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Phillis Johnson-Ball
Section of Environmental Analysis
Surface Transportation Board
309 E Street, SW
Washington, D.C. 20423

Re: Environmental Filing
STB Finance Docket No. 35087

Dear Ms. Johnson-Ball:

This letter contains the comments of Will County, Illinois on the draft scope of the Environmental Impact Statement ("EIS") being prepared in connection with the application filed by the Canadian National Railway and the Grand Trunk Corporation collectively ("CN") to acquire the vast majority of the Elgin, Joliet and Eastern Railway Company (EJ&E). If approved, this transaction will have very significant environmental impacts in Will County. It, therefore, requires thorough analysis.

I. BACKGROUND FACTS

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. 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. 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.

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.

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

According to the CN's application, the EJ&E segments in Will County are expected to see a significant increase in rail traffic as a direct result of the proposed acquisition. From the East Joliet Yards and northward, 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 application also indicates that there will be concomitant increases on this line segment of 250 percent in freight tonnage and a more than 700 percent increase in hazardous materials tonnage. 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. This line segment is also projected to experience corresponding increases of 592 percent in freight tonnage and a 587 percent in hazardous materials tonnage.

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.

II. COMMENTS

A. The STB Should Take Into Account The Reasonably Foreseeable Impacts of This Transaction For The Next 20 Years

1. Applicable Legal Considerations

The National Environmental Policy Act ("NEPA") requires federal agencies to consider "any adverse environmental effects" of "major . . . actions." 42 U.S.C. §4332(c). The Council on Environmental Quality regulations, which implement NEPA and are binding on the STB, require the STB to analyze both the "direct effects" and "indirect effects" of a proposed transaction. *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.2d 520, 549 (8th Cir. 2003) (citing 40 C.F.R. §1508.8). Direct effects are defined as effects "which are caused by the action and occur at the same time and place." 40 C.F.R. 1508.8. Indirect effects are defined as effects "which are caused by the action and are later in time or place, but are still reasonably foreseeable." *Id.*¹ As the Eight Circuit explained in its recent decision vacating the STB's approval of the EIS in the DM&E Railroad case:

As in other legal contexts, an environmental effect is "reasonably foreseeable" if it is "sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision."

¹ The STB also must take into the cumulative impact of the proposed transaction on the environment. 40 C.F.R. §1508.7.

Mid States Coalition for Progress, 345 F.2d at 549, (quoting *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992)).

2. Use Of A Three to Five Year Time Frame For Evaluating The Reasonably Foreseeable Effects Of The Proposed Transaction Would Not Satisfy Any Fundamental Requirements Of An EIS

The draft scope for the proposed EIS did not identify a time horizon for purposes of analyzing the environmental effects of the proposed transaction. As noted in the Background section above, the CN's Application filed with the STB only contained rail traffic projections for a three year time frame, and virtually ignored the prospect of increased traffic from other carriers. The CN also reportedly has urged the consultant it hired to prepare the EIS, HDR, to adopt a 3 to 5 year time frame for purposes of analyzing the impacts of the proposed transaction.

The CN acquisition of the vast majority of the EJ&E, if approved, will have reasonably foreseeable environmental effects on Will County for a period of time well beyond the 3 to 5 years time frame suggested by the CN. Will County, quite frankly, assumes that the STB has no intention of adopting a limited 3 to 5 year time frame for purposes of analyzing the affects of the proposed transaction. Given the critical importance of this issue, however, Will County is compelled to observe that it believes adopting such a limited time horizon would violate one of the fundamental legal requirements of the EIS, which is not in anyone's interest.

3. The STB Should Use 20 Year Rail Traffic Projections In Evaluating The Environmental Effects Of This Transaction

The rail traffic projections will significantly affect every aspect of the environmental analysis of the proposed transaction. The greater the increase in rail traffic, the greater will be the environmental impacts on auto congestion, public safety, noise, vibration and air quality.

