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H.R. 6707, THE "TAKING RESPONSIBLE ACTION FOR COMMUNITY SAFETY ACT"

(110–164)

HEARING

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

SEPTEMBER 9, 2008

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September 5, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Committee on Transportation and Infrastructure

FROM: Committee on Transportation and Infrastructure Staff

SUBJECT: Hearing on H.R. 6707, the "Taking Responsible Action for Community Safety Act"

PURPOSE OF HEARING

On Tuesday, September 9, 2008, at 11:00 a.m., in Room 2167 Rayburn House Office Building, the Committee on Transportation and Infrastructure is scheduled to hold a hearing on H.R. 6707, the "Taking Responsible Action for Community Safety Act".

The main purpose of H.R. 6707 is to establish that when the Surface Transportation Board ("STB" or "Board") considers a merger involving a Class I railroad and a Class II or III railroad[1] the Board has the power to disapprove the merger if the Board finds that the adverse environmental effects of the merger outweigh its transportation or other benefits. Under current law, the Board has the authority to disapprove a merger involving at least two Class I carriers if the transaction is not consistent with the public interest, but has never disapproved a Class I merger on environmental grounds. Some STB staff believe that under existing law the Board also has authority to disapprove a merger involving a Class II or Class III rail carrier on environmental grounds. However, there is a provision in existing law indicating that in a merger involving a Class II or Class III rail carrier, the Board can only disapprove the merger if it would have adverse competitive effects. Additionally, it is not clear whether the Board Members share the staff's view that they have authority under existing law to disapprove a merger involving a Class II or Class III rail carrier on environmental

[1] Rail carriers are grouped into three classes to determine their accounting and reporting obligations. A Class I railroad has annual operating revenues of more than $250 million, a Class II railroad has annual operating revenues of between $20 million and $250 million, and a Class III railroad has annual operating revenues of less than $20 million. These operating revenues are fixed on 1991 dollars and are adjusted annually for inflation. (49 C.F.R. Part 1201, Subpart A, General Instructions)

grounds. If the Board did take this position, there is a substantial possibility that a reviewing Court would not accept their interpretation of existing law, for reasons discussed below.

BACKGROUND

On September 26, 2007, the Canadian National Railway ("CN"), which is a Class I railroad, and the U.S. Steel Corporation ("U.S. Steel") announced an agreement where CN would acquire most of the Elgin, Joliet & Eastern Railway Company ("EJ&E"), which is a Class II railroad that is a wholly owned indirect subsidiary of U.S. Steel, for $300 million, subject to the regulatory approval of the STB. The EJ&E's main line, known as "Chicago's Outer Belt", runs 198 miles and encircles the City of Chicago, from Waukegan, Illinois through Joliet, Illinois, to Gary, Indiana. This acquisition will allow CN to bypass Chicago, which CN believes will allow it to significantly improve the efficiency of CN's rail operations in the Chicago region. CN currently has three lines that run into Chicago, and it plans to divert traffic from these lines onto the EJ&E line, which would increase the number of trains operating through the communities along the EJ&E by approximately 15 to 24 trains per day.

Opponents of the transaction maintain that the CN acquisition would impose a number of adverse impacts on the people living in the 50 communities along the EJ&E line. The STB's Section of Environmental Analysis ("SEA"), which is responsible for undertaking environmental reviews of certain STB actions, found that if CN increases train volumes on the EJ&E rail line as proposed in its Operating Plan, the acquisition would result in a projected 28 percent increase in rail accidents on the EJ&E line; an increase in grade crossing accidents on the EJ&E rail line of anywhere from 1.57 to 6.04 accidents annually; an increase in the number of "major key routes" (rail segments where the volume of hazardous materials transported would exceed 20,000 carloads annually) from 2 to 14 on the EJ&E rail line, with subsequent increases in reportable hazardous material releases; an increase in air pollution; and a substantial increase in noise and vibration in communities and on public lands adjacent to the line, affecting 17 forest preserves, natural areas and preserves, resource-rich areas, and land and water reserves, 14 adjacent trails and scenic corridors, 16 adjacent local parks, and 4 adjacent land and water conservation fund properties. In addition, 15 grade crossings on the EJ&E line would be "substantially affected" (meaning that train queue length would block a roadway that is not blocked currently, the roadway would be at or over-capacity, or delay for all delayed vehicles would be more than 40 hours per day), resulting in total traffic delays from about one hour in West Chicago to about 165 hours in Joliet; and 11 fire and emergency medical service providers near the EJ&E rail line could have substantial difficulties in coping with emergencies as a result of the proposed transaction.

Proponents of the transaction maintain that the CN acquisition would be beneficial to the region and help mitigate freight rail congestion in the nation's freight rail bottleneck. They also maintain that the transaction would benefit communities along CN's current lines to and from Chicago through decreased accidents, noise, congestion, and delay as a result of a reduction in train traffic. The SEA found that the transaction would reduce CN traffic in some minority and low-income communities by eight trains per day. The SEA also found that the transaction would not affect existing Metra commuter rail service or Amtrak service on rail lines in the area in which CN now operates, and it would not preclude implementation of the proposed STAR line and Southeast Service, but could introduce potential operating complexities. In addition, the SEA found that while the total number of train accidents on the EJ&E rail line is likely to increase by 28 percent, the likely

number of rail accidents on the existing CN rail lines would decline 77 percent, a change directly related to the decrease in train-miles on CN's existing rail lines. The SEA also found that the consequences of increased train traffic on the EJ&E rail line would increase the risk for pedestrians and bicycles at 21 train/rail crossings and decrease the risk at 36 trail/rail crossings along existing CN lines.

The application for the CN to acquire the EJ&E is now pending before the STB. Under current law, a rail carrier or other entity may not consolidate, merge, or acquire control of another rail carrier without authorization and approval from the Board.

Existing law sets forth two different standards – depending on the class of the rail carrier – that the STB must use in considering applications for consolidation, merger, or acquisition of control: the law gives the STB considerable discretion to disapprove a transaction involving at least two Class I rail carriers, and much less discretion to disapprove transactions not involving at least two Class I rail carriers, such as the CN acquisition of the EJ&E.

Prior to the Staggers Act of 1980, the criteria for considering an application for a merger or control between Class I rail carriers and Class II or Class III rail carriers were identical. For all mergers and consolidations, the Interstate Commerce Commission ("ICC" or "Commission") was required to consider (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; and (4) the interest of carrier employees affected by the proposed transaction. The Commission was required to approve and authorize such a transaction only when it found that the transaction was consistent with the public interest. The Commission was also authorized to impose conditions governing the transaction.

However, Section 228 of the Staggers Act altered considerably the standards for rail carrier consolidation applications involving at least two Class I rail carriers filed after October 1, 1980. A fifth factor was added to the list of criteria that the Commission must consider: whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region. However, the requirement that the five factors (outlined in the above paragraph) be considered was limited to cases involving at least two Class I railroads.

The Staggers Act added a new section to govern rail consolidations not involving the merger or control of two or more Class I railroads (such as CN-EJ&E). This section, now found in section 11324(d) of Title 49, United States Code, provides that the Board "shall approve" this type of consolidation "unless" the Board finds that: (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 anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

On its face, the new section would appear to take away the Board's authority to disapprove mergers or consolidations of a Class I rail carrier with a Class II or a Class III rail carrier on general public interest grounds, such as adverse effects on safety or the environment.

Some STB staff, however, maintain that the Board does have the authority to disapprove transactions involving Class II or Class III rail carriers because of adverse environmental effects.

The STB staff did not have any cases or legal memos to support this interpretation. As Committee staff understands it, STB staff's rationale is that although there is a specific provision in the law requiring approval of mergers with Class II or Class III rail carriers if they are not anti-competitive, if we interpret the law "as a whole", the Board has authority to disapprove a merger involving Class II or Class III rail carriers on environmental grounds. In the view of STB staff, the Board has authority to disapprove a merger involving two Class I rail carriers on environmental grounds and it would not make sense for the Board not to have the same power to disapprove a merger between a Class I rail carrier and a Class II rail carrier on environmental grounds. This type of merger could be just as harmful to the environment as a merger involving two Class I rail carriers.

STB staff further points to the fact that the draft Environmental Impact Statement ("EIS"), prepared by staff, for the proposed CN acquisition of the EJ&E states that the Board "will decide whether to approve the proposed acquisition, deny it, or approve it with mitigating conditions, including environmental conditions." The draft EIS also states that Council on Environmental Quality regulations implementing the National Environmental Policy Act require consideration of a No-Action Alternative. Under the No-Action Alternative, CN would not acquire control of the EJ&E land, rail line, and related assets. Thus, by implication the draft EIS asserts the Board's power to deny approval on environmental grounds.

It is not clear if the Board did disapprove a transaction involving a Class I rail carrier and Class II rail carrier on environmental grounds that the decision would survive a judicial challenge. A U.S. Court of Appeals case dealing with the Board's power over mergers with Class II and Class III rail carriers points in the direction of not giving the Board power to deny a merger on environmental grounds. However, this case is not completely dispositive since it involved public interest factors other than the environment. Moreover, the decision is not binding on other Federal Courts of Appeal.

The case in point is *People of the State of Illinois, Illinois Commerce Commission and Patrick W. Simmons v. Interstate Commerce Commission and United States of America* (687 F.2d 1047; 1982 U.S. App.), before the United States Court of Appeals for the Seventh Circuit. The court affirmed a decision of the ICC (predecessor of the STB) refusing to consider public interest factors involving effects on employment of a Class I/Class II merger which was not anticompetitive. The court ruled that if there were not anti-competitive effects, the ICC was required to approve the merger. The court found the Staggers Act separated rail consolidation proposals into two distinct groups: major rail consolidations, which involve the merger or control of two or more Class I rail carriers, and minor rail consolidations, which do not involve the consolidation of two or more Class I rail carriers. The court concluded that a careful reading of the law in its entirety "discloses that the broad public interest standard of [section 11324(c)] applies only to consolidations of two or more Class I railroads whereas the more limited criteria of (d) apply to all other rail consolidations."

The court also found "the mandatory language "shall approve" of [section 11324(d)] taken in context, denotes that if the Commission finds no substantial anticompetitive effects flowing from the proposed transaction, its analysis is at an end. At that point, the Commission must approve the transaction, and any finding about consistency with the public interest would be superfluous. In other words..."the words "shall approve" in this context should be construed to require approval of transactions where no substantial anticompetitive effects are found."

The court added, "Although subsection (d) requires the Commission to review public interest factors if it finds substantial anticompetitive effects, that provision does not require the agency to determine whether the transportation is 'consistent with the public interest'. Rather, if anticompetitive effects are substantial, the Commission must balance against those effects 'the public interest in meeting significant transportation needs.' "

The court's findings are echoed in the remarks included by current STB Commissioner Buttrey in a July 25, 2008 decision setting forth a schedule for completion of the environmental review process in the proposed CN acquisition of the EJ&E. He states, "For a transaction like this that does not involve the merger or control of at least two Class I railroads, the statute provides that the Board shall approve the application unless it finds serious anticompetitive effects that outweigh the public interest."

CN, the applicant in the CN/EJ&E case, appears to also believe that the Board cannot disapprove the merger on environmental grounds. Accordingly, CN would be likely to seek judicial review of any STB decision disapproving the merger on environmental grounds.

In a petition filed before the Board on August 14, 2008, for expedited approval of the transaction, CN stated: "ICCTA requires the Board to approve any transaction not involving two Class I railroads unless the Board finds both that (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 anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs. Under this standard, if the Board is unable to make either of these findings, approval of the proposed transaction is mandatory."

It is worth noting that, in *People of the State of Illinois v. Interstate Commerce Commission and United States of America*, the court stated that the law "could benefit from more artful draftsmanship" on the question of public interest considerations. Additionally, on November 10, 1981, a little over a year after the Staggers Act was enacted, ICC Chairman Reese H. Taylor, Jr. testified before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation that the interplay between the two different sets of standards for considering rail mergers and consolidations and the requirement for considering the public interest was "a problem area in the legislation possibly in need of redrafting."

SUMMARY OF H.R. 6707

H.R. 6707 amends section 11324 of Title 49, United States Code, to require the Surface Transportation Board, in a proceeding which involves the merger or control of at least one Class I rail carrier to consider the five factors the Board is now required to consider when the merger involves two Class I carriers: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the effect on the public interest of including, or failing to include other rail carriers in the area involved in the proposed transaction; (3) the total fixed charges that result from the proposed transaction; (4) the interest of rail carrier employees affected by the proposed transaction; (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system. H.R. 6707 also adds two new factors for the Board to consider: (6) the safety and environmental effects of the

proposed transaction, including the effects on local communities, such as public safety, grade crossing safety, hazardous materials transportation safety, emergency response time, noise, and socioeconomic impacts; and (7) the effect of the proposed transaction on intercity rail passenger transportation and commuter rail passenger transportation.

H.R. 6707 also requires the Board to approve and authorize a transaction involving at least one Class I rail carrier when the Board finds the transaction is consistent with the public interest. The bill prohibits the Board from approving a transaction if it finds that the transaction's adverse impacts on safety and on the affected communities outweigh the transportation benefits of the transaction. The bill further authorizes the Board to impose conditions governing the transaction, including conditions to mitigate the effects of the transaction on local communities.

In addition, the bill requires the Board to hold public hearings on a proposed transaction involving at least one Class I rail carrier including public hearings in the affected communities, unless the Board determines that public hearings are not necessary in the public interest.

The amendments made by H.R. 6707 are to be applied to all transactions that have not been approved by the Board as of August 1, 2008. The hearing will examine the anticipated impacts of H.R. 6707 on pending and future railroad acquisitions and mergers.

EXPECTED WITNESSES

The Honorable Peter Visclosky
Congressman
Indiana, District 1

The Honorable Donald Manzullo
Congressman
Illinois, District 16

The Honorable Judy Biggert
Congresswoman
Illinois, District 13

The Honorable Melissa Bean
Congresswoman
Illinois, District 8

The Honorable Peter Roskam
Congressman
Illinois, District 6

The Honorable Bill Foster
Congressman
Illinois, District 14

The Honorable Charles D. "Chip" Nottingham
Chairman
Surface Transportation Board

The Honorable Francis P. Mulvey
Vice Chairman
Surface Transportation Board

The Honorable W. Douglas Buttrey
Board Member
Surface Transportation Board

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Senior Analyst for Tax and Budget Policy
U.S. Public Interest Research Group
Federation of State Public Interest Research Groups

Ms. Karen Darch
Village of Barrington, Illinois

Mr. E. Hunter Harrison
President and Chief Executive Officer
Canadian National Railway

Representative Elaine Nekritz
State of Illinois

Mr. John Tolman
Vice President & National Legislative Representative
Brotherhood of Locomotive Engineers and Trainmen

Mr. Joseph P. Schwieterman, Ph.D.
Director
Chaddick Institute for Metropolitan Development
DePaul University

Mr. Peter Silvestri
President
Village of Elmwood Park, Illinois

Accompanied by
Mr. Richard Pellegrino
Executive Director
West Central Municipal Conference

Mr. John Swanson
Executive Director
Northern Indiana Regional Planning Commission

Mr. Tom Weisner
Mayor
City of Aurora, Illinois

Mr. Mark Yagelski
Chairman of the Board of Trustees
Northern Indiana Commuter Transportation District
Member of the LaPorte County Council

I

110TH CONGRESS
2D SESSION

H. R. 6707

To require Surface Transportation Board consideration of the impacts of certain railroad transactions on local communities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2008

Mr. OBERSTAR (for himself, Ms. BEAN, Mrs. BIGGERT, Mr. VISCLOSKY, Mr. FOSTER, Mr. MANZULLO, Mr. ROSKAM, Mr. HOBSON, Mr. NEAL of Massachusetts, Mr. THOMPSON of California, Mr. KAGEN, Mr. KIND, Ms. WASSERMAN SCHULTZ, Ms. CASTOR, Ms. BERKLEY, Ms. HOOLEY, Mr. BRALEY of Iowa, Ms. PRYCE of Ohio, Mr. GILCHREST, Mr. LAHOOD, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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A BILL

To require Surface Transportation Board consideration of the impacts of certain railroad transactions on local communities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Taking Responsible
5 Action for Community Safety Act".

1 **SEC. 2. EFFECT OF MERGERS ON LOCAL COMMUNITIES**
2 **AND RAIL PASSENGER TRANSPORTATION.**

3 Section 11324 of title 49, United States Code, is
4 amended—

5 (1) in subsection (a)—

6 (A) by striking the last sentence and in-
7 serting "The Board shall hold public hearings
8 on the proposed transaction, including public
9 hearings in the affected communities, unless the
10 Board determines that public hearings are not
11 necessary in the public interest.";

12 (2) in subsection (b)—

13 (A) by striking "which involves the merger
14 or control of at least two Class I railroads,"
15 and inserting "with respect to a transaction
16 that involves at least one Class I railroad,";

17 (B) by striking "and" at the end of para-
18 graph (4);

19 (C) by striking the period at the end of
20 paragraph (5) and inserting a semicolon; and

21 (D) by adding at the end the following new
22 paragraphs:

23 "(6) the safety and environmental effects of the
24 proposed transaction, including the effects on local
25 communities, such as public safety, grade crossing
26 safety, hazardous materials transportation safety,

1 emergency response time, noise, and socioeconomic
2 impacts; and
3 "(7) the effect of the proposed transaction on
4 intercity rail passenger transportation and commuter
5 rail passenger transportation, as defined by section
6 24102 of this title.";
7 (3) by redesignating subsections (c), (d), (e),
8 and (f) as subsections (d), (e), (f), and (g) and in-
9 serting a new subsection (c) as follows:
10 "(c) The Board shall approve and authorize a trans-
11 action under this section when it finds the transaction is
12 consistent with the public interest. The Board shall not
13 approve a transaction described in subsection (b) if it finds
14 that the transaction's adverse impacts on safety and on
15 the affected communities, as defined under subsection (b),
16 outweigh the transportation benefits of the transaction.
17 The Board may impose conditions governing a transaction
18 under this section, including conditions to mitigate the ef-
19 fects of the transaction on local communities.";
20 (4) in subsection (d), as redesignated, by strik-
21 ing "The Board shall approve" and all that follows
22 through "the transaction, including" and insert
23 "The conditions the Board may impose under this
24 section include"; and

1 (5) in subsection (e), as redesignated, by strik-
2 ing "the merger or control of at least two Class I
3 railroads, as defined by the Board" and inserting "a
4 transaction described in subsection (b)".

5 **SEC. 3. EFFECTIVE DATE.**

6 The amendments made in this Act shall be applied
7 to all transactions that have not been approved by the
8 Board as of August 1, 2008.

○

HEARING ON H.R. 6707, THE TAKING RESPONSIBLE ACTION FOR COMMUNITY SAFETY ACT

Tuesday, September 9, 2008,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Committee met, pursuant to call, at 11:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable James L. Oberstar [Chairman of the Committee] presiding.

Mr. OBERSTAR. The Committee on Transportation and Infrastructure will come to order.

The Chair would like to take this opportunity to welcome colleagues back to Washington, back to the Committee from our district work period, and I know for all of us it has been work. Conventions are work. The district period is a work time, and it is so refreshing, during August, not to be in Washington. You can breathe.

And welcome all those Representatives of wide-ranging interests from across the Country back to Washington. It is good to have you all back with us.

I know that my Committee colleagues on the Republican side had a very invigorating convention in Minneapolis-St. Paul and had an opportunity to see an element of transportation success with the reconstruction of the I-35W Bridge.

This morning, we convene to review legislation to give the Transportation Board or to ensure the Transportation Board has the authority and the policy direction to deal with mergers that involve a Class I railroad and a Class II or III or other in which there may be safety, environmental or quality of life problems for the various communities.

This is a rather complex subject of transportation, of rail transportation law, and I want to take just a few moments to elucidate the reasons for this legislation, for this hearing and for action.

The Canadian National Railway filed a merger application that raises issues that have long simmered under the surface within the Surface Transportation Board and rail policy since enactment of the Staggers Act in 1980.

The CN asks approval of the Board to acquire the Elgin, Joliet and Eastern Railway, EJ&E. In their application, CN says they will divert traffic on three of their lines going through Chicago onto the main line of EJ&E and that, thereby, they will reduce traffic

going through the City of Chicago, better service, better transit times, decreased rail traffic, lower cost to the railroad.

Opponents, however—there are always two sides to these issues, especially in transportation—cite safety concerns and environmental consequences on the 50 communities lying along this 180-mile track.

I took the opportunity to visit several of those communities at the request of Members who represent communities affected by the proposed merger. I met in situ. I walked the rail grade crossing areas, and I have listened to Ms. Biggert and Ms. Bean, Mr. Manzullo, Mr. Visclosky, Mr. Foster and Mr. Roskam who all voiced the concerns of the communities they represent, their constituents.

Now, regardless of whether you support the CN acquisition or not, the transaction highlights a serious question: Does the STB under current law have authority to disapprove a merger or consolidation of a Class I railroad and a Class II or III on public interest grounds? That is an issue of law that has not been settled in court or any challenge or directly addressed by the Board.

There are two differing standards in existing law. Depending on the class of railroad, STB must use one or another of these standards. The law gives the Board considerable discretion to disapprove a transaction involving at least two Class I railroads, much less discretion to disapprove transactions not involving two Class Is or two or more Class Is such as the case of the EJ&E acquisition by CN.

But that wasn't always the case. Before the Staggers Act in 1980—I remember this era quite well—the criteria for a merger or acquisition of two Class Is or a Class I, Class II or Class III were identical. The Commission was required to approve and authorize the transaction only when it found that the transaction was consistent with the public interest, not inconsistent, but consistent with the public interest. It is a different burden of proof.

The Commission also was authorized to impose conditions governing the transaction, but Section 228 of the Staggers Act considerably altered the standards for consolidation applications after date of enactment.

A new section was added governing this type of transaction that we are considering today, and that section provides that the Board shall approve such transactions of a Class I or a Class II or III unless the Board finds there is likely to be a lessening of competition, creation of a monopoly or restraint of trade or the anti-competitive effects outweigh the public interest in meeting transportation needs.

On the face of it, this language does not seem to provide the Board with authority to disapprove a merger or consolidation even if the Board finds that the transaction should be disapproved on general public interest grounds such as safety or environment.

In the testimony we will hear from Chairman Nottingham, he suggests that the Board assumed it still has the power to refuse to approve a merger of a Class I with a Class II or Class III railroad on environmental grounds, but he also concedes the Board has never tried to exercise this power and it has never been tested in court.

CN's testimony also suggests that it believes the Board does not have this power.

In this uncertain situation, it occurs to me in the context of this transaction, which reflects so much of what is happening in the rail sector today across the County, that we should have legislation to clarify the authority of the Board to deny a merger on environmental grounds or to modify the merger to comply with the concerns expressed justifiably by the affected communities.

Transportation benefits are critical and important. Rails—we almost need not say it—they are so vital to movement of goods in America, but that significance and that role should not trump all other concerns regardless of how important those other concerns are. It should not be allowed to trump everything else.

That is not good public policy, and I don't think that is what the original drafters of the Staggers Act had in mind. There are not very many of them around anymore in the Congress or outside or in retirement. But in going through the debate and sitting on the House floor and rubbing my worry beads about what was the right vote, eventually, I cast my vote in favor of deregulation, never thinking it was going to have these kinds of consequences.

So, with that, I overstayed my five minutes and framed the issue that we will consider this morning.

I will recognize the gentleman from Florida, our distinguished Ranking Member, and then we will proceed to the witnesses.

Mr. MICA. Well, thank you for convening this meeting.

I also want to thank you for the hospitality extended to the Republican Members in Minneapolis-St. Paul at our convention last week. I said I hadn't been in that area for 24 years. One of the things I think we get to see in our position is the majesty of this great Country and the beauty of some of our cities like Minneapolis and St. Paul.

It was an incredible convention. There were a few people who made it unpleasant.

Mr. OBERSTAR. Both conventions.

Mr. MICA. At both conventions. I told the Chairman that people actually came up and apologized for some of the actions of some of the folks there but, again, I thank you.

And, the I-35 Bridge visit we had—and I know you couldn't be with us but sent words of greeting—Mn/DOT and other folks are to be commended for a remarkable project that will be completed in less than 437 days which I think should be a model for all of our replacement projects.

I also appreciate your holding this hearing. I know it is important to Members. I haven't really taken a position on this yet, and I want to hear some of the testimony and what you have to say.

It does alter the review process, and it also can have a significant effect on some future rail mergers. As you know right now, STB participation is limited to the larger rail mergers, and this would change that.

I do think that we have to look at public policy here, and in an era when we are trying to save energy and move goods and services and reduce congestions there are also benefits to the proposal to acquire the line and move some of the traffic in the perimeter area.

Now, I have exactly the same issue going on in Central Florida with a commuter rail line and moving freight to another line, and it does raise issues of the impact on various constituencies. So I am glad to see Members here who are doing their best to defend their interests and represent their communities on the adverse impacts and the positive effects that this plan will have.

As we change, though, Federal policy relating to this, I don't want it to have a chilling effect on some of the mergers that make sense or plans that may make sense in enhancing transportation alternatives that are good for the environment, good for energy and good for moving products around our metropolitan areas.

So we will look at it, and I thank you again for allowing this forum, and I look forward to the presentation.

I have dueling competition between guns and rail, and I will shuttle between here and my other Committee across the hall, and it will be in good hands with Mr. Shuster today.

Mr. OBERSTAR. Defend the guns.

Mr. MICA. I am for them, me and Sarah. Thank you.

[Laughter.]

Mr. OBERSTAR. I thank the gentleman for his kind remarks about the Twin Cities and on the bridge, and I think that bridge will stand as a very salient lesson for us as we shape the next transportation bill.

Now we will begin with Mr. Visclosky and go through the list of Members present in descending order of seniority.

TESTIMONY OF THE HONORABLE PETER VISCLOSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. VISCLOSKY. Or age perhaps, Mr. Chairman.

Mr. OBERSTAR. Oh, no, no, no. You are younger than when you came here, first came to Congress.

Mr. VISCLOSKY. Mr. Chairman, I want to thank you, and I want to thank Mr. Mica for holding this hearing today and especially for your leadership on addressing, in a bipartisan fashion, our Nation's aging infrastructure.

My remarks are going to be focused on the issue of safety but following up on the Ranking Member's comments about the necessity, potentially, of some of these mergers taking place, I would make it clear for the record I am not opposed for businesses making money or gaining efficiencies.

But in my congressional district, we also have a mass transportation system we want to expand. After six months of negotiation, the Canadian National didn't even know which railroad had been trying to negotiate with them for six months. In the case of the Gary Airport, to the railroad to be bought, had been negotiating for six years to relocate one line. There are public interests.

I would, at the beginning, also acknowledge the presence of two Indiana residents, Northwest Indiana Regional Planning Commission's Executive Director, John Swanson, who will testify later and LaPorte County Councilman, Mark Yagelski, and Chairman of the Northwest Indiana Commuter Transportation District Board of Trustees.

I would also be remiss if I did not acknowledge the presence in the audience of my very good friend, Councilman Stan Dobosz of Griffith, Indiana.

I come before you today as an original co-sponsor of H.R. 6707, the TRACS Act, and I am appreciative of the Chair's sponsorship of this measure.

I was born and raised in Lake County, Indiana, and I, like every resident of that county, am very experienced with freight rail traffic and the danger it poses to local residents. In 1977, my mother, Helen, was struck by a train and, thankfully, survived the experience.

Waiting at crossing gates and finding alternative routes are a fact of life when you live in this heavily industrialized area that serves as the eastern gateway for freight into Chicago. Lately, though, it has become apparent to the residents of the region that the waits are becoming longer, that the detours are becoming more congested and that safety seems to be deteriorated.

FRA statistics show three people died and four were injured via crossing collisions in Lake County, Indiana, alone from January to May of this year.

On July 7th, three additional residents of my congressional district died at a CSX grade crossing. On July 25th at a CN crossing, three more were injured.

In September, this month, September 3rd, a woman was killed at a CSX crossing.

That is 1 death every 16 days in my congressional district at a rail crossing since July 7th. That is 1 accident at a rail crossing at my congressional district every 21 days.

In 2007, Indiana was tied with the State of California—and think about the disparity in size and population—for the number of accidents at grade crossings, 161 in our States.

To illustrate the need for the TRACS Act, I would like to highlight the situation created in northwest Indiana by the Canadian National proposed acquisition of the EJ&E railroad:

In northwest Indiana, the CN/EJ&E transaction would result in a three-fold increase in rail traffic on the existing EJ&E line and cause the average train length to go from 2,590 feet to 6,321 feet.

With as many as 34 trains per day running on the track, it would bisect communities, impede the flow of automobile traffic and create a considerable public safety concern.

The proposed acquisition, as I have mentioned, also would create new barriers and fail to remove other obstacles to local economic development initiatives.

Since this transaction was first proposed in the Fall of 2007, I would acknowledge that the STB has made some decisions in this transaction that would be considered favorable to the public's interest, including their decision last evening to deny CN's petition to shortcut the environmental review process. However, the recently released draft Environmental Impact Statement gives me a new appreciation for the term, getting railroaded.

I would like to read just one passage from that statement from page 17 of the Mitigation section: Railroads, historically, have not paid more than a small share, 5 to 10 percent, of grade separations

because grade separations primarily benefit the community and not the railroads.

Well, I would suggest to those families that lost four people in train accidents since July 7th, there is a greater public interest and would hope, as the Committee considers the testimony today and the TRACS legislation, that balance—and that is all I am looking for here—balance between public interest and private interest is struck.

With that, Mr. Chairman, I thank you again for the opportunity to testify today.

Mr. OBERSTAR. Thank you for that compelling statement. That is shocking news about the fatality incidents in your district. We have to address that.

Mr. Manzullo.

TESTIMONY OF THE HONORABLE DONALD MANZULLO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. MANZULLO. Thank you, Mr. Chairman, for the leadership that you have been providing to the people of this Country.

The Chairman has stated the anomalies that are in the law. It simply means that the STB will not stop a transaction because of community concerns unrelated to antitrust issues, such as the safety of the people or environmental concerns. It may seem like semantics, but it is an important distinction that has long tipped the scale toward privately-owned rail carriers and away from communities who have to live with them.

Let me state this. I have always encouraged rail for passengers and freight. In fact, I helped bring the Union Pacific intermodal hub to Rochelle, Illinois, which is in the rural area of my congressional district.

However, in northern Illinois, in Ms. Bean's district, the community of Barrington and surrounding areas are unalterably opposed to the proposed sale of the EJ&E line to Canadian National as evidence by the thousands of people who showed up at the STB scoping session last January and a formal hearing in August.

This is not because of not in my back yard syndrome. Everybody understands the need to improve the national rail transportation network and would be willing to compromise, but having additional freight train traffic traverse on the aging EJ&E track would not just be a simple minor inconvenience. It will fundamentally alter the entire nature of the town and people who travel through the town such as the people that I represent in adjoining McHenry County.

I am honored to serve the thousands of commuters who live in southern McHenry County and must travel through Barrington either by car or rail to get to work or perform daily errands.

While I have been concerned about this deal since day one, the draft Environmental Impact Statement recently released by the STB confirmed many of our worst fears about increased accident risks, increased air pollution, increased exposure to hazard material and increased traffic, but at the same time said that CN would only have to pay 5 to 10 percent of the cost to mitigate these problems.

This will leave taxpayers paying the tab for a transaction that solely benefits a private company's bottom line. I say it is not about what is tradition. It is about what is fair.

The people from the 16th District of Illinois, which I represent, have had plenty of chances to talk over these issues in the past few weeks with me. I have heard from a lot of them.

Your bill, Mr. Chairman, H.R. 6707, corrects an oversight made in 1995 and requires the STB to weight impacts on local communities more heavily when considering any railroad transaction. In fact, the STB would have to reject a proposed acquisition if it finds that transactions and impacts on the affected communities outweigh the transportation benefits.

We have to learn from the experience of this particular transaction and make sure no community in the Nation will have to go through what Barrington is experiencing now.

In this particular case, I understand that the transaction will have many macro benefits, but CN accomplishes that goal primarily by shifting the train congestion from downtown Chicago to outlying suburban areas such as Barrington. They don't solve the problem. They shift the problem.

Tens of thousands of motorists in northern Illinois, especially those in McHenry County, travel through Barrington on their way to work each day, crossing the EJ&E line at Route 14, 59 and Lake Cook Road. Approximately another 4,000 commuters from McHenry County ride metro rail to work in the Chicagoland area each day.

When I talked to the CN authorities about trains that could be as long as 10,000 feet, blocking all three intersections at one time, their response was, well, we will make the trains go faster.

I don't think that is a responsible attitude, especially in light of the fact that we are very, very sensitive in northern Illinois when several years ago we lost seven children when a Metra train smashed into the school bus.

Those problems are on top of all of this. They haunt us. There would be over 800 crossings of school buses each day just at the 3 crossings in Barrington. So the people that we represent are very sensitive to balancing the issues of safety with the need for increased transportation enhancements.

In closing, I would like to express my appreciation to you, Mr. Chairman, for introducing this piece of legislation, for working with me and others in the suburban Chicago delegation in a bipartisan manner and for calling this hearing on such a timely matter.

We would urge our colleagues to support H.R. 6707.

Mr. OBERSTAR. I thank the gentleman for those comments and for that. Again, did you say 800 school bus crossings?

Mr. MANZULLO. Eight hundred and forty.

Mr. OBERSTAR. Yes, thank you.

Mr. MANZULLO. Mr. Chairman, there are about 130 grade crossings. Those 840 school bus crossings each day are just at 3 of those in Barrington. Ms. Bean has more information on that.

Mr. OBERSTAR. Thank you for that clarification—Ms. Biggert—and thank you for your advocacy at this hearing and the resolution that we propose.

TESTIMONY OF THE HONORABLE JUDY BIGGERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. BIGGERT. Thank you, Mr. Chairman and Members of the Committee and thank you, Mr. Chairman. I appreciate your giving us the opportunity today to speak on behalf of the TRACS Act, and I would like to express my gratitude for your willingness to work with my colleagues and me in such a bipartisan fashion on this important legislation.

As you have heard from the previous speaker, the bill under consideration today is of vital interest to the people we represent in Illinois.

In my district, there are over half a dozen cities and villages that would be devastated by the Canadian National's proposal of the acquisition of the EJ&E. Their current plan is to increase freight traffic on the line through our communities by as much as 400 percent in some places.

The result, according to the STB's own findings, will be a disturbing increase in accidents, blocked crossings, pollution, noise, traffic and more. Home values will drop. At least 11 emergency response providers will be cut off from those who need their protection, and total automobile weight times would increase up to as much as 165 hours per day at a given crossing.

Further complicating matters is the fact that the STB and the Canadian National expect local taxpayers to foot the bill for 90 to 95 percent of grade separation construction costs.

Like many communities in America, right now our towns and cities are facing tough economic times. Forcing them to come up with this 95 percent of the 40 to 60 million dollars necessary to build just one grade separation will literally break the bank.

Coupled with the extra safety, noise and other infrastructure improvements necessary to accommodate the added traffic through over 112 crossings along the EJ&E, the burden on the Illinois taxpayer would be crippling, and this is all so some foreign company can add to its bottom line.

Those defending this merger claim that it will reduce traffic elsewhere in the Chicago region, but mark my words, it won't last.

The demand for freight service in Chicago is expected to nearly double over the next 20 years. Even if some rail lines see a temporary decline in CN trains, they will be replaced in short order by trains from other shippers.

And, many of those who currently support this acquisition haven't yet realized that they too will be asked to pay for CN's plans in the form of taxes and the disruption of commuter rail service.

For rail companies, it is an easy and cheap way to increase traffic through the region without paying for the real infrastructure investments necessary to balance the needs of taxpayers, local communities and shippers.

Mr. Chairman, during the time that this acquisition has been pending before the Surface Transportation Board, Members of our delegation have had to become quick experts of the laws governing the approval process for rail mergers. The STB is required to study how mergers would affect our communities, environment and even the social-economic impact.

It allows them to set certain and, in my opinion, right now inadequate conditions on the merger to partially mitigate the damage. But no matter how bad the impact is, no matter how contrary to the public interest, the STB approves or denies the merger based on whether or not it would create a rail monopoly. That is so unfair to be criminal or at least it should be, and that brings us to the subject of the hearing today and the TRACS Act.

Mr. Chairman, I would like to again commend you for your work on this bill, and I am proud to be an original co-sponsor.

It does exactly what a reasonable person would expect. It simply requires the STB to weigh the public costs a merger would have against the transportation benefits. If the transportation benefits of a proposed plan are completely outweighed by the damage to the public interest, then a merger could be denied or additional mitigation required.

And, it spells out common-sense factors that the STB should consider when determining the public interest: things like public safety, emergency response time, noise and hazardous material safety.

To Members of this Committee, I would ask that you strongly consider this bipartisan vital legislation and, when you do, keep in mind that your community could be next. The next time a massive rail company tries to unilaterally impose its will on small town or suburban America, we should have rules in place that provide some protection and basic fairness. The TRACS Act would do exactly that.

Again, thank you for holding this hearing, and I yield back the balance of my time.

Mr. OBERSTAR. Thank you very much for your comments and for your assessment of the common-sense factors. I think that may be a good new name for the bill, the Common-Sense Railroad Bill.

Ms. Bean.

TESTIMONY OF THE HONORABLE MELISSA BEAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. BEAN. Thank you, Chairman Oberstar, Ranking Member Mica and Members of the Committee here today for giving us the opportunity to testify in strong support of H.R. 6707, the Taking Responsible Action for Community Safety Act or TRACS Act.

I want to commend Chairman Oberstar's leadership on the bill and look forward to working with the Committee.

Last month, during a field hearing that my colleagues and I held in Chicago, we heard testimony from the Illinois Department of Transportation and the Chicago Metropolitan Agency for Planning who expressed serious concerns about the STB review process. The process' narrow focus on a given transaction in the private sector disregards existing transportation plans, investments and input from local and Federal officials.

