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NORTHWESTERN INDIANA REGIONAL PLANNING COMMISSION

Together We Make The Difference

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Date Rec'd:

May 29, 2008

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

File No. _____
Scanned (Initial): _____
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RE: Finance Docket No. 35087, Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company

Dear Ms. Quinlan:

On behalf of the Northwestern Indiana Regional Planning Commission (NIRPC), I write to express NIRPC's strong opposition to the Canadian National Railway Company and Grand Trunk Corporation's (CN) *Request for Establishment of Time Limits for NEPA Review and Final Decision* filed in the above referenced docket (Filing 222352). In this Filing CN requests that the Surface Transportation Board (STB) agrees to make a Final Decision by December 1, 2008 on its proposed transaction to purchase the EJ&E Railroad. NIRPC opposes the establishment of a deadline for a Final Decision because it could jeopardize the thoroughness, completeness, and fairness of the Environmental Impact Study (EIS).

NIRPC is a Council of Governments (COG) and the designated Metropolitan Planning Organization (MPO) for Lake, Porter and LaPorte Counties in northwest Indiana. The NIRPC Board is comprised of 53 elected local government officials from the three counties plus one State legislator appointed by the Governor of Indiana. Either the Commission or Executive Board meets monthly to review, discuss and establish policy regarding transportation, environmental and economic development proposals and projects.

For many months the proposed CN transaction has been discussed at meetings of our NIRPC Board and Transportation Policy Committee (TPC). The views of the NIRPC Commissioners and other interested parties in northwest Indiana have been widely reported in area newspapers. Elected officials and representatives from communities and public agencies have offered thoughtful and reasoned concerns and raised issues that their cities, towns and residents would face if the pending transaction is approved. These representatives are from communities that are on the EJ&E arc, i.e. Dyer, Schererville, Griffith, Gary, Hammond, East Chicago and Whiting and others are from communities and public agencies that are on or near the CN main line, i.e. Highland, Munster, Merrillville, Hobart, Valparaiso, Porter County, LaPorte County, the Gary-Chicago International Airport, and stakeholders of The Marquette Plan: A Vision for Lakeshore Reinvestment.

These representatives who oppose the transaction are not, as CN states on pages 22-23, "well financed", seeking "controversy-induced delay", or adopting "increasingly rigid and obstructionist approaches to discussion". These communities have **legitimate concerns** about the safety, environmental and financial burdens they must incur if the transaction is approved. CN repeatedly bases its arguments on the costs they must pay for the EIS and extra costs they might incur if the EIS is delayed, but ignores the impacts and costs to our communities and residents.

Our communities do not have the financial resources to fund opposition to the transaction nor for a study of the environmental and social impacts that this transaction will have on their communities. Indeed, they must solely rely on the STB's Section of Environmental Analysis (SEA) to conduct a fair, balanced and thorough EIS and to thoughtfully consider and protect their interests. They also have a long history of

trying to deal with CN, which has not often been responsive, cooperative or helpful in addressing at-grade crossing improvements or rail traffic impacts on the local economies. To date CN has offered no assistance to help our communities mitigate the transaction's impacts on local quality of life concerns.

CN requests that the STB pursuant to 40 C.F.R. § 1500.8 establish a schedule that would result in the STB issuing a Final Decision on the transaction on December 1, 2008 so that CN would not lose "over a year's worth of time and millions of dollars in expenses related to the Transaction." However, 40 C.F.R. § 1500.8 does not cite that a federal agency must consider the monetary cost to a company and the company's ability to make "fundamental business decisions" as factors that a federal agency should consider when requested to establish time limits for an environmental review process.

CN states on pages 1-2, 5-6, 8-13, 16, and 23-25 that the transaction will have environmental and transportation "public benefits" (p.6) which have "been clear from the beginning" (p. 5) and "have been recognized by a broad spectrum of shippers, rail carriers, business groups, communities, and government officials" (p.10). These "public benefits" are stated as fact and imply that there is no need for a thorough and balanced study that might require a schedule that does not comply with the CN and EJ&E Stock Purchase Agreement (SPA) fallback deadline of December 31, 2008 (p.2).

While we acknowledge that there will be some freight benefits for some communities in northeast Illinois, we request that CN support their statements of "public benefits" in the Filing by citing national and regional studies that **identify alternatives to solving freight congestion** in the Chicago Urban Core and the greater Chicago region including northwest Indiana and which would provide information relative to the following questions:

- Why and how is this transaction the best solution to keep rail competitive with trucking?
- Why and how is this transaction beneficial to all railroads and to mitigating freight congestion in the Midwest and the nation?
- Why are the solutions to regional and national freight congestion and other mobility problems best solved through a single railroad's business and profit decision?
- Why should the interests of impacted communities and regions be ignored?

