

UNITED STATES OF AMERICA  
SURFACE TRANSPORTATION BOARD

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PUBLIC MEETING

IN THE MATTER OF:

CANADIAN NATIONAL RAILWAY COMPANY  
AND GRAND TRUNK CORPORATION -  
CONTROL - EJ&E WEST COMPANY;  
ISSUANCE OF FINAL ENVIRONMENTAL  
IMPACT STATEMENT

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Tuesday,

November 18, 2008

Surface Transportation Board  
Suite 120  
395 E Street, S.W.  
Washington, D.C.

The above-entitled matter came on for  
hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

CHARLES D. NOTTINGHAM, Chairperson  
FRANCIS P. MULVEY, Vice Chairperson  
W. DOUGLAS BUTTREY, Commissioner

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P-R-O-C-E-E-D-I-N-G-S

10:03 a.m.

CHAIRMAN NOTTINGHAM: All right.

Good morning. The Board is meeting on our Section of Environmental Analysis, affectionately known as SEA. You will hear SEA mentioned a lot today regarding the Environmental Impact Statement they are preparing on the Canadian National Railway Company's application seeking to acquire control of the EJ&E West, a wholly owned non-carrier subsidiary of the Elgin, Joliet & Eastern Railway Company.

SEA is a company by members of HDR, Inc., the third-party contractor that has been working with SEA to prepare the environmental documents in this case. EJ&E is a Class II Railroad that currently operates 198 miles of track in Northeastern Illinois and Northwestern Indiana.

In addition to acquiring that existing line, CN is seeking to construct six new rail connections and, approximately 19 miles of

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1 new sightings and double tracking. The  
2 application was filed on October 30, 2007 and on  
3 November 26, 2007, the Board announced that it  
4 would prepare an Environmental Impact Statement,  
5 also known as the EIS.

6 SEA has provided an extensive comment  
7 period to ensure that the public agencies,  
8 elected officials and communities have the  
9 opportunity to actively participate and comment  
10 on the environmental review process.

11 SEA first prepared a draft scope of  
12 study that was published in December 2007.  
13 During the scoping process, the Board received  
14 over 3,000 written comments and SEA held seven  
15 public open house meetings held in the affected  
16 areas during the scoping process.

17 The final scoping document was served  
18 on April 25, 2008 and was made available on the  
19 Board's website and 51 libraries located in  
20 communities along the EJ&E Rail Line.

21 SEA then served the draft EIS on July  
22 25, 2008. SEA hosted eight public meetings

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1 throughout the Chicago metropolitan area to  
2 present the findings of the draft EIS and  
3 received public comments. SEA received some  
4 9,500 comments on the draft EIS by the close of  
5 the comment period on September 30, 2008.

6 Since then, SEA has been analyzing  
7 the comments submitted on the draft EIS and  
8 working to prepare a final EIS.

9 The purpose of this meeting today is  
10 to provide the Board Members an opportunity to  
11 hear from SEA on their report and have SEA report  
12 on the comments received from the public and also  
13 an explanation of the analysis that has been  
14 conducted and SEA's preliminary recommendations  
15 regarding potential mitigation to be included in  
16 the final EIS.

17 I look forward to exploring all these  
18 issues today. We are pleased to have with us  
19 members of the team working on the final EIS from  
20 the Board's staff: Victoria Rutson, Chief of the  
21 SEA, Phillis Johnson-Ball, who is the Deputy  
22 Chief of SEA, Evelyn Kitay, who is STB's

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1 Association General Counsel and from HDR we have  
2 John Morton, Senior Vice President, and Bill  
3 Burgel, Vice President for Rail Operations, again  
4 both of HDR, Inc.

5 I understand other members of the HDR  
6 team will be making presentations today and will  
7 be introduced as the meeting proceeds. I do want  
8 to welcome all of the HDR staff who have made the  
9 trip to be here today.

10 The team will first give a  
11 presentation generally summarizing the  
12 environmental review process, its results and  
13 SEA's preliminary recommendations. Following  
14 that presentation, my colleagues and I will have  
15 an opportunity to ask questions and engage in  
16 dialogue.

17 I look forward to this morning's  
18 presentation and discussion. Before turning the  
19 floor over to the team, I would like now to turn  
20 to my colleagues for any opening remarks that  
21 they may like to offer. Vice Chairman Mulvey?

22 VICE CHAIRMAN MULVEY: Thank you,

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1 Chairman Nottingham. And I want to thank the SEA  
2 staff for their efforts in this area. Vicky,  
3 Evelyn, Phillis, I know this has occupied a lot  
4 of your time over the last few months and this  
5 really shows a great deal of effort and a great  
6 deal of oversight on your part. You have done an  
7 outstanding job in very, very difficult  
8 circumstances.

9 I also want to thank the  
10 representatives from HDR. As you know, the Board  
11 Members had opportunity to go out and see the  
12 project at one point. And we were taken around  
13 and shown some of the places that were particular  
14 contentious where the environmental issues were  
15 particularly important. And we did learn a lot  
16 from that and we want to thank you for your  
17 efforts in taking us out there.

18 This is really the first major  
19 environmental review that this Board has  
20 undertaken in the last five years. I know the  
21 Board does these kind of environmental reviews  
22 often associated with abandonments and other

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1 transactions. But the last one that was this  
2 large, unless I'm mistaken, was when the DM&E  
3 proposed to build into the Powder River Basin.  
4 That proposal raised a lot of concern and the  
5 Board undertook an extensive and environmental  
6 review of that proceeding as well.

7 That proceeding took place before I  
8 was on the Board. And since my tenure is co-  
9 termed with Mr. Buttrey's and precedes Mr.  
10 Nottingham, this is really the first one that any  
11 of us have really had to address. So we're  
12 looking forward to hearing what you have to say  
13 and to take this into consideration in coming up  
14 with our final decisions.

15 As the Chairman has mentioned, we  
16 have received nearly 10,000 responses/comments on  
17 the draft environmental review. They are both  
18 positive and negative as to the transaction's  
19 environmental impacts. And I understand it's  
20 very, very difficult to sort all these out.

21 I'm looking forward to hearing the  
22 results of your assessment today and with that,

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1 I'll turn it over to my colleagues.

2 CHAIRMAN NOTTINGHAM: Thank you, Vice  
3 Chairman Mulvey. Commissioner Buttrey?

4 COMMISSIONER BUTTREY: Thank you, Mr.  
5 Chairman, and good morning to everyone. This  
6 proceeding, in my view, is the most interesting  
7 and perplexing case to come before me since I  
8 came to the Board. In some ways, it's a very  
9 simple case. It concerns a relatively short line  
10 of railroad and the purchase price is relatively  
11 small in today's economy.

12 The subject transaction involves only  
13 two railroads. Yet, this transaction has drawn  
14 an incredible amount of attention from a wide  
15 variety of stakeholders, including suburban  
16 Mayors, Members of Congress, one of whom is the  
17 new President-elect.

18 It has split the urban and suburban  
19 Chicago community and the Congressional  
20 Delegation and has fueled an emotional public  
21 relations campaign rarely experienced in the  
22 generally quiet, peaceful neighborhoods west of

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1 Chicago.

2 When I visited these communities  
3 recently, I even saw yard signs and notices about  
4 public rallies. It was grassroots democracy at  
5 work.

6 The issues presented in this  
7 proceeding remind me of a landmark 1971 Supreme  
8 Court case, which has always been special to me,  
9 because its subject matter arose in the very city  
10 where I was a law student at the time of the  
11 decision. That case is Citizens to Preserve  
12 Overton Park v. Volpe, 401 U.S. 402.

13 In that case, the United States  
14 Department of Transportation had decided to built  
15 Interstate 40 right through the middle of  
16 downtown Memphis and right through the middle of  
17 one of the oldest and most beautiful public parks  
18 in the south, which contained, among other  
19 things, the city zoo, golf course and the  
20 Historic Overton Park Shell built in 1936, where  
21 Elvis Presley performed his first paid concert.

22 Certain civic-minded citizens of

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1 Memphis said no. The United States Supreme Court  
2 agreed. The Court said that under the applicable  
3 statutory provisions, the Secretary of  
4 Transportation could only approve the use of  
5 federal funds for construction of a highway in a  
6 public park if no feasible alternative exists and  
7 only after undertaking all possible planning to  
8 minimize harm.

9 Justice Douglas did not participate  
10 in consideration of the decision of that case.  
11 Otherwise, it was a unanimous decision by the  
12 United States Supreme Court.

13 Now, some of you might have had the  
14 pleasure of driving through the beautiful and  
15 very fertile Mississippi River Delta, which  
16 includes Memphis. If so, you might have noticed  
17 that I-40 splits just east of downtown Memphis  
18 and continues in a circle around the city, both  
19 north and south, and comes together again on the  
20 eastern bank of the Mississippi River where it  
21 crosses the river and enters the great State of  
22 Arkansas.

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1           So it is obvious that the highway was  
2 eventually built to accommodate Interstate  
3 Commerce, but that it was built using an  
4 alternative route so as to also accommodate the  
5 environmental concerns of local citizens. In the  
6 end, the Supreme Court stood between the  
7 seemingly overwhelming forces of the Federal  
8 Government and the concerns of a few local  
9 citizens who just wanted to preserve their park.

10           In my view, this is undoubtedly one  
11 of the most elegant decisions ever rendered by  
12 the highest Court of the land.

13           As we go forward in the consideration  
14 of this and other similar cases, I would urge all  
15 concerned to be mindful of this ruling and others  
16 like it, so that we do not forget the power of  
17 the people to not have their rights abridged by  
18 their Government.

19           I have made it abundantly clear that  
20 I have serious concerns about this transaction,  
21 based on environmental grounds. It is my  
22 judgment that those concerns are on legal parity

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1 with the transportation issues before us and that  
2 to somehow subordinate those concerns runs afoul  
3 of a long line of cases that require us to make  
4 sure that we have fully considered, to use the  
5 language of the court, "feasible and prudent"  
6 alternatives and after undertaking "all possible  
7 planning to minimize harm."

8 I'm going to try to ensure that we do  
9 just that. Consequently, I look forward to  
10 hearing what the presenters have to say. Thank  
11 you, Mr. Chairman.

12 CHAIRMAN NOTTINGHAM: Thank you,  
13 Commissioner Buttrey. We will now turn it over  
14 to the team. Ms. Rutson, you will take it over  
15 from here. Thanks.

16 MS. RUTSON: Good morning, Chairman  
17 Nottingham, Vice Chairman Mulvey and Commissioner  
18 Buttrey. On behalf of the Section of  
19 Environmental Analysis and our third-party  
20 consultant, HDR, we appreciate the opportunity to  
21 discuss with you today the Environmental Impact  
22 Statement that we are currently preparing in

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1 Finance Docket 35087, Canadian National and Grand  
2 Trunk Railroad control EJ&E West.

3 I would like to take a few moments to  
4 introduce you to the rest of the team. Chairman  
5 Nottingham, you have already introduced the  
6 people at the table, but for those listening via  
7 website, I will repeat some of the introductions.

8 To my right from the Surface  
9 Transportation Board is Evelyn Kitay and Phillis  
10 Johnson-Ball. To Phillis' right is Gail Frane  
11 from HDR who will be helping us with the  
12 PowerPoint presentation. To my left is John  
13 Morton, the Project Manager from HDR. And to his  
14 left is Bill Burgel, Rail Operations Specialist.

15 The remainder of the team is sitting  
16 in the first two rows behind the speaker's table.  
17 Each member of this team specializes in a certain  
18 environmental discipline area. I'm going to call  
19 each of their names and they will stand up. When  
20 they speak, they will come forward and focus on  
21 their discipline area.

22 They will tell us what we did in the

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1 draft EIS, explain the comments that we received  
2 on the draft and then provide a briefing to you  
3 on our preliminary findings, conclusions and  
4 recommendations and final EIS.

5           These folks are all from HDR. First,  
6 Stephanie White, Public Involvement; John  
7 Lazzara, Vehicular Transportation; Leif Thorson,  
8 Rail Safety; Fionna Goodson, Natural Resources;  
9 Tim Casey, Noise and Vibration; and Kevin Keller,  
10 Hazardous Materials Transport.

11           Rich Christopher from HDR is also  
12 joining us, not to speak individually, but  
13 prepared to respond to questions on state  
14 regulatory matters. Rich is the former Deputy  
15 Chief Counsel of Indiana DOT and we believe is  
16 uniquely qualified to respond to questions on the  
17 state regulatory process for Illinois and for  
18 Indiana.

19           Each of these technical experts  
20 represents large group of other scientists,  
21 technicians and professionals who have worked and  
22 are continuing to work on the EIS. They would

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1 have enjoyed all being with us here today and I  
2 suspect there may have been enough seats in this  
3 hearing room for all of them, but it would have  
4 been a full house indeed.

5 A word about acronyms. The Chairman  
6 kindly explained some of them. Again, for those  
7 listening via webcast, I'm going to go over a few  
8 more. This will help everyone realize that we  
9 are actually speaking a language and not a  
10 mysterious code.

11 The environmental area is full of  
12 acronyms and it can get a bit confusing. EJ&E or  
13 J is the Elgin, Joliet and Eastern Railroad. EIS  
14 is Environmental Impact Statement, which we have  
15 issued in draft form and are preparing in final  
16 form. NEPA, National Environmental Policy Act.  
17 SEA or S-E-A is the Section of Environmental  
18 Analysis.

19 CN is Canadian National Railway. And  
20 CNN isn't involved in this case at all. Yet, the  
21 team and members of the public have ended up  
22 talking, I think, in an abundance of enthusiasm

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1 over end about CNN. Not involved in this case.

2 The relevant background for this  
3 proceeding is set forth in the Board's press  
4 release of November 7<sup>th</sup> announcing this briefing  
5 and Chairman Nottingham has also provided a  
6 summary. Very quickly, on October 30, 2007,  
7 Canadian National Railway and its U.S. affiliate,  
8 Grand Trunk, filed an application with the Board  
9 seeking the Board's approval to acquire the  
10 Elgin, Joliet and Eastern.

11 The Elgin, Joliet and Eastern is an  
12 old railroad conceived by Joliet businessmen in  
13 1855 for the purpose of avoiding congestion in  
14 the city of Chicago. The applicant's reasons for  
15 wanting to buy the EJ&E are set forth in their  
16 application. These reasons are three-fold.

17 First, applicants wish to move train  
18 traffic off the CN Lines that are currently  
19 running in and out of Chicago and move that rail  
20 traffic to the EJ&E. Thus, avoiding congestion  
21 in the City of Chicago.

22 Second, applicants wish to gain

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1 ownership of Kirk Yard in Indiana.

2 And third, applicants wish to offer  
3 rail service to shippers currently served by the  
4 EJ&E.

5 Immediately after the application was  
6 filed with the Board, SEA began receiving a  
7 steady stream of letters. These letters were  
8 mostly from people who live in the communities  
9 along EJ&E. These people were fearful about what  
10 would happen to them if train traffic on the J  
11 increased.

12 In November, the Board issued  
13 Decision No. 2, which announced that the Section  
14 of Environmental Analysis would prepare an EIS in  
15 this proceeding. The Board's environmental rules  
16 normally require an EA or Environmental  
17 Assessment for rail acquisitions.

18 But here, the Board stated that the  
19 more rigorous EIS was appropriate. In that EIS,  
20 we would examine both the benefits and the  
21 adverse impacts of CN's proposal. We would also  
22 examine reasonable and feasible alternatives to

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1 that proposal, including a no action alternative.

2 SEA retained HDR to help us prepare  
3 the EIS. As you know, the third-party  
4 contracting process is permitted both by the  
5 Board's environmental rules and by the  
6 President's Council on Environmental Quality  
7 Regulations.

8 The process allows us to hire  
9 consultants to work for us and only us at the  
10 applicant's expense. Our work is impartial. Our  
11 job, my job is to ensure that the decision maker,  
12 you, have a full complete disclosure of all  
13 benefits and impacts that could occur as a result  
14 of this proposal.

15 I can tell you, based on my  
16 reputation, that our work has been and will  
17 continue to be done impartially. SEA and HDR  
18 experts in a broad spectrum of environmental  
19 discipline areas began work on the EIS. We  
20 conducted meetings, talked with federal, state  
21 and local officials, performed studies and  
22 gathered as much information as we could about

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1 life in the communities that could benefit and  
2 could be adversely impacted by CN's proposal.

3 We also learned about the rail  
4 systems in Chicago, the history of the EJ&E and  
5 how it operates today and delved into every  
6 detail that we could find about CN's proposal.

7 On July 25, 2008, we issued a draft  
8 EIS for public review and comment. As you well  
9 know, over 9,500 comments were received. And we  
10 are now preparing the final EIS which will in  
11 part respond to those comments.

12 We hope to issue the final EIS in the  
13 next few weeks. The final EIS in addition to  
14 responding to comments will also set forth some  
15 additional analysis that we have done based on  
16 the comments received. It will also set forth  
17 SEA's preliminary conclusions and  
18 recommendations, which we would like to discuss  
19 with you today.

20 Briefing highlights. Next, Evelyn  
21 Kitay will discuss in more detail the regulatory  
22 process. Phillis Johnson-Ball will then

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1 summarize our extensive public involvement  
2 process. Bill Burgel will then set the stage  
3 describing the unique role of Chicago as a rail  
4 transportation hub, provide a short history of  
5 rail operations on the EJ&E and describe details  
6 of the applicant's proposal and alternatives that  
7 we examined during the environmental review  
8 process.

9 Stephanie White will build on  
10 Phillis' summary of public involvement and  
11 describe major issues that we discovered through  
12 working with the citizens of Illinois and  
13 Indiana. Then the HDR technical experts will  
14 lead us through what we did in the draft EIS,  
15 what we heard in comments and what we are  
16 thinking about doing in the final EIS.

17 So now, I would like to turn the  
18 microphone over to Evelyn Kitay.

19 MS. KITAY: Thank you, Vicky. Good  
20 morning, Chairman Nottingham, Vice Chairman  
21 Mulvey and Commissioner Buttrey. I have been  
22 working closely with SEA on the EIS in this case

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1 and am happy to discuss the regulatory process.

2 Since 1920, Congress has vested the  
3 ICC and now the Board with plenary and exclusive  
4 authority over rail mergers and acquisitions.  
5 This proposed acquisition requires authority from  
6 the Board, because under the Interstate Commerce  
7 Act, a railroad may not acquire another railroad  
8 without STB approval.

9 As you know, CN filed its application  
10 for STB approval in October 2007. In November  
11 2007, the Board accepted the application and  
12 concluded that a full EIS was warranted based on  
13 the information in the application on potential  
14 increased traffic along the EJ&E Line increases  
15 between 15 to 24 trains a day on certain segments  
16 and the concerns that had already been raised by  
17 potentially affected citizens and communities.

18 The dual purpose of an EIS is to  
19 disclose potential environmental impacts,  
20 consider reasonable and feasible alternatives,  
21 including the No Action Alternative, and develop  
22 reasonable mitigation that could be imposed to

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1 eliminate or reduce potential environmental  
2 impacts of the proposed action discovered during  
3 the course of the environmental review.

4 The Board's practice is not to impose  
5 mitigation for pre-existing conditions.  
6 Conditions that exist when the Board's process  
7 begins. Mitigation can, as here, include  
8 voluntary mitigation proposed by applicants. SEA  
9 also encourages applicants to enter into mutually  
10 acceptable negotiated agreements with communities  
11 or other entities. These negotiated agreements  
12 can result in mitigation that is more far  
13 reaching than the mitigation the Board could  
14 unilaterally impose.

15 Ample opportunities for public input  
16 are provided during the EIS process. The EIS  
17 addresses not only issues that arise under NEPA,  
18 which requires agencies to take a hard look at  
19 the environmental consequences of their licensing  
20 decisions, but also takes into account the  
21 requirements of other federal environmental laws,  
22 such as the Endangered Species Act and the

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1 National Historic Preservation Act.

2 Consultations with other agencies is  
3 a very important part of the EIS process. And in  
4 this case, SEA has consulted extensively with  
5 agencies, including the Environmental Protection  
6 Agency and the U.S. Fish and Wildlife Service  
7 during the EIS review.

8 Steps for an EIS are set out in the  
9 Board's environmental rules at 49 CFR Part 1105  
10 and the rules of the Council on Environmental  
11 Quality implementing NEPA. First, SEA issues a  
12 Notice of Intent to prepare an EIS and initiates  
13 scoping to determine the issues to be addressed  
14 in the EIS.

15 Then SEA issues a draft EIS for  
16 public review and comment containing  
17 environmental analysis of the potential  
18 environmental effects, both beneficial and  
19 adverse, and preliminary mitigation  
20 recommendations and recommendations on  
21 environmentally preferable alternatives.

22 After a public comment period, a

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1 final EIS is prepared responding to comments  
2 containing further analysis, if appropriate, and  
3 presenting SEA's final recommendations including  
4 recommendations for environmental mitigation.

5 The conclusions of the EIS are staff  
6 recommendations that the Board considers in  
7 deciding what action to take on a proposed  
8 acquisition. In essence, the EIS process is what  
9 builds the record before the Board on the effects  
10 of the proposed acquisition on any issues other  
11 than those involving the transportation merits.

12 Just to briefly summarize the EIS  
13 process here, within days of the Board's November  
14 2007 decision accepting the application, SEA  
15 began work on the EIS. In December 2007, a  
16 Notice of Intent and a draft scope study were  
17 issued. Open house meetings were held at seven  
18 locations in the Chicago area and over 3,000  
19 scoping comments were received.

20 In April 2008, a final scope of study  
21 was issued. Less than three months later in July  
22 2008, a comprehensive five volume draft EIS was

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1 served. SEA then held eight public meetings in  
2 the Chicago area as well as stakeholder meetings  
3 during the 60 day comment period on the draft  
4 EIS, which ended September 30, 2008.

5 9,500 comments both pro and con were  
6 received on the draft EIS addressing a wide range  
7 of environmental issues. In May 2008, CN asked  
8 the Board to establish time limits for the  
9 completion of the EIS. In July 2008, the Board  
10 set a target date of December 2008 to the end of  
11 January 2009 for completion of the final EIS and  
12 stated that a final decision would be issued as  
13 soon as possible thereafter.

14 No specific date was set for the  
15 issuance of the final EIS, because the Board  
16 could not predict in advance the extent and type  
17 of comment that might be made on the draft.

18 In September 2008, the Board denied  
19 CN's subsequent petition to modify the procedural  
20 schedule. SEA is well along with completing the  
21 EIS. A final EIS responding to comments  
22 containing additional analysis as appropriate and

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1 setting forth SEA's final mitigation  
2 recommendations should be issued in the next few  
3 weeks.

4 The issuance of the final EIS will  
5 conclude the environmental review process and the  
6 Board will then issue a final decision in this  
7 case addressing both the transportation related  
8 and environmental issues.

9 In doing so, it will consider the  
10 draft and final EIS and all of the environmental  
11 comments received as well as the information  
12 filed on the transportation merits.

13 In short, a thorough environmental  
14 review that encompasses both the EJ&E Rail Line  
15 where rail traffic will increase and the CN Lines  
16 in the Chicago area, which will generally benefit  
17 from an expected decrease in traffic, has taken  
18 place in this case.

19 I now turn it over to Phillis.

20 MS. JOHNSON-BALL: Thank you, Evelyn.  
21 Good morning, Chairman Nottingham, Vice Chairman  
22 Mulvey, Commission Buttrey. I will be talking

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1 about SEA's public outreach and coordination  
2 activities for the proposed transaction.

3 The public has an important role in  
4 the NEPA process, particularly doing scoping and  
5 providing input on what issues should be  
6 addressed in the EIS and commenting on the  
7 findings of the EIS. SEA's purpose in conducting  
8 public involvement in Agency consultation  
9 activities is to comply with NEPA to raise public  
10 awareness, inform interested or affected  
11 individuals about the proposed action and to gain  
12 public and Agency input on the development and  
13 review of the EIS.

14 For this transaction, SEA conducted  
15 extensive and proactive public outreach to  
16 encourage board participation in the  
17 environmental review process. Public  
18 participation throughout the environmental review  
19 process was unprecedented. The public, federal,  
20 state and local agencies, stakeholders,  
21 communities and organizations actively  
22 participated in the environmental process by

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1 providing information, reviewing and commenting  
2 on all aspects on the development of EIS.

3 To ensure that parties typically  
4 under-represented in the environmental review  
5 process received all available information, SEA  
6 conducted targeted outreach to minority and low-  
7 income populations, environmental justice  
8 populations and federally recognized tribes.

9 On December 21, 2007, the Board issue  
10 the Notice of Intent to prepare the EIS. This  
11 also announced the start of the scoping process  
12 and included the times and dates of public  
13 meetings. The publishing of the Notice of Intent  
14 began the flow of comments into the Board. SEA  
15 received, approximately, 350 comments prior to  
16 the issuance of the draft scope of work.

17 By comparison, no comments are  
18 typically received during this period. During  
19 the scoping process, SEA informed the public  
20 about the proposed action, described the  
21 environmental review purpose and process and  
22 gathered public comments on the draft scope of

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1 the EIS.

2 Also to inform the public about the  
3 proposed transaction, SEA prepared public  
4 notices, media outreach, announcement posters,  
5 develop a project website and maintained a toll  
6 free project information line and project update  
7 mailings.

8 SEA developed and maintained an  
9 environmental distribution list which included  
10 individuals, locally elected officials, agencies  
11 and agencies that have interests that would  
12 normally be contacted during the EIS process.

13 In November 2007 and January 2008 to  
14 advertise and prepare for public scoping  
15 meetings, SEA distributed media releases and  
16 placed public notices and advertisements in 24  
17 Chicago area newspapers. SEA also placed posters  
18 in public libraries and other public locations  
19 that served the communities along the EJ&E Rail  
20 Line.

21 SEA held 14 public scoping meetings  
22 at seven locations throughout the Chicago

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1 metropolitan area in January 2008. Meetings were  
2 held in Mundelein, Illinois; Barrington,  
3 Illinois; Joliet, Illinois; Madison, Illinois;  
4 Chicago, Illinois; West Chicago, Illinois and  
5 Gary, Indiana.

6 The meetings were held in an open  
7 house format. Two meetings per location were  
8 conducted, one in the afternoon and one in the  
9 evening. The public was able to provide scoping  
10 comments in a variety of ways. Written comments,  
11 verbal comments, e-filings and via a toll free  
12 project information line. The information line  
13 also had a Spanish option.

14 At the public meetings, commenters  
15 were also able to provide verbal comments to  
16 transcribers. Approximately, 4,000 scoping  
17 comments were filed by the end of scoping. And  
18 approximately, 2,600 people attended the public  
19 scoping meetings.

20 In addition to public scoping  
21 meetings, SEA invited 38 federal, state and local  
22 agencies to participate in stakeholder focus

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1 groups and to provide feedback on their areas of  
2 expertise. On April 28, 2008, the Board  
3 published the Notice of Availability of the  
4 proposed scope of study in the Federal Register.

5 On July 28, 2008, SEA issued the  
6 draft EIS and made it available for public review  
7 and comment with a 60 day comment period. On the  
8 same day, the Board released a press release  
9 announcing the availability of the draft EIS.

10 In August and September 2008, SEA  
11 held eight public scoping meetings to provide the  
12 public with information on the draft EIS and to  
13 receive comments. Meetings were held in Madison,  
14 Illinois; Mundelein, Illinois; Barrington,  
15 Illinois; Bartlett, Illinois; Chicago, Illinois;  
16 Aurora, Illinois; Joliet, Illinois; and Gary,  
17 Indiana.

18 Again, as with scoping, the meetings  
19 included an open house format and a more formal  
20 public meeting in which attendees could make  
21 formal comments. As during scoping, comment  
22 forms were provided in several languages,

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1 including Spanish, Polish and Chinese. Chinese  
2 and Polish languages were added as a result of  
3 our outreach activities.

4 Comments at the public meetings were  
5 accepted either on-site or by mail. The project  
6 toll-free telephone line remained open and  
7 updated for the duration of the comment period to  
8 record comments over phone lines. Commenters  
9 could also submit electronic comments through the  
10 Board's e-filing system.

11 SEA distributed the draft EIS using  
12 the same outreach methods used in scoping, that  
13 is distributing copies of the draft EIS to all  
14 parties of record and parties on the  
15 environmental distribution list placing copies in  
16 libraries, placing the entire EIS on the project  
17 website and notification through the media of the  
18 availability of the draft EIS.

19 As part of SEA's outreach to agencies  
20 and public officials, SEA notified 20  
21 Congressional Members, 31 State of Illinois  
22 elected officials and 10 State of Indiana elected

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1 officials of the public meeting.

2 On June 25, 2008, SEA attended a  
3 metropolitan Mayor's conference meeting with 27  
4 officials from the Chicago area. On September  
5 30, 2008, SEA attended a meeting of the South  
6 Suburban Mayor's and Manager's Association, a  
7 group of stakeholders representing the cities  
8 from the south side of Chicago. Information  
9 gathered at as a result of that meeting, was  
10 vital to the analysis of the EIS.

11 SEA continued to conduct outreach to  
12 under-represented groups, including minority and  
13 low-income populations and environmental justice  
14 populations. More than 30,000 individuals are  
15 currently on our environmental distribution list.

16 SEA believed that our proactive  
17 outreach efforts played a large part in the large  
18 participation rate for this transaction. SEA  
19 received over 9,500 comment documents containing  
20 over 43,000 issues and concerns on the draft EIS.  
21 All 30,000 individuals on our environmental  
22 distribution list will receive either a

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1 notification of the availability of the final  
2 EIS, a copy of the executive summary, a CD copy  
3 of the entire document or a printed copy of the  
4 document. Thank you.

5 MS. RUTSON: I would now like to turn  
6 the microphone over to Bill Burgel, who will be  
7 discussing historic and existing conditions in  
8 the project area, the proposed action and  
9 alternatives and anticipated changes.

10 MR. BURGEL: Mr. Chairman, Vice  
11 Chairman and Commissioner, I'm here today to  
12 describe the -- how Chicago and the rail industry  
13 interact with each other, both at a local,  
14 regional, national and perhaps global level. If  
15 I may, I'll stand and use the podium here.

16 6 out of the 7 Class Is, the large  
17 railroads that operate in the U.S., all converge  
18 in Chicago. The -- you've got the Norfolk  
19 Southern and the CSX both originate or Eastern  
20 Railroad either originate or terminate here in  
21 the eastern part of the Chicago area. Western  
22 Railroads, Union Pacific and BNSF, be in or end

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1 here in Chicago as well.

2 Two other railroads, Canadian Pacific  
3 and CN both operate through Chicago. The -- with  
4 -- CN is the only railroad that operates through  
5 on its own track. It's got five quarters in red  
6 here, three of them are primary quarters and CN  
7 operates north to south and then east through  
8 Chicago.

9 To facilitate the interchange of all  
10 these different railroad systems, we have several  
11 smaller railroads that serve at the discretion of  
12 the Class Is. They are owned and operated by the  
13 Class Is. Those include the Indiana Harbor Belt  
14 and the Belt Railway of Chicago and they perform  
15 the switching assignments for these Class Is.

16 The various trackage rights and  
17 haulage rights that are negotiated by all the  
18 Class Is are performed by the smaller railroads.  
19 Interlaced with all these freight railroads are  
20 the extensive passenger service of Amtrak, Metra  
21 and also the Northern Indiana Commuter  
22 Transportation District or NICTD who operates

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1 through the south shore.

2 Currently over 1,200 trains a day  
3 operate in Chicago. Roughly half freight and the  
4 other half passenger. On top of this fabric is a  
5 network of highway systems, lots of great  
6 separations in the urban core of Chicago, less  
7 though on the outer core. It is the changing  
8 volumes of the highway system and the rail system  
9 that were not quite in sync with each other and  
10 that's one of the reasons we are here today.

11 One of the adjustments that -- as  
12 described previously, the EJ&E is this outer  
13 railroad that serves to the boundary of this CORA  
14 map which is produced by the Chicago Area  
15 Railroad Operators and it's no accident that it  
16 forms the boundary of this map.

17 As Vicky described earlier, it was  
18 envisioned by a group of businessmen in the mid-  
19 1800s and came to fruition in the 1890s or so of  
20 several predecessor railroads that link together  
21 to form this circumference or route around  
22 Chicago. It has seen 50 trains per day that

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1 operated roughly in the World War II area and had  
2 passenger service that linked several communities  
3 as well.

4 The Griffith Historical site talks  
5 about 180 trains per day operating through  
6 Griffith at one time. The EJ&E performs several  
7 functions. It is owned by U.S. Steel and then  
8 forms the switching functions for U.S. Steel,  
9 that's one of its primary roles. It is an  
10 industrial railroad that has and supports many  
11 on-line customers that depend heavily on the  
12 service, one of which is certainly Midwest Energy  
13 that depends on it, the coal delivery on a timely  
14 basis that is provided by the EJ&E. That  
15 supplies have the electrical energy for the  
16 Chicago area. So a very vital service that the  
17 EJ&E performs.

18 Because all these railroads  
19 intersect, again, it performs a perimeter around  
20 Chicago. All the Class Is at one location or  
21 another intersect with the EJ&E and as it --  
22 where these intersections occur, the J is used to

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1 shuttle cars back and forth between these Class  
2 Is, so it performs that service.

3 And one trend that is increasing is  
4 BNSF, Norfolk Southern and Union Pacific  
5 primarily are using the EJ&E to bypass routes  
6 that they used to come into Chicago and back out.  
7 They are now using the EJ&E as a bypass, mostly  
8 in this southwest quadrant. It's primarily how  
9 the Class Is are used and the J is a bypass.

10 As described earlier, the CN operates  
11 on the former Wisconsin Central to the north and  
12 then from the east they entered Chicago initially  
13 back in 1923, the Grand Trunk has been in  
14 Canadian ownership since then. And then the CN  
15 acquired the Illinois Central in the early -- a  
16 few years ago. And that performs, along with the  
17 other two, routes that is their primary service.

18 They have a couple of yards that they  
19 service here in -- along Glenn Yard along the  
20 Joliet, and their primary yard is Marcum Yard  
21 which is down by Homewood. You notice gaps in  
22 the flow of the red lines through here. The only

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1 continuous route is along the St. Charles  
2 Airline, which is one that Air Daily has asked CN  
3 to relinquish in terms of train flow through  
4 Chicago.

5 Every other -- these gaps are places  
6 where CN doesn't operate on their own railroad.  
7 They have to basically run on other railroads and  
8 by that very nature, they are controlled by  
9 others and that's one of the things they are  
10 trying to rectify by the acquisition of the EJ&E.

11 The heart of this -- what -- most of  
12 their trains come in and are classified, switched  
13 around at a major classification yard that is  
14 owned by the Belt Railway of Chicago. That is a  
15 clearing yard. And the process right now,  
16 because they will bring trains in along the --  
17 say from the north and they will have trains that  
18 will stay all along here waiting for their slot  
19 to come into the clearing yard.

20 Again, it is owned by others. And as  
21 these trains are brought in, they will -- as that  
22 slot opens up, each one of these trains will move

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1 forward into that slot. That's extremely, you  
2 know, wasteful in terms of locomotive efficiency  
3 for CN utilization and these idling locomotives  
4 produce unwanted air emissions as they wait their  
5 turn.

6 It will take somewhere 12 to 15 hours  
7 to make that move inside the arc from Leithton  
8 down into the clearing yard and another 12 to 15  
9 hours as they get classified there at clearing.  
10 So it's quite a process just to get into a yard  
11 they don't own. That's the very heart of their  
12 system and yet they don't control that.

13 For many reasons, this and many  
14 reasons, CN has asked the Board for permission to  
15 acquire the EJ&E and that's to divert roughly 15  
16 to 24 trains that now operate on these lines  
17 inside the Chicago arc, so that train traffic is  
18 proposed to move over on the EJ&E to bypass  
19 Chicago and into Kirk Yard or East Joliet.

20 To accomplish this and then again  
21 where they interact with these different  
22 railroads, they propose six connections that they

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1 would like to construct as well as double track  
2 up in this area and along through between Eola  
3 down to just north of Plainfield along here and  
4 that's roughly 19 miles of double track. About  
5 half of that trackage is on road bed that was --  
6 formerly supported a second track.

7           They also are talking in terms of CN  
8 is proposing increases in the switching activity  
9 at both East Joliet Yard and at Kirk Yard as  
10 well.

11           In response to comments received  
12 during scoping, SEA considered four alternatives  
13 to the proposed action, one of which was expanded  
14 trackage rights along the EJ&E to where CN could  
15 -- would operate without the Board's permission  
16 on an expanded trackage rights basis.

17           A second alternative was the full  
18 implementation of the Chicago CREATE Project,  
19 which might have the benefit of increasing the  
20 throughput through Chicago.

21           The third alternative was perhaps CN  
22 could invest on a line interior of the arc and

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1 create a faster throughput in that fashion.

2 And a fourth that we heard was to  
3 construct an alternative bypass outside the arc  
4 in some -- in an area or locale yet to be  
5 determined for -- because a lot of these reasons  
6 didn't meet the purpose need that's before us.  
7 So we didn't explore these options.

