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SERVICE DATE - DECEMBER 1, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34424

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
— CONTROL — DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY,
BESSEMER AND LAKE ERIE RAILROAD COMPANY, AND THE PITTSBURGH &
CONNEAUT DOCK COMPANY

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34424; Notice of Acceptance of Primary Application and Related Filings; Issuance of Procedural Schedule.¹

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the primary application and related filings filed November 5, 2003, by Canadian National Railway Company (CNR, a rail carrier that controls several rail carrier subsidiaries) and Grand Trunk Corporation (GTC, a noncarrier holding company through which CNR controls its U.S. rail carrier subsidiaries). CNR and GTC are referred to collectively as CN or as applicants. The primary application seeks Board approval and authorization under 49 U.S.C. 11321-26 for the acquisition by CN of control of three U.S. railroads: Duluth, Missabe and Iron Range Railway Company (DMIR), Bessemer and Lake Erie Railroad Company (B&LE), and The Pittsburgh & Conneaut Dock Company (P&C Dock). Because DMIR, B&LE, and P&C Dock are now controlled by Great Lakes Transportation LLC (GLT), the primary application is referred to as the “CN/GLT Application,” the transaction proposed in the primary application is referred to as

¹ This decision covers: the railroad control application filed in STB Finance Docket No. 34424, Canadian National Railway Company and Grand Trunk Corporation — Control — Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company; the trackage rights exemption notice filed in STB Finance Docket No. 34424 (Sub-No. 1), Duluth, Winnipeg and Pacific Railway Company — Trackage Rights — Duluth, Missabe and Iron Range Railway Company; and the trackage rights exemption notice filed in STB Finance Docket No. 34424 (Sub-No. 2), Duluth, Missabe and Iron Range Railway Company — Trackage Rights — Duluth, Winnipeg and Pacific Railway Company. The railroad control application filed in STB Finance Docket No. 34424 is referred to as the “primary application.” The trackage rights exemption notices filed in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are referred to collectively as the “related filings.”

the “CN/GLT Transaction” or the Transaction, and DMIR, B&LE, and P&C Dock are referred to collectively as the “GLT Railroads.” The related filings seek related trackage rights contingent upon approval of the primary application. The Board finds that the transaction proposed in the primary application is a “minor transaction” under 49 CFR 1180.2(c).

The Board has considered CN’s petition suggesting a 146-day procedural schedule, also filed November 5, 2003. The Board is adopting a 156-day procedural schedule patterned upon the 156-day procedural schedule that was adopted earlier this year in the “KCS/Tex Mex” proceeding.² The 156-day procedural schedule adopted by the Board is essentially the same as the 146-day procedural schedule suggested by CN, except that the Board’s schedule adds five days to the “evidentiary proceeding” stage and another five days to the “final decision” stage. The 156-day procedural schedule will allow the Board to issue a decision 45 days after the close of the record and 24 days prior to the statutory deadline, assuming that no unanticipated environmental review is required.

DATES: The effective date of this decision is **December 5, 2003**. Comments on CN’s Environmental Appendix (submitted November 5, 2003, and supplemented November 10, 2003) are due by **December 10, 2003**. CN must submit its Safety Integration Plan (SIP) by **December 15, 2003**. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **December 19, 2003**, a notice of intent to participate. Comments on CN’s SIP must be filed by **January 22, 2004**. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **January 26, 2004**. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by **February 24, 2004**. A public hearing/oral argument will be held **the week of March 1, 2004** (the precise date and the location will be announced later). For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Send an original and 20 copies of all pleadings (except for environmental submissions, as discussed below) referring to STB Finance Docket No. 34424 to: Surface

² See Kansas City Southern — Control — The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company, STB Finance Docket No. 34342, Decision No. 2 (STB served June 9, 2003, and published at 68 FR 35474 on June 13, 2003).

Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.³ In addition, one copy of all documents in this proceeding must be sent to each of the following: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; and (3) Paul A. Cunningham, Esq., HARKINS CUNNINGHAM LLP, 801 Pennsylvania Avenue, N.W., Suite 600, Washington, D.C. 20004-2664.

In addition to submitting an original and 20 copies of all paper documents filed with the Board, parties must also submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1-2-3 Release 9 or Microsoft Excel 2002. A copy of each disk or CD submitted to the Board should be provided to any other party upon request. Further details are discussed below.

