

Appendix P

Decision Documents

Attachments:

- P1 STB Decision Document No. 1 (10/22/07)
- P2 STB Decision Document No. 2 (11/26/07)
- P3 STB Decision Document No. 3 (01/18/08)
- P4 STB Decision Document No. 4 (01/25/08)
- P5 STB Decision Document No. 5 (01/25/08)
- P6 STB Decision Document No. 6 (01/30/08)
- P7 STB Decision Document No. 7 (02/20/08)
- P8 STB Decision Document No. 8 (02/22/08)
- P9 STB Decision Document No. 9 (04/23/08)
- P10 STB Decision Document No. 10 (05/28/08)

Attachment P1

STB Decision Document No. 1

10/22/07

SERVICE DATE – OCTOBER 22, 2007

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

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

MOTION FOR PROTECTIVE ORDER

Decision No. 1

Decided: October 19, 2007

On October 3, 2007, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Elgin, Joliet and Eastern Railway Company (EJ&E), collectively referred to as Applicants, filed a joint petition for protective order¹ under 49 CFR 1104.14 to protect material containing proprietary and commercially sensitive information that may be filed during this proceeding.

Applicants plan to file an application pursuant to 49 U.S.C. 11323-11325, seeking the Board's approval for control of EJ&E West Company (EJ&EW), a wholly owned subsidiary of EJ&E, a rail common carrier. Applicants submit that a protective order is necessary because the Applicants and other interested parties may engage in discovery or file evidence that includes proprietary and commercially sensitive information, including shipper-specific traffic data that is protected against public disclosure pursuant to 49 U.S.C. 11904, proprietary financial data, or other confidential information the disclosure of which would have an adverse competitive impact on Applicants or other interested parties.

The request is similar to those for protective orders recently issued by the Board.² Good cause exists to grant the motion, which conforms to the Board's rules at 49 CFR 1104.14, governing protective orders to maintain the confidentiality of materials submitted to the Board. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive injury to the parties. Issuance of the Protective Order will facilitate the discovery process and establish appropriate procedures for the submission of

¹ A proposed Protective Order and Undertakings were included with the motion.

² See, e.g., Canadian Pacific Railway Company, et al. – Control – Dakota, Minnesota & Eastern Railroad Corp., et al., STB Finance Docket No. 35081 (STB served Sept. 21, 2007); Fortress Investment Group LLC, et al. – Acquisition – Florida East Coast Railway, LLC, STB Finance Docket No. 35031 (STB served June 6, 2007); The Indiana Rail Road Company – Acquisition – Soo Line Railroad Company, STB Finance Docket No. 34783 (STB served Dec. 22, 2005).

evidence containing proprietary information. Accordingly, the motion for a protective order will be granted, and the Protective Order and Undertakings contained in the Appendix to this decision will be adopted.

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

It is ordered:

1. The motion for a Protective Order is granted, and the parties to this proceeding must comply with the Protective Order in the Appendix.
2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX
PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Application” means an application filed, or intended to be filed, in this docket seeking authorization for Canadian National Railway Company (“CNR”) and Grand Trunk Corporation (“GTC”) to acquire control of EJ&E West Company (“EJ&EW”), pursuant to the Stock Purchase Agreement dated September 25, 2007, by and between GTC and Elgin, Joliet and Eastern Railway Company, a wholly owned subsidiary of Transtar, Inc. (“Transtar”), and indirect subsidiary of United States Steel Corporation (“U.S. Steel”).

(b) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(c) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information.

(d) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 5 or 6 of this Protective Order, and any Confidential Information contained in such materials.

(e) “Proceedings” means those proceedings before the Surface Transportation Board (“Board”) concerning the application in STB Finance Docket No. 35087, regulatory authority for the creation of the EJ&EW, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 35087 or from any related proceedings before the Board.

2. Personnel of CNR and its affiliates (collectively, CN), and of Elgin, Joliet and Eastern Railway Company, Transtar, U.S. Steel, and their affiliates (collectively, EJ&E), and their affiliates, including outside consultants and attorneys for CN or EJ&E (representatives), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, unless and until the application in the Proceedings is approved, except to the extent they would have been properly able to exchange such information apart from this order.

3. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of CN and EJ&E, or their affiliates are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and

will not be deemed a violation of 49 U.S.C. 11323 or 11904, or any other relevant provision of the ICC Termination Act of 1995.

4. If the application is disapproved by the Board, or if the application is approved but control is not effected, or if no application is filed, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these Proceedings and except as provided elsewhere in this Order, must, upon the request of the party originating the Confidential Information contained or reflected in such Confidential Documents, be destroyed or returned to the requesting party.

5. If any party to these Proceedings determines that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

6. Any party producing material in discovery to another party to these Proceedings, or submitting material in pleadings or other documents filed or served, may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

7. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

8. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

9. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing

a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

10. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

11. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings; or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

12. No party may include Designated Material in any pleading, brief, or other document submitted physically to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 CFR 1104.14. No party may include Designated Material in any pleading, brief, or other document submitted to the Board electronically, under the e-filing option provided in 49 CFR 1104.1(e), unless the filing party submits the pleading or other document as “Confidential” under such options as are provided on the Board’s Web site for electronic filing of documents. All pleadings and other documents submitted pursuant to the terms of this paragraph and containing information designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” shall bear a prominent designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” as appropriate, on their first pages. All such pleadings and documents shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

13. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

14. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any

discussion of such Designated Material; and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

15. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 12 of this Protective Order.

16. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with the paragraphs above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904, or of any other relevant provision of the ICC Termination Act of 1995.

17. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

18. Simultaneously with the submission of any document to the Board that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the submitting party must also submit a public version of that document, from which all Confidential Information has been redacted. Any party submitting a document to the Board that it designates as “HIGHLY CONFIDENTIAL” shall make available to in-house counsel for all other parties who have signed an undertaking substantially in the form set forth in Exhibit A to this Order a version of that document containing all information reviewable by such in-house counsel under the terms of this Order (“Confidential Version”). If the Confidential Version is provided to counsel for other parties in electronic form, the submitting party shall not also be required to provide a paper copy. In lieu of providing a Confidential Version, the submitting party may, simultaneously with its submission of the document to the Board, make available to outside counsel for all other parties a list of all portions of that document that must be redacted therefrom to produce a Confidential Version, and such outside counsel may then prepare Confidential Versions, from which those listed portions have been redacted, which such outside counsel may provide to in-house counsel who have signed confidentiality undertakings substantially in the form set forth at Exhibit B of this Order.

19. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party, unless that party has consented in writing to the disclosure.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on October 22, 2007, governing the production and use of Confidential Information and Confidential Documents concerning STB Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with any of those proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____

Exhibit B

UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel][consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on October 22, 2007, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with any of those proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that, at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____
OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

Attachment P2

STB Decision Document No. 2

11/26/07

38540
EB

SERVICE DATE – NOVEMBER 26, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

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

AGENCY: Surface Transportation Board.

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

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

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 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 website at "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, S.W., 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, S.E., 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, N.W., Suite 400, Washington, DC 20006-3804; and

(4) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after December 13, 2007, as practicable).

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

SUPPLEMENTARY INFORMATION: CNR is one of Canada's two major railroads, extending from Halifax, Nova Scotia, on the Atlantic to Vancouver and Prince Rupert, British Columbia, on the Pacific. Through its GTC subsidiary, CNR controls the following rail carriers: GTW, IC, CCP, WCL, Duluth, Winnipeg and Pacific Railway Company (DWP), St. Clair Tunnel Company (SCTC), Cedar River Railroad Company (CRRC), Waterloo Railway Company (Waterloo), Sault Ste. Marie Bridge Company (SSMB), Wisconsin Chicago Link Ltd. (WCLL), Duluth, Missabe and Iron Range Railway Company (DMIR), Bessemer and Lake Erie Railroad Company (B&LE), and The Pittsburgh & Conneaut Dock Company (P&C Dock). DWP extends the applicants' system from the international border at Duluth Junction/Ranier over DWP's own lines to Nopeming Junction, MN. GTW also extends applicants' system to Chicago from the international border at Port Huron/Sarnia and Detroit/Windsor. In 1999, applicants acquired IC, thus extending applicants' system from Chicago to the Gulf Coast, and becoming part of a North American Free Trade Agreement (NAFTA) rail network offering shippers access to Kansas City Southern de México, S.A. de C.V. (KCSM), Mexico's largest rail system. In 2001, applicants acquired WCL and its affiliates, and in 2004 applicants acquired the Great Lakes Transportation LLC (GLT) carriers including DMIR, thus providing applicants with a connection between Chicago and applicants' lines west of the Great Lakes. In the GLT transaction, applicants also acquired B&LE and P&C Dock, which, together with applicants' ownership of DMIR and Great Lakes Fleet, LLC (a water carrier operating on the Great Lakes), provides applicants a continuous supply chain for iron ore moving from the Missabe Iron Range of Minnesota to the Union Railroad Company, which serves the Edgar Thompson Steel Works of United States Steel Corporation (USS) in Braddock, PA.

EJ&EW is an Illinois corporation formed on August 16, 2007, and is a wholly owned noncarrier subsidiary of EJ&E. EJ&E is a Class II railroad that currently operates over 198 miles of track in Northeastern Illinois and Northwestern Indiana, consisting primarily of an arc around Chicago, IL, extending from Waukegan, IL, southwards to Joliet, IL, then eastward to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics, and chemical producers, steel processors, distribution centers, and scrap processors. EJ&E is a wholly owned indirect subsidiary of USS, a noncarrier. USS owns all of the issued and outstanding stock of Transtar, Inc. (Transtar), a noncarrier holding company, which owns all of the issued and outstanding stock of seven common carrier railroads, including EJ&E.²

² 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.

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 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.³ Parties intend to execute the trackage rights agreement promptly upon applicants' acquisition of control

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

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 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.⁴ 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.

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

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 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, S.W., 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.⁵ Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA).⁶ Finally, actions whose environmental effects are ordinarily insignificant may be excluded from NEPA review across the board, without a case-by-case review. As pertinent here, an acquisition transaction normally requires the preparation of an EA or EIS where certain thresholds would be exceeded.

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

⁵ See 49 CFR 1105.4(f), 1105.10(a).

⁶ See 49 CFR 1105.4(d), 1105.10(b).

1105.7(e)(5)(ii).⁷ The application indicates that the thresholds for environmental review would be exceeded here, and applicants agree that the preparation of either an EA or EIS is warranted in this proceeding.⁸

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

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

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

⁷ For rail lines located in attainment areas, environmental documentation normally will be prepared if the proposed action would result in (1) an increase of at least 8 trains per day, (2) an increase in rail traffic of at least 100 percent (measured in annual gross ton miles), or (3) an increase in carload activity at rail yards of at least 100 percent. See 49 CFR 1105.7(e)(5)(i).

