

Appendix A

Public Outreach and Agency Coordination Materials

**PUBLIC OUTREACH AND AGENCY COORDINATION
MATERIALS**

STB Finance Docket No. 35087

**CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION—CONTROL—
EJ&E WEST COMPANY**



Environmental Impact Statement

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Surface Transportation Board,
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Under the National Environmental Policy Act of 1969, as amended (NEPA), agencies undertaking Federal actions must consult with other governmental agencies and the public while preparing environmental documents regarding the action. In this case, the Canadian National Railway Company and Grand Trunk Corporation (collectively, CN or the Applicants) are seeking authorization from the Surface Transportation Board (Board) to acquire control of EJ&E West Company, a wholly owned non-carrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). CN's acquisition of the EJ&E rail system is a Federal action.

In response to this Proposed Action, the Board's Section of Environmental Analysis (SEA) implemented an extensive public outreach and agency coordination effort to ensure that potentially affected individuals, agencies, and organizations were well informed about the Proposed Action and its potential environmental effect. Appendix A presents the public outreach and agency coordination materials that SEA developed and used to inform the public and government agencies.

SECTION I

Federal Register Publications

Official project documents were served and published in the Federal Register throughout the environmental review process:

1. Notice of Acceptance of Primary Application and related filings—On November 29, 2007, SEA published the Notice of Acceptance of Primary Application in the Federal Register. This announced that the Board accepted for consideration the Primary Application filed October 30, 2007, for the Proposed Action.
2. Notice of Intent and Draft Scope of Study—On December 21, 2007, SEA published a Notice of Intent (NOI) in the Federal Register announcing the start of the scoping process and the dates and times of public scoping meetings. The Draft Scope of Study was included in this publication for public review.
3. Notice of scoping comment period extension—On January 31, 2008, SEA published a notice in the Federal Register that the public scoping comment period would be extended from February 1, 2008 to February 15, 2008.
4. Addendum to Final Scope of Study—On April 28, 2008, SEA published an addendum to the Final Scope of Study in the Federal Register.
5. Corrected Final Scope of Study—On April 28, 2008, SEA published a corrected Notice of Availability of the Final Scope of Study in the Federal Register with the addendum.

A-I.1 Notice of Acceptance of Primary Application

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35087]

Canadian National Railway Company
and Grand Trunk Corporation—
Control—EJ&E West Company¹AGENCY: Surface Transportation Board,
DOT.ACTION: Decision No. 2 in STB Finance
Docket No. 35087; Notice of Acceptance
of Primary Application and Related
Filings; Issuance of Procedural
Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the primary application filed October 30, 2007, by Canadian National Railway Corporation (CNR) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CNR controls its U.S. rail subsidiaries, and seven related filings. The primary application seeks Board approval under 49 U.S.C. 11321–26 of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E), by CNR and GTC. This proposal is referred to as the Control Transaction, and CNR

and GTC are referred to collectively as applicants.

The related filings are notices of exemption involving an intra-corporate family transaction and the granting of trackage rights. The Sub-No. 1 filing provides for EJ&E to transfer property to EJ&EW, which, at that time, would become a rail common carrier, prior to applicants acquiring control of EJ&EW. The Sub-Nos. 2 through 7 filings provide for grants of trackage rights by EJ&EW to Grand Trunk Western Railroad (GTW), Illinois Central Railroad Company (IC), Chicago, Central & Pacific Railroad Company (CCP), and Wisconsin Central Ltd. (WCL), and by IC and CCP to EJ&EW, promptly upon applicants' acquisition of control of EJ&EW, should the Board approve the proposed Control Transaction.

The Board finds that the Control Transaction is a "minor transaction" under 49 CFR 1180.2(c), and adopts a procedural schedule for consideration of the application. In finding that the transaction is a minor transaction, the Board has preliminarily determined that any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs. 49 CFR 1180.2(b)(2). The Board makes this determination based solely on evidence presented in the application. The Board stresses that this is not a final determination, and its finding may be rebutted by filings and evidence submitted into the record for this proceeding. The Board will give careful consideration to any claims that the transaction will have anticompetitive effects that are not apparent from the application itself.

Moreover, the Board has determined to prepare an Environmental Impact Statement (EIS) with respect to the transaction.

DATES: The effective date of this decision is November 29, 2007. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 13, 2007, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and 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 28, 2008. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the primary application or related filings must be filed by March 13, 2008. If a public

¹ This decision also embraces *Elgin, Joliet and Eastern Railway Company—Corporate Family Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 1); *Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 2); *Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 3); *Illinois Central Railroad Company—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 4); *Wisconsin Central Ltd.—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 5); *EJ&E West Company—Trackage Rights Exemption—Chicago, Central & Pacific Railroad Company*, STB Finance Docket No. 35087 (Sub-No. 6); and *EJ&E West Company—Trackage Rights Exemption—Illinois Central Railroad Company*, STB Finance Docket No. 35087 (Sub-No. 7).

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hearing or oral argument is held, it will be held on a date to be determined by the Board. Under 49 U.S.C. 11325(d)(2), a final decision would be issued by April 25, 2008; however, the Board is also required to accommodate in its decisionmaking the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* Thus, the Board will not issue a final decision on the merits of the application until the environmental review is completed, including preparation of an EIS and a substantial opportunity for public comment and participation. For further information respecting dates, see Appendix A (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at <http://www.stb.dot.gov> at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Paul A. Cunningham (representing CNR and GTC), Harkins Cunningham LLP, 1700 K Street, NW., Suite 400, Washington, DC 20006-3804; and (4) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after December 13, 2007, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 245-0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: CNR is one of Canada's two major railroads, extending from Halifax, Nova Scotia, on the Atlantic to Vancouver and Prince Rupert, British Columbia, on the Pacific. Through its GTC subsidiary, CNR controls the following rail carriers: GTW, IC, CCP, WCL, Duluth, Winnipeg and Pacific Railway Company (DWP), St. Clair Tunnel Company (SCTC), Cedar River Railroad Company (CRRC),

Waterloo Railway Company (Waterloo), Sault Ste. Marie Bridge Company (SSMB), Wisconsin Chicago Link Ltd. (WCLL), 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). DWP extends the applicants' system from the international border at Duluth Junction/Ranier over DWP's own lines to Nopeming Junction, MN. GTW also extends applicants' system to Chicago from the international border at Port Huron/Sarnia and Detroit/Windsor. In 1999, applicants acquired IC, thus extending applicants' system from Chicago to the Gulf Coast, and becoming part of a North American Free Trade Agreement (NAFTA) rail network offering shippers access to Kansas City Southern de México, S.A. de C.V. (KCSM), Mexico's largest rail system. In 2001, applicants acquired WCL and its affiliates, and in 2004 applicants acquired the Great Lakes Transportation LLC (GLT) carriers including DMIR, thus providing applicants with a connection between Chicago and applicants' lines west of the Great Lakes. In the GLT transaction, applicants also acquired B&LE and P&C Dock, which, together with applicants' ownership of DMIR and Great Lakes Fleet, LLC (a water carrier operating on the Great Lakes), provides applicants a continuous supply chain for iron ore moving from the Missabe Iron Range of Minnesota to the Union Railroad Company, which serves the Edgar Thompson Steel Works of United States Steel Corporation (USS) in Braddock, PA.

EJ&EW is an Illinois corporation formed on August 16, 2007, and is a wholly owned noncarrier subsidiary of EJ&E. EJ&E is a Class II railroad that currently operates over 198 miles of track in Northeastern Illinois and Northwestern Indiana, consisting primarily of an arc around Chicago, IL, extending from Waukegan, IL, southwards to Joliet, IL, then eastward to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics, and chemical producers, steel processors, distribution centers, and scrap processors. EJ&E is a wholly owned indirect subsidiary of USS, a noncarrier. USS owns all of the issued and outstanding stock of Transtar, Inc. (Transtar), a noncarrier holding company, which owns all of the issued and outstanding stock of seven

common carrier railroads, including EJ&E.²

Before applicants acquire control of EJ&EW, EJ&E plans to transfer all of its land, rail, and related assets located west of the centerline of Buchanan Street in Gary (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street) to EJ&EW, which at that time would become a rail common carrier. As noted above, this transaction is the subject of the Sub-No. 1 related filing. EJ&E would retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). It is expected that, if the Control Transaction is approved and applicants acquire control of EJ&EW, EJ&E would change its name to Gary Railway Company, and EJ&EW would assume the Elgin, Joliet & Eastern Railway Company name.

In order to permit trains of its operating subsidiaries—GTW, IC, CCP, and WCL—to operate over EJ&EW's line and provide for maximum operational flexibility, applicants intend to cause EJ&EW to grant trackage rights to those subsidiaries over the entire length of EJ&EW from Waukegan to Gary. Applicants also intend to grant EJ&EW trackage rights over selected portions of its CCP and IC subsidiaries. These proposed trackage rights are the subjects of notices of exemption in the related filings Sub-Nos. 2 through 7, providing for grants of trackage rights by EJ&EW to GTW, IC, CCP, and WCL and by IC and CCP to EJ&EW.

GTC and EJ&E have entered into a Stock Purchase Agreement (Agreement), dated as of September 25, 2007. The Agreement provides that, subject to Board authorization of the Control Transaction, and other conditions, GTC will purchase from EJ&E all of the issued and outstanding common stock of EJ&EW for an overall purchase price of \$300 million, subject to adjustments as provided for in the Agreement.

Applicants state three primary purposes for pursuing the Control Transaction. First, they believe the Control Transaction would improve their operations in and beyond the Chicago area by providing CNR with a continuous rail route around Chicago, under applicants' ownership, that would connect the five CNR lines that presently radiate from Chicago. Second, acquiring EJ&E's rail assets would make

²In 2001, Transtar spun off its interest in B&LE, DMIR, P&C Dock, and a water carrier, Great Lakes Fleet, to GLT, which became a holding company controlled by the Blackstone Group. In 2004, in a transaction unrelated to USS, applicants acquired the GLT subsidiaries.

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available to applicants EJ&E's Kirk Yard—an automated classification facility in Gary—as well as smaller facilities in Joliet and Whiting, IN, thus enabling applicants to consolidate car classification work at Kirk and East Joliet Yards and to reduce use of the Belt Railway Company of Chicago's (BRC) Clearing Yard. Lastly, applicants state that their system would benefit from the fact that EJ&E provides an important supply line for North American steel, chemical, and petrochemical industries, as well as for Chicago area utilities and others, which would allow applicants to develop closer and more extensive relationships with companies in and serving those industries.

Financial Arrangements. No new securities have been or would be issued in connection with applicants' acquisition of control of EJ&EW. Under the Agreement, the purchase price would be paid in cash on the closing date. Applicants anticipate that they would finance the Control Transaction with debt and cash on hand.

Passenger Service Impacts. Applicants state that the Control Transaction would not affect passenger rail service operating on CNR rail lines today; rather, applicants anticipate reduced freight train traffic on CNR lines inside the EJ&E arc, which would benefit passenger operations over those lines. Once applicants cease operations on the St. Charles Air Line Route, applicants state that the National Railroad Passenger Corporation (Amtrak) would be the only remaining regular user of that route. Before the line can be formally abandoned, Amtrak trains would need to be re-routed to Norfolk Southern Railway Company's line, as has been planned in connection with the Chicago Region Environmental and Transportation Efficiency (CREATE) Project. Applicants state that EJ&E lines are not used for intercity or commuter passenger rail service, though EJ&E does cross, at grade, several corridors of the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois (Metra). Applicants state that they would work with Metra and the host freight operators to coordinate operations and adjust operating windows so that the needs of all users can be met. Applicants also note that they are aware that Metra is studying the feasibility of using a portion of the EJ&E corridor for future light-rail commuter service. Applicants state that they would explore options to further Metra's goal of extended commuter train service while accommodating applicants' need to move its freight

traffic more efficiently through and around Chicago.

Market Analysis. The primary application included market analyses that contend that there would be no reduction in direct rail competition between CNR and EJ&E as a result of this acquisition. Applicants analyzed stations and interchange points served by both CNR and EJ&E and concluded that there are no cases of 2 to 1 or 3 to 2 reductions in shipper rail options. In addition, applicants submitted a detailed geographic market study of origin and destination markets showing that the acquisition would not increase market concentration.

Discontinuances/Abandonments. Applicants state that they do not anticipate any transaction-related line abandonments. Although applicants intend to re-route all their trains currently operating over the St. Charles Air Line, a formal abandonment of that line would require coordination with BNSF Railway Company (BNSF) and Union Pacific Railroad Company, which own the line jointly with applicants, and with existing users such as Amtrak.

Public Interest Considerations. Applicants state that the Control Transaction would promote the public interest in a more efficient and reliable rail transportation system, and would have no adverse competitive, safety, or other effects. Applicants assert that the Control Transaction would have no anticompetitive effects in that it would connect two transportation systems that do not compete but instead complement each other and would together create a stronger network. Applicants assert that there would be no 2-to-1 shippers, nor 3-to-2 shippers, on the CNR/EJ&EW system. Moreover, applicants state that the Control Transaction would bring about no vertical foreclosure, no reduction in effective geographic competition, and no increase in market power. Applicants state that, as in past transactions, they are committed to keeping gateways open and honoring trackage rights and haulage agreements with all connecting carriers.

Applicants assert that, even if the Control Transaction had any adverse impacts on competition, those effects would be outweighed by its transportation benefits. The Control Transaction, applicants assert, would ensure more efficient and reliable rail transportation at a lower cost and would, over time, reduce rail traffic congestion, increase rail capacity for carriers operating in Chicago, and reduce traffic density in Chicago's urban core. Applicants state that the Control Transaction would provide CNR with a continuous route around Chicago,

which would make it possible for CNR traffic to bypass the congested Chicago terminal. Applicants maintain that this rerouting would benefit CNR-served customers in the Chicago area and customers served by other Class I railroads by reducing the demand on the capacity of BRC, Indiana Harbor Belt Railroad (IHB), and other CNR lines through the central Chicago terminal area. Further, applicants note, the availability of a continuous CNR route around Chicago would greatly improve the fluidity of intermodal and other CNR traffic that must move to, from, or through Chicago. Also, the availability of a continuous CNR route around Chicago would advance the congestion-reducing objectives of the CREATE Project and make it possible for applicants to more quickly cease operations over the St. Charles Air Line. The Control Transaction, applicants state, would also eliminate interchanges between EJ&E and CNR, making possible single-line service for approximately 10,000 carloads that the two railroads now carry in interline service each year. Applicants also note that the public would benefit from applicants' plans to spend approximately \$100 million to upgrade EJ&E's infrastructure.

Time Schedule for Consummation. Applicants intend to consummate control of EJ&EW as soon as possible after the effective date of the final order, should the Board authorize the proposed Control Transaction. Applicants expect to have fully implemented the Control Transaction within three years after consummation of their acquisition of control over EJ&EW.