8 I'll turn it back to John here now.

9 MR. MORTON: Thank you, Bill. We  
10 would like to start discussing some of the  
11 technical issues. And what I would like to do  
12 first is ask Stephanie White to elaborate a  
13 little bit on the discussion that Phillis had in  
14 terms of the outreach and cover some of, in more  
15 detail, you know, where the outreach was and, you  
16 know, the comments that came in. Stephanie?

17 MS. WHITE: Thank you, John.  
18 Chairman Nottingham, Vice Chairman Mulvey and  
19 Commissioner Buttrey, again, my name is Stephanie  
20 White. And I'm the public involvement lead for  
21 this project.

22 I would like to call your attention

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1 to a series of slides that I will use to  
2 illustrate both how we chose the meetings or the  
3 locations for all the public meetings as well as  
4 to show you some of the distribution of comments  
5 that we received during both formal comments  
6 periods on this project.

7 The first slide you are looking at  
8 showcases some of the environmental justice  
9 communities and particularly those in close  
10 proximity to the J. We discovered 28  
11 environmental justice communities. These  
12 represent a few of those.

13 When we were selecting meeting  
14 locations -- if you will move to the next slide,  
15 please?

16 COMMISSIONER BUTTREY: Ms. White,  
17 excuse me, would you point that mike right at  
18 you, please?

19 MS. WHITE: Yes, sir.

20 COMMISSIONER BUTTREY: Thank you.

21 MS. WHITE: Is that better?

22 COMMISSIONER BUTTREY: I think so.

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1 MS. WHITE: Okay.

2 COMMISSIONER BUTTREY: Thank you.

3 MS. WHITE: You will see that the  
4 seven locations for the public meetings during  
5 the scoping period are represented on this slide.  
6 At that time, we endeavored to choose locations  
7 that gave our environmental justice communities  
8 as equal opportunity to participate as possible.  
9 We also were looking for a good geographic  
10 distribution, both along the J and then  
11 representation in both states as well as  
12 representation inside the yard created by the  
13 EJ&E.

14 The next slide will show you the  
15 distribution of comments as they were submitted  
16 during the scoping period, the public scoping  
17 period. You will see that Barrington represented  
18 the majority of those comments. We had a total  
19 of 3,958 comments submitted during the scoping  
20 period.

21 2,289 of them came from Barrington.  
22 Second in rank would be Frankford, Illinois with

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1 300, 500 -- I'm sorry, 353 comments. And then  
2 close behind Frankfort were Bartlett with 324  
3 comments, Aurora with 305 and Naperville with  
4 263.

5 As we looked for locations for the  
6 public meetings to solicit comments on the draft  
7 EIS, we chose to replace the west Chicago meeting  
8 with meeting locations in Bartlett and Aurora,  
9 because of their substantial contribution or  
10 commenting activity on the scope of service.

11 If we move then to the next slide, I  
12 would like to talk you through some of the  
13 comments that were submitted by members of this  
14 area, particularly by the method by which they  
15 were submitted. We endeavored to provide as many  
16 opportunities as possible for members of the  
17 community, agencies, elected officials to comment  
18 on this.

19 On the left side of that graphic, you  
20 will see the methods for submission, certainly  
21 the e-filing or the electronic filing on the  
22 Board's website, the toll free project hot line

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1 that Phillis mentioned, the opportunity to speak  
2 your comments formally at a public meeting and we  
3 offered that at the draft EIS meetings, those  
4 transcribed by a Court Reporter at public  
5 meetings, letters, comment forms or petitions  
6 submitted during either of the comment periods.

7 You will see -- you can see the  
8 difference between the scoping comment periods,  
9 which totaled 3,958 comments and those submitted  
10 during the draft, 9,530, for a total comment  
11 submitted on this -- in this action 13,488.

12 The next slide is a distribution of  
13 comments submitted during the draft EIS comment  
14 period. Because of the volume of comments, we  
15 changed the scale a little bit on this one.  
16 Letters again, 9,530. To be precise, comments  
17 were submitted on the draft Environmental Impact  
18 Statement.

19 The community submitting most of  
20 those comments was Barrington with 2,155 followed  
21 closely by Crown Point, Indiana; Chicago,  
22 Illinois; Bartlett and Frankfort.

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1                   Now, also during the draft EIS  
2 period, we had 12 petitions submitted  
3 representing roughly 18,000 signatories, two-  
4 thirds of which were in support -- were in  
5 opposition to the proposed action. One-third was  
6 in support of the proposed action. You will see  
7 a significant move towards the south and the east  
8 of the project area. There is a significant  
9 concentration of petition signatories.

10                   Those come from Griffith, Dyer,  
11 Schereville and Frankfort communities that all  
12 submitted their own petitions. There are several  
13 petitions submitted by the applicant and an  
14 organization in the area known as START.

15                   The final slide that I would like to  
16 show you represents the 10 major issues of public  
17 concern. Now, you have heard a couple of numbers  
18 today, comments submitted during the draft EIS.  
19 You will hear the number of 9,500. Phillis also  
20 mentioned the presence of 43,000 comments -- I'm  
21 sorry, issues.

22                   Inside of every comment, there might

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1 be five to seven issues. Those specific  
2 references to environmental impacts in an area  
3 and that's what constitutes the number of 43,000  
4 issues. That's what you see here on this screen  
5 from left to right in ranking order, this graphic  
6 represents the most common issues that we heard  
7 about in those 9,500 letters or comments.

8 So they are traffic delays and  
9 congestion on the far left, emergency response  
10 directly to its right in ranking order No. 2,  
11 mitigation funding, communities and community  
12 cohesion, hazardous material transport, vehicle  
13 safety, noise, economics and employment, the  
14 number, the frequency and the length of trains  
15 and then finally property values.

16 I will now turn it back over to John  
17 Morton, who will lead a discussion with our  
18 Project Team touching all of these issues in one  
19 fashion or another. Thank you.

20 MR. MORTON: Thank you, Stephanie.  
21 Mr. Chairman, Mr. Vice Chairman, Mr.  
22 Commissioner, we have a number of issues that we

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1 would like to talk in detail and I'm going to  
2 call upon various members of my technical team to  
3 help me do that.

4 The issues that we would like to  
5 cover this morning are listed on the board in  
6 front of you. Those are certainly not all the  
7 issues, but those represent the -- kind of the  
8 main concerns that the public had and where a lot  
9 of the energy and the draft EIS focused its  
10 analysis and the final EIS is focusing its  
11 analysis.

12 I would like to start off with a  
13 discussion of train traffic. I would like to  
14 turn it back over to Mr. Burgel to talk about  
15 that.

16 CHAIRMAN NOTTINGHAM: Thank you.

17 MR. BURGEL: Howdy. The train  
18 traffic numbers or the input in which we use,  
19 basically all the analysis in the EIS is based on  
20 these numbers, so we work to get these numbers  
21 correct. The CN, the applicant, as part of their  
22 operating plan in the application that they gave

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1 us, proposed a certain number of -- diversion of  
2 a certain number of trains onto the -- from the  
3 routes through Chicago onto the EJ&E, based on  
4 their operating plan, which is the method and  
5 manner in which they propose to operate their  
6 trains along the existing traffic along the EJ&E.

7 The facts as we understand them, the  
8 train numbers were given to us, the amount of  
9 tonnage associated with the diversion, the number  
10 of hazardous material of cars that operate before  
11 and after the transaction, the speed, the average  
12 speed of these trains through the crossings was  
13 provided as well as the length of trains beyond  
14 the average length was used in the analysis.

15 We certainly worked on that average  
16 in a couple of aspects and I'll describe those  
17 later. The criteria again, as Vicky described,  
18 is where we have met or exceeded the Board's  
19 threshold for environmental review is what  
20 triggered -- a lot of these lines didn't see any  
21 change and so we didn't spend much time, if any,  
22 on some of these branch mains.

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1           But primarily, the 15 to 24 trains  
2           that were diverted certainly exceeded the  
3           threshold and so we looked at that. We also  
4           looked at the proposed changes in yard activity.  
5           Again, the two major yards on EJ&E were the Kirk  
6           Yard in Gary, which now handles roughly about 680  
7           cars per day and CN envisions going to roughly  
8           2,000 cars per day on the yard there. And then  
9           the yard at East Joliet, they would plan to go  
10          from 680 -- or excuse me, from 500 cars today to  
11          about 1,200.

12           Then we also analyzed and looked at  
13          each of the connections as well as the double  
14          track sections and were there alternatives that  
15          we could look at to that? We also looked -- took  
16          -- we heard from many folks in the scoping  
17          comments about CN's proposed planning horizon of  
18          2012 and was that realistic from a lot of  
19          respects?

20           A lot of people thought that was too  
21          short. A lot of planning agencies typically  
22          analyze growth patterns into the 2025, 2035 era.

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1 And 2012 seems way too short from their point of  
2 view. And you know, the comment was also held  
3 closely by the public that, you know, CN wouldn't  
4 embark on a transaction if these were indeed the  
5 numbers.

6 So they might -- right after the end  
7 of the 2012 period, they might suddenly spring a  
8 lot of trains onto the public. So the concern  
9 was that the time horizon was too short. We also  
10 got comments back from CN that going further out  
11 into the time period was too long. It would be  
12 speculative.

13 Again, there were service  
14 organizations that meets the needs of customers  
15 and customer patterns change capriciously and so  
16 they have to change the traffic patterns to meet  
17 that as well.

18 If somebody were to site a major  
19 distribution facility somewhere on the line,  
20 suddenly there would be a couple more trains per  
21 day and then that changes as business needs also  
22 change.

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1           Our response, SEA's response to that  
2 was we couldn't go too far out, say 2025, 2035,  
3 and that you wouldn't be producing reliable  
4 information. And traditionally, the STB, the  
5 time horizons are much shorter than that. And so  
6 we compromised and extended the time to about  
7 2015, three years longer than the railroad had  
8 asked for.

9           The idea of being -- that was CN's  
10 plans to ramp up the traffic was going to take  
11 roughly three years and this would give us a few  
12 years to see how that traffic balanced out on the  
13 revised alignment.

14           We also took a look at the concern  
15 about could 100 trains suddenly appear out of  
16 nowhere and suddenly be operating by CN along  
17 this route. Again, if there is some time  
18 advantages to operating through Chicago, wouldn't  
19 the -- any shippers out there suddenly fought to  
20 CN in terms of this more expedited route through  
21 Chicago?

22           We looked at that from five different

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1 ways in terms of an economic analysis of, you  
2 know, what type of business is out there?  
3 Certainly, we saw a shift. Fuel prices were high  
4 over the summer. We did see a shift towards the  
5 general railroad industry. But now that prices  
6 are low again, that shift has gone away.

7 So it's a, again, somewhat steady  
8 business, but does see changes on that. We also  
9 saw historical trends for flow in the Chicago  
10 area. The general -- while Chicago is still very  
11 important from the rail industry point of view,  
12 the general trends of Class I is to go south  
13 through the southern tier and bypass Chicago,  
14 because of the time penalty of coming through  
15 Chicago. So we did see that and just, you know,  
16 how that national flow would affect CN traffic  
17 levels here.

18 We then took a hard look at what we  
19 called a bottleneck analysis. Again, the concern  
20 was, you know, if certain segments along EJ&E  
21 were experiencing a certain level of traffic,  
22 would that traffic grow if suddenly all the, you

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1 know, approvals were met and all of a sudden here  
2 comes 100 trains through Barrington, for  
3 instance.

4 That -- from the bottleneck analysis,  
5 we felt that the number of trains through the  
6 Joliet area would be the constraint and not in  
7 other sections through the EJ&E system. That was  
8 based on several factors. It was a qualitative  
9 analysis in terms of this bottleneck analysis.

10 It looked at things like the river  
11 crossing over the Des Plains River Bridge, a lift  
12 bridge, that operates at the discretion of the  
13 navigation vessels. 17 times a day up and 17  
14 times a day down, single track bridge. Although  
15 it was constructed for two tracks, it has only  
16 got one track across it.

17 The approach spans are missing.  
18 There would be quite a bit of work needed to  
19 rehabilitate this bridge to any greater standard  
20 than it is now. So that was certainly a  
21 bottleneck that we looked at in terms of train  
22 flow over 10 miles an hour through that area,

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1 through the east Joliet Yard.

2 The switching operations, again, that  
3 yard is built to switch cars and EJ&E typically  
4 originates and terminates trains there. It  
5 doesn't operate through, so there is going to  
6 have to be some revamping there in terms of the  
7 ability to get the train flow through that east  
8 Joliet area.

9 So the bottleneck analysis tended to  
10 focus on this, what I call, southwest corner of  
11 the yard. We then put numbers around that into  
12 kind of a quantitative analysis we call the why  
13 not, it's the index, which is kind of a  
14 spreadsheet analysis that determines the number  
15 of minutes in a day and how long it takes a train  
16 to actually operate through that particular  
17 segment.

18 It also incorporates things like the  
19 lift bridge outage, the type of track, management  
20 system whether it is track warrant control or  
21 centralized traffic control, whether the industry  
22 is now on-line. Over there by Plainfield there

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1 is a lot of industry there that EJ&E works three  
2 to four hours a day spotting up and pulling cars  
3 from those industry.

4 So the idea that, you know, you would  
5 be able to run the volume of trains that CN is  
6 contemplating would be right at its maximum  
7 through that Joliet area. The numbers that  
8 flowed through the rest of the yard were pretty  
9 much, we felt, going to be at the maximum based  
10 on this constraint in the Joliet area.

11 The last analysis we did was kind of  
12 a computer simulation of the whole system using  
13 software, dispatch software called RGC. It is  
14 the same software that the Chicago CREATE people  
15 use to funnel all the traffic improvements in the  
16 Chicago area for the infrastructure plans that  
17 they put together for that program as well.

18 The rail traffic control model took  
19 into account the proposed changes of where the  
20 Metra plans to increase frequency there say  
21 through Barrington, through West Chicago. We  
22 looked at how the Star Line would interact, you

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1 know, between Joliet and Hoffman Estates. John  
2 will talk about that a little bit later.

3 And then we also looked at the  
4 proposed service in the southeast service through  
5 Chicago Heights. While we looked at the average  
6 number of train lengths in terms of what CN  
7 proposes to run, but we also anticipated that CN  
8 may run trains much longer than the average  
9 length. So we threw in, you know, several 10,000  
10 foot trains to see how they would operate through  
11 there.

12 And the RGC software has a mechanism  
13 inherent with it that it won't advance a train  
14 that we also put the road crossing locations in  
15 there and if the train exceeds the space between  
16 the road crossings, it will hold the train back.  
17 So I mean, it did show that the CN could operate  
18 on the proposed number of trains by the  
19 infrastructure as they offered in the  
20 application.

21 I'll turn it back to John now.

22 MR. MORTON: Thank you, Bill. Next,

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1 I would like to talk a little bit about safety  
2 and I would like to have Leif Thorson talk about  
3 that. For each one of these technical areas, we  
4 are going to try to describe what the issue is,  
5 what we -- the scoping process concerns were,  
6 what methodology we used, we employed, the  
7 analysis that we did in the draft EIS,  
8 conclusions from the draft EIS, the comments that  
9 were -- that SEA received on the draft EIS and  
10 concluded with, you know, the preliminary  
11 conclusions and the work that we are doing on the  
12 final EIS. And with that, Leif?

13 MR. THORSON: Thank you, John. And  
14 good morning, Chairman, Vice Chairman and  
15 Commissioner. My name is Leif Thorson. I'm the  
16 technical area lead for rail safety. And our  
17 group looked at the effects of the proposed  
18 action upon rail safety.

19 During our scoping process, seven  
20 major areas of concern were identified that we  
21 needed to include within the EIS. And these were  
22 infrastructure, the infrastructure of the EJ&E,

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1 accidents or train-related accidents, hazardous  
2 material transport, which will be covered by Mr.  
3 Keller later on, passenger commuter rail safety,  
4 vehicular safety, pedestrian and bicycle safety  
5 and lastly, quiet zones.

6 I'll briefly touch upon each of  
7 these. Some of them more so than others and talk  
8 about what we did in the draft analysis and the  
9 comments that we received and an additional  
10 analysis that we did.

11 The first area which was  
12 infrastructure, you know, was the condition of  
13 the EJ&E capable to handle the traffic that the  
14 applicants are proposing to do?

15 And in short, we reviewed existing --  
16 the existing infrastructure and found that the  
17 EJ&E, its track, its bridges and its right-of-way  
18 were fully adequate and maintained to a standard  
19 that would allow for the traffic that the  
20 applicants proposed. And that that track  
21 complied with the Federal Railroad Administration  
22 or FRA's track safety standards for Class IV

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1 Track.

2 The second area we looked at was  
3 train accidents. And the accidents that we  
4 looked at were the same definition of an accident  
5 that the FRA uses when they define accidents.  
6 And that is any accident involving rail equipment  
7 that results in greater than \$8,400 in property  
8 damage, results in personal injury or release of  
9 a hazardous commodity.

10 SEA staff reviewed the FRA's database  
11 and used a 5 year -- the most current 5 year  
12 window that we have, which would be years 2003  
13 through 2007. So we looked at that database and  
14 the accident statistics that both CN and EJ&E had  
15 for train accidents and how those accidents  
16 compared with peers in that group, peers being  
17 Class I railroads for the CN or Class II or Group  
18 II railroads for the EJ&E.

19 Our findings were that CN had an  
20 accident safety record of 4.2 accidents per  
21 million train miles operated, which compared with  
22 3.9 for the average of the Class Is. We thought

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1 it was slightly higher, it was fairly comparable.

2 The EJ&E on the other hand had a  
3 safety record that was 18.2 accidents per million  
4 train miles operated, which compared with 4.9  
5 accidents for the other Class II peers.

6 Our results or our analysis going  
7 forward, we looked at using Canadian National's  
8 safety record along with the 2015 planning  
9 horizon for trains. Our rationale for doing that  
10 was that the additional train traffic that the  
11 applicants were proposing was going to be more  
12 similar to the CN traffic that they operate now.  
13 And also, safety is more reflective of a  
14 corporate policy and cultures than the  
15 predecessor properties.

16 What we found in our analysis was  
17 that there would be an additional one expected  
18 accident per year on the combined system. That  
19 is to say that the EJ&E -- along the EJ&E, we  
20 would expect there to be -- go from 1.5 accidents  
21 per year to as many as 3. And on the CN Lines we  
22 would go down correspondingly with a net result

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1 of an increase of 1 accident per year.

2 We received numerous comments from  
3 public and from agencies that we consider CN's  
4 Canadian safety record as well as its U.S. safety  
5 record. There is a different method looking at  
6 rail safety in Canada than there is in the U.S.  
7 Whereas, in the U.S., the Federal Railroad  
8 Administration has jurisdiction over that. In  
9 Canada, it is Transport Canada.

10 They have similar roles, similar  
11 functions, but entirely different reporting  
12 systems as it relates to accidents. So a direct  
13 comparison between the two was not allowed. But  
14 what we did find and we have a rather detailed  
15 breakout in the proposed final -- or the final  
16 EIS is that CN's Canadian safety record is  
17 comparable to the U.S. safety record. And we did  
18 not think that inclusion of the Canadian safety  
19 record was necessary or required for our  
20 analysis.

21 The third item that we looked at was  
22 passenger and commuter rail safety. We want to

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1 be able to show what the implications of the  
2 proposed action would be on passenger and  
3 commuter trains. The difference being primarily  
4 is that the commuters or the Metra trains, people  
5 going to and from work, and the passenger trains  
6 are primarily the Amtrak trains which is more a  
7 long distance haul.

8 What we -- what our analysis showed  
9 is that currently on the CN Lines there are a  
10 number of corridors that passenger trains and  
11 freight trains commingle either on the same track  
12 or on the same corridor. We did not have that  
13 situation along the EJ&E. Along the yard there  
14 are no shared corridors between passenger and  
15 commuter.

16 As a result of the proposed action,  
17 there would be significant reduction in the  
18 number of freight trains on those shared  
19 corridors, on the CN Lines, so we found no  
20 adverse effects. And in fact, we thought there  
21 would be a positive result to commuter and  
22 passenger safety by removing those freight

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1 trains.

2 The next area that we looked at was  
3 vehicle safety and what was the effect upon the  
4 proposed action for cars, trucks, buses and other  
5 motorized vehicles at highway rail crossings?  
6 There are 178 public at-grade crossings along the  
7 EJ&E Lines. And 155 along the CN Line segments  
8 that we looked at.

9 This included all crossings on all of  
10 the EJ&E western properties that would be  
11 acquired by CN, as well as the CN Line segments  
12 inside of the arc and a distance of 5 miles  
13 outside of the arc. We thought in our study area  
14 that we wanted to include a buffer zone outside  
15 of the yard for trains that might be negotiating  
16 those connections.

17 We used the existing FRA's database,  
18 the FRA maintains the definitive grade crossing  
19 database that the states also use for their  
20 analysis. We started with that and then we field  
21 verified those crossing locations as to types of  
22 warning devices, number of tracks through there

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1 and number of roadway lanes, so that we could  
2 update the accident prediction again using year  
3 2015 numbers.

4 Using -- our preliminary conclusions  
5 running those accidents is that there will be a  
6 decrease from 11 accidents per year to 10  
7 accidents per year on the combined system. It --  
8 the numbers went from 4.5 to 6.0 along the EJ&E  
9 for an increase of 1.5 accidents per year and a  
10 decrease of 2.5 accidents per year inside the  
11 yard from 6.5 to 4.0 along the CN Lines.

12 This reduction is due primarily to  
13 the decrease in the number of trains on the CN  
14 Lines where we had higher ADTs or Average Daily  
15 Traffic.

16 The next thing we did with the  
17 vehicle safety is we looked at the high predicted  
18 accident frequency locations. Using past EISes  
19 before the Board, there is a -- there was a  
20 threshold or a target to look at accident rates  
21 of .15 per year or greater. What that equates to  
22 is one accident per 7 years.

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1           A crossing that had a predicted  
2 accident of that rate was considered to be a high  
3 accident frequency location. Under the No Action  
4 scenario, we -- there were five locations, three  
5 of which were on CN Lines, two of which were on  
6 the EJ&E Lines.

7           Under the proposed action, there were  
8 four and they were all on the EJ&E Lines. Those  
9 four were Lake Street and Miller Street in  
10 Griffith, Indiana; Renwick Road in Plainfield;  
11 and Woodruff Road in Joliet. We have recommended  
12 mitigation measures that would address the Lake  
13 Street and Miller Street in Griffith, Indiana.

14           Renwick Road at the time we did our  
15 analysis had simply flashers. It has since been  
16 upgraded through normal processes to include  
17 gates, so that would -- that mitigation there is  
18 not required. And Woodruff Road is addressed  
19 within the community agreement between CN and  
20 Joliet.

21           The next area that we looked at was  
22 pedestrian safety. Pedestrian crossings, we

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1 looked at pedestrian safety at pedestrian  
2 crossings. And those occur at legitimate and  
3 authorized locations along the line and they  
4 occur at one of two locations.

5 Predominantly, they are where the --  
6 similar to a sidewalk, where it shares the same  
7 corridor as the roadway. And as such, when the  
8 state DOTs or the Illinois Commerce Commission,  
9 as stated in the case of Illinois, looks at those  
10 and determines the adequacy of the warning  
11 devices and the appropriateness of those devices,  
12 they take into account the pedestrian uses at  
13 that location as well.

14 The second type is those where we  
15 have trails or pedestrian only uses, where they  
16 are not sharing the same corridor. Those are  
17 under a slightly jurisdiction. Those are  
18 primarily considered private crossings that exist  
19 between agreement between the railroad and the  
20 agency having authority over the trail.

21 There are -- along the lines that we  
22 looked at, there are 16 -- I'm sorry, I'm going

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1 to back up. We also identified what we  
2 considered trails. We tried to identify  
3 designated trails. And what we use was the  
4 Department of Natural Resources of both Illinois  
5 and Indiana maintain a GIS database and a listing  
6 of trails.

7 We overlaid those onto the system.  
8 There are 16 on the EJ&E and 19 on the Canadian  
9 National Lines that are pedestrian access along  
10 side of highway rail crossings. And there are  
11 three on the EJ&E and two on the CN Lines that  
12 are pedestrian only at-grade crossings.

13 SEA staff solicited input from the  
14 Federal Railroad Administration, the Illinois  
15 Commerce Commission and the DOTs of both Illinois  
16 and Indiana for guidance in policy on adequacy of  
17 the warning devices, the appropriateness of those  
18 for pedestrian safety.

19 And what we discovered was that none  
20 of those agencies had standards or policies that  
21 addressed pedestrian issues, similar to what they  
22 did for highway vehicles. Our recommendation for

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1 mitigation was that a diagnostic review be done  
2 at these locations. And a diagnostic review is  
3 an on-site meeting between railroad, the agencies  
4 that have responsibility over those warning  
5 devices, the trail authority and other local  
6 users that may have, you know, special knowledge  
7 to provide input to that. And that those  
8 diagnostic reviews would identify and look at the  
9 appropriateness of the warning devices and if any  
10 modifications should be done.

11           Following release of the draft EIS,  
12 we received hundreds of comments regarding  
13 pedestrian issues as it relates specifically to  
14 school age children. Concerns were also given  
15 for student drivers, proximity of schools to the  
16 tracks and school bus safety. This is something  
17 that was covered in more general terms under the  
18 draft, but in the final EIS, we have expanded and  
19 added considerable language and some additional  
20 analysis to approach the school issue.

21           What we have -- what we did was using  
22 U.S. Census Bureau data, local GIS data, Illinois

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1 and Indiana School Board of Education and  
2 National Catholic Education Association and local  
3 school boards and use of aerial photography, we  
4 identified the number of schools K through 12  
5 that were located 2 miles from the line segments,  
6 1/4 of a mile from the line segments and that  
7 were immediately adjacent to the line segments.

8 What our analysis showed was that  
9 there are 12 schools immediately adjacent to the  
10 tracks along the EJ&E, 14 along the CN Lines.  
11 Within a 1/4 of a mile of the track, there are 44  
12 schools along the EJ&E Line segments and there  
13 are 118 along the CN Line segments. And within  
14 the 2 mile buffer, there are 344 schools along  
15 side the EJ&E Lines and 983 along the CN Lines.

16 So our preliminary findings were that  
17 although those problems and concerns may be  
18 exacerbated along the EJ&E Lines, they are offset  
19 by improvements along the CN Lines for those  
20 conditions as well.

21 Now, the applicants have offered  
22 voluntary mitigation that would specifically

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1 address these issues of schools or at least some  
2 of these issues of schools and that would include  
3 Operation Lifesaver training, educational  
4 materials. And in the case of those schools and  
5 parks that are adjacent to the tracks, fencing.

6 The last item that I'm going to  
7 discuss here is that of quiet zones and the  
8 implication that the proposed action would have  
9 on those existing locomotive on quiet zones. The  
10 quiet zones are established by the communities  
11 using Federal Railroad Administration Rules and  
12 look at a safety risk analysis on the corridor.

13 There are seven existing -- there are  
14 six existing and one that was proposed at the  
15 time of the applicant's application and five of  
16 those were along EJ&E Lines. Two of those were  
17 along CN Lines. Our analysis looked at again the  
18 year 2015 and using the FRA's risk calculator, we  
19 looked at the proposed action and what affect it  
20 would have, if any, on those communities ability  
21 to maintain the quiet zone.

22 What we found is that only one quiet

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1 zone, that in the City of Barrington, was likely  
2 to fall out of compliance as the proposed action.  
3 And we have proposed mitigation that would  
4 require the applicants to maintain the  
5 Barrington's quiet zone as part of that.

6 And I think that concludes mine.

7 MR. MORTON: Thank you, Leif.

8 MR. THORSON: Um-hum.

9 MR. MORTON: The next issue that we  
10 would like to talk about is traffic delay in  
11 emergency response. If you remember, the graphic  
12 that Stephanie showed you, those are the two  
13 issues that received the greatest number of  
14 comments. To talk about the analysis that we did  
15 is Mr. John Lazzara.

16 MR. LAZZARA: Thank you, John. Good  
17 morning, Mr. Chairman, Mr. Vice Chairman and Mr.  
18 Commissioner. As John mentioned, my name is John  
19 Lazzara and I'm a transportation planning  
20 engineer. And I am the technical lead for the  
21 transportation analysis as well as the emergency  
22 services analysis that we will talk about in a

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1 minute.

2 I would like to start off with the  
3 transportation analysis. Many roadways within  
4 the study area currently experience vehicular  
5 traffic congestion without the influence of train  
6 operations. This trend continues to grow each  
7 year. Transportation effects at highway rail and  
8 crossings is a primary concern and is directly  
9 related to train operations.

10 The proposed actions effects to the  
11 transportation system involve delay and mobility  
12 issues, both on the local and regional level.  
13 The objective of this EIS is to identify the  
14 effects related to the change in train operations  
15 for the proposed action.

16 During the scoping process, comments  
17 noted concerns that have been consistently  
18 expressed throughout the EIS process. These  
19 issues included average daily traffic, also  
20 referred to as ADTs, that will be used during the  
21 analysis, the growth rates to be applied to  
22 project future traffic volumes and a planning

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1 horizon to be considered as Mr. Burgel mentioned  
2 earlier.

3 The analysis started with data  
4 collection, which was initiated in December of  
5 2007. SEA used the Federal Railroad  
6 Administration database to develop an inventory  
7 of crossings. This information was supplemented  
8 by data sources such as state and county DOTs and  
9 various municipalities to develop existing  
10 traffic volumes.

11 We also did field verifications of  
12 all the at-grade and grade separated crossings  
13 along the EJ&E and CN Lines. Crossings in line  
14 with the change in trains were initially examined  
15 which included 112 at-grade -- public at-grade  
16 crossings along the EJ&E Rail Line and 134  
17 crossings along the CN Lines.

18 When we started to establish our  
19 existing base condition for traffic data, we  
20 obtained any available traffic data on a daily  
21 basis. The daily information was available for  
22 years ranging from 1980 through 2007. SEA

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1 developed growth rates that we applied to this  
2 traffic information to grow those existing  
3 numbers up to a base condition for 2007.

4 In growing the traffic volumes, SEA  
5 looked at historical traffic data, population  
6 statistics and contacts with local agencies to  
7 develop county level growth rates to use for the  
8 projections. SEA then applied these same county  
9 level growth rates to project traffic through our  
10 planning horizon which was 2015.

11 Next, SEA looked at the ADT threshold  
12 for analysis for a grade crossing. SEA  
13 considered initially 5,000 vehicles per day at a  
14 crossing if the at-grade crossing had at least  
15 5,000 vehicles per day, it would be considered in  
16 the analysis.

17 Through the scoping process, there  
18 were many comments on this threshold and SEA  
19 reconsidered this and the threshold was lowered  
20 to 2,500 vehicles per day. This provided a  
21 conservative approach incorporating more  
22 crossings into the analysis.

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1                   VICE CHAIRMAN MULVEY: 2,500 vehicles  
2 a day in both directions?

3                   MR. LAZZARA: Correct.

4                   VICE CHAIRMAN MULVEY: Thanks.

5                   MR. LAZZARA: Total, in total. The  
6 crossings that were based on this ADT threshold,  
7 the crossings for the EJ&E resulted in 87  
8 crossings meeting that threshold and 134  
9 crossings along the CN Line.

10                  Delay mobility issues were then  
11 considered. The existing roadway network is  
12 congested today and SEA needed to consider local  
13 and regional effects to account for travel  
14 between municipalities as well as within the  
15 communities themselves. SEA considered several  
16 factors in its calculations.

17                  SEA used the average number of  
18 trains, average train speed, average train length  
19 and the average daily vehicular traffic on the  
20 roadways. To determine if crossings were  
21 substantially affected, SEA established three  
22 threshold criterias of significance for the

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1 analysis.

2 The first criteria was level of  
3 service at the crossing. If the level of service  
4 at a highway rail at-grade crossing was a Level  
5 of Service D or better in the No Action Condition  
6 and it dropped to below Level of Service D in the  
7 Proposed Action Condition, the crossing was  
8 determined to be substantially affected.

9 The second criteria was used -- that  
10 was used was from the Federal Highway  
11 Administration and that's the total delay in a 24  
12 hour period. If this total delay, total  
13 vehicular delay, exceeds 40 hours or 2,400  
14 minutes when collected over a 24 hour period,  
15 then that crossing was determined to be  
16 substantially affected.

17 The third and final criteria used was  
18 queue length changes. A queue length is where  
19 traffic backs up from an at-grade crossing and  
20 stacks up towards another intersection. It was  
21 decided that if a queue length backed up in the  
22 Proposed Action Condition and blocked a major

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1 thoroughfare, which did not get blocked under the  
2 No Action Condition, then this also would be  
3 considered a substantial affect to that crossing.

4 SEA performed calculations for  
5 average delay per delayed vehicle, average delay  
6 for all vehicles, total delay for all vehicles,  
7 total blocked crossing time and the change in  
8 queue lengths. In general, the draft EIS  
9 concluded that there would be negative effects  
10 from increases in vehicular delays at highway  
11 rail at-grade crossings along the EJ&E Rail Line  
12 and positive benefits from decreases in vehicular  
13 delay at crossings along the CN Rail Lines.

14 In the draft EIS, SEA concluded that  
15 there were 16 crossings substantially affected.  
16 Two of these crossings were due to level of  
17 service criteria and they were located in Joliet,  
18 Illinois. The other 14 crossings were spread  
19 throughout the study area and they were due to  
20 total delay, increased queue length or a  
21 combination of both conditions.

22 One of these 16 crossings did not

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1 warrant consideration for mitigation. It was  
2 Diamond Lake Road in Mundelein, Illinois. This  
3 crossing was considered substantially affected in  
4 the draft EIS due to queue length increases, but  
5 a dedicated right turn lane allows the blocked  
6 movement to still occur. So this, SEA  
7 determined, mitigation would not be warranted.

8 Mitigation presented in the draft EIS  
9 was a range of options for the public to  
10 consider. These options ranged from voluntary  
11 mitigation to roadway modifications to grade  
12 separations as well as other options. SEA  
13 requested input from the public on these  
14 strategies.

15 During the draft EIS comment period,  
16 many people commented on issues such as average  
17 daily traffic volumes that were used in our  
18 calculations, the growth rate factors that were  
19 used to develop our traffic projections, both  
20 comments were indicating that the growth rates  
21 were too high and too low.

22 Commenters noted that the threshold

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1 criteria for determining substantial effects was  
2 greater than used in past cases. Commenters  
3 noted that there was concern about proximity of  
4 signalized intersections to at-grade crossings  
5 and that there were not enough substantial  
6 effects noted in the draft EIS.

7 Comments relative to the mitigation  
8 really focused on grade separations. The public  
9 felt that there was not enough grade separations  
10 proposed and there was not enough mitigation in  
11 general for transportation effects.

12 In the final EIS analysis, several  
13 factors were updated. There was a change in  
14 average daily traffic relative to new information  
15 becoming available. SEA researched information  
16 on Illinois DOT website, contacted the Illinois  
17 and Indiana DOTs, contacted counties and  
18 municipalities and received information through  
19 the draft EIS comment period on new daily traffic  
20 information.

21 SEA verified this information and,  
22 where appropriate, used it in the updated

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1 analysis. Train operations also were updated.  
2 The applicant modified a connection configuration  
3 at Madison, Illinois and they also improved the  
4 double tracking at least in Mundelein, Illinois.  
5 With these improvements, they increased the train  
6 speeds which affected the operating speeds and  
7 the delay associated with those -- with several  
8 crossings in those areas.

9 One new highway crossing along the  
10 EJ&E Rail Line was also added to the analysis,  
11 because with updated 2015 traffic volumes, this  
12 roadway Keating Drive, 87<sup>th</sup> Street near Aurora,  
13 Illinois now met the 2,500 vehicles per day  
14 threshold.

15 Now, I would like to talk briefly  
16 about the preliminary conclusions found in the  
17 final EIS. SEA's preliminary analysis shows that  
18 13 highway rail at-grade crossings are currently  
19 considered substantially affected. Starting with  
20 the 16 substantially affected crossings in the  
21 EIS, two were eliminated due to train operation  
22 changes. This was at Allison Road and Cicero

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1 Avenue in Madison, Illinois. Both of these  
2 locations, the train speeds increased, the total  
3 delay decreased below the substantial affected  
4 criteria level.

5 Next, there were three crossings that  
6 were eliminated from being potentially  
7 substantially affected due to the ADTs being  
8 updated. In this case, the ADTs were reduced and  
9 this reduced delays and queue lengths and some of  
10 the queue length conditions are still  
11 substantially affected, but they are also -- they  
12 happen in the No Action Condition, which would  
13 indicate that there were preexisting conditions.

14 And finally, there were two crossings  
15 that were added to the potentially substantial  
16 affected list, because the ADTs were updated and  
17 increased. This affected the queue lengths at  
18 those crossings.