⁸ See Application at p. 33.

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

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

¹¹ Id.

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.¹²

The EIS process will ensure that the Board takes the hard look at environmental consequences required by NEPA. After issuing a notice of intent to prepare an EIS, the Board will determine the scope of work for the EIS and will provide opportunities for public participation and consultation with appropriate federal, state, and local agencies and governmental entities. A Draft EIS will be prepared that will analyze in detail the potential environmental impacts of the proposed transaction and will make recommendations for environmental mitigation.¹³ The public will have at least 45 days to comment on the Draft EIS. A Final EIS will then be issued that will respond to the public comments, present the results of any further environmental analysis, and incorporate final environmental mitigation recommendations.¹⁴ The Board will consider the entire environmental record in deciding whether to authorize the transaction as proposed, deny the proposal, or grant it with conditions, including environmental mitigation conditions.

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

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

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

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

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

Historic Review. Finally, in accordance with Section 106 of the NHPA the Board is required to determine the effects of its licensing actions on cultural resources.¹⁷ The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older.¹⁸ Applicants state that the proposed transaction fits within this exception.¹⁹ They assert that they have no plans to alter or dispose of properties 50 or more years old, and that any future line abandonment or construction activities by applicants would be subject to the Board's jurisdiction. Based on this information, it does not appear that historic review under the NHPA is required in this case.

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

Filing Requirements. Any document filed in this proceeding must be filed **either** via the Board's e-filing format **or** in the traditional paper format as provided for in the Board's rules. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at "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

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

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

¹⁷ See 49 CFR 1105.8.

¹⁸ See 49 CFR 1105.8(b)(1).

¹⁹ See Application at p. 33.

document (and also an electronic version) to: Surface Transportation Board, 395 E Street, S.W., 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, S.E., 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, N.W., 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 website at "www.stb.dot.gov" under "E-LIBRARY/Decisions & Notices" or to make advance arrangements with the Board's copy contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapdc@verizon.net; telephone number: 202-306-4004), to receive copies of decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

ACCESS TO FILINGS. An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The primary application and other filings in this proceeding will also be available on the Board's website at "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 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 as a “significant” one.

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 <u>Federal Register</u> .
December 13, 2007	Notices of intent to participate in this proceeding due.
January 28, 2008	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or related filings, including filings of DOJ and DOT, due.
March 13, 2008	Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the primary application or related filings due.
TBD	A public hearing or oral argument may be held.
TBD ²⁰	Date by which a final decision will be served.
TBD ²¹	Date by which a final decision will become effective.

²⁰ 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.

²¹ The final decision will become effective 30 days after it is served.

Attachment P3

STB Decision Document No. 3

01/18/08

38639
SEC

SERVICE DATE – LATE RELEASE JANUARY 18, 2008

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

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

Decision No. 3

Decided: January 18, 2008

NOTICE TO THE PARTIES:

The attached service list has been compiled from notices of intent to participate submitted in accordance with the procedural schedule set forth in this proceeding as described in Decision No. 2, served on November 26, 2007, and published on November 29, 2007, in the Federal Register at 72 FR 67622-30.

Each person actively participating as a Party of Record in this proceeding must, by January 23, 2008, serve a copy of all filings submitted so far in this proceeding on each Party of Record (designated on the attached service list as “Party of Record”) to the extent such filings have not previously been served upon such other parties. Each Party of Record also will be required to file with the Board, by January 23, 2008, a certificate of service, indicating that the service required by the preceding sentence has been accomplished.

Any document filed in this proceeding must be filed either via the Board’s e-filing format or in the traditional paper format. Any person e-filing a document should attach a document and otherwise comply with the instructions found on the Board’s website at “www.stb.dot.gov” at the “E-FILING” link. Any person filing a document in the traditional paper format should send to the Board an original and 10 paper copies of the document (and also an electronic version).

Every filing made by a Party of Record after the service date of this Notice must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. As stated in Decision No. 2, Members of the United States Congress and Governors are not Parties of Record and, therefore, need not be served with copies of filings, unless any such Member of Congress or Governor has requested to be, and is designated as, a Party of Record.

The Board will follow the practice regarding service of Board actions in past proceedings. See Fortress Investment Group LLC, et al.—Control—Florida East Coast Railway, LLC, STB Finance Docket No. 35031 (STB served July 25, 2007). Copies of decisions, orders, and notices will be served only on those persons who are designated as Party of Record, Non-Party, Member of Congress, or Governor on the official service list. All other interested persons

are encouraged either to secure copies of such decisions, orders, and notices via the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Decisions & Notices" or to make advance arrangements with the Board's copy contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapdc@verizon.net; telephone number: 202-306-4004), to receive copies of decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.¹

All persons on the attached service list should review the list and determine whether information about their address and status (as a Party of Record or Non-Party) is correct. The list reflects 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. In this proceeding, if a request was made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name was added to the service list as a "Non-Party." 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 Decision No. 2 and this notice.

¹ An interested person does not need to be on the service list to obtain a copy of the application or any filing in this proceeding. The Board's Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." See 49 CFR 1180.4(a)(3). The application and other filings received in this proceeding will also be available on the Board's website at "www.stb.dot.gov" under "E-LIBRARY/Filings." Furthermore, ASAP Document Solutions will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order previously entered in this proceeding.

Requests to change or correct service list information, or to be deleted from the service list, must be filed **in writing** with the Board by January 23, 2008. Parties must submit such requests either via the Board's e-filing format or in the traditional paper format (an original plus 10 copies). Requests submitted in the paper format should be directed to:

Surface Transportation Board
Re: STB Finance Docket No. 35087
395 E Street, S.W.
Washington, DC 20423-0001

Anne K. Quinlan
Acting Secretary

SERVICE LIST

PARTY OF RECORD

Terence M. Hynes
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Represents: Canadian Pacific Railway Company

PARTY OF RECORD

Honorable Jesse L. Jackson, Jr.
United States House of Representatives
2419 Rayburn House Office Building
Washington, DC 20515

PARTY OF RECORD

George F. Mahoney III
Mahoney, Silverman & Cross, Ltd.
822 Infantry Drive, Suite 100
Joliet, IL 60435

Represents: Village of Frankfort, Illinois

PARTY OF RECORD

Randal W. Jessen
Superintendent of Public Improvements
Village of Plainfield – Public Works
24401 W. Lockport Street
Plainfield, IL 60544

PARTY OF RECORD

L. Charles Lukmann, III
Harris Welsh & Lukmann
107 Broadway
Chesterton, IN 46304

Represents: Northern Indiana Commuter Transportation District

PARTY OF RECORD

Honorable Carolyn H. Krause
Illinois House of Representatives
200 E. Evergreen, Suite 122
Mt. Prospect, IL 60056

PARTY OF RECORD

Honorable Richard G. Lugar
United States Senate
306 Hart Senate Office Building
Washington, DC 20510

PARTY OF RECORD

John D. Heffner
John D. Heffner, PLLC
1750 K Street, N.W.
Suite 350
Washington, DC 20006

Represents: Wisconsin & Southern Railroad Co.

PARTY OF RECORD

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604

Represents: Aux Sable Liquid Products, Inc., Bulkmatic Transport Company, Chicago Port Railroad Company, Commuter Rail Division of the Regional Transportation Authority, Northeast Illinois Regional Corporation, The City of West Chicago, and American Chemical Service, Inc.

PARTY OF RECORD

John G. Tolomei
Village Administrator
Village of Lake Zurich
70 E. Main Street
Lake Zurich, IL 60047

PARTY OF RECORD

Mark H. Sidman
Weiner Brodsky Sidman Kider P.C.
1300 19th Street, N.W.
Fifth Floor
Washington, DC 20036

Represents: Chicago SouthShore & South Bend Railroad Co.

PARTY OF RECORD

Peter J. Shutz
Federal Regulation &
Washington General Counsel
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

PARTY OF RECORD

David C. Olson
Minnesota Chamber of Commerce
400 Robert Street North
Suite 1500
St. Paul, MN 55101

PARTY OF RECORD

Steven Quigley
Will County Governmental League
50 E Jefferson Street
Suite 101
Joliet, IL 60432

PARTY OF RECORD

Karl B. Browning
Indiana Department of Transportation
100 North Senate Avenue
Room N758
Indianapolis, IN 46204

PARTY OF RECORD

Paul Samuel Smith
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Room W94-316 C-30
Washington, DC 20590

PARTY OF RECORD

Paul Guthrie
Canadian Pacific Railway Company
401 9th Avenue, S.W.
Gulf Canada Square, Suite 500
Calgary, Alberta T2P 4ZA CD

PARTY OF RECORD

John Casper
Oshkosh Chamber of Commerce
120 Jackson Street
Oshkosh, WI 54901

PARTY OF RECORD

Andrew Lisak
The Development Association
1401 Tower Avenue, Suite 302
Superior, WI 54880

PARTY OF RECORD

Michael S. Wolly
Zwerdling, Paul, Kahn & Wolly P.C.
1025 Connecticut Avenue, N.W.
Suite 712
Washington, DC 20036

Represents: International Brotherhood of Electrical Workers, International Association of Machinists and Aerospace Workers, American Train Dispatchers Association and National Conference of Fireman & Oilers

PARTY OF RECORD

Neil Volmer
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

PARTY OF RECORD

Harold A. Ross
Brotherhood of Locomotive Engineers and Trainmen
1370 Ontario Street, Mezzanine
Cleveland, OH 44113

PARTY OF RECORD

William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037

Represents: Indiana Harbor Belt Railroad Company

PARTY OF RECORD

Richard E. Weicher
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

PARTY OF RECORD

Donald C. McCrory
Memphis and Shelby county Port Commission
1115 Riverside Blvd.
Memphis, TN 38106

PARTY OF RECORD

Joseph Reitemeier
Fond du Lac Area Chamber of Commerce
207 North Main Street
Fond du Lac, WI 54935

PARTY OF RECORD

Paul A. Cunningham
Harkins Cunningham LLP
1700 K Street, NW, Suite 400
Washington, DC 20006

Represents: Canadian National Railway Company and Grand Trunk Corporation

PARTY OF RECORD

Honorable Melissa L. Bean
United States House of Representatives
512 Cannon House Office Building
Washington, DC 20115

PARTY OF RECORD

Timothy A. Brown
Town of Merrillville
7820 Broadway
Merrillville, IN 46410

PARTY OF RECORD

Thomas R. Anderson
Save the Dunes Council Inc.
444 Barker Rd.
Michigan City, IN 46360

PARTY OF RECORD

Kevin M. Sheys
Kirkpatrick & Lockhart Preston
Gates Ellis LLP
1601 K Street, N.W.
Washington, DC 20006

Represents: The Village of Barrington, Illinois

PARTY OF RECORD

Katherine Dodds
Aux Sable Liquid Products, Inc.
6155 East US Route 6
Morris, IL 60450