Comments (an original and 10 copies) on the Environmental Appendix and SIP should be submitted in writing to: Attn: Phillis Johnson-Ball, STB Finance Docket No. 34424, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The CN/GLT Transaction proposed in the primary application contemplates the acquisition, by CN, of control of four carriers — the three GLT Railroads (DMIR, B&LE, and P&C Dock) and an affiliated water carrier (Great Lakes Fleet, Inc., referred to as GLF) — which now operate an integrated iron ore delivery chain that extends from ore mines in Minnesota to steel plants in Pennsylvania. The three GLT Railroads (DMIR, B&LE, and P&C Dock) and the affiliated GLT water carrier (GLF) are referred to collectively as the “GLT Carriers.” The proposed acquisition, by CN, of control of DMIR, B&LE, and P&C Dock is subject to the jurisdiction of the Board; the related acquisition, by CN, of control of GLF is not subject to the jurisdiction of the Board. See 49 U.S.C. 11323 (the

³ For a document to be considered a formal filing, the Board must receive an original and 20 copies of the document, which must show that it has been properly served upon all Parties of Record. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they would result in unnecessarily burdensome, duplicative processing. In addition, each formal filing must be accompanied by an electronic submission per the Board’s requirements as discussed in detail in this decision.

Board's "control jurisdiction" extends only to transactions involving rail carriers). The related acquisition, by CN, of control of GLF is, however, subject to review by the U.S. Maritime Administration and the Coast Guard, and is also subject to review under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Canadian National. As of September 30, 2003, CN's rail network, which crosses North America from east to west and from north to south, serving major ports on three coasts, consisted of 17,539 route miles in 15 American states and eight Canadian provinces. CN's principal routes run: (1) between Vancouver and Prince Rupert, BC, in the west, and Halifax, NS, in the east, serving every major metropolitan area in Canada; (2) between Chicago, IL, and Buffalo, NY, serving three major metropolitan areas (Chicago, IL, Detroit, MI, and Buffalo, NY) in the U.S.; (3) between Winnipeg, MB, and Chicago, IL; (4) between Chicago and the Gulf of Mexico, reaching every major metropolitan area on the Mississippi River (including St. Louis, MO, Memphis, TN, and New Orleans, LA); and (5) between Nebraska/Iowa and Chicago, extending from Sioux City and Council Bluffs, IA, in the west, to Chicago in the east. CN's U.S. operations are conducted by CNR and, through CNR's GTC subsidiary, by 10 U.S. railroads that are part of the CN system: Duluth, Winnipeg and Pacific Railway Company (DWP), Grand Trunk Western Railroad Incorporated (GTW), St. Clair Tunnel Company (SCTC), Illinois Central Railroad Company (IC), Chicago, Central & Pacific Railroad Company (CCP), Cedar River Railroad Company (CRRC), Waterloo Railway Company (WRC), Wisconsin Central Ltd. (WCL), Sault Ste. Marie Bridge Company (SSMB), and Wisconsin Chicago Link Ltd. (WCLL).

In 1999, CN acquired IC to position itself to better serve north-south "NAFTA" traffic by extending its system from Chicago to the Gulf Coast. As a result of the 1999 CN/IC transaction and CN's 1998 marketing alliance with The Kansas City Southern Railway Company (KCS), CN is today part of a NAFTA rail network offering shippers access to TFM, S.A. de C.V. (TFM), Mexico's largest rail system. In 2001, CN acquired WCL and its affiliates, thus providing CN with a connection between Chicago and the CN lines west of the Great Lakes. This connection is completely under CN ownership, with the exception of the 17-mile segment between Nopeming Junction, MN, and South Itasca, WI, over which CN's DWP subsidiary operates by means of trackage rights granted by DMIR.

The GLT Carriers. DMIR, a Class II railroad that owns 212 miles of rail line in Minnesota and Wisconsin, carries primarily: (1) taconite pellets (a form of processed iron ore) from taconite plants in the Mesabi Range (a) to DMIR-owned docks on Lake Superior at Duluth, MN, and Two Harbors, MN (for loading onto vessels for movement to steel plants), and (b) to interchange points with other railroads; and (2) limestone from the dock at Duluth to Mesabi Range taconite plants. DMIR's Missabe Main Line runs 74 miles in a generally north-south direction between Mountain Iron, MN, and Duluth, MN. Its Iron Range Main Line runs 74 miles in a generally east-west direction between Iron Junction, MN (where the Missabe Main Line and

