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Karen Borlaug Phillips
Vice-President, North American
Government Affairs

601 Pennsylvania Avenue, N.W.
Suite 500, North Building
Washington, D.C. 20004

T 202-347-7816
F 202-347-8237

karen.phillips@cn.ca

July 16, 2009

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

Dear Director Wallen:

I am responding to the June 26, 2009 letter from Ms. Karen Darch and Mr. Tom Weisner regarding CN's May 11 and June 10 monthly status reports to the Surface Transportation Board (STB) on CN's operations over the Elgin, Joliet & Eastern (EJ&E) line.

Operational Issues

By all measures, CN's monthly reports show continuing operational improvements on the EJ&E. CN has expended considerable effort to change the historical operating practices on the EJ&E to enhance overall efficiency and to minimize blocked crossings.

As transaction implementation continues, our dispatching and operating personnel have gained valuable experience that is helpful in reducing future blockages. We have been using this experience to determine crossings that are more susceptible to delays and then using that information proactively to reduce delays. In addition, CN's planned infrastructure improvements on the EJ&E line should reduce blockages related to current or future trains operating on the line.

Ms. Darch and Mr. Weisner assert that community residents have reported a number of crossing delays and other operations issues that CN has not addressed in its monthly reports to the Board. It is important to point out,

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however, that many of the complaint reports do not involve rail operational failures or other reportable incidents.

The complaints at page 3 concerning Ogden Avenue/Route 34 in Aurora, for example, involve a crossing location where the Board has imposed a condition requiring a grade separation in order to avoid excessive vehicular crossing delays that would occur even with ordinary anticipated rail operations. Therefore, the fact that there are vehicular delays at this location does not demonstrate that there was a breakdown or special problem with CN's rail operations that should be have been reported.

Likewise, many of the complaints at pages 3 – 5 of the letter do not involve reportable incidents. Some concern vehicular delays at rail crossings that appear to be due to normal rail operations (e.g., Plainfield – 3/27 and Barrington – 4/17), while many are based on an individual's subjective and undocumented claim that noise, idling or vibration was "excessive," and others relate to conditions that pre-existed CN's acquisition of the EJ&E (e.g., Plainfield – 4/29, Aurora – 5/6).

A large proportion of the remaining complaints are based on apparent confusion in some EJ&E communities about quiet zones. As you are aware, the existence of a quiet zone does not mean that train horns never blow – it appears, however, that many residents along the EJ&E line are unaware of this fact. While a quiet zone is defined as one or more grade crossings where the railroad is excused from sounding the normally required horn sequence upon a train's approach to a grade crossing, railroad operating rules require that the engineer sound the train's horn in several instances, such as when approaching people or equipment working on the right-of-way or in the case of an imminent hazard, such as the presence of pedestrians or animals on the tracks.

Further, some local residents also appear to be misinformed as to whether quiet zones exist in their communities (e.g., the claims of quiet zone violations for Naperville and Aurora). At the time of CN's acquisition of the EJ&E, there were five quiet zones either in place or proposed on the EJ&E line. CN is actively engaged with several communities along the line to assist in the communities' efforts to seek establishment of a quiet zone under the rules specified by the FRA. As a general matter under the FRA rules, communities bear the financial responsibility for establishment of quiet zones. For the EJ&E communities with which CN reached a Voluntary Mitigation Agreement (VMA),

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however, CN has agreed to pay for the cost of the signal equipment installation and maintenance necessary for communities seeking quiet zones to qualify for this designation or to maintain and, if required, upgrade that equipment in the two VMA communities that have existing quiet zones. We also will pay for installation of other necessary equipment, such as median barriers, in the VMA communities seeking quiet zones.

Our investigations into specific quiet zone violations illustrate these points. For example, we have received a number of comments from an individual in Plainfield indicating poor compliance with a quiet zone located on the EJ&E's main line. Based on the times that the alleged violations occurred, we have determined that many of the instances involved trains operating through the quiet zone that were required to sound the horn due to the presence of roadway workers, while other instances involved trains operating on the nearby EJ&E Illinois River Line, which does not have a quiet zone. Similarly, our investigation of quiet zone complaints in the Barrington area has centered on the fact that Hough Road/Route 59 is not currently included in a quiet zone. Our train crews are therefore required to sound the horn in the familiar long-long-short-long pattern upon approach to that grade crossing, but that sound has frequently been misinterpreted by some residents to be a violation of adjacent quiet zones. While Mr. Weisner and Ms. Darch maintain that these and other comments demonstrate a failure by CN to comply with the law, the actual evidence in fact points strongly to the exact opposite conclusion.

Whether reportable or not, CN takes very seriously all complaints raised by residents related to operations on the EJ&E. As you know, CN works with the STB and FRA on complaints from residents on matters that involve potential safety issues. As outlined above, CN also looks into other complaints alleging quiet zone violations, as well as excessive noise and vibration, excessive idling, and other concerns. Where CN has been able to locate problems, we have acknowledged the problems and taken steps to remedy them (e.g., with respect to the idling of a maintenance of way machine overnight in Barrington cited in the letter at 4 and excessive noise emitted by a CN locomotive operating on the EJ&E line).

