

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35087

**CANADIAN NATIONAL RAILWAY COMPANY AND
GRAND TRUNK CORPORATION**

-CONTROL-

EJ&E WEST COMPANY

OPENING MEMORANDUM OF WILL COUNTY

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-CONTROL-

EJ&E WEST COMPANY

OPENING MEMORANDUM OF WILL COUNTY

Will County, Illinois ("Will County") submits this opening Memorandum for the purpose of making the Surface Transportation Board ("STB" or "Board") aware of some of the public interest issues and ramifications of the proposed acquisition by the Canadian National Railway Corporation and the Grand Trunk Corporation (collectively "CN" or the "Applicants") of the vast majority of the Elgin, Joliet and Eastern Railway Company ("EJ&E"). The verified statements of Curt Paddock and Sheldon C. Latz are attached to this Memorandum as Exhibits 1 and 2 and are incorporated herein. Mr. Paddock is the Director of Will County's Land Use Department, and Mr. Latz is the County Engineer. At this point, Will County is not urging the Board to either approve or reject the CN's control application. Rather, the purposes of this Memorandum and attached verified statements are to make the Board aware of the potentially tremendous impact that this transaction could have on one of the Chicago metropolitan areas that is bisected by the EJ&E, and to urge the Board to take the time to make sure that it understands the competing

transportation benefits and detriments before it concludes this part of the proceeding,¹ or issues a decision on the merits.

I. STATEMENT OF FACTS

A. General Transportation Issues

The EJ&E bisects Will County, a metropolitan county located approximately 20 miles south of Chicago's southern border at its closest point. Will County is one of the fastest growing counties in terms of population in the United States. According to the 1990 U.S. Census Bureau count, Will County's population figure was 357,313 and grew by approximately 40% between 1990 and 2000, resulting in a year 2000 census figure of 502,266 residents. Verified Statement of Curt Paddock ("Paddock V.S."), ¶5. Will County's population as of July 1, 2006 was estimated by the United States Census Bureau at 668,217 residents, which is the most recent estimate available. *Id.* The County population has been growing at a rate of 2,000 to 3,000 per month, or 25,000 to 30,000 people annually. *Id.*

Will County's traffic has grown with the population increase. The transportation expenditures for projects under Will County's jurisdiction alone are almost half a billion dollars, and that figure does not include the construction projects under state or municipal jurisdiction. *Id.*, ¶6.

Because the EJ&E truly does bisect Will County, there are 52 public at-grade crossings in Will County that involve the EJ&E. *Id.*, ¶7. There are 38 public at-grade crossings along the

¹ The Board issued guidance on December 12, 2007 in which it explained the difference between the submissions and possible hearing before the STB concerning the effects of the proposed control application with respect to issues concerning competition, transportation and labor, and the other part of the proceeding, involving environmental issues that will be considered in connection with the environmental impact statement process. This part of the proceeding refers to the first part of the proceeding, as described above.

EJ&E Mainline, ten crossings along the EJ&E's Illinois River branch in the western part of Will County, three crossings along EJ&E's Downtown Branch in Joliet, and one crossing on EJ&E's Romeoville Branch west of Lockport. *Id.*

Attached as Ex. 2-A to Mr. Latz's Verified Statement is a list of the public at-grade crossings in Will County and the associated average daily traffic ("ADT") count at each crossing based on the most recent data available. Verified Statement of Sheldon C. Latz ("Latz V.S."), Ex. 2-A. Will County is working with the Chicago Metropolitan Agency for Planning, which is responsible for Chicago regional transportation forecasts, and others to develop accurate future ADT forecasts for each of these crossings so that the full impact of the CN's proposal is known. The future ADT have not yet been established for each of the 52 public at grade crossings. Latz V.S., ¶10.