These hearings raised the following questions:

How is it that a transaction initiated by and for the benefit of a foreign company and their shareholders would allow that shareholder upside to be paid for by American taxpayers?

How is it that an Environmental Impact Statement can acknowledge an egregious burden on American communities but offer few or no solutions?

Why is it that a private company can preempt regional planning and transportation priorities that have been worked on by all levels of government and agreed to in a bipartisan fashion?

We are here today and got involved in reviewing the STB's mission and decision-making process because of the local deal that you have been hearing about that is impacting communities in all of our districts. But while we will share specific examples from CN's proposal to acquire the EJ&E, it is important for you all to note that unless the mandate of the STB is clarified, communities in your districts can face the same sorts of challenges.

The current process has historically put the interests of industry over those of American families and taxpayers. This doesn't have to be the case. As noted by the Board's most recent decision, the STB has the ability to deny an acquisition on environmental grounds. Toward that end, I hope that they use the CN/EJ&E case to set that precedent.

However, the TRACS Act would clarify their obligation as a Federal Agency to protect the interests of the taxpayers who fund them. The impact on a local shipper, while important, shouldn't outweigh the impact on communities and the citizens who live there. This bill will require that public impact concerns are given equal consideration to those of commerce, but that is not how it appears to be working currently.

As I share details about this transaction with you, I am speaking not just on behalf of the 8th District constituents but as a mom who crosses those tracks to get to my daughter's school, to the grocery store, the post office, almost anywhere in my community.

But there are over 40 communities along the EJ&E in Illinois and northwest Indiana whose families will experience a 400 to 900 percent increase in freight train traffic. That is why there is such strong bipartisan opposition to this deal.

Last November, I requested an Environmental Impact Statement be prepared to give our local residents a forum to raise their concerns, and thousands of residents have shown unprecedented levels of involvement, culminating in over 5,000 residents attending a recent hearing held at a high school that Congressman Manzullo and I attended right in my district.

The intent of an EIS should be to balance the priorities between issues of commerce and transportation with community concerns including safety, quality of life and economic impact. Regrettably, the draft EIS seemed to endorse allowing a private company to destroy local communities' quality of life, safety and economies while expecting those communities to pick up the tab.

It failed in scope and solutions, specifically placing an egregious tax burden on local communities by expecting them to fund the vast majority of mitigation costs for a project they don't want and will not benefit from.

CN has offered $40 million towards mitigation which is laughable considering costs are projected at well over a billion dollars, and that is just for grade separations.

It fails to provide other options or review existing alternatives. We don't have the time to get into those, but there are many options about how we build our transportation infrastructure for the

growth that Congresswoman Biggert just mentioned and to support that growth in the future.

It identifies 11 communities who would be cut off from their police, fire and emergency providers. It disregards deadlocked traffic, emissions, noise levels, safety concerns, thousands of children standing in the cold winters of Chicago to get to school while 2-mile trains go by and the economic burdens as well.

The reason we need this bill is that the STB acknowledged all these concerns, and we need this bill so that they can weigh those concerns when they make their final decisions and balance issues of commerce with issues that our taxpayers pay for. It is a common-sense solution, and it will create equity and serve the communities and the taxpayers who we all, as Federal officials or Federal workers, are entrusted to do.

Thank you and I yield back.

Ms. BROWN. [Presiding.] Next.

TESTIMONY OF THE HONORABLE PETER ROSKAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ROSKAM. Thank you. I want to thank Chairman Oberstar particularly for taking the time to come to our region and to visit and look and listen and spend the time on the ground, to come to the Chicagoland area and see firsthand. I know he has been there many times, but it was a great encouragement to me and my constituents to know that we have a Chairman who is willing to do that, rolling up his sleeves and taking the time, physically, to come in.

I just want to point out to the Committee this is a bipartisan group here, three Republicans and three Democrats that have come together and are unanimous in this effort in joining with Chairman Oberstar.

It is sort of an old playbook in Illinois to have city versus suburb tension, and those of you who represent metropolitan areas understand that natural tension. Those of here largely represent suburban areas.

This is a case, with all due respect to the City of Chicago with whom we have good relationships, but the City of Chicago benefits from this. And, essentially, they are saying take the rail traffic that is coming our way and why don't you just scoot it out and run it through the suburbs?

As Ms. Biggert mentioned a couple of minutes ago, that may be a good deal for them in the short run, but ultimately in the long run I don't think that is a very good deal.

I think it bears out in even some of the observations that have made by the Surface Transportation Board. For example, they raise the point that there is going to be a 28 percent increase, likely, in the accidents that come out in the area that would be impacted as a result of this merger.

With all due respect to CN and the offer that they have on the table, I don't think it really passes the straight face test and, frankly, the law at this point doesn't require them to do it.

I think that this is an effort, and with the Chairman's leadership we hope to change that dynamic so that they don't simply have to

offer 5 percent of the infrastructure costs and get all of the benefits because think of the deal that they are offering.

Essentially, they are coming in and they are saying: Look, we are going to string rail, and we are going to run it, and we are going to increase traffic that is going to blow right through your particular town.

You, as the local community, as the local property taxpayer, are going to be asked to take on the infrastructure burden of rail traffic that is blowing through your town, coming from hundreds of miles away, going hundreds of miles away.

And, it doesn't create any great value to that particular community.

I represent Bartlett, Illinois. Bartlett, Illinois is a town that is out west, in the northwest suburbs of Chicago. It had conflict after conflict in the past with CN over some of the rail line.

They are currently putting in place a new fire station, but this new fire station is going to be cut off from some of the areas that they need to serve in the future. So, again, CN gets the benefit, but ultimately it is the local tax payers that pick up the burden, and that is just not a good deal.

I think the wisdom of the Chairman's approach is brilliant, and it is elegant in a way because all it does is says: Look, we are going to put this new and make this one of the considerations, safety and environmental effects on the proposed transaction including the effects on local communities such as public safety, grade crossing safety like Ms. Bean mentioned, hazardous materials, transportation safety, emergency response time, noise and other impacts.

Also, we have not really touched on because we have been focusing primarily on the safety impact, but there is a commuter line that is in place to be used in this area. Our region has a real need for enhanced commuter rail up in sort of the north-south corridor, making an arc around the Chicago area, and it is called the STAR line.

This is not a NIMBY issue because this is in our back yard. I mean we represent rail communities. We represent rail-oriented people. But what we have to do is use this, make sure that this is used wisely because these types of infrastructure decisions that are made are going to have an impact not only today but literally a ripple effect, I think, for a generation to come.

So we are here as a bipartisan group that has joined together in, essentially, sending up the signal flare because we are not going to be alone in this. This is going to be an issue that is going to have an impact on other communities.

Our hope is that we can invite you to come alongside us and to come alongside the Chairman to put these really common-sense things into place and ultimately come up with a system so that the right criterions are evaluated properly and that it is balanced.

Mr. Chairman, thank you for the time and the opportunity to spend with you today.

Mr. OBERSTAR. [Presiding.] Thank you, Mr. Roskam, for your very thoughtful comments, well expressed. The effect on the fire department that you described is evident all through communities, the 50 or so communities along this route.

And, your statement, goods come from hundreds of miles away and are destined for hundreds of miles further and little benefit to the local community, but that wasn't always the case when the railroads had less than carload service and they would stop in small towns and pick up and drop off goods, pick up and drop off the mail and pick up and drop off passengers. That disappeared with the discontinuances in the 1960s and 1970s and with the Staggers Act.

Mr. Foster.

TESTIMONY OF THE HONORABLE BILL FOSTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. FOSTER. I would like to thank Chairman Oberstar for this opportunity to testify today and also for his leadership on an issue of great importance to the people of Illinois and to our Country.

I would also like to recognize the bipartisan efforts of my colleagues from Illinois—Representatives Biggert, Bean, Manzullo and Roskam—and whose work on behalf of their constituents these past several months has been exemplary. Finally, I would like to thank my friend and constituent, Mayor Tom Weisner of Aurora, for appearing today. He has stood up for his community, provided leadership to the nearby communities and brought the fight against this acquisition to Washington.

For several months, families and businesses in my district have overwhelmingly declared their opposition to the potential acquisition of the EJ&E by Canadian National. I have heard from them in public forums, on the phone and in private meetings. They have held rallies and petitioned the Surface Transportation Board in writing.

Meanwhile, both CN and the STB have ignored these voices. Last month, Canadian National skipped a public hearing on the purchase, refusing to participate in any panels not moderated by their de facto ally, the Surface Transportation Board.

One hundred years ago, railroad barons struck deals in smoke-filled rooms and made fortunes on the backs of ordinary Americans. It appears that not much has changed.

Sadly, the public has been largely left out of the process even though they stand to lose the most in this transaction. There will be no improvement in the quality of life in the region and no economic upside.

The recently released draft Environmental Impact Statement estimates the acquisition will lead to the loss of about 300 jobs in the region. It will also unreasonably saddle local taxpayers with the cost of mitigation for the project.

The draft EIS provided, at best, a vague and incomplete study of the 133 grade crossings in the area and, from this, recommended that CN pay only 5 to 10 percent of mitigation costs. Grade separations cost about $50 million a piece, and the STB apparently expects local communities or the States or perhaps space alien to shoulder most of this burden.

The deal also raises serious public safety concerns, many of which are simply glossed over in the draft EIS. Increased traffic on the EJ&E will raise the probability of train accidents in the area by 28 percent.

Furthermore, the ability of the local fire, police and EMS services to respond to emergencies in the affected communities will be hampered by blocked intersections. Once again, the CN is not directed to help fund projects that will mitigate this potentially life-threatening problem.

Public transportation will also be adversely affected. Each year, millions of suburban commuters rely on Metra, but CN has not agreed to share the tracks along EJ&E. This threatens construction of Metra's suburban STAR line and presents yet another financial burden to residents already dealing with high fuel prices.

The STB must consider the impacts of transactions like this if they have unwelcome communities. That is why I support H.R. 6707, the Taking Responsible Action for Community Safety, the TRACS Act.

This legislation would require the STB to consider a transaction's effect on public safety, grade crossing safety, hazardous materials transportation and emergency response time in its decision to approve or reject an acquisition proposal. Such a proposal would be approved when it is consistent with the public interest, rejected when it is not.

To be clear, I do not mean to oppose all railway transactions. Railways are an extremely efficient means of transportation, and their use can and should increase in response to rising fuel prices.

However, transactions such as the EJ&E expansion should only proceed when there is an overall commercial and economic benefit. That is not the case here. There is something seriously wrong with a process that leaves out the public interest and deflects the cost of these acquisitions and traffic increases onto local communities.

H.R. 6707 will help change this.

Now, a final observation I would like to make is that this problem, the problem here, is not limited to STB approval of mergers and acquisitions. A fundamental problem is that there is no mechanism in Federal law to ensure that the public costs are balanced against private profit.

As railway traffic increases in the coming decades, if companies such as CN continue to conduct themselves in ways that are indifferent or antagonistic to the public interest, they can fully expect Congress' attention to turn to explicit mechanisms to ensure environmental and economic remediation for their actions.

Once again, I thank Chairman Oberstar for the opportunity to testify and thank the Committee for its consideration.

Mr. OBERSTAR. I thank the gentleman for his statement. I think he summed it up very well. The public has been left out of the process, and the purpose of our legislation is to reinsert the public interest into the process.

I would simply observe that in a previous hearing on rail issues, I pointed out that in the period 1820 to 1871 the Federal Government gave to the railroads 173 million acres of public land, nearly 9 percent of the land surface of the United States for the public use, convenience and necessity to develop a rail system across the land.

There is a public responsibility on the part of the railroads, to be responsive to the public.

Do Members have any questions? Mr. Shuster?

Mr. SHUSTER. No, sir. I have no questions, just to express that I certainly am sympathetic to the needs of the communities that all of you represent and that are affected by this deal and also to point out, at this point, I am in no position to judge whether this should move forward and that in this Committee, I believe, our role is to make sure that the STB has the tools in place to make good, wise decisions on whether mergers and acquisitions like this should proceed.

My concern is that this particular legislation might have much broader and longer lasting implications and effects on the rail industry and the transactions that may occur in the future.

But again, I appreciate all of your being here, and all of you obviously know your subject matter and put forth a very compelling case. So I want to thank you for taking the time to do that. Thank you.

Mr. OBERSTAR. I thank the gentleman.

Are there other Members who wish to make a comment or question our colleagues? Mr. McNerney?

Mr. MCNERNEY. Thank you, Mr. Chairman.

I just want to say the testimony was very compelling. Everyone on the panel said something that was very memorable.

In my own community, we have a similar problem. We have a town that is bisected by rail. It has cut off the emergency services from the people that need it, school buses, crossings. And another town, Tracy, is considering expanding rail service. So these are very relevant questions and issues.

I want to thank you for your testimony, and I want to thank the Chairman for bringing this issue in front of the Committee.

Mr. OBERSTAR. I thank the gentleman.

Are there any others who wish to make comments? Mr. Brown?

Mr. BROWN. Thank you, Mr. Chairman. I, too, appreciate the bipartisan support that this hearing has conducted.

My question would be if we did not pass this bill and the merger did not go through, would it mean that those railroads could not be used or could they use them without the merger?

Mr. OBERSTAR. I think the answer to your question is yes. The EJ&E, if the STB disapproved the merger, EJ&E would remain in the hands of U.S. Steel Corporation. The CN would continue operating as it does. They would just operate on different levels of service.

Ms. BEAN. I think if there is also a question, could the CN add traffic on the EJ&E?

They could work out a lease arrangement. However, the length of these new trains that they are proposing to put on there could not be supported by the existing track. So I think it is less likely that it would proceed, but that would be between what their arrangement to do something like that.

Mr. BROWN. And my question would be then would this bill have any influence on extending those tracks under some kind of new management?

Ms. BEAN. No. This bill really doesn't affect this transaction. It is just affecting the considerations and clarifying the considerations that we would expect the Federal Agency to consider and that they already can consider.

But because there is a lack of clarity in balancing the community considerations with issues of commerce, it will require them to do that more clearly.

Mr. BROWN. Okay. I was just concerned about the discouraging more train usage because I know the efficiency we are all dealing with now with the energy crisis and with the shortage of and dealing with foreign energy. I just felt like since the rail is more efficient at moving freight, that we certainly should try to consider all alternatives whether it be above-grade crossings or some other ways to mitigate the transaction.

I know I am not from Chicago. I am from Charleston, South Carolina, but we all have transportation needs and problems related to that.

Mr. FOSTER. If I could make, no. Go ahead.

Ms. BIGGERT. I think that we all really appreciate the railroads and how they affect our economy and how important they are and don't want to cause any loss of that, and I think this type of bill is important particularly.

What is unusual about this merger and most of the mergers are not concerned with the density in population that this proposed merger and where the track is would cause such angst to the communities because of the disruptions and because of the numbers of grade crossings that you don't really find in train traffic.

There have been some proposals that will move this out to an area that is not densely populated. So there is other consideration and other options that they would have.

So we are not trying to say we don't want commerce, we don't want trains, but really look very carefully at what the public interest is, and that is what this bill would allow the Surface Transportation Board to do.

Mr. FOSTER. I would just like to explain my comment at the end in my testimony. The merger and acquisitions are only part of the problem. As was mentioned by Representative Bean, you could have a leasing arrangement that would accomplish pretty much the same thing in terms of transferring the traffic load.

So the problem is bigger than just acquisitions, and I urge the Committee to think through a set of solutions that would cause the public interest to be considered everywhere as train traffic evolves.

Ms. BEAN. Can I add one final comment to just draw attention to what Congressman Manzullo had said?

There is a sincere interest by all of the Members here today in wanting to solve the issues of congestion and expand rail traffic and efficiencies in the area, but moving the problem from one congested, densely populated area to another densely populated area is just moving a problem. It is not solving anything.

Mr. MANZULLO. Chairman, as the Chairman knows, whenever a railroad wants to extend a passenger service, there has to be an alternative study to see if it is the best way to do it, et cetera.

But here, it is very strange because we are moving the problem from urban Chicago to suburban Chicago, and the only consideration by the Surface Transportation Board has to do with an antimonopoly issue. The law simply does not make sense.

Mr. OBERSTAR. With those remarks, I think the gentleman from Illinois summed it up quite well, we want to establish a balance.

The purpose of the legislation is to establish a balance between consideration of mergers between two Class I or more railroads and those between a Class I and a Class II or III and to have equitable treatment and consideration of the public interest.

I thank the panel, each and separately, for their advocacy on behalf of their communities in bringing this issue to the attention of the Chair and to our Committee. Thank you very much for being with us.

We will now proceed to our next panel which consists of Mr. Nottingham, Mr. Mulvey, Mr. Buttrey, the Board Members of the Surface Transportation Board.

And, in case you haven't done so before, you have just heard from the voice of the people, the Members of Congress who represent the citizens of the communities along the route that will be affected by the proposed merger. Having thus been informed, we welcome you to the Committee hearing and look forward to your testimony.

We will begin with you, Chairman Nottingham.

TESTIMONY OF THE HONORABLE CHARLES D. NOTTINGHAM, CHAIRMAN, SURFACE TRANSPORTATION BOARD; THE HONORABLE FRANCIS P. MULVEY, VICE CHAIRMAN, SURFACE TRANSPORTATION BOARD; AND THE HONORABLE W. DOUGLAS BUTTREY, BOARD MEMBER, SURFACE TRANSPORTATION BOARD

Mr. NOTTINGHAM. Good morning, Chairman Oberstar, Ranking Member Mica, distinguished Members of the Committee. I appreciate the opportunity to appear before the Committee today to discuss H.R. 6707.

The purpose of the bill is to direct how the Board should take certain environmental and safety considerations into account into its decision-making in merger and acquisition proposals involving only one large railroad. My testimony will be fairly general because an issue addressed by the bill is raised in a pending Board proceeding.

Railroads may not merge with or acquire another railroad without prior Board approval.

In 1980, Congress changed the standards and procedures for considering railroad mergers and acquisitions that do not involve more than one large railroad. Congress found that over-regulation had contributed to the railroad industry's financial woes, and so Congress sought "to provide, through freedom from unnecessary regulation, for improved physical facilities financial stability of the national rail system."

Essentially, Congress changed the statute to require the Agency to rule on smaller transactions, those that do not involve two large carriers, more quickly and it "reduced the number of factors the Agency must consider" in those cases.

Under the current standard, the Agency examines whether there would be a substantial lessening of competition or restraint of trade if the transaction were approved

The Board must also comply with the broad Federal statute governing Agency decision-making regarding environmental impacts. Proper deference to and compliance with the National Environ-

mental Protection Act, or "NEPA" is a matter of great importance and has been of interest to me personally since law school where it was a focus of my studies.

I first began working on the front lines of NEPA implementation and interpretation 20 years ago at the U.S. Department of Justice's Environment and Natural Resources Division, the litigating division that advises and defends most Federal Agencies in NEPA cases.

As any student of NEPA knows, there is a rich history connecting transportation infrastructure projects with the development and enactment of NEPA. Much of the justifying rationale for the enactment of NEPA in 1970 grew out of concerns that highway planners in particular were selecting construction corridors with little or no regard to environmental and community impacts.

As a former State DOT Chief Executive Officer and former senior official in the Federal Highway Administration, I gained extensive firsthand experience in NEPA interpretation and compliance related to projects such as the Woodrow Wilson Bridge Corridor replacement in Virginia and Maryland, the Stillwater Bridge replacement project in Minnesota and Wisconsin, the I-80 widening project in Nebraska and the Intercounty Connector project in Maryland—important projects that raised extensive NEPA concerns.

In my more recent work at the STB, I have gained additional experience working on NEPA issues related to a variety of proposed rail line construction projects, abandonments—including those that may lead to Rail-to-Trails projects—and proposed mergers. I am pleased to report that the STB has an excellent record in the areas of NEPA compliance and environmental stewardship.

NEPA requires Federal Agencies to consider "to the fullest extent possible" the potential environmental consequences in every major Federal action that could significantly affect the quality of the human environment.

This means that when considering an action that has the potential for significant environmental impacts, the Federal Agency must examine potential impacts, inform the public of those impacts and generally take those impacts into account in its decision-making.

In doing so, NEPA's implementing regulations direct Federal Agencies to consider a range of alternative courses of action, including the "no action" alternative, also known as denial. The consideration of alternatives is intended to prevent decision-makers from preselecting a preferred course of action and then ignoring information about alternatives to that action.

The nature and extent of the Board's environmental review in railroad merger and acquisition cases varies, depending upon the extent to which operational changes and traffic increases are projected as a result of the proposed merger or acquisition.

However, the environmental review that the Board has conducted under NEPA in various types of Board cases routinely includes consideration of the safety and community impacts described in H.R. 6707, and the Board has imposed mitigating conditions addressed to those sorts of impacts in various cases in the past.

H.R. 6707 would place transactions involving only one large railroad together with one or more smaller Class II or III railroads under the standard now applicable only to the merger of two or more large railroads. The bill also would amend the standards that specifically enumerate certain safety and community impacts along with effects on passenger transportation as mandatory criteria that must always be considered in the analysis.

H.R. 6707 was introduced "in response to an application filed last year by the Canadian National Railway, seeking the STB's approval to acquire control of the 198-mile Elgin, Joliet and Eastern rail line encircling Chicago."

It is inappropriate for me to discuss any aspect of this proposed acquisition while it is currently pending at the Board. When it is reviewing a proposed merger or acquisition application, the Board is operating in a quasi-judicial role similar to an administrative court. As such, Board Members must exercise extreme caution in commenting on any aspect of a pending proceeding in a manner that might give the impression that the Board has reached certain conclusions about a case before the record is complete and a decision is rendered.

The Board is currently receiving public comments on the proposed CN/EJ&E transaction. The comment period ends September 30th, 2008.

I understand that the Committee may wish to discuss the legal question of whether the Board believes that it always had the authority under the current statute to deny on environmental grounds a transaction that does not involve two or more large railroads. However, that issue recently has been raised in the CN/EJ&E case.

It is a legal issue of first impression, as the Chairman mentioned, that has not been addressed by the Board or any court. Accordingly, it would not be appropriate for me to discuss that issue at this time.

I should note, however, that the introduction of the bill, purportedly to provide clarity, has to date served primarily to create confusion. Until this bill's introduction, it had been assumed that the Agency had the authority to deny a transaction on environmental grounds. The Board's environmental staff along with the parties have put forth extensive efforts in studying the environmental issues in the CN/EJ&E case.

Unfortunately, the overarching premise of this bill—that the Board currently lacks authority to protect the public interest, public safety and the environment—could now be referenced in litigation by parties seeking to pressure the Board to either approve or deny a pending merger application.

This Board takes its merger review and environmental review responsibilities seriously, and we have always been able to take appropriate action to address the environmental concerns that have been brought before us. If we determine that existing law does not allow us to protect the public interest and the environment, we will not hesitate to seek legislative reform.

I would be happy to respond to any questions so long as they are not focused on a pending proceeding. Thank you for providing me this opportunity.

Mr. OBERSTAR. Thank you very much, Chairman Nottingham.

I didn't realize you spent such a chunk of your career on the NEPA law or that you had been involved in the Wilson Bridge Corridor or the Stillwater Bridge. You know that issue has finally reached a decision, and there is now an agreement to go ahead. The problem is after 20, almost 25 years, the cost went from $15 million to $330 million, and I don't know when that bridge is ever going to be built.

Mr. Mulvey, welcome back to the Committee.

Mr. MULVEY. Thank you very much and good morning, Mr. Chairman, Mr. Shuster sitting in for Mr. Mica, Ms. Brown. Always nice to see you again Mr. Lipinski and other Members of the Committee.

I would like to thank you all for giving me this opportunity to testify today on H.R. 6707, the Taking Responsible Action for Community Safety Act or TRACS.

At the outset, I would like to make clear that my testimony today pertains only to the TRACS Act, and it should not be interpreted as signaling my views on any cases currently pending before the Board including three control transaction cases: those between the Canadian Pacific and the Dakota, Minnesota and Eastern; the oft referenced here Canadian National and the Elgin, Joliet and Eastern; and the most recent Norfolk Southern proposal to merge with the Pan American Railways.

Whether or not the Board can deny approval of a merger that it has categorized as a minor transaction on grounds other than potential anti-competitive impacts is a question that is under review at present. To date, however, the Board has never rejected any merger on such grounds.

Our statute with respect to minor transactions specifies that we focus on anti-competitive impacts. On the other hand, the National Environmental Policy Act or NEPA directs that agencies take a so-called hard look at potential environmental impacts in carrying out their mandates.

"The Congress authorizes and directs that, to the fullest extent possible, one, the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter" of NEPA and, secondly, that "all agencies of the Federal Government shall" give appropriate consideration to environmental concerns in their decision-making along with considering economic and technical aspects.

They should also explain the environmental impacts of the proposed action, identify any unavoidable adverse impacts and any alternatives to the proposed action including the no action alternative.

There seems to be a conflict here, and as a result the question of the scope of the Board's authority is very likely to wind up in the courts in the very near future.

A related concern of mine is the way in which the Agency has categorized mergers in the past. That is we have three categories of mergers: major, significant and minor.

I have long thought that the Agency's categorization was problematic in practice because the significant category is almost a null

set. The Agency has only categorized one transaction as significant since 1993.

Now when I was on this Committee staff, I was very critical of the Board's categorizations. Several proposals came before us, which I believed should have been categorized as significant because of their far-reaching impacts, which the Board classified as minor. In fact, virtually all non-major transactions were determined to be minor even where there were important regional impacts, at least in my opinion.

I believe that mergers, other than those involving two Class I railroads, that have regional or national transportation significance should be classified as significant in accordance with our existing statute.

Over the past year, I have made clear my views regarding the Board's categorization of particular transactions, in several cases dissenting when they were classified as minor.

I believe it is important that we continue to differentiate amongst transactions although what is considered significant needs to be recalibrated because of changes in the railroad industry since the Staggers Act of 1980.

I also believe the Board should accord the fullest due process permissible under our existing statute to all transactions before it, including adequate opportunities for stakeholder participation in developing the evidentiary record and in undertaking the environmental review process.

Now I am not opposed to the TRACS Act. I believe the Board should consider the public interest, including environmental issues, in some manner in deciding whether or not to approve control transactions.

If the Board already has a direct authority to do so, then the TRACS Act is not needed. If it does not have that authority, then I would welcome the additional authority to do so.

So while I have already stated I don't oppose the TRACS Act, I do want to comment on a practical problem that I do see with it. Section 2 of the TRACS Act requires that the Board hold public meetings "in the affected communities unless the Board determines that public hearings are not necessary in the public interest."

It appears that this language provides a suitable amount of discretion for the Board to determine whether or not and where to hold hearings and how many hearings to hold and how to conduct such hearings. However, I do want to emphasize that as a small agency, we currently dedicate a considerable portion of our resources to holding hearings, and I urge the Committee to be mindful of this in light of the size and scope of potential future transactions.

As you know, Class I railroads operate networks in the tens of thousands of miles running through literally hundreds of communities. It would be impractical and impossible for us to hold hearings in every community that might affected by a major merger.

That concludes my statement, and thank you for the opportunity to testify today, and I look forward to answering any questions the Committee might have.

Mr. OBERSTAR. Thank you very much for, as usual, your thoughtful comments on pending legislation—as you, Mr. Chairman.

Now, Mr. Buttrey.

Mr. BUTTREY. Good morning, Mr. Chairman and other Members of the Committee.

What I would like to do, if I could with your permission, is to associate myself with the remarks of the Chairman. If I had said what my views were, they would be exactly in line with what the Chairman said.

So I am not going to submit separate testimony in the interest of time. I would be happy to answer any questions you might have.

Mr. OBERSTAR. Well, thank you very much. You are of one accord.

Chairman Nottingham, you say it has been assumed that the Agency has the authority to deny a transaction on environmental grounds. Then you go on to say it is a legal issue of first impression that has not been addressed by the Board or any court.

So how can you come to the assumption or conclusion that the Board has authority when it hasn't been tested and when the precedent is with the Interstate Commerce Commission that the Board does not have that authority and a Federal Court affirmed the ICC position?

Mr. NOTTINGHAM. Thank you for the question, Mr. Chairman.

The case you reference, I believe, is the Seventh Circuit case. It did not relate to NEPA whatsoever. As you point out, the ICC was affirmed.

It related to a labor issue. The petitioner sought to require the Board to consider a labor question. So there weren't two competing statutes at play there. There was an argument that the Board should consider labor impacts.

In this situation, I have to be careful wading very deeply into it at all because, as you did point out, we have been served legal paperwork by the CN indicating very clearly we may well be in court with them very soon, where they seem to assert that we don't have certain authority.

But it is important to recognize we do have two statutes here. In the first panel, you heard a lot about the first statute which is the one that says we should consider, and look at impacts, economic impacts and what not.

You didn't hear much about the National Environmental Policy Act which is a very broad and sweeping statute. We have always assumed that it applies to everything we do, every Federal action, just as it does to reach every other agency in the Federal Government.

We often and very regularly interpret statutes before they are ever litigated in court. Usually, it is not too difficult to read a law and make sense of it, and that has always been the understanding with the Agency.

Mr. OBERSTAR. Well, this is a very important issue to address and goes to the heart of the concerns of the previous panel of Members and those witnesses who represent the communities from whom we will hear shortly.

I go back to the origins of the dissolution of the ICC and the Staggers Act, and subsequently Reese Taylor, who was Chairman of the ICC, said in a hearing in the Senate that in those cases, the cases not involving two Class I railroads, the Commission is di-

rected to approve the application unless it finds there is likely to be a substantial lessening of competition and the anti-competitive effects outweigh the public interest.

Then Reese Taylor goes on to say that, I think, this is an area of the law that should be addressed by the Congress. The Senate didn't address it, unfortunately, and left it lying there on the table for all this time.

But the direction that the application shall be approved unless the Board finds serious anti-competitive effects that outweigh the public interest, the burden of proof really shifts doesn't it?

Mr. NOTTINGHAM. I don't know former Commissioner Taylor. That was, I think, in the early eighties when apparently he testified.

Mr. OBERSTAR. It was. It was 1981.

Mr. NOTTINGHAM. I don't know the full context even of the hearing. I expect, though, that it was not focused on NEPA whatsoever. Very often, we get into dialogues about our statutes, and if we take statements in a certain context and try to apply them to another context they are not really good fits.

But, in any event, if the Committee is inclined to address the issue of what authority the Board may or may not have, I would propose that there are very short and more surgical ways to do that, just something as simple as nothing should be interpreted to imply that the STB isn't governed by the full parameters of NEPA. I am sure counsel could draft it even more capably than that.

We have no problem being governed by NEPA. We have been acting as if we have been governed by NEPA for many years. We are acting currently as if we are governed by NEPA in all of its entirety.

The bill, unfortunately, does a lot more than that and sets up kind of a parallel regime that is very similar on the one hand, but on the other hand looks to be crafted, perhaps by some—it may be not the intention of the Chair by any means—but to add litigation, add points to argue over in addition to the NEPA issues which we very thoroughly address and are addressing.

Mr. OBERSTAR. Well, that hearing that I referred to in the Senate was a review a year after enactment of Staggers on the issues, on the concerns, the problems, try and raise issues about what might need further to be addressed.

Chairman Taylor said that transactions involving smaller railroads was a problem area in the legislation possibly in need of redrafting. That was rather insightful at the time, foreshadowing the issue we are dealing with today.

It wasn't specifically on NEPA, but the hearing was generally on the issues involved in implementing the Staggers Act.

What unintended consequences do you think there are of this legislation, since you made that statement, and how would you propose we address them?

Mr. NOTTINGHAM. I have some concerns about the retroactivity of the bill, the fact that it would reach back and apply to matters that are currently before the Board. We have at least three good-sized—I use that phrase because I don't think it gets me in legal trouble, good-sized. We have words like "significant" and "minor" and "major" that all have these special technical meetings, I have

learned at the STB—we have at least three good-sized mergers pending with us now.

It is a little awkward for the Board, although absolutely fully within Congress' discretion to reach back in a situation like this and address something retroactively. We respect that completely. We will implement whatever regime the Congress asks us to.

What we are currently doing is our best to implement the regime that currently is in law.

I do worry that having set up a parallel structure that on the one hand is very similar to NEPA but goes by a different name and was put forward into the record with a lot of statements, both in the record and also in the media about intent, the intention to affect one particular transaction that we heard about in the first panel and we will hear about in later panels. It is of concern to me. I think we will see more litigation, not less.

It could in cases, future merger cases where there really aren't major environmental issues, it could be taken advantage of to basically have a dampening effect on transactions.

In a hypothetical case, it could really be a win-win-win merger, but you can always find someone who, for whatever reason, wants to object to or take advantage of a new second opportunity, a second bite at the apple, so to speak.

Mr. OBERSTAR. Well, your statements are on the record, and I appreciate that. If you have further thoughts, we welcome your written submission subsequently, and we will take those into consideration when we eventually move to a markup on the bill.

Our purpose is not to stop transactions necessarily but to give Board authority to adjust those transactions to accommodate the public interest.

Now, Mr. Mulvey, is there any reason we should not have or the Board should not have authority to deal with a transaction of a Class I and a Class II or III as it does with transactions between two Class Is?

Mr. MULVEY. No. I don't think it is the size. It is not so much the size of the transaction or the size of the railroads. It is the impact of the transaction that we should be looking at.

It can be a situation where although the railroad is relatively small, if the environmental impacts are large, then we ought to be able to impose the mitigations that are necessary to protect the public interest. So we should always be balancing the public interest versus the benefits of the transaction.

As I have said in my statement, I am not opposed to us having this authority. The question, of course, is whether or not we already have the authority, and that is the question that is unanswered.

In light of what you were mentioning before about Commissioner Taylor, this was right after the Staggers Act, and as you recall, in those days the interest was making sure that the railroads were free from excessive regulation, as Chairman Nottingham mentioned a few moments ago.

I think the focus was on making it as easy as possible or focusing on making it easier for railroads to merge and to rationalize the system because the ICC had been seen as a barrier to rationalizing the rail system, and in those days there were too many railroads.

So, focusing on that, one can understand why that would be the case.

NEPA, I think, wasn't thought of at the time, but I think he was pressured in realizing there could be problems coming up later on.

Mr. OBERSTAR. Thank you very much.

I will withhold further questions at this time and recognize the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman.

I thank the members of the Board for being here today.

Could each of you just briefly clarify? Do you believe that you can decline an approval on transactions between Class Is with a Class II or a Class III? What is your position?

I am not sure I understand what your thoughts are. Do you think that, the three of you?

I know you are going to go to court, but your view today is can you decline an approval at this point under the current law?

Mr. NOTTINGHAM. Congressman Shuster, you asked the question generally, which I appreciate, because generally the answer is very simple: Yes.

What is untested, though, is whether or not we can invoke NEPA to deny.

We can certainly, if the right facts and circumstances exist. It is unquestioned that we can invoke our other governing statute if the facts are present.

But I need to just refrain. We are going to be in court soon, we expect, fighting this out. Despite what you might have heard in the first panel, the railroad, at least one of the railroads with a pending matter seems pretty inclined to express unhappiness with the Board and take us to court, and we need to be prepared to protect the public interest in that setting.

Mr. SHUSTER. Right. Mr. Buttrey?

Mr. BUTTREY. I have really nothing to add substantively, Congressman, to what the Chairman said.

It is clear, I think, if you look at all the reports, statements and opinions and decisions in this matter up until this point and the fact that we are going through this environmental process right now where we are having public hearings in the areas that are affected by this proposed action, that the Board has assumed all along that it had that authority.

Mr. SHUSTER. Right. Mr. Mulvey?

Mr. MULVEY. Well, the authority is what we can do about environmental impacts. We certainly have said that we have the authority to require mitigation of environmental impacts, and this was for non-double Class I merge. This is one of the first times that we have actually done such an extensive environmental review of a merger.

I might add, by the way, it was mentioned earlier about the Board's environmental review being somewhat cursory. I think if you took a look at our draft Environmental Impact Statement, it looks far from cursory. The thing looks like New York City phone books. It is a fairly extensive look at this.

The issue really is whether or not we can turn down the merger based on environmental impacts alone or whether there also has to be competitive considerations or whether we are limited to only re-

quiring reasonable environmental mitigations of the merger, and that is something which is before the courts. We will have to see how the courts rule on that, whether or not we have the authority or not.

Mr. SHUSTER. Right. That brings me to, when you mentioned that environmental study, the law states that the STB shall approve transactions if it does not involve two Class I railroads unless it impacts competition. Can you talk a little bit about that?

You are doing a full environmental review. As you have said, it is no little thing. I understood it is $20 million and several hundred, if not a thousand, pages. Can you give the rationale of why you went through that and what?

Mr. MULVEY. Although that transaction was classified as a minor transaction, and I disagreed with that—I thought it was at least a significant transaction—we did feel, however, the potential environmental impacts of all these communities that would be affected and the number of trains that would be increased certainly met the threshold for requiring an Environmental Impact Analysis.

And so, we said that despite the fact that it is a minor transaction we are going to go ahead and a full Environmental Impact Analysis, and a contractor was employed.

I believe they have a couple hundred people working out there, looking at all these grade crossings and calculating the safety impacts, the pollution impacts and the like. Then, depending upon their report, at some point we would have the responsibility of recommending appropriate mitigations.

The question as to whether or not we can actually turn it down based solely on that is one that is open and hasn't been decided yet.

Mr. SHUSTER. Right.

Mr. NOTTINGHAM. I can just add, Mr. Shuster, that our decision to conduct a full blown NEPA Environmental Impact Statement has at least two rounds of public comment. We are in our second round of public hearings now. We did some in January. We did some a couple weeks ago. We are doing more this week in the communities that are impacted.

We have had record turnout, thousands and thousands of attendees. The record is being well developed and is open until September 30th.

That wasn't an accident. We didn't do that by some oversight. It was a thoughtful step and, frankly, a step to keep us from losing a NEPA lawsuit because we fully anticipated that unhappy stakeholders would see our ignoring NEPA as very consequential if we were to do that.

Mr. SHUSTER. Right. Thank you.

Mr. Chairman, I see my time has wound down, but I have one more question.