19 In the draft EIS, the EJ&E Rail Line  
20 crossing at Illinois 6083 in Mundelein, Illinois  
21 showed a total delay above the 40 hour total  
22 vehicular delay threshold. However, it was not

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1 identified as a substantially affected crossing,  
2 at that time.

3 The applicant modified their double  
4 track connection at least and updated ADT  
5 information was used. At this crossing, this  
6 increase -- the train speed, the train operating  
7 speed at several crossings, including the  
8 Illinois 6083 crossing. The updated analysis  
9 shows that the total delay for the Illinois 6083  
10 crossing now falls below the 40 hour total delay  
11 threshold is not considered substantially  
12 affected.

13 The preliminary analysis in the final  
14 EIS indicates that mitigation is proposed for  
15 eight crossings. SEA is considering, at this  
16 time, two crossings that are considered under the  
17 applicant's agreement with Joliet, it's Woodruff  
18 Road and Washington Street in Joliet, Illinois,  
19 two grade separations proposed at Ogden Avenue  
20 and Aurora, Illinois and Lincoln Highway in  
21 Lynnwood, Illinois and four crossings that SEA  
22 considers potentially warranting traffic advisory

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1 signs indicating do not block intersections to  
2 address queue length issues.

3 These warning signs would be posted  
4 at Old McHenry Road in Hawthorne Woods, Illinois,  
5 Main Street in Lake Zurich, Illinois, Huff Street  
6 in Barrington, Illinois and finally Plainfield-  
7 Naperville Road in Plainfield, Illinois.

8 Of the 13 crossings -- 13 crossings  
9 substantially affected, the remaining 5 are  
10 related to total vehicle delay issues and in one  
11 case an increased queue lane where a blocked  
12 movement can still occur with the existing  
13 dedicated right turn lane.

14 Traffic advisory signs were not  
15 deemed to be effective mitigation for total delay  
16 effects. Also, grade separations were not  
17 determined to be appropriately based on specific  
18 level of effects at these highway rail at-grade  
19 crossings.

20 Thus, in SEA's preliminary analysis,  
21 mitigation is not proposed for the 5 remaining  
22 crossings, which include Diamond Lake Road in

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1 Mundelein, Illinois, Montgomery Road in Aurora,  
2 Illinois, Western Avenue in Park Forest,  
3 Illinois, Chicago Road in Chicago Heights,  
4 Illinois and Broad Street in Griffith, Indiana.

5 As mentioned before, Allison Road in  
6 Mundelein, Illinois and Cicero Avenue in Madison,  
7 Illinois are no longer considered substantially  
8 affected due to increased train speeds associated  
9 with the applicant's improved double track and  
10 connection configurations.

11 As an additional recommendation  
12 condition, SEA, in a preliminary analysis,  
13 believes it is important for the applicant to  
14 follow through with the revised double track in  
15 Mundelein and the connection at Madison in order  
16 to decrease -- increase train operating speeds  
17 and decrease the delay.

18 As a final preliminary condition, SEA  
19 also recommends that the applicant consult with  
20 the Illinois Commerce Commission and the Indiana  
21 DOT to identify signalized intersections in close  
22 proximity, approximately, 1,000 feet to at-grade

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1 crossings.

2 That concludes the transportation  
3 analysis. I would like to move on to the  
4 emergency service analysis. Key issues within  
5 this category were the impacts of the additional  
6 train traffic and the response times of emergency  
7 service providers, such as ambulance, fire and  
8 police personnel.

9 The commenters' concerns were  
10 consistent with these key issues that I just  
11 mentioned about the effect of congestion and  
12 delays at highway rail at-grade crossings on  
13 emergency service response times.

14 This evaluation considered the  
15 proximity of each facility to the rail line,  
16 locations of all the crossings and the number of  
17 highway rail at-grade crossings. SEA located all  
18 emergency service providers along the EJ&E and CN  
19 Rail Lines and evaluated those that were located  
20 within 2 miles of the EJ&E Rail Line or CN Rail  
21 Line of a zone where emergency service providers  
22 have a higher probability of interacting with

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1 rail operations because of the impact of traffic  
2 delays and the limited number of available routes  
3 or they were located within 2 miles of at least  
4 one public highway rail at-grade crossing and 1  
5 mile away from a public grade separated crossing.  
6 Again, limiting their access to get to the other  
7 side of the tracks.

8 And the final criteria was they were  
9 located outside a reasonable distance of a  
10 similar facility on the opposite side of the rail  
11 line. Interviews were conducted with various  
12 service providers about their dispatch procedures  
13 emergency service routes, communication  
14 technology, the number of emergency vehicles  
15 crossing per day and finally the procedures  
16 currently followed when an emergency vehicle  
17 arrives at a blocked crossing.

18 SEA assumed a response time for many  
19 emergency service providers is within the 4 to 6  
20 minute limitation time window set forth by the  
21 National Fire Protection Association. So an  
22 increased delay of 30 seconds or more could be a

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1 serious effect.

2 As additional screening criteria to  
3 identify which facilities may experience  
4 potentially substantially affected crossings as a  
5 result of the proposed action, SEA analyzed the  
6 highway rail at-grade crossings and used two  
7 criteria: An increase of 30 seconds for the  
8 average delay per delayed vehicle or an average  
9 or an increase of 30 minutes in total blocked  
10 crossing time.

11 This took into consideration the  
12 effect an emergency vehicle might have to wait in  
13 the average delay and also the frequency that it  
14 might occur at a blocked crossing.

15 In SEA's draft EIS analysis, SEA  
16 analyzed 104 police stations, 239 fire stations  
17 and 41 hospitals for potential impacts. SEA  
18 determined that impacts on police response would  
19 not be based on the location of facilities,  
20 because police are typically deployed throughout  
21 the community.

22 11 fire and emergency medical service

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1 providers near the EJ&E Rail Line would  
2 experience potentially substantial effects as a  
3 result of the proposed action. Of these 11, 9  
4 were fire stations and 2 were emergency medical  
5 facilities.

6 Mitigation was presented in the draft  
7 EIS as a range of options that SEA was  
8 considering for effects to emergency services.  
9 Similar to the transportation mitigation, SEA  
10 requested public input on these options. These  
11 options ranged from applicant's voluntary  
12 mitigation to enhanced communications in  
13 relocating emergency service facilities.

14 During the draft EIS comment period,  
15 emergency services was the No. 2 issue that was  
16 identified through comments. Many people cited  
17 specific personal examples of trains historically  
18 blocking crossings and affecting the fire  
19 protection and ambulance service. Even more  
20 people were -- expressed concern of future  
21 potential delays.

22 During the comment period of the

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1 draft EIS, SEA received comments from the public  
2 identifying several other emergency service  
3 facilities as having the potential to be  
4 substantially affected. In response to the  
5 comments, SEA screened all of the facilities  
6 suggested in the communities and identified 10  
7 other emergency service facilities that warranted  
8 additional analysis.

9 In SEA's final EIS analysis, SEA  
10 conducted additional analysis to determine if  
11 these facilities would be potentially  
12 substantially affected by their proposed action.  
13 In the preliminary findings, SEA determined that  
14 3 of these 10 facilities would be potentially  
15 substantially affected and they include Advocate  
16 Good Shepherd Hospital in Barrington, Illinois,  
17 West Chicago Fire Protection District Station 1  
18 and West Chicago Fire Protection District Station  
19 3, both in West Chicago, Illinois.

20 Now, I would like to talk about the  
21 preliminary conclusions of the EIS. The  
22 preliminary findings indicate that 14 potentially

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1 substantially affected emergency services would  
2 result from the proposed action. This includes  
3 the 11 facilities identified in the draft EIS  
4 analysis, plus the 3 additional facilities that I  
5 just mentioned through the updated FEIS analysis.

6 SEA's preliminary mitigation  
7 considerations include one potentially  
8 substantially affected emergency service facility  
9 that was found to not warrant mitigation. St.  
10 James Hospital in Olympia Fields has three grade  
11 separations located within a 3 mile radius and  
12 thus the access is less affected by increased  
13 train operations and does not warrant mitigation.

14 This leaves 13 potentially  
15 substantially affected emergency service  
16 facilities that were found to warrant mitigation.

17 In determining appropriate mitigation for the  
18 affected facilities, SEA considered several  
19 factors, including the following: Access to and  
20 from the emergency service providers, the  
21 existing service areas and emergency response  
22 operations, the applicant's voluntary mitigation

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1 and public input.

2 The -- in the applicant's voluntary  
3 mitigation, one of the mitigations, voluntary  
4 mitigations, the applicant -- includes the  
5 applicant notifying emergency service dispatching  
6 centers when an at-grade crossing would be  
7 blocked by a stopped train and may be unable to  
8 move for a significant period of time.

9 This voluntary mitigation also  
10 commits the applicants to work with communities  
11 towards improving communication by providing  
12 items such as dispatching monitors for real time  
13 train locations when requested.

14 In the preliminary review of  
15 mitigation, as an additional analysis --  
16 additional mitigation condition, SEA proposed  
17 closed captioned TV cameras to provide real time  
18 video monitoring, information on train  
19 operations, for 12 of the 13 substantially  
20 affected emergency service facilities.

21 The cameras would be positioned at  
22 strategic highway rail at-grade crossings, which

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1 would provide train operational information to  
2 emergency service dispatchers for each of the  
3 affected facilities.

4           The 13<sup>th</sup> emergency service facility is  
5 in the Joliet -- is the Joliet Fire Department  
6 Station No. 8 in Joliet, Illinois. Mitigation  
7 for this facility is covered by the applicant's  
8 agreement with the City of Joliet that no further  
9 mitigation is proposed in the preliminary  
10 analysis.

11           This concludes my portion of the  
12 briefing. Thank you.

13           MR. MORTON: Thank you, John. I  
14 would just like to expand on one of the items  
15 that John talked about. In the draft EIS, SEA  
16 requested that the public comment on a number of  
17 things including the appropriate percentage that  
18 the applicant might commit to a grade separation  
19 project.

20           SEA received a lot of comments, a lot  
21 of discussion on that. I think as SEA pointed  
22 out in the draft EIS, that grade separations, you

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1 know, primarily benefit the public. They are  
2 also a function of preexisting conditions as well  
3 as a result of the transaction. For the final  
4 EIS undertook an examination of kind of the  
5 regional contribution of the transaction to total  
6 delay.

7 It would contribute about 15 percent  
8 to total delay and SEA is proposing that the  
9 applicants would contribute 15 percent to a grade  
10 separation which is more than their traditional  
11 share of a grade separation.

12 With that, I would like to turn over  
13 to talk about the noise analysis and would like  
14 to have Tim Casey step forward and discuss our  
15 analysis on noise.

16 MR. CASEY: Thanks, John. Good  
17 morning, Chairman Nottingham and Vice Chairman  
18 Mulvey and Commissioner Buttrey. I'm Tim Casey.  
19 I'm the technical lead for the noise and  
20 vibration analyses and I want to thank you for  
21 the opportunity to brief you on SEA's studies.

22 The basic issues that SEA addressed

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1 are -- is a potential for noise and vibration to  
2 increase as a result of trains rolling down the  
3 track, a potential for locomotive horn noise  
4 increase at-grade crossings and any potential for  
5 vibration changes.

6           During the scoping period, we  
7 received comments touching upon all those  
8 subjects in addition to concerns about potential  
9 vibration at Fermi Lab and potential changes to  
10 vibration at Fermi Lab.

11           SEA used standard noise and vibration  
12 analysis methods that are consistent with the  
13 methods that have been used on prior Board  
14 decisions and they are also consistent with the  
15 methods used to assess freight train noise and  
16 vibration nationwide under current practices.

17           Using the Board's thresholds for  
18 noise analysis that exist in the regulations, the  
19 Environmental Regulations, SEA determined that  
20 almost every segment on the EJ&E arc is-- was  
21 predicted to experience a traffic increase that  
22 required a noise analysis. Almost every segment

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1 on -- was analyzed by SEA.

2 In addition, both the Kirk and East  
3 Joliet Rail Yards were projected to experience  
4 activity increases that trip the thresholds for  
5 noise analyses, therefore, they were also  
6 included in the work we did.

7 SEA expressed a desire to evaluate  
8 both the effects and also the benefits of the  
9 proposed action, so we performed noise analyses  
10 on the 5 CN Lines that radiate inside the arc as  
11 well.

12 The Board's environmental rules  
13 require that the noise analysis express the  
14 results using the day/night noise level, that's  
15 abbreviated LDN. The day/night noise level, the  
16 LDN, is a descriptor that is actually calculated.  
17 It is not instantaneously measured. It doesn't  
18 represent noise levels that are experienced on a  
19 24 hour basis continuously.

20 Rather, the LDN takes average hourly  
21 noise levels for 24 continuous hours and it  
22 applies a 10 decibel penalty to the nighttime

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1 noise levels. The LDS is a calculated noise  
2 parameter that has a penalty assessed to  
3 nighttime noise periods. And in that matter, it  
4 is useful for evaluating community response to  
5 noise, because people generally don't like noise  
6 at night, whereas they have a higher tolerance  
7 for it during the daytime.

8 It is important that you understand  
9 that the LDN does not represent continuous noise  
10 levels for an entire 24 hour duration nor does it  
11 represent instantaneous noise levels during the  
12 train pass-by.

13 From a practical perspective, it is  
14 also important to recognize that train noise  
15 levels rise and fall as a train pass-by event  
16 occurs. And after the pass-by ends and the train  
17 is gone, noise levels drop down to existing kind  
18 of background noise levels that presumably are  
19 acceptable in the project area. And really all  
20 the proposed action has the potential to do is  
21 to increase the frequency of train pass-by  
22 events.

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1           Let's see, I'm going to skip over  
2           that concept. SEA measured noise levels and  
3           vibration levels throughout the project area.  
4           SEA performed 24 hour noise measurements at 41  
5           locations. The sound level meters continuously  
6           process data, stored it every hour for continuous  
7           24 hours. That information allowed SEA to  
8           determine the LDN, the day/night noise level at  
9           these 41 locations spread roughly equally  
10          throughout the project area.

11          SEA also measured noise from train  
12          pass-by events. Those measurements were --  
13          served a different purpose. That allowed SEA to  
14          identify a noise emissions term for a locomotive  
15          and a rail car and for locomotives and rail cars  
16          operated by CN, operated by the EJ&E and operated  
17          by any other freight carrier active in the  
18          overall project area.

19          These pass-by measurements, that data  
20          was used in the model, the mathematical model  
21          that we constructed to assess future noise  
22          levels. So in that way, we kind of custom

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1 tailored our model to the project area by using  
2 these project specific noise emission terms that  
3 SEA measured.

4 SEA also measured vibration  
5 continuously for 24 hours at a number of  
6 locations in the project area. And similar to  
7 the work that we did in the noise analysis, SEA  
8 measured vibration specifically from train pass-  
9 bys and also created vibration events and  
10 measured the propagation of that controlled  
11 vibration event through the soil.

12 And the combination of those  
13 propagation test measurement data, the -- and the  
14 pass-by data, vibration data, it allowed SEA to  
15 assess future vibration levels associated with  
16 the proposed action. SEA also performed a very  
17 detailed ground vibration analysis at Fermi Lab.

18 The noise model that SEA constructed  
19 used equations that were published by FTA and FRA  
20 as recently as 2005 and 2006. Additionally, SEA  
21 implemented the FRA locomotive horn noise model  
22 to assess horn noise at public grade crossings.

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1 We performed a remarkably detailed analysis of  
2 locomotive horn noise at every public grade  
3 crossing. The results of that led to the  
4 creation of site specific unique locomotive horn  
5 noise contours at every over 100 public grade  
6 crossing in the project area. And that is a  
7 level detailed and I don't think many people  
8 expect it.

9 Similarly, SEA assessed vibration,  
10 the vibration assessment used in current FTA  
11 methods and at Fermi Lab in addition to the FTA  
12 methods, we used site specific geologic data that  
13 was provided by Fermi Lab and also a finite  
14 element analysis model that had over 1,000,000  
15 element points in it. It was a very rigorous and  
16 detailed analysis.

17 Results of all those analyses were  
18 plotted using GIS technologies and digital area  
19 photos. And communicated to the team and also in  
20 figures in the appendix of the draft EIS as noise  
21 and vibration contours. And you can see where  
22 noise and vibration levels were projected to

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1 reach threshold levels by identifying -- by  
2 visual inspection of those contours.

3 So the draft EIS includes SEA's noise  
4 and vibration results. Based on train pass-by  
5 measurements, SEA determined that CN trains  
6 actually are quieter than other trains that  
7 operate in the project area. However, the  
8 projected increase in train traffic results in an  
9 overall increase in average hourly levels and  
10 therefore the LDN, the day/night noise level is  
11 projected to increase also.

12 Under existing conditions, SEA's  
13 analysis identified roughly 4,800 noise effects,  
14 2,800 of them were on the existing CN Lines and  
15 about 2,000 of them are on the EJ&E, that's under  
16 existing conditions. Under the proposed action,  
17 SEA's analysis determined that, approximately,  
18 3,000 noise effects are predicted to occur and  
19 those are largely on the EJ&E and areas adjacent  
20 to the EJ&E.

21 Under the proposed action, SEA also  
22 determined that there is a potential net benefit,

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1 a net reduction of about 2,700 noise effects on  
2 the CN Lines. And in the draft EIS, SEA provided  
3 a simple comparison of the projected effects  
4 under the proposed action and the projected  
5 benefits and that results of that simple  
6 comparison showed a net increase of about 300  
7 noise effects under the proposed action.

8 In this simple comparison, we  
9 received some comments during the comment  
10 response period. It is important to note that  
11 this simple comparison is a convenient way to  
12 assess both the benefits and the effects that  
13 neither diminishes the merit nor the consequences  
14 of a proposed action. And it also provides an  
15 opportunity to look at things on both a local and  
16 a regional scale, which fulfills the full  
17 disclosure requirements of NEPA.

18 SEA also identified, approximately,  
19 1,600 noise effects inside a noise contour that,  
20 for lack of a better term, will call up the noise  
21 mitigation contour. It was the 70 DBA LDN  
22 contour and we will talk a little bit about that

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1 in just a few minutes here.

2 SEA's vibration analysis determined  
3 that vibration -- ground borne vibration levels  
4 associated with CN trains, EJ&E trains and other  
5 trains that operate in the greater project area,  
6 do not differ materially. So that the analysis  
7 results in the draft EIS suggested that we don't  
8 expect vibration levels to change if more CN  
9 trains operate on the EJ&E, because vibration  
10 levels right now are comparable.

11 Vibration levels from CN trains, EJ&E  
12 trains and other trains that operate in the  
13 project area are comparable. So under the  
14 proposed action, we don't expect there to be a  
15 net increase in vibration associated with train  
16 pass-bys.

17 And that's kind of an important  
18 concept to embrace. Unlike noise which for the  
19 purposes of our work here on the project, which  
20 is assessed on a cumulative basis, vibration is  
21 only assessed on a per pass-by basis. It is not  
22 a cumulative assessment.

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1           In response to the work that we  
2 published in the draft EIS, we received a number  
3 of comments that addressed concerns over the  
4 assessment of wheel squeal and whether or not it  
5 was adequately addressed. There was some  
6 feedback, some comments that suggested that the  
7 LDN descriptor itself is not fully understood,  
8 which is why I took a minute to try to explain  
9 what the LDN is.

10           There was some concerns that the--  
11 some comments that are model and methodology are  
12 outdated, you know, recognizing that they are  
13 based on 2005 and 2006 FRA and FTA methodologies,  
14 clearly they are not outdated. And that the  
15 mitigation threshold is too high. The mitigation  
16 threshold is based on prior Board decisions. And  
17 the Board is the only agency that has  
18 jurisdiction for the proposed action.

19           We disagreed with the comments --  
20 with comments that suggest that that threshold is  
21 too high.

22           But in response to the comments on

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1 the draft EIS, SEA refined the noise and  
2 vibration analyses. SEA performed a very  
3 conservative assessment of wheel squeal. Wheel  
4 squeal is somewhat of a moving target in that it  
5 has potential to occur on sections of curved  
6 track where you may not have expected it to occur  
7 and it may not occur in areas where you probably  
8 would have expected it to occur.

9 To address that well of uncertainty,  
10 SEA chose a very conservative criteria for when  
11 to assume wheel squeal was going to occur. Very  
12 conservative criteria for assessing the effects  
13 of wheel squeal. We had a conservative over-  
14 assessment of the number of effects due to wheel  
15 squeal. But in this manner, we ensure that we  
16 didn't under-predict it and there is no potential  
17 that we under-predicted it in the project area.

18 Although it is kind of a moving  
19 target, it can be controlled using very simple  
20 track lubrication techniques, which balance the  
21 over-conservative assessment, because it is very  
22 easily controlled.

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1           SEA also modified the noise and  
2 vibration analysis to more complete assess noise  
3 and vibration effects at crossover gaps in the  
4 track where the wheel flange has to cross over a  
5 track to allow the train to move on in a  
6 different direction. At that gap, when the wheel  
7 rolls over the gap and contacts the track on the  
8 other side of the gap, it creates additional  
9 noise and additional vibration.

10           We refined our assessment of those  
11 effects for the draft environmental -- for the  
12 draft EIS. We also enhanced the noise and  
13 vibration analysis that was performed for the  
14 connections to more thoroughly assess noise and  
15 vibration at those locations. We revised our  
16 assessment of noise from idling trains and SEA  
17 also provided an assessment of cost-effectiveness  
18 of potential noise mitigation measures and that  
19 was based on criteria used by the Illinois and  
20 Indiana DOT to assess and abate highway noise.

21           Now, the preliminary analysis  
22 results, preliminary conclusions in the current

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1 version, the working version of the final EIS,  
2 SEA's noise analysis identifies a total of 5,100  
3 effects under existing conditions and that's a  
4 combination of effects on the CN and effects on  
5 the EJ&E under existing conditions.

6 Under the proposed action SEA's noise  
7 analysis results indicate, approximately, 5,800  
8 noise effects. So we are seeing an increase of,  
9 approximately, 700. That is a shift largely from  
10 the 5 CN Lines to the EJ&E corridor. It is also  
11 dominated by a very conservative wheel squeal  
12 analysis. Again, that's a phenomenon that's very  
13 easily controlled.

14 The increase is also dominated or I  
15 should say a large portion of the increase in  
16 noise effects is also due to the assessment of  
17 noise at crossovers and also from idling  
18 locomotives. The idling locomotive analysis is  
19 also very conservative in that we, essentially,  
20 assume that all the locomotives that could idle  
21 in the entire duration, that they could be idling  
22 at any given day, could occur in any where that

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1 there is space for them to be.

2 Where in reality, they won't be  
3 everywhere at the same time throughout the day.  
4 They will just idle in one location and then move  
5 on. So we have conservatively over-predicted the  
6 noise effects of idling locomotives as well.

7 Similarly, SEA's estimate of the  
8 number of effects inside that mitigation contour  
9 has increased up to about 900.

10 So in summary, the increase in the  
11 noise analysis results are largely attributable  
12 to these conservative over-assessments of noise  
13 from wheel squeal and idling locomotives and also  
14 from our revised assessment crossovers. As a  
15 result of that refinement in the analysis of  
16 crossovers, the vibration results actually show a  
17 decrease in the number of vibration effects.

18 This is not intuitive, it is  
19 explained, I think, clearly in the preliminary  
20 working version of the draft of the final EIS.  
21 I'll explain it to you very briefly. SEA did not  
22 have very accurate locational information for

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1 crossover at the time the analyses were performed  
2 in support of the draft EIS.

3 To reflect the uncertainty in the  
4 actual location of those, SEA used a rectangular-  
5 shaped contour. Now, the crossover themselves  
6 were the -- the vibration from the crossover  
7 themselves were modeled as point sources, where  
8 the energy radiates equally in all directions, so  
9 that would have been a circular contour.

10 Because of the uncertainty in the  
11 actual location, we drew a rectangle around the  
12 area that we knew contours were in or that we  
13 thought contours were proposed to be in. For the  
14 final EIS, we took great pains to refine and  
15 locate the precise location, identify the precise  
16 location of existing and proposed crossovers.  
17 That allowed us to remove the rectangular contour  
18 and present in our analysis only the circular  
19 point source contours. Thus, we cover a much  
20 smaller area with the vibration contour at  
21 crossover and correspondingly the number of  
22 effects decrease.

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1                   Now,           additional           preliminary  
2           conclusions   also   identified   opportunities   to  
3           reduce   noise.   In   fact,   the   applicant   proposed  
4           voluntary   noise   mitigation   measures   to   work   with  
5           affected   communities   and   reduce   train   noise  
6           levels   to   as   low   as   an   LDN   of   70   DBA.   SEA   also  
7           recommended   or   we   have   preliminary  
8           recommendations   to   implement   track   lubrication  
9           measures   in   areas   where   communities   identify  
10          wheel   squeal   has   been   occurring   and   we   are   also  
11          kind   of   --   a   preliminary   recommendation   also  
12          addresses   working   together   with   Fermi   Lab   and  
13          notifying   Fermi   Lab   when   operational   changes   have  
14          potential   to   occur   and   effect   ground   borne  
15          vibration   levels.

16                   And   that   concludes   my   briefing.

17                   MR. MORTON:   Thank   you,   Tim.   I   would  
18          briefly   like   to   talk   about   passenger   and   commuter  
19          rail   activities.   Mr.   Thorson   talked   some   about  
20          safety-related   issues   associated   with   passenger  
21          rail.   I   would   like   to   talk   about   three   other  
22          issues   that   came   up   during   the   scoping   process

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1 that were addressed in the draft EIS.

2 And, you know, we were addressing in  
3 the final analysis. And that is Amtrak and  
4 Amtrak's use of the St. Charles Airline. The  
5 Metra and Metra's proposed new Star Line Service  
6 and the Northern Indiana Commuter Transportation  
7 District or NICTD's future West Lake corridor --  
8 the Amtrak issue came up first during scoping.

9 CN's proposed operating plan would  
10 take all its traffic off of the St. Charles  
11 Airline leaving Amtrak as the sole occupant. And  
12 Amtrak expressed concern that because they would  
13 be the sole occupant, they would be expected to  
14 shoulder the maintenance and the operations cost  
15 or that, at some point in time, CN would come to  
16 the Board seeking to abandon the St. Charles  
17 Airline.

18 Prior to the publication of the draft  
19 EIS, CN committee to Amtrak to allow to remain on  
20 the St. Charles Airline and capped its costs at  
21 the current day costs just subject to inflation.  
22 That was discussed in the draft EIS. I think the

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1 final EIS preliminarily, you know, concludes that  
2 that condition should address Amtrak's concerns  
3 with the St. Charles Airline.

4 The Star Line is a proposal by the --  
5 by Metra to introduce a new commuter rail  
6 service. The service would start at O'Hare  
7 Airport and run, you know, the I-90 corridor out  
8 to about Hoffman's Estate at which point it would  
9 turn to the south and travel on the EJ&E corridor  
10 down to about the Joliet area.

11 The -- in the draft EIS, you know,  
12 for the draft EIS CN took a lot of discussions  
13 with Metra, reviewed the current concepts for the  
14 Star Line, evaluated SEA's -- CN's operating plan  
15 and concluded that the proposed transaction would  
16 not preclude the implementation of the Star Line  
17 on that corridor.

18 We received a lot of comments on the  
19 draft EIS and specifically on that conclusion  
20 that indicated that they disagreed with the  
21 conclusion, that they felt that the proposed  
22 transaction would kill the Star Line or make it -

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1 - add cost to it such that it would no longer be  
2 reasonable or would make the Star Line feasible.

3 For the final EIS, we have gone back  
4 and looked at all the data, the preliminary  
5 information that Metra has developed for the Star  
6 Line. They are currently in their preliminary  
7 engineering phase. They don't really have a  
8 defined concept, so we identified four different  
9 scenarios under which you could implement a Star  
10 Line service on the EJ&E Rail Line.

11 We examined all the proposed  
12 infrastructure improvements that would be  
13 required to implement the Star Line on the EJ&E  
14 and all the things that Metra has indicated that  
15 they were looking at in terms of infrastructure  
16 upgrades on the EJ&E. We evaluated CN's  
17 operating plan and all of CN's proposed  
18 improvement to that section of track between  
19 Hoffman Estates and Joliet that they are  
20 proposing.

21 We ran the RTC model that Mr. Burgel  
22 talked about earlier looking at the various

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1 operations with various train levels on it. And  
2 our preliminary conclusions are that, you know,  
3 the Star Line certainly doesn't preclude the  
4 implementation of the Star Line. In some cases  
5 it could add as much as 2 to 8 percent to the  
6 cost of that section of the Star Line for the  
7 additional infrastructure that would be needed to  
8 run both the passenger rail and the freight  
9 traffic on that.

10 The third issue is the Northern  
11 Indiana Commuter Transportation District's  
12 proposed West Lake corridor. For the draft EIS,  
13 SEA looked at the planning that had gone on to  
14 the West Lake corridor and what NICTD, you know,  
15 efforts were today and concluded that that  
16 potential new start was far enough out that SEA  
17 didn't need to consider it in the draft EIS.

18 We received a lot of comments from  
19 the public and from various agencies on that  
20 conclusion for the final EIS. We have gone back  
21 and reassessed that, have looked at all of  
22 NICTD's plans, have looked at the potential

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1 effect that the transaction might have on NICTD's  
2 West Lake corridor. And the preliminary  
3 conclusions is that there would be no adverse  
4 effect and there could potentially be a  
5 beneficial effect by taking some traffic off CN  
6 Rail Line segments that NICTD would plan to use.

7 And with that, I would like to invite  
8 Kevin Keller up to talk a little bit about  
9 hazardous material transportation analysis and  
10 our water resource analysis.

11 MR. KELLER: Thank you, John. Mr.  
12 Chairman, Mr. Vice Chairman, Mr. Commissioner,  
13 I'm the technical lead for the hazardous  
14 materials transportation, hazardous waste sites  
15 areas of the EIS. And I would like to brief you  
16 on what we have done in our preliminary  
17 conclusions that we have reached so far.

18 The EIS discusses the potential  
19 environmental impacts of the proposed transaction  
20 on public health and safety with respect to the  
21 transportation hazardous materials, including  
22 changes in the types of hazardous materials and

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1 quantities transported or rerouted, the nature of  
2 the hazardous materials that are currently being  
3 transported or are proposed to be transported,  
4 the applicant's safety practices and protocols  
5 based on a review of our Safety Integration Plan,  
6 which by the way just recently did get FRA  
7 approval, the applicant's U.S. safety data on  
8 derailments, accidents and hazardous material  
9 spills, the applicant's emergency response plans  
10 and resources to address accidental spills and a  
11 probability of increased spills and releases for  
12 the proposed action given railroad safety  
13 statistics and applicable FRA requirements.

14 In order to evaluate the hazardous  
15 materials transportation changes due to the  
16 proposed action, SEA performed the following  
17 assessments: We verified the historical data  
18 provided by CN and EJ&E on hazardous material  
19 shipments. In addition, we analyzed potential  
20 safety impacts of the proposed rail operations  
21 related to hazmat transport within the study  
22 area.

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1           We evaluated all rail lines  
2 potentially controlled by the EJ&E and CN in the  
3 area to identify those rail line segments and  
4 rail yards that would experience an increase in  
5 the volume of hazardous materials transported as  
6 a result of the proposed action.

7           We evaluated the safety effects of  
8 transporting hazardous waste and materials by  
9 rail along the proposed routes associated with  
10 the proposed action using the applicant's and  
11 industry's data sources. We evaluated historical  
12 releases of hazardous materials by CN and EJ&E,  
13 system-wide and locally, and other rail shippers  
14 in the study area.

15           We also reviewed the FRA's safety  
16 database and the pipeline of hazardous materials  
17 and substances agencies, hazardous materials  
18 incident reporting system for entries involving  
19 CN and EJ&E within the study area for the most  
20 recent 5 year period. We made a preliminary  
21 determination of routes that would be designated  
22 as key routes as defined by the Association of

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1 American Railroads.

2 We assessed local communities  
3 emergency response capabilities to address the  
4 hazmat spill or release, including an evaluation  
5 of local emergency response plans and local  
6 emergency planning communities. We calculated  
7 such parameters of annual hazardous materials car  
8 miles, both total and per rail segments, system-  
9 wide averages for derailments, release rates per  
10 mile and other statistics.

11 And finally, we calculated the  
12 probability of a release of hazardous materials  
13 per rail segments, including the frequency of  
14 release and the consequence of release.

15 In the draft EIS, we presented the  
16 following findings. Hazardous material releases  
17 had historically been and should continue to be  
18 remote due to existing regulatory requirements  
19 and best management practices that prevent  
20 circumstances that might otherwise result in a  
21 release and regulations and procedures that  
22 typically lead to prompt responses by the

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1 appropriate authorities.

2 There would be a potential increase  
3 in the possibility of a release due to the  
4 increased train miles resulting from the longer  
5 route and more car loads of hazardous materials  
6 transported on the EJ&E Rail Line.

7 However, the possibility of a  
8 hazardous materials release would remain remote  
9 due to regulatory and other safeguards already in  
10 place. There would be a substantial reduction in  
11 the risk of a release on the CN Rail Lines as a  
12 result of the proposed action due to the downward  
13 redistribution of rail traffic.

14 In addition, the CN Rail Lines were  
15 located in more densely populated areas than the  
16 areas along the EJ&E Rail Lines, thus presenting  
17 a positive impact for overall exposure to  
18 hazardous materials.

19 Other considerations to take into  
20 account include the no action alternative, in  
21 which hazardous materials take more time to move  
22 through Chicago on CN Rail Lines than they would

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1 under the proposed action, thus continuing to  
2 potentially expose people in the vicinity of the  
3 CN Rail Lines to risk for a longer period of  
4 time.

5 And also, the same hazardous material  
6 classes would be proposed to be carried on EJ&E  
7 Line are the same as those currently being  
8 transported on the EJ&E Rail Line. Local  
9 emergency responders are already trained and  
10 equipped to respond to such incidents with these  
11 materials.

12 The following request and suggestions  
13 were received after publication of the draft EIS.  
14 Commenters requested that EIS address the  
15 potential environmental impacts to the proposed  
16 acquisition in further detail, including a  
17 discussion of possible accidental release, spill  
18 management capabilities and the presence of  
19 contaminated sites along the EJ&E Rail Line.

20 Commenters also suggested to include  
21 CN's safety record in Canada as well as the  
22 United States.

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1                   Commenters       suggested       assessing  
2       alternative    routes    for    hazardous    material  
3       shipments.

4                   In order to respond to these comments  
5       in the final EIS, we will provide a table listing  
6       hazardous commodities proposed to be transported  
7       as a result of the proposed transaction based on  
8       AAR classifications.   CN did provide us, in the  
9       application, a very detailed analysis of the  
10      hazardous materials that they will be  
11      transporting on the proposed action.

12                  However, that information is deemed  
13      to be secure information, cannot be disclosed in  
14      its present form.   What we did to mitigate that  
15      in the final EIS is we will prepare a summary  
16      table that breaks down those commodities per AAR  
17      Hazard Classification groupings.   So that data  
18      will be summarized and presented.

19                  We will also provide a further  
20      description of potential and response procedure  
21      releases of hazardous materials in different  
22      environments and in different situations in the

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1 final EIS. We will provide a description of CN  
2 safety record in Canada. You heard Mr. Thorson  
3 earlier talk a little bit about it. We will also  
4 include in the final EIS some discussion on the  
5 hazardous materials records in Canada for CN.

6 We will also provide a description of  
7 the proposed final FRA and Department of Homeland  
8 Security rule makings on transportation security  
9 of hazardous materials. As you may know, those  
10 newly released regulations will require all rail  
11 carriers of hazardous materials to perform an  
12 analysis of alternative routes of which a  
13 hazardous material could be transported and to do  
14 a comparison of those routes and to select the  
15 most appropriate route for transportation.

16 The preliminary conclusion of the  
17 hazmat transport evaluation is that although  
18 train accidents resulting in the release of  
19 hazardous materials are remote, increases in  
20 freight rail traffic along the EJ&E Rail Line  
21 would have a corresponding increase in the risk  
22 of hazardous material spills.

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1           The freight currently being  
2 transported by EJ&E, as I told you earlier,  
3 includes hazardous materials and the same classes  
4 of hazardous materials will be transported if the  
5 proposed action is approved. Therefore, SEA has  
6 reached a preliminary conclusion that proposed  
7 action does not create any new threats.

8           Adverse impacts on the proposed  
9 action take the form of increased probabilities  
10 for spills and releases, although those  
11 probabilities are still remote. As explained in  
12 the draft EIS, if a spill of a hazardous material  
13 were to occur, CN is required by federal and  
14 state regulations to report and respond  
15 immediately to that incident.

16           SEA has also determined that CN has  
17 appropriately trained and equipped the responders  
18 to provide effective and timely response in the  
19 event of a release. As mitigation for the  
20 possibility of a spill or release of hazardous  
21 materials, the applicant has proposed 13  
22 voluntary mitigation measures, including the

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1 training of local emergency providers and  
2 committing to integrate the EJ&E system into  
3 their hazardous materials management and spill  
4 response policies and procedures.

