. Phillis Johnson-Ball, Deputy Chief
Environmental Filing
STB Finance Docket No. 35087

Re: STB Finance Docket No. 35087 – Canadian National Railway Co. and Grand Trunk Corporation – Control – EJ&E West Company

National Railroad Passenger Corporation Response to Request for Comments on Draft Scope of the Environmental Impact Statement

Dear Ms. Rutson:

On behalf of the National Railroad Passenger Corporation (“Amtrak”), this letter responds to the Board’s Request for Comments on the Draft Scope of the Environmental Impact Statement (“EIS”) for the proposed Canadian National Railway Corporation and Grand Trunk Corporation (collectively “CN”) acquisition of the EJ&E West Company (“EJ&EW”), STB Finance Docket No. 35087.

Amtrak has carefully reviewed the Notice of Intent to Prepare an Environmental Impact Statement; the Notice of Initiation of the Scoping Process; and the Request for Comments on the Draft Scope published by the Board’s Section of Environmental Analysis (“SEA”) in the Federal Register on December 21, 2007. From this review, it is clear that although SEA has identified a number of important environmental impact categories that must be examined, it has failed to identify the full scope of impacts under these categories. More specifically, SEA has not taken into full account the impact on existing Amtrak passenger rail service that will result from the proposed acquisition.

As explained in Amtrak’s comments below – which are organized under the headings used by SEA in its December 21, 2007 Draft Scope of EIS (“Draft Scope”) – it is imperative that the scope of SEA’s environmental review be expanded to encompass all aspects of the impact

the proposed transaction will have upon Amtrak's passenger rail service and the significant environmental consequences flowing from such impact.

I. Proposed Action

SEA describes the reasonably foreseeable consequences of the proposed acquisition too narrowly, and consequently overlooks the significant environmental impacts that will be associated with loss of critical Amtrak passenger service if the acquisition is approved without appropriately responsive mitigating conditions. Specifically, SEA describes the "proposed action" as resulting in only: a) "shifting of rail traffic from rail lines in Chicago to rail lines on the EJ&E" and b) "construction of seven rail connections, siding extensions, and installation of second track (double tracking)" along the EJ&EW line. The impacts on Amtrak passenger rail service summarized below, and set forth in more detail in Amtrak's January 28, 2008 Comments in Opposition to the Proposed Transaction ("Amtrak's January 28 Comments"), are just as foreseeable as the shift in freight traffic, and related construction projects on EJ&EW, but are not mentioned in the Draft Scope.¹

Of similar concern is the fact that the Draft Scope document repeats CN's erroneous assertion that "the proposed transaction would not impair CNR's ability to handle commuter trains, passenger trains, or trackage/haulage trains currently operating on its lines."² If there was any doubt about whether the negative impacts on Amtrak are foreseeable, one only needs to consult the STB and SEA dockets, where a number of entities, including those supporting and opposing the merger, have raised concerns about the negative impacts on Amtrak.³ For example, the City of Chicago's Mayor Daley has expressed general support for the transaction but emphasizes that the city has "a concern regarding the impact of this acquisition on Amtrak and request the STB to join us in asking that CN work with Amtrak to identify and alleviate *any negative operational impacts that may result from the acquisition.*"⁴

As explained in more detail in Amtrak's January 28 Comments, the proposed transaction will in fact have a reasonably foreseeable and significant impact on Amtrak passenger rail service. The purpose of the proposed CN acquisition is to enable CN to shift freight traffic from its lines through downtown Chicago to EJ&EW and thus "more quickly cease operations over

¹ The STB's EIS must evaluate all "reasonably foreseeable" effects of the proposed acquisition. 40 C.F.R. § 1508.8(b). An environmental effect is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision." Mid States Coalition for Progress v. Surface Transportation Board, 345 F. 3d 520, 548 (8th Cir. 2003)(quoting Sierra Club v. Marsh, 976 F.2d 763, 767 (1st Cir. 1992).

² 72 Fed. Reg. 82,821 (Dec. 21, 2007).