the Iron Range Main Line intersect) and Two Harbors, MN. DMIR also operates 64 miles of branch lines. Among these branch lines are the Shaw Cut Off/Superior Branch, which runs 16 miles eastward from Emmert, MN, to Keenan, MN, where it meets the Missabe Main Line; the Taconite District, which runs 4.5 miles to the west of Calumet, MN (the Taconite District is not contiguous with any other DMIR line); and the Interstate Branch/Spirit Lake Branch, which runs from Adolph, MN (on the Missabe Main Line), 23 miles in a generally southward and eastward direction through Nopeming Junction, MN, to South Itasca, WI (near Superior, WI), where DMIR's property ends. DMIR's lines between Virginia, MN (in the north), and Duluth, MN, and South Itasca, WI (in the south), are generally parallel to CN's lines between Virginia and South Itasca, and, for the southernmost 17 miles of that corridor (i.e., the 17-mile segment from Nopeming Junction, MN, to South Itasca, WI), CN and DMIR operate over the same track, pursuant to trackage rights granted by DMIR to CN's DWP subsidiary. DMIR itself operates via trackage rights over 10 miles of CN track between Shelton, MN, and Minorca Junction, MN, and over 19 miles of track of The Burlington Northern and Santa Fe Railway Company (BNSF) between Calumet, MN, and Emmert, MN (the Calumet-Emmert trackage rights enable DMIR to access its Taconite District).

B&LE, a Class II railroad operating between North Bessemer, PA (near Pittsburgh, PA), and the port at Conneaut, OH (on Lake Erie), carries principally coal, iron ore, and limestone. B&LE's main line runs between North Bessemer and Albion, PA, and its two northernmost branch lines run between Albion, PA, on the one hand, and, on the other hand, Conneaut, OH, and Wallace Junction, PA.

P&C Dock, a Class III railroad, does not own or operate any rail routes, but performs switching operations and ship-to-rail and rail-to-ship bulk transfer operations for B&LE at three docks at Conneaut, OH.

GLF is a water carrier (not a rail carrier) that owns a fleet of vessels that carry ore and other bulk commodities on the Great Lakes.

DMIR, B&LE, P&C Dock, and GLF are wholly owned subsidiaries of DMIR Holdings Corp. (DMIR Holdings), B&LE Holdings Corp. (B&LE Holdings), P&CD Holdings Corp. (P&CD Holdings), and GLF Holdings Corp. (GLF Holdings), respectively. DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings are noncarriers, and each is a wholly owned subsidiary of Great Lakes Transportation LLC (GLT). GLT is owned by Great Lakes Transportation Holdings, L.P., which is an affiliate of The Blackstone Group.

The CN/GLT Transaction. GTC and GLT have entered into a Stock Purchase Agreement (the CN/GLT Agreement), dated October 19, 2003, that provides that, subject to a number of conditions, GTC will purchase from GLT all of the issued and outstanding shares of DMIR Holdings, B&LE Holdings, P&CD Holdings, and GLF Holdings for an overall purchase

price of \$380 million, subject to certain adjustments provided for in the CN/GLT Agreement. CN advises that, if the CN/GLT Transaction is approved, it intends to pay the purchase price in cash on the closing date under the CN/GLT Agreement (CN expects to meet the cash requirements for consummation of the Transaction by borrowing under its existing revolving credit facility, combined with long-term debt), and it intends to consummate control of the GLT Railroads as soon as possible after a final order of the Board approving the primary application and authorizing the Transaction has become effective. CN further advises that, because it plans few operational changes in connection with the CN/GLT Transaction, it expects to fully implement that Transaction shortly after consummation of CN control of the GLT Railroads. CN adds that, although it does not anticipate any increases in total traffic and revenue handled by CN and the GLT Railroads as a result of the CN/GLT Transaction, it does anticipate that the Transaction would lead to more efficient operations and permit efficiency-related cost reductions. CN advises that it has no present plans to merge DMIR Holdings, B&LE Holdings, or P&CD Holdings into any other entity in the CN system, or to merge any of the GLT Railroads with any of CN's other subsidiaries.

Related Filings. DWP and DMIR operate two separate rail lines that run between Shelton Junction, MN (near Virginia, MN), and Nopeming Junction, MN (near Superior, WI). The related filings, which were made pursuant to 49 CFR 1180.2(d)(7), involve reciprocal grants of trackage rights that would allow each of DWP and DMIR to operate its trains, locomotives, cars, and equipment, with its own crews, over the other's essentially parallel line between Shelton Junction and Nopeming Junction. In STB Finance Docket No. 34424 (Sub-No. 1), DWP has filed a notice of exemption relating to trackage rights to be granted to DWP over DMIR's lines between Shelton Junction (Mileage B 2.71 on DMIR's Virginia Branch) and Nopeming Junction (Mileage R 5.77 on DMIR's Spirit Lake Branch), a distance of approximately 64 miles. In STB Finance Docket No. 34424 (Sub-No. 2), DMIR has filed a notice of exemption relating to trackage rights to be granted to DMIR over DWP's lines between Shelton Junction (MP 70.7 on DWP's Rainy Subdivision) and Nopeming Junction (MP 10.7 on DWP's Rainy Subdivision), a distance of approximately 60 miles. The reciprocal trackage rights provided for in the notices of exemption filed in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are intended to be effective upon acquisition by CN of control of DMIR, and, therefore, are contingent upon approval of the primary application.