5 SEA has recommended an additional two  
6 mitigation measures to ensure that local  
7 communities are receiving the appropriate support  
8 and communications from the applicant.

9 That concludes my briefing on the  
10 hazardous materials transport area. I would also  
11 like to brief you on the water resources area, if  
12 I may.

13 Railroad operations and construction  
14 activities can have adverse impacts to water  
15 resources and water quality. For the water  
16 resources area, we evaluated the potential  
17 effects of the proposed transaction on surface  
18 and ground water quality as well as on flood  
19 plains, local drainage systems and wetlands.

20 For this evaluation, we identified  
21 and assessed existing surface and ground water  
22 resources in the vicinity of the EJ&E Rail Line,

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1 particularly in areas where the applicant has  
2 proposed construction activity. We assessed  
3 whether potential impacts from the construction  
4 of proposed rail connections, sighting extensions  
5 and installation of double tracks would be  
6 consistent with applicable federal and state  
7 water quality standards.

8 We assessed whether permits may be  
9 required under the Clean Water Act for any  
10 construction of proposed rail connections,  
11 sighting extensions and installation of double  
12 track and whether any such projects have the  
13 potential to encroach upon any designated  
14 wetlands or 100 year flood plains.

15 We also assessed the hydrogeology in  
16 the study area and the possible presence of any  
17 designated sensitive ground water areas. In  
18 performing this evaluation, we reviewed  
19 information from the Illinois EPA, from the  
20 Illinois Department of Natural Resources,  
21 Illinois State Geological Survey, the Illinois  
22 State Water Survey, the Indiana Department of

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1 Natural Resources, the U.S. Army Corps of  
2 Engineers and also the U.S. EPA.

3 Based on our assessments in the draft  
4 EIS, we reached the following preliminary  
5 conclusions: Potential effects on surface water  
6 identified include a short-term effect due to  
7 sediment, erosion from a construction phase of  
8 the new connections and double tracks.

9 It also may have a long-term screen  
10 bed degradation downstream of culvert extensions  
11 based on soil surveys and culvert velocities.  
12 Under the proposed action, ground water and  
13 surface water quality could be impacted by  
14 construction activities. However, implementation  
15 of erosion and saltation control measures neither  
16 required U.S. Army Corps of Engineers and MPDES  
17 permits would limit impact to water bodies.

18 Potential impacts to water body  
19 elevations would also be reduced in design of  
20 bridges and culverts. Changes in rail operation  
21 would not alter existing culverts and would not  
22 affect flood plains or streams.

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1           The proposed construction of rail  
2 connections and double track, however, could  
3 affect water surface elevations and flood plains  
4 and streams unless appropriate measures are taken  
5 during design to avoid or minimize potential  
6 effects.

7           CN has proposed mitigation which will  
8 minimize these potential effects to flood plains.  
9 Operation of maintenance activities to the  
10 proposed action such as mowing and weed spraying  
11 also have the potential to affect surface water  
12 quality, although these activities are currently  
13 being performed by the EJ&E. CN's proposed  
14 right-of-way Maintenance for Vegetation Control  
15 Program would not involve changes to those  
16 current practices. So the situation should  
17 remain the same.

18           Near surface groundwater flow  
19 direction in the vicinity of the EJ&E Rail Line  
20 were estimated by interpreting USGS digital  
21 topographic data of the elevations of nearby  
22 surface water features. We also utilized

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1 information from the Illinois EPA and from the  
2 U.S. EPA, where applicable.

3 The groundwater flow direction was  
4 estimated at approximate distances of 1.5 to 2  
5 miles from the vicinity of well head protection  
6 areas, preserves, documented locations of fins  
7 and county -- other county natural resource  
8 areas.

9 Designation of a well head protection  
10 area is required by the Illinois Groundwater  
11 Protection Act of 1987. The well head protection  
12 area, basically, provides a setback that will  
13 protect any public water supply sources coming  
14 from groundwater in that area.

15 In the course of the public meetings  
16 on the draft EIS, several additional comments  
17 were received. Some commenters wanted more  
18 information on wetlands mitigation and what the  
19 applicant would do in case wetlands were  
20 encroached. Some commenters were concerned about  
21 potential impact from releases of hazardous  
22 materials on water resources, such as surface

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1 water streams and groundwater.

2 Based on our review and analysis of  
3 the data and taking the public comments into  
4 consideration, we have reached the following  
5 preliminary conclusions: Although the change in  
6 rail operations would not affect wetlands, the  
7 construction of the proposed rail connections and  
8 double track could result in the loss of some  
9 wetlands.

10 Unless existing drainage patterns are  
11 maintained, degradation of additional wetlands by  
12 the loss of hydrology could also result when  
13 proposed connections are constructed. The  
14 largest wetland impacts would occur at the Munger  
15 connection and alternate configurations of  
16 proposed Madison connection.

17 The construction activities, the  
18 double track segments could also affect wetlands.  
19 SEA has proposed mitigation to address these  
20 wetland impacts. The draft EIS provided the  
21 results of an examination of susceptibility of  
22 local groundwater supplies to a hazardous

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1 material spill.

2 The study considered the proximity of  
3 drinking water wells to the right-of-way,  
4 direction of groundwater flow and the potential  
5 for contamination as determined by the thickness,  
6 permeability and other properties of the geologic  
7 materials.

8 Additional analysis have identified  
9 one location in Plainfield, Illinois where an  
10 existing public water supply well could be  
11 affected by a hazardous material spill and also  
12 identified several rail segments with greater  
13 potential for a spill that could impact private  
14 wells or natural areas.

15 SEA undertook additional  
16 investigation since the draft EIS and identified  
17 areas primarily on Des Plains River in Will, Cook  
18 and DuPage Counties in Illinois where the  
19 geologic materials overlying the bedrock are  
20 thinner and are more permeable than along most of  
21 the other right-of-ways.

22 The shallow bedrock offered in this

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1 area is more susceptible, therefore, to  
2 contamination from the surface. It must be  
3 noted, however, that the EJ&E Railroad currently  
4 runs through these susceptible areas, so that  
5 wells and water supplies are already at risk from  
6 a potential spill.

7 The freight currently being hauled  
8 includes hazardous materials, as I have presented  
9 earlier, representing the same classes of  
10 hazardous materials that would be transported if  
11 the proposed action is approved. Therefore,  
12 effects from the proposed action on groundwater  
13 would take the form of increased probability for  
14 a spill, which increases the likelihood that a  
15 given well or resource may potentially be  
16 impacted, but there is no difference in the types  
17 of hazardous commodities that would have to be  
18 responded to and remediated.

19 Statistics on the current proposed  
20 action release intervals will be also included in  
21 the EIS. As explained in the draft, if a spill  
22 were to occur, the applicant would be required by

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1 federal and state laws to mitigate the impacts by  
2 remediating the groundwater resource immediately  
3 and/or providing an alternate supply of water to  
4 the property owner.

5 The applicant's have proposed 12  
6 voluntary mitigation measures in the water  
7 resources area, including compensation for what  
8 land impacts in accordance with U.S. Army Corps  
9 of Engineer Regulations and one regarding best  
10 management practices for management and  
11 preservation of aquatic biota.

12 The applicant's remaining voluntary  
13 mitigation measures address a variety of  
14 potential storm water, groundwater and surface  
15 water protection issues. In addition to these  
16 voluntary mitigation measures, SEA is  
17 recommending three additional mitigation measures  
18 to ensure that the applicant complies with all  
19 applicable federal, state and local water  
20 regulations.

21 And that concludes my briefing.

22 MR. MORTON: Thank you, Kevin. The

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1 next to the last resource area that we would like  
2 to discuss with you is natural resources and  
3 specifically some endangered species issues. And  
4 Fiona Goodson from the team will brief you on  
5 that.

6 MS. GOODSON: Mr. Chairman, Mr. Vice  
7 Chairman, Mr. Commissioner, my name is Fiona  
8 Goodson. I was the biological resources  
9 technical lead.

10 Effects due to construction and  
11 changes in operation can have an impact on  
12 natural communities and the species that live in  
13 these communities. In order to evaluate the  
14 effects of the proposed action and transaction-  
15 related constructions on natural resources, we  
16 defined the study area as a 1 mile corridor  
17 centered on rail lines where there was an  
18 increase in train numbers of at least one train  
19 per day.

20 As a result, we were limited to areas  
21 adjacent to the EJ&E Rail Line. We used data  
22 from published reports, feasibility studies,

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1 regulatory agency documents, guidance manuals,  
2 discussions with resource personnel, aerial  
3 photography, topographic maps, analysis of GIS  
4 databases and field visits.

5 Field visits were conducted in  
6 February and April for the draft EIS and  
7 subsequently in October and November in  
8 preparation for the final EIS. Since publication  
9 of the draft EIS, SEA met with natural resource  
10 stakeholders and reviewed their comments and  
11 conducted additional analysis to better detail  
12 preliminary conclusions in the final EIS.

13 A biological report is being prepared  
14 to submit to the U.S. Fish and Wildlife Service  
15 for their review and concurrence. The biological  
16 report evaluates five species: The endangered  
17 Indiana Bat, Hine's Emerald Dragonfly, Karner  
18 Blue Butterfly and the Leafy Prairie Clover and  
19 the threatened Eastern Prairie Fringed Orchid.

20 These species were evaluated because  
21 preliminary information indicated that they occur  
22 or may occur in or near the EJ&E Railway. An

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1 additional four plant species were eliminated  
2 from further consideration, because they do not  
3 presently occur in proximity to the EJ&E or  
4 because they occur only in areas where no  
5 construction or operational impacts were  
6 reasonable anticipated.

7 For the previously mentioned species,  
8 critical habitat exists for the Hine's Emerald  
9 Dragonfly and the Indiana Bat. After a detailed  
10 review of the best scientific and commercial  
11 information available and habitat level surveys,  
12 SEA preliminarily concludes the following: The  
13 proposed action and transaction related  
14 construction may affect, but is not likely to  
15 adversely affect, the Indiana Bat, the Karner  
16 Blue Butterfly, the Eastern Prairie Fringed  
17 Orchid, the Leafy Prairie Clover and the Hine's  
18 Emerald Dragonfly.

19 Additional analysis based on comments  
20 from the Department of Interior letter was  
21 conducted for the Hine's Emerald Dragonfly. And  
22 therefore, I will provide you with details of

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1 what was found. The U.S. Fish and Wildlife  
2 Service disagreed with the may affect, not likely  
3 to adversely affect determination in the draft  
4 EIS and determined the proposed transaction could  
5 adversely affect the dragonfly in one of four  
6 areas.

7 The first area along the Paul Ales  
8 Branch, there is potential for adult mortality  
9 and effects to larval habitat. Since there are  
10 no increases in operations or construction  
11 activity proposed on the Paul Ales Branch, there  
12 is no effect as a result of the proposed action.

13 Additionally, there are speed  
14 restrictions in this area under a special  
15 condition of a 1996 core permit and will remain a  
16 requirement if the transaction is approved.

17 The second area at the Joliet  
18 connection, there is no breeding, forging or  
19 larval habitat occurring in the area. The area  
20 where the connection is proposed is vegetated by  
21 dense buckthorn and other invasive shrubs and  
22 saplings.

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1                   No     Hine's     Emerald     Dragonfly  
2     observations have been made in this type of  
3     vegetation community in 14 years of monitoring it  
4     and other Illinois sites. There is a stream  
5     located on the site, but it is larger than normal  
6     Hine's Emerald Dragonfly sites. Fish, many of  
7     which are insectivores, were observed during an  
8     October site visit providing additional support  
9     to the non-habitat determination. Construction  
10    of the Joliet connection would not affect the  
11    Hine's Emerald Dragonfly.

12                   The third area increased traffic  
13    along segment 9B. Concern was raised by the Fish  
14    and Wildlife Service about increased traffic on  
15    segment 9B where the EJ&E crosses the Des Plains  
16    River. Traffic is projected to increase from  
17    18.5 to 42.3 trains per day. However, train  
18    speeds would not exceed 10 mph in this area,  
19    because of track and bridge constraints.

20                   Observations on the nearby Paul Ales  
21    Branch have indicated that Hine's Emerald  
22    Dragonflies have no difficulty evading slow

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1 moving trains.

2 The final area of concern was along  
3 the Joliet subdivision where the draft EIS  
4 indicated a proposed increase from 1.8 to 2  
5 trains per day. Discussions with the applicant  
6 indicate that contrary to information included in  
7 the draft EIS, there will be no increase in train  
8 traffic on CN's Joliet subdivision.

9 Operations are currently 2 trains per  
10 day, plus 10 Amtrak trains and 4.3 Metra trains  
11 all using the same lines and will remain  
12 identical if the transaction is approved.

13 CN has conducted preliminary studies  
14 on the interactions of dragonflies and the  
15 relatively fast moving trains on the Joliet  
16 subdivision and plans to continue these studies  
17 in coordination with U.S. Fish and Wildlife  
18 Service. Because there is no proposed change in  
19 operations at this location, there will be new --  
20 no new adverse impacts to adults or larvae  
21 dragonfly.

22 In terms of indirect effects, on

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1       October 23, 2008, Midwest Generation informed the  
2       U.S. Fish and Wildlife Service that the proposed  
3       acquisition of the EJ&E would result in loss of  
4       coal train storage areas serving their Will  
5       County Generation Facility.     And would have  
6       required Midwest to increase the number of rail  
7       sightings, lines within the River South area, a  
8       highly environmentally sensitive area along the  
9       Paul Ales Branch.     This would result in adverse  
10      impacts to the Hine's Emerald Dragonfly.

11                 After a detailed review of Midwest's  
12      proposal and discussions with Midwest Generation,  
13      U.S Fish and Wildlife Service, SEA and CN, it has  
14      been determined that there is no cause and effect  
15      relationship between the CN acquisition of the  
16      EJ&E     and     construction     of     additional     rail  
17      sightings at River South.

18                 Midwest has indicated that the  
19      construction of the additional rail sightings is  
20      not its preferred alternative to solve its coal  
21      storage capacity issues.     CN has committed to a  
22      voluntary mitigation measure which would result

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1 in discussions with Midwest Generation to  
2 identify reasonable alternative locations for  
3 coal train storage.

4 Since publication of the draft EIS,  
5 the applicant has committed to seven additional  
6 voluntary mitigation measures, including, as  
7 previously mentioned: Cooperating with Midwest  
8 Generation to identify locations for staging of  
9 coal trains.

10 Two, participating in the development  
11 of a habitat conservation plan for the Hine's  
12 Emerald Dragonfly.

13 Working with relevant natural  
14 resource stakeholder groups to support creation  
15 or enhancement of migratory bird habitat away  
16 from the rail line to offset proximity impacts.

17 Construction and maintaining turtle  
18 crossings where habitat occurs on both sides of  
19 the rail line.

20 Investigating participation in the  
21 Safe Harbor Agreement for the Karner Blue  
22 Butterfly.

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1 Designating areas of prime prairie  
2 and dune and swale habitat for potential land  
3 management agreement and/or conservation  
4 agreement within Kirk Yard.

5 And finally, serving suitable habitat  
6 for the Eastern Prairie Fringed Orchid. If  
7 orchids are found, the applicant shall not  
8 conduct any construction activities in that area,  
9 shall notify the U.S. Fish and Wildlife Service  
10 and the Board immediately and the Board shall  
11 reinitiate consultation with the U.S. Fish and  
12 Wildlife Service.

13 As previously described, the  
14 methodology for biological resources in the draft  
15 EIS focused on areas where effects were presumed  
16 to have a potentially detrimental effect. The  
17 methodology presumed that areas with a reduction  
18 in train traffic would lightly experience  
19 positive effects due to a decrease in rail  
20 operations.

21 The biological resources analysis  
22 does not state that these potential positive

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1 impacts inside the EJ&E arc negate negative  
2 impacts along the arc. SEA acknowledges that the  
3 EJ&E arc where rail traffic is proposed to  
4 increase contains more and generally higher  
5 quality habitat areas than areas where CN trains  
6 are likely to decrease or remain the same along  
7 CN lines within the arc.

8 Forest preserves, INAI sites, state  
9 nature preserves and national park service lands  
10 occur in areas inside the EJ&E arc, including  
11 Lockport Prairie, Wampum Lake, Thatcher Woods  
12 Prairie, Hoosier Prairie and portions of Pratt's  
13 Wayne Woods where CN trains are likely to  
14 decrease.

15 It is acknowledged that there are  
16 fewer higher -- that there are fewer high quality  
17 biological resources inside the arc rather than  
18 along the arc. However, significant resources  
19 exist along routes where train traffic is likely  
20 to be reduced.

21 The decrease in CN trains near these  
22 areas is likely to result in fewer species

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1 collisions and decreased noise effects. Although  
2 natural areas occur all throughout the city area,  
3 only Pratt's Wayne Woods Forest Preserve is  
4 potentially impacted by both operations and  
5 construction.

6 Many commenters, public and agencies,  
7 expressed concern for Pratt's Wayne Woods. SEA  
8 concurs that Pratt's Wayne Woods Forest Preserve  
9 is an important natural area with habitat that  
10 supports numerous listed and protected species.  
11 As such, effects to Pratt's Wayne Woods were  
12 included in the draft EIS.

13 The applicant proposed modifications  
14 to the proposed Munger connection alternative  
15 involving the construction of two retaining walls  
16 to remain within the right-of-way and to minimize  
17 direct impacts to the forest preserve.

18 Additionally, numerous mitigation  
19 measures are proposed, such as avoiding  
20 construction to minimize disturbances to breeding  
21 birds and development of a local liaison that  
22 will allow natural resource stakeholders to

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1 interact with CN to complete various adaptive  
2 management measures and monitoring in natural  
3 areas along the EJ&E right-of-way.

4 In addition, CN will either conduct  
5 or will supply financial support for pre- and  
6 post-construction monitoring to evaluate and  
7 document potential affects and subsequent impacts  
8 by the proposed action.

9 Once monitoring is completed, the CN  
10 local liaison and natural resource stakeholders  
11 can develop and implement appropriate site-  
12 specific mitigation measures once potential  
13 effects from the proposed action are realized,  
14 including identifying and improving habitat away  
15 from the rail line to offset increased train  
16 noise level impacts.

17 That concludes my briefing.

18 MR. MORTON: Thank you, Fiona. The  
19 last area that we would like to talk about is an  
20 area that is -- we call quality of life and it is  
21 actually composed of a number of specific  
22 concerns including safety, noise, schools,

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1 traffic, all of which we have already talked  
2 about. One issue that has generated a lot of  
3 comments is -- that is related to quality of life  
4 is property values.

5 For -- the concerns on property  
6 values is that the increase in rail activity  
7 would result in a reduction of property values  
8 for those homes, residences, near the EJ&E rail  
9 line. We did -- for the draft EIS, we did  
10 literature survey to see if there were studies  
11 that we could, you know, turn to to help us.

12 There is very limited information  
13 about the effects of increased traffic. There  
14 was a study that was done as a result of Conrail  
15 in the Cleveland area that provided the best  
16 information that we could find for the draft EIS.  
17 And the general conclusion was that there would  
18 be a nominal reduction of property values for  
19 some ranges of homes, lower and moderate priced  
20 homes.

21 The more expensive homes would not  
22 see the same level of reduction in property

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1 values. We received a lot of comments on the  
2 draft EIS, you know, where people were concerned  
3 about those conclusions. For the final EIS, we  
4 have gone back and we have done more extensive  
5 analysis of actual property values, home prices,  
6 both along the EJ&E Rail Line and adjacent to it  
7 and away from it, compared those in several  
8 sections, you know, both in more affluent areas  
9 and also in more modest areas along the EJ&E Rail  
10 Line.

11 We have also went back and did a lot  
12 of literature survey. The commenters pointed us  
13 to some studies that they felt were appropriate.  
14 And I think, as a result of that, essentially, we  
15 think that the conclusions in the draft EIS, you  
16 know, were correct.

17 We did go in and then look at the  
18 effects that the property value -- a change in  
19 the property value, a nominal change might have,  
20 assuming a reduction along the EJ&E Rail Line and  
21 properties adjacent to it of about 5.56 percent,  
22 which is kind of what the study thought would be

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1 the maximum reductions and looked at what that  
2 would do for the residential property values  
3 within communities and also what that would do  
4 for property tax revenues within those  
5 communities.

6 The preliminary conclusion is that  
7 the property tax revenues, you know, the greatest  
8 impact might be in the neighborhood of \$10,000 in  
9 a reduction of property tax revenues for some  
10 communities.

11 And with that, that completes our  
12 discussion of the major resource issues on the  
13 EIS. I would like to turn it back over to Vicky  
14 Rutson. Vicky?

15 MS. RUTSON: Only 30 more seconds and  
16 we will be quite and respond to your questions.  
17 So what would happen if, to the environment, you  
18 were to approve this proposal? Well, the team  
19 has assessed and preliminarily concluded that  
20 there would be benefits. There would be adverse  
21 impacts.

22 Some of these adverse impacts could

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1 be mitigated, but some of them exacerbate an  
2 existing condition. In other words, make a bad  
3 situation worse. The applicant has volunteered  
4 over 100 mitigation measures, which they have  
5 priced at, approximately, \$16 million.

6 We have looked at each of these  
7 measures and believe that they will help.  
8 Additionally, SEA has developed and is continuing  
9 to develop and is eager to discuss with you 69  
10 additional measures that we hope will minimize  
11 impacts to the absolute extent that we are able  
12 to do so.

13 With that, we await your questions.

14 VICE CHAIRMAN MULVEY: This should  
15 not be interpreted as not having any questions.

16 CHAIRMAN NOTTINGHAM: We weren't  
17 taking a straw vote on the merits of the -- we  
18 were talking about breaking logistics. I'm  
19 cognizant that staff and consultant staff have  
20 been largely stuck here for three hours now and  
21 we have the luxury of being able to sneak about  
22 10 yards down the hall with the sound system on

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1 to occasionally stretch our legs and not miss  
2 anything.

3 But without further delay, we will  
4 break now for 45 minutes. We will -- we do  
5 expect significant questions, so gear up. It  
6 could be a full afternoon and we will come back.  
7 I have it is about 12:50 now. So we will come  
8 back in 45 minutes, which I believe would be  
9 1:35. Thanks. We are temporarily adjourned.

10 (Whereupon, the meeting was recessed  
11 at 12:48 p.m. to reconvene at 1:39 p.m. this same  
12 day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:39 p.m.

3 CHAIRMAN NOTTINGHAM: Good afternoon.

4 We will resume this morning's meeting with some  
5 questions. I'll start it off and I think we will  
6 -- just to mix it up a little bit, I'll let  
7 Commissioner Buttrey have the opportunity right  
8 after I finish the first round. And then we will  
9 switch it up, accordingly everybody kind of gets  
10 a chance to ask all the questions that we have.

11 Let's see, thank you, first of all,  
12 that was a very comprehensive presentation,  
13 clearly, a lot of work has gone into this. And  
14 I'm, you know, familiar with HDR's work in  
15 general having worked on some highway projects  
16 where I have had the chance to observe and I  
17 definitely want to commend HDR for a very  
18 comprehensive and professional job on this. It's  
19 a reminder of how your firm has earned the very  
20 strong reputation that you do have. So I  
21 appreciate that.

22 MR. MORTON: Thank you, Mr. Chairman.

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1                   CHAIRMAN NOTTINGHAM:     Let me ask  
2     though, you guys do this not for charity. You  
3     have homes and bills and families that need to be  
4     taken care of. What does all this kind of work  
5     cost, ballpark? I mean, I don't want to meddle  
6     in, you know, any business sense. I mean, we're  
7     talking about a couple hundred thousand dollars,  
8     a couple million dollars, ten plus million? I  
9     mean, just ballpark.

10                  MR. MORTON:     In ballpark, this has  
11     been about a \$20 million effort. It is a very  
12     accelerated effort. We have done a lot of things  
13     on parallel, you know, with a lot of very senior  
14     staff and that's one reason why, you know, it's  
15     actually certainly more expensive than one would  
16     have, you know, typically expected.

17                  CHAIRMAN NOTTINGHAM:     Our Agency's  
18     entire budget for a year, the last time I  
19     checked, is something around \$27 million. Does  
20     that sound right, colleagues? \$26-ish. So  
21     clearly, we are not paying for that nor do we  
22     customarily pay for applicant's environmental

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1 work.

2 Just for the record, so everyone has  
3 the same understanding how this works, who pays  
4 those bills in this situation?

5 MR. MORTON: We are concerted as Ms.  
6 Rutson mentioned at the beginning, we are a  
7 third-party contractor, that is there is a  
8 Memorandum of Agreement between SEA, HDR and  
9 Canadian National that specifies that SEA is  
10 responsible for directing and that we report to  
11 SEA and that Canadian National is responsible for  
12 the cost for the analysis.

13 We then have a separate commercial  
14 terms contract with Canadian National that  
15 specifies, you know, the billing rates and, you  
16 know, invoice procedures and the mechanisms for  
17 compensation.

18 CHAIRMAN NOTTINGHAM: Now, do you get  
19 paid whether or not CN likes your work or doesn't  
20 like your work?

21 MR. MORTON: I certainly hope so, Mr.  
22 Chairman.

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1                   CHAIRMAN NOTTINGHAM:     That's your  
2     expectation?

3                   MR. MORTON:     That's my expectation,  
4     yes.  Our clients are the Surface Transportation  
5     Board and specifically, Vicky and Phillis and  
6     Evelyn.

7                   CHAIRMAN NOTTINGHAM:  Okay.  Do you -  
8     - I think I know the answer to this, but I want  
9     to make sure to get it on the record.  Do you  
10    receive oversight and direction from CN on what  
11    you should report or not report in your work?

12                  MR. MORTON:  Absolutely not.  CN had  
13    an opportunity to review the draft EIS when it  
14    was made public on July 25<sup>th</sup>.  To the best of my  
15    knowledge, that's the first time they saw any of  
16    the analysis or the results of those analysis.  
17    We do ask CN for information when we need it.

18                  There is a very formal and very  
19    transparent process and that is our team, my team  
20    generates the information request.  We pass that  
21    on to Vicky and SEA and Phillis and they review  
22    that information request.  They then submit that

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1 formally in writing to the applicants. We post  
2 that request out on the project website, so  
3 everybody can see what we are asking for.

4 And then when we get their response  
5 to those information requests, you know, once  
6 again it comes back through SEA to our team. And  
7 once again, we post all those responses on the  
8 project website, so everybody can see the  
9 correspondence trail. And in the draft EIS, we  
10 published all that correspondence and we propose  
11 in the final EIS to publish all the  
12 correspondence that has taken place since the  
13 draft EIS.

14 CHAIRMAN NOTTINGHAM: Thank you. I  
15 guess I should probably -- something tells me we  
16 have all kinds of stakeholders following this, I  
17 hope, on the -- on our webcast. I also see some  
18 stakeholders in the room today, too.

19 I should probably just express some  
20 recognition and gratitude to the CN for  
21 supporting the EIS process to the tune of \$20  
22 plus million, that there has been a lot of mixed

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1 signals sent in the media and through legal  
2 channels, but, clearly, financially they are  
3 supporting the EIS process just as they told us  
4 they would at the -- near the outset of this  
5 project. So we appreciate that. It helps us  
6 make an informed decision, which we need to make  
7 consistent with the law.

8 I was interested a little bit, I  
9 guess, as a very amateur historian in a little  
10 bit of the history that came up in your  
11 presentation that the concept for a EJ&E type  
12 western loop around Chicago dates back to 1855  
13 and that the project was cut -- sort of cobbled  
14 together in pieces, it sounded like, and it was  
15 pretty much in tact as of 1890, according to my  
16 notes, following the presentation.

17 So since 1890, there has been some  
18 type of western loop bypass rail traffic going on  
19 at different levels over all those years?

20 MR. MORTON: That's correct. I think  
21 you recorded those dates correctly. I would like  
22 Mr. Burgel to maybe clarify or expand upon kind

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1 of the history of the EJ&E and then maybe, you  
2 know -- so that, you know, we can get some more  
3 of that into the record.

4 I know we kind of briefly covered it  
5 this morning, but, Bill?

6 MR. BURGEL: Mr. Chairman, the --  
7 yeah, that's correct. The routes were pretty  
8 much contiguous as of 1892, I believe. And then  
9 it was primarily owned by predecessors, the U.S.  
10 Steel, and they used to run trains back and forth  
11 between Waukegan and then down to the Gary Mill.  
12 And very much shuttle trains back and forth  
13 between the two facilities.

14 And then along the line came, you  
15 know, lots of industry along there as a result.  
16 Primarily an industrial railroad that in some  
17 place more, more than others, industrial and  
18 rural in others. U.S. Steel had a transaction  
19 with TranStar, which was a holding company, and  
20 then they acquired it back. So it has been back  
21 and forth in terms of ownership since 1980 or so.  
22 So that's more recent.

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1                   And now several other Class Is have  
2                   certainly been interested in the property, but  
3                   never to the extent that CN has, you know,  
4                   expressed interest here.

5                   CHAIRMAN NOTTINGHAM:       And if I  
6                   followed your presentation, according to my  
7                   notes, probably the high water mark for train  
8                   traffic would have been during World War II,  
9                   which I guess makes sense. There was those high  
10                  water marks for a lot of communities situated  
11                  along rail lines. And that was 50 some trains a  
12                  day?

13                  MR. BURGEL:     That's correct, yeah.  
14                  And pretty much as an average throughout the arc.  
15                  More in some places and less in others, but  
16                  that's pretty much anecdotal information, you  
17                  know, as far as a lot of folks at the public  
18                  meetings, as you will all imagine, a lot of folks  
19                  were ex-EJ&E employees. And they supplied us  
20                  with that type of information.

21                  CHAIRMAN NOTTINGHAM:       So your  
22                  historical information is somewhat anecdotal, but

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1 it's based on, in part, information conveyed by  
2 sort of first-hand knowledgeable sources. What  
3 about written resources? Any historical tracks  
4 that reference the history of the railroad or  
5 anything else?

6 MR. BURGEL: That's correct. Yeah,  
7 that was a supplemental. There are books on the  
8 EJ&E that we sourced as part of our information  
9 as well. Passenger schedules there at  
10 Barrington, that sort of thing.

11 CHAIRMAN NOTTINGHAM: Were you able  
12 to come up with any indication that EJ&E or any  
13 predecessor owner of that line held itself out as  
14 planning to get out of the rail business, close  
15 the line, abandon the line? I'm trying to get a  
16 sense of this is a situation where people who  
17 live along the line have a right to be completely  
18 shocked that they are living next to an active  
19 line railroad that could --

20 MR. BURGEL: Well, actually --

21 CHAIRMAN NOTTINGHAM: -- actually see  
22 a growth in traffic.

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1 MR. BURGEL: Yeah.

2 CHAIRMAN NOTTINGHAM: Some of the  
3 correspondence we have gotten almost indicates  
4 that, but I just was trying to, not being  
5 intimately familiar with the history of the  
6 region, get a sense of is there anything in the  
7 record that we know about that would lead people  
8 to think that the line was scheduled to be  
9 abandoned at a certain date or that traffic  
10 generally in the Chicago area was on the decline  
11 and it would be a safe bet to move next to a rail  
12 line under the assumption that it would just be a  
13 matter of time before it faded out of existence?  
14 I'm just trying to understand the situation.

15 MR. MORTON: The historian that  
16 worked on the entire line isn't with us today and  
17 we would be more than happy to get you an answer  
18 to that question. I don't think the team, as  
19 such, really researched that specific question.  
20 From an anecdotal standpoint, you know, we  
21 certainly know that it has been an active rail  
22 line and, you know, continues to be an active

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1 rail line.

2 We have got a lot of, like Mr. Burgel  
3 mentioned, former and current EJ&E employees that  
4 came to the various public meetings, both the  
5 scoping meetings and the draft EIS meetings, and  
6 took that time to, you know, kind of give us the  
7 back brief on their first-hand knowledge and, you  
8 know, were more than happy to sort of talk about  
9 their history and experience with the line.

10 MR. BURGEL: My personal history, I  
11 was -- started my railroad career in the Detroit,  
12 Michigan area and one of my first assignments was  
13 to -- on the Penn Central that came in to  
14 Chicago. So part of my territory was the Chicago  
15 area, but from then on, I switched to a western  
16 road. But pretty much the entire 38 years I have  
17 been working in the rail industry, I have always  
18 heard that EJ&E has been considered an asset by  
19 those in the Chicago area.

20 And not once have I heard that, you  
21 know, there was a consideration that it would be,  
22 you know, abandoned or rendered mothballed or

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1 anything like that.

2 CHAIRMAN NOTTINGHAM: Okay. Anything  
3 in your research or in the record that would help  
4 us get a picture of what the outer -- the  
5 western, what we now view as the western, suburbs  
6 of Chicago would have kind of looked like in the  
7 1890s when this line actively, you know, came  
8 into existence as far as the situation where most  
9 of the growth and development had actually come  
10 to the area adjacent to the line after the lines  
11 existence or was it there prior to?

12 MR. MORTON: I think it's a  
13 combination. There are certainly several  
14 communities that have indicated that they  
15 preceded the line. There is information that  
16 some communities grew up along the line. I  
17 think, you know, that we did a lot of work on  
18 kind of the history and the historical areas.  
19 Many of the communities, you know, along the line  
20 include the line as part of the context in which  
21 the, you know, boundaries of their historical  
22 districts are set.

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1           And so it is included in discussions,  
2           you know, that -- and nomination forums for, you  
3           know, things like, you know, nomination for a  
4           historic district, you know, with the Keeper of  
5           the National Register and those sort of things.

6           And once again, I apologize we did  
7           not bring the historian who did all that work.  
8           We do have information in the record, you know, a  
9           series of -- you know, a book of photographs of  
10          their early EJ&E and some history of the EJ&E and  
11          that's certainly all the -- currently in the  
12          record.

13          And we would be more than happy to  
14          drill in and, you know, get a better answer for  
15          you, if you would like.

16          MR. BURGEL: As late as the EJ&E is  
17          pretty early, 1890, but even at that time, they  
18          were late coming to the party, so to speak, in  
19          terms of the railroad scene in the Chicago area.  
20          Most of the lines that radiate out from the hub  
21          and spoke, so to speak, were there much before  
22          the EJ&E. You can see that in the agreements

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1 that, you know, Union Pacific, which acquired  
2 CN&W, which is one of the predecessor railroads  
3 here, that was pretty strong, especially through  
4 Barrington and through West Chicago.

5 Their agreements are pretty clear.  
6 And if you look at some of the sketches, some of  
7 the platting maps that are included with this  
8 agreement, it's very rural, very rustic  
9 communities that -- you know, while EJ&E was  
10 second. You know, I would guess to answer your  
11 question, I think mostly on the railroads that  
12 radiate from the city is where these towns were  
13 originated along those. And then the J came  
14 later.

15 You can see that pretty clearly in  
16 these written agreements that are roughly about  
17 1909/1910. You know, and they basically govern  
18 how each railroad is going to behave at these  
19 crossing diamonds.

20 CHAIRMAN NOTTINGHAM: In the --  
21 listening to the history and looking at the  
22 current day situation within Chicago, the

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1 enormous presence of freight rail and passenger  
2 rail operations, it just leads me to -- I can't  
3 help but conclude that people within the core of  
4 Chicago are -- have experienced and continued to  
5 experience kind of a, what I'll call,  
6 disproportional share of the nation's rail  
7 traffic in their neighborhoods.

8 I mean, sure there are -- I know  
9 there are other places that would maybe argue,  
10 Houston and a few others that have folks who live  
11 near the Port of LA, Long Beach, but it's an  
12 enormous burden on the people in that area. And  
13 it seems like it has been for decades and decades  
14 and decades.

15 This might be a little bit of a  
16 intellectual question that can't -- might be of  
17 limited use to us, but I'll ask it anyway,  
18 because we think it's just important.

19 If we were -- if we had no railroad  
20 lines in this area today, but we had the  
21 communities and the people that currently live in  
22 Chicago, close in metropolitan Chicago, and there

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1 were proposals to drop this rail system, so to  
2 speak, within the community, to weave it into the  
3 community, as it exists today, and applications  
4 came and we had new construction applications and  
5 we were working that through as a Board following  
6 NEPA, of course, and today's law, what are the  
7 odds that we could ever get, you know, this kind  
8 of system built, permitted, built and through the  
9 judicial review process in Chicago as it  
10 currently exists today under current law?

11 Maybe, Ms. Kitay, you might be well  
12 positioned. I know it's a little bit of a  
13 speculative question.

14 MS. KITAY: I think it would be  
15 really difficult to assemble the rail corridor  
16 today, just because of the proximity and the rail  
17 line to schools and homes and businesses that  
18 have built up around the rail line.

19 CHAIRMAN NOTTINGHAM: And it is  
20 lines, right, I mean?

21 MS. KITAY: Lines. While there are  
22 many, there are five CN Lines and then EJ&E

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1 Lines.