Follow-up Items

Ms. Darch and Mr. Weisner note four issues at page 5 on which they seek updated information.

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First, with respect to the March 17 brush fire, every railroad recognizes the possibility of brush fires along rights of way that can result from sparking that occurs during normal railroad operations – this remains an industry concern. CN and all railroads have put safeguards in place to minimize these kinds of incidents. CN has an ongoing inspection process during the warmer months of the year that requires that the spark arresting equipment on our locomotives be inspected every seven days. We also have an annual vegetation control program along our right-of-way that inhibits dead vegetation from accumulating close to our tracks and being a ready fuel source. Nevertheless, even with these precautions, a brush fire arising from a spark release can occur on occasion. In the case of the March 17 incident, the locomotive involved was promptly pulled out of service and inspected. The locomotive itself was determined to be operating properly and the spark arresting equipment was found to be in place and operating properly.

Second, with respect to the concern raised about CN trains idling on tracks abutting the play yard at Peterson Elementary School in Naperville, the EJ&E has a passing siding located parallel to this school, which opened in 2007. This siding, however, is located more than 200 feet away from school property. It is a signalized siding, and the locations of the controlling signals, where the locomotives wait for authorization to proceed onto the mainline, are several thousand feet away from school property. As a result of our planned infrastructure improvements, which include extending that siding further south, the south signals will be located much further away from school property than their present locations. In the meantime, however, I would note that the siding is being used precisely as designed, in normal rail operations, and in full compliance with all applicable rules and regulations. Further, in compliance with VM 10 and Condition 11, CN is in discussions with school officials to pay for installation of a chain link security fence at the school's property where it parallels the EJ&E line.

Third, on the track in Elgin, our engineers have reviewed the situation and determined that it poses no current threat to our track. We will continue to monitor this situation.

Fourth, as to the Rand Road/Route 22 bridge in Lake Zurich, CN conducts systemwide annual bridge inspections to ensure their structural integrity. In this case, where the bridge has been repeatedly hit by trucks that do not observe posted clearance signage, CN's engineering department conducts an

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inspection when notified of a collision to determine if the structural integrity is in any way compromised and removes any excess concrete. Several times over the years, the EJ&E refaced the concrete over the facing girder as a cosmetic repair. Over time, especially as a result of freeze/thaw cycles and compounded by truck strikes, the refacing can become loosened and detached from the original concrete. This is not a compromise of the integrity of the bridge structure and poses no risk of bridge failure.

Clarification and Corrections

I would also clarify the letter's statement that CN is running "two additional trains along the EJ&E." Even with the small number of trains we have added, overall CN traffic levels on the EJ&E are lower than they were prior to CN assuming control of the EJ&E. Our most recent monthly operations report, filed on July 10 at the STB, shows train counts on the EJ&E to be lower than pre-transaction levels due to lower traffic volumes.

More importantly, I am concerned that the letter alleges a "suspicious pattern of retaliation" by CN against communities along the EJ&E that have not entered into VMAs with CN or have been "particularly vocal in logging complaints." This allegation is baseless, false, and extremely offensive. CN is making every effort to work cooperatively with all communities along the EJ&E line, and our extensive efforts since taking control of the EJ&E are documented in the two quarterly mitigation reports we have filed at the Board. I would also point out that our employees are not motivated to annoy any particular community as employees who violate quiet zone and other rules are subject to discipline, up to and including termination.

The letter also takes issue with CN's retention of HDR as a third-party consultant to work under the direction of the STB's Section of Environmental Analysis (SEA) to assist SEA in the monitoring and enforcement of mitigation measures, as required by the Board's Condition 73. Given that HDR assisted SEA on the nearly one-year environmental review of our EJ&E acquisition and on preparation of the environmental impact statement, HDR has extensive knowledge of this transaction, the impact of operations on the EJ&E on surrounding communities, and the environmental conditions in the area. We believe HDR is well-equipped to provide any necessary independent input on the reports CN is filing at the Board on the implementation of this transaction.

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Lastly, the letter is sharply critical of CN's safety record, accusing CN of "putting profit and 'on time performance' metrics before the safety of its employees and the communities in which it operates." Nothing could be further from the truth – operating safely is a core CN value, and we consistently commit substantial resources and time to ensure that our track and equipment meet or exceed federal safety standards and that our employees are well-trained and operate in a safe environment. CN remains committed to continuous safety improvement.

I appreciate this opportunity to provide CN's perspective on this matter. Please contact me if you need any additional information on CN's implementation of the EJ&E transaction.

Sincerely,



Karen Borlaug Phillips
Vice President – North American
Government Affairs

cc: Transportation Secretary LaHood
House Transportation & Infrastructure Committee Chairman Oberstar
House Transportation & Infrastructure Committee Ranking Member Mica
Members of the Illinois Congressional Delegation
Section Chief Rutson