According to the CN's application, the EJ&E segments in Will County are expected to see a significantly large increase in rail traffic as a direct result of the proposed acquisition. From the East Joliet Yards and northward, the rail traffic will increase from the current rate of approximately 18 trains per day, which averages to a train every 1 hour and 20 minutes during a 24 hour period, to a projected rate of 45 trains per day, which averages to one train every 32 minutes in a 24 hour period. Paddock V.S., ¶7. The segments south of the East Joliet Yards currently average 6 trains per day, which averages to a train every 4 hours during a 24 hour period. The projected increase of rail traffic is expected to be 28 trains per day, which averages to one train every 51 minutes during a 24 hour period. *Id.*

The CN's figures only account for CN's own projected traffic figures immediately after the control application is fully implemented. CN Application, Operating Plan at 209. They do

not address or account for possible future growth in traffic carried by the CN for other carriers, or include any projected growth for carriers with trackage rights over CN lines. *Id.*

B. The Proposed Metra Star Line

The Northeast Illinois Regional Commuter Railroad Corporation, d/b/a Metra ("Metra"), is the inter-city commuter rail passenger service provider for Will County and the rest of the greater Chicago metropolitan region. Metra is a party of record in this proceeding.

Metra has proposed a new STAR line, which essentially would be a commuter rail corridor providing rail passenger service around the outer circumference of the greater Chicago metropolitan region. The proposed Metra STAR line would use some of the EJ&E lines and, as proposed, would include the following:

- New suburb-to-suburb service would make use of 50 miles of the existing 103-mile Elgin, Joliet and Eastern (EJ&E) freight line to connect Waukegan to Gary, Indiana, via Barrington, Elgin, Aurora, and Joliet. Transfers would be made to most of Metra's existing radial lines.
- New stations would potentially be located at 95th Street, 111th Street, 135th Street, Village of Plainfield (IL 59 or IL 126), I-55/U.S. Route 30, Gaylord Road, Weber Road, and Collins Street (IL 171). The line would connect with the existing Joliet Union Station (Rock Island District/Heritage Corridor lines) and then continue east through New Lenox, Frankfort, and into Cook County toward Indiana.

Paddock V.S., ¶10.

The exact impact of the CN control application on Metra's STAR project cannot be determined from the CN's proposal. Presumably, Metra will address it. However, Will County believes that Metra's STAR project is an absolutely critical improvement to the greater Chicago metropolitan region's commuter rail passenger system, and that nothing that occurs in this

proceeding should effectively operate to foreclose bringing Metra's STAR project to fruition.
Id., ¶11.

I. ARGUMENT

A. The Board Must Consider The Impact Of The Proposed Acquisition On The Regional Transportation System

The standard governing this proceeding is set forth in 49 U.S.C. §11324(d). That statute provides in relevant part that the Board should approve the proposed control application unless the Board finds that:

- (1) as a result of the transaction, there is likely to be substantial lessening of completion, creation of a monopoly, or restraint or trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

Will County is not addressing any anticompetitive effects of the proposed transaction. However, in evaluating "the public interest in meeting significant transportation needs," Will County submits that the Board must consider public interest issues associated with the impact on the entire regional transportation system, and not just the rail commuter and freight operations.

In making that argument, the County is aware of the definition of the word "transportation" in 49 U.S.C. §10102(9). 49 U.S.C. §10102(9) provide in relevant part:

In this part

* * * * *

(9) "transportation" includes –

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers and property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property;

The definition of "transportation" to include rail passenger and freight services does not mean that the STB is limited to considering solely rail transportation needs in evaluating the merits of the proposed transaction. The word "include" is "a word of illustration, not limitation." *Richardson v. National City Bank of Evansville*, 141 F.3d 1228, 1232 (7th Cir. 1998). *See United States v. Vegas-Garnica*, 332 F.3d 471, 474 (7th Cir. 2003) (same); *United States v. Camacho*, 110 F.3d 260, 263 (5th Cir. 1997) ("including" is an inclusive, not exclusive, or exhaustive term). The word "includes" in statutory definitions is frequently construed as a word of extension or enlargement rather than of limitation or enumeration. *See, e.g., Federal Trade Comm'n v. MTK Marketing, Inc.*, 149 F.3d 1036, 1040 (9th Cir. 1998) (holding that statutory definition of person as including "an individual, firm, association, partnership, joint venture or other business entity" also encompasses governmental entities).

