



FREQUENTLY ASKED QUESTIONS

On October 30, 2007, Canadian National Railway Company and Grand Trunk Corporation (CN) filed an application with the Surface Transportation Board seeking the Board's approval to acquire control of EJ&E West Company and to use the EJ&E main rail line to connect all 5 of CN's rail lines in the Chicago, Illinois Metropolitan Area. The EJ&E main line, located in northeastern Illinois and northwestern Indiana, extends in an arc around Chicago, Illinois. The following addresses frequently asked questions about the STB, its decision-making process and authority, and the proposed acquisition.

What is the Surface Transportation Board (STB or Board)?

The STB was created by the ICC Termination Act of 1995 as a successor to the Interstate Commerce Commission, and is responsible for the economic regulation of freight railroads under the Interstate Commerce Act, pursuant to 49 U.S.C. 701-727 and 10101-16106. Among its various duties, the STB reviews railroad proposals to construct and operate new rail lines, abandon unneeded rail lines, or acquire and operate other lines or other railroads.

The Board itself is a bipartisan body with 3 members who are appointed by the President and confirmed by the Senate for staggered 5-year terms. Currently (as of July 2008), Charles D. Nottingham is the Chairman of the STB, Francis P. Mulvey is the Vice Chairman, and W. Douglas Buttrey is the third member.

Within the STB, the Section of Environmental Analysis (SEA) is responsible for directing the environmental review process for matters that come before the Board, conducting independent analysis of all environmental data, and making environmental recommendations to the Board.

Overall, the STB has a staff of approximately 140 people, consisting of attorneys, economists, transportation industry analysts, engineers, auditors, environmental specialists, and support staff. Although the STB is organizationally within DOT, it operates as an independent regulatory agency.

What is the STB's process for authorizing railroad consolidations and acquisitions of control?

When 2 or more rail carriers seek to consolidate – whether through merger or common control – they must obtain prior STB approval under 49 U.S.C. 11323-25 and 49 CFR Part 1180. In the case of the proposed acquisition of the Elgin, Joliet and Eastern Railway Company (EJ&E) (a Class II railroad) by the Canadian National Railway Company and Grand Trunk Corporation (CN) (a Class I railroad), the STB must approve the acquisition unless it finds (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and (2) the anti-competitive effects of the transaction outweigh the public interest in meeting significant transportation needs (49 U.S.C. 11324(d)).

After an application for STB approval is filed, the STB sets a procedural schedule that gives interested parties time to submit information on any transportation issues and for the applicant to reply. The STB also prepares environmental analyses and documentation to meet its obligations under environmental laws. The STB then considers the entire record (including all comments received on environmental or transportation issues), in deciding whether to authorize the acquisition application as proposed, deny the proposal, or approve the proposal with conditions imposed to mitigate potential safety or environmental concerns.

There are statutory time limits for the STB's processing of merger/control applications. For



Proposed Canadian National Railway Company Acquisition of the Elgin, Joliet & Eastern Railway Company - Draft Environmental Impact Statement

the CN-EJ&E acquisition application involving the proposed merger of a Class I and a Class II railroad, the STB's decision is due within 10 months of the filing of the application (49 U.S.C. 11325(c)). However, the STB must also comply with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, in its decisionmaking and must complete the necessary environmental review process before making a final decision.

What does NEPA require?

NEPA requires Federal agencies to examine the potential environmental impacts of their proposed actions, to inform the public concerning those impacts, and to consider the impacts in their decisionmaking. The purpose of NEPA is to focus the attention of the agency and the public on the likely environmental consequences of a proposed action in order to minimize or avoid potential adverse environmental impacts. However, NEPA does not mandate a particular result. Once the adverse environmental impacts have been adequately identified and evaluated, the agency can conclude that other benefits outweigh the environmental costs.

The STB's environmental review process must comply with the requirements of the President's Council on Environmental Quality NEPA regulations (40 CFR Parts 1500-1508) and with its own NEPA-implementing regulations (49 CFR Part 1105). In the case of the proposed CN-EJ&E acquisition, the STB determined that these regulations require the preparation of a full Environmental Impact Statement (EIS) -- the environmental documentation prepared in cases that have potentially significant environmental impacts.