Mr. OBERSTAR. The gentleman may proceed.

Mr. SHUSTER. Thank you.

Concerning the proposed changes in this legislation, have you looked at it? What do you feel will happen to the review process and the work load at the STB? Do you have the resources?

It would be my view that it would significantly increase the time to review something, the manpower to do these reviews on what

are much smaller transactions. Can you just address that a little bit?

Mr. NOTTINGHAM. I want to be careful not to overstate the impact on the Agency. That is not a big concern to me. It very often is, as the Chief Executive of the Agency. As Chairman, I have to keep a very keen eye on resource allocation and staff work burdens.

It is fair to say we do most, if not, I believe, all of this type of analysis that is referenced in the bill when we do a full-fledged EIS as we currently are with the pending merger of the CN/EJ&E. So, in many respects, the bill is not asking us to do work that we don't always do.

It is just, by setting up a parallel regime, it gives parties who want to object to our work kind of two bites. They can attack us on whether or not we followed NEPA perfectly. Then they can attack and say, well, we didn't cross-reference it to this other statute.

It creates something that you don't see. I am not familiar in the highway sector or other transport sectors where you have NEPA review, which governs all the sectors across the board of the government and an additional environment review.

Now, with this bill we will pick on the railroad sector in particular and have this only for the railroad sector, this one additional review, implying that there is not adequate review currently. We think, of course, there is adequate review currently.

If the concern truly is about whether or not NEPA in its full glory applies to every action the Board takes, that can be stated in a congressional statement in about 12 words or less.

Mr. SHUSTER. Okay. Mr. Mulvey, how do you feel? You look like you were needing to add.

Mr. MULVEY. I wanted to add that we do a lot of environmental analysis above and beyond these kinds of mergers. Every time there is a major abandonment or a significant abandonment of a mile or two of railroad, we make sure that that line of railroad is abandoned in accordance with the environmental laws to make sure that the tracks or the ties are taken away and that they are not allowed to pollute streams and what the impact of abandoning a line would be on fisheries and historic sites, et cetera.

So we are very much involved in doing environmental analysis with abandonments, and it is also true for any new construction.

If we have any new railroad construction, for example, the new construction by the DM&E into the Powder River Basin, we do a very, very thorough environmental analysis. We did so for PRB as we will also do if the Yucca Mountain project goes forward. So we already do environmental analyses for new constructions.

Mr. SHUSTER. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman for his questions and the Board for their response.

Ms. Brown, the Chair of our Rail Subcommittee.

Ms. BROWN. Thank you, Mr. Chairman, and thank you for holding this hearing.

I guess I will go right to you, Mr. Chairman. How does the Board define public interest?

Has the Board ever denied any merger application on public interest grounds such as adverse safety and environmental condi-

tions since the enactment of the Staggers Act? To the Chairman and then the others can respond.

Mr. NOTTINGHAM. I don't believe the Board has ever denied a merger on environmental or community impact or safety grounds.

The first part of your question about how do we define.

Ms. BROWN. Public interest.

Mr. NOTTINGHAM. Public interest and was it reasonable mitigation? Was that the question?

Ms. BROWN. No. Has the Board ever denied any merger application on public interest grounds such as safety or environmental conditions?

Mr. NOTTINGHAM. Not on environmental. Occasionally, I believe in the past, distant past, the public interest could have been cited in sort of the economic analysis and sort of the traditional non-environmental analysis of a merger or two but not on environmental or community impact grounds.

Ms. BROWN. Anyone that is going to respond to that?

Mr. MULVEY. No. That's is an accurate statement. We have never. As I said in my own statement, we have never turned down a merger on environmental bases.

Ms. BROWN. The panel just before you had serious concerns about safety and the number of accidents. It seems as if it is not addressed, and I guess that would be the concerns of any Member, of the safety. It just doesn't seem to be in place.

In reading, reviewing the information, I understand that accidents will go up, but overall it will go down.

I know you don't want to talk specifically about this particular case. But the safety, it is not being addressed? That is what it seems.

Mr. NOTTINGHAM. Chairwoman Brown, if I could just say, generally speaking, I am not speaking on any particular case here.

Ms. BROWN. Right.

Mr. NOTTINGHAM. When we review transactions at the STB, we absolutely consider safety impacts. We, and the Federal Railroad Administration, look carefully at the rail safety integration plan as we have done in the pending merger that has been discussed today. We absolutely look at any safety benefits or dis-benefits and assess those. We look at historic data.

We have a draft, very voluminous as Vice Chairman Mulvey pointed out, a draft Environmental Impact out for the public right now, and it spotlights and flags a number of issues.

I just want to be careful. We are not at the point in the process where we are announcing the Board's action based on those issues.

Some of the first panelists, I worry, confuse the fact that there is a draft out and they haven't seen action out yet with the belief that we would never take corrective action or appropriate action. That couldn't be further from accurate. I just want to make sure we have a chance to clarify that.

Ms. BROWN. Back to public interest, what is your definition?

Has the Board ever denied any merger application on public interest grounds and you are saying?

Mr. NOTTINGHAM. Not in terms of invoking environmental or community impact.

What I don't know is whether back, and this Agency has a 100 plus 20-some year history going back to the ICC. I don't know whether I can turn to counsel.

I am advised, excuse me, that it bears correction. A predecessor board did deny the Santa Fe Railroad/Southern Pacific proposed merger sometime in the past, before my time, on public interest grounds.

Ms. BROWN. Okay. I yield back.

Mr. OBERSTAR. I thank the gentlewoman for those remarks.

Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman.

I thank Chairman Nottingham and Vice Chairman Mulvey and Mr. Buttrey for their testimony here today.

As you all know, I represent a district in Chicago, in the suburbs of Chicago. I grew up living less than a football field's length away from railroad tracks, and I now live in a village of a little under 13,000 that is bisected by a railroad line that has between 160 and 170 trains per day going through, 3 of which had me stuck on the way to the airport yesterday.

This line also cuts off my side of town from the fire station, and there are no grade separations there. So I know all too well the safety issues and the inconveniences that can be caused by trains.

But I also know that Chicago is the rail hub of North America. As you well know, it is also a very bad choke point for rail in North America. So that is why I was happy to get $100 million in the SAFETEA-LU bill a few years ago to begin phase one of the CREATE program, the public-private partnership to help ease congestion on the rails and on the roads in Chicagoland.

I am very proud of that earmark. No matter what people are saying about earmarks right now, I am very happy about that, and I want to thank Chairman Oberstar for support in that. You all know how important that program is for not just Chicagoland but the Country.

So when the CN acquisition plan was announced, I immediately wanted to know two things: first, the regional impact on safety and on affected communities and, second, the economic harm and benefits to the region due to the effect on the congested rail lines.

Now, while I commend the STB for holding a series of public meetings in Chicagoland, I do want to express my strong concern that the attention and focus has been on the communities along the EJ&E while communities in Chicago and inner suburbs such as those in my district have largely been left on the sidelines.

Analysis by two faculty members at University of Chicago's Harris School of Public Policy Studies points out some interesting facts. Professor Berry and Professor Bueno de Mesquita note in their analysis that the majority of the public meetings have largely been held in communities along the EJ&E.

There were seven scoping meetings. Six were held in the outer suburbs, only one in Chicago.

There were 22 outreach meetings for minorities. Only one was held in Chicago.

And, there were eight public hearings to comment on the draft EIS, and only one was held in Chicago.

I would like to ask unanimous consent to include this report in the record.

Mr. OBERSTAR. Without objection, so ordered.

Mr. LIPINSKI. It is also my concern that 45 of the about 60 pages of draft EIS Executive Summary concentrated impacts in communities that might see an increase in train traffic.

Bridgeport, Beverly, Mount Greenwood, Garfield Ridge, Clearing, Chicago Ridge, LaGrange Park, North Riverside, Berwyn, Riverside, Oak Lawn, these are some of the communities in my district that are going to see fewer trains as a result of this transaction. There are more than 60 communities, densely populated communities that will see fewer trains.

Now I believe that all voices need to be heard. A loud minority should not drown out a silent majority especially when there may be issues here of environmental justice.

Now to better understand where we are at right now, I sat down and reviewed Section 11324 of Title 49, U.S. Code, as we have been talking about here today.

Subsection A says the Board shall hold a public hearing. It also speaks to the issue of public interest. As Chairwoman Brown just suggested, public interest here is unclear, what that means.

The statute does not speak to the issue of community concerns and impacts, and it does not specifically direct that all voices be heard. So that is why I believe we need to clarify the current statute to ensure that all voices are heard.

I want to applaud Chairman Oberstar for his leadership on this issue and for introducing this bill because of this needed clarification.

Now, with a little bit of time left, I wanted to just ask the Board what is the methodology that is used in determining where hearings will be held and how can we ensure that all voices are adequately heard in the future on any railroad acquisitions?

Mr. NOTTINGHAM. I will take a stab at that, Mr. Lipinski, if I could.

We don't have any printed established methodology per se on holding hearings. It is a case by case decision. The Chairman typically collaborates with the other Board Members on matters like that.

I will say we have had more public involvement opportunities in this proceeding, this EJ&E application, than I believe the Board ever has in the past. I believe eight scoping meetings, eight meetings on the draft EIS that are going on currently. When the record closes September 30th, we will get together and decide what, if any, additional hearings might be appropriate.

The record, based on the mail I am getting and I read every day—and those letters all go into the record—the record, as I have reviewed it, it is extensive. I don't get the impression as I sit here today that too many people are not being heard, but I will reserve judgment on that until the end of the comment period.

I know that the team is working on the EIS, and I won't speak substantively about it. I can't.

But you asked a process question. They are very aware and focusing a lot on both the benefits and dis-benefits, potentially, of this merger, costs and benefits, looking at the safety data and

whether or not safety is improved in some places and not improved in others and trying to quantify that.

So these are incredibly important considerations that you flag that are definitely getting into the record appropriately, and they will definitely be considered.

On hearings, we are open to suggestions. We have received a lot of mail about hearings, and we will keep an open mind on that.

Mr. LIPINSKI. Any way that you could see that you could see changing the statute to ensure that all voices across the board are heard, all that may be impacted?

I can understand that usually when you are looking at a situation just as this, maybe the first thing is you look at where is there going to be a negative impact caused by more trains going through. I think this may be a unique situation where there really is a need for a regional view rather than just looking at the impact on that one line that may be purchased.

So is there anything specific that you might recommend to make sure that all voices will be heard, any changes in the statute to be more clear to the STB in the future how this should be done?

Mr. NOTTINGHAM. I just think NEPA is very comprehensive on this point. It has been very well litigated. The agencies are required to make informed considerations of significant environmental impacts, both positive impacts and negative, and we are doing that.

I don't see the problem here. It is a little bit like voting, I guess, to a certain extent. It would be nice if every single person always voted in every election, but some people opt not to. I don't know why.

But we think we have gotten comments, believe me, thousands on all perspectives.

Mr. LIPINSKI. I truly believe that.

Mr. NOTTINGHAM. On all perspectives and viewpoints on this. So we will wait to see after September 30th to cast judgment whether we think it has been a failed public comment and interaction process or not. So far, I don't think it is.

Mr. MULVEY. I think it is a judgment call, and I think you have to rely upon making good judgments as to when and where to hold these hearings. We do work with the contractor who helps put together these hearings.

And, I think you are absolutely right, that the concern starts out being, well, where are the negative impacts, and perhaps you have many more hearings where you are expecting negative impacts and not having a sufficient number where there are, as you say, positive impacts.

That is something I think is a learning process. If this comes again, one could expect that perhaps you would be sympathetic to making sure that we have a better balance in where we are holding these hearings.

Mr. NOTTINGHAM. If I could just add, Mr. Lipinski, under the National Environmental Policy Act, what an agency cannot do is just tally up the comments, put them in different piles—pro, anti, neutral—and then you vote for the tallest stack.

That is not how it works. That just would reward people who have the money to hire consultants and lobbying teams and grass-

roots teams to go out and flush neighborhoods with flyers and get people to sign petitions.

We look at the thoughtfulness of the comments, have experts double-check those for accuracy. One or two very salient, thoughtful comments can make more difference than one or two thousand comments that were just ginned up by some grassroots consulting firm with people not even knowing what they are signing onto.

But we look. We try to get beyond the numbers and look at the actual data impacts.

Mr. LIPINSKI. I appreciate your understanding of how this process oftentimes will work and that all the voices are heard, not just the ones that do have the extra cash to hire the consultants.

So I thank the Board for their comments and thank the Chairman for his indulgence.

Mr. OBERSTAR. I thank the gentleman.

The gentlewoman from California, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. It is good to be back and see you.

Gentlemen, both the Port of Los Angeles and Long Beach are just one block outside of my district. So 45 percent of the entire Nation's cargo goes through my district.

And, Mr. Chairman, I thought I would bring out a point of something we haven't talked about today.

In a letter dated from the Port of Long Beach, it says: According to the statements made by CN, the EJ&E merger will allow the railway to expedite cargo moving from Canada to the U.S., resulting in cargo diversion from the U.S. ports to Canadian ports. Such statements and their implications must be studied by STB in detail when assessing the value of this proposal.

The Port of Long Beach knows firsthand the environmental and transportation impacts of goods movement as well as the benefits of ports and what they have on the national economy. That is why we respectfully ask that you contact—they are asking me to contact—the STB to ensure that they review all available information to determine the impacts this proposed project will have on the Nation's economy, the job market, the environmental and the movement of goods throughout the United States ports.

So, therefore, my question is how much business do you anticipate the ports would lose?

Have you conducted a job analysis, job loss analysis, and would the U.S. gain any real jobs as a result of this merger?

Mr. NOTTINGHAM. I am afraid, Congresswoman Richardson, I am not going to be able to answer that question partly because it relates to a pending proceeding.

I will say we are getting a lot of information along the lines of the statement you just made on the record. The record will close September 30th, and we will be reviewing it after that intensely. We already are reviewing aspects of it now.

So I don't want to say anything. If I say anything further, I think I would be stepping over the line of saying something that sounds like I think the merger is a terrific idea or not a terrific idea or what have you. I just need to check myself there, and I apologize for that. I hope you can understand.

Ms. RICHARDSON. Sure. Then my only request would be that due diligence would be met to address the concerns that I brought forward for the record.

Thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentlewoman.

I just have a follow-up question. We need to get on to the other witnesses.

Mr. Mulvey made a very pertinent observation, that the size of the railroad should not be the determinant on whether action is taken on environmental or other public interest factors.

Has the Board ever rejected or ordered a modification of a proposal involving a Class I and non-Class I railroad, Mr. Nottingham?

Mr. NOTTINGHAM. Well, your question raises a couple quick issues, Mr. Chairman. One is, first, let me say it is not our position that the size of the railroads involved in the transaction dictate the level of environmental scrutiny.

Two of the smallest railroads in the world could get together in the wrong place at the wrong time and trigger all of NEPA and its implementing regulations, that we follow. We don't check or curtail our level of NEPA review based on the size of the railroads involved.

But, as Vice Chairman Mulvey pointed out, the statute has two different processes on what I will call the economic impact analysis, the effect on shippers and competition and the market. I don't want to speak for Mr. Mulvey, but I think he said smaller looking transactions can trigger pretty serious competition and marketplace and shipper impacts.

So I won't speak for you any further than that.

Mr. MULVEY. That is fine. No. That is what I was saying.

In light of what you were saying before, by the way, with regard to when taking into account public interest, the only time we have taken into account public interest was an economic interest in that merger.

I don't want to leave the impression that that public interest was environmental or safety in that case. It was, to respond to Ms. Brown's question, it was an economic interest.

Mr. OBERSTAR. Sure. There are a range of public interests and concerns, yes.

But the Board, in fact, has not exercised authority to modify, has it, a transaction involving a Class I and non-Class I railroad?

Mr. NOTTINGHAM. Excuse me, Mr. Chairman, if I could confer with counsel because I want to make sure I get this right. There is a long history here, and I want to make sure.

Mr. MULVEY. Since 1966.

Mr. OBERSTAR. We have not been able to find any. Maybe in the recesses of your memory over there, maybe you do have some.

Mr. NOTTINGHAM. I'm sorry to be delayed. I do need to say that in the not too distant past our review of the DM&E/Canadian Pacific merger, we imposed very significant mitigating conditions.

If your question is denial.

Mr. OBERSTAR. No. The question is modification, and the DM&E was denied subsequently on other grounds by the Secretary of Transportation on the financing side.

Mr. MULVEY. The loan was.

Mr. NOTTINGHAM. The financing, yes. We prevailed in the court of appeals on the quality of our review, and we will be doing a full-fledged EIS of that in due course if they actually proceed with their new line construction.

Mr. OBERSTAR. All right. I welcome your thoughts, collectively, on our proposed legislation or introduced legislation, I should say, and any recommendations you have for further clarification or clarity and wording of the legislation would be welcome.

In a precedent I am thinking of in France, in the TGV line between Paris and Tours, a 220-some mile line, Ms. Brown will remember this. She was on the tour with us when Florida was considering their high-speed line from Sanford to Miami.

As the line approached this rich wine-growing region of France, the vintners, raised vigorous objection that the train was going to cause vibrations in the substrata that would affect the bottled wine in the caves, in the limestone caves where it was aging, and they were concerned it was going to deteriorate the quality of this very rich, especially white, wine in the Tours region.

That is a language I speak fluently, French, and I had quite an engaging discussion with the mayor of the town, the president of the oldest vineyard in the region and the TGV authority, government authority who was there with us.

I won't go into all the details. But after a year of testing of vibrating wines in bottles, aging, there was a test, a blindfolded test in which the vintners themselves were required to taste wine that had been vibrated with the sensitivity of the vibration would be emitted by the TGV and those that were not.

At the end, they were asked to grade the wine. The one that got the highest value was the wine that had been vibrated.

[Laughter.]

Mr. OBERSTAR. These are people who that is their business. That is their livelihood.

Mr. NOTTINGHAM. Mr. Chairman, you may have just identified a point where we would, I think, all agree that there is an opportunity for expanded STB jurisdiction, if you want to have us help with that dispute resolution.

Mr. OBERSTAR. I think you should have that authority over there in Tours.

Mr. NOTTINGHAM. I thought you were making a Buy America statement until you got to the end there.

Mr. OBERSTAR. No, no. In the end, they said: We don't care whether it makes the wine better or not. We don't want the vibrations.

So they built a tunnel, and they built huge blocks of styrofoam into that, feet in depth blocks of styrofoam into that tunnel to absorb any possible mitigation.

Mr. MULVEY. Mr. Chairman, we had the same issue with regard to the Mayo Clinic and the DM&E. The Mayo Clinic was concerned that the vibrations from the increased traffic on the DM&E would affect the MRI machines, and so that was a concern even though these trains were six blocks away.

As you also remember, with the Maglev, people were concerned about electromagnetic fields coming from the Maglev trains that

would affect the milk production of the cows along the area. Of course, as you know, the Germans spent a lot of time looking at whether or not EMF would affect the cows and their milk production.

So these are always concerns, and they do deserve to be studied.

Mr. OBERSTAR. They certainly do, and we want to give you authority to be able to deal with those problems, and that is the purpose of this legislation.

I thank you all.

Mr. Shuster, do you have anything further?

Mr. SHUSTER. No.

Mr. OBERSTAR. Thank you for your presentation this morning.

Mr. NOTTINGHAM. Thank you, Mr. Chairman.

Mr. OBERSTAR. Our next panel will include Mr. E. Hunter Harrison, President and CEO of the Canadian National Railway; Ms. Karen Darch, President of the Village of Barrington; the Honorable Tom Weisner, Mayor of the City of Aurora; Mr. John Swanson, Executive Director of the Northern Indiana Regional Planning Commission; and Mr. Mark Yagelski, Chairman of the Board of Trustees of the Northern Indiana Commuter Transportation District; and the Honorable Elaine Nekritz, State of Illinois of the State Legislature; and Peter Silvestri, President of the Village of Elmwood Park, Illinois.

Welcome and thank you very much for your patience.

Chairman Harrison, good to see you again. Thank you for being with us. We welcome your statement.

TESTIMONY OF E. HUNTER HARRISON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CANADIAN NATIONAL RAILWAY; KAREN DARCH, PRESIDENT, VILLAGE OF BARRINGTON, ILLINOIS; THE HONORABLE TOM WEISNER, MAYOR, CITY OF AURORA, ILLINOIS; JOHN SWANSON, EXECUTIVE DIRECTOR, NORTHERN INDIANA REGIONAL PLANNING COMMISSION; MARK YAGELSKI, CHAIRMAN OF THE BOARD OF TRUSTEES, NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT AND MEMBER OF THE LAPORTE COUNTY COUNCIL; THE HONORABLE ELAINE NEKRITZ, STATE OF ILLINOIS; AND PETER SILVESTRI, PRESIDENT, VILLAGE OF ELMWOOD PARK, ILLINOIS

Mr. HARRISON. Thank you. Mr. Chairman and Members of the Committee, I want to thank you for the opportunity to offer CN's perspective on H.R. 6707.

Allow me briefly to introduce myself. I have spent over 40 years in the railroad industry from my first job in the freight yards of the Frisco Railroad as a laborer in Memphis, Tennessee, to my present job as CEO of CN.

CN operates from the Atlantic to the Pacific in Canada and all the way to the Gulf of Mexico in the U.S. We have operated in the U.S. since the 1870s.

In the last 10 years, the STB has approved three acquisitions by CN, and each has smoothly and safely integrated into our family of 6,500 employees in the U.S. We understand U.S. railroad operations, especially operations in Chicago, very well.

I lived in Chicago for 20 years, ironically, in the western suburbs and am proud of the fact that I helped nurse Illinois Central back from the brink of bankruptcy to a high level of efficiency before it was acquired by CN.

Back then, we had to struggle with congestion in Chicago every day, and things have only gotten worse. Chicago is the most congested area in the North American rail system.

All of the railroads, both freight and passenger, will operate better and more effectively if we can, and I emphasize together, find ways to relieve congestion. Relieving that congestion should be a national priority.

Rail is inherently safer, more environmentally friendly, more fuel efficient than our competition, the truck. Every time we improve efficiency so that freight stays on a rail, our Country is better off. Accordingly, we strongly support the national goal reflected in the Staggers and ICC Termination Acts of promoting railroad acquisitions that encourage efficiency.

We are seeking to make our railroad and the national system more efficient by acquiring EJ&E. This small acquisition would permit us to remove trains from the congested lines that run through urban Chicago by shifting traffic onto the under-utilized EJ&E. Our $300 million investment would greatly help decongest the Chicago gateway.

Our acquisition is strongly supported by a range of shippers, by the NIT League, chambers of commerce and by the communities in which we would remove trains in Chicago.

However, because CN would put new trains on the EJ&E lines, the transaction is opposed by some suburban communities that have built up around those lines.

In response to that opposition, the transaction is being subjected to the most intensive environmental review ever undertaken by the STB. The Board is studying the environmental impacts of our acquisition of 158 route miles in 2 States, but it will take longer to do than it took for a 10,500 route mile, $10 billion Conrail transaction that spanned 13 States and the District of Columbia.

And, it will be extremely costly. Assuming the transaction is approved, the roughly $25 million that we will pay for the environmental review, together with the cost of our comprehensive voluntary mitigation, will total more than 20 percent of the cost of the acquisition, a portion clearly unprecedented.

This experience has provided us with a perspective on the issues raised by the legislation under consideration. I just want to touch on some key points here.

First, I believe that CN shares the same goals as this Committee. We want the most efficient rail network possible, and we want to assure that when railroads take steps to improve efficiency there are ways to address environmental impacts.

Second, we believe that Congress has properly required independent analysis of transportation efficiency and environmental impacts in railroad transactions. We recommend you maintain that distinction.

Our industry is one of the few for which acquisitions are subject to both competition and NEPA review. However, what concerns us is not environmental review itself but the lack of predictability and

the significant costs and delays that the Board's regulatory review process imposes.

This Committee understands well the capacity issues facing our industry as well as the challenging congestion in Chicago. If CN and other railroads are going to fix these issues, we need to be able to predict and get confirmation as to whether our initiatives will be permitted. Together, predictability and early confirmation strengthen our ability to direct our energy to the most productive alternatives.

For smaller transactions especially, the key test is whether a transaction is anti-competitive. If we fail that test, then there is no need to complete any environmental review. If we pass, then we know that the investment in environmental review is likely to produce real benefits.

Unfortunately, we have been denied this regulatory certainty. After 10 months of review, while no substantial competition concerns have been raised, the STB has still not made a determination whether the EJ&E transaction passes the competition test.

Meanwhile, our strategic plan remains in regulatory limbo, and we are paying huge sums to consultants employed by the STB for an environmental review that would not be needed if the transaction failed the competition test.

Accordingly, our hope is that Congress would not direct the STB to mix its competition and environmental reviews. Instead, we suggest that it would better serve the Nation's transportation policy if the Board were to conduct its competition review as expeditiously as possible so long as any environmental impacts are deferred, pending a final environmental review.

Now we are confident that our transaction, if considered on the merits, will ultimately pass the competition test. We, therefore, continue to participate in the environmental review process.

This leads me to my third point. There is no need to add a new requirement to determine whether approving a transaction is consistent with environmental considerations. What is needed is a more structured way for the STB to make those determinations.

Relying on its current authority, the Board conducts a thorough review of any significant environmental effects arising from a control transaction. No further legislation is required to accomplish this goal.

We respectfully disagree with those who want the Board to compare transportation merits with environmental impacts before deciding whether to approve a transaction. If a transaction that is in the public interest has significant adverse environmental impacts, the answer is to reasonably mitigate those impacts. The railroad's fair share of those costs should be determined in light of any offsetting environmental benefits, the causes of the impacts to be mitigated and the relative benefits to be realized by the parties.

In any event, the environmental review process should be disciplined. It should be conducted on a well-defined schedule.

As long as the environmental review if open-ended, it may encourage some people who place their local interest above the national transportation interest to abuse the process. They can seek to defeat the transaction or attempt to extract unreasonable mitigation.

The STB should have in place the resources to assess potential environmental impacts thoroughly, yet expeditiously. In this way, the board can encourage the timely development of mitigation to address reasonable local concerns while precluding opponents from unduly dragging out the process.

This process should be more balanced. In our case, the SEA's voluminous draft EIS is far more concerned with adverse impacts than with positive impacts. The focus implicitly favors the interest of suburbs over those of urban communities in Chicago that will benefit enormously from our transaction.

Unfortunately, it is too late to improve the process in our case and, at this point in our transaction, delay is taking its toll. Our focus recently has been on finding a practical solution to the fact that regulatory delays have created a substantial risk that the transaction will be terminated.

In order to avoid this risk, we asked the Board to decide our case on competition grounds, so we can close before the year's end. If we are allowed to close, we would agree with the Board of maintaining effectively an environmental status quo, not moving any trains from the present routes that they take and until the Board completed its environmental review, we would stay with that plan.

Now the fact that some of the suburban interests oppose that request even though it fully protected the environment and protected their rights may suggest that the true goal is not to mitigate but to terminate.

Late yesterday, however, the Board denied our request, and we are assessing our options.

In any event, given the status of our transaction, I urge that you not apply this bill retroactively. H.R. 6707's overall purpose is to ensure sufficient environmental review of rail transactions. The STB's extraordinary environmental review of the EJ&E has already met that purpose.

Even though the adverse environmental impacts are largely outweighed by the benefits that will be realized by the millions of Chicago residents who will see fewer trains, we have volunteered to provide mitigation for all the significant adverse impacts as measured by the sound standards used by the Board in prior cases. In other words, we have already committed to mitigate more than the net adverse impacts of our transaction.

For these reasons, no useful public purpose could be served by retroactive application of the legislation that could cause the death of our transaction.

Mr. Chairman, thank you again and we would welcome questions of you or any of your panel.

Mr. OBERSTAR. Thank you very much. We will have questions later on, and we will go on with the other witnesses.

Ms. Darch, thank you for coming. Good to see you again.

Ms. DARCH. Good afternoon, Chairman Oberstar and Members of the Committee. I would like to thank the Chairman and the Congressional proponents of H.R. 6707, particularly from the Illinois and Indiana delegations and my Congresswoman, Melissa Bean, for your leadership on this issue.

My name is Karen Darch, and I am the President of the Village of Barrington, Illinois, and Co-Chair of a bipartisan coalition of

local and county elected officials in northern Illinois and Indiana who have formed in response to a proposed rail transaction by Canadian National that will have devastating environmental and safety impacts on many of the collar suburbs of the greater Chicago area.

I am pleased to have the opportunity to speak to this distinguished Committee in support of H.R. 6707, the Taking Responsible Action for Community Safety Act.

The legislation would make it absolutely clear to the railroad industry and to the Surface Transportation Board that the public interest of residents and communities threatened by the negative environmental and safety impacts of railroad merger and acquisition transactions involving a Class I railroad must be considered on an equal basis with the alleged transportation benefits of any such transaction.

As a municipal elected official responsible for developing local ordinances that balance the needs of our residents with business development goals, I know full well that the Members of this Committee have an important and challenging responsibility when it comes to establishing public policies that facilitate freight movement while protecting the interests of communities.

The economic and system benefits that may accrue to a large railroad company from a particular merger or acquisition need to be carefully weighed against other equally valid safety and environmental impacts that will result from any such transaction. This is particularly important if significant volumes of freight traffic will be rerouted through high density residential areas that were not designed and do not have the infrastructure to accommodate such drastic changes.

Based on my experience over the last 11 months since the CN proposed to acquire the EJ&E, it has become evident that CN and other large railroads do not believe the STB has the authority under current law to consider the environmental impacts of such railroad transactions on an equal footing with rail and shipper competition issues.

In reviewing the STB's treatment of past merger and acquisition transactions involving large railroads, one finds that the STB has never rejected a comparable transaction on environmental impact grounds and has never shifted the burden of meaningful mitigation to the railroad applicant. It seems that as a practical matter the STB, itself, appears to doubt whether it has the authority to reject such a transaction on environmental grounds.

This ambiguity needs to be clarified through H.R. 6707 if environmental review process mandated by NEPA is to have any significance in large railroad transactions subject to STB review.

Since CN applied to the STB for approval of its plan to purchase and reroute the significant volumes of freight traffic, my village has been actively involved in the STB process.

The line that CN wants to buy and transform into a high density corridor for mile or two-mile long intermodal trains runs right through the heart of Barrington, intersecting at grade level with four busy roads in the center of the village that are used by our residents and visitors to access downtown businesses, medical fa-

cilities, local schools and that serve as regional commuter corridors. This issue is life-changing for my community.

Numerous other communities along the EJ&E line have joined together in the TRAC Coalition to protect our shared interests in avoiding the significant environmental and safety harms that our constituents will experience as a result of the proposal. The TRAC communities are facing harms that any community across this Country can face, absent the TRACS Act.

Much of our U.S. rail infrastructure was laid when vast stretches of the Country were sparsely populated, and rail served as a vital point of connectivity for small outposts. Today, we confront a vastly different landscape.

The STB should be required to disapprove of proposed acquisition involving a large railroad and major traffic shifts if community harms outweigh the transportation benefits. Federal Agencies are not authorized under NEPA to contemplate environmental impacts as an abstract exercise but instead must consider those environmental impacts as an important component of the Agency's process of deciding whether to approve a Federal action.

Under H.R. 6707, the STB would be required to conduct an environmental review. This will be money well spent when the communities may live with the transaction for a lifetime.

Rail law that makes American communities second-class citizens in the regulatory review process is a relic of another era.

The railroads today are highly profitable, and they can well afford to make the investment necessary to integrate their operations into our communities. They will not do so, however, unless they are incentivized to do so by a law like H.R. 6707 that makes it clear that environmental and safety impacts on affected communities will be considered fairly on a level playing field with purported transportation benefits.

It is a law that's time has come, and communities of TRAC speak in one voice for our communities and communities across America that will find themselves in similar circumstances. We ask this Committee to take the first step in making this bill the law of the land before Congress adjourns.

I thank you for your time and attention and would be happy to answer questions.

Mr. OBERSTAR. Thank you for your testimony and for your thoughtful comments.

Before I go to the next witness, I just want to observe for the record the presence of your able Washington counsel, Mr. Harrison, Karen Phillips who represents your railroad with great effectiveness.

Mr. HARRISON. Thank you.

Mr. OBERSTAR. Mr. Weisner.

Mr. WEISNER. Good afternoon, Chairman Oberstar, Mr. Shuster and Members of the Committee.

My name is Tom Weisner, and I am the Mayor of Aurora, the second largest city in the State of Illinois. I have the pleasure to serve as Co-Chair of TRAC, a bipartisan coalition of suburban municipalities and counties in the Chicagoland area who are opposed to the proposed acquisition of the EJ&E line by Canadian National Railway.

I would like to thank you, Chairman Oberstar, as well as Members of the Illinois delegation, particularly Representatives Bean, Biggert and Foster, and other Congressmen responsible for initiating this needed legislation.

Thank you for holding this hearing to examine legislation that would bring our Nation's rail regulatory policy into the 21st Century. Current law remains grounded in the days when government would do almost anything to spur rail development as your citing of the land grants in the 1800s, Mr. Chairman, exemplified.

While rail services remain important to us today, the impact of rail development on local communities must be considered equally and fully. Unfortunately, under the current interpretation of the law the U.S. Surface Transportation Board uses to review, analyze and issue a decision on rail industry mergers and acquisitions, impacted communities and residents are considered as an afterthought.

We have learned this the hard way. Despite the enormous impact this deal would have on millions of residents and taxpayers along the EJ&E line, no study was guaranteed. Instead, President Darch and local communities had to pleased our case to the STB to order a draft environmental study.

I would submit there is no better example than why this legislation is long overdue, not because our situation is unique, quite the contrary. The economic, environmental, safety and mitigation burden that looms before us could occur in any congressional district, perhaps yours.

H.R. 6707, the TRACS Act simply asks for the public interest to be fairly and fully considered before any deal is approved.

I would like to share with you some examples of how this acquisition would impact our communities and ask you to consider whether you would want your constituents heard if this were to happen in your district.

As we speak, 55,000 vehicles per day pass over a particular grade crossing in my community along the EJ&E line. If, as proposed, the number of 10,000-foot freight trains triples, that will cause lengthy delays for commuters who are driving to work, taking their kids to school or businesses transporting goods and services.

Further, our hospital is on one side of the tracks, and a third of our population is on the other. As a result, we may no longer be able to guarantee rapid emergency response to many of our residents.

School administrators are rightfully concerned about the safety of our kids crossing busier at-grade crossings where children have already tragically died under current train volume. They are worried that the increased noise will affect student ability to learn, and they want answers as to whether there will be increases in hazardous material transport near schools.

I believe their concerns deserve to be heard.

The draft EIS lacked a real analysis of the impact on property values, instead simply guessing that property values would most likely be affected in a minor way.

Our communities continue to grow tremendously as new families realize the American dream and transform our cities and villages

into bustling economic development engines with subdivisions, hospitals, schools and commerce. Do we now reverse that progress?

If freight traffic increases by 400 percent, and let me be clear—that is not the high water mark but simply a jumping off point—these communities will literally be split in half by freight traffic, dividing residents, creating congestion and stalling economic development. I believe these impacts need to be carefully considered.

There are multiple communities along the EJ&E that fall below the median household income level. Aurora's population is 55 percent minority population with a considerable percentage of low income residents.

For years, we have worked hard to encourage new commerce and development to keep property values up. They will now take two steps back instead of continuing to move on the economic ladder. I do not believe their efforts should be ignored.

Canadian National told the Chicago Tribune that the bulk of costs for mitigation would be paid for by State and Federal Governments and should be paid for by State and Federal Governments. I am pretty sure that the Federal Government does not have millions of dollars of loose change to devote to mitigation of this particular instance or those that happen in the future, and I know that the State of Illinois has trouble filling its potholes.

Our communities are not opposed to profitable companies or rail expansion, but we are opposed to profitable companies becoming more profitable at the expense of our taxpayers in terms of mitigation, not to mention our quality of life. This is not, as some would argue, an issue of not in my back yard. It is more an issue of not in our back pocket.

By the end of this week, eight open houses will occur in the affected region. Thousands of residents will have attended these hearings and providing oral and written testimony outlining their concerns over one acquisition. The STB is experiencing an unprecedented show of opposition to this acquisition which is further demonstrated by this hearing today.

Our residents want to be considered, and I expect yours would too if their quality of life and safety were threatened. I hope you agree they deserve to have their concerns balanced with those of corporation who seek to profit at the expense of taxpayers who live, work and invest in these communities.

H.R. 6707 represents an opportunity to recognize the shortcomings of the current process and update it to consider the paradigm that exists today.

The Federal Government does not need to expedite mergers and acquisitions to jump-start rail activities. Those days are long over. The Federal Government needs to strike a balance that weighs the quality of life of the affected residents with the desire for more efficient and profitable rail systems.

As I said earlier, this experience really showcases the need to update the current law to require full consideration of community impacts and greater powers to put mitigation costs on someone other than the American taxpayer.

Thank you for your time and consideration.

Mr. OBERSTAR. Thank you very much, Mr. Weisner.

Mr. Swanson.

Mr. SWANSON. Thank you, Chairman Oberstar, Congressman Shuster and other Members of the Committee. I would especially like to thank our Congressman, Pete Visclosky, for his leadership on transportation and infrastructure throughout northwest Indiana.

My name is John Swanson. I am the Executive Director of the Northwestern Indiana Regional Planning Commission commonly referred to as NIRPC.

With me is Stan Dobosz from the town of Griffith. He is the Chair of NIRPC's Transportation Policy Committee as well as a Councilman for the Town of Griffith.

We are appreciative that you are holding this hearing and for the opportunity to testify on behalf of this important bill, H.R. 6707.

NIRPC is a council of governments comprised of 52 elected local government officials plus 1 State Legislator appointed by the Governor of the State of Indiana. It serves as the designated metropolitan planning organization for transportation planning and programming for Lake, Porter and LaPorte Counties in northwest Indiana. We are located adjacent to the City of Chicago, and we are part of the larger metropolitan area for Chicago.