2 CHAIRMAN NOTTINGHAM: Then you go  
3 beyond CN and talk about the whole rail  
4 industry's presence, I guess my question was more  
5 of a macro one talking about going from--

6 MS. KITAY: It would be enormously  
7 difficult. And we saw that in the DM&E Rail  
8 construction case where existing communities that  
9 were going to see traffic increase just were up  
10 in arms.

11 CHAIRMAN NOTTINGHAM: And would there  
12 not be --

13 MS. KITAY: We're talking years of  
14 litigation.

15 CHAIRMAN NOTTINGHAM: -- a lot of  
16 environmental justice issues?

17 MS. KITAY: There would be  
18 environmental justice issues and other kinds of  
19 environmental issues beyond those that have  
20 surfaced here, because we're dealing with  
21 existing lines. So you don't have the  
22 construction impacts that you would have if you

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1 were starting from scratch.

2 CHAIRMAN NOTTINGHAM: I don't know  
3 exactly why I asked the question, but I just-- we  
4 have to weigh benefits and dis-benefits, adverse  
5 impacts and positive impacts. And I just think  
6 it is worth reflecting for a moment just on the  
7 sheer burden that the status quo situation  
8 imposes on the people of Chicago and close in  
9 Chicago.

10 It's not to say that other people's  
11 concerns along the EJ&E Line aren't completely  
12 valid and meritorious, but it's -- we have to  
13 make a balancing assessment to a certain extent  
14 and then make sure we are looking at those  
15 benefits and those adverse impacts and try to  
16 figure out how to sort through it.

17 I just have a couple more for the  
18 first round and then I'll kick it over to  
19 Commissioner Buttrey momentarily.

20 I think it might have been you, Mr.  
21 Morton, who touched on the four alternatives that  
22 were considered at the early stage of the

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1 environmental review process. And of course,  
2 this goes back in part to Commissioner Buttrey's  
3 very helpful reference to the City of Overton  
4 Park case, which, of course, is black letter law  
5 that is, you know, hammered home in the first  
6 year of environmental law and administrative law  
7 and a number of other settings.

8           It's an incredibly important case.  
9 One of the big outcomes of that case was was this  
10 concept of alternative analysis, and you don't  
11 just jam a new interstate through a park because  
12 that's the straightest line between two distances  
13 and it's where some traffic engineer says it will  
14 be efficient. You look at the impact of the  
15 resources and look at alternatives.

16           And here though, I understood -- I  
17 head you say -- you said you didn't explore these  
18 options. I wrote down and I just want to make  
19 sure I understand. There were alternatives.  
20 They were looked at, correct? And for various  
21 reasons they were put aside. If the team could  
22 help me understand, because I want to make sure

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1 we have given adequate focus to the alternatives  
2 analysis process.

3 MR. MORTON: Mr. Chairman, I think  
4 your recollection is correct. The team first  
5 identified the applicant's purpose and need, you  
6 know, that -- for the transaction. And there is  
7 really three elements of that purpose and need  
8 and to kind of paraphrase them, it's the connect  
9 -- there are five lines radiating around and give  
10 them a through route without, you know, going  
11 through the congestion of the Chicago area.

12 The second one, and I know Mr. Burgel  
13 talked about it in detail, is really to obtain  
14 control and access to Kirk Yard and to some  
15 extent East Joliet Yard for their car  
16 classification activities, so they can move those  
17 activities out of the BRC Clearing Yard.

18 And the third purpose is to develop a  
19 relationship with the shippers on the EJ&E.

20 So each of the alternatives that we  
21 looked at, and there are a number of alternatives  
22 that were suggested during scoping and throughout

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1 the process, the four that we talked about,  
2 really were, you know, one, is to -- full  
3 implementation of the Chicago CREATE Project.

4 The CREATE project is, as certainly  
5 the Board knows, a project that is designed to  
6 reduce rail congestion in the Chicago area. It  
7 is moving forward. They perhaps haven't had the  
8 level of funding, you know, that they were  
9 anticipating, but they are making progress.

10 The CREATE Project would,  
11 essentially, give CN a through route by  
12 connecting, essentially, their, and correct me if  
13 I'm wrong, Bill, but essentially, line coming in  
14 on the Illinois Central to the Norfolk Southern  
15 Rail Line in an area called Grand Crossing.

16 And in that -- they would make a  
17 connection there, allow them to bypass the  
18 cumbersome airline, St. Charles Airline route and  
19 that would be kind of their through connection.  
20 It still would not be a line that they own. They  
21 would be on that line under trackage rights.

22 They would still do their switching

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1 at the BRC Clearing Yard. They would still, you  
2 know, be one of several tenants at the BRC  
3 Clearing Yard, so they wouldn't have their own  
4 facility. And so we did not consider CREATE as  
5 an alternative to the proposed transaction.

6 The second one, that I think Bill  
7 mentioned, was expanded trackage rights. There  
8 are a lot of Class Is that are currently  
9 operating on the EJ&E under trackage rights  
10 arrangements, including CN. And one option was  
11 to just expand that. But once again, that  
12 wouldn't necessarily solve their car  
13 classification issues and would not give them  
14 control.

15 Plus, you know, and I think CN's  
16 filing sort of makes this case, there would not  
17 be the incentive for EJ&E to make the investments  
18 into the infrastructure that Canadian National is  
19 proposing, if Canadian National -- if it was  
20 still owned by the EJ&E.

21 The third alternative was,  
22 essentially, an acquisition of a rail line on the

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1 inside in the interior of Chicago, presumably  
2 either, you know, the Belt Railroad or the IHB,  
3 but one of the railroads actually connect them.  
4 The -- we didn't consider that to be an  
5 alternative, because that's, essentially, how  
6 they operate today.

7 It just would shift the ownership.  
8 Once again, not giving them the access to Kirk  
9 Yard and get them out of the internal congestion  
10 that is Chicago.

11 And the fourth option, I believe that  
12 we talked about earlier this morning, was there  
13 was suggestions that you could build a new bypass  
14 outside of the EJ&E arc, somewhere in the less  
15 densely populated area. A lot of different  
16 suggestions came. But in each case, it was a new  
17 construction that, and I think as Ms. Kitay, you  
18 know, mentioned, it would be very challenging to  
19 assemble that type of right-of-way and to, you  
20 know, use that option. And so we didn't believe  
21 that that was a viable alternative either.

22 CHAIRMAN NOTTINGHAM: So we have

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1 received some correspondence. We have received  
2 all kinds of correspondence. They are all in the  
3 record on this transaction. But some of the  
4 correspondence did indicate hey, why not just  
5 build it further to the west?

6 Is there a corridor to the west where  
7 there are no serious environmental issues? I'm  
8 sensing that Greenfield's new rail line  
9 construction in a semi-, even if you could find  
10 a, rural part of Illinois would not be an easy  
11 thing to get through the process.

12 MR. MORTON: I might, you know,  
13 suggest either Vicky or Phillis, who have some  
14 experience with construction projects.

15 MS. RUTSON: Mr. Chairman, I think it  
16 would be very difficult to get through the NEPA  
17 process for a new line construction. For  
18 example, in the DM&E case, which Evelyn alluded  
19 to, construction was proposed and eventually  
20 permitted through Western South Dakota and  
21 Eastern Wyoming.

22 To my untutored eye, those areas

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1 looked quite expansive, not heavily populated,  
2 but yet there were tremendous concerns there,  
3 potential habitat for the Black Footed Ferret,  
4 ranchers who had land that they preferred to keep  
5 in tact and not divided. So it's one thing for  
6 rural people to say to urban people that perhaps  
7 rail lines would less -- would impact you less,  
8 because you live in such an urban area.

9           And then urban people say to rural  
10 people, well, there is so little out where you  
11 are that you would be impacted less. But the  
12 bottom line is through 20 years of experience  
13 with NEPA, everyone loves where they live and  
14 wants it to stay pretty much as much as they-- in  
15 the same way as when they first moved there. And  
16 they don't want new rail lines to be built on top  
17 of where they live, be it urban or rural.

18           MR. BURGEL: And I might add that one  
19 of the purpose needs for CN is to again classify  
20 railcar business that, say for instance, comes in  
21 from the Grand Trunk out of say Michigan or out  
22 of Toronto, and marry that up with some cars that

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1       come out of Memphis in a yard somewhere in the --  
2       you know, where all the business that would  
3       either go to Chicago or be picked up in Chicago  
4       and then advanced on some of the other branch  
5       lines or main lines, I should say, a line, a  
6       bypass on the west side wouldn't, you know,  
7       accomplish that unless they somehow knitted all  
8       these different arteries together.

9                Again, they are looking for a yard in  
10       the center and Kirk Yard is what they have  
11       chosen. Their purpose of using east Joliet Yard  
12       is to do what they call block swapping, which is  
13       they would take blocks of cars from one train to  
14       another and advance them that way.

15               CHAIRMAN NOTTINGHAM: Certainly, one  
16       of the, I'm guessing, more challenging informed  
17       judgment calls to make relates to the appropriate  
18       level of mitigation that you preliminarily  
19       reported on today. If I heard correctly, the  
20       preliminary recommendation is that we adopt for  
21       purposes of looking at those instances where the  
22       recommendation is to see the construction of a

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1 grade separation project, that the applicant  
2 railroad, CN, be held responsible for 15 percent  
3 of the cost of that project, the preliminary  
4 engineering, the right-of-way, the construction,  
5 design construction.

6 And that if I heard correctly, that  
7 15 percent was arrived at by the very extent of  
8 analysis of the proportional contribution of this  
9 proposed project regionally to the overall  
10 degradation of traffic conditions throughout the  
11 region of the project. Is that a fair  
12 restatement?

13 MR. MORTON: Yes, sir, it certainly  
14 is. And I would like John Lazzara to step back  
15 up here just briefly and he could elaborate on  
16 the analysis that we did and the discussion and  
17 explain that a little bit better for you.

18 CHAIRMAN NOTTINGHAM: That would be  
19 helpful, because I want to make sure -- one of  
20 the questions I had when I first heard this was  
21 okay, that sounds like a lot of thought went into  
22 that, but conditions across a region can get kind

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1 of diffuse. Whereas, conditions at a specific  
2 intersection crossing are not so diffuse. They  
3 are very specific, very -- you know, much more  
4 easily sort of identifiable.

5 How does that 15 percent relate to  
6 these conditions at those locations? We're  
7 trying to address the real hot spots where  
8 certain locations would likely be sort of  
9 disproportionately impacted. We talked about  
10 traffic levels and going from D down to F and  
11 pre-existing conditions.

12 But help me understand how we get  
13 from 15 percent contribution to regional traffic  
14 problems to 15 percent contribution to these  
15 particular, what I'll call, hot spots.

16 MR. LAZZARA: Sure. Chairman and  
17 Board Members, we looked at total vehicle delay  
18 and when we calculated the total vehicular delay,  
19 we looked at the level of -- or the delay caused  
20 at the at-grade crossings. When we calculate  
21 delay, you can either have delay from roadway  
22 levels of service or from the crossing levels of

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1 service.

2 And the effects from the railroad  
3 operations really focuses on that isolated  
4 location at the crossings. In the analysis when  
5 we looked at total vehicular delay, we calculated  
6 what that would be if you added up all the delay  
7 for the CN crossings that were affected and then  
8 all the EJ&E crossings.

9 And we compared those systems with  
10 the no action system versus the proposed action.  
11 And when we looked at that, there was an increase  
12 in vehicular delay along the EJ&E lines and a  
13 decrease along the CN lines. When we compared  
14 the totals, that's when we came up with 356 hours  
15 of increased vehicular delay per day on the whole  
16 system.

17 And that represents that the delay is  
18 caused at those locations along the crossings.  
19 It also affects other roadways, but the roadways  
20 also are influenced heavily on the roadway  
21 configuration of the number of lanes, the traffic  
22 signalization that occurs and the spacing of

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1 different roadways.

2           Again, trying to figure out what the  
3 impact of the transaction would be, we wanted to  
4 isolate that impact based on their operational  
5 changes. The changes at signalized intersections  
6 due to lane configurations really is an existing  
7 condition.

8           So when we calculated that total  
9 system delay between the EJ&E and CN systems,  
10 pre- and post-transaction, we came up with that  
11 15 percent. And that 15 percent is 15 percent of  
12 the total system delay. The 15 percent is the  
13 increase related to that. Does that address your  
14 concern?

15           CHAIRMAN NOTTINGHAM: Well, I guess  
16 what I'm trying to understand is what -- did you  
17 look at the possibility that a specific roadway  
18 crossing of the rail line at which you are  
19 recommending a grade separation project be built,  
20 did you look at the possibility that conditions  
21 at any one of those particular locations could be  
22 worsened by this project as proposed above and

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1 beyond 15 percent scale?

2 It could be 15 percent region-wide,  
3 but at this one spot, yikes, it's going to be 30  
4 percent worse. And, you know --

5 MR. LAZZARA: Correct.

6 CHAIRMAN NOTTINGHAM: -- in that  
7 scenario, you could expect that we will hear  
8 from, and we have heard in the record, the towns  
9 and citizens and the state that they would be  
10 expecting something more akin to the actual  
11 percentage impact at those locations, I would  
12 guess.

13 MR. LAZZARA: Correct. And when we  
14 did the analysis, we did look at each individual  
15 crossing itself, calculated that -- those delay  
16 figures and determined what the individual  
17 effects would be. When we looked towards  
18 mitigation, we considered various options, but  
19 SEA settled on in the preliminary analysis with  
20 the conclusion on a system-wide basis there is  
21 benefits and disadvantages.

22 And if we looked at just isolated

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1 intersections and said that a particular  
2 intersection raised the delay at that location by  
3 more than, you know, 10 percent, more than 15  
4 percent, it could be as high as 50 percent or  
5 more increase in delay at a particular location,  
6 but then there is no input for the benefit that  
7 is caused in other locations.

8 So to calculate that percentage that  
9 the applicant would be responsible for in -- for  
10 the mitigation purposes of a grade separation,  
11 those costs were spread out throughout the whole  
12 system to determine the net effect.

13 CHAIRMAN NOTTINGHAM: I may want to  
14 loop back to that issue, but let me pause and  
15 turn it over to Commissioner Buttrey for  
16 questions.

17 COMMISSIONER BUTTREY: Thank you, Mr.  
18 Chairman. I would add my word of thanks to  
19 everyone for their very fine presentations today.  
20 Mr. Morton, if it's okay, I'm going to sort of  
21 direct my questions to you and then you can reach  
22 back and get whoever you need to get to come up

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1 and see if they can address this.

2 MR. MORTON: Yes, sir, that would be  
3 fine.

4 COMMISSIONER BUTTREY: As the line of  
5 railroad exists right now today, it's basically  
6 one line of track going north and south. Let's  
7 say from Joliet all the way north up to the end  
8 of the area that we are considering here. And I  
9 have heard a lot of talk about double tracking  
10 somewhere around 20 or so miles of that.

11 So they are talking about double  
12 tracking about 20 percent of the track that is  
13 there just for the freight operations.

14 MR. MORTON: Yes, sir. The --  
15 Commissioner, the plan is to do about 19 miles of  
16 double tracking in about five locations,  
17 including on that north/south line from Joliet  
18 north, but also there would be some double  
19 tracking on the -- you know, when it goes around  
20 Joliet and goes east/west towards Indiana, there  
21 would -- they would include -- some of the double  
22 tracking includes in that area.

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1 I don't have the exact breakdown in  
2 terms of the mileage, but that's correct.

3 COMMISSIONER BUTTREY: I think I  
4 heard somebody say about 20, when you add it all  
5 up, it would be about 20 miles.

6 MR. MORTON: That's correct.

7 COMMISSIONER BUTTREY: And as I  
8 recall, when I was there, I was shown an area  
9 where they are going to make a high speed turnoff  
10 of this track to allow them to go onto another  
11 track. And it happens to be right smack in the  
12 middle of the DuPage County Nature Preserve.

13 MR. MORTON: Yes, sir. You are  
14 absolutely correct. And the high speed turnout  
15 that you are referring to is at a location that  
16 we have identified as Munger.

17 COMMISSIONER BUTTREY: Right.

18 MR. MORTON: Munger is just a station  
19 location on the EJ&E and actually doesn't really  
20 exist, but it's in the middle of the DuPage  
21 County Forest Preserve, the Pratt's Wayne Woods  
22 Forest Preserve. The applicants did redesign the

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1 Munger connection in response to concerns raised  
2 by the forest preserve to tighten up the  
3 connection.

4 They put in retaining walls to keep  
5 it basically on their right-of-way and on the  
6 right-of-way of the utility right beside it and  
7 actually reduced the speed through that  
8 connection. And I believe it is now a 50 mph  
9 connection. It's just a 10 mph connection  
10 through there now.

11 So they did redesign it. We have  
12 evaluated --

13 COMMISSIONER BUTTREY: And it will go  
14 to a what mile per hour connection?

15 MR. MORTON: It will stay at a 10 mph  
16 connection under the current proposed design.

17 COMMISSIONER BUTTREY: Okay.

18 MR. MORTON: They would operate 10  
19 mph.

20 COMMISSIONER BUTTREY: In the  
21 language that I have seen here in the reports  
22 that I have seen about this location, the

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1 terminology that is used is that this is  
2 "adjacent" to Pratt's Wayne Woods Preserve. Now,  
3 when I was out there, it didn't look like it was  
4 "adjacent" to it. It looked like to me it was  
5 right in the middle of it.

6 I mean, geographically, right in the  
7 middle of it. And that the track they were  
8 talking about goes right through the middle of  
9 Pratt's Wayne Woods. It's not adjacent to it,  
10 which would lead you to believe it's like a  
11 railroad track going down beside a golf course or  
12 something. It goes right through the middle.

13 MR. MORTON: Yes, sir, that's  
14 correct.

15 COMMISSIONER BUTTREY: Okay.

16 MR. MORTON: That's correct.

17 COMMISSIONER BUTTREY: Just for the  
18 record, because there is not a lot of detail in  
19 here about the information I have seen anyway,  
20 about people who are commenting on this, about  
21 the meets and bounds of this area that we are  
22 talking about and basically what it looks like.

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1           The old saying is a picture is worth  
2 a thousand words. I wish we had a picture of it.  
3 The only thing we have is aerial photos, which  
4 don't really tell you the story. But can you or  
5 someone describe for the record what this area  
6 looks like and how it came to be?

7           MR. MORTON: I think I would like to  
8 ask Fiona Goodson to step up here and talk a  
9 little bit about the nature of the forest  
10 preserve. I don't know that Fiona would be able  
11 to really describe how it came to be, but I think  
12 we would ask Rich Christopher maybe to talk about  
13 the forest preserve system in Illinois and how  
14 they came about. But Fiona can talk about the  
15 nature of the Pratt's Wayne Woods, what is there  
16 and the concerns that are associated with it.

17           COMMISSIONER BUTTREY: Thank you.

18           MR. MORTON: Fiona?

19           COMMISSIONER BUTTREY: And address if  
20 you could how it came to be and that sort of  
21 thing.

22           MR. MORTON: Yes.

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1 MS. GOODSON: Yeah, I don't really  
2 have the history on Pratt's Wayne Woods. Maybe  
3 Rich Christopher does.

4 COMMISSIONER BUTTREY: Okay.

5 MS. GOODSON: As you mentioned,  
6 Pratt's Wayne Woods is a pretty important area.  
7 It is a large area. There is a lot of habitat  
8 there for species.

9 COMMISSIONER BUTTREY: Large meaning  
10 5,000 acres?

11 MS. GOODSON: I don't have the  
12 specific size of it. I don't know the specific  
13 size of it, sorry.

14 MR. MORTON: We'll have to get back  
15 with you. I think --

16 COMMISSIONER BUTTREY: Okay.

17 MR. MORTON: -- we identified it in  
18 the draft.

19 COMMISSIONER BUTTREY: Okay.

20 MS. GOODSON: But DuPage Forest  
21 Preserve District has been very involved  
22 throughout the process in providing a lot of

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1 information. They provided a lot of information  
2 on elements and occurrence records of species  
3 that occur within the area. We were able to work  
4 with them a lot in terms of what a lot of their  
5 concerns were.

6 A lot of their concerns involved loss  
7 of habitat adjacent to the rail line, which  
8 partly was addressed by, you know, tightening up  
9 the design as it went through the Munger  
10 connection. A lot of concerns also addressed or  
11 were associated with noise impacts, loss of  
12 habitat for aquatic species.

13 And as such, a lot of the mitigation  
14 measures that were developed through the corridor  
15 kind of came out of those discussions and some of  
16 those were developing crossings for turtles,  
17 because there is wetland habitat on either side  
18 of the tracks. That certainly isn't an option  
19 there to, you know, facilitate movement of  
20 Blandings Turtles, Spotted Turtles through that  
21 area.

22 Also, being able to develop this

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1 liaison, the environmental liaison with CN would  
2 give the stakeholders, such as the managers of  
3 Pratt's Wayne Woods, the opportunity to work with  
4 CN to determine what species they should be  
5 serving for to see what the impacts are of this  
6 project or, you know, if this transaction, if it  
7 were to be approved, also to give the opportunity  
8 of identifying locations of the habitat that  
9 could be improved, because what's the point of  
10 necessarily going back in and reclaiming habitat  
11 that is impacted immediately adjacent to the rail  
12 line if there is opportunities to make -- create  
13 better habitat elsewhere or else give the  
14 opportunity for species that are mobile to be  
15 able to move into that habitat.

16 I'm trying to think what else there  
17 was.

18 COMMISSIONER BUTTREY: I think this  
19 area was created by a Large Estate that was --  
20 existed there at one time. And then that estate  
21 was donated to DuPage County or to the regional  
22 environmental groups or whatever to create

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1 something that, basically, doesn't exist anywhere  
2 around there, especially in an area that is as  
3 urban as it is all around it.

4 I mean, it's just like an oasis  
5 basically, from where I sit anyway. It looks  
6 like it's just an oasis in the middle of urban  
7 sprawl, if you will, not to be critical of Cook  
8 County, DuPage County and Will County, but the  
9 whole area of Chicago is moving into this area.

10 And right now, my understanding is  
11 there is not even so much as a soccer field on  
12 this property at the moment and it won't be a  
13 soccer field or anything else there until the  
14 people who are managing this resource in  
15 perpetuity as I understand it say so. Somebody  
16 correct me if I'm wrong, but that's my  
17 understanding.

18 I see a gentleman standing up back  
19 here who I spent some time with when I was out in  
20 the area surveying all this area and maybe he can  
21 shed some light on some of my questions.

22 MR. CHRISTOPHER: Thank you,

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1 Commissioner. My name is Rich Christopher. I  
2 work for HDR in Chicago. I'm a regulatory  
3 specialist for HDR. And to get to your question,  
4 Commissioner Buttrey, the forest preserve  
5 districts of DuPage County, Will County, Cook  
6 County, Kane County, generally acquire property  
7 through the sale of bonds which are general  
8 obligation bonds backed by property taxes.

9 So they will raise anywhere from \$20  
10 to \$150 million at a time to go on acquisition  
11 campaigns. My understanding is that Pratt's  
12 Wayne Woods was purchased from a couple of  
13 families who had large holdings in there. You  
14 may be familiar with Morton Salt. The Morton  
15 family had owned an awful lot of that property  
16 there.

17 And since they purchased it, oh, the  
18 first purchases of Pratt's Wayne Woods were about  
19 40 years ago. Most of it was -- most of the  
20 purchasing was done by about 30 years ago. They  
21 have been gradually restoring the area. Part of  
22 it they actually mined it. It had not been good

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1 farm land and they issued a permit for a fella to  
2 take gravel out of it.

3 Now, that has been reclaimed. The  
4 marshes and fens and things like that have just  
5 been slowly restored to previous habitat quality.

6 COMMISSIONER BUTTREY: While I have  
7 you up here, sir, could you address the area  
8 where the bird sanctuary is where the line runs  
9 right through the middle of the bird sanctuary?

10 MR. CHRISTOPHER: Well, I can tell  
11 you, Commissioner, that maybe other people can  
12 help. That's a single track line that goes  
13 through there now. There is no proposal for any  
14 construction through there. We did document in  
15 the report and there are findings about what we  
16 know about the impacts of noise on the herons  
17 that are in there today. But at present, this  
18 action has no construction proposed through  
19 there.

20 COMMISSIONER BUTTREY: Okay. And  
21 there are estimated to be maybe several thousand  
22 nesting pairs in that preserve right now?

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1 MR. CHRISTOPHER: I believe it will  
2 probably be about 500. I don't think its in the  
3 thousands.

4 COMMISSIONER BUTTREY: It looked like  
5 a thousand when I was there, but maybe it was  
6 only 500.

7 MR. CHRISTOPHER: It's the largest  
8 heron rookery in Illinois, I believe, and it has  
9 been a great success.

10 COMMISSIONER BUTTREY: Right, right.  
11 And was there any research done to talk about the  
12 breeding and nesting and bird strike issues that  
13 are presented by the fact that instead of having  
14 three or four trains a day run through there,  
15 there might be as many as 25 or 30 or 35 running  
16 through there every day.

17 MR. CHRISTOPHER: I think I might  
18 have to defer.

19 MR. MORTON: Yes, Commissioner. We  
20 did do some additional work on that issue. You  
21 will see some additional analysis. I would like  
22 Fiona to step back up here and talk a little bit

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1 about our proposal for some adaptive management  
2 activities and specifically as it relates to  
3 migratory water fowl or migratory birds.

4 COMMISSIONER BUTTREY: Okay. Thank  
5 you. We don't want to wear you out, but I'm glad  
6 you're here. Thank you.

7 MS. GOODSON: I probably don't have  
8 as clear of an answer for you as you would like  
9 in terms of the number of birds that are being  
10 hit by trains along the line. There wasn't a lot  
11 of data available. No one has been collecting  
12 that kind of data.

13 COMMISSIONER BUTTREY: Um-hum.

14 MS. GOODSON: The railroads -- we had  
15 requested that in an information request from  
16 both CN Rail as well as from the EJ&E. They  
17 weren't collecting that kind of data either.

18 COMMISSIONER BUTTREY: Um-hum.

19 MS. GOODSON: SEA made the assumption  
20 that with increases in rail traffic that there  
21 would likely be an increase in collisions with  
22 species.

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1 COMMISSIONER BUTTREY: Um-um.

2 Assuming the birds decide to stay there.

3 MS. GOODSON: Yeah, and, you know,  
4 because there is not a lot of data out there, we  
5 are trying to do as much research as we could to  
6 be able to determine what the impacts were. And  
7 one of the main studies that was available to us  
8 was conducted by DeMario in 1993 out at Lake  
9 Renwick at the Heron Preserve there.

10 And it was a really small sample  
11 size, so it's not necessarily completely  
12 representative, but just took a look at the  
13 response of herons in reaction to trains as they  
14 went by. And in -- with four trains going by,  
15 the birds only flushed one out of the four times,  
16 left their nest.

17 And even at that point, the birds  
18 still returned to their nests after the trains  
19 had gone by. So they weren't abandoning their  
20 nests. They were certainly leaving, but they  
21 were coming back afterwards.

22 MR. MORTON: We do propose a

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1 condition by which the Canadian National would be  
2 working with and appoint specifically a liaison  
3 to work with the Natural Resource Agencies,  
4 including the DuPage County Forest Preserve and  
5 others, to identify those issues related to train  
6 operation activities and those opportunities for  
7 adaptive management.

8 That is, you know, looking at, you  
9 know, trying some sort of management technique  
10 and it may be developing some habitat away from  
11 the rail lines, so if they do flush, they have  
12 some place to go, you know, in working with those  
13 agencies to better adapt those techniques to the  
14 issues that they are identifying out there.

15 COMMISSIONER BUTTREY: Does anybody  
16 know if that's 10 mile an hour track through  
17 there and proposed to be 10 mile an hour track in  
18 the future or is it going to be 35 mile an hour  
19 track or do we know?

20 MR. MORTON: Through Lake Renwick,  
21 through Lake Renwick.

22 MR. BURGEL: Through Lake Renwick,

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1 there is supposed to be no change and it's right  
2 now 45 miles an hour.

3 COMMISSIONER BUTTREY: 45 miles an  
4 hour. Okay.

5 MR. BURGEL: On the EJ&E main line.

6 COMMISSIONER BUTTREY: Okay.

7 MR. BURGEL: There are Munger, CN had  
8 initially given us a 25 mile an hour design and  
9 they cut that back to 10 miles an hour to stay on  
10 their right-of-way.

11 COMMISSIONER BUTTREY: Okay. Thank  
12 you. Could we talk about train accidents for a  
13 moment? That's someone else, I'm sure.

14 MR. MORTON: Yes, sir. Depending  
15 upon your question, we've got a couple of  
16 different specialists.

17 COMMISSIONER BUTTREY: Okay.

18 MR. MORTON: But I would ask Leif to  
19 step up.

20 COMMISSIONER BUTTREY: I'm sure if  
21 you ask everybody in this room what they thought  
22 a train accident was, everybody would give you a

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1 different answer. I'm just curious what is your  
2 definition of a train accident? And I'm talking  
3 primarily about the difference between a  
4 train/automobile type occurrence and a  
5 train/pedestrian type occurrence. If you can  
6 enlighten us a little bit about what your  
7 definition is and how that was used for the  
8 calculations?

9 MR. THORSON: Okay. We talked about  
10 two different types of train accidents. One is  
11 the trains which involve moving equipment, that  
12 was a separate category. We also looked at and  
13 talked about crossing accidents. And a crossing  
14 accident is defined by the FRA. It's really any  
15 incident that happens at a crossing that results  
16 in any injury or property damage.

17 So those crossing accidents include,  
18 you know, minor collisions. They include, you  
19 know, abandoned vehicles on the crossing. They  
20 also include pedestrian injuries or incidents  
21 that happen at those crossings, if they happen  
22 within the crossing zone.

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1           So the numbers that we looked at and  
2           estimated for crossing accidents included any  
3           pedestrian incidents that might happen at that  
4           crossing.

5           COMMISSIONER BUTTREY:   And I didn't  
6           see any breakout anywhere, maybe I just missed  
7           it, of how many pedestrian accidents there were  
8           within the study period.

9           MR. THORSON:    I don't have those  
10          numbers with me.  We do have them.

11          COMMISSIONER BUTTREY:  Did you supply  
12          those for the record?

13          MR. THORSON:   We do supply those for  
14          the record.

15          COMMISSIONER BUTTREY:  Just breakout  
16          for the pedestrian numbers?

17          MR. THORSON:   Yeah.  And I want to  
18          say that -- somewhere that the -- of those  
19          accidents that we saw within the last five years,  
20          somewhere in the neighborhood of 10 percent of  
21          them were probably pedestrians.

22          COMMISSIONER BUTTREY:    Around 10

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1 percent?

2 MR. THORSON: Yes.

3 COMMISSIONER BUTTREY: And those  
4 wouldn't necessarily be pedestrian accidents at  
5 crossings, that might be pedestrian accidents  
6 anywhere?

7 MR. THORSON: A pedestrian accident  
8 that does not happen at a crossing is not  
9 considered as part of that crossing accident.  
10 FRA has classifications for those, looks at those  
11 as trespasser accidents.

12 COMMISSIONER BUTTREY: Accidents,  
13 okay.

14 MR. THORSON: Um-hum.

15 COMMISSIONER BUTTREY: Okay. Could  
16 we talk about public parks and schools? Who  
17 could address that?

18 MR. MORTON: I think Mr. Thorson  
19 probably has as good a handle on that as anybody  
20 right now.

21 COMMISSIONER BUTTREY: Okay. You had  
22 a huge number, as I recall, of parks that were

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1 pretty close to the railroad tracks. You had it  
2 broken out in three different categories, as I  
3 recall.

4 MR. THORSON: Um-hum.

5 COMMISSIONER BUTTREY: I visited some  
6 parks where you step off the railroad tracks and  
7 you step onto the park property. There is no  
8 separation, there is no fence, there's no  
9 nothing. You're just on the park one minute and  
10 you're on the railroad right-of-way next. You  
11 really can't tell where the railroad right-of-way  
12 stops or ends or the park stops or ends. You are  
13 just sort of wondering around.

14 In fact, somebody said don't go over  
15 there. So I was already over there at that point  
16 in a place where I wasn't supposed to be,  
17 according to this person who was with me, and  
18 indicated that I was probably a trespasser at  
19 that point. So I came back. And I started  
20 showing my credentials, but I decided not to do  
21 that.

22 But anyway, there were a large number

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1 of parks that were -- I think one of the measures  
2 you used were within 50 feet of the tracks.

3 MR. THORSON: Um-hum.

4 COMMISSIONER BUTTREY: And you came  
5 up with a number of how many parks are within 50  
6 feet of the tracks.

7 MR. THORSON: I'm sorry,  
8 Commissioner, I don't have that number, but would  
9 be more than happy to provide it for the record.  
10 But there, as you mentioned, are a large number  
11 of parks and natural areas adjacent to the rail  
12 line. And in fact, many of the comments that we  
13 received on the draft EIS identified even other  
14 ones for us that either weren't part of the  
15 database that we, you know, assembled from  
16 Indiana or Illinois DNR or other databases.

17 So we have added to those numbers  
18 since the draft EIS.

19 COMMISSIONER BUTTREY: Right. The  
20 ones that I personally observed, you could almost  
21 putt a golf ball from the swing sets and the  
22 teeter totters over to the railroad right-of-way

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1 from where I was. And that was-- I don't like 50  
2 foot putts, but you could pretty much do that if  
3 you wanted to, if you were so inclined to do so.

4 That's how close they were. And then  
5 we went by some schools that were literally,  
6 looked like to me, just backed up to the railroad  
7 right-of-way. See, I don't -- I can't understand  
8 why anybody would allow construction of a school  
9 that close to a railroad.

10 But just to give you an idea -- this  
11 room is 75 feet long, from that wall to that wall  
12 back there. From about the front of this desk  
13 right here where you are sitting to that back  
14 wall is about 50 feet. That's the distance we  
15 are talking about, from the front of this desk to  
16 that wall back there. Okay, just so we have a  
17 frame of reference here when we're talking about  
18 50 feet.

19 MS. KITAY: There is fencing  
20 mitigation recommended in the final EIS, both  
21 voluntary mitigation and some additional  
22 mitigation that SEA has developed. There is also

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1 mitigation for schools and there is a lot of  
2 analysis in the final EIS about steps that  
3 communities can take to encourage safety in, you  
4 know, school buses and in pedestrians getting to  
5 the school.

6 So I think that this issue, as was  
7 mentioned this morning, was a major issue in the  
8 comments on the EIS and there has been an awful  
9 lot of analysis of that issue and the development  
10 of appropriate mitigation to minimize those  
11 effects.

12 COMMISSIONER BUTTREY: Right. I  
13 remember when I was there, there was one school  
14 we went to where there was -- it was a double  
15 track railroad crossing 25 feet from the corner  
16 of the school building. And there were school  
17 crossings on both sides for kids to walk through  
18 with crossing guards, if you would. The sign  
19 said that there were crossing guards. Should be  
20 a crossing guard anyway.

21 But down where the railroad was,  
22 there was no sign about any kind of crossing

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1 guard or assistance getting across the railroad  
2 tracks or anything. There were lights and there  
3 were crossing arms and so forth, so they were  
4 there.

5 There was a good bit of discussion  
6 about the Star Line and what the plans are for  
7 the Star Line, which interested me tremendously,  
8 and especially the conclusion that the Star Line  
9 and the railroad, the freight railroad are going  
10 to be able to use a single line of track without  
11 any kind of degradation of service on either  
12 party.

13 I found that to be very interesting,  
14 because presumably there are going to be trains  
15 going northbound. There are going to be trains  
16 going southbound. There are going to be freight  
17 trains. There may be passenger trains. And they  
18 are all going north and south on one railroad.

19 That sounds like a very interesting  
20 situation to me. You know, having watched Nascar  
21 a little bit, you know, when you get that much  
22 activity on a limited infrastructure, sometimes

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1 bad things happen, people start swapping paint  
2 and all that sort of thing.

3 I'm just curious. I'm having trouble  
4 kind of understanding how that is going to  
5 happen, how you are going to have freight trains  
6 going north and south and passenger trains going  
7 north and south on one railroad track, on one  
8 line of track, and you are saying you're only  
9 going to double track 19 miles.

10 And presumably CN is not double  
11 tracking this line for the benefit of the  
12 passenger carrier.

13 MR. MORTON: Right.

14 COMMISSIONER BUTTREY: CN is double  
15 tracking this line for its own benefit, which I  
16 would certainly expect them to do. And I'm just  
17 curious about how you could come to that  
18 conclusion that you are going to be able to get  
19 all that traffic on that line especially if you  
20 have got 30 or 35 trains a day, presumably day  
21 and night going up and down that railroad track.

22 I just can't -- I don't understand

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1 that. Help me.

2 MR. MORTON: Absolutely. I  
3 appreciate the opportunity to clarify. I'm sorry  
4 that -- we probably went through that a little  
5 too fast earlier this morning and we could have  
6 done a better job.