What is the role of SEA in the NEPA process?

Under NEPA, the STB must consider the potential environmental impacts of its action before deciding whether to approve an application. SEA is the office within the STB that gathers and analyzes the environmental record in a case, prepares the NEPA

documentation, and provides technical advice and recommendations to the Board on environmental matters. SEA has trained legal and environmental specialists, headed by the Chief of the Section of Environmental Analysis, Victoria Rutson.

SEA often uses "third-party contracting" to help prepare environmental documentation. Third-party contracting is a voluntary arrangement in which the applicant pays for a contractor to assist SEA by developing the environmental analyses necessary for compliance with NEPA and related environmental laws, under SEA's direction, control, and supervision. The Board's environmental rules at 49 CFR 1105.10(d) as well as the CEQ regulations at 40 Code of Federal Regulations [CFR] 1500 – 1508, specifically permit the use of third-party contractors approved by SEA.

The third-party contracting process provides an effective means to prepare an independent, comprehensive environmental analysis that meets the requirements of NEPA and related environmental laws. The contractors function as an extension of SEA's staff. They work under SEA's direction to collect and verify environmental information from the railroads, consulting agencies, other interested parties, and the general public; conduct unbiased environmental analysis; develop appropriate environmental criteria and methodologies for analyzing particular environmental issue areas; and prepare environmental documentation and mitigation options. SEA makes its own evaluation of the environmental issues and is responsible for the scope and content of the NEPA document.

What is the STB's NEPA process in a railroad acquisition case?

If an EIS is prepared, SEA first issues a notice of intent to prepare an EIS and determines the scope of work for the EIS, after providing opportunities for public participation and consultation with appropriate Federal, state, and local agencies and other government entities. SEA then prepares a Draft EIS that analyzes in detail the potential environmental impacts of the



Proposed Canadian National Railway Company Acquisition of the Elgin, Joliet & Eastern Railway Company - Draft Environmental Impact Statement

proposed acquisition, considers reasonable and feasible alternatives to the applicant's proposal, and makes recommendations for environmental mitigation. By regulation, the public has at least 45 days to comment on a Draft EIS.

SEA then issues a Final EIS that responds to the public comments, presents the results of any further environmental analysis, and incorporates final environmental mitigation recommendations. The Board then considers both the environmental record (the Draft and Final EISs and all comments received) and the record on the transportation issues to decide whether to authorize the acquisition as proposed, deny the proposal, or approve it with conditions, including environmental conditions (see 49 CFR 1105.10(a) and (f)).

What is the public's role in the NEPA process?

There are ample opportunities for public input during the NEPA process, particularly during scoping (to determine what issues should be addressed in an EIS) and in commenting on a Draft EIS. The public can submit written comments directly to the agency and/or participate in hearings or public meetings. In preparing the Final EIS, the Federal agency must take into consideration, and respond to, the comments received from the public and other parties.

For the EIS on the proposed CN-EJ&E acquisition, SEA held 14 scoping open house meetings in 7 locations in January 2008. In addition to the public scoping meetings, SEA held agency scoping meetings with Federal, state, and local agencies in Illinois and Indiana. At the Illinois agency scoping meeting, a number of agencies asked for a greater role in development of the Draft EIS. In response, SEA established 5 stakeholder focus area groups which reviewed the methodologies and data sources used in the analysis for the Draft EIS, offered comments and suggestions, and provided additional data.

Throughout the EIS process SEA has consulted extensively with appropriate agencies, including

the United States EPA and the US Fish and Wildlife Service.

In addition, SEA identified 28 communities with minority or low-income populations potentially affected by the proposed acquisition. SEA then conducted targeted and specific outreach efforts to engage these communities in the environmental review process, including direct calls to elected officials regarding the environmental review process, public scoping meetings, and meetings with local representatives.

The Board is publishing the Draft EIS and is making it available for public review and comment. SEA is also scheduling open houses/public meetings at 8 locations in the Chicago area to give people an opportunity to learn about the Proposed Action and to present their views. SEA will continue to consult with Federal, state, and local agencies, tribes, affected communities, and all interested parties to gather and disseminate information about the proposed acquisition.

