

BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO 35087
CANADIAN NATIONAL RAILWAY COMPANY
AND GRAND TRUNK CORPORATION
- CONTROL -
EJ&E WEST COMPANY

**WISCONSIN & SOUTHERN RAILROAD CO.'S
COMMENTS ON THE DRAFT SCOPE OF
ENVIRONMENTAL IMPACT STATEMENT**

Respectfully submitted.

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Due February 15, 2008

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INTRODUCTION

On December 21, 2007, the Surface Transportation Board's Section of Environmental Assessment ("the SEA") issued a decision in the above-captioned control proceeding entitled "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." In accordance with this decision the SEA solicited comments on the draft scope and participation in the

environmental review process by "all interested agencies, organizations, communities, and members of the public" on or before February 15, 2008¹

Pursuant to that decision, Wisconsin & Southern Railroad Co ("WSOR"), a class II rail carrier incorporated and headquartered in Wisconsin and operating in the States of Illinois and Wisconsin, files these comments about the environmental impacts of Canadian National Railway's ("CN's") absorption of the railroad lines and operations of the EJ&E West Company (referred to as either the "J" or the "EJ&E")² WSOR submits with this filing the comments of its President, Chief Executive Officer, and majority owner William Gardner.

WSOR maintains that the unconditioned absorption by CN of the "J" will have serious adverse impacts on citizens of Wisconsin, rail shippers with facilities located in Wisconsin, and rail carriers serving Wisconsin such as WSOR. It urges the SEA to find that this transaction has not only significant local, but also regional and system-wide ramifications, and further urges the SEA to examine this transaction from the perspective of the entire Upper Midwest region instead of just the local Chicago vicinity.

Absent imposition of appropriate mitigation, WSOR strongly opposes the transaction, and urges that the transaction be denied.

¹ The original comment due date of Feb 1, 2008, was extended until Feb 15, 2008.

² This transaction represents most of the common carrier operations of the Elgin, Joliet and Eastern Railway Company.

BACKGROUND

On January 28, 2008, WSOR submitted argument and testimony by its President, CEO, and majority owner William Gardner regarding the economic impacts of this transaction. Mr. Gardner predicted that this transaction would produce significant railroad congestion and would seriously and adversely affect WSOR's ability to provide local rail service to its Wisconsin customers. In particular, Mr. Gardner stressed that the Board must examine the CN/EJ&E transaction in the light of the nearly simultaneous filing by Canadian Pacific Railway ("CPR") to acquire the Dakota, Minnesota & Eastern ("DM&E") and Iowa, Chicago & Eastern Railroads ("IC&E") and the impact of both transactions on WSOR's ability to reach the all important Chicago Gateway.

To protect the interest of WSOR and its local Wisconsin shippers, Mr. Gardner asked the Board to either require CN to sell to WSOR certain trackage and overhead trackage rights providing access to the Belt Railway of Chicago's Clearing Yard or, alternatively, to require CN to convey to WSOR overhead trackage rights to Clearing Yard.³

³ Mr. Gardner's views about the impacts of this transaction on Chicago-area rail congestion reflect comments filed by other railroads include MLIRA, the Chicago commuter rail agency, in the current (CN/EJ&E) proceeding, by CSX Transportation in the current proceeding, and by BNSF Railway Company in the CPR/DM&E/IC&E proceeding. MFIRA Opposition Statement And Request for Conditions dated January 28, 2008, at 6; CSX Transportation letter dated January 28, 2008, to Acting STB Secretary Anne K. Quinlan, and BNSF Railway Company Comments on the Environmental Review Procedures Proposed in the Application of Canadian Pacific Railway, et al. dated October 24, 2007, at 2-4, and 12-14.

ENVIRONMENTAL COMMENTS

This proceeding presents the SEA with two fundamental challenges. First, the SEA must evaluate this transaction and impose appropriate relief in the light of the heavy impacts on the Upper Midwest, particularly Wisconsin which lies closely proximate to the Chicago rail hub, and, second, the SEA must evaluate this transaction and impose appropriate relief in light of the impacts flowing from the simultaneous CPR/DMF/ICE transaction occurring in the same geographic region. WSOR submits that the law and sound public policy require the SEA to do no less than both

CN would have the Board and the SEA believe that consolidation of the CN and the EJ&E would produce great public benefits by removing from downtown Chicago the current interchange of traffic between these two railroads. See, e.g., Application at 13-4, 23. Many suburban Illinois commenters argue to the contrary, and aver that the transaction's impact would chiefly be to move those interchanges and the related environmental and community impacts from downtown Chicago to the Chicago suburbs. See, e.g., Opening Memorandum of Will County at 8.

