

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

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HEARING

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IN THE MATTER OF: :
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HEARING ON CN EJ&E : Finance Docket
REPORTING REQUIREMENTS, : No. FD 35087
 :
CANADIAN NATIONAL RAILWAY: :
COMPANY AND GRAND TRUNK :
CORPORATION :
 :
- CONTROL - : Decision No. 23
 :
EJ&E WEST COMPANY. :
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Wednesday,
April 28, 2010

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 1:00 p.m.

BEFORE :

DANIEL R. ELLIOTT, III	Chairman
FRANCIS P. MULVEY	Vice Chairman
CHARLES D. NOTTINGHAM	Commissioner

APPEARANCES:

On Behalf of Canadian National Railway
Company, and Grand Trunk Corporation:

GORDON T. TRAFTON, II

TED KALICK

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A G E N D A

PANEL 1

The Honorable Melissa Bean
U.S. House of Representatives
Illinois, 8th District. 12

PANEL 2

HDR, Inc.
John Morton 18

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Canadian National Railway Company
Gordon Trafton
Ted Kalick
Karen Phillips. 56

P R O C E E D I N G S

(12:58:57 a.m.)

CHAIRMAN ELLIOTT: Welcome, everyone to today's hearing. Welcome, Congresswoman Bean. Before I get started today, I just would like to express my condolences for the sad loss that we just recently had on the line at issue, Katie Lunn, a very young woman. It's always sad to see someone pass away, but especially someone so young and vibrant to pass away, in such a way. We just wanted to express our condolences, and assume that the CN and the FRA are working on ways to address these kinds of accidents hopefully not occurring in the future.

To get to the hearing at hand, as many of you know, in December of 2008 this Agency approved the acquisition of the Elgin, Joliet and Eastern Railway by the Canadian National Railway. In approving the deal, the Board imposed an unprecedented amount of mitigation measures on CN. While this merger was approved before my appointment as Chairman, it is one of my highest

1 priorities to ensure that CN adheres to the
2 mitigation provisions.

3 To ensure compliance, the Board
4 created a five-year oversight process to closely
5 monitor various aspects of the transaction. CN
6 must file monthly Operations Reports and
7 quarterly Environmental Reports with the Agency.
8 The reports must include information on daily
9 train counts, accidents, and incidents, and, of
10 relevance today, of blocked crossing delays.

11 In my first few months as Chairman, I
12 heard a lot of concerns about the accuracy of the
13 reports filed by CN. In January of 2010, I
14 directed our independent third-party contractor
15 to audit CN's reports for November and December
16 of 2009. That audit identified a major
17 discrepancy in CN's reporting. In November and
18 December 2009, CN reported a total of 14 blocked
19 crossings for longer than 10 minutes. Our
20 auditors revealed over 1,400 occurrences. It
21 appears that CN's monthly reports only include
22 occurrences of blocked crossings for longer than

1 10 minutes when the train had completely stopped;
2 whereas, the data from the audit includes not
3 only stopped, but also blockages from slow-moving
4 trains, or other causes.

5 We called this hearing for CN to
6 explain why it failed to inform the Board of its
7 ability to report blocked crossings due to slow-
8 moving trains. We're not here to revisit our
9 approval of the merger, or to decide what, if
10 anything, this new information will show. We
11 just received the information, and are processing
12 it now, and we will receive public feedback at
13 the end of May. Rather, the sole issue here is
14 why CN failed to comply with our order, and to
15 understand why it never revealed to the Board, or
16 its staff, of the existence of all this very
17 specific information about blocked crossings.

18 Now I will turn the floor over to
19 Vice Chairman Mulvey for any opening remarks.

20 VICE CHAIRMAN MULVEY: Thank you,
21 Chairman Elliott.

22 The Board approved this transaction

1 in December of 2008, only after a detailed
2 analysis of the environmental impacts to
3 communities located along the EJ&E lines. We
4 recognize that, while this transaction offered
5 the promise of relieving rail congestion in and
6 around Chicago, a vital part of this nation's
7 freight yard network, we also recognize that it
8 would have negative environmental impacts on
9 certain communities on the EJ&E lines. And due
10 to the severity of these potential impacts, the
11 Board conditioned its approval of the transaction
12 on the requirement that CN comply with
13 environmental mitigations designed to alleviate
14 those adverse environmental impacts.

15 The Board established a five-year
16 oversight period during which CN is required to
17 collect and submit detailed information to the
18 Board. The point of the oversight reporting is
19 to allow the Board to determine on an ongoing
20 basis whether the original conditions it imposed
21 in the transaction are effective, or whether more
22 are needed. If the information revealed in the

1 oversight that the original conditions are either
2 not sufficient, or no longer appropriate, the
3 Board has the power to adjust and tailor those
4 conditions.

5 The importance of the accuracy of the
6 data that CN is required to submit during the
7 oversight cannot be overstated. In my separate
8 statement that approved the transaction, I
9 indicated that divergence from traffic
10 projections should be closely scrutinized, and
11 that the oversight data would permit the Board to
12 assure that its conditions were appropriate.
13 Without accurate and robust data, the Board's
14 ability to monitor the impacts of the transaction
15 is greatly hindered. And, as a result, the
16 public would suffer.

17 I am deeply disappointed by even the
18 possibility that CN failed to disclose
19 information, in fact, an entire database in its
20 possession that provides data responsive to one
21 of the Board's monitoring conditions.

22 Our decision required the CN to

1 report "the frequency, cause, and duration of
2 train blockages of crossings of 10 minutes in
3 duration or greater, listing each delay, and
4 including any notifications from persons affected
5 by the blockage, and the time of the beginning
6 and end of each delay." That implies that all
7 kinds of blockages are important to us, not
8 simply the ones where trains are stopped.

9 Without a doubt, the RTU data
10 discovered during HDR's audit provides automated
11 information that tracks both the frequency and
12 duration of down crossing gates on the vast
13 majority of crossings on the EJ&E lines. This
14 information would appear to give CN the ability
15 to quickly identify instances where a crossing is
16 blocked for more than 10 minutes, allowing it to
17 investigate contemporaneously whether the
18 crossing was blocked by a train that was stopped,
19 or slow-moving, why the blockage occurred, and
20 what remedial steps CN was taking.

21 The difference in a blocked crossing
22 reported by CN and the blocked crossings reported

1 by the RTU data is staggering. It is difficult
2 to imagine that any railroad subject to a
3 monitoring condition regarding blocked crossings
4 would not consider the RTU data to be highly
5 relevant to its reporting responsibilities, and
6 capabilities.

7 Given this, it was incumbent on CN to
8 disclose the existence of the RTU database to the
9 Board's staff at the very earliest stages of the
10 monitoring process, and to use the database to
11 comply with the Board's conditions. It is,
12 therefore, extremely unfortunate that the Board
13 has learned of the existence of an entire
14 database that tracks the frequency and duration
15 of down crossing gates on EJ&E only through an
16 audit.

17 In this hearing, I expect CN to
18 explain when it became aware of the RTU data on
19 the EJ&E line, and whether it fully disclosed the
20 existence of these data to Board staff during the
21 monitoring process, and explain what the data are
22 used for by the CN.

1 Thank you, Chairman Elliott.

2 CHAIRMAN ELLIOTT: Thank you, Vice
3 Chairman Mulvey, and now I turn the floor over to
4 Commissioner Nottingham.

5 COMMISSIONER NOTTINGHAM: Thank you,
6 Chairman Elliott. I share many of the concerns
7 expressed by my two colleagues. In the interest
8 of time, and we do have a distinguished member of
9 the Congress with us, Representative Bean, I will
10 keep my remarks very short. I do expect to have
11 plenty of questions, and plenty of things to say
12 once we hear a little more about what this full
13 picture may look like as the hearing progresses.
14 So, with that being said, I'll turn it over back
15 to you, Mr. Chairman.

16 CHAIRMAN ELLIOTT: Thank you,
17 Commissioner Nottingham.

18 Before we get started, as
19 Commissioner Nottingham mentioned, and as I
20 mentioned earlier, we have Congresswoman Melissa
21 Bean here, who represents the 8th District of
22 Illinois, who's been very involved throughout

1 this transaction. And Congresswoman Bean has
2 asked to offer a few remarks, so we now offer you
3 the podium.

4 REPRESENTATIVE BEAN: Thank you, Mr.
5 Chairman, and thank you to the STB for putting
6 this together, and for providing me an
7 opportunity to testify before you today.

8 You had an opportunity to meet many
9 of them even prior to this transaction being
10 approved, and so I remind all that are present
11 that I'm speaking not only on behalf of the
12 thousands of my constituents, whose lives have
13 already begun to be fundamentally altered by the
14 increased freight traffic expected on the EJ&E
15 rail lines, but also as a mom whose children
16 cross these tracks every day.

17 There are over 40 communities along
18 the EJ&E, including towns in my district, like
19 the Barrington area, Mundelein, Hawthorn Woods,
20 Lake Zurich, but also outside of my district in
21 suburbs of Illinois, Bartlett, Naperville,
22 Aurora, Plainfield, West Chicago, Frankfort, and

1 even northwest Indiana. These communities are
2 expected to experience between 400 and 900
3 percent increase in terms of freight train
4 traffic and train lengths, which is why there was
5 bipartisan opposition to this merger in Illinois
6 and Indiana, including Senator Durbin, Rep.
7 Manzullo, Representatives Roskam, Foster,
8 Biggert, and Visclosky, as well as myself.

9 We had expressed prior fears about
10 the concerns and the impacts that our communities
11 would experience, some of which your audit has
12 already demonstrated are proving true. We were
13 concerned about deadlocked traffic, and blocked
14 crossings, increased emissions and pollution,
15 noise levels, safety casualties, and the
16 thousands of children that could be standing
17 waiting in freezing weather to get to school
18 every day.

19 What I'm really pleased to see from
20 you having heard our concerns, is that the
21 Transportation Board has continued to provide
22 oversight and attention to our concerns. And,

1 particularly, I think this audit was a very
2 positive and helpful step in response to the many
3 complaints that you have heard from so many of
4 our constituents, and I want to particularly
5 thank Chairman Elliott for making this a
6 priority. And you've seen firsthand, because
7 you've made two site visits, how our communities
8 are directly impacted by this transaction.

9 The reason I'm here is this audit
10 follows the concerns we raised relative to CN's
11 pattern of disregard for our laws, and an
12 indifference to our communities. And recognizing
13 that safety is our top priority, it's difficult
14 for those in the communities that I represent to
15 trust their promises to be cooperative, when they
16 continue to sue our government to avoid minimal,
17 if unprecedented levels of mitigation that you
18 did require of them in this transaction; and they
19 continue to provide inaccurate data to the STB on
20 its operations, and the impacts that their
21 operations are having on our communities. And
22 that includes not just blocked crossings, but

1 accident reports, as well.

2 The blocked crossing reports from the
3 CN showed 14 instances of crossing blocks for 10
4 minutes or longer in November and December 2009,
5 when, in fact, there were over 1,400. My
6 understanding is that the STB now will be
7 requiring of CN that they provide all of this
8 omitted data, as they should have in the first
9 place. Operational accident reporting was also
10 under-reported. And this is an issue that I know
11 I've personally brought up with the STB, and so
12 many of the families in my district raised, and
13 we feel if there are any gaps in the law that
14 caused miscommunication between the Agencies,
15 Congress needs to know so that we can fix the
16 problem. Why is it that they reported fewer
17 accidents to the STB than they did to the FRA?
18 And how can you properly provide oversight if
19 you're not getting all the information that you
20 need to do so?

21 Safety signage. HRD, who'd done the
22 audit, found that the temporary signs had been

1 removed, but it could be many months before
2 permanent signs would be installed, which leaves
3 too long that residents won't be able to get
4 information visibly posted at crossings, so they
5 can report emergencies, or dangerous conditions,
6 as required by the mitigation terms of your
7 merger approval. CN's delayed response to this
8 demonstrates its insufficient attention to
9 meeting its most basic obligations in good faith.

10 I would urge the STB to use its full
11 authority on this matter in moving forward to
12 levy fines, and to always reassess the terms of
13 the approval decision. And I would hope that in
14 future audits, you'll work with the communities.
15 I think we need enhanced coordination and support
16 of community stakeholders as the oversight
17 process moves forward.

18 As you know, there are concerns with
19 the community survey, and I hope the STB will
20 address those concerns moving forward. I know
21 HDR's audit recommended an improved dialogue
22 between CN, the communities, and STB. And while

1 we can all agree on the importance of
2 communication, for communication to work, there
3 has to be trust. Sadly, so far, CN's promises to
4 work with the community in good faith, and keep
5 their commitments have proven false. So, I hope
6 as you continue to provide oversight moving
7 forward, you'll continue to keep our citizens in
8 mind as your top priority. Thank you.

9 CHAIRMAN ELLIOTT: Thank you,
10 Congresswoman Bean. And we definitely will take
11 your thoughts and concerns into consideration,
12 and we thank you very much for taking time out of
13 your busy schedule to address this important
14 matter.

15 We will now hear from John Morton
16 from HDR. And you have 10 minutes for any
17 prepared remarks that you have, Mr. Morton.

18 MR. MORTON: Good afternoon, Chairman
19 Elliott, Vice Chairman Mulvey, Commissioner
20 Nottingham. I am John Morton, and on behalf of
21 HDR Engineering, I'm here today to describe the
22 activities that we undertook to complete an audit

1 of the CN's monthly Operations Reports submitted
2 to the Board for the month of November and
3 December of 2009.

4 On December 24th, 2008, the Board
5 approved CN's application to acquire control of
6 the EJ&E. The Board's approval was subject to
7 quarterly reporting on compliance with
8 environmental mitigation conditions, and monthly
9 reporting on operations of the EJ&E and the CN
10 rail lines through Chicago.

11 After CN started filing its reports,
12 the Board received public comments asserting
13 that, among other issues, CN was under-reporting
14 instances for the highway rail at-grade crossings
15 that were blocked by trains for 10 minutes or
16 more on the EJ&E rail line. In order to verify
17 the information in CN's reports on November 17th,
18 2009, the Board announced that they retained an
19 independent third-party contractor, HDR
20 Engineering, to conduct an audit. The Board
21 directed HDR to complete a scope of services that
22 included six tasks. Task one focused on CN's

1 compliance with the Board's environmental
2 conditions that involved communities along the
3 EJ&E. Task two involved citizen's complaints
4 concerning train noise and vibration. Task
5 three, the task that I'm here to report on today,
6 concerned CN's reports on train volumes and
7 crossing blockages. Task four analyzed vehicle
8 delay at grade crossings, and highway traffic
9 congestion. Task five reviewed CN's reports on
10 accidents and injuries along the rail line. Task
11 six involved CN's obligation to post warning and
12 emergency notification signs at crossings.

13 HDR issued a report on April 14th,
14 2010, that summarized the findings of our audit.
15 This afternoon I will focus on the grade-crossing
16 blockage audit. To repeat, the objective of Task
17 Three was to independently investigate the
18 completeness and accuracy of the information CN
19 reported in November and December 2009 monthly
20 reports to the Board concerning the number of
21 highway rail at-grade crossing blockages
22 occurrence on the EJ&E rail line that exceeded 10

1 minutes in duration.