Will County is not aware of any statutory history suggesting that the definition of "transportation" in 49 U.S.C. §10102(9) was intended to restrict the STB's public interest consideration solely to impacts on rail transportation. Frankly, given the potential impact of this and similar proposed rail consolidations on the surface transportation system, it would do a disservice to the public to adopt such a restrictive interpretation. The potential meltdown of the surface transportation system would be no less harmful to the public interest than an increase in rail congestion. The STB should be convinced that such impacts will not occur before it concludes this part of the proceeding.

B. Will County Is Still Attempting To Evaluate The Impact Of The Proposed Acquisition On The Rail And Surface Transportation System In Will County

Will County has served discovery on both CN and the EJ&E in an effort to obtain documents and information to allow Will County to evaluate whether, among other considerations, the CN's acquisition of the EJ&E will result in excessive rail congestion in Will County or severe impacts on the surface transportation system in Will County.² The EJ&E flatly refused to provide any discovery, and the CN objected to the vast majority of Will County's discovery. Will County also has requested and obtained a copy of CN's workpapers and is in the process of reviewing them.

Will County has not yet completed its analysis of the impact of the CN's proposed acquisition on the rail and surface transportation system in Will County. There is no question that the proposed transaction will have serious impacts on the Will County transportation system and its residents. The tremendous increase in train traffic, in some cases for 6 to 28 trains or more per day, is bound to result in increased rail congestion; traffic delays due to blocked crossings; costs to improve alternative routes; increased traffic control costs to address traffic ques and keep auto traffic off the tracks; and increased costs for grade crossing safety improvements. The tremendous growth in train traffic also will result in a variety of environmental impacts, including noise, vibration and air quality impacts.

Will County intends to continue to pursue discovery to enable it to quantify and more effectively evaluate the transportation and other impacts of the proposed acquisition. Will

² Will County's discovery also was designed to produce information concerning the safety and environmental impacts of the CN's proposed acquisition.

County will pursue traditional methods to secure compliance with its discovery. If CN and EJ&E continue to resist discovery, Will County may request that the schedule be extended or the application denied.

C. The Information Included In CN's Application Is Insufficient To Allow The Board To Make A Full Evaluation Of The Public Interest Considerations

Based on the section of the Board's Decision No. 2 in this proceeding dated November 26, 2007 addressing public interest considerations, it appears that the Board may preliminarily have agreed with the CN's assertions that the public interest will benefit from the proposed transaction because rail congestion in the Chicago urban core will be reduced. Will County submits that before the Board draws any final conclusions on that issue, it needs to carefully weigh the benefits and detriments of shifting that traffic to the suburban counties ringing Chicago, which includes Will County. Specifically, the Board needs to evaluate how much rail traffic will be shifted and carried now and in the future in order to assess the likely rail congestion that will result on the EJ&E lines and what impact that traffic will have on the surface transportation system.

To date, the CN's application is limited to rail traffic projections for three years, and there is no projection of the rail traffic that will be carried for or by other carriers. If the EJ&E route is so much faster and less congested, it seems almost certain that other carriers would be interested in using the same routes. CN's application does not contain enough information for the Board to make a meaningful assessment of the public interest considerations.

I. CONCLUSION

For the reasons set forth above, Will County urges the Board to evaluate the impact of this transaction on the regional transportation system before it concludes this part of the proceeding. If the Board agrees that additional information concerning traffic projections or other matters is required before it can reach any conclusions concerning the public interest statutory requirement, it should delay the proceeding to allow CN to submit the necessary information. Given that completion of the environmental impact statement process generally requires 18 months or more to complete, there is no reason to unnecessarily truncate the analysis in this part of the proceeding.

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Dated: **January 28, 2008**

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has caused a true and correct copy of the foregoing document(s) to be served upon:

ALL PARTIES OF RECORD AS OF THIS DATE

SEE ATTACHED SERVICE LIST

by mailing a true and correct copy thereof from the law office of Hinshaw & Culbertson LLP, 400 South Ninth Street, Suite 200, Springfield, Illinois, 62701, to the persons named on the Surface Transportation Board's service list as of this date, January 28, 2008.



