

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35087¹

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION—CONTROL—EJ&E WEST COMPANY

Decision No. 23

Decided: April 20, 2010

The Board orders Canadian National Railway Company (CN) to appear at an oral hearing on April 28, 2010, at 1:00 p.m. The purpose of the hearing is for CN to explain why CN's submissions to the Board on crossing blockages of 10 minutes or more differ from data automatically reported by its own crossing gates, and why CN did not disclose that it had such information. The Board further orders CN to provide additional information pertaining to such reports, as specified below.

BACKGROUND

In Decision No. 16, served December 24, 2008, the Board approved, subject to numerous environmental and other conditions, the acquisition of control by Canadian National Railway Company (CN) of EJ&E West Company, a wholly owned, noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). See Canadian Nat'l Ry. & Grand Trunk Corp.—Control—EJ&E W. Co. (Approval Decision), FD 38057, et al. (STB served Dec. 24, 2008). As part of the Approval Decision, the Board established a 5-year monitoring and oversight period to allow the Board to examine closely various aspects of the transaction, including community concerns about post-acquisition increased delay and blockages at the numerous highway/rail at-grade crossings (places where rail lines cross streets at the same level, rather than going over or under the streets) on the former EJ&E line. As part of that oversight process, CN must file monthly status reports on certain operational matters related to the acquisition, including “the date and descriptive information about each crossing blocking occurrence on the [former] EJ&E

¹ This decision also embraces Elgin, Joliet & E. Ry.—Corporate Family Exemption—EJ&E W. Co., FD 35087 (Sub-No. 1); Chi., Cent. & Pac. R.R.—Trackage Rights Exemption—EJ&E W. Co., FD 35087 (Sub-No. 2); Grand Trunk W. R.R.—Trackage Rights Exemption—EJ&E W. Co., FD 35087 (Sub-No. 3); Ill. Cent. R.R.—Trackage Rights Exemption—EJ&E W. Co., FD 35087 (Sub-No. 4); Wis. Cent. Ltd.—Trackage Rights Exemption—EJ&E W. Co., FD 35087 (Sub-No. 5); EJ&E W. Co.—Trackage Rights Exemption—Chi., Cent. & Pac. R.R., FD 35087 (Sub-No. 6); and EJ&E W. Co.—Trackage Rights Exemption—Ill. Cent. R.R., FD 35087 (Sub-No. 7).

rail line that exceeds 10 minutes in duration.” Id. at 26. CN also must file quarterly reports on the implementation of the environmental conditions.

Several of the environmental conditions imposed in the Approval Decision address crossing blockages of 10 minutes or more. Voluntary mitigation measure 35² requires that CN “shall operate under U.S. Operating Rule No. 526 (Public Crossings), which provides that a public crossing must not be blocked longer than 10 minutes, unless it cannot be avoided” and that “[i]f the blockage is likely to exceed this time frame, then the train shall be promptly cut to clear the blocked crossing or crossings.” Id. at 63. In Condition No. 2, the Board added the requirement that, as part of CN’s quarterly environmental reports, CN shall report quarterly to the Board and communities “on the frequency, cause, and duration of train blockages of crossings of 10 minutes in duration or greater, listing each delay and including any notifications from persons affected by the blockage and the time of the beginning and end of each delay. [CN] shall summarize the cause of each type of blockage that [CN self-reports] and shall state how [CN intends] to reduce the incidence of all blockages not attributed to emergencies or weather-related incidents (sometimes called Acts of God).” Id. at 73. Condition No. 3 requires CN to distribute to communities adjacent to or intersected by the former EJ&E line the contact information for the railroad’s community liaison to ensure that the railroad is “aware of highway/rail at-grade crossing blockages lasting 10 minutes or more.” Id.

CN filed its first monthly and quarterly reports in April 2009, and has filed timely reports since that time. The Board created an oversight web site to post the monthly and quarterly reports for the public to view easily and to provide comments (www.stbfinancedocket35087.com).

Citizens and communities along the former EJ&E line began to voice concerns about the accuracy and completeness of CN’s reports. To investigate, the Board tasked its independent third-party contractor, HDR, Inc. (HDR), to review and audit information provided by CN in its monthly reports for November and December 2009. HDR was also instructed to investigate certain issues where concerns have been raised and to prepare audit reports for the Board. HDR was specifically instructed to review the information reported by CN on the number of trains operating on the former EJ&E line that caused blockages at highway/rail at-grade crossings for 10 minutes or more.³

² Applicants often propose voluntary environmental conditions during the environmental review process. Where appropriate, the Board imposes such conditions in its decision authorizing the proposal. Applicants must comply with all of the environmental mitigation the Board imposes (including both voluntary mitigation and conditions developed by the Board itself).