Environmental Impacts. Applicants concede that environmental review under NEPA is necessary in this case. As discussed below, the increased traffic that would result from this transaction would substantially exceed the Board's thresholds for environmental review. Due to the potentially significant impact that this transaction may have on the environment and communities in the affected area, the Board will prepare a full EIS. Applicants also have agreed to prepare a Safety Integration Plan (SIP), pursuant to the Board's regulations at 49 CFR 1106, which will be addressed in the EIS. In the SIP, applicants will specify how they would ensure safe operations during the acquisition and implementation process. Applicants state that the transaction would have no adverse impact on historic properties, as there are no line abandonments and no elimination of duplicative rail facilities involved in the proposed transaction,

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and that, therefore, there is no need for historic review under the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470. Based on the available information, it does not appear that historic review is required in this case.

Labor Impacts. Applicants anticipate two principal labor impacts as a result of the Control Transaction: The elimination of redundant positions and the organization/integration of forces to realize the efficiencies of the transaction. Applicants estimate that the Control Transaction would result in the elimination of 114 positions. Applicants anticipate that, to the extent the transaction leads to the elimination of positions, most of these impacts could be accommodated through normal attrition during the implementation period. Applicants' continuing need for experienced, skilled railroaders at its neighboring Chicago operations makes it highly likely that most of the affected employees would have the opportunity to fill other positions opening up elsewhere in applicants' Chicago operation. Applicants state they would work with the respective collective bargaining units to attempt to secure labor implementing agreements that would provide for the flexibility to fully employ any potentially adversely impacted employee. Applicants further acknowledge that the Control Transaction would be subject to employee protective conditions and other procedures adopted in *New York Dock Ry.—Control—Brooklyn Eastern District Terminal*, 360 I.C.C. 60, *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979) (*New York Dock*).

Related Filings. In connection with this transaction, several notices of exemption were filed under 49 CFR 1180.2(d)(3) and 1180.2(d)(7).

Sub-No. 1. In Sub-No. 1, EJ&E filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. Under this notice of exemption, EJ&E will transfer all its land, rail, and related assets located west of the centerline of Buchanan Street in Gary, IN (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street), to EJ&EW, which upon completion of the transfers would become a rail carrier. EJ&E will retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). EJ&E intends to consummate the transaction with EJ&EW immediately before CNR and GTC acquire control of EJ&EW, which

would not occur until after approval of the Control Transaction by the Board. The purpose of the transaction is that it would allow EJ&E to segregate into a separate corporate entity (EJ&EW) the rail properties to be acquired by GTC, thus facilitating the transaction described in the primary application. According to EJ&E, this is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). As a condition to use of this exemption, EJ&E states that any employees adversely affected by the transaction will be protected by the conditions set forth in *New York Dock*.

Sub-No. 2. In Sub-No. 2, CCP submits a verified notice of exemption under 49 CFR 1180.2(d)(7). Pursuant to a written trackage rights agreement, EJ&EW would grant CCP trackage rights over all of EJ&EW's line, which runs between milepost 74.6 at Waukegan, IL, and milepost 45.4 at Gary, IN, including all trackage west of the centerline of Buchanan Street in Gary, IN, plus trackage associated with the hump and Dixie leads located east of Buchanan Street, a distance approximately 120 miles. Parties intend to execute the trackage rights agreement promptly upon applicants' acquisition of control of EJ&EW, should the Board approve the proposed Control Transaction. As a condition to this exemption, CCP states that any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *as modified in Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Sub-No. 3. In Sub-No. 3, GTW submits a verified notice of exemption under 49 CFR 1180.2(d)(7). Pursuant to a written trackage rights agreement, EJ&EW would grant GTW trackage rights over EJ&EW's lines between milepost 74.6 at Waukegan, IL, and milepost 45.4 at Gary, IN, including all trackage west of the centerline of Buchanan Street in Gary, IN, plus trackage associated with the hump and Dixie leads located east of Buchanan Street.³ Parties intend to execute the trackage rights agreement promptly upon applicants' acquisition of control of EJ&EW, should the Board approve the proposed Control Transaction. As a condition to this exemption, GTW states that any employees affected by the acquisition of the temporary trackage rights will be

³ GTW currently has trackage rights over EJ&E lines between milepost 36.2 at Griffith, IN, and milepost 24.0 at Eola, IL, which EJ&EW would acquire under Sub-No. 1.

protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *as modified in Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Sub-No. 4. In Sub-No. 4, IC submits a verified notice of exemption under 49 CFR 1180.2(d)(7). Pursuant to a written trackage rights agreement, EJ&EW would grant IC trackage rights over EJ&EW's lines between milepost 74.6 at Waukegan, IL, and milepost 45.4 at Gary, IN, including all trackage west of the centerline of Buchanan Street in Gary, IN, plus trackage associated with the hump and Dixie leads located east of Buchanan Street. Parties intend to execute the trackage rights agreement promptly upon applicants' acquisition of control of EJ&EW, should the Board approve the proposed Control Transaction. As a condition to this exemption, IC states that any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *as modified in Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Sub-No. 5. In Sub-No. 5, WCL submits a verified notice of exemption under 49 CFR 1180.2(d)(7). Pursuant to a written trackage rights agreement, EJ&EW would grant WCL trackage rights over EJ&EW's lines between milepost 74.6 at Waukegan, IL, and milepost 45.4 at Gary, IN, including all trackage west of the centerline of Buchanan Street in Gary, IN, plus trackage associated with the hump and Dixie leads located east of Buchanan Street. Parties intend to execute the trackage rights agreement promptly upon applicants' acquisition of control of EJ&EW, should the Board approve the proposed Control Transaction. As a condition to this exemption, WCL states that any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *as modified in Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Sub-No. 6. In Sub-No. 6, CNR submits a verified notice of exemption under 49 CFR 1180.2(d)(7). Pursuant to a written trackage rights agreement, CCP would grant EJ&EW trackage rights over CCP's lines between milepost 35.7 at Munger, IL, and milepost 8.3 at Belt Crossing, IL. Parties intend to execute the trackage rights agreement promptly upon applicants' acquisition of control of EJ&EW, should the Board approve the

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proposed Control Transaction. As a condition to this exemption, CNR states that any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Sub-No. 7. In Sub-No. 7, CNR submits a verified notice of exemption under 49 CFR 1180.2(d)(7). Pursuant to a written trackage rights agreement, IC would grant EJ&EW trackage rights over IC's lines between milepost 17.9 at Highlawn, IL, and milepost 31.4 at University Park, IL, and between milepost 36.7 at Joliet, IL, and milepost 7.9 at Lemoine, IL. Parties intend to execute the trackage rights agreement promptly upon applicants' acquisition of control of EJ&EW, should the Board approve the proposed Control Transaction. As a condition to this exemption, CNR states that any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Primary Application and Related Filings Accepted. The Board finds that the proposed Control Transaction would be a "minor transaction" under 49 CFR 1180.2(c), and the Board accepts 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 seven related filings, which are also in compliance with the applicable regulations. The Board reserves the right to require the filing of supplemental information as necessary to complete the record.

The Board has received comments in support of the Control Transaction, as well as comments both opposing and supporting the "minor transaction" designation.⁴ On November 8, 2007,

⁴ Several parties have provided statements in support of the transaction. On November 9, 2007, applicants submitted the verified statements of Consumers Energy Company, Erco Worldwide, and Millar Western Forest Products Ltd, in support of the proposed Control Transaction. On November 19, 2007, applicants submitted verified statements in support of the Control Transaction from A&R Transport, Inc., Behr Iron & Steel, Inc., Consolidated Grain and Barge Enterprises, Inc., Hapag-Lloyd (America) Inc., Louisiana Pacific Corporation, Major-Prime Plastics, Inc., Ozinga Transportation, Inc., Parkdale International Ltd., and Verso Paper. Also on November 19, 2007,

Congressman Peter J. Visclosky submitted a comment with his notice of intent to participate in the proceeding, stating his belief that the Board should treat the Control Transaction as a significant transaction, in order to give those affected in Northwestern Indiana ample opportunity to analyze the impacts of the proposed purchase and comment accordingly. On November 21, 2007, Congresswoman Melissa L. Bean also submitted a comment with her notice of intent to participate urging the Board to treat the Control Transaction as a significant transaction. In addition, Congresswoman Bean requested that an EIS be prepared in connection with the proposed transaction and supported a local field hearing where the concerns of affected citizens and communities could be heard.

On November 19, 2007, Aux Sable Liquid Products, Inc. (Aux Sable) filed a reply in opposition to applicants' request that the Control Transaction be considered a minor transaction. Aux Sable argues that the Control Transaction should be found to be a significant transaction because the proposed transaction would eliminate EJ&E as a neutral switching carrier that provides efficient, economical, and nondiscriminatory access to numerous Class I railroads and short lines.

On November 21, 2007, applicants filed a reply in opposition to the arguments offered by Congressman Visclosky and Aux Sable to the effect that the proposed transaction should be deemed significant. Applicants assert that these parties' arguments present no justification for finding the proposed transaction to be anything other than minor.

The statute and Board regulations treat a transaction that does not involve two or more Class I railroads differently depending upon whether or not the transaction would have "regional or national transportation significance," 49 U.S.C. 11325. Under our regulations, at 49 CFR 1180.2, a transaction that does not involve two or more Class I railroads

is to be classified as "minor"—and thus not having regional or national transportation significance—if a determination can be made either: (1) That the transaction clearly will not have any anticompetitive effects, or (2) that any anticompetitive effects will clearly be outweighed by the anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is "significant" if neither of these determinations can clearly be made.

The Board finds the proposed Control Transaction to be a "minor transaction" because it appears on the face of the application that the efficiency and other public interest benefits would clearly outweigh whatever anticompetitive effects may exist. Today much of CNR's traffic moving between its various components must travel through downtown Chicago. With this acquisition, applicants propose to reroute most of their traffic around Chicago, relieving congestion on crowded downtown track. According to applicants' operating plan, the EJ&E is currently lightly used. Applicants indicate that they could increase use of EJ&E's line by adding more CNR traffic while maintaining existing levels of other traffic. Further, the transaction does not appear to pose any significant anticompetitive effects. There is virtually no overlap; EJ&E and the applicants' rail lines do not appear to serve any shippers in common. Applicants also state their commitment to keeping gateways open and honoring trackage rights and haulage agreements with all connecting carriers so that other railroads would be able to continue to use their trackage rights on the EJ&E after completion of the Control Transaction.

The Board reiterates, however, that its findings regarding the anticompetitive impact are preliminary. The Board will give careful consideration to any claims that the transaction will have anticompetitive effects that are not apparent from the application itself. Moreover, the schedule established by the Board gives Aux Sable the opportunity to present its evidence on the issue of nondiscriminatory access and for the Board to consider the issue. In response to Congressman Visclosky's comment, the Board notes that the proposed schedule is contingent upon completion of a full environmental review process. As discussed, the Board has decided to prepare a full EIS in this proceeding that will ensure that the Board takes the hard look at environmental consequences required

Metropolitan Milwaukee Association of Commerce (MMAC) submitted a verified statement in support of the Control Transaction. On November 20, 2007, applicants submitted the verified statement of ATC Pembroke, Inc., in support of the proposed transaction. In a letter filed on November 21, 2007, the Chicagoland Chamber of Commerce (Chicagoland Chamber) expressed its support of the Control Transaction. Also on November 21, 2007, the Fond du lac Area Chamber of Commerce submitted a verified statement supporting the transaction and applicants submitted a letter from Michigan Governor Jennifer M. Granholm supporting the transaction. Governor Granholm, A&R Transport, Inc., MMAC, Chicagoland Chamber, and the Fond du lac Area Chamber of Commerce urge the Board to treat the proposed transaction as a minor transaction.

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by NEPA, which is warranted in view of the large projected traffic increases on certain line segments, and the potential impacts of the proposed transaction on a number of communities that would likely result from the increased activity levels on rail line segments and at rail facilities. As part of the NEPA process, the Board will consider whether to impose specific environmental conditions, should it decide to authorize this proposal, to mitigate potential environmental impacts resulting from the proposed transaction.

Although the Board finds that the application is in substantial compliance with the applicable regulations, applicants have not submitted the information required under 49 CFR 1180.11. Applicants should submit this information to the Board by December 6, 2007.

Public Inspection. The primary application and related filings are available for inspection in the library (Room 131) at the offices of the Surface Transportation Board, 395 E Street, SW., in Washington, DC. In addition, the primary application and related filings may be obtained from Mr. Cunningham (representing CNR and GTC) at the address indicated above.

Procedural Schedule. The Board has considered applicants' request (filed October 30, 2007) for an expedited procedural schedule, under which the Board would issue its final decision before the statutory deadline of 180 days after the filing of the primary application.

On November 19, 2007, the Village of Barrington, IL (Barrington) filed a reply, urging the Board to develop an EIS and adopt a schedule that allows sufficient time to prepare an EIS, including sufficient time for preparation of a scoping notice, a Draft EIS, and Final EIS. On November 21, 2007, applicants responded, contending that the Board lacks sufficient information to decide now whether an EIS is needed in this case.

On November 20, 2007, BNSF submitted comments on applicants' suggested expedited procedural schedule, requesting that the Board set a procedural schedule that provides for sufficient time for consideration of the potential impacts of the proposed transaction and for negotiations with applicants to ensure that the interests of connecting railroads and their shippers are protected. On November 21, 2007, applicants responded, arguing that BNSF's concerns do not warrant lengthening the procedural schedule proposed by the applicants.

The Board denies applicants' request for an expedited procedural schedule

and is adopting a procedural schedule, under which the Board would issue its final decision by April 25, 2008, provided that the environmental review process described below is complete. The Board's schedule also provides that any necessary oral argument or public hearing will be held on a date to be determined by the Board.

Under the procedural schedule adopted by the Board: any person who wishes to participate in this proceeding as a POR must file a notice of intent to participate no later than December 13, 2007; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or related filings, including filings by DOJ and DOT, must be filed by January 28, 2008; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the primary application or related filings must be filed by March 13, 2008. As in past proceedings, DOJ and DOT will be allowed to file, on the response due date (here, March 13), their comments in response to the comments of other parties, and applicants will be allowed to file (as quickly as possible thereafter) a response to any such comments filed by DOJ and/or DOT. Under this schedule, a public hearing or oral argument may be held on a date to be determined by the Board. The Board plans to issue its final decision by April 25, 2008, and make any such approval effective by May 25, 2008, but those dates may be extended as required to accommodate completion of the environmental review process under NEPA, including preparation of an EIS and a full opportunity for public comment and participation. For further information respecting dates, see Appendix A (Procedural Schedule).