PARTY OF RECORD

Timothy R. Sheehy
Metropolitan Milwaukee Association
of Commerce
756 North Milwaukee Street,
Suite 400
Milwaukee, WI 53202

PARTY OF RECORD

Stanley Dobosz
Town of Griffith
111 N. Broad Street
Griffith, IN 46319

PARTY OF RECORD

W. James Wochner
The Kansas City Southern Railway Company
427 West 12th Street
Kansas City, MO 64121

PARTY OF RECORD

Dennis H. Miller
Iowa Interstate Railroad Ltd.
5900 6th Street, S.W.
Cedar Rapids, IA 52404

PARTY OF RECORD

Honorable Peter J. Visclosky
United States House of Representatives
701 East 83rd Avenue, Suite 9
Merrillville, IN 46410

PARTY OF RECORD

J. Michael Hemmer
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

PARTY OF RECORD

Timothy A. Baldermann
Mayor
Village of New Lenox
1 Veterans Parkway
New Lenox, IL 60451

PARTY OF RECORD

Alan Anderson
Southern Wayne County Regional Chamber
20600 Eureka Road, Suite 315
Taylor, MI 48181

PARTY OF RECORD

Gordon P. MacDougall
1025 Connecticut Avenue, N.W.
Washington, DC 20036

Represents: John D. Fitzgerald and United Transportation Union-General Committee of Adjustment

PARTY OF RECORD

Chris Curry
Gary/Chicago International Airport Authority
6001 W. Industrial Highway
Gary, IN 46406

PARTY OF RECORD

Joseph P. Clary
Illinois Department of Transportation
Division of Public and Intermodal Transportation
300 W. Adams, 2nd Floor
Chicago, IL 60606

PARTY OF RECORD

John Sobotik
Wisconsin Department of Transportation
4802 Sheboygan Avenue, Room 115B
P.O. Box 7910
Madison, WI 53707

PARTY OF RECORD

Richard Harnish
Midwest High Speed Rail Association
P.O. Box 805877
Chicago, IL 60680

PARTY OF RECORD

Eileen Phipps
Village of Wayne
5N430 Railroad Street, P.O. Box 532
Wayne, IL 60184

PARTY OF RECORD

Kelvin J. Dowd
Slover & Loftus
1224 Seventeenth Street, NW
Washington, DC 20036

Represents: Wisconsin Public Service Corporation

PARTY OF RECORD

John A. Lobaito
Village of Mundelein
440 East Hawley Street
Mundelein, IL 60060

PARTY OF RECORD

Joseph W. Werner
Village Mokena
11004 Carpenter Street
Mokena, IL 60448

PARTY OF RECORD

Honorable Thomas McDermott, Jr.
Mayor c/o City of Hammond
5925 Calumet Avenue
Hammond, IN 46320

Represents: The City of Hammond, Indiana

PARTY OF RECORD

Honorable Pamela J. Althoff
Illinois State Senate
One North Virginia Street
Crystal Lake, IL 60014

PARTY OF RECORD

John Mezera
City of Joliet
150 West Jefferson Street
Joliet, IL 60432

PARTY OF RECORD

Bruce A. Knight
City of Champaign
Planning Department
102 North Neil Street
Champaign, IL 61820

PARTY OF RECORD

Cameron Moore
Champaign County Regional Planning Commission
1776 East Washington Street
P.O. Box 17760
Urbana, IL 61803

PARTY OF RECORD

Richard Greene
Naperville Area Chamber of Commerce
55 South Main Street
Naperville, IL 60540

PARTY OF RECORD

Rod Nilsestuen
Department of Agriculture,
Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708

PARTY OF RECORD

Morgan B. Johnston
University of Illinois at Urbana-Champaign
Physical Plant Services Building
1501 South Oak Street
Champaign, IL 61820

PARTY OF RECORD

Luann Hamilton
Chicago Department of Transportation
30N. LaSalle Street, Suite 500
Chicago, IL 60602

PARTY OF RECORD

Marcie Schatz
Director of TED Business Group
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

PARTY OF RECORD

Robert W. Baker
Village of Trout
P.O. Box 621
Cary, IL 60013

PARTY OF RECORD

Gary D. Adams
Village Administrator
Village of Oswego
113 Main Street
Oswego, IL 60543

PARTY OF RECORD

David Cline
Mayor, City of Mattoon
208 North 19th
Mattoon, IL 61938

PARTY OF RECORD

John Eichelberger
Fire Chief
Plainfield Fire Protection District
15025 S. Desplaines Street
Plainfield, IL 60014

PARTY OF RECORD

Meleah Geertsma
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601

PARTY OF RECORD

Laura E. Weis
Champaign County Chamber of Commerce
1817 S. Neil Street, Suite 201
Champaign, IL 61820

PARTY OF RECORD

Brad Cole
Mayor, City of Carbondale, Illinois
200 South Illinois Avenue
P.O. Box 2047
Carbondale, IL 62902

PARTY OF RECORD

Honorable Evan Bayh
United States Senate
131 Russell Senate Office Building
Washington, DC 20510

PARTY OF RECORD

Michael J. Van Poucke
The Macom Corporation
3380 Lacrosse Lane, Suite 100
Naperville, IL 60564

PARTY OF RECORD

Craig Thompson
Transportation Development Association of Wisconsin
131 W. Wilson Street, Suite 302
Madison, WI 53703

PARTY OF RECORD

Honorable Karen A. Yarbrough
Illinois House of Representatives
272 – Stratton Building
Springfield, IL 62706

PARTY OF RECORD

Brian McCarthy
ArcelorMittal USA Inc.
One Dearborn Street
Chicago, IL 60603

PARTY OF RECORD

Mark L. Fowler
Northwest Municipal Conference
1616 East Golf Road
Des Plaines, IL 60016

PARTY OF RECORD

Jamie Bowden
Village Administrator
Village of Channahon
24555 S. Navajo Drive
Channahon, IL 60410

PARTY OF RECORD

Honorable Janice D. Schakowsky
United States House of Representatives
1027 Longworth House Office Building
Washington, DC 20515

PARTY OF RECORD

Steven Bosco
Village of Bartlett
228 S. Main Street
Bartlett, IL 60103

PARTY OF RECORD

Randall S. Blankenhorn
Chicago Metropolitan Agency for Planning
233 South Wacker Drive, Suite 800, Sears Tower
Chicago, IL 60606

PARTY OF RECORD

Stan Wojtasiak
Naperville Township
31 W 331 North Aurora Road
Naperville, IL 60563

PARTY OF RECORD

Honorable Angelo Saviano
Illinois House of Representatives
314 State House
Springfield, IL 62706

PARTY OF RECORD

Anna Montana
Mayor, Village of Schiller Park
9526 west Irving Park Road
Schiller Park, IL 60176

PARTY OF RECORD

Anthony Arredia
Mayor, City of Des Plaines
1420 Miner Street
Des Plaines, IL 60016

PARTY OF RECORD

David Ross
President, Duluth Area Chamber of Commerce
5 West First Street, Suite 101
Duluth, MN 55802

PARTY OF RECORD

Honorable Elaine Nekritz
Illinois House of Representatives
24 South Des Plaines River Road, Suite 400
Des Plaines, IL 60016

PARTY OF RECORD

Honorable Mike Fortner
Illinois House of Representatives
135 Fremont Street
West Chicago, IL 60185

PARTY OF RECORD

A. George Pradel
Mayor, City of Naperville
400 S. Eagle Street
Naperville, IL 60540

PARTY OF RECORD

Daniel R. Elliott, III
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

PARTY OF RECORD

Robert J. Schillerstrom
Chairman, DuPage County Board
421 N. County Farm Road
Wheaton, IL 60187

PARTY OF RECORD

Joseph J. Plaistow
L.E. Peabody & Associates, Inc.
1501 Duke Street, Suite 200
Alexandria, VA 22314

PARTY OF RECORD

Honorable Debbie Stabenow
United States Senate
133 Hart Senate Office Building
Washington, DC 20510

PARTY OF RECORD

Honorable Carl Levin
United States Senate
269 Russell Senate Office Building
Washington, DC 20510

PARTY OF RECORD

Honorable Joe Knollenberg
United States House of Representatives
2349 Rayburn House Office Building
Washington, DC 20515

PARTY OF RECORD

Honorable Thaddeus McCotter
United States House of Representatives
1632 Longworth House Office Building
Washington, DC 20515

PARTY OF RECORD

Honorable William E. Peterson
Illinois State Senate
3050 North Main Street
Buffalo Grove, IL 60089

PARTY OF RECORD

William H. Brimm
Village of Buffalo Grove
50 Raupp Boulevard
Buffalo Grove, IL 60089

PARTY OF RECORD

Steve Greenberg
4730 Westbury Drive
Long Grove, IL 60047

PARTY OF RECORD

Honorable Tim Walberg
U.S. House of Representatives
325 Cannon House Office Building
Washington, DC 20515

PARTY OF RECORD

Honorable Candice S. Miller
U.S. House of Representatives
228 Cannon House Office Building
Washington, DC 20515

PARTY OF RECORD

Honorable Mark Beaubien
Illinois House of Representatives
314 State House
Springfield, IL 62706

PARTY OF RECORD

Rodney W. Kreunen
Wisconsin Railroad Commissioner
610 N. Whitney Way
P.O. Box 8968
Madison, WI 53708

PARTY OF RECORD

Gerald J. Roper
Chicagoland Chamber of Commerce
200 E. Randolph Street, Suite 2200
Chicago, IL 60601

PARTY OF RECORD

Honorable Terry Link
Illinois State Senate
321 State Capitol Building
Springfield, IL 62706

PARTY OF RECORD

Thomas and Patricia Wichlinski
1033 N. Broad Street
Griffith, IN 46319

PARTY OF RECORD

George W. Mayo, Jr.
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004

Represents: National Railroad Passenger Corporation

PARTY OF RECORD

John M. Scheib
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

PARTY OF RECORD

Nicholas J. DiMichael
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036

Represents: The National Industrial Transportation League

PARTY OF RECORD

Timothy J. Sanders
Northwest Indiana Regional Development Authority
9800 Connecticut Drive
Crown Point, IN 46307

PARTY OF RECORD

Thomas F. DeGiulio
Town of Munster
1005 Ridge Road
Munster, IN 46321

PARTY OF RECORD

Honorable Michael W. Tryon
State Representative
1 N. Virginia Street
Crystal Lake, IL 60014

PARTY OF RECORD

Maurice Gratton
PGAC Shippers' Group
800, 717-7th Avenue SW
Calgary, Alberta T2P 0Z3

PARTY OF RECORD

Honorable Robert A. Rita
Illinois House of Representatives
4818 W. 137th Street, Suite 2
Crestwood, IL 60445

PARTY OF RECORD

Becky Barnhart
5327 Cedar Drive
Naperville, IL 60564

PARTY OF RECORD

Honorable John M. Shimkus
U.S. House of Representatives
2452 Rayburn House Office Building
Washington, DC 20515