The CN has offered and intends to pay \$300 million to acquire the EJ&E. The CN did not make that offer based on a three or even five year planning horizon. Also, given that the alleged purpose and major transportation benefit of the proposed acquisition is to avoid the current bottleneck of traffic in central Chicago and instead reroute traffic more efficiently on the EJ&J lines, it is not logical to assume that other carriers will not be drawn to the allegedly more efficient and economical EJ&E route through Will County.

To date, the CN has resisted responding to discovery in the ongoing STB proceeding and refused to provide any other parties with the CN's rail traffic projections beyond a three year time frame. The STB should direct the CN to provide the STB with its rail traffic projections for the next 20 years. If the CN does not have the requested information, then the STB should obtain whatever projections the CN does have, and then the STB should do its own rail traffic projections. Without long-term rail traffic projections, it is not possible to do a meaningful analysis of the environmental impacts of the proposed transaction.

This is a major transaction with far reaching consequences for Will County, its local units of government, and its residents. The scope of the STB's analysis of the environmental effects resulting from the transaction should not be limited due to the intransigence or refusal of a rail carrier to provide the information necessary to complete a meaningful analysis.

4. The STB Should Use 20 Year Highway Traffic Projections In Analyzing The Environmental Effects Of The Proposed Transaction

The Chicago Metropolitan Agency for Planning ("CMAP") is the Illinois regional agency that is charged with responsibility for transportation and land use planning for the greater Chicago metropolitan seven county region. See 70 ILCS 1707/15(a). CMAP also is the authoritative source for regional data collection, analysis, forecasting and modeling. *Id.* 1707/44.

As part of its statutory duties, CMAP and its predecessor agencies prepare 20 year transportation plans for the region and prepare 20 year forecasts for auto traffic, which typically is in the form of average daily traffic ("ADT") counts and projections. The 20 year ADT forecasts prepared by CMAP and its predecessors are routinely used for a variety of purposes in the greater Chicago area, including but not limited to decisions concerning what transportation facilities should be constructed or improved, and what level of traffic they should be designed to accommodate.

At Will County's request, CMAP has prepared 2030 ADT forecasts for every road, street or highway in Will County that crosses the EJ&E at a public at grade crossing. 2030 ADT forecasts prepared by CMAP will be submitted to the STB for use in its analysis.

Will County believes that CMAP's 2030 ADT forecasts represent the reasonably foreseeable traffic growth in Will County, and should be used by the STB in assessing the environmental effects of the proposed transaction.

B. Mitigation Commitments: Tiering and STB Oversight

Will County is one of the fastest growing counties in the United States. As a result, there are reasonably foreseeable effects of the proposed transaction that may not require immediate mitigation but ultimately will require future mitigation. In these instances, Will County believes the use of tiered mitigation would be appropriate whereby the obligation to implement mitigation would be delayed until, for example, ADT at a crossing exceeded a particular threshold. However, Will County submits that the tiered approach will almost certainly require the STB oversight or enforcement beyond the standard five year time frame.

C. The Metra STAR Line Should Be Included In The Scope Of Analysis

Metra provides intercity commuter rail service in the greater Chicago metropolitan area. The Metra system currently is configured for a hub and spoke radial system, with downtown Chicago serving as the hub. The proposed Metra Suburban Transit Access Route ("STAR")

Line is a proposed line that will use EJ&E track between mileposts Nos. 7.5 and 42.5 on the EJ&E's Western Subdivision to create a circumferential route connecting Chicago area suburbs, but with connections to the radial lines to downtown Chicago. Along with a number of other units of government, Will County is very supportive of Metra's STAR Line and committed to seeing it come to fruition.

In section 2.C. of the draft scope of analysis, the STB has proposed to limit its analysis of the effects of the proposed transaction to proposed passenger rail improvements that "are planned, approved and funded." Will County agrees with CMAP's suggestion that the draft scope be revised to include the effect on rail passenger improvements that are "contained in officially adopted plans."

