

Before the
SURFACE TRANSPORTATION BOARD

242403

ENTERED
Office of Proceedings
January 10, 2017
Part of
Public Record

Finance Docket No. 35087 (Sub No. 8)

**CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION – CONTROL – E J & E WEST COMPANY**

**PETITION SEEKING IMPOSITION OF ADDITIONAL MITIGATION
PURSUANT TO THE BOARD’S OVERSIGHT JURISDICTION AND
REOPENING PURSUANT TO GOVERNING REGULATIONS**

The Illinois Department of Transportation (IDOT), jointly with the Village of Barrington, Illinois, respectfully files this Petition seeking additional oversight mitigation and an extension of the Board’s oversight period pursuant to the Board’s retention of jurisdiction to impose additional conditions and take other actions to address newly developed information that demonstrates the actual impacts of the transaction.¹ This joint Petition, that is supported by Chicagoland’s MPO – the Chicago Metropolitan Agency for Planning (CMAP)² -- is based on the reality that CN’s freight-induced congestion in the Village of Barrington is not merely a local problem, but a regional transportation flow issue of concern to the State of Illinois’ regional transportation planning efforts. As the Decision’s oversight website states:

¹ Decision No. 16, December 24, 2008, at 25-6 and Board’s Final Mitigation Condition No. 72.

² See Attachment 1 of this Petition.

*The Board established an oversight period for 5-years so that it may assess the competitiveness of service provided by CN upon implementation of the proposed transaction, the various service and other impacts of the transaction, and the effectiveness of the various conditions imposed. If operational problems arise after the effective date of the transaction, this oversight condition provides an effective mechanism for quickly identifying and addressing them. **The Board retains jurisdiction to impose additional conditions and take other action if, and to the extent, the Board determines it is necessary to address matters related to operations and environmental mitigation following the transfer of control.** The Board finds that an initial 5-year duration is appropriate, so that the oversight period will begin with the implementation phase (which applicants expect to be completed within 3-years after consummation of their acquisition of control over EJ&E) and continue for a 2-year period following the full implementation of the operating plan. **At the end of the 5-year oversight period, the Board may elect to extend its oversight for an additional period if conditions warrant.** (Emphasis added.)”³*

SUMMARY OF ARGUMENT

In its Decision on Docket FD No. 35087, the Surface Transportation Board (STB), on December 24, 2008 approved the acquisition of the EJ&E rail line by Canadian National Railway (CN) with numerous mitigation provisions meant to reduce the environmental harms the acquisition would cause in the Chicagoland region as a result of greatly increased rail freight traffic on what had been a little-used outer belt rail line. With forward leaning prescience, the Board reserved for itself an oversight period of five years to “*allow the Board to take appropriate action if there is a material change in the facts or circumstances upon which we*

³ <http://www.stbfinancedocket35087.com/html/faq.html>

relied in imposing specific environmental mitigation.”⁴ This five-year oversight period was extended for one year in 2010 as a result of CN’s misleading reporting to the STB on the number of times its freight operations blocked crossings on the EJ&E rail line from commencement of operations in 2009. Oversight was further extended until January 23, 2017 by the December 16, 2014 Decision of the Board in response to a petition filed by the Village of Barrington and the TRAC Coalition following a regional impacts forum in Chicago hosted by U.S. Senator Richard Durbin of Illinois.

With the end of Board oversight imminent, and the CN application and NEPA review projections now in the rearview mirror, Petitioners, in their capacity as the State’s regional transportation authority and the impacted municipality, seek additional grade separation mitigation in the Village of Barrington where U.S. Highway 14 meets the CN rail line. Additionally, Petitioners seek an extension of the oversight period until January 9, 2019 – a reiteration of an oversight timeline request originally made by CMAP on September 26, 2008 in its comments to the Board on the DEIS for the transaction. The mitigation request is based on the immediate, crucial need to address the current and imminent impacts at that crossing, as they unquestionably exceed the adverse impacts that the Board anticipated when it attempted to mitigate them by requiring warning signage at the U.S. Highway 14 crossing in Barrington. This request for additional mitigation is, therefore, based on unanticipated new evidence of substantially changed circumstances regarding CN’s operations and the impacts throughout the region surrounding **the only Federal highway that does not have a single grade separation from the CN/EJ&E Line in Illinois.** The Board should note that U.S. Highway 14 in Barrington has an Average Daily Traffic count (ADT) that is in line with the other nine federal

⁴ Decision No. 16, December 24, 2008, at 39 (emphasis added).

highway crossings that have already been grade separated – two of which were by the order of the STB in the 2008 Decision.

**GRADE SEPARATION STATUS OF US HIGHWAYS IN ILLINOIS INTERSECTING
WITH THE EJ&E/CN RAIL LINE (MAINLINE)**

September 2016

ADT Data from <http://www.gettingaroundillinois.com>

HWY	LOCATION	ADT	ADT YEAR	GRADE SEPARATION STATUS
US 30	Lynwood	25,900	2009*	STB ordered grade separation completed Nov. 2015
US 45	Mokena	35,700	2015	Grade Separated
US 6	Joliet	12,400	2012	Grade Separated
US 30	Joliet	19,300	2015	Grade Separated
US 30	Plainfield	19,900	2015	At Grade
US 30/IL 59	Plainfield	19,300	2015	Grade Separated
US 34	Aurora	33,000	2009*	STB ordered grade separation completed Dec. 2016
US 20	Elgin	44,000	2015	Grade Separated
US 14	Barrington	26,900	2015	At Grade
US 12	Lake Zurich	36,400	2015	Grade Separated
US 45	Mundelein	27,000	2015	Grade Separated
US 41	North Chicago	42,000	2015	Grade Separated

* Data is prior to commencement of grade separation construction. It should also be noted that the 26,900 figure for U.S. Highway 14 captures only a minority percentage of the ADT that crosses over the EJ&E line in Barrington.

The extensive regional delays caused by CN freight rail traffic are inconsistent with the Metropolitan area's regional transportation plan. U.S. Highway 14 in Barrington is currently a four-lane (plus median) federal highway running at a skewed angle. It is also part of

Chicagoland's Strategic Regional Network designed to provide regional mobility and is located just one-quarter mile (1320 feet) from another busy Strategic Regional Arterial ("SRA") -- IL 59/Hough Street -- that crosses the EJ&E rail line in Barrington with an ADT of 17,400 vehicles. U.S. Highway 14 is the only one of the four roadways intersecting with the EJ&E/CN in Barrington that does not intersect with the UP/Northwest Metra commuter line and has the highest ADT of all four crossings. Accordingly, grade separating that particular crossing is the most effective way to mitigate a portion of the freight-induced bottlenecks through Barrington, as that crossing's proximity to IL 59 would reduce interlocking delays at both SRA crossings.

U.S. Highway 14 is located just 4.25 miles north of U.S. Interstate 90 and essentially parallels it through the region. As such, it provides a free-flowing routing alternative to the Interstate. Grade separating U.S. Highway 14 will increase Interstate 90's capacity for long-distance vehicles and highway freight that must use the tollway. In addition to national and regional significance, U.S. Highway 14 also provides local access to many adjacent residential and commercial areas within the region, as evidenced by the combined projected 2016 average daily traffic (ADT) of 73,851 vehicles that cross the EJ&E at the four roadways in Barrington, even though the population of Barrington is just under 10,000 residents.

Prior to the Board's approval of CN's acquisition of the EJ&E, U.S. Highway 14 did not warrant a grade separation. That is no longer the case. An investment of \$21.9 million in state and federal tax dollars⁵ has been made that partially funds the grade separation that is needed to address the problems that CN's freight traffic alone has created. Because its traffic is the sole

⁵ The Phase I NEPA review and engineering was completed with a \$2.8 million TIGER II Grant and IDOT's support for a \$700,000 local match. \$3.9 million of STP funding and a State match of \$900,000 has been secured to fund a roadway realignment necessitated by the grade separation project. An additional \$9.6 million in STP funds matched by \$4 million in State funds is currently being dedicated to Phase II activities of the grade separation project.

cause of the current problems, the Board should require CN to accept responsibility for the current situation and order it to fund additional grade separation mitigation of \$37.5 million (58% of total costs). The Board is reminded that this particular grade-level crossing is the only one of the remaining 148 public grade level crossings on the CN/EJ&E rail line that requires substantial mitigation in the form of a grade separation as a result of the transaction, as evidenced by the fact that all other EJ&E communities with potential grade crossing issues negotiated settlements with CN. The unique convergence of current and imminent transportation and roadway network factors requires the Board to take immediate action to rectify the adverse impacts that must be attributed solely to CN's greatly expanded freight operations.