³ Stakeholders expressing concern to the STB about Amtrak impacts so far, even before the end of the SEA's comment period, and not including comments directly to the SEA by non-parties, include: U.S. Department of Transportation; Illinois Department of Transportation; City of Chicago; National Association of Railroad Passengers; City of Champaign; City of Carbondale; University of Illinois at Urbana-Champaign; Champaign County Chamber of Commerce; Washtenaw Area Transportation Study; City of Mattoon; Mattoon Chamber of Commerce; Midwest High Speed Rail Association; Chicago Metropolitan 2020; and Transportation for Illinois Coalition.

⁴ Letter from Mayor Richard M. Daley to STB Acting Secretary Anne K. Quinlan (January 15, 2008) (emphasis in original).

the St. Charles Air Line.”⁵ Amtrak currently operates six daily trains that use the St. Charles Air Line Route (“Air Line Route”) to access Chicago Union Station.⁶ These passenger trains are:

- The *City of New Orleans*, which operates a daily round trip between Chicago and New Orleans and seventeen stops in between; and
- The *Illini* and *Saluki*, which together provide two daily round trips between Chicago and Champaign/Carbondale, IL.

Over 400,000 passengers ride these trains each year, and ridership is increasing. In fiscal year 2007, ridership on the *Illini* and *Saluki* totaled 229,000, a nearly 70% increase over the previous year (due to increased service and higher gas prices). In fiscal year 2007, the *City of New Orleans* carried 180,000 passengers. In addition to providing a third frequency on the Chicago-Champaign/Carbondale segment, this train serves many small cities and towns in Tennessee, Kentucky, Mississippi, and Louisiana that do not have scheduled air service or, in some cases, intercity bus service. Once CN shifts its traffic off the Air Line Route, this route will most likely be lost to Amtrak, either because the line would then be formally abandoned and sold for non-rail use as long-planned and agreed to by CN and City of Chicago, or because the continued use and maintenance of the Air Line Route by Amtrak alone will become cost-prohibitive in the absence of mitigating conditions from the Board. Indeed, CN has cited the conversion of the Air Line Route to non-rail uses as one of the public benefits of the transaction.⁷

II. Environmental Impact Analysis

As explained above, the proposed transaction will have direct negative impacts on Amtrak’s passenger rail service unless appropriate mitigating conditions are imposed by the Board. As explained in Amtrak’s January 28 Comments, CN’s Application makes it clear that the transaction will result in loss of the Air Line Route to Amtrak. CN’s claim to the contrary - that the transaction “will not affect passenger rail services operating on CN lines”(CN Application, p. 222) – is not credible. Regardless of how the transaction is characterized by CN, the acquisition will result in impacts on Amtrak that must be reviewed and mitigated in the context of the Board’s NEPA process. The Council on Environmental Quality’s NEPA implementing regulations clearly require the Board’s EIS to examine all reasonably foreseeable

⁵ CN October 30, 2007 Railroad Control Application (“CN Application”) at p. 16; *see also* CN Application at p. 210 (Operating Plan) (identifying as a “key element” of its operating plan “[r]e-routing of CN traffic off the St. Charles Air Line facility”); and p. 216 (Operating Plan)(in phase 3, “CN trains no longer use St. Charles Air Line”).

⁶ If the application is approved, CN plans to discontinue all of its operations over an 11-mile segment of the Air Line Route between Union Avenue interlocking in downtown Chicago and 94th Street, a segment that includes both the St. Charles Air Line and a portion of CN’s Chicago Subdivision. The Air Line Route is described in more detail in Amtrak’s January 28 Comments, and the verified statement of Michael W. Franke and related exhibits, which are attached to those comments.

⁷ See Application, p. 16, and CN press release dated Dec. 20, 2007 (http://www.cn.ca/about/media/news_releases/2007/4th_quarter/en_News20071220.shtml).

environmental impacts of the proposed transaction, whether they are characterized as “direct” or “indirect” impacts.⁸

III. Environmental Impact Categories

The Amtrak-related effects of a number of critical environmental impact categories have been overlooked in SEA’s initial Draft Scope.