Given the study, work and preparation that already has occurred with respect to the STAR Line, it certainly is reasonably foreseeable that the STAR Line will be implemented if not for the proposed CN transaction, and that the proposed CN transaction would affect Metra's STAR Line. As described on pages 8 and 9 Metra's Opposition Statement and Request for Conditions that was filed in this docket with the STB on January 28, 2008, the planning process has been extensive and the first step in the engineering process to bring the project to fruition is imminent. Metra anticipates completing its alternatives analysis in 2008, which is required for Federal Transit Administration funding, and securing federal funding and approval to proceed with preliminary engineering this year. Moreover, as reflected on page 9 of Metra's January 28, STB filing, the actions of communities in which stations are to be located have involved changes to comprehensive plans, but have gone well beyond the planning stages. These communities' efforts, according to Metra, have also included new zoning, land acquisitions for stations and parking lots and in one case, construction of a new commuter lot.

The Metra STAR Line is a reasonably foreseeable project that must be factored into the STB's analysis.

D. Rail And Surface Transportation System Effects

The proposed CN acquisition of the EJ&E, and the resultant dramatic increase in rail traffic, have the potential to significantly disrupt large segments of the Will County Surface Transportation system. In order to effectively assess those environmental effects, the STB should carefully examine the likelihood of rail and auto congestion.

Sections 2.A of the Transportation section of the draft scope published by the STB indicates that the EIS will describe "system-wide and localized effects of the proposed operational changes." Section 2.E. of the draft scope indicates the EIS will address traffic delays at grade crossings due to increased rail traffic and that estimates of typical delays at grade crossings will be made for grade crossings that have vehicle traffic levels of 2500 or more ADT and where train traffic is projected to increase by three trains or more in non-attainment areas or eight trains or more in attainment areas. Will County is supportive of the STB's stated intent but has several comments and suggestions.

1. Rail Congestion

In order to effectively analyze the extent and duration of the blockage of auto traffic at at-grade public crossings, the STB will have to carefully evaluate the condition of the current EJ&E track and evaluate its ability to handle the structural stress associated with the dramatic increase in freight and traffic. Delays required for increased maintenance will have to be taken into account. The ability to coordinate the switching operations required for local shippers with the increased traffic will have to be carefully studied. The speed and frequency of switching trains being switched onto EJ&E tracks from other carriers will have to be analyzed. And to get an accurate picture of the likely impact, the STB is going to have to have meaningful rail traffic projections for the reasonably foreseeable future, which Will County contends is much longer than the three year horizon urged by the CN. Any rail congestion due to the foregoing considerations will slow the speed of trains through crossings, thereby extending the blockage time.

What all of this means is that the STB is going to have to require the CN to provide a significant amount of detail about its future operating plans. That level of detail is certainly not included in the Application or any other public filings made to the STB.

In light of two recent rulings by the Illinois Supreme Court, neither local units of government nor the State have any meaningful ability to control or even have any input into how long a railroad can block a public at-grade crossing. See *Village of Mundelein v. Wisconsin Central Railroad*, Ill. S. Ct. Dkt. No. 103543 (decided January 25, 2008); *Eagle Maine Industries, Inc. v. Union Pacific Railroad Co.*, Ill. S. Ct. Dkt. No. 102462 (decided Jan. 25, 2008). Accordingly, the analysis that the STB has indicated it will perform takes on even greater significance than before.

2. Surface Transportation Congestion

Will County agrees that the typical delays at grade crossings should be determined as part of the environmental analysis. However, Will County submits that there should be no ADT threshold, and that the STB's analysis should extend to delays at all public at-grade crossings. At a minimum, if there is to be a limit, the limit should be established using 2500 ADT for year 2030, and not merely today's ADT.

