



June 26, 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) May 11 and June 10 monthly operational reports that summarize the operational difficulties relating to CN's acquisition of the EJ&E rail line for the months of April and May 2009. While we were encouraged by your May 14 letter to the TRAC Coalition to hope that the monitoring process by CN would prove more accurate with time, we regret to inform you that, once again, the TRAC website's complaint mechanism provides compelling evidence that CN is failing abysmally in providing a full and complete report of the problems its operations are causing in the communities that are home to the EJ&E rail line. We strongly urge you to take a more active role in the report auditing process as it appears that CN has become even more emboldened in its omission of key data in its reporting to the Board. In fact, TRAC believes it is now quite obvious that the Board should "reopen the proceedings to issue more stringent reporting requirements" – the possibility of which you had mentioned in your May 14 response to TRAC.

Grade Crossing Delay Omissions:

For the months of April and May, CN reported a total of only 25 grade crossing delays along the EJ&E. These events – with one exception – fail to mention the 42 incidents that were registered by community members on the TRAC website and simultaneously forwarded to the Board's Office of Public Assistance, Governmental Affairs, and Compliance for review. We fail to see how the Board can get a good idea of how its suppositions from the environmental review approving this Decision are meshing with reality if this is allowed to continue. Only 27.5% of public road to rail crossings along the EJ&E are grade-separated, while a full 58% of CN's public rail to road crossings within the EJ&E arc have a grade separation in place. As a result, it is imperative that CN be required to report any grade crossing delay due to its operations along the EJ&E that creates vehicular traffic logjams lasting longer than 10 minutes. If CN is not in the position to collect such data in any encompassing and verifiable way, then it should be required by the Board to fund an independent data collection mechanism that has that capability.

To provide you with a sense of what the Board Decision allowing CN to increase freight volumes on the EJ&E has meant to the region, we have included the verbatim comments from four different citizens about just one delay that took place on April 13 during morning rush hour in Aurora. Please note that CN failed to mention this incident in its relevant monthly operational report to the Board.

- **Complaint 1 detailing 7:50 to 8:20 am time frame at Ogden/Route 34:**

“Roadways were blocked while trying to make passage east bound on Route 34. I was so far back in the line that I was not able to see if there was a train passing or not, however the roadways were definitely unsafe! There was a private ambulance that eventually drove into oncoming traffic to attempt to pass the cars waiting in line at this crossing! After waiting another 10 minutes after the ambulance drove past, cars/trucks began to drive over the center median (the kind with grass and two curbs, not meant to be driven over) to re-route. I eventually had to do the same. Something must be done to relieve traffic congestion, people are going to get hurt!”

- **Complaint 2 detailing 8:45 am time frame at Ogden/Route 34:**

“It had happened to me once already. I was 30 minutes late to open the store where I work. Today luckily I was not opening but I was 15 mins late. I started to go down Ogden and it was backed up so I already knew why because I had already seen it before. So I turned around and went down Eola, well so did everyone else. I understand a little traffic every now and then but the amount of traffic that accumulates is just ridiculous. This may cost people their jobs. Which is not something you would like to see happen during these tough economic times.”

- **Complaint 3 detailing the 8:40 am time frame at Liberty Street:**

“I was stopped at the railroad for over 10 minutes because the lights were flashing and the stick came down, but no train ever came. I made a detour that was packed with other detour traffic, and finally passed over a bridge about 10 minutes later due to backed up train detour traffic, even though it was just one block, and noticed that the cars were still held up due to the train crossing being closed to a train that still had not come.”

- **Complaint 4 detailing the “7:45 am till sometime after 9:00 am” time frame at Ogden Avenue:**

“I and many others were literally stuck on Ogden between Frontenac and Eola for over an hour. There was nowhere to turn around. There was no police presence for an hour. People started driving over the median to get out of there. I was over an hour late for work. How about some compensation for that! This was ridiculous, uncalled for, a severe waste of time and GAS.”

