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

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CN
935 de La Gauchetière Street West
Montréal, Québec H3B 2M9 Canada
(514) 399-4800

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
Map Design & Production: Canadian National - IT, Ref: C88430-T86527 / Oct 2007, GP
N
Kenosha
Walworth
Wisconsin
Illinois
Silver Lake
Trevor
Antioch
Fox Lake
Lake Villa
Lake
McHenry
Grays Lake
Prairie Crossing
Waukegan
North Chicago
Upton
Rondout
Mundelein
Leithton
Crystal Lake
Gilmer
Lake Zurich
Prairie View
Western Subdivision
Barrington
Waukesha Subdivision
Wheeling
Freeport Subdivision
Sutton
Plato Center
Elgin
Cook
Deval
Des Plaines
Spaulding
Bowes
Youngsdale
Coleman
Elgin Jct.
Munger
Bensenville
Rosemont
Schiller Park
Tower B-12
Carol Stream
Norpaul
River Forest
Addison
Proviso
Forest Park
Lake Michigan
St. Charles Airline
Kane
West Chicago
DuPage
Broadview
CHICAGO
Warrenhurst
La Grange
Lemoyne
McCook
Argo
Elsdon
Chicago 67th St
Lake Front Line
Aurora
Eola
Naperville
East Siding
Frontenac
Willow Springs
South Chicago
USS Gary Works
Joliet Subdivision
Hayford
Whiting Branch
Lambert
Normantown
Lemont
Western Subdivision
Blue Island Jct
Kirk Yd
Gary
Walker
Plainfield
Romeoville
Paul Ales Branch
Chicago Intermodal
Harvey
Thornton Jct
Markham
Woodcrest
Oak Glen
Tolleston
Willow Creek
Lockport
Homewood
Munster
Ivanhoe
Van Loon
Hobart
Caton Farm
Kendall
East Joliet Yd
Hays
Joliet
Rock Island
Elsdon Subdivision
Illinois River Line
Rockdale
Marble Falls
Matteson
Griffith
Hartsdale
Minooka
Plaines
Brisbane
Frankfort
Richton
Dyer
Chicago Heights
Sedley
Millsdale
University Park
East Morris
Logistics Park (Chicago)
Eastern Subdivision
Monee
Chicago Subdivision
South Bend Subdivision
Beven
Divine
Will
Porter
Lake
Morris
Goose Lake
Grundy
Peotone
Illinois
Indiana
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