Furthermore, it is more than reasonably foreseeable that traffic will be diverted from the blocked crossings for which a grade separation is not constructed. It is a certainty. In order to address the environmental effects resulting from the blocked crossings, the scope of the EIS must be modified to include a traffic study that identifies and analyzes the routes to which otherwise blocked traffic will be diverted, the improvements that will need to be made to the alternative routes to mitigate the resultant congestion, noise and air quality impacts of the diverted traffic, and the cost of the required mitigation roadway improvements.

E. Public Safety

1. Grade Crossing Safety

Section 1.H. of the draft scope in the Safety section indicates that the EIS will consider at-grade rail crossing accident probability and safety factors with ADT levels of 2,500 or more. First, Will County believes that safety at a grade crossing is important without regard to how many vehicles use the crossing on a daily basis. Thus, Will County submits that no ADT limit is appropriate to justify refusal to evaluate the public safety impact at a given crossing. If the STB insists on using an ADT limit, then consistent with the legal requirement that the STB evaluate all reasonably foreseeable impacts, the STB should use CMAP's 2030 ADT forecasts, and not current ADT levels.

Second, while the language in the safety section of the draft scope is not explicit on this point, Will County assumes that the language used was intended to reflect a commitment to study all aspects of the public safety requirements at every at-grade public crossing within the scope of the STB's analysis. That analysis would include, for example, evaluation of the existing safety equipment and procedures at every such crossing and an analysis of the full panoply of appropriate safety mitigation options including, in appropriate circumstances, grade separation structures, installation of constant warning time circuitry and systems, and similar measures required to adequately protect public safety. Will County recommends that the draft scope be revised to specifically include the foregoing in its scope of analysis. Furthermore, as noted in CMAP's comments, the scope of the safety study should address bicycle and pedestrian safety and crossings as well as vehicular traffic.

Will County also believes that public safety impacts at the Mills Road and West Spencer Road require analysis, even if they do not meet any ADT scope limit established by the STB. These crossings merit safety analysis due to their unique configuration and poor sight lines and visibility.

2. Emergency Vehicle Response Time

The draft scope does not specifically provide that the EIS will analyze the impact of increased rail traffic and grade crossing closures on emergency vehicle response times. It is essential that the EIS analyze the impact on emergency vehicle response times of the anticipated increase in grade crossing closures. The analysis should include an analysis of the impact of every type of emergency vehicle, including but not limited to fire, police, ambulance, hospital and all other emergency vehicles that use a given crossing.

3. Increased Traffic Associated Increased Intermodal Activity

In addition to the foregoing, Section 1.E. of the Safety section in the draft scope indicates that the STB intends to address "local truck traffic increases attributable to increase intermodal activities." Will County believes that all forms of increased traffic, not just truck traffic, due to increased intermodal activities should be studied. Furthermore, the increased

traffic should be analyzed as part of an overall traffic study that accounts for all of the reasonably foreseeable impacts of the proposed transaction.

F. Public Transportation

In addition to the comments concerning the Metra STAR Line, Will County is concerned about the potential impact of the proposed CN transaction on Metra's planned Southeast Service route and any other reasonably foreseeable impact on current and future public transportation operations. Subsection B and C of the Transportation section of the draft scope indicated that EIS does intend to analyze the effect on commuter and passenger operations. Will County agrees with the draft scope language changes recommended by CMAP that would clarify that the scope would extend to the Metra STAR Line and any other reasonably foreseeable future new line or expansion.

Furthermore, as reflected in several recent studies, public transportation offers enormous environmental benefits. In the report entitled *Conserving Energy and Preserving the Environment: The Role of Public Transportation*, three very accomplished economists draw the following conclusions, as reflected on page two of the Executive Summary of the Report:

For every passenger mile traveled, public transportation produces only a fraction of the harmful pollution of private vehicles: only 5 percent as much carbon monoxide, less than 8 percent as many volatile organic compounds, and nearly half as much carbon dioxide and nitrogen oxides.