7 COMMISSIONER BUTTREY: That's why  
8 we're going through it again now.

9 MR. MORTON: Yes. We are -- there  
10 was never an intent by either Metra, you know, in  
11 their Star Line proposal to operate on a single  
12 track main. Metra had, you know -- proposal  
13 included extensive amounts of double tracking,  
14 you know, on that segment from, essentially,  
15 Hoffman Estates down to just, you know, south of  
16 the Plainfield area.

17 So they recognized that on a single  
18 track main, you know, they would not be able to  
19 implement the type of commuter service that they  
20 were proposing even before the transaction. What  
21 we looked at is the amount of infrastructure that  
22 Metra had proposed to put in place, that is the

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1 second main line.

2 We then looked at the type of  
3 infrastructure that CN was proposing to put in  
4 place and that's, as you mentioned, the --  
5 several sections of their double tracking where  
6 they are connecting sidings and where they will  
7 have a second main line.

8 In some cases, we developed -- well,  
9 what we did is we developed four different  
10 scenarios. Since the Star Line really isn't  
11 designed yet, we had no real basis to start from,  
12 so we developed operating scenarios. How could  
13 you operate both the Star Line service and the  
14 EJ&E and the CN proposed operations on that rail  
15 line track? What type of infrastructure would  
16 you need to put in place?

17 The first scenario is essentially --  
18 well, actually, it might be easier for me to let  
19 Mr. Burgel explain each one of those scenarios,  
20 so that I don't get them wrong. Bill, would you?

21 MR. BURGEL: We dug into them pretty  
22 deep, Commissioner, and to answer your first

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1 question about if we were to superimpose all the  
2 CN traffic onto what we understood would be  
3 Metra's design, we put it into this RTC, this  
4 dispatch simulation model, and lo and behold it  
5 didn't work.

6 So your point is well-taken about  
7 what could and would and should happen in terms  
8 of the volume of CN traffic. Plus, Metra plans  
9 to run 30 minute service. It roughly works out  
10 to about 52 trains between Hoffman Estates and  
11 down to Joliet. Prior to that, that was Scenario  
12 1B.

13 Scenario 1A, we actually tried to do  
14 it without the CN traffic and based on what Metra  
15 had in mind, it actually worked quite well. So,  
16 you know, that part is true. We added the CN  
17 traffic and it didn't work.

18 COMMISSIONER BUTTREY: And that  
19 traffic, that north and south bound traffic --

20 MR. BURGEL: Um-hum.

21 COMMISSIONER BUTTREY: -- going both  
22 directions, could intersect along the way, along

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1 this arc, if you will --

2 MR. BURGEL: Um-hum.

3 COMMISSIONER BUTTREY: -- the traffic  
4 going east and west in and out of the city?

5 MR. BURGEL: Correct, yeah.

6 COMMISSIONER BUTTREY: At certain  
7 points along the line?

8 MR. BURGEL: We took a hard look at  
9 these crossing diamonds. Metra in their report,  
10 their most recent report said they didn't believe  
11 that they would be able to cross the West Chicago  
12 diamond at-grade, so at their suggestion, we put  
13 in a fly over at West Chicago. And that's the  
14 only place, that's where we had lunch. And  
15 that's the only place that we put a fly over on  
16 the first three scenarios.

17 So we did -- we basically avoided the  
18 project -- problem with a fly over at West  
19 Chicago.

20 MR. MORTON: And that would be the  
21 case under any of the operating scenarios.  
22 That's what Metra would more or less need to do

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1 today to operate through there is put a fly over  
2 there at West Chicago and avoid that crossing  
3 diamond.

4 MR. BURGEL: We like flowers.

5 COMMISSIONER BUTTREY: Well, let me  
6 ask one more question and then I'll turn it over  
7 to my colleague, Mr. Mulvey, Vice Chairman  
8 Mulvey. Was there an analysis on how much of the  
9 traffic moving along, this new traffic that we  
10 are talking about, this line is actually O&D  
11 traffic Chicago or is it -- or my impression is  
12 very little of this traffic is supposed to be  
13 moving over this line. It's going to be O&D  
14 Chicago traffic -- O or D traffic -- Chicago  
15 traffic.

16 A lot of this traffic or maybe the  
17 vast majority of this traffic is going to be pass  
18 through traffic going from a place not in Chicago  
19 to a place not in Chicago.

20 MR. BURGEL: Well, this goes back to  
21 when this team worked on the Conrail, as my  
22 information was based on that. But CN and CP,

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1 both have transcontinental routes that go across  
2 Canada. And for the Chicago market, they divert  
3 a number of their trains to Chicago, because of  
4 the O&D pairs they pick up here.

5 So I didn't get a percentage of that  
6 number, Mr. Commissioner, but there is a fair  
7 amount or they could continue across the  
8 transcontinental routes through Canada.

9 COMMISSIONER BUTTREY: Um-hum.

10 MR. BURGEL: But if they do it for  
11 the Chicago market, then certainly the Detroit  
12 market as well.

13 COMMISSIONER BUTTREY: Some of the  
14 comments seem to indicate that this proposed  
15 action would benefit traffic coming in through  
16 Prince Rupert going to places in the southeastern  
17 United States, which would be basically remote  
18 traffic coming in from some place down through  
19 across Canada down through Chicago across this  
20 line and down into the old -- what used to be the  
21 old Illinois Central territory. Is that your  
22 understanding as well?

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1 MR. BURGEL: That's my understanding,  
2 yes.

3 MR. MORTON: Yes, that's correct.  
4 And we did have a number of comments, as I'm sure  
5 you are aware, on Prince Rupert and expressing  
6 concern about the traffic levels from Prince  
7 Rupert. Prince Rupert, for the benefit of those  
8 listening, is a, you know, port on the Canadian  
9 West Coast.

10 It currently is developed for about  
11 500 TEUs or 20 foot equivalent units. There is a  
12 proposal to expand the Prince Rupert to about 2  
13 million TEUs, that's under environmental review  
14 and the permitting process right now in Canada.

15 COMMISSIONER BUTTREY: And I don't  
16 know how many days it takes the traffic to get to  
17 Prince Rupert from where it is originating from,  
18 but I'm thinking somewhere between probably 18  
19 and 25 days. I don't know for sure, so don't  
20 quote me on that. But the -- some of the  
21 information I saw said that -- indicated that if  
22 you were in the mid-south, for instance, and the

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1 traffic was coming through from Asia over this  
2 route, that it would cut a whole day off the  
3 transit time. Is that the information you have?

4 MR. MORTON: Yes, sir. Prince Rupert  
5 is closer to the Asian markets than like the Port  
6 of LA and Long Beach would be, that's correct.

7 COMMISSIONER BUTTREY: So instead of  
8 getting to its destination in 28 days or 29 days  
9 or 30 days, it would get there one day sooner?

10 MR. MORTON: Yes, sir, I believe that  
11 is correct. We can verify that.

12 COMMISSIONER BUTTREY: I have some  
13 more questions, Mr. Chairman.

14 CHAIRMAN NOTTINGHAM: Certainly.  
15 Thank you, Commissioner Buttrey. I expect we  
16 will have multiple rounds and it's now my  
17 pleasure to turn it over to Vice Chairman Mulvey.

18 VICE CHAIRMAN MULVEY: Thank you very  
19 much, Mr. Chairman. I agree with Doug, it's  
20 going to cut a day off, but I think it maybe be  
21 less of a total. I think it's about 8 days from  
22 China to Prince Rupert and one day off and the

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1 four days on the east coast. So percentage wise,  
2 it's probably a larger impact.

3 I would like to ask about in terms of  
4 safety, and that is people who are killed,  
5 pedestrians who are killed. The majority of  
6 people who are killed by railroads today are not  
7 in highway grade crossing accidents or are they  
8 pedestrians crossing at crossings. But rather  
9 they are the category called trespassers.

10 About four or five years ago,  
11 trespassers overtook people killed at highway  
12 grade crossing accidents. Did you look at the  
13 impact on trespassers, because like it or not,  
14 trespassing will happen?

15 MR. THORSON: In our analysis, we did  
16 not look at and attempt to quantify the  
17 trespasser implications. You are correct in that  
18 a few years back the number of trespasser  
19 fatalities overtook the number of grade crossing  
20 fatalities. Another alarming statistic that the  
21 FRA is seeing is that there is an inordinate  
22 increase in the number of what appear to be

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1 suicides as well at those trespasser locations.

2 VICE CHAIRMAN MULVEY: Those are not  
3 included in the trespasser statistics. The  
4 suicides are exempt from those numbers, but  
5 anyway.

6 MR. THORSON: Our analysis when we  
7 looked at it, we were looking at legitimate  
8 crossings of the track. We zeroed in on the  
9 sidewalks, the trail crossings.

10 VICE CHAIRMAN MULVEY: Then that's  
11 true, but illegitimate crossing still happens and  
12 the people who are killed trespassing are still  
13 dead, even if they are illegitimately crossing  
14 the track. Was it possible simply to extrapolate  
15 from some of the other estimates as to what the  
16 likelihood of accidents would be, therefore,  
17 extrapolating what the trespassing rate would be?

18 Because you can correlate the density  
19 of traffic and density of population with  
20 trespassing fatalities. I was wondering if you  
21 have been able to do that?

22 MR. THORSON: As I said, we did not.

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1 VICE CHAIRMAN MULVEY: Okay.

2 MR. THORSON: We did not do that. If  
3 I could interject though, we do have in our  
4 analysis, however, a number of issues and  
5 discussions that address people, primarily  
6 children, on railroad properties not at  
7 designated or appropriate locations and  
8 mitigation that the applicants have provided for  
9 some of those.

10 MR. MORTON: I think that's an  
11 important point and if I could, Vice Chairman,  
12 just -- we did not, as Mr. Thorson identified,  
13 evaluate that and try to quantify it, but it  
14 doesn't mean that the mitigation isn't sensitive  
15 to that. There is voluntary mitigation that the  
16 Canadian National has proposed where they would  
17 work with the communities to provide fencing in  
18 appropriate areas near schools and near parks and  
19 those areas where trespassing occurs.

20 And there is also a real commitment  
21 in the mitigation to expand the operation  
22 lifesaver training and the education and the

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1 awareness to reduce, you know, those trespasser  
2 events.

3 VICE CHAIRMAN MULVEY: Just speaking  
4 to an observation about the mitigation, about the  
5 voluntary mitigation and as well as the Board  
6 mitigation, there is, approximately, 170  
7 mitigations that are called for. And yet, if I  
8 look at it very, very carefully, I find less than  
9 half a dozen that I would actually call  
10 mitigation in the sense that you are requiring  
11 the railroad to do something that otherwise it  
12 would not do.

13 All the railroads work with Operation  
14 Lifesaver. All the railroads work with  
15 communities, because they have to. And many of  
16 the mitigations that I read about here simply say  
17 you will obey the law. You will obey existing  
18 regulations. You will live up to the commitments  
19 that you have already made.

20 The mitigations that I see are the  
21 ones that relate to what the railroads have to  
22 spend on the grade crossings, the 15 percent to

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1 install grade separations. The installation of  
2 cameras at certain crossings, so that emergency  
3 response vehicles can see what is happening and  
4 respond more quickly is another true mitigation.

5 I was happy to see the turtles are  
6 being protected. I considered that to be a  
7 mitigation. They would not have done that on  
8 their own. But it strikes me that virtually  
9 everything else that we call mitigation are  
10 things that the railroads would likely have done  
11 anyway.

12 I'm not being especially critical. I  
13 understand that these are things that need to be  
14 looked at and then perhaps put in writing, but do  
15 you want to comment on that, that these  
16 mitigations are kind of soft, if you like? I'm  
17 trying to just get your response to what the  
18 communities are going to say about some of these.

19 MS. RUTSON: Some of them may appear  
20 soft, for example, the liaison, the CN required  
21 liaison to work with Illinois Natural Resource  
22 and Water Resource Stakeholder Group. Now, that

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1 condition may, on its face, not say much, but  
2 that condition, the team feels strongly, is going  
3 to be very powerful.

4 CN is required to work with Pratt's  
5 Wayne Woods and a number of other natural and  
6 resource stakeholders, interested agencies with  
7 special expertise in the areas of natural  
8 resource and water resource. They are going to  
9 work with CN when CN needs to spray pesticides to  
10 maintain the right-of-way.

11 But rather than having to say to CN,  
12 you will comply with EPA regulations on spraying  
13 pesticides, CN will work with the Natural and  
14 Water Resource Groups to figure out what is going  
15 on in the environment at the time when CN needs  
16 to spray. Perhaps spraying doesn't -- isn't  
17 necessary at a certain time. Perhaps it can be  
18 limited to a certain area.

19 Well, we can't put that out in a  
20 final EIS now. We're not the Natural and Water  
21 Resource experts. The people who manage those  
22 lands are. So they need to work with CN and CN

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1 needs to work with them, more importantly, to  
2 know exactly what needs to be done to maintain  
3 those properties.

4 It is simply not effective for us to  
5 say CN you shall not spray on February 15<sup>th</sup>  
6 through March. I mean, that's meaningless. So  
7 it needs to be tailored.

8 VICE CHAIRMAN MULVEY: I suppose my  
9 view is that when I was writing it I would say  
10 you shall consult with and you shall follow the  
11 directions of that particular group about the  
12 spraying as opposed to simply saying consult,  
13 because I'm not sure how we can enforce them  
14 doing anything beyond consulting.

15 You have a consultation where you  
16 have the "coordination," but if they elect not to  
17 follow-up, what is our response to make sure that  
18 they do, in fact, do what we are hoping that they  
19 would do?

20 MS. RUTSON: Well, we are  
21 recommending reporting requirements, quarterly  
22 reporting requirements that would continue for

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1 several years. And the Board therefore, if  
2 circumstances warranted, could take appropriate  
3 action and that would be true if there were  
4 significantly changed circumstances from what  
5 existed at the time the proposed action were  
6 approved, assuming that it is approved.

7 VICE CHAIRMAN MULVEY: And that  
8 appropriate action could include fines, for  
9 example?

10 MS. RUTSON: For additional  
11 mitigation or modifying the mitigation that the  
12 Board imposes.

13 VICE CHAIRMAN MULVEY: Well, let me  
14 get to another one of my concerns or questions.  
15 And that is that we have mitigations based upon  
16 what we assume to be going to be true up to 2015  
17 and projecting to 2015 is not so easy. I just  
18 read a study the other day about waterways and  
19 the traffic shifts between modes of  
20 transportation, given higher fuel costs, and this  
21 was very good study. However, it is a little bit  
22 dated now, though it came out in October of this

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1 year, and I had three levels of possible fuel  
2 costs: high \$150 a barrel, medium expected \$90 a  
3 barrel and low, \$60 a barrel, all in 2008  
4 dollars. A week after the report is out, it is  
5 at \$56 a barrel. So it's very, very difficult to  
6 predict the future.

7 My question is what if we are not  
8 correct on, say for example, these ADTs? And in  
9 fact, that fuel prices fall down to \$30 or \$40 a  
10 barrel, \$20 a barrel, what have you, and traffic  
11 in these areas continue to grow and traffic  
12 problems are much worse. There are many, many  
13 more EMS delays and people suffering negative  
14 consequences, that euphemism for deaths, because  
15 EMS vehicles could not get through, et cetera.

16 Is there any way that we can have  
17 tranches of mitigation that we can monitor things  
18 and say that well, if delays reach a certain  
19 level, they will trigger us to go back and look  
20 at further mitigation, so we can require it? Is  
21 that a possibility? Because it seems to me -- I  
22 know we're monitoring for five years, that over

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1 that five year period, things could be worse then  
2 expected. Can we have tranches of mitigations  
3 depending upon what actually happens?

4 MS. KITAY: Well, there is a  
5 condition now that says that if a party comes in  
6 and argues that there are significantly changed  
7 circumstances, that the Board could review the  
8 continuing applicability of the final mitigation.  
9 So I think that is the reason for this  
10 remonitoring and enforcement conditions that were  
11 in the draft EIS and are also in the proposed  
12 final EIS.

13 And that happened after the Conrail  
14 transaction. We had similar provisions and there  
15 were some adjustments to the mitigation, I  
16 believe, as that case went forward. So I think  
17 the same thing could be true here.

18 MS. RUTSON: And to add, NEPA  
19 requires us to take a snapshot of what is  
20 reasonably foreseeable. They don't expect us to  
21 be Gods. In Conrail, Evelyn, of course, is  
22 correct. We looked at a number of segments. NS,

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1 in particular, had proposed rather dramatic  
2 increases in rail traffic in southern Virginia.

3 Those rail increases never  
4 materialized for whatever reason. But did we go  
5 back in and say well, all this mitigation we are  
6 requiring of you, NS, is no longer applicable?  
7 No, we did not. NS still had to meet that rather  
8 expensive mitigation requirements.

9 But your question is, of course, an  
10 excellent one. And EPA made the point to us  
11 during the commenting period, EPA suggested to us  
12 why don't you have tiered mitigation, so that if  
13 the train traffic, and that's what everyone was  
14 really wondering about, the numbers of trains  
15 that CN was forecasting, being people who were  
16 concerned about their homes and families and  
17 lives, they were very worried that there would be  
18 more trains than anybody projected.

19 So that's why we, as my consultants  
20 so aptly say, drilled into the numbers. And  
21 that's why we did all of that modeling and  
22 checking and probing and pushing and asking and

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1 demanding to figure out if those numbers were  
2 right. And we are pretty damn confident that we  
3 are right with those train numbers. And that's  
4 why we think that our mitigation with the train  
5 numbers is right.

6 But you are raising a very good  
7 point. What is the vehicular traffic should  
8 change? Life as we know now more than ever can  
9 be so uncertain and things happen that no one can  
10 predict, even very, very smart people. So NEPA  
11 is requiring us to look to the best extent that  
12 we can at what is reasonably foreseeable, so  
13 that's what we are doing.

14 VICE CHAIRMAN MULVEY: Well, that  
15 leads me to these train numbers, for example. I  
16 look at the map and it shows parts of the route  
17 where trains increase and other parts where  
18 trains decrease. And I notice that there are  
19 really only five places where you have a  
20 significant reduction in the number of trains.  
21 Where it's a large number, like from 15 to 2.

22 Yet, I find, I think there are 19

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1 places where the increases are very, very large,  
2 much larger than the reductions in any place.  
3 There are places where you go from 2 trains a day  
4 to 25, 30 to 40. There has been 43.5 trains per  
5 day. These are enormous increases.

6 It does seem that the way the  
7 analysis has been done, it's sort of well, there  
8 is benefit here, but there are setting off losses  
9 here, losses there, benefits there. And we sort  
10 of trade these things on an even basis.

11 It's kind of like the old economics  
12 argument about the constant marginal utility of  
13 money. Is the utility of another dollar the  
14 same for a rich person-- is an extra dollar the  
15 same for a rich person and a poor person? With  
16 respect to the environment, there is a difference  
17 between reducing a negative externality in a  
18 place that already experiences a lot of it and  
19 benefit to that community and the cost of  
20 introducing the same externality to a place that  
21 has relatively few of them and now all of a  
22 sudden, we have a lot of it.

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1 I think that is generally perceived  
2 as not the same thing. That it is actually worse  
3 to introduce a negative externality into a place  
4 that was previously relatively pristine, than  
5 reducing it when there is this overall  
6 background. Can you comment on that? Is it a  
7 fair tradeoff to say well, we're reducing  
8 pollution here, and we're increasing it there and  
9 so it's an offset? Even if it's the same kinds  
10 of pollutants or even if it's the same LDN  
11 numbers, because of the places and because of the  
12 history and the background, they really can't be  
13 treated the same.

14 MS. RUTSON: I think some of the  
15 areas, you are exactly right, are not the same.  
16 Fiona Goodson explained to us that the  
17 environmental quality of the lands along,  
18 adjacent to or through which the railroad does  
19 run, on the EJ&E are of a very high quality. And  
20 the environmental areas, natural areas, within  
21 the arc less so.

22 So if you looked at an acre to acre

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1 comparison of impacts, it seems that a scientific  
2 and rational person would conclude that the  
3 impacts would be greater to the high quality  
4 natural areas rather than the less high quality  
5 natural areas.

6 But then you come to the numbers that  
7 really do speak volumes. When Leif Thorson was  
8 talking about the numbers of schools in the  
9 additional analysis that we did, 900-some within  
10 50 feet, I believe? We'll have to get Leif back.

11 VICE CHAIRMAN MULVEY: 2 miles.

12 MS. RUTSON: 2 miles. 2 miles along  
13 the CN five lines feeding into Chicago, 900-  
14 some, and yet 300-some on the EJ&E Line. To my  
15 mind, those numbers, those discrete numbers are  
16 quite comparable.

17 Now, would you ask are the children  
18 who live with trains perhaps on a more daily  
19 basis inside the arc, are they more savvy than  
20 children who live on the EJ&E? I don't know.

21 What I do know is that even today  
22 along the J, even during the time that we were

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1 working on this EIS, two children met their  
2 deaths on the J. One a tragic trespassing  
3 incident in which the child was playing with her  
4 brother and her sister and the other two children  
5 made it across the line, but the young child did  
6 not. And another incident in which a young man  
7 passed away, again hit by a train.

8 It's very difficult, I think, to  
9 compare those situations. And I certainly don't  
10 have the wisdom to be able to comment on the  
11 degree of impact to children inside the arc and  
12 on the arc. But we have looked at the hard  
13 numbers to make that comparison.

14 MR. MORTON: If I could just briefly,  
15 I think you are absolutely correct that in a lot  
16 of cases we tried to quantify both the impacts on  
17 the EJ&E where, you know, traffic would increase,  
18 as well as the impacts on the CN Rail Line. In  
19 some cases, and Mr. Lazzara mentioned it, we did  
20 a regional analysis and compared those two.

21 You know, there is a total of 356  
22 hours of delay increase when you look at all the

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1 increases and all the decreases. Some resources  
2 like air quality where you really are dealing  
3 with a regional sort of phenomena, it does make  
4 sense to quantify it and add it all up and net it  
5 out and say, you know, are we -- you know, we are  
6 adding some pollution, you know, some missions  
7 over here. We are taking them off here. What  
8 are we doing to the region?

9 And that's a good approach. I think  
10 what we tried to do, and I hope you find it this  
11 way, is we tried to present the facts as, you  
12 know, we identified them and quantified them.

13 The real offset, does this balance  
14 this versus this? It is actually -- you know,  
15 and I know I'm speaking out of turn, it's sort of  
16 the role of the decision maker and it's really  
17 your -- I mean, that's why hopefully we are  
18 giving you the information that you can look at  
19 and try to make that decision in that balance.

20 MS. KITAY: And even when you did  
21 look at things on a regional basis, you also went  
22 and looked at every school within --

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1 MR. MORTON: Yes.

2 MS. KITAY: -- 2 miles of the line or  
3 whatever, 50 feet, every emergency service  
4 response --

5 MR. MORTON: Right.

6 MS. KITAY: -- person along in every  
7 single community. So even though there are some  
8 balancing, it's not as if SEA and HDR have not  
9 done a real individualized environmental  
10 analysis.

11 VICE CHAIRMAN MULVEY: One more  
12 question and I'll move on to the next round.  
13 There are also issues of environmental justice,  
14 and I notice that it's addressed in the report,  
15 but it's not really delved into all that much.  
16 But isn't it the case that -- I recall I asked  
17 Ms. Rutson when we first saw an early draft about  
18 the numbers of people who are affected, we didn't  
19 have information on the total numbers who were  
20 affected.

21 As I recall, there are far more  
22 people benefitting in the city of Chicago than

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1 who are dis-benefitted in the suburbs. And isn't  
2 there some question about the relative economic  
3 well-being of the people who are benefitting and  
4 the people who are dis-benefiting?

5 MR. MORTON: Yes, sir.

6 VICE CHAIRMAN MULVEY: In other words  
7 -- yeah.

8 MR. MORTON: Yeah. I would like to  
9 perhaps ask Rich Christopher to just step back up  
10 here real quick. He did the details and I think  
11 the Vice Chairman's question really is related  
12 to, you know, the number of people on the  
13 interior versus the number and the demographics  
14 of those two populations.

15 MR. CHRISTOPHER: Well, first of all,  
16 when we did our environmental justice analysis  
17 just to compare the effects on people along the  
18 EJ&E, we didn't do it based on total numbers of  
19 people. We did it based on census block groups.  
20 And some census block groups are quite a bit  
21 larger than other ones.

22 We selected that unit of measurement,

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1 because that's the lowest unit of measurement for  
2 income distribution. The census block level  
3 probably would have been a more accurate level  
4 for effects, but you can't get income data at  
5 that level.

6 So we compared numbers of census  
7 block groups, low-income versus non-low-income,  
8 minority versus non-minority. We also tried to  
9 describe the number of census block groups that  
10 would be benefitted with less delay and safety  
11 problems and less noise.

12 So -- but we did not try to do a  
13 total number of people analysis. Now, in other  
14 parts of the document, we used census block  
15 groups and total numbers of people to calculate,  
16 for instance, who was going to experience a  
17 slightly increased risk of exposure to hazardous  
18 materials and who would get a slightly lower  
19 number.

20 And when we did that analysis, we had  
21 about 900,000 people with a slightly lower risk  
22 and about 330,000 people with a slightly higher

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1 risk. So those were not based on income or  
2 minority demographics. Those were just total  
3 numbers of people.

4 VICE CHAIRMAN MULVEY: But if you  
5 look at income and minority demographics, is it  
6 true that income, low-income and minority  
7 individuals are more likely to benefit from these  
8 environmental changes?

9 MR. CHRISTOPHER: When we did our  
10 analysis, Vice Chairman, that wasn't necessarily  
11 true. Just from looking at the census block  
12 groups and the way that they were distributed,  
13 the number of census block groups of non-minority  
14 or non-low-income is actually much higher inside  
15 the arc than you would expect. And that's  
16 because the arc is so far out.

17 VICE CHAIRMAN MULVEY: Um-hum.

18 MR. CHRISTOPHER: I mean, it's what a  
19 good 30 plus miles from the center of the city.

20 VICE CHAIRMAN MULVEY: How large are  
21 the census block groups, in general, in terms of  
22 acres or square miles or what have you?

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1 MR. CHRISTOPHER: Well, it depends on  
2 population density.

3 VICE CHAIRMAN MULVEY: Right.

4 MR. CHRISTOPHER: We had some that  
5 were very small, that probably had a population  
6 of less than 1,000. And then we had one that was  
7 actually 13,000 people. So it was all kind of a  
8 community determination made by the census. It  
9 wasn't anything we had anything to do with.

10 VICE CHAIRMAN MULVEY: That's all for  
11 this round from me. Thank you.

12 CHAIRMAN NOTTINGHAM: Thank you, Vice  
13 Chairman. Just to follow-up on this trespassing  
14 concern. Is it fair to say that there currently  
15 is trespassing that happens under the system,  
16 both on the EJ&E today, but also on the CN system  
17 in Chicago?

18 MS. RUTSON: Absolutely, sir.

19 CHAIRMAN NOTTINGHAM: Any reason to  
20 believe that there would be more trespassing  
21 problems if the traffic were to largely relocate  
22 from Chicago to the EJ&E Line, if this

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1 transaction were approved?

2 MS. RUTSON: No reason to believe  
3 that at all.

4 CHAIRMAN NOTTINGHAM: Okay. So  
5 really trespassing is one more example that  
6 weighing where you may have -- certainly may have  
7 a little more in some locations, but probably  
8 have less in others post-transaction, if it were  
9 approved?

10 MS. RUTSON: That's exactly right,  
11 Mr. Chairman. And there is voluntary mitigation  
12 from the applicants and SEA's preliminary  
13 proposed mitigation that addresses fencing and  
14 working with communities, parks to try and make  
15 the rail line as safe as possible.

16 CHAIRMAN NOTTINGHAM: When we as a  
17 group visited the area, we didn't spend quite as  
18 much time looking at the existing CN system in  
19 Chicago as we did looking at the EJ&E arc. We  
20 have had some reference this afternoon to  
21 proximity of the EJ&E Line to housing, schools,  
22 park resources, etcetera.

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1           Can someone give us a snapshot of  
2           what, on the benefit side, the picture looks like  
3           on the existing CN Lines within Chicago? I  
4           assume, I've seen some of it, but you're talking  
5           about lines --

6           MR. MORTON: Right.

7           CHAIRMAN NOTTINGHAM: -- that are  
8           near housing, lines near public housing, lines  
9           near schools, lines near streets and cumulatively  
10          that sheer number of people in a densely  
11          populated megatropolis, such as Chicago, that  
12          would, I'm guessing, be -- would far out number  
13          those that are impacted, if this transaction were  
14          approved in the outer suburbs.

15          MR. MORTON: That's correct, Mr.  
16          Chairman. I believe and I think Rich just  
17          mentioned it is that there is, approximately,  
18          900,000 people that live along the five CN Rail  
19          Lines that, you know, inside the EJ&E arc and  
20          about 300,000 or 400,000 people that live along  
21          the EJ&E Rail Line. So it is -- the CN Lines run  
22          through more densely populated areas.

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1 I think that, in general, the lines  
2 have been there, you know, for quite some time.  
3 You know, the population has grown up around  
4 them. There is a lot of housing near them in  
5 some areas. There is a lot of businesses near  
6 them in some areas.

7 You know, so I think it's a little  
8 difficult to just characterize them, you know, in  
9 whole, but they do run through more densely  
10 populated areas. That's correct.

11 CHAIRMAN NOTTINGHAM: Thank you.  
12 There has been a lot of discussion, as there  
13 should be, about pre-existing conditions and the  
14 status quo as exists today along the EJ&E Lines  
15 and the communities adjacent to the EJ&E Lines.  
16 It struck me, when we had a chance to recently  
17 visit the area, that certainly there was  
18 significant traffic congestion and some safety  
19 concerns in and around the track location  
20 currently.

21 I didn't notice and this is not  
22 scientific whatsoever, so I'm not going to make a

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1 decision based on this at all, but I didn't  
2 notice a lot of highway improvement construction  
3 projects. We didn't -- we weren't delayed by --  
4 we were there during summer months. We didn't  
5 see a lot of cones, a lot of equipment and  
6 things, as a former State Highway Department had  
7 I know easily how to recognize, nor did I even  
8 notice a lot of evidence of recent sort of new  
9 looking turn lanes or newer looking intersection  
10 improvements.

11 But help me understand someone the  
12 history. I got the impression, and I want to  
13 hear from folks who have spent more time and have  
14 more facts on this than my, you know, impressions  
15 that I was getting, that there hasn't been a  
16 sustained effort to keep traffic moving freely  
17 for whatever reason in much of the EJ&E corridor.

18 I just -- is that -- am I accurate  
19 there? Did you pick up -- are there plans that  
20 show projects? We're talking about communities  
21 that have a lot of Ds and some Fs on traffic  
22 flow. Are there projects in the pipeline that

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1 the metropolitan planning divisions have to  
2 address that?

3 I mean, this project could disappear  
4 tomorrow, I mean, with the financial situation,  
5 the economy, I mean, so this is a question really  
6 that goes beyond just whether this project  
7 happens or not or happens with mitigation. I  
8 mean, this -- you are talking about communities  
9 that are facing some serious challenges. But I  
10 didn't -- I was worried that not a lot of action  
11 to address it.

12 MR. MORTON: I'm going to turn it  
13 over to Rich in just a second, but I think that  
14 issue was certainly identified during the scoping  
15 process where we -- where SEA received a lot of  
16 comments/concerns about existing congestion and  
17 existing traffic problems and would this proposed  
18 transaction exacerbate those?

19 That's one of the reasons in the  
20 draft EIS that we actually identified the level  
21 of service on the roadway. As you know,  
22 typically SEA would look at a level of service

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1 analysis at an individual railroad crossing. And  
2 certainly, they did so this time. But because of  
3 the regional concerns and some of the mobility  
4 issues that you see, that's one of the reasons  
5 why we also looked at the -- you know, and  
6 quantified the total delay and looked at those  
7 at-grade crossings where you had more than 40  
8 hours of delay and also the queue length, because  
9 that certainly has a potential to impact other  
10 regional issues.

11 And so that's one of the reasons why  
12 we looked at those two factors was to try to  
13 accommodate the regional issues. With that, I  
14 would like to turn it over to Rich to kind of  
15 give you a little bit of a feel for the history  
16 of that. Rich, would you mind kind of giving a  
17 little bit of your background, so they know, you  
18 know, from where you are speaking?

19 MR. CHRISTOPHER: Okay. First of  
20 all, my background. I was with the Illinois DOT  
21 for about 26 years. I worked for the State of  
22 Illinois for about 30. And for the-- during most

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1 of those 26 years, I was the counsel to the  
2 planning organization as well, because it was  
3 tied very closely to the Illinois DOT.

4 So some of the stuff I would like to  
5 say today is what I learned, but it's also what I  
6 learned from the people that had been there  
7 before I got there.

8 First of all, we have two  
9 metropolitan planning organizations in the  
10 project area. One in northwest Indiana and one  
11 in northeast Illinois. And most people in  
12 Chicago that want to go back to the like how did  
13 we get into this and where did all these  
14 improvements come from, the benchmark we usually  
15 turn to is 1962 Plan.

16 It was kind of a pioneering plan. It  
17 was the first one of its kind in the United  
18 States, because it was long-range. It was  
19 regional. And it combined highway and transit.  
20 The only long-range plan that had been done  
21 before that was in Detroit and it was limited to  
22 highway improvements.

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1                   Now, the 1962 Plan called for  
2 extending transit, finishing the radial  
3 expressway system, which is pretty much the  
4 interstate highway system in the Chicago area,  
5 and planning for future concentric rings that  
6 would move around the Chicago area, much like the  
7 EJ&E does.

8                   The first ring would be about 3 or 4  
9 miles outside the city limits. That ring was  
10 already built in 1962 and it is still there  
11 today. The second ring would be about another 7  
12 miles out. That ring is about half built today.  
13 And the third ring would be pretty close to the  
14 EJ&E. That ring that starts and stops in the  
15 planning process and there currently isn't really  
16 a long-range highway planned in that corridor.

17                   There are individual pieces that are  
18 planned, but not a long continuous route. There  
19 is a fourth ring, which is another 7 or 8 miles  
20 further out west where there is actually work  
21 being done and construction being done to move  
22 traffic north and south.

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1                   Now, there is a lot of reasons why  
2                   that, you know, has happened at certain places  
3                   and hasn't happened in others. Since 1962, a lot  
4                   of things have changed. NEPA got passed along  
5                   the way. It's a lot harder to do an improvement  
6                   now than it used to be. The planning rules have  
7                   changed. And now the long-range transportation  
8                   plans have to be consistent with air quality  
9                   planning and that's a real constraint on how  
10                  these things get done.

11                  Also, the planning agencies don't  
12                  just do transportation any more. They try to  
13                  integrate land use planning, natural resource  
14                  planning, air quality planning and all these  
15                  things into one mix. Now, that might make for a  
16                  plan that is responsive to an awful lot more  
17                  needs, but it also makes it much more difficult  
18                  to get significant transportation improvements.

19                  Now, and of course, the biggest  
20                  constraint to any of this is finances. The  
21                  finances for highway and transit improvements are  
22                  actually the public finances, which are much less

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1 today than they were in 1962. The gas tax is  
2 just -- as you know, it hasn't turned out to be  
3 what we all thought it would be.

4 Now, that doesn't mean that there  
5 isn't still progress being made, that there  
6 aren't still improvements going in. As I said,  
7 most of that second ring is -- about half of it  
8 is built, about half toll facility, about half  
9 non-toll facility.

10 The first ring around the Chicago  
11 area is about 90 percent tolled. The transit  
12 now, the transit system goes much further out  
13 than it ever did before and ridership is much,  
14 much higher on transit than it once was. And of  
15 course, recently, there has been a tremendous  
16 surge with the fuel prices, as you were talking  
17 about, Mr. Vice Chairman.

18 There are also local projects. Now,  
19 some of the projects that are local in nature go  
20 through the metropolitan planning process, so  
21 that they are eligible for federal funds. Some  
22 of them don't have to. And we listed, to the

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1 extent we could find them, ever local  
2 improvement, that we knew of, that was going  
3 through the county highway departments where they  
4 just come up with their own program, publish it  
5 and go on their way.

6 We looked for the ones that were as  
7 close to the EJ&E as possible. We found -- and  
8 then even when we thought we had a good list, we  
9 got into the comment period and found out we had  
10 missed a bunch. So we have got just about every  
11 single one we could find are listed in the final  
12 EIS.

13 There are some that are -- have been  
14 initiated by the communities immediately around  
15 the grade crossing, other ones initiated by the  
16 county highway departments, as I said. And we  
17 have got them all listed in the final document.

18 MR. MORTON: Did that answer your  
19 question, Mr. Chairman?

20 CHAIRMAN NOTTINGHAM: That was  
21 helpful. The sense I got that I want to bounce  
22 this off knowledgeable sources that we have here

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1 today, it seemed that there weren't a lot of lane  
2 additions that had been undertaken in some of the  
3 major arterials that were running kind of  
4 east/west through some of the communities that  
5 have generated a lot of correspondence to it on  
6 this transaction, turn lanes, widened shoulders  
7 and whatnot.