This Petition is governed by 49 C.F.R. § 1117.1 and reopening is further warranted pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, which provide that a petition for reopening “must state in detail the respects in which the proceeding involves material error, **new evidence, or substantially changed circumstances** and must include a request that the Board make such a determination.” This Petition is based on newly discovered evidence and changed circumstances, so it satisfies the Board's regulations regarding re-opening.

BACKGROUND

Illinois businesses, residents, and visitors have access to one of the largest and most effective multi-modal transportation systems in the nation. This includes roads, railways, airways, waterways, canals, and terminals such as airports, railway stations, bus stations, warehouses, and intermodal facilities. Illinois' centralized geographic location, as well as the diversity of available transportation options, means that its transportation system plays an essential role in the nation's ability to move goods and people. IDOT is responsible for sustaining, strengthening, expanding, and maintaining this system by partnering with state,

federal, and local entities to ensure the transportation network fosters and supports economic growth at community, regional, state, and national levels.

Through effective planning, programming, and project development efforts, IDOT strives to look at a full range of transportation options, evaluate how they affect mobility for users, assess the current infrastructure, prioritize needed improvements based on system performance and demographics, and then, with available revenue sources, integrate them into the overall IDOT transportation strategy.

Metropolitan Chicago is the nation's freight hub. An unmatched combination of freight transportation modes and infrastructure has contributed to the region's position as a hub for both domestic and international freight. A quarter of all freight in the nation originates, terminates, or passes through metropolitan Chicago. The region's concentration in intermodal moves is even more striking, with **about half of the nation's intermodal shipments touching the Chicago area.**

The grade separation project at U.S. Highway 14 is in the State TIP – placed on the list after the CN acquisition of the EJ&E as a direct result of the regional traffic impacts stemming from CN freight running on the rail line. The Board can well imagine, however, that the list of identified State projects in need of construction funding is extensive. Because the State of Illinois and the USDOT simply do not have the financial resources to build every project expeditiously, Petitioners believe that when it comes to U.S. Highway 14 in Barrington, CN should be ordered by the Board to contribute the remaining funding needed to complete the grade separation under the “you broke it, you fix it” theory of funding allocation.

As the following census data shows, demographic patterns have continued to evolve in the metropolitan area since the STB approved CN's acquisition of the EJ&E rail line. The

region's population and travel patterns are clearly less Chicago-centric than they had been just a decade ago. It is imperative, therefore, that the congestion issues created by intensifying freight traffic on the EJ&E belt line be addressed, especially because U.S. Highway 14 is, unquestionably, a key regional SRA that crosses the rail line that CN calls its "Chicago Advantage."⁶

The evolving demographics of the Chicagoland area demonstrate that integrating vehicular traffic with the operation of rail freight is a growing problem in the collar counties and Suburban Cook County. As the chart below indicates, the counties that are to the north and northwest of the U.S Highway 14 chokepoint at the CN/EJ&E rail line – Lake and McHenry – have experienced significant population growth while Chicago's population has decreased.

⁶ According to a 2015 piece entitled "The Chicago Facts" on the CN website: *"In 2009, the railroad acquired the former Elgin, Joliet and Eastern Railway (EJ&E). This new connection, CN's Chicago Advantage, goes around the congestion. It allows us to seamlessly connect our five rail lines entering the city, avoiding those crowded inner city rail corridors. This advantage, when compared to the competition, means CN moves faster, more fluidly in the U.S. Our dwell times are lower, with cargo aboard CN trains moving more efficiently toward its destination. The EJ&E Express Route gives us direct routes to the NS and BNSF without entering the city. CN's Chicago Advantage makes us less dependent on third parties to facilitate interchange with shipping partners."*

2010 Census demographic profiles

TOTAL HOUSEHOLDS (DPSF13)	2000 CENSUS	2010 CENSUS	PERCENT CHANGE	PROPORTION OF REGION IN 2010
CHICAGO	1,061,928	1,045,560	-1.5%	33.9%
SUBURBAN COOK	912,253	920,796	+0.9%	29.8%
COOK TOTAL	1,974,181	1,966,356	-0.4%	63.7%
DUPAGE COUNTY	325,601	337,132	+3.5%	10.9%
KANE COUNTY	133,901	170,479	+27.3%	5.5%
KENDALL COUNTY	18,798	38,022	+102.3%	1.2%
LAKE COUNTY	216,297	241,712	+11.8%	7.8%
MCHENRY COUNTY	89,403	109,199	+22.1%	3.5%
WILL COUNTY	167,542	225,256	+34.4%	7.3%
7-COUNTY TOTAL	2,925,723	3,088,156	+5.6%	100.0%

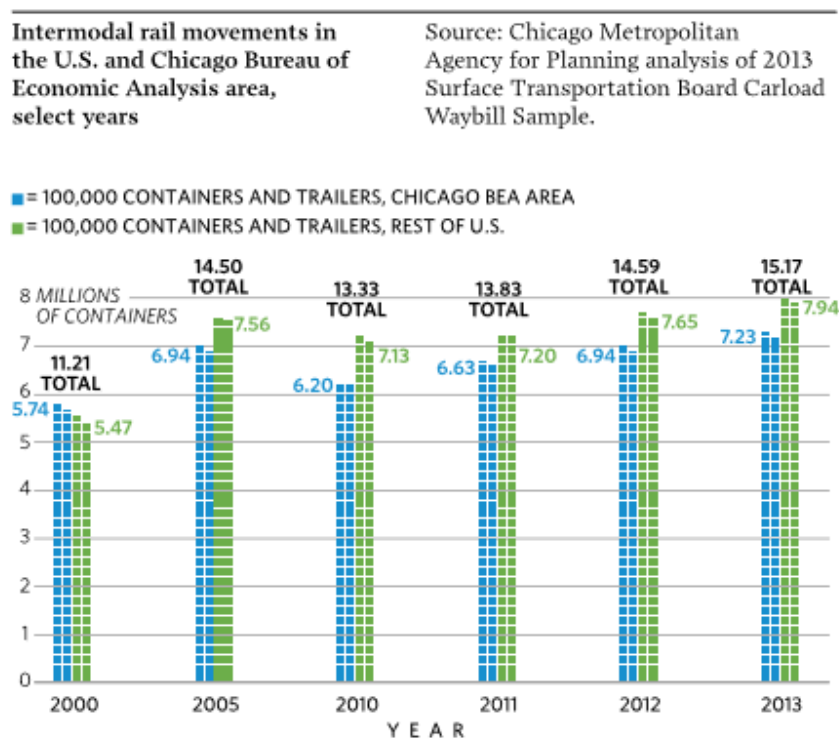
2010 Census tables in ()

Sources: 2010 and 2000 U.S. Census, Census 2000 data from Summary File 1

Freight volumes in the Chicagoland area have increased markedly since the STB reviewed and approved CN's application in 2008. This continuing growth has been the driving force for investment of more dollars in the freight rail/congestion relief program, CREATE, that was established in 2003 specifically to address freight-related congestion problems that not only impact drivers, but also bottleneck the nation's rail freight that moves through Chicago. CREATE's current plans for the construction of 25 new roadway overpasses or underpasses at locations where traffic (auto, pedestrian, bicycle, bus) currently cross railroad tracks at grade level is extensive – but only impacts the area that had traditionally experienced Class I railroad traffic. It should be noted that the CREATE program project list included a number of projects to alleviate traffic congestion issues related to CN rail lines. All of these were cancelled after CN purchased the EJ&E.

Despite ebbs and flows in the rail shipment of commodities since the recession of 2008/2009, freight volumes have continued to grow in the Chicago megaregion (that now

includes the EJ&E). Intermodal is a clear driver of this growth in the period following the Board's approval of CN's acquisition of the EJ&E rail line as the following CMAP chart shows.



