



Volume 3

Appendices M-V

DRAFT ENVIRONMENTAL ASSESSMENT November 1998

Finance Docket No. 33556
Canadian National Railway Company,
Grand Trunk Corporation, and
Grand Trunk Western Railroad Incorporated
--Control--
Illinois Central Corporation,
Illinois Central Railroad Company,
Chicago, Central & Pacific Railroad Company,
and Cedar River Railroad Company

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SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556

**Canadian National Railway Company, Grand Trunk Corporation, and
Grand Trunk Western Railroad Incorporated**

--Control--

**Illinois Central Corporation; Illinois Central Railroad Company;
Chicago, Central & Pacific Railroad Company; and Cedar River Railroad Company**

GUIDE TO THE DRAFT ENVIRONMENTAL ASSESSMENT

This Draft Environmental Assessment (Draft EA) evaluates the potential environmental impacts that could result from the proposed Acquisition of Illinois Central Corporation; Illinois Central Railroad Company; Chicago, Central & Pacific Railroad Company; and Cedar River Railroad Company (IC) by Canadian National Railway Company and Grand Trunk Corporation (together with its affiliates [CN]). The Surface Transportation Board (Board), Section of Environmental Analysis (SEA) has prepared this document in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321); the Council on Environmental Quality (CEQ) regulations implementing NEPA; the Board's environmental rules (49 CFR Part 1105); and other applicable environmental statutes and regulations.

To assist the reader in the review of this document, each volume contains a Guide to that volume. In addition, each individual volume also contains a Guide to the Draft EA, a Glossary of Terms, a List of Acronyms and Abbreviations, and the Table of Contents of the Draft EA. Specifically, the Draft EA document includes the following volumes:

Volume 1: The Executive Summary and Chapters 1 through 8

- The Executive Summary provides an overview of the proposed CN/IC Acquisition, including the potential significant environmental impacts.
- Chapter 1, "Introduction and Background," describes the purpose and need for the project, the proposed action, and the alternatives to the proposed action. It also sets forth the jurisdiction of the Board and outlines SEA's environmental review process. In addition, this chapter presents an overview of SEA's agency coordination and the public comment process.
- Chapter 2, "Overview of Public Participation," describes SEA's public outreach activities to notify interested parties and potential environmental justice populations of

the anticipated environmental impacts of the proposed CN/IC Acquisition and of the availability of the Draft EA for public review and comment. Additionally, the chapter explains SEA's distribution of the Draft EA, explains the methods that SEA used to facilitate the public comment process, and describes the agency consultation that SEA performed as part of the environmental review process.

- **Chapter 3, "Project Description,"** identifies the proposed CN/IC Acquisition-related activities that SEA analyzed. This chapter includes a table presenting the thresholds SEA used to identify activities for environmental analysis and explains project activities.
- **Chapter 4, "Environmental Consequences—Operational Changes,"** presents the environmental analysis that SEA conducted to evaluate the potential environmental effects of changes in rail operations as a result of the proposed Acquisition. Specifically, Chapter 4 explains the methods of analysis, identifies the results of the analysis, and discusses SEA's assessment of potential environmental impacts. In addition, this chapter describes both the anticipated environmental benefits and the potential adverse environmental impacts of the proposed CN/IC Acquisition.
- **Chapter 5, "Environmental Consequences—Construction Projects,"** presents the environmental analysis that SEA conducted to evaluate the potential environmental effects of the Applicants' Acquisition-related construction projects.
- **Chapter 6, "Environmental Consequences—Cumulative Effects,"** presents the environmental analysis that SEA conducted to evaluate the cumulative potential environmental effects of operational changes, construction projects, and other related projects. Chapter 6 also presents SEA's methods of analysis, analysis results, and SEA's assessment of potential cumulative environmental impacts of the proposed CN/IC Acquisition.
- **Chapter 7, "Safety Integration Plan,"** sets forth the purpose and issues addressed in the Applicants' Safety Integration Plan and includes the Board's decision requiring the Safety Integration Plan.
- **Chapter 8, "SEA's Preliminary Recommended Environmental Mitigation,"** presents SEA's preliminary environmental mitigation recommendations to the Board to address potential adverse environmental impacts.