8           And I got the sense that perhaps, and  
9 I have seen this, this is certainly a common  
10 phenomena around the country, that perhaps  
11 communities consciously decided not to seek  
12 funding and push projects ahead for fear that  
13 they would become more of a conduit for cut  
14 through traffic so to speak from the outer  
15 suburbs to the west in and effort not to become  
16 that thoroughfare, that, you know, speed bump in  
17 between a job center like Chicago in the western  
18 suburbs.

19           The consciously said no, we don't  
20 have any plans. But is that a situation -- I've  
21 seen that situation many other places. I don't  
22 want to assume that's the situation along the

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1 EJ&E Line. But do you have any information that  
2 would speak to that one way or the other?

3 MR. CHRISTOPHER: Well --

4 CHAIRMAN NOTTINGHAM: And if so, has  
5 that been a successful strategy? Has it actually  
6 resulted in less traffic problems?

7 MR. CHRISTOPHER: Well, first of all,  
8 because of the modern planning process, which  
9 includes the NEPA process and context sensitive  
10 solutions to transportation problems, things like  
11 add lanes projects don't get built unless  
12 communities want them.

13 I mean, there has to be a community  
14 consensus find, a major investment with  
15 disruptions and right-of-way takes and everything  
16 else, otherwise, you're not going to do it. And  
17 we found a couple of examples, when I was working  
18 at that, where communities knew that they needed  
19 something, but they were having a horrible time  
20 figuring out what it was, because they didn't  
21 like any of the choices.

22 And in some of those cases, it does

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1 put off getting the improvement that you need,  
2 because you just can't agree on what it is you  
3 ought to do. There have been communities who  
4 have decided that the best way for them to live  
5 on the way that they want to live on is to avoid  
6 any significant transportation improvement.

7 And it's tough to generalize, but  
8 that usually doesn't work. If traffic is headed  
9 your way, it is headed your way. And if you  
10 don't do anything about it, you're probably going  
11 to get it anyway. Would you get more traffic if  
12 you had a bigger road going through the middle of  
13 town? I don't know. That's an argument that is  
14 a tough one for anybody to win, I think.

15 CHAIRMAN NOTTINGHAM: Thank you.  
16 Some of the comments we have received indicate  
17 that many stakeholders, many interested parties  
18 are comfortable with the current levels of rail  
19 traffic that exists now, very concerned about  
20 increases, of course, for all the obvious reasons  
21 and suggested that if we were to approve this  
22 transaction, we do so with strict limits to

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1 disallow traffic increases, unless agreements are  
2 reached with the local governments involved about  
3 the terms and conditions under which traffic  
4 increases might be able to go forward.

5           You have been, all of you have been,  
6 working and spending quality time in these  
7 communities. Some of your careers it sounds  
8 like, Mr. Christopher, what are the chances that  
9 -- I worry that if we were to go that route,  
10 there may be other reasons to have problems with  
11 this transaction and certainly other mitigation  
12 discussion items, but if we were to focus too  
13 much on that, we would basically be putting  
14 localities in charge of Interstate Commerce and  
15 the chance that any locality would actually allow  
16 increases in traffic, I think, I mean, would be  
17 pretty minimal.

18           But can you speak to that? You know,  
19 how would that be -- how would that work? Just a  
20 suggestion to go forward.

21           MR. MORTON: Well, there is a couple  
22 of things and I think you put your finger on an

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1 issue that, you know, has been a concern for a  
2 number of the stakeholders from the very start.  
3 And that is, you know, what assurance do they  
4 have that the number of trains that CN has  
5 proposed and that were evaluated in the EIS is  
6 going to remain the number?

7 And of course, you know, we certainly  
8 understand that railroads, you know, respond to  
9 market forces. They, you know, increase the  
10 number of trains. They decrease the number of  
11 trains. But what we did do, and I think Mr.  
12 Burgel explained a couple of those things earlier  
13 this morning, but we looked at the train numbers  
14 from, basically, five different ways.

15 And I think we discussed these in the  
16 draft EIS, but first, we looked at it from a  
17 capacity standpoint and we did three analyses to  
18 look at capacity. And one was the bottleneck  
19 analysis. And we looked at the Joliet area as  
20 one bottleneck, not necessarily the only  
21 bottleneck, that the railroad would have to  
22 approve.

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1           And our conclusion with that is that  
2           there -- really their operating plan sets the  
3           maximum number of trains. One of the things that  
4           EPA asked and, you know, they probe very hard on  
5           the bottleneck analysis and one is, you know,  
6           well, is there an easy fix?

7           Let's say they add a second track to  
8           the bridge, could they all of a sudden put 50  
9           more trains on it? And so we started looking at  
10          that and the EPA kind of used the analogy of an  
11          onion. You know, if you peel back this layer,  
12          you know, you get a quantum increase in capacity  
13          or there is just more layers of the onion to go  
14          through.

15          And so we did look at that under the  
16          bottleneck analysis. And there is certainly a  
17          fix that you can do here that gives incremental  
18          additional, you know, improvement and then  
19          another fix and another fix. But there wasn't  
20          anything that looked to us that gave them just  
21          this quantum leap in capacity. And so that was  
22          one analysis.

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1           As Mr. Burgel explained, we also did  
2           the line occupancy analysis in the RTC modeling,  
3           a much more robust analysis. Then the other two  
4           things we did were from the demand side. We  
5           looked at -- you know, we did an economic  
6           analysis that looked at general freight trains  
7           with, you know, capacity unconstrained and how  
8           those economic factors would influence, you know,  
9           how traffic may be driven by economic factors.

10           And once again, you know, for 2015,  
11           we came up that this is -- you know, that the  
12           train traffic levels that we are using in the EIS  
13           are within that reasonable range of what we would  
14           expect to see, based upon just, you know, global  
15           or national sort of economic trends.

16           CHAIRMAN NOTTINGHAM: Mr. Morton, let  
17           me -- I hate to cut you off, but I want to  
18           respect time for others. I think everything you  
19           are saying is interesting to me, but I want to  
20           maybe rephrase my question.

21           Pick your favorite or pick a  
22           community that has submitted a lot of letters to

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1 the Board. I'm not going to name one, just pick  
2 -- in opposition to this transaction. And then  
3 play out with me just quickly a little  
4 hypothetical exercise. We approve this  
5 transaction under the condition that there will  
6 be no increase in traffic through community X,  
7 who has written a lot of letters, citizen letters  
8 opposing this project, unless that community  
9 approves of the terms and conditions under which  
10 increased traffic were to take place.

11 What are the chances that our -- we  
12 would ever see an increase in traffic? In other  
13 words, is this just a matter of the parties not  
14 being able to agree on a couple million dollars  
15 so far in mitigation and the informal, you know,  
16 private voluntary mitigation dialogue or are we  
17 miles apart?

18 And so what I'm sensing the letters  
19 and the intent is we are miles apart. Now, there  
20 is no scenario whereby -- and for understandable  
21 reasons, which I think is why we have something  
22 called the Interstate Commerce Act and something

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1 called the Surface Transportation Board and we  
2 don't have a system in our country where, God  
3 bless them, the wonderful people who do some of  
4 the hardest work in Government, and I mean this  
5 in our country, which is local government work.

6 I used to work for a distinguished  
7 Member of Congress who said without doubt the  
8 toughest job he has ever been exposed to was  
9 school board, local school board duty.

10 MR. MORTON: Right.

11 CHAIRMAN NOTTINGHAM: And everything  
12 else is easy compared to that. And you know, you  
13 can work it on up. But how -- help me out. I  
14 mean, would such a scenario likely result in a  
15 kind of real compromise where you would see some  
16 increase in traffic with some additional benefits  
17 flowing to the communities or would this just be  
18 the end of the story, as far as traffic?

19 MR. MORTON: My sense, you know, Mr.  
20 Chairman, is that it is mixed, that there are  
21 communities out there that it would be very  
22 difficult to negotiate with and come up with some

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1 sort of traffic increases that would be  
2 palatable. There are some communities out there  
3 that I think it would be much easier to work with  
4 and strike some deals or, you know, identify a  
5 number that they could live with, I think.

6 CHAIRMAN NOTTINGHAM: And in reality,  
7 all it takes is one community, right, to stop  
8 increase in traffic for the whole line.

9 MR. MORTON: Yes, that's correct.

10 CHAIRMAN NOTTINGHAM: And so I would  
11 suggest if that -- if we were to support such a  
12 hypothetical, it would probably be more honest  
13 just to vote against the transaction than to say  
14 oh, we're voting for it, but we're just going to  
15 let the locals work it out with the railroad. I  
16 think that would be shirking our responsibility,  
17 in my personal humble opinion.

18 And so I'm going to -- you know,  
19 whatever we do, I think I'm going to make sure  
20 its the Board's action that we're held  
21 accountable and that we don't pass it off for  
22 decades of in fighting amongst other parties. So

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1 I appreciate your response.

2 We had some reference, I referenced  
3 it myself, Commissioner Buttrey referenced the  
4 Overton Park decision. And, Ms. Kitay, I might  
5 ask you, you are our most knowledgeable  
6 environmental attorney, and I'm sure you have  
7 cited the Overton Park case more than once in  
8 your career. It is a black letter law and a  
9 really important case, as Commission Buttrey  
10 referenced.

11 A beautiful park resource targeted  
12 for disruption by a major interstate, a new  
13 construction project during the interstate  
14 construction era and the Supreme Court weighed in  
15 very clearly on the type of informed judgment and  
16 alternatives analysis and avoidance of  
17 environmental harms type of analysis.

18 I don't see -- as important as  
19 Overton Park is, I don't see this case -- Lord  
20 knows this case will raise and we will see it  
21 play out in the courts no matter what we do. A  
22 number of interesting legal issues, I'm sure.

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1 But I don't see it as an Overton Park case where  
2 we have the green fields situation where all of a  
3 sudden a new massive new construction is being  
4 plowed through.

5 We have an existing line of railroad.  
6 We have an applicant wanting to come in and route  
7 more traffic over that line could raise serious  
8 issues that we have been hearing, but not -- I  
9 don't see it as an Overton Park factual case,  
10 what's your sense on that?

11 MS. KITAY: I would agree with you,  
12 Mr. Chairman. I think that there is a big  
13 difference between constructing a new line in  
14 which case you might really have a number of  
15 alternatives and using an existing railroad  
16 right-of-way, which is what we are doing here, I  
17 think that there can be environmentally  
18 preferable alternatives. And certainly for some  
19 of the connections that CN proposes, we are  
20 recommending environmentally preferable  
21 alternatives.

22 But essentially, you have an existing

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1 rail line and there really are no alternatives,  
2 other than using that existing rail line. And as  
3 we have discussed earlier today, the alternatives  
4 that have been proposed throughout this  
5 proceeding, like the CREATE Line or increased  
6 trackage rights would not allow the applicants to  
7 meet the purpose and the need of the project.

8 And the courts have found that if  
9 you're looking at alternatives, they have to be  
10 reasonable and feasible alternatives that would  
11 allow the applicant to meet its purpose and need.  
12 So in mergers and acquisitions, we don't do the  
13 same kind of alternatives analysis that you would  
14 do in a new construction.

15 CHAIRMAN NOTTINGHAM: Thank you.  
16 Now, turning back to the mitigation and assuming  
17 if we were to conditionally approve this  
18 transaction, if we were to with mitigation, and  
19 almost all the transactions I have heard about  
20 that have been approved in recent years, the  
21 Board came with mitigation conditions, help me  
22 understand the mechanics of that.

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1           Some period, let's say we mandate 4  
2           or 6 or some number of above grade, grade  
3           separation project improvements and they get  
4           designed and built at different stages in the  
5           future. How does the -- how would the money  
6           flow? You were suggesting earlier 15 percent  
7           would be an appropriate number. Does there need  
8           to be any kind of mechanism set up to make sure  
9           that -- how do we enforce that?

10           And who, under your preliminary  
11           scenario, would the State DOTs largely be in the  
12           driver's seat on that process of sort of  
13           marginally working with the locals and the  
14           railroad, so that no one party can just sort of  
15           stall or frustrate the intent of any such  
16           mitigation plans?

17           MR. MORTON: The -- Mr. Chairman, I  
18           think the -- clearly the -- there needs to be a  
19           partnership developed and on both of those roads,  
20           Ogden Avenue and Lincoln Highway, they are both  
21           state routes and we would envision that the State  
22           DOT would be the driver of that partnership.

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1           Both Indiana and Illinois have  
2 processes in place for grade separation projects.  
3 And those processes do include partnerships that  
4 they developed, you know, between the locals, the  
5 state and the railroad. And we would envision  
6 that you would work through the existing process  
7 that they have to do that. That is correct.

8           MS. KITAY: They would also be  
9 reporting, as we have said earlier, so we would  
10 be kept apprised of the railroad's progress --

11           CHAIRMAN NOTTINGHAM: So if the state  
12 says --

13           MS. KITAY: -- in implementing.

14           CHAIRMAN NOTTINGHAM: -- we're about  
15 to let a contract for preliminary engineering, CN  
16 send in your percentage contribution, that's  
17 going to either happen or if it doesn't happen,  
18 we hear about it or we're able to do something  
19 about it?

20           MS. KITAY: Yes. We would hear about  
21 it in the quarterly reports that the railroads  
22 would be required to file.

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1                   CHAIRMAN NOTTINGHAM: But you are not  
2 proposing, if I understand, that we hold on to  
3 some kind of working capital fund or something  
4 where we hold onto the railroad's money until the  
5 state asks for it?

6                   MR. MORTON: There was -- one of the  
7 eight suggestions, you know, concepts that we  
8 published in the draft EIS, one of them did  
9 include a traffic impact mitigation fund. And we  
10 specifically asked the public to comment on, you  
11 know, who would hold the capital. You know, how  
12 such a fund would work. And we did get some  
13 comments on that, but you know, that is not what  
14 we would be proposing on -- in this. That's  
15 correct.

16                   CHAIRMAN NOTTINGHAM: And whatever  
17 that percentage of mitigation responsibility for  
18 those new construction projects that we hold the  
19 railroad accountable for, whether it is 15  
20 percent or something higher, that doesn't  
21 actually guarantee those projects get built,  
22 right, realistically? You're still going to have

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1 to -- you're still going to need the state and  
2 the localities to agree on a project, agree on  
3 the need, come up with their share of the  
4 resources.

5 So we could actually mandate  
6 something recognizing a very serious traffic and  
7 safety problem and look back 10 years later and  
8 see that nothing happened, because of just lack  
9 of financial or willpower or leadership or  
10 whatever it is.

11 MS. KITAY: Well, that's true. And  
12 it is also -- it could lead to negotiated  
13 agreements that could result in more favorable  
14 mitigation for a community that really doesn't  
15 want a grade separation.

16 CHAIRMAN NOTTINGHAM: Okay. That's a  
17 good point. In my experience, grade separations  
18 may be very desirable from a safety and  
19 engineering perspective and a traffic flow  
20 perspective, but when you superimpose them on the  
21 realities of the community and you look at the  
22 distances and the spaces and the footprint of a

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1 modern day grade separation project, it can be  
2 very difficult to weave that into the context of  
3 an existing community in a way that is popular,  
4 frankly.

5           The -- jumping around here a little  
6 bit, there was some reference I saw in some of  
7 the correspondence we received on some of the  
8 environmental issues about the concerns about  
9 possible hazmat spills and suggestions to  
10 different ways to mitigate and a mitigation  
11 strategy referenced as an impermeable membrane  
12 surface.

13           And is this something that -- my  
14 understanding is this would be some kind of  
15 fabric like material that would be laid -- in-  
16 laid beneath the soil surface adjacent to  
17 railroad right-of-way that would hopefully almost  
18 act as a sponge, in effect, in the event of a  
19 hazmat spill, you would contain the runoff into  
20 waterways and water resources, etcetera. Is that  
21 a fair description?

22           MR. MORTON: There were certainly a

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1 number of commenters who were concerned about  
2 hazardous materials spills and specifically the  
3 potential for a hazardous material spill to leach  
4 into the groundwater and, you know, contaminate  
5 the shallow source aquifer that a number of  
6 communities use as their drinking water source.

7 It was -- we didn't get a lot of  
8 comments, you know, really, you know, designing  
9 it or specifying it. The concept, and I'll let  
10 Kevin talk about it in a second, has generally  
11 been some sort of impermeable membrane or clay  
12 lens or something like that that would serve as a  
13 catchment basin.

14 And I don't know, Kevin, if you  
15 wanted to?

16 MR. KELLER: Sure. Hazmat is a very,  
17 very well-regulated area, as we all know. There  
18 are state regulations. There is federal  
19 regulations. Often times with storm water, there  
20 is local regulations. The rail industry has  
21 really, really stepped up in terms of responding  
22 to hazmat incidents, in terms of spills and

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1 releases into the environment.

2 We were talking with U.S. EPA about  
3 this containment, this barrier type system. And  
4 in their eyes, you know, if such a barrier or  
5 containment system can be installed near areas of  
6 vulnerable and susceptible water areas, like a  
7 groundwater, a well protection area, a surface  
8 water body, a creek, a fen, a wetlands, a ditch,  
9 then that would be a good idea.

10 And in fact, railroads in their  
11 yards, in fixed facilities use certain things  
12 like that. They have track pads, which are  
13 containment structures for any kind of a fueling,  
14 for example, overfill or something like that  
15 situation.

16 What happens is that is extremely  
17 problematic in the real environment. What  
18 happens is sometimes that can cause more damage  
19 than it can prevent, because if you have a catch  
20 basin type situation, what if there is a big rain  
21 event? There is already that contaminate, that  
22 material in there and it overflows, now, you have

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1 just created a bigger problem than what you  
2 originally had.

3 The best solution we think is still  
4 in terms of pollution prevention an immediate  
5 response to any kind of a spill or release. So  
6 we are not going to recommend a barrier or  
7 containment system in our mitigation measures,  
8 but instead what we are making sure and that we  
9 want to ensure is that the applicant supplies all  
10 local emergency responders with the appropriately  
11 trained people, they have the right equipment,  
12 they have had the right materials to respond  
13 immediately and effectively to any kind of a  
14 release.

15 CHAIRMAN NOTTINGHAM: What I think  
16 I'm hearing is this suggestion of an impermeable  
17 membrane type strategy is not a best practice  
18 that has been widely deployed along the rail  
19 corridors that has worked well.

20 MR. KELLER: That's correct, Mr.  
21 Chairman. It has been deemed actually to be  
22 technically impractical at most places. It is

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1 not a regulatory requirement in any state or any  
2 federal agency. And we just don't think it would  
3 be feasible, at this point.

4 CHAIRMAN NOTTINGHAM: Okay. I want  
5 to move to Commissioner Buttrey momentarily.  
6 Thank you for your patience, colleagues. Two  
7 quick questions, maybe not so quick, but  
8 hopefully they will be quick.

9 One of the ironies of this  
10 application, this project is while we -- while  
11 \$20 plus million has been spent on the very, I  
12 think, thorough environmental analysis and  
13 thousands of hours have been spent by hundreds of  
14 different -- thousands of different stakeholders  
15 thinking about this project and hearing the Board  
16 try to figure out how to comply with our legal  
17 responsibility and to thoughtfully handle this  
18 application, while we are giving this all this  
19 thought, there is nothing that occurs to me,  
20 there is nothing that would prevent the rail,  
21 current rail owner, from running more traffic  
22 over this line.

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1                   They currently -- my understanding  
2 is, the EJ&E already does have other railroads  
3 running traffic over this line, correct?

4                   MS. RUTSON:     That's correct, Mr.  
5 Chairman.

6                   CHAIRMAN NOTTINGHAM:   And if they  
7 decided to add a few trains each year or every  
8 other year for the next five years, would we have  
9 -- would they require our permission to do that?

10                  MS. RUTSON:     Perhaps a trackage  
11 rights application, but that, under our  
12 environmental rules, requires no environmental  
13 review.

14                  MS. KITAY:     Unless there was enough  
15 potential for environmental impacts.

16                  CHAIRMAN NOTTINGHAM:   So if they hit  
17 a certain threshold perhaps they would?

18                  MS. KITAY:     We could, theoretically,  
19 do an environmental review of trackage rights if  
20 there was enough potential for environmental  
21 impacts.

22                  CHAIRMAN NOTTINGHAM:   Have we ever

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1 done that before?

2 MS. RUTSON: Never.

3 MS. KITAY: No.

4 MS. RUTSON: Never.

5 MS. KITAY: No.

6 CHAIRMAN NOTTINGHAM: I would have to  
7 say this Board has been shown the willingness to  
8 go where no Board has gone before on other  
9 occasions. So that's not -- but it is worth  
10 noting.

11 MS. KITAY: But I think that the  
12 trackage rights clearly could happen and the  
13 thing is that they would not allow the applicants  
14 to totally satisfy the purpose and need of the  
15 project.

16 CHAIRMAN NOTTINGHAM: Right. Now,  
17 looping back to this 15 percent mitigation  
18 number. I understand the data and the analysis  
19 about the region-wide sort of contribution to the  
20 -- or exacerbation if I should call it, let's  
21 call it the exacerbation of traffic congestion  
22 factor. It is 15 percent region-wide, if this

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1 transaction were approved.

2 The transaction would exacerbate or  
3 worsen traffic conditions region-wide to the tune  
4 of 15 percent, that's what I understand. Then we  
5 look at the actual locations where there are  
6 preliminary recommendations to do grade  
7 separation construction and projects.

8 I want to know if we have it, what is  
9 -- location by location, what is that  
10 exacerbation factor? Do we have data or can we  
11 get out a number there? Because whether it is 2  
12 percent or 18, I'm more comfortable, frankly,  
13 just being location-specific, because those are  
14 the locations we are saying the situation is so  
15 serious that something very dramatic needs to  
16 happen.

17 We are not quite as concerned, with  
18 all due respect, with the 15 percent out there  
19 that don't trigger the Level of Service F,  
20 etcetera. So that's why I don't want to be  
21 overly hung up on that 15 percent if that's not  
22 what -- the exacerbation factor, to make up a

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1 phrase there, of that location.

2 MR. MORTON: For each of the 88 grade  
3 crossings, at-grade crossings on the EJ&E, we  
4 calculated exactly that information and it is  
5 presented in -- it will be presented in the final  
6 EIS. And that is we calculated, you know, under  
7 a no action scenario what the current delay would  
8 be and for each one of them, we calculated under  
9 the proposed action what the expected delay would  
10 be and calculated the difference.

11 So that information certainly is  
12 available for each one of those.

13 CHAIRMAN NOTTINGHAM: Good. Did you  
14 put it in percentage terms? I know Dr. Mulvey  
15 would have no problem crunching the numbers, but  
16 the poor lawyers over here might still struggle  
17 with that. So if you could put it in  
18 percentages?

19 MR. MORTON: We would be more than  
20 happy to put it in percentage.

21 CHAIRMAN NOTTINGHAM: All right.

22 MR. MORTON: Yes, absolutely.

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1                   CHAIRMAN NOTTINGHAM:     Thank you.  
2     Now, last question, I promise. We have this at  
3     two locations where we -- two seriously degraded  
4     intersections where there is actually a voluntary  
5     mitigation agreement already in place. If that  
6     voluntary agreement, in my understanding, had not  
7     been reached, the same rationale that results in  
8     the preliminary recommendation for grade  
9     separation projects at a couple other locations  
10    would have applied at those locations.

11                   Just quickly walk through that,  
12    because I want to make sure I'm comfortable  
13    intellectually with the consistency of mandating  
14    grade separation one place but not in other  
15    places when the same levels, same numbers have  
16    been hit.

17                   MR. MORTON:     Okay.

18                   CHAIRMAN NOTTINGHAM:     And I say that  
19    with all great respect for voluntary mitigation.  
20    We applaud it. We encourage it. I will point out  
21    for the record there is still time for folks who  
22    are watching or here in person to undertake

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1 voluntary mitigation plans and agreements, that's  
2 much better than a Government-imposed solution,  
3 in my mind.

4 But at the same time, I want to be  
5 sure we're being consistent in how we approach  
6 it, recognizing in almost any scenario that I  
7 think is realistic, if we were to approve this  
8 transaction, it would be with conditions and it  
9 would require significant state and local  
10 contributions, so there's no actual mandate that  
11 something is going to get built. It's going to  
12 take a team effort.

13 MR. MORTON: Yes, sir. The -- I  
14 think the -- if you go back in the discussions  
15 that we had earlier this morning, both Mr.  
16 Thorson and Mr. Lazzara, on the safety side we  
17 evaluated the change in safety, the change in the  
18 risk at all the at-grade crossings. And there  
19 were four at-grade crossings that we identified  
20 in the draft EIS that had a substantial risk  
21 profile change.

22 Those are two in Griffith, you know,

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1 Lake Street and Miller Street, which we have  
2 voluntary mitigation for. There is one that has  
3 already been upgraded, so, in fact, the  
4 mitigation has already taken place for that. And  
5 then the fourth one was Woodruff Avenue in  
6 Joliet, Illinois. And Woodruff Avenue is at sort  
7 of the west end of the East Joliet Yard.

8 The analysis of -- on the traffic  
9 side, when we looked at the change in the level  
10 of service at the various at-grade crossings,  
11 there were only -- in that -- that's historically  
12 the analysis that SEA has used on most cases is  
13 the change in level of service. There are only  
14 two that changed from a Level of Service D or  
15 better to a Level of Service D or worse after the  
16 transaction and that's Washington Street, also in  
17 Joliet, Illinois, and Woodruff Avenue that we  
18 just talked about in Joliet.

19 So those two crossings are crossings  
20 that SEA would historically call impacted under,  
21 you know, any sort of analysis or the analysis  
22 they did. We then did the -- you know, expanded

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1 that analysis to look at the regional  
2 transportation impact and that's why we did the -  
3 - both the 40 hour delay and the queue length.

4 But you are absolutely right.  
5 Washington Street and Woodruff Avenue absent a  
6 Joliet agreement are certainly two crossings that  
7 I think we would look very seriously at the type  
8 of mitigation, what might be appropriate at those  
9 two crossings, because they both would warrant it  
10 under SEA's, you know, analysis.

11 CHAIRMAN NOTTINGHAM: My  
12 understanding is that preliminarily, the staff is  
13 not inclined to mandate a percentage contribution  
14 for a grade separation project there, because a  
15 voluntary mitigation agreement has already been  
16 entered into. But the Board, presumably, has  
17 some discretion to actually look at it and say  
18 well, if you apply the actual numbers and the  
19 data, the metrics, these two are impacted just as  
20 badly as the others.

21 And we want to require that the  
22 railroad be responsible in the event that the

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1 locals and state put together a plan to actually  
2 address that. Now, if some side agreement  
3 prevents the localities and state from deciding  
4 to go forward with the plan, so be it. We  
5 respect agreements and mitigation agreements. We  
6 don't want to micromanage the priority setting of  
7 the community that may very well at Joliet have  
8 decided that it's much more important than to  
9 straighten out that yard and advance some of the  
10 other goals they were able to achieve in their  
11 mitigation plan.

12 But I just float that as food for  
13 thought. Again, as long as it is based on the  
14 data, I think we would be in strong territory  
15 there. No, we can't just make this stuff up,  
16 obviously, at some free flowing sense of equity.  
17 I mean, but you are talking about data analysis  
18 that would have led to a certain outcome, but for  
19 a side agreement that was reached. That's all I  
20 have. Commissioner Buttrey?

21 COMMISSIONER BUTTREY: Thank you, Mr.  
22 Chairman. I don't want to let the opportunity go

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1 by to address the noise issue, but I think our  
2 noise expert just left the room. So hopefully he  
3 will be returning soon.

4 When we talk about hazmat, in the  
5 meantime, if the hazmat expert can come back up?

6 MR. MORTON: Kevin?

7 MR. KELLER: Yes, sir?

8 COMMISSIONER BUTTREY: I would like  
9 to ask you a question, which you probably will  
10 not want to answer, but it seems to me that if  
11 you have hazardous materials going through, a  
12 line of track going, a populated area at 10 miles  
13 an hour, the chances of something untoward  
14 happening is probably less than if you have a  
15 hazmat -- several cars of hazmat moving through a  
16 populated area at 45 miles an hour. The chances  
17 are that if that occurrence, God forbid that ever  
18 happened, the chances are more of a catastrophic  
19 spill would take place if the train was going 45  
20 miles an hour, rather than going 10 miles an  
21 hour. Is that within the realm of feasibility?

22 MR. KELLER: That's true. And the

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1 models can work both ways though realize. It's,  
2 you know, if the train is moving slower and if  
3 there is a release, the exposure time is longer,  
4 therefore, the probability of any kind of harm or  
5 injury to the general population could be longer  
6 and worse.

7 COMMISSIONER BUTTREY: Um-hum.

8 MR. KELLER: If it is going quicker  
9 and if there is some kind of a catastrophic  
10 event, obviously, the release could be a lot  
11 worse in magnitude, but if it's moving,  
12 obviously, it would be less exposure in terms of  
13 time durations. There is a balance there that  
14 the FRA tries to regulate.

15 COMMISSIONER BUTTREY: Okay. Thank  
16 you very much. Our noise expert is back. I had  
17 asked the staff to try to set up a noise  
18 demonstration in the room here. And they said  
19 they would give that a shot. And I understand  
20 they did give it a shot. But that the noise  
21 expert said that there was really no way of doing  
22 a noise demonstration inside this room, because

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1 doing a noise demonstration inside of a closed  
2 room is not the same as the noise event would be  
3 if you were outside standing nearby the track.

4           You presumably put noise monitoring  
5 devices out near the tracks to measure the single  
6 event noise, if you will, and then use that  
7 calculation to extrapolate some type of value  
8 that you have used to present here in the report.  
9 Is that correct?

10           MR. CASEY: Yes, sir.

11           COMMISSIONER BUTTREY: So you didn't  
12 take somebody else's data, if you will, about  
13 what kind of noise a locomotive makes going  
14 through Naperville. You actually went out and  
15 measured it somehow in that location?

16           MR. CASEY: We did. We found an area  
17 that was grass covered, free from -- I should say  
18 not in close proximity to other noise sources, so  
19 it was away from grade crossings. And we were  
20 able to, using two sound level meters, measure  
21 the noise associated with the locomotive pass-by.  
22 You turn that meter off and you turn the other

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1 meter on when the railcars go by.

2 And you can post process that  
3 monitoring data and arrive at a noise emissions  
4 term for a single locomotive and a single  
5 railcar. We did that for 25 train pass-bys and  
6 some of them did, in fact, include the locomotive  
7 horn noise. So we have three, you know, distinct  
8 noise emissions terms in our data set.

9 COMMISSIONER BUTTREY: And what was  
10 the average value that you came up with about the  
11 single event? The LDN level.

12 MR. CASEY: Well, there are two  
13 different things and your question actually kind  
14 of interweaves two unrelated things. The SEL  
15 values that we measured for locomotives,  
16 locomotive horns and railcars are in the draft  
17 EIS. And forgive me, I don't have that  
18 information off the top of my head.

19 We did use a conservatively high  
20 value for the locomotive horns, which I think was  
21 103, instead of 100 for our locomotive horn noise  
22 model and we used the FRA model. So we,

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1 essentially, over-predicted the locomotive horn  
2 noise at every grade crossing in the project area  
3 by just a conservative amount.

4 MR. MORTON: And when you said 103,  
5 that means 103 decibels?

6 MR. CASEY: Decibels, yeah.

7 MR. MORTON: Yeah.

8 COMMISSIONER BUTTREY: Since we can't  
9 do a noise demonstration here in the room that  
10 makes any sense, can you compare what 103 decibel  
11 level event would be that we might be more  
12 familiar with than a locomotive going by? And  
13 I'm thinking about maybe Redskins stadium when it  
14 is 3<sup>rd</sup> and 1 or something like a rock concert on  
15 Row 10 or maybe an airplane, you know, Indy-11 or  
16 something. No, not an Indy-11. A 727 taking off  
17 from an airport.

18 Can you compare some of those values,  
19 so we sort of get an idea of what this noise  
20 sounds like? Not that -- we have all heard a  
21 railroad locomotive go by, but I'm just comparing  
22 the numbers. Sometimes numbers turn out to be

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1 just numbers. And unless you can compare them to  
2 something, you really don't -- it's kind of like  
3 you really don't know what you are talking about.

4 I mean, you know what you are talking  
5 about, but you can't compare it to anything.

6 MR. CASEY: There is numerous  
7 examples of common noise events, indoors and  
8 outdoors. I have just a few of them here in  
9 front of me. A gas lawn mower at 3 feet is  
10 representative of somewhere in the upper -- the  
11 mid to 90s, maybe upper 90s. So a common one at  
12 about 3 feet.

13 A jet flyover at 1,000 feet would be  
14 maybe at 110. I do have a rock band listed on  
15 this. This comes from a document that was  
16 published by the Government a few decades ago. A  
17 rock band is at 110 decibels. I have been told  
18 that in some circumstances, the control consul,  
19 the mixing board for some concerts, they like to  
20 have the sound pressure level come from the  
21 stage, you know, between 95 and maybe 100  
22 decibels, but that varies by band and that varies

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1 by location.

2 You know, so 103 is very -- it's a  
3 high noise level. We're talking about locomotive  
4 horn noise, so it's just, you know, briefly used.  
5 It's a very intermittent source.

6 COMMISSIONER BUTTREY: Now, you  
7 talked about the -- sort of a multiplier that you  
8 used to calculate the noise level, the difference  
9 between daytime noise and nighttime noise. Could  
10 you run through that again one more time for me?

11 MR. CASEY: When we -- when I tried  
12 to explain what an LDN is, I mentioned that it  
13 takes -- in a calculation of an LDN, you start  
14 with 24 consecutive hourly average noise levels.  
15 And to the 9 hours between 10:00 p.m. and 7:00  
16 a.m., you add 10 decibels to each of those  
17 average hourly noise levels.

18 And then you perform a mathematical  
19 function that compresses them, all them, into a  
20 single, you know, number. It's a logarithmic  
21 number. And so the significance of that is that  
22 events that happen in nighttime are 10 times

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1 louder than they would be if they happened during  
2 the daytime.

3 COMMISSIONER BUTTREY: 10 times?

4 MR. CASEY: 10 times louder.

5 COMMISSIONER BUTTREY: The perception  
6 -- the perceived noise level is 10 times more  
7 irritating if it happens at night than if it  
8 happens during the daytime?

9 MR. CASEY: No, no.

10 COMMISSIONER BUTTREY: Is that what  
11 you're saying? It's what it sounds like you are  
12 saying. But I get -- are you sure -- is that  
13 what you are saying?

14 MR. CASEY: No, sir, that's not what  
15 I'm saying. I'm saying in the calculation of an  
16 LDN, a nighttime noise event is given 10 times  
17 more the energy than it would as if it happened  
18 during the daytime where it would not have  
19 received that penalty.

20 Now, the purpose of the penalty is to  
21 kind of recognize that people sometimes do or  
22 generally do consider nighttime noise events to

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1 be more intrusive or annoying or at least that's  
2 the assumption.

3 VICE CHAIRMAN MULVEY: Aren't you  
4 saying that it's exponential and therefore you  
5 give it 10 decibels and that's the equivalent of  
6 being 10 times higher?

7 MR. CASEY: Essentially, yes.

8 VICE CHAIRMAN MULVEY: Thank you.

9 MR. CASEY: Thank you.

10 CHAIRMAN NOTTINGHAM: So it's akin to  
11 dropping a pebble into a placid pond versus a  
12 stormy sea, as far as the energy, noticeable  
13 energy it emits or is that a terrible analogy?  
14 I'm just trying to help Commissioner Buttrey  
15 understand.

16 COMMISSIONER BUTTREY: I think that's  
17 a terrible analogy.

18 CHAIRMAN NOTTINGHAM: Well, the  
19 concert thing wasn't working for me, because Dr.  
20 Mulvey and I were -- you know, it's a concert, we  
21 don't know if we're talking about Commissioner  
22 Mulvey's big band or Dr. Mulvey's Grateful Dead

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1 or something in between.

2 MR. CASEY: I think I can share a  
3 little insight that might clarify some of the  
4 concepts we are discussing. It is generally  
5 recognized that 3 decibels is -- it is generally  
6 considered the threshold of perception. That  
7 term refers to the fact that if you increase a  
8 sound level by 3 decibels or if you decrease it  
9 by 3 decibels, you may or may not perceive a  
10 change.

11 If you have ever gone to an  
12 audiologist, that's one of the things they do.  
13 They see where is your threshold of perception.  
14 A 5 decibel increment, a change or a decrease, an  
15 increase or a decrease is clearly perceivable. A  
16 10 decibel increase is perceived as a doubling.  
17 It is twice as loud.

18 Now, in reality, if you have two  
19 identical noise sources and you turn them both  
20 on, the resulting noise level is going to be 3  
21 decibels higher. It's not actually twice as  
22 loud, it's only 3 decibels louder.