As the record of the proceedings in FD 35087 shows, IDOT has been an active participant in this Docket -- both before and after the Board approved the transaction. In addition to raising unresolved concerns prior to Board approval, IDOT has been continuously supportive of the Village of Barrington's efforts to secure additional oversight-mandated mitigation in the way of a grade separation for U.S. Highway 14. The Board should also note in reviewing the record of proceedings that Barrington's efforts to secure additional grade separation mitigation funded by CN have also been supported over the many years preceding and following approval by a bipartisan group of Members of Congress from the region.

IDOT has also supported the Village's efforts to secure discretionary transportation funding for a grade separation through seven rounds of TIGER grant applications from 2010 through 2016 and twice with the new FASTLANE program in 2016. Barrington secured the

largest TIGER planning grant ever awarded (\$2.8 million) in 2010 and has completed the NEPA review process for the grade separation at U.S. Highway 14, which has provided the foundation for the additional significant investment of both federal Surface Transportation and State transportation improvement dollars that have been moving this grade separation project forward.

Petitioners remind the Board that discretionary funding through the TIGER and FASTLANE programs has thus far failed to acknowledge that a quarter of all freight in the nation originates, terminates, or passes through metropolitan Chicago. As a result, the region is left with two options when it comes to constructing a grade separation at U.S. Highway 14 – either hoping that \$37.5 in scarce federal dollars⁷ can eventually be secured in that highly competitive national transportation grant environment, or by requesting that the Board direct CN to pay its fair share to mitigate the harms it has created on one of the last two remaining federal highway crossings in Illinois that intersects with the EJ&E at grade level. Petitioners choose the latter course as the most sensible and expeditious option, especially given that CN closed the transaction with the full knowledge that the Board had retained “jurisdiction to impose additional conditions” if subsequent post-acquisition need was shown.

ARGUMENT

“Substantially Changed Circumstances” Support This Petition’s Request. To determine whether there has been *“a material change in the facts or circumstances upon which*

⁷ As the Board likely knows, competition for transportation dollars is fierce. The new FASTLANE grant program that explicitly funds grade separation projects notes on its USDOT website: “In the first call for FASTLANE grants, USDOT received 212 applications totaling nearly \$9.8 billion for grants – with states and localities requesting over 13 times more funding than was available through FASTLANE – underscoring the continuing need for infrastructure investment across the country.” Petitioners strongly believe that because CN created the congestion problems in Barrington through its greatly expanded freight operations, CN should provide the additional funding necessary to complete the grade separation necessitated solely by its operations -- and not further burden state or federal taxpayers.

[the Board] relied in imposing specific environmental mitigation,⁸ it is necessary to compare key aspects of CN's 2008 application and the environmental review with current and imminent realities. Such an exercise demonstrates that a re-opening of the Decision is necessary to provide grade separation relief at U.S. Highway 14 similar to that ordered by the Board in 2008 in Aurora at U.S. Highway 34 and in Lynwood at U.S. Highway 30.

ISSUE	2008 CN & NEPA REVIEW PROJECTIONS FOR 2015	SOURCE
Number of Trains per Day on Leithton to Spaulding EJ&E Line Segment	20.3	DEIS Appendix B Rail Operation Analysis at page 15
Average Length of Trains on Line Segment	6,829 feet	DEIS Appendix B Rail Operation Analysis at page 24
Hazmat Cars Per Day on Line Segment	209.4 cars	DEIS Appendix B Rail Operation Analysis at page 18
Average Number of Cars Per Train on Line Segment	112 cars	DEIS Appendix B Rail Operation Analysis at page 24
Average Speed of Trains on Line Segment	40 mph	DEIS Appendix B Rail Operation Analysis at page 61
Projected 2015 Hours of Delay at the U.S. Highway 14 Crossing	1907.2 minutes (or 31.78 hours) ⁹	FEIS Appendix A at page 482 ¹⁰
Capacity at Port of Prince Rupert Fairview Terminal (served only by CN) and how that would impact CN volumes on the Line Segment	500,000 TEU Capacity (Accounted for only after SEA scrutiny, as CN	October 30, 2007 CN Application Verified Statement of Gerald R. Radloff

⁸ December 24, 2008 STB Decision at 84.

⁹ The Board undertook crossing-specific delay analysis at all public grade-level crossings along the EJ&E. The DEIS analysis for U.S. Highway 14 showed that delays stood at 164 minutes (2.73 hours) with no action and would increase to 1,182 minutes (19.7 hours) with proposed action. The FEIS analysis revised those figures to show 149.4 minutes of delay with no action (2.49 hours) and 1907.2 (31.8 hours) under the proposed action scenario.

¹⁰ The delay figures in FEIS Appendix A are a crossing-specific analysis for U.S. Highway 14, and resultantly, more accurate than the aggregated regional delay calculations performed for the whole of Barrington by SEA's contractor and disclosed for the first time in the December 2008 FEIS.

	originally used 2006 data for baseline traffic projections)	
Number of Rail Lines on Segment	1	CN Application

The delineated assumptions and resultant expectation that CN would operate in conformance with those assumptions were, by necessity, the driving force in guiding the Board's 2008 determination regarding necessary mitigation at U.S. Highway 14 in Barrington. Based on its pre-acquisition environmental analysis relative to Barrington's EJ&E crossings, the Board required that CN *"develop a program to install traffic advisory signs on roadway ROW at certain public highway/rail at-grade crossings along the EJ&E rail line. These signs shall clearly advise motorists not to block intersections, and the format and lettering of these signs shall comply with FHWA's Manual on Uniform Traffic Control Devices."*¹¹ This mitigation was ordered for both Barrington SRA's that cross the EJ&E in the Village: Hough Street/IL 59 and U.S. Highway 14. As post-transaction evidence demonstrates, signage alone wholly failed to rectify the problems that have been generated for the region by CN traffic at Barrington's U.S. Highway 14 crossing.

Increase in Average Number of Trains Per Day. While CN commenced operations on the line in March 2009, its train volumes have not ramped up as quickly as CN had projected in its application – 20.3 trains per day within three years. Sole reliance on the raw number of trains, however, is deceptive. In order to evaluate the actual impact, it is necessary to consider the length of trains and relative speeds. Without question, the easiest way to keep the average number of trains below 20.3/day is to simply increase the length of each train. Also relevant are

¹¹ December 24, 2008 approval Decision at page 76.

external factors that affect the number of trains, including economic downturns that may temporarily decrease the number of daily trains.

CN and the railroad industry had to deal with the fall-out from the Great Recession in 2008/2009 and a nose dive in the rail movement of energy commodities that began in mid-2014. As the pre-eminent hauler of Canadian heavy crude, frac sand, and condensate, it is natural that a temporary decline in CN's carload volumes for energy commodities would impact train counts on the line segment through Barrington. However, because Canadian heavy crude is largely refined in the Gulf Coast (where CN's backhauls of condensate then originate), one must look past any recent decline in rail shipments and consider the future impact of CN's service over the EJ&E line. A year-by-year chart of average daily train counts through Barrington as provided in CN's monthly operating reports to the Board is provided below which demonstrates that CN traffic on the EJ&E line is on the rebound:

YEAR	AVG. NUMBER OF TRAINS THROUGH BARRINGTON
2009	6.4
2010	8.5
2011	7.9
2012	13.9
2013	16.5
2014	17.6
2015	19.6
Through Sept 2016	17.7

Longer Than Projected Average Length of Trains and Increased Number of Cars
Mandate Congestion Relief at US 14. The lower number of daily trains reported by CN must be countered by the simple fact that CN trains running on the EJ&E rail line are far longer than the average lengths that CN had originally projected. In 2008, CN projected to the Board that the average length of all trains running on the segment of the EJ&E running through Barrington

would be 6,829 feet. Crossing-specific delay calculations were made by the Board’s Office of Environmental Analysis (OEA) with that train length in mind. According to observational camera-generated data provided by Barrington, that projection has proved to be inaccurate. Based on the data reviewed, verified, and compiled by Barrington’s traffic consulting firm (Civiltech), the following train lengths have been observed operating through Barrington during the following periods of time¹²:

TIME PERIOD	AVG. TRAIN LENGTH	NUMBER & PERCENTAGE OF TRAINS GREATER THAN 6,800 FEET	PERCENTAGE OF TRAINS GREATER THAN 10,000 FEET
May 12 to June 15, 2011	5,800	87 (41%)	3%
October 2015	7,700	380 (69%)	13%
March 2016	7,700	336 (71%)	16%
April 2016	8,000	384 (75%)	19%
May 2016	7,700	330 (71%)	16%

Common sense dictates that longer trains equal longer delays at grade-level crossings such as U.S. Highway 14.