The Draft EA also includes Appendices containing the detailed analysis conducted in each technical discipline and the results reached, including methods, extensive tables, and other pertinent data. Additional appendices contain public outreach and agency consultation information and documents, including public and agency correspondence, public outreach materials, responses from other railroads, verified statements, relevant Board decisions, Federal regulations, site visit summaries, and other pertinent information. The Final EA will include the public comments received on this Draft EA. The Appendices are organized as follows:

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- **Appendix A: List of Public Comments on the Proposed CN/IC Acquisition**
- **Appendix B: Rail Line Segments**
- **Appendix C: Safety Analysis Methods and Results**
- **Appendix D: Transportation Analysis Methods and Results**
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- **Appendix F: Air Quality Analysis Methods and Results**
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- **Appendix I: Hazardous Materials Spill Sites and Hazardous Waste Sites Analysis Methods and Results**
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- **Appendix K: Land Use Analysis Methods and Results**
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- **Appendix N: Public Participation Materials**
- **Appendix O: Verified Statements**
- **Appendix P: Voluntary Railroad Mitigation Plans**
- **Appendix Q: Relevant Board Decisions**
- **Appendix R: List of Inconsistent and Responsive Applications: Verified Statements**
- **Appendix S: List of Site Visits**
- **Appendix T: List of Agency Consultations and Relevant Correspondence**

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APPENDIX M
CUMULATIVE IMPACTS ANALYSIS—
BACKUP INFORMATION

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APPENDIX M

CUMULATIVE IMPACTS ANALYSIS—BACKUP INFORMATION

Appendix M provides a memo from the Applicants' attorney, Harkins Cunningham, outlining why any changes in rail operations or potential environmental impacts occurring off the combined CN/IC system as a result of the strategic marketing alliance among CN, IC, and KCS (the "Alliance") should not be included in SEA's environmental review of the CN/IC Acquisition.

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CN/IC PROJECT OFFICE

RECD: 7/15/98

DOCUMENT # 313/98 2:18:41 PM

HARRIS CUNNINGHAM
ATTORNEYS AT LAW

1800 MONTGOMERY STREET NW
WASHINGTON, DC 20036-1400
(202) 973-7420

MEMORANDUM

TO: PAM/SEA

FROM: Harris Cunningham

DATE: July 15, 1998

RE: CN Position on Environmental Analysis of Environmental
Impacts on KCS Lines

Below we outline why any changes in rail operations or potential environmental impacts occurring off the combined CN/IC system as a result of the strategic marketing alliance among CN, IC, and KCS (the "Alliance") cannot and should not be included in the environmental analysis of the CN/IC transaction in STB Finance Docket No. 33556.

- * THE STB HAS A LONGSTANDING, WELL-REASONED PRACTICE OF NOT STUDYING OPERATIONAL CHANGES AND POTENTIAL ENVIRONMENTAL IMPACTS OFF THE SYSTEMS OF THE APPLICANT CARRIERS.
- * The STB has confronted this issue in virtually every prior control and merger proceeding, and it has consistently declined to analyze potential transaction impacts off the lines of the applicant carriers.
 - * For example, in each of the last major merger proceedings, the STB confronted traffic diversions that would create off-line effects, but it did not investigate off-line impacts.
 - * Even where there have been agreements that are directly dependent on the transaction at issue and that clearly would cause off-line impacts, the STB

has declined to extend its analysis beyond the applicants' own lines.

- In the UP/SP case, for example, the applicants' settlement agreement with BNSF led to increases in traffic on BNSF lines, but the environmental analysis in that case was limited to the increased traffic on UP/SP's own lines as a result of the settlement.
- The STB's practice appropriately accommodates the practical limitations that make it infeasible, if not impossible, to investigate off-line impacts systematically.
 - Such an inquiry would be unreasonably broad and burdensome, substantially chilling transactions that are in the public interest.
 - In the CSX/NS/Conrail case, for example, given the extensive interconnections between the Applicants and other carriers, an environmental study of foreseeable off-system impacts could have required an analysis encompassing nearly all the railroads in the continental United States.
 - Even if the analysis were limited to railroads with which CSX and NS had voluntary coordination agreements ("VCAs") similar to the CN/IC/KCS Alliance Agreement (i.e., agreements providing for joint pricing and marketing), the scope of the inquiry would have been unreasonably broad and overburdensome.
- Neither Applicants nor the STB typically possess the information or expertise necessary for such an inquiry.
 - Applicants typically do not have the necessary operating or facilities information required for such an analysis.
 - The STB similarly lacks this information and expertise, and it is unclear if it even has the authority to require its submission by third parties.