- **Safety**

The Draft Scope indicates that the EIS will cover the safety issues associated with: a) at-grade crossings; b) accidents and derailments associated with increased freight traffic; c) effects of increased EJ&EW traffic on commuter and intercity passenger service; d) transportation of hazardous materials on EJ&EW; and e) local truck traffic increases associated with increased intermodal activities. This list overlooks the safety consequences of eliminating passenger rail service for over 400,000 passengers annually, most of whom will be forced to use the highway system as an alternative to Amtrak. Almost 95% of all transportation fatalities are highway-related.⁹ Rail passengers are 40 times *less* likely to be involved in a fatal accident, and 20 times less likely to be involved in an accident that results in an injury, than automobile passengers.¹⁰ Accordingly, the negative safety impacts of the loss of Amtrak passenger service over the Air Line Route should be examined in the EIS.

- **Transportation Systems**

Passenger Transportation Delays and Highway Efficiency Impacts Overlooked: The draft scope appropriately indicates that the EIS will address the “system-wide effect of the proposed operational changes” on “commuter rail service and intercity passenger (Amtrak) service.” But to actually accomplish this, the review must include the transportation system impacts associated with the loss of the Air Line Route. The Chicago area is tied with New York City and Boston for the tenth worst highway congestion in the nation. The primary highway alternate to the subject Amtrak route into downtown Chicago from Champaign/Carbondale is the Dan Ryan Expressway (I-94). With over 300,000 vehicles using part of the Dan Ryan every week-day, it is already one of the most congested roads in the state of Illinois.¹¹

⁸ 40 C.F.R. § 1502.16(a) requires that the EIS discussion of environmental consequences include “direct effects” and § 1502.16(b) requires the EIS to include “indirect effects.” An “indirect effect” or “indirect impact” are those “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b).

⁹ “Transportation Statistics Annual Report,” U.S. DOT, Research and Innovative Technology Administration, Bureau of Transportation Statistics (Nov. 2005), p. 7.

¹⁰ “State Safety Oversight Program Annual Report for 2005,” U.S. DOT, Federal Transit Administration, Office of Safety and Security (Oct. 2006), p.9.

¹¹ Congestion has adverse impacts on productivity, energy consumption, and air pollution. For example, the Texas Transportation Institute found in 2005 that in 85 urban areas across America it studied, 2.3 billion gallons of fuel were wasted solely due to congestion. Urban Mobility Information: 2005 Annual Urban Mobility Report, Texas Transportation Institute.

- **Energy**

Net Energy Impacts Overlooked: The more than 400,000 passengers that use the Amtrak trains on the Air Line Route represented over 127.7 million annual passenger miles in 2007 alone. Because Amtrak is approximately 21% more energy-efficient than automobiles per-passenger mile, and over 17% more energy-efficient than commercial airlines, the loss of this Amtrak service represents a significant negative net impact on energy consumption.¹² This impact should be examined and mitigated by the Board in its NEPA process.

- **Air Quality**

Increased Passenger Vehicle Emissions Not Included: SEA's Draft Scope perhaps inadvertently cites to the Board's environmental thresholds for air quality impacts in Clean Air Act attainment areas (49 C.F.R. § 1105.7(e)(5)(i)), but then paraphrases the appropriate air quality review thresholds for non-attainment areas (49 C.F.R. § 1105.7(e)(5)(ii)). SEA then paraphrases the air quality impact threshold for increases in "truck" or "vehicle" traffic at § 1105.7(e)(5)(ii)(C) by only referencing increased "truck" traffic, and excluding air quality impacts from increased passenger vehicle traffic.

As discussed below, the increased net emissions impact from passenger vehicles associated with the loss of the Air Line Route will be significant for a number of Clean Air Act criteria pollutants and CO₂, and would exceed SEA's annual stated threshold for air quality analysis of 100 tons per-year. The increase in emissions from passenger vehicles will arise from both: i) the additional vehicles put on the road as substitutes for the 127.7 million passenger miles contributed by the six Amtrak trains threatened by the proposed transaction; and ii) from the increased emissions from new and existing vehicle users that result from increased idle time, and reduced average miles per-hour that arise from increased congestion. The potential for increased emissions of criteria air pollutants is significant.¹³