PARTY OF RECORD

Paul Hayes
One Town Square
Dyer, IN 46311

PARTY OF RECORD

Don A. De Graff
Mayor, Village of South Holland
16226 Wausau Avenue
South Holland, IL 60473

PARTY OF RECORD

Edward W. Paesel
South Suburban Mayors & Managers Association
1904 W. 174th Street
East Hazel Crest, IL 60429

PARTY OF RECORD

Terri Blackmore
Washtenaw Area Transportation Study
705 North Zeeb Road, 2nd Floor
Ann Arbor, MI 48103

PARTY OF RECORD

Alayne M. Weingartz
Corporation Counsel
City of Aurora
44 East Downer Place
Aurora, IL 60507

PARTY OF RECORD

Steven L. Matrisch
Office of Transportation Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

PARTY OF RECORD

John D. Tomasoski
City Administrator
City of Crest Hill
1610 Plainfield Road
Crest Hill, IL 60403

PARTY OF RECORD

Erik Kotewa
Deputy Director
Champaign County EDC
1817 S. Neil Street
Champaign, IL 61820

PARTY OF RECORD

Hildy L. Kingma
Village Hall
350 Victory Drive
Park Forest, IL 60466

PARTY OF RECORD

David M. Austgen
Town of Schereville, Lake County, Indiana
130 North Main Street
Crown Point, IN 46307

PARTY OF RECORD

Edward R. Gower
Hinshaw & Culbertson LLP
400 South Ninth, Suite 200
Springfield, IL 62701

Represents: Will County, Illinois

PARTY OF RECORD

John W. Gohmann
Small Railroad Business Owners of America
508 Cleveland Avenue North
St Paul, MN 55144

PARTY OF RECORD

Jery G. Arthur
Supply Chain Management Consultant
833 Shoreline Road
Lake Barrington, IL 60010

PARTY OF RECORD

Honorable John D. Dingell
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC 20515

PARTY OF RECORD

George W. Mayo, Jr.
National Railroad Passenger Corporation
555 Thirteenth Street, NW, Columbia Square
Washington, DC 20004

NON-PARTY

Robert Volkmann
Town of Schereville, Lake County, Indiana
10 E. Joliet Street
Schereville, IN 46375

NON-PARTY

G. Paul Moates
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Represents: Norfolk Southern Railway Company

NON-PARTY

Milton R. Sees
Illinois Department of Transportation
Office of the Secretary
2300 South Dirksen Parkway
Springfield, IL 62764

NON-PARTY

Alan Gilmore
City Administrator, City of Mattoon
208 North 19th
Mattoon, IL 61938

NON-PARTY

Leslie K. Moll
Corporate Procurement Department
ArcelorMittal USA
3300 Dickey Road 4-442
East Chicago, IL 46312

NON-PARTY

Kevin Brubaker
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601

NON-PARTY

David Silverman
Mahoney, Silverman & Cross LTD
822 Infantry Drive
Joliet, IL 60435

Represents: The Village of Channahon, Illinois

NON-PARTY

Kristina Kantar
City Attorney
5925 Calumet Avenue
Hammond, IN 46320

Represents: The City of Hammond, Indiana

NON-PARTY

Michael Noland
Commuter Rail Division of the Regional
Transportation Authority
547 West Jackson Blvd.
Chicago, IL 60661

NON-PARTY

Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037

Represents: Indiana Harbor Belt Railroad Company

NON-PARTY

Andrew P. Flach
Champaign County Chamber of Commerce
1817 S. Neil Street, Suite 201
Champaign, IL 61820

NON-PARTY

David C. Dillon
Dillon & Nash
111 West Washington Street
Chicago, IL 60602

Represents: Bulkmatic Transport Company and Chicago Port Railroad Company

NON-PARTY

Roger A. Serpe
Indiana Harbor Belt Railroad Company
150 North Wacker Drive
Suite 1500
Chicago, IL 60606

NON-PARTY

Mark G. Ahearn
Indiana Department of Transportation
100 North Senate Avenue
Room N758
Indianapolis, IN 46204

PARTY OF RECORD

Thomas G. Byrne
Chicago Department of Transportation
30N. LaSalle Street, Suite 500
Chicago, IL 60602

NON-PARTY

Jennifer Wozniak
295 West Otto Drive
New Lenox, IL 60451

NON-PARTY

Dawn Steinman
566 Aberdeen Road
Frankfort, IL 60423

NON-PARTY

David T. Tanking
5 Tioga Trail
Lake Barrington, IL 60010

NON-PARTY

Joe W. Baum
558 Braemar Lane
Barrington, IL 60010

NON-PARTY

Ron S. Stephani
11 Eastingsway
South Barrington, IL 60010

NON-PARTY

Peter A. Pfohl
Slover & Loftus
1224 Seventeenth Street, NW
Washington, DC 20036

Represents: Wisconsin Public Service Corporation

NON-PARTY

Scott & Doreen Gilbrich
1850 Nicholson
Hoffman Estates, IL 60010

NON-PARTY

Raymond Kawasaki
912 Northwest Hwy
Fox River Grove, IL 60021

NON-PARTY

Carol Rolfs
631 Leon Drive
Tower Lakes, IL 60010

NON-PARTY

Rosemary Geisler
28 Brinker Road
Barrington Hills, IL 60010

NON-PARTY

Troy Cowdrey
1145 Glencrest
Inverness, IL 60010

NON-PARTY

Michael S. Schwendau
222 Greenwood Road
Elgin, IL 60120

NON-PARTY

Maureen Watkins
1991 Westridge
Bartlett, IL 60103

NON-PARTY

David Becker
752 Chaucer Way
Buffalo, IL 60089

NON-PARTY

Sharon Marie Sickal
450 signal Hill Road
North Barrington, IL 60010

NON-PARTY

Kari Frankenberg
20142 Deer Chase Ct.
Deer Park, IL 60010

NON-PARTY

Allison E. Mosele
688 Bent Ridge Lane
Barrington, IL 60010

NON-PARTY

John Hines
1741 N. Diamond Lake Road
Mundelein, IL 60060

NON-PARTY

R. Dennis Ball
20364 Meadow Lane
Deer Park, IL 60010

NON-PARTY

Kirk Zoellner
Village of Mokena
11004 Carpenter Street
Mokena, IL 60448

NON-PARTY

Greg C. Bedoe
998 Bosworthfield Road
Barrington, IL 60010

NON-PARTY

Joann Robbins
250 Surrey Lane
Barrington, IL 60010

NON-PARTY

Amy McClain Carder
9833 Braeburn Road
Barrington, IL 60010

NON-PARTY

Laurie Whitmer
105 Old Oak Drive
Barrington, IL 60010

NON-PARTY

Michelle A. Miller
619 S. Hough Street
Barrington, IL 60010

NON-PARTY

Gary D. Carder
9833 Braeburn Road
Barrington, IL 60010

NON-PARTY

Thomas Palmer
511 Park Barrington Way
Barrington, IL 60010

NON-PARTY

Catherine Noel Howes
219 Biltmore Drive
North Barrington, IL 60010

NON-PARTY

Eleanor D. Acheson
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NON-PARTY

Brian Wayne Molis
38 Wood Oaks Drive
South Barrington, IL 60010

NON-PARTY

Erin Shechtman
1 Mesa Drive
South Barrington, IL 60010

NON-PARTY

Mohammed Khan
5 Glacier Circle
South Barrington, IL 60010

NON-PARTY

Grace Baptiste
31 Glacier Circle
South Barrington, IL 60010

NON-PARTY

Scott Bradley
985 Commonwealth Court
Barrington, IL 60010

NON-PARTY

Anil & Lakshmi Koripelly
50 Wood Oaks Drive
South Barrington, IL 60010

NON-PARTY

Joan Pawloski
634 Bristol Drive
Barrington, IL 60010

NON-PARTY

Scott K. Willock
32 Squire Road
Hawthorn Woods, IL 60047

NON-PARTY

Paul A. Hemmersbaugh
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Represents: Norfolk Southern Railway Company

NON-PARTY

Donald H. Smith
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Represents: Norfolk Southern Railway Company

NON-PARTY

Jared I. Roberts
National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002

NON-PARTY

R. Latane Montague
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004

Represents: National Railroad Passenger Corporation

NON-PARTY

Kevin M. Brinegar
Indiana Chamber of Commerce
115 West Washington Street, Suite 850S
P.O. Box 44926
Indianapolis, IN 46244

NON-PARTY

R. J. Pirlot
Wisconsin Manufacturers & Commerce
501 East Washington Avenue
P.O. Box 352
Madison, WI 53701

NON-PARTY

Yonghao Lin
12 Glacier Circle
South Barrington, IL 60010

NON-PARTY

Michele Evans
29 Glacier Circle
South Barrington, IL 60010

NON-PARTY

Gerald Haan
2023 Hearth Circle
Lansing, IL 60438

NON-PARTY

Larry W. Henry
143 Walnut Street
Frankfort, IL 60423

NON-PARTY

Michael S. Allison
Village of Vernon Hills
290 Evergrass Drive
Vernon Hills, IL 60061

NON-PARTY

Peter Boonstra
Principal, Illiana Christian High School
2261 Indiana Avenue
Lansing, IL 60438

NON-PARTY

Jeffery Ingrum
Champaign County Chamber of Commerce
1817 S. Neil Street, Suite 201
Champaign, IL 61820

NON-PARTY

Randy Romanski
Department of Agriculture,
Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708

NON-PARTY

Patrick Lyp
Blachly, Tabor, Bozik & Hartman, LLC
56 South Washington, Suite 401
Valparaiso, IN 46383

Represents: Gary/Chicago International Airport Authority

NON-PARTY

Russ Loebe
Village Administrator
Village of New Lenox
1 Veterans Parkway
New Lenox, IL 60451

NON-PARTY

Lawrence E. Wzorek
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

NON-PARTY

Linda J. Morgan
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20115

Represents: Union Pacific Railroad Company

NON-PARTY

Michael L. Rosenthal
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20115

Represents: Union Pacific Railroad Company

NON-PARTY

David C. Reeves
The Kansas City Southern Railway Company
427 West 12th Street
Kansas City, MO 64121

NON-PARTY

Adrian L. Steel, Jr.
Mayer Brown LLP
1909 K Street, N.W.
Washington, DC 20006

Represents: BNSF Railway Company

NON-PARTY

Kathryn A. Kusske Floyd
Mayer Brown LLP
1909 K Street, N.W.
Washington, DC 20006

Represents: BNSF Railway Company

NON-PARTY

Jay C. Johnson
Mayer Brown LLP
1909 K Street, N.W.
Washington, DC 20006

Represents: BNSF Railway Company

NON-PARTY

Karen Darch
Village of Barrington
Village Hall
200 S. Hough Street
Barrington, IL 60010

NON-PARTY

Eric L. Hirschhorn
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006

Represents: Village of Frankfort, Illinois

NON-PARTY

James R. Thompson
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006

Represents: Village of Frankfort, Illinois

NON-PARTY

Rose-Michele Nardi
Weiner Brodsky Sidman Kider P.C.
1300 19th Street, N.W.
Fifth Floor
Washington, DC 20036

Represents: Chicago SouthShore & South Bend Railroad Co.