Our northwest Indiana region is extremely concerned about the proposed CN acquisition of the EJ&E that is currently under consideration by the Surface Transportation Board.

We believe this transaction will have a negative impact on five major issues in our region: one, our region's air quality where we are already designated as a severe non-attainment area; two, the efforts to expand our commuter rail service; three, the efforts to expand the Gary-Chicago Airport; four, the redevelopment of our Lake Michigan shoreline; and five, the quality of life of our affected communities.

The CN/EJ&E transaction would result in three to four times more trains running through our affected communities. The average train length is expected to increase from one-half mile to over a mile in length.

During a 24-hour period, total vehicle delays would increase by a factor of 6 to 11 times, and these idling vehicles will emit more pollutants into our air.

The Towns of Griffith, Dyer and Schererville will be bisected and unable to function effectively or safely. Impacted communities face considerable safety concerns due to an expected increase in crashes and longer routes for fire and police vehicles because of blocked crossings.

Let me identify specific impacts on just one of our communities, the Town of Griffith. Griffith has a population of 17,000 residents. It has seven at-grade crossings at the EJ&E line.

Average trains per day will increase from 7.6 to 28.6 a day. Total vehicle traffic will increase from 9 to 11 times during a 24-hour period.

The transaction will effectively cut the town in two, and emergency delay response time could double for police, fire and ambulance service. All three fire stations and the police station located in Griffith are located on the west side of the tracks. If crossings are blocked, response times could double to the east side.

The environmental impacts—noise, vibration, whistle-blowing and air quality—will be disruptive to adjacent neighborhoods. A derailment could be catastrophic to residents.

Finally, there are no economic benefits for the Town of Griffith with the increased train traffic. Indeed, this transaction will probably have an adverse effect on property values.

Griffith is not alone. The same scenario exists for the Towns of Schererville and Dyer and the City of Gary, Indiana, and communities throughout suburban northeastern Illinois.

During the course of our communications with the STB on the issue of the proposed CN and EJ&E transaction, we have come to understand that when the STB makes decisions on railroad transactions, it is mandated by Congress to focus on the impact on the railroad industry and overall transportation benefits. The STB does not appear to be required to focus as much on the impacts the transaction would have on our local communities and their quality of life.

The result is that the STB could approve a transaction that shifts and indeed increases the transportation and economic burdens from communities to other communities, so long as it can be shown that over a large area there are some positive transportation benefits.

Changes to railroad infrastructure and operations in northwest Indiana brought by the CN transaction will affect the daily lives and economic well being of our residents, workers and businesses and our entire transportation system for many decades to come.

It should be in the Nation's interest as well as the railroads' interest to have an integrated surface transportation system that benefits everyone, including residents and businesses in the local communities that will be hosting and living with the railroads' business decisions for many, many years to come.

I believe that the TRACS bill under consideration today will significantly improve the Surface Transportation Board's capacity to make decisions on railroad transactions that will be in the Nation's interest as well as the interest of local communities and metropolitan areas. It will also help STB decision-making be more consistent with the spirit and intent of the Surface Transportation Act.

On behalf of the communities and counties of the Northwestern Indiana Regional Planning Commission, I wish to express our support for the provisions of H.R. 6707 relating to certain railroad transactions that would require the STB to do the following:

One, hold public hearings in the affected communities;

Two, consider the safety and environmental effects of proposed railroad transactions on local communities;

Three, consider the effects of proposed rail transactions on both intercity rail and commuter rail passenger transportation;

Four, require conditions to mitigate the effects of the transaction on local communities; and,

Five, reject transactions if the adverse impacts on the public outweigh the public benefits.

Mr. Chairman and Members of the Committee, I appreciate this opportunity to show support for H.R. 6707 to require the Surface Transportation Board to consider the impacts of certain transactions on local communities and those of our region. Thank you.

Mr. OBERSTAR. Thank you for a very thoughtful, very succinct presentation.

Mr. Yagelski.

Mr. YAGELSKI. Good morning, Chairman Oberstar, Mr. Shuster and Members of the Committee.

My name is Mark Yagelski, and I am the LaPorte County Councilman and Chairman of the Northwest Indiana Commuter Transportation District Board of Trustees. I am honored to appear before you today, and I appreciate the opportunity to offer NICTD's strong support for H.R. 6707, the Taking Responsible Action for Community Safety Action.

On behalf of NICTD, we applaud the Chairman's common-sense approach to reforming the Surface Transportation Board's, the STB, approval process of proposed mergers and acquisitions. Thank you for making these reforms a priority by introducing the critical legislation and holding this hearing today.

NICTD would also like to thank Congressman Visclosky for his co-sponsorship of this important legislation and for being our constant and ardent champion here in Washington.

This year, NICTD is celebrating its 100th Anniversary of the South Shore passenger service, and I pleased to share with you that the line is experiencing another record year of increased ridership. Even before gas prices reached a whopping $4 a gallon, more and more Hoosiers were turning to NICTD in search of non-automotive transportation alternatives. Since the mid-1970s, ridership has grown from 1.5 million to over 4.2 million passengers in 2007.

This is an exciting time for commuter rail. However, we are deeply concerned that the STB's current process will literally derail our efforts to provide even greater service to our communities.

While the acquisition of the EJ&E railroad may be just one of the many that STB will review this year, our situation brings to light an urgent need for reform.

In particular, NICTD supports the Chairman's legislation which would give the STB the authority to consider the effects of the proposed transaction on the intercity passenger rail and commuter rail. Such authority is necessary to prevent worthwhile projects like the West Lake Corridor from being derailed by harmful, inaccurate conclusions and to ensure that the STB's assessments accurately account for public interest in long-term transportation improvements.

Already, we are feeling the negative effects of the draft EIS, and we will be working tirelessly to correct them and recover from the unnecessary setback. In fact, the draft EIS dismisses the future of transportation in northwest Indiana as "not reasonably foreseeable."

The statement is factually inaccurate and could not be further from the truth. It is a shame to see that, for the time being, our limited resources will be spent on clearing the West Lake Corridor's good name and reputation rather than bolstering the project in preparation for the return of the Indiana legislators.

NICTD is a critical piece of Indiana transportation infrastructure, and we represent the future of northwest Indiana.

Let me set the record straight. The West Lake Corridor is alive and well. The project which has been in the forefront of planning

efforts for the past two decades has strong support at local, State and Federal levels and is moving ahead.

We are about to complete an Alternatives Analysis on Phase 1 which is a critical step in determining the eligibility in the Federal Transit Administrator's New Start Process. As you are aware, this is a highly competitive process, and statements like those made by the STB only serve to undercut the project.

In addition, earlier this year, legislation to help finance the project was approved one house of the Indiana Legislature. We expect the Legislature to continue these efforts during the next session.

Most troubling is a draft EIS severely limits our ability to negotiate a right of way agreement with CN. Obtaining such an agreement is the linchpin between the expansion toward Valparaiso. Moving both goods and people is essential to the economy.

However, the STB's draft EIs is incredibly shortsighted and fails to recognize the need for increased transit capacity in the corridor. This is a significant shortfall and will cripple our economy should it ever become final. There is simply too much at risk, too much potential that will not be realized, too much previous work and planning that will be lost.

The benefits of the West Lake Corridor are numerous and cannot be overstated. This type of transportation investments would spur local development, reduce vehicle miles traveled, VMT, therefore limiting the harmful production of greenhouse gases and open up thousands of good-paying jobs.

It is good for the economy, it is good for the environment, and it is good for our pocketbooks.

I recognize the focus of today's hearing is not to espouse the benefits of transit. However, it is important for the Committee to appreciate exactly what is at stake. Even more so, it is essential that I highlight the tremendous benefits of the West Lake Corridor in my testimony as you will find this critical information absent from the STB's draft EIS.

In conclusion, H.R. 6707 is timely, much-needed legislation. It is essential that mergers of all railroads be treated the same way as Class I mergers are currently treated, and this legislation would provide a level playing field.

I thank you for the opportunity to testify today, and I would look forward to any of your questions.

Mr. OBERSTAR. Thank you very much, Mr. Yagelski. I just want to pick up on your reference to the Northern Indiana Economic Development Initiative.

Mr. Shuster, who is very deeply engaged in economic development in his district and throughout the region of Pennsylvania he represents, would envy, as I did, the gathering of over 600 people at a meeting of the Northern Indiana Economic Development authorities and entities gathering with local development groups, mayors, councils, business people.

I participated in that a couple of years ago. I was just blown over by the intensity of interest. They really care, and they are all engaged.

Ms. Nekritz, a Representative, thank you. Good to see you again.

Ms. NEKRITZ. Thank you, Mr. Chairman. Good to see you.

Mr. OBERSTAR. Thank you for being here.

Ms. NEKRITZ. I appreciate being here and, Congressman Shuster, thank you for this opportunity.

I am going to go ahead and deliver my testimony anyway even though I think Congressman Lipinski covered almost all the points that I was going to discuss.

I am a member of the Illinois House of Representatives, representing a suburban district with the current CN line running right through the heart of it, and I am also the Chair of the Illinois House Rail Committee.

I don't oppose giving the STB authority to hold public hearings, as long as it is in all affected communities as proposed by H.R. 6707, nor do I oppose including safety and environmental concerns as part of the STB review process as well as impacts on intercity passenger or commuter rail.

I am very concerned, however, that the local, regional and national benefits of a transaction will get lost in the clamor created by those who are opposed. I encourage the Committee to ensure that all impacts be considered and weighed as part of any STB review.

I would like to point to Des Plaines, Illinois, which is a community I represent. It has about 60,000 people and is home to 3 Class I railroads along with a busy commuter rail line station.

We have 32 at-grade crossings and only 2 grade separations. Frankly, it is impossible to go anywhere in Des Plaines without crossing railroad tracks.

Up until the mid-1990s, railroads in Des Plaines were a minor inconvenience, but now we have approximately 140 trains a day rumbling through Des Plaines. So the 32 at-grade crossings are frequently, if not routinely, blocked.

All the complaints that have been raised by the opponents of the EJ&E transaction are a daily reality in Des Plaines. Children getting to school are put in harm's way. Emergency vehicles are delayed or rerouted. Daily commutes are longer, and local businesses suffer when customers find it difficult to get to their destination.

And, it is going to get worse. According to AASHTO, freight rail will grow another 67 percent by 2020. Consequently, Des Plaines looks forward to even greater and greater delays.

So when the CN seeks to reduce the number of trains it sends through Des Plaines from 19 per day to 2, this is a local benefit that should receive consideration on par with the concerns raised by others. As Congressman Lipinski said, our voices deserve to be heard.

Des Plaines is a middle class community. Its residents include teachers, firefighters, electricians and many seniors who have come to the downtown condos in order to be able to afford to live on a fixed income. This is not a community that can hire influential lobbyists, expensive public relations firms or print thousands of yard signs or t-shirts.

Furthermore, because the freight lines in Des Plaines are already owned by the Class I railroads, we never had any opportunity to object to increased traffic nor have we been offered any funding for mitigation.

I am deeply troubled by giving those who will only now feel the effects of increased train traffic an opportunity to jump to the front of the line for funding for much-needed safety equipment, grade separations and noise abatement while those who have been living with freight traffic for years, if not decades, continue to wait and wait.

I urge the Committee to make it crystal clear that H.R. 6707 requires all local impacts, both positive and negative, to be taken into consideration in part of the STB decision-making process.

There are also some very important regional and national considerations that should be weighed by the STB, and again I am going to use Chicagoland as an example.

We are the world's fifth largest intermodal hub. We have nearly $8 billion in economic activity as a result of the 6 Class I railroads traversing our region. We have over 9,000 railroad jobs with thousands more in warehousing, logistics and distribution. We are a rail hub, and the resulting economic activity is critical to maintaining our vibrant economic diversity.

Unfortunately, as you well know, our regional rail system is antiquated and horribly congested. If we fail to address this congestion, shippers and freight railroads will ultimately decide to take their business and the corresponding trade and industrial activity to other locales, thus damaging our regional economy.

Finally, I know this Committee is very aware of the CREATE program in Chicago. In the last Federal transportation bill, this Committee was instrumental in designating CREATE as a project of national significant. The problem of congestion in Chicago was acknowledge to have an impact on the national freight system.

Ultimately, CREATE received $100 million toward the $1.5 billion cost which is not enough. I am not casting any stones because we at the State of Illinois have not been able to come up with anything. So, while we continue to haggle over taxpayer funding for critical congestion relief, the CN is offering a purely private solution to this congestion problem.

Trains are the most economically and environmentally form of transportation. In the global economy which is dependent on transporting goods quickly and reliably, freight trains are a fact of life.

The transactions to be considered under H.R. 6707 deserve a fair review that considers all factors including positive local, regional and national benefits.

And, Chairman, I know you went out to visit the far out suburbs. If you would like to come visit communities that Commissioner Silvestri and I represent, we would welcome that so you could see what is going on there.

Thank you.

Mr. OBERSTAR. Thank you very much. It is quite evident why you are Chair of the Rail Safety Subcommittee. You know your subject matter well, and you are an articulate advocate for your communities and for the issue. You see the broader implications, and you can see both sides of the issue.

I thank you very much. Good to see you again.

Our next witness, I appreciate, Mr. Silvestri from Elmwood Park.

Mr. SILVESTRI. Thank you. Mr. Chairman, Mr. Shuster, Members of the Committee, I thank you for this opportunity to appear before

you today to discuss H.R. 6707, the Taking Responsible Action for Community Safety Act, and I would like to thank you all for your leadership on this very important issue.

I would also like to thank Congressman Dan Lipinski for his leadership and scholarly approach to reviewing this issue and all transportation-related issues as well as to thank our Representatives Jan Schakowsky, Rahm Emanuel, Danny Davis and Jesse Jackson who are supporting our coalition efforts to see this transaction approved.

I would also like to acknowledge the presence of Rich Pellegrino who is the Executive Director of the West Central Conference of Municipalities which represents 35 west suburban communities in metropolitan Chicago.

My name is Peter Silvestri. I am a member of the Cook County Board of Commissioners and serve as Village President or Mayor of the Village of Elmwood Park.

My village is a community of about 25,000 residents who live in two square miles. We are located just west of the City of Chicago, and we are approaching our centennial year. It is crossed by a railroad track right down the middle of town, and let me assure, as many of my neighbors, have experienced firsthand the effects of rail benefits and problems.

When I became Mayor in 1989, the Village of Elmwood Park—remember, a town with 12,500 residents per square mile—experienced 40 trains day. Today, that number has tripled, and more than 120 trains pass through Elmwood Park each and every day.

At the same time, 24,000 vehicles travel across these tracks at its main intersection. Half of our public high school students, half of our middle school students and half of our preschoolers and kindergartners try to cross these tracks with their parents on a daily basis.

With four crossings within a one-mile stretch through town, I believe the people of our community know the issues that surround trains. In fact, one of these crossings has been determined to be the most dangerous crossing in the State of Illinois by the National Transportation Safety Board after a commuter train slammed into thirteen vehicles trapped on these tracks at rush hour on the eve before Thanksgiving in 2006.

The reduction of rail traffic in my community has been a major concern for years, and that is why I, along with 60 other suburban communities in the Chicagoland area, formed a group named START which supports the benefits that would result from the EJ&E purchase by the Canadian National.

In my 1 community, this 1 transaction would result in a reduction of 7 to 10 trains, meaning that we would still suffer from over 115 trains a day. Yet, we would welcome this reduction.

Similar reductions in countless city neighborhood and inner core suburbs would be welcomed as an improvement in our collective lives in each and every case. Each of these communities have similar stories with respect to public safety issues, school transportation issues and issues surrounding trying to get these people across the railroad tracks.

For example, in our communities, we have mutual aid agreements with all of our neighboring communities, as most suburban

communities in the Chicagoland region do, to help alleviate the impact of this crossing.

The TRACS Act is a good idea because it looks at the specific concerns of a given area. In our region, for example, over 4.1 million people could potentially benefit from fewer and faster trains in 60 suburban communities in comparison to the 30 communities that would increase in train traffic.

Unfortunately, Mr. Chairman, as an aside, only one STB hearing was held in the parts of the Chicago region that would benefit from this transaction. We would encourage additional hearings in the inner suburbs and in the City of Chicago.

As a County Commissioner representing 14 municipalities and countless neighborhoods on the northwest side of Chicago consisting of approximately 320,000 residents, I understand the importance of studying these sorts of things from a regional approach and taking both the negative and positive aspects of development of regional importance into account. In fact, the Cook County Board has passed a resolution supporting the CN purchase of the EJ&E as a benefit to the majority of the county residents.

As Village President, I also understand the concerns of communities who would experience more train traffic due to a purchase such as this one and the reason behind including language in H.R. 6707 that addresses adverse impacts on affected communities. Reasonable accommodations must be reached. This is not about transferring a problem. This is about a fair solution for all of us in all parts of the region.

For example, we would still have 120 trains in our community, which would be 400 to 500 percent more than the anticipated impact in some of our neighbors to the west. Are the lives of the inner suburban city areas any less important than those of the further out suburbs along the EJ&E line?

The likely number of rail accidents on the CN rail lines inside the EJ&E area estimated to approximately decline by 77 percent. Isn't the safety of our children and our residents and our commuters who come through our villages to get home to the villages along the EJ&E line less important than those communities that do not want increases in rail traffic in their communities?

In every case, relocating some of the freight traffic out of Chicago and the inner ring suburbs benefits the local, regional and national economy. Freight traffic, increasingly more important because of fuel costs, chokes in our region. This choking also results from these trains idling in our communities and polluting our neighborhoods.

In effect, the EJ&E purchase helps reduce pollution as these trains will move through our region quicker and helps reduce our reliance on fuel oil as this alternative means of transportation is utilized.

Mr. Chairman, this concludes my prepared remarks. I would like to thank you and the Members of the Committee for this opportunity and for your leadership, and I look forward to working with you and all of our suburban neighbors in continuing to enhance our rail systems.

Thank you.

Mr. OBERSTAR. Well, thank you very much, Mr. Silvestri, for your statement. Together, you and Ms. Nekritz expressed the spectrum of concerns that the board has to continue, that we are trying to balance on the Committee in response to concerns of Members of Congress on the panel that you heard at the outset of this hearing.

The positives, I think our legislation does, despite what Mr. Harrison seems to think, that our legislation seems to be far more concerned with adverse impacts than with positive impacts. I want to assure you that the legislation is balanced in requiring consideration of both the benefits as well as the adverse impacts. We certainly heard from those who feel adversely impacted.

Mr. HARRISON. Mr. Chairman, if I could, that statement was in regard to the Environmental Impact Statement, not the proposed legislation, if I could clarify that.

Mr. OBERSTAR. Thank you for that clarification.

Now, Mr. Harrison, do you think, as your testimony seems to express, that the Board has authority under current law to deny the CN application on public interest grounds, safety and environmental considerations? I was just looking at your testimony.

Do you think the Board has authority to modify substantially, to direct modifications on public interests grounds? That is safety and environmental considerations.

Mr. HARRISON. Our view is that under the existing act, a minor transaction cannot be turned down on environmental issues. It can be mitigated or there can be conditions placed that say you can only merge if you will mitigate, if you will do the following.

But the true test, if you look at it, is to review the anti-competitive nature of the transaction. If the transaction is pro-competitive and it is not anti-competitive, then the issue becomes—and we are perfectly willing to deal with that—to resolve the environmental issues, mitigate the environmental issues.

We are just concerned about how the process would work, this open-endedness.

One of the reasons that we are concerned about the retroactivity is we would never have structured this transaction like it was today if we had known this legislation could be passed and be retroactive. One of the reasons why is because we have a deal that runs out at the end of the year.

The Act says that you will look at a minor transaction in 180 days. Well, what does 180 days matter if you are going to take a year or two for environmental review? So this deal could go dead on us, and we could spend fifty or seventy-five million dollars for nothing.

So I have no problem going forward, effectively, with the legislation and the purpose of the legislation. We cannot argue with public interest. We can't argue with the environment. We can't argue with anti-competitiveness. We are willing to deal with all of those, and we think that is a fair proposition.

Mr. OBERSTAR. If the Board were to order modifications of your proposal to deal with the safety issues raised, to deal with the noise, to deal with the vibration, to deal with separation of towns, ordering or proposing to order the railroad to build rest areas, side lines, prior to or after a community mile or two-mile length accord-

ing to the length of the train, so that you had to stop a train and you wouldn't be severing a community in case of fire or medical emergency, if they ordered you to do that for some number of these communities, would you comply or would you challenge that in court?

You can say that is too speculative and you can't make that decision, and that would be perfectly understandable. But do you have a general spirit of compliance?

Mr. HARRISON. Yes, absolutely. I appreciate the question, and let me clarify a couple of things.

Number one, we have never made a statement to the press of Chicago that we thought the State and Federal governments ought to pay for the bulk of the mitigation. The issue becomes confusing when it deals with grade crossings, and grade crossing separations.

Mr. Chairman, as you well know, for 50 years or more the precedent has been that all grade crossings, if you add a grade crossing or if you do a separation, it is the Federal share, which is usually about 85 to 90 percent. It is the local and State with about 5 or 10, and the railroad with about 5, and we maintain it in perpetuity.

Now that has been that way for 50 years. If the Members of Congress earlier here today don't think that is the right thing to do, they should have corrected it a long time ago, not to wait for this transaction.

We have committed so far up to $40 million for mitigation in addition to the $100 million in improving the infrastructure with connections and crossings.

And, I can say this: All the things that you mentioned, every one of them we would deal with if you could put them under the category of yes, they are reasonable.

If they came to us and said the mitigation is going to be $2 billion, no, we couldn't do that. The transaction wouldn't happen.

But we are reasonable people. We have employees that live in these affected communities. I lived in the western suburbs. I understand.

But if you look at it, the same number of trains are coming to Chicago. It is just which route they are going to take. We are taking them off a congested route where there will still be trains there and putting them on a less congested route.

I understand and am sympathetic with the people in the western suburbs. But if you really put a slide rule to it and you take an average train, our average train size of 6,000 to 7,000 feet, going 40 miles an hour, they will go across the crossing. They will block it for two minutes from the time the gates start down on the approach.

If you do that in some of the communities that have said they are going from 5 trains to 20, which is a 400 percent increase, okay, that is 15 trains. What happens effectively is the crossing is blocked 48 minutes a day, 2 minutes every hour.

That is a long traffic light.

I have been working 44 years, and I have never been accused of a train blocking causing a mother to have a baby in a car.

You know we can cut crossings. We can react to emergencies. We are reasonable people, and we will try to deal with every one of these issues, but I will tell you that there will be issues.

We can't create, as you well know, a grade separation. I can't go in and put a viaduct, an underpass in. I have to go all through environmental review. The State has to approve it. The funding has to be approved. We can't do that individually.

We will pay what we think—and we will work with the other communities—our fair share. That line is not drawn in the sand at $40 million. So, yes, we would take all those things under advisement reasonably.

Mr. OBERSTAR. Going back to 1986, in this Committee, this very Committee room, we approved the first very substantial funding for railroad grade separation be done out of the Highway Trust Fund.

In fact, it was my colleague from Minnesota who initially proposed it. He represented a large farm district in western Minnesota where many communities were just exasperated with the safety problems at grade crossings. We included that language in the 1986 Surface Transportation Act.

Of course, this Committee didn't have direct jurisdiction over railroad issues until the Republican majority. One of the really good things the Republicans did was bring that total transportation authority into this Committee.

In years past, the Committee never dealt with these issues, the previous Committee. That is the Energy and Commerce. This is the first time we are really taking a hard look at these issues.

There are situations. They have happened in my district, a different railroad that simply blocked a town. A young child was choking on something that he swallowed the wrong way, and the train is sitting right here.

The hospital emergency room is on the other side of the track, and the child is on this side of the track. Fortunately, there was a volunteer fire department person who was able to respond.

The railroad wouldn't move the train. That is not our problem.

You have to go three or four miles north and then another three or four miles south in order to get to the clinic or to the hospital or to an emergency support.

There are many cases. I have heard from these communities that the railroad just sat there and blocked the town, and the locomotive is idling and vibrating and the noise and the smell and particulate matter descending upon them. You hear these stories directly.

Mr. HARRISON. I cannot justify that behavior. That is wrong. It is absolutely wrong.

And, Mr. Chairman, we have been dealing with communities and trying to resolve some of these issues. We have said to them, we would talk about curfews during certain periods of time. We would work with you when you are going to have a big sports event or something where there is going to be a lot of traffic, that we could work and deal with that.

We would agree that we would support legislation that if we blocked a crossing longer than X that we would be severely fined, that it would motivate us—if they think we are only motivated by dollars—not to block the crossings.

But some people have said to us: Look, we don't want to mitigate. We don't want you here.

Someone has to decide where the trains are going in Chicago or they are going some place else.

You have heard in the inner city, how many trains there are, 120 trains through these communities that they deal with, effectively. Is it inconvenient? Sure, it is inconvenient.

There is going to be some that would shift to the western suburbs. If the growth goes to the inner city, they are going to be worse. If you don't want them in the western suburbs, where do you want trains?

Not in Chicago? Then what is going to happen could happen to Chicago, and Chicago becomes the next St. Louis.

St. Louis used to be the largest interchange gateway in the U.S. Because of similar issues of congestion, lack of improving infrastructure or service, now Chicago is king and St. Louis has slid to about three or four. It would have a devastating impact—a devastating impact on the economy.

So what we are trying to encourage is all of us, collectively, work together. We've all got skin in this game. Let's collectively work together.

Let's work with the communities, try to solve their issues, at the same time effectively move freight and do it in a fair-minded way, hopefully.

Mr. OBERSTAR. That is a very strong appeal, Ms. Darch, Mr. Swanson, Mr. Yagelski.

Mr. Weisner had to leave. He told us earlier he had a plane to catch, but his testimony says that average property loss of one neighborhood would be $60,000 per property.

You are head of that coalition of which Mr. Weisner is a member.

While there are adverse effects in the inner city now, in the Des Plaines area, there will be adverse effects in the future. In your area, what are those property losses while there may be property gains elsewhere?

Ms. DARCH. Mr. Chairman, thank you for the question.

As one of the panelists said in the first panel this morning, I think a huge issue is shifting a problem instead of solving a problem in our area.

We definitely have information that says property values will go down substantially. We have homes, 8 percent of the homes in my community, that are within 300 feet of the rail.

The issues of the block, the blockage times, the draft Environmental Impact Statement, while we have some issues with that, goes into some detail on vehicle waiting times.

In communities that are traversed by commuter lines that would be now bisected by the EJ&E, mine is one, there will be substantial waiting times if a CN rail train arrives when a commuter train is supposed to be crossing. We are talking about 8, 9, 10-minute delays that could happen more than once, several times a day. Hours of delay multiplied for the communities up and down the line.

A fundamental issue that we have come to understand in this and that you heard earlier is while some communities inside Chicago, a lot of them have three or four trains now a day on the CN

lines—the same amount that some of our communities have—everybody is not a Des Plaines with 19.

Many of the inner city communities have six or eight or four or three, an average of four a day. So we are not talking about a huge impact.

But we believe that even with the shift of those, if this transaction were proposed, that other rail will fill that space. Rather than create a huge regional problem by creating places where billions of dollars in infrastructure improvements need to be done because we don't have overpasses and underpasses, the alternatives need to be reviewed by the STB.

Certainly under this legislation, that would be confirmed. Under NEPA, that should be done.

The CREATE program, which you have heard about today, was the decongestion alternative for Chicagoland. That is not being funded. That is not helping the communities like Elmwood Park and places that would have help.

Although we can talk, if there is no money to do infrastructure improvements for those communities now, our communities, were this transaction to be approved, it is not a good situation.

It is something that needs to be looked at by the STB under an H.R. 6707 or currently under NEPA, and if there is not appropriate mitigation and there really can't be in the size of this transaction, then it really does need to be turned down.

Mr. OBERSTAR. Thank you.

Mr. Swanson?

Mr. SWANSON. Yes, Mr. Chairman. We are a regional agency. We look at it not from the standpoint of just one particular community's impacts but the total impact on the three-county area.

There is one improvement in one of our communities should this happen. The Town of Munster would have a reduction in the number of trains through that community. I think it is about 25 to 3 or 4 a day. So that would go to a Level of Service A in terms of roadway capacity.

On the other hand, we have 15 at-grade crossings that will diminish from Level of Service A to Level of Service F unless you did something like grade separation.

Now the numbers that are thrown around are downright scary. Forty to sixty million dollars per grade crossing would be needed to do this, and our communities are just now having to live with one percent property tax cap. In polls by our Indiana General Assembly, it is not realistic.

Mr. OBERSTAR. I have many other questions, but I want to cede to Mr. Shuster, who I know has a number of concerns and questions that he wants to ask.

Mr. SHUSTER. Thank you, Mr. Chairman. Many of my questions have been answered in your questioning and this lively discussion and passionate discussion, which I understand the passion.

I certainly can sympathize with the communities. I had a community, Chambersburg, Pennsylvania, that was bisected by a rail line that has since been moved and the problem been solved.

Also, the City of Altoona is the home to Norfolk Southern's rebuild shop for locomotives. So I am constantly hearing about the

locomotives in the yard right across the way, running at night. So, again, I certainly can sympathize with those communities.

Chicago is a problem. It has tremendous congestion, and we have to figure out a way to alleviate some of that congestion. Building a brand new line certainly would be wonderful, but again there are constraints with money and the environmental constraints. The litigation would take years if it all got done.

So I guess, as I said, a lot of my questions have been answered. But I understand at the City of Joliet, there was something worked out there, and I wonder if, Mr. Harrison, you could talk a little bit about that.

And, Ms. Darch, after he gets done, your thoughts on what they did in Joliet and is there a solution?

Mr. HARRISON. We were able to sit down with our staff, with the Joliet officials and figure out what were their issues, what were their concerns. There were some infrastructure issues there that were going to cause the speed of the trains to be much slower than 40 miles an hour, which would in turn block the crossings further, and they had some concerns.

And so, we agreed to improve the infrastructure there to take some of the degrees out of the curve where we could run faster, where we would block the crossings less. We did some quid pro quo, and we came up with a cooperative agreement that they would support the merger.

Joliet is a railroad town. There is a possibility there is a lot of infrastructure on the EJ&E that is right there in the Joliet area that could become a mixing center, an intermodal center. It could create a lot of jobs, and I think they see it from that standpoint as overall positive, given that we were able to deal with their local issues.

Mr. SHUSTER. Ms. Darch?

Ms. DARCH. Congressman, I am not privy to the specifics of the Joliet deal. I recognize that it is a unique community in terms of its railroad distribution centers.

The other communities in TRAC have different issues that CN has not offered to mitigate to the satisfaction of the communities if they even could be.

But again, with the dollars that we are talking about, looking at the reasonableness of the whole deal, that is clearly a question.

I should say too that overall, so far in this draft Environmental Impact Statement, the regional benefit of this transaction is assumed by many people, but on its face the EIS is showing that the air quality impacts are worse for the regional as a whole because the train route is longer, more diesel and more cars idling at crossings, that there are more people who will be bothered by noise because there are more sensitive receptors along the miles of the EJ&E and then again the issue of this being a temporary benefit for the communities that are losing traffic. The EJ&E fills up at capacity by the time this deal goes through and where will those other trains go?

So, top to bottom, all of our communities have many issues still.

Mr. SHUSTER. As Mr. Harrison mentioned, is there a way to mitigate this for your community? Is it Barrington, I guess, is your community?

Ms. DARCH. Barrington.

Mr. SHUSTER. I have a map. I have been looking at this map, trying to figure out where everybody is.

Is there something that they can put on the table that will bring your community to the table to say, okay, let's do it?

Ms. DARCH. We have had some discussions actually along the way. I have 3 major strategic regional arterial roads crossing the EJ&E line and a commuter rail line crossing within 5,918 feet. They are within 5,918 feet of each other which is less than the length of a 6,000 regular CN train.

There are 74,000 cars a day that pass through my community and 65 commuter trains at this point, a number expected to increase, that pass through. So, basically, without grade separation for those three roads and the rail, we are looking at tremendous issues well into the future.

So the cost of that kind of mitigation is very substantial. It is several hundred million dollars, and this transaction is a $300 million transaction with $100 million in improvements that CN is making on its own line.

Mr. SHUSTER. One of the components you left out there is if we don't figure out a way how to get more capacity and have our system running more efficiently than it is, our freight rail system, we will have more trucks on the road. So you are going to have not only more cars but more trucks.

Again, this is a national issue. Chicago is a choke point in the system.

So I wonder, Mr. Harrison. Also, you said what you did in Joliet. You were able to get some economic development along these. I am sure not every community you can do what you did in Joliet, but are you looking at those ways to have a positive economic benefit to these communities?

Mr. HARRISON. We are trying, but it is very, very difficult. I mean to some degree when you come out and say if the railroad moves to town, the housing prices are going to go down, they are going to go down.

They predicted it, and they said our housing prices are going to go down. So there is nothing I can do about real estate prices going down.

We have talked about curfews. We have talked about substantial fines if we block crossings. We have talked about emergency response plans where if a crossing is blocked and, God forbid, there is an emergency that we would make a call to this agency. They would reroute the ambulance or the fire.

We have done just about everything we think that is reasonably possible to do. At some places we offered to put up berms, and they said, we don't want a berm. It is not going to look pretty.

Well, what can we do about the noise? Put up a baffle. We don't want a baffle in our little town. Well, I can't help you with the noise then.

So all of those things and some of the people have just said to us very frankly, we just don't want you here. If they don't want us here, then there is nothing I can do to mitigate. So that is the issue we have.

You are absolutely right in your observations, and it is close at Chicago. We keep having to tell customers I don't know when we are going to get your freight to Atlanta because I don't know how long it is going to take to get through Chicago or Chicago traffic.

I use the analogy: Some days, we get from Winnipeg, Manitoba to Chicago quicker than we get from North Chicago to South Chicago.

That won't last long. Traffic will come off the rails because of service. It will go on the highway. And, guess what? If you want to get delayed on the highway system, go to Chicago on the interstate system. The trains move faster than the cars on 294.

If you are talking about fuel efficiency, if you are talking about environmental, it says you don't want trucks, more of them, on the highway from a safety standpoint.

So the issue becomes we have to figure out a way to do this, and people suggested in the western suburbs, build another railroad. Go out further.

What do you think those people are going to say? What do you think the environmental studies then would be? Get that railroad out of here.

People forget this Country was built on railroads. That the railroad was there a long time before those communities were. Those railroads created those communities. People moved there because that is the way you move people and commerce.

Then people say: No more. We would like to be a bedroom community. Go some place else with your trains.

It is hard to solve.

Mr. SHUSTER. Mr. Darch, I will give you an opportunity.

Ms. DARCH. To respond.

Mr. OBERSTAR. Would the gentleman yield?

Mr. SHUSTER. Certainly.

Mr. OBERSTAR. On that point, Mr. Harrison, I have to observe that there is a symbiotic relationship between the railroad and the communities. They need each other. They needed each other from the very beginning, and I don't think it is appropriate to say oh, well, these towns grew up after the railroad. They grew up together.

Mr. HARRISON. Fair point.

Ms. DARCH. In fact, Mr. Chairman, my town was there before the EJ&E line, and our community was built.

On this issue of the congestion in Chicago and what is happening in this transaction, we recognize—and you heard from the Congresswoman from California in her letter from the Port of Long Beach and we heard from the Port of Seattle—the issue that a lot of this is through traffic, transporting the Asian goods from Port of Prince Rupert, Canada, down to Memphis, down to New Orleans.

So the benefit to Chicago, it is going around. It is not feeding the economic engine of Chicago.

The question of congestion in Chicago and these relative benefits are the reason really that H.R. 6707 needs to be the law, to confirm that the impacts on us, that they can be properly evaluated and measured against the benefit to a railroad of the transaction and that the communities aren't on the losing end of the issue.

Mr. SHUSTER. Well, thank you.

I don't know if anybody else would want to comment.

Ms. NEKRITZ. I thank you, Congressman Shuster.

I would just like to say that Chicago isn't an economic entity unto itself, neither is Memphis, neither is Atlanta. To the extent that we all rise and fall together, the freight traffic in the United States of America has to be addressed as the whole Country, not just what is good for Chicago, because what is good for Chicago is good for Memphis is good for Atlanta.

Mr. SHUSTER. I heard once my predecessor actually said the Port of Seattle should actually be called the Port of Chicago because 70 percent of something like that of the freight that hits the ground in Seattle goes right to Chicago.

Ms. NEKRITZ. I actually just was in Prince Rupert last week and saw what is coming. I understand the Congresswoman's perspective from California, but it is three days less shipping time to Prince Rupert than it is to Long Beach, and that is an economic advantage that is just geography.

You can't fight it necessarily, and we are not going to be able to. Unless we impose tariffs, we are not going to be able to change that.

Mr. SHUSTER. Right. Thank you very much.

Mr. OBERSTAR. I thank the gentleman for his observations and questions and the panel for their response.

Before I go to Mr. Lipinski, on Prince Rupert Island, Prince Rupert is 345 miles further out in the Pacific Island than the Port of Long Beach-Los Angeles. It has the advantage of the great circle of the Pacific Ocean route, a faster transit time, plus it is further out into the ocean.

It gives great economic opportunity and advantage for the railroad, and the CN is building on an already existing facility and expanding it. It has deep water capability. It doesn't need dredging, and Mother Nature does that daily with the tide.

It will provide a great advantage to shippers and consumers as well as to the railroad. I know the first point of entry in the United States for a good deal of that traffic will be northern Minnesota in my district, and therefore I would encourage the CN to consider a short-sea shipping initiative that would help avoid the congestion in Chicago.

Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman. I want to note that Mr. Shuster just quoted his predecessor. His predecessor is a very wise man.

Mr. SHUSTER. He likes to remind me of that. For those of you who don't know, that is my father who was the Chairman of this Committee.

[Laughter.]

Mr. LIPINSKI. I will leave my predecessor out of this.

I want to thank everyone here on the panel, all the witnesses. You really do provide the range of testimony that we really do need to hear in regard to what the impact is going to be all across the region in terms of the CN proposed acquisition.