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 13, 2007, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, and Mr. Cunningham (representing CNR and GTC).

If a request is made in the notice of intent to participate to have more than one name added to the service list as a POR representing a particular entity, the extra name will be added to the service list as a "Non-Party." The list will reflect the Board's policy of allowing only one official representative per party to be placed on the service list, as specified in Press Release No. 97-68 dated August 18, 1997, announcing the

implementation of the Board's "One Party-One Representative" policy for service lists. Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings. Persons seeking to change their status must accompany that request with a written certification that he or she has complied with the service requirements set forth at 49 CFR 1180.4, and any other requirements set forth in this decision.

Service List Notice. The Board will serve, as soon after December 13, 2007, 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, a certificate of service 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 need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a POR.

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 or related filings, including filings by DOJ and DOT, must be filed by January 28, 2008.

Because the Transaction proposed in the application is 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 application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval without 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

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Opposition; Rebuttal in Support of the Primary Application or Related Filings. Responses to comments, protests, requests for conditions, and other opposition submissions, and rebuttal in support of the primary application or related filings must be filed by March 13, 2008.

Public Hearing/Oral Argument. The Board may hold a public hearing or an oral argument in this proceeding on a date to be determined by the Board.

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

Environmental Matters. NEPA requires that the Board take environmental considerations into account in its decisionmaking. Under both the regulations of the President's Council on Environmental Quality implementing NEPA and the Board's own environmental rules, 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 EIS.⁵ Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA).⁶ Finally, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review. As pertinent here, an acquisition transaction normally requires the preparation of an EA or EIS where certain thresholds would be exceeded.

The thresholds differ depending on whether a rail line segment is in an area designated as in "attainment" or "nonattainment" with the National Ambient Air Quality Standards established under the Clean Air Act. Because the EJ&E lines that currently move through Chicago, and the lines of the proposed EJ&EW, are located in nonattainment areas, environmental documentation typically is required where the proposed action would result in: (1) An increase of at least 3 trains per day, (2) an increase in rail traffic of at least 50 percent (measured in annual gross ton miles), or (3) an increase in carload activity at rail yards of at least 20 percent. See 49 CFR 1105.7(e)(5)(ii).⁷

⁵ See 49 CFR 1105.4(f), 1105.10(a).

⁶ See 49 CFR 1105.4(d), 1105.10(b).

⁷ For rail lines located in attainment areas, environmental documentation normally will be prepared if the proposed action would result in (1) an increase of at least 8 trains per day, (2) an increase in rail traffic of at least 100 percent (measured in annual gross ton miles), or (3) an

The application indicates that the thresholds for environmental review would be exceeded here, and applicants agree that the preparation of either an EA or EIS is warranted in this proceeding.⁸

Applicants explain that the most notable change that would result from the proposed transaction is the shifting of rail traffic. Although rail traffic on CNR lines inside the EJ&E arc would generally decrease, these decreases in rail traffic would be offset by substantial increases in the number of trains operated on the EJ&EW line outside Chicago. Following the full implementation of the proposed transaction (which would be phased in), the EJ&EW line outside Chicago would gain approximately 9,695 carloads of extended haul traffic within approximately 3 years of consummation.⁹ Applicants state that they would also use the EJ&EW line as a cross-connecting corridor. Accordingly, applicants anticipate that 14 of the existing 18 segments of the EJ&EW line would experience increases of between 15.0 and 26.6 trains per day.¹⁰ These increases in trains per day would significantly exceed the 3 or 8 trains per day thresholds in the Board's environmental rules.

Applicants also project large increases in annual gross ton miles per day (gtm/d) on most of the affected line segments, which would exceed the Board's tonnage increase thresholds. For example, applicants' Operating Plan shows that on the Mungler to West Chicago line segment gtm/pd would change by as much as 1,185 percent.¹¹ Applicants state that the proposed transaction would not impair CNR's ability to handle commuter trains, passenger trains, or trackage/haulage trains currently operating on its lines.

Finally, on the integrated CNR/EJ&EW system, four train pairs would be added to EJ&E terminals (three inbound and three outbound switch trains at Kirk Yard, and one inbound and one outbound switch train at East Joliet Yard). The estimated proposed increase of 1,355 car handlings daily at the Kirk Yard (currently 665 car handlings) and the estimated addition of 709 daily car handlings at East Joliet (currently 500 car handlings) would exceed the Board's

increase in carload activity at rail yards of at least 100 percent. See 49 CFR 1105.7(e)(5)(i).

⁸ See Application at p. 33.

⁹ See Application at p. 192. Applicants state that there would be no quantifiable traffic gains from trucks or from rail traffic not presently handled in part by the applicants. See Application at p. 209.

¹⁰ See Applicants' Operating Plan, Attachment A.2, p. 247.

¹¹ *Id.*

thresholds for increased car load activity at rail yards.

The NEPA Process. Based on the information provided in the application and on a number of expressions of concern for the possible impact of the proposed transaction on potentially affected communities, and after consultation with the Section of Environmental Analysis (SEA), the Board has decided that it will prepare a full EIS in this proceeding. Although this proposed transaction is deemed to be minor and is thus entitled to an abbreviated review process on the merits, the schedule will not limit the environmental review process. The Board's proposed final decision date of April 25, 2008, and effective date of May 25, 2008, will be extended as needed to complete the full environmental review process, including preparation of the EIS and public comment as discussed below.

Under NEPA, an EIS is prepared for "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C). An EIS normally is not required in acquisition cases; a more limited EA generally is sufficient because there are not usually significant environmental impacts from the change in ownership of the operation of existing lines. 49 CFR 1105.6(b)(4). In this case, however, a full EIS is warranted in view of the large projected traffic increases on certain line segments, and the potential impacts of the proposed transaction on a number of communities that would likely result from the increased activity levels on rail line segments and at rail facilities.¹²

The EIS process will ensure that the Board takes the hard look at environmental consequences required by NEPA. After issuing a notice of intent to prepare an EIS, the Board will determine the scope of work for the EIS and will provide opportunities for public participation and consultation with appropriate federal, state, and local agencies and governmental entities. A Draft EIS will be prepared that will analyze in detail the potential environmental impacts of the proposed transaction and will make recommendations for environmental

¹² Contrary to applicants' claims, the Board has enough information about the potential environmental impacts of this project to support the decision to prepare a full EIS. Moreover, making this determination at this point should result in a shorter NEPA review than if the Board began the EA process, only to find that the potential environmental impacts warranted an EIS, and it then had to begin again with the procedural steps required for an EIS.

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mitigation.¹³ The public will have at least 45 days to comment on the Draft EIS. A Final EIS will then be issued that will respond to the public comments, present the results of any further environmental analysis, and incorporate final environmental mitigation recommendations.¹⁴ The Board will consider the entire environmental record in deciding whether to authorize the transaction as proposed, deny the proposal, or grant it with conditions, including environmental mitigation conditions.

The time the EIS will take to prepare cannot be determined ahead of time because there is no way to predict in advance all of the specific issues that may arise. In prior cases, the EIS process has ranged from approximately 18 months to several years.¹⁵

Safety Integration Plan. Applicants state that they will work with the Federal Railroad Administration (FRA) to formulate a SIP¹⁶ to address the safe integration of their rail lines, equipment, personnel, and operating practices. The proposed SIP will be submitted to the Board and made available for public review and comment during the EIS process, consistent with the Board's regulations at 49 CFR 1106 and 1180.1(f)(3).

Historic Review. Finally, in accordance with Section 106 of the NHPA the Board is required to determine the effects of its licensing actions on cultural resources.¹⁷ The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.¹⁸ Applicants state that the

proposed transaction fits within this exception.¹⁹ They assert that they have no plans to alter or dispose of properties 50 or more years old, and that any future line abandonment or construction activities by applicants would be subject to the Board's jurisdiction. Based on this information, it does not appear that historic review under the NHPA is required in this case.

Filing/Service Requirements. Persons participating in this proceeding may file with the Board and serve on other parties: A notice of intent to participate (due by December 13); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service-list notice (due by the 10th day after the service date of the service-list notice); any comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or related filings (due by January 28); and any responses to comments, etc., and any rebuttal in support of the primary application or related filings (due by March 13).

Filing Requirements. Any document filed in this proceeding must be filed either via the Board's e-filing format or in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at <http://www.stb.dot.gov> at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Secretary of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) Paul A. Cunningham (representing CNR and GTC), Harkins Cunningham LLP, 1700 K Street, NW., Suite 400, Washington, DC 20006-3804; and (4) any other person designated as a POR on the service-list notice.

Service of Decisions, Orders, and Notices. 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, GOV, or Non-Party. All other interested persons are encouraged either to secure copies of decisions, orders, and notices via the Board's Web site at <http://www.stb.dot.gov> under "E-LIBRARY/Decisions & Notices" or to make advance arrangements with the Board's copy contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapdc@verizon.net; telephone number: 202-306-4004), to receive copies of 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.

Access to Filings. 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. Under the Board's rules, 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 Web site at <http://www.stb.dot.gov> under "E-LIBRARY/Filings."

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. 35087 and the related filings in STB Finance Docket No. 35087 (Sub-Nos. 1 through 7) 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.
4. This decision is effective on November 29, 2007.

Decided: November 23, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey. Commissioner Mulvey dissented with a separate expression.
Vernon A. Williams,
Secretary.

COMMISSIONER MULVEY, dissenting:

I would have preferred that the Board categorize this transaction as "significant." In light of the configuration of Class I railroad lines, traffic flows, critical junctures the E&E offers in the Chicago area, and the

¹³ During the environmental review process, railroad applicants have sometimes negotiated mutually acceptable agreements with affected communities and other entities, addressing specific local environmental concerns. The Board encourages voluntary agreements of this nature because they can be extremely effective in addressing specific local environmental and safety concerns. See 49 CFR 1180.1(f)(2).

¹⁴ The environmental analysis will focus on the potential environmental impacts resulting from changes in activity levels on particular line segments and facilities. The Board's general practice has been to mitigate only impacts resulting directly from a proposed transaction, and not to require mitigation for existing conditions and existing railroad operations. See 49 CFR 1180.1(f)(1).

¹⁵ Sometimes, environmental work has been suspended for reasons unrelated to the environmental review process.

¹⁶ See 49 CFR 244.17(a) and 1106.4(a).

¹⁷ See 49 CFR 1105.8.

¹⁸ See 49 CFR 1105.8(b)(1).

¹⁹ See Application at p. 33.

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applicants' less than thorough treatment of how their consolidation would impact other carriers, I do not believe applicants have satisfied the standards necessary for the Board to categorize this transaction as "minor." I recognize that the substantive standard for Board approval of "significant" and "minor" transactions is the same under 49 U.S.C. 11324(d). However, a "significant" categorization would have allowed interested parties and the Board to take

advantage of the additional procedural safeguards provided by 49 U.S.C. 11325(c).

I have long been concerned about why the agency's categorization of consolidation transactions includes virtually no "significant" transactions, and only one since the early 1990's. The current standards for determining whether a consolidation transaction is "significant" or "minor" were adopted at a time when many more Class I

carriers existed than do today, when the railroad industry was in a different financial posture than it is in today, and when the agency was viewed as an impediment to economic recovery of the industry. That is no longer the environment in which we consider the merits of transactions such as this. As a result, I would have preferred we handle this transaction²⁰ as a "significant" one.²¹

APPENDIX A: PROCEDURAL SCHEDULE

October 3, 2007	Motion for Protective Order filed.
October 22, 2007	Protective Order issued.
October 30, 2007	Primary Application, Related Filings, and Motion to Establish Procedural Schedule filed.
November 29, 2007	Board notice of acceptance of application published in the Federal Register .
December 13, 2007	Notices of intent to participate in this proceeding due.
January 28, 2008	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or related filings, including filings of DOJ and DOT, due.
March 13, 2008	Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the primary application or related filings due.
TBD	A public hearing or oral argument may be held.
TBD ²⁰	Date by which a final decision will be served.
TBD ²¹	Date by which a final decision will become effective.

[FR Doc. E7-23151 Filed 11-28-07; 8:45 am]
BILLING CODE 4915-01-P

A-I.2 Notice of Intent and Draft Scope of Study

38646
SEA

SERVICE DATE – DECEMBER 21, 2007

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION –
CONTROL – EJ&E WEST COMPANY

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS); Notice of Initiation of the Scoping Process, including Notice of Availability of Draft Scope of Study for Environmental Impact Statement; Request for Comments on Draft Scope; and Notice of Open-House Meetings.

SUMMARY: On October 30, 2007, Canadian National Railway Corporation (CNR) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CNR controls its U.S. rail subsidiaries, filed an application with the Surface Transportation Board (Board) seeking the Board's approval of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). In this document, the action before the Board will be referred to as the proposal or the proposed acquisition and CNR and GTC will be referred to collectively as CN or as Applicants.

CN is one of Canada's two major railroads. It extends from Halifax, Nova Scotia, to Vancouver and Prince Rupert, British Columbia. EJ&E is a Class II railroad that currently operates over 198 miles of track in northeastern Illinois and northwestern Indiana, consisting primarily of an arc of roughly 190 miles around Chicago, IL, extending from Waukegan, IL, southwards to Joliet, IL, then eastward to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics and chemical producers, steel processors, distribution centers, and scrap processors.

Applicants' proposed acquisition of the EJ&E would shift rail traffic currently moving over CN's rail lines inside the EJ&E arc in Chicago to the EJ&E, which traverses the suburbs generally to the west and south of Chicago. Rail traffic on CNR lines inside the EJ&E arc would generally decrease. The decreases in rail traffic would be offset by increases in the number of trains operating on the EJ&E rail line outside of Chicago (approximately 15-27 more trains would operate on various segments of the EJ&E). Applicants also proposed to construct six new rail connections and approximately 19 miles of new sidings/double tracking. Applicants give three primary reasons for seeking approval of the proposed acquisition: improved rail operations in the Chicago area; availability to EJ&E's Kirk Yard in Gary, Indiana, and other smaller facilities in Joliet, Illinois, and Whiting, Indiana; and improved service to companies dealing in steel, chemicals, and petrochemicals, as well as Chicago area utilities.

A-1.2 Notice of Intent and Draft Scope of Study

To thoroughly assess the potential environmental impacts that may result from the proposed acquisition, the Board, through its Section of Environmental Analysis (SEA), will prepare an Environmental Impact Statement (EIS). The purpose of this Notice is to give all interested persons the opportunity to actively participate in the forthcoming environmental review, the first step of which is “scoping.” Scoping is an open process for determining the range of issues that should be examined and assessed in the EIS. In addition to announcing that the Board will prepare an EIS for this proceeding, this Notice also announces the availability of a draft scope of study, requests comments on the draft scope of study, and presents the schedule of Open-House meetings to be held in the project area.