NON-PARTY

David A. Hirsh
Harkins Cunningham LLP
1700 K Street, N.W., Suite 400
Washington, DC 20006

Represents: Canadian National Railway Company and Grand Trunk Corporation

NON-PARTY

James M. Guinivan
Harkins Cunningham LLP
1700 K Street, N.W., Suite 400
Washington, DC 20006

Represents: Canadian National Railway Company and Grand Trunk Corporation

NON-PARTY

Sean Finn
Canadian National Railway Company
P.O. Box 8100
Montréal, QC H3B 2M9

NON-PARTY

Theodore K. Kalick
Canadian National Railway Company
601 Pennsylvania Avenue, N.W.
Washington, DC 20004

NON-PARTY

Jeffrey S. Burritt
Zwerdling, Paul, Kahn & Wolly P.C.
1025 Connecticut Avenue, N.W.
Suite 712
Washington, DC 20036

Represents: International Brotherhood of Electrical Workers, International Association of Machinists and Aerospace Workers, American Train Dispatchers Association and National Conference of Fireman & Oilers

NON-PARTY

Edward J. Fishman
Kirkpatrick & Lockhart Preston
Gates Ellis LLP
1601 K Street, N.W.
Washington, DC 20006

Represents: The Village of Barrington, Illinois

NON-PARTY

Janie Sheng
Kirkpatrick & Lockhart Preston
Gates Ellis LLP
1601 K Street, N.W.
Washington, DC 20006

Represents: The Village of Barrington, Illinois

NON-PARTY

Brendon P. Fowler
Kirkpatrick & Lockhart Preston
Gates Ellis LLP
1601 K Street, N.W.
Washington, DC 20006

Represents: The Village of Barrington, Illinois

NON-PARTY

Paul R. Wisner
445 E Washington
Lombard, IL 60148

NON-PARTY

Luciana Galesi
4308 Pagoda Ct
Naperville, IL 60564

NON-PARTY

Patrick Bond
Bond, Dickson & Associates, P.C.
301 S. County Farm Rd., Suite E
Wheaton, IL 60187

Represents: The City of West Chicago, Illinois

NON-PARTY

Christopher BuBois
7 Mesa Drive
South Barrington, IL 60010

NON-PARTY

James Tarpo
P.O. Box 190
Griffith, IN 46319

NON-PARTY

Valerie L. Salmons
228 S. Main Street
Bartlett, IL 60103

NON-PARTY

Lee Ann Goodson
14621 Thomas Jefferson Drive
Plainfield, IL 60544

NON-PARTY

Natalie Aglipay
711 N. Broad Street
Griffith, IN 46319

NON-PARTY

Lynn A. Ostendorf
106 W. Main
Wesley, IA 50483

NON-PARTY

Scott Phillips
2400 Ellis Road
Durham, NC 27703

NON-PARTY

Ron and Holly Velleuer
216 Dundee Avenue
Barrington, IL 60010

NON-PARTY

Michael Lev
1130 Knollwood Drive
Buffalo Grove, IL 60089

NON-PARTY

Jeffrey Bernacchi
21125 N. Prestwich Drive
Barrington, IL 60010

NON-PARTY

Robert M. Skwarek
2033 Providence Drive
Bartlett, IL 60103

NON-PARTY

Evelyn G. Means
30W112 Willow Lane
Warrenville, IL 60555

NON-PARTY

Charlene J. Herman
25008 Wright Lane
Plainview, IL 60585

NON-PARTY

Daniel E. Weber
536 N. Harlem Avenue
River Forest, IL 60305

NON-PARTY

Lawrence Poglitsch
911 Lakewood Drive
Barrington, IL 60010

NON-PARTY

Dicie Hansen
497 White Oak Lane
Barrington, IL 60010

NON-PARTY

Mary Wenzel
25030 Blue Iris Ct. S.
Plainfield, IL 60585

NON-PARTY

Steven Kirk
2728 Whitehall Lane
Naperville, IL 60564

NON-PARTY

David B. Hearn
22441 Imperial Drive
Richton Park, IL 60471

Attachment P4

STB Decision Document No. 4

01/25/08

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

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

Decision No. 4

Decided: January 25, 2008

In Decision No. 2, served November 26, 2007, the Board accepted for consideration the application filed by Canadian National Railway Corporation (CNR) and Grand Trunk Corporation (GTC), for Board authorization of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company, by CNR and GTC. The Board also found the proposed transaction to be a “minor” transaction and set a procedural schedule accordingly. This proposal is referred to as the transaction. CNR and GTC are referred to collectively as applicants.

On December 17, 2007, Indiana Harbor Belt Railroad Company (IHB) filed a petition for reconsideration seeking reconsideration of the Board’s designation of the transaction as “minor” and requesting that the Board find the transaction to be “significant.” In the alternative, IHB requested that the Board extend the current procedural schedule by 30 days to give interested parties more time to file comments, protests, requests for conditions, or other opposition and evidence. On December 28, 2007, United Transportation Union (UTU) late filed a petition for reconsideration, incorporating the arguments made by IHB, and urging the Board to review the comments of the National Railroad Passenger Corporation (Amtrak), regarding the transaction’s

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

impact on Amtrak lines. No other parties filed a petition for reconsideration.² Ten parties submitted filings in support of IHB's petition including American Chemical Service, Inc. (ACS), ArcelorMittal USA, Aux Sable Liquid Products, LLC (Aux Sable), Coilplus Illinois, Inc. (Coilplus), Environmental Law & Policy Center (ELPC), Gary/Chicago International Airport, Midwest High Speed Rail Association, Reichhold, Inc., Technical Propellants, Inc., and Will County, IL.

On January 3, 2008, applicants submitted a reply to IHB's petition for reconsideration, and addressed the filings of Will County and ELPC. Following several conversations and meetings with the applicants, IHB withdrew its petition on January 7, 2008, stating that it believed that the transaction would not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region in the United States. UTU also withdrew its petition for reconsideration on January 7, 2008.

Following IHB's withdrawal of its petition, Coilplus and Technical Propellants, Inc. withdrew as parties of record from this proceeding on January 11, 2008. Aux Sable, ACS, and Reichhold, Inc. informed the Board on that date that they continue to seek a reclassification of the proposed transaction as "significant" or, in the alternative, a 15-day extension of the January 28 deadline for filing opposition evidence and argument and requests for conditions. On January 14, 2008, ELPC reiterated its support for reclassifying the transaction as "significant" or, in the alternative, extending the comment period for an additional 30 days. On January 16, 2008, applicants submitted a reply, and Reichhold, Inc. withdrew as a party of record from this proceeding.

No basis has been shown to reclassify the proposed transaction or to extend the procedural schedule set forth in Decision No. 2. None of the parties seeking reclassification or, in the alternative, an extension of the schedule, themselves filed timely petitions for reconsideration. A letter, filed after the 20-day reconsideration period, in support of another party's timely petition for reconsideration, is not itself a timely filed petition for reconsideration.

And in any event, the remaining commenting parties have neither shown that the Board's action in the prior decision will be affected materially because of new evidence or changed circumstances, nor that there was material error. The central argument in several of the comments, that the number of public comments received by the Board demonstrates that the transaction is "significant," is without merit. As explained in Decision No. 2, the classification of a transaction as "minor" or "significant" has a particular, specialized meaning under our regulations, based on an examination of the transaction's possible anticompetitive effects and its anticipated contribution to the public interest in meeting significant transportation needs,³ not the

² Pursuant to 49 CFR 1115.3, petitions for reconsideration appealing an entire Board action must be filed within 20 days after the service of the action.

³ 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

(continued . . .)

breadth of public attention that the transaction attracts. Moreover, none of the parties' other arguments, which merely restate or expand arguments asserted before the Board issued Decision No. 2, warrant reconsideration.

Regarding an extension of the schedule, the commenting parties have not shown that the 60 days provided for comments and other filings in opposition is insufficient notwithstanding the 2-3 intervening days when many offices were closed for the holidays. As for those parties expressing concerns regarding time needed to assess and comment on matters related to the environmental impact of the transaction, we note that the Board's Section of Environmental Analysis (SEA) has determined that an Environmental Impact Statement (EIS) will be prepared.⁴ The EIS process will allow ample time for parties to assess and comment on these matters.

Therefore, the Board denies the requests to reclassify the transaction or to alter the procedural schedule issued in Decision No. 2.

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

It is ordered:

1. Requests to reclassify the transaction as "significant" and to alter the procedural schedule issued in Decision No. 2 are denied.
2. This decision is effective on the service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey. Vice Chairman Mulvey commented with a separate expression.

Anne K. Quinlan
Acting Secretary

(. . . continued)

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.

⁴ See Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company, STB Finance Docket No. 35087 (STB served Dec. 21, 2007).

VICE CHAIRMAN MULVEY, commenting

My position that this transaction should be categorized as “significant” rather than “minor” is unchanged, as expressed in my dissent to the majority’s decision in Canadian National Ry. – Control – EJ&E West Co., STB Finance Docket No. 35087 (STB served Nov. 26, 2007) (Decision No. 2), at 18. However, I agree that the limited pleadings before us on reconsideration of this categorization do not support reclassification or modification of the procedural schedule.

Attachment P5

STB Decision Document No. 5

01/25/08

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

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

Decision No. 5

Decided: January 25, 2008

On January 18, 2008, a Notice to the Parties (Decision No. 3) was served in this proceeding. The service list was attached to the Notice. The Notice directed that corrections to the service list must be filed in writing with the Surface Transportation Board (Board) by January 23, 2008. The Notice also directed that all persons actively participating as a Party of Record in this proceeding must serve a copy of all filings submitted so far on all persons listed as Parties of Record (POR) to the extent such filings have not previously been served upon such other parties.

The Board received a request from Eric L. Hirschhorn, counsel representing the Village of Frankfort to replace George F. Mahoney III with Mr. Hirschhorn as a POR and to have Mr. Mahoney III, designated as a Non-Party. The Board also received a request from Adrian L. Steel, Jr., counsel for BNSF Railway Company, to change the service list to reflect Mr. Steel, Jr., as the POR and have Richard E. Weicher listed as a Non-Party. In addition, the Board received a request from Michael L. Rosenthal, counsel for Union Pacific Railroad Company to be designated as the POR. In accordance with the Board's "One Party-One Representative" policy, J. Michael Hemmer, counsel for Union Pacific Railroad Company, will be designated as a Non-Party. In addition, several requests to add persons as a POR or Non-Party have been received.