I wanted to start out by addressing Mr. Silvestri. You noted in your testimony that Elmwood Park has one of the most dangerous crossings or the most dangerous grade crossing in Illinois, and I

certainly remember in 2006 that horrific crash with 13 cars involved there. That is just one of the worst intersections I have ever seen that I think there could be.

Now I understand that the Illinois Department of Transportation receives about $10 million a year specifically for grade separations. It comes from a $220 million set-aside from the Federal Highway Administration's Highway Safety Improvement Program.

This $10 million for Illinois can't even pay for 1 grade separation. While States do have flexibility that they can spend other core highway program dollars for grade separations, with limited funds and unlimited needs, that usually does not happen. Money goes towards repaving, resurfacing a road or some other important project.

Now I have been working on drafting a bill that would direct more Federal resources and dedicate funds for grade separations to improve safety and quality of life in the areas that are congested and have a high density of grade crossings.

I was wondering if you could comment on this idea for more Federal funding, dedicating more Federal funding. Obviously, $220 million is not that much.

Now how could this potentially be helpful for Elmwood Park and other municipalities in your area?

Mr. SILVESTRI. Well, as much as I would like to think Elmwood Park is unique as its Mayor, it is very similar to many of the communities in the inner ring suburbs or the older suburbs of Chicago in that we were built up on the railroad. As I mentioned, we have 4 at-grade crossings within a mile and we get 127 trains per day that go through that, commuter and freight.

When the commuter train traveling at 90 miles an hour hit the 13 vehicles that were literally trapped on the crossing because of the direction of the crossing and the backed up traffic, which the NTSB also said was contributed to by the fact that there are so many delays on that road because of all these trains blocking traffic, the State initiated a study to determine the cost of putting an underpass at that crossing.

The State was kind enough to pay for the analysis, and we received three proposals. The cheapest proposal is in excess of $70 million to build the underpass, and the one that is least disruptive to the community, basically our downtown, would be approximately $90 million to build.

So more Federal funding of crossings would, of course, be welcomed by communities like ours. As you know, Congressman, Illinois has the largest number of at-grade crossings of any State in the Union, most of them located in the metropolitan Chicago region. So more funding would obviously be welcomed by all of the leadership and I am sure all the residents and people of the greater Chicago region.

Mr. LIPINSKI. Thank you.

I wanted to just very briefly ask Ms. Nekritz as Chair of the Rail Safety Committee. I know you have the expertise, and you are charged, since you are doing this for the entire State of Illinois, with really looking at what solutions that there are to issues that we have with rail safety.

Now looking at what would happen, the impact of moving trains from some areas to other areas, what do you see as the difference? If we were just talking about reshuffling the deck, does that make a difference?

Are we just moving trains from one congested area to another or by reshuffling the deck, opening up another line, overall when you look at the whole system does it make improvements?

Ms. NEKRITZ. I think maybe the next panel would be more capable of answering that because to my understanding, yes, if we move off the already congested lines to a line that has capacity, excess capacity, like the EJ&E, it does open up the Chicago region and reduces the congestion and thus reduces the time that is necessary to get through the area.

Mr. LIPINSKI. I was just trying to get at the point that it would seem that if you are taking trains from a very congested area to an area that is under-utilized, that there is a net gain when you do something like that.

Ms. NEKRITZ. I believe that would be the case. I think the STB report—I have only read the Executive Summary, and I didn't read the big stack—indicated that there would be fewer accidents overall and that safety would be improved overall by this.

Mr. LIPINSKI. Chairman Oberstar was, a couple months ago, out in LaGrange which is right next to Western Springs. The same rail line runs through there, and there are about 160 to 170 trains a day.

That area along that route, Ms. Biggert, who was testifying earlier, lives right next to Western Springs in Hinsdale. Those villages are doing very well.

I just really think that there is an issue right here of, yes, there are problems that are caused and issues. Certainly, safety needs to be addressed. It needs to be worked out.

There is a lot of mutual aid agreements in a lot of the villages as was mentioned here, and towns, but there is a possibility of making things as good as they can be while still having a rail line that goes through the area. Even when you have 160 trains a day going through, it is possible, and I think everything should be done.

Everything possible should be done to try to mitigate where there are going to be issues, but we have to figure out where these trains are going.

So, with that, I will yield back.

Mr. OBERSTAR. I thank the gentleman.

We are going to have votes on the floor in about 20 minutes, and I want to move to the next panel but before I do that, a question to Ms. Nekritz.

Is the legislature of Illinois prepared to provide matching funds to those that we might have to consider in the spirit of Mr. Lipinski's testimony and to respond to the concerns of others and to those of Mr. Harrison for all the mitigation that would be required? That could be several hundreds of millions of dollars.

If we were to consider or enact legislation to provide, as Mr. Lipinski was just discussing, a Federal matching program, there would have to be some participation from the private sector, some from the State and local governments. Is the legislature of a mind to move such legislation?

Ms. NEKRITZ. I hesitate to get into the mind of our legislature right now. It is a very trying time in Illinois politics.

That being said, we do have a grade crossing protection fund that takes in several million dollars every year, and it basically gets expended on safety crossing equipment because it is insufficient to address, to do grade separations. But if we were able to use that as matching funds for grade separations, then I would think yes.

I think that the problem has become so bad in our region that there is lots of support for doing something to help the residents because we hear about it all the time. It is a very common problem throughout the Chicago region, and so I think if that opportunity arose there would be plenty of support for that.

Mr. OBERSTAR. And, Mr. Swanson and Mr. Yagelski, do you think the Indiana Legislature would be of a similar mind?

Mr. SWANSON. Indiana is somewhat unique in that due to the leasing of the toll road, it actually has a fully funded 10-year roads program.

Mr. OBERSTAR. With your governor, they might find a way to sell off the railroad and lease it back and toll it and so on.

Mr. SWANSON. Well, in any event though, I would have to say that for at least the 10-year program the money is not there.

Frankly, the legislation passed this spring, HEA 1001, imposed a 1 percent limit on all property taxes on our local governments which is causing many of them to contract seriously, and some of them actually are almost entertaining distressed community status. So, even if the legislature were in its wisdom to come up with additional dollars, I don't think the local funding is there, Congressman Oberstar.

Mr. OBERSTAR. Thank you.

Mr. Harrison, you responded with some enthusiasm and detail about the effect of an increased number of trains at certain grade crossings and saying it would be 2 minutes and a total of 48 minutes in certain circumstances.

But reviewing the draft Environmental Impact Statement of the Board, the Surface Transportation Board, they reviewed 112 at-grade crossings on the EJ&E. Eighty-seven met the Board's threshold for environmental analysis. The remainder either had no train increases or had less than 2,500 vehicles.

And, they observed that if you delay 60 vehicles by 1 minute each, that is an hour total delay. If you delay 1,200 vehicles by 2 minutes each, that equals 40 hours of delay.

So the two minutes that you cite is of interest if there is only one vehicle at that railroad grade crossing. But if there are numerous, multiple vehicles, there is a cumulative substantial delay impact on the totality of the citizenry, is that not right?

Mr. HARRISON. I guess it is kind of the devil is in the details. I don't agree with necessarily all their analysis, but you can put your finger on exactly what it is, however many cars are stopped and however many feet there are from there to the crossing.

I guess my point is this: The blockage at crossings is an issue. We understand it, and we are willing to deal with it, but we should deal with facts and not innuendo.

Mr. OBERSTAR. The Board has facts in here, a substantial number of facts. Increase in total vehicle delay in their analysis ranged from 50 minutes to 149 hours. So there is a range of impacts.

Also, they say that 15 crossings would be substantially affected, and delay for all vehicles would be more than 40 hours a day.

So there is and, in their appendix, there is a substantial amount. I raise that for the consideration.

You point out, we will build a berm or we will build a noise barrier.

Oh, we don't want that. Citizens want this, don't want the other thing, but communities have readily accepted noise barriers along highways that block noise from the interstate or from a portion of highway on the National Highway System.

Somehow, those concerns have to be reconciled, and the railroad has to be prepared to take some action on its own where there is a conflict or potential conflict with passenger rail.

Who has that cell phone? I have to say again the rules of the Committee are that there is no audible sound permitted on cell phones or Blackberries or any other communication device.

What is the cost of building a siding?

Mr. HARRISON. A siding?

Mr. OBERSTAR. Yes, a mile or two-mile siding?

Mr. HARRISON. A good round number today is a million dollars a mile. It could be a little more, could be a little less, depending on the grading you have to do and the location, but a million dollars is a pretty good number.

And I would remind you, Mr. Chairman, that is part of the $100 million is improving that improving that infrastructure where we can pick the speed up and then have faster turnouts and better connections where there will be less blockage.

The issue, as we tried to deal with individual communities, is some communities—and I understand their issue—have decided that they like their little downtown the way it is, and they don't want to put a viaduct in. They would rather not have us there.

So I can't create a viaduct. I can't create an underpass. I mean the State or the local community has to be the moving party. The STB can direct me to pay so much money with one exception. The precedent has never been to be over what is in current law and practice.

There was one exception in the Conrail transaction, I think, where they said that Conrail should fund 25 percent of that crossing.

That is the problem we have. When I talk to the community, they say, well, the State doesn't have any money and we are not going to get a grade crossing.

That is where we are, and that is why we are trying to look at other ways to deal with it.

Mr. OBERSTAR. I thank you for your response.

I thank all the panel members for your contribution. We will have to evaluate all these factors.

But I think it emerges, as the burden of the testimony comes along, that the Board needs some authority and clarity to deal with this issue of a large railroad acquiring a smaller railroad and the

effects and the authority the Board has to direct changes to mitigate those effects or if the burden exists to deny it.

As for CREATE, if other parties had been willing to contribute as much to CREATE as our side did, it would have $200 million. That was close to the goal of getting 40 percent Federal funds into CREATE. We will deal with it next time.

Ms. NEKRITZ. Well, it is seriously under consideration in the Illinois General Assembly, and we are looking at trying to get $500 million for it.

Mr. OBERSTAR. Thank you. Thank you very much. I look forward to your continuing participation in this process.

Our fourth panel includes Dr. Joseph Schwieterman of the Chaddick Institute for Metropolitan Development at DePaul University; Dr. Phineas Baxandall, Senior Analyst for Tax and Budget Policy of the U.S. Public Interest Research Group; and John Tolman, a long-time presence in this Committee's deliberations on rail issues, the Vice President and National Legislative Representative for the distinguished Brotherhood of Locomotive Engineers and Trainmen.

Take up positions.

Dr. Schwieterman, thank you for being with us, for your very scholarly work and testimony. Please begin.

TESTIMONY OF DR. JOSEPH P. SCHWIETERMAN, PH.D., DIRECTOR OF THE CHADDICK INSTITUTE FOR METROPOLITAN DEVELOPMENT, DEPAUL UNIVERSITY; DR. PHINEAS BAXANDALL, PH.D., SENIOR ANALYST FOR TAX AND BUDGET POLICY, U.S. PUBLIC INTEREST RESEARCH GROUP, FEDERATION OF STATE PUBLIC INTEREST RESEARCH GROUPS; AND JOHN TOLMAN, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

Mr. SCHWIETERMAN. Mr. Chairman, Members of the Committee, I am honored to be here today to express my views on the TRACS.

I have written a great deal about community impacts of freight railroad projects. In 2000, I wrote a study at the request of Senator Durbin on railway whistle-blowing noise and implications of the new FRA's quiet zone ruling. I have written a book on rail freight service, and I understand the concerns being voiced here today.

My remarks are specifically on the Act itself and not on the CN/EJ&E transaction per se.

The idea of asking the Board to conduct more robust examinations of environmental impacts has many implications, and I will attempt to explain why I think there are many unintended consequences that we need to think two or three years down the road as cities, railroads, lawyers learn to work with the exact wording that is in the Act and why, if it is literally interpreted, does push us toward full-blown benefit-cost analysis which would greatly delay the approval of many railroad transactions.

I believe without a more thorough reassessment of the STB's resources and responsibilities, asking it to formally weigh the environmental costs and transportation benefits risks creating a systematic bias against railroad mergers and acquisitions. That is the Act may focus attention mostly on the immediate negative impacts

on communities on the line without offering a balanced presentation of any offsetting benefits which can only be understood with a more comprehensive analysis than that which is conducted today.

Transportation markets are dynamic. When one carrier acquires another, of course, there are many indirect benefits: fewer trucks on the road, fewer highway accidents, less traffic on competing rail lines, less pollution from mobile sources.

There are also competitive changes triggering a second round of investments which are not even subject to STB approval, which have implications for communities.

This puts the STB in a very difficult position. If it limits its attention to the most obvious impacts, such as the environmental consequences on communities along the railroad to e acquired, its assessment will be incomplete and skewed against the transaction. But evaluating all the benefits, direct and indirect, will require comprehensive and scenario-based analysis that is not presently part of its work.

For the analysis to be completed in a timely fashion, the STB would need to make many assumptions and subjective judgments which would make the process much less predictable.

I am not suggesting the STB should not consider and vigorously deal with community impacts in its decisions. I do believe, however, that bringing greater formality to the process and the language as the Act is currently written would greatly change the nature of the Board's, lengthen its investigations and trigger unintended consequences.

Here is a simple example of the analysis that would be needed. Environmental impacts of a merger would need to include a counter-factual analysis of how traffic would change if the merger did not take place.

In the case of the CN application, the STB would need to consider whether and when congestion in Chicago would otherwise result in greater use of the EJ&E bypass and how this would affect traffic on other routes. In order to do this right, the STB would need to make difficult assumptions and greatly elevate the level of analysis it provides.

My second point: No other transportation mode providing intercity service in the United States, whether it is intercity trucking, airlines, barge operators, motor bus operators, even Amtrak, is subject to the kind of criteria established in H.R. 6707.

The unintended consequence will likely be that the Act will become an impediment toward moving forward to cooperative solutions to community issues involving railroads. Let me articulate several of these potential unintended consequences which may result from pushing Federal policy into what I consider uncharted waters.

Railroads and communities may have an incentive to be less than candid when discussing the impacts of a transaction. Thus, the Act may serve to place the two parties in a more naturally adversarial role.

Railroads may sidestep the need for STB approval entirely by negotiating trackage rights and hauling rights agreements with other railroads rather than pursuing a merger and acquisition.

Railroads may be reluctant to let commuter agencies and intercity operators use their right of way, afraid that they may creating a new stakeholder who has incentive to fight for the status quo.

A muddled political debate may result from the language in the Act that the socioeconomic impacts of railroad mergers and acquisitions be evaluated and weighed. Do we really think such impacts can be evaluated convincingly without opening the door to lengthy delays?

My third point is the implication of greatly stepping up the transactions that require different levels of STB approval beyond Class I railroads greatly increases the STB work load. That, too, has implications. I am not saying the STB can't deal with these implications, but I do feel a more vigorous assessment of the ramifications are warranted.

The history of railroad regulation prior to the Staggers Act suggests the need for great caution here.

And finally, as I think we heard in the previous panel, the Act risks shifting some responsibility for solving problems of rail transportation from their roots, which often is grounded in inadequate State and Federal funding, to private railroad companies.

We are seeing a great deal of frustration being directed at Class I railroads. We have heard much of it today. In many respects, we are living with the consequences of inadequately funding CREATE, the congestion relief program for Chicago.

Public agencies have also not brought forth, particularly in our State, the funds to support grade crossing separations, and communities now lack practical options to abate noise of locomotive horns through the creation of quiet zones in some situations.

So, in summary, I urge caution in crafting any legislation that would change in mid-stream a policy process that has been in place for many years, that it certainly warrants greater discussion and evaluation before moving ahead.

I believe the Act is well intended, and I have great respect for the sponsors. However, there is an immediate need here. It is the need to look systematically at the implications of the Act, so we don't create a new set of policy problems.

Mr. Chairman, I thank you for the chance to express my view.

Mr. OBERSTAR. Thank you very much for those well-expressed thoughts and insights. We will come back to that in a moment.

Mr. Baxandall.

Mr. BAXANDALL. Chairman Oberstar, Members of the Committee, thank you for the invitation to present the views of the U.S. Public Interest Research Group.

As you know, U.S. PIRG serves as the Federal lobbying office for State public interest research groups. We are non-profit and nonpartisan citizen advocacy groups who are active in over 20 States.

U.S. PIRG believes that rail is critical to America's transportation future and that Federal policy must ensure that key decisions affecting the Nation's rail network consider the public interest. As such, U.S. PIRG speaks today in support of the TRACS Act.

Transportation patterns have profound consequences that extend far beyond individual rail companies and their shareholders as we have heard today. Impacts also extend beyond the local communities that abut the transportation routes.

Rail plays an increasing role in addressing important national issues that extend beyond the development, local traffic, rights of way and the industry competitiveness that we have heard so much of.

For instance, major decisions about our Nation's rail network will significantly determine the extent of our Nation's dependence on oil, much of which continues to come from unstable or unfriendly regimes.

Our rail network will shape the regional patterns of residential and commercial development. It will profoundly affect the quantity of global warming pollution we emit, the range of travel choices available to our aging population and the integration of America's dynamic urban centers with their surrounding suburbs.

These are issues that are best considered by a national decision-making body, one such as the Surface Transportation Board.

In the years ahead, America will need to greatly expand its rail network, not just the portion of freight tonnage hauled by rail that was mentioned earlier but also more and better commuter service on tracks often owned by freight companies and, finally, to build out our Nation's designated high-speed rail networks in ways that will stimulate regional economies and relieve the short-haul traffic in our distressed air travel industry.

U.S. PIRG takes no position on the application filed by CN to acquire EJ&ER. On the one hand, the merger will provide opportunity to relieve gridlock and other impacts. On the other hand, the abutting communities will be unprepared and adversely affected by the rail traffic.

Over the long term, the most important implications for the broader public impact may be how this proposed acquisition could prevent attainment of a decades long vision to connect communities around Chicago's circumference through the Suburban Transit Access Route, the STAR program.

In the particular northeastern Illinois context, we applaud the fact that CN is striking voluntary deals with individual communities such as in Joliet to improve affected traffic crossings and reduce noise. We do not, however, think that these ad-hoc local deals can be a substitute for Federal level attention to national priorities.

Beyond the local context, the broader issue is whether future mergers and acquisitions in the rail industry will serve the public interest or only the short-term interests of the rail company stockholders. These two interests often overlap, but we cannot treat them as identical.

Like laws for other natural monopolies such as utilities or telecom, this Act before us would provide important oversight to ensure that mergers advance, rather than undermine, the public interest.

Now since the 19th Century, we have often learned the hard way that railroad mergers can create society-wide impacts that harm the public interest. Rail mergers reshape the network because each route is typically a natural monopoly. There is virtually no means to compete for service on a particular route once another company owns the tracks, and it is highly inefficient for multiple firms to complete for the same route over duplicate tracks.

The issue is not just that the railroad acquisitions can be anti-competitive by extracting monopoly prices from shippers or consumers. Current law, in any event, already gives the STB authority to deny certain mergers that would be anti-competitive.

We support the TRACS Act because it would address the fact that mergers can also undermine the public interest by affecting how railway companies reroute traffic, maintain existing tracks or develop new lines.

The legislation, we believe, would appropriately empower the STB to consider the broader public interest including the impacts on commuter and intercity rail. This makes sense as we look forward toward the challenges of the future and the role that transportation must play in meeting those challenges.

Thank you for the opportunity to share these comments with the Committee.

Mr. OBERSTAR. Thank you very much for your comments.

Mr. Tolman.

Mr. TOLMAN. Good afternoon, Chairman Oberstar, Ranking Member Shuster and Members of the Committee.

I would like to first take the opportunity to thank the Chairman for introducing H.R. 6707.

Chairman Oberstar, for many years, you have been a tireless advocate for a sensible national transportation policy which includes both freight and passenger rail. I believe that your efforts, combined with the skyrocketing price of fuel and the discussions today about infrastructure investment in the railroad industry, may finally change the course of our Nation, and I applaud you for them.

H.R. 6707 requires STB to address the public interest in railroad transactions, and we are fully supportive of this.

Current law, as contained in the Staggers Act, does not provide STB with the authority to disapprove mergers or consolidations of Class I's with a Class II or III railroad if it finds a transaction is not consistent with the public interest nor can the STB impose conditions to address legitimate community concerns.

Growing sentiment regarding the safe transportation of hazardous materials and spent nuclear fuel along with opposition to various mergers and acquisitions was the impetus for this legislation. We live in an era where there is a "not in my back yard" aversion to such transactions which often causes them to be politicized.

Two transactions which best illustrate the problem are the Canadian National's purchase of EJ&E and the Department of Energy's proposed Yucca Mountain repository. In each of these cases, the surrounding communities have voiced their concern for safety, just as we have, and have problems with these transactions.

The BLET has not received enough information about the EJ&E merger to fully judge its impact to our members. However, our general committees, of which there are four involved in this particular transaction, they have not received enough information.

Of the four general committees involved in this transaction, only one of them is fully supporting this. Another one is absolutely opposed to it, and the other two do not have enough information.

I guess I ask this question: Is this any way to run a railroad?

The BLET has a number of issues with the proposed plan to ship nuclear waste to Yucca Mountain which we have expressed

throughout the years and will continue to do so. We believe that this will have a negative impact on the safety of our members and the communities through which we run the trains.

First and foremost among these problems is the lack of exposure protection for our members. Also training in handling these materials received by our members is almost nonexistent.

Unquestionably, both these transactions directly impact the safety of the surrounding communities as well as causing fear and anxiety among their residents.

However, while crafting and adjusting a national policy is a legislative matter, executing that policy should not take place in an overly politicized environment nor can it take place in a vacuum. The concern of localities impacted by rail transactions should be heard, considered and, where appropriate, addressed.

The appropriate body for this input is the STB which has regulatory authority over these transactions.

The BLET supports 6707 because it provides a mechanism to hear legitimate local concerns and also deal with unreasonable fears which often arise through the lack of information and community input. We feel this legislation would not overly burden the railroads with greater regulation but would provide a mechanism for communities to express their concerns about safety of the citizens in an appropriate manner, and it would do so in an orderly fashion.

As for the discussion of highway grade crossing, separation technology today, we absolutely support it. It is extremely traumatic for a locomotive engineer or trainman to go through any highway grade crossing accident.

Again, Mr. Chairman, I appreciate the opportunity to testify in front of you. Thank you.

Mr. OBERSTAR. Well, you did a remarkable timing, all three of you.

I have one observation, and you can see the votes that we have. Mr. Shuster and I are both going to have to rush off to the floor.

The compilation of railroad laws provides in the case of construction of new line that the Board shall issue a certificate unless the Board finds that activities, building the new line, are inconsistent with the public convenience and necessity. The certificate may approve the application as filed or with modifications and may require compliance with conditions the Board finds necessary in the public interest.

But there is no such requirement on the Board for merger or for acquisition.

So I appreciate your observation, Dr. Schwieterman, that there may be unintended consequences, but let me read the language:

"The Board shall hold public hearings including public hearings in the communities unless the Board determines hearings are not necessary in the public interest"—there is no unintended consequence there—"and shall consider the safety and environmental effects of the proposed transaction."

It doesn't say adverse safety. It says shall consider the safety and environmental effects "including the effects on local communities."

It doesn't say negative or positive, but it presumes that the Board consider both negative and positive, "such as public safety,

grade crossing safety, hazardous materials transportation safety, emergency response time, noise and socioeconomic impacts."

Perhaps you are suggesting we should add the words, both positive and negative, to avoid unintended consequences.

Mr. SCHWIETERMAN. I think my concern about the Act is not that environmental impacts be dealt with and considered, but there is very explicit language about weighing the environmental consequences with the transportation benefits which, to me, implies a level of analysis that requires a degree of quantification of the benefits and the costs, were it to be interpreted very literally, at least implicit.

To do that right really requires a fairly expansive addition to the level of analysis the STB provides because currently, in its approach to evaluating a problem, it looks primarily at the implications of the community affected by the transaction itself. The secondary benefits to other cities, it is very difficult to measure those.

My fear is that puts the negative impacts front and center where the positive impacts much more difficult to quantify.

Mr. OBERSTAR. We don't want to do that. If you have some suggestion of language to mitigate that effect and achieve more of balance, I would welcome your suggestion.

But as for Mr. Harrison talked about how much time will be required to do this analysis, whatever that time is, the outcome is permanent for the communities. So they have to live forever.

If there is a year or two years time for evaluation, that is small in comparison to the permanency of the decision, say, to proceed with the acquisition on the employees, the brotherhoods, on communities. That is there forever.

Mr. SCHWIETERMAN. Yes, and my response there would be that, sure, more is good. I mean more analysis clearly yields some benefit.

But there is a consequence, and the consequence is the railroad industry trying to make decisive decisions with a degree of predictability, that when you subject it to that kind of a process, there are all kinds of ways the process can be manipulated. There is difficulty in conducting analysis in a timely manner.

Mr. OBERSTAR. You might also put a limitation on time within which to do that analysis as we have done in other transportation considerations.

Mr. SCHWIETERMAN. Yes, yes.

Mr. OBERSTAR. But thank you for that cautionary thought, for testimony. I wish we had a little more time to explore other issues, but any additional thoughts may be submitted in writing.

The Committee is adjourned.

[Whereupon, at 2:53 p.m., the Committee was adjourned.]

Committee on Transportation and Infrastructure

Hearing on "the Taking Responsible Action for Community Safety Act"
Tuesday, September 9, 2008

Statement – Congressman Jason Altmire (PA-04)

Thank you, Chairman Oberstar, for calling today's hearing to review the Taking Responsible Action for Community Safety Act, also known as the TRACS Act. I would like to begin by thanking the witnesses who have joined us here today. Their knowledge of this issue will be of great assistance to the Committee as we debate taking further action on this legislation.

The TRACS Act was recently introduced by the Chairman to provide the Surface Transportation Board (STB) with the authority to weigh environmental and public safety concerns when approving mergers that involve a Class I and Class II or III railroad. Under current law, it is unclear whether or not the STB has this authority. In fact, many have argued that the STB only has the authority to deny this type of merger for anti-competitive reasons.

I am particularly interested in hearing from the STB representatives who have joined us today. Their thoughts regarding the necessity of this legislation and any long term impacts that it may have on the rail industry should be carefully considered by the Committee.

Chairman Oberstar, thank you again for holding this hearing today.

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The Honorable Melissa L. Bean
Illinois 8th District

Testimony on H.R. 6707, *The Taking Responsible Action for Community Safety Act*

House Committee on Transportation & Infrastructure
September 9, 2008

Chairman Oberstar, Ranking Member Mica, Members of Committee, thank you for inviting me to testify today in strong support of H.R. 6707, *The Taking Responsible Action for Community Safety Act.* I want to commend Chairman Oberstar's leadership on this bill and look forward to working with the committee.

Last month, during a field hearing I held in Chicago with my colleagues, we heard testimony from the Illinois Department of Transportation and Chicago Metropolitan Agency for Planning who expressed their serious concerns about the STB review process. The process's narrow focus on a transaction in the private sector disregards existing transportation plans, investments, and input from local and federal officials.

How is it that a transaction initiated by and for the benefit of a foreign company and their shareholders would allow those shareholders upside to be paid for by the American taxpayers?

How is it that an environmental impact statement can acknowledge an egregious burden on American communities, but offer few or no solutions?

Why is it that a private company can pre-empt regional planning and transportation priorities that have been worked on by all levels of government in a bipartisan fashion?

I got involved in reviewing the STB's mission and decision process because of a local transaction impacting communities in my district; however, unless the mandate of the STB is either clarified, communities your own districts across could face the same challenges.

The current process has historically put the interests of industry over those of American families and taxpayers. This doesn't have to be the case. As noted by the board's most recent decision, the STB has the ability to deny an acquisition on environmental grounds. Toward that end, I hope they use the CN/EJ&E case to set that precedent.

However, *The TRACS Act* would clarify their obligations as a federal agency to protect the interests of the taxpayer who fund them. The impact on a local shipper, while important, shouldn't outweigh the impact on communities and the citizens who live there. This bill will require that public impact concerns are given equal consideration to those of commerce.

The STB would be required to consider public impact including:

- Local Communities
- Public Safety
- Grade crossing safety
- Hazardous materials transportation
- Emergency Response
- Noise Pollution
- Socioeconomic Impacts
- Commuter Rail

That is not how it appears to be working currently.

I speak to you today not only on behalf of my Eighth District constituents, but as a mom who crosses those tracks to get to my daughters school, the grocery store, the post office, almost anywhere.

There are well over 40 communities along the EJ&E in Illinois and Northwest Indiana whose families will experience a 400 to 900 percent increase in freight train traffic. That is why there is strong bipartisan

opposition to this deal.

Last November, I requested an environmental impact statement be prepared. Unlike the standard review performed by the STB, the EIS process gives local residents a forum to raise their concerns. Over the last several months, thousands of residents have shown unprecedented levels of involvement culminating in over 5,000 residents attending a recent hearing held my Congressional District

The intent of an EIS should be to balance priorities between issues of commerce and transportation with concerns regarding safety, quality of life, and economies of American communities.

Regrettably the draft environmental impact statement seemed to endorse allowing a private company to destroy local communities' quality of life, safety and economies, while expecting those communities to pick up the tab.

The EIS fails both in scope and solutions. Specifically:

- Placing an egregious tax burden on local communities by expecting them to fund the vast majority of mitigation costs for a project they do not want and would not benefit from. CN has offered $40 million towards mitigation, which is laughable considering costs are projected at well over $1 billion and that is for selected grade separations only.
- Fails to provide other options or review existing alternatives. We should not seek to move a problem, but instead solve a problem.
- Identifies 11 communities who would be cut off from their police, fire, and EMS providers, while offering no solutions to ensure the safety of our communities.
- Disregards the severe impact a 400 to 900 percent increase in freight traffic would have on the quality of life in our neighborhoods due to:
    - Dead locked traffic
    - Increased emissions and pollution
    - Noise levels
    - Safety—for instance the EIS expects 28 percent increase in highway/rail accidents
    - Thousands of children standing waiting in freezing cold Chicago winters while waiting for two mile long trains to go by so they can cross the tracks to get to school.
    - Economic Burden: lost businesses, lost property value, and a decrease in municipal revenues while the tax burden will increase.

The reason we need this bill is after review, if the adverse impact on communities are significant or outweigh the potential benefits to commerce, then the STB would be required to disapprove or mitigate accordingly.

The TRACS Act is a commonsense solution that will create equity between the railroads and the business needs they serve and the communities and American taxpayer who we serve.

Thank you and I yield back the balance of my time.

News From

JUDY BIGGERT

CONGRESSWOMAN ♦ 13TH DISTRICT ♦ ILLINOIS

FOR IMMEDIATE RELEASE
Tuesday, September 9, 2008

CONTACT: Zachary Cikanek
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Remarks of U.S. Rep. Judy Biggert on Bill to Restrict Railway Mergers like CN-EJ&E

Washington, DC – U.S. Representative Judy Biggert (R-IL-13th) today issued the following statement delivered at a House Committee on Transportation and Infrastructure hearing on H.R. 6707, the Taking Responsible Action for Community Safety (TRACS) Act. The bill would amend laws governing how the Surface Transportation Board (STB) reviews railway mergers like the one between Canadian National (CN) and the Elgin, Joliet & Eastern Railway (EJ&E) line:

"Thank you, Mr. Chairman. I appreciate your giving us the opportunity today to speak on behalf of the TRACS Act. And I would like to express my sincere gratitude for your willingness to work with my colleagues and me in such a bipartisan fashion on this important legislation.

"As you heard from the previous speaker, the bill under consideration today is of vital interest to the people we represent in Illinois. In my district, there are over a half dozen cities and villages that would be devastated by Canadian National's proposed acquisition of the Elgin, Joliet & Eastern Railway line – also known as the EJ&E.

"Their current plan is to increase freight traffic on the line through our communities by as much as 400 percent in some places. The result -- according to the STB's own findings -- will be a disturbing increase in accidents, blocked crossings, pollution, noise, traffic, and more. Home values will drop. At least 11 emergency response providers will be cut off from those who need their protection. And total automobile wait times would increase to as much as 165 hours per day at a given crossing.

"Further complicating matters is the fact that the STB and Canadian National expect local taxpayers to foot the bill for 90 to 95 percent of grade separation construction costs. Like many communities in America right now, our towns and cities are facing tough economic times. Forcing them to come up with 95 percent of the $40 to $60 million necessary to build just one grade separation will literally break the bank. Coupled with the extra safety, noise, and other infrastructure improvements necessary to accommodate the added traffic through 112 crossings along the EJ&E, the burden on Illinois taxpayers would be crippling. And this is all so some foreign company can add to its bottom line.

-more-

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"Those defending this merger claim that it will reduce traffic elsewhere in the Chicago region. But mark my words; it won't last. The demand for freight service in Chicago is expected to nearly double over the next 20 years. Even if some rail lines see a temporary decline in CN trains, they will be replaced in short order by trains from other shippers. And many of those who currently support the acquisition haven't yet realized that they, too, will be asked to pay for CN's plans in the form of taxes and the disruption of commuter rail service.

"For rail companies, it's an easy and cheap way to increase traffic through the region without paying for the real infrastructure investments necessary to balance the needs of taxpayers, local communities, and shippers.

"Mr. Chairman, during the time that this acquisition has been pending before the Surface Transportation Board, members of our delegation have had to become quick experts on the laws governing the approval process for rail mergers.

"The STB is required to study how the merger would affect our communities, our environment, and even the socioeconomic impact. It also allows them to set certain – and in my opinion, inadequate -- conditions on the merger to partially mitigate the damage. But no matter how bad the impact is, no matter how contrary to the public interest, the STB approves or denies the merger based on whether or not it would create a rail monopoly. That's so unfair as to be criminal – or at least it should be. Which brings us to the subject of today's hearing – the TRACS Act.

"Mr. Chairman, I would just like to commend you once again for your work on this bill. I'm proud to be an original cosponsor. It does exactly what a reasonable person would expect. It simply requires the STB to weigh the public costs a merger would have against the transportation benefits. If the transportation benefits of a proposed plan are completely outweighed by the damage to the public interest, then a merger could be denied or additional mitigation required.

"And it spells out common-sense factors that the STB should consider when determining the public interest – things like public safety, emergency response time, noise, and hazardous materials safety.

"To members of this committee, I would ask that you strongly consider this vital, bipartisan legislation. And when you do, keep in mind that your community could be next. The next time a massive rail company tries to unilaterally impose its will on small-town or suburban America, we should have rules in place that provide some protection and basic fairness. The TRACS Act would do exactly that.

"Again, thank you for holding today's hearing. I yield back."

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OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-3)
HOUSE TRANSPORTATION & INFRASTRUCTURE COMMITTEE

Hearing On
H.R. 6707 Taking Responsible Action for Community Safety Act
September 9, 2008

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Thank you Chairman Oberstar and Ranking Member Mica for holding this hearing to discuss the Surface Transportation Board (STB) environmental oversight on merging Class I and Class II or III railroad carriers. Also, I want to thank my colleagues for assisting the committee in its inquiry.

The Staggers Act passed in 1980 left the (STB) oversight on Class I and II mergers vague. The court implied that the current interpretation under the Staggers Act does not allow for the Surface Transportation Board to deny merges of Class I and II railroad carriers on environmental grounds. The resolution to this issue is important for both the railroad industry and the communities that it affects. However, it can not lose sight of the greater concern for national transportation accessibility.

As we have heard from my fellow colleagues and the communities they represent, there are worries of how the transaction will affect them. Chairman Oberstar's legislation HR 6707 draws attention to the importance of protecting the communities that are affected by these transactions. In clarifying this issue, we must be mindful of the well-being of those communities that are directly involved in its outcome.

In closing, I am hopeful that the resolution for STB will not only protect the environment and the communities near the rail networks, but also to keep in mind the effect it has on the nation as a whole. Again, I want to thank the Chairman and Ranking Member for holding this hearing.

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STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON HR 6707, THE "TAKING RESPONSIBLE ACTION FOR COMMUNITY SAFETY ACT
SEPTEMBER 9, 2008

Thank you, Mr. Chairman for holding this hearing on HR 6707, the Taking Responsible Action for Community Safety Act.

Over the years, there has been confusion and misinterpretation of what powers the Surface Transportation Board (STB) has and what factors need to be considered when the STB considers a merger involving a Class I railroad and a Class II or III railroad.

This issue has been magnified by Canadian National's (CN) attempt to merge with Elgin, Joliet and Eastern Railway Company (EJ&E) in the state of Illinois. While CN's acquisition would allow CN to bypass Chicago and improve the efficiency and effectiveness of its operations, many communities and citizens have serious environmental and safety concerns, including the possibility of increased rail accidents, increased hazardous material releases, increased air pollution, and increased traffic delays because of 15 grade crossings being heavily affected.

I am pleased Chairman Oberstar is holding this hearing so we can better understand the issues and, as you seek to do with HR 6707, clarify the intent of Congress and remove the uncertainty surrounding the STB authority.

I am committed to working with my home state, this Committee and interested stakeholders to make sure all concerns and issues are being addressed when considering a merger. I am particularly interested in hearing from our colleagues and state officials on the implications of the proposed legislation and how that would affect the CN/EJ&E merger.

With that, I welcome the witnesses here today, and look forward to their testimony.

Elijah E. Cummings

Committee on Transportation and Infrastructure
Full Committee

Hearing on H.R. 6707, the "Taking Responsible Action for Community Safety Act"

September 9, 2008
11:00 a.m.
2167 Rayburn House Office Building

Opening Statement of Congressman Elijah E. Cummings

Mr. Chairman:

I thank you for calling today's hearing to give us the opportunity to take a comprehensive look at H.R. 6707, the "Taking Responsible Action for Community Safety Act."

As you know, America's railroads are essential to maintaining a robust economy and a world-class transportation network. Whether moving freight or the traveling public, it is critical that our railroads function in an effective and efficient manner.

Recently, we have witnessed an escalation in the amount of freight shipped by rail and statistics indicate that our railroads will grow increasingly congested. In fact, some reports indicate that rail tonnage is expected to grow some 60% by 2035.