CN/GLT Common Control: Purposes Served. CN contends that its acquisition of control of the GLT Railroads would serve three primary purposes.

First, acquisition of control of DMIR would give CN full ownership of the route over which all CN traffic between Winnipeg and Chicago now moves. CN notes that, at present, it must operate by means of trackage rights granted by DMIR over the 17-mile segment between Nopeming Junction and South Itasca.

Second, CN contends that acquisition of control of DMIR would increase CN's operational flexibility by allowing CN to institute "directional running" on the two parallel Shelton Junction-Nopeming Junction lines, which would reduce transit time and increase service reliability over CN's entire Winnipeg-Chicago corridor. CN adds that, because DMIR's Shelton Junction-Nopeming Junction line has newer ties and newer and heavier rail than DWP's Shelton Junction-Nopeming Junction line, the transfer to the DMIR line of some traffic that now uses the DWP line would allow CN to avoid the capital expenditures that would otherwise be required for centralized traffic control (CTC) and extensions of sidings on the DWP line.

Third, CN contends that acquisition of control of the four GLT Carriers (DMIR, B&LE, P&C Dock, and GLF), which provide an important supply line for the North American steel industry, would enable CN to develop closer and more extensive relationships with companies in and serving that industry.

CN/GLT Common Control: Public Interest Considerations. CN contends that the CN/GLT Transaction would benefit the public interest by connecting two transportation systems that do not compete with each other but, rather, complement each other. The CN/GLT Transaction, CN argues, would strengthen the GLT Railroads by making them part of the rail system operated by CN, a successful rail carrier that would have the commitment and ability to make long-term investments in plant, equipment, and systems as they become needed. CN contends that the CN/GLT Transaction would enable CN to lower its maintenance costs and to improve transit times and reliability for shippers by using the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction for freight moving between western Canada and Chicago. And, CN adds, the CN/GLT Transaction would eliminate the need for interchange between CN and DMIR, thus permitting some single-line rail operations to and from shippers on CN and on DMIR, which should result in reduced handling and shortened car transit times.

CN contends that, in view of the limited scope of the CN/GLT Transaction, the record of CN and its constituent railroads over the past decade in successfully implementing rail consolidations, the good operating condition of both systems, and the absence of any need for a sweeping "Day One" change in systems, the CN/GLT Transaction would present a low risk of implementation-related service difficulties.

CN contends that the CN/GLT Transaction would have no anticompetitive effects. (1) *Horizontal Effects.* CN contends that the CN/GLT Transaction would not have adverse "horizontal" effects on competition. CN explains that, except for Virginia, MN, and Duluth, MN/Superior, WI, which each receive rail service from three or more rail carriers, the CN and GLT lines serve no common metropolitan areas or cities. CN further explains that there would be no 2-to-1 shippers (i.e., there is no shipper now capable of receiving rail service from more than one independent railroad who would be reduced to having only one independent railroad available to it), and that, although there would arguably be one 3-to-2 shipper (i.e., a shipper now

capable of receiving rail service from three independent railroads that, as a result of the Transaction, would only have two independent railroads available), that shipper (Koppers, Inc., at Ambridge, MN) would not be adversely affected by the nominal reduction in horizontal competition.⁴ (2) *Vertical Effects*. CN contends that the CN/GLT Transaction would not have adverse “vertical” effects on competition. CN explains that there would be no harm to shippers from a reduction in source or geographic competition, because CN and the GLT Railroads do not serve competing origins or destinations. CN further explains that, although vertical effects might conceivably arise when a railroad with market power in one geographic market merges with a connecting railroad and, as a result of the merger, extends its market power to the connecting railroad’s territory, closing gateways and thus foreclosing other connecting railroads from participating in movements to or from the first railroad’s service area, vertical effects of this nature are unlikely as a matter of economic theory. CN adds that, in any event, applicants would not engage in such foreclosure by closing efficient gateways; rather, applicants would keep all existing active gateways affected by the CN/GLT Transaction open on commercially reasonable terms, and applicants would waive any defenses they might otherwise have as a result of the CN/GLT Transaction, under the Board’s general policy that it does not separately regulate bottleneck rates, in circumstances where a shipper prior to the CN/GLT Transaction would have been entitled to regulation of a bottleneck rate under the Board’s “contract exception” to the general rule.

