



**Surface Transportation Board**  
Washington, D.C. 20423-0001

*Office of Public Assistance, Governmental Affairs,  
and Compliance*

May 14, 2009

Ms. Karen Darch  
Co-Chair & President  
TRAC

Mr. Tom Weisner  
Co-Chair  
TRAC

Dear Ms. Darch & Mr. Weisner:

Thank you for your comments on CN's first monthly status report on operational matters related to CN's acquisition of the Elgin, Joliet & Eastern Railway Company (EJ&E), as required in STB Finance Docket No. 35087, Canadian National Ry. and Grand Trunk Corp. - Control – EJ&E West Co. As you know, the Board established a five-year oversight and monitoring period for this acquisition to allow it to closely examine various aspects of the transaction. As part of that process, CN must file monthly status reports on operational matters and quarterly reports on the implementation of the Board's environmental mitigations. During this oversight period, the Board will rely on information provided by organizations such as yours to audit the reports from CN. The Board continues to take very seriously concerns raised by the communities impacted by the transaction.

Let me turn to some of your specific concerns. You suggest that CN's reporting methodology is flawed and that the Board has no way of auditing the monthly submissions to know whether we have received a full and substantive report on accidents and incidents. I can assure you that the Board is crosschecking the monthly reports with the separate accident and incident reports that CN is required to submit to the Federal Railroad Administration (FRA) to ensure that all necessary information is reported. The Board also has the power to compel the production of books and records if necessary to determine compliance. A number of the incidents set forth in your letter, such as the problem with malfunctioning crossing gates that lowered and stayed down even though there were no trains, were not items that CN is required to report to the Board. But the Board is continuing to analyze the information contained in your letter. Should it become apparent that CN's operations reports are incomplete, the Board can reopen the proceeding to issue more stringent reporting requirements or take other appropriate action.

You also express concerns regarding possible grade-crossing-delay omissions in CN's first monthly report. The Board also requested further information from CN about crossing delays after receiving CN's first monthly report. CN itself stated that it was not satisfied with its performance. The Board will be monitoring the delay issue closely and expects CN to work to improve its performance.

Your letter suggests that the Board should be collecting data on quiet zones, excessive noise and vibration, excessive idling, and structural defects on the rail line. Information on these types of issues will be provided in the quarterly environmental reports CN must file detailing its progress in implementing the Board's environmental mitigation conditions. CN is only in the early stages of implementation of this acquisition. But, as the Board stated in its mitigation condition number 72, "If there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions, and upon petition by any party who demonstrates such material change, the Board may review the continuing applicability of its final set of mitigations, if warranted."

Your letter also includes many comments that have been collected on the TRAC website and forwarded to the Board's Office of Public Assistance, Governmental Affairs, and Compliance for review. When necessary, Board staff contacts the relevant commenter for additional information and then works with CN and/or the FRA to address the concern. As you indicate, most of these comments concern quiet zones, noise and vibration, and safety, which CN is reporting in its quarterly environmental reports.

Your comments conclude by recommending that the Board mandate CN to underwrite an independent monitor for the duration of the oversight and monitoring period. The Board required CN in mitigation condition number 73 to fund a third-party contractor to assist in the monitoring and enforcement of mitigation measures. Should the Board determine that it lacks the appropriate resources and tools necessary to effectively monitor and enforce the required mitigation conditions, it can address that through additional conditioning. My office will continue to monitor CN's progress.

Again, thank you for commenting on CN's first monthly status report on operational matters. If you have any additional questions please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'MTW', with a long horizontal flourish extending to the right.

Matthew T. Wallen  
Director