With such a large increase in rail tonnage expected, more acquisitions and corporate agreements between Class I railroads and Class II or Class III railroads are to be expected to meet this increasing demand. As a result, many communities are concerned that local rail traffic will increase.

This is best evidenced by the proposed agreement between Canadian National Railway (CN), a Class I railroad, and

the U.S. Steel Corporation in which CN would acquire most of the Elgin, Joliet, and Eastern Railway Company (EJ&E). As a result, CN would be able to divert trains from traveling directly through Chicago, to the area surrounding the city.

While CN believes that this change will allow them to improve their efficiency, the communities along the new route have many concerns as the number of trains operating within their boundaries will increase from 15 to 24. Citizens in the area are worried about the impact the increased train traffic will have on safety as well as the environment.

H.R. 6707, the "Taking Responsible Action for Community Safety Act" seeks to address this issue by granting the

Surface Transportation Board (STB) the power to disapprove a merger between Class I and Class II railroads; or a merger of Class I and Class III railroads, if the Board finds that the adverse environmental effects of the merger outweigh its transportation benefits.

I believe railroads need the flexibility to take the steps that will make their competitive positions as strong as possible; however, it is of paramount importance that all environmental concerns be adequately weighed during acquisitions and merger evaluations.

Unfortunately, the citizens of my district are all too familiar with the risks posed by increased rail traffic through our communities.

On July 18, 2001, a CSX freight train carrying hazardous materials including hydrochloric acid derailed in the Howard Street Tunnel in Baltimore. The city was brought to a grinding halt and many lives were placed in harm's way. Thankfully, a swift response by emergency management officials prevented this situation from becoming even more chaotic.

I believe that this Committee must work to afford the STB the authority it requires in order to protect the environment and the citizens who live in the vicinity of all rail lines while also continuing to assess the impact of proposed acquisitions and mergers on competition. It is important that this issue be resolved in an expeditious manner, because the safety of our neighborhoods and communities is at stake.

I look forward to hearing the testimony of today's witnesses and any insight they may be able to offer to further improve the safety and reliability of our freight rail network. Thank you and I yield back the remainder of my time.

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OPENING STATEMENT
The Honorable Donald A. Manzullo (IL-16)

"Impact of Railroad Transactions on Local Communities"

House Committee on Transportation and Infrastructure
September 9, 2008
Room 2167 Rayburn House Office Building

Good morning. I'm here this morning to offer my unqualified support for your leadership, Mr. Chairman, and your legislation – *Taking Responsible Action for Community Safety Act* (H.R. 6707) – to help solve a left-over problem from when Congress abolished the Interstate Commerce Commission in 1995. The Surface Transportation Board (STB) took over the functions of the ICC with the missions of resolving railroad rate and service disputes and reviewing proposed railroad mergers.

Current law gives the STB considerable discretion to disapprove transactions involving at least two Class I rail carriers but allows much less flexibility to disapprove transactions like Canadian National Railway's proposed acquisition of the EJ&E. In fact, the law states that the STB "shall" approve the transaction "unless" the Board determines it will hurt competitiveness, restrain trade or fail to meet significant transportation needs. In plain English, this means that the STB will not stop a transaction because of local community concerns unrelated to anti-trust issues. This may seem like semantics, but it's an important distinction that has long tipped the scale toward privately owned rail carriers and away from the communities who have to live with them.

In northern Illinois, the community of Barrington is unalterably opposed to the proposed sale of the EJ&E line to the CN, as evidenced by the thousands of people who showed up to the STB scoping session last January and the formal hearing in August. This is not because of a "not in my backyard" syndrome – everyone understands the need to improve the national rail transportation network and would be willing to compromise. But having additional freight train traffic traverse on the aging EJ&E track will not be just a simple minor inconvenience – it will fundamentally alter the entire nature of this town.

While I do not directly represent Barrington, Illinois, I am honored to serve the thousands of commuters who live in southern McHenry County and must travel through Barrington, either by car or rail, to get to work or to perform daily errands. While I've been concerned about this deal since day one, a Draft Environmental Impact Statement recently released by the STB confirmed many of my worst fears about increased accident risks, increased air pollution, increased exposure to hazardous material, and increased traffic. The report also acknowledged that railroads traditionally only contribute 5 to 10 percent of the costs to mitigate these problems. That would leave taxpayers paying the tab for a transaction that solely benefits a private company's bottom line.

I say it's not about what's traditional. It's about what's fair. And the people from the 16th District of Illinois, who I've had plenty of chances to talk with over the past few weeks, agree with me.

H.R. 6707 corrects an oversight made in 1995 and requires the STB to weigh impacts on local communities more heavily when considering any railroad transaction. In fact, the STB would have to reject a proposed acquisition if it finds that transaction's impacts on the affected communities outweigh the transportation benefits. Congress should learn from the experience with this particular transaction and make sure that no community in the nation will ever have to go through what Barrington is experiencing now.

In this particular case, I understand that this transaction could have some macro benefits, but CN accomplishes that goal primarily by exporting the train congestion problems in downtown Chicago to outlying suburban areas such as Barrington. Tens of thousands of motorists in northern Illinois – especially those in McHenry County – travel through Barrington on their way to work each day, crossing the EJ&E line at Route 14, Route 59, and Lake-Cook Road. Approximately another 4,000 commuters from McHenry County ride Metra rail to work in the Chicago-land area each day, crossing the EJ&E line in Barrington. All of these people will be affected by additional CN freight traffic.

At the very least, they are going to encounter inconvenient delays and increases in air pollution. At the worst, it could become a matter of life and death. Not only could emergency responder vehicles become trapped on all sides by a train, but school buses in the Barrington school district cross the EJ&E lines about 400 times a day. Additional freight trains could quadruple the safety risk of students who traverse the crossings each day.

In closing, I'd like to express my appreciation to you, Mr. Chairman, for introducing this piece of legislation, for working with me and others in the suburban Chicago delegation in a bipartisan manner, and for calling this hearing in such a timely manner. I urge my colleagues to support H.R. 6707.

Thank you.

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Full Committee Hearing
9/9/08

Thank you, Mr. Chairman.

Today we will discuss the Taking Responsible Action for Community Safety Act, H.R. 6707.

This legislation would establish requirements for rail carrier mergers. Specifically, this bill would require that current standards used for a merger involving two Class I rail carriers apply for any transaction involving at least one Class 1 rail carrier.

Furthermore, this measure would add two additional factors for the Surface Transportation Board's consideration – the safety and environmental effects and the impact of the transaction on commuter rail and intercity rail passenger transportation.

I look forward to hearing more from our witnesses about this legislation.

I yield back.

Congressman Peter J. Roskam

Comments before the House Transportation & Infrastructure Committee
HR 6707, the Taking Responsible Action for Community Safety Act
September 9, 2008

Chairman Oberstar, Ranking Member Mica, I appreciate the opportunity to testify before the committee today on the Taking Responsible Action for Community Safety Act. Mr. Chairman, I thank you for bringing your attention and expertise to this matter, and the people of my district are grateful for your thoughtful legislation.

The EJ&E rail line roughly forms the western boundary of my Congressional District – I represent the western and northwestern suburbs of Chicago. It's no new theme in Illinois that the city and the suburbs stand on opposite sides of an issue. The City of Chicago is obviously happy to rid itself of some of CN's train traffic in the name of enhancing efficiency and moving trains through the city. The Chicagoland area is after all the "rail hub" of the nation, and we suffer from major gridlock.

But even the Chicago Metropolitan Agency for Planning has expressed grave doubts about CN's push to acquire the EJ&E ring railroad. CMAP is a land-use and transportation planning agency with a seven-county regional view. CMAP has expressed opposition to the deal thus far because CN has not made any commitments about long-term reductions in traffic on certain lines, nor has it made any guarantees to see through to completion a regional commuter rail project long in the works using the EJ&E.

The community impacts of this proposed acquisition are severe. The Chicagoland area has recognized the need to update its rail

infrastructure. The CREATE Program was the fruit of a long deliberation among public and private stakeholders to provide a plan to update the rail infrastructure and move trains through the area more efficiently. Instead, CN has come claiming to have a solution. But their solution has ignored many of the community impacts, and the Draft Environmental Impact Statement was not able to adequately address them either due to statutory limitations.

Nonetheless, the Draft Environmental Impact Statement for this proposed acquisition projected a 28% increase in accidents along the EJ&E line, hundreds of jobs lost, an increase in fuel consumption by the railroad to get around the city, an increase in emissions equivalent to adding 1,000 cars to the road, an increase in hazardous materials transportation and accidents, an obvious increase in noise and vibrations, and 11 fire and emergency medical service providers that will face substantial difficulties coping with emergencies.

One of those providers is the Village of Bartlett in my Congressional District. This month, the village is set to open a brand new fire station at a cost of nearly $5M. CN using the EJ&E will severely hamper this station's ability to serve the village, as its service area is split by the EJ&E tracks. Even minutes for our first responders at these grade crossings could turn unfortunate accidents into catastrophes, or injury into death.

For all this – lesser inconveniences to larger issues of life and death, what do we get? What benefit befalls my constituents? One mitigation measure proposed by STB: CN should create a hotline where communities could call to resolve blockage situations. This recommendation is of no comfort to the Village of Bartlett that has

toiled for so long with Canadian National over one of its existing lines on which the railroad blocks major state roads for inordinate periods of time.

The STB process is humming along with no regard for the region's CREATE effort, and with inadequate attention paid to the impact on a revolutionary inter-suburban commuter rail project that is coming together as a product of years of careful planning and work by stakeholders across the region. This commuter line would connect nearly 100 suburban communities, and give more than 1M people an alternative to driving. CN has offered no guarantees about the future of this project that has already benefited from taxpayer assistance in SAFETEA-LU and member project requests.

Mr. Chairman, I realize the benefits rail transportation offers to our country. It's a fuel efficient form of transportation that has provided local benefits to my constituents on the numerous rail lines crossing our district. We certainly have benefitted from access to rail for shipping goods from our strong manufacturing base. For the most part we're able to live peacefully among the rail presence—we don't suffer from a NIMBY complex.

What we suffer from is a process that is fundamentally flawed, a process that virtually assumes approval of the transaction. We need a paradigm shift in evaluating rail mergers such as these—one where we get a fuller picture of impacts beyond only the anti-competitive considerations of the railroads. Chairman Oberstar, your thoughtful legislation will offer a more appropriate and comprehensive review of rail transactions.

Thank you.

House Transportation and Infrastructure Committee

Statement of Dr. Phineas Baxandall, Senior Tax and Budget Analyst,
U.S. Public Interest Research Group
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Testimony Regarding "H.R. 6707, the Taking Responsible Action for Community Safety Act (TRACS Act)"

September 9, 2008

Chairman Oberstar, Representative Mica and members of the committee: Thank you for the invitation to present the views of the U.S. Public Interest Research Group on how the TRACS Act would impact the public interest. As you know, U.S. PIRG serves as the federal lobbying office for state Public Interest Research Groups. We are non-profit and non-partisan public interest advocacy groups supported by citizen members and active in over twenty states around the country.

U.S. PIRG believes that rail is critical to America's transportation future and that federal policy must ensure that key decisions affecting the nation's rail network consider the public interest. As such, U.S. PIRG speaks today in support of the TRACS Act.

Transportation patterns have profound implications that extend far beyond individual rail companies and their shareholders. Impacts also extend beyond the local communities that abut transportation routes. Rail plays an increasing role in addressing important national issues that extend beyond local traffic, rights of way, and industry competitiveness.

For instance, major decisions about our nation's rail significantly determine how dependent Americans will be on the rising cost of oil, much of which will continue to come from unstable or unfriendly foreign regimes. Our rail network will shape regional patterns of residential and commercial development. It will profoundly affect the quantity of global warming pollution we emit, the range of travel choices available to our aging population, and the degree that America's dynamic urban centers will be integrated with their surrounding suburbs and rural areas. These are issues that are best considered by a national decision making body, one such as the Surface Transportation Board.

In the years ahead America will need to greatly expand its rail network: not just the portion of freight tonnage hauled by rail; but also more and better commuter service on tracks often owned by freight companies; and finally to build out our nation's high speed

rail corridors in ways that stimulate regional economies and relieve short-haul traffic in our distressed air travel industry.

U.S. PIRG takes no position on the application filed by the Canadian National Railway Corporation to acquire Elgin, Joliet & Eastern Railway. On the one hand, a merger would provide opportunity to relieve gridlock in the nation's most important rail hub inside Chicago by routing rail traffic around its suburban circumference. On the other hand, the abutting communities will be unaccustomed and unprepared for the resulting level of freight rail traffic. Over the long term, the most significant implications for the broader public interest may be how this proposed acquisition could prevent attainment of a decades-long vision to connect communities around Chicago's circumference through a Suburban Transit Access Route (STAR).

In the particular Northeastern Illinois context, we applaud the fact that Canadian National is striking voluntary deals with individual communities along the route, such as the city of Joliet, to improve affected traffic crossings and reduce noise. We don't, however, think that these ad hoc local deals can be a substitute for federal-level attention to national priorities. Nor is it likely that current side deals would have been struck so readily if not for this pending legislation.

Beyond Illinois, the broader issue is whether future mergers and acquisitions in the rail industry will serve the public interest or only the short-term interests of rail company stockholders. These two interests often overlap, but we can not treat them as identical. Like laws for other natural monopolies like utilities and telecomm, this legislation provides important oversight to ensure that mergers would advance rather than undermine the public interest.

Since the Nineteenth Century, public leaders have learned the hard way that railroads are natural monopolies that create society-wide impacts and that mergers can indirectly harm the public interest. Rail is a natural monopoly because there is virtually no means to compete for service on a particular route once another company owns the tracks. Competition does not ensure efficient outcomes because it is extremely inefficient for multiple firms to compete for the same route over duplicate tracks.

But the issue is not just that railroad acquisitions can be anti-competitive. The danger is not only that railroads can extract monopoly rents from shippers and consumers. Current law, in any event, already gives the Surface Transportation Board authority to deny certain mergers that would be anti-competitive. The TRACS Act would address the fact that mergers can also undermine the public interest by affecting how railway companies reroute traffic, maintain existing tracks, or develop new lines. The legislation would appropriately empower the Surface Transportation Board to consider the broader public interest, including the impacts on commuter and intercity rail. This makes sense as we look toward the challenges of the future and the role that transportation must play in meeting those challenges.

Thank you for the opportunity to share these comments with the committee.

Testimony of W. Douglas Buttrey
Member, Surface Transportation Board
395 E Street, SW; Washington, D.C. 20423; (202) 245-0220

Before the
House Committee on Transportation and Infrastructure
Hearing on "H.R. 6707, the Taking Responsible Action for Community Safety Act (TRACS Act)"
11:00 A.M., September 9, 2008; 2167 Rayburn H.O.B.

Good morning Chairman Oberstar, Ranking Member Mica, and Members of the Committee.

My name is Douglas Buttrey. I have had the privilege to serve as a Member of the Surface Transportation Board since May 28, 2004.

I appreciate the opportunity to appear before the Committee today as you consider this proposed legislation. The Board's Chairman, Charles Nottingham, has submitted testimony which discusses the issues that are the subject of this hearing. The Chairman's testimony covers everything that I would have said. Rather than duplicating coverage of the same topics, I will instead associate myself with and endorse the Chairman's formal, filed testimony.

I stand ready to respond to any questions the Committee may wish to address to me; with the caveat that, of course, I cannot comment on any proceeding or issue that is presently pending before the Board.

VILLAGE OF BARRINGTON

WRITTEN TESTIMONY OF
KAREN DARCH
PRESIDENT, VILLAGE OF BARRINGTON, ILLINOIS
& CO-CHAIR, THE REGIONAL ANSWER TO CANADIAN NATIONAL (TRAC)
(Village of Barrington, 200 South Hough Street, Barrington, IL 60010; 847/304-3400)
BEFORE
THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON H.R. 6707, the "Taking Responsible Action for Community Safety Act"

SEPTEMBER 9, 2008

Good afternoon, Chairman Oberstar, Ranking Member Mica and Members of the Committee. My name is Karen Darch. As the President of the Village of Barrington and Co-Chair of a bipartisan Coalition formed by local and county elected officials in northern Illinois and Indiana in response to a proposed rail transaction by Canadian National (CN) that will have devastating environmental and safety impacts on many of the collar suburbs of the greater Chicagoland area, I am pleased to have the opportunity to be here today to speak to this distinguished Committee in support of H.R. 6707, the "Taking Responsible Action for Community Safety Act" (TRACS Act.)

The legislation that Chairman Oberstar has drafted and co-sponsored with 20 members of Congress provides a much-needed and long overdue technical clarification to the federal law applicable to large Class I railroads. The legislation would make it absolutely clear to the railroad industry and to the Surface Transportation Board (STB) that the public interest of residents and communities threatened by the negative environmental and safety impacts of large railroad M&A transactions must be considered on an equal basis with the alleged transportation benefits of any such transactions during the regulatory review process.

As a municipal elected official responsible for developing local ordinances that balance the needs of our residents with business development goals, I know full well that members of this Committee have an important and challenging responsibility when it comes to establishing public policies that facilitate freight movement while protecting the interests of communities that are coping with an unprecedented growth in rail freight traffic. However, the economic and system benefits that may accrue to a large railroad company from a particular merger or acquisition need to

be carefully weighed against other equally valid safety and environmental impacts that will result from any such transaction. This is particularly important if significant volumes of freight traffic will be re-routed through high density residential areas that were not designed for and do not have the infrastructure to accommodate such drastic changes. The only way to achieve the necessary balance is to consider the interests of the freight railroads and the affected communities on a level playing field.

Based on my experience over the past 11 months since the CN proposal to acquire the EJ&E was announced, it has become evident that CN and the other large railroads do not believe the STB has the authority under current law to consider the environmental impacts of such large railroad transactions on an equal footing with rail shipper and competition issues. The STB's treatment of past M&A transactions involving large railroads provides further confirmation that, as a practical matter, the STB itself appears to doubt whether it has the authority to reject such transactions on environmental grounds. This ambiguity needs to be clarified through H.R. 6707 if the environmental review process mandated by NEPA is to have any significance in large railroad transactions subject to STB review.

Experience Learned from the CN Transaction:

Since CN applied to the STB last fall for approval of its proposed plan to purchase and re-route significant volumes of freight traffic onto the EJ&E rail line that loops through residential communities northwest of downtown Chicago, my Village has been actively involved in the STB regulatory process as a voice of opposition because we've had no choice. The line CN wants to buy and transform into a high-density corridor for mile-long intermodal trains runs right through the heart of Barrington -- intersecting at grade level with four busy roads in the center of the Village that are used by our residents and visitors to access downtown businesses, medical facilities, and local schools, and that serve as regional commuter corridors. Over the ensuing months, numerous other communities along the EJ&E line have joined forces to protect our shared interest in avoiding the significant environmental and safety harms that our constituents will experience as a result of the CN proposal. That shared interest to speak as a unified voice of opposition on this transaction led to the creation of the TRAC Coalition that I co-chair with Tom Weisner, the Mayor of Aurora, Illinois.

Over the last several months, the TRAC communities have worked within the dictates of the STB review process as it exists and attempted to discuss our concerns about mitigating environmental and community impacts with CN. However, there has been little reason for CN to take these discussions seriously. CN publicly states that it is negotiating with affected communities on mitigating the problems its operations over the EJ&E line would cause, but effectively operates on the assumption (supported by the Board's disposition of prior cases similar to the EJ&E acquisition) that the Board does not have the authority to block the transaction on environmental grounds and therefore it is not obligated to fund any meaningful mitigation measures sought by the affected communities.

From a process standpoint, everyone at the STB has been nothing but courteous, pleasant, and professional. However, we don't have any real sense at this point that our public comments on the environmental issues will make a bit of difference in the final decision the Board makes on whether to approve or reject the transaction. We have looked at the precedents in these types of proceedings. With one minor and very distinguishable exception, the STB has uniformly approved such transactions subject to certain limited mitigating conditions that often require nothing beyond compliance with other applicable law. The STB has never rejected or even seriously considered rejecting a comparable transaction on environmental impact grounds, and has never shifted the burden of meaningful mitigation to the railroad applicant. We truly believe that, in the absence of H.R. 6707, the STB will reach the same conclusion in the CN transaction.

The STB should be required to disapprove a proposed acquisition involving a large railroad and major traffic shifts if community harms outweigh the transportation benefits. Under NEPA, federal agencies are not authorized to contemplate environmental impacts as an abstract exercise, but instead must consider those environmental impacts as an important component of the agency's process of deciding whether to approve a federal action. Unfortunately, it is not clear from prior precedent that the STB believes that it has the authority to approve or reject such a large railroad transaction on anything other than competitive grounds. From its recent filings, CN certainly does not believe the STB has the option to say "no" when environmental impacts outweigh the transaction's purported transportation benefits.

The Need to Pass H.R. 6707:

Under H.R. 6707, the STB would be required to conduct an environmental review process that insures that all environmental impacts are fully evaluated and weighed against the purported benefits of the transaction. This Committee needs to approve the TRACS Act to clarify for everyone that the STB has a duty to serve the taxpayers of this nation by stating that if the environmental harms to affected communities outweigh the transportation benefits and cannot be adequately mitigated by the railroad, these large railroad transactions need to be rejected.

In his concurring comments in the July 24 Board decision setting a timetable for a decision on this transaction, STB Commissioner Douglas Buttrey stated the following: *"For this proposed transaction, the scope, in terms of track mileage and transaction cost, is relatively low. However, the issues related to environmental impacts, mitigation costs, and impacts on the affected communities both now and in the future appear to be incredibly high. ...it is hard to imagine how even the most far-reaching mitigation measures would be enough to offset or balance the environmental detriments that would flow from this proposal."*

We believe that Mr. Buttrey's assessment in this case is absolutely correct – we couldn't have said it better ourselves. His statement gives the TRAC communities reason to hope that we will not be railroaded by CN and that a meaningful environmental review and evaluation process will be followed for the nearly 2 million residents of the greater Chicagoland region who will be negatively impacted if the CN deal is approved without adequate mitigating conditions. Passing H.R. 6707 into law will insure that our voice will be heard and considered fairly in the regulatory process.

Railroad law that makes American communities second class citizens in the regulatory review process is a relic of another era. The railroads of today are highly profitable and they can well afford to make the investments necessary to integrate their operations into our communities. They will not do so, however, unless they are incentivized to do so by a law like H.R. 6707 that makes it clear that environmental and safety impacts on affected communities will be considered on a level playing field with purported transportation benefits.

The TRAC communities are facing harms that any community across this country can face absent passage of the TRACS Act. Much of our rail infrastructure was laid when vast stretches of the country were sparsely populated and rail served as a vital point of connectivity for small

outposts. Today, we confront a vastly different landscape. In those cases in which the negative community impacts outweigh the transportation efficiencies for one private company, it is only rational that our public policy not compound an existing wrong by placing the interest of a railroad above all else. H.R. 6707 is a law that's time has come, and the communities of TRAC speak in one voice in asking that this Committee take the first step in making this bill the law of the land before Congress adjourns. Thank you.

STATEMENT OF

E. HUNTER HARRISON
PRESIDENT & CHIEF EXECUTIVE OFFICER
CANADIAN NATIONAL RAILWAY COMPANY

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

HEARING ON
H.R. 6707, THE TAKING RESPONSIBLE ACTION
FOR COMMUNITY SAFETY ACT

SEPTEMBER 9, 2008

CN
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Mr. Chairman, members of the Committee, thank you for inviting me to offer CN's perspective on H.R. 6707.

Allow me to briefly introduce myself and CN. I have spent more than 40 years in the railroad industry, from my first railroad job in the freight yards of the former Frisco railroad in Memphis to my present job as CEO of CN. CN operates from the Atlantic to the Pacific in Canada, and from the northern Midwest to the Gulf of Mexico in the U.S. We and our predecessors have operated railroads in the U.S. since the late 1870s, when Grand Trunk Railway acquired a line between Port Huron, Michigan, and Chicago. In the last 10 years, starting with the Illinois Central transaction, the STB has approved three successful acquisitions by CN and each has subsequently been smoothly and safely integrated into our family of roughly 6,500 employees in the U.S.

We understand U.S. railroad operations, especially operations in the Chicago area, very well. While CEO of the Illinois Central, I lived in the Chicago area for almost twenty years, and helped nurse the IC back from the edge of collapse to a high level of efficiency before it was acquired by CN. Back then, we had to struggle with the congestion of the Chicago terminal area every day, and things have only gotten worse. Chicago is the one major weak link left in the CN system, and one of the most congested areas of the entire North American railroad system. All of the railroads – freight and passenger – will run better if we can together find new ways to relieve that congestion.

Relieving that congestion should be a critical national transportation priority. As you know, rail transportation is inherently safer and more environmentally friendly than trucking. Every time we improve efficiency so that freight stays on rail, the country and its commerce are better off. While CN is already one of the most efficient railroads in

North America, my job at CN is to try to expand and make better use of our capacity. Accordingly, we strongly support the national goal, reflected in the Staggers Rail Act and the ICC Termination Act, of promoting railroad acquisitions that encourage efficiency and are not anticompetitive.

We are seeking to make our railroad and the entire national rail system more efficient by acquiring the principal lines of the EJ&E railroad. This small, but strategic acquisition would permit us to remove most of our trains from the very congested lines that run through urban Chicago. By shifting traffic onto the under-utilized EJ&E, our private sector investment -- of $300 million in the acquisition, and $100 million in the rehabilitation to improve the EJ&E – would help decongest the Chicago terminal area. It would thus begin to achieve the primary goal of the CREATE Project.

Our acquisition is strongly supported by a wide range of shippers, by the National Industrial Traffic League, by chambers of commerce and other business organizations, and by the communities from which we would remove trains in Chicago. However, because CN would put new trains on the underutilized EJ&E lines, the transaction is opposed by the suburban communities that have built up around those lines.

Largely in response to that suburban opposition, the transaction is being subjected to the most intensive environmental review ever undertaken by the STB in a control case. The Board is studying the environmental impacts of our acquisition of 158 route miles of railroad in two states. But it will take longer to do so than it took to study the 10,500 route mile, $10 billion Conrail transaction, that spanned 13 states and the District of Columbia. It will also be extremely costly. Assuming the EJ&E transaction is not found to be anticompetitive, and is therefore approved as required by law, the roughly $25M

that we will pay for the environmental review, together with the cost of the comprehensive voluntary mitigation plan we have proposed, will total more than twenty percent of the cost of the acquisition – a proportion clearly unprecedented for a railroad control transaction.

This experience has provided us with a perspective on the issues raised by the legislation under consideration today. I want to touch on some key points here.

First, I believe that CN shares the same broad goals as this Committee. We want the most efficient rail transportation network possible, and we want to assure that when railroads take steps to improve network efficiency, there are reasonable ways to address significant environmental impacts.

Second, we believe that Congress, in the legislation governing railroad control transactions, has properly required independent analyses of transportation efficiency and environmental impacts. We recommend that you should maintain that distinction.

Our industry is one of the few for which efficiency enhancing acquisitions are subject to both competition and NEPA environmental review. However, what concerns us is not environmental review itself but the lack of predictability in the process and the very significant costs and delays that the Board's regulatory review imposes on our industry and its customers.

This Committee well understands the capacity challenges facing our industry, as well as the particularly challenging congestion in Chicago. If CN and the other railroads, which all operate in a competitive and dynamic environment, are going to fix these problems effectively, we need to be able to predict and then get confirmation as to whether our initiatives will be permitted. Together, predictability and early confirmation

strengthen our ability to direct our energy and capital to the most productive alternatives. For smaller transactions especially, the key test is whether a transaction is anticompetitive. If we fail that test, then there is no need to complete any required environmental review. We can go on to other things. If we pass it, then we know the investment in environmental review is likely to produce real benefits.

Unfortunately, we have been denied this regulatory certainty in the EJ&E transaction. After 10 months of review, while no substantial competition concerns have been raised, the STB still has not made a final determination whether the transaction passes the statutory competition test. Meanwhile, CN's strategic plans remain in regulatory limbo. And, as required, we are paying huge sums to consultants employed by the STB for an environmental review that would not be needed if the transaction failed the competition test. Accordingly, our hope is that Congress would not direct the STB to mix its competition review with its environmental review.

Instead, we respectfully suggest that it would better serve the nation's transportation policy goals if the Board were to conduct its competition review as expeditiously as possible, so long as any significant environmental impacts are deferred pending a final environmental review. At a minimum, Congress should take no steps that would undermine the instructions it gave the STB to review the competition impacts of minor transactions within 180 days.

As you know, we have a lot of confidence that our transaction, when considered on the merits, will pass the competition test with flying colors. We have therefore continued to participate in and to fund the environmental review process. This leads me to my third point: There is no need to add a new requirement for the STB to determine

whether approving a transaction is consistent with environmental considerations. What is needed is a more structured way to make those determinations.

Relying on its current statutory authority, the Board conducts a thorough review of any significant environmental effects arising from a control transaction. No further legislation is required for the Board to accomplish this goal. We respectfully disagree with those who want the Board to compare the transportation merits of a transaction with the environmental impacts before deciding whether to approve a transaction. If a transaction that is in the public interest has significant adverse environmental impacts, the answer is to reasonably mitigate those impacts. The railroad's fair share of those costs should be determined in light of any offsetting environmental benefits produced by the transaction, the causes of the impacts to be mitigated, and the relative benefits to be realized by the parties from mitigation. After that, the Board's job should be done.

In any event, the environmental review process should be disciplined and efficient. It should also be conducted on a well-defined schedule. As long as the environmental review is open-ended, it may encourage some people who place their local interest above the national interest in efficient transportation to abuse the process. They can seek to defeat the transaction or to extract unreasonable mitigation. The STB should have in place the resources and procedures to assess potential environmental impacts thoroughly, yet expeditiously. In this way, the Board can encourage the timely development of mitigation to address reasonable local concerns while precluding transaction opponents from unduly dragging out the process.

The process should also be more balanced. In our case, the SEA's voluminous draft review of our transaction is far more concerned with adverse impacts than with the

positive impacts. This focus implicitly favors the interests of suburban communities over those of the urban communities in Chicago that will benefit enormously from our transaction.

Unfortunately, it is too late to improve the process in our case; the statutory deadline for decision has long passed. Instead, our focus is on finding a practical solution to the fact that the delays in the environmental review have created a substantial risk that the transaction will be terminated before the Board finishes its job. In order to avoid this risk, we have asked the Board to decide our case on competition grounds so that we can close the transaction before year's end. If we are allowed to close, we will maintain the environmental status quo. Most important, this means that we will not transfer any CN trains from Chicago routes to the EJ&E until the Board finishes its environmental review and duly approves such transfer. The fact that some of the suburban interests are opposing this request, even though it would fully protect the environment and the rights and interests of all concerned, suggests that their true goal may be to defeat the transaction.

Given the history and status of our transaction, I urge that you not seek to apply this bill retroactively. H.R. 6707's overall purpose is to ensure sufficient environmental review of rail control transactions. The STB's extraordinary environmental review of the EJ&E transaction has already met that purpose. And, even though the adverse environmental impacts of the transaction are largely outweighed by the beneficial impacts that will be realized by the millions of Chicago area residents who will experience a reduction in train traffic, we have already volunteered to provide reasonable mitigation for the significant adverse impacts of the transaction, as measured by the

sound standards used by the Board in prior cases. In other words, we are prepared to mitigate more than the net significant adverse impacts of our transaction. For these reasons, we believe that no good public purpose would be served by the retroactive application of legislation that, by virtue of delay alone, could cause the death of our transaction.

That ends my prepared remarks, Mr. Chairman. I would welcome any questions.

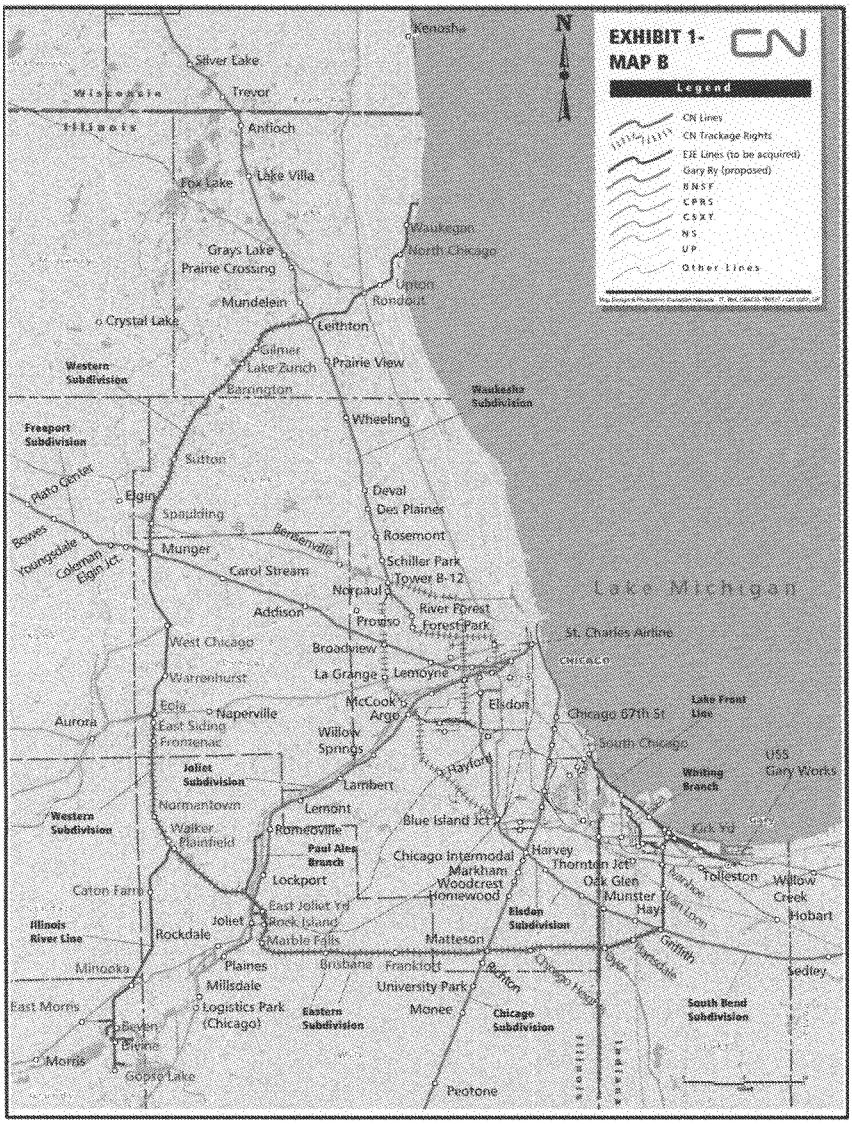
EXHIBIT 1-
MAP B
Legend
CN Lines
CN Trackage Rights
EJE Lines (to be acquired)
Gary Ry (proposed)
BNSF
CPRS
CSXT
NS
UP
Other Lines
N
Kenosha
Silver Lake
Trevor
Wisconsin
Illinois
Antioch
Fox Lake
Lake Villa
Waukegan
North Chicago
Gray's Lake
Prairie Crossing
Union
Rondout
Mundelein
Crystal Lake
Leithton
Gilmer
Lake Zurich
Prairie View
Western Subdivision
Barrington
Waukesha Subdivision
Wheeling
Freeport Subdivision
Sutton
Plato Center
Elgin
Deval
Des Plaines
Spaulding
Bowes
Rosemont
Bensenville
Youngsdale
Coleman
Elgin Jct.
Munger
Schiller Park
Carol Stream
Tower B-12
Norpaul
Lake Michigan
Addison
Proviso
River Forest
Forest Park
West Chicago
Broadview
St. Charles Airline
CHICAGO
Warrenhurst
La Grange
Lemoyne
McCook
Argo
Elsdon
Lake Front Line
Aurora
Esta
Naperville
East Siding
Fromzenac
Willow Springs
Chicago 67th St
South Chicago
USS Gary Works
Joliet Subdivision
Lambert
Hayford
Whiting Branch
Normantown
Lemont
Western Subdivision
Walker
Romeoville
Blue Island Jct
Kirk Yd
Gary
Plainfield
Paul Ales Branch
Chicago Intermodal
Harvey
Markham
Thornton Jct
Lockport
Woodcrest
Oak Glen
Tolleston
Willow Creek
Caton Farm
Homewood
Munster
Hammond
East Joliet Yd
Hay
Hobart
Joliet
Rock Island
Elsdon Subdivision
Illinois River Line
Rockdale
Marble Falls
Matteson
Griffith
Minooka
Plaines
Brisbane
Frankfort
Dyer
Schererville
Sedley
Millsdale
University Park
Burton
Chicago Heights
East Morris
Logistics Park (Chicago)
Eastern Subdivision
Monee
Chicago Subdivision
South Bend Subdivision
Braidwood
Dwyer
Morris
Gooselake
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September 23, 2008

The Honorable James L. Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman,

Thank you again for the opportunity to testify at the Committee's September 9, 2008 hearing on H.R 6707, the "Taking Responsible Action for Community Safety Act," and on CN's proposed acquisition of the major portion of the Elgin, Joliet & Eastern Railway Company (EJ&E).

During the course of the hearing, some of the other witnesses made erroneous comments related to CN's EJ&E transaction. I would like to take this opportunity to correct those comments for the record of this hearing and to provide additional background on the transaction itself to ensure that the Committee has an accurate understanding of the scope of this important transaction and the benefits it would bring to the Chicago region.

Before doing so, I would like to reiterate a key point relevant to H.R. 6707 with respect to the environmental review that has taken place on the EJ&E transaction. As I understand it, the primary purpose of the legislation is to elevate and ensure the STB's consideration of the environmental impacts in merger transactions involving a Class I and a smaller railroad.

I believe all objective observers will agree that CN's EJ&E transaction has been the subject of an extensive environmental analysis by the Section of Environmental Analysis (SEA) of the Surface Transportation Board (STB). In fact, this is the only "minor" transaction for which the STB has elected to prepare a full Environmental Impact Statement (EIS). In previous cases involving "minor" transactions, the STB has prepared an Environmental Assessment, which covers a broad range of issues but is less detailed, or has found the transaction to be exempt from environmental review.