DATES, TIMES, AND LOCATIONS: Scoping Open House meetings will be held at the dates and locations listed below. Each location will have an afternoon and an evening session at the following times: the afternoon Open House is scheduled from **1:00pm to 4:00pm** and the evening Open House is scheduled from **6:00pm to 8:00pm**. There is no need to attend more than one meeting, but all are welcome to attend as many meetings as desired.

Date	Location
January 8, 2008	Crown Plaza, Salon A/C Room 510 E. Route 83 Mundelein, IL 60060 847-949-5100
January 9, 2008	Makray Memorial Golf Club, Grand Ballroom 1010 S. NW Highway Barrington, IL 60010 847-381-6500
January 10, 2008	Jacob Henry Mansion, Ballroom 15 South Richards Street Joliet, IL 60433 815-722-2465
January 15, 2008	Holiday Inn, Willow Room 500 Holiday Plaza Drive Matteson, IL 708-747-3500
January 16, 2008	Genesis Convention Center, Gary Lakes Room One Genesis Center Plaza Gary, IN 46402 219-882-5505
January 17, 2008	St. Andrews Golf Club, St. Andrews Room 3N441 Route 59

A-I.2 Notice of Intent and Draft Scope of Study

	West Chicago, IL 60185 630-231-3100
January 22, 2008	Crowne Plaza Chicago-Metro, Ballroom 733 West Madison Chicago, IL 60661 312-602-2106

The public scoping meetings will be informal meetings in an open house format. Interested persons may ask questions about the proposal and the Board's environmental review process, and discuss the potential environmental effects of the proposal with SEA staff. In keeping with the open house format of the scoping meetings, there will be no formal presentations made by the agency. Rather, SEA staff members will be available to answer questions and receive comments individually. A court reporter will be available for those persons who wish to submit oral comments. Writing stations will be available to those who wish to submit written comments at the Open House. SEA staff will be available to listen and make notes of comments. Additional copies of the draft scope will be available at all Open House meetings.

The meeting locations comply with the Americans with Disabilities Act. Persons who need special accommodations should telephone SEA's toll-free number for the project at 1-800-347-0689. Please leave a message and someone will return your call promptly.

SEA will issue a final Scope of Study shortly after the close of the scoping comment period. Written comments on the draft scope are due February 1, 2008. Directions on how to submit comments of the draft scope are set forth below.

SUMMARY OF THE BOARD'S REVIEW PROCESSES FOR THIS PROCEEDING: The Board will review the proposed transaction through two parallel but distinct processes: (1) the economic process that examines the competitive, transportation, and economic implications of the acquisition on the national rail system, and (2) the environmental process conducted by SEA that assesses the potential environmental effects of the proposed acquisition on the human and natural environment through preparation of an EIS. Interested persons may participate in either, or both, processes, but if interests are focused on potential impacts on communities, including grade crossing safety, air emissions, emergency vehicle access, noise, vibration, and other similar environmental issues, then the appropriate forum is SEA's environmental review process.

ENVIRONMENTAL REVIEW PROCESS: The National Environmental Policy Act (NEPA) process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on that proposed action is made. SEA is responsible for ensuring that the Board complies with NEPA and related environmental statutes. The first stage of the EIS process is scoping. Scoping is an open process for determining the scope of environmental issues to be addressed in the EIS and their potential for significance.

A-I.2 Notice of Intent and Draft Scope of Study

SEA has developed a draft scope of study for the EIS for public review and comment, which incorporates the issues and concerns raised in the comment letters SEA has received thus far. SEA is soliciting written comments on this draft scope of study. After the close of the comment period on the draft scope of study, SEA will review all comments received and then issue a final scope of study (final scope) for the EIS.

Following the issuance of the final scope, SEA will prepare a Draft EIS (DEIS) for the project. The DEIS will address those environmental issues and concerns identified during the scoping process. It will also contain SEA's preliminary recommendations for environmental mitigation measures. Upon its completion, the DEIS will be made available for public and agency review and comment for 45 days. SEA will then prepare a Final EIS (FEIS) that will address the comments on the DEIS from the public and agencies. Then, in reaching its decision in this case, the Board will take into account the DEIS, the FEIS, the public comments, and the environmental analysis and recommendations, including any environmental mitigation proposed by SEA.

The Procedural Schedule set for this proceeding in Decision No. 2 establishes the date of April 25, 2008 for the Board's proposed final decision. This date will be extended if additional time is needed to complete the full EIS process.

SUBMITTING COMMENTS ON THE DRAFT SCOPE: SEA encourages broad participation in the EIS process. All interested agencies, organizations, communities, and members of the public are invited to participate in the scoping process by reviewing and commenting on the draft scope of the EIS. Written comments on the draft scope of the EIS may be submitted to the Board within the comment period, as described below, no later than February 1, 2008. To file comments on the draft scope and participate in the environmental review process, it is not necessary to be a Party of Record (as detailed in Decision 2¹). If you wish to submit written comments regarding the attached proposed draft scope, please send your comments to:

Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Attention: Phillis Johnson-Ball
Environmental Filing,
STB Finance Docket No. 35087

Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E_FILING" link.

Please refer to STB Finance Docket No. 35087 in all correspondence, including E-filings, addressed to the Board.

¹ Board Decision No. 2 was issued November 26, 2007.

A-I.2 Notice of Intent and Draft Scope of Study

Following these directions will help ensure that your comments are considered in the environmental review process for this proposed acquisition. SEA will add your name to its mailing list for distribution of the final scope of the EIS, the DEIS, and Final EIS (FEIS). Interested persons who wish to receive individual copies of Board decisions, orders, and notices served in this proceeding but do not want to be a party of record are encouraged to contact the Board's copy contractor as soon as possible: Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706, telephone number (202) 306-4004, or e-mail address: asapdc@verizon.net. All Board decisions, orders, and notices in this proceeding will also be available on the Board's website at www.stb.dot.gov under "E-Library," and "Decisions & Notices" or "Filings."

FOR FURTHER INFORMATION CONTACT

Phillis Johnson-Ball
Section of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001
1-800-347-0689 (project information line)

Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

The website for the Surface Transportation Board is www.stb.dot.gov.

Decided: December 18, 2007.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

A-1.2 Notice of Intent and Draft Scope of Study

APPENDIX A

Draft Scope of the EIS

Proposed Action and Definition of Alternatives

Applicants' proposed acquisition of the EJ&E would result in shifting of rail traffic from rail lines in Chicago to rail lines on the EJ&E. Rail traffic on CNR lines inside the EJ&E arc would generally decrease. These decreases in rail traffic would be offset by substantial increases in the number of trains operated on the EJ&EW line outside Chicago. The increase in train traffic on the EJ&E would vary from approximately 15 to 27 additional trains per day. Applicants state that the proposed transaction would not impair CNR's ability to handle commuter trains, passenger trains, or trackage/hauling trains currently operating on its lines. Finally, on the integrated CNR/EJ&EW system, four train pairs would be added to EJ&E terminals: three inbound and three outbound switch trains at Kirk Yard, and one inbound and one outbound switch train at East Joliet Yard. Applicants' projections for the changes in rail operations as a result of the acquisition are set forth in the Application, available on the Board's website.

The proposed transaction also includes construction of seven rail connections, siding extensions, and installation of second track (double-tracking).

Reasonable or feasible alternatives that will be evaluated in the EIS are (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction in whole (No-Action alternative); or (3) approval of the proposed transaction with conditions, including environmental mitigation conditions.²

If deemed necessary, alternative configurations of proposed connections may be considered. Proposed modifications to the proposed transaction as requested by other parties in their inconsistent or responsive applications will also be addressed in the EIS.

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. Existing rail operations are the baseline from which the potential environmental impacts of the proposed transaction will be evaluated. SEA will evaluate only the potential environmental impacts of operational and physical changes that are directly related to

² The Board has broad authority to impose conditions in railroad control transactions under 49 U.S.C. 11324 (c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, and the condition imposed must be reasonable. See *United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

A-1.2 Notice of Intent and Draft Scope of Study

the proposed transaction. SEA will not consider environmental impacts relating to existing rail operations and existing railroad facilities.³

The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (e.g., an increase in average trains per day) for those rail line segments that meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7.
2. Proposed changes in activity at rail yards to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7.
3. Proposed physical construction of improved rail connections, siding extensions, and installation of second rail track (double-tracking).

Environmental Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, socioeconomic effects related to physical changes in the environment, environmental justice, and cultural and historic resources, as described below.

1. Safety

The EIS will:

- A. Consider at-grade rail crossing accident probability and safety factors. This will generally include grade crossings with average daily traffic levels of 2,500 or more trips. Accident probability analysis will address the potential for rail and vehicle accidents.
- B. Consider increased probability of train accidents and derailments due to increased traffic on a system-wide basis.
- C. Address potential effects of increased freight traffic on commuter and intercity passenger service operations.

³ In proceedings similar to this proposed acquisition, the Board's practice consistently has been to mitigate only those environmental impacts that result directly from the transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy preexisting conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the merger (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

A-1.2 Notice of Intent and Draft Scope of Study

- D. Discuss the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:
- (1) Changes in the types of hazardous materials and quantities transported or re-routed;
 - (2) Nature of the hazardous materials being transported;
 - (3) Applicants' safety practices and protocols;
 - (4) Applicants' relevant safety data on derailments, accidents and hazardous materials spills;
 - (5) Contingency plans to address accidental spills;
 - (6) Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements; and
 - (7) Location and types of hazardous substances at hazardous waste sites or hazardous materials spills on the right-of-way of any proposed connection or rail line abandonment site.
- E. Address local truck traffic increases attributable to increased intermodal activities.
- F. Address safety issues associated with the integration of differing rail operating systems and procedures.

2. Transportation Systems

The EIS will:

- A. Describe system-wide and localized effects of the proposed operational changes, construction of improved connections, siding extensions, and installation of second track, and evaluate potential impacts on commuter rail service and intercity passenger (Amtrak) service.
- B. Evaluate those commuter rail line segments that would experience increased freight traffic as a result of the proposed transaction for the capability of the rail line segments to accommodate the reasonably foreseeable addition of commuter trains.
- C. Discuss potential effects on proposed passenger rail service where such future rail operation inception or expansion is reasonably foreseeable (i.e., where capital improvements are planned, approved, and funded).
- D. Discuss potential diversions of freight traffic from trucks to rail and from rail to trucks, as appropriate.
- E. Address vehicular delays at rail crossings and intermodal facilities due to increases in rail-related operations as a result of the proposed transaction. Estimates of typical delays at grade crossings will be made for crossings that have

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vehicle traffic levels of 2,500 ADT or more and that exceed train traffic increases of three trains per day for non-attainment areas or eight trains per day for attainment areas.

- F. Discuss potential effects of increased train traffic on railroad bridges that cross navigation channels to the extent that such bridges allow only one mode of transportation to pass at a time.

3. Land Use and Socioeconomics

The EIS will:

- A. Describe whether the proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) are consistent with existing land use plans.
- B. Describe environmental impacts associated with the proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) as to acres of prime farmland potentially removed from production.
- C. Discuss consistency of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) with applicable zoning requirements.
- D. Address socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.
- E. Propose mitigative measures to minimize or eliminate potential project adverse impacts to social and economic resources, as appropriate.

4. Energy

The EIS will:

- A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities to the extent that such information is available.
- B. Evaluate potential changes in fuel use arising from the transaction.

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5. Air Quality

The EIS will:

- A. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), for air quality nonattainment areas as designated under the Clean Air Act. Thresholds are as follows since the Chicago Metropolitan area is a nonattainment area⁴:
- (1) A 50 percent increase in rail traffic (measured in gross-ton miles annually) or an increase of three trains a day on any segment of rail line affected by the proposal; or
 - (2) An increase in rail yard activity of at least 20 percent or more in carload activity (rail car switching and block swapping).
 - (3) Increase in truck traffic greater than 10 percent of ADT or 50 trucks per day.
- B. Discuss the net increase in emissions from increased railroad operations associated with the proposed transaction. Net emissions changes will be calculated for counties with projected transaction-related emissions increases of:
- 100 tons per year or more of any pollutant
- C. Discuss the following information regarding the anticipated transportation of ozone depleting materials (such as nitrogen oxide and freon):
- (1) Materials and quantity;
 - (2) Applicants' safety practices;
 - (3) Applicants' safety record (to the extent available) on derailments, accidents, and spills;
 - (4) Contingency plans to address accidental spills; and
 - (5) Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.
- D. Discuss potential air emissions increases from vehicle delays at rail crossings where the rail crossing is projected to experience an increase in rail traffic over the thresholds described above in Section 5(A) for attainment and maintenance areas, and in Section 5(B) for non-attainment areas, and which have an average

⁴ Nonattainment areas are areas that do not comply with one or more ambient air quality standards. Ozone non-attainment areas are further classified as Marginal, Moderate, Serious, Severe, or Extreme Areas. These classifications are based on the level, in parts per million (ppm), of ozone measured for each area. Moderate areas are defined as .092 to .107 ppm, Serious Areas are defined as containing 0.107 ppm to 0.120 ppm, and Severe Areas are defined as containing 0.120 to 0.187 ppm. The Chicago area is currently classified as moderate non-attainment for ozone and non-attainment for PM 2.5

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daily vehicle traffic level above 2,500. Such increases will be factored into the net emissions estimates for the affected area.

- E. Examine local impacts from the transaction caused by increases or decreases in diesel particulate emissions.

6. Noise and Vibration

The EIS will:

- A. Describe potential noise and vibration impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in Section 5A of the Air Quality discussion.
- B. Identify whether the proposed transaction-related increases in rail traffic will cause an increase to a noise level of 65 decibels L_{dn} or greater. If so, an estimate of the number of sensitive receptors (e.g., schools and residences) within such areas will be made.
- C. Identify transaction-related activities that have the potential to result in an increase in noise level of 3 decibels L_{dn} or more which occur in areas exposed to less than 65 dBA L_{dn} .
- D. Assess potential vibration effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or immediately adjacent to the railroad right of way.

7. Biological Resources

The EIS will:

- A. Discuss the potential environmental impacts of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on federal endangered or threatened species or designated critical habitats.
- B. Discuss the effects of proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on wildlife sanctuaries or refuges, and national or state parks or forests.

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8. Water Resources

The EIS will:

- A. Discuss whether potential impacts from proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) may be inconsistent with applicable federal or state water quality standards.
- B. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 U.S.C. 1344) for any proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking), and whether any such projects have the potential to encroach upon any designated wetlands or 100-year floodplains.