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EJ&E WEST COMPANY

VERIFIED STATEMENT OF CURT PADDOCK

1. My name is Curt Paddock. I am the Director of the Land Use Department for Will County, Illinois. I have held that position since October 2005. As the Director of the Will County Land Use Department, I am responsible for all of the County's land use and planning functions.
2. I received my B.A., magna cum laude, from Westminster College in 1973 and a master's degree in public administration from the University of Missouri at Columbia in 1979. I hold a professional planning certification from the American Institute of Certified Planners and I am a Certified Economic Developer so designated by the International Economic Development Council. I have been awarded a Fulbright Senior Scholar Award for community development studies in India. In addition, I have received a Certificate of Completion from the Program for

Senior Executives in State and Local Government from the JFK School of Government at Harvard University.

3. Following receipt of my bachelor's degree, I began my professional career at the Missouri Department of Community Affairs, where I served as a Program Manager from January 1974 to May 1979. Following completion of graduate studies, I served as Director of the Center for Community Affairs and Assistant Professor in the Department of Political Science at Indiana University of Pennsylvania. In May 1983, I became an Assistant Professor in the School of Public Administration at Drake University, where I also served as the first Executive Director of the Drake Research Institute. I remained at Drake University until May 1985, when I was appointed as the Assistant Dean of Bradley University Graduate School and the Executive Director of the Institute for Urban Affairs and Business Research. In 1989, I left to form my own consulting firm, Paddock Health Services, Inc., based in Peoria, Illinois. In 1991, I formed Trajectory, Community and Economic Development Consulting in Cincinnati, Ohio. Trajectory was a project management and association services firm which provided operational support, strategic planning, marketing, governmental relations and fund raising services for community and economic development organizations. In 2002, I became the Director of the Clermont County Department of Planning and Economic Development. In 2005, I joined Will County and assumed my current position.

4. As Director of the Will County Land Use Department, I have been directed by the County Board to evaluate and seek mitigation of impacts on Will County from the Canadian National Railway's ("CN") proposed acquisition of the EJ&E railroad facilities. Potentially, the impact of that acquisition could be enormous.

5. Will County, which is located approximately 20 miles from Chicago's southern border, is one of the fastest growing counties in the country. Its population in the 1990 United States census was 357,313 people. By 2000, the official census figure was 502,266 residents, which was approximately a 40 percent increase. As of July 1, 2006, in the most recent United States Census Bureau estimates, Will County's population was 668,217 residents. The County's population is estimated to have grown this decade at the rate of 25,000 to 30,000 annually.

6. As population grows, obviously traffic and traffic congestion also increase. In 2007 dollars, the average annual cost of transportation projects under Will County's jurisdiction is \$495 million, or almost a half billion dollars.

7. According to the information that has been provided to Will County by the CN and as reflected in Attachment A-2 to the CN's Operating Plan that was attached to its Control Application, the EJ&E segments in Will County are expected to see a significantly large increase in rail traffic as a direct result of the proposed acquisition. From the East Joliet Yards and northward, the rail traffic will increase from the current rate of approximately 18 trains per day, which averages to a train every 1 hour and 20 minutes during a 24 hour period, to a projected rate of 45 trains per day, which averages to one train every 32 minutes in a 24 hour period. The segments south of the East Joliet Yards currently average 6 trains per day, which averages to a train every 4 hours during a 24 hour period. The projected increase of rail traffic is expected to be 28 trains per day, which averages to one train every 51 minutes during a 24 hour period.

8. Will County is in the process of collecting the information necessary to evaluate the impact of the proposed transaction on Will County. Our Highway Department is working with Will County municipalities to develop accurate current and future average daily traffic ("ADT")

counts for each of the crossings at issue. We also are working with Will County municipalities and other local units of government to identify emergency services that may be impacted by the transaction to identify sensitive noise receptors and to collect a large amount of other information concerning safety and environmental impacts of the proposed transaction.

9. While we began our data collection efforts in earnest almost immediately after learning of the proposed acquisition, we have not assembled all of the necessary information or completed our analysis. We know the CN's acquisition will have potentially significant impacts upon Will County's transportation system and environment, but we are not yet able to identify or quantify all of the impacts.

