



May 6, 2009

Mr. Matthew T. Wallen, Director
Office of Public Assistance, Government Affairs & Compliance
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Dear Mr. Wallen,

We are submitting these comments to you on behalf of the TRAC Coalition in response to Canadian National Railway's (CN's) April 13 report providing its first STB-required monthly operational difficulties summary relating to CN's acquisition of the EJ&E rail line. While we are grateful for the STB decision that mandates these reports as a condition of its December 24, 2008 approval of the transaction, we are concerned that the reporting methodology seems quite flawed as there is no auditing provision required by the mandate that enables your office (or the general public) to know whether you have received a full and substantive report on accidents and incidents related to CN's operation of the EJ&E rail line. Based on this initial CN report you have received detailing operational incidents for February and March of this year, we have compelling evidence indicating that you are receiving only a partial and biased report that attempts to paint an overly rosy scenario by omitting key incidents data.

As you may know, TRAC is the coalition of municipalities and counties in the greater Northeastern Illinois region that joined forces in 2008 to represent and defend our combined interests when faced with CN's purchase of the EJ&E rail line that runs in an arc through all of our communities. Current TRAC members include: Aurora, Barrington, Barrington Hills, Barrington Township, Bartlett, DuPage County, Hawthorn Woods, Lake Zurich, Naperville, New Lenox, Plainfield, Wayne and Will County. Other communities that have negotiated a mitigation agreement with CN are prohibited by the terms of their agreements from participating in TRAC's ongoing monitoring of CN's operations and mitigation efforts, but many of them were initially active members of the TRAC Coalition and continue to have a keen interest in managing the impacts of this transaction in our region.

While TRAC lacks the resources to design a methodology for collecting comprehensive operational data detailing difficulties with CN's operations on the EJ&E, we have received resident complaints by setting up a complaint form on the TRAC website at www.fightrailcongestion.com (that directs complaints simultaneously to both TRAC and the STB) in addition to receiving periodic complaint calls from irate citizens at the governmental offices of impacted local communities. The following information/data that was omitted by CN in its April 13 report to you has been collected via these avenues, and as such, cannot be viewed as an exhaustive listing of incidents that CN omitted.

Details on Operational Issues Omitted in the CN Report to the Board:

Grade Crossing Delay Omissions:

In its report to you, CN detailed 50 crossing delays of at least ten minutes through the course of February and March 2008. In the cover letter explaining these incidents, CN states that *“many of the reported blockages were a result of unanticipated delays in clearing trains to proceed.”* We find it difficult to understand why CN (or the STB) would view these incidents as “unanticipated” when numerous filings (including that of the Chicago Metropolitan Agency for Planning – CMAP) throughout the review proceedings pointed out that integrating CN freight movement with existing commuter rail and non-CN freight movements at intersecting lines would be problematic, if not impossible. Since CN has admitted to 50 crossing delays for the first operating period that, in part, actually preceded the commencement of new CN freight traffic running on the EJ&E, it is inevitable that this problem will only worsen as CN ramps up freight traffic on the line.

In terms of delay incidents on the EJ&E, there were numerous February and March incidents not reported by CN. According to the Wayne Police Department, the following NON-REPORTED incidents occurred causing the use of its police personnel to direct traffic:

- February 23 – two incidents at Army Trail Road; the first at 12:55 pm requiring police intervention for 25 minutes and the second at 4:30 pm for at least 10 minutes. Firsthand witness input provided details about the latter event, and indicates that CN was fully aware of this problem and should have reported it to you in its operational report: *“The gates would go down and stay down, no train would come, the gates would go up and then down again. Witness finally drove around the gates after the several cars in front of him turned around. He said cars were backed up on Army Trail as well as Powis Road where it intersects with Army Trail. This occurred at roughly 4:15 pm. One of the police officers was very frustrated and said that this had been happening all day and expressed the feeling that if they are going to increase traffic on this line, they should have a gate keeper that is closer than 2 hours away.”*
- March 13 – an Army Trail Road delay lasting for 20 minutes.
- March 26 – an Army Trail Road delay at 1:15 pm lasting for 16 minutes.