- * THERE IS NO PRINCIPLED REASON FOR THE STB TO ABANDON ITS LONG-STANDING PRACTICE IN THIS PROCEEDING.
- * The Alliance is not dependent on the CN/IC control transaction (the "Transaction"). The Alliance has been in place since April 15, 1998, and will continue regardless of the outcome of the CN/IC proceeding.
 - * The Alliance provides for coordination by the three railroads regarding sales and marketing, operations, fleets, and information systems, for the purpose of developing new traffic.
 - * Specifically, the parties have agreed to establish Springfield, Illinois, and Jackson, Mississippi, as the principal interchange points between the railroads, and for joint operation of yards and facilities in Jackson, Mississippi.
 - * Voluntary coordination agreements ("VCAs"), and similar inter-railroad arrangements that are comparable to the Alliance, are common in the industry but have never before been held to necessitate environmental analysis of a non-applicant railroad's lines.
 - * Since the Alliance is not dependent on the CN/IC Transaction, and since that Transaction will affect the traffic of many other connecting carriers, there is no principled reason to single out KCS for additional analysis.
- * To the extent the Alliance in combination with the Transaction would have an impact on Applicants' lines, it will be fully considered.
 - * Applicants' operating plan reflects changes in traffic and yard activity that would result from the Transaction and the Alliance, fully taking into account the synergistic effects of the Transaction.
 - * Applicants' analyses have identified virtually no effects for the Alliance that are independent of the Transaction.
 - * Consequently, the environmental review based on Applicants' operating plan will, if anything, already be over-inclusive.

- The STB would place Applicants in an untenable position and unfairly prejudice them if it were now to change its policy and require a study of off-line impacts.
- The Application process would be unreasonably and unfairly delayed as Applicants would have to prepare an operating plan for KCS -- a task that took months to complete for CN/IC.
- In any event, Applicants do not have the operating and track information or the system-specific operating expertise necessary to assess reasonably off-line impacts of the Transaction.
 - Development of an operating plan on KCS would require extensive information and cooperation from KCS.
 - Scott Steinwert's July 7 memo to Mark Giesbrecht identifies some of the information that would be required for analysis of off-line environmental effects, but which Applicants do not have for KCS: tonnage and train movements by line segment, number of hazmat carloads handled, number of hazmat intermodal containers handled, train performance, detour routes, crew change locations, throughput improvements (switching yards), crossing improvements, rule books, timetables, track charts, contracts with passenger authorities, trackage rights agreements.
 - Applicants do not have the extensive necessary information or expertise to meet these requirements, and since KCS and IC are competitors, is it far from clear that KCS would be willing to provide the required information and expertise.
- If the STB requires a study of off-line impacts in this proceeding, it will be unable to defend its failure to similarly require a study of connecting carriers' traffic in other proceedings, including CSX/NS/Conrail and future proceedings.
- CN BELIEVES IT HAS BEEN AGREED THAT THE CN/IC ENVIRONMENTAL REVIEW WILL NOT EXTEND TO CONSTRUCTION OF NEW FACILITIES TO

HANDLE BUSINESS DEVELOPED BY THE ALLIANCE, FOR WHICH DETAILS ARE NOT AVAILABLE AT THIS TIME. CN BELIEVES THIS APPROACH IS APPROPRIATE, FOR THE FOLLOWING REASONS:

- ♦ Analysis of off-line construction would be contrary to STB practice and precedent, as well as to the argument the STB recently made to the Ninth Circuit in defense of its NEPA review of BN's acquisition of Washington Central Railroad Company.
 - In that case (City of Auburn v. STB, No. 97-70022), the STB argued that its environmental assessment was not required to examine the environmental impacts of upgrading and rehabilitating a line that BN owned before the transaction for which it sought STB approval. (The STB's position was briefed in June 1997, and defended in oral argument last month.)
 - If the STB is correct in its assertion that NEPA does not require examination of improvements to the acquirer's own line, then it certainly does not require examination of improvements or additions to the