Special Case: Eveleth Mines, LLC, d/b/a EVTAC Mining. CN advises: that, until May 2003, Eveleth Mines, LLC, d/b/a EVTAC Mining (EVTAC), operated a facility at Fairlane, MN (11 miles south of Virginia, MN), that processed raw iron ore into taconite pellets; that, although only DMIR was physically capable of carrying iron ore to, or processed taconite pellets from, the loading and unloading tracks at EVTAC’s Fairlane facility, both CN and DMIR were capable of carrying general freight (i.e., commodities other than iron ore and taconite) to and from other tracks at that facility; and that, therefore, if EVTAC had not closed the Fairlane facility in May 2003, that facility would have been regarded, as respects the CN/GLT Transaction, as a “1-to-1” facility for iron ore and taconite and a “2-to-1” facility for general freight. CN also advises, however, that it might be argued that CN could have built in to the Fairlane facility to handle its iron ore and taconite freight, or that EVTAC could have built out to CN to obtain competitive service from CN as respects EVTAC’s iron ore and taconite movements. CN further advises: that, if the EVTAC facility should reopen and require rail service, CN would be prepared to offer competitive access to another railroad for general freight, so as to restore two-railroad competition for that traffic; that, to this end, CN intends, should EVTAC reopen, to grant trackage rights access to EVTAC to another railroad, or, if traffic volumes are too low to justify trackage rights operations, to provide haulage service or switching at a rate that would not disadvantage the other railroad; and that, to replicate any build-in or

⁴ See CN-2 at 53. See also CN-2 at 68 & n.3.

build-out opportunity that now exists as respects iron ore and taconite traffic, CN would also be prepared to provide another railroad access to the build-in or build-out point via trackage rights over the DWP line. CN adds that, although it would expect to negotiate the terms of such access (either as respects general freight or as respects access to the build-in/build-out point) through voluntary agreement with a competing railroad, it is, of course, possible that the parties might be unable to agree on such terms. CN therefore contends that, if the Board approves the primary application, the Board should retain jurisdiction over the CN/GLT Transaction for a reasonable period for the purpose of reopening this proceeding if the EVTAC facility should resume operations and require rail service, if necessary to prescribe terms of access for a second rail carrier to handle general freight (i.e., commodities other than iron ore and taconite) to and/or from the EVTAC facility, or to prescribe terms of access to a build-in or build-out point on the existing DWP line that would permit a second rail carrier to handle iron ore and taconite to/from that facility. CN adds that, because its trackage rights agreement with DMIR prohibits CN from transporting iron ore (including taconite pellets) over the DMIR line between Nopeming Junction and South Itasca, CN should not be required to permit use of that DMIR line for transportation of iron ore, except on commercial terms. CN also adds that, because CN does not have access to an ore dock of its own in the Duluth/Superior area, the railroad receiving trackage rights to a build-in/build-out point should not be one that presently owns such a dock.

Labor Protection. CN projects that the CN/GLT Transaction would result in the elimination of 122 positions and the transfer of 18 positions. CN also projects that the reciprocal grants of Shelton Junction-Nopeming Junction trackage rights provided for in the related filings would have no adverse effect on train and engine service employees. CN notes, however, that, whereas these projections represent CN's best estimate, based on information presently available, of the changes necessary to effect the public transportation benefits and the efficiencies of the CN/GLT Transaction, additional changes might be required as circumstances change, opportunities open elsewhere on the CN system, traffic and shipping patterns evolve, and CN acquires experience in operating the combined system. CN acknowledges that the applicable level of labor protection for the CN/GLT Transaction would be that set forth in New York Dock Ry. — Control — Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979), and that the applicable level of labor protection for the Shelton Junction-Nopeming Junction trackage rights would be that set forth in Norfolk and Western Ry. Co. — Trackage Rights — BN, 354 I.C.C. 605, 610-15 (1978), as modified in Mendocino Coast Ry., Inc. — Lease and Operate, 360 I.C.C. 653, 664 (1980), aff'd sub nom. Railway Labor Exec. Ass'n v. United States, 675 F.2d 1248 (D.C. Cir. 1982). CN adds that management employees whose positions would be eliminated as a result of the Transaction, and who would not be offered a job opportunity elsewhere in the CN system, would be offered severance packages, and that, if relocation to another job is offered, CN would also offer to relocate the management employee in accordance with the then-current CN management relocation plan.