How would the CN-EJ&E acquisition affect me and my community?

If the Board were to approve the CN-EJ&E acquisition, CN would redirect its trains from its 5 rail lines in Chicago to the EJ&E rail line, thereby increasing the volume of freight rail traffic along the EJ&E rail line, with a corresponding decrease in the volume of freight rail traffic along the CN rail lines. The increase in rail traffic along the EJ&E rail line would or could result in increases in:

- Delays at highway/rail at-grade crossings, including delays of school buses and emergency vehicles
- Levels of noise and vibration
- Risk of train accidents
- Air pollutant emissions
- Energy use

Although the risk is still very low, people along the EJ&E rail line would also have an increased risk of exposure to hazardous materials should an accident occur resulting in a release of such materials. Property values could decrease



Proposed Canadian National Railway Company Acquisition of the Elgin, Joliet & Eastern Railway Company - Draft Environmental Impact Statement

somewhat for residences adjacent to the EJ&E rail line. No impacts to land use and biological, water, and cultural resources or changes to population, housing, and public services are expected. Some of the potential environmental impacts could be reduced or eliminated with mitigation.

The decrease in freight rail traffic along the 5 CN rail lines would result in corresponding benefits (decreases in existing adverse impacts) to the communities along those rail lines. In addition, the proposed redirection of freight rail traffic along the EJ&E line is expected to reduce freight rail delays and rail traffic congestion within the Chicago rail system.

Would the STB impose mitigation to reduce the adverse impacts if the CN-EJ&E acquisition were approved?

As it has in other cases, the Board is very likely to impose mitigation if it were to approve the CN-EJ&E acquisition. Based on the information available to date, consultations with appropriate agencies, and extensive environmental analysis, SEA has developed recommended preliminary environmental mitigation measures to address the identified adverse environmental impacts. These measures include requiring CN to take actions to reduce emergency vehicle delays, levels of noise and vibration, and the risk of accidents, including accidents involving hazardous materials. In addition, CN has submitted 76 voluntary mitigation measures.

As an alternative to the mitigation that the Board might unilaterally impose upon applicants, SEA encourages applicants to negotiate mutually acceptable agreements with affected communities to address potential environmental impacts. Negotiated agreements can be with neighborhoods, communities, cities, counties, regional coalitions, states, or other entities. If negotiated agreements are submitted to the Board, the Board's practice is to include a condition in any final decision approval of the proposed transaction requiring applicants to comply with the terms of the negotiated agreement.

What is the Board's authority to impose mitigation?

As a government agency, the Board can only impose conditions that are consistent with its statutory authority. Any conditions the Board imposes must relate directly to the transaction before it, must be reasonable, and must be supported by the record before the Board. The Board typically does not require mitigation for existing environmental conditions, such as the effects of current railroad operations, or for land development in the vicinity of the railroads.

Will the STB consider safety issues?

Yes. Although ensuring freight rail safety is the primary responsibility of the Federal Railroad Administration, the STB also takes safety concerns into consideration in its decisionmaking. This includes vehicle safety, passenger rail safety, freight rail safety, pedestrian safety, bicycle safety, emergency vehicle response and hazardous material transportation. Safety concerns are usually raised and addressed in the STB's environmental review process.

In the future, could CN run more trains over the EJ&E rail line?

Because of physical and operational constraints on the EJ&E rail line, SEA concluded that, under the CN proposed operating plan, the EJ&E rail line would be operated at or very near to capacity. In other words, it is unlikely that the number of trains using the EJ&E rail line would be higher than that estimated by CN in the proposed operating plan. SEA conducted numerous independent rail capacity and constraint analyses before reaching this conclusion.

Has the Board ever denied a request for approval of a railroad acquisition?

Yes. The Board and its predecessor agency, the Interstate Commerce Commission, have denied some rail merger and acquisition proposals. Each case is unique, however, and the Board makes a decision in each case before it based on



Proposed Canadian National Railway Company Acquisition of the Elgin, Joliet & Eastern Railway Company - Draft Environmental Impact Statement

the full record of the transportation merits and the potential environmental impacts. Only after considering the full record does the Board make a decision to grant, to deny, or to grant with mitigating conditions.

