

November 19, 2021

By E-Filing

The Honorable Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423

Re: Finance Docket No. 36500, *Canadian Pacific Railway Company, et al.—Control—Kansas City Southern, et al.*

Dear Ms. Brown,

Canadian National Railway Company and its rail operating subsidiaries (collectively, “CN”) respectfully submit this comment on the environmental scoping schedule that the Office of Environmental Analysis (“OEA”) issued in its decision published November 12, 2021 (“*November 12 Decision*”). CN appreciates OEA’s recognition that the implications of the CP-KCS merger warrant preparation of an environmental impact statement (“EIS”).¹ CN is concerned about two issues, however.

First, the *November 12 Decision* only defines two alternatives to be analyzed: a “Proposed Action” of full merger approval and a “No-Action Alternative” of disapproval. It does not contemplate a third option of approval with conditions. In past mergers, the agency has typically analyzed at least three alternatives: (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction; and (3) approval of the proposed

¹ In Finance Docket No. 36514, CN and KCS voluntarily asked OEA to prepare an environmental impact statement for CN’s then-proposed merger with KCS. See Voluntary Request to Prepare Environmental Impact Statement, EI-31238, Finance Docket No. 36514 (August 13, 2021).

Honorable Cynthia T. Brown

November 19, 2021

Page 2

CN-6

transaction with conditions.² It is important for OEA to analyze the environmental impacts of conditions that may be proposed and responsive applications that may be filed. OEA should make clear that it intends to analyze approval with conditions as an alternative, and it should address how it plans to analyze the environmental impacts of requests for conditions and responsive applications.

Second, OEA's commencement of the scoping process for the EIS without first publishing a draft scope of study for public comment deprives stakeholders of important information necessary to prepare informed comments on the scope of the EIS and would truncate public review in a way that departs from Board precedent. Allowing informed public comment on the scope of an environmental impact statement is a critical part of National Environmental Policy Act ("NEPA") review as part of the agency's "hard look at the potential environmental consequences of the proposed action."³ In prior matters in which OEA or its predecessor the Section of Environmental Analysis ("SEA") have decided to prepare an EIS, the agency has published a

² See, e.g., *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, Fin. Docket No. 35087 (served Dec. 21, 2007), 72 Fed. Reg. 72819, 72821 ("CN-EJ&E Draft Scope") (attached as Exhibit A) ("Reasonable or feasible alternatives that will be evaluated in the EIS are (1) approval of the transaction as proposed; (2) disapproval of the proposed transaction in whole (No-Action alternative); or (3) approval of the proposed transaction with conditions, including environmental mitigation conditions."); *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*, Fin. Docket No. 33388 (served July 3, 1997), 62 Fed. Reg. 36332, 36334-36335 ("*Conrail Draft Scope*") ("Reasonable or feasible alternatives that will be evaluated in the EIS are (1) the proposed action, (2) the no-action alternative, and (3) the proposed action with conditions, including environmental mitigation conditions. Proposed modifications to the proposed transaction as requested by other parties in their inconsistent or responsive applications will also be addressed in the EIS.").

³ *Northern Plains Resource v. Tongue River R.R.*, (9th Cir. 2011).

Honorable Cynthia T. Brown
November 19, 2021
Page 3

CN-6

detailed draft scope of study, which solicits comment on potential environmental impacts that the agency intends to review and provides for a period of public comment on the draft scope of study.⁴

The Board has been explicit about the role of a draft scope of study in allowing a fully-informed public to adequately participate in the EIS process:

The Board's EIS process involves a number of steps, and all interested parties, affected communities and members of the general public will have ample opportunity to participate in the Board's environmental review and to comment on all aspects of the environmental analysis. *When an EIS is prepared, the Board first issues for public review and comment a notice of intent to prepare an EIS and a draft scope of study.*⁵

⁴ See *CN-EJ&E Draft Scope*, attached as Appendix A at 6-13; *Conrail Draft Scope* at 36334-36336; see also *Seven County Infrastructure Coalition – Rail Construction & Operation – In Utah, Carbon, Duchesne and Uintah Counties*, Utah, Fin. Docket No. 36284 (served June 19, 2019), 84 Fed. Reg. 28611; *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Construction, Acquisition and Operation Exemption – In Wilmington and Woburn, Mass.*, Fin. Docket No. 34797 (Sub-No. 1) (served Sep. 30, 2016), 81 Fed. Reg. 67416; *Great Lakes Basin Transp., Inc. – Authority to Construct and Operate a Rail Line in Ind., Ill. and Wisc.*, Fin. Docket No. 35952 (served Mar. 18, 2016), 81 Fed. Reg. 14929; *Canaveral Port Authority – Petition for Exemption to Construct and Operate a Rail Line Extension to Port Canaveral, Fla.*, Fin. Docket No. 35852 (served Oct. 27, 2014), 79 Fed. Reg. 64009.

⁵ *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway – Construction, Acquisition and Operation Exemption – In Wilmington and Woburn, Mass.*, at 4, n.6, Fin. Docket 34797 (served May 17, 2016) (emphasis added); see also *Solid Waste Rail Transfer Facilities*, at 4, Ex Parte 684 (served Nov. 20, 2012) (“The Notice of Intent to Prepare an EIS, which includes a description of the proposed action and provides a period for written comments on the draft scope of the EIS, is then published in the Federal Register and served.”).

