



ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

July 15, 2016

Dave Navecky
Surface Transportation Board
Docket No. FD 35952
395 E Street SW
Washington, DC 20423-0001

RE: DOCKET NO. FD 35952

Dear Mr. Navecky,

On behalf of the Environmental Law & Policy Center, I am writing concerning the scoping of the Environmental Impact Statement (EIS) concerning the Great Lakes Basin Transportation, Inc.'s (GLBT)'s rail line circumnavigating Chicago.

On the one hand, this 278 mile long railroad will cross numerous streams, disrupt thousands of farms, and run through many critical natural areas, as detailed in comments submitted by Openlands and others. Because the GLBT has offered rail service to any landowner along the route, the GLBT could lead to new industrial and warehousing development far outside the urban area. Such development could cause vast and irreparable environmental damage and completely undermine the region's long range plans as memorialized in the Chicago Metropolitan Agency for Planning's GO TO 2040 plan.

On the other hand, if this project succeeded in eliminating the largest point of railroad delay in North America, it could allow railroads to capture market share from trucks – a shift that would reduce air pollution, road congestion, and traffic fatalities nationwide. It could solidify the Chicago region as the nation's transportation crossroads and thus support the region's economy. Less freight traffic in the more urbanized area could also increase capacity and reduce delays for METRA and Amtrak passenger rail service. However, because no Class 1 railroad has indicated an interest in using the proposed new GLBT rail tracks, there is considerable skepticism that this proposed project is financially feasible.

A thorough EIS is necessary to meet the National Environmental Policy Act's purposes, goals and requirements, and, in particular, to assess the environmental costs and benefits and to fully and fairly evaluate all reasonable alternatives, so that the public and decision makers can reach an informed decision on the merits of the proposed project.

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We note that the regulatory framework within which this EIS is being conducted is unusual. The GLBT has not yet submitted an application to the STB for review. Thus, many of the details of the project remain vague. Indeed, it appears that the project sponsor wasn't even incorporated until after the OEA began its evaluation of this project¹. The Environmental Law & Policy Center questions whether this unusual and premature approach, combined with the vague and still ill-defined details of this proposed GLBT project, complies with the National Environmental Policy Act's requirements. It is also far from clear whether GLBT has any realistic possibility of securing the funding necessary for such an ambitious project. This is particularly true since two of the Class 1 railroads upon whom this railroad would depend for business have publicly stated they have no interest in using the proposed railroad². We note that the publicly reported cost of \$8 billion to complete this project represents roughly 25 times as much as the Canadian National paid for its own circumnavigatory route around Chicago (the EJ&E) or that freight railroads have collectively invested in CREATE projects to reduce rail congestion in Chicago.

Nor is it clear that the proposed project could be deemed "feasible," let alone the preferred alternative. Construction of this rail corridor appears to be virtually impossible without the use of eminent domain, which GLBT has claimed STB approval would provide.³ It is far from clear that GLBT would be able to meet Illinois' burden of proof that the rail line is "necessary for a public purpose" by virtue of the STB approving the project based on a finding that it is not "inconsistent with the public convenience and necessity." Even if GLBT crosses this hurdle, further legal constraints may prevent it from acquiring easements across protected public lands.

1. Project Scope

We urge the Office of Environmental Analysis to broaden the analysis of secondary and cumulative impacts to include the grandiose vision of the GLBT and the foreseeable result of said vision.

The GLBT's plans also call for a 200 foot wide right-of-way, of which 50 feet would be reserved for pipelines and utility lines. Regulatory approval for a utility right-of-way is an entirely separate regulatory decision over which the Surface Transportation Board has no jurisdiction. Moreover, an alternatives analysis for a utility corridor would be very different than the alternatives analysis for a railroad. And since GLBT hasn't even specified what "utility" they

¹ "I have just confirmed with the client that they now have a Delaware C Corp called 'Great Lakes Basin Transportation, Inc.'" Letter to STB from GLBT's attorney dated March 13, 2016, EI-21425

² Norfolk Southern is "not inclined to think that the proposed Great Lakes Basin route would work well with our system or that we would be a user of the route." Letter to STB from Norfolk Southern Corporation, May 23, 2016, EI-22974. Union Pacific "determined in June 2014 that it was not interested in moving forward with a discussion on the Great Lakes Basin Railroad's bypass project. Chicago Tribune March, 21, 2016 at <http://www.chicagotribune.com/business/ct-illinois-rail-line-0322-biz-20160318-story.html>.

³[http://www.boarddocs.com/il/boone/Board.nsf/files/A7YCZL74FC7F/\\$file/Eminent%20Domain%20Procedures_201603111507.pdf](http://www.boarddocs.com/il/boone/Board.nsf/files/A7YCZL74FC7F/$file/Eminent%20Domain%20Procedures_201603111507.pdf)

are proposing, it is impossible to determine what those alternatives might be. The proposed project should therefore be limited to the corridor necessary for the railroad (presumably 150 feet wide or less). Since the GLBT has indicated its desire to provide an adjacent 50-foot utility corridor, that potential corridor should be considered as a secondary impact.

Similarly, the GLBT proposal includes a railyard and maintenance facilities which would cover over 22 square miles of farmland just east of Manteno, IL. To put that size in perspective, the largest classification yard in the world (UP's Bailey Yard in North Platte, Nebraska) covers just 4.5 square miles in a rectangle roughly 2 miles by 8 miles in size. The proposed size of this facility defies all reason as a maintenance facility for a relatively small short line railroad. The only reasonable conclusion is that the vast majority of the space needed is to accommodate warehousing, manufacturing, and other supporting industries. Regulatory approval of such facilities falls outside the jurisdiction of the Surface Transportation Board. Thus, the proposed project should be limited to the transportation needs of the railroad itself, such as yard operations and maintenance of its own locomotives. At the same time, the ancillary activities GLBT anticipates – the remainder of the 22 square miles of proposed activity – should be analyzed as direct and secondary impacts.

2. Alternatives Analysis

Equally important at the scoping stage of the environmental review is the consideration of alternatives. We concur with the OEA's July 5, 2016 letter to GLBT, in which you both stress the need for an alternatives analysis and observe that

[o]ther than these variations, the Narrative presents only one alignment. There is no explanation in the information GLBT has provided to date to explain whether GLBT considered other potential alignments and variations and why they might have been rejected. Studies or other support for any such conclusions also has not been provided. Based on the information available to date on GLBT's proposal, it appears that consideration of one alignment may not allow the Board to meet its obligations under NEPA in this case.⁴

We would add that GLBT's proposal is so vague that there is no objective means by which to evaluate the degree to which alternatives meet the proposed purpose and need.

Without prejudging which alternative is preferable, ELPC believes the Surface Transportation Board's evaluation should include the following alternatives:

- A. The Chicago Regional Environmental And Transportation Efficiency (CREATE) program is designed to address the same congestion as the GLBT proposal. Unlike GLBT, the CREATE project has been endorsed by most major railroads, the City of Chicago, METRA, and the State of Illinois. While funding challenges have delayed its

⁴ EO-2809

implementation, completion of CREATE would also ensure that transportation related jobs remain in the Chicago region.

- B. Many abandoned or little-used railroad tracks exist in the region that could be pieced together to provide alternative routes to the GLBT's proposed alignment. To cite one of several examples, the old New York Central's (Conrail) Kankakee Belt that went from Elkhart, IN through Kankakee and connected with the ATSF (now BNSF) in Streator could replace the southern half of the GLBT's proposal. North of Streator, an old right of way runs as far as Zearing, Illinois. New track between Ottawa, IL and Troy Grove, IL would create a complete Chicago bypass. To be clear, ELPC has no first-hand knowledge of whether this particular alignment is feasible or preferable. Our point is that an alternatives analysis should consider the use of existing underutilized railroad rights of way. We urge a broad analysis of such alternatives across the entire corridor as suggested by the Wisconsin Department of Transportation concerning the Wisconsin portions of the project.⁵
- C. The EIS must consider a "no build" alternative.
- D. In addition to the required "no build" alternative, the EIS should also consider "no build" alternatives for individual segments of the proposed project. For example, the Wisconsin Department of Transportation has suggested a "no build" alternative for segments north of Rockford⁶. Another "no build" alternative would be to eliminate the proposed rail yard.

Given the feasibility of at least one of these alternatives (CREATE), we believe it is unlikely that GLBT could receive permission to alter 4(f) protected lands – should any be identified in the draft EIS – since such permitting is permissible only if no prudent and feasible alternative exists. Moreover, as noted earlier in this letter, it is an open question whether the GLBT's proposed corridor, necessarily relying upon questionable powers of eminent domain, could even qualify as a "prudent and feasible alternative," let alone be selected as the preferred one.

Regarding the railyard discussed earlier, we also note that it could be built anywhere along the rail corridor or even in another area accessible by rail to GLBT. The alternatives analysis should thus take a very broad view of where this rail yard and anticipated industrial/logistics activities could minimize environmental impacts. We suspect that the answer is that these facilities should be located within the urbanized area, which offers far better access to jobs and has the existing road, sewer, water and other infrastructure necessary to support this growth and is in keeping with the region's approved GO TO 2040 plan.

⁵ EI-24094

⁶ EI-24094

3. Secondary and Cumulative Impacts

We believe that the secondary and cumulative impacts of this project warrant special attention in the EIS. In addition to the massive rail yard discussed above, GLBT proposes to provide rail service to any landowner adjacent to their rail line. Thus, the very real possibility of a new beltway of grain elevators, logistics parks and manufacturing facilities exists. The threat is particularly great at the five points where the proposed rail line intersects interstate highways. The EIS should consider how such changes in land use reconcile with the approved GO TO 2040 plan which dissuades such exurban sprawl. It should carefully evaluate, among other things, the following impacts of this potential change in land use:

- Loss of farmland;
- Impacts to natural resources;
- Cost of new municipal infrastructure (roads, water, sewer, power, etc.) to supply a growing employment and population in rural areas along the rail corridor⁷;
- Employment and tax impacts to the City of Chicago and inner-ring suburbs if jobs and people move closer to the rail corridor; and
- Impacts to Vehicle Miles Travelled, air pollution, energy use, and congestion resulting from this population and employment shift.

4. Other Impacts

Another impact that deserves careful consideration is the movement of hazardous materials. We urge the OEA to consult with the Federal Railroad Administration (FRA) on this issue. The FRA requires railroads to move hazardous materials by the safest route. Since GLBT's proposed corridor avoids population centers and minimizes at-grade road crossings, that factor could be considered by FRA in determining the best route for moving hazardous materials by rail through and around the Chicago region. On the other hand, emergency responders in the proposed corridor may not be well equipped to respond to hazardous releases and the corridor crosses many critical habitats, drinking water supplies, and groundwater recharge areas. Both the increased risks presented along the corridor and the offsetting reduction in risks in the Chicago Terminal District should be evaluated.

5. Given the scope of this proposal, the STB should require a full review

Even though the OEA is proceeding with the scoping process for the EIS, GLBT has not yet actually requested project approval from the STB. This request for approval could take two forms: they can either file a formal request for approval or request an exemption from formal application.

⁷ As Cook County notes in their April 14, 2016 letter to the STB, "these areas are not well served by a transportation network and that will most certainly force Illinois Taxpayers to fund the needed roads and bridges and other infrastructure to support this development." EI-22592.

The question of which regulatory path is taken is well within the purview of the OEA for consideration. The federal action that triggers this NEPA review is not the proposed construction of a railroad but rather the proposed federal approval of the proposed railroad. Thus, in a sense, the alternatives analysis should include alternative federal actions, such as denying a request for exemption under 42 USC 10502.

Given the vast scope of this project, given that it proposes to take enough land to build the largest rail yard in the United States, and given that the impacts of this project – both in terms of benefits and costs – are long range and complex, we believe that a full application should be required. Furthermore, as stated above, the Environmental Law & Policy Center questions whether this proposed EIS approach complies with the legal requirements of the National Environmental Policy Act.

We look forward to continued engagement in this important discussion of Chicago's transportation future.

Sincerely,

Kevin Brubaker
Deputy Director