We also received the following information about 14 long crossing delays from the TRAC website complaint mechanism form that were all omitted from CN’s first monthly operational report:

- March 4 – two delays reported (at 8:20 am and again at 4:30 pm) in the Naperville/Aurora area with crossings blocked at Hafenrichter Rd, Normantown, Wolf’s Crossing, Montgomery Rd, 111th, 127th, 135th – *“Last night on my way home I had to wait for 30 cars to make a left, at the Normantown\91st street intersection. I sat for 10 solid minutes. Then decided to make a right instead of waiting any longer. Then sat in another back up at Normantown\Keating Rd. Needless to say there is absolutely NO way around this huge inconvenience!!!! WE NEED OVER PASSES OR UNDER PASSES!!! THIS IS RIDICULOUS.”*
- March 5 -- delay in Aurora at North Aurora Road at 8:35 am – *“Significant rail delay while a train SLOWLY crossed through the street. Sat in park for at least 15 minutes.”*
- March 7 – delay in Aurora at Ogden Avenue at 2:05 pm – *“Long delay, 10 min on a Saturday when we had to be at a school activity! This is wrong!! This was a long train, coal load and blocked a lot of traffic! We were going to a school activity, and this made us late. I don't appreciate this on a daytime hour and at peak!”*
- March 10 – delay in Plainfield at 127th Street at 7:40 am – *“Today I waited for 10 minutes and was late for work again! This is ridiculous! I don't think it is necessary to run these extremely slow trains during rush hour when people are trying to get to work.”*

- March 10 – delay in Aurora at Normantown Road at 4:44 pm – *“Come on!!! Over 10 minutes to wait for a train to pass? And it STOPPED!!!!”*
- March 11 – delay in Deer Park at Cuba Road at 5:30 pm – *“It is rush hour and a train 150 cars long passed through town. I thought the plan was for CN to be careful of rush hour and travel during non-peak hours??? It took a min of 15 minutes for it to pass!”*
- March 13 -- delay in Aurora at Liberty at 5:55 pm – *“Freight train passing took about 10-15 minutes going at 2 miles per hour jammed traffic on this single lane road.”*
- March 14 -- delay in Deer Park at Cuba Road at 1:45 pm – *“Very, Very slow train. Train had CN and Herzog cars on it.”*
- March 15 -- delay in Lake Zurich at Ela Road at 2:00 pm – *“An extremely slow moving freight train blocked the Ela Road intersection for over 8 minutes. This also created residual delays onto US route 12. This is troubling because it is a Sunday afternoon, there is very light Metra traffic. There should be no interference with other train lines on a Sunday. Based upon comments of people associated with CN, they indicated that communities that have fought the transaction may have engineers take pride in the unnecessary blockage of intersections. This shows there is absolutely no coordination between rail lines in the Chicago area. These companies do not work with communities or each other to have smooth operations.”*
- March 18 -- delay in Mundelein at Rte. 60 at 3:22 pm – *“I had to wait for a train from 3:22 pm until 3:36 pm. THIS IS ALMOST 15 minutes! This is a quarter of an HOUR! This is UNACCEPTABLE! And the train was going 3 miles PER HOUR! This is RIDICULOUS! What if I had someone in the car that I was trying to get to the hospital!!!!!!????? THIS IS UNBELIEVABLE! Why are you hauling freight at such a busy time in the afternoon? Do you have ANY IDEA how long the backup was that this train created???? These trains should be scheduled to run when the impact is the LEAST FELT, like 2 in the morning! I am FURIOUS!”*
- March 19 -- delay in Aurora at Ogden Avenue at 6:50 am – *“Going to work turning onto Liberty from Eola with increased and slowed traffic. Train was dead stopped so all cars were turning around. Arrived to work at 7:20 a.m. I have a 7:00 a.m. start time.”*
- March 25 -- delay in Aurora at Liberty at 5:00 pm – *“Train is too long and so many trains come across the city. I have to wait at least 15 - 25 minutes for the train to get through.”*