TRAC finds it incredible that CN is not required to report a grade crossing delay incident of this nature that completely snarled traffic at crossings a mile-and-a-half apart in one community along the EJ&E for over an hour, as such an incident is a true reflection of the environmental impact CN’s operations are having along the EJ&E. Given that CN is currently running only two additional trains along the EJ&E rather than the full level of anticipated traffic, we are certain that the frequency of such problems will be compounded once the economy recovers.

Miscellaneous Operational Problems Not Detailed by CN:

In addition to the incident noted above, for the reporting period between April 1 and May 31, TRAC received 158 specific reports detailing 177 operational problems in 20 separate communities in the region. Please note that complaint issues exceed total number of complaint reports as some complaint reports registered more than one issue. While you had mentioned in your May 14 letter to TRAC that many of the issues we reported in our correspondence to your office about CN’s first operational report would be detailed in CN’s next

quarterly environmental report that is due in July, we reviewed CN's first environmental reported (dated April 10, 2009) and failed to see how CN's spreadsheet provided the Board with that information. Therefore, we have again decided to provide a summary report on information relating to violation of quiet zones, excessive noise and vibration, excessive idling, structural defects on the rail line, and other miscellaneous complaints in this correspondence to the Board. Finally, we remind the Board that because the data is based only on registered TRAC website complaints, it cannot be viewed as a comprehensive detailing of CN operational problems along the EJ&E as some additional incidents may have gone unreported.

Deer Park – 15 total issues reported; 5 quiet zone violations; 5 grade crossing delays; 1 excessive vibration; 4 excessive noise

Naperville – 4 total issues reported; 3 quiet zone violations; 1 excessive idling

Bartlett – 11 total issues reported; 1 quiet zone violation; 7 grade crossing delays; 3 excessive noise

Unincorporated Will County – 3 total issues reported on excessive noise

Frankfort – 13 total issues reported; 2 excessive idling; 1 excessive vibration; 9 excessive noise; 1 loss of property value

Wayne – 3 total issues reported; all 3 grade crossing delays

Lake Zurich – 5 total issues reported; 1 poor bridge condition; 1 grade crossing delay; 2 excessive vibration; 1 excessive noise

Joliet – 3 total issues reported; all 3 excessive noise

Barrington – 16 total issues reported; 2 quiet zone violations; 4 grade crossing delays; 1 excessive idling; 1 Metra train delay; 1 excessive vibration; 7 excessive noise

Barrington Hills – 5 total issues reported; 1 quiet zone violation; 1 excessive idling; 1 excessive vibration; 1 fumes; 1 excessive noise

Mundelein – 1 issue reported on a grade crossing delay

Elgin – 3 total issues reported; 1 excessive idling; 1 excessive vibration; 1 excessive noise

West Chicago – 1 issue reported on a grade crossing delay

New Lenox – 6 total issues reported; 1 quiet zone violation; 2 grade crossing delays; 3 excessive noise

Plainfield – 37 total issues reported; 21 quiet zone violations; 2 poor track conditions; 4 grade crossing delays; 1 poor bridge condition; 5 excessive vibration; 4 excessive noise

Crest Hill – 2 total issues reported; 1 excessive idling; 1 excessive noise

Park Forest – 1 issue reported on excessive noise

Aurora – 30 total issues reported; 5 quiet zone violations; 4 poor track conditions; 11 crossing delays; 1 Metra delay; 8 excessive noise; 1 loss of property value

Hoffmann Estates – 17 total issues reported; 3 grade crossing delays; 1 excessive idling; 4 excessive vibration; 8 excessive noise; 1 loss of property value

Long Grove – 1 issue reported on excessive idling

Based on the complaint information we are receiving on the TRAC website, we are beginning to see a pattern of operational problems reported by people in those communities that have not entered into a negotiated mitigation agreement with CN or in neighborhoods that have been particularly vocal in logging complaints against CN on the TRAC website:

- **Aurora** – May 6: *“I’ve just had to replace the rear end part of my car - totaling \$1000 because of the crossing in Aurora at Ogden. This crossing must be fixed it is a danger to the public!”*
- **Plainfield** – April 29: *“The tracks at 135th were closed to fix the hazard it was. It was closed for 5 days and 2 days later it is just as bad as it was before if not worse. How do they shut the street down for 5 days and it is already in need of repair already?? My 11 year old could have done better!!! FIX THE TRACKS YOU BOUGHT AND FIX THEM CORRECTLY!!!!!!!!!!”*
- **Barrington** – April 16: *“A CN train arrived last night at 7PM, stalled, and ran all night. It is now 9AM and it is still here next to the Arbors in Barrington. It has kept us all awake and breathing polluted air for 13 hours.”*
- **Bartlett** – April 1: *“At grade crossing blocked with EJ&E crane. Work could have been performed without blocking crossing. Callous and irresponsible attitude of railroad company.”*
- **Barrington** – April 27: *“Metra Union Pacific Northwest Line Train #631 forced to stop to wait for crossing of CN train on EJ&E track.”*
- **Aurora** – April 14: *“Train slows almost to a complete stop, then engineer slams it into reverse causing still moving cars to bang/slam together creating a thunderous roar and shaking of the area, then the engineer slams it into forward, causing still moving cars to bang/slam together, creating a thunderous roar and shaking of the area. This yanking of the cars back/fourth while in motion continued several times, and occurred 2 days in a row.”*
- **Plainfield** -- May 7: *“Incident occurring at 2 clearly marked quiet crossings, engineer clearly disregards both crossings by blasting a short then loooong then several moderate blasts each at 135th and 143 St crossings. Dogs were barking all over and wild birds went scurrying from trees into the night sky. This sucks, CN is out to destroy us and slowly but surely they are succeeding. Never thought I would want to move from my home and neighborhood, I think the time has come.”*
- **Plainfield** – March 27: *“My commute due to the congestion caused by "snail" trains has doubled because of traffic around 3:30 p.m. This makes me want to leave Plainfield!!”*
- **Wayne** – May 4: *“A stopped CN train blocked the Army Trail Road crossing for so long, the west bound traffic backed up to Munger Road (almost a mile). My son's school bus was stuck for about 30 minutes.”*
- **Deer Park** – May 11: *“Total 10 minute delay-first part of train passed very slow for 5 minutes; then train stopped for 5 minutes AND this happened during evening rush hour.”*
- **Naperville** – April 30: *“At 2:30 am this morning, I was awoken by several long blasts from the CN rail train. About 15 minutes later, what sounded like a second train going the other direction sounded 6--7 long blasts from their horn. This is supposed to be a quiet zone. No reason for this at this time of the night.”*

- **Barrington** – April 17: *“At 4pm a long freight train crossed the Lake Cook Rd crossing in Barrington. Occurring right at rush hour, this train caused a massive traffic backup, all the way to Rte 59 (Hough St.) Many drivers tried to go around the backup by driving onto side roads, creating a traffic mess. There were also many pedestrians leaving Barrington High School trying to navigate through this situation.”*

While we do not want to believe that these incidents are retaliatory in nature, when there seems to be no rational operating purpose served by them or the CN actions are in direct contravention to the mitigation measures CN was mandated to abide by in the Board’s Decision approving the transaction, we are forced to raise the question to the Board. We respectfully request that the Board investigate this suspicious pattern of retaliation on CN’s part and let us know what steps will be taken to prevent its continuance.

Failure of the Board to Enforce Meaningful Monitoring of CN Operations:

While we were appreciative of your May 14 letter to the TRAC Coalition in which you stated that during the oversight period, “the Board will rely on information provided by organizations such as yours to audit the reports from CN,” as it acknowledges TRAC’s efforts to provide accurate data to the Board, we are disturbed that such a position burdens impacted communities with the ongoing cost of that responsibility. Unlike CN – that will reap bottom line benefits as a result of this transaction – the taxpayers of impacted communities should NOT be expected to finance an independent monitoring effort by TRAC to protect and safeguard our interests over the next five years. Since it is CN that is the subject of the Board’s five-year oversight period as a condition of receiving approval for the transaction, why would the Board think it appropriate to burden impacted communities with the costs associated with auditing the veracity and thoroughness of CN’s reports to you?