10. The other extremely important transportation project that could be significantly impacted by the CN's proposed acquisition of the EJ&E is Metra's STAR Line project. Metra's STAR Line project essentially involves a proposed circumferential commuter line circling the Chicago metropolitan area from Lake County through Will County and into Cook County toward the state line with Indiana. The current Metra commuter rail system is the shape of the spokes of a wheel, with the Chicago central business district as the hub where all trains either commence or terminate. The Metra STAR line would run as follows:

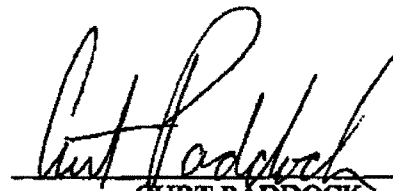
New suburb-to-suburb service would make use of 50 miles of the existing 103-mile Elgin, Joliet and Eastern (EJ&E) freight line to connect Waukegan to Gary, Indiana, via Barrington, Elgin, Aurora, and Joliet. Transfers could be made to most of Metra's existing radial lines.

New stations would potentially be located at 95th Street, 111th Street, 135th Street, Village of Plainfield (IL 59 or IL 126), I-55/U.S. route 30, Gaylord Road, Weber Road, and Collins Street (IL 171). The line would connect with the existing Joliet Union Station (Rock Island District/Heritage Corridor lines) and then continue east through New Lenox, Frankfort, and into Cook County toward Indiana.

11. The Metra STAR line would be an enormous transportation addition and benefit to Will County residents and business because it would dramatically increase their public transportation rail options. While Will County determined that it is appropriate for Metra to take the lead in evaluating the impact of the proposed acquisition on the STAR line project, Will County also firmly believes that Metra's STAR line project is a critical future component of the Chicago regional commuter rail system.

VERIFICATION

I, CURT PADDOCK, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I verify that I am qualified and authorized to file this Verified Statement.


CURT PADDOCK

Executed: January 28, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35087

**CANADIAN NATIONAL RAILWAY COMPANY AND
GRAND TRUNK CORPORATION**

-CONTROL-

EJ&E WEST COMPANY

VERIFIED STATEMENT OF SHELDON C. LATZ

1. My name is Sheldon C. Latz. I am the County Engineer for Will County, Illinois and am responsible for direction and supervision of the Will County Department of Highways.
2. I am a licensed Professional Engineer in the State of Illinois. I first received my license as a Professional Engineer in 1972 and have been licensed from 1972 to the present. I am also licensed in Illinois as a Professional Land Surveyor, which license I first received in 1974 and have held continuously since then.
3. I received my Bachelor of Arts degree from Lewis University in 1969.
4. I have been the County Engineer for Will County for the last 12 years, since 1996.
5. I began my employment with the Will County Highway Department in 1961. I was a resident engineer with the County from 1961 to 1974. From 1974 to 1975, I was the County's

Design Engineer. From 1975 to 1996, I was the Assistant County Engineer. In 1996, I became the County Engineer and have held that position to the present day.

6. My staff and I have been asked to assist in evaluating the impact of the proposed acquisition of the EJ&E railroad track for Will County by the Canadian National Railway Company and Grand Trunk Corporation ("CN"). To date, our task has been focused principally upon collecting the most current Average Daily Traffic ("ADT") counts for each of the roads crossing the Elgin, Joliet and Eastern ("EJ&E") track at the 52 public at-grade crossings in Will County.

7. We have obtained the most current ADT available from five sources. The Illinois Department of Transportation ("IDOT") has ADT information for 50 of the 52 crossings. Will County has ADT data available for the EJ&E crossings involving highways under Will County's jurisdiction. The municipalities all have ADT information for roads under their jurisdiction. The Federal Railroad Administration ("FRA") and the Illinois Commerce Commission also have ADT numbers for all the crossings, which ADT generally are identical to the IDOT ADT.

8. At my direction and under my supervision, my staff has compiled a chart that reflects the most current available ADT numbers for each of the 52 crossings. We used the IDOT ADT for consistency purposes, and because we are familiar with the IDOT methodology. For the two crossings where IDOT ADT information was not available, Center Street and Royce Avenue, we used the FRA ADT data. A copy of the chart reflecting the most current available ADT numbers for each of the 52 crossings is attached as Exhibit 2-A.

