

training program. It also permits the Maritime Administration (MARAD) to determine if a graduate, who wishes to defer the service obligation to attend graduate school, is eligible to receive a deferment. Their service obligation is required by law.

**Need and Use of the Information:** This information collected establishes overall compliance with the service obligation contract in support of the Economic Growth and Trade and National Security goals identified in the DOT Strategic Plan. Because the graduates are required to serve as commissioned officers in the U.S. Merchant Marine Reserve, U.S. Naval Reserve (as an aspect of the service obligation), they become the Navy's single largest source of naval reserve officers except for Naval R.O.T.C. In their civilian capacities, they are required first to sail on their professional merchant marine licenses or work in the maritime industry ashore. This dual role makes the graduates especially valuable because national defense planning initiatives and the Nation's economic needs depend on available personnel who are highly trained.

**Description of Respondents:** U.S. Merchant Marine Academy students and graduates, and subsidized students and graduates.

**Annual Responses:** 21.

**Annual Burden:** 4.2 hours.

**Comments:** Comments should be referred to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at <http://www.regulations.gov>. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at <http://www.regulations.gov>.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.regulations.gov>.

**Authority:** 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: November 20, 2007.

**Christine S. Gurland,**

*Acting Secretary, Maritime Administration.*

[FR Doc. E7-23152 Filed 11-28-07; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35087]

#### Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company<sup>1</sup>

**AGENCY:** 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

<sup>1</sup> 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).

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.<sup>2</sup>

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

<sup>2</sup> In 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.

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,

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.<sup>3</sup> 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

<sup>3</sup> 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

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 Lemoyne, 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.<sup>4</sup> On November 8, 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

<sup>4</sup> 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,

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.

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**



*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.<sup>5</sup> Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA).<sup>6</sup> 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).<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> 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 Munger to West Chicago line segment gtm/pd would change by as much as 1,185 percent.<sup>11</sup> 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 685 car handlings) and the estimated addition of 709 daily car handlings at East Joliet (currently 500 car handlings) would exceed the Board's

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 lines segments and at rail facilities.<sup>12</sup>

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

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

<sup>8</sup> See Application at p. 33.

<sup>9</sup> 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.

<sup>10</sup> See Applicants' Operating Plan, Attachment A.2, p. 247.

<sup>11</sup> Id.

<sup>12</sup> 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.

<sup>5</sup> See 49 CFR 1105.4(f), 1105.10(a).

<sup>6</sup> See 49 CFR 1105.4(d), 1105.10(b).

<sup>7</sup> 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

mitigation.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

**Safety Integration Plan.** Applicants state that they will work with the Federal Railroad Administration (FRA) to formulate a SIP<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> Applicants state that the

proposed transaction fits within this exception.<sup>19</sup> 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](mailto: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 EJ&E offers in the Chicago area, and the

<sup>13</sup> 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).

<sup>14</sup> 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).

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

<sup>16</sup> See 49 CFR 244.17(a) and 1106.4(a).

<sup>17</sup> See 49 CFR 1105.8.

<sup>18</sup> See 49 CFR 1105.8(b)(1).

<sup>19</sup> See Application at p. 33.



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 transaction<sup>20</sup> as a "significant" one.<sup>21</sup>

#### 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 <b>Federal Register</b> .
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 <sup>20</sup> .....	Date by which a final decision will be served.
TBD <sup>21</sup> .....	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

#### DEPARTMENT OF TRANSPORTATION

##### Surface Transportation Board

[STB Finance Docket No. 35081]

**Canadian Pacific Railway Company, et al.—Control—Dakota, Minnesota & Eastern Railroad Corp., et al.**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Decision No. 3 in STB Finance Docket No. 35081; notice of proposed procedural schedule and request for comments.

**SUMMARY:** The Surface Transportation Board (Board) invites public comments on a proposed procedural schedule for this proceeding. On October 5, 2007, Canadian Pacific Railway Corporation (CPRC), Soo Line Holding Company, a Delaware Corporation and indirect subsidiary of CPRC (Soo Holding), Dakota, Minnesota & Eastern Railroad Corporation (DM&E), and Iowa, Chicago & Eastern Railroad Corporation, a wholly-owned rail subsidiary of DM&E (IC&E) (collectively referred to as the "Applicants") submitted a filing with the Board seeking approval under 49 U.S.C. 11321-26 of the acquisition of

control of DM&E and IC&E by Soo Holding (and, indirectly, by CPRC). In Decision No. 2, served on November 2, 2007, and published in the **Federal Register** at 72 FR 63232-36 on November 8, 2007, the Board accepted the October 5 submission as a prefiling notification, thus allowing the Applicants to perfect their application, and provide any supplemental materials or information, on or after December 5, 2007.<sup>1</sup>

**DATES:** Written comments on the Board's proposed procedural schedule must be filed by December 10, 2007.

**ADDRESSES:** Any filing submitted in this proceeding must be submitted 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 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) Terence M. Hynes (representing CPRC), Sidley Austin LLP, 1501 K Street, NW., Washington, DC 20005; and (2) William C. Sippel (representing DM&E), Fletcher & Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

**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:** On November 13, 2007, Applicants filed a petition to establish a revised procedural schedule as directed by the Board in Decision No. 2. The Board now seeks public comments on a procedural schedule that is the same as the Applicants' proposed procedural schedule, except that the record would close with the filing of briefs on July 2, 2008, and that the Board's proposed procedural schedule would provide for a possible oral argument or public hearing to be held on a date in June 2008 to be determined by the Board. Applicants had proposed closing the record on June 16, 2008, with the filing of briefs, and to hold open the possibility of scheduling a public hearing or oral argument after that date. The Board's proposed procedural schedule would instead allow the full 180 days for development of the record,

<sup>20</sup> Under 49 U.S.C. 11325(d)(2), a final decision would be issued by April 25, 2008; however, the Board also is required to accommodate NEPA in its decisionmaking. Therefore, a final decision here

will be issued as soon as possible after completion of the EIS process.

<sup>21</sup> The final decision will become effective 30 days after it is served.

<sup>1</sup> In Decision No. 2, the Board found that the transaction contemplated by the Applicants is a significant transaction, as defined at 49 CFR 1180.2(b).