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1                   COMMISSIONER BUTTREY: Now, how far  
2 away were these instruments when you measured the  
3 -- on a single event basis, how far away from the  
4 noise source were they?

5                   MR. CASEY: When we did our pass-by  
6 measurements, the instruments ranged in distance  
7 from the center line or maybe the nearest rail.  
8 I want to say from about 40 at the closest to  
9 maybe 60 at the farthest. The instruction and  
10 the monitoring plan was to get them at 50 feet.  
11 And so they were all mathematically normalized to  
12 50 feet.

13                   COMMISSIONER BUTTREY: Um-hum. And  
14 again, 50 feet is like from the front of this  
15 desk to the wall back there.

16                   MR. CASEY: Yes, sir.

17                   MS. KITAY: There is also a lot of  
18 noise mitigation in the final EIS, including  
19 pretty extensive voluntary mitigation that was  
20 proposed by applicants. So we are not talking  
21 about 103 decibels here. That's before  
22 mitigation, right?

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1           MR. CASEY: Well, this 103 decibels  
2 is the, I believe it is, sound pressure level  
3 that we inserted into the FRA locomotive horn  
4 noise model to represent the horn noise. And it  
5 is not all that far off from what it is in  
6 reality.

7           MS. KITAY: But what would it be with  
8 mitigation? I mean, if the mitigation --

9           MR. CASEY: Well, mitigation for a  
10 horn noise would be a quiet zone and so you  
11 would, under normal circumstances, no longer have  
12 that sound in a typical operating scenario. You  
13 would be left with just the wayside noise, which  
14 is the locomotive noise and the steel wheel/rail  
15 interaction, you know, of the train rolling by.

16           MS. KITAY: And there is mitigation  
17 for that also, wheel squeal?

18           MR. CASEY: Well, in sections of  
19 curved track, there is mitigation for that wheel  
20 flange squeal noise on sections of curved track.

21           COMMISSIONER BUTTREY: Now, right now  
22 today, there is no horn noise quiet zone in

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1 Joliet, correct?

2 MR. CASEY: Mr. Thorson?

3 MR. THORSON: That's correct.

4 MR. CASEY: That's correct, sir.

5 COMMISSIONER BUTTREY: The only other

6 -- the only -- excuse me, not the only other.

7 The only quiet zone along this line of track is

8 Barrington. Is that correct?

9 MS. KITAY: No.

10 COMMISSIONER BUTTREY: That's not

11 correct? What is correct?

12 MS. KITAY: 7, 8, something?

13 MR. THORSON: There are five quiet

14 zones along the existing EJ&E Rail Lines. And I

15 apologize, I don't have the exact limits of

16 those, but there is a Lake Zurich Quiet Zone.

17 There is a Barrington Quiet Zone. There is a

18 Warrenville Quiet Zone, which includes the

19 communities of Aurora and Naperville.

20 And the reason those are combined is

21 that a quiet zone by establishment of the FRA

22 must have a single sponsoring community that

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1 establishes them. It can run, you know, miles  
2 and miles and include many communities and  
3 districts, but one must take the lead for it.

4 There is -- Plainfield has a quiet  
5 zone as well. And I'm trying to think if there  
6 are quiet zones east of Joliet. I can't think of  
7 any that come to mind right now.

8 COMMISSIONER BUTTREY: And we are  
9 assuming that all those will stay in effect?

10 MR. THORSON: Yeah, yeah. Oh, I'm  
11 sorry, Mundelein has a quiet zone as well.

12 COMMISSIONER BUTTREY: Okay. Thank  
13 you very much. Mr. Chairman, I think that  
14 concludes my questions. I will have a closing  
15 statement at the end.

16 CHAIRMAN NOTTINGHAM: Thank you,  
17 Commissioner Buttrey and didn't mean -- hope I  
18 didn't offend with my reference to the big band.  
19 I know you are a man of all -- multiple and  
20 varied tastes and culture, so we will --

21 COMMISSIONER BUTTREY: And my hearing  
22 is bad, because I was nearby too many big band

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1 stages, I think. That and shotguns and  
2 chainsaws.

3 VICE CHAIRMAN MULVEY: That was Tommy  
4 and Jimmy Dorsey, but anyway.

5 CHAIRMAN NOTTINGHAM: Let me -- I do  
6 have just a couple of questions, if I could. Are  
7 you -- oh, it's your turn?

8 VICE CHAIRMAN MULVEY: It's my turn.

9 CHAIRMAN NOTTINGHAM: Let me turn  
10 over the questions. Excuse me, Vice Chairman  
11 Mulvey. I was going to ask about the quiet zone  
12 situation --

13 VICE CHAIRMAN MULVEY: Well, I --

14 CHAIRMAN NOTTINGHAM: -- in  
15 Barrington, but go ahead.

16 VICE CHAIRMAN MULVEY: Well, I have a  
17 question, too, about quiet zone, but it's not  
18 particular the Barrington situation.

19 I did a lot of work on the quiet zone  
20 issue when I was on the Hill and at the IG's  
21 office, as a matter of fact. And one of the  
22 problems with quiet zones or with the,

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1 establishment of them, is that a lot of people do  
2 get killed in these zones, unless they are  
3 properly protected.

4           Theoretically, you are supposed to  
5 have in place mitigation factors that give you  
6 the same level of safety as blowing the train  
7 horn. However, our experience has been it's  
8 very, very difficult to achieve. One of the ways  
9 you can achieve it, however, and from what I have  
10 read from studies in North Carolina and  
11 elsewhere, is that if you have barriers in the  
12 center line, you have a situation where you have  
13 a quiet zone and have two quadrant gates, which  
14 is what is typical. Otherwise, people often  
15 drive around the gates.

16           Research in North Carolina has shown  
17 that if you put flexible barriers in the middle,  
18 it prevents people from going around the gates  
19 and driving in front of trains and getting  
20 killed.

21           Have you looked into that? Is that  
22 something that you have suggested as part of your

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1 mitigation to establish these center line  
2 barriers to prevent people from driving around  
3 two quadrant gates in quiet zones?

4 MR. THORSON: Yes, you are absolutely  
5 right about quiet zones. That a quiet zone, you  
6 know, must -- every crossing within a quiet zone  
7 must have gates, flashers and constant warning  
8 time circuitry and then a combination of what  
9 they call supplemental safety measure or  
10 alternative safety measures, which the FRA has  
11 given credit or waiting to that says it offers an  
12 additional safety measure when you add those up,  
13 average them out, you show that the risks for  
14 that corridor with those devices in place is less  
15 than the risk with horns.

16 VICE CHAIRMAN MULVEY: But if they  
17 are not physical and one of the ones the FRA  
18 calls for is education.

19 MR. THORSON: Yes.

20 VICE CHAIRMAN MULVEY: Community  
21 education. Well, that's a nice thing to say, but  
22 I think the physical barriers are much more

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1 effective than somebody going into a classroom  
2 and saying don't drive around closed gates.

3 MR. THORSON: Yeah, yeah. Education  
4 is not what the FRA calls a supplemental. It's  
5 what they call an alternative.

6 VICE CHAIRMAN MULVEY: Right.

7 MR. THORSON: And meeting the  
8 threshold for a quiet zone with using alternative  
9 safety measures is very difficult, because you  
10 have to set up some sort of a monitoring system  
11 and show that.

12 What the applicants have offered in  
13 their voluntary mitigation is that communities  
14 wishing to establish quiet zones, they will  
15 identify where median barriers are required and I  
16 think even fund those median barriers.

17 VICE CHAIRMAN MULVEY: The  
18 communities will fund them?

19 MR. THORSON: No.

20 VICE CHAIRMAN MULVEY: CN will fund  
21 them?

22 MR. THORSON: CN will fund them.

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1                   VICE CHAIRMAN MULVEY: Okay. Good.  
2           I want to talk about property values for a  
3           moment. I read with great care the draft EIS on  
4           property values. And I was taken back by the  
5           estimated impact on property values. It struck  
6           me as low, so I went and dug into the research  
7           that lay behind it. There was the evidence from  
8           Cleveland and the Conrail breakup and there were  
9           was a few European studies that were done.

10                    You mentioned that you have gone on  
11           and done further research and gotten more data to  
12           support the original finding of the roughly  
13           \$5,000 maximum impact and differential impact on  
14           large and low valued homes.

15                    Can you expound a little bit on what  
16           the additional research encompassed?

17                    MR. MORTON: There were a number of  
18           studies that, you know, either commenters  
19           suggested or there was actually one study that  
20           was done, you know, and presented to the -- to CS  
21           as part of their -- you know, of the comments by  
22           a couple of researchers from the University of

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1 Chicago.

2 We didn't really find anything  
3 additional studies that were really on target.  
4 They were, you know, studies related to train  
5 noise. In some cases, they were related to  
6 airport noise that we used to sort of go back and  
7 look at that and see how that related to property  
8 values.

9 So I think that the study that we  
10 used in the draft EIS, our conclusion is that  
11 that is probably the most on target, in terms of  
12 what the issue is out there.

13 VICE CHAIRMAN MULVEY: Yeah. I had  
14 suggested that perhaps there were other kinds of  
15 activities that could be deemed as detrimental to  
16 a neighborhood and how proximity to those might  
17 have an impact. It doesn't have to simply be  
18 trains or even transportation. It could be  
19 landfills, for example, or other kinds of noisome  
20 activities, which may have an impact on property  
21 values.

22 And I was wondering if any of those

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1 were looked at?

2 MR. MORTON: I think a lot of those  
3 suggestions were made. And, Mr. Vice Chairman, I  
4 don't know off the top of my head whether we --  
5 how much we looked at those sort of companion  
6 type studies, no.

7 VICE CHAIRMAN MULVEY: There was some  
8 discussion of the trackage rights and the EJ&E  
9 could grant trackage rights. And that may or may  
10 not trigger an investigation by the STB depending  
11 upon the amount of track involved. But there are  
12 also haulage rights agreements. And if there was  
13 a haulage agreement, then the STB would have no  
14 authority whatsoever, I understand.

15 If it's haulage rights, we just turn  
16 it over. I noticed there is an awful lot of  
17 concern about the purpose of the project for the  
18 CN and this centers very much around the control  
19 over the Kirk Yard.

20 Wouldn't it be possible for the CN  
21 and the EJ&E to do a haulage agreement and  
22 simultaneously CN and EJ&E enter into a Meridian

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1 Speedway type agreement for the joint operation  
2 of the Kirk Yard? Would that be possible? And  
3 could it bypass our processes entirely if they  
4 were to do that?

5 MS. KITAY: I think the haulage  
6 agreement would not require approval from the  
7 Board and there would, therefore, not be any  
8 possibility of environmental review.

9 VICE CHAIRMAN MULVEY: What about the  
10 Kirk Yard? I mean, it comes back to this all the  
11 time that all the proposals, all the alternatives  
12 that Doug mentioned, etcetera, and that we all  
13 talked about looking at. It seems to always focus  
14 on the purpose of the acquisition is to get  
15 control of the Kirk Yard.

16 Couldn't they get control or largely  
17 run Kirk Yard under an agreement with EJ&E, which  
18 again would not require approval from the Board?

19 MS. KITAY: The only time we look at  
20 yards is if they are linked to proposals that do  
21 require authority from the Board. So part of the  
22 construction proposal or as here part of the

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1 acquisition proposal relates to --

2 VICE CHAIRMAN MULVEY: And this  
3 haulage agreement --

4 MS. KITAY: -- a particular --

5 VICE CHAIRMAN MULVEY: And the  
6 haulage would be neither of those, so they could,  
7 in fact, do that if they wanted to?

8 MS. KITAY: I believe so.

9 VICE CHAIRMAN MULVEY: Hum. Vicky,  
10 do you have a --

11 MS. RUTSON: I was only thinking how  
12 different my life would be right now if that, in  
13 fact, had been what had happened, haulage, but  
14 that's all.

15 VICE CHAIRMAN MULVEY: You would have  
16 had a lot more time with your family, I would  
17 guess. One of the concerns about this project is  
18 that there is going to ultimately be an impact on  
19 CREATE. Now, all the six major U.S. Railroads  
20 use Chicago and the largest of the railroads in  
21 Chicago is the CN.

22 And for whatever you think about the

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1 distribution of cost responsibilities, amongst  
2 the railroads, the CN has the largest cost  
3 responsibility. We know for various reasons that  
4 CN has had some question about its real need to  
5 be part of CREATE for some time. With the  
6 acquisition of the Wisconsin Central in the past  
7 and now this, etcetera, CN has been sort of  
8 looking at CREATE and saying well, maybe we don't  
9 need to be as involved in CREATE.

10 Doesn't this, in fact, allow CN to  
11 pretty much withdraw from the CREATE Project and  
12 then wouldn't that complicate, therefore, that  
13 project going forward?

14 MS. RUTSON: The only evidence that  
15 we have on the record is that CN has indicated  
16 that it continues to support CREATE and has no  
17 short-term plans for withdrawing from CREATE. So  
18 we are taking that information for face value and  
19 just moving on with the environmental review  
20 process.

21 VICE CHAIRMAN MULVEY: One hopes that  
22 that is still true. But we have had a lot of

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1 comments both pro and con and a lot of members  
2 came up there. We had 9,500 and 13,500,  
3 etcetera, comments in total. And I know that in  
4 terms of raw numbers, there were people opposed  
5 to this project or demanding more environmental  
6 mitigation than here supportive.

7 Do you have a rough percentage  
8 breakdown as to the percentage for and the  
9 percentage against?

10 MS. RUTSON: A very rough breakdown  
11 including the form letters and the petitions puts  
12 those in favor of the proposal at about 1/3 and  
13 those who are opposed to the proposal at about  
14 2/3.

15 VICE CHAIRMAN MULVEY: What about  
16 commercial interests, businesses, etcetera? Very  
17 often a business comes in and it's a single  
18 business, but that single business may employ 500  
19 or 1,000 employees. Did you get many responses  
20 from commercial interest? And did those break  
21 out similarly or were those much more in support  
22 of the project?

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1 MS. RUTSON: Not so much during the  
2 comment period on the draft EIS. But during  
3 scoping and then in a continual, I wouldn't say a  
4 flood, but it's a solid stream of commercial  
5 letters coming in in support explaining how  
6 important the CN proposal was to the particular  
7 interest, business interest writing the letter.  
8 Yes, we got many of those letters.

9 VICE CHAIRMAN MULVEY: But it's  
10 difficult to weigh those. You sort of have to  
11 weigh them one letter from a company employing  
12 1,000 people would have the same value as a  
13 single property owner who feels there might be  
14 delay at the added crossing. Is that correct?

15 MS. RUTSON: Well, and I'm not sure  
16 if this response of mine is responsive to your  
17 question. But I have been thinking a lot about  
18 this issue. And in the end, the best I can think  
19 is that NEPA is important for public outreach,  
20 but it is not an election. I mean, if it had  
21 been, I suspect everyone here would be much  
22 better rested than we are.

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1 I do think every comment is  
2 important. Are some more important than others?  
3 I hope not. I hope not. We try to treat them  
4 all equally.

5 VICE CHAIRMAN MULVEY: Okay. The  
6 EJ&E accident numbers seemed high, many, many  
7 times higher than the CN accident rates. But are  
8 we comparing apples and oranges there? How does  
9 the EJ&E compare to similarly situated railroads?  
10 In other words, other railroads operating in  
11 densely populated areas of the country?

12 MS. RUTSON: Bill Burgel has an  
13 explanation for this, as he has for most things.

14 VICE CHAIRMAN MULVEY: Bill?

15 MS. RUTSON: He explained, and Bill  
16 will talk about this, that the type of railroad  
17 that EJ&E is is part of the reason why the  
18 accident rate is -- seems quite high.

19 MR. BURGEL: I'll defer to Kevin.

20 VICE CHAIRMAN MULVEY: So it's not  
21 necessarily the nature of their carelessness or  
22 nature of operations, but rather it's the nature

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1 of the environment in which they are operating  
2 in? Is that right?

3 MR. KELLER: That's correct. It's a  
4 switching railroad. There is a lot more car  
5 movements, a lot more interchanges, a lot more  
6 yard operations and that's generally where a lot  
7 of the accidents take place. And so if you  
8 compare that against other switching railroads,  
9 it's right in the norm.

10 VICE CHAIRMAN MULVEY: That's what I  
11 was also going to point out. A breakdown of the  
12 accidents, given FRA's kind of crazy \$8400  
13 number, I have a car. If I scratch the bumper,  
14 I'm out almost that much money. So today almost  
15 any accident that the railroad has at all is  
16 going to cost \$8,400. So it's very, very  
17 difficult to distinguish minor accidents from  
18 serious accidents. And I think that breaking  
19 those numbers out and getting a better sense of  
20 serious accidents and comparing serious accidents  
21 on that railroad versus other railroads  
22 similarlFy situated might be more helpful and

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1 somewhat less misleading.

2 With regard to hazmat movements, are you  
3 going to be distinguishing between PIH and TIH  
4 movements from general hazmats? Because, I mean,  
5 they are very, very different, especially with  
6 health concerns. And you do plume analysis to  
7 look at the impact if something happens. We all  
8 heard ad nauseam, I suppose in more ways than  
9 one, that if there was an accident here in  
10 Washington, D.C. that the plume from an anhydrous  
11 car, I guess, could kill 100,000 people. Have  
12 you looked that sort of analyses in your  
13 assessment?

14 MR. KELLER: We -- the first part of  
15 the question is we have broken down the hazmats  
16 into the various categories, i.e., if they are  
17 PIH, TIH or flammable gas or a corrosive liquid,  
18 those type of general categories.

19 We do have specific information from  
20 CN, like I said earlier, but because of the  
21 secure nature of that information, we can't  
22 release that.

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1 VICE CHAIRMAN MULVEY: Okay. But you

2 --

3 MR. KELLER: And then --

4 VICE CHAIRMAN MULVEY: -- have  
5 considered it, even though you can't release it?

6 MR. KELLER: Yes, sir. Yes, sir, we  
7 have looked at that. The second part of the  
8 question, have we done any faint and transport  
9 modeling in terms of the worst case scenario?

10 NEPA tells you you do not do a worst case  
11 analysis. So we have not done that. But what we  
12 have done is for certain scenarios of hazardous  
13 material releases, we have kind of walked through  
14 what happens and how you would take care of it.

15 VICE CHAIRMAN MULVEY: Okay.  
16 Applicant's construction-related equipment may  
17 not cross residential properties without  
18 permission, according to some of the voluntary  
19 mitigations. They agree not to run their trucks  
20 across somebody's front lawn.

21 How many incidents of crossings do  
22 you believe will be needed and what happens if a

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1 property owner withholds permission and the  
2 railroad says I need to get across your property  
3 and the property owner says you're not getting --  
4 you're not running your truck or your equipment  
5 over my property. What can be done? Can the  
6 property owner be forced to accommodate it or is  
7 it some sort of eminent domain activity or what?

8 MR. MORTON: This is a voluntary  
9 mitigation measure that --

10 VICE CHAIRMAN MULVEY: Okay.

11 MR. MORTON: -- the applicants have  
12 proposed.

13 VICE CHAIRMAN MULVEY: Um-hum.

14 MR. MORTON: You know, in most cases,  
15 they actually can and do have access along their  
16 own right-of-way. I guess our supposition is  
17 that if they are unable to obtain, you know,  
18 private property access to get their construction  
19 equipment across, that they either have  
20 alternative ways to access or a backup strategy,  
21 because they proposed the condition themselves.

22 VICE CHAIRMAN MULVEY: Okay. If you

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1 go out to the SEA recommendations on railroad  
2 operations in regard to blocked crossings and  
3 reporting of incidents of 10 minutes or greater  
4 duration, what is the significance of the 10  
5 minute threshold? Is that FRA Regulation?

6 MR. MORTON: It is. I think if --  
7 you know, I need one of the operations guys, but  
8 I believe that that threshold comes from their  
9 U.S. Rule Book.

10 VICE CHAIRMAN MULVEY: Yeah.

11 MR. BURGEL: CN has their own U.S.  
12 set of rules that -- it's Rule 526. They say any  
13 time they anticipate blocking a crossing for 10  
14 minutes, they will cut the crossing.

15 VICE CHAIRMAN MULVEY: They will cut  
16 the train and let people go through?

17 MR. BURGEL: Right.

18 VICE CHAIRMAN MULVEY: Okay. Did I  
19 miss cameras being mentioned? Aren't cameras one  
20 of the voluntary mitigations? To put cameras at  
21 all the critical crossings and CN would be paying  
22 for that. And then people in the fire stations

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1 or emergency medical centers will have TV sets or  
2 monitors, so they can see what's going on. Is  
3 that true?

4 MS. KITAY: Yeah, but I don't think  
5 it is voluntary.

6 MR. MORTON: That's correct.

7 VICE CHAIRMAN MULVEY: It's a  
8 recommendation. No it's not voluntary, that's an  
9 SEA mitigation.

10 MR. MORTON: That's correct.

11 VICE CHAIRMAN MULVEY: Do you know  
12 how much that is going to cost? Any estimate of  
13 the cost of that?

14 MR. MORTON: We did cost out those  
15 mitigation items and if you give me just a  
16 second, I'll be able to, you know, give you a  
17 ballpark feel. Our estimate, you know, dependent  
18 upon the location, would be \$25,000 to \$35,000  
19 per location.

20 VICE CHAIRMAN MULVEY: And how many  
21 locations would that be, approximately?

22 MR. MORTON: About 25 or 30.

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1                   VICE CHAIRMAN MULVEY:    About 25 or  
2                   30.  So it's about \$625,000 to \$825,000?  Is that  
3                   right?

4                   MR. MORTON:     That's correct.  I'm  
5                   sorry, we're trying to do the mental math here  
6                   and you beat us to it.

7                   CHAIRMAN NOTTINGHAM:  Vice Chairman  
8                   Mulvey, I think we can --

9                   VICE CHAIRMAN MULVEY:  I think that's  
10                  all I have.

11                  CHAIRMAN NOTTINGHAM:    -- we might  
12                  want to consider retaining sort of franchise  
13                  rights on those -- that footage.  I mean, some  
14                  people thought the weather channel would be a big  
15                  bore when it was unveiled and it's now the  
16                  hottest channel out there.  So in case we create  
17                  a tidalwave of viewership of the intersections,  
18                  we want to retain those royalties.

19                  MR. THORSON:     Inside knowledge.

20                  CHAIRMAN NOTTINGHAM:  And work with  
21                  the FCC on that maybe.

22                  VICE CHAIRMAN MULVEY:  With that, I

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1 will end my questions for the time being and turn  
2 it back over to the Chairman.

3 CHAIRMAN NOTTINGHAM: Seriously  
4 though, the quiet zone issue is important. My  
5 understanding is there is just only one community  
6 that would actually see -- that currently has a  
7 quiet zone, that if this proposal application  
8 were approved would be at serious risk of losing,  
9 falling out of conformity with the quiet zone  
10 requirements and that's Barrington.

11 We have -- staff is, as I understand  
12 it, preliminarily proposing a mandatory  
13 mitigation that would reference the quiet zone in  
14 Barrington and its future. Help me understand  
15 how that would work, because, of course, we're  
16 talking about a sister agency, the FRA over whom  
17 which we don't have control. And so I want to  
18 make sure I understand what we would be under  
19 this scenario.

20 What would we be promising the people  
21 of Barrington and what we can't promise, because  
22 it is in someone else's germane.

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1                   MR. MORTON: Okay. I'll ask Leif to  
2 sort of expand upon that for you.

3                   MR. THORSON: What the -- you know,  
4 what the FRA does is they have a clear rule and a  
5 risk calculator that works for the establishment  
6 of quiet zones and also for the maintenance of  
7 quiet zones. Now, when a quiet zone falls out of  
8 compliance, there is a notification and then they  
9 have, I believe it is, three years to bring it  
10 back, otherwise the horns will need to be  
11 sounded.

12                   So when we looked at what our  
13 analysis did with the Barrington Quiet Zone,  
14 although we looked at all the quiet zones, we ran  
15 the 2015 numbers and using the 2008 FRA  
16 calculator, if you will, and those 2015 numbers,  
17 the Barrington Quiet Zone no longer complied with  
18 the requirements.

19                   So what, in effect, the applicant  
20 would be required to do is to take those trains  
21 under their operating plan, put it in there and  
22 see what combination of supplemental safety

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1 measures would be required within that corridor  
2 that would bring it back into compliance and  
3 allow for continuation of that quiet zone.

4 So we don't prescribe median barriers  
5 at this location or four quadrant gates here.  
6 There is clearly sort of a negotiation between  
7 the parties or a best fit in that corridor for  
8 those measures that will allow the quiet zone to  
9 continue.

10 CHAIRMAN NOTTINGHAM: And help me  
11 understand the FRA process or precedent here. If  
12 we make this mandatory and if CN goes to the FRA  
13 and says we have got a problem, we need your  
14 help, we need you to tell us, FRA tell us, CN,  
15 what we need to do to keep this quiet zone in  
16 operation. And what would FRA likely say? What  
17 would they look at and how much chance is the FRA  
18 says you are out of luck, you know, it's a safety  
19 problem and we're going to make -- you know,  
20 you're obligated to sound the horns.

21 MR. THORSON: Yeah, well, right now  
22 the FRA Rules clearly allow them to apply

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1 supplemental safety measures, which do have a  
2 defined benefit that they apply to the risk. And  
3 if they meet that FRA requirement, then the quiet  
4 zone is approved.

5 Now, the FRA being the FRA does have  
6 the authority at any time to change their own  
7 rules, to make it -- to lower the thresholds or  
8 to raise the thresholds, if you will. I think  
9 the way it is working now, at least my experience  
10 with quiet zones, is that there is -- the  
11 communities themselves generally look at the  
12 supplemental safety measures that work best.

13 Median barriers are usually the  
14 preferred option, as long as they have a narrow  
15 enough footprint that they don't require  
16 additional right-of-way. If that's not the case,  
17 then often times they jump to maybe a four  
18 quadrant gate or, you know, one way pairs or  
19 something like that.

20 CHAIRMAN NOTTINGHAM: I should add  
21 that this Agency, the Board has a very strong and  
22 longstanding working relationship with the FRA

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1 and, of course, if we were to mandate such an  
2 outcome, we would have -- we would not just sit  
3 back and hope that the parties work it out. We  
4 would be -- I can certainly say if I had anything  
5 to do with it, we would be leaning forward  
6 working with FRA and urging FRA to make sure they  
7 are as flexible as they can be to honor the  
8 mitigation requirement that you posed.

9           And my experience with working with  
10 FRA staff as well is they are extremely helpful  
11 in this regard. Although, they are somewhat  
12 reluctant to them specify what is a better  
13 supplemental safety measure. They usually leave  
14 that to the community and to the railroad. But  
15 their staff is extremely helpful, yes.

16           CHAIRMAN NOTTINGHAM: I have to ask a  
17 question about turtle crossings. It's not every  
18 day we get a turtle crossing issue before us.  
19 I'm reminded very much of a project in Virginia,  
20 a much needed highway widening where there was  
21 actually a documented presence of black bears and  
22 threatened black bears that were known to cross

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1 the highway and not make it across. And the  
2 concern was if we four lane the two lane road,  
3 that -- and we put in bear crossings.

4 I'll ask the same question I asked  
5 the Army Corps at the time though, how do -- I'm  
6 assuming we're not talking bridges or rope  
7 swings. We are talking tunnels. Is that a fair  
8 assumption?

9 MS. GOODSON: Yeah, they are,  
10 essentially, kind of pipes and culverts and  
11 tunnels and fairly easy to install when new  
12 construction is going on.

13 CHAIRMAN NOTTINGHAM: And is there  
14 some research, I assume, that indicates that  
15 turtles are able to make their way to these? I  
16 mean, these crossings. I mean, how do  
17 they --

18 MS. GOODSON: Well, they certainly  
19 get installed in areas where there is existing  
20 habitat and in areas where there is a reason for  
21 them to be moving. So they are not just going to  
22 be -- they will be going to habitat, which occurs

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1 on the other side of the rail line. And, you  
2 know, there is designs that are in place. And  
3 partly, you have kind of almost funnel like  
4 systems that will kind of allow the turtles to  
5 find those areas.

6 The mitigation for the turtle  
7 crossings came out of discussions with the  
8 natural resource stakeholders as well as the Fish  
9 and Wildlife Service. It was something they had  
10 requested in terms of being a good opportunity to  
11 improve the -- what's -- you know, to improve  
12 mortality, I guess, of turtles out there now.

13 CHAIRMAN NOTTINGHAM: Thank you.

14 COMMISSIONER BUTTREY: It's like  
15 salmon stairs.

16 CHAIRMAN NOTTINGHAM: Right.

17 COMMISSIONER BUTTREY: Glad to hear  
18 the state of the practice has improved from when  
19 I was doing a highway lighting, because at that  
20 time, the Resource Agency said that signage would  
21 help the bears get across. And that still  
22 puzzles me to this day.

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1                   VICE CHAIRMAN MULVEY:     That was  
2     Virginia, right?

3                   VICE CHAIRMAN MULVEY:     That was and  
4     it was a federal agency, a sister federal agency  
5     I will keep nameless to protect their reputation,  
6     but thank you for that explanation.

7                   CHAIRMAN NOTTINGHAM:     I have no  
8     further questions. I do want to offer colleagues  
9     one last chance.

10                  VICE CHAIRMAN MULVEY:     I have one  
11     observation about noise and that is with the LDN,  
12     the day/night noise level. You know, it's also  
13     true with say an airplane. An airplane flying  
14     over at 8:00 in the evening and one flying over  
15     the same distance at 3:00 in the morning are two  
16     very different things.

17                  And one of the problems with the  
18     railroads is railroads are 24/7 operations.  
19     Airports very often will have curfews and so no  
20     flights will be coming out especially around here  
21     after 11:00 at night or they will reroute planes  
22     to minimize the impact on neighborhoods, often at

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1 the behest of the neighborhoods.

2 And again, railroads can't do that.  
3 So it is very, very difficult to apply the  
4 typical LDN measure to railroads, because their  
5 operations are so different. Do you have a  
6 comment on that?

7 MR. CASEY: I try to avoid discussing  
8 aviation noise in the context of a railroad noise  
9 project for a couple of reasons. Not to be  
10 flippant, but for a couple of reasons. No. 1,  
11 that planes are over your head and their noise  
12 travels, you know, great distances. It affects a  
13 great number of people. Whereas trains, you  
14 know, they only go one way or the other in this  
15 corridor.

16 VICE CHAIRMAN MULVEY: Right. And on  
17 the ground and so all the people on both sides  
18 over that whole period are affected. So I'm not  
19 sure the numbers are all that much different,  
20 depending on population density, how high the  
21 plane is and at least we know the train is on the  
22 ground.

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1           The other thing is back to this  
2           Pratt's Woods, which we talked about a long time  
3           ago, Pratt's Wayne Woods Forest Preserve. The  
4           voluntary mitigation says that "Where possible,  
5           the applicant shall maintain access to any  
6           construction activities involving Pratt's Woods."

7           Who determines what is possible? And  
8           what is the process for resolving any dispute  
9           over the decision as to whether or not it is  
10          possible or whether or not construction  
11          activities are going to cut off access? Is that  
12          the railroad's or is that the community's  
13          responsibility?

14          MR. CASEY: I believe there is a  
15          voluntary mitigation measure.

16          VICE CHAIRMAN MULVEY: It is a  
17          voluntary mitigation, but who discerns what --  
18          who decides what is possible?

19          MR. MORTON: This was a condition  
20          that actually the manager of the Oli Olafsson  
21          with the DuPage Forest Preserve actually  
22          specifically requested. In this particular case,

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1 the rail line, I think, you know, as Commissioner  
2 Buttrey mentioned goes through the middle of the  
3 forest preserve.

4 There is an underpass and the concern  
5 that the forest industry had was they would close  
6 that underpass, because the construction was  
7 going to be close to that. I don't think CN has  
8 finished their design effort and didn't exactly  
9 know, but they worked with the forest preserve to  
10 come up with the specific language of that  
11 voluntary mitigation measure that demonstrates  
12 they are going to try to keep that open.

13 But if for safety reasons, they need  
14 to work above it, then they may be forced to  
15 close it for short periods of time.

16 VICE CHAIRMAN MULVEY: With that, I  
17 thank you. My questions are finished. It has  
18 only been seven hours, so thank you.

19 CHAIRMAN NOTTINGHAM: Vice Chairman  
20 Mulvey, do you care at all for any closing  
21 comments?

22 VICE CHAIRMAN MULVEY: No, just to

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1 once again extend my thanks to everyone who has  
2 been a part of this. I know it has been long and  
3 a lot of very, very tough questions, which I  
4 think you have all handled in an excellent and  
5 intelligent and information manner. And I want  
6 to thank you all for your very, very good work  
7 and look forward to working with you all again.  
8 Thank you.

9 CHAIRMAN NOTTINGHAM: Commissioner  
10 Buttrey, you indicated you might have some  
11 comments?

12 COMMISSIONER BUTTREY: Thank you, Mr.  
13 Chairman. In closing, I would like to compliment  
14 the staff and the environmental consultants for a  
15 thorough and meticulous job. I know that they  
16 worked hard to get ready for today's  
17 presentation. And the staff and consultants have  
18 arguably identified those areas of concern that  
19 must be addressed.

20 But now that I have listened to the  
21 presentation, my perception is that there is  
22 still a huge chasm that exists between the

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1 tentative recommendations that have been  
2 presented here today and what the state and local  
3 interests and affected individuals are saying  
4 must be done to adequately address the expected  
5 environmental effects of this proposed  
6 transaction.

7 It concerns me greatly that we would  
8 presume to substitute our judgment for that of  
9 the state and local interests. I understand that  
10 applicants have so far reached a negotiated  
11 agreement with Joliet. I would prefer that we  
12 would find a way to keep all the stakeholders  
13 focused on working out private resolutions for  
14 all the environmental issues that have been  
15 raised.

16 I understand that our discussions --  
17 that other discussions have occurred, but have  
18 not yet come to fruition. I would not want our  
19 resolution of this case to remove the incentive  
20 for applicants to reach mutually agreeable  
21 resolution with all of the other affected  
22 entities. Thank you, Mr. Chairman.

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1                   CHAIRMAN NOTTINGHAM:     Thank you,  
2                   Commissioner Buttrey. I do also want to thank  
3                   the STB staff and the consultant, third-party  
4                   consultant staff for just an enormous effort  
5                   here. I'm sure there will be aspects of your  
6                   work that one or more Board Members will not  
7                   completely endorse when push comes to shove, but  
8                   I know you won't take that personally.

9                   We all have responsibilities and a  
10                  job to do. I do want to assure all the  
11                  stakeholders and interested parties who might be  
12                  observing here today and via the web link that  
13                  this Board takes its responsibilities and  
14                  situations, such as this and in all of our work,  
15                  extremely seriously.

16                  We are completely impartial. If you  
17                  look at who is suing us and challenging us at any  
18                  given time, you will find every possible type and  
19                  stripe of stakeholder from the biggest railroads  
20                  to the biggest shippers to the small shippers and  
21                  small railroads, and that's because we don't put  
22                  our finger up in the air and try to guess how

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1 many people we can make happy on Wednesday or  
2 Thursday and vote based on that.

3 We take our obligations seriously.  
4 In many situations, this is one, there is not--  
5 probably not a win-win where we are going to make  
6 a decision that will leave every stakeholder  
7 happy. I wish there was. And I'm the eternal  
8 optimist on such things.

9 But it has always been my approach in  
10 dealing with matters like this to try my best to  
11 get as close as possible to leaving -- handling  
12 matters such as this in a way that leaves all of  
13 the impacted communities better off after our  
14 work is done, than they were beforehand.

15 That's a stronger test than perhaps  
16 NEPA and the law requires, but that has always  
17 been my personal goal and I'll continue to try to  
18 strive towards that in my efforts here. If we  
19 can't reach that goal, I want to get as close to  
20 it as reasonably possible.

21 And I want to assure the communities  
22 who may not deal with the STB on a regular basis

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1 and for whom this might be their first experience  
2 dealing with the STB, that we take the letters,  
3 the comments, what we have heard at the many  
4 public hearings and meetings, we take those to  
5 heart. We give them serious consideration.

6 We all live in communities. Many of  
7 us know what it is like to have lived near and  
8 adjacent to rail tracks or to have to handle and  
9 make decisions regarding major projects that  
10 have, on occasion, "winners" and, you know, "non-  
11 winners" in the short-term.

12 So, please, know that we expect,  
13 obviously, to be challenged no matter what we do  
14 on this important proceeding. And we will be  
15 ready for those challenges. But we hope that  
16 when folks look back in -- after an appropriate  
17 time has gone by, they will look back and say  
18 this was a Board that was thoughtful, that took  
19 its obligations very seriously and followed the  
20 law and the facts where those two important  
21 considerations led us.

22 With that, we will be adjourned.

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(Whereupon, the meeting was concluded  
at 4:37 p.m.)