9. Environmental Justice

The EIS will:

- A. Report on the demographics in the immediate vicinity of any area where major activity such as construction of improved rail connections, siding extensions, and installation of second track (double-tracking) is proposed.
- B. Report on the demographics in the vicinity of rail lines with projected rail traffic increases above eight trains per day.
- C. Evaluate whether such activities potentially have a disproportionately high and adverse health effect or environmental impact on any minority or low-income group.

10. Cultural and Historic Resources

The EIS will:

- A. Address potential impacts from proposed construction of improved rail connections, siding extensions, and installation of second track (double-tracking) on cultural and historic resources that are on, or immediately adjacent to, a railroad right-of-way.

11. Secondary and Cumulative Effects

The EIS will:

- A. Address secondary and cumulative effects of environmental impacts that have regional or system-wide ramifications. This analysis will be done for environmental impacts that warrant such analysis given the context and scope of

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the proposed transaction. The environmental effects to be analyzed include air quality and energy.

- B. Evaluate secondary and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction, where information is provided to the Board that describes (1) those other projects or activities, (2) their interrelationship with the proposed transaction, (3) the type and severity of the potential environmental impacts; and SEA determines that there is the likelihood of significant environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis within the schedule for the preparation of the EIS.
- C. Discuss the potential environmental impacts of construction or facility modification activities within railroad-owned property affected by the proposed merger, and additional environmental impacts related to the proposed transaction but not subject to Board approval, in order to identify secondary and cumulative impacts.

A-I.3 Notice Extending the Public Scoping Period

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35087]

Canadian National Railway Company and Grand Trunk Corporation— Control—EJ&E West Company; Notice Extending the Public Scoping Period

AGENCY: Surface Transportation Board,
Department of Transportation.

ACTION: Notice extending the public
scoping period.

SUMMARY: The Surface Transportation Board's Section of Environmental Analysis (SEA) announces the extension of the scoping period for the Environmental Impact Statement (EIS) that is being prepared in connection with an application filed by Canadian National Railroad Company (CN) to acquire certain rail lines of the Elgin, Joliet & Eastern Railroad (EJ&E). SEA is preparing an EIS because the Surface Transportation Board has determined that the proposed acquisition has the potential to result in significant effects upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA).

DATES: The scoping period on the EIS is extended through February 15, 2008.

ADDRESSES: If you wish to submit written comments regarding the attached proposed draft scope, please send your comments to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423. Attention: Phillis Johnson-Ball, Environmental Filing, STB Finance Docket No. 35087.

Environmental comments may also be filed electronically on the Board's Web site, <http://www.stb.dot.gov>, by clicking on the "E_FILING" link. You do not

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need a Login Account to submit Environmental Comments. Simply click on "Environmental Comments," which will take you to the comment screen. Add the Docket number, which is "FD 35087." Select "Phillis Johnson-Ball" in the drop down list under "attention of." Then complete the form by adding your name, address, phone and email, then click "Submit."

You may also call your comments into SEA's toll-free hotline established for this proceeding. Dial 1-800-347-0689 and leave your comments after the tone. Please refer to STB Finance Docket No. 35087 in all correspondence, including E-filings, addressed to the Board.

Following these directions will help ensure that your comments are considered in the environmental review process for this proposed acquisition. In addition, SEA will add your name to its mailing list for distribution of the final scope of the EIS, the DEIS, and Final EIS (FEIS).

FOR FURTHER INFORMATION CONTACT: Ms. Phillis Johnson-Ball, SEA Project Manager, toll-free at 1-800-347-0689 (TDD for the hearing impaired 1-800-877-8339). The Web site for the Surface Transportation Board is <http://www.stb.dot.gov>. This document is available in English and Spanish by calling the toll-free number at 1-800-347-0689.

SUPPLEMENTARY INFORMATION: On October 30, 2007, Canadian National Railway Corporation (CN) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CN controls its U.S. rail subsidiaries, filed an application with the Surface Transportation Board (Board) seeking the Board's approval of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). In this document, the action before the Board will be referred to as the proposal or the proposed acquisition and CN and GTC will be referred to collectively as CN or as Applicants.

CN is one of Canada's two major railroads, extending from Halifax, Nova Scotia, to Vancouver and Prince Rupert, British Columbia. EJ&E is a Class II railroad that currently operates over 198 miles of track in northeastern Illinois and northwestern Indiana, consisting primarily of an arc around Chicago, IL, extending from Waukegan, IL, southwards to Joliet, IL, then eastward to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics and chemical

producers, steel processors, distribution centers, and scrap processors.

Applicants' proposed acquisition of the EJ&E would shift rail traffic currently moving over CN's rail lines inside the EJ&E arc in Chicago to the EJ&E, which traverses the suburbs generally to the west and south of Chicago. Rail traffic on CNR lines inside the EJ&E arc would generally decrease. The decreases in rail traffic would be offset by increases in the number of trains operating on the EJ&E rail line outside of Chicago (approximately 15-27 more trains would operate on various segments of the EJ&E). Applicants also proposed to construct six new rail connections and approximately 19 miles of new sidings/double tracking. Applicants give three primary reasons for seeking approval of the proposed acquisition: Improved rail operations in the Chicago area; availability to EJ&E's Kirk Yard in Gary, Indiana, and other smaller facilities in Joliet, Illinois, and Whiting, Indiana; and improved service to companies dealing in steel, chemicals, and petrochemicals, as well as Chicago area utilities.

Because this proposal has the potential to result in significant environmental impacts, the Board has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. To help determine the scope of the EIS, and as required by the Board's regulations at 49 CFR 1105.10(a)(2), SEA published in the **Federal Register** and made available to the public on December 21, 2008, the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments. SEA held seven public scoping meetings in the project area between on January 9 and 22, 2008. The scoping comment period originally concluded February 1, 2008, but, in response to requests, SEA is extending the scoping period an additional 14 days, to February 15, 2008.

Decided: January 30, 2008.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8-1859 Filed 1-30-08; 8:45 am]

BILLING CODE 4915-01-P

A-I.4 Addendum to Final Scope of Study

39004
SEA

SERVICE DATE – LATE RELEASE APRIL 28, 2008

SURFACE TRANSPORTATION BOARD

NOTICE TO THE PARTIES

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
CONTROL – EJ&E WEST COMPANY

Correction to the Final Scope of Study for the Environmental Impact Statement (EIS)

The Section of Environmental Analysis (SEA) issued the Final Scope of Study in the above-captioned proceeding on April 25, 2008 and published the Final Scope of Study in the Federal Register on April 28, 2008. It has come to our attention that a statement on page 7 of the Final Scope is confusing and open to various interpretations.

Therefore, we will strike this language:

Thus, the EIS will use a five-year threshold from the date of the anticipated year of the issuance of a final decision (2015) for analysis of effects of increased rail traffic, such as vehicle delay. This year was selected because five years is not too long to produce reasonable and reliable freight rail forecasts.

And replace it with:

Thus, the EIS will use a year 2015 threshold for analysis of effects of increased rail traffic, such as vehicle delay. This year was selected because it would provide at least five years of data to be considered in order to produce reasonable and reliable freight rail forecasts.

Please correct your copies accordingly. A corrected version of the Final Scope will be served today.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan
Acting Secretary

A-I.5 Corrected Final Scope of Study

39005
SEA

SERVICE DATE – LATE RELEASE APRIL 28, 2008

SURFACE TRANSPORTATION BOARD

CORRECTED DECISION

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK CORPORATION
CONTROL – EJ&E WEST COMPANY

Decided: April 23, 2008

Agency: Surface Transportation Board.

Action: Notice of Availability of the Final Scope of Study for the Environmental Impact Statement (EIS).

Summary: On October 30, 2007, the Canadian National Railway Company (CN) and Grand Trunk Corporation (collectively CN or the Applicants) filed an application with the Surface Transportation Board (Board or STB) seeking the Board's approval to acquire control of EJ&E West (EJ&EW) Company, a wholly owned noncarrier subsidiary of the Elgin, Joliet and Eastern Railway Company¹ (EJ&E). In their application, Applicants state that they plan to construct six new rail connections and approximately 19 miles of siding extensions and second mainline track (double track). EJ&E is a Class II railroad that currently operates approximately 200 miles of track in northeastern Illinois and northwestern Indiana.

On November 26, 2007, the Board issued Decision No. 2 announcing that its Section of Environmental Analysis (SEA) will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts that may result from the proposed acquisition. On December 21, 2007, SEA published a Notice of Intent (NOI) in the Federal Register announcing the start of the scoping process and the dates and times of public scoping meetings. This

¹ Applicants state in their application that EJ&E plans to transfer all of its land, rail, and related assets located west of the centerline of Buchanan Street in Gary (together with the real property and related fixtures associated with the hump and Dixie leads located east of Buchanan Street) to EJ&EW, which at that time would become a rail common carrier. EJ&E would retain its land, rail, and related assets east of the centerline (other than the real property and related fixtures associated with the hump and Dixie leads). It is expected that, if the proposed transaction is approved and Applicants acquire control of EJ&EW, EJ&E would change its name to Gary Railway Company, and EJ&EW would assume the Elgin, Joliet & Eastern Railway Company name. To eliminate confusion, and because EJ&EW would be a temporary entity, the remainder of this document will refer only to "EJ&E."

A-I.5 Corrected Final Scope of Study

STB Finance Docket No. 35087

document, as well as a Draft Scope of Study, was served and distributed to approximately 350 stakeholders and 41 federal, state, and local agencies on an environmental distribution list. A press release was issued to 21 Chicago-area newspapers to announce the NOI to the public.

Information about the STB's environmental review of the proposed acquisition was also made available through the Board's website, www.stb.dot.gov. The Board's website provides an overview of the proposed acquisition; public comment guidance; links to documents (including the NOI and Draft Scope of Study); links to CN's, and EJ&E's websites; and SEA contact information. Additionally, SEA established a toll-free information line (1-800-347-0689) for public comments with a Spanish-language option available. An electronic filing system is also available on the Board's website, www.stb.dot.gov, to receive comments.

To promote participation in a series of 14 public scoping meetings scheduled for January 2008, SEA placed quarter-page advertisements and published public notices in 21 Chicago-area newspapers announcing the meetings. SEA issued a follow-up press release to the same newspapers. Announcement posters were placed in 42 public libraries in communities along the EJ&E rail line, and SEA emailed notices to 285 local elected officials.

Approximately 2,600 individuals participated in the open-house scoping meetings held at seven locations throughout the Chicago region. Two meetings per location were held: one from 1 p.m. to 4 p.m. and one from 6 p.m. to 8 p.m. The dates and locations of the 14 open house meetings were:

- January 8, 2008: Mundelein, Illinois
- January 9, 2008: Barrington, Illinois
- January 10, 2008: Joliet, Illinois
- January 15, 2008: Matteson, Illinois
- January 16, 2008: Gary, Indiana
- January 17, 2008: West Chicago, Illinois
- January 22, 2008: Chicago, Illinois

On January 30, 2008, SEA extended the deadline for Draft Scope of Study comments from February 1, 2008 to February 15, 2008. To publicize the extension, postcards were mailed to 3,038 persons on an updated environmental distribution list, and 43 letters were sent to agencies during the week of January 28, 2008. SEA issued a press release to the 21 Chicago-area newspapers and emailed 310 elected officials to alert them to the comment period extension.

In total, SEA received:

- 1,347 comments from individuals attending the open house meetings;
- 1,268 comment letters;
- 219 oral comments on SEA's information line; and
- 858 individual comments filed electronically on the Board's website.

At the conclusion of the comment period, SEA mailed follow-up postcards acknowledging the receipt of comments and participation in the scoping process. SEA placed

A-I.5 Corrected Final Scope of Study

STB Finance Docket No. 35087

the names of all commenters on the environmental distribution list, thereby ensuring that they will receive notice of availability of the Draft and Final EIS, as well as the Final Scope of Study.

Based on the comments received and further analysis, SEA has prepared the Final Scope of Study for the EIS, which is included in this Notice of Availability as Appendix A.

Addresses for Further Information: Written requests for further information on the proposed acquisition should be directed to:

Phillis Johnson-Ball
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Telephone requests may be made by calling 1-800-347-0689 (SEA's information line), and emails may be sent via the Board's website at www.stb.dot.gov by clicking on the "E_FILING" link.

Supplementary Information: On October 30, 2007, Canadian National Railway Company (CN) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CN controls its U.S. rail subsidiaries, filed an application with the Board under 49 USC 11323-25. The application seeks the Board's authorization for CN to acquire control of the EJ&E rail line, land, and related assets west of Buchanan Street in Gary, Indiana, along with the hump and Dixie lead tracks located east of Buchanan Street leading into Kirk Yard. Trackage east of Buchanan Street would be handled by the Gary Railway Company.

Acquisition of the EJ&E rail line would provide CN with a continuous route around Chicago. The Applicants intend to connect the existing five CN rail lines that run into central Chicago and re-route CN trains now going through Chicago on their way to other destinations, to the EJ&E rail line. The proposed acquisition includes changes in rail line operations and changes in yard operations.

The Applicants plan to make approximately \$100 million in capital improvements, including constructing six new connections at Munger, Joliet, and Matteson (all in Illinois) and Griffith, Ivanhoe, and Kirk Yard located in Gary (all in Indiana). In addition, the proposed acquisition includes plans to install double track and extend sidings within the existing EJ&E railroad right-of-way (ROW) along 19 miles of the EJ&E arc at several locations:

- Leithton and Mundelein, Illinois
- East Siding to 95th Street (between Eola and Naperville, Illinois)
- Normantown to Walker, Illinois
- East Joliet to Frankfort, Illinois.

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CN has stated that it intends to shift its trains to the EJ&E rail line from the existing CN routes as the proposed new rail line connections are completed and mainline capacity is added to the EJ&E rail line.

The Applicants propose to upgrade and expand Kirk Yard, and to assess the capabilities of the East Joliet Yard and upgrade it to accommodate increased yard activity. The Applicants propose to relocate rail car sorting and train development activities to both Kirk Yard and East Joliet Yard to allow CN to reduce switching activity that now occurs at CN's Glenn, Hawthorne, Schiller Park, and Markham yards, and at the BRC Clearing Yard. The rail cars of local shippers would continue to be handled at all of those locations and intermodal rail cars would still be served at Markham Yard.

Although the Applicants intend eventually to re-route all their trains currently operating over the St. Charles Air Line, a rail line in downtown Chicago owned jointly by CN, Union Pacific Railroad Company (UP), and BNSF Railway Company (BNSF), no abandonments are anticipated as a direct result of the proposed acquisition. Any abandonment of the St. Charles Air Line would require a separate request for authority to the Board under 49 USC 10903 or 10502, as well as coordination with BNSF and UP, and with other existing users such as Amtrak.