The final service list incorporates the additions and corrections as reflected in the Appendix attached to this Notice. Each person actively participating as a POR in this proceeding must serve a copy of all filings submitted so far in this proceeding on each POR (designated on the attached service list as "Party of Record") 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, a certificate of service, indicating that the service required by the preceding sentence has been accomplished. All future filings must have a certificate of service indicating that all Parties of Record have been properly served with a copy of the filing.

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

It is ordered:

1. The final service list incorporates the additions/corrections shown in the Appendix attached to this decision.

2. This decision is effective on its date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary

APPENDIX

Please make the following corrections to the service list decision served on January 18, 2008.

THE FOLLOWING NAMES SHOULD BE CHANGED ON THE SERVICE LIST TO PARTIES OF RECORD:

PARTY OF RECORD

Eric L. Hirschhorn
Winston & Strawn LLP
1700 K Street, N.W.
Washington, DC 20006

Represents: Village of Frankfort, Illinois

PARTY OF RECORD

Adrian L. Steel, Jr.
Mayer Brown LLP
1909 K Street, N.W.
Washington, DC 20006

Represents: BNSF Railway Company

PARTY OF RECORD

Michael L. Rosenthal
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20115

Represents: Union Pacific Railroad Company

THE FOLLOWING NAMES ARE ADDED TO THE SERVICE LIST AS PARTIES OF RECORD:

PARTY OF RECORD

Honorable Susan Garrett
Illinois State Senate
129 Capitol Building
Springfield, IL 62706

PARTY OF RECORD

Ross B. Capon
National Association of Railroad Passengers
900 Second Street, NE, Suite 308
Washington, DC 20002

THE FOLLOWING NAMES SHOULD BE CHANGED ON THE SERVICE LIST TO **NON-PARTIES**:

NON-PARTY

George F. Mahoney III
Mahoney, Silverman & Cross, Ltd.
822 Infantry Drive, Suite 100
Joliet, IL 60435

Represents: Village of Frankfort, Illinois

NON-PARTY

Richard E. Weicher
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

NON-PARTY

J. Michael Hemmer
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

THE FOLLOWING NAMES ARE **ADDED** TO THE SERVICE LIST AS **NON-PARTIES**:

NON-PARTY

Michael J. Whims
Michigan Association of Railroad Passengers, Inc.
P.O. Box 52148
Livonia, MI 48152

NON-PARTY

Lynn Schneider
Buffalo Grove Area Chamber of Commerce
50 ½ Raupp Blvd.
P.O. Box 7124
Buffalo Grove, IL 60089

NON-PARTY

Arlene J. Mulder
Mayor, Village of Arlington Heights
33 South Arlington Heights Road
Arlington Heights, IL 60005

NON-PARTY

Kurt A. Edwards
520 Westwood Drive
Barrington, IL 60010

NON-PARTY

Helen Benner
1203 Wesley Avenue, Apt. 109
Savoy, IL 61874

NON-PARTY

Jeffrey Witt
21918 W. Talia Lane
Deer Park IL 60010

NON-PARTY

Mathew Pava
2001 S. Mattis Avenue, Unit F
Champaign, IL 61821

NON-PARTY

Brenda Ranchino
1785 Kelley Drive
Hoffman Estates, IL 60192

NON-PARTY

Eileen Sanfilippo
547 Summit Street
Barrington, IL 60010

NON-PARTY

Leeann Zouras
217 Roslyn Road
Barrington, IL 60010

NON-PARTY

Mary F. Reid Vizintos
Concord Valley HOA
4 S. 727 Karns Road
Naperville, IL 60563

NON-PARTY

John Cook
113 Brinker Road
Barrington Hills, IL 60010

NON-PARTY

Joseph E. Luecke
94 Otis Road
Barrington Hills, IL 60010

NON-PARTY

Eric and Jennifer Thomas
5415 Dogwood Court
Naperville, IL 60564

NON-PARTY

Martin S. Magida
2935 Roslyn Lane
Buffalo Grove, IL 60089

NON-PARTY

William J. Baumer
618 Applegate Lane
Lake Zurich, IL 60047

NON-PARTY

Karen C. Wever
4 Brookhaven Circle
South Barrington, IL 60010

NON-PARTY

Susan Rodgers
P.O. Box 581
Centralia, IL 62801

NON-PARTY

Kathy Smith
117 North Hickory Street
Centralia, IL 62801

NON-PARTY

Tommy S. Voughn
329 W. Broadway
Centralia, IL 62801

NON-PARTY

Vicki L. Rodgers
300 Aaron Parkway
Centralia, IL 62801

NON-PARTY

Russel Goodiel
Chase Environmental Group Inc.
418 Poplar Street
P.O. Drawer AB
Centralia, IL 62801

NON-PARTY

Suzanne Whittenburg
117 N. Hickory Street
Centralia, IL 62801

NON-PARTY

Rodger J. Fredericks
400 East Broadway
Centralia, IL 62801

NON-PARTY

Jim Underwood
Kaskaskia College
27210 College Road
Centralia, IL 62801

NON-PARTY

Joseph E. Hinton
2641 W. Carmen Avenue #3W
Chicago, IL 60625

NON-PARTY

Steve Mahlandt
Breese Journal & Publishing Company
8060 Old Highway 50
Breese, IL 62230

NON-PARTY

Richard A. Hofeld
Village of Homewood
2020 Chestnut Road
Homewood, IL 60430

NON-PARTY

Phil Hess
305 Warwick Road
Tower Lakes, IL 60010

NON-PARTY

John Joyce
3 Chestnut Court
Park Forest, IL 60466

NON-PARTY

Michael Roth
200 Moorehead Drive
Bartlett, IL 60103

NON-PARTY

Cynthia Lee Padley
21975 Mayfield Lane
Deer Park, IL 60010

NON-PARTY

Alix Soske
61 Spring Creek Road
Barrington, IL 60010

NON-PARTY

Julie C. Koelzer
928 Lakewood Drive
Barrington, IL 60010

NON-PARTY

Stephanie s. Skopek
2 Marbury Lane
Barrington, IL 60010

NON-PARTY

Arlo Kallemeyn
924 E. 162nd Street
South Holland, IL 60473

NON-PARTY

Claire Vogt Wally
303 Elm Road
Barrington, IL 60010

NON-PARTY

Andrew Giza
2070 Providence Drive
Bartlett, IL 60103

NON-PARTY

Jason S. Greenstein
1529 N. Mohawk
Chicago, IL 60610

NON-PARTY

Jacob John Madden
24710 George Washington
Plainfield, IL 62801

NON-PARTY

Barbara Kukowski
345 Lake Shore Drive N.
Barrington, IL 60010

NON-PARTY

Bonnie Altenburg
812 S. Grove
Barrington, IL 60010

NON-PARTY

Sara Stolberg
431 Cedar Court South
Buffalo Grove, IL 60089

NON-PARTY

Anne Cook
113 Brinker Road
Barrington Hills, IL 60010

NON-PARTY

Marti Swanson
5615 N. Ridgeway Road
Ringwood, IL 60072

NON-PARTY

Howard E. Sloan
301 Oregon Street
Frankfort, IL 60423

NON-PARTY

Todd and Lori Phillips
5217 Elliott Drive
Hoffman Estates, IL 60192

NON-PARTY

Roberta T. Darcy
3349 Legacy Drive
Lockport, IL 60441

NON-PARTY

Virginia Sabbak
409 North Avenue
Barrington, IL 60010

NON-PARTY

Judith Bassoul
6 Hubbell Court
Barrington, IL 60010

NON-PARTY

Delores Simon
3343 Legacy Drive
Lockport, IL 60441

NON-PARTY

Deborah Daniel
1390 N. Elm Street
Palatine, IL 60067

NON-PARTY

Bill Bohstedt
26881 Taylor Road
Barrington, IL 60010

NON-PARTY

Craig M. Van der Voort
9 Oak Lake Drive
Barrington Hills, IL 60010

NON-PARTY

William B. Nurre
66 Windrush Lane
Barrington Hills, IL 60010

NON-PARTY

Maria Gatlin
1470 Tea Tree Lane
Frankfort, IL 60423

NON-PARTY

Collen Bernard
4024 Champion Road
Naperville, IL 60564

NON-PARTY

Mark A. Jackson
238 Abbott Place
Barrington, IL 60010

NON-PARTY

Andrew Rockwood
560 summit Street
Barrington, IL 60010

NON-PARTY

Sue A. Pajakowski
226 Coolidge Avenue
Barrington, IL 60010

NON-PARTY

Abra Shapiro
105 Brinker Road
Barrington, IL 60010

NON-PARTY

Brad A. Levy
8052 RFD
Long Grove, IL 60047

NON-PARTY

Kathy F. Powers
1883 Sedgewood Avenue
Aurora, IL 60503

NON-PARTY

Mark D. Kolar
560 Golfview Drive
North Barrington, IL 60010

NON-PARTY

Gary Pituch
413 Elder Dr.
Round Lake Park, IL 60073

NON-PARTY

Marilyn J. Grens
80 Rolling Knolls Avenue
Elgin, IL 60120

NON-PARTY

Judith Joy
P.O. Box 3
Centralia, IL 62801

NON-PARTY

Ashley Marcum
117 N. Hickory Street
Centralia, IL 62801

NON-PARTY

Robert L. Koentz
Mayor, City of Trenton
14 West Broadway
Trenton, IL 62293

NON-PARTY

Norman J. Schuchman
NJS & Group, LLC
1741 Moonglow Road
Centralia, IL 62801

NON-PARTY

Alan B. Owen
DePew & Owen Builders, Inc.
511 S. Oak Street
Centralia, IL 62801

NON-PARTY

Jackie Mathus, Jr.
Mayor, City of WAMAC
361 East 17th Street
Centralia, IL 62801

NON-PARTY

Sonya Germann
Centralia Recreation Complex
115 East Second Street
Centralia, IL 62801

NON-PARTY

Sean Danielson
145 Wedgewood Drive
Barrington, IL 60010

NON-PARTY

Peggy Thodos
34 Brinker Road
Barrington, IL 60010

NON-PARTY

Karen Wojciechowski
1783 Dyer Drive
Bartlett, IL 60103

NON-PARTY

Leonard E. Ferguson
Mayor, The City of Salem
101 South Broadway
Salem, IL 62881

NON-PARTY

Tena Hoyt
P.O. Drawer D
140 S. Locust, 3rd Floor
Centralia, IL 62801

NON-PARTY

Jay P. Koch
EcoDigital Development Group
P.O. Box 589
Mount Vernon, IL 62864

NON-PARTY

John A. Vuono
310 Grant Street, Suite 2310
Pittsburgh, PA 15219

NON-PARTY

Robert Handley
31 W. 655 Percheron Lane
Wayne, IL 60184

NON-PARTY

Mona L. Sevens
2404 Arden Drive
Champaign, IL 61821

NON-PARTY

Roland and Sharon Kaeser
93 Hills and Dales Road
Barrington, IL 60010

NON-PARTY

George and Patricia Hinton
2596 Lakeside Drive
Centralia, IL 62801

NON-PARTY

Mary Jane Chesley
Mayor, City of Mt. Vernon
1100 Main, City Hall
Mount Vernon, IL 62864