Compared to private vehicles, public transportation is reducing annual emissions of the pollutants that create smog, volatile organic compounds (VOCs) and nitrogen oxides (NOx), by more than 70,000 tons and 27,000 tons respectively. These reductions equal:

- Nearly 50 percent of all VOCs emitted from the dry cleaning industry, a major source of this pollutant;
- 45 percent of all VOCs emitted from the industrial uses of coal;
- 50 percent of NOx from the industrial uses of coal;
- more than 33 percent of the NOx emitted by all domestic oil and gas producers or by the metal processing industry.

The reduced VOC and NOx emissions that result from public transportation use save between \$130 million and \$200 million a year in regulatory costs.

Public transportation is reducing emissions of carbon monoxide (CO) by nearly 745,000 tons annually. This equals nearly 75 percent of the CO emissions by all U. S. Chemical manufacturers

Public transportation is also reducing emissions of carbon dioxide (CO₂), which contributes to global warming, by more than 7.4 million tons a year.

R.J. Shapiro, K.A. Hassett and F.S. Arnold, *Conserving Energy and Preserving the Environment: The Role of Public Transportation* (July 2002).

More recently, a report prepared by SAIC for the American Public Transportation Association entitled *Public Transportation's Contribution to U.S. Greenhouse Gas Reduction*, released September 2007, concluded that the use of public transportation significantly reduces the amount of greenhouse gas produced. Greenhouse gas, of course, refers to the gasses that are substantially responsible for global warming.

To the extent that the proposed transaction is determined to have any negative impact on public transportation, the full extent of the environmental consequences of that impact need to be addressed in the EIS.

G. Hazardous Materials, Air Quality And Noise And Vibration Impacts.

Will County is pleased that the STB intends to conduct a comprehensive analysis of the impact of the proposed transaction on such diverse but extremely important issues as hazardous materials safety, and air quality, noise and vibration impacts. CMAP has made some suggestions for improvements to the scope of the analysis in these areas and Will County agrees and incorporates those suggestions by reference as part of Will County's recommendations. Among CMAP's thoughtful comments in this case was the suggestion that emissions changes be calculated for individual counties, a suggestion that Will County wholeheartedly endorses.

The areas in Will County that municipalities have identified as being sensitive to increased noise, vibration, or both, and are adjacent to or near the existing EJ&E tracks are:

1. Plainfield
 - Walkers Grove Elementary School; 24810 W. 135th St.-west of the 135th St. crossing
 - Indian Trail Middle School; 1005 N. Eastern-north of Eastern Avenue crossing
 - Lakewood Nursing and Rehab Center; 1112 N. Eastern Ave.-north of Eastern Avenue crossing
2. Crest Hill
 - Richland Elementary School; 1919 Caton Farm-west of Caton Farm overpass
 - Joliet Montessori; 1600 Root-south of Weber road overpass

3. Joliet

- Sunny Hill Nursing Home; 421 Doris Ave.-adjacent to tracks north of Mills Road crossing
- Salem Village Nursing and Rehab Center; 1314 Rowell Ave.-north of southern Rowell Avenue crossing

4. New Lenox

- Spencer Pointe Elementary; 1721 S. Spencer-north of Spencer Road crossing
- Spencer Crossing Elementary; 1711 S. Spencer-north of Spencer Road crossing
- Spencer Trail Kindergarten Center; 1701 S. Spencer- north of Spencer Road crossing

5. Frankfort

- Hickory Creek Middle School; 22150 S. Owens-north of 116th Avenue crossing
- Future Frankfort Fire Station – Wolf Road crossing
- Main entry into historic district at Center Road crossing
- Chelsea Grammar School-approximately 0.5 miles south of tracks between Sauk Trail and Harlem Avenue crossings

These areas require special attention in the EIS analysis.