If the Board denies the acquisition application, can CN use the EJ&E line anyway?

Yes. CN currently has trackage rights to the EJ&E rail line, giving it the right to use the EJ&E line, and could shift an increased number of trains onto the EJ&E rail line. CN would not need Board approval to exercise its existing trackage rights on the EJ&E

Where can I get more information on the pending CN-EJ&E acquisition case or other proposals currently before the STB?

Please visit the STB's website at <http://www.stb.dot.gov>. The STB maintains an electronic public docket and information system designed to permit prompt and easy public access to all filings and comments submitted to the STB and decisions issued by the agency. Information about the pending CN-EJ&E acquisition case can be found by referencing STB Finance Docket No. 35087, *Canadian National Railway Company and Grand Trunk Corporation Control-EJ&E West Company*.

SEA also maintains a project specific website at <http://www.stbfinancedocket35087.com>.

How can I submit comments on the Draft EIS?

SEA encourages all interested parties to submit written comments on any aspect of the Draft EIS. SEA will consider all comments in preparing the Final EIS, which will include responses to all substantive comments, SEA's final conclusions on potential impacts, and SEA's final recommendations.

Comments on the Draft EIS may be submitted by mail, by e-file, or by telephone. All correspondence should refer to STB Finance

Docket No. 35087. The deadline for comments on the Draft EIS is **September 30, 2008**.

When submitting comments, please be as specific as possible and substantiate your concerns and recommendations.

Written comments should be mailed to:

Phillis Johnson-Ball
STB Finance Docket No. 35087
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Environmental comments can also be filed electronically on the Board's web site, <http://www.stb.dot.gov>, by clicking on the "E-FILING" link. Comments are accepted at the toll-free project information line at 1-800-347-0689. A Spanish language option is available.

SEA will also hold 8 open house/public meetings to present the conclusions in the Draft EIS and invite interested parties to make oral comments. The dates, times, and locations of these public meetings are shown in the table, below.



Proposed Canadian National Railway Company Acquisition of the Elgin, Joliet & Eastern Railway Company - Draft Environmental Impact Statement

Public Meeting Dates and Locations

Date	Location	Address
Monday, August 25	Matteson, Illinois Holiday Inn Hotel & Conference Center	500 Holiday Plaza Drive Matteson, IL 60443
Tuesday, August 26	Mundelein, Illinois Crowne Plaza Chicago North Shore	510 E. Route 83 Mundelein, IL 60060
Wednesday, August 27	Barrington, Illinois Barrington High School	616 W. Main Street Barrington, IL 60010
Thursday, August 28	Bartlett, Illinois Bartlett High School	701 Schick Road Bartlett, IL 60103
Monday, September 8	Chicago, Illinois Loyola University of Chicago	25 E. Pearson Chicago, IL 60611
Tuesday, September 9	Aurora, Illinois West Aurora High School	1201 W. New York St. Aurora, IL 60506
Wednesday, September 10	Gary, Indiana Indiana University Northwest	3400 Broadway Gary, IN 46408
Thursday, September 11	Joliet, Illinois Holiday Inn Hotel & Conference Center	411 S. Larkin Avenue Joliet, IL 60436

The same information will be presented at each meeting and will follow the schedule outlined below:

Open House – 4:00 PM – 6:00 PM	Staff from the Board and HDR, Inc. will be available to answer questions and help members of the public review project maps and other findings of the Draft EIS and analysis.
Public Meeting – 6:00 PM – 9:00 PM	Staff from the Board and HDR, Inc. will make a short presentation to the public and will then be available to receive formal comments on the Draft EIS. This portion of the meeting will be held for the purpose of receiving comment. It is not a question-and-answer session. Beginning on July 25, speaker registration will be determined on a first come first serve basis by calling the hotline to pre-register in advance (1-800-347-0689) or at the sign-in tables the day of the public meeting. Each speaker will be allocated up to 3 minutes to present her or his comments.