NON-PARTY

Edward M. Paine
1800 E Calumet Street
Centralia, IL 62801

NON-PARTY

Robert and Nancy Jones
23 Edgewood Lane N
Centralia, IL 62801

NON-PARTY

Mary Ellen Bechtel
Jefferson County Development Corporation
200 Potomac Blvd.
P.O. Box 523
Mount Vernon, IL 62864

NON-PARTY

Wendy Ruhde
3640 Arlington Court
Aurora, IL 60504

NON-PARTY

Gerald Schweighart
City of Champaign
102 North Neil Street
Champaign, IL 61820

NON-PARTY

Blake Griffin
DBG Enterprises, Inc.
P.O. Drawer R
140 S. Locust Street, 3rd Floor
Centralia, IL 62801

NON-PARTY

David J. Eggermann
BASF Corporation
100 Campus Drive
Florham Park, NJ 07932

NON-PARTY

Jamie Synder
City of Carbondale
200 S. Illinois Avenue
Carbondale, IL 62901

NON-PARTY

Angie Kubow
301 S. Vine Street
Urbana, IL 61801

Attachment P6

STB Decision Document No. 6

01/30/08

38760
SEA

SERVICE DATE – JANUARY 30, 2008

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

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

Decision No. 6

Decided: January 30, 2008

NOTICE TO THE PARTIES:

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

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

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

to conclude on February 1, 2008, but in response to requests, SEA is extending the scoping period an additional 14 days, to February 15, 2008. Scoping comments must be post-marked no later than February 15th.

If you wish to submit written comments regarding the proposed draft scope, which was mailed to you previously but which is also available on the Board's website under "Environmental Matters," "Key Cases" and "CN-EJ&E Acquisition," please send your comments to:

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

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

Scoping comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E_FILING" link. You do not need a Login Account to submit Environmental Comments. Simply click on "Environmental Comments," which will take you to the comment screen. Type in the docket number, which is "FD 35087." Select "Phillis Johnson-Ball" in the drop down list under "attention of." Then complete the form by adding your name, address, phone and email, and click "Submit."

You may also call your scoping comments into SEA's toll-free hotline established for this proceeding. Dial 1-800-347-0689 and leave your comments after the tone.

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

This is the first opportunity to submit comments during the environmental review process. SEA will afford additional opportunities, including asking for comments on the Draft EIS after SEA issues that document.

Questions may be directed to Phillis Johnson-Ball, SEA Project Manager, toll-free at 1-800-347-0689 (TDD for the hearing impaired 1-800-877-8339). The website for the Surface Transportation Board is www.stb.dot.gov. This document is available in English and Spanish by calling the toll-free number at 1-800-347-0689.

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

Anne K. Quinlan
Acting Secretary

Attachment P7

STB Decision Document No. 7

02/20/08

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

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

Decision No. 7

Decided: February 20, 2008

In Decision No. 2, served November 26, 2007, the Board accepted for consideration the application filed by Canadian National Railway Corporation (CNR) and Grand Trunk Corporation (GTC), for Board authorization of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company (EJ&E), by CNR and GTC. CNR and GTC are referred to collectively as CN or applicants. The Board found the proposed transaction to be a “minor” transaction and the application to be in substantial compliance with the applicable regulations governing minor transactions. (This proposal is referred to as the primary transaction.) However, the Board reserved the right to require the filing of any supplemental information necessary to complete the record.

With their application, applicants submitted an operating plan that proposed and briefly described the construction of connecting tracks at six locations. Applicants state that the improved connecting tracks at Munger, IL, Joliet, IL, Matteson, IL, Griffith, IN, Ivanhoe, IN,

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

and Kirk Yard, IN, would enable CN to route its trains efficiently over the EJ&EW arc. The connecting tracks to be constructed would connect existing EJ&E lines or facilities with lines of either CNR or other Class I rail carriers.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10901(a), a person may “construct an extension to any of its railroad lines” or “construct an additional railroad line . . . only if the Board issues a certificate authorizing such activity.” An extension or addition to a rail line that requires authority under 49 U.S.C. 10901 occurs when a construction project enables a carrier to penetrate or invade a new market. See Texas & Pac. Ry. v. Gulf, Etc., Ry., 270 U.S. 266, 278 (1925) (Texas & Pacific). However, not all railroad construction activities require Board approval. Carrier improvements to or investments in their existing system do not require section 10901 authority.² Furthermore, under 49 U.S.C. 10906, the Board does not have licensing authority “over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.”

Based on the current record, it appears that some or all of the connecting tracks that applicants propose to construct might require Board authorization. Applicants refer both to improved connections and to new tracks. Application at 222. Moreover, some or all of the connections appear to require the acquisition of new right-of-way.³

Applicants appear to assume that they do not need Board authority for any of these constructions, but do not offer any basis for not seeking that authority. Applicants do not assert that the trackage proposed to be constructed falls under section 10906 and thus could be constructed without Board authorization. And Applicants do not explain why this case differs from past control proceedings in which parties have sought, and the Board has granted, authority to construct connecting tracks similar to those proposed here in conjunction with a proposed

² See Texas & Pacific at 278; City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208, 1216 (1993) (finding double-tracking to be an improvement to an existing rail line, and thus not an extension or addition to a rail line), aff'd sub nom. Detroit/Wayne County Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); Union Pacific RR Co.—Petition—Rehabilitation of MO-KS-TX RR, 3 S.T.B. 646, 651 (1998) (finding that rehabilitation and reactivation of a former line that would not penetrate or invade a new market but would simply augment the capacity of existing main line operations would not require the Board’s construction authority despite the fact that the reactivated line was outside the right-of-way of the existing main line); Missouri Pacific Railroad Company and Southern Pacific Transportation Company—Construction and Operation Exemption—Avondale, LA, STB Finance Docket No. 33123 (STB served July 11, 1997) (finding that the construction of three proposed connecting tracks within existing railroad rights-of-way that would not permit the constructing carrier to invade new territory would not require Board approval).

³ While the need to acquire new right-of-way is not necessarily determinative, it is significant in determining whether the class exemption for construction of connecting track at 49 CFR 1150.36 is available.

merger. See CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196, 346-47 (1998); CSX Transportation, Inc.—Construction and Operation Exemption—Connecting Track at Crestline, OH, STB Finance Docket No. 33388 (Sub-No. 1) et al. (STB served Nov. 25, 1997); Burlington Northern et al.—Merger—Santa Fe Pacific et al., 10 I.C.C.2d 661, 792 (1995).⁴

As a result, we direct applicants to file for construction authority for each of the six connecting tracks they propose to construct by March 3, 2008, or to show cause why authority is not needed for one or more of these construction projects by March 3, 2008.

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

It is ordered:

1. Filings seeking authority to construct the six connecting tracks or showing cause why authority is not needed for one or more of the construction proposals will be due by March 3, 2008.
2. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

⁴ In Canadian National, et al.—Control—Illinois Central, et al., 4 S.T.B. 122, at 130 (1999), the Board observed that the applicants in that proceeding asserted that the construction and operation of one connection and the upgrade of another did not require Board approval under section 10901. The Board, however, did not rule on that assertion in its decision approving the overall control transaction.

Attachment P8

STB Decision Document No. 8

02/22/08

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

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

Decision No. 8

Decided: February 22, 2008

In Decision No. 2, served November 26, 2007, the Board accepted for consideration the application filed by Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), for Board authorization of the proposed acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company (EJ&E), by CNR and GTC. This proposal is referred to as the primary transaction. CNR and GTC are referred to collectively as applicants.

BACKGROUND

On January 22, 2008, the Village of Frankfort, IL (Frankfort), filed a motion to compel responses to discovery requests served on EJ&E and EJ&EW, and on January 25, 2008, Frankfort filed a motion to compel discovery requests served on applicants. Frankfort seeks to compel discovery from EJ&E, EJ&EW, and applicants on topics such as projections of rail traffic volume following the proposed acquisition; air pollution that would result from trains and vehicles waiting to cross blocked rail crossings; anticipated noise and vibration from rail

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

construction and operations; effects of the proposed transaction on property values; potential railroad safety issues in the Frankfort vicinity, including grade crossing issues; issues related to traffic delays due to blocked grade crossings in Frankfort; and potential environmental mitigation to eliminate or reduce the foregoing types of potential environmental effects. Frankfort states that, in response to its request for documents and interrogatories, applicants, EJ&E, and EJ&EW provided no substantive answers to its information requests. On February 8, 2008, applicants, EJ&E, and EJ&EW filed a joint reply arguing that Frankfort was not entitled to invoke the Board's discovery process to explore issues that would be addressed in the ongoing environmental review process. They also objected to the discovery requests on grounds that EJ&E and EJ&EW were not parties in this proceeding and hence not subject to discovery.

On February 5, 2008, Will County, IL (Will County), filed a motion to compel responses from applicants regarding rail traffic congestion and possible gridlock; auto and truck traffic congestion and possible gridlock; and public safety and other environmental and transportation concerns.²

On January 31, 2008, ArcelorMittal USA Inc., ArcelorMittal Burns Harbor LLC, ArcelorMittal Indiana Harbor LLC, ArcelorMittal Kote Inc., ArcelorMittal Tek Inc., ArcelorMittal Hennepin Inc., and ArcelorMittal Riverdale Inc. (collectively ArcelorMittal) filed a motion to compel discovery responses from EJ&E and EJ&EW regarding any and all likely changes to the numerous agreements and day-to-day operations with ArcelorMittal should the Board approve the proposed transaction. Many of ArcelorMittal's requests pertain to actual, planned, anticipated, or possible changes to agreements and operations on the EJ&E line and/or the future Gary Railroad. On February 8, 2008, EJ&E and EJ&EW filed their reply to the motion to compel, asserting that they are not subject to discovery because they are not parties to this proceeding. They further argue that ArcelorMittal requests information that only applicants are in a position to offer, namely information on changes in operation of the assets applicants seek to acquire.

DISCUSSION AND CONCLUSIONS

Discovery of Environmental Matters. Frankfort and Will County, which adopts and incorporates Frankfort's arguments, assert that discovery is available regarding any matter relevant to the subject matter involved in a proceeding, including environmental matters, citing 49 CFR 1114.21(a)(1), even though they acknowledge that the Board will address the types of environmental issues on which they seek discovery during the environmental review process. Applicants, EJ&E, and EJ&EW maintain that discovery is not available to address environmental issues and that information needed to address concerns such as those raised by Frankfort and Will County are developed through the less formal environmental review process that is taking place under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq.

