

Congress of the United States
Washington, DC 20515

May 28, 2010

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

RE: STB April 21, 2010 Decision No. 23, Docket No. FD 35087, Canadian National Railway Company and Grand Trunk Corporation –Control-EJ&E West Company

Dear Mr. Wallen:

We are writing to provide public comment on the April 21st Surface Transportation Board (STB) Decision and the subsequent STB hearing on April 28th, 2010. We continue to express our disappointment in Canadian National Railroad's (CN) significant failure to report grade crossing blockages along the Elgin, Joliet and Eastern Railroad (EJ&E).

Accordingly, we are calling on the STB to extend its oversight period of the merger by one year. Further, we believe that corrective action must be taken to hold CN accountable for its failure to comply with the terms of the Approval Decision. We urge the Board to reopen the Approval Decision and improve the mitigation requirements, prevent future abuse, and ensure that our communities are provided with the resources they need to preserve the safety and quality of life of area residents.

The STB's Decision No. 21, Docket No. FD 35087 reads:

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

Despite the STB's ongoing efforts to assure CN's compliance with safety and time mandates, we remain concerned with the adverse impacts the increase in freight traffic is clearly having on many of our Illinois and Indiana communities along the EJ&E. The STB's announcement released on April 21, 2010 that an independent audit of CN's reported grade crossing blockages for the months of November and December 2009 found a shocking 1,443 additional unreported street crossing blockages of 10 minutes or more is both unacceptable and disingenuous.

It is our understanding that the independent audit used data compiled by CN's own Radio Transmission Units (RTUs) and that CN excluded 1,443 blockages simply because the trains were moving. Our constituents remain inconvenienced by excessive blockages regardless of whether the CN train is in motion or not.

As STB Vice Chairman Francis Mulvey stated at the April 28th hearing, the RTU data is "highly relevant" to the reporting requirements contained in the Approval Decision, and it is "extremely unfortunate" that the Board only learned of the existence of the RTU database through the audit.


As STB Board Member Charles Nottingham pointed out at the hearing, CN should have proactively approached the Board if there was any confusion as to the substance or nature of the reporting requirements. CN's failure to do so demonstrates a possible intent to report incomplete information on blocked crossings. This was further brought to light at the hearing by the testimony of the independent auditor – HDR, Inc. HDR found that CN utilized dispatcher data, which includes RTU records, to interpret which blockages of 10 minutes or longer were the result of stoppages. CN then extracted that information to provide to the Board, which indicates an active decision to publicly disclose distilled, rather than complete information.

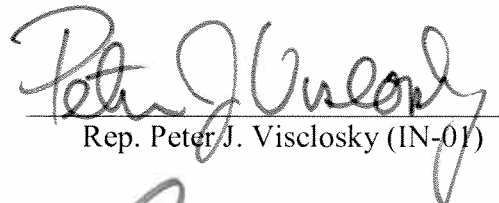
In his closing remarks at the STB hearing, Board Member Nottingham stated that, "there's been a degradation of that trust" between the Board and CN. He went on to say that the Board should consider extending the oversight period by one year, given that, "we've lost a year in terms of doing the kind of robust oversight I'd envisioned."

Board Chairman Daniel Elliott underscored these points: "When carriers believe they can decide what information to reveal and what to conceal, it undermines the integrity of the process."

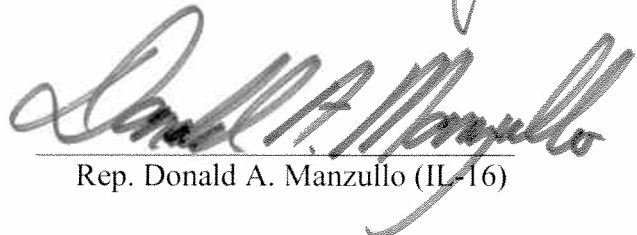
We agree with these sentiments and endorse Board Member Nottingham's recommendation for an extended oversight period of the merger. We continue to encourage the STB to exercise its full lawful authorities to hold CN accountable and uphold the terms of the Approval Decision.

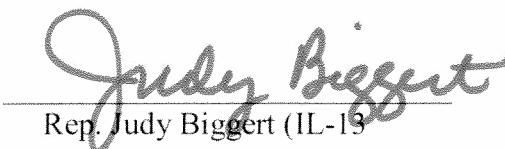
Sincerely,


Rep. Melissa L. Bean (IL-08)


Rep. Peter J. Visclosky (IN-01)


Rep. Bill Foster (IL-14)


Rep. Donald A. Manzullo (IL-16)


Rep. Judy Biggert (IL-19)