Accidents & Incidents Omission:

CN felt it was valuable for the Board to be aware of a photocopier accident involving an employee trying to clear a paper jam that resulted in a laceration of the employee’s hand. Therefore, we find it inconceivable that CN failed to report a March 17 fire incident that took place along the EJ&E that was caused by a sparking locomotive and resulted in a brush fire that took three hours to control by fire personnel from Plainfield, Lockport Township, Channahon, Naperville, Oswego, Troy, Romeoville, and Bolingbrook (press report attached.) This accident resulted in the burning of a building, several trailers and a vehicle, but was not deemed important enough for CN to report it as an accident. We strongly suggest that the Board make inquiries into this incident to determine the circumstances surrounding the equipment causing the fire and whether a full inspection of the locomotive was done to insure that it is safe to operate.

Other Operational Problems Not Detailed by CN:

In the Decision approving this transaction, the Board stated that the purpose for CN’s monthly operational reporting is to *“closely monitor whether applicants have adhered to the various representations made on the record in this proceeding.”* That being the case, TRAC questions why the reporting requirements involve only the submission of information about train volumes, accidents and incidents, and street crossing blockages. In just the first month of CN operations on the EJ&E, TRAC has collected a series of complaints involving CN’s flagrant and continuing disregard of quiet zones, excessive noise and vibration, excessive idling, as well as apparent structural defects on the EJ&E rail line or rail bed.

For the reporting period between March 2 (when TRAC launched its on-line complaint mechanism) and March 31, TRAC received 101 specific reports detailing 114 operational problems (please note that complaint issues exceed total number of complaint reports as some complaint reports registered more than one issue):

Bartlett – 5 total issues reported: 3 crossing delays; 2 excessive noise

Matteson/Park Forest – 1 issue reported on excessive idling

Aurora – 26 total issues reported: 21 crossing delays; 3 excessive noise; 1 excessive vibration; 1 drop in property value

Frankfort – 7 total issues reported: 1 excessive idling; 4 excessive noise; 2 excessive vibration

Normantown – 1 issue reported on crossing delay

Deer Park – 17 total issues reported: 9 crossing delays; 2 excessive noise; 5 disregard for quiet zone; 1 excessive vibration

Naperville/Aurora – 1 issue reported on crossing delay

Wayne -- 2 total issues reported: both crossing delays

Lake Zurich – 7 total issues reported: 3 crossing delays; 2 excessive noise; 1 excessive vibration; 1 CN failure to start work on safety camera mitigation

Joliet – 1 issue reported on excessive noise

Hoffman Estates – 7 total issues reported: 3 excessive noise; 3 disregard of a quiet zone; 1 excessive vibration

Barrington Hills – 5 total issues reported: 1 excessive idling; 1 excessive noise; 2 disregard of a quiet zone; 1 excessive vibration

Barrington – 22 total issues reported: 1 crossing delay; 1 excessive idling; 5 excessive noise; 12 disregard of a quiet zone; 3 excessive vibration

Plainfield – 11 total issues reported: 2 crossing delays; 3 excessive noise; 3 disregard of a quiet zone; 3 excessive vibration

Mundelein – 2 total issues reported: both crossing delays

In addition to the operational complaints detailed above, there were two complaints on track or track bed conditions that need further investigation by the proper authorities:

- March 8 report filed from Elgin: *“Due to very rainy conditions on March 7, 2009 and March 8, 2009, there is flooding and moving water along the base of rail bed. The rail bed is built up with gravel and earth, but the fast moving stream of water is causing erosion, and eventually this section of rail will become unstable. Water is an ongoing significant problem because the rail line is at the base of a sloping hill, and there are natural springs in the area. No one from CN has done an inspection or maintenance. This is an accident waiting to happen. And if it does, I will have a train falling over into my backyard, and because we have a private well, the water supply of my entire neighborhood is at risk.”*
- March 17 report from Lake Zurich: *“The EJ&E railroad bridge that goes over Rand Road in Lake Zurich is in serious need of repair. Prior to CN, only a few trains a day crossed it. However, today alone I have already*

seen AND heard 4 (it is noon)! This bridge has large chunks of concrete missing and a friend recently had a large piece fall on her car and damage it. With the increased train traffic, I fear the worst. This bridge crosses over a MAJOR roadway and could cause significant damage. It needs to be repaired immediately if CN thinks they will be driving more, longer and heavier trains over these tracks!"