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SEA has been engaged in reviewing the environmental impacts of our proposed acquisition of 158 route-miles of railroad in two states since December 2007. It has prepared a five-volume Draft EIS that is over 3,500 pages long and that comprehensively addressed every environmental issue that the Board could be required to analyze in order to satisfy its obligations under the National Environmental Policy Act. By the time this process concludes, it will have taken longer than the EIS preparation for the $10 billion Conrail acquisition, which involved 10,500 route miles in 13 states and the District of Columbia. SEA's review, performed by an independent, third-party consultant paid by CN but working strictly under SEA's direction, will cost roughly $20 million to complete. (In contrast, the STB's entire annual budget is $26.5 million.)

At the same time we have been participating in the SEA process, CN has been engaged in an extensive outreach program to communities along the EJ&E line. Earlier this year, CN launched this program with a team of senior CN officers, along with our outside environmental experts. Our team has offered to meet with any community along the EJ&E line to identify their environmental concerns associated with increased train traffic along the line and to work together to negotiate a voluntary mitigation agreement to address these concerns. CN officials have met with officials of 31 of the 33 communities along the EJ&E line at more than 80 meetings to date, along with numerous conversations by telephone. The progress and success of those discussions has varied. We were successful in negotiating a voluntary mitigation agreement with the City of Joliet, which we announced in August, and we are working actively to secure additional agreements.

There is thus no question of the depth of the STB's consideration of the environmental impacts of the CN/EJ&E transaction or the extent of CN's participation in the agency's environmental review. Should Congress eventually adopt H.R. 6707, it would be fundamentally unfair to make the legislation retroactively applicable to our transaction.

Turning now to the September 9 hearing, I would like to respond to some of the inaccurate statements made about CN and our proposed transaction by some of the witnesses.

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Transaction Benefits

Opponents of the transaction charged that this transaction would not improve the quality of life or the economy in the region, with at least one witness commenting that our transaction does not solve the congestion problem, but rather only shifts it.

I agree that much more needs to be done to truly solve the rail congestion problem in Chicago, but our proposed EJ&E acquisition would make an important contribution toward this goal, consistent with the objectives of the CREATE project. By removing most of our trains from the very congested lines that run through urban Chicago to the underutilized EJ&E line, we would help to reduce overall congestion in the region. The transaction is not about moving congestion from one place to another, it is about relieving congestion – much like the construction of a new road or use of a second underutilized road can relieve overall traffic congestion.

Further, contrary to the comment of one witness that this transaction would not help Chicago because CN simply brings goods through Chicago that are intended for other destinations, this transaction would indeed benefit businesses in the Chicago region.

First, this commenter ignores the fact that Chicago has long been the rail hub of America and as such that a tremendous number of businesses and jobs in the Chicago region depend upon it maintaining that status. As I noted in my comments at the hearing, if Chicago's rail congestion problems remain unaddressed through proposals such as this transaction, that status and the accompanying benefits to the region will ultimately be threatened or lost as rail carriers and others seek alternatives to Chicago. Second, the strong support that our transaction has received from rail customers and their representatives, including rail customers in the Chicago region, clearly demonstrates that the transportation benefits of our transaction are not limited to destinations outside of the region. For example, our acquisition is

strongly supported by rail customers, including the National Industrial Transportation League, the Illinois, Chicagoland, and Indiana Chambers of Commerce, and numerous other local chambers. Finally, the commenter would ignore the fact that there are more than 60 communities in the Chicago area that will experience reduced train traffic as a result of this transaction. Thus, a broad range of community organizations and residents of communities inside the EJ&E arc have expressed their strong support for the proposed transaction. An efficient transportation system benefits businesses in the Chicago region and beyond, as well as the U.S. economy.

Safety

Anyone concerned with transportation safety should be a natural supporter of our transaction. SEA's Draft EIS found that safety overall would improve. The DEIS projected an overall 8% reduction in crossing accidents. Further, while the DEIS projected that train accidents on the EJ&E line would increase by 28%, it also found that train accidents on CN lines inside the arc would decline by 77%. The net impact is an improvement in safety that could save lives in the Chicago region.

The Draft EIS also projects no additional hazardous materials accidents as traffic shifts from CN's downtown lines to the EJ&E. The transaction actually addresses an important objective of the Federal Government – namely, that certain hazardous materials should be rerouted away from heavily populated urban corridors, such as downtown Chicago, to less-populated areas whenever possible. CN's line currently runs through the heart of Chicago, under McCormick Place, and past Soldier Field.

At the hearing, concern was expressed about a CN grade crossing accident earlier this year in Indiana. On July 4, 2008, a driver parked his vehicle on the Main Street crossing in Mishawaka, Indiana too close to the tracks while he went to retrieve a dog prior to the train's approach. Fortunately, there was no loss of life in this case, as the train struck the unoccupied van in the rear. This has been CN's only grade crossing collision in Indiana in 2008.

Nonetheless, improved safety at highway/rail grade crossings remains a major priority for the railroad industry generally and for CN. CN has been active with Operation Lifesaver on important grade crossing safety education initiatives, as well as our own "All Aboard for Safety" campaign that we implement throughout our service territory. Progress has been made to improve safety at these crossings; in fact, the industry-wide grade crossing collision rate has fallen each year since 1978. We recognize that a problem remains, and we and our industry colleagues continue to work to find practical ways to drive the rate of accidents toward zero.

CN also has committed to provide full training for municipal first responders and will offer more comprehensive emergency response capabilities than exist along the EJ&E today. As part of the community outreach effort described above, CN held two emergency response seminars covering 12 towns in Will and Lake counties.

Train Traffic Increases/Crossing Delay

One witness asserted that train traffic along the EJ&E line would increase between 400 and 900 percent. While this is simply not true, efforts to characterize traffic increases in percentage terms are misleading, masking the fact that current traffic levels on the under-utilized EJ&E line are small. Train traffic will increase at varying levels along different segments of the EJ&E line. For example, the Village of Barrington would see an increase from the current 5.3 trains per day to 18.3 trains per day, while the City of Aurora would see an increase from 15.7 trains per day to 37.5 trains per day. While these represent noticeable percentage increases (though still far less than 400 percent), total train traffic along the EJ&E line would still be far less than current traffic levels on other carriers' lines in various other communities in the Chicago region.

Assertions were made that motorists' waiting time at highway/rail grade crossings would increase significantly. However, calculations in the Draft EIS indicate that the average motorist along the EJ&E would see an increase in delay of less than 12 seconds.

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Further, we believe that the Draft EIS did not correctly assess the crossing delay improvements that would be made in the region. Independent analysis conducted for CN indicates a net reduction of over 200 hours per day in grade crossing delays across the region or 73,000 hours per year. This transaction would benefit motorists in the region overall, with fewer crossing delays.

Other witnesses asserted that any train traffic decreases on CN lines would be short-lived. We do not know what the eventual demand from other carriers for use of the lines that CN would vacate; a key factor in this determination will be whether Congress provides significant funding for the CREATE project. In the meantime, we know that any trains we put on the EJ&E will not be in downtown Chicago. It is also likely that on certain of our lines Metra will be able to add to its commuter services, something that Metra has long desired.

Environmental Mitigation

Some witnesses asserted that CN is not willing to pay its "fair share" for mitigation. In fact, CN has volunteered to pay the cost of the vast majority of the mitigation projects in the Draft EIS. CN proposed to pay fully for 70 voluntary mitigation measures, which SEA included in the Draft EIS. Our comprehensive voluntary mitigation plan addresses all environmental issues as measured by the sound standards used by the Board in prior cases.

The one major disputed area of cost sharing is with respect to grade separations, the costs of which have for many years been treated as a shared responsibility between the railroad and Federal, State, and local governments. This reflects the fact that the primary beneficiaries of grade separations are not the rail carriers – which modestly benefit from reduced grade crossing accidents – but motor vehicle drivers who, in addition to reduced safety risks, would otherwise face delays. It also reflects the reality that the public interest in rail freight transportation and crossing convenience and safety justifies a significant public contribution.

Metra's Proposed STAR Line

Witnesses asserted that this transaction would be harmful to the implementation of Metra's proposed STAR Line service. This is not the case. Negotiations between CN and Metra have been underway for the past several months. CN has committed to work with Metra to reach an agreement that, upon CN's acquisition of the EJ&E, would permit Metra's proposed STAR Line service to jointly use enhanced EJ&E rail lines, should the STAR Line service be approved and funded by the government. We understand that this is Metra's preferred option. While the specifics of the negotiations are confidential, I am confident that our proposed EJ&E acquisition would not preclude the STAR Line project.

NICTD South Shore Passenger Service

Concern was expressed at the hearing about the future of the Northern Indiana Commuter Transportation District (NICTD)'s proposed South Shore passenger service from Valparaiso to Munster, Indiana. First, it is important to note that the EJ&E transaction has no bearing on this proposed service, which would not operate on any portion of the EJ&E. Second, CN has been working closely with NICTD on this potential commuter line. Last December, CN conducted an inspection trip for NICTD officials from Fort Wayne to Munster for the purpose of exploring the feasibility of building a commuter line on CN's right-of-way on this corridor. We understand from NICTD that they have everything they need from CN at this point to conduct their evaluation and we will be happy to conduct discussions with NICTD on property requirements and other issues when they are prepared to resume them.

A NICTD issue that is directly related to the transaction is the reduction of trains at Kensington as a result of acquisition of the EJ&E. This would make it possible for CN to accommodate NICTD's request for a corresponding reduction in structural track requirements that would otherwise be necessary to support the train traffic at Kensington. This is a cost savings that directly benefits NICTD.

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CN Corporate Organization

Witnesses expressed concern that CN is a foreign company. It is true that CN is headquartered in Montreal, Canada, but CN's shares are traded on the New York Stock Exchange and roughly half of CN's shareholders are U.S. individuals or institutions.

CN has a rich history in the United States. The railroads that are part of CN's system or their predecessors have owned railroads in the United States for over a century. Since 1999, CN has acquired three U.S. railroad systems. The STB reviewed and approved each acquisition without any substantial concerns being raised before or after about the fact that CN is a Canadian company.

CN has a substantial presence in the United States; we operate approximately 6,700 miles of railroad in this country. Our U.S. headquarters is in the Chicago area at Homewood, and we have over 6,500 US employees, with roughly 1,500 in Illinois alone. We also make significant investments and tax payments in the U.S.

Putting this transaction in context, it is important to remember that Canada and the United States are each other's largest trading partner, with Canada providing an important market for U.S. products. In fact, Canada is the largest trading partner for Illinois and Indiana and 34 other states and tens of thousands of jobs in Illinois and Indiana are supported by Canada/U.S. trade.

Please do not hesitate to contact me if you need additional information on the EJ&E transaction or with respect to CN's views on H.R. 6707. Please also include this letter in the official record of the September 9 hearing.

Sincerely,

E. Hunter Harrison
President and
Chief Executive Officer

... /9

cc: The Honorable John Mica
The Honorable Corinne Brown
The Honorable Bill Shuster

Before The
U.S. House of Representatives
Committee on Transportation and Infrastructure

September 9, 2008 Hearing
Taking Responsible Action for Community Safety Act
H.R. 6707
11:00 A.M.
2167 Rayburn House Office Building

Testimony Of
Vice Chairman Francis P. Mulvey
Surface Transportation Board
395 E Street, SW, Suite 1290
Washington, DC 20423-0001
(202) 245-0210

Good morning Chairman Oberstar, Ranking Member Mica, and other Members. Thank you for this opportunity to testify on H.R. 6707, the "Taking Responsible Action for Community Safety Act."

At the outset, I would like to make clear that my testimony today pertains only to the TRACS Act. It should not be interpreted as signaling my views on any cases currently pending before the Board, including three control transactions between: the Canadian Pacific and Dakota, Minnesota & Eastern; the Canadian National and Elgin, Joliet & Eastern; and the Norfolk Southern and Pan Am Railways, respectively.

Whether the Board can deny approval of a merger that it has categorized as "minor" on grounds other than potential anticompetitive impacts is a question that is under review at present. To date, the Board has never rejected any merger on such grounds. Our statute with respect to "minor" transactions specifies that we focus on competitive impacts. On the other hand, the National Environmental Policy Act (NEPA) directs that agencies take a so-called "hard look" at potential environmental impacts in carrying out their mandates. "The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall" give appropriate consideration to environmental concerns in their decision-making along with economic and technical considerations; and explain the environmental impacts of the proposed action before the agency, unavoidable adverse impacts, and "alternatives to the proposed action" before the

agency.[1] 42 U.S.C. 4332. The question of the scope of the Board's authority is very likely to wind up in court in the near future.

A related concern of mine is the way the agency has categorized mergers (i.e., "major," "significant," and "minor") over the past 15 years. I have long thought that the agency's categorization was problematic in practice because the "significant" category is almost a null set. The agency has only categorized one transaction as "significant" since 1993. When I was on this Committee's staff, I was critical of the Board's categorizations, because all non-"major" transactions were determined to be "minor," even where there were important regional impacts (in my opinion). I believe that mergers -- other than those involving two Class I railroads -- that have regional or

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[1] NEPA provides that:
The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall—

. . . .

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by subchapter II of this chapter, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--
(i) the environmental impact of the proposed action,
(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
(iii) alternatives to the proposed action,
(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

. . . .

42 U.S.C. 4332.

national transportation significance should be classified as "significant," in accordance with our existing statute.[2]

Over the past year, I have made clear my views regarding the Board's categorization of particular transactions. I believe it is important that we continue to differentiate among transactions, although what is considered "significant" needs to be recalibrated because of the changes in the rail industry since the Staggers Rail Act of 1980. I also believe that the Board should accord the fullest due process permissible under our existing statute to all transactions before it, including adequate opportunities for stakeholder participation in developing the evidentiary record and in undertaking the environmental review process.

I am not opposed to the TRACS Act. I believe that the Board should consider the "public interest" (including environmental issues) in some manner in deciding whether or not to approve control transactions. If the Board already has the direct authority to do so, then the TRACS Act is not needed. If it does not, then I would welcome the additional authority to do so.

While I do not oppose the TRACS Act, as I have already stated, I do want to comment on a practical problem that I see with regard to it. Section 2 of the TRACS Act would require the Board to hold public hearings "in the affected communities, unless the Board determines that public hearings are not necessary in the public interest." It appears that this language provides a suitable amount of discretion for the Board to determine

[2] 49 U.S.C. 11325(c); 49 CFR 1180.2(b).

whether or not to hold hearings, where to hold hearings, how many hearings to hold, and how to conduct hearings. However, I do want to emphasize that we are a small agency, and we currently dedicate a considerable portion of our resources to our hearings. I urge the Committee to be mindful of this in light of the size and scope of potential future transactions. As you know, Class I railroads operate networks in the tens of thousands of miles, running through multitudes of communities. It would be impractical and impossible to hold hearings in every community that might be affected by a "major" merger.

That concludes my statement. Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Statement By

Elaine Nekritz, State Representative

Illinois House of Representatives – 57th District
Chair, Rail Safety Committee
24 South River Road, Suite 400
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Hearing Before The

Committee on Transportation and Infrastructure
U.S. House of Representatives

Washington, D.C.

September 9, 2008, 11:00 a.m.

H.R. 6707 – "Taking Responsible Action for Community Safety Act"

Mr. Chairman, Ranking Member Mica and Members of the Committee, I thank you for inviting me to testify on H.R. 6707.

As acknowledged on the Committee's web page, this legislation has arisen out of the cauldron of controversy in the Chicago region over the proposed acquisition by the Canadian National Railway (CN) of the Elgin, Joliet & Eastern Railway (EJ&E). As you are aware, this proposal is currently pending before the Surface Transportation Board (STB).

I do not oppose giving the STB authority to hold public hearings in affected communities as proposed in H.R. 6707. Nor do I oppose including safety and environmental concerns as part of the STB review process, as well as impacts on intercity passenger or commuter rail.

I am concerned, however, that the local, regional and national benefits of a transaction will get lost in the clamor created by those who are opposed. As with any controversial transaction, there are inevitable losers and winners. The winners are typically not as loud or as vocal, so I encourage the Committee to ensure that all local, regional and national impacts of a transaction be considered and weighed as part of any STB review.

Local Benefits

Take the case of Des Plaines, Illinois, a community I represent. Des Plaines was founded over 150 years ago on an existing rail line that provided a convenient transport to Chicago. Over the years, through additional construction and consolidations, Des Plaines, a community of only 60,000 people, became home to three Class I railroads along with a busy commuter rail station. The rails crisscross the community, intersecting with local streets 34 times, only two of which enjoy a grade separation. The bottom line - it is impossible to get anywhere in Des Plaines without crossing railroad tracks.

Up until the mid 1990's, the railroads in Des Plaines were a minor inconvenience. And then came globalization, an increased need for on-time inventories, truck traffic congestion and skyrocketing fuel prices. All of these factors converged to place ever increasing freight and commuter rail traffic through our town. Now, with approximately 140 trains per day rumbling through Des Plaines, the 32 at grade crossings are frequently, if not routinely, blocked.

All the complaints that are raised by the opponents of the EJ&E transaction are a daily reality in Des Plaines. Children getting to school are put in harms way. Emergency vehicles are delayed or rerouted. Hazardous materials are transported through residential neighborhoods. Daily commutes are longer as vehicles wait at crossings. And local businesses suffer when customers find it difficult, if not impossible, to get their destination.

It is going to get worse – both for Des Plaines and our region. According to the American Association of State Highway and Transportation Officials (AASHTO), freight rail will grow another 67% by 2020. But there is very little federal, state or local funding for constructing grade separations. Consequently, Des Plaines looks forward to even greater and greater delays from freight rail traffic.

Des Plaines is a middle class community. Its residents include teachers, firefighters and electricians. The many condominiums in downtown Des Plaines have attracted seniors who have downsized in order to afford living on a fixed income. This is not a community that can hire influential lobbyists, expensive public relations firms, print thousands of yard signs and T-Shirts or take a day off to travel downtown to testify before the STB.

So when the CN seeks to reduce the number of trains it sends through Des Plaines from 19 per day to 2, this is a local benefit that should receive consideration on par with the concerns raised by others. Our voices deserve to be heard.

Even the current STB process minimizes the opportunity for input by those who benefit from this transaction. Of the eight public hearings scheduled for comment on the draft Environmental Impact Study, seven are in communities along the EJ&E and the eighth is in downtown Chicago. And if someone wanted to travel to the outlying suburbs to testify, it is, at best, uncomfortable. Several of my constituents attended and testified

in support of the transaction at a hearing in Mundelein, Illinois. They were greeted with cold stares, cat calling and other unwelcoming behavior. Only the most thick skinned would be willing to step forward under such difficult circumstances.

Thus far, the STB has denied requests to hold additional hearings in the communities that are benefited. Because 80 communities stand to see reduced train traffic versus 34 that will see an increase, I sent a letter dated August 22, 2008 to the STB, requesting at least one hearing in a community that will benefit. A recent letter from the STB rejected the appeal.

Finally, because the freight lines in Des Plaines and similarly situated communities are already owned by the railroads, those municipalities have never had any opportunity to object to the increased traffic nor have they been offered any funding for mitigation of the impacts. I am deeply troubled by giving those who will only now feel the effects of increased train traffic an opportunity to jump to the front of the line for funding for much needed safety equipment, grade separations and noise abatement while those who have been tolerating freight traffic for years, if not decades, continue to wait.

I urge the Committee to make it crystal clear that H.R. 6707 requires all local impacts, both positive and negative, to be taken into consideration and be part of the STB decision making process.

Regional and National Benefits

There are also important regional and national considerations that should be weighed by the STB along side the local issues.

Due to its relatively low cost, rail accounts for nearly 40% of inter-city freight transport by ton. Two thirds of all freight from overseas travels through Chicago. Chicago is the worlds fifth largest intermodal hub (it was third not so many years ago). Whether it is a washing machine, television, food, shoes or a myriad of other products, chances are it arrived by rail. When a light switch goes on, the coal that generated that electricity was probably hauled behind a locomotive.

The Chicago region enjoys nearly $8 billion in economic activity as a result of the freight railroads that traverse our region. Six of the seven Class I railroads serve Chicagoland. There are over 9000 railroad jobs in our area with thousands more in warehousing, logistics and distribution that result from the proximity to the railroads. We are a rail hub and the resulting economic activity is critical to maintaining our vibrant economic diversity.

Unfortunately, our regional rail system is antiquated, over burdened and horribly congested. If we fail to address this congestion, many of the shippers and freight railroads will ultimately decide to take their business – and the corresponding trade and industrial activity - to other locales. Memphis and Kansas City are already very active in

promoting themselves as less congested options. That would be a tremendous loss to our regional economy.

The CN is offering a solution to this congestion. Stalled trains awaiting access to crowded inner-city rail yards will be reduced, average train speeds will increase, fuel consumption will decrease and transit time s for all traffic will be reduced. Again, the benefits from a private transaction that serves the public interest should not be ignored or minimized.

Finally, this Committee is very aware of the Chicago Region Environmental and Transportation Efficiency Program (CREATE). CREATE was established a few years ago when the Chicago Department of Transportation, the Illinois Department of Transportation and the six Class I railroads in the Chicago region came together to work out a plan to relieve rail and traffic congestion. CREATE was conceived as a $1.5 billion public-private partnership.

In the last federal transportation bill, SAFETEA-LU, this Committee was instrumental in designating CREATE as a project of national significance. Ultimately, however, CREATE received only $100 million toward the $1.5 billion cost. And the State of Illinois has yet to come up with any funding. While we continue to haggle over taxpayer funding for critical congestion relief, the CN is offering a purely private sector solution.

Trains are the most economically and environmentally efficient form of transportation. In the global economy, which is dependent upon transporting goods quickly and reliably, freight trains are a fact of life. The transactions to be considered under H.R. 6707 deserve a fair review that considers all factors, including positive local, regional and national benefits.

TESTIMONY OF

CHARLES D. NOTTINGHAM
CHAIRMAN

SURFACE TRANSPORTATION BOARD
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AT A HEARING BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE

REGARDING

H.R. 6707, the Taking Responsible Action for Community Safety Act (TRACS Act)

SEPTEMBER 9, 2008
11:00 A.M.

Testimony of Charles D. Nottingham
Chairman of the Surface Transportation Board
Before the U.S. House of Representatives
Committee on Transportation and Infrastructure
Hearing on H.R. 6707, the Taking Responsible Action
for Community Safety Act (TRACS Act)
11:00 a.m. September 9, 2008
2167 Rayburn House Office Building

Good morning Chairman Oberstar, Ranking Member Mica, and Members of the Committee. My name is Charles D. Nottingham, and I am Chairman of the Surface Transportation Board (Board or STB). I appreciate the opportunity to appear before this Committee today to discuss H.R. 6707, the "Taking Responsible Action for Community Safety Act." The apparent purpose of the bill is to direct how the Board should take certain environmental and safety considerations into account in its decision making in merger and acquisition proposals involving only one large railroad. My testimony will be fairly general, because an issue addressed by the bill is raised in a pending Board proceeding.

The Board's Authority Over Railroad Mergers And Acquisitions. Since 1920, the Board or its predecessor, the Interstate Commerce Commission (ICC), has had authority over railroad mergers and acquisitions involving two or more rail carriers, 49 U.S.C. 11321(a). Railroads may not merge with or acquire another railroad absent prior Board approval, 49 U.S.C. 11323.

For mergers or acquisitions involving two (or more) large (Class I) carriers, the statute, at 49 U.S.C. 11324(b), lists five factors that the Board must, at a minimum, consider: the effect of the transaction on the adequacy of transportation to the public; the effect of including, or failing to include, other rail carriers in the area involved in the

proposed transaction; the fixed charges that would result from the transaction; the interests of rail carrier employees; and the effect of the transaction on competition among rail carriers in the affected region or in the national rail system. Section 11324(c) makes clear that the Board may impose conditions governing the transaction, a power that applies equally to transactions involving small railroads. The courts have consistently recognized that the STB has "extraordinarily broad discretion" in determining whether or not to attach merger conditions to its approval, and in shaping those conditions. Southern Pacific Transp. Co. v. ICC, 736 F.2d 708, 721 (D.C. Cir. 1984); Grainbelt Corp. v. STB, 109 F.3d 794, 798 (D.C. Cir. 1997).

In 1980, Congress changed the standards and procedures for considering railroad mergers and acquisitions that do not involve more than one large railroad. Congress found that over-regulation had contributed to the railroad industry's financial woes, and so Congress sought "to provide, through . . . freedom from unnecessary regulation, [for] improve[d] physical facilities [and] financial stability of the national rail system." H. Conf. Rept. No. 96-1430 (1980), at 80. Toward that end, Congress changed the statute to require the agency to rule on smaller transactions (those that do not involve two large carriers) more quickly and it "[reduced] the number of factors the [agency] must consider" (id. at 120) in those cases. Under the current standard, the agency examines whether there would be a substantial lessening of competition or restraint of trade if the transaction were approved.

NEPA. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321-43, generally requires federal agencies to consider "to the fullest extent possible" the potential environmental consequences in every major federal action that could

significantly affect the quality of the human environment. 42 U.S.C. 4332(2)(C). This means that in granting approval for an action that has the potential for significant environmental impacts, the Board must examine the potential impacts, inform the public of those impacts, and generally take those impacts into account in its decision making. Baltimore Gas & Electric Co. v. NRDC, 462 U.S. 87, 97 (1983).

The nature and extent of the agency's environmental review in railroad merger and acquisition cases varies, depending upon the extent to which operational changes and traffic increases are projected as a result of the proposed merger or acquisition. However, the environmental review that the Board has conducted under NEPA in various types of Board cases routinely embraces (where applicable) all of the sorts of safety and community impacts described in H.R. 6707. And the Board has imposed mitigating conditions addressed to those sorts of impacts in various cases in the past.

Discussion. H.R. 6707 would place transactions involving only one large railroad, together with one or more smaller (Class II & III) railroads, under the standard now applicable only to the merger of two or more large railroads. The bill also would amend that standard to specifically enumerate certain safety and community impacts, along with effects on passenger transportation, as mandatory criteria that must always be considered in the analysis.

The legislative history of H.R. 6707 makes clear that the bill comes "in response to an application filed last year by the Canadian National Railway (CN) seeking the STB's approval to acquire control of the 198-mile Elgin, Joliet, and Eastern (EJ&E) rail line encircling Chicago..."[1] As with any case that is pending before the agency, it is

[1] Press Release, U.S. House of Representatives, 110th Congress, Transportation and Infrastructure Committee (Aug. 1, 2008).

inappropriate for me to discuss any aspect of this proceeding while it is pending at the Board.

I understand that the Committee may wish to discuss a legal issue that extends beyond the bounds of the CN/EJ&E case: whether the Board believes that it already has the authority under the current statute to deny, on environmental grounds, a transaction that does not involve two or more large railroads. However, that issue recently has been raised in the CN/EJ&E case.[2] It is a legal issue of first impression that has not been addressed by the Board or any court. Accordingly, it would not be appropriate for me to discuss that issue at this time.

I should note, however, that the introduction of the bill – purportedly to provide clarity – has to date served primarily to create confusion. Until this bill's introduction, it had been assumed that the agency has the authority to deny a transaction on environmental grounds. See Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company, STB Finance Docket No. 35087 (STB served July 25, 2008) (Commissioner Buttrey, concurring); see also the Draft Environmental Impact Statement issued on July 25, 2008, at 1. The Board's environmental staff, along with the parties, have put forth extensive efforts in studying the environmental issues in the CN/EJ&E case. Unfortunately, the overarching premise of this bill – that the Board currently lacks authority to protect the public interest, public safety and the environment – will likely be referenced in litigation by parties seeking to pressure the Board to either approve or deny a pending merger application.

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[2] CN's pending petition to modify the procedural schedule appears to assume that the Board lacks such authority. The Board has received at least one reply to that petition in which several parties assert that the Board has such authority.

For the record, I would like to take this opportunity to note that the Board neither requested this legislation nor were we consulted during the drafting process. This Board takes its merger review and environmental review responsibilities seriously, and we have always been able to take appropriate action to address the environmental concerns that have been brought before us. If we determine that existing law does not allow us to protect the public interest and the environment, we will not hesitate to seek legislative reform.

I would be happy to respond to any questions, so long as they are not focused on a pending proceeding. Thank you for providing me this opportunity to appear before the Committee.

Testimony on the

Taking Responsible Action for

Community Safety Act (H.R. 6707)

Presented to the

House Transportation and Infrastructure Committee

September 9, 2008

Joseph P. Schwieterman, Ph.D.

Director, Chaddick Institute for Metropolitan Development

Professor, School of Public Services

DePaul University

Mr. Chairman and members of the committee, I am honored to have this opportunity to share my views on the Taking Responsible Action of Community Safety Act ("the Act").

I have spent a great deal of time evaluating the community impacts of rail-freight operations, having written several technical articles and a historically oriented book on the topic. In 2000, at the request of Senator Richard Durbin, I conducted a study with Professor Brett Baden on a proposed Federal Railway Administration ruling affecting the use of locomotive horns at grade crossings. We found that the proposed changes, making it more difficult to create "quiet zones," would impose significant costs on communities. I understand very well the concerns being voiced about the environmental costs of expanding rail-freight operations.

My remarks focus specifically on how the Taking Responsible Action for Community Safety Act (H.R. 6707) will affect the work of the Surface Transportation Board (STB). The Act increases the number of transactions requiring STB approval, and it requires the board to conduct more robust examinations of the environmental impacts of these transactions on communities. My remarks should not be interpreted as relating specifically to the pending review of the Canadian National Railway's proposal to acquire the Elgin, Joliet & Eastern Railroad.

Although I believe the Act's supporters have the public welfare in mind, I recommend rejecting this legislation in its current form for the following reasons.

• *Without a thorough reassessment of the STB's resources and responsibilities, asking it to more formally weight the environment costs and transportation benefits risks creating a systematic bias against railroad mergers and acquisitions. That is, the Act may focus attention on immediate, mostly negative impacts on communities without offering a balanced presentation of any offsetting benefits, which can only be understood through more comprehensive analyses.*

Transportation markets are dynamic. When one carrier acquires or merges with another to improve service, there are many indirect benefits, such as fewer trucks on the road, fewer highway accidents, less traffic on competing lines, and less pollution from mobile sources. Often, the competitive changes resulting from the transaction trigger a second round of investments which are not subject to federal approval but which nevertheless have significant implications for communities.

This puts the STB in a difficult position. If it limits its attention to the most obvious impacts, such as the environmental costs in communities along the railroad to be acquired, its assessment will be incomplete and probably skewed against the proposed transaction. Evaluating *all* the direct and indirect changes, however, will require comprehensive scenario-based analysis that is presently not part of the STB's work.

Performing an analysis properly will require elevating the scope and scale of the STB's investigation to a much higher level. For this analysis to be completed in timely fashion, however, the STB would need to make many assumptions and subjective judgments, which would make the process much less predictable.

I am not suggesting that the STB should not consider—nor deal with—community impacts in its decisions. I do believe, however, that bringing great formality to the process of weighing the environmental costs and benefits without recognizing that this could change the nature of the Board's work—requiring it to greatly lengthen its investigations—and would be a mistake.

Consider a simple example. Investigations of the environmental costs and benefits of a merger proposal would need to include a counterfactual analysis of how traffic would grow if the merger did not take place. In the case of the CN application, for example, the STB would need to consider whether (and when) congestion in Chicago would otherwise result in greater use of the Elgin, Joliet & Eastern bypass, and how this would affect traffic on other routes serving the Midwest. In order to do it right, the STB would need to make difficult assumptions and consider multiple scenarios.

If the Act passed, I suspect that systematic bias would gradually develop against railroad mergers and acquisitions that are, in fact, in the public interest. Curiously, the Act makes no mention of the need to even consider the indirect environmental costs and benefits to cities on routes not directly part of the proposed merger and acquisition.

The result would be a new barrier to investment in the industry, slowing down the industry's effort to build seamless transportation systems.

• *No other transportation mode providing intercity service in the United States—interstate trucking companies, airlines, barge operators, motor bus operators, or even Amtrak—is subject to the kind of criteria established in HR 6707. The unintended result would be that the Act serves as an impediment to any effort toward finding cooperative solutions to community issues involving railroads.*

Since the Staggers Act of 1980 and the dissolution of the Interstate Commerce Commission in 1995, our nation has enjoyed the benefits of a more predictable and rational approach to dealing with railroad-consolidation issues. Railroads have been relieved of the burdens that for decades had stifled innovation and their consolidation. Private capital is again flowing to the carriers.

Pushing the STB in the direction of conducting a more robust cost-benefit analysis on environmental matters without further consideration of the STB's capabilities and resources sends federal policy into uncharted waters. What are some of the possible unintended consequences?

- Railroads and communities may have an incentive to be less-than-candid when discussing the impacts of a transaction. Thus the Act may serve to place the two parties in a more adversarial role.

- Railroads may sidestep the need for STB approval by negotiating trackage-rights and hauling rights agreements with other railroads rather than pursuing a merger or acquisition.

- Railroads may be more reluctant to let commuter rail agencies and intercity operators use their rights-of-way, afraid that they may be creating a new stakeholder who has an incentive to fight to preserve the status quo.

- A muddled public debate may result from the requirement in the Act that the "socioeconomic impacts" of railroad mergers and acquisitions be evaluated and weighed. Do we really think such impacts can be evaluated convincingly without opening the door to delays?

There are good reasons why we do not require privately financed transactions involving airlines, bus companies, and trucking companies to undergo such a robust assessment of the environmental impacts on communities. These same reasons apply to railroads.

• *The Act would greatly increase the number of transactions subject to STB approval. Although the implications are hard to predict, there is a risk that it will become an impediment to rail-service improvements.*

By expanding the list of transactions subject to STB approval, the Act will introduce new uncertainty into the efforts of Class I carriers to modernize their physical plant. Smaller transactions that once took days or weeks now could take months—or perhaps longer. Given that the STB already has a heavy caseload, it is unclear how the board would handle the additional work without either compromising the scope of its analysis or slowing down its decisions. The history of railroad regulation prior to the Staggers Act suggests a need for great caution here.

• *The Act risks shifting the responsibility for solving some of the problems of rail transportation from their roots—in state and federal policy—to private railroad companies.*

Much of the frustration being directed at Class I railroads would be more properly directed at public agencies who have been unable to keep up with the nation's infrastructure needs. As I am sure others will mention here today, there has been inadequate investment in CREATE, the congestion-relief program for Chicago. Public agencies have not brought forward the funds needed to support grade-crossing separations. Communities lack practical options to abate the noise of locomotive horns through the creation of "quiet zones."

As frustration grows, more and more of the public expects railroads to pay for improvements themselves rather than seeing it as a shared responsibility with public agencies. Due to the complexity and time required to accurately weight environmental costs and transportation benefits, the Act risks shifting the burden of such improvements unfairly toward private carriers.

In summary, I urge caution in crafting any legislation that would change in midstream a policy and process that has been in place for many years and that would raise skepticism about the predictability of the STB's decisions. I believe the Act is well intended, and I have great respect for its sponsors. However, there is an important need here; it is the need for these policy changes to undergo a careful and systematic assessment so that we do not create a new set of public policy problems.

Mr. Chairman, I thank you for this opportunity to express my views.

Testimony before
U.S. House of Representatives
Committee on Transportation and Infrastructure

The Honorable Peter N. Silvestri
Mayor, Village of Elmwood Park
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708-452-7300

Mr. Chairman and members of the Committee:

I thank you for this opportunity to appear before you today to discuss H.R. 6707, the Taking Responsible Action for Community Safety Act. I would also like to thank Congressman Dan Lipinski for his leadership and scholarly approach to reviewing transportation related issues. Congressman Lipinski has always taken the time to review issues such as this one from all angles before rushing to a snap decision.

My name is Peter Silvestri, as the Cook County Commissioner of the 9th District and Mayor of the Village of Elmwood Park, a community of almost 26,000 residents, located just across the boarder from the City of Chicago, I have experienced first hand the effects of rail traffic.

When I became Mayor in 1989, the Village of Elmwood Park, a community that has 12,500 residents per square mile, experienced 40 trains a day. Today, that number has tripled and 120 trains pass through my community each and every day. With four crossings within a one-mile stretch through town I personally know the issues that surround trains.

The reduction of rail traffic in my community has been a major concern for years that is why I along with over 60 other communities in the Chicagoland area would benefit from the EJ&E purchase by Canadian National.

The TRACS Act is a good idea in concept because it looks at the specific community concerns of a given area. During the current STB review of the EJ&E purchase by CN many communities' comments were not given equal opportunity to be expressed. Over 4.1 million people could potentially benefit from fewer and faster trains in 60 communities in comparison to approximately 30 communities and 1.5 million residents who would see an increase in train traffic. However, only one STB EIS hearing was held in this part of the region. As a commissioner representing several municipalities, I understand the importance of studying these sorts of things from a regional approach and taking both the negative and positive aspects of developments of regional importance into account. Nonetheless, a region's best interest are not considered in a process that is one sided or allows a few negatively impacted communities to derail a project that has regional and potentially national benefits. The legislation should require

that the environmental benefits of a transaction receive equal consideration to any adverse environmental impacts; as currently drafted, this is not the case. In the case of the EJ&E transaction, it is important that the regional benefits of this transaction not be overlooked in the environmental review process. In the absence of any significant funding for CREATE or any other regional solution to Chicago's serious congestion problems, CN's proposed transaction provides a private-sector means of beginning to address rail congestion in Chicago.

As a village president, I can understand the concerns of communities who would experience more train traffic due to a purchase such as this one; and the reason behind including language H.R. 6707 that address adverse impacts on affected communities. But I ask you are the lives of inner suburban areas any less important then the rich far out suburbs along the EJ&E line? The likely number of rail accidents on CN's rail lines inside the EJ&E arc would decline 77% with this purchase, while the affected communities would likely see an increase by 28%. These communities site safety concerns and do not want rail in their back yards. What about our safety? Current STB regulations already require consideration of public safety, including impacts on emergency responders and transport of hazardous materials, as well as a broad range of environmental impacts. There is no need for additional direction from Congress on this matter.