³ The audit also involved vehicle delay and traffic congestion at at-grade crossings; train volumes; noise and vibration caused by CN trains; operational accidents; and appropriate public grade crossing signs. In addition, the Board developed a questionnaire that was sent to all of the communities along the former EJ&E line to hear directly from them and give them the opportunity to elaborate on any particular concerns they might be experiencing relating to CN’s purchase of the EJ&E.

DISCUSSION

CN reported in its November 2009 operational report that 4 street crossing blockages of 10 minutes or more occurred because of stopped CN trains on the former EJ&E line. CN's December 2009 operational report stated that 10 street crossing blockages of 10 minutes or more had occurred as a result of stopped CN trains.

HDR's independent audit report prepared at our request, however, presents a significantly different story. The report explains that HDR discovered that many of the highway/rail at-grade crossings on the former EJ&E line acquired by CN are equipped with "Radio Transmission Units," also known as RTUs.⁴ The RTUs record when crossing gates are down. The RTUs generate a fax report that is sent directly to the railroad dispatching desk that controls the rail line. When the gate down time exceeds 10 minutes, the RTU sends a time-stamped fax to the train dispatcher. When the crossing gate is raised, the RTU sends another fax to the train dispatcher indicating that the gate has been raised, along with the time that the crossing gate has gone up. The total elapsed time is then calculated and archived.

According to HDR's report, the RTU-generated data shows 1,457 instances, involving 85 different crossings on the former EJ&E line, where the crossing signal system was activated and the gates were in the down position for periods exceeding 10 minutes in November/December 2009. The 14 instances of street crossing blockages due to stopped trains in CN's reports for November/December 2009 are included in the RTU-generated data for the same time periods. However, 1,443 street crossing blockages of 10 minutes or more listed in the RTU-generated data are not described in CN's monthly reports.

Given the availability of, and material difference presented by, the RTU-generated street blockage data, we would have expected CN to have brought that data to our attention far sooner in this process, and without the necessity of an independent audit by the Board. Consequently, the Board hereby orders CN to appear for a hearing at the Board's offices on April 28, 2010. At that time, the Board expects CN to address why it did not report the existence of this data to the Board earlier as part of its ongoing monitoring responsibilities pursuant to Decision No. 16. HDR representatives also will appear at the hearing to answer Board questions regarding its independent audit that uncovered this RTU data.

As part of our ongoing oversight and monitoring, the Board further directs CN immediately to begin including all known occurrences of street crossing blockages of 10 minutes or more in its future monthly and quarterly reports as reflected in RTU-data, in any other database, or any other source of information available to CN. CN is further ordered to resubmit

⁴ According to HDR's report, the Illinois Commerce Commission has been installing RTUs at various crossings in Illinois (including crossings on the former EJ&E line) to protect the public by improving safety. The Board first learned of the RTUs during HDR's audit; no railroad, party, or commenter indicated during the acquisition proceeding or subsequent oversight that RTUs, or any other kind of computer system to keep track of blockages at street crossings, exists.

by April 26, 2010, all previous reports that omit the RTU-data for crossings blocked by moving trains. Finally, by April 26, 2010, CN is ordered to submit in electronic format all historical RTU-data in its possession (or otherwise available to it), for any past period for which it is available, for all crossings along the acquired line. This information will be made available to the public on the Board's website.

The hearing will be open for public observation, but only the parties noted in this order will be permitted to testify. The general public is invited to file written comments by May 28, 2010, on HDR's audit and the RTU-data CN will be submitting to the Board.

A video broadcast of the hearing will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the Patriots Plaza Building's main entrance at 395 E Street, S.W. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral arguments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the hearing upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room, or in the building's main lobby.

The Board's hearing room complies with the Americans With Disabilities Act, and persons needing such accommodations should call (202) 245-0245, by the close of business on April 23, 2010.

For further information regarding the hearing, contact Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A hearing shall be held on April 28, 2010, at 1:00 p.m., in the Surface Transportation Board Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.

2. CN shall appear at the oral hearing to explain why CN's submissions to the Board on crossing blockages of 10 minutes or more differ from data automatically reported by its own crossing gates, and why CN did not disclose that it had such information. HDR representatives also will appear at the hearing.

3. CN shall immediately begin including all known occurrences of street crossing blockages of 10 minutes or more in its future monthly and quarterly reports as reflected in RTU-data, in any other database, or any other source of information available to CN.

4. By April 26, 2010, CN shall resubmit all previous reports that omit the RTU-data for crossings blocked by moving trains.

5. By April 26, 2010, CN is ordered to submit in electronic format all historical RTU-data in its possession (or otherwise available to it), for any past period for which it is available, for all crossings along the acquired line.

6. Interested parties have until May 28, 2010, to submit comments on HDR's audit and the RTU-data.

7. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.