2 As part of the audit, HDR conducted
3 the following activities. We reviewed the
4 Board's Decision Number 16, reviewed the monthly
5 reports as furnished by CN to the Board, reviewed
6 the comment letters received by the Board related
7 to street blockages, and met with CN at its North
8 American Headquarters in Homewood, Illinois on
9 February 5th, 2010 to ascertain the methods used
10 by CN to determine the number and cause of
11 blockages of highway rail at-grade crossings on
12 the EJ&E rail line of 10 minutes, or longer, in
13 duration. We observed the conduct of the train
14 dispatching by the train dispatcher's desk for
15 the EJ&E rail line at CN's Regional Operation
16 Center in Homewood, Illinois. We met with CN on
17 February 17th, March 5th, March 8th, March 10th, and
18 April 9th at its Homewood headquarters to continue
19 the review of CN's highway rail at-grade crossing
20 data. We also conducted clarifying telephone
21 conversations with CN several times.

22 During our initial meeting on

1 February the 5th, CN described their process for
2 collection and reporting the data that makes up
3 CN's monthly Operations Report to the Board.
4 CN's discussion included a detailed description
5 of the process used to assemble the information
6 reported to the Board on street crossing
7 blockages.

8 Based on CN's description, HDR asked
9 CN for certain records, including the train
10 dispatcher crossing blockage logs for November
11 and December of 2009, CN's history and policies
12 on how they deal with crossing blockages, CN's
13 operational bulletins that concern crossing
14 blockages, all of the RTU faxes for November and
15 December of 2009. I'll discuss the RTU faxes in
16 greater detail in a moment. HDR also asked for
17 permission to observe the Dispatching Desk 11,
18 the desk that controls the EJ&E rail line for a
19 short period of time.

20 HDR made follow-up visits to review
21 the documents provided by CN, and to observe the
22 dispatching operations. CN answered all the

1 questions, and provided all the requested
2 records. CN also provided HDR with access to
3 their professionals, and to observe the EJ&E
4 dispatching desk.

5 CN described the process they used to
6 generate data for the monthly Operations Report
7 related to grade crossing blockages. CN was
8 clear that its report to the Board was assembled
9 to report only crossings that were blocked by a
10 train that was stopped for 10 minutes or more,
11 and as discussed in our final report, our audit
12 confirmed that based strictly on this definition,
13 CN's reports were substantially complete.

14 Because the RTU data is central to
15 our audit, and CN's methodology for tracking
16 crossing blockages, I'll summarize some of the
17 key points about RTUs that we learned. An RTU is
18 a Remote Terminal Unit. It's a device that
19 collects information about the operation of grade
20 crossing signal systems and transmits that
21 information via cellular telephone technology to
22 a central location. The RTU can inform the host

1 railroad of a signal system malfunction, a power
2 failure, or other operational issues. The RTU
3 technology has one of several commercial types of
4 technology used in the railroad industry to
5 collect and transmit information about the status
6 of grade crossing signal systems. And according
7 to its vendor, the RTU technology has been
8 available for about 10 years.

9 There are about 4,500 of its RTU
10 devices installed in the United States. The RTU
11 is not part of the mechanism that controls or
12 activates the crossing gates or lights. Instead,
13 it monitors information from the grade crossing
14 signal controller, and reports certain
15 information to the host railroad.

16 Our understanding is that on the EJ&E
17 prior to CN acquisition, at least some of the RTU
18 devices were configured to send an alert to the
19 railroad when the gate had been down for 10
20 minutes. When an RTU at a specific crossing
21 determines that the grade crossing protection
22 system is activated for 10 minutes, the RTU,

1 using the cellular -- sends an alarm information
2 to the vendor's central back office's computer
3 located in Cincinnati, Ohio. The computer
4 generates the actual fax and time stamp that is
5 sent to the CN train dispatcher in Homewood,
6 Illinois. The fax that is sent to the dispatcher
7 provides only the information that the signal
8 system has been active for 10 minutes. It does
9 not provide any information on if a train is
10 present, or if highway traffic is being delayed.

11 According to the Illinois Commerce
12 Commission, the primary purpose of its RTU
13 installation project was related to public
14 safety, and not to monitor how long crossings
15 were blocked. On the EJ&E main line from
16 Mundelein to Gary, Indiana, 82 out of the 83
17 public crossings in Illinois, and 9 out of the 15
18 public crossings in Indiana are equipped with
19 RTUs.

20 We understand that CN has two
21 different approaches for data collection, one for
22 crossings that are equipped with RTUs, and one

1 for crossings that are not equipped with RTUs.
2 For RTU-equipped crossings, CN uses, as we
3 understand it, the following approach. When the
4 grade crossing signal system has been activated
5 for 10 minutes, a time stamped fax is sent to the
6 dispatcher's desk. When the grade crossing
7 signal system transitions to the deactive state,
8 a second fax is sent showing that time. When the
9 dispatcher receives the fax notifying that the
10 grade crossing signal system has been active for
11 10 minutes, the dispatcher may contact the train
12 crew to determine the circumstances related to
13 the crossing. The dispatcher also starts a new
14 entry into his or her log capturing data from the
15 RTU, as well as identifying the train that is
16 occupying the crossing.

17 While the data is being entered, the
18 dispatcher may contact the train by radio, if the
19 dispatcher feels it's necessary to understand the
20 reason for the blockage, and the action the train
21 crew intends to take to reduce the duration of
22 the blockage. The train dispatcher then

1 determines, to the best of his or her ability,
2 how long the train was stopped at the crossing.

3 On crossings not equipped with RTUs,
4 the dispatcher relies upon the train crew to
5 contact him or her when the train has been
6 stopped blocking a crossing for 10 minutes or
7 more. CN generates the data for the monthly
8 reports to the Board from the dispatcher's log.

9 In order to show the data in historic
10 context, HDR asked CN to provide RTU data for
11 November and December of 2008. This data was
12 retrieved by the vendor of the RTU system, and it
13 was provided to HDR by CN on April 9th, 2010. HDR
14 entered the data from the RTUs and the
15 dispatcher's logs into spreadsheets which were
16 then used to generate the tables and schematic
17 illustration in the reports on Task Three and
18 Task Four. The reports were completed for our
19 Task Three and Task Four, show where the delays
20 occurred in November and December of 2009, and
21 the total of the 10-minute delays reported from
22 the RTUs, or dispatcher's logs.

1 In our final report, our
2 recommendation was that the Board should clarify
3 what constitutes a crossing blockage occurrence
4 for the purposes of the Board's reporting
5 requirements.

6 Mr. Chairman, I hope this discussion
7 has been useful, and I'd be more than happy to
8 answer any questions that you might have. Thank
9 you.

10 CHAIRMAN ELLIOTT: Thank you, Mr.
11 Morton, for your excellent report, and the
12 excellent work you've been doing on the audit.
13 The first question, I don't have many questions,
14 because I think you covered how the RTUs work.
15 Is there any issue with respect to RTUs about
16 their accuracy that you're aware of?

17 MR. MORTON: Well, one of the
18 important pieces of information is that the
19 actual time stamp is put on by the central
20 computer in Cincinnati, so they use cellular
21 technology for the RTU to transmit its
22 information to Cincinnati. And that's where the

1 time stamp comes on, so it's the same technology,
2 as I understand it, that we would use for a cell
3 phone conversation, so there may be a time delay
4 in terms of the precise time when the gates went
5 down, and the gates came up.

6 CHAIRMAN ELLIOTT: And were you aware
7 of the ability to measure the slow-moving trains
8 at blocked crossings throughout the process of
9 the oversight?

10 MR. MORTON: No, sir. When we met
11 with CN on February 5th, that was really the first
12 time -

13 CHAIRMAN ELLIOTT: February 5th of?

14 MR. MORTON: I'm sorry. February 5th,
15 this year. And they described the process. They
16 went through the process for all the data that
17 they were reporting to the Board, including the
18 crossing delay information. And that was the
19 first time that we understood that the RTU
20 information existed, and that it was being used,
21 at least sent to the train dispatcher.

22 CHAIRMAN ELLIOTT: Thank you. Vice

1 Chairman Mulvey.

2 VICE CHAIRMAN MULVEY: A couple of
3 things. You mentioned about the RTUs recording
4 data at blocked crossings because traffic is
5 backed up and congested. But isn't it also a
6 safety issue? I mean, one of the arguments made
7 while we evaluated this case was that these
8 crossings would be blocked, and that emergency
9 medical vehicles, et cetera, would be unable to
10 cross. So, it's a safety issue, as well as a
11 congestion one. Correct?

12 MR. MORTON: I think from -- my
13 understanding is, our discussions with the
14 Illinois Commerce Commission, who actually helped
15 pay for and install some of those, that safety
16 was their primary motivation for installing the
17 RTUs.

18 VICE CHAIRMAN MULVEY: You said
19 there's 4,500 of these nationwide, and I would
20 assume that these are mostly on the large
21 railroads. And wouldn't the large railroads, and
22 the large railroad operators be familiar with

1 these devices. You said they've been around now
2 for about 10 years. I believe GE was the first
3 one who was putting these out. Is that correct?

4 MR. MORTON: You know, I guess I
5 really can't speak to what the railroads might be
6 familiar with, or not. But the technology has
7 been around for 10 years, that's correct.

8 VICE CHAIRMAN MULVEY: One of the
9 concerns that we have is the completion of this
10 project, it's only beginning, really. I mean, we
11 have only begun to see a slight increase in the
12 number of trains on former EJ&E tracks compared
13 to what is proposed in the longer term. The
14 economy has been down, so the growth of traffic
15 has been less than we might have expected. But,
16 ultimately, we are expecting, and I believe CN
17 was expecting, that there would be 20, 30, or
18 more trains per day, and that many of these
19 trains, I would believe, are coming from the West
20 Coast. They could be unit trains with 120 cars
21 or so. This 10-minute requirement, are they
22 going to be able to meet that, where the train --

1 let's say it's creeping through a neighborhood
2 where there are schools, et cetera, and maybe
3 it's moving through at 5 miles an hour, so a 120-
4 car train is 7,000 feet long. It would seem that
5 that train would not be able to get through a
6 crossing in just 10 minutes. Isn't that going to
7 be a problem over time?

8 MR. MORTON: I think you ask a very
9 good question, but the one thing I could point
10 out is that one of the conditions that the Board
11 imposed was a voluntary mitigation condition that
12 CN actually offered, that is, to comply with
13 their U.S. Operating Rule that talks about the
14 time frame that they block crossings, and what
15 they would do. So, it might be best to -- I know
16 that the railroad is -- since they have an
17 Operating Rule in place, and they may be able to
18 better talk about that issue.

19 VICE CHAIRMAN MULVEY: The railroad
20 quotes an Illinois state law of a 10-minute
21 delay, et cetera, but I believe that that law was
22 superseded by federal regulation. Isn't that

1 correct, also, that the Illinois law is really
2 not in effect, the 10-minute rule. It's really a
3 federal imposition?

4 MR. MORTON: I'm certainly not a
5 lawyer, but my understanding, Vice Chairman, is
6 that I think in December of 2007, that the
7 Illinois Supreme Court ruled that that particular
8 statute was preempted by federal law.

9 VICE CHAIRMAN MULVEY: Thank you.
10 That's all I have for the time being.

11 CHAIRMAN ELLIOTT: Thank you, Vice
12 Chairman Mulvey. Commissioner Nottingham.

13 COMMISSIONER NOTTINGHAM: Thank you,
14 Mr. Chairman. Mr. Morton, thanks for being with
15 us. I do want to say at the outset that I have
16 very high regard for HDR, as an engineering
17 consulting firm. I've had the privilege of
18 working with your firm and colleagues on many,
19 many projects, primarily highway-related projects
20 in my former two jobs at the Federal Highway
21 Administration, and at the Virginia Department of
22 Transportation. And I can say, I've always been

1 impressed with the quality of work, so thank you
2 for being here, and for also doing what seems to
3 be good work related to what we asked you to dig
4 into in this audit. And I just want you to know
5 we appreciate that.

6 MR. MORTON: Thank you, Commissioner.

7 COMMISSIONER NOTTINGHAM: It doesn't
8 mean, though, I'm not going to have some tough
9 questions, so bear with me. They're not meant to
10 be tough, but they are important, I think.

11 The Chairman raised the question
12 about the accuracy of the RTU data, and if I
13 could paraphrase what I thought I heard you say,
14 is that there probably is some brief, at least,
15 time lag since we're talking about gates going
16 down, a signal being somehow captured,
17 transmitted by cellular technology to Cincinnati,
18 received there, some type of document produced,
19 date stamped, and then faxed to CN, in this
20 case's, dispatching center. Assuming that that
21 does create, probably, some brief interlude
22 between when the gates actually go down on the

1 EJ&E line, and when CN actually receives the fax,
2 wouldn't that delay be countered by, basically,
3 the start and stop? There's two faxes. We could
4 assume the first one arrives shortly, but there
5 is a time lag, I would assume, after the gates go
6 down, and the second fax is received shortly,
7 with a similar time lag when the gates go back
8 up. So, the reports, for our purposes, seem to
9 me to be quite useful, and basically very much
10 accurate enough for our business. We're not
11 forensic accident re-creators, or anything.
12 That's another matter, but for our purposes, it
13 sounds like we ought to be able to rely on these.
14 Is that consistent with your professional
15 judgment?

16 MR. MORTON: Yes, Commissioner. My
17 understanding is that the actual RTU, first RTU
18 fax is generated after the gates have been down
19 for 10 minutes, and then that signal -- the alarm
20 is sent to the central office, and that fax is
21 sent back to it. So, I think your position is
22 correct. In terms of relative time, I believe

1 they are very useful.

2 COMMISSIONER NOTTINGHAM: Now, I know
3 because I worked with you on it at the time, you
4 were intimately involved in the Environmental
5 Impact Statement work, and the traffic analysis,
6 and the work that went into our legally binding
7 merger approval, with conditions, decision of
8 December 24, 2008. So, with that in mind, I'm
9 going to read to you a couple of the legally
10 binding provisions that are in our approval
11 decision, and (a) ask if they sort of ring a bell
12 with you, and then also ask if you find anything
13 confusing, or unclear in these provisions.

14 First, I'll describe that our
15 decision of December 24, 2008, which
16 conditionally approved the merger, requires CN,
17 as part of our oversight process to file
18 quarterly reports on environmental mitigation,
19 and monthly reports on certain operational
20 matters. This has been touched on by others, but
21 I want to make sure I get it in the record.
22 Those monthly reports are to include, among other

1 things, "the date and descriptive information
2 about each crossing blocking occurrence on the
3 EJ&E rail line that exceeds 10 minutes in
4 duration."

5 Next, several conditions imposed in
6 our approval decision specifically refer to
7 blocked crossings. You mentioned one that's
8 sometimes referred to as CN's voluntary
9 mitigation, because it was proffered up,
10 initially, in a voluntary manner. It's very
11 important for people observing this proceeding to
12 understand that once we incorporate the many
13 voluntary, and CN did offer up numerous voluntary
14 mitigation offerings, once that's incorporated in
15 our legally binding decision, it loses any sort
16 of semblance of voluntariness. We, sometimes,
17 will refer to it as one of the voluntary ones,
18 but it's just as binding as anything else that's
19 in our list of conditions in the decision.

20 So, Voluntary Mitigation Measure 35
21 requires that CN, "Shall operate under U.S.
22 Operating Rule 526," which I'm told is a CN

1 corporate operating rule regarding public
2 crossings. And I'm quoting here, "which provides
3 that a public crossing must not be blocked longer
4 than 10 minutes."

5 Later, in Condition 2, we required
6 CN's quarterly Environmental Reports to include
7 information "on the frequency, cause, and
8 duration of train blockages of crossings of 10
9 minutes in duration or greater, listing each
10 delay and including any notifications from
11 persons affected by the blockage and the time of
12 the beginning and end of each delay. [CN] shall
13 summarize the cause of each type of blockage that
14 [CN self-reports], and shall state how [CN
15 intends] to reduce the incidence of all blockages
16 not attributed to emergencies or weather-related
17 incidents (sometimes called acts of God)."

18 Next, in Condition 3, that condition
19 requires CN to distribute to communities adjacent
20 to, or intersected by the former EJ&E line, the
21 contact information for the railroad's community
22 liaison to insure that the railroad is "aware of

1 highway/rail at-grade crossing blockages lasting
2 10 minutes or more."

3 Are any of those provisions, in your
4 professional opinion, having worked with
5 railroads and transportation departments on
6 controversial projects, is there anything
7 confusing in what I just read?

8 MR. MORTON: We, certainly, worked
9 with your staff on the wording of many of those
10 conditions, and we felt that as we were working
11 with them, that they were clear, yes.

12 COMMISSIONER NOTTINGHAM: Thank you.
13 Do they show, in your professional opinion, a
14 repeated and strong interest by this Board in the
15 overall subject of impacts on the community, and
16 on traffic, and on safety of delays of all types
17 lasting 10 minutes, or longer, at at-grade
18 highway rail crossings?

19 MR. MORTON: We, certainly understood
20 when we were working with your staff on
21 mitigation conditions that that was a concern of
22 the Board, absolutely.

1 COMMISSIONER NOTTINGHAM: And I'll
2 get into a hypothetical here, but if you were --
3 and I know in other aspects of your firm's work,
4 you advise clients. If you were advising a
5 client on kind of what the Board was expecting in
6 the way of information about blocked crossings of
7 more than 10 minutes, would your advice be based
8 on what I just told you, we reviewed in the
9 legally binding decision, would it be that your
10 client ought to be pretty forward-leaning, and
11 err on the side of providing more information to
12 the Board, or less?

13 MR. MORTON: You know, I think -- I
14 mean, as we talked about in our final report, it
15 certainly seems to us that there's a difference
16 in that -- what the Board actually wants to be
17 reported, does need some clarification. That
18 seemed, based upon our discussions with CN, and
19 what they were reporting, that there probably was
20 a disconnect someplace.

21 COMMISSIONER NOTTINGHAM: Let me
22 challenge you a little bit on that, because the

1 choice of words is important here. Your audit
2 report does point out that there may need to be
3 some type of clarification, or some type of
4 correction, but you just said a few minutes ago
5 that the legally binding decision, approving with
6 conditions the merger, was clearly worded. And
7 if I can not put words in your mouth, but pretty
8 easy to understand. If there is any -- if you
9 were advising a client about any possible
10 confusion that the client might have, a railroad,
11 or a highway department, or a private
12 corporation, would you not recommend that they
13 come to the Board at the earliest opportunity and
14 say we have this, we're confused. Can you please
15 set us straight, because we just want to,
16 presumably, follow the law, and do the right
17 thing. Is that -- would that sound like the kind
18 of -- what you would recommend in a situation, if
19 there truly was confusion?

20 MR. MORTON: That certainly seems to
21 me like that would be prudent advice, yes.

22 COMMISSIONER NOTTINGHAM: Thank you.

1 Now, I want to get into a little bit to the
2 details of your discovery of this RTU data, which
3 was quite helpful, and I think will be quite
4 useful going forward for the Board, and I wish we
5 knew about it earlier.

6 If I understand your testimony, you
7 were doing your audit job. You were in CN's
8 headquarters, and in their Operations Center, and
9 at some point in the process, you observed, or
10 you became aware of the existence of RTU data.
11 Walk me through that, exactly how that sort of
12 came to pass.

13 MR. MORTON: We set up a, pretty much
14 what I would describe as sort of a kickoff
15 meeting with CN to talk to many of their
16 professionals in a number of different fields,
17 the professionals that are responsible for the
18 accidents, and reporting, and operational
19 professionals. And they went through, in detail,
20 how they developed information to be responsive
21 to the Board's request and their monthly reports.
22 And during the discussion, they described the way

1 they build the information, or collect the
2 information for the street crossing blockage
3 report. And, as part of that, their discussion
4 started with an explanation about the RTU data,
5 and the availability of that data, and that the
6 information is sent via fax to the dispatcher.
7 And then what the dispatcher does, and walked
8 through it. So, based upon that discussion, we
9 asked to see the raw data, so that's how we
10 became first aware that the RTU data existed, and
11 that they could retrieve it, and we could audit
12 it.

13 COMMISSIONER NOTTINGHAM: Did you
14 have occasion to receive or look at any
15 documents, any memorandum prepared by CN that
16 actually appeared to show that CN had been using
17 RTU data for business, and other purposes?

18 MR. MORTON: When they described
19 their process to us, it became clear, at least
20 for the November and December time period, that
21 the RTU data is, at least, one of the first
22 triggers for the dispatcher to start recording a

1 crossing blockage occurrence on his dispatcher
2 log. It is then -- they determine on that log
3 what the train is, the number of minutes the
4 crossing was blocked, how many of those minutes,
5 how many minutes the train was moving, how many
6 minutes the train was stopped, and any corrective
7 action, any cause, any descriptive information.
8 So, the RTU data triggers the start of that
9 process.

10 COMMISSIONER NOTTINGHAM: So, when
11 you mentioned earlier that the reporting, the
12 monthly and quarterly reporting that CN had been
13 providing to the Board per our legally binding
14 decision relied on dispatcher logs, at some
15 point, at the latest, because you said you
16 personally are aware of this by
17 November/December, those dispatch logs actually
18 incorporated all of the RTU data. In other
19 words, the RTU data went into, and supported, and
20 served as kind of the foundation of those
21 dispatcher logs?

22 MR. MORTON: Yes, sir. That's

1 correct.

2 COMMISSIONER NOTTINGHAM: Did you
3 have any occasion to observe any gleaning out or
4 filtering of that raw data by CN personnel sort
5 of later in the process, because we know what
6 ended up coming to us, initially, of course, was
7 reference to 14 blockages over two months lasting
8 longer than 10 minutes. We now know, because the
9 railroad was only defining long blockages as ones
10 involving stopped trains, as opposed to all the
11 other causes that can trigger one of those long
12 blockages, but was there -- what point did that
13 raw data evolve into 14, because the raw data
14 showed what -- again, what numbers did the raw
15 data show on 10 minute or longer blockages of all
16 types?

17 MR. MORTON: I believe that the
18 number would be -- there wasn't perfect harmony
19 between the dispatcher's log and the RTU data,
20 but when you combined them and looked at it, it
21 appeared to us that there are about 1,457
22 occurrences. It's my understanding that CN

1 management then takes a look at the dispatcher's
2 log. And the dispatcher does, in fact, record
3 how many minutes the train was moving, and how
4 many minutes the train was stopped. So, they
5 look at that, and from that they glean how many
6 of the blockages were caused by a train that was
7 stopped for 10 minutes or more.

8 COMMISSIONER NOTTINGHAM: And that
9 sounds to me like some type of sort of filtering,
10 or editing process materialized by CN, where the
11 raw data showing 1,400 plus 10 minute or longer
12 delays at these crossings evolved into 14.
13 Somebody actually had to go in there and
14 manipulate it, do some cutting, pasting, editing,
15 or whatever. I mean, they had to really go in
16 and handle it, in other words, get into that data
17 and sort through it. Would that be a fair
18 statement?

19 MR. MORTON: Well, I think they
20 extracted from that data set those crossings
21 where the train was stopped for 10 minutes, or
22 more.

1 COMMISSIONER NOTTINGHAM: So, they
2 went through this extraction process.

3 MR. MORTON: I believe so, yes.

4 COMMISSIONER NOTTINGHAM: I think
5 I'll just pause. I know I've been doing a lot of
6 questioning. Do colleagues have questions for
7 Mr. Morton?

8 CHAIRMAN ELLIOTT: I don't have any
9 further questions.

10 VICE CHAIRMAN MULVEY: I want to ask
11 a couple more questions. Do we have any data on
12 the distribution of the 10-minute blocked
13 crossings? In other words, there are about 90 or
14 100 public crossings on EJ&E. It's possible that
15 you would have 1,200 blockages on three
16 crossings, and then the other ones only a few.
17 And I was wondering, can we get some data, some
18 information on the distribution of these blocked
19 crossings?

20 MR. MORTON: Absolutely. We have
21 that information. We, actually, graphically
22 presented it in the report that we prepared under

1 our Task Four. And what we did is, we have a
2 schematic of the EJ&E as it goes around to each
3 crossing. We didn't do it graphically, but
4 that's certainly possible, because we certainly
5 have all the information. I'd be happy to
6 prepare a list like that.

7 VICE CHAIRMAN MULVEY: CN is claiming
8 that while the data that they reported, and the
9 data from the RTUs do differ, and differ
10 substantially, they are trying to make the case
11 that, in fact, as bad as things might sound right
12 now, things were actually worse when the EJ&E was
13 operating over the same lines. In fact, this
14 chart that was put together, shows there's 2,500
15 to 3,000 crossings blocked each month under the
16 EJ&E operation, which seems to be running around
17 1,000 or so each month. Could you comment on why
18 there may have been these changes? Are things,
19 in fact, getting better, or is this reflecting
20 changes in the economy, or what have you?

21 MR. MORTON: I don't know that I'm
22 qualified to comment on why there might be a

1 change, but we did look at the information from
2 November and December of 2008, and CN asked the
3 vendor if they could go back and generate that
4 data, and provide it to us, and they did. And in
5 those two months -- and there's a little
6 difference in terms of the --we focused on just
7 the part of the EJ&E rail line from Leithton, or
8 Mundelein to Gary, where there were traffic
9 changes. And it was -- that's the area that we
10 focused on.

11 The data includes a lot of
12 information on other parts of the EJ&E, including
13 some of their branch lines, and some of the other
14 ones, but we extracted just the information for
15 that 105 miles from Leithton to Gary.

16 VICE CHAIRMAN MULVEY: So, these data
17 that I'm looking at here just reflect the 105
18 miles, not all of EJ&E, or you're not sure about
19 that?

20 MR. MORTON: I'm sorry, I'm not --the
21 data that we presented in our -

22 VICE CHAIRMAN MULVEY: The data that

1 you presented. Okay.

2 MR. MORTON: Yes.

3 VICE CHAIRMAN MULVEY: And then these
4 data may, in fact -

5 MR. MORTON: You'd have to ask them.

6 VICE CHAIRMAN MULVEY: I mean,
7 there's an old saying in economics that figures
8 don't lie, but liars figure. So, sometimes you
9 don't know precisely what you're getting. We've
10 got six months of data, or seven months of data
11 here under EJ&E. I don't know what would happen
12 if we were looking at say six or seven years of
13 data.

14 MR. MORTON: Right.

15 VICE CHAIRMAN MULVEY: Maybe that was
16 an outlying period, that was a period just before
17 the merger, so I don't know if there's anything
18 unique about this, which would make these numbers
19 so high. So, perhaps I can address that later on
20 to CN.

21 I wanted to also echo what
22 Commissioner Nottingham said. HDR did a great

1 job on our Environmental Impact Statement, and we
2 really appreciate the quality of your work. And
3 I know also from experience that HDR is a very,
4 very reputable, and a firm with a large number of
5 talented people, so we want to thank you for your
6 efforts.

7 MR. MORTON: Thank you, Mr. Vice
8 Chairman.

9 CHAIRMAN ELLIOTT: Thank you, Vice
10 Chairman Mulvey. Just to clarify the record,
11 the document that we were -- Vice Chairman was
12 referring to is an exhibit that was submitted by
13 CN just today, so just for the record's sake.

14 I have just one other question, quick
15 question. It's my understanding throughout this
16 oversight process, at some point in time, the STB
17 went to CN and asked about if it was possible to
18 monitor slow-moving trains at grade crossings,
19 and there was a pilot project using stopwatches,
20 apparently, by CN employees put into effect at
21 certain crossings. Are you familiar with that
22 project?

1 MR. MORTON: We are only just
2 becoming familiar. We were not part of that.

3 CHAIRMAN ELLIOTT: Okay. Then I'll
4 save my question for CN. Commissioner
5 Nottingham.

6 COMMISSIONER NOTTINGHAM: I was
7 actually going to explore the same topic. Mr.
8 Morton, when you were doing sort of your due
9 diligence, and your work on the audit, is it fair
10 to say that you came across the existence of the
11 so-called June/July pilot at five intersections
12 that was the result of ongoing Board concern
13 about long blockages of intersections of all
14 types and causes, and the development of a five
15 intersection pilot. Does that ring a bell?

16 MR. MORTON: Commissioner, your staff
17 actually briefed us on that pilot project while
18 we were doing the audit, yes.

19 COMMISSIONER NOTTINGHAM: And when
20 you got that information, were you able to check
21 your information about the RTUs, and actually
22 determine whether any of those five intersections

1 actually were covered by these RTU units?

2 MR. MORTON: No, sir, we have not
3 done that cross-check.

4 COMMISSIONER NOTTINGHAM: Okay.

5 VICE CHAIRMAN MULVEY: Excuse me for
6 a second. I believe the RTU program was one of
7 the ones that was developed, the pilot program,
8 anyway, while I was Acting Chairman, and I
9 believe that at least a couple of them, the Ogden
10 Avenue one, and the 127th Street crossing, both of
11 them had RTU devices. I'm wondering why if they
12 have RTU devices right there, and CN personnel
13 are there with stopwatches, they wouldn't know
14 that they have this automatic reporting at the
15 same time, and they would sort of cross-check
16 against them.

17 MR. MORTON: Mr. Vice Chairman --

18 VICE CHAIRMAN MULVEY: I'll save that
19 question, also.

20 MR. MORTON: Yes. I'm not aware.

21 CHAIRMAN ELLIOTT: Thank you very
22 much, Mr. Morton. We will now here from

1 representatives from CN. I would ask that
2 everyone from CN introduce themselves, provide us
3 with your title and position at CN, and I notice
4 that you do have counsel in the room. I mean,
5 your counsel is more than welcome to join you,
6 but you now have 10 minutes for your prepared
7 remarks. You may begin.

8 MR. TRAFTON: Good afternoon. My
9 name is Gordon T. Trafton, II. I am here
10 representing CN. I am a special advisor to the
11 CN Leadership Team. With me at the table this
12 afternoon is Karen Phillips, to my left, CN's VP,
13 Public and Government Affairs, and Ted Kalick,
14 CN's Senior Regulatory Counsel.
15 With the Board's permission, I'd like to begin
16 with the following statement on behalf of CN.

17 With nearly 32 years of railroad
18 experience, including nearly 14 years at Illinois
19 Central and CN, where I served as Senior Vice
20 President, Southern Region in charge of most of
21 CN's U.S. operations, and most recently as a CN
22 Vice President, Strategic Acquisitions and

1 Integration, leading the integration of CN and
2 the EJ&E. Our President and CEO, Claude Mongeau,
3 regrets that he could not be here for this
4 important hearing. Like the rest of us at CN, he
5 wants to be sure that we directly address the
6 concerns expressed in your order regarding the
7 nature of our oversight reporting, and our
8 sharing of data related to grade crossing
9 blockages.

10 The CN team has dedicated thousands
11 of hours of our effort to provide you with the
12 information you've requested to perform your
13 oversight of the EJ&E integration. In that
14 effort, we have sought to collect and report
15 promptly information we believed that the Board
16 required of us, and, otherwise, to comply fully
17 with the Board's orders.