Slower Than Anticipated Average Train Speeds Mandate Congestion Relief at U.S. Highway 14. Beyond train length, the other major factor in the Board’s 2008 determination of traffic delays was CN’s assumption that its trains would travel at an average speed of 40 mph on the EJ&E line segment that includes U.S. Highway 14. The post-acquisition data gathered for train lengths also collected data on train speeds. That data shows that a “typical” CN train runs

¹² If it is assumed that each car averages 60 feet in length, a 5,800-foot long train would contain 90 cars. A 7,700-foot train, would contain 120 cars. If you have 20 trains a day with 90 cars each, you would move 1,800 cars per day. If you have 20 trains a day that contain 120 cars, you would move 2,400 cars per day. In order to move 2,400 cars per day in trains that only contain 90 cars per train, CN would have to move 26.67 trains per day.

through Barrington at only two-thirds the speed it (and the Board) had assumed during the environmental review process:

TIME PERIOD	AVG. DAILY NUMBER OF TRAINS ON LINE SEGMENT DURING TIME PERIOD	AVERAGE SPEED THROUGH BARRINGTON	AVERAGE CN SYSTEM-WIDE TRAIN VELOCITY
May 12 to June 15, 2011	14.7 trains	32 mph	unknown
October 2015	19 trains	28 mph	26.3 mph ¹³
March 2016	16.7 trains	28 mph	27.1 mph ¹⁴
April 2016	17.4 trains	28 mph	27.1 mph
May 2016	17.4 trains	28 mph	27.1 mph

This data – taken as a whole – demonstrates that the CN trains running through Barrington are not only longer but also slower than anticipated. As such, the daily traffic delays at U.S. Highway 14 calculated by OEA in 2008 must be “materially different” than the 31.78 hours projected at that specific crossing during the NEPA review. Plainly, re-opening of the approval Decision is warranted so the Board can now review the materially different circumstances and provide grade separation relief to address the real impacts demonstrated by the operational data collected during the oversight period. Given CN’s overall network velocities, it is improbable to expect that travel times through the U.S. Highway 14 crossing can improve, especially given the reality that CN’s freight trains intersect with the UP/Northwest Metra commuter trains that receive priority at the crossing in Barrington. In fact, the CN monthly data on blocked crossings reflect a telling pattern of CN blockages in (and surrounding) Barrington. As shown in the blue columns below, the number of reportable blockages in the

¹³ Jim Vena, Executive Vice-President and Chief Operating Officer; STIFEL TRANSPORTATION & LOGISTICS CONFERENCE, February 10, 2016.

¹⁴ <https://www.cn.ca/en/investors>

vicinity of U.S. Highway 14 is substantially (and suspiciously) less than those at the surrounding crossings.¹⁵ Such a disparity is highly unlikely to continue once oversight concludes. If crossings such as U.S. Highway 14 experience what appears to be the normal rate of blockages, such a scenario will serve only to compound the regional delays generated at that crossing.

POST-ACQUISITION DATA FOR REPORTABLE BLOCKAGES ON THE EJ&E
(Spaulding to Leighton Line Segment)
From March 2009 through September 2016

Roadway Name	Ela Road	Cuba Road	Lake Zurich Road	US 14 (Northwest Highway)	Hough Street (IL 59)	Lake Cook/ Main Street	Otis Road	Penny Road	Old Sutton Road (Sutton Road)
ADT	16,200 (2015)	7,700 (2015)	2,250 (2015)	26,900 (2015)	17,400 (2015)	10,900 (2014)	550 (2014)	2,500 (2014)	1,600 (2014)
Total Blockages	278	636	61	79	89	87	326	114	170

NOTES:

- Numbers are conservative based on early implementation CN undercounts.
- Grade crossings are arranged from north to south on the EJ&E.
- Blue cells indicate Barrington's four grade-level crossings.
- Because the Metra UP Northwest line intersects with the EJ&E in Barrington, CN trains must frequently stop in the vicinity. When oversight ends, Barrington suspects that more of those trains will stop and block one or more of Barrington's crossings, rather than the crossings in neighboring towns.

¹⁵ In addition to the data provided in the chart, Barrington's police department received a call from a Wisconsin police department in a town plagued by frequent CN stoppages on the Wisconsin Central line running through it. A public safety official there had learned from a CN crew member that CN told crews to avoid stoppages in Barrington to the greatest extent possible. This town's public safety leaders wanted to know how Barrington had merited such preferential treatment. See Chief Dave Dorn Verified Statement – Attachment 2.

Based on the above data, it appears that CN has purposefully avoided extended blockages in the Village during the Board oversight period.¹⁶

Higher Than Average Volume of Daily Hazmat Traffic on the Rail Segment

Necessitates Congestion Relief at U.S. Highway 14. Over the last several post-acquisition years, the dangers associated with the rail shipment of hazmat – in both unit and manifest trains – has become a focus of multiple federal regulators and the National Transportation Safety Board (NTSB). Pipeline and Hazardous Materials Safety Administration (PHMSA) rules and subsequent congressional action have resulted in strategies to reduce safety problems in the rail shipment of hazmat materials. Nonetheless, we are in a transitional period during which the danger to the public remains acute – especially in freight mega-regions like Chicago. By law, the railroads are required to route hazmat in ways that reduce the dangers in High Threat Urban Areas (HTUAs). Because the EJ&E/CN belt line is beyond the geographical boundaries of the Chicago HTUA, CN uses the line for many of its hazmat movements. In fact, in an August 18, 2014 meeting between CN’s hazmat team and Barrington officials, CN admitted that approximately 8% of the railroad’s shipments through Barrington consist of hazmat – an amount the executives also conceded was double the railroad’s system-wide average.

CN projected hauling 209 daily cars of hazmat on the line based on 2006 operations. Based on its admissions, however, the railroad may actually be hauling over 400 hazmat cars per day on that specific line segment post-acquisition. Separating that high daily volume of hazmat from the nearly 27,000 vehicles crossing the rail line at Northwest Highway will, for that reason alone, provide immense safety-enhancing benefits at an SRA that is also a federal highway.

¹⁶ See Monthly Operating reports at the Oversight Website:
<http://www.stbfinancedocket35087.com/>

Clearly, from a transportation planning perspective, the post-acquisition transport of significantly more hazmat on the EJ&E/CN line than had been projected in 2008, constitutes a materially changed circumstance.

Additionally, the increased shipment of hazmat traveling on the other numerous Class I rail lines in the region necessitates the free flow of traffic on U.S. Highway 14, a key route for first responders in reacting to volatile hazmat spills in the northwest suburbs of Chicagoland. Furthermore, U.S. Highway 14 would serve as a regional evacuation route if a train were to derail on either the EJ&E or the UP/Metra Northwest freight lines that run in the Barrington area. In addition, a grade separation at U.S. Highway 14 improves the region's ability to withstand probable occurrence or recurrence of an emergency because all emergency response departments in Illinois are members of MABAS (Mutual Aid Box Alarm System) in partnership with IEMA (Illinois Emergency Management Agency) -- a statewide, non-discriminatory mutual aid response system for fire, EMS and specialized incident operational teams.

MABAS includes approximately 35,000 of Illinois' 40,000 firefighters who staff emergency response units including more than 1,500 fire stations, 2,495 engine companies, 469 ladder trucks, 1,100 ambulances (mostly paramedic capable), 297 heavy rescue squads, and 788 water tenders. Fire/EMS reserve (back-up) units account for more than 1,000 additional emergency vehicles. MABAS offers 42 specialized operations teams for hazardous materials as well as "packaged" teams for larger incidents requiring complicated and time-consuming efforts that are beyond the capacity for any single agency to handle. Given that U.S. Highway 14 is an SRA, it is essential that emergency responders be afforded 24/7 unimpeded traffic mobility through Barrington to facilitate a timely regional MABAS response. An example of a routine MABAS activation was the City of Chicago's LaSalle Bank Building Fire in 2004, when twenty-

two (22) suburban fire agencies filled in at City of Chicago fire stations to maintain continuity of emergency service to various Chicago neighborhoods. EMS MABAS responses to the City of Chicago, MABAS Division 9, have occurred during mass casualty events related to marathons and Metra/subway train crashes as well.

Current and Anticipated Port of Prince Rupert (PPR) Traffic Will Massively

Impact the Line Segment. CN filed its application to the STB seeking Board approval for its acquisition of the EJ&E rail bypass line on October 30, 2007, one day before the first container vessel called at the Port of Prince Rupert (PPR) – an intermodal terminal served only by CN rail.¹⁷ CN’s application explicitly envisioned that no new PPR business would impact its traffic projections on the EJ&E. In fact, a verified statement in the application package from Gerald R. Radloff, (CN’s Assistant Vice-President for CN Worldwide North America) made it clear that PPR intermodal traffic was not included in CN projections. He stated at page 193 of the application: *“2006 traffic data are the best general source of available information about likely traffic gains as a result of the transaction.”* At page 196, Radloff continued, *“In addition to this extended haul assessment, I also considered whether as a result of the Transaction there would be quantifiable gains of entirely new business in which CN nor EJ&E had any participation in 2006. Given the limited scope of the Transaction, I did not expect that there would be any such traffic gains.”*

To its credit, the Board’s Office of Environmental Analysis (then known as the Section on Environmental Analysis or SEA) didn’t just rely upon CN’s application to analyze the impacts of PPR intermodal traffic as was made clear in Chapter 3 of the FEIS:

¹⁷ http://www.sitnews.us/0109news/012209/012209_prince_rupert.html

In its April 21, 2008, letter responding to SEA's request for additional information on train traffic from the developing Port of Prince Rupert, CN stated that the relevant Prince Rupert traffic "ranged between two and four trains per week in 2008. The Operating Plan is designed to accommodate all expected growth in that traffic from the full utilization" of Phase 1 of the Port of Prince Rupert development. Even at full capacity, this would generate no more than two trains per day (one in each direction) of the maximum length of 10,000 feet that could move on the EJ&E rail line. These data were incorporated into the Applicants' Operating Plan and are therefore part of SEA's review. (At page 3.4-103)

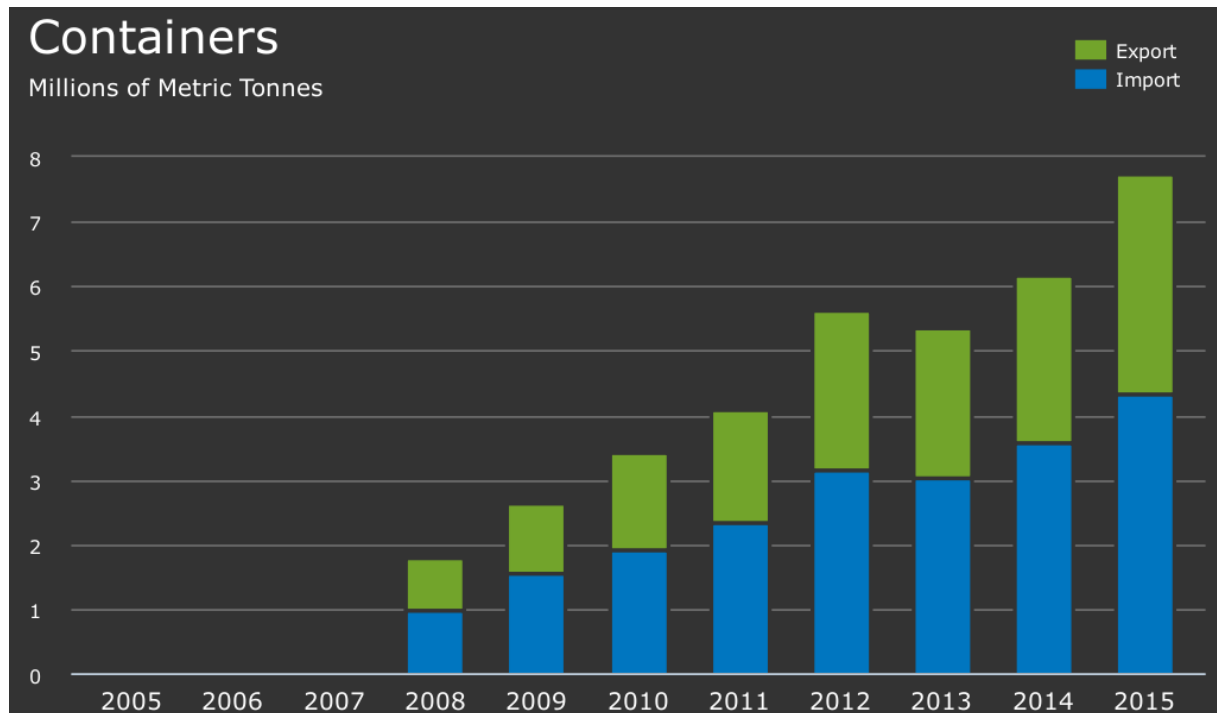
And again, at page 3.4-76 of the December 2008 FEIS:

"In the Draft EIS, SEA included the full development of future rail traffic from Port of Prince Rupert Phase 1 in its estimate of the reasonably foreseeable rail traffic that the Applicants would operate over the EJ&E rail line. In response to the comments received on the Draft EIS, on September 30, 2008, SEA submitted information request No. 6 to the Applicants requesting additional information concerning the potential for increased rail activity from the Port of Prince Rupert's proposed Phase 2 development. The Applicants supplied additional information concerning the Port of Prince Rupert and the current development plans for Phase 2 of the port's Fairview Container Terminal in both the Applicants' September 30, 2008, comment letter on the Draft EIS and in a letter to SEA dated October 21, 2008. The Applicants described the current uncertainty of the environmental review process, global port competition, global intermodal demand, and the funding decisions associated with the Phase 2 development.

*SEA evaluated the information provided by the Applicants and contacted staff of the Port of Prince Rupert to confirm that the environmental review process for Phase 2 of the port's Fairview Container Terminal is currently underway, but is not complete. SEA notes that unlike the existing Phase 1 development, which involved the adaptation of existing port infrastructure for intermodal container traffic, the Phase 2 development would require substantial expansion of port infrastructure, including filling in a portion of Chatham Sound/Hecate Strait. Both national and global economic conditions have reduced the international intermodal market rate of growth, and there is substantial competition among the ports on the West Coast. SEA concludes that its determination in the Draft EIS was correct and that **it would be too speculative** (emphasis added) to include future Port of Prince Rupert Phase 2 traffic in the rail traffic projections used in this Final EIS."*

Given this pre-acquisition analysis context, it is instructive to now review the post-acquisition growth of CN's PPR intermodal traffic since the railroad began its operation on the

EJ&E belt rail line. The data from the PPR’s 2015 Annual Report¹⁸ demonstrates the massive increase in container traffic CN handles to and from PPR since 2008:



In the time that CN has been operating on the EJ&E, intermodal traffic arriving into the PPR has expanded exponentially,¹⁹ with an imminent expansion set to be completed by mid-2017 that will enable CN to transport 1.3 million TEU’s annually on its tri-coastal rail network in just a few short months. In fact, in March, 2015 CN’s Jean-Jacques-Ruest stated in a media interview: *“To handle the expected volume growth from the port and broader traffic gains, CN is planning to expand its intermodal rail terminals in Chicago and Memphis.”*²⁰

CN Plans to Increase the Number of Rail Lines on Spaulding to Leithton Segment.

All of OEA’s 2008 projected traffic delay calculations were based on a single CN line in the

¹⁸ <http://2015.rupertport.com/>

¹⁹ http://www.joc.com/port-news/international-ports/port-prince-rupert/terminal-expansion-shows-prince-rupert-idea-works_20150310.html

²⁰ Ibid.

EJ&E line segment from Spaulding to Leithton through the Village of Barrington. It appears, however, that CN is actively planning for a second rail line in that segment. Such a move would completely invalidate the Board's 2008 assumptions as to freight congestion impacts at U.S. Highway 14 because when CN double-tracks, its freight volumes will no longer have the upper limit imposed by running two directions of freight traffic on a single rail line.

In its 2016 ²¹grant funding requests seeking federal transportation dollars to construct the grade separation at U.S. Highway 14, Barrington recognized the potential increase in rail lines when it stated:

*"Barrington believes 20.3 daily trains will not prove to be a cap in the rail freight volumes congesting the region. Barrington's belief is founded on the NEPA review for the project funded by the 2010 TIGER Grant. During this planning phase for the grade separation, CN's request in an April 5, 2013 project planning email that meeting minutes from a March 22, 2013 Phase 1 meeting be changed from "CN stated that they have no current plans to add a second track in this area" to **"CN confirmed that a second track in this area would be consistent with other double-tracking projects completed and planned since CN's take-over of the former EJE."**"²²*

In discussing project readiness in its 2016 FASTLANE grant application, Barrington added:

"Note that the project cost has increased by \$786,000 at CN's request to accommodate a rail shoo-fly in lieu of a roll-in bridge so that rail operation interruptions will be limited to less than 3 hours during construction. Barrington/IDOT also agreed to a costlier two-track rail abutment structure (despite there being only one track) over single-track abutments at CN's insistence."

More recently, transportation planners are aware of an RFP that CN released to a handful of pre-qualified bidders in mid-2016 for double-tracking through Barrington. Confidential

²¹ The Village of Barrington applied three times in 2016 for federal grant dollars to complete the grade separation project that is the subject of this petition: for a TIGER grant on 4/6/16 and for two rounds of FASTLANE funding on 4/6/16 and 11/28/16. The Village has applied for federal funding for this project every year between 2010 and 2016.

²² Village of Barrington 2016 FASTLANE grant proposal at pages 3 and 12. (emphasis added).

sources noted that bids were already received and rejected by CN as of the filing of this Petition to the Board, and that CN will issue a new RFP in the future. The RFP was for environmental, engineering, storm water, design, and communications components for double tracking, and the original RFP schedule called for plans to be completed by December 31, 2016. It appears that, at a minimum, the following specific locations were identified in the proposal and include Barrington at milepost 49.6:

- Sutter-Gill, mileposts 43.9-57.2
- Spaulding, mileposts 37.85-41.8
- Eola-West Chicago mileposts 22.8-29.2

The map²³ below shows the relevant geography that appears to have been included in the RFP for double-tracking the part of the EJ&E that includes Barrington:

²³ http://www.ejearchive.com/images_maps/1ejemap2008.pdf



Confirmation of the existence of this RFP and CN's future double-tracking intentions would certainly seem to be an oversight matter that the Board would have an interest in clarifying with CN executives (in sworn statements) given that double-tracking through Barrington at the U.S. Highway 14 crossing would exponentially increase regional gridlock. The Board is reminded that CN's ability to increase freight volumes on its "Chicago Advantage" rail line can only be accommodated through double-tracking. As OEA clearly stated in the December 2008 FEIS:

"SEA analyzed the projected effects of the Proposed Action and CN's plan for operating freight rail traffic along the EJ&E rail line if the Proposed Action were approved.... As part of its analysis, SEA examined whether CN's projected train numbers

along the EJ&E rail line were reasonable and if higher levels of rail traffic might occur in the future along that line. SEA's analysis showed that, given the track construction and Operating Plan proposed by CN, as well as the physical constraints and other uses of the EJ&E rail line that CN does not propose to change, the EJ&E rail line would be at or near its practical train volume capacity if CN chose to operate the number of trains proposed in the Operating Plan."²⁴

NEED TO RE-OPEN DECISION TO MITIGATE CURRENT OPERATIONAL IMPACTS AT U.S. HIGHWAY 14

The Board, CN, and the Village of Barrington have long disagreed about the analysis of hourly delays at Barrington's crossings. Rather than second-guessing the veracity of any claims and counter-claims, IDOT and the Village of Barrington believe the evidence presented herein demonstrates the clear need for a grade separation at U.S. Highway 14 based on the material changes in the facts that provided the basis for the Board's mitigation decisions in 2008 relative to U.S. Highway 14.

This contention is based on the railroad's actual operating history on the rail segment that crosses U.S. Highway 14. These facts (and not CN's 2008 projections) provide a clear record of the existing and imminent operational impacts of the CN rail line at U.S. Highway 14 as of 2017. The critical need for a grade separation is underscored by the likelihood that CN seeks to double-track through Barrington in the near future. Such a project would allow the railroad to run trains in both directions without clearance interruptions, thereby substantially increasing freight volumes and vehicular congestion at U.S. Highway 14.

Petitioners urge the Board to meet its oversight commitment to the public by undertaking a careful and intensive review of this Petition's recitation of new evidence and materially changed circumstances. As past experience has shown, the Board's analysis should not simply

²⁴ FEIS Chapter 3 at page 3.4-57, when SEA discussed its capacity analysis of the EJ&E.

rely upon CN's representations as to its operations and plans. The Board is cautioned to remember that it was CN's own falsification of blocked crossing data that led to the Board's 2010 extension of oversight in this proceeding, as well as a \$250,000 fine against the railroad. Accepting CN's representations without sworn verification would undermine both the efficacy of the Board's oversight and the public's faith in the Board's 2008 Decision commitments.

Petitioners point not only to the CN's 2010 misrepresentations as a reason to verify CN claims, but also highlight a more recent example of CN ignoring its FRA reporting obligations so as to cloud CMAP's efforts in the GO TO 2050 transportation planning process. In February 2015, Barrington alerted CMAP (February 3, 2015 letter attached as Attachment 3) that its traffic delay data at the four Barrington/CN crossings was erroneous because it showed that only three trains were running on the line through the Village. After research into the issue, CMAP (in the attached February 11, 2015 letter – Attachment 4) advised Barrington that:

“[a] ...new federal rule will take effect on March 7, 2015, requiring the railroads to update their entries in the National Highway-Rail Crossing Inventory no less than every three years. Previously, they have been required to update their records in the inventory maintained by the Federal Rail Administration (FRA) only when the physical characteristics of a crossing have changed and not, for example, when the number of trains at a crossing has increased.

The 2013 national inventory data for the four crossings does not differ substantially from the 2011 data. However, recent filings to the Surface Transportation Board (STB) by the Canadian National Railway (CN) do demonstrate that the federal inventory is not current for these four crossings. The new federal rule means that CN will have until March 7, 2016, to make all their FRA inventory entries current, and then the three-year update cycle will begin.”

CN did update its records for the four Barrington crossings with the FRA on April 14, 2016. But again, the ICC records show that in 2016 CN still claimed to run only three trains

through the U.S. Highway 14 crossing at a timetable speed of 45 mph.²⁵ CN's failure to provide accurate FRA-mandated data that would facilitate CMAP's regional transportation planning efforts, along with the railroad's inaccurate reporting of blocked crossings to the Board seem to demonstrate a pattern of misrepresentation. Taken as a whole, these issues cause Petitioners to question how the Board, as part of its oversight obligations, can rely on CN's assurances vis-à-vis its current and imminent operations on the EJ&E belt rail line.²⁶

THE PURPOSE OF OVERSIGHT

While Petitioners understand that the STB must balance the interests of efficient and economically competitive rail service, Petitioners are obliged to integrate rail operations with the State's and region's transportation planning objectives. At the heart of this Petition is the unresolved question of what oversight of a Board-approved transaction means for the public and for transportation planners. In its Approval Decision of December 24, 2008, the Board clearly stated its wish to understand the environmental impacts of its approval Decision and use the oversight period to determine whether any additional mitigation would be warranted. CN then proceeded to consummate the transaction with the clear understanding that additional STB-mandated mitigation would remain a possibility.

The region and Illinois transportation planners counted on the Board's commitment to keep a close eye on the unfolding consequences of CN's freight operations on the EJ&E rail line. Petitioners believe the Board acted in good faith in 2008 in establishing oversight and that a

²⁵ <https://www.icc.illinois.gov/railroad/search.aspx>

²⁶ As another example of CN's disregard for complying with legal mandates, the Board is reminded by Petitioners of STB Docket No. NOR 42134 and the service issues Amtrak is having with CN in Illinois caused by the Railroad's long-term disregard for prioritizing Amtrak trains over freight as is required by law. *"CN has engaged in a pattern and practice of obstructing and delaying Amtrak passenger trains in violation of its obligation to prioritize Amtrak trains over freight transportation under the preference requirement of 49 U.S.C. § 24308(c)."*

timely re-opening of the Decision at this point post-acquisition will lead the Board to order CN to invest the \$37.5 million needed to complete the grade separation at U.S. Highway 14 in Barrington. Furthermore, an additional order extending oversight until January 9, 2019 will provide the full ten-year oversight period as originally requested by CMAP; ensure that progress on the U.S. Highway 14 grade separation is timely; and, provide the Board additional time to assess the implications of CN's future double-tracking of the EJ&E.

Respectfully Submitted,

/s/ Richard H. Streeter

Richard H. Streeter
Law Office of Richard H. Streeter
Special Assistant Attorney General for the
State of Illinois and Counsel for the
Village of Barrington, IL
5255 Partridge Lane, NW
Washington, DC 20016
P: 202.363.2011
Email: rhstreeter@gmail.com

Dated: January 10, 2017



Chicago Metropolitan Agency for Planning

233 South Wacker Drive
Suite 800
Chicago, IL 60606
312-454-0400
www.cmap.illinois.gov

December 21, 2016

Ms. Rachel Campbell
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: STB Docket No. 35087

Dear Ms. Campbell:

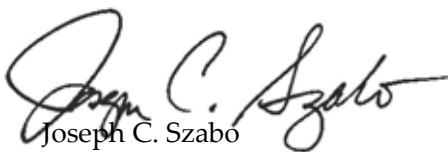
This letter supports the Illinois Department of Transportation (IDOT) and Village of Barrington's petition for the Canadian National Railway Company (CN), which in 2009 acquired the EJ&E-West Railway Company (EJ&E), to institute additional mitigation measures.

Northeastern Illinois is reliant upon its role as North America's rail freight hub to sustain its economic vitality. In 2008, CMAP advocated to the Board for a longer than the "reasonably foreseeable future" mitigation period anticipating changes in CN's rail traffic projections. CMAP continues to believe CN's rail traffic impacts to the Strategic Regional Arterial System (SRA) could be significant to both passenger and freight traffic fluidity through the region. Because the SRA network was designed to provide regional mobility, additional delays caused by increased freight traffic should be mitigated.

CMAP has supported mitigation at a number of at-grade highway crossings on the SRA network, including at US 14 in Barrington, which is an at-grade, 4-lane + median, skewed angle crossing. This particular crossing is an important focus of the IDOT and Village of Barrington's petition.

We encourage the STB to look closely at the IDOT and Village of Barrington's most recent data on average daily traffic, average trains per day, average train length, etc. and the information on the increased traffic from the Port of Prince Rupert. The mitigation factors raised in the petition are deserving of the STB's most serious consideration.

Sincerely,


Joseph C. Szabo
Executive Director

Board Members

Gerald Bennett, Chair
Rita Athas
Frank Beal
Matt Brolley
Franco Coladipietro
Janel Forde
Elliott Hartstein
Al Larson
Andrew Madigan
John Noak
Rick Reinbold
William Rodeghier
Carolyn Schofield
Peter Silvestri
Peter Skosey

Non-voting Members

Sean McCarthy
Brian Oszakiewski
Leanne Redden

Executive Director

Joseph C. Szabo

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION – CONTROL – E J & E WEST COMPANY

VERIFIED STATEMENT OF DAVID DORN

My name is Dave Dorn and I am the Chief of Police of the Barrington Police Department. I've held this position for three years and have been a police officer for eighteen years.

Relative to this 2017 Petition before the Surface Transportation Board, on or about March of 2015, my Assistant Chief Ruben related to me a recent phone call he had taken from a Wisconsin police department relative to CN's operations on the rail line that runs through that town. The Wisconsin police officer (name and PD location are unknown) was calling to inquire how the Village of Barrington had secured preferential treatment from CN Railroad as regards to preventing its trains from blocking Village grade crossings. The Wisconsin officer's town had experienced a significant level of freight-induced congestion as a result of trains stopped at its crossings and police personnel had asked the CN train personnel how to prevent such stoppages. The CN train crew told him that only in Barrington, IL were CN crews operating under company instructions to prevent crossing blockages to the greatest extent possible.

VERIFICATION

I, David Dorn, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on January 5, 2017

/s/ David Dorn

David Dorn
Chief of Police
Village of Barrington, IL

VILLAGE OF

a great place to live, work, and play



BARRINGTON

February 3, 2015

Ms. Jill Leary
Acting Director
Chicago Metropolitan Agency for Planning (CMAP)
233 South Wacker Drive, Suite 800
Chicago, Illinois 60606

Via Email

Dear Ms. Leary;

I wanted to bring to your attention a serious flaw with data detailed in the "Mobility" portal that CMAP launched on its website last week. I bring this to your attention for correction because I'd hate to see CMAP's vital regional planning efforts undermined by using flawed third-party data -- over which you have no control -- to support future transportation planning proposals.

As you can imagine, when I saw the Chicago Tribune article about this portal I was particularly interested in reviewing the grade crossing delay figures for the four EJ&E crossings in Barrington because we have been seeking redress for traffic gridlock created in the Village as a result of CN's purchase of the rail line in 2009. In fact, we currently have a mitigation petition pending before the Surface Transportation Board seeking that it order CN to pay the remaining \$50 million needed to build a roadway underpass at U.S. Highway 14 where it meets with the EJ&E rail line.

On October 15, 2010, the USDOT awarded Barrington a \$2.8 million TIGER II grant for the Phase I engineering/environmental review for a grade separation at the crossing and CMAP supported our request in the grant proposal package. That grant confirmed that U.S. Highway 14 has a significant regional impact. In addition to the \$2.8 million TIGER II planning grant for Phase I (the largest of the TIGER II planning grants awarded in that round), IDOT provided the local match of \$700,000. PHASE I was completed and IDOT approved the project design in September, 2014, so we are ready to move forward as soon as the additional funding is secured.

VILLAGE HALL
200 S. HOUGH ST.
BARRINGTON, IL 60010
(847) 304-3400

PRESIDENT & BOARD
MANAGER'S OFFICE
TEL (847) 304-3444
FAX (847) 304-3490

COMMUNITY AND
FINANCIAL SERVICES
TEL (847) 304-3400
FAX (847) 381-7506

DEVELOPMENT SERVICES
TEL (847) 304-3460
FAX (847) 381-1056

PUBLIC WORKS
300 N. RAYMOND AVE.
BARRINGTON, IL 60010
TEL (847) 381-7903
FAX (847) 382-3030

PUBLIC SAFETY
400 N. NORTHWEST HWY.
BARRINGTON, IL 60010

POLICE
TEL (847) 304-3300
FAX (847) 381-2165

FIRE
TEL (847) 304-3600
FAX (847) 381-1889

The Mobility data we reviewed was for the four crossings at Lake Zurich Road, Northwest Highway (US 14), Hough Street (IL 59) in Lake County and Main Street (Lake Cook Rd) in Cook County. Unfortunately, the crossing delay figures for those four Barrington crossings are not even remotely in line with reality.

As a case in point, for U.S. Highway 14, the CMAP data notes that 132 vehicles were delayed at that crossing for an average of 1.77 minutes amounting to 2.14 total hours of daily aggregate delay. Those figures cannot be reconciled with IDOT's figure of a 29,000 ADT at that crossing and the substantial queuing on Northwest Highway that results from blockages caused by the 18 to 19 daily freight trains currently running on the EJ&E. In 2011, Barrington commissioned a VISSIM traffic analysis by Civiltech and the delay figures for that crossing showed that we will be experiencing 98 total hours of daily delay there by the end of this year. As you can see, this is not a minor rounding discrepancy!