Environmental Review Process: In reviewing the proposed acquisition, the Board will consider both the transportation merits of the proposed acquisition, and the potential environmental impacts. Based on the information provided in the application, concerns raised regarding possible impacts of the proposed acquisition on communities, and consultations with SEA (the office within the Board responsible for preparing the Board's environmental documentation under the National Environmental Policy Act (NEPA), 42 USC 4321-4335, and related environmental statutes) the Board decided in its decision accepting the application to prepare a full EIS. The EIS will include all of the environmental information necessary for the Board to take the hard look at environmental consequences required by NEPA.

The NEPA environmental review process is intended to assist the Board and the public to identify and assess potential environmental consequences of the proposed acquisition before a decision is made whether to approve the proposed transaction, deny it, or approve it with mitigating conditions, including environmental conditions. On December 21, 2007, SEA issued a Notice of Intent (NOI) to individuals and agencies potentially interested in or affected by the proposed acquisition informing them of the Board's decision to prepare an EIS and to initiate the formal scoping process.

SEA also developed and made available a Draft Scope of Study and requested comments. Public meetings were held and comments were received between December 21, 2007 and February 15, 2008. After carefully reviewing the public comments, SEA is issuing this Final Scope of Study for the Draft EIS.

SEA is currently preparing a Draft EIS for the proposed acquisition. The Draft EIS will address those environmental issues and concerns identified during the scoping process and detailed in this Final Scope of Study. It will also include an appropriate discussion of alternatives and potential environmental mitigation.

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Upon its completion, the Draft EIS will be made available for public and agency review and comment. A Final EIS will then be issued reflecting the SEA's further analysis, the comments on the Draft EIS, and SEA's recommendations (if any) for environmental mitigation. In reaching its decision on this case, the Board will take into account the full environmental record, including the Draft and Final EIS, and all public and agency comments received.

Discussion: Many issues that emerged through the scoping process are linked to concerns about potential impacts from increased freight rail traffic as a result of this proposed transaction. The issues raised by commenters are briefly outlined below, followed by a discussion of how the issue will be addressed in the Draft EIS. This preamble to the actual Final Scope of Study, included in Appendix A, provides SEA's rationale.

Proposed Acquisition and Definition of Alternatives: Reasonable and feasible alternatives for the proposed acquisition that will be evaluated in the EIS include approval of the transaction as proposed, disapproval of the proposed transaction in whole (No-Action alternative), or approval of the proposed transaction with conditions, including environmental mitigation conditions.²

Many commenters recommended that the EIS include consideration of the Chicago Region Environmental and Transportation Efficiency Program (CREATE Program) as an alternative to the proposed acquisition, or that it at least consider the effects on CREATE, and the use of non-EJ&E rail corridors and connections for CN to move its trains through the Chicago area.

Create and Other Non-EJ&E Rail Corridors as Alternatives: NEPA and the Board's environmental rules require the EIS to include reasonable and feasible alternatives to the proposed acquisition (49 CFR 1105.7(e) (1)). The EIS will evaluate proposed alternatives to determine which would meet "the purpose and need" of the proposed transaction, and warrant actual study or analysis, for the reasons that will be explained in the EIS. The purposes of the proposed transaction are described in a section of the CN application entitled "Purpose of the Transaction" (p. 22). These purposes are 1) connecting the five CN rail lines in the Chicago area to create operational improvements throughout the CN system, 2) obtaining access to the East Joliet and Kirk Yards, and 3) facilitating expanded business opportunities with EJ&E's shippers. Any reasonable and feasible alternative must meet the stated purpose and need for the proposed acquisition.

Neither CREATE nor any other non-EJ&E rail corridors will be treated as alternatives for the proposed action because they plainly would not meet the three-fold purpose and need

² The Board has broad authority to impose conditions in railroad control transactions under 49 USC 11324(c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, mitigation is not imposed to correct pre-existing conditions, and the condition imposed must be reasonable. See *United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

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articulated in the application. Nevertheless, the transportation systems section of the EIS will address these issues as appropriate.

Alternative Connections: Commenters also suggested that the EIS should examine alternative locations or configurations for the proposed new connections to reduce potential impacts related to this proposed transaction because there may be a variety of reasonable ways in which Applicants could accomplish construction of the proposed connections. The EIS will contain an appropriate examination of alternative configurations for the proposed connections to determine whether there is a way to meet the purpose and need of the proposed acquisition with less potential environmental impact.

Environmental Impact Categories

Safety

Commenters raised concerns about rail safety and security, the Applicants' emergency management capability and planning, and the proximity of sensitive populations and land uses to the EJ&E rail line. The largest number of commenters on safety issues expressed concern about the potential impacts to local communities from accidents. As indicated in the Draft Scope of Study, the EIS will evaluate the effects of the proposed acquisition on the safety of the public at large (including such issues as increased probability of train accidents and derailments due to increased proposed acquisition-related train traffic on a system-wide basis), potential effects at grade crossings, and potential effects of increased proposed transaction-related freight traffic on commuter and intercity passenger service operations. The EIS also will include an appropriate discussion of Applicants' Safety Integration Plan.

Hazardous Materials Transportation

A number of commenters requested that the EIS address potential environmental impacts of the proposed acquisition on public health and safety with respect to the transportation of hazardous materials, including a discussion of possible accidental release, spill management capability, and the presence of contaminated sites. Many commenters suggested that this analysis should include CN's safety record in Canada, as well as the United States. Other commenters suggested that the EIS should assess accidents involving hazardous materials and alternative routes for hazardous material shipments.

The EIS will assess CN's safety record in the United States. The rail safety statistics in Canada are collected and analyzed in a different manner than that used in the United States. The EIS will provide information on CN's U.S. safety record and that of the other U.S. Class I railroads, as compiled by the Association of American Railroads (AAR), to provide a valid basis for comparison. The EIS will use Federal Railroad Administration (FRA) standards as the basis for compliance for all hazardous material accidents and spills. The EIS also will address quantities and types of hazardous materials transported, response plans for potential spills or accidents, and locations of contaminated sites in the vicinity of planned construction activities.

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Transportation Systems

There are approximately 140 highway/rail at-grade crossings on the EJ&E line that may experience longer traffic delays due to increased freight rail traffic resulting from the proposed acquisition. Although existing CN crossings on lines into downtown Chicago would experience less train traffic and fewer delays as a result of the proposed acquisition, a number of commenters expressed concern about the potential impact of increased freight rail traffic on local transportation systems, including congestion and delays at highway/rail at-grade crossings, and potential impacts to community emergency response capability.

Consistent with the Draft Scope of Study, the EIS will evaluate the impact of the proposed transaction on local transportation systems and intercity Amtrak services, vehicular delays due to increases in rail-related operation, and increased train traffic on movable railroad bridges as result of the proposed transaction. Since no changes in intermodal activity or truck traffic have been identified, analysis of truck traffic as identified in the Draft Scope of Study does not appear warranted. Other issues of concern to be included in the transportation systems impact evaluation are described below.

Planning Horizon: CN has used 2012, three years from the date of the Board's anticipated issuance of a final decision, as the year it expects to achieve the rail traffic projected in the application. Many commenters objected that this three-year forecasting period is too short. Commenters are concerned that using 2012 as the planning horizon would underestimate the potential effects of the proposed acquisition, and could result in less mitigation than the mitigation the Board would impose if the planning horizon were lengthened.

Planning horizon threshold suggestions for both freight rail and highway traffic ranged from 2020 to as long as 2030 or 2035. The commenters believe that potential increases in freight rail traffic can be projected that far into the future, even though the forecasts are not as reliable as shorter projections. The commenters also allege that CN would not have decided to proceed with this proposed acquisition transaction based only on a short range forecast of potential freight rail traffic. On the other hand, CN contends that forecasts longer than three to five years are necessarily speculative due to uncertainties in the global economy and the effects of competition. CN also states that the proposed transaction would not lead to additional freight rail traffic beyond the projections in the application.

After carefully considering the comments, SEA has determined that the time horizons suggested by the commenters are too long to produce reliable information. Those time horizons also exceed by far the time horizons that have been used in prior Board proceedings. At the same time, the three-year time horizon proposed in the Draft Scope of Study is too short for the proposed transaction. Thus, the EIS will use a year 2015 threshold for analysis of effects of increased rail traffic, such as vehicle delay. This year was selected because it would provide at least five years of data to be considered in order to produce reasonable and reliable freight rail forecasts. SEA has requested the necessary information from CN to permit the use of a five-year forecast in the EIS.

Highway traffic will also be forecasted to 2020 for vehicle delay analysis. The year 2020 is reasonable based on available highway traffic data and will provide useful information for

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community planning purposes. Any year further in the future would diverge too much from the five-year freight rail forecast timeframe that will be used.

ADT Threshold: The Draft Scope of Study stated that the EIS would assess impacts to safety and vehicle delays at highway/rail at-grade crossings where the average daily highway traffic (ADT) exceeds 2,500 vehicles per day, but did not state which year should be used to measure the ADT. Some commenters suggested that the threshold for analysis should be lowered to 2000 vehicles per day, to better help interested persons obtain information on all of the possible locations where drivers could be delayed or safety could be affected as a result of this proposed transaction.

In the EIS, vehicle delay will be estimated for all public highway/rail at-grade crossings and more detailed analysis will be done for crossings with an ADT of 2,500 vehicles per day. To clarify, SEA will apply the 2,500 vehicle per day threshold to traffic levels for the years 2015 and 2020. SEA also will conduct a more detailed analysis where the ADT at the crossing is less than 2,500 vehicles per day where appropriate as a result of specific circumstances. The ADT threshold of 2,500 vehicles per day will provide a sufficient level of analysis to determine the location of significant effects of the proposed acquisition on safety or vehicle traffic delays.

Gary Chicago International Airport (GCIA): Many commenters took the position that the EIS should analyze the effects of the proposed transaction on the Gary Chicago International Airport (GCIA). The GCIA has been engaged in an improvement program to increase the capacity of its existing principal east/west runway and to remedy a safety deficiency associated with this runway. Supporters of the airport expansion expect it to provide economic stimulus to the economy of Northwest Indiana. The Federal Aviation Administration (FAA) signed a Record of Decision (ROD) approving the extension in 2005.

According to the comments, GCIA plans to extend the primary runway (designated as Runway 12/30) 1,900 feet to the northwest to solve capacity and safety problems. Based on the available information, GCIA evidently has obtained commitments for funding to carry out airport improvements. Currently the northwest end of the runway is only 270 feet from the EJ&E tracks, which are on top of an embankment that places the tracks 22 feet above the end of the runway. Safety concerns have been raised because of the proximity of the EJ&E roadbed to the end of the runway, and the roadbed's elevation above the runway.

To extend the runway and reduce the potential safety issues, GCIA has proposed to relocate and lower to ground level the EJ&E tracks. According to the FAA ROD, the proposed relocation of the EJ&E would increase the rail route by 5,263 feet and add two highway/rail at-grade crossings at Chicago Avenue and Industrial Drive. These two crossings would be eliminated at a later date by closing Chicago Avenue and raising the grade of Industrial Highway over the EJ&E tracks.

Negotiations have been ongoing for many years between GCIA and EJ&E. CN has been sitting in on negotiations since the proposed acquisition was announced. To date, the parties have not reached an agreement on whether to relocate the EJ&E line or how the rail line relocation should be designed. During the parties' negotiations, concerns have been raised about

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increased fuel consumption and interference of the highway/rail at-grade crossings with train operations if the rail line is relocated. GCIA has contended that projected additional trains associated with the proposed transaction could make it more difficult to negotiate a solution to the runway problem. In response, CN asserts that the proposed transaction would have no effect on the relocation negotiations or GCIA because CN believes that the number of trains using the EJ&E rail line does not affect the issues that need to be addressed related to the relocation. CN has labeled the potential impacts of the proposed line relocation “a pre-existing condition,” rather than one that would be a direct result of the proposed acquisition transaction.

The Draft Scope of Study did not mention any analysis of potential effects on existing or proposed airports. Based on the comments, SEA will include in the EIS an appropriate analysis of the impacts of increased train traffic on the existing line near GCIA, as well as the proposed runway expansion and rail line relocation at GCIA.

The Commuter Rail Division of the Regional Transportation Authority (Metra) and the Suburban Transit Access Route (STAR Line): Many individuals and government agencies commented that the EIS should address the effects of the proposed transaction on future commuter rail service planned for a portion of the EJ&E ROW in Illinois. The Commuter Rail Division of the Regional Transportation Authority (a/k/a Metra) proposes to institute passenger service on certain segments of the EJ&E ROW and tracks. The service, to be known as the Suburban Transit Access Route, or the STAR Line, is part of the 2030 Regional Transportation Plan for Northeastern Illinois. The STAR Line plan calls for service over approximately 35 miles of EJ&E ROW from a point east of Interstate 55 in Joliet, to Interstate 90 in Hoffman Estates, from which the service would then travel eastward on new track within the I-90 ROW corridor to O’Hare Airport. Metra’s STAR Line would include seven new passenger rail stations along the existing EJ&E rail line in Cook, DuPage, and Will counties.

Congress authorized funding for preliminary engineering of the STAR Line in Section 3043(c)(120) of SAFETEA-LU. Many of the municipalities along the STAR Line route have already obligated or spent funds to provide new passenger rail stations and are incorporating the STAR Line into their land use planning. Metra is also studying potential extensions to the STAR Line east of Joliet and north of Hoffman Estates on the EJ&E ROW, but that planning is preliminary and is not expected to be completed in the foreseeable future.

The Draft Scope of Study states that the transportation systems analysis in the EIS will address the potential effects on reasonably foreseeable future commuter rail operations. SEA now clarifies that the EIS will encompass an appropriate discussion of the STAR Line from Joliet to Hoffman Estates, as part of the analysis.

Metra and the EJ&E Interlockings: Many commenters urged that the EIS should include an analysis of the effects of the proposed acquisition on commuter rail operations where the Metra trains intersect with the EJ&E. Metra currently operates approximately 700 trains each day throughout the Chicago region. The Metra trains pass over “interlockings” (rail to rail at-grade crossings) where freight traffic on the EJ&E corridor is projected to increase as a result of the proposed transaction. The interlockings are controlled by EJ&E. Metra and many other commenters are concerned that the projected freight increases resulting from this proposed

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transaction could impair Metra's on-time performance by causing commuter trains to wait for passing or stopped freight trains. Metra further states that it is planning to extend its service on the UP West Line that passes over the EJ&E interlocking at West Chicago, and on the UP Northwest Line that passes over the EJ&E interlocking at Barrington. Metra is also planning to institute new Southeast Service over the UP ROW, which would pass over the EJ&E interlocking at Chicago Heights. The success of these projects allegedly would be adversely affected due to the projected freight rail increases described in the application.

