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June 20, 2008

The Honorable Joseph Boardman
Administrator
Federal Railroad Administration
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C., 20590

The Honorable Gene L. Dodaro
Acting Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, D.C., 20548



Re: Request for report evaluating the safety of railroads operating in the United States

Dear Administrator Boardman and Acting Comptroller General Dodaro:

In letters to you dated June 17, 2008, five Members of Congress have requested that FRA and GAO prepare a report evaluating the safety of railroads operating in the United States. They further request that the portions of the completed report discussing the U.S. safety record of Canadian National Railway Company (CN) be submitted to the Surface Transportation Board (STB) for consideration in its ongoing review of CN's proposed acquisition of the principal lines of the Elgin, Joliet & Eastern Railway (EJ&E). In making their requests, the Congressional members cite concerns about CN's safety practices in Canada that are discussed in a May 29, 2008 Canadian Parliamentary report on rail safety in Canada from the House Standing Committee on Transport, Infrastructure and Communities (Parliamentary Report).

Operation of a safe railroad is CN's number one priority and we pledge to cooperate fully with any objective review of our safety practices and record that you may determine to undertake as part of a broader review of the industry's safety record.

We are proud of our outstanding safety record and remain committed to continuous safety improvement. Indeed, although the Parliamentary Report noted some areas where CN has had to work to improve, it also cited the underlying report

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of the Railway Safety Act Review Panel, which found that the record of Canada's major railways is among the best in North America. See Parliamentary Report at 15. Similarly, using the FRA's own safety criteria to compare CN's accident ratio with other major U.S. railroads shows that CN's system-wide safety performance has outpaced that of the U.S. industry each year since 2001. In 2007, for example, CN's FRA accident ratio was 2.73, compared with the U.S. Class 1 railroad average of 3.09.

Although CN respects the Congressional members' concerns and their call for new reports, the safety issues they seek to raise provide no basis for delaying the STB's consideration of CN's proposed acquisition. CN has prepared a Safety Integration Plan (SIP) for the EJ&E transaction that is being reviewed by FRA, as well as other safety materials for the Environmental Impact Statement (EIS) that the STB is preparing. Thus, the issue of CN's safety performance and practices as it relates to the proposed EJ&E transaction is being thoroughly addressed for purposes of the STB's environmental review and will be available for further public comment once the STB issues the Draft EIS that is anticipated this summer.

It is important to note that the Parliamentary Report is based on a review of Canada's Railway Safety Act conducted last year by an independent panel that was completed and published in November 2007. Thus, it has long been publicly available and any party genuinely concerned with the safety aspects of the transaction (as opposed to making a last minute call for studies that might delay the transaction) has had ample time to show that the report was relevant to the Board's inquiry. Yet, no one, including the five Members of Congress now calling for a study has sought to do so since the STB proceeding began last fall.

This, we suspect, is because the information in the Parliamentary Report has no bearing on CN's proposed transaction. The key issues it raises have already been addressed, are being addressed, or are related solely to operations in Canada. By contrast, the study that FRA and the STB have been conducting of the transaction relates directly to its impacts, and no party has come forward with any evidence that safety on CN's U.S. rail subsidiaries will be diminished by the transaction. Instead, the evidence is that the transaction will enhance safety, by reducing congestion on rail lines in urban Chicago and by improving the facilities and systems of the EJ&E.

Not only is there no basis for delaying consideration of CN's proposed transaction, but doing so would also be contrary to the public interest. The STB determined in November 2007 that CN's proposed acquisition of the EJ&E is a "minor" transaction. That is tantamount to a preliminary determination that the transaction will have no anticompetitive effects or that any such effects are clearly outweighed by the transportation benefits and efficiencies of the transaction. The statute calls for a final decision on such pro-competitive "minor" transactions within 180 days of the filing of an application for approval. 49 U.S.C. §11325(d). The record on the substantive transportation issues that are at the core of the STB's approval process is complete, but the statutory decisional date (April 28, 2008) has now passed, with the

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decision awaiting completion of the EIS. CN is cooperating fully with that review, but as it has urged the STB, the public benefits of the CN/EJ&E transaction should not be deferred or lost through unnecessary extensions of the EIS process.

The Congressional members who have written to you may oppose and seek to delay the CN/EJ&E transaction out of concern about the impact of increased traffic on their constituents. Nonetheless, the transaction otherwise enjoys tremendous support from elected officials, communities, rail customers, and other stakeholders because it promises broad and substantial public benefits. It represents a private sector solution that will begin to relieve rail congestion in Chicago's urban core and augment rail capacity at a time of growing demand for rail transportation. As discussed above, safety issues are already being fully addressed by FRA through the development of a final SIP and by the STB through its environmental review process, and the public will have additional opportunity to comment on such issues. The public interest benefits of the transaction for commerce, transportation efficiency, and the environment of the greater Chicago region should not be threatened by unnecessary delays.

I appreciate your consideration of CN's perspective on this matter and my colleagues and I would welcome the opportunity to discuss CN's safety performance and programs with you, should you so desire.

Sincerely,



Karen Borlaug Phillips
Vice President
North American Government Affairs

cc: The Honorable Melissa L. Bean
The Honorable Peter J. Visclosky
The Honorable Judy Biggert
The Honorable Donald Manzullo
The Honorable Peter Roskam
Ms. Anne Quinlan, Esq., Surface Transportation Board
Ms. Victoria J. Rutson, Surface Transportation Board