Honorable Cynthia T. Brown
November 19, 2021
Page 4

CN-6

For example, in *Conrail* SEA published a detailed Scoping Notice for public comment before it issued a Final Scope document.⁶ And in the *CN-EJ&E* proceeding, SEA published an eight-page document detailing the “Draft Scope of the EIS,” which included a point-by-point summary of the issues that the EIS was expected to cover.⁷ The Board also held multiple in-person public scoping hearings and solicited written comments on the draft scope of impacts to be reviewed during the NEPA analysis.⁸

For the proposed CP-KCS merger, however, OEA has not published a draft scope of study or provided any guidance to parties about the draft scope of the EIS, other than a brief bullet-point list of potential topics.⁹ While OEA has announced plans to conduct six “virtual” scoping meetings and to take written comments on scope, the *November 12 Decision* does not indicate any plan to provide a draft scope of study for public comment in advance of the scoping meetings. OEA instead intends to proceed directly to issue “the final scope of study in early 2022,” after the comment process for the scoping period has concluded.¹⁰

CN respectfully submits that this departure from ordinary practice unnecessarily hampers the public comment process on scoping. Scoping meetings and scoping comments will be more meaningful and more productive if OEA provides its typical draft scope of study that gives interested parties guidance as to the potential range of impacts the agency will analyze, as well as potential alternatives to the proposed action.

⁶ See *Conrail Draft Scope* at 36334-36336.

⁷ See *CN-EJ&E Draft Scope* at 6-13 (attached as Exhibit A).

⁸ See *id.* at 2-3.

⁹ See *November 12 Decision* at 5. For example, the *November 12 Decision* lists broad topics like “Freight rail capacity and safety,” “Noise” and Air quality,” while the *CN-EJ&E Draft Scope* and *Conrail Draft Scope* detail the particular issues that the EIS was expected to explore in those areas. Compare *November 12 Decision* at 5 with *CN-EJ&E Draft Scope* at 6-13.

¹⁰ *Id.*

Indeed, the need for OEA to publish a draft scope of study is even stronger here than it was in past proceedings, because the Application does not include an Environmental Report that would give parties some guidance on the potential environmental impacts of a CP-KCS merger. Applicants admit that their merger may have “localized impacts,” and say that they will “work with OEA and the affected communities to identify and mitigate those impacts as appropriate.”¹¹ But Applicants provide no details about these potential “localized impacts” or about what mitigation they might be willing to offer. Applicants’ cover letter providing information to OEA’s request is now available on the Board’s environmental comment filing website, but the attachments with this information are not.¹²

CN appreciates that OEA has been given limited time to analyze the environmental impacts of this major merger—largely because of Applicants’ decisions to wait until October 28, 2021 to provide information in response to OEA’s inquiries and then to file an Application the following day. But the STB’s environmental review process should not be impaired because of Applicants’ delay in providing information to OEA.

For these reasons, CN urges OEA to add a third alternative of approval with conditions and publish a draft scope of study for its planned EIS prior to holding scoping meetings or concluding the public comment period. Depending on when the draft scope of study is published, this may require an extension of the time to comment and the scheduling of additional scoping hearings after the draft scope is published.

¹¹ See Application Vol. I at 38.

¹² See EI-31312. According to the cover letter, the undisclosed attachments apparently include traffic analyses as of 2027. *Id.* at 1. The Application and operating plan only conduct a three-year analysis through 2025. *E.g.*, Application Vol. 1 at 299-300, 345-351, Vol. 2 at 166, 351-361.

SIDLEY

Honorable Cynthia T. Brown
November 19, 2021
Page 6

CN-6

Respectfully submitted,

/s/ Raymond A. Atkins

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cc: Parties of Record in FD 36500

Danielle Gosselin, Acting Director, Office of Environmental Analysis

Joshua Wayland
Surface Transportation Board
c/o VHB
Attention: Environmental Filing, Docket No. FD 36500,
940 Main Campus Dr., Suite 500, Raleigh, NC 27606

Exhibit A

Draft Scope of Study for Environmental Impact Statement and Request for
Comments on Draft Scope, *Canadian National Railway Company and
Grand Trunk Corporation – Control – EJ&E West Company*, Fin.
Docket No. 35087 (served Dec. 21, 2007)

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 35087

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT

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

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

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

Decided: December 18, 2007.

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

Vernon A. Williams
Secretary

APPENDIX A

Draft Scope of the EIS

Proposed Action and Definition of Alternatives

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

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

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

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

Environmental Impact Analysis

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

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

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

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

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

Environmental Impact Categories

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

1. Safety

The EIS will:

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

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

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

2. Transportation Systems

The EIS will:

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

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

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

3. Land Use and Socioeconomics

The EIS will:

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

4. Energy

The EIS will:

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

5. Air Quality

The EIS will:

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

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

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

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

6. Noise and Vibration

The EIS will:

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

7. Biological Resources

The EIS will:

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

8. Water Resources

The EIS will:

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

9. Environmental Justice

The EIS will:

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

10. Cultural and Historic Resources

The EIS will:

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

11. Secondary and Cumulative Effects

The EIS will:

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

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

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