The Chicago Region Environmental and Transportation Efficiency Program (CREATE) did not include studies or projects in northwest Indiana partially because our region lacked the funding to participate in the Illinois initiative. However, we would welcome a regional study that would include northwest Indiana and that would consider alternative regional solutions to freight traffic congestion. The study could include any or all of the following forms of freight transportation: railroad, trucking, water-borne shipping, air freight and pipelines. Northwest Indiana includes world-class steel mills and one of the major pipeline terminals in the U.S. It is a major generator and recipient of freight goods as well as a location of considerable through-traffic freight movement. Northwest Indiana includes major interconnecting interstate highways, a heavy-duty truck highway facility, major railroads, and a Great Lakes freight port.

We believe that a comprehensive long-term (10- to 20-year horizon) study on future freight movement in the greater Chicago area should include the impacts on northwest Indiana communities. We hope that a number of regional freight mobility studies in the U.S. would lead to the adoption of a national freight mobility policy that would include a fair distribution of the costs, burdens, mitigation and benefits involved in solving the nation's increasing freight congestion and delays. A single corporation's business decision, including CN's pending transaction may or may not be in the region's or nation's interest.

CN states (page 13) that if the Transaction is not approved, *"USS (parent company of EJ&E) cannot be expected to let the unused EJ&E capacity go to waste indefinitely. Such capacity cannot be inventoried, and its value cannot be realized except through usage. USS therefore has a strong incentive, if CN is not permitted through this Transaction to ease rail congestion in downtown Chicago, to **make its under-used EJ&E line available for use by CN or to other railroads that are seeking ways to move their traffic more efficiently and help relieve the rail congestion in downtown Chicago.** Thus, if this Transaction is not consummated, **alternatives**, including increased interchange and haulage, **which would not***

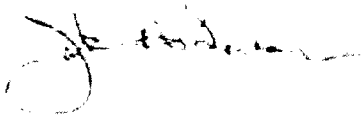
*require NEPA review, will likely be available that would nonetheless allow CN, other carriers, or both to move additional traffic over EJ&E. These solutions **would not likely be as efficient or as beneficial to the public interest or CN itself as the proposed Transaction**, so CN remains committed to the Transaction" (emphasis added). CN, therefore, concedes that it is not certain that the transaction is the best of all possible solutions. Perhaps that is why CN is in a hurry for the STB to reach a Final Decision by December 1, 2008.*

CN further states (pp. 21-22) that "While there is no apparent reason in the substantive work required by NEPA for the review process to run past the deadlines proposed here by CN, some will undoubtedly argue that delay will be required to respond to the sheer volume of opposition and political pressure emanating from certain villages and towns along EJ&E that will experience increases in rail traffic. **The Board should ignore any such arguments**". "The Board and the public interest have **nothing to gain from controversy-induced delay**. Further delay will not lessen controversy but will likely be **used by opponents to try to increase and extend controversy**...CN has actively engaged many communities along the EJ&E arc that have raised concerns about environmental impacts, but after some initial progress, as the environmental analysis has dragged on, **CN has seen communities adopt increasingly rigid and obstructionist approaches to discussions**. Delays, unrealistic expectations, and the lack of any established schedule for environmental review appear to have fueled hopes that the continuation of the environmental review process might itself be exploited to stop the Transaction entirely. Though **CN believes the concerns raised by some of the more vocal local activists are largely overstated or unsupported, it continues to reach out to the affected communities in the hope of reaching some agreements**, and has made an unprecedented commitment of a budget of \$40 million – a full 13% of the acquisition cost of EJ&EW – to support mitigation efforts for those communities."

NIRPC states categorically that northwest Indiana communities are not interested in seeking an increase in or extending controversy. It has not adopted rigid and obstructionist approaches to discussions. Their concerns are not overstated or unsupported. The only agreements that CN has sought from our communities and agencies are those in which the communities and agencies would support CN's transaction. CN has not offered any of its purported \$40 million to support mitigation efforts in northwest Indiana.

NIRPC, local northwest Indiana governments and agencies have identified a significant number of environmental, economic development and social issues which could negatively impact our region and its communities and residents if the transaction is approved. NIRPC and the northwest Indiana communities and interested parties on the EJ&E arc and along the CN mainline **ask that the STB conduct a thorough, balanced and fair study of the transaction's positive and negative environmental, economic and social impacts. A thorough study of alternatives**, however long or short the study process will be, is needed to show that this transaction is the best of all alternative solutions to the rail, trucking, shipping, air and pipeline freight congestion and mobility problems in the entire bi-state region. The study should also identify how **the costs, burdens, mitigations and benefits of the Transaction will be fairly distributed to all stakeholders**, including our region's affected local governments and public agencies.

Sincerely,



John A. Swanson
Executive Director