Furthermore, some communities would see on average up to 19 less trains a day coming through their community. This reduction would greatly improve the quality of life for people along these rail lines. Not only would residents have less delays at rail crossings there would also be less pollution released into the environment from idling trains.

I have great concerns as to why provisions of the legislation apply to any transaction that has not been approved by the Surface Transportation Board (STB) as of August 1, 2008. CN's application for its proposed acquisition of the EJ&E was filed at the STB in October 2007 and was based on the statutory criteria provided by Congress in the ICC Termination Act of 1995, which were in effect at the time CN filed its application. To change the rules that would apply to the transaction while the transaction is still under consideration is unfair and contrary to normal legislative practice. A key purpose of the legislation is to ensure that environmental impacts of proposed rail transactions receive adequate consideration by the STB. There is no question that CN's proposed EJ&E acquisition has been and is continuing to be thoroughly examined by the STB's Section of Environmental Analysis (SEA). SEA has provided numerous opportunities for interested parties to provide input on the environmental impacts of this transaction. In fact, the only other time that the STB has prepared a full Environmental Impact Statement (EIS) on a rail control transaction was in the far more complex Conrail case in 1999, in which Norfolk Southern and CSX acquired Conrail assets. The Conrail case involved 10,500 route miles in 14 states, the District of Columbia, and one Canadian province, while CN's proposed EJ&E acquisition involves 158 route-miles in two states. Unlike the Conrail case, the EJ&E transaction is considered a "minor" transaction by the Board, because it does not involve two Class I carriers and does not raise serious anticompetitive issues. Under current law, the STB is required to render a decision on a "minor" transaction within 180 days after the application has been filed; in this case, by April 25, 2008. In the Conrail case, the STB completed the EIS process in 11 months; the environmental review process for the far less complex EJ&E transaction will take at

least that long by the time the EIS process has been completed. This displays that the STB understands the sensitive environmental issues surrounding rail purchases and adjusts their process accordingly where necessary. Congress should not change the STB's current statute unless it is clear that the STB cannot fairly consider the environmental impacts of this transaction and order appropriate mitigation.

Mr. Chairman, this concludes my prepared remarks. In closing, I would like to thank you for your continued support of local governments. I look forward to working with you in continuing to enhance our rails system..... I would be pleased to answer any questions.

Testimony of

John Swanson, Executive Director
Northwestern Indiana Regional Planning Commission

Before the

U.S. House of Representatives
Committee on Transportation and Infrastructure

Regarding

H.R. 6707: To require Surface Transportation Board consideration of the impacts of certain railroad transactions on local communities, and for other purposes; or "Taking Responsible Action for Community Safety Act" – "TRACS".

Washington, D.C.
September 9, 2008

Testimony of
John Swanson, Executive Director Before the
U.S. House of Representatives Congressional Hearing
September 9, 2008

Thank you, Chairman Oberstar, Congressman Mica and other Members of the Committee. I would also like to thank Congressman Peter J. Visclosky for his leadership on transportation issues and for his support of transportation and other infrastructure projects throughout the Northwest Indiana region.

My name is John Swanson. I am the Executive Director of the Northwestern Indiana Regional Planning Commission, also known as NIRPC. We are appreciative that you are holding this important hearing and for the opportunity to testify on behalf of this important bill, H.R. 6707, also referred to as TRACS.

NIRPC is a Council of Governments representing 52 elected local government officials plus one State legislator appointed by the Governor of Indiana. It serves as the designated Metropolitan Planning Organization for transportation planning and programming for Lake, Porter and LaPorte Counties in northwest Indiana and we are located adjacent to the City of Chicago, and we are part of the larger metropolitan Chicago region. We are the regional planning agency that must ensure that transportation plans, programs and projects in northwest Indiana comply with all federal regulations.

Our northwest Indiana region is extremely concerned about the proposed CN acquisition of the EJ&E that is currently under consideration by the Surface Transportation Board (STB). We believe this transaction would have a negative impact on five major issues in our region: 1) our region's air quality; 2) the efforts to expand our commuter rail services; 3) the efforts to expand the Gary-Chicago International Airport; 4) the redevelopment of our Lake Michigan Shoreline; and 4) the quality of life in our affected communities.

This CN/EJ&E transaction would result in three to four times more trains running through our affected communities. The average train length is expected to increase from one-half mile to over a mile. During a 24-hour period total vehicle delays would increase by a factor 6 to 11 times and these idling vehicles will emit more pollutants into our air. The Towns of Griffith, Dyer, and Schererville will be bisected and unable to function safely and effectively. Impacted communities face considerable safety concerns due to an expected increase in crashes and longer routes for fire and police vehicles because of blocked crossings. Economic development initiatives, such as the plan to redevelop the Lake Michigan lakeshore by the Cities of East Chicago, Gary, Hammond, and Whiting face new obstacles from this transaction. The STB's draft Environmental Impact Study stated that expanded commuter rail service was not "reasonably foreseeable." This is in itself an unreasonable assumption. These adverse impacts on our communities and region should be strongly considered by the STB when making a final decision ruling on the CN/EJ&E transaction.

Testimony of
John Swanson, Executive Director Before the
U.S. House of Representatives Congressional Hearing
September 9, 2008

On behalf of our Council of Governments, I have communicated our concerns in three separate letters to the STB and I have testified on the proposed CN and EJ&E transaction before the ad hoc U.S. Congressional hearing held in Chicago on August 5th, 2008.

During the course of our communications with the STB on the issue of the proposed CN and EJ&E, we have come to understand that when the STB makes decisions on railroad transactions, it was mandated by Congress to focus on how the railroad transaction would impact the railroad industry and overall transportation benefits. The STB is not required to focus as much on the impacts a transaction would have on local communities. The result is that the STB could approve a transaction that shifts the transportation and economic burdens from some communities to other communities, so long as it can be shown that over a large region, there are some positive transportation benefits.

Metropolitan Planning Organizations (MPOs), like NIRPC, are not allowed to promote transportation policies and projects that simply shift the burdens of one community or population to another, even if there may be some overall statistical benefits. Congress needs to understand that a national and regionally focused transportation problem needs to be solved in a national and regional context, not community by community or community versus community.

Changes to railroad infrastructure and operations in northwest Indiana brought on by the CN transaction will affect the daily lives and economic well-being of our residents, workers and businesses and our entire transportation system for many decades to come. It should be in the nation's interest, as well as the railroads' interests, to have an integrated surface transportation system that benefits everyone, including residents and businesses in the local communities that will be hosting and living with railroad's business decisions for many decades, if not centuries, into the future.

When Metropolitan Planning Organizations, such as NIRPC and State Departments of Transportation, make far-reaching transportation policy decisions and decisions on which improvements we should be implement, we are required by Congressional mandate to carefully consider all the safety, transportation, environmental, economic development, and social impacts upon our public, including our local communities. We must all agree regionally and locally that improvements will benefit the entire region and will not have a negative impact on individual communities. Since States and MPOs are mandated by Congress to consider impacts on local communities when making major highway and transit decisions, the STB should also be required to give serious and meaningful consideration to impacts on local communities when making decisions on railroad transactions, especially those transactions that will cause major changes to the rail infrastructure and operations through those communities.

Testimony of
John Swanson, Executive Director Before the
U.S. House of Representatives Congressional Hearing
September 9, 2008

States, MPOs, and local communities are required to work together, consult each other and coordinate their decisions on highway and transit improvements. The STB should require railroads to consult with and coordinate their improvements with MPOs, not for the purpose of preventing a railroad's business decision, but to ensure that railroad decisions are coordinated and integrated with the regional network of highways, transit, airports and water ports to the best advantage for all. Railroad business decisions should not undermine the quality of life in local communities, the environment or the economic health of the entire region. The STB should require that a railroad whose transactions would have major impacts on local communities work with MPOs to ensure the minimum disruption to local communities and to maximize the regional benefits.

I believe that the TRACS bill under consideration today will significantly improve the Surface Transportation Board's capacity to make decisions on railroad transactions that will be in the nation's interest as well as in the interests of local communities and metropolitan areas. It will also help STB decision-making to be more consistent with the spirit and intent of rest of the Surface Transportation Act.

On behalf of the communities and counties of the Northwestern Indiana Regional Planning Commission, I wish to express our support for the provisions in H.R. 6707 relating to certain railroad transactions that would require the STB to do the following:

(1) Hold public hearings in the affected communities;
(2) Consider the safety and environmental effects of proposed railroad transactions on local communities;
(3) Consider the effects of proposed rail transactions on both intercity rail and commuter rail passenger transportation;
(4) Require conditions to mitigate the effects of the transaction on local communities; and finally
(5) Reject transactions if the adverse impacts on the public outweigh the public benefits.

That is how we have to do business and how the STB must do business.

Mr. Chairman and Members of the Committee, I appreciate this opportunity to support H.R. 6707 to require the Surface Transportation Board to consider the impacts of certain railroad transactions on local communities. I would be pleased to respond to any questions.

Before the
United States House of Representatives
Committee on Transportation and Infrastructure
Hearing on
H.R. 6707,
the "Taking Responsible Action for Community Safety Act"
September 9, 2008
Testimony of
John P. Tolman, Vice President and National Legislative Representative
Brotherhood of Locomotive Engineers and Trainmen
A Division of the Teamsters Rail Conference

Good morning, Chairman Oberstar, Ranking Member Mica, and members of the Committee. I'm John Tolman, Vice President and National Legislative Representative of the Brotherhood of Locomotive Engineers and Trainmen, which is a Division of the Teamsters Rail Conference. On behalf of approximately 59,000 BLET members and 38,000 members of Rail Conference affiliate Brotherhood of Maintenance of Way Employes Division, I want to thank you for holding today's hearing and inviting us to address you.

I would first like to take the opportunity to thank the Chairman for introducing H.R. 6707. Chairman Oberstar, for many years, you have been a tireless advocate for a sensible national transportation policy which includes both freight and passenger rail. I believe that your efforts, combined with the skyrocketing price of fuel, may finally change the course of our nation. For too long, we have been dependent on other modes of transportation while allowing our nation's railroad infrastructure to crumble. As we have seen recently, record numbers of people are using passenger rail on a daily basis and more freight is moving by rail. This is hopefully a trend which will continue.

The subject of today's hearing — the impact of railroad transactions on the public interest and public safety — is important in light of these recent developments and several controversial transactions which are currently pending before the Surface Transportation Board.

The legislation that you have proposed requires the STB to address the public interest in railroad transactions and we are fully supportive of this. Current law, as contained in the Staggers Act, does not provide the STB with the authority to disapprove mergers or consolidations of a Class I railroad with a Class II or a Class III railroad if it finds the transaction is not consistent with the public interest or if it finds that the transaction's adverse impacts on safety and on the affected communities outweigh the transportation benefits of the transaction.

Growing sentiment regarding the safe transportation of hazardous materials and spent nuclear fuel, along with opposition to various mergers and acquisitions was the impetus for this legislation. We live in an era where there is a "not in my backyard" aversion to such transactions, which often causes these them to become politicized.

The two transactions which best illustrate the problem are Canadian National's purchase of the Elgin, Joliet and Eastern Railway and the Department of Energy's proposed Caliente Line to the Yucca Mountain repository.

CN wants to buy EJ&E for $300 million and use the line, which runs in an arc around the Chicago region, to reroute some freight traffic from lines in Chicago and inner suburbs. STB is hosting eight meetings on the proposed sale through Sept. 11. Despite pressure from CN to accelerate the approval process, the board will issue a final ruling between Dec. 1 and Jan 31.

According to an article in the *Chicago Tribune* (August 12, 2008 online edition), many suburban officials fear the number of such lengthy trains will increase if a plan to divert transcontinental freight traffic from densely populated areas through their less dense communities is approved. Suburban leaders fear their towns will be perched on a railroad superhighway if the Canadian National Railway is successful in its bid to purchase the Elgin, Joliet and Eastern Railway. They worry that 20 to 40 of these super-size trains will roll through their communities each day.

The BLET has not received enough information about this transaction to fully judge its impact on our members. However, we feel that it could cause job losses among our members and also problems with our collective bargaining agreements. However, CN has repeatedly ignored our requests to meet regarding these issues.

U.S. Department of Energy plans to ship by railroad some 77,000 tons of high-level nuclear waste to a proposed repository at Yucca Mountain, 90 miles northwest of Las Vegas. The 300-mile Caliente Line would connect an existing Union Pacific Railroad line near Caliente to a proposed geologic repository at Yucca Mountain. The DOE could use the proposed line to transport spent nuclear fuel and high-level radioactive waste to the geologic repository, where the materials would be disposed. The DOE also would provide common-carrier rail service to communities along the line.

The BLET has a number of issues with the proposed plans to ship nuclear waste to Yucca Mountain, which we have expressed in various venues throughout the years. We believe that this will have negative impacts on the safety of our members and the communities through which they run trains. Rail workers do not receive proper training to handle spent fuel and do not receive the same exposure protections given to other workers exposed to nuclear radiation. Specifically, DOE has no program to track rail workers' potential exposure to radiation from the shipments.

Unquestionably, both of these transactions directly impact the safety of the surrounding communities, as well, causing fear and anxiety among their residents. However, while crafting and adjusting national transportation policy is a legislative matter, executing that policy should not take place in an overly politicized environment. Nor can it take place in a vacuum. The concerns of localities impacted by rail transactions should be heard, considered, and — where appropriate — addressed. The appropriate body for this input is the STB, which has regulatory authority over rail transactions.

The BLET supports H.R. 6707 because it provides a mechanism to hear legitimate local concerns and also to deal with the unreasonable fears which often arise through lack of information and community input. H.R. 6707 allows the Board to approve transactions which it finds consistent with the public interest, while giving the Board the option to not approve a transaction if it finds that the transaction's adverse impacts on safety and on the affected communities outweigh the transportation benefits of the transaction. The Board also may impose conditions governing a transaction, including conditions to mitigate the effects of the transaction on local communities.

We feel this legislation would not overly burden the railroads with greater regulation but would provide a mechanism for communities to express their concerns about the safety of their citizens in an appropriate manner. And it would do so in an orderly fashion.

Again, I would like to thank you for the opportunity to testify and commend you for the introduction of this legislation.

City of Aurora

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Thomas J. Weisner
Mayor

PREPARED STATEMENT

TOM WEISNER
MAYOR, CITY OF AURORA
CO-CHAIR, TRAC COALITION

Before the U.S. House Transportation and Infrastructure Committee Hearing on H.R. 6707, the "Taking Responsible Action for Community Safety Act"

September 9, 2008

Good Morning Chairman Oberstar, Ranking Member Mica and the Members of the Committee. My name is Tom Weisner and I am the Mayor of the Aurora, the second largest city in the State of Illinois. I also have the pleasure to serve as the Co-Chair of TRAC, a bi-partisan coalition of suburban municipalities and counties in the Chicagoland area, who are opposed to the proposed acquisition of the EJ&E line by Canadian National Railway.

Thank you for holding this hearing to examine legislation that would bring our nation's rail regulatory policy into the 21st Century. The current law has been on the books since the days when this country was much less populated and expanding rail capacity was a top priority. Today, millions of Americans live near rail lines across this country and we believe how rail expansion affects their quality of life should be equally considered.

Under the current interpretation of the law the U.S. Surface Transportation Board (STB) uses to review, analyze and issue a decision on rail industry mergers and acquisitions, impacted communities and residents are considered an afterthought. We've learned this the hard way. Despite the enormous impact this would have on millions of taxpayers along the EJ&E line, no study was guaranteed. Instead, President Darch and other communities had to plead our case for the STB to order a draft environmental study. I would submit there is no better example why this legislation is long overdue than this experience – not because our situation is unique – quite the contrary. The economic, environmental, safety and mitigation burden that is on the horizon

could occur in any Congressional district in Congress. It just depends on when and where the next proposed acquisition may be announced.

H.R. 6707, the TRACS Act, asks for the public interest to be fairly and fully considered before any decision is approved. I'd like to share with you some examples of how this acquisition would impact our communities and then please consider whether you would want your constituents considered if this were to happen in your district.

- As we speak, 55,000 vehicles per day travel pass a crossing in my community along the EJ&E Line. If as proposed, the number of 10,000 foot freight trains triples that will cause lengthy delays for commuters who are driving to work, taking their kids to school or businesses transporting goods and services. Further our hospital is on one side of the tracks and a third of our population is on the other. As a result, we may no longer be able to guarantee rapid emergency response. I believe everyone can agree this should not be ignored.

- School administrators are rightfully concerned about the safety of our kids crossing busier at-grade crossings where children have already tragically died under the current train volumes. They are worried that the increased noise will affect student's ability to learn, and they want answers on whether there will be increases in hazardous material transport near schools. I believe their concerns deserve to be heard and considered.

- The Draft EIS lacked a substantive analysis of the impact on property values, instead simply guessing that property values would most likely be affected in a minor way. Frankly, this is one of the most glaring errors contained in this document. An independently conducted analysis found that the average property value loss for a home in one neighborhood would be $60,000. I'm certain not one Member of this Committee would tell their constituent that this loss was minor.

- We've seen young families and seniors chasing the American dream transform corn fields into bustling economic development engines with subdivisions, hospitals, schools

and commerce. What happens to them, now? If freight traffic increases by 400% - and let me be clear that is not a high water mark but a jumping off point – these communities will literally be split in half by freight traffic dividing residents and stalling economic development. I believe these people deserve to be considered.

- There are multiple communities along the EJ&E line that fall below the median household income level. For years they have worked hard to encourage new commerce and development to keep property values up. They will now take two steps back instead of continuing to move up the economic ladder. I do not believe their efforts should be ignored.

- Let's take into consideration the increased noise and pollutants running through these suburban neighborhoods surrounded by schools and parks. There is one community that would hold the distinction of becoming the Mecca for train traffic in the region – estimating hundreds of trains per a day. I'm not sure there is a quality of life under those circumstances.

- Canadian National told the Chicago Tribune that the bulk of the costs for mitigation would be paid for by the state and federal governments. I'm pretty sure you don't have the money to pay the hundreds of millions of dollars for mitigation and the State of Illinois has an enormous debt and can't even fix its potholes. Our communities are not opposed to profitable companies or rail expansion, but we are opposed to profitable companies becoming more profitable at the expense of our pocketbook and our quality of life.

By the end of this week, eight open houses will occur in the affected region. Thousands of residents will have attended these hearings and provided oral and written testimony outlining their concerns over one acquisition. It is our understanding that the STB is experiencing an unprecedented show of opposition to this acquisition which is further demonstrated by this hearing today – and HR 6707. Our residents want to be considered and I expect yours would too if their quality of life were threatened. I hope you agree they deserve to have their concerns balanced with those of corporations who seek to profit at the expense of the taxpayers who live, work and invest in these communities.

To be honest, this is really a matter of common sense. More trains equal more traffic, more congestion, more pollution and more infrastructure needs. However, the current process does not allow for a common sense approach and solution. On one hand, you have thousands of residents pleading their case to the STB while Canadian National threatens to pursue legal action because the deal has not been approved under their timetable?

In my estimation, what completely eclipses the rhetoric is this simple fact – if you attended an open house on the north end of the EJ&E Line and an open house on the south end of the EJ&E you would hear the same exact story. Increased traffic congestion, parents concerned about the safety of their children and the air they would breathe, physicians testifying that delaying an ambulance is a life and death matter, first-time homeowners frustrated that their property values will plummet and outrage by taxpayers that they are going to have to foot the bill for this lose-lose situation. And, if an acquisition like this was proposed in your district you would hear the same concerns.

S.B. 6707 represents an opportunity to recognize the shortcomings of the current process and update it to consider the paradigm that exists today. The federal government does not need to expedite mergers and acquisition to jump-start rail activities – those days are long over. The federal government needs to strike a balance that weighs the quality of life of the affected residents with the needs of a more efficient rail system. And as I said earlier, this experience really showcases the need to update the current law.

Thank you for your time and consideration.

Statement of Mark Yagelski

LaPorte County Councilman and Chairman of the Northern Indiana
Commuter Transportation District Board of Trustees

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Hearing on H.R. 6707, the "Taking Responsible Action for Community Safety Act" before the House Transportation and Infrastructure Committee

September 9, 2008

Good Morning Chairman Oberstar, Ranking Member Mica, Members of the Committee. My name is Mark Yagelski and I am a LaPorte County Councilman and Chairman of the Northern Indiana Commuter Transportation District Board of Trustees. I am honored to appear before you today and I appreciate the opportunity to offer NICTD's strong support of H.R. 6707, the Taking Responsible Action for Community Safety Act.

On behalf of NICTD, we applaud the Chairman's common sense approach to reforming the Surface Transportation Board's (STB) approval process of proposed mergers and acquisitions. Thank you for making these reforms a priority by holding this hearing today. NICTD would also like to thank Congressman Visclosky for his co-sponsorship of this important legislation and for being our constant and ardent champion here in Washington.

This year NICTD is celebrating the 100th anniversary of the South Shore passenger service and I am pleased to share with you that the line is experiencing another record year of increasing ridership. Even before gas prices reached a whopping $4 a gallon, more and more Hoosiers were turning to NICTD in search of a non-automobile transportation alternative. This is an exciting time for commuter rail; however we are deeply concerned that the STB's current process will literally derail our efforts to provide even greater service to our communities.

When most people think of commuter rail and transit systems, big cities like Boston and New York come to mind. But let me tell you, transit is alive and well in northwest Indiana. The demand for increased service is at a fever pitch with the promise of new service south to Lowell and east Valparaiso. Known as the West Lake Corridor, this proposed expansion has sparked a groundswell of support that we cannot afford to loose. Simply put, NICTD is a critical piece of Indiana's transportation infrastructure and we represent the future of northwest Indiana. I would like to take this opportunity to tell you a little about NICTD so that you can fully appreciate what transit means to us.

NICTD owns and operates the South Shore Commuter Train Line which serves communities from South Bend, IN to Chicago, IL. NICTD was established in 1977 by an act of the Indiana General Assembly in response to the threatened abandonment of South Shore passenger service which has been in service since the early 1900's. The South Shore Line is a major contributor to the economic engine of northern Indiana and southeast Chicago, operating more than 12,800 trains annually carrying more than 4.2 million passengers to high paying Chicago jobs. South Shore riders return an excess of $225 million in salaries and wages to northwest Indiana. Since the mid-70's ridership has grown from 1.5 million to over 4.2 million passengers in 2007. This is the highest ridership level in 50 years. The South Shore is uniquely positioned in the heart of Chicago's Loop within easy access to approximately 500,000 jobs, nearly doubling the job base of Lake and Porter counties, Indiana.

Positioned against this backdrop of economic necessity is the potential to unlock even greater opportunity for northwest Indiana. The benefits of the West Lake Corridor are numerous and cannot be overstated. This type of transportation investment would spur local economic development, reduce vehicle miles traveled (VMT) thereby limiting the harmful production of greenhouse gases and open up thousands of good paying jobs. It's good for the economy, good

for the environment and good for our pocket books. There are too many facts that we cannot ignore, specifically:

- **JOBS**: There is an overwhelming need to provide efficient access from northwest Indiana to the Chicago job market. In 2004, the average job in Cook County, IL paid almost 40% more than the average job in northwest Indiana. Chicago jobs paid higher wages than jobs in northwest Indiana in every industry except manufacturing, and significantly higher wages in white collar industries (Northwest Indiana Regional Development Authority Comprehensive Economic Development Plan, January 9, 2007, page 31).

- **CONGESTION**: A study commissioned by NICTD found that by the year 2030, Interstate 90/94 in Cook County, the Borman Expressway, Interstate 65 in Lake County, and many portions of U.S. and State highways will be operating at or above their traffic capacity. The same study found that the north/south roads linking southern Lake and Porter counties to the East/West Interstate highway system into Chicago cannot support expected transportation demand. Congested interstates add up to more time wasted for commuters and lost productivity for businesses.

- **COST SAVINGS**: A report by the Victoria Transport Policy Institute states that public transit in cities with large rail systems provides $279 per capita in congestion cost savings, while transit in bus-only cities provides only $41 per capita.

- **ECONOMIC DEVELOPMENT**: Transit lines and economic development go hand in hand. Munster, Gary, Dyer, Cedar Lake, Portage and Valparaiso are beginning to include transit-oriented development in their city planning, underpinned by NICTD's West Lake corridor expansion. Developers and industries are attracted to areas that invest in rail transit and through smart land-use and outside investments we can create sustainable communities.

- **LOCAL ECONOMY**: An analysis by the Northwest Indiana Regional Development Authority indicates that by year 2030, the rail line's operation will bring more than $1.8 billion (as measured in today's dollars) to the region from workers who hold jobs in Chicago.

- **RETURN ON INVESTMENT**: It is estimated that over the seven years it will take to construct the West Lake Corridor, this investment will return $36.8 billion [NPV] in personal income during the period, and produce 26,480 jobs. At the same time, this investment returns $81.9 billion in total economic activity (Northwest Indiana Regional Development Authority Comprehensive Economic Development Plan. January 9, 2007, page 36).

I recognize that the focus of today's hearing is not to espouse the benefits of transit, however, it is important for the committee to appreciate exactly what is at stake. Even more so, it is essential that I highlight the tremendous benefits of the West Lake Corridor in my testimony as you will find all of this critical information absent from the STB's Draft Environmental Impact Statement

(EIS) concerning the proposed the acquisition of the Elgin, Joilet & Eastern Railway (EJ&E) by Canadian National (CN). In fact, the draft EIS dismisses the future of transportation in northwest Indiana as "not reasonably foreseeable." Draft Environmental Impact Statement, Finance Docket No. 35087, pages ES-12. This statement is factually inaccurate and could not be further from the truth.

Let me set the record straight; the West Lake Corridor is alive and well. The project, which has been at the forefront of planning efforts for the past two decades, has strong support at the local, state and federal levels and is moving ahead. We are about to complete an Alternatives Analysis for Phase I which is a critical step in determining eligibility in the Federal Transit Administration's New Start Process. As you are aware, this is a highly competitive process and statements like those made by the STB only serve to undercut the project. In addition, earlier this year state legislation to help finance the project was approved by one House of the Indiana Legislature. We expect the Legislature to continue these efforts during the next session.

Most troubling, the draft EIS severely limits our ability to negotiate a right of way agreement with CN. Obtaining such an agreement is the linchpin of the expansion towards Valparaiso. Moving both goods and people is essential to the economy, however STB's draft EIS is incredibly shortsighted and fails to recognize the need for increased transit capacity in this corridor. This is a significant shortfall and it will cripple our economy should it become final. There is simply too much at risk, too much potential that will not be realized, too much previous work and planning that will be lost.

While the acquisition of the EJ&E may be just one of the many that STB will review this year, our situation brings to light an urgent need for reform. In particular, NICTD supports the Chairman's legislation which would give STB the authority to consider the effects of the proposed transactions on intercity passenger rail and commuter rail. Such authority is necessary to prevent worthwhile projects like the West Lake Corridor from being derailed by harmful and inaccurate conclusions and to ensure that STB's assessments accurately account for public interest and long-term transportation improvements. Already we are feeling the negative effects of the draft EIS and we will be working tirelessly to correct them and recover from the unnecessary setback. It is a shame to see, that for the time being, our limited resources will be spent on clearing the West Lake Corridor's good name and reputation, rather than bolstering the project in preparation for the return of the Indiana Legislature.

Thank you for the opportunity to testify before you today. I look forward to your questions.

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For the Record

Stalemate over Rail Plan Reflects Failure of Political Leadership

Christopher Berry and Ethan Bueno de Mesquita
Harris School of Public Policy Studies, The University of Chicago

All important public policy decisions create winners and losers. Good governance involves adopting policies whose benefits outweigh their costs, and compensating the losers. Unfortunately, good policies are not always deemed good politics. Parochial interests, if organized and well funded, often win the favor of politicians. It is hard to find a better example than the conflict over Canadian National (CN) Railway's planned purchase of the Elgin, Joliet and Eastern (EJ&E) Railway, where narrow interests and a failure of political leadership threaten to derail a move that would greatly benefit our economy, environment, and the ongoing revitalization of Chicago's inner city.

No serious observer doubts the regional economic and environmental benefits that would result from the rerouting of freight traffic from the city's core to its periphery if CN is allowed to purchase the EJ&E. The controversy pits these overriding benefits for the region against costs to the suburbs from the rerouted rail traffic. But this is a false juxtaposition. For every suburban nuisance expected from the plan, there is a more-than-offsetting benefit for city neighborhoods (including those in which we live and work).

For instance, the Village of Barrington, the vanguard of suburban opposition to the acquisition, may see an increase of 15 trains per day. Yet, the Austin neighborhood of Chicago anticipates a decrease of 14 trains. Seem like an even exchange? Not when one considers that Barrington has a population of 10,000 while Austin has a population of 117,000.

The political clout associated with money and organization is the real reason the environmental and economic merits may not win the day. Affluent, white suburbs have clout. Less wealthy, minority neighborhoods do not. Just compare suburban Barrington to urban Austin. Barrington's population is 95 percent white with a median household income of $107,000. Austin's population is 94 percent minority with a median income of $44,000. Looking at all Chicago neighborhoods that would see a reduction in freight traffic, we find a population of 1.25 million people with a median income of $46,000, 70 percent of whom are non-white.[1] The suburbs where train traffic would increase have a combined population of 900,000 with a median income of $76,000, 67 percent of whom are white.[2] Is it any surprise which interests find representation?

Understandably, suburban leaders, representing the narrow "not in my backyard" interests of their well-organized constituents, have been outspoken opponents of the acquisition. Congresswoman Melissa Bean and Congressman Peter Roskam, among others, have recently held public hearings on this issue and have introduced multiple pieces of legislation aimed at blocking the CN deal.

More troubling are the positions adopted by state and national leaders, whose job is to look beyond parochial interests in order to consider the totality of benefits and costs. Of Illinois'

[1] See Table 1.
[2] See Table 2.

senators. Richard Durbin has sided with the suburbs as an outspoken opponent of the rail deal and Barak Obama is less vocal but has also expressed some concerns. Governor Rod Blagojevich remains largely silent. We are yet to learn the final position of the federal Surface Transportation Board (STB), whose approval is required for the deal to go forward. But there are some disturbing signs that the well-coordinated efforts of the suburbs may influence the STB to place greater weight on local suburban concerns than on benefits to the city or the collective interests of the region.

Throughout the STB's deliberations, the full litany of suburban complaints has been solicited, quantified and documented in thousands of pages of official reports, while the benefits to Chicago's neighborhoods have hardly been mentioned. This is no accident. Of seven STB "scoping" meetings designed to discover costs and benefits of the acquisition, six were held in the suburbs and only one was in Chicago.[3] Of 39 poster locations announcing the meetings, 38 were in the suburbs.[4] Of 22 outreach meetings for minorities, only one was in Chicago.[5] And of eight public hearings on the STB's "Draft Environmental Impact Statement," only one is scheduled to be held in Chicago.[6] Yet, there are more people in Chicago who stand to benefit from the plan than who would be harmed in all the suburbs combined. The Chicagoans just happen to be less affluent and less white.

Given that the benefits to city neighborhoods and the region as a whole clearly outweigh any harm faced by the suburbs, serious leaders should devote their efforts to creating ways to offset suburban costs rather than blocking the deal. For example, the STB could require CN to pay more than a railroad's customary share for grade separations in areas where traffic will increase significantly. A more creative policy solution might involve creating a tax increment financing district (TIF) around the communities that will benefit from the acquisition. Such a plan would generate tax revenues based on increased land values in areas that see a decrease in rail traffic and use it to subsidize infrastructure improvements in the hardest hit suburbs.

The STB is expected to render its decision by year's end or shortly thereafter. They have the rare opportunity to approve a plan that is both good policy and good for many residents of the city who have long borne more than their fair share of the burdens and inconveniences of our region's economic activity. Now is the time for our politicians—or those among them who aspire to be leaders rather than panderers—to dedicate themselves to finding creative ways to make this plan work and urge the STB to do the same. It may not be good politics, but it's the right policy.

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[3] See the STB'S "Draft Environmental Impact Statement" (DEIS), Chapter 9. Available at http://www.stbfinancedocket35087.com/html/deis-report.html
[4] DEIS 9-3.
[5] DEIS 9-6.
[6] See the schedule on the STB's website: http://www.stbfinancedocket35087.com/html/publicinvolv.html

Table 1: Chicago Community Areas where Rail Traffic Will Be Reduced under CN Plan

Name	Total Population	Percent White	Median Household Income
Archer Heights	12,644	75%	50,866
Armour Square	12,032	19%	29,355
Ashburn	39,584	45%	69,187
Austin	117,527	6%	43,425
Avalon Park	11,147	1%	57,204
Belmont Cragin	78,144	61%	55,675
Beverly	21,992	66%	86,202
Bridgeport	33,694	55%	45,840
Brighton Park	44,912	53%	46,756
Burnside	3,294	1%	44,879
Chatham	37,275	0%	41,720
Chicago Lawn	61,412	24%	46,418
Clearing	22,331	88%	58,738
Douglas	26,470	7%	32,037
Garfield Ridge	36,101	79%	58,612
Greater Grand Crossing	38,619	0%	36,012
Humboldt Park	65,836	20%	37,059
Hyde Park	29,920	47%	46,428
Kenwood	18,363	17%	47,229
Lower West Side	44,031	41%	35,814
McKinley Park	15,962	56%	46,453
Montclare	12,646	74%	60,160
Morgan Park	25,226	31%	68,542
Mount Greenwood	18,820	95%	74,166
Near South Side	9,509	27%	44,284
North Lawndale	41,768	3%	23,661
Oakland	6,110	1%	13,853
O'Hare	11,956	88%	56,169
Pullman	8,921	12%	39,946
Riverdale	9,809	1%	17,000
Roseland	52,723	1%	49,326
South Lawndale	91,071	31%	41,693
South Shore	61,556	1%	35,795
West Elsdon	15,921	70%	58,450
West Garfield Park	23,019	1%	29,826
West Lawn	29,235	66%	60,652
West Pullman	36,649	3%	52,217
Woodlawn	27,086	3%	23,563
Aggregate	**1,253,315**	**30%**	**46,053**

Notes: Data are from the 2000 US Census, downloaded by community area from the Northern Illinois Planning Commission (NIPC) website (http://www.nipc.org). Median income is adjusted to 2008 dollars per the CPI. Aggregate median income is the population-weighted average of the community area medians.

Table 2: Suburbs where Rail Traffic Will Be Increased under CN Plan

Suburb	Total Population	Percent White	Median Household Income
Aurora city, Illinois	143,609	68%	70,771
Barrington village, Illinois	10,018	95%	107,180
Barrington Hills village, Illinois	4,162	96%	187,476
Chicago Heights city, Illinois	33,045	45%	47,676
Crest Hill city, Illinois	13,032	75%	58,454
Deer Park village, Illinois	3,227	96%	192,511
Dyer town, Indiana	13,856	96%	81,328
Elgin city, Illinois	93,895	71%	67,860
Ford Heights village, Illinois	3,499	3%	22,575
Frankfort village, Illinois	10,247	94%	107,141
Gary city, Indiana	102,746	12%	35,082
Hawthorn Woods village, Illinois	6,412	95%	171,209
Hoffman Estates village, Illinois	50,352	74%	85,059
Joliet city, Illinois	106,157	69%	61,612
Lake Zurich village, Illinois	18,144	92%	108,521
Lynwood village, Illinois	7,342	51%	72,955
Matteson village, Illinois	12,883	33%	76,862
Naperville city, Illinois	128,300	86%	114,515
New Lenox village, Illinois	17,617	98%	87,329
Park Forest village, Illinois	23,278	55%	61,377
Plainfield village, Illinois	13,010	95%	104,231
Richton Park village, Illinois	12,407	36%	62,306
Sauk Village village, Illinois	10,417	61%	60,266
Schererville town, Indiana	24,825	92%	76,423
Warrenville city, Illinois	13,194	90%	80,535
Wayne village, Illinois	2,099	98%	148,786
West Chicago city, Illinois	23,919	78%	81,817
Aggregate	**901,692**	**67%**	**75,767**

Notes: Data are from the 2000 US Census, downloaded from the Census Bureau's American Factfinder website (www.census.gov). Median income is adjusted to 2008 dollars per the CPI. Aggregate median income is the population-weighted average of the suburb medians. Three Illinois suburbs where rail traffic would increase on some lines but decrease on others were excluded (Bartlett, Griffith, and Mundelein).

GREGG GOSLIN
COMMISSIONER
14TH DISTRICT

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September 11, 2008

WRITTEN TESTIMONY OF
GREGG GOSLIN
COMMISSIONER, 14TH DISTRICT, COOK COUNTY, ILLINOIS
Regarding:
HEARING ON H.R. 6707, the "Taking Responsible Action for Community Safety Act"

I am writing today to express my strong support for H.R. 6707, *the Taking Responsible Action for Community Safety Act*. The Act would ensure that the Surface Transportation Board review, process, evaluate and weigh all environmental impacts against the projected benefits of the transaction.

In the 14th District of Cook County, which I represent, the acquisition of EJ&E by CN will be devastating to the safety and quality of life in the community. School buses and children will be crossing tracks with a projected 400 – 900 percent increase in freight train traffic. First responders will be unable to respond quickly to emergencies in communities that will now be divided by trains nearly two miles in length.

Those of us who oppose the acquisition are not reacting with a "not in my backyard" mentality, but rather with alarm at the devastating impact to the future of our local community.

H.R. 6707 will provide a stronger process for the STB to fully consider the environmental harms to affected communities and reject transactions that would not be adequately mitigated.

Very truly yours,

Gregg Goslin, *Commissioner*

GG/tg

Commissioner Gregg Goslin's Mission Statement
To professionalize, modernize and privatize Cook County government. Provide efficient, effective, economical and compassionate management of County business. Partner with other units of government and the private sector to develop regional solutions for regional issues. Provide citizens with the necessary tools to access and be served by the resources of Cook County Government.