PRIMARY APPLICATION AND RELATED FILINGS ACCEPTED. The Board agrees with CN that the CN/GLT Transaction proposed in the primary application would be a “minor transaction” under 49 CFR 1180.2(c), and the Board is accepting the primary application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR part 1180. The Board is also accepting for consideration the two related filings, which are also in compliance with the applicable regulations. The Board reserves the right to require the filing of supplemental information from CN or any other party or individual, if necessary to complete the record in this matter.

PUBLIC INSPECTION. The primary application and the related filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, D.C. In addition, they may be obtained from CN’s representative (Mr. Cunningham) at the address indicated above.

PROCEDURAL SCHEDULE. CN contends that, in view of the asserted public benefits of the CN/GLT Transaction, the asserted lack of competitive harm, and the asserted absence of complicating environmental factors or related applications, a shorter procedural schedule than the 180-day maximum procedural schedule allowed by statute would be appropriate. CN has therefore proposed a 146-day procedural schedule that provides for issuance of a decision by the Board on March 30, 2004.

The Board is adopting a 156-day procedural schedule patterned upon the 156-day procedural schedule that was adopted earlier this year in the “KCS/Tex Mex” proceeding. The Board’s 156-day procedural schedule, although 10 days longer than the schedule suggested by CN, still provides for less total time than the 180-day procedural schedule (30 days + 105 days + 45 days) established by the deadlines set forth at 49 U.S.C. 11325(a), (d)(2). Comments on CN’s Environmental Appendix (submitted November 5, 2003, and supplemented November 10, 2003) are due by **December 10, 2003**. CN must submit its Safety Integration Plan (SIP) by **December 15, 2003**. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **December 19, 2003**, a notice of intent to participate. Comments on CN’s SIP must be filed by **January 22, 2004**. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **January 26, 2004**. As in past proceedings, DOT will be allowed to file, on the reply due date (here, February 24, 2004), its comments in response to the comments of other parties, and CN will be allowed to late-file (as quickly as possible) a reply to DOT’s responsive comments. Responses to comments, protests, requests for conditions, and other opposition, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by **February 24, 2004**. A public hearing/oral argument will be held **the**

week of March 1, 2004 (the precise date and the location will be announced later). The Board's decision will be issued on **April 9, 2004** (the 156th day after the date on which the primary application and the related filings were filed, and the 45th day after the close of the record). If, however, it is determined that an Environmental Impact Statement or Environmental Assessment is required, the procedural schedule will be adjusted as necessary.

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than **December 19, 2003**, an original and 20 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and CN's representative (Mr. Cunningham). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

The Board will serve, as soon as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, an original plus 10 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record, and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, ASAP Document Solutions,⁵ to receive copies of Board decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

⁵ The mailing address is: ASAP Document Solutions, Suite 405, 1925 K Street, N.W., Washington, DC 20006. The telephone number is: (202) 293-7878. The e-mail address is: **asapdoc.@verizon.net**.

An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. The Board's Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's website at "www.stb.dot.gov" under "Filings." Furthermore, ASAP Document Solutions will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order previously entered in this proceeding.

COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings by DOJ and DOT, must be filed by **January 26, 2004**.

Parties (including DOJ and DOT) filing such comments, etc., must submit an original and 20 copies thereof. Each such submission: must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001; must refer to STB Finance Docket No. 34424; and must be clearly labeled with an identification acronym and number (e.g., the primary application was labeled "CN-2"), see 49 CFR 1180.4(a)(2). In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the Secretary of the United States Department of Transportation, CN's representative, and all other PORs, and should include the docket number and title of the proceeding, and the name, address, and telephone number of the commenting party and its representative upon whom service shall be made.

Because the CN/GLT Transaction proposed in the primary application has been determined to be a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval without imposition of conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. See Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295 (D.C. Cir. 1983).

RESPONSES TO COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION, INCLUDING DOJ AND DOT; REBUTTAL IN SUPPORT OF PRIMARY APPLICATION. Responses to comments, protests, requests for conditions, and other opposition submissions, responses to comments of DOJ and DOT, and rebuttal in support of the primary application and/or either or both of the related filings must be filed by **February 24, 2004.**

ENVIRONMENTAL MATTERS. Under the regulations of the President's Council on Environmental Quality implementing the National Environmental Policy Act of 1969 (NEPA) and under the Board's environmental regulations as well, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an Environmental Impact Statement (EIS). 40 CFR 1501.4(a)(1); 49 CFR 1105.4(f), 1105.6(a). Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA) (an EA is a document containing environmental analysis sufficient for the Board to determine whether it should prepare an EIS or may make a finding that the transaction will have no significant environmental impact). 40 CFR 1501.4(c); 49 CFR 1105.4(d), 1105.6(b). Actions that ordinarily have insignificant environmental effects may normally be categorically excluded from NEPA review, without a case-by-case review. 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c). And, even when the Board's presumptive tonnage thresholds for environmental analysis are met, the Board may reclassify a particular transaction or modify the requirement that an EIS or EA be prepared, if the railroad applicant demonstrates that the proposed transaction has no potential for significant environmental effects. 49 CFR 1105.6(d).