The one area that no one, including the STB, has addressed is evaluation of alternative routes for purposes for carriage of hazardous materials. It appears that the CN plans call for shipping anywhere from 300 to 500 carloads of hazardous materials annually through very heavily populated Chicago metropolitan counties and communities. *See* CN Application, Attachment A-2 to Operating Plan, at 247. It would only take one terrorist incident involving several carloads of the right hazardous materials for a potentially disastrous situation to occur. Accordingly, Will County believes that the STB's draft scope should be revised to include evaluation of possible re-routing to reduce the amount of hazardous materials carried in the metropolitan area by re-routing it to tracks that travel through less populated areas.

H. Land Use And Socioeconomics

Will County agrees with and incorporates by reference CMAP's suggested amendment to the draft scope in the Land Use and Socioeconomics Area. Will County agrees that it is important that in performing its analysis, the STB utilize existing and future (2030) land use and transportation network data contained in local government and regional comprehensive plans, the CMAP 2030 Regional Transportation Plan, Will County's Transportation and Land Use plans, other transportation and transit agency short and long term regional plans, and local transportation and land use plans.

I. Summary of Comments

In sum, Will County believes that:

- In order to properly analyze the reasonably foreseeable impacts of the proposed transaction, the STB must use 20-year rail and surface transportation forecasts.
- STB should consider tiered mitigation, which likely will require STB oversight for longer than five years.
- The scope of the EIS must include analysis of the impacts on the Metra STAR line.
- Both rail and surface transportation congestion must be carefully evaluated, and a traffic study prepared to identify the roadway improvements required to accommodate road, street, and highway traffic diverted onto other roads due to increased at-grade crossing closings and blockages.
- The public safety analysis must include an analysis of the safety and equipment at every grade crossing and not just those with a current ADT of 2500. If any ADT level is used to eliminate any crossing from review, the ADT should be based on 2030 ADT, and safety of a minimum of two of the crossings must be studied regardless of any otherwise applicable ADT threshold due to visibility concerns.
- The impact of the proposed transaction on emergency vehicle response times must be studied at every public at-grade crossing.
- The evaluation of impacts due to increased intermodal activity must include an analysis of increases in all traffic, not just increased truck traffic.
- Any impacts on public transportation must consider the enormous environmental benefits provided by public transportation.
- Will County agreed with, supports and adopts CMAP's comments on the draft scope with respect to the proposed analysis of hazardous materials, air quality, noise, vibration, land use and socioeconomic impacts.
- The EIS should analyze the possible re-routing of hazard materials carriage to less populated areas to prevent terrorist activities with potentially disastrous consequences.

III. TIME ALLOWED FOR COMMENTS ON THE DEIS

The draft scope does not address the amount of time that the STB contemplates allowing for comments on the draft EIS. In an agency scoping meeting, there was some discussion of the possibility of using the minimum 45-day comment period.

Given the very significant impacts that the proposed transaction will have on Will County, coupled with the depth and breadth of analysis that must be reflected in the draft EIS with respect to those far-reaching impacts, Will County believes that a 45-day comment period would be woefully inadequate. Will County believes that a 120-day comment period would be more appropriate.

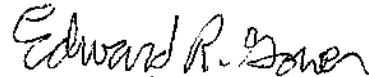
IV. CONCLUSION

Will County thanks the STB's Section of Environmental Analysis for its efforts to date in connection with the environmental aspects of this proceeding. We look forward to working with the STB and its consultant, HDR, on this very important matter and to a free flow and exchange of information and data as the evaluation of all aspects of the reasonably foreseeable impacts of the proposed transaction occurs.

We also thank you for the opportunity to comment upon the draft scope for the EIS evaluating the proposed transaction. Please feel free to contact me if any of the Will County comments require clarification.

Very truly yours,

Hinshaw & Culbertson LLP



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ERG:mr

cc: James W. Glasgow, Will County State's Attorney
Larry Walsh, Will County Chief Executive
James Moustis, Chairman of the Will County Board