CO₂ Emissions Not Included: SEA's Draft Scope does not reference an analysis of net carbon or CO₂ impacts associated with the loss of Amtrak service. Federal courts have recently made it clear that the Board's NEPA process must take a hard look at CO₂ emissions, even if they are not a criteria air pollutant under the Clean Air Act.¹⁴ The increased net CO₂ emissions associated with converting 127.7 million passenger miles from Amtrak to automobiles is significant. For example, using relative carbon emissions rates per passenger mile from the World Resources Institute and Carbonfund.org, converting this mileage from Amtrak to

¹² Annual Transportation Energy Data Book, Edition 26, 2007, U.S. Department of Energy, Oak Ridge National Laboratory, tables 2.13 and 2.14, at <http://cta.ornl.gov/data/Index.shtml>

¹³ Using emissions factors from EPA's MOBILE 6.2 program for modeling average annual vehicle emissions, and assuming a fleet split of 40% Light-trucks/SUVs and 60% passenger cars, the pollution associated with an additional 127.7 million annual passenger vehicle miles traveled is substantial: Hydrocarbons (HC) = 410,665 lbs.; Carbon Monoxide (CO) = 3,859,128 lbs.; Nitrogen Oxides (NOx) = 297,591 lbs.; Particulate Matter (PM₁₀) = 1,609 lbs.; and Fine Particulate Matter (PM_{2.5}) = 1,502 lbs.

¹⁴ See, e.g., Center for Biological Diversity v. National Highway Traffic Safety Admin., 508 F. 3d 508 (9th Cir. 2007); Mid States Coalition v. STB, 345 F.3d 520, 550 (8th Cir. 2003); and Boarder Power Plant Working Group v. Department of Energy, 260 F.Supp.2d 997 (S.D. Cal. 2003).

automobiles would result in a net increase of 19,707 U.S. tons of CO₂ annually. This far exceeds SEA's stated threshold for inclusion in the EIS of 100 tons per-year.

CAA SIP Conformity: Without addressing the impact of increased passenger vehicle usage, it will be impossible for the Board to fulfill its obligations under the U.S. Environmental Protection Agency's Transportation Conformity Rules.

IV. Scoping and Consultation Process

Because the initial Draft Scope did not describe the impacts on passenger transportation associated with the loss of the Air Line Route to Amtrak, we are also concerned that SEA's intra-agency consultation process may be similarly deficient. Once SEA amends the scope for this EIS, it should also revisit its list of consulting federal and state agencies to insure that it has consulted with the agencies, and divisions within agencies that can provide input on the impacts associated with CN's proposal, such as the Chicago Metropolitan Agency for Planning (CMAP).

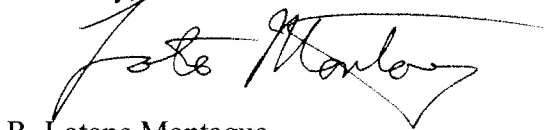
V. Environmental Mitigation Must Include Conditions To Ensure that Amtrak Retains Access to Air Line Route on Current Terms

Although impacts on Amtrak passenger rail service from the proposed transaction will likely result in significant negative environmental and safety impacts, all of these adverse impacts can be fully mitigated if the Board approves the proposed transaction with appropriate conditions as required by NEPA and the Board's own environmental regulations.¹⁵ As set forth in Amtrak's January 28 Comments, Amtrak's current service can be preserved, and the related environmental harms can be avoided, if Amtrak continues to have access to the Air Line Route, that route is maintained to its current standards, and Amtrak is not required to incur costs disproportionate to the costs it is currently incurring to utilize this route. Because the Grand Crossing Route proposed for the CREATE rail initiative is the only viable alternative to the Air Line Route, any Board approval of the proposed CN transaction should be conditioned on a requirement that CN preserve the Air Line Route at its current operating standards, at no additional cost to Amtrak (or the State of Illinois), until such time as the Grand Crossing route is completed and in operation.

* * *

Amtrak appreciates the opportunity to comment on the Draft Scope of the EIS for the proposed transaction, and looks forward to being actively engaged in the SEA's NEPA process. Please do not hesitate to contact the undersigned with any questions about Amtrak's concerns regarding the Draft Scope for this EIS or SEA's NEPA process.

Sincerely,



R. Latane Montague

¹⁵ For example, 49 C.F.R. § 1105.11(f) requires that the EIS and related comments be included in STB's record of decision, and that STB's decision include appropriate environmental mitigating conditions based on that record.

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