UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
JAN 16 2009
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FILED JAN 16 2009
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**IN THE**
**UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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| City of Aurora, Illinois,<br>Village of Lake Zurich, Illinois,<br>Village of Bartlett, Illinois,<br>City of West Chicago, Illinois,<br>Village of Hawthorn Woods, Illinois,<br>Village of Wayne, Illinois,<br>City of Naperville, Illinois,<br>Village of Barrington Hills, Illinois<br>Barrington Township, Illinois<br>City of Warrenville, Illinois<br>Village of Plainfield, Illinois<br>DuPage County, Illinois<br>Lake Zurich Fire Protection District<br><br>Petitioners,<br><br>v.<br><br>Surface Transportation Board<br><br>and<br><br>United States of America,<br><br>Respondents. | 09-1028<br><br>Case No. 09- |

**PETITION FOR JUDICIAL REVIEW ON BEHALF OF THE CITIES OF AURORA, WEST CHICAGO, WARRENVILLE AND NAPERVILLE, ILLINOIS AND THE VILLAGES OF LAKE ZURICH, BARTLETT, HAWTHORN WOODS, PLAINFIELD AND WAYNE, ILLINOIS, LAKE ZURICH FIRE PROTECTION DISTRICT AND DUPAGE COUNTY, ILLINOIS**

Pursuant to 28 U.S.C. §§ 2321, 2342 and 2344 and Rule 15(a), Fed. R. App. P., the Cities of Aurora, West Chicago, Warrenville and Naperville, Illinois and the Villages of Lake Zurich, Bartlett, Hawthorn Woods, Plainfield and Wayne, Illinois, Lake Zurich Fire Protection District and DuPage County, Illinois (collectively referred to as "Petitioners") hereby petition this Court for review of the decision,

dated December 24, 2008 of the Surface Transportation Board ("STB") in STB Finance Docket No. 35087, *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company* (the "Decision"). A copy of the STB's decision is appended to this Petition. Venue is proper under 28 U.S.C. § 2324.

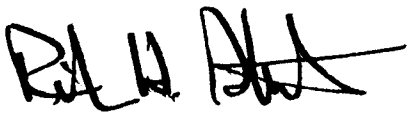
The STB's Decision authorizes Canadian National Railway Company ("CN") to acquire the rail lines of the Elgin, Joliet & Eastern Railway Company ("EJ&E"). The EJ&E's lines, which are located in Northeastern Illinois and Northwestern Indiana, extend in a 120-mile arc of mainline track around Chicago. Approximately 3 to 18 trains per day currently travel along various segments of the EJ&E lines which traverse the Villages, Cities and County that are seeking this emergency stay. Because CN intends to divert multiple trains from the CN's other five rail lines in Chicago to the EJ&E line, rail traffic along the EJ&E line will be increased by at least 15 to 24 freight trains per day.

Petitioners sought protective mitigation conditions from the Board. However, even though the Board readily acknowledged the extreme adverse environmental impacts that would be caused by its approval, it failed to exercise its power to ameliorate the adverse impact by imposing conditions that would have required CN to cover a portion of the cost of mitigation that is commensurate with the financial gains that it will realize as a result of its acquisition of the EJ&E.

Because they will bear the brunt of the harms while realizing no benefits, the Petitioners will be irreparably harmed.

Petitioners respectfully request that this Court, pursuant to 28 U.S.C. § 2349, set aside the Decision and remand this case to the Board with the instruction that it fully comply with NEPA, including the formulation of appropriate mitigation conditions within the Board's own jurisdiction under Title 49 of the U.S. Code.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2009, I caused a copy of the foregoing Petition for Review to be served by hand delivery as designated (*) and by first-class mail, postage prepaid, pursuant to Fed. R. App. P. 15 on the following:

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