9. Included in the information reflected on the attached chart is the year in which the ADT count was made. The vast majority of the IDOT ADT data was collected in 2004. In a county

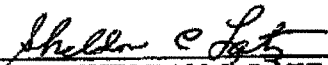
whose population is growing as rapidly as Will County, ADT counts that are four years old very likely understate the traffic on a number of the roads, in some cases by a very significant amount. Some municipalities provided the County with more recent ADT counts showing tremendous traffic increases, but we did not have time to verify the methodology and accuracy of the counts, so we have not included the more recent higher municipal ADT counts.

10. My staff and I are currently working with the Chicago Metropolitan Agency for Planning ("CMAP") and others to develop more accurate current and future ADT for the highways and roads at all 52 crossings. CMAP is the agency responsible for regional transportation planning in the greater Chicago metropolitan area. We have not received a full set of ADT projections for the vehicle traffic at the 52 crossings, but should have it available by the end of February.

11. With respect to projected ADT, we have asked CMAP to use a 20 year planning horizon. That typically is the planning horizon used for highway projects because, among others, that is the design life of a highway project.

VERIFICATION

I, SHELDON C. LATZ, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I verify that I am qualified and authorized to file this Verified Statement.



SHELDON C. LATZ

Executed: January 28, 2008

EJ&E Public At-Grade Crossings In Will County			
STREET	BRANCH	ADT	YEAR
87th St	Mainline	1,450	04
Hafenrichter Rd	Mainline	4,700	04
95th/Wolf's Crossing	Mainline	9,500	04
111th St	Mainline	8,900	04
119th St/Ferguson	Mainline	3,950	04
127th St	Mainline	4,650	04
135th St	Mainline	8,500	04
Van Dyke Rd	Mainline	5,000	04
143rd St	Mainline	4,300	04
Naperville-Plainfield Rd	Mainline	3,300	04
IL RT 126/Main St	Mainline	18,500	05
Center St	Mainline	1,150	99
Eastern Ave	Mainline	2,800	04
Lockport Rd	Mainline	8,200	04
Renwick Rd (CH 36)	Mainline	9,300	04
Essington Rd/East Frontage Rd	Mainline	3,600	04
Division St	Mainline	5,500	04
Gaylord	Mainline	4,100	04
Oakland St	Mainline	1,200	04
Woodruff Rd	Mainline	7,700	04
Washington St	Mainline	7,300	99
Rowell St (N)	Mainline	2,300	04
Mills Rd (CH 51)	Mainline	2,200	04
Rowell St (S)	Mainline	2,300	04
West Spencer Rd	Mainline	850	04
Briggs St. (CH 54)	Mainline	10,000	04
Cherry Hill Rd	Mainline	800	04
Gougar Rd (CH 52)	Mainline	5,600	04
Nelson Rd	Mainline	5,300	04
Cedar Rd (CH 4)	Mainline	6,700	04
South Spencer Rd	Mainline	1,600	04
Schoolhouse Rd	Mainline	6,300	04
116TH/Owens Rd	Mainline	650	04
Wolf Rd	Mainline	7,200	04
Center Rd	Mainline	5,600	04
Sauk Trail	Mainline	2,500	04
Pfeiffer Rd/88th	Mainline	5,600	04
Harlem Ave/ IL 43	Mainline	8,400	02

EJ&E Public At-Grade Crossings in Will County			
STREET	BRANCH	ADT	YEAR
US 30/Lockport St	Illinois River	24,400	05
Renwick Rd	Illinois River	4,300	04
Drauden Rd	Illinois River	5,200	04
Caton Farm (CH 5)	Illinois River	22,000	04
Theodore	Illinois River	5,000	04
Black Rd	Illinois River	1,450	04
US RT 52/Troy Rd	Illinois River	8,300	05
Belth Rd/Sell Rd	Illinois River	3,600	04
Mound Rd	Illinois River	400	04
County Line Rd	Illinois River	2,300	06
IL RT 171/ Collins Street	Downtown	7,600	05
Henderson Rd	Downtown	6,200	04
Royce Ave	Downtown	29	02
Division St/167th St	Romeoville	6,100	04