Based on your May 14 letter to TRAC we had hoped to receive a follow-up communication from your office following your analysis of the issues we raised in early May. To date, we have received nothing about any Board response or action relating to:

- The cause of the brushfire that occurred on March 17, whether the involved equipment has been adequately repaired, and what steps CN is taking to prevent repeat incidents.
- What has been done to put a stop to CN idling its trains abutting the play yard at Peterson Elementary School in Naperville.
- Whether the dangerous track situation in Elgin or the crumbling Rand Road bridge in Lake Zurich have been inspected thoroughly to determine if they pose a threat to public safety now that heavier tonnage trains are running on the EJ&E.

This last issue is all the more important to address in light of the June 19 tragedy in Rockford, Illinois involving a CN train derailment and release of a hazardous substance that was responsible for one death, numerous injuries, and the evacuation of 600 homes. While the National Transportation Safety Board is still undertaking its investigation, from eye witness accounts it appears that the cause may involve line infrastructure problems on the rail line/bed compounded by CN operations in standing water conditions – a causes that may reflect CN’s well-known and abysmal record of putting profit and “on time performance” metrics before the safety of its employees and the communities in which it operates. The track bed and standing water matter in Elgin which TRAC brought to your attention two months ago has never been resolved as far as we know as we have

not yet received a reply from your office about what steps you have taken to insure that the line was inspected and is safe for the increased freight tonnage CN is operating on the EJ&E.

You had noted in your May 14 letter to TRAC that the “Board required CN in mitigation condition number 73 to fund a third-party contractor to assist in monitoring and enforcement of mitigation measures.” On May 13, 2009 CN responded to your office to TRAC’s May 5 comments on the first operational report by stating that it had secured the services of HDR to serve in the role as third-party monitoring contractor. Since there is a clear record in the proceedings of the environmental analysis surrounding this transaction that TRAC and various impacted communities have significant disagreements with the assessment methodologies used by HDR in quantifying environmental impacts prior to the decision on this transaction, it gives us no comfort to know that HDR is now put in a conflicted position as a result of being charged by CN to monitor and report on incidents where it might need to highlight inaccurate conclusions it arrived at during the environmental review process.

Clearly because of its questionable analysis and its primary role in the environmental review process, HDR does not have the level of arms-length independence to make it an acceptable third party monitor of CN’s operations. Any benefits provided to impacted communities by the conditions imposed by the Board in approving this transaction are based on the Board’s proactive watchdog efforts to insure that CN is abiding by the letter and spirit of the Board’s Decision. Absent that, the conditions are nothing more than a meaningless effort to placate the communities that are living with the consequences of the Board’s action while we await the opportunity to appeal the Decision in the courts. Since progress on TRAC’s legal appeal is being held up by the Board’s failure to rule on the Illinois Commerce Commission regulatory appeal of this transaction, it is all the more imperative that we all take ongoing monitoring responsibilities seriously. As a result, we respectfully request that you inform CN that HDR cannot serve as independent oversight monitor for problems associated with the implementation of this transaction.

Finally, you had noted in your May 14 letter to TRAC that the Board “has the power to compel the production of books and records if necessary to determine compliance.” Given the fact that we have had no response detailing what investigation the Board took, if any, about the 17 grade crossing delays that were not reported by CN in its first monthly operational report and the other matters we brought to your attention, we respectfully ask that you delineate the actions your office has taken or plans to take to investigate the completeness of CN’s reports to the Board.

It seems to TRAC that the NEPA protection inherent in the environmental review process that precedes a decision by the Surface Transportation Board is meaningless absent a clear interest by the Board in understanding the real world impacts ensuing from its decisions. We urge you to recognize that the Board must wrest control for oversight of this transaction away from CN and live up to its obligations to insure the impacted communities receive even the minimal (and inadequate) amount of protection that had been promised to them in the Decision approving CN’s purchase of the EJ&E.

Sincerely,



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Copies to:

Transportation Secretary Ray LaHood

House Transportation & Infrastructure Committee Chairman James Oberstar

House Transportation & Infrastructure Committee Ranking Member John Mica

Members of the Illinois Congressional Delegation

SEA Chief Victoria Rutson