Prior to filing the CN/GLT Application with the Board on November 5, 2003, CN discussed the CN/GLT Transaction with the Board's Section of Environmental Analysis (SEA) and explained that, in its view, the CN/GLT Transaction would have no significant environmental impacts, and that, therefore, preparation by the Board of an EIS or EA is not required to discharge the Board's obligations under NEPA. Pursuant to CN's discussions with SEA, CN prepared an Environmental Appendix that describes what CN regards as the reasonably foreseeable impacts of the CN/GLT Transaction, and that explains why CN believes that there is no need to prepare either an EIS or an EA. CN argues, in essence: that the only reasonably foreseeable Transaction-related operational change involves coordinated use of the DWP/DMIR lines in the 64-mile Shelton Junction-Nopeming Junction corridor (which, CN advises, lies in a relatively sparsely populated area of northeastern Minnesota); that, if foreseeable increases in tonnage on the DMIR line are compared to traffic volumes now moving on the DMIR line, the Board's presumptive tonnage thresholds for environmental analysis would be exceeded on a total of 61.5 miles of the DMIR line; but that, if foreseeable increases in tonnage on the DMIR line are compared to the traffic volumes generated before the recent closing of EVTAC's Fairlane facility, the Board's presumptive tonnage thresholds would not be exceeded at all, except on the

6.0-mile segment running through the rural territory between Adolph and Nopeming Junction. CN contends, in essence, that whether potential traffic shifts are measured against a base that includes or excludes EVTAC traffic, the reality of the situation is that the environmental consequences of the CN/GLT Transaction would be insignificant and thus do not warrant environmental review beyond that entailed in the preparation and review of CN's Environmental Appendix.

CN offers the following points in support of this contention: (1) the Transaction should have no impact on land use, biological resources, or natural resources because there would be no construction or abandonment of rail lines, and no construction or operational changes in connection with rail yards or intermodal facilities; (2) there are no plans to dispose of or alter any properties that are 50 years old or older; (3) the only operational change contemplated by CN is the coordination of operations on the parallel DWP and DMIR lines between Shelton Junction and Nopeming Junction; (4) any traffic increases resulting from such coordination would reflect shifts of existing traffic, not new traffic or diversions from trucks or other railroads; (5) the DMIR line between Shelton Junction and Nopeming Junction runs through a lightly populated area; (6) the estimated increase in rail traffic on that line would be below the applicable tonnage threshold on nearly the entire length of that line, if the increase were measured against pre-May 2003 traffic volumes; (7) the potential environmental impacts from increased traffic on DMIR's Shelton Junction-Nopeming Junction line would be minimal (because there would be no increase in energy consumption, air quality would be unchanged or better, noise impacts would be insignificant, roadway at-grade crossings would remain safe, there would be little impact on rail safety, the quantities of hazardous materials shifted to the DMIR line would be modest, directional running should allow rail traffic to move more smoothly, and there would be no high and adverse impacts on any "environmental justice" populations); and (8) even the potential environmental impacts from increased traffic on the Adolph-Nopeming Junction segment of DMIR's Shelton Junction-Nopeming Junction line should be insignificant (CN claims that only 66 structures of any kind lie within 1,000 feet of the Adolph-Nopeming Junction right-of-way).

To facilitate public review of all aspects of the Environmental Appendix, and to provide an opportunity for comments to SEA on the CN/GLT Transaction, and, in particular, on CN's conclusion that the Transaction would have no significant environmental impacts, CN mailed copies of the Environmental Appendix to appropriate local, state, and federal environmental agencies and other interested parties, and placed notices in major newspapers delivered to potentially affected communities. **December 10, 2003**, is the date by which interested parties may submit comments on the Environmental Appendix directly to SEA.