The Metra extensions described above are part of the 2030 Regional Transportation Plan for Northeastern Illinois. Section 3043(a)(13) of SAFETEA-LU authorized over \$26 million for final design and construction of Metra's UP West Extension. Section 3043(c)(119) of SAFETEA-LU authorized funding of preliminary engineering for Metra's Southeast Service.

As the Draft Scope of Study stated, the EIS will evaluate the effects of the proposed transaction on existing and reasonably foreseeable commuter rail operations. As part of that analysis, the EIS will contain an appropriate examination of the transportation system impacts of the proposed acquisition on existing Metra service, Metra's UP West Extension, the UP Northwest Extension, and the Southeast Service.

The National Railroad Passenger Corporation (AMTRAK): Many commenters noted that the EIS should consider the effects of the proposed transaction on AMTRAK service between downstate Illinois and Chicago. AMTRAK explained that it operates six trains each day over the CN Chicago Subdivision Line south from a point near 23rd Street on Chicago's Lakefront Line. These six trains connect from the Lakefront Line to Chicago's Union Station over the St. Charles Air Line, a rail line owned jointly by CN, UP, and BNSF. Under the proposed transaction, CN would no longer operate any freight trains over the St. Charles Air Line or along the Lakefront Line. AMTRAK is concerned that it could remain the only user of the St. Charles Air Line and CN's Lakefront Line and, as such, could be required to pay all maintenance expenses for the St. Charles Air Line. The Illinois Department of Transportation (IDOT) shares AMTRAK's concern, noting that it helps to finance AMTRAK's six daily trains. AMTRAK and IDOT say they would not be able to pay all of the maintenance expenses alone, which could jeopardize AMTRAK's current service. AMTRAK further indicates that, at present, it does not have an acceptable alternative access route into Chicago's Union Station.

The commenters also asked that the EIS assess the impacts that could occur from loss of AMTRAK service to Illinois communities that rely on AMTRAK service to and from Chicago and the effects on the highway system and related energy consumption that would result from loss of this service.

CN minimizes the potential impacts of this proposed transaction on AMTRAK, noting that AMTRAK has an existing agreement to use the St. Charles Air Line and the Lakefront Line tracks through 2010 and that AMTRAK can continue to use these lines indefinitely on the same terms with the same adjustments for inflation, as stated in the existing agreement. CN adds that there is no proposal pending before the Board to abandon the St. Charles Air Line or any of CN's tracks along the Chicago Lakefront Line.

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The Draft Scope of Study stated that the EIS would describe the effects of the proposed acquisition on existing AMTRAK service. SEA now clarifies that the EIS will examine the transportation system impacts on existing AMTRAK service on the St. Charles Air Line and the other CN lines used by AMTRAK in the Chicago area. Because there is no proposal in front of the Board for authority to abandon the St. Charles Air Line, the possible future discontinuance of AMTRAK service over the St. Charles Air Line will not be analyzed in detail in the EIS. Any attempt to do so at this point would be speculative.

Northern Indiana Commuter Transportation District (NICTD): Many commenters urged that the EIS consider the effects of the proposed transaction on existing and proposed commuter rail service for Northwestern Indiana. The commenters explain that NICTD operates the South Shore commuter rail service between South Bend, Indiana and Chicago. The South Shore connects with the CN Illinois Central (Chicago Subdivision) tracks at 115th and Kensington in Chicago. Freight service on this CN line is expected to decrease as a result of the proposed transaction. NICTD is presently completing a switching improvement project where its tracks connect with CN at 115th and Kensington. NICTD evidently is considering two new West Lake Corridor commuter rail services between Chicago and communities in northwest Indiana. Both proposed services apparently would use existing Metra and NICTD trackage to Hammond, where the services would then use ROW controlled by NICTD south to Maynard, near Munster. Service between Chicago and Valparaiso, Indiana would use the CN South Bend Subdivision between Munster and Valparaiso, Indiana; this service would cross the EJ&E at Griffith. Service between Chicago and Lowell, Indiana would use CSXT trackage between Munster and Lowell, Indiana. This service would cross the CN South Bend Subdivision at Maynard and the EJ&E at Dyer.

The available information indicates that NICTD has prepared two planning documents related to these proposed services, which identify the purpose and need for the proposed services and describe rail and bus alternatives. However, a Locally Preferred Alternative (LPA) has not been determined for these services. No funding sources have been secured to date for continued planning and implementation for the proposed services. NICTD also does not have an agreement with CN to use its South Bend Subdivision ROW for the proposed passenger service. NICTD and others have commented that the outstanding issues related to use of the CN South Bend Subdivision ROW should be resolved in the instant acquisition proceeding and that the EIS should assess the impacts related to loss of the opportunity to institute new commuter service on the CN South Bend Subdivision ROW.

An appropriate discussion of the NICTD operations will be included in the EIS.

Land Use

Some commenters expressed concerns regarding potential impacts to parks and other community facilities and amenities, as well as impacts to neighborhoods including visual impacts. Consistent with the Draft Scope of Study, the EIS will evaluate consistency of the proposed transaction with existing land use plans and zoning requirements, and potential impacts to prime farmland. Because trains already operate on the EJ&E rail line, and additional trains resulting from the proposed transaction are not expected to change the physical character of the line or adjoining lands, SEA does not believe that a detailed visual impact analysis is warranted.

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Socioeconomics

A number of commenters expressed concern over the potential impacts that the proposed acquisition would have on community quality of life, on local property values and the local economy, and how the proposed transaction would affect community growth and social cohesion. Consistent with the Draft Scope of Study, the EIS will evaluate socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.

Energy

Some commenters expressed concern about fuel consumption related to congestion and potential effects of the proposed transaction on climate change. As indicated in the Draft Scope of Study, the EIS will evaluate the potential environmental impact of the proposed transaction on the transportation of energy resources and recyclable commodities to the extent that such information is available, and evaluate potential changes in fuel use arising from the proposed transaction. The EIS will also include an appropriate discussion of fuel use changes related to this proposed transaction and climate change.

Air Quality

Commenters expressed concern regarding the potential impacts of the proposed transaction to public health and regional air quality resulting from proposed transaction-related changes in train emissions. The commenters noted that longer and more frequent trains and additional rail activity in the rail yards are expected to increase air emissions in the EJ&E corridor. In addition, commenters were concerned about an increase of emissions at highway/rail at-grade crossings from vehicles subject to delays as a result of the proposed acquisition. The Chicago Metropolitan Area has been designated as a nonattainment area under the Clean Air Act. Accordingly, the EIS will evaluate air emissions increases where the post-proposed acquisition activity would exceed the Board's thresholds for environmental review in nonattainment areas in 49 CFR 1105.7(e)(5)(i) (generally, an increase of three trains per day on any segment of rail line affected by the proposal).

The EIS will also evaluate the net increase in emissions from increased railroad operations, as well as potential air emissions increases from vehicle delays at rail crossings associated with the proposed transaction. Emissions changes arising from the proposed transaction will be estimated, including expected increases or decreases in diesel particulate emissions and related air toxics.

Noise and Vibration

Many commenters expressed concern about potential increases in horn and other noise, as well as train-induced vibration throughout the EJ&E corridor as a result of the proposed acquisition. As the commenters note, the proposed transaction would place more and longer trains on EJ&E tracks and increase activity at key points such as Kirk Yard in Gary, Indiana. Accordingly, consistent with the Draft Scope of Study, the EIS will evaluate potential proposed transaction-related increases in noise and associated impacts and will assess potential vibration

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effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or adjacent to the EJ&E rail line ROW.

Biological Resources

Commenters expressed concern regarding potential impacts of the proposed transaction on wildlife, as well as nature preserves and designated natural areas. The Draft Scope of Study stated that the EIS would assess the effects of acquisition-related construction (double tracking, proposed new connections) on threatened and endangered species, wildlife sanctuaries or refuges, and national or state parks or forests. Many commenters suggested that the EIS should also assess the effects of increased rail operations, maintenance (herbicide spraying), and the risk of accidents on wildlife areas along the EJ&E ROW.

Based on the comments, the EIS will assess the operational impacts of additional freight rail traffic on areas where federal or state threatened or endangered species or designated critical habitats are located. The EIS will examine the effects of the proposed acquisition in areas along the EJ&E rail line ROW that have been designated as natural areas by federal, state, and local natural resource agencies. The EIS will also assess the potential effects on designated natural areas from construction of the alternative configurations for the proposed new connections and double tracking.

Water Resources

Some commenters expressed concern about the potential effects of the proposed transaction on surface and groundwater quality, as well as flood plains and local drainage systems. As indicated in the Draft Scope of Study, the EIS will evaluate consistency with applicable federal or state water quality standards; determine if permits may be required under Sections 404 or 402 of the Clean Water Act (33 USC 1344) for any proposed construction; and assess whether any planned construction has the potential to encroach upon any designated wetlands or 100-year floodplains.

Environmental Justice

Some commenters expressed concern about potential disproportionate adverse effects of the proposed acquisition on minority or low income populations. Consistent with the Draft Scope of Study, the localized adverse impacts of the proposed transaction (for example, noise, air quality, residential or business relocations, and community impacts) will be analyzed in relation to the presence of minority and low income populations. The EIS will assess demographics in the immediate vicinity of areas where major planned activities (such as construction of improved rail connections, siding extensions, and installation of double track) would take place, and where increases in train traffic would be above the Board's threshold for environmental review. The EIS will evaluate whether such activities potentially could have a disproportionately high and adverse effect on minority or low-income groups.

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Cultural and Historic Resources

The Draft Scope of Study stated that the EIS would address potential effects from construction of the proposed connections and double tracking on cultural and historic resources that are in or immediately adjacent to the railroad ROW. Commenters suggested that the EIS should assess impacts on cultural resources that are near but not necessarily adjacent to the EJ&E ROW or near the area where new connections are proposed. These cultural resources range from historic and prehistoric sites to historic districts.

The Final Scope of Study clarifies that the EIS will establish an area of potential effect (APE) in coordination with the State Historic Preservation offices (SHPO) in Illinois and Indiana. SEA will assess potential effects within the APE. The APE will most likely be inside the EJ&E ROW and the immediate area where construction activities (double tracking, new connections) may cause ground disturbance. In addition, the EIS will evaluate Native American sites to the extent they are suggested for evaluation by a SHPO or a Native American tribe.

Indirect and Cumulative Effects

Commenters expressed concern about the potential indirect and cumulative effects that could be caused by the proposed acquisition, including effects of other reasonably foreseeable activities on communities and natural resources. Consistent with the Draft Scope of Study, the EIS will address indirect and cumulative effects that may occur later in time, or at other locations, or which, in combination with other actions, could affect the same resources. This analysis will be done for reasonably foreseeable related actions that warrant such analysis, given the context and scope of the proposed acquisition.

In addition, some commenters suggested that the EIS should examine the effects of increased freight rail traffic on CN lines in Wisconsin. They suggested that the proposed acquisition of the EJ&E by CN would result in increased traffic on the CN lines in Wisconsin going to and from the Chicago area. This, the commenters state, would result in increased impacts to safety and air quality in Wisconsin.

In preparing the EIS, SEA will determine the geographic boundaries for the analysis of indirect and cumulative effects by examining an area within reasonable proximity to the area or areas where direct effects to environmental resources are observed. SEA will also take into account the nature of each affected resource that is analyzed. The Applicants have not identified proposed transaction-related train traffic changes on any of the CN rail line segments outside of the EJ&E's arc. Although SEA's own review analysis has not been completed yet, the available information does not suggest that an analysis of indirect and cumulative effects outside of the Chicago metropolitan area will be warranted.

As indicated in the Draft Scope of Study, the EIS will evaluate indirect and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction where SEA determines that there is the likelihood of significant environmental impacts and where information is provided to the Board that describes 1) those other projects or activities, 2) their interrelationship with the proposed acquisition, and 3) the type and severity of the

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potential environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis in the EIS.

Some commenters suggested that the EIS should examine the effects of the proposed acquisition of the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) and the Iowa, Chicago & Eastern Railroad Corporation (IC&E) by Canadian Pacific Railway Corporation (CP).³ Prior to CP's application to acquire DM&E and IC&E, the Board approved an extension of the DM&E into the Powder River Basin in Northeastern Wyoming to permit rail access to coal resources.⁴ The commenters believe that the likely route for any new coal shipments that could result from the CP's proposed acquisition of the DM&E would be over the CN rail lines in Wisconsin, including the EJ&E rail lines, if CN's proposed acquisition of EJ&E is authorized and implemented. They contend that this would result in more and longer freight trains than the numbers projected in the application, which, the commenters claim, would result in more severe impacts on their communities than would otherwise be the case.

As previously noted, the EIS will include an appropriate evaluation of indirect and cumulative effects of reasonably foreseeable projects that relate to the proposed acquisition. The commenters' suggestion that the impacts of the proposed acquisition of the DM&E and IC&E by CP need to be considered as part of the cumulative impact analyses, however, is premature. In a decision in Finance Docket No. 35081, issued on April 4, 2008, the Board determined that it would be appropriate to defer preparation of an EIS addressing the possible future movement of DM&E PRB coal traffic over the IC&E and/or CP lines because sufficient information is not available to conduct a meaningful review now. In that decision, the Board made clear that should it ultimately authorize the transaction proposed in Finance Docket No. 35081, it would impose conditions on the authorization precluding such movements pending completion of an EIS and the issuance of a final Board decision addressing the impact of such coal operations and allowing such operations to begin, if appropriate. In short, no movements of the sort commenters are concerned about are reasonably foreseeable at this time.

Mitigation

Many commenters suggested that the Board should require CN to install highway/rail grade separations or change rail operations wherever vehicle delays or safety risk would exceed the existing conditions. Other commenters stated that the Board should base its mitigation conditions on the accomplishment of regional goals and not on local problem sites. Some commenters believed that the Board should retain jurisdiction over the proposed transaction for an extensive period after the proposed transaction is implemented (assuming the Board

³ This acquisition is pending before the Board in STB Finance Docket No. 35081, *CP Railway Company et. al. – Control – Dakota Minnesota & Eastern Railroad Corp., et. al.*

⁴ See *Dakota, Minnesota & Eastern Railroad Corp., Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Feb. 15, 2006), affirmed *Mayo Foundation v. STB*, 472 F.3d 545 (8th Cir. 2006).

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authorizes it), to review additional increases in freight rail and vehicle traffic to determine appropriate mitigation. Other commenters suggested that the Board should not approve the proposed transaction unless CN agrees to make accommodations for improvements, such as the runway extension at GCIA and the NICTD West Lake Corridor service on the South Bend Subdivision ROW.