Both the applicants and their opponents ignore the fact that the transaction will have tremendous impacts on adjacent areas in the Upper Midwest Region as the impact of rail congestion backs up into Wisconsin

and other areas. As the State of Wisconsin has said in its comments to be filed today,

“[w]hat is noticeably absent however is the impact the transaction will have on other portions of the CN system that feed into the Chicago area. In particular, the Wisconsin Department of Transportation is concerned about the congestion that exists on the lines of the CN traversing through the state.”

WISDOT comments at 1

In his attached comments, Mr. Gardner predicts, absent appropriate relief, that CN's absorption of the "J" will have significant adverse impacts on the citizens of Wisconsin, rail shippers with facilities in Wisconsin, and railroads serving Wisconsin such as WSOR. More specifically, he states that CN's projected increase of through-freight traffic over its former Wisconsin Central main line overwhelm the line's capacity line resulting in added noise and air pollution, train congestion, grade crossing related delays and accidents, and similar negative effects.

Regarding rail service impacts, Mr. Gardner maintains that CN will have tremendous difficulty providing reliable and frequent rail service to local car load customers because the increased through-service frequencies will leave limited opportunities for switching wayside customers. As a result, he predicts these customers will either divert their business to

regional and short line railroads such as WSOR, divert their traffic to other modes of transportation, or relocate from Wisconsin Gardner at 6-7

Focusing on WSOR's own operations, Mr. Gardner expresses his concern that more frequent CN through freight service will diminish WSOR's ability to utilize its overhead trackage rights on CN's former Wisconsin Central line between Slinger and Waukesha, WI, despite CN's claim that the operations of other railroads will not be adversely affected Gardner at 9

The law is clear that the SEA must examine this transaction from a regional, rather than purely local, perspective Impacts on neighboring Wisconsin are part of the SEA's study mandate The SEA's December 21, 2008 Decision ("Decision") intimates that the SEA will "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 the proposed transaction " Decision at 12-13 Under applicable Council on Environmental Quality ("CEQ") regulations, the SEA must examine such

secondary or indirect effects caused by the transaction but located some distance away such as in Wisconsin. 40 CFR 1508 8(b).⁴

Additionally, federal law and sound public policy require the SEA to analyze the CN/EJ&E transaction in the context of both the CPR/DM&E/IC&E transaction and the distinct possibility that DM&E may construct a rail line into the Powder River Basin (PRB)

The Third Circuit has held that CEQ regulations provide the framework for how cumulative impacts are to be addressed in an EA. Although the impact of a particular project maybe inconsequential when considered in isolation, if the cumulative impact of a given project and other planned projects is significant, an applicant cannot simply prepare an EA for its project, and ignore the overall impact of the project on a particular neighborhood. 40 C F R § 1508 27(b) (7) Society Hill Towers Owners Association v Rendell, 210 F 3d 168, 180-82 (3d C 2000)

In Kleppe v Sierra Club, 427 U S 390, 49 L Ed. 2d 576. 96 S. Ct 2718 (1976) the Supreme Court addressed the question of when the cumulative impact of other projects must be included in an environmental analysis. The Court stated when several proposals for actions that will have

⁴ Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. 40 C F R 1508 8(b),

cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together " Id at 410.

In W. N. C. Alliance v. N. C. DOT, 312 F. Supp. 2d 765 (D. N. C. 2003), an EA prepared for a highway widening project was found deficient for failing to consider the cumulative effects of other planned projects affecting the same transportation corridor. This is certainly similar to the issues presented herein, where the cumulative or synergistic impact of both the CN & CPR transactions affect the same rail transportation corridor, i.e., Wisconsin.

Again, Mr. Gardner has addressed this issue at length in his economic testimony filed on January 28, 2008, and in his comments submitted today. Simply stated, he believes the combination of CN's increased traffic volumes and the PRB coal traffic moving on CPR's main line will overwhelm the capacity of rail lines moving from the Upper Midwest to Chicago. This will impair the ability of rail customers with facilities in Wisconsin to move their traffic to or from the Chicago Gateway and will likewise impair WSOR's ability to use its trackage rights to Chicago over the METRA and CP-owned C&M Line. Gardner at 12-3. In Kleppe, the United States Supreme Court addressed the question of whether an agency

must study the cumulative impacts of a series of independent but seemingly related proposals. The answer is yes.

The Court stated when several proposals for actions that will have cumulative or synergistic environmental impacts upon a region are pending concurrently before an agency, their environmental consequences must be considered together. *Id.*, 427 U.S. at 410.⁵ Regulations promulgated by the CEQ provide the framework for how cumulative impacts are to be addressed in an EA (Environmental Assessment) or EIS. CEQ regulations identify factors that should be considered in determining whether an impact is significant. 40 C.F.R. § 1508.27. Although the impact of a particular project may be inconsequential when considered in isolation, if the cumulative impact of a given project and other planned projects is significant, an applicant can not simply prepare an EA for its project, issue a FONSI, and ignore the overall impact of the project on a particular neighborhood. 40 C.F.R. § 1508.27(b)(7). See also, National Wildlife Federation v. FERC, 286 U.S. App. D.C. 117, 912 F.2d 1471, 1478 (D.C. Cir. 1990). There the Court held that the agency "is not required to delve into the possible effects of a hypothetical project but it must focus on the impact of the particular proposal at issue and *other pending or recently*

⁵ The Court noted however, that the concept of "cumulative impact" was not intended to expand an inquiry into the realm of the fanciful. *Id.*

approval proposals that might be connected to or act cumulatively with the proposal at issue” [emphasis supplied]

Thus, CEQ directs agencies to consider “Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”⁶

That the SEA is required to view the CN/EJ&E and CPR/DM&E/IC&E transactions as connected or having a cumulative impact belies the obvious. The national railroad system forms a network and Chicago is the hub of that network. CN and CPR lines meet in Chicago. These railroads interchange traffic and share some of the same yard facilities. Congestion on one line necessarily spills over to the other line as the Board and the SEA have by now learned from other railroad consolidations over the past 15 years. The SEA cannot ignore that reality.

⁶ CEQ regulations define “cumulative impact” as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. *Id.* An agency’s regulations typically direct entities conducting environmental reviews to “group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of composite or contemplated actions.” 24 C.F.R. § 58.32(a), discussed in Seminary Hill Towers Owners Association v. Rendell, 210 F.3d 168, 180-82 (3rd Cir. 2000).

In fact, the Board itself codified that reality ten years ago when it rewrote its regulations on major rail consolidations.⁷

The only remaining issue is whether the PRB extension is so reasonably foreseeable that the SEA should consider the possibility that PRB-generated coal traffic moving over CPR lines into Chicago would overwhelm the Upper Midwest rail system and adversely affect Wisconsin rail service. Federal case precedent holds that a future action is “reasonably foreseeable” if the impact is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision. Sierra Club v. Marsh, 976 F.2d 763, 767-8 (1st Cir. 1992) (the Court found that the other projects there were sufficiently reasonably foreseeable as to be required in the consideration of the cumulative impacts). WSOR submits that it would. Gardner at 11.⁸

CONCLUSION

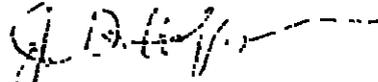
Accordingly, WSOR urges the SEA to find that this transaction has significant regional and system-wide ramifications, that the SEA examine this transaction from the perspective of the entire Upper Midwest region,

⁷ While the Board and the Interstate Commerce Commission historically reviewed only the merger or control transaction before it without regard to any other pending or future transactions, the Board repudiated that policy in major railroad merger proceedings. STB Docket No. EP-582 (sub-no. 1), Major Rail Consolidation Proceedings (served March 31, 2000).

⁸ The notion that DM&E’s construction of a line into the PRB is “reasonably foreseeable” is not far fetched at all. See, the comments filed by BNSF Railway Company in the CPR/DM&E/IC&E case referenced at note 3 on page 4 of these comments.

and that the transaction be denied absent imposition of appropriate mitigation

Respectfully submitted,

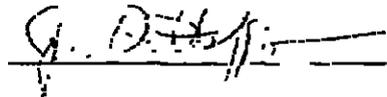


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Due February 15, 2008

CERTIFICATE OF SERVICE

I, John D Heffner, hereby certify that I served a copy of the foregoing "Comments on the Draft Scope of Environmental Impact Statement of Wisconsin & Southern Railroad Co." on all parties to this proceeding this 18th day of February 2008, by first class U S Mail



ENVIRONMENTAL COMMENTS OF
WILLIAM E. GARDNER ON BEHALF OF THE
WISCONSIN & SOUTHERN RAILROAD CO

My name is William E. Gardner. My mailing address is P O Box 90229, Milwaukee, WI 53209. Since 1988, I have served as President, Chief Executive Officer, and majority owner of the Wisconsin & Southern Railroad Co ("WSOR"), an independently owned class II regional railroad that serves a substantial part of central southern Wisconsin and northern Illinois. I am the same William Gardner who previously submitted sworn testimony about the economic implications of the absorption of the Elgin, Joliet & Eastern Railway ("the J") by the Canadian National Railway ("CN").

As background, WSOR plays a vital role in the economy of the State of Wisconsin handling over 60,000 car loads of freight on a network of more than 700 miles of track and trackage rights. WSOR is the principal rail carrier serving such communities as Madison, Wisconsin's State capital, Janesville, Horicon, and Oshkosh, just to name a few. WSOR handles a diverse group of commodities including grain and other types of agricultural produce, ethanol, coal, aggregate, minerals, lumber, paper products, plastics, and manufactured goods. WSOR is fairly unique among regional railroads in

that it represents a true public private partnership with public ownership of much of its railroad infrastructure¹ Of key importance here, WSOR holds overhead trackage rights between Slinger and Waukesha, WI, over Applicant CN's track, as well as between Fox Lake and Chicago, IL, and Milwaukee, WI, and Chicago, IL, over the main line of the Canadian Pacific Railroad These trackage rights give WSOR access to all six class I railroads serving Chicago. I am attaching to my statement a map that depicts WSOR's route structure and the communities it serves

My purpose in submitting this statement is to give the Board's Section of Environmental Assessment ("the SEA") the benefit of my railroad's views on the proposed absorption of the J into the CN I have read and endorse the comments prepared by the Wisconsin Department of Transportation in connection with the Board's Draft Scope of Study for Environmental Impact Statement

My purpose in filing these comments is to apprise the SEA of two important environmental consequences that will flow from a hastily considered and approved CN acquisition CN's inability to handle the local car load freight generated along its lines by customers located in Wisconsin

¹ Approximately 81% of WSOR's track and rights-of-way are owned by the State of Wisconsin through a series of government entities known as Transit Commissions WSOR leases another 13% of its track and rights-of way from CP Rail and Union Pacific Railroad and WSOR owns the balance (6%) Gardner VS at 1-2

and the inability of the rail network entering the Chicago Gateway from the Upper Midwest to handle drastic future increases in freight and passenger traffic² For the reasons stated below, each of these consequences will have significant negative impacts on the quality of life for Wisconsin citizens, rail service for customers with rail facilities in Wisconsin, and the ability of railroads in Wisconsin such as WSOR's to meet its common carrier rail service needs of those customers. Accordingly, WSOR has asked the Board to condition its approval of CN's absorption of the J by requiring CN either to sell to WSOR its former Wisconsin Central main line and related trackage rights from Leighton into the Belt Railway of Chicago Clearing Yard or, alternatively, to grant WSOR trackage rights over those lines to the Clearing Yard so that WSOR can continue to interchange freight as it does today³

Today the Board is faced with two different control transactions filed by both Canadian-owned class I railroads. Several months ago, the

² Currently, there are four principal rail routes between the Upper Midwest and the Chicago Gateway. CN owns and operates the former Wisconsin Central LTD line between the Twin Cities/Duluth and Chicago via Fond du Lac and Stevens Point, WI. CP Rail owns and operates a mainline between the Twin Cities and Chicago via Milwaukee. Amtrak also uses this line. Union Pacific Railroad owns and operates a secondary mainline linking these same points. Finally, BNSF Railway owns and operates a main line between the Twin Cities and Chicago via Prairie du Chien in western Wisconsin and Savannah, IL.

³ More specifically, WSOR has asked the Board to require CN, as a condition of the transaction's approval, to (1) sell to WSOR a segment of CN's former Wisconsin Central main line from Leighton (MP 37.9) to Forest Park, IL (MP 11.0), (2) grant WSOR overhead trackage rights over CN's line between Grays Lake (MP 44.0) and Leighton (MP 37.9), and (3) assign to WSOR its trackage rights over CSXT from MP 11.0 (also known as CSXT MP 33.0) to the entrance to the Clearing Yard (approximately BRC MP 9.9, distance of about 8.9 miles) or, alternatively, to grant WSOR overhead trackage rights on this entire line from Grays Lake (MP 44.0), to Leighton (MP 37.9) and then to Forest Park, IL (MP 11.0) and to require CN to assign its rights over CSXT into the Clearing Yard. This request is discussed more specifically in WSOR's testimony filed with the Board on Jan. 28, 2008. Gardner VS at 9-10.

Canadian Pacific Railway, generally known as CP Rail ("CPR") announced its desire to acquire the commonly-owned Dakota, Minnesota & Eastern and Iowa, Chicago & Eastern Railroads. A few weeks later CN announced its intention to acquire the "J". The Board has decided to treat the CPR acquisition as a "significant" transaction while relegating the CN transaction to a lower level of scrutiny as a "minor" transaction.

A superficial reading of CN's application suggests that it would result in few, if any, adverse impacts on other railroads in the region and even on communities in the region. Unfortunately, the truth is otherwise. While I don't believe that CN's application even references any impacts on WSOR, it does have a very definite impact on both my railroad and the State of Wisconsin generally. Unlike many railroad consolidations that involve just the loss of modal competition for and/or traffic diversion from connecting carriers, CN's absorption of the "J" will have significant operating impacts on other railroads and Wisconsin communities and their citizens. WSOR maintains that the SEA must analyze both the CN and CPR transactions as two interrelated transactions. To consider the environmental impacts of one without reference to the other would be contrary to the National Environmental Policy Act (NEPA) as well as bad public policy. It would

represent the worst sort of "tunnel vision" that government agencies that are sometimes known for

With respect to CN, WSOR currently holds overhead trackage rights between Slinger and Waukesha, WI, over CN's mainline between Superior, WI, and Chicago, IL. These rights enable WSOR to move trains from its Horizon Subdivision into Milwaukee for movement to Chicago or elsewhere on WSOR's system

In addition, WSOR currently has two overhead routes into Chicago utilizing trackage rights over two lines over which CPR conducts freight operations. First, WSOR operates into the State of Illinois from Janesville, WI, to Fox Lake, IL, where connects with a commuter line owned by Chicago's commuter rail agency (METRA) from Fox Lake via Rondout and thence into downtown Chicago to reach the Belt Railway of Chicago Clearing Yard. Second, WSOR recently obtained a second route for overhead traffic by a grant of trackage rights from CPR from over its line⁴ from North Milwaukee to downtown Chicago via Milwaukee. These two routes converge at Rondout with METRA owning the track and right-of-way south of that point. Upon reaching downtown Chicago, WSOR then turns west on another METRA-owned line to reach the Clearing Yard owned by

⁴ Commonly known as the "C&M Line"

the Belt Railway of Chicago where it interchanges with other carriers.⁵ I should also note that under WSOR's trackage rights agreement with METRA, WSOR has a very limited operating "window" over the METRA-owned lines, between midnight and 2AM

As I have testified in the economic phase of this proceeding, Chicago is an extremely important destination for WSOR.⁶ WSOR presently operates one roundtrip nightly over the METRA Fox Lake to Chicago line and some limited additional service over the CPR C&M Line from North Milwaukee south to Chicago.⁷

The more or less simultaneous combination of the CPR/DM&E/IC&E acquisition and the CN absorption of the "J" present WSOR with a "double-whammy." Assuming that the Board approves CPR's acquisition of the DM&E and IC&E and the DM&E eventually builds into the Powder River Basin, the C&M Line will become flooded with coal trains.

The prospect of the "J's" absorption into the CN System further tightens the noose of rail congestion. CN's Wisconsin rail network today

⁵ The BRC also provides access to yards of the Indiana Harbor Belt Railway and CSXT

⁶ Here I testified that 6.1% of WSOR's 60,000 car loads per year traffic base continues to Chicago for interchange with other railroads, notably CSXT and Norfolk Southern Railway. The Chicago Gateway provides the only source of coal for WSOR which handles all inbound coal traffic for the electric utility serving the City of Madison and for the University of Wisconsin's own power plant. Grain represents 25% of WSOR's total car loadings and 75% of that grain traffic goes to Chicago, the location of WSOR's end customers. Significantly, WSOR hauls more of Wisconsin's grain than all other railroads in the State combined! Gardner VS at 5-6

⁷ METRA owns the C&M Line south of Rondout, IL. However, CPR operates local and through freight service over this segment of track

does not resemble the system of lines that the Wisconsin Central LTD assembled some 20-plus years ago from the former Soo Line Railroad (which eventually became part of CPR). The organizers of Wisconsin Central LTD established that carrier as a customer-focused regional railroad to provide more frequent and higher quality service to meet the needs of local shippers in Wisconsin, Minnesota, and the Upper Peninsula of Michigan. When CN acquired the Wisconsin Central a few years ago, it did so in order to connect its mainline from western Canada to the Chicago Gateway. Since then, CN has invested substantial sums in the Wisconsin Central track and right-of-way to enable it to handle frequent through freight trains. But CN's local service to Wisconsin shippers has atrophied in quantity and quality and freight rates have increased. WSOR firmly believes that as CN continues to develop its through traffic to and from Prince Rupert, BC, at the expense of service to its Wisconsin shippers (utilizing the "J" as a Chicago bypass), those customers will be forced to find alternatives and to abandon CN by relocating to other railroads such as WSOR, utilizing truck transload facilities to bring traffic to other railroads including WSOR, or relocating outside our State. As a result, WSOR anticipates an increase in its local traffic and a need to operate additional trains into the Chicago Gateway for interchange with other railroads.

Focusing initially on the CN impacts, the current Wisconsin Central route is a single track signaled line that was built in the 19th Century by the predecessors of the former Soo Line Railroad to funnel limited amounts of traffic from Canada to Chicago and to handle substantial amounts of local traffic generated by such on-line communities as Fond du Lac, Appleton, and Chippewah Falls. Much of this traffic consisted of paper products, ores, and agricultural produce reflecting the nature of the local economy. Unlike the BNSF's mostly double track Chicago-Twin Cities Line, this line was not designed as a high speed, high capacity route. Local service was its focus. Currently, this line handles about 24 trains per day, a service frequency within but approaching the limits of the line's capacity. According to evidence accompanying CN's own application, the types of traffic handled will change and service levels will increase dramatically, at least by 50% initially.⁸ CN intends to use this line as a through route for "land bridge" intermodal traffic between Prince Rupert, BC, Chicago, IL, and eastern Canada. This route is 300 miles shorter than CN's Canadian transcontinental line between Prince Rupert/Vancouver and Montreal-Toronto. While railroads can improve the capacity of a rail line by adding sidings or double track segments and adding or upgrading signals or even

⁸ See, Comments on the Draft Scope of Environmental Impact State (EIS) by Wisconsin Department of Transportation at 2.

installing electrification, there is only so much one can do. The Line still has many grade crossings, curves, and tight clearances. A leopard can't change its spots!

The practical and obvious results of this significant increase in rail traffic will include added noise and air pollution, traffic congestion at grade crossings, rail yard congestion, and interference with the passage of or blockage of emergency vehicles at grade crossings, among other things. But less obvious is the serious impact on the operations of other railroads in Wisconsin and in or near Chicago. As noted earlier, my railroad operates over CN's former Wisconsin Central main line between Slinger and Waukesha, a distance of about 25 miles. While CN claims that its increase operations will not adversely affect the operations of other freight or passenger railroads, numerous filings by carriers as diverse as Amtrak, CSX Transportation, and METRA suggest otherwise. WSOR is very concerned about the impact on it.

The former Wisconsin Central main line easily serves about 100 local customers within the State of Wisconsin. These customers historically received service at least five days per week, with service provided by a local freight that stops at and switches individual sidings. Absent significant and possibly impractical capacity increases, CN's ability to handle locally

generated traffic will be compromised. Suppose that CN is operating a 40 car local freight train serving on-line industries located anywhere from one to ten miles apart. Suppose further that the train stops to drop three inbound cars at a customer's siding and to pick up two outbound cars there. And let us assume further, as is usually the case, that the switch leading into the customer's siding is directly off the main track and hand thrown. First, the train stops to drop off a crew member who unlocks the switch. Then the crew member cuts the three inbound cars from the rest of the train which then moves forward until it clears the switch. The crew member then throws the switch leading into the siding and the train then backs into the siding until the train couples onto the two outbound cars. The train consisting of both the in and outbound cars then moves forward clearing the switch. The crew member then realigns the switch back to the straight (main line) position. The engine then backs down to the rest of the train coupling the two outbound cars to the train. After the crew member disconnects the inbound cars from the rest of the train, the locomotive pulls the inbound cars forward until the train again clears the switch. The crew member again throws the switch so the locomotive can spot the three inbound cars on the slipper siding. The crew member uncouples the engine from the newly spotted inbound cars. After the engine heads out of the siding and back to

the main line, the crew member realigns and locks the switch and then engine backs down and recouples to the train. But before the train can proceed to service the next industry down the line and repeat the cycle all over again, the crew member must reboard the train and the engine must pump up the air supply to enable the train's brakes to work. Depending upon the number of cars and other circumstances, this process can take anywhere from 30 to 60 minutes per siding. As you can see, if CN intends to run a through train every hour it will soon become very difficult to service local industries absent the installation of a parallel track for accessing local industries commonly known as a "tail track" and/or power switches and special signaling. The practical result of CN's proposed changes in operations will be the relocation of local industry to other modes, other railroads, or even other parts of the country.

Now let's focus on the impact of CPR's acquisition of the DM&E/IC&F rail system. CPR has asserted that it is acquiring these carriers just for their existing agricultural traffic base. Any plan to extend the railroad into the Powder River Basin (PRB) would be a wholly separate matter. But there are numerous parties who believe otherwise. Why, they

say, would CPR spend almost \$3 billion⁹ to acquire and rehabilitate a severely deteriorated light density regional carrier but to build into the PRB? WSOR is not so prescient as to predict or explain CPR's motives. However, as a user of CPR's C&M Line, WSOR is familiar with this line, its capacity, and its ability to handle freight that could be diverted from CN's line. The C&M Line is a double track high speed railroad that presently handles about 25 CPR freight trains. WSOR's two nightly trains (one round trip) plus eight Amtrak roundtrips (16 trains), and numerous METRA trains for a portion of the route¹⁰ CPR's stated intent is to divert traffic to its Twin Cities-Chicago Line (including the C&M Line) that DM&E presently handles to Chicago via IC&E's lines. While the C&M Line currently has adequate capacity, both METRA and Amtrak are likely to increase their service levels particularly if Amtrak should initiate the sort of high speed rail service proposed by the Midwest High Speed Rail Compact. Should CPR build the

⁹ Source: BNSF Railway Company Comments on the Environmental Review Procedures Proposed in the Application by the Canadian Pacific Railway, Et Al at pages 3-4

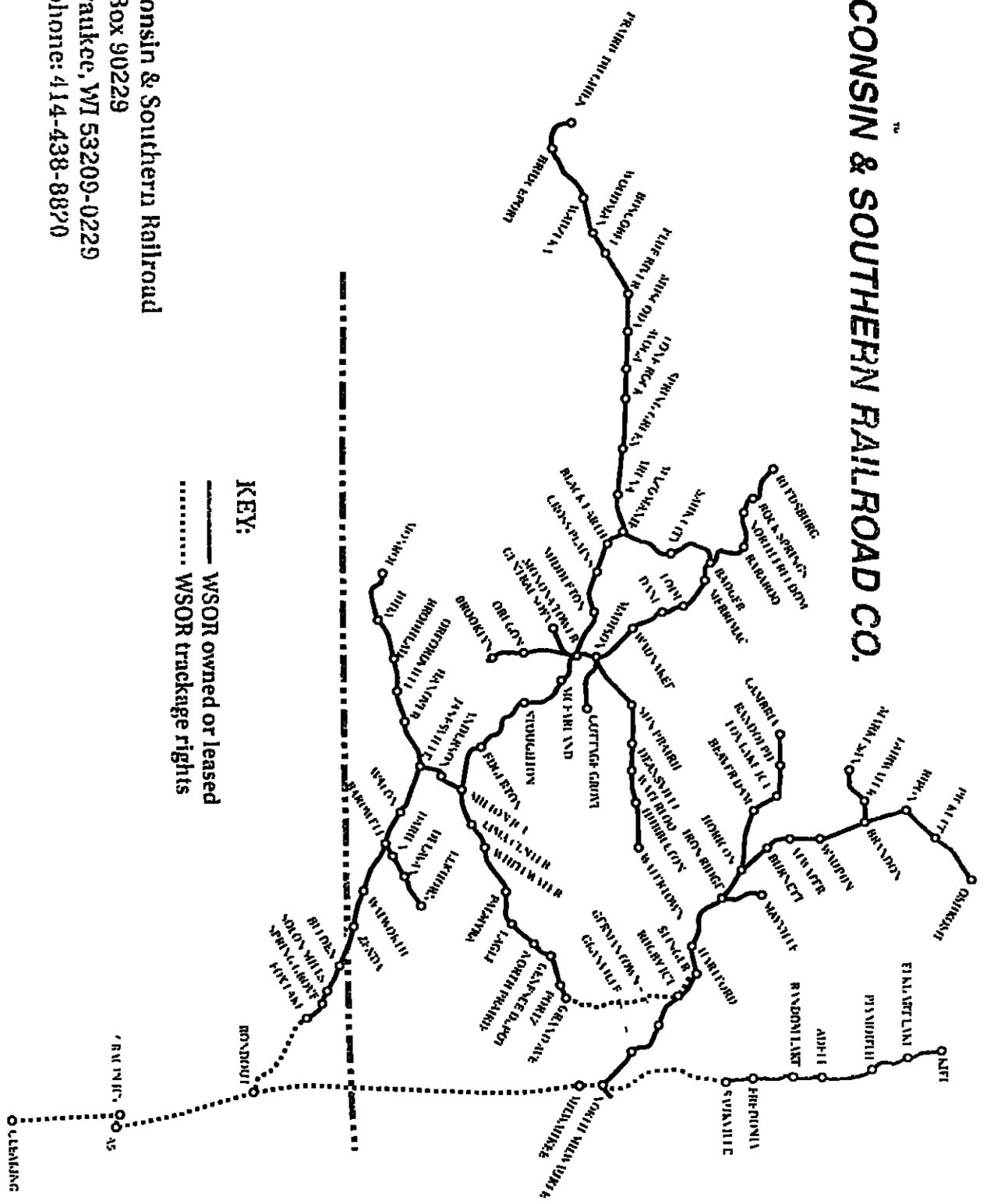
¹⁰ In my economic testimony I noted that the traffic density map that CPR furnished with its application to acquire control of the DM&E and IC&E shows that the C&M Line currently has about 25 scheduled freight trains per day. See Graphical Summary of CPR mainline trains, Appendix A attached to CPR's Operating Plan Exhibit 13 of its Application. It is my understanding that should the DM&E build the Powder River Basin extension, the DM&E would operate as many as 37 trains per day over at least a part of its line, many of which would likely continue to Chicago over the C&M Line. Add to that Amtrak's frequent Chicago-Milwaukee *Hiawatha* service, frequent METRA commuter service into Chicago, and the eventual prospect of higher speed multi-frequency Amtrak service between Chicago and the Twin Cities, this already heavily utilized route will become *one busy railroad*. WSOR is understandably concerned that the resulting congestion could make it difficult for CPR and METRA to accommodate WSOR's existing service, let alone any growth potential. And METRA has already advised WSOR that it cannot accommodate any additional WSOR service on its lines. (Gardner VS at 6-7)

PRB extension and route Chicago bound traffic over the Twin Cities-Chicago mainline, the additional service frequencies will strain the capacity of that line and make it difficult to WSOR to operate its nightly Chicago round trip absent significant capacity expansion.

In conclusion, I urge the SEA to review the CN/EJ&E and CPR/DM&E/IC&E transactions as two interrelated transactions with major regional and system-wide ramifications. Furthermore, I urge the SEA to look at the totality of these impacts including the effects on local Wisconsin communities, rail customers, and local rail service to those communities and customers. The SEA should examine the extent to which both transactions may cause rail congestion, inability of railroads to perform their common carrier obligations, and the diversion of rail traffic to other modes or carriers and to impose appropriate mitigation on any decision approving both transactions. In the case of WSOR, the SEA should require CN to install sufficient capacity that WSOR's trackage rights operations between Slinger and Waukesha, WI, are not adversely affected. Moreover, the SEA should examine WSOR's requested acquisition of trackage and trackage rights from Leighton, IL, south to the Chicago Gateway as a way of mitigating congestion-related impacts of a rerouting of many CN trains onto the EJ&E

and minimizing congestion between WSOR and passenger service over the
C&M Line

WISCONSIN & SOUTHERN RAILROAD CO.



KEY:
 ————— WSOR owned or leased
 WSOR trackage rights

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