

## **STB rebuffs challenge to CN-EJE track rights**

(The following story by John D. Boyd appeared on The Journal of Commerce website on September 2, 2009.)

WASHINGTON, D.C. — The Surface Transportation Board cleared the way for Canadian National Railway to knit its various Chicago-area rail units more tightly together through a new batch of immediate trackage rights, rebuffing suburban critics who wanted regulators instead to launch a new environmental impact review.

The challenges to CN's plans were the latest involving its controversial acquisition of short line Elgin, Joliet & Eastern Railway. CN took over the small railroad, which arcs westward around Chicago, early this year to shift some of its trains out of congested central-city tracks and onto EJ&E.

Area suburbs fought hard against the acquisition, which the STB approved last Dec. 24, and have since criticized the regulators for not taking a tougher stand over the impact of heavier train traffic on their already congested roadways.

So when CN in early August served notice to the STB that it would implement 17 new trackage right agreements within 30 days between its various lines at Chicago, the suburbs thought they had a chance to reopen the whole merger approval. The agreements include EJ&E, the Village of Barrington, Ill., and the TRAC Coalition that also includes other suburbs.

Suburban groups argued that CN's proposed track use plans have implications for both the previous impact assessment made by the STB staff, and the board's Christmas Eve decision approving the CN-EJ&E merger. They asked regulators to stay the process that would allow CN's network agreements to take effect, and order up a supplemental review.

The United Transportation Union also jumped in to ask for a stay, saying that since the union does not yet have implementing agreements negotiated with EJ&E related to three trackage rights deals, some of its union members could be harmed and might even have to relocate.

"It will be nearly impossible to unscramble the egg of seniority rights, and perhaps residence changes, once the trackage rights go into effect," the union argued.

CN responded that it was only putting through the trackage agreements to do what it always said it would do, and which the board already approved – move its people or equipment as needed from one part of CN's lines in the Chicago terminal area to another.

The carrier bought a number of regional U.S. railroads over the years, but they still exist as legal entities under their previous names – including Illinois Central, Wisconsin Central, Grand Trunk Western and Chicago, Central & Pacific – so rights between them have to be registered separately with the STB.

These changes, the railroad said, "would not result in CN running additional trains or in CN rerouting trains differently than provided for in the operating plan reviewed by the board" in the underlying merger. And any delays, it said, would hurt shippers by depriving them of more efficient rail operations.

Board members Charles D. Nottingham and Francis P. Mulvey rejected both petitions, saying the suburbs had made no claim on the merits of the actual

trackage rights at issue, and that UTU's concerns should be covered in standard labor protection conditions.

Chairman Daniel R. Elliott, who took office last month and is a former UTU associate general counsel, did not participate in the ruling.

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