It would be inappropriate to present any specific mitigation in the Final Scope of Study for the Draft EIS. Mitigation depends on the results of the environmental analysis, and the environmental analysis related to the proposed transaction is not yet completed. The Draft EIS will contain recommendations for environmental mitigation based on the results of the analysis of potential effects. After the Draft EIS is issued, commenters will have the opportunity to comment on the mitigation recommendations in the Draft EIS. The comments will be reflected in the Final EIS. The Board then will consider SEA's final recommended mitigation in deciding whether to grant or deny the proposed acquisition or grant it with environmental conditions. Finally, it is worth noting here that the Board only has authority to require mitigation for effects arising from the proposed acquisition, not pre-existing conditions. At the same time, however, voluntary mitigation (i.e., mitigation proposed by the railroad often after consultations with potentially affected communities and others) can sometimes achieve more far reaching results than the Board could unilaterally impose. Voluntary mitigation and mutually acceptable negotiated agreements can result in cost sharing to allow completion of very costly measures, such as grade-separated crossings, which primarily benefit the community rather than the railroad, and thus are typically funded primarily by entities other than the railroad.

The Final Scope of Study for the Draft EIS of the proposed transaction is attached as Appendix A.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan
Acting Secretary

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APPENDIX A: Final Scope of Study for the EIS

Proposed Action and Definition of Alternatives:

Applicants' proposed acquisition of the EJ&E railroad would result in shifting of rail traffic from rail lines in Chicago to rail lines on the EJ&E line, which forms an arc around Chicago. Rail traffic on CN lines inside the EJ&E arc would generally decrease. These decreases in rail traffic would be offset by substantial increases in the number of trains operated on the EJ&E line outside Chicago. The increase in train traffic on the EJ&E line would vary from approximately 15 to 24 additional trains per day. Applicants state that the proposed transaction would not impair CN's ability to handle commuter trains, passenger trains, or trackage/haulage trains currently operating on the EJ&E line. Finally, on the integrated CN/EJ&E system, four train pairs would be added to EJ&E terminals: three inbound and three outbound switch trains at Kirk Yard, and one inbound and one outbound switch train at East Joliet Yard. Applicants' projections for the changes in rail operations as a result of the proposed acquisition are set forth in the application, available on the Board's website. The proposed transaction also includes construction of six rail connections, siding extensions, and installation of double track. The EIS will discuss the purpose and need for the proposed transaction.

Reasonable and feasible alternatives /9630 for the proposed acquisition that will be evaluated in the EIS are 1) approval of the proposed transaction, 2) disapproval of the proposed transaction in whole (No-Action alternative), or 3) approval of the proposed transaction with conditions, including environmental mitigation conditions.¹

In addition, the EIS will consider as appropriate, reasonable and feasible alignment alternatives for the six proposed connections.

Environmental Impact Analysis

Analysis in the EIS will address proposed activities and their potential environmental impacts, as appropriate. Existing rail operations are the baseline from which the potential environmental impacts of the proposed transaction will be evaluated. SEA will evaluate only the potential environmental impacts of operational and physical changes that are directly related to the proposed transaction. SEA will not consider

¹ The Board has broad authority to impose conditions in railroad acquisition transactions under 49 USC 11324 (c). However, the Board's power to impose conditions is not limitless: there must be a sufficient nexus between the condition imposed and the transaction before the agency, mitigation is not imposed to remedy pre-existing conditions, and the condition imposed must be reasonable. See *United States v. Chesapeake & O. Ry.*, 426 U.S. 500, 514-15 (1976); *Consolidated Rail Corp. v. ICC*, 29 F.3d 706, 714 (D.C. Cir. 1994).

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environmental impacts solely arising from existing rail operations and existing railroad facilities.²

The scope of the analysis will include the following types of activities:

1. Anticipated changes in level of operations on rail lines (for instance, an increase in average length of trains, or a proposed change in average train speed) for those rail line segments that meet or exceed the Board's thresholds for environmental review in 49 CFR 1105.7.
2. Proposed changes in activity at rail yards to the extent such changes may exceed the Board's thresholds for environmental analysis in 49 CFR 1105.7.
3. Proposed physical construction of improved rail connections, siding extensions, and installation of double track.

Environmental Impact Categories

The EIS will address potential impacts on the environment that will include the areas of safety, rail operations, transportation systems, hazardous waste sites, hazardous materials transportation, land use, energy, air quality, noise, natural resources, water resources, socioeconomic effects related to physical changes in the environment, environmental justice, cultural or historic resources, and indirect and cumulative effects, as described below.

1. Safety

The EIS will:

- A. Consider at-grade rail crossing accident probability and safety factors related to increased freight traffic as a result of the proposed transaction. This will generally include all public highway/rail at-grade crossings. Accident probability analysis will address the potential for rail and vehicle accidents.

² In proceedings similar to this proposed acquisition, the Board's practice consistently has been to mitigate only those environmental impacts that result directly from the proposed transaction. The Board, like its predecessor, the Interstate Commerce Commission, has not imposed mitigation to remedy pre-existing conditions such as those that might make the quality of life in a particular community better, but are not a direct result of the proposed acquisition (i.e., congestion associated with the existing rail line traffic, or the traffic of other railroads).

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- B. Consider increased probability of train accidents and derailments due to increased proposed transaction-related traffic on a system-wide basis.
- C. Address potential effects of proposed transaction-related increased freight traffic on commuter and intercity passenger service operations.
- D. Discuss CN's emergency management or emergency response plans.
- E. Address safety issues associated with the integration of differing rail operating systems and procedures, including an appropriate discussion of Applicants' Safety Integration Plan.

2. Hazardous Materials Transportation

The EIS will discuss the potential environmental impacts of the proposed transaction on public health and safety with respect to the transportation of hazardous materials, including:

- A. Changes in the types of hazardous materials and quantities transported or re-routed.
- B. Nature of the hazardous materials that are currently being transported or are proposed to be transported.
- C. Applicants' safety practices and protocols.
- D. Applicants' U.S. safety data on derailments, accidents and hazardous materials spills.
- E. Contingency plans to address accidental spills.
- F. Probability of increased spills given railroad safety statistics and applicable Federal Railroad Administration requirements.

3. Transportation Systems

The EIS will:

- A. Describe system-wide and localized effects of the proposed transaction-related operational changes, construction of proposed connections, siding extensions, and installation of double track.
- B. Evaluate those commuter rail line segments or crossings that would experience increased freight traffic as a result of the proposed transaction.

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- C. Discuss proposed transaction-related effects on existing or proposed commuter or passenger rail service (Metra, NICTD, AMTRAK) as appropriate (i.e., where capital improvements have been approved). Evaluate the capability of the EJ&E rail line segments or crossings to accommodate the reasonably foreseeable addition of commuter trains.
- D. Discuss proposed transaction-related potential diversions of freight traffic from trucks to rail and from rail to trucks, as appropriate.
- E. Address vehicular delays at rail crossings and intermodal facilities due to increases in rail traffic operations as a result of the proposed transaction. Estimates of typical delays will be made for highway/rail at-grade crossings, more detailed analysis will be done at highway/rail at-grade crossings that have an ADT of 2,500 vehicles per day or are within 800 feet of another crossing. Vehicle delay analysis will be done for traffic levels in years 2015 and 2020. Detailed analysis also will be conducted at highway/rail at-grade crossings that have an ADT of less than 2,500 vehicles per day, but have unique circumstances that make such evaluations appropriate.
- F. Evaluate potential effects of proposed transaction-related highway/rail at-grade crossing blockage due to stopped trains.
- G. Discuss potential effects of proposed transaction-related increased train traffic on emergency response facilities in proximity to the EJ&E rail line.
- H. Discuss potential effects of proposed transaction-related increased train traffic on railroad bridges that cross navigation channels to the extent that such bridges allow only one mode of transportation to pass at a time (movable-span railroad bridges).
- I. Discuss potential effects of proposed transaction-related increased train traffic on the Gary Chicago International Airport and its planned expansion.

4. Land Use

The EIS will:

- A. Describe whether the construction of the proposed rail connections, siding extensions, and installation of double track are consistent with existing land use plans.
- B. Describe environmental impacts associated with the construction of the proposed rail connections, siding extensions, and installation of double track on existing land use plans and potential effects on prime farmland.
- C. Discuss potential effects of proposed transaction-related changes in rail operations on parks, forest preserves, and schools in the vicinity of the EJ&E rail line.

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D. Discuss consistency of the construction of the proposed rail connections, siding extensions, and installation of double track with applicable zoning requirements.

5. Socioeconomics

The EIS will:

A. Address socioeconomic issues related to changes in the physical environment as a result of the proposed transaction.

B. Describe demographic characteristics of the transaction area and potential effects of the proposed transaction.

C. Evaluate economic effects of proposed acquisition-related construction and improvements to the EJ&E.

D. Discuss potential effects of proposed transaction-related increased train traffic on the potentially affected communities.

6. Hazardous Materials – Contaminated Sites

The EIS will:

A. Describe any recorded sites of contamination within or adjacent to areas potentially disturbed by proposed transaction-related construction activities.

B. Discuss known areas where spills of hazardous materials have occurred in the past and which may be affected by proposed transaction-related activities.

C. Discuss emergency response and clean up plans.

7. Energy

The EIS will:

A. Describe the potential environmental impact of the proposed transaction on transportation of energy resources and recyclable commodities.

B. Evaluate potential changes in fuel use arising from the proposed transaction.

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8. Air Quality

The EIS will:

A. Evaluate air emissions increases where the proposed post-acquisition activity would exceed the Board's environmental thresholds in 49 CFR 1105.7(e)(5)(i), for air quality nonattainment areas as designated under the Clean Air Act. The applicable thresholds are as follows for the Chicago Metropolitan area, which is a nonattainment area:³

1. A 50 percent increase in rail traffic (measured in gross-ton miles annually) or an increase of three trains a day on any segment of rail line affected by the proposal; or
2. An increase in rail yard activity of at least 20 percent or more in carload activity (rail car switching and block swapping).
3. Increase in truck traffic greater than 10 percent of average daily traffic (ADT) or 50 trucks per day.

B. Discuss the net change in emissions from changes in railroad operations associated with the proposed transaction. Net emissions changes will be calculated for counties with projected proposed transaction-related changes in train traffic.

C. Discuss the following information regarding the anticipated transportation of ozone depleting materials (such as nitrogen oxide and Freon):

1. Materials and quantity;
2. Applicants' safety practices;
3. Applicants' safety record (within the United States) on derailments, accidents, and spills;
4. Contingency plans to address accidental spills; and

³ Nonattainment areas are areas that do not comply with one or more ambient air quality standards. Ozone non-attainment areas are further classified as Marginal, Moderate, Serious, Severe, or Extreme Areas. These classifications are based on the level, in parts per million (ppm), of ozone measured for each area. Moderate areas are defined as .092 to .107 ppm, Serious Areas are defined as containing 0.107 ppm to 0.120 ppm, and Severe Areas are defined as containing 0.120 to 0.187 ppm. The Chicago area is currently classified as moderate non-attainment for ozone and non-attainment for PM 2.5.

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5. Likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

D. Discuss potential air emissions increases from vehicle delays at highway/rail at-grade crossings where the crossing is projected to experience a change in rail traffic arising from the proposed transaction over the thresholds described above. Such increases will be factored into the net emissions estimates for the affected area.

E. Estimate potential increases or decreases in diesel particulate emissions arising from the proposed transaction.

F. Discuss potential for changes in greenhouse gas emissions arising from the proposed transaction and how such changes may relate to climate change.

9. Noise and Vibration

The EIS will:

A. Describe potential noise and vibration impacts of the proposed transaction for those areas that exceed the Board's environmental thresholds identified in the Air Quality section.

B. Identify whether the proposed transaction-related increases in rail traffic will cause an increase to a noise level of 65 dBA L_{dn} and 3 dBA L_{dn} or greater. If so, an estimate of the number of sensitive receptors (e.g., schools and residences) within such areas will be made.

C. Assess potential proposed transaction-related vibration effects based on Federal Transit Administration (FTA) vibration methodology in areas where it appears there may be vibration sensitive receptors within or immediately adjacent to the railroad right of way.

D. Discuss existing or planned Quiet Zones.

10. Biological Resources

The EIS will:

A. Discuss the potential environmental impacts of construction of proposed connections, siding extensions, and installation of double track on federal or state endangered or threatened species or designated critical habitats.

B. Discuss the effects of construction of proposed rail connections, siding extensions, and installation of double track on wildlife sanctuaries or refuges, and national or state parks or forests.

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C. Discuss potential effects of proposed transaction-related increased train traffic on federal or state designated protected species or areas of special biological significance.

11. Water Resources

The EIS will:

A. Describe existing surface and groundwater resources in the vicinity of the EJ& E, particularly in areas of planned construction activity.

B. Discuss whether potential impacts from the construction of proposed rail connections, siding extensions, and installation of double track may be inconsistent with applicable federal or state water quality standards.

C. Discuss whether permits may be required under Sections 404 or 402 of the Clean Water Act (33 USC 1344) for any construction of proposed rail connections, siding extensions, and installation of double track, and whether any such projects have the potential to encroach upon any designated wetlands or 100-year floodplains.

D. Discuss hydrogeology in the study area and presence of any designated sensitive groundwater areas.

12. Environmental Justice

The EIS will:

A. Report on the demographics in the immediate vicinity of any area where major activity such as construction of rail connections, siding extensions, and/or installation double track is proposed.

B. Report on the demographics in the vicinity of rail lines with projected proposed transaction-related rail traffic increases above the Board's thresholds for environmental review.

C. Evaluate whether such activities potentially have a disproportionately high and adverse effect on any minority or low-income group.

13. Cultural and Historic Resources

The EIS will address potential impacts from the proposed construction of rail connections, siding extensions, and installation of double track on cultural and historic resources that are within areas potentially disturbed by construction activities.

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14. Indirect and Cumulative Effects

The EIS will:

A. Address indirect and cumulative effects of environmental impacts that have regional or system-wide ramifications. This analysis will be done for environmental impacts that warrant such analysis given the context and scope of the proposed transaction.

B. Discuss as part of the indirect and cumulative impact analysis the potential environmental impacts of yard modification activities on railroad-owned property that would potentially be affected by the proposed transaction.

C. Evaluate indirect and cumulative effects, as appropriate, for other projects or activities that relate to the proposed transaction where SEA determines that there is the likelihood of significant environmental impacts and where information is provided to the Board that describes 1) those other projects or activities, 2) their interrelationship with the proposed acquisition, and 3) the type and severity of the potential environmental impacts. This information must be provided to the Board within sufficient time to allow for review and analysis in the EIS.

15. Mitigation

Where SEA determines there is potential for significant adverse impacts arising from the proposed transaction, SEA will consider reasonable mitigation measures that could reduce or eliminate such adverse impacts. SEA may consider a range of mitigation measures based on the nature and severity of the potential impact and consistent with the Board's jurisdiction and authority.