² On January 28, 2008, Will County filed a motion to compel discovery responses from EJ&E and EJ&EW. On February 8, 2008, the motion was withdrawn.

The Board confirms that formal discovery on environmental issues such as those raised by Frankfort and Will County is not available because information of these types of issues will be developed by the Board's Section of Environmental Analysis (SEA) during the NEPA process. See Illinois Central Railroad Company—Construction and Operation Exemption—In East Baton Rouge Parish, LA, STB Finance Docket No. 33877 (STB served Aug. 21, 2001) (East Baton Rouge Parish); Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin, STB Docket No. 33407 (STB served Feb. 2, 2000). See also CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (STB served May 27, 1998); Burlington Northern Santa Fe Corporation, BNSF Acquisition Corp., and Burlington Northern Railroad Company—Control—Washington Central Railroad Company, STB Finance Docket No. 32974 (STB served Sept. 20, 1996). As stated in East Baton Rouge Parish, the Board decides matters regarding transportation issues based on an evidentiary record developed by the parties including through the discovery process. In contrast, to assess the potential environmental effects of a proposed acquisition, SEA performs an independent environmental review that allows for and encourages public participation throughout the process.

In this case, a full Environmental Impact Statement (EIS) will be prepared to disclose and address environmental concerns related to the proposed transaction and develop potential environmental mitigation measures. As explained in the Notice of Intent to Prepare an Environmental Impact Statement, served December 21, 2007, the NEPA process is intended to assist the Board and the public in identifying and assessing the potential environmental consequences of a proposed action before a decision on that proposed action is made. This process involves soliciting public comments on a draft scope of study for the EIS,³ followed by the issuance of a final scope of study for the EIS. SEA then prepares a draft EIS that will evaluate the direct, indirect, and cumulative impacts of the proposed transaction and address a wide range of issues including, as appropriate, air quality, noise, environmental impacts to low income or minority populations, land use and safety, including grade crossing safety. The draft EIS also will include preliminary recommendations for environmental mitigation measures. As part of the EIS process, SEA can ask applicants for additional information on the planned operations, as appropriate, to permit the Board to take the requisite "hard look" at environmental issues required by NEPA.

The draft EIS will be made available for public and agency review and comment for a minimum of 45 days. A final EIS will then be issued that will address public comments, include further environmental analysis, if appropriate, and set forth SEA's final environmental mitigation recommendations. The Board will then consider the entire record, including the environmental record, in deciding whether to approve the proposed transaction, deny the proposed transaction, or approve it with conditions, including environmental conditions.

³ In this case, SEA has conducted seven scoping meetings in the project area to facilitate public input.

Throughout this process, Frankfort and Will County (as well as all other interested parties, communities, organizations, and members of the general public) will have ample opportunity to raise any environmental concerns they might have. The discovery responses sought by Frankfort and Will County pertain to the same issues that can and will be explored and addressed in the EIS. Accordingly, Frankfort and Will County's motions to compel, which seek information solely on environmental issues, will be denied.

EJ&E's "Party" Status. Under 49 CFR 1101.2, a party is defined as "a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Board to participate in a proceeding." Frankfort and ArcelorMittal contend, among other things, that EJ&E and EJ&EW are parties by virtue of the notice of exemption submitted with the application, Elgin, Joliet and Eastern Railway Company—Corporate Family Exemption—EJ&E West Company, STB Finance Docket No. 35087 (Sub-No. 1), in which EJ&E filed for a notice of exemption based on a corporate family transaction with EJ&EW. ArcelorMittal further argues that this notice of exemption authorizing EJ&E to transfer its assets to EJ&EW is a central and necessary element to the proposed transaction.

In their responses, applicants, EJ&E, and EJ&EW assert that, under 49 CFR 1101.2 EJ&E and EJ&EW are not parties to this proceeding. They argue that EJ&E and EJ&EW do not fall into any of the categories listed in 49 CFR 1101.2. They concede that EJ&E filed a notice of exemption; however applicants argue that "such class exemptions do not start proceedings; they merely indicate that . . . no proceedings are necessary." Applicants, EJ&E, and EJ&EW also argue that the discovery requests sought by Frankfort and ArcelorMittal are not related to the notice of exemption.

The Board directs EJ&E and EJ&EW to participate in STB Finance Docket No. 35087 as parties, in accordance with 49 CFR 1101.2. As ArcelorMittal has noted, the transfer of EJ&E assets to EJ&EW is integral to the proposed transaction. Accordingly, the Board grants ArcelorMittal's motion to compel all discovery requests from EJ&E and EJ&EW regarding current operations and arrangements between EJ&E and ArcelorMittal and any requests regarding the Gary Railroad's future operations and commercial arrangements. Responses to document requests and interrogatories solely regarding future plans and possible actions by applicants, or post-transaction plans and actions with respect to EJ&E lines applicants seek to acquire, are not compelled because applicants have already responded to similar requests.

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

It is ordered:

1. Frankfort and Will County's motions to compel are denied.
2. ArcelorMittal's motion to compel is granted to the extent that discovery requests pertain to the Gary Railroad's future operations and commercial arrangements and/or EJ&E and EJ&EW's current operations and arrangements with ArcelorMittal.
3. This decision is effective on the service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

Attachment P9

STB Decision Document No. 9

04/23/08

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

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

Decision No. 9

Decided: April 21, 2008

In Decision No. 2, served November 26, 2007, the Board accepted for consideration the application filed by Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), for Board authorization of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet & Eastern Railway Company (EJ&E), by CNR and GTC. CNR and GTC are referred to collectively as CN or applicants.

With their application, applicants submitted an operating plan that proposed and briefly described the construction of connecting tracks at six locations. Applicants stated that improved connecting tracks at Munger, IL, Joliet, IL, Matteson, IL, Griffith, IN, Ivanhoe, IN, and Kirk Yard, IN, would enable CN to route its trains efficiently over the EJ&EW arc. The connecting tracks to be constructed would connect existing EJ&E lines or facilities with lines of either CNR or other Class I rail carriers.

In Decision No. 7, served February 20, 2008, the Board stated that, based on the current record, it appeared that some or all of the connecting tracks that applicants proposed to construct might require Board authorization under 49 U.S.C. 10901. The Board directed the applicants to

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

seek authority to construct the six connecting tracks or to show cause why authority is not needed for one or more of the construction proposals. Applicants submitted their response to the Board's decision on March 3, 2008.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10901(a), a person may “construct an extension to any of its railroad lines” or “construct an additional railroad line . . . only if the Board issues a certificate authorizing such activity.” However, not all railroad construction activities require Board approval. An extension or addition to a rail line that requires authority under 49 U.S.C. 10901 occurs when a construction project enables a carrier to penetrate or invade a new market. See Texas & Pac. Ry. v. Gulf, Etc., Ry., 270 U.S. 266, 278 (1925) (Texas & Pacific). Carrier improvements to or investments in their existing system do not require Board approval.²

In their reply, applicants state that Board approval for the proposed construction projects is not necessary because the projects would not fall within the Board's section 10901 jurisdiction. Applicants assert that the proposed connecting tracks would not enable CN or EJ&E to penetrate or invade any new markets that are not now accessible by either CN or EJ&E. Rather, applicants state that the proposed construction would improve the efficiency of moving traffic over lines that already cross or connect. Applicants also note that the proposed construction projects will be analyzed as part of the Board's ongoing environmental review of the proposed acquisition of control. Applicants maintain that a Board finding that applicants do not need authority to construct the connections proposed in this proceeding would not be inconsistent with the Board's action in past merger decisions, such as the Conrail proceeding (see CSX Corp. et al.—Control—Conrail Inc. et al., 3 S.T.B. 196, 346-47 (1998)), where the need for authority to construct was not placed in issue.

The Board finds that none of the connecting tracks that applicants propose to construct are extensions of or additions to a rail line that require prior Board approval under section 10901. Rather, applicants have demonstrated in their reply and in maps submitted with it that the construction activities related to these short connections are for operational efficiency and that

² See Texas & Pacific at 278; City of Detroit v. Canadian National Ry. Co., et al., 9 I.C.C.2d 1208, 1216 (1993) (finding double-tracking to be an improvement to an existing rail line, and thus not an extension or addition to a rail line), aff'd sub nom. Detroit/Wayne County Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); Union Pacific RR Co.—Petition—Rehabilitation of MO-KS-TX RR, 3 S.T.B. 646, 651 (1998) (finding that rehabilitation and reactivation of a former line that would not penetrate or invade a new market but would simply augment the capacity of existing main line operations would not require the Board's construction authority despite the fact that the reactivated line was outside the right-of-way of the existing main line); Missouri Pacific Railroad Company and Southern Pacific Transportation Company—Construction and Operation Exemption—Avondale, LA, STB Finance Docket No. 33123 (STB served July 11, 1997) (finding that the construction following a previously approved merger of three proposed connecting tracks within existing railroad rights-of-way that would not permit the constructing carrier to invade new territory would not require Board approval).

the construction would take place within, or very close to, existing rights of way. Thus, the connections would not provide CN or EJ&E the ability to invade or penetrate new markets. See Port Authority of New York and New Jersey—Petition for Declaratory Order, STB Finance Docket No. 34428, slip op. at 5 (STB served Jan. 21, 2004). Accordingly, under these factual circumstances, the Board's finding that the proposed construction of the connecting tracks does not require Board authorization is not inconsistent with past merger decisions. Further, the potential environmental impact of the proposed construction of the connecting tracks, if any, will be addressed in the environmental review process for the proposed acquisition of control.

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

It is ordered:

1. Applicants have shown that they do not need Board authorization under 49 U.S.C. 10901 to construct the six connections they have described in this proceeding.
2. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

Attachment P10

STB Decision Document No. 10

05/28/08

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35087¹

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

Decision No. 10

Decided: May 28, 2008

On May 8, 2008, the Illinois Department of Transportation (IDOT) filed a motion to compel discovery from Canadian National Railway Company (CNR) and Grand Trunk Corporation (GTC), collectively referred to as applicants, seeking information on the cost of maintaining a segment of railroad track known as the St. Charles Airline, in Chicago, IL. In accordance with 49 CFR 1104.13, applicants' reply to IDOT's motion is due by May 28, 2008. On May 27, 2008, applicants filed a request for an extension of time to reply to IDOT's motion to compel. Applicants seek an additional 14 days to submit a reply to the motion to compel. Applicants state that IDOT consents to this request for an extension of time.

Applicants' request for additional time is reasonable and will be granted. Applicants' reply to the motion to compel will be due by June 11, 2008.

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

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

It is ordered:

1. Applicants' request for an extension of time is granted.
2. Applicants' reply to the IDOT motion to compel is due by June 11, 2008.
3. This decision is effective on the service date.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary