

the times

Transportation Board chief says enforcing agreement a top priority

Top fed: CN Railway has to abide by '08 decision

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NEW LENOX | The chairman of the Surface Transportation Board on Wednesday said Canadian National Railway will have to stick to the terms of his agency's original decision on its acquisition of the EJ&E Railway, including funding a rail overpass in Lynwood.

"We are fully behind that decision," said Surface Transportation Board Chairman Dan Elliott. "And we will defend it in court."

By Monday, the agency plans to submit a brief in defense of the decision and the mitigation measures it ordered in the U.S. Court of Appeals for the District of Columbia.

The requirement that Canadian National fund the bulk of the cost of railroad overpasses in Lynwood and Aurora, Ill., was challenged by the railroad just months after the transportation board approved its \$300 million acquisition of the EJ&E.

"Since I've come on the board, I've heard how important this is to all of you," Elliot told about 50 concerned residents at the New Lenox Village Hall. "And I said I would make this one of my top priorities when I came on."

Elliott was sworn in as Surface Transportation Board chairman in August. He is a former associate general counsel for the United Transportation Union.

Elliott was invited to the town hall forum by U.S. Rep. Debbie Halvorson, D-Ill. Elliott, Will County Executive Larry Walsh and Suzanne Devane, representing The Regional Answer to Canadian National (TRAC), joined Halvorson on a panel to answer audience questions.

"We are here today to stand together to make sure Canadian National abides by what they said they would do," Halvorson said in her opening statement.

Many at the forum wanted the original transportation board decision reversed, saying the impact on the environment and their communities have been far greater than anything outlined in the original environmental impact statement that was part of the decision.

"It's just another case of a very big business coming and telling the communities and the Surface Transportation Board what they needed to hear," said Ralph Flens, of Schererville. "And now it's catch-me-if-you-can."

Canadian National contends that requiring it to pay such a high proportion of the costs for railroad overpasses, 79 percent in the case of Lynwood, is a radical departure from past transportation board practices. Both overpasses would cost the railroad approximately \$70 million in total.

When contacted Wednesday, Canadian National spokesman Patrick Waldron pointed out 22 communities along the EJ&E route have signed voluntary mitigation agreements with the railroad. The railroad will undertake \$60 million in mitigation projects altogether, exclusive of the two overpasses.

The transportation board's December 2008 decision came after more than one year of public hearings.

Elliott would not say what the audience seemed to want to hear Wednesday, which is that he would work to overturn the original decision; although when reporters questioned him later, he would not rule that out.

At the 45-minute town hall forum, he emphasized the current court case and measures to enforce the current decision, including a recent audit of Canadian National's performance in living up to the decision's stipulations.

In one case, that audit found more than 1,400 blockages of road crossings of 10 minutes or more in November and December, a period when Canadian National reported only 14 such blockages. The railroad disputes the audit's finding.

On Tuesday, Elliott also toured some of the communities affected by the acquisition and met with small businesses that are now served by Canadian National rather than the EJ&E.