18 As you know, since acquiring the
19 EJ&E, CN has been responsible for complying with
20 108 voluntary mitigation conditions proposed by
21 the CN, and 74 mitigation conditions added by the
22 Board. It has expended enormous amounts of time,

1 effort, and money in doing so. And, although the
2 HDR audit of those efforts recommendations
3 clarifications by the STB, and improved
4 communication between the communities and the CN
5 in some areas, we believe that overall the audit
6 validates CN's compliance efforts.

7 CN fully understands that lengthy
8 grade crossing blockages, whether from stopped or
9 moving trains, are a significant public concern.
10 We know the Board has made clear through
11 statements and inquiries that it takes the
12 concern very seriously, and we have worked hard
13 to address this concern. Indeed, the available
14 data suggests our operation of EJ&E may have
15 caused fewer significant grade crossing blockages
16 that were caused before the CN/EJ&E transaction.
17 With respect to the data at issue here, we freely
18 shared with HDR the fact that, in order to help
19 prepare our monthly report to the Board of grade
20 crossing blockages by stopped trains, CN had
21 begun using automated crossing warning devices,
22 or otherwise known as ACWD, activation notices

1 generated by Cellular Remote Terminal Units,
2 otherwise known as RTUs, located at EJ&E's
3 automated grade crossings. HDR did not have to
4 dig to determine that fact, we volunteered it.
5 When HDR asked us for the actual RTU data we had
6 used for the two audit months, we provided it
7 without delay or objection, and when HRD also
8 suggested it wanted historical data for
9 comparison purposes, we immediately went back to
10 the vendor who stores the data, and had it
11 retrieved for HDR.

12 Questions have now arisen about why
13 CN did not volunteer this RTU data prior to the
14 audit. The answer is straightforward. We
15 believed we were meeting the Board's reporting
16 requirements. With respect to blocked crossings,
17 we had a good faith understanding that the
18 Board's expectation was for reports on blockages
19 caused by stopped trains, and we diligently
20 worked to meet that expectation. The Board has
21 now ordered CN to report all known occurrences of
22 street crossing blockages of 10 minutes or more,

1 as reflected in the RTU data, or any other source
2 of information available to CN, as well as all
3 historical data regarding such occurrences. We
4 understand, and will comply with that order.

5 We regret that, as a result of our
6 understanding of our reporting obligations, which
7 has been the basis of our blocked crossing
8 reports for the past year, we did not provide the
9 Board all of the information it believes it
10 requires to perform its oversight functions. We
11 hope that the extensive data we provided on
12 Monday, and the data we will be filing in the
13 future will provide that information.

14 Before we began filing our various
15 oversight reports, as required by the Board's
16 order, we consulted with the Board personnel
17 concerning the content and the format of these
18 reports. We suggested that we comply with the
19 Board's request for blocked crossing information
20 by reporting crossing blockages of 10 minutes or
21 more due to stopped trains. We thought this
22 approach made sense for several reasons.

1 First, there are events that we must
2 respond to immediately to provide relief, and
3 assure that they will not likely happen again.

4 Second, lengthy ACWD activations
5 caused by moving trains occur on all railroads
6 operating in heavily developed areas like around
7 the EJ&E. Some moving train delays are an
8 unavoidable element of providing service to
9 customers. For example, the fact that gates may
10 be down at a crossing for 10 minutes or more due
11 to slow-moving trains entering shipper facility
12 would not ordinarily be a noteworthy event in
13 terms of rail operations, or regulatory
14 oversight. To the extent that moving train
15 delays can be remedied, they are generally best
16 addressed not as individual events requiring
17 immediate particularized attention, but in the
18 course of making systemic improvements to
19 operations.

20 Third, blockages due to stopped
21 trains are the types of blockages addressed in
22 other mitigation conditions related to blockages.

1 VMs 31, 32, 42, and 35 either expressly or in a
2 case implicitly addressed those types of
3 blockages.

4 We recognize that a motorist is
5 equally inconvenienced whether a blockage is from
6 a stopped or a moving train. As railroad
7 operators, however, it made sense to us to
8 suggest that we report crossing blockages caused
9 by trains stopped 10 minutes or more.

10 Thereafter, following consultation with the Board
11 personnel, we made our report on that basis.

12 The fact that we were reporting
13 crossing blocked by trains stopped 10 minutes or
14 more was well publicized, and well understood.
15 The cover letter for every report has noted that
16 we were reporting crossings blocked by trains
17 stopped 10 minutes or more. For example, the
18 cover letter to our very first report filed April
19 13th, 2009, stated on page 2 that the street
20 crossing blockages "report provides data
21 concerning each instance where a crossing was
22 blocked by stopped train for 10 minutes or more."

1 Likewise, the title of each crossing blockage
2 report made it clear that the report was limited
3 to blockages caused by stopped trains. This
4 limitation was also noted and commented on by
5 opponents of the transaction.

6 The Board's hearing notice focused on
7 the data collected by the RTUs that are deployed
8 at grade crossings on the EJ&E that are equipped
9 with ACWDs. These are otherwise known as gates,
10 flashers, bells along the system, and not
11 including the passive devices, such as
12 crossbucks. These are units that were installed
13 at these grade crossings under an agreement with
14 the Illinois Commerce Commission, and that
15 agreement is publicly available on their website.

16 As the ICC noted in the agreement
17 with EJ&E concerning the installation of the
18 RTUs, EJ&E's undertaking with respect to the RTUs
19 was a limited one: to initiate health check
20 messages for ACWD system in order to confirm the
21 integrity of the system. They are not primarily
22 intended or used to monitor delay to vehicles at

1 crossings. The RTUs generate messages that are
2 received by EJ&E as faxes or emails concerning
3 such things as gate irregularities, power
4 failures, or jumpers in use, usually used during
5 maintenance of the ACWD system. The data
6 generated by the RTUs are also stored in digital
7 form on servers maintained by an independent
8 vendor for a total of 33 months.

9 The RTU's capacity to communicate
10 warnings of possible crossing equipment
11 irregularities can be programmed to provide
12 notifications when ACWDs have been activated, for
13 any reason, longer than a specific period of
14 time. The EJ&E RTUs were programmed to provide
15 such notices after 10 minutes.

16 ACWD activations of 10 minutes or
17 more are not a new phenomenon on the EJ&E. In
18 fact, the available data show that the number of
19 reported instances of ACWDs being activated 10 or
20 more minutes on the EJ&E has generally dropped
21 under CN control. The HDR report showed that for
22 the two audit months, there were 1,457 such

1 reports on the former EJ&E's Eastern and Western
2 subdivisions, now known as CN's Leithton and
3 Matteson subdivisions. By comparison, for
4 November/December 2008, before CN controlled
5 EJ&E, the number reported was 1,658. In order to
6 expand the scope of the comparison, I'm
7 submitting with my statement a table comparing
8 the RTU data across the full 33 months for which
9 it is available, which you should have a copy of.
10 Even accounting for potential range of error, the
11 data demonstrate that significant numbers of ACWD
12 activations of 10 minutes or more are neither
13 new, nor unusual on the EJ&E. And, based on my
14 experience, they are typical of railroad
15 operations in metropolitan areas.

16 ACWD activations for extended periods
17 often occur as trains are required to stop and
18 restart, or slow for a variety of reasons,
19 including a train picking up or dropping off
20 cars at a rail-served industry, a train pulling
21 into or out of siding, a train waiting to
22 enter or exit the railroad's lines, or a train

1 waiting for an Amtrak or commuter train to pass.

2 Although less common, extended ACWD activations
3 may occur due to signal failures, speed
4 restrictions, maintenance, accidents, mechanical
5 breakdowns, or employee error.

6 We work hard to keep our trains
7 moving as safely, efficiently, and quickly as
8 possible. That is the best way to serve our
9 customers and run an efficient railroad.

10 However, especially in the Chicago area, the only
11 place in the U.S. where six Class I railroads
12 meet, delays and slow trains are, unfortunately,
13 often unavoidable.

14 This does not mean that CN passively
15 accepts lengthy crossing blockages. If I could
16 continue? We are continuing to make investments
17 and improve operations in ways that not only
18 benefit our customers, but also reduced extended
19 ACWD activations. For example, improved line
20 maintenance by CN has already reduced a number of
21 slow orders, improved train speeds, and reduced
22 crossing delays. In addition, as recognized by

1 the Board's FEIS, many of the locations where
2 frequent blockages occur due to slow moving
3 trains will experience fewer blockages once CN's
4 planned infrastructure upgrades are complete.

5 Some of these blockages are due to
6 trains either entering or exiting EJ&E, or moving
7 between EJ&E's main line and its branch lines, or
8 sidings. CN's investment in upgraded connections
9 at places such as Leithton, which is in
10 Mundelein, would allow trains to travel at 25
11 miles per hour instead of 10, and Matteson, where
12 trains will be able to operate 15 instead of 5,
13 should allow trains to move through faster
14 through these connections, thereby reducing
15 blockages at Illinois Route 60/83 and Diamond
16 Lake Road in Mundelein, at Main Street in
17 Matteson, and Western Avenue in Park Forest.
18 Similarly, projects to add a power switch to the
19 Illinois River Line at Illinois Route 26, to the
20 connection at Munger, which is in Bartlett, and
21 to the north switch at Sutton Siding in Hoffman
22 Estates, have reduced or will reduce ACWD

1 activations on nearby roadways. Other blockages
2 have significantly increased as a result of the
3 very projects we are engaged in to enhance long-
4 term fluidity. Once these projects, such as the
5 Joliet Yard project, are complete, we expect
6 these temporary increases to end.

7 At the other locations, CN is trying
8 to address unnecessary blockages through improved
9 operating practices. These primarily involve
10 existing slow movements for trains that are
11 connecting with other carriers, or serving
12 particular customers. It may not be possible to
13 completely eliminate delays due to these
14 movements, but CN's constant efforts to improve
15 train speed will help reduce them as much as
16 practicable.

17 In response to the Board's order in
18 Decision 23, on Monday we filed extensive data
19 and revised reports. Once you've had time to
20 review the data, and our updated reports, we
21 will, of course, be available to work with you in
22 answering any questions you may have.

1 With respect to historical RTU
2 information, CN is largely dependent upon the
3 vendor for RTUs, which is Progress Rail, which
4 archives the RTU data. For purposes of
5 responding to HDR's data request, and Decision
6 23, Progress Rail agreed to extract and present
7 reports for the data. The vendor is in
8 transition because Progress Rail purchased the
9 RTU business from GE less than two months ago.
10 Moreover, the extraction of relevant data from
11 the full RTU database, which is stored in an old
12 proprietary format that is well understood by
13 only a few programmers, is a difficult process
14 that has required a team of programmers, and the
15 development of custom algorithms.

16 The Board should also understand that
17 all RTU data have certain limitations. For
18 example, because the RTUs rely on cellular
19 technology to transmit information, the duration
20 of ACWD activations of 10 minutes or more can be
21 overstated. Similarly, because of the limits of
22 the communication system through which the RTUs

1 report, a single ACWD activation may be reported
2 as multiple activations. Moreover, the 10-minute
3 notices only identify the fact that an ACWD is
4 activated; they do not distinguish among causes,
5 such as moving trains, or stopped trains. Nor do
6 these notices distinguish which railroads, trains
7 caused the ACWD activation; for example, whether
8 it was a trackage rights train of another
9 carrier. In some cases, ACWDs are interconnected
10 so that RTUs on the EJ&E pick up traffic moving
11 on the adjacent tracks of other carriers. And
12 the RTUs can only be installed at crossings with
13 ACWDs; they provide no information where ACWDs
14 have not been installed.

15 It appears, however, that some of
16 these inherent limitations can be overcome by
17 systematic review of the RTU data in the context
18 of other information. CN has recently begun
19 using an improved data collection process that
20 should allow it more reliably to capture and more
21 easily integrate blocked crossing notices
22 provided by the RTUs with information provided by

1 train crews and dispatchers. Accordingly, CN
2 expects that future crossing blockage reports
3 based on RTU data, and other information, may be
4 less difficult to develop, more reliable, and
5 more useful.

6 In conclusion, ultimately, our
7 challenge as a railroad is to reduce extended
8 blocked crossings on the EJ&E without penalizing
9 customers by reducing the efficiency of our rail
10 operations. WE focus immediate initiatives
11 specifically on blockages from stopped trains.
12 We minimize moving freight train delays by
13 constantly improving our railroad, so that it
14 operates in the safest and most efficient way
15 possible. Through both approaches, we seek to
16 maximize benefits for our customers and our
17 shareholders, while minimizing adverse impacts on
18 our stakeholder communities.

19 Thank you again for the opportunity
20 to be here today. With the Board's permission, I
21 would like to submit a written statement for the
22 record, and I would be glad to respond to any

1 questions or comments you may have.

2 CHAIRMAN ELLIOTT: Thank you, Mr.
3 Trafton. You would be more than welcome to
4 submit your written statement for the record, and
5 also the exhibit that you've submitted today can
6 be submitted as CN Exhibit 1.

7 I do have a few questions. I guess,
8 really, the questions just focus on why we're
9 here today. I wasn't here during this whole
10 process, but my understanding is that STB staff
11 throughout the oversight process had expressed to
12 CN that they were interested in measuring slow-
13 moving trains at grade crossings. Is that
14 correct?

15 MR. TRAFTON: Yes, that's correct.

16 CHAIRMAN ELLIOTT: I know there was a
17 meeting in February of 2009, and I think that was
18 when it was first expressed. Is that your
19 recollection?

20 MR. TRAFTON: I believe so, yes.

21 CHAIRMAN ELLIOTT: Okay. And with
22 these expressions of a desire to -- let me step

1 back a second. When did CN first become aware
2 that this RTU data was available to make these
3 kind of measurements of slow-moving trains at
4 grade crossings?

5 MR. TRAFTON: Obviously, the EJ&E
6 people were aware of the existence of the data.
7 As we began the integration process in early
8 2009, and throughout the middle of the year as
9 were moving dispatchers into the Homewood office,
10 and doing some of the integration efforts, and,
11 also in trying to deal with some of the
12 mitigation requirements, specifically as it
13 relates to the CCTV cameras with some of the
14 communities, that is when some of the information
15 first became available, that there may be this
16 information out there that might be useful in
17 terms of dealing with some blocked crossing
18 questions. That was the latter part of March,
19 and into early April, I believe.

20 CHAIRMAN ELLIOTT: And my
21 understanding is CN, in fact, did use the RTUs to
22 measure crossings that were blocked due to

1 stopped trains based on an understanding that
2 they had reached with the Board. Is that
3 correct?

4 MR. TRAFTON: I'm not sure. What we
5 did do, once we started learning of the data, and
6 its availability, started doing a collection with
7 the dispatchers. You would see in some of the
8 records, the dispatcher records, that the
9 information is less complete in the beginning,
10 and, obviously, more complete as you get into the
11 remainder of 2009.

12 During that process we were
13 collecting the information, we didn't have a lot
14 of confidence, let alone knowledge about the
15 data, and it was through our Operations Center,
16 that was working with the data to try to see if
17 there's some way in which we could utilize it in
18 answering or addressing questions, we were using
19 it initially as audits to try to pick out
20 incidents where, based on what our understanding
21 was, that blockages of crossings 10 minutes or
22 greater stopped trains, that when they showed up

1 in the report, that would be a flag for us to do
2 more in depth in terms of what was happening in
3 that particular incident.

4 CHAIRMAN ELLIOTT: And from previous
5 questions, it sounds like CN understood that we
6 were that we were interested in measuring slow-
7 moving trains at crossings, and CN was aware of
8 the ability to measure slow-moving trains as of,
9 at least, March of 2009. I guess the only
10 question I have left is, why didn't CN disclose
11 that information at that point in time?

12 MR. TRAFTON: What we understood, and
13 what we were providing, and we regret that we
14 took it this way, that we were to provide
15 information pertaining to blocked crossings
16 greater than 10 minutes when a stopped train was
17 involved. In some ways, we got into the mode of
18 thinking of that in terms of what we were
19 developing. As much as the information for the
20 RTUs became available in terms of knowledge in
21 March, but really didn't start formulating until
22 April/May time frame, and even into June, it was

1 about the middle of the year, we were still, if
2 you will, trying to understand the data, what
3 some of the limitations are. I mean, we weren't,
4 for instance, aware of the fact that the
5 information existed for 33 months until the
6 inquiry from the Board came up. And that
7 occurred, obviously, here in the last few weeks.
8 But we had not done a lot of work to try to
9 understand what was available, and putting
10 together that information, so we started
11 collecting it, and using it, but it was, in our
12 regret now, that we've given the Board the
13 impression that the information was there, and we
14 didn't provide it. That was not our intent.

15 CHAIRMAN ELLIOTT: So, I guess in
16 response, I don't want to put the words in your
17 mouth, but it was not, as you perceive, you know,
18 I can't say what you're thinking, but it wasn't
19 perceived to be an intentional omission to hide
20 the ball from the Board, or the communities.

21 MR. TRAFTON: Not at all. From my
22 standpoint, one, I view it as a reputation very

1 strongly, as does our CEO. Keeping in mind, we
2 were going through a lot of change, and a lot of
3 issues at that point in time with the EJ&E
4 acquisition. We were having to put together
5 reports, a two-month filing, initially,
6 developing information and processes that we did
7 not have in place, and dealing with a wide range
8 of issues, not least of which is within the
9 public in terms of the perception of the EJ&E
10 acquisition. So, we had our hands on a lot of
11 different efforts, and to the extent, we were not
12 looking to hide information here, we were
13 actually looking to find, and like I said, I
14 indicated earlier, the RTU information was used
15 as more of an audit to try to make sure we
16 weren't missing things, so we were accurately
17 reporting to the Board what we thought we were
18 supposed to report, which were blockages greater
19 than 10 minutes due to a stopped train.

20 CHAIRMAN ELLIOTT: And let me ask you
21 just a couple of follow-up questions about your
22 own internal rules. I know that you have, I

1 believe it's the GCOR US Rule 526, which limits,
2 or attempts to deal with crossings that are
3 blocked of over 10 minutes, or more. Do you have
4 any internal procedures that, I guess, assess
5 whether or not that is, in fact, happening, if
6 the crossings are being blocked 10 minutes or
7 more?

8 MR. TRAFTON: What happens today,
9 it's both triggered now by some of the RTU
10 information, but, typically, the crew, because of
11 the sensitivity -- one of the things you have to
12 also remember back on the EJ&E, there were some
13 cultural changes that were happening in terms of
14 how the railroad was operated versus how we would
15 operate the railroad, how we now work towards
16 operating the railroad. There was -- I would
17 suggest to you that the sensitivity of blocked
18 crossings became much more paramount because of
19 the acquisition, and also because of the Board's
20 orders in terms of what we had to produce.

21 From that standpoint, we put out
22 orders to our train crews that if you do block

1 crossings, you need to notify the dispatcher
2 right away so that corrective actions could be
3 taken to immediately free-up the crossing. In
4 some cases, we've had police departments that
5 have told us because of other circumstances to
6 stop a train, and when we asked to cut the
7 crossing, they tell us not to, because they may
8 be after a felon, or something in the area.
9 There's circumstances where we're told not to do
10 anything, just stand still.

11 In other situations, obviously,
12 there's tradeoffs and judgments that have to be
13 made as to whether or not the cutting of a
14 crossing, for instance, is actually going to
15 result in a longer blockage than it otherwise
16 would have. So, there's those judgment calls
17 that are made out there in the real world day-to-
18 day on the operating side that we have to deal
19 with. But, all in all, the procedures right now,
20 even to this day, indicate that the train crews,
21 particularly at crossings that don't have RTUs,
22 train crews are to report if they are blocking a

1 crossing, and the dispatcher is supposed to then
2 deal with that situation in terms of rectifying
3 it, and determine what we have to do in order to
4 clear it up.

5 CHAIRMAN ELLIOTT: So, that data is
6 compiled through, I guess, between the dispatcher
7 and the crew, the operating crew?

8 MR. TRAFTON: It's a note that's -a
9 lot of times, in fact, you'll see it in some of
10 the spreadsheets, it's indicated in there that
11 such and such a blocked crossing, or where we've
12 notified a police department, or something of
13 that sort, there are notes of that.

14 CHAIRMAN ELLIOTT: Okay.

15 MR. TRAFTON: Whether it be in the
16 spreadsheet, or they may be keeping individual
17 notes as we would follow-up with them.

18 CHAIRMAN ELLIOTT: Okay. I am going
19 to turn it over to Commissioner Nottingham. I
20 believe you were here on the early stages, so
21 I'll defer to you on some of the more
22 particulars, since I wasn't here.

1 COMMISSIONER NOTTINGHAM: Thank you,
2 Mr. Chairman.

3 Let's see. I wanted to go back again
4 to what I view as, basically, the most important
5 document, and the most legally significant
6 document that relates to this whole discussion.
7 That, of course, is our Conditional Approval
8 Decision of the merger back on December 24, 2008.

9 Can any of the witnesses from CN
10 point to words in that decision that refer to
11 "stopped trains," in other words, when we talk
12 about concern about reporting blockages of
13 highway rail grade crossings for longer than 10
14 minutes, can you find the words "blockages caused
15 by stopped trains?"

16 MR. KALICK: I would point out three,
17 Commissioner Nottingham, VM 31.

18 COMMISSIONER NOTTINGHAM: I'm sorry.
19 Is your microphone on? I want to make sure.

20 MR. KALICK: Yes, it is. We would
21 point out VM 31, VM 32 -

22 COMMISSIONER NOTTINGHAM: Let's just

1 pause. VM 31, and where -

2 MR. KALICK: That's on page 63 of the
3 Board's decision. VM 31 on the same page, VM 42
4 on page 64. VM 31 reads, "Applicant shall
5 install power switches along EJ&EW where
6 applicants determine that manual switches could
7 cause stopped trains to block crossings for
8 excessive periods of time."

9 VM 31, "In order to minimize the
10 number of trains being stopped by operators at
11 locations that block crossings on the EJ&E
12 system, applicant shall work with other railroads
13 to establish reasonable and effective policies."

14 VM 42, "Applicant shall notify
15 emergency services dispatching centers for
16 communities along the affected segments of all
17 crossings blocked by trains that are stopped, and
18 maybe unable to move for a significant period of
19 time."

20 And then VM 35, which refers to the
21 CN Operating Rule, which provides that "a public
22 crossing must not be blocked longer than 10

1 minutes, unless it can be avoided." And then
2 provides that, "If a blockage is likely to exceed
3 this time, then the train shall be promptly cut
4 to clear the blocked crossing, or crossings."

5 And at least implied in that, for us, as railroad
6 operators, you wouldn't cut a moving train. It
7 wouldn't really be safe to, for any number of
8 reasons, so that in terms of normal railroad
9 operations, that would be referring to cutting a
10 stopped train.

11 Now, all of these, in essence, were
12 the reasons why we, in the February '09 meeting
13 with Board personnel, that we raised the issue of
14 what crossings the Board wanted us to report.
15 Notwithstanding the language that you read
16 before, which we concede reads as it reads, but
17 because of these other VMs, because of our
18 knowledge of railroad operations, we, in fact,
19 raised the issue with the Board at that meeting
20 in trying to come to some sort of an agreement of
21 what it was that we were to report.

22 COMMISSIONER NOTTINGHAM: Mr. Kalick,

1 thank you. You've largely responded to my
2 question. Let me ask it a slightly different
3 way. Are you aware of provisions in our legally
4 binding conditional approval decision that
5 represent expressions of Board concern, and
6 interest in wanting information about
7 intersection blockages of more than 10 minutes
8 where we don't limit that interest to stopped
9 trains?

10 MR. KALICK: Certainly.

11 COMMISSIONER NOTTINGHAM: So, you
12 would agree that there are provisions that --

13 MR. KALICK: Certainly.

14 COMMISSIONER NOTTINGHAM: Thank you.
15 And, surely, as an experienced counsel, you are
16 familiar with, I can think of at least two ways,
17 one of which has already been availed by us, used
18 by CN, two ways to correct, or change a formal
19 Board decision that's legally binding, such as
20 the one in December. Can you describe what the
21 first two ways that we would normally think of to
22 amend, or have changed the specifically legally

1 binding terms of a decision?

2 MR. KALICK: Well, the two I would
3 characterize as really a variation of one, either
4 a petition to reopen, or clarification.

5 COMMISSIONER NOTTINGHAM: Right. So
6 there is established process to go in and address
7 cases where the Board might have made a mistake,
8 might have been a typo, might have inartfully
9 explained something, because this is important,
10 because there's lot of litigation surrounding
11 this decision. Correct?

12 MR. KALICK: Yes.

13 COMMISSIONER NOTTINGHAM: Litigation
14 that CN has instigated, litigation that citizens
15 have chosen to take part in, and communities.
16 So, it's not just about what might or might not
17 have been said by CN officials to Board officials
18 or staff. The reason we have these public
19 decisions and put them out for the world to see,
20 is they have great legal meaning. And if they
21 need to be changed, or somebody thinks they
22 should be changed, you referenced the process for

1 that to be done, or going to court, which is the
2 other avenue that CN has decided to do on, I'll
3 say, a very related and germane aspect of this
4 decision, which is how much accountability and
5 responsibility should CN be required to take for
6 the most severely degraded highway rail crossings
7 that the Board determined were going to be
8 appreciably greater degraded, more degraded as a
9 result of the merger. That's in court. You've
10 decided to challenge that. I won't go into the
11 detail. We'll let the court decide that, but,
12 clearly, there's a record in the press, in the
13 public court filings that this whole issue of
14 Board concern about traffic impacts and
15 intersection delays, and mitigation has been a
16 point of some real conflict between CN and the
17 Board.

18 I say that, because all the more
19 reason why one would think that -- one would
20 expect that the railroad would conduct itself
21 with extreme care and caution when it comes to
22 abiding by -- not only do you have these outside

1 litigants, you've got a lawsuit you've decided to
2 bring yourselves against the Board on a related
3 issue, and all of a sudden somewhere in March of
4 2009, right when you were just getting started
5 operating this new section of railroad, EJ&E, and
6 right when the reporting requirements that are
7 obligated by our decision start to take effect,
8 we now learn that you discovered the existence of
9 this RTU data.

10 Let me pause there. When CN
11 proffered that the sort of best way, or most
12 efficient way, or I don't want to put words in
13 your mouth, that CN felt that it was appropriate
14 to report only stopped train blockages lasting
15 more than 10 minutes, was one of the reasons for
16 that limitation that it would be not reasonable
17 to expect CN to come up with a monitoring process
18 at all these many, many intersections, that that
19 would be a burden on the railroad?

20 MR. KALICK: No, we would, of course,
21 provide anything that was required by the Board.
22 That was never an issue. I think the heart of

1 the discussion at the February meeting was really
2 what to report, not the burdens of gathering
3 data.

4 If I may, if I could just respond to

5 -

6 COMMISSIONER NOTTINGHAM: Let me
7 just, if I could, before we leave that point,
8 would you surprised that there are extensive
9 notes and recollections of people in that meeting
10 that CN actually did raise the concern about how
11 would we practically be able to report all these
12 intersections when what we sort of know how to
13 report, and usually do report, are the stopped
14 train incidents? So, this whole issue of sort of
15 reasonable expectations about what data -- my
16 point is, it seems to me circumstances changed
17 quite significantly in late March when the RTU
18 data was discovered. All of a sudden it became,
19 potentially, at least, recognizing maybe it took
20 a little time to validate that information, check
21 it out, but all of a sudden what was proffered to
22 be a very difficult and burdensome legal mandate

1 by the Board, all of a sudden appears to have
2 become around that time frame pretty darned easy
3 to comply with.

4 MR. KALICK: I don't think I would
5 characterize it as easy to comply with, because
6 we didn't have the confidence in the data at the
7 time. And, in fact, what I would suggest to you
8 is that during 2009 that this process has
9 evolved, we learned of deficiencies in terms of
10 the reportings, we learned deficiencies within
11 the data itself, some of which you've already
12 discussed with Mr. Morton, but over time what we
13 learned -- I mean, an example, you mentioned the
14 June report earlier, where we actually put people
15 in the field, if we had had a reliable source of
16 data, at least as we viewed it at the time, we
17 wouldn't have spent the hours and time of people
18 sitting in a vehicle with stopwatches trying to
19 get the accurate information there at the
20 crossings that we measured, which were in Ogden
21 Avenue and 127th Street. That was all done
22 because we didn't have the confidence to provide

1 the information, as far as the RTU information,
2 as a reliable source.

3 COMMISSIONER NOTTINGHAM: Mr. Trafton
4 and Ms. Phillips, because you were at this
5 February 2009 meeting that's been referenced, can
6 I get you to each respond to whether or not one
7 of CN's concerns about the Board's reporting
8 requirements related to 10-minute or longer
9 delays related to the feasibility of complying
10 with that, the practicability, feasibility. I'll
11 let you speak to that.

12 MS. PHILLIPS: Yes, that was
13 definitely one of the concerns, was that -

14 COMMISSIONER NOTTINGHAM: It was one
15 of the concerns. Okay.

16 MS. PHILLIPS: Well, it was from the
17 standpoint that from a practical railroad
18 perspective, we were looking at stopped trains.
19 We knew that we could put together measurements
20 for stopped trains. Keep in mind, as Mr. Trafton
21 mentioned, we were very early on in the process
22 in February, we had just assumed control of the

1 EJ&E. We really didn't know what we were looking
2 at, so looking at it both from the standpoint of
3 practical railroad operations, and also not
4 knowing exactly what we were dealing with in
5 terms of the overall property there, and what
6 data were available, it did appear to be a very
7 Herculean task. We did, certainly, want to do
8 whatever the Board wanted us to do to be in
9 compliance with the monitoring conditions, but at
10 that time, it appeared that looking at stopped
11 trains was a reasonable way to progress.

12 COMMISSIONER NOTTINGHAM: Mr.
13 Trafton, is that consistent with your
14 recollection?

15 MR. TRAFTON: It is. And from what I
16 remember, we were scratching our heads trying to
17 figure out how we would generate the information,
18 and why we had the discussion with the Board in
19 February, because we didn't have a process in
20 place, and even to the extent that the RTU
21 existed, and it was, obviously, generating some
22 data at the time on the EJ&E, none of us at that

1 meeting at the time, nor actually for several
2 weeks afterwards, was familiar with the
3 information.

4 COMMISSIONER NOTTINGHAM: Thank you.
5 Mr. Kalick, does any of this jog your memory at
6 all. I'll give you a chance to amend your answer
7 a few minutes ago when you said that feasibility
8 didn't really play any role in -

9 MR. KALICK: Well, feasibility didn't
10 play into my own participation at the meeting,
11 which was really directed more toward the legal
12 issue -

13 COMMISSIONER NOTTINGHAM: That makes
14 sense, because you're not the rail operations
15 person, you're the lawyer. Okay.

16 MR. KALICK: I was really looking at
17 -

18 COMMISSIONER NOTTINGHAM: If we want
19 to go into feasibility, we would tend to rely on
20 the direct employees of the railroad. That makes
21 some sense.

22 MR. KALICK: If I could just respond

1 to your former comment, previous comment,
2 Commissioner Nottingham, regarding the processes
3 available to CN to possibly seek clarification,
4 or reopening. As you know, the Board's approval
5 decision directed CN to work with Board
6 personnel, specifically as to the oversight and
7 monitoring reporting. And we worked with not
8 just SEA, but STB, your staffs, general counsel
9 at that meeting, and for intents and purposes,
10 from our perspective, that was, essentially, a
11 proxy for the Board to really resolve how we were
12 going to go forward on the particulars of
13 reporting. So, while I agree with you
14 wholeheartedly about the description of the
15 process, the process here actually had another
16 layer to it.

17 COMMISSIONER NOTTINGHAM: Ms.
18 Phillips, do you recall, regarding this February
19 2009 meeting, which was really kind of the
20 kickoff meeting as we moved into implementation
21 of the actual merger and oversight of it, as
22 opposed to up until that point we had been not in

1 communication with the railroad. We were doing a
2 very legally sensitive merger review. After that
3 was finalized, and the appropriate period of time
4 went by, we then had to kick in to do our job
5 that we had committed to the public, and our
6 stakeholders we would do of oversight, so,
7 naturally we started opening up lines of
8 communication to figure out how we could best
9 oversee CN's compliance with the decision.

10 Do you recall anybody from the STB
11 voicing concern about limiting reporting to only
12 stopped blockages, and how that would be likely
13 viewed in the community?

14 MS. PHILLIPS: There was definitely
15 interest expressed by people at that meeting,
16 including yourself, about the fact that the Board
17 is interested in the impacts of the transaction
18 overall on the communities. Having had that
19 discussion, though, we then proceeded to talk
20 about what are the data that are available, what
21 did we know at the time, what made sense from the
22 standpoint of conventional railroad operating

1 practices.

2 COMMISSIONER NOTTINGHAM: What was
3 feasible.

4 MS. PHILLIPS: What was feasible, and
5 that's how we got to where we were with the
6 initial monitoring reports, and the monitoring
7 reports that we've been doing thereafter.

8 COMMISSIONER NOTTINGHAM: I'll pause
9 here. I do have some more questions. I'm going
10 to let my colleagues have a chance.

11 CHAIRMAN ELLIOTT: Thank you,
12 Commissioner Nottingham. I'll turn the floor
13 over to Vice Chairman Mulvey.

14 VICE CHAIRMAN MULVEY: Thank you. I
15 feel a little bit like I'm at the Senate Finance
16 Committee hearings.

17 I have to say that in some ways some
18 of the testimony does sound a little
19 disingenuous. I mean, it seems to me it was
20 clear that the concern the Board had was over the
21 impacts on the community, and the community
22 doesn't care whether your train is stopped, or

1 slow-moving, or whether the gate has failed. The
2 point is whether or not the crossings were going
3 to be closed for a significant amount of time.
4 It's been referred to over, and over, and over
5 again, and I know that, Mr. Kalick, you mentioned
6 some of the voluntary mitigation procedures where
7 the words "stopped trains" were, in fact, used,
8 but our decision required CN, I'm going to quote
9 this again, to report "the frequency, cause, and
10 duration of train blockages at crossings of 10
11 minutes duration or greater." Now, the cause,
12 obviously, a stopped train, what caused a stopped
13 train, or what caused a slow train, what caused
14 it to be blocked for 10 minutes? Not that the
15 train was stopped, but that the train was slow,
16 and it does strike me that it was clear from the
17 outset that we were interested in monitoring not
18 only stopped trains, but slow trains.

19 Now, when I was Chairman, Acting
20 Chairman back in June of 2009, CN did put
21 together a pilot program. In fact, I give CN
22 credit for suggesting it, and it was an attempt

1 to monitor crossing delays due to moving trains.
2 And can you explain exactly what was done during
3 that pilot program, and how did you identify the
4 crossings that you were going to study in the
5 pilot program?

6 MR. TRAFTON: The pilot at that time
7 came as a result of a meeting because of some
8 concerns with some blocked crossings, that we had
9 a meeting with the Board, actually, with members
10 of the staff to sit down and talk through how we
11 might address those concerns. It was suggested
12 at that time that we look at a pilot that we
13 would actually put people in the field on site in
14 vehicles with stopwatches watching and observing
15 trains. The information is not totally perfect,
16 as I indicated at the time to some of the staff
17 when we got it back, but it was throughout
18 different times of the day. And the actual
19 locations were ones that were agreed to in
20 consultation with the staff, itself.

21 I believe that one of the drivers at
22 the time, I remember some of the comments along

1 the lines of the complaints that were coming in.
2 One of the points that we made at that time,
3 though, too, was give us something that we can go
4 to work on to try to identify if there are
5 certain areas that you're seeing focus, or issues
6 by the community in terms of what we see out
7 there. We weren't -- and, again, at that point
8 in time, the RTU data was still in its early
9 stages from a reliability standpoint. Frankly, I
10 don't believe we started really using it until
11 sometime around midyear, even though our numbers
12 would show that you had information as far back
13 as April, but we also had information in May and
14 June.

15 As I said earlier, we wouldn't have
16 put people that would otherwise have been running
17 the railroad, spending time with our crews,
18 trying to operate the railroad safely and
19 efficiently, at a crossing in a vehicle for hours
20 on top of hours with stopwatches trying to
21 collect information on trains. In some cases, we
22 were actually booted off property because it

1 turned out it was owned by ComEd or somebody, and
2 we had to take extra efforts over a weekend in
3 order to get permission to do these observations.
4 But we completed the observations, I believe it
5 was from, don't hold me to this, but I believe it
6 was from -- it was in June, the month of June
7 that the observations were conducted. And it was
8 approximately for about a two, to two and a half-
9 week time period that we collected that
10 information, different trains, different times of
11 the day, different types of trains themselves,
12 whether they be unit trains, or merchandise
13 trains, locals, whatever it might be. The whole
14 objective was to try to get some data that we
15 held as far as confidence in that we could say
16 that this is what we actually saw out there,
17 somebody was there.

18 One of the things, and maybe I'm -I'm
19 sorry if I'm taking longer to respond, one of the
20 concerns we've had from the beginning with the
21 RTU is the number of people that handle the RTU
22 data before it actually gets into what we call

1 the spreadsheet. And in that process, faxes can
2 be lost, transcripts or information being
3 transcribed can be misstated, corrections that
4 have to be made with everything from street names
5 to locations, to time of day, that's part of what
6 we've been struggling with over the past year
7 that we believe now we've got a way in which to
8 capture better, that just actually went on line
9 here over a week ago, that we're starting to use
10 to collect it. Again, we're going to be able to
11 provide, we believe, more accurate information.

12 Long-winded answer to your question,
13 but I think that the point there is we didn't
14 have all that knowledge of the information at the
15 time, which is why we put people out in the
16 field.

17 VICE CHAIRMAN MULVEY: Well, several
18 times you mentioned the reliability of the RTU
19 data, and it was asked earlier to the HDR
20 representative as to whether or not there were
21 any technical problems with the RTU reporting
22 devices, and I believe he said that he was not

1 aware of any. And neither are you, so you're
2 saying that any problems in the reliability of
3 the data are more human factors, rather than
4 technical-related.

5 MR. TRAFTON: Yes, more human factor,
6 but also technically related. What was made -- a
7 point that was made earlier is, yes, you can have
8 a situation where the initial event when it's
9 transmitted by the cellular network can say that,
10 let's say it's off a minute in terms of the
11 transmission, that you can assume that at the
12 tail end when the activation is continued, that
13 there's a minute, but that's not always the case,
14 because it has to do with the cellular network.

15 The testing that we've done over time
16 is that it's not to say that just because you
17 have a minute on one end, you're going to get a
18 minute on the other, or vice versa. So, there's
19 some question in terms of the timing of the data,
20 in terms of how it's stamped, but there's also in
21 cases where we've seen, where we've got multiple
22 messages coming from the same site, which could

1 indicate that through the cellular network
2 something gets lost, not unlike what you would
3 have in your cellular phone, only to be
4 reconnected maybe a second or two, or so later,
5 or in the case of the RTU, the information not
6 getting transmitted, having to be re-transmitted.
7 There have been examples of that, as well. So,
8 yes, more on the human side, but also some also
9 on the technical side.

10 VICE CHAIRMAN MULVEY: In your review
11 of the RTU data, which I assume you've been doing
12 now, are you finding that certain crossings are
13 more often affected than other crossings? Is
14 there a pattern, or is it pretty widely
15 distributed over the entire EJ&E network?

16 MR. TRAFTON: No, there are
17 definitely some locations that are typically ones
18 that stand out. From what we've seen over time,
19 they're not ones that are real surprises,
20 Leithton where there's a new connection that's
21 going to be built as part of our plan that will
22 increase the train speeds, as I've indicated in

1 my statement today. Mundelein, which is affected
2 by the Leithton cutoff would be a benefit of
3 that. Down around the West Chicago area, where
4 we have a connection with another railroad, down
5 around the Eola area, another connection with
6 another railroad. That's typically where we're
7 seeing it, where trains are entering and exiting
8 the railroad from either some other railroad, or
9 our own railroad up at Leithton. Also, down in
10 the Matteson area, Main Street stands out because
11 if you were to look at a map in Google, you would
12 see, actually, we cross Main Street twice with
13 two different tracks, one where we're going
14 across with EJ&E, and the other one where there's
15 a connection back to the Illinois Central side of
16 the railroad. So, you wind up with double
17 activations, if you will, or longer activations
18 sometimes, depending upon the types of moves that
19 are occurring, and what kind of train traffic you
20 have there. Broad Street over in Griffith is
21 another area. If you were again to look at a
22 Google map of the area around Griffith, you'll

1 see that Broad Street intersects different lines
2 of not only our railroad, but also the fact that
3 there are some other lines that operate through
4 there, as well. So, it's not as though what
5 we're seeing is any different than what we had
6 expected, but what we have seen -- and the Joliet
7 area, I should also mention that. Joliet is a
8 switching yard, and, therefore, you have trains
9 entering and exiting, you have trains or switch
10 crews that are switching cars, and as a result,
11 there are some longer blockages that are due
12 there, as well.

13 VICE CHAIRMAN MULVEY: You mentioned
14 that in your experience with railroads, these
15 numbers of reported blockages were not unusual
16 for an urban area; although, Chicago is an
17 unusual area with regard to railroading, but
18 there are a few other places that also have lots
19 of crossings. I think of the Tower 55 area
20 around Dallas, and Kansas City, and others. Are
21 there any data, say from RTU's, available that
22 indicate how often roads are blocked on other

1 railroads and at other locations that would
2 support your statement that this is not atypical
3 for a railroad operating in an urban setting?

4 MR. TRAFTON: We explored that
5 opportunity, but there wasn't a lot of interest
6 by others to assist us with that.

7 VICE CHAIRMAN MULVEY: Even on a
8 confidential basis?

9 MR. TRAFTON: Actually, what we had
10 suggested is to generalize the information and to
11 try to give us something so that we can show, but
12 I think the best thing to go back to is what the
13 EJ&E was experiencing prior to CN acquisition,
14 not only in terms of the times, but also the
15 number of events that they were having. And, in
16 fact, I was talking to the former chief engineer
17 who's with the CN still to this day just here
18 about a week ago, and he was commenting that one
19 of the big changes under CN is we don't have near
20 the slow orders that the EJ&E used to have. Slow
21 orders are typically put out for engineering
22 purposes, because of track condition, weather, or

1 some other circumstances. We have a very tight
2 process within CN about slow orders, because
3 we're looking at velocity and speed.

4 I mean, when you get down to what
5 we're trying to do, we're trying to run a
6 railroad safely and efficiently in serving the
7 customers, and when you look at what might have
8 been happening prior to CN's acquisition, there
9 were -- it's not as though the EJ&E was not
10 somewhat of the same mind set, but they didn't --
11 they were making choices at the time that from a
12 slow order standpoint would have affected how the
13 trains operated, and, therefore, had issues and
14 impacts on the grade crossings.

15 VICE CHAIRMAN MULVEY: We know that
16 as I said earlier, this is a project that's still
17 being consummated. And with the economy and
18 everything else, the rate at which it's been
19 consummated has been slowed, one presumes.

20 How many trains so far of the total
21 number of trains that you eventually expect to
22 shift on to the EJ&E and out of the interior of

1 Chicago have now been shifted, and how many more
2 do you expect to be shifted? And if you can
3 hazard a guess as to how much longer in length
4 those new trains are going to be compared to the
5 ones that were traversing the EJ&E lines
6 beforehand?

7 MR. TRAFTON: I'd have to give you a
8 written response on that, because I can't --I
9 don't have the numbers off the top of my head.
10 We definitely have shifted some trains over. I
11 mean, I could think of four off the top of my
12 head.

13 VICE CHAIRMAN MULVEY: But to ball
14 park this for a second, four seems to be a
15 relatively small fraction, certainly well under
16 20 percent of the total amount that was
17 envisioned at the time of the acquisition.
18 Correct?

19 MR. TRAFTON: Right. I think when you
20 -- in order to answer your, we've shifted over at
21 least four trains, two each direction. And I'd
22 have to go back to get the actual numbers, but,

1 ultimately, we would expect at some point,
2 although we believe now delayed because of the
3 economic downturn that occurred, that we will get
4 up to the numbers that we're talking about. And,
5 if anything, what we believe is going to occur is
6 that we will likely get infrastructure in place
7 that will help mitigate the impact of those much
8 sooner than we otherwise would have, if the
9 economy had stayed at the levels that it was
10 before.

11 VICE CHAIRMAN MULVEY: Part of the
12 infrastructure in place might involve grade
13 separations, and one of the ways of moving trains
14 through quickly, and not having 7,000 foot trains
15 taking 15 minutes to get through a crossing and
16 blocking traffic, whether it's EMV vehicles or
17 regular traffic, would be with full grade
18 separations. But then the question, of course,
19 becomes who pays for that? And, as you know, I
20 pushed very, very hard to get the mitigation that
21 we got, and I understand that the railroad still
22 feels that that was still more than was typical,

1 and more than was fair. But would you accept
2 that one way of solving this problem might be for
3 more grade separations, and, perhaps, more
4 agreements between the cities and CN about
5 cooperating on getting these separations in place
6 to improve the flow?

7 MR. TRAFTON: Yes. Grade separations
8 is certainly one aspect of it, but there are many
9 other things that we're doing, as well, that are
10 going to speed trains up. And I believe that in
11 a lot of respects, if you think about the time,
12 the cost, money, and even the impact to the
13 communities in terms of grade separations, that
14 there are a lot of other things that can be done,
15 not least of which are the things that we've
16 already started accomplishing by installing power
17 switches, by improving turnouts to connecting
18 railroads, all those before you'd be talking to
19 the millions of dollars for grade separations,
20 let alone the impact it has on the community in
21 that very local area.

22 VICE CHAIRMAN MULVEY: One concern,

1 we do have a large number of trains 30, 40, 50
2 trains a day, and they're 7,000 feet long, and
3 for safety sake, the trains need to be relatively
4 slow-moving. You can either do grade
5 separations, which is going to cost a lot of
6 money, and we argue over who should pay for it.
7 You could cut the trains, but if you cut the
8 trains, that means you need more crews, more
9 operations, and that affects the overall
10 economics of the project. You could change the
11 standard and say well, 10 minutes is too short a
12 time. We need to have more time before we begin
13 to consider these blockages to be a concern. I
14 mean, none of those are particularly desirable,
15 but if we're not going to have serious problems
16 affecting the suburban areas of Chicago, we're
17 going to need to come up with a solution to this,
18 it strikes me.

19 MR. TRAFTON: Well, there's other
20 mitigation. Obviously, some of the things we're
21 talking about already, like I said, the
22 investments that we've made that can actually

1 speed up those connections. That's part of our
2 plan today. I mean, one of the connections at
3 Eola, for instance, is going to speed up the
4 connection to another carrier that will, I
5 believe, go to 25 mph from the current 10. But
6 those are -- there's a lot of different options
7 that are open to dealing with that.

8 But to your point, I mean, when you
9 get down to it, it's not as though that there's a
10 silver bullet here for anything, because there's
11 impacts all along the way. And if you also think
12 about grade separations, the timing in terms of
13 how long it takes to get something like that
14 eventually built is into the years beyond.
15 Something more probably indicative would be what
16 we could do more in the next two to three years,
17 I think, which is very possible with the
18 construction plans that we have right now on the
19 EJ&E.

20 VICE CHAIRMAN MULVEY: Do those
21 include four quadrant gates, as well?

22 MR. TRAFTON: No, I haven't explored

1 more the four quadrant gates as an alternative.

2 I don't know.

3 VICE CHAIRMAN MULVEY: Thank you.

4 CHAIRMAN ELLIOTT: Thank you, Vice
5 Chairman Mulvey. Commissioner Nottingham.

6 COMMISSIONER NOTTINGHAM: Thank you,
7 Mr. Chairman. I have a couple of more questions.

8 I guess, I want to make sure while
9 we're together here we end any future potential
10 for miscommunication, or misunderstanding. Let
11 me ask the panel, are there any other examples of
12 provisions in our legally binding approval
13 decision of December 24, 2008 that -- let me give
14 you opportunity now just to sort of speak now or
15 forever hold your peace. We just heard about,
16 leading up to this hearing and today, about this
17 issue of different definitions of what a blocked
18 crossing is. Is there anything else out there
19 that we need to be aware of while we're together
20 here, where CN believes it has a different view
21 or definition, than seems to be clearly
22 enunciated in the -

1 MR. TRAFTON: I don't believe so, and
2 I think that based on the filings that we've had
3 to-date, we're assuming that what the Board is
4 receiving is, in fact, what it's looking for. If
5 not, we would be the first to stand up and say if
6 there's something else we need to do, please tell
7 us what it is.

8 COMMISSIONER NOTTINGHAM: And in that
9 spirit, let me do that, because I'll speak as one
10 Commissioner. I don't want to assume to speak
11 for the Board. But as one Commissioner, I just
12 would say we expect you to be forward-leaning and
13 bring issues like this to our attention sooner,
14 rather than later. It would have been okay, in
15 my mind, had you come to us and said we're not
16 sure what we've got here, but it sure looks like
17 it's something of interest to the Board. And we
18 need some time to assess it, this RTU
19 information. We're not sure of the accuracy, but
20 it's out there, and we don't want the Board
21 stumbling across it, or finding out about it many
22 months or years later, and then wondering why

1 they didn't know about it. That's the type of
2 corporate culture and responsibility we're
3 looking for. Is that clear to everybody?

4 MR. TRAFTON: Yes, it is. And,
5 Commissioner, again, we regret that it's gone
6 down this path. In some ways, we're thankful
7 that we found it -- we came across this with you
8 at this point in time, as opposed to further down
9 the stream.

10 COMMISSIONER NOTTINGHAM: Well,
11 that's another point. I mean, good grief, what
12 if we had -- we're busy around here. We have
13 other major projects. This is one of our most
14 important, for sure, but if we had not done this
15 oversight, and if HDR had not such a thorough
16 job, I hazard to guess how many more months or
17 years could have drifted by where we would have
18 been oblivious, and the community would have been
19 oblivious to the existence of this very real and
20 meaningful data about events that impact the
21 community in the most real and jarring, and
22 sometimes in a safety-related manner. But

1 there's not really a question there. I just
2 wanted to flag that it's unfortunate, because it
3 is unclear that we ever would have gotten this
4 information had we not been diligent, and our
5 consultant auditor diligent.

6 But there's been some reference today
7 here to cultural change, and indirect reference
8 to the culture of operating a railroad, and
9 different railroads sometimes have different
10 cultures. You also had a comment in here, the
11 so-called culture of the EJ&E, and I just want to
12 make sure that in that sort of cultural
13 discussion, we don't lose track of something
14 that's very important to this Board member, which
15 is we recognize, I believe, as a Board, that it's
16 difficult running a railroad. It's complicated,
17 and you are running into conflicts, and
18 interference, and human error, and weather
19 problems, and a whole host of challenges that
20 prevent any railroad from running a 100 percent
21 seamless, perfect speed at all times operation.
22 We recognize that. We spent enough time out in

1 the field, and working with communities and the
2 railroad. I've walked the tracks, and flown over
3 them with the Mayor of Houston, other cities that
4 are somewhat similarly burdened. The Chicago
5 region is certainly way up there on the scale of
6 burden with interference between roadway and rail
7 traffic, but there are other places that are
8 extremely burdened, too. So, we get that, but I
9 want to make sure we understand today, if it
10 hasn't been understood before, that we're not
11 really -- when we're talking about the EJ&E,
12 especially for the duration of our oversight
13 period, which currently is five years, we're not
14 talking about any old section of the CN's rail.

15 In other words, what you're doing in
16 Canada, or what you're doing on a section of line
17 that might be slowing trains down, or causing
18 some delays along your track that's not the
19 subject of a Board order pursuant to a merger,
20 not the subject of hundreds of mitigation
21 conditions, is of much less concern to us. I'm
22 not saying we would never be concerned, but we

1 are -- I need to hear that CN understands this
2 section of railroad is a very different -- a bird
3 of a very different feather. It's something that
4 we are thoroughly monitoring, and on top of, and
5 the reason I say this is because, Mr. Trafton,
6 with all due respect, I heard you mention in your
7 testimony that some blockages just, from the
8 railroad's perspective, are "not noteworthy."

9 Well, I take a little exception to that. I want
10 you to work with us, and let us, when it comes to
11 the EJ&E line during the duration of the
12 oversight process, let us help determine what's
13 noteworthy, or not, because having the railroad
14 just tell us what's noteworthy is -- you can
15 imagine the concern that triggers to regulators.

16
17 It puts a total premium on trust,
18 and, frankly, there's been some degradation of
19 that trust, at least from my perspective. And we
20 need the -- I need the railroad to understand
21 that we need to be involved in the decision about
22 what's noteworthy, when it comes to conditions

1 out on that railroad. Can I get some kind of -

2 MR. TRAFTON: That's understood.

3 COMMISSIONER NOTTINGHAM: All right.

4 Thank you.

5 I guess what I'd like -- I hope to
 6 see in the future, because this hearing has been
 7 interesting, but what I really care about as an
 8 individual Board member is, what's going to
 9 happen in the future? Is this going to get
 10 worse? I heard some encouraging things today
 11 about your commitments, and your previous
 12 commitments to do some construction, and other
 13 mitigation, and that's going forward. I've heard
 14 that traffic is actually significantly less now
 15 than was anticipated during the merger, when the
 16 economy was still roaring, going great guns. But
 17 I've also -- I'm looking at the chart proffered
 18 by CN just today, and this is very recent
 19 information. This came to the Board in the last
 20 couple of days, and we'll certainly make it
 21 available, I'm sure, to the public. It will be
 22 in the record, but we know about December and

1 November. That's been in the press, and in a
2 report, the so-called 1,400 plus delays from
3 November-December '09, but what the public and
4 stakeholders might not yet know, but they will
5 soon, is that ramps up. In January alone, we're
6 looking at 1,156 events of 10 minutes or longer.
7 In February, 1,239, in March, 1,804, and then
8 dropping to 1,193, so I worry that this is
9 possibly a worsening situation. And while we're
10 in the middle of this oversight period, we've got
11 to be convinced that we're on track working with
12 CN to see improvement here, and how we can
13 measure that.

14 And I'll ask you to respond to that,
15 but before I do, let me just say, we need your
16 help, I believe, in -- we have people analyzing
17 these intersections, and the data, but we need
18 help making sure we can sort these intersections
19 into priority buckets, do kind of what I'll call
20 the so-called stacking and racking of which ones
21 can really be improved, which ones are just,
22 unfortunately, endemically burdened because of

1 the location of a shipper, where you have a
2 common carrier obligation to serve, and the
3 communities' development decisions over the years
4 that have boxed you in, perhaps, and there are
5 things that there may well -- I accept the
6 locations where, unfortunately, sadly, we might
7 not expect to see much improvement. But I really
8 believe in my heart that there are a number of
9 locations along this line where we should expect
10 and demand, and that it's reasonable to expect
11 and demand to see real improvements. I'll let
12 the railroad respond to that.

13 MR. TRAFTON: Yes. One thing I want
14 to point out in the chart that you're referring
15 here, is that the numbers here in April are
16 estimated, and it's noted at the bottom, so I
17 don't want to mislead anybody here, trying to be
18 up front here with everything. But we believe,
19 too, that the numbers are erratic. If you go
20 back in the history, you're going to see quite a
21 variation, so we're going to -- we track this
22 information. We'll be glad to work with the

1 Board going forward, as you indicated, to try to
2 maybe point out these areas of concern, and to
3 identify what types of things that we've got in
4 place, whether it be through construction, or
5 other operating practices, that would assist us
6 in trying to minimize the number of gates down
7 time greater than 10 minutes, for whatever
8 reason, stopped train, or not stopped train.

9 COMMISSIONER NOTTINGHAM: I
10 appreciate that, because we're going to need, I
11 think, to rely on, and also verify, and validate
12 independently from the railroad's perspective,
13 because you do have, obviously, the most
14 information about your property, and your
15 operation.

16 Let me just wrap up my questions and
17 comments by just suggesting that one of my real
18 sources of frustration about this whole episode,
19 and what led to this hearing, what we've heard at
20 this hearing, is the lost time. I really feel
21 that we could have gotten to work far earlier on
22 some real solutions at some of these

1 intersections, some real operational analysis and
2 changes had we known about the extent of the
3 problem earlier. And, yes, some might say well,
4 that's spilt milk, and you can't do anything
5 about it, but I think we can. I think one way to
6 address, I'll just commend this to my colleagues'
7 consideration, we don't need to decide it today,
8 obviously, but we have a five-year oversight
9 period. I, frankly, feel, and I was the driving
10 force behind putting together as then Chairman,
11 the conditional approval and all of the -- what
12 went into the decision. Commissioner Mulvey
13 certainly played a key part in that, too, but I
14 feel like we've lost, basically, a year, and I
15 really feel the Board should consider extending
16 for a year our oversight period, so that we don't
17 give this railroad, or any other railroad the
18 idea that they can benefit somehow from either
19 negligently, accidentally, or whatever the excuse
20 is, not being forthcoming. And I'm not
21 characterizing it right now today. I'm going to
22 take this under advisement, and look at the

1 record, and consult with staff and our lawyers,
2 but, at the least, I feel we've lost a year of
3 doing the kind of robust oversight that I
4 envisioned when we started this project, and that
5 we ought to add a year, and make up for that.
6 But I just mention that here on the public
7 record, so people aren't shocked to hear later
8 that's something that the Board is possibly
9 considering. Thanks.

10 CHAIRMAN ELLIOTT: Thank you,
11 Commissioner Nottingham, for your insightful
12 comments and questions.

13 First of all, in conclusion, I'd like
14 to thank everyone for coming today, CN, Mr.
15 Morton on behalf of HDR, and Congresswoman Bean
16 on behalf of some of the communities that have
17 been affected by this transaction. Today's
18 hearing, to me, has revealed a very troublesome
19 failure by CN to be entirely forthcoming with the
20 Agency, as it appears on the record, based on the
21 record before us today.

22 Our regulatory process relies on

1 honest and truthful production of information
2 held by the carriers who regulate. When carriers
3 believe they can decide what information to
4 reveal, and what to conceal, it undermines the
5 integrity of our entire process.

6 I am thankful to HDR for its
7 excellent work in this audit. As a result, we
8 now have better data, as Commissioner Nottingham
9 mentioned, to carefully monitor the impact of
10 this deal going forward on delays at grade
11 crossings, and we'll be analyzing that
12 information carefully over the next few months.

13 We will consider the explanations
14 that were offered here today by CN. We do ask
15 you, and I know that you have counsel in the
16 room, to put a litigation hold on all records
17 that relate to the matter at this time. And the
18 consequences, as mentioned, for failure to report
19 to the Board this information regarding the RTUs
20 will be taken under advisement.

21 I thank you again, and the hearing is
22 concluded.

(Whereupon, the proceedings went off
the record at 2:57 p.m.)

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STB Finance Docket No. 35087

**Statement
Of
Gordon T. Trafton, II**

**STB Hearing
April 26, 2010**

Good afternoon. My name is Gordon T. Trafton, II. I am Special Advisor to the CN Leadership Team. I have nearly 32 years of railroad experience, including nearly 14 years at Illinois Central Railroad and then CN, where I served as Senior Vice President Southern Region, in charge of most of CN's U.S. operations, and, most recently, as the Senior Vice President Strategic Acquisitions and Integration, leading the integration of the CN and EJ&E.

Our President and CEO, Claude Mongeau, regrets that he could not be here for this important hearing. Like the rest of us at CN, he wants to be sure that we directly address the concerns expressed in your order regarding the nature of our oversight reporting and our sharing of data related to grade crossing blockages.

The CN team has dedicated thousands of hours to our effort to provide you with the information you have requested to perform your oversight of the EJ&E integration. In that effort, we have sought to collect and report promptly the information we believed that the Board required of us and otherwise to comply fully with the Board's orders.

As you know, since acquiring the EJ&E, CN has been responsible for complying with 108 voluntary mitigation conditions proposed by CN and 74 mitigation conditions added by the Board. It has expended enormous amounts of time, effort, and money doing so. And although the HDR audit of those efforts recommends clarifications by the STB and improved

communication between communities and CN in some areas, we believe that overall the audit validates CN's compliance efforts.

CN fully understands that lengthy grade crossing blockages, whether from stopped or moving trains, are a significant public concern. We know that the Board has made clear through statements and inquiries that it takes that concern very seriously. And we have worked hard to address this concern. Indeed, the available data suggest our operation of EJ&E may have caused fewer significant grade crossing blockages that were caused before the CN/EJ&EW Transaction. With respect to the data at issue here, we freely shared with HDR the fact that, in order to help prepare our monthly report to the Board of grade crossing blockages by stopped trains, CN had begun using automated crossing warning device (or ACWD) activation notices generated by Cellular Remote Terminal Units (or RTUs) located at EJ&E's automated grade crossings. HDR did not have to dig to determine that fact, we volunteered it. When HDR asked us for the actual RTU data we had used for the two audit months, we provided it without delay or objection, and when HDR also suggested it wanted historical data for comparison purposes, we immediately went back to the vendor who stores the data and had it retrieved for HDR.

Questions have now arisen about why CN did not volunteer this RTU data prior to the audit. The answer is straightforward. We believed we were meeting the Board's reporting requirements. With respect to blocked crossings, we had a good faith understanding that the Board's expectation was for reports on blockages caused by stopped trains and we diligently worked to meet that expectation. The Board has now ordered CN to report all known occurrences of street crossing blockages of 10 minutes or more, as reflected in RTU-data or any other source of information available to CN, as well as all historical data regarding such occurrences. We understand and will comply with that order.

We regret that, as a result of our understanding of our reporting obligation, which has been the basis of our blocked crossing reports for the past year, we did not provide the Board all of the information it believes it requires to perform its oversight functions. We hope that the extensive data we provided on Monday and the data we will be filing in the future will provide that information.

A. CN's COMPLIANCE WITH THE BOARD'S CROSSING BLOCKAGE REPORTING REQUIREMENTS

Before we began filing our various oversight reports, as required by the Board's order (*see* Decision No. 16 at 26), we consulted with Board personnel concerning the content and format of those reports. We suggested that we comply with the Board's request for blocked crossing information by reporting crossing blockages of 10 minutes or more due to stopped trains. We thought this approach made sense for several reasons.

First, these are the events that we must respond to immediately to provide relief and assure that they will not likely happen again.

Second, lengthy ACWD activations caused by moving trains occur on all railroads operating in heavily developed areas like that around the EJ&E. Some moving train delays are an unavoidable element of providing service to customers. For example, the fact that gates may be down at a crossing for ten minutes or more due to a slow moving train entering a shipper facility would not ordinarily be a noteworthy event in terms of rail operations or regulatory oversight. To the extent that moving train delays can be remedied, they are generally best addressed not as individual events requiring immediate particularized attention but in the course of making systemic improvements to operations.

Third, blockages due to stopped trains are the types of blockages addressed in other mitigation conditions related to blockages.

- VM 31 provides that “Applicants shall install power switches along EJ&EW where Applicants determine that manual switches could cause stopped trains to block grade crossings for excessive periods of time and that power switches would increase the speed of rail traffic and reduce the likelihood of such blockages.”
- VM 32 provides that “In order to minimize the number of trains being stopped by operators at locations that block grade crossings on the EJ&EW system, Applicants shall work with other railroads to establish reasonable and effective policies and procedures to prevent other railroads’ trains from interfering with Applicants’ trains on EJ&EW.”
- VM 42 requires notification to Emergency Services Dispatching Centers “of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time.”
- VM 35 requires that CN not block crossings for longer than 10 minutes unless it cannot be avoided, and provides for cutting the train if a blockage is likely to exceed that time. These references are clearly to stopped trains, as one cannot cut a moving train, and it would make no sense to stop a train just to cut it. In fact, the Illinois state law concerning railroad crossing blockages of more than 10 minutes provides an exception for moving trains.

We recognize that a motorist is equally inconvenienced whether a blockage is from a stopped or a moving train. As railroad operators, however, it made sense to us to suggest that we report crossing blockages caused by trains stopped ten minutes or more. Thereafter, following consultation with Board personnel, we made our reports on that basis.

The fact that we were reporting crossings blocked by trains stopped ten minutes or more was well publicized and well understood. The cover letter for every report has noted that we were reporting crossings blocked by trains stopped ten minutes or more. For example, the cover letter to our very first report, filed April 13, 2009, stated (at page 2) that the street crossing blockages “report provides data concerning each instance where a crossing was blocked by a stopped train for 10 or more minutes.” Likewise, the title of each crossing blockage report made it clear that the report was limited to blockages caused by stopped trains. This limitation was also noted and commented on by opponents of the Transaction.

B. EJ&E’S RTUs AND THE DATA THEY GENERATE

The Board’s hearing notice focused on the data collected by the RTUs that are deployed at grade crossings on the EJ&E that are equipped with ACWDs (that is, devices such as gates, flashers, and bells, not simply passive devices such as crossbucks). These are units that were installed at these grade crossings under an agreement with the Illinois Commerce Commission (or ICC). That agreement is publically available on the ICC website.

As the ICC noted in its agreement with EJ&E concerning the installation of the RTUs, EJ&E’s undertaking with respect to the RTUs was a limited one: to initiate “health check messages” for the ACWD system in order “to confirm the integrity of the system” (ICC-EJ&E Agreement, April 8, 2002). They are not primarily intended or used to monitor delay to vehicles at crossings. The RTUs generate messages that are received by EJ&E as faxes or emails concerning such things as gate irregularities (stuck up or down), power failures, or jumpers in use (which generally means the ACWD is undergoing maintenance). The data generated by the

RTUs are also stored in digital form on servers maintained by an independent vendor for a total of 33 months.

The RTUs' capacity to communicate warnings of possible crossing equipment irregularities can be programmed to provide notifications when ACWDs have been activated, for any reason, longer than a specific period of time. The EJ&E RTUs were programmed to provide such notices after 10 minutes.

C. ACWD ACTIVATIONS LASTING 10 MINUTES OR MORE ARE AN INEVITABLE FACT OF RAILROADING IN METROPOLITAN AREAS

ACWD activations of 10 minutes or more are not a new phenomenon on the EJ&E. In fact, the available data show that the number of reported instances of ACWDs being activated 10 or more minutes on the EJ&E has generally dropped under CN control. The HDR report showed that for the two audit months (November and December, 2009) there were 1,457 such reports on the former EJ&E's Eastern and Western subdivisions (now CN's Leithton and Matteson subdivisions). By comparison, for November/December, 2008, before CN controlled EJ&E, the number reported was 1,658. In order to expand the scope of the comparison, I am submitting with my statement a table comparing the RTU data across the full 33 months for which it is available. Even accounting for a potential range of error, the data demonstrate that significant numbers of ACWD activations of 10 minutes or more are neither new nor unusual on the EJ&E. And, based on my experience, they are typical of railroad operations in metropolitan areas.

ACWD activations for extended periods often occur as trains are required to stop and restart or slow for a variety of reasons, including: a train picking up or dropping off cars at a rail-served industry, a train pulling into or out of a siding, a train waiting to enter or exit another railroad's lines, or a train waiting for an Amtrak or commuter train to pass. Although less

common, extended ACWD activations may also occur due to signal failures, speed restrictions, maintenance, accidents, mechanical breakdowns, or employee error.

We work hard to keep our trains moving as safely, efficiently and quickly as possible. That is the best way to serve our customers and run an efficient railroad. However, especially in the Chicago area, the only place in the U.S. where six Class I railroads meet, delays and slow trains are, unfortunately, often unavoidable.

This does not mean that CN passively accepts lengthy crossing blockages. We are continuing to make investments and improve operations in ways that not only benefit our customers, but also reduce extended ACWD activations. For example, improved line maintenance by CN has already reduced the number of slow orders, improved train speeds, and reduced crossing delays. In addition, as recognized by the Board's FEIS, many of the locations where frequent blockages occur due to slow moving trains will experience fewer blockages once CN's planned infrastructure upgrades are complete.

Some of these blockages are due to trains either entering or exiting EJ&E, or moving between EJ&E's main line and its branch lines or sidings. CN's investment in upgraded connections at places such as Leighton (Mundelein) (allowing trains to travel at 25 mph instead of 10 mph) and Matteson (15 mph instead of 5 mph) should allow trains to move faster through those connections, thereby reducing blockages at IL Route 60/83 and Diamond Lake Road (Mundelein), at Main Street (Matteson), and at Western Ave. (Park Forest). Similarly, projects to add a power switch to the Illinois River Line at IL Route 26, to the connection at Munger (Bartlett), and to the north switch at Sutton Siding (Hoffman Estates) have reduced or will reduce ACWD activation on nearby roadways. Other blockages have significantly increased as a result

of the very projects that we are engaged in to enhance long term fluidity. Once these projects, such as the Joliet Yard project, are complete, we expect these temporary increases to end.

At other locations, CN is trying to address unnecessary blockages through improved operating practices. These primarily involve existing slow movements for trains that are connecting with other carriers, or serving a particular customer. It may not be possible to completely eliminate delays due to these movements, but CN's constant efforts to improve train speed will help to reduce them as much as practicable.

D. CN's SUBMISSION ON MONDAY, APRIL 26, 2010

In response to the Board's order in Decision No. 23, on Monday we filed the following three items:

- (1) summary sheets and complete raw RTU data relating to notifications of ACWDs activated for 10 minutes or more for the entire EJ&E line and for the full period for which such data has been retained (July 20, 2007 to April 9, 2010);
- (2) all prior blocked crossing reports (February 2009 to March 2010) restated to include added RTU data drawn from the raw data; and
- (3) CN's dispatcher spreadsheets from April 2009, when CN first began to use those spreadsheets to prepare monitoring reports, through its last report, covering March 2010, which show RTU information reviewed by CN in preparing its monthly report of crossing blockages caused by trains stopped 10 minutes or more.

As noted in our cover letter to that filing, the data we filed differ from the RTU data summarized by HDR because our data cover the entire EJ&E, whereas HDR's data were limited to the former EJ&E Eastern Subdivision and Western Subdivision. Once you have reviewed the

data and our updated reports, we will of course be available to work with you in answering any questions you may have.

E. THE LIMITATIONS AND LIKELY FUTURE USES OF THE RTU DATA

With respect to historical RTU information, CN is largely dependent upon the vendor for the RTUs – Progress Rail – which archives the RTU data. For purposes of responding to HDR's data request and Decision No. 23, Progress Rail agreed to extract and present reports from the data. The vendor is in transition because Progress Rail purchased the RTU business from GE less than two months ago. Moreover, the extraction of relevant data from the full RTU database, which is stored in an old proprietary format that is well understood by only a few programmers, is a difficult process that has required a team of programmers and the development of custom algorithms.

The Board should also understand that all RTU data have certain limitations. For example, because the RTUs rely on cellular technology to transmit information, the duration of ACWD activations of 10 minutes or more can be overstated. Similarly, because of the limits of the communication system through which the RTUs report, a single ACWD activation may be reported as multiple activations. Moreover, the 10-minute notices only identify the fact that an ACWD is activated; they do not distinguish among causes, such as moving trains or stopped trains. Nor do these notices distinguish which railroad's train caused the ACWD activation (for example, whether it was a trackage rights train of another carrier). In some cases, ACWDs are interconnected so that RTUs on the EJ&E pick up traffic moving on the adjacent tracks of other carriers. And the RTUs can only be installed at crossings with ACWDs; they provide no information where ACWDs have not been installed.

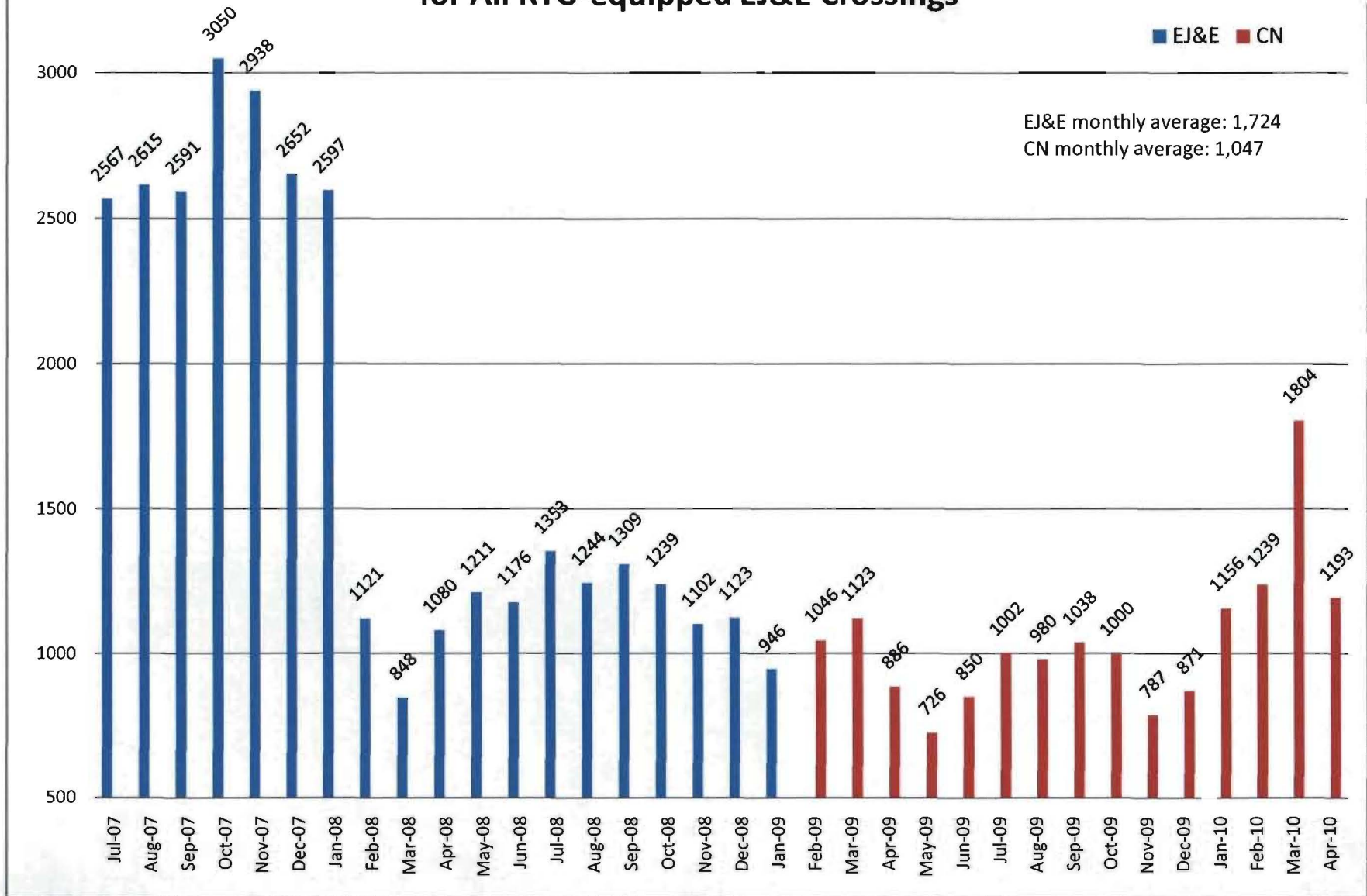
It appears, however, that some of these inherent limitations can be overcome by systematic review of the RTU data in the context of other information. CN has recently begun using an improved data collection process that should allow it more reliably to capture and more easily integrate blocked crossing notices provided by the RTUs with information provided by train crews and dispatchers. Accordingly, CN expects that future crossing blockage reports based on RTU data and other information may be less difficult to develop, more reliable, and more useful.

CONCLUSION

Ultimately, our challenge as a railroad is to reduce extended blocked crossings on the EJ&E without penalizing customers by reducing the efficiency of our rail operations. We focus immediate initiatives specifically on blockages from stopped trains. We minimize moving-train delays by constantly improving our railroad so that it operates in the safest and most efficient possible way. Through both approaches, we seek to maximize benefits for our customers and our shareholders, while minimizing adverse impacts on our stakeholder communities.

Thank you again for the opportunity to be here today. I would be glad to respond to any questions or comments you may have.

Automated Crossing Warning Device Activations of 10 Minutes or More for All RTU-equipped EJ&E Crossings



Notes: Jul. 2007 & Apr. 2010 estimated based on daily average of partial month data that was available. Only partial readings were taken in Mar. 2008, and possibly Feb. & Apr. 2008, as RTUs were transitioned from analog to digital.