As a result of this, we followed up with Tom Garritano on your CMAP staff and he was good enough to refer us to the ICC where the data originated. Just yesterday morning, we received an email response from Steve Laffey at the ICC that clarifies where this data is derived from:

"The source of the data used in the analysis is primarily FRA's grade crossing inventory system with certain items, such as railroad line segment name and segment type, provided by the ICC. The grade crossing inventory system is a voluntary system where state DOTs and railroads provide information to the FRA (and for Illinois crossings, concurrently to the ICC). The railroad is responsible for some items (train counts and speeds) and the state DOT others (AADT); ICC does not collect train count or AADT data."

Mr. Laffey provided us with the data sheets used for the calculations and we have seen that even the most recent data from March 31, 2013 does NOT include CN's operations on the EJ&E. That data sheet just shows three trains running on our segment of the rail line, rather than the average 2014 daily train volumes of 17.7 trains per day (that CN shared with Barrington and the STB as recently as January 26, 2015.) In fact, CN has now admitted that as many as 25 trains a day have already passed through Barrington on multiple occasions. In addition to the number of trains, the speed of the trains in the ICC data set is inaccurate. The ICC uses the "maximum time table speed" for the basis of its calculations -- or 45 mph at that particular crossing. However, Civiltech actually measured train speeds at the U.S. 14 crossing in 2011, and CN's freight trains were averaging only 32 mph. The bottom line is that it's clear that

February 3, 2015

Page 3

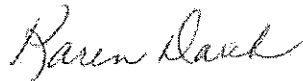
CN has not provided any updates on its EJ&E operations to the FRA or ICC, so we have a case of 'junk in, junk out' data analysis that begins and ends with CN.

As a first course of action, it is imperative that the Mobility data for the whole of the EJ&E be removed from CMAP's website as soon as possible because it's clear that the basis for that particular data is flawed. However, my concerns go far beyond just the EJ&E because the traffic that was running on CN's core lines through Chicago prior to the railroad's acquisition of the EJ&E is likely still counted into the data for those lines and thus impacting the accuracy of the crossing delays for the entire Chicago rail network. To the extent that CMAP can vet the accuracy of the data for other crossings in the region with local municipal leaders, or ask the FRA or ICC to conduct a spot audit, that would seem advisable.

After these initial adjustments are made on the Mobility portal, I would like to work with CMAP to discuss the issue with IDOT and the FRA (and perhaps our congressional delegation) to see what can be done to secure accurate data from the railroads moving forward. While it is now a voluntary effort on the part of the railroads, perhaps supplying this data needs to be made mandatory with an accompanying auditing process instituted. Because greater Chicagoland is the nation's largest freight hub, it is vital that the railroads be held accountable for the operational data they supply to Illinois and our regional planning organizations.

I look forward to working with you on this issue to insure that the region's long-range transportation planning efforts are accurately data-driven.

Sincerely,



Karen Y. Darch
President, Village Board

cc:

Gerald Bennett, Chairman, CMAP

Joseph Szabo, Senior Fellow, CMAP

Tom Weisner, Mayor, Aurora & TRAC Co-Chair



Chicago Metropolitan Agency for Planning

233 South Wacker Drive
Suite 800
Chicago, IL 60606
312-454-0400
www.cmap.illinois.gov

February 11, 2015

Via e-mail:
kdarch@barrington-il.gov
and First Class U.S. Mail

The Honorable Karen Darch, Village President
Village of Barrington
200 South Hough Street
Barrington, Illinois 60010

Dear President Darch:

Regarding your recent letter about data related to crossing delays, I certainly understand your concerns about EJ&E impacts and federal reporting requirements for railroads. Your letter highlights the importance of making data public, because doing so sheds light on processes that can be improved at all levels of government. So thank you for taking the time to comment.

We have investigated further, as described below. First, I will describe the federal process for compiling the national rail inventory. And second, I will address your concerns about our website's use of the federal data for Lake Zurich Road, Northwest Highway (US 14), Hough Street (IL 59) in Lake County, and Main Street (Lake Cook Road) in Cook County.

National Highway-Rail Crossing Inventory

Described at

<http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/GcisNewRequirements.aspx>, a new federal rule will take effect on March 7, 2015, requiring the railroads to update their entries in the National Highway-Rail Crossing Inventory no less than every three years. Previously, they have been required to update their records in the inventory maintained by the Federal Rail Administration (FRA) only when the physical characteristics of a crossing have changed and not, for example, when the number of trains at a crossing has increased.

The 2013 national inventory data for the four crossings does not differ substantially from the 2011 data. However, recent filings to the Surface Transportation Board (STB) by the Canadian National Railway (CN) do demonstrate that the federal inventory is not current for these four crossings. The new federal rule means that CN will have until March 7, 2016, to make all their FRA inventory entries current, and then the three-year update cycle will begin.

Board Members

Gerald Bennett, Chair
Rita Athas
Frank Beal
Elliott Hartstein
Al Larson
Lisa Laws
Andrew Madigan
John Noak
Raul Raymundo
Rick Reinbold
William Rodeghier
Carolyn Schofield
Peter Silvestri
Rae Rupp Srch
Thomas Weisner

Non-voting Members

Bola Delano
Leanne Redden

Interim Executive Director

Jill Leary

February 11, 2015

Page 2

CMAP website

Staff at the Illinois Commerce Commission (ICC) are confident in their calculations of crossing delays, which are based on the best available federal inventory. While that federal process should be improved -- and, we believe, will be improved when the new reporting rule takes effect -- at present that national inventory is the one resource for observing our regional freight system historically for comparison of trends. The GO TO 2040 plan and its recent update rely on this important indicator.

Of course we believe the federal inventory should be improved, and we will incorporate those improvements in our own planning processes and materials. While we understand your concerns, CMAP cannot remove the entire map from our website. But we will remove the four crossings from the map and add the following text on our Sources page

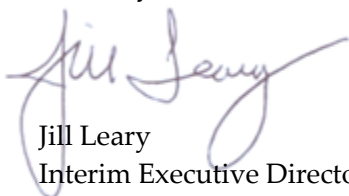
(<http://www.cmap.illinois.gov/mobility/explore/sources/>):

"Please note that this map omits data on crossing delays at four crossings that have been affected significantly since the Canadian National Railway (CN) acquisition of the Elgin, Joliet, and Eastern Railway (EJ&E). Because the National Highway-Rail Crossing Inventory entries for those crossings may not reflect current conditions, CMAP has elected to omit the following: Lake Zurich Road, Northwest Highway (US 14), Hough Street (IL 59) in Lake County, and Main Street (Lake Cook Road) in Cook County."

We will work with ICC staff to update the map from 2011 to 2013 data, but as mentioned above, that update will not result in significant differences for the four crossings due to the federal inventory process. Our hope is that the new federal reporting requirements will in 2016 result in an improved inventory for the U.S., our state, and our region.

Again, thank you for carefully articulating your concerns and CMAP will continue to work with you in addressing the impacts of increased freight traffic in Barrington. Please let me know if you have additional questions.

Sincerely,



Jill Leary
Interim Executive Director

TG:JL/stk

cc: Gerald R. Bennett-CMAP Board Chair, Mayor City of Palos Hills
Tom Weisner-CMAP Board, Mayor City of Aurora
Carrie Ann Ergo, City of Aurora
Sue Gaffino, City of Aurora

CERTIFICATE OF SERVICE

I, Richard H. Streeter, certify that I have this 10th day of January, 2017, caused a true copy of the Joint Petition of the Illinois Department of Transportation and the Village of Barrington, IL, seeking Imposition of Additional Mitigation Pursuant to the Board's Oversight Jurisdiction and Reopening Pursuant to Governing Regulations, by e-mail, upon:

Harkins Cunningham LLP
1700 K Street, N.W., Suite 400
Washington, D.C. 20006-3804
Paul A. Cunningham
pac@harkinscunningham.com
David A. Hirsh
dhirsh@harkinscunningham.com
Simon A. Steel
ssteel@harkinscunningham.com
James M. Guinivan
jguinivan@harkinscunningham.com
Matthew W. Ludwig
mludwig@harkinscunningham.com

Sean Finn
Canadian National Railway Company
P.O. Box 8100
Montréal, QC H3B 2M9
sean.finn@cn.ca

Theodore K. Kalick
Canadian National Railway Company
Suite 500 North Building
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-3608
ted.kalick@cn.ca

Richard H. Streeter /s/

Richard H. Streeter