CN has advised that, pursuant to the joint regulations adopted by the Board and the Federal Railroad Administration (FRA) to ensure adequate and coordinated consideration of safety integration issues by both the Board and FRA, see 49 CFR Parts 244 and 1106, CN will submit a Safety Integration Plan (SIP) to the Board and FRA by **December 15, 2003**. CN has

further advised that it will distribute the SIP to appropriate government agencies and other interested parties, and will place notices in major newspapers delivered to potentially affected communities, to announce the availability of the SIP. Interested parties will have until **January 22, 2004**, to submit comments on the SIP to SEA. In accordance with past practice, the Board will include in any decision approving the CN/GLT Transaction a condition requiring CN to comply with the SIP. See 49 CFR 1106.4(b)(4).

Based on its consideration of all timely comments on the Environmental Appendix and the SIP and its own independent review of all available environmental information, SEA will recommend to the Board whether there is a need for formal environmental review of the CN/GLT Transaction, and the Board will then determine whether formal environmental review is required and, if so, whether an EIS or an EA should be prepared. If an EIS or an EA is required to meet the Board's obligations under NEPA, the procedural schedule set forth in this decision will be adjusted accordingly.

PUBLIC HEARING/ORAL ARGUMENT. To afford interested parties an opportunity to address the Board respecting any issues arising out of the CN/GLT Transaction, a public hearing/oral argument will be held **the week of March 1, 2004**. The precise date and the location will be announced later.

DISCOVERY. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

ELECTRONIC SUBMISSIONS: IN GENERAL. As already mentioned, in addition to submitting an original and 20 paper copies of each document filed with the Board, parties must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or on compact discs (CDs), copies of all textual materials, electronic workpapers, data bases, and spreadsheets used to develop quantitative evidence. Parties unable to comply with the electronic submission requirement can seek a waiver from the Board. Textual materials must be in, or compatible with, WordPerfect 10.0. Electronic spreadsheets must be in, or compatible with, Lotus 1-2-3 Release 9 or Microsoft Excel 2002. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1 (served October 29, 2003), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by computer data will facilitate timely review by the Board and its staff. The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in the Board's regulations. See 49 CFR 1104.3(b).

ELECTRONIC SUBMISSIONS: WORKPAPERS, DATA BASES, AND SPREADSHEETS. In the past, the Board has encountered problems with the “links” in spreadsheets functioning properly when the spreadsheets are installed on desktop computers or network servers. To avoid such problems, parties submitting electronic workpapers, data bases, and/or spreadsheets should use naming and linking conventions that will permit the spreadsheets to operate on the Board’s computers.⁶ Electronic data bases should be compatible with the Microsoft Open Database Connectivity (ODBC) standard.⁷ The Board currently uses Microsoft Access 2000, and data bases submitted should be either in this format or another ODBC-compatible format. Otherwise, submitters should explain why it is not possible to submit the data base in this format and seek a determination as to whether it is feasible for the Board to accept the data base in another format.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The primary application in STB Finance Docket No. 34424 and the related filings in STB Finance Docket No. 34424 (Sub-Nos. 1 and 2) are accepted for consideration.
2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.

⁶ The Board will not specify a particular naming and linking convention. It is incumbent upon the submitter to use generic naming and linking conventions that will permit the spreadsheets to operate on desktop computers or from a network server. Questions concerning naming and linking matters and/or compatibility with the Board’s computers can be addressed to William H. Washburn, Office of Economics, Environmental Analysis, and Administration, at (202) 565-1550.

⁷ ODBC is a Windows technology that allows a database software package, such as Microsoft Access, to import data from a database created using a different software package. All databases must be supported with adequate documentation on data attributes, SQL queries, programmed reports, etc.

4. This decision is effective on December 5, 2003.

Decided: November 25, 2003.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

APPENDIX A: PROCEDURAL SCHEDULE

November 5, 2003	Primary application, related filings, Environmental Appendix, and petition for establishment of procedural schedule filed.
November 10, 2003	Supplemented Environmental Appendix submitted.
December 5, 2003	Board notice of acceptance of primary application and related filings published in the <u>Federal Register</u> .
December 10, 2003	Comments on the Environmental Appendix due.
December 15, 2003	Safety Integration Plan (SIP) due.
December 19, 2003	Notices of intent to participate due.
January 22, 2004	Comments on the SIP due.
January 26, 2004	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), due.
February 24, 2004	Responses to comments, protests, requests for conditions, and other opposition due. Responses to comments of DOJ and DOT due. Rebuttal in support of the primary application and/or either or both of the related filings due.
Week of March 1, 2004	A public hearing/oral argument will be held the week of March 1, 2004 (the precise date and the location will be announced later).
April 9, 2004	Date of service of final decision (if no unanticipated environmental review is required).