On March 19, TRAC was notified by a concerned resident of the region about an ongoing idling problem near an elementary school in Naperville -- District-204 Peterson Elementary School. The school is located very close to the EJ&E tracks near 103rd and Normantown Road in Naperville. The track running from Wolf's Crossing to 111th is double tracked and long enough for CN trains to idle without impacting traffic crossings. The Board needs to intervene quickly to instruct CN to stop this practice to prevent the children at the school from developing the known respiratory ailments associated with frequent and repeated exposure to diesel emissions.

Suggested Remedy to Prevent Further Reporting Deficiencies:

The STB mandated monthly operating reports expressly for the purpose of assessing *"the effectiveness of the various conditions"* it has imposed. The Decision explicitly states that the Board *"is mindful that operational difficulties can arise when implementing transactions of this scope. Therefore, approval of the transaction will be conditioned upon a monitoring and oversight condition. If operational problems arise after consummation of the transaction, this oversight condition should provide a fully 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 following the transfer of control."*

The failure of CN to live up to its obligations to the STB by compiling an operating report that provides only partial and misleading information on its *"operational difficulties"* along the EJ&E, indicates that CN is frustrating the Board's clear interest in maintaining oversight of implementing problems along the line. TRAC respectfully requests that the Board take quick and aggressive action to insure that this state of affairs is not allowed to continue unchecked. Specifically, we request that the Board -- based on the evidence that TRAC has provided -- impose additional conditions to alleviate the inherent flaws with the current monitoring scheme. In practice, it does not appear to make sense to institute a monitoring program that allows the monitored entity -- CN in this case -- to take the lead in monitoring its **own** behavior.

TRAC realizes that the Board may be limited in the human and financial resources it can dedicate to monitoring the operations of the EJ&E as well as the implementation of mitigating conditions along the line. However, we believe that given the flagrant omissions contained in its first report it is reasonable for the Board to mandate that CN underwrite the full costs associated with the appointment of an independent monitor (with investigative subpoena powers) for the duration of the monitoring oversight period. This will enable the Board and the general public to have a higher level of confidence that the information and data provided to the Board in the monthly operating and quarterly environmental reports is accurate and fully inclusive. Most importantly, we urge the Board to involve all communities along the EJ&E (including those communities that have reached a negotiated mitigation agreement with CN) in developing an acceptable monitoring program in concert with the independent monitor.

While we understand that the independent monitor remedy for the reporting flaws we have enumerated may be unprecedented, this acquisition will have an almost unprecedented impact on rail traffic volumes in our region and thus requires an unprecedented level of scrutiny. Indeed, there is only one other rail merger (Conrail) approved by the Board within the last decade that has resulted in an increase of this magnitude in terms of the

number of trains that will run through the TRAC communities. Given the Board's explicit recognition that the transaction will impose substantial environmental costs on the TRAC communities, it is imperative that the Board take full advantage of the oversight function it reserved for itself in this transaction so as to ensure that the TRAC communities actually realize any benefit whatsoever from the Board's conditions. In this regard, the immediate adverse impact of only a tiny increase in the number of trains is an indication that the conditions will not adequately address the impact that will flow from the ultimate shift of CN trains to the EJ&E tracks.

An additional factor the Board must consider in determining how best to monitor CN's operations on the EJ&E, is the reality that its deceptive under-reporting is not a unique incident in CN's record. CN has had a history throughout the regulatory proceedings for this transaction of making expedient statements to achieve its goals. Most recently in its March 27 filing before the District of Columbia Court of Appeals, CN has stated that it plans to appeal the STB Decision on this transaction based on questioning whether the STB has **any** authority to mandate conditions that would mitigate environmental harms caused by its operations. This appeal issue is in direct contradiction to what CN told Congress when its chief executive, Mr. Hunter Harrison, appeared before the House Transportation and Infrastructure Committee on September 9, 2008 to testify against H.R. 6707, the "Taking Responsible Action for Community Safety Act." At that time, he is on record in stating, "**there can be conditions placed that says you can only merge if you will mitigate, if you will do the following.**" It appears to TRAC that CN feels fully empowered to say whatever it wants in any given circumstances if its feels it can further its business objectives.

If the Board fails to forcefully check CN's misleading reporting at this early juncture, it leaves itself open to the criticism that its oversight conditions were nothing more than window dressing meant to appease the transaction's opponents. On behalf of the millions of people who are impacted by the operations on the EJ&E, we hope that this is not the case. We look forward to hearing from you about how the Surface Transportation Board plans to deal with the flaws inherent in the current monitoring program that is controlled in totality by CN. We believe that forceful action by the Board to appoint an independent monitor is crucial at this juncture.

Sincerely,



Karen Darch
TRAC Co-Chair & President, Barrington



Tom Weisner
TRAC Co-Chair & Mayor, Aurora

cc: The Honorable James L. Oberstar
The Honorable John L. Mica
The Honorable Jerry F. Costello
The Honorable Daniel Lipinski
The Honorable Phil Hare
The Honorable Timothy V. Johnson
The Honorable Aaron Schock

The Honorable Richard J. Durbin
The Honorable Roland Burris
The Honorable Ray LaHood
The Honorable Melissa L. Bean
The Honorable Judy Biggert
The Honorable Bill Foster
The Honorable Debbie Halvorson
The Honorable Mark Kirk
The Honorable Donald Manzullo
The Honorable Peter J. Roskam

Trains sparked brush fires

March 18, 2009

By [BRIAN STANLEY](mailto:bstanley@scn1.com) bstanley@scn1.com

CREST HILL — The train kept a-rollin'... and apparently burning, too.

(The Herald News)

Brush fires that burned in Crest Hill and Plainfield on Tuesday afternoon were likely caused by sparks from a freight train, initial reports indicate.



Crest Hill police direct traffic at the intersection of Weber and Caton Farm roads on Tuesday after a series of grass fires broke out within a mile of each other.

(Liz Wilkinson Allen/Staff Photographer)



A Lockport Township Fire District firefighter drags a hose to another area of a grass fire along Caton Farm Road near Weber Road on the far west side of Crest Hill Tuesday afternoon. The fire spread to some nearby buildings.

(John Patsch/Staff Photographer)

"It looks like the fire was caused by a 'hot train' coming through," Plainfield Assistant Fire Chief Jon Stratton said after the blaze at 143rd Street and Van Dyke Road was contained. "We've had this before from the combination of dryness and wind."

Before the train reached Plainfield, Lockport Township firefighters were called around 2:30 p.m. to a brush fire that took three and a half hours to bring under control.

"We had fire stretching for about two miles from Oakland Avenue to Gaylord Road," Assistant Chief Dave Skoryi said.

The fire ran along the Canadian National rails, making it difficult to fight.

"It was just so long, and some spots were hard to access," Lockport Battalion Chief Dave Jerling said.

Jerling said he spoke with Canadian National Railway officials who confirmed the trains had sparked the blaze.

"They had two locomotives going through sparking," he said. CN recently purchased the rails from the Elgin, Joliet and Eastern Railway company and began bringing additional trains through the area just days ago.

"It spread to one structure, a commercial building on Caton Farm Road that was storing some construction equipment," Skoryi said.

A pole building and several trailers owned by Foschi Excavating burned. A vehicle in a building was also damaged.

The fires filled the sky with black smoke on an otherwise beautiful and unseasonably warm day.

Both brush fires were box alarms, which called on other departments to assist in putting them out. Lockport Township was assisted by Channahon, Troy, Romeoville, Bolingbrook and Plainfield, which brought a truck designed for fighting brush fires.

When the second fire started, Plainfield got assistance from Naperville and Oswego brush trucks.

There were no reported injuries.