



The Regional Answer to Canadian National

July 31, 2009

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Office of Public Assistance, Government Affairs  
& Compliance  
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Mr. Edward W. Pritchard  
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Federal Railroad Administration  
1200 New Jersey Avenue, S.E.  
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**Re: Canadian National Railway Company and Grand Trunk Corporation –  
Control – EJ&E West Company, STB Finance Docket No. 35087**

Dear Sirs:

This letter is intended to reiterate the serious concerns of the TRAC Coalition<sup>1</sup> regarding Canadian National Railway Company's safety meltdown and request, once again, that your two agencies immediately order CN to comprehensively re-examine and revise its Safety Integration Plan ("SIP") and make changes to ensure that CN operates safely on the EJ&E lines. In addition, we request that the STB and the FRA not permit CN to shift any new trains or traffic onto the EJ&E lines until the SIP has been revised, re-submitted, re-approved by the STB/FRA and fully implemented.

In its July 10 response to our original request to you, CN attempted to muddy the waters on its safety record by including some Canadian statistics in its rebuttal of our contentions. Rather than getting into a tit-for-tat type of scenario with TRAC and CN both continuing to offer additional statistics to buttress our claims, we believe that CN's rebuttal arguments only served to support our fervent belief that it is time for both the FRA and the STB to take an in-depth look at the safety record of this railroad as a way to getting at the truth of the issue and ensuring that U.S. oversight of rail safety is sufficient to police CN's operational practices.

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<sup>1</sup> TRAC is the coalition of municipalities and counties in the greater Northeastern Illinois region, including: Aurora, Barrington, Barrington Hills, Barrington Township, Bartlett, DuPage County, Hawthorn Woods, Lake Zurich, Naperville, New Lenox, Plainfield, Wayne and Will County.

Since we contacted you in late June to make this request, we have had further evidence that CN's safety practices are sorely lacking.

- On July 11 a vehicle was struck by a CN train in Park Forest, IL (along the EJ&E) destroying the involved car. According to a local press report (eNews Park Forest), *"Police say the engineer on the train told them he believes the gates were down. However, the driver of the car that was struck and three other witnesses told police the lights to the gate had just started flashing and the gates had just started to move when the train came through. Police say the skid marks from the automobile are directly beneath where the gate would be if it had been closed. If the gates had been down, one official at the scene said, the car would have struck and damaged the gates. "I gave [the driver] \$10 and told him to buy a lottery ticket because apparently he's the luckiest person alive," said one officer who asked not to be identified."*
- CN claimed in its July 10 letter to you that many rail crossing accidents "have much more to do with crossing density, adjacent land uses, the nature of rail operations, and driver behavior, than with the safety culture or practices of the railroad involved." This contention completely ignores CN's culpability for its lax maintenance of safety equipment on its rail lines. TRAC and its member communities have had recurring problems with faulty gates opening and closing for no apparent reason. In addition to the Park Forest incident already described, specific instances of crossing gate problems in Wayne, Plainfield, Aurora, and Hoffmann Estates have all occurred and been reported to CN and the STB over the last several months.

When gates go down and remain closed for lengthy periods of time with no train in sight, it is natural that motorists begin to ignore them and find ways to continue their travels. CN's failure to ensure that its gates are working properly is leading to a regional motorist response that is akin to playing Russian roulette with the trains. Since only 27.5% of road to rail crossings along the EJ&E are grade-separated, while a full 58% of rail to road crossings along the inner-loop CN lines have a grade separation in place, the acquisition of the EJ&E is allowing CN to move its trains off of lines that are clearly more suitable for high train volumes. While TRAC's appeal of the transaction works its way through the legal system, it is incumbent upon the FRA and STB to ensure that the known operational problems with safety gates do not continue to occur.

In its July 10 letter to you, CN attempted to minimize its responsibility for the recent Rockford derailment, claiming, "Accidents are unfortunate, but they – like accidents on the highways and involving other transport modes – do sometimes occur." While we acknowledge that accidents *DO* occur, it is highly unlikely that the NTSB will ultimately characterize the Rockford derailment as an "accident" when it appears that CN had at least twenty minutes of warning that there was a track washout from 911 operators in the Rockford area.

While it may defy logic to believe that CN would ignore such a clear safety hazard and increase its speed in this situation, it all makes sense when one understands CN's bottom line dedication to running its system "Hunter's Way." In an August 2009 edition of *Trains* magazine,

a feature story entitled “*Hunter’s Way or the Highway*” CN executives discuss the way the railroad achieves its record operating ratios:

*“...the biggest difference between CN and the rest of the pack is a simple idea: balance. Perfect asset utilization requires perfect balance – not just in train movements by direction, but also by day of the week. “We build our railroad around it,” (Keith) Creel remarks. That’s unique to us.” Imagine the possibilities. Your physical assets are always working. You always have just enough crews, just enough locomotives. Adds Creel: “It’s a huge challenge, the balancing act. You’re always on the edge of your seat.”*

Unfortunately the woman killed in the Rockford derailment, Zoila Tellez, got in the way of CN’s “perfect balance” on June 19, 2009. We have to wonder how CN’s drive for perfect asset utilization impacted the thinking of the CN employees running the train that derailed. The importance of increasing train speeds – and its potential impact on operating safety – was highlighted by CN CEO Hunter Harrison in a July 20, 2009 Q2 results conference call with the financial media and investor communities. According to Harrison, “... strictly from a labor standpoint, it is much more important in the U.S. than it is in Canada, from a labor cost standpoint. Because I’m paying by the hour in the U.S. and I’m paying by the mile in Canada.”

In its July 10 letter to you, CN dismissed many of the safety concerns we had raised and claims that its safety record in Canada has improved. Yet as recently as July 21, 2009 in an article in a Canadian newspaper – *The Northern View* – a Canadian government official voiced concerns about CN moving oil and condensate from the Alberta oilfields by rail. According to MP Nathan Cullen:

*“The risk associated with oil and condensate moving up and down the Skeena by rail is just too significant. I cannot be convinced that this is a good idea. ...I think one of the reasons CN proposed this idea was they didn’t believe they needed an environmental assessment if the oil was moved on pre-existing rail... But it doesn’t address the main concern, which is how do you offset the risks... You could argue that rail is even more dangerous. Just look at CN’s track record, they have derailed and put cars into rivers and lakes countless times and have always said ‘we’re sorry, we’ll fix it’ but it keeps happening.”*

Ultimately, TRAC believes these ongoing safety issues are tied to the “culture of fear” we had noted from a Canadian Parliamentary Report and that has been backed by recent CN employee postings on Glassdoor.com that say of CN: “*Leader of the schoolyard bullies,*” “*CN railroads its employees*” and “*Culture of fear creates poisoned atmosphere*” There is a pattern of evidence that indicates that regardless of CN’s creation of a new Chief Safety Officer position in 2007, worker morale is so low that safe operational practices remain a continuing risk.

Since there is such a vast gap between what CN “says” and what CN “does” when it comes to safety, it is time for the two agencies with the authority and responsibility to ensure the safety of CN’s operations along the EJ&E to do so now. Your agencies are the federal governmental entities that are at the helm when it comes to insuring that a given railroad conducts its operations in a manner that is consistent with the safety of the American public. CN has

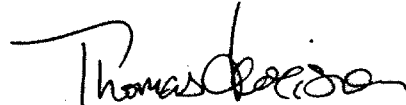
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demonstrated time and again the inadequacy of its safety measures. Therefore, we ask you to move expeditiously to devise adequate safeguards given the inadequate safety record surrounding CN operations.

Sincerely,



Karen Darch  
TRAC Co-Chair & President, Barrington



Tom Weisner  
TRAC Co-Chair & Mayor, Aurora

cc: Mr. E. Hunter Harrison, President & CEO, Canadian National  
Mr. Joseph C. Szabo, Administrator, FRA  
Mr. Francis P. Mulvey, Acting Chairman, STB  
Mr. Charles D. Nottingham, Vice Chairman, STB  
Members of the regional Illinois Congressional delegation