

trip that can take as long as a day – could bypass the City in two hours. Removal of such through traffic from the core of the Chicago area would permit trains that still had to travel to or from Chicago for origination, interchange or delivery of freight to do so more efficiently. The desires of the City of Chicago and others to remove freight traffic from the St. Charles Air Line (also a goal of Project CREATE) could be accomplished to a significant degree.

While U.S. Steel's decision was of course presumably based on its own private interests, rather than undertaken as a pro bono publico effort to solve the seemingly endless transportation crisis in and around Chicago, its sale of most of EJ&E to CN can make a material positive contribution to that end. But it must be borne in mind that CN's investment, like U.S. Steel's disinvestment, has primarily private economic motivations, and should not be looked upon as, or reshaped into, a vehicle for achieving what are fundamentally collateral public goals, which should properly be publicly financed.

1. Amtrak⁴⁸

Amtrak has filed comments in opposition to the Application because it was concerned that the Transaction would adversely impact its passenger service between Chicago and other cities. Currently, Amtrak trains traveling between Chicago and cities in downstate Illinois (such as Carbondale, Champaign and Mattoon) and points further south (such as New Orleans), access Union Station over a portion of CN's track known as the St. Charles Airline route ("Air Line route"). Amtrak's access to that line is available through a 1995 Agreement with CN that runs through January 31, 2010.

⁴⁸ This section also responds to comments by the Cities of Carbondale, Champaign, and Mattoon, and the Illinois Department of Transportation. Those parties' comments and requests for conditions are related solely to the ability of Amtrak to access Chicago's Union Station.

In the Application, CN stated that the proposed transaction would enable CN to move its traffic off the Air Line route. CN was careful to state, however, that it was not proposing to abandon the Air Line route, that before the line could ever be formally abandoned Amtrak trains would need to be re-routed, and that it would work with Amtrak to try to accommodate its interests. CN-2 at 222.

Amtrak asks the Board to condition its approval of the proposed transaction on requiring CN to preserve the Air Line route for Amtrak's use, at its current operating standards, at no additional cost to Amtrak or the State of Illinois until such time as the Grand Crossing route⁴⁹ is completed and in operation. Several other parties⁵⁰ expressed concern that the proposed transaction would harm Amtrak's existing service, and therefore opposed the transaction or sought conditions.⁵¹

Notwithstanding the fact that the conditions sought are unrelated to anticipated competitive impacts of the Transaction, and therefore fall outside the Board's authority to condition the Transaction, CN has now agreed to the conditions sought by Amtrak. It has committed to allowing Amtrak to remain on the SCAL indefinitely, until the Grand Crossing routing or another alternative acceptable to it is available, at costs to be capped at their current level (adjusted only for inflation pursuant to the formula contained in the

⁴⁹ The restoration of the Grand Crossing connection between CN and NS would allow Amtrak to reach Union Station over NS's line, and was one of the projects proposed by CREATE.

⁵⁰ This includes the National Railroad Passenger Association, the Cities of Champaign, Carbondale, and Mattoon, and the Illinois Department of Transportation.

⁵¹ A number of other parties filed comments with the Board's SEA requesting that the impact on Amtrak be included in the scope of study for the EIS that is being prepared in this proceeding.

current agreement between Amtrak and CN) and at the level of operating utility that Amtrak currently enjoys. *See* Letter of E. Hunter Harrison to Senator Richard Durbin, Feb. 14, 2008 (Exhibit 3); Letter of E. Hunter Harrison to Alex Kummant, Mar. 10, 2008 (Exhibit 4).

This commitment goes well beyond CN's statutory responsibilities toward Amtrak, and constitutes a significant annual subsidy of Amtrak by CN. Congress has carefully defined the relationship between Amtrak and freight railroads – and that relationship does not require freight carriers ultimately to retain lines they do not need solely for Amtrak's benefit or to subsidize Amtrak's operations. As the STB has consistently recognized and enforced, carriers are permitted to charge Amtrak the full incremental cost for using their rail lines – those costs that carriers would avoid but for Amtrak's operations.⁵²

CN's commitment to Amtrak therefore goes well beyond the requirements of the law. CN is effectively subsidizing Amtrak by agreeing to forego (1) the proceeds and benefits of a sale of the Air Line route for as long as Amtrak wishes to remain on the line; (2) the statutory compensation to which it would be entitled for maintaining the Air Line route, which would otherwise rise sharply with CN's withdrawal from the line.

CN's generous offer to allow Amtrak to maintain its existing service at no additional cost not only fulfills the conditions sought by Amtrak, it also should resolve

⁵² *See* Section 402, Rail Passenger Services Act, Pub L. No. 91-518, 49 U.S.C. 24308(a)(2); *see also, e.g., National R.R. Passenger Corp. – Applic. – 49 U.S.C. 24308(a)*, 3 S.T.B. 143, 145 (1998) (*Amtrak Express*); *National R.R. Passenger Corp. – Applic. – 49 U.S.C. 24308(a)*, 3 S.T.B. 157, 168 n.24 (1998) (*Amtrak/Guilford*).

any and all issues concerning impacts of the proposed transaction on Amtrak service.⁵³ Nonetheless, because some parties have argued that CN should also be required to help fund a new Grand Crossing connection for Amtrak's use or have suggested that the proposed transaction would undermine CREATE, CN wishes to address those further issues.

There is no basis for calls that CN fund a portion of a new Grand Crossing connection. As explained in the joint verified statement of Robert T. Holmstrom and Paul E. Ladue, CN has never committed itself or been responsible for making a financial contribution to a connection at Grand Crossing or any other facilities that would enable Amtrak to re-route its passenger service. Neither did CN make any such commitment as part of the CREATE Project.

As further explained by Messrs. Holmstrom and Ladue, far from harming the CREATE project, CN's investment of \$400 million in the lines of the EJ&E, plus the additional costs of mitigation, will significantly advance CREATE objectives. It would help reduce rail congestion in the Chicago region and allow CN to relocate its freight operations from the Air Line route, which has long been a goal of the City of Chicago. It would also accomplish these goals more quickly and with less disruption than the construction of the full Central Corridor route.

In sum, CN's commitments concerning Amtrak and the Air Line make it unnecessary for the Board to impose any conditions relating to Amtrak.

⁵³ Including those filed by the City of Carbondale, the City of Champaign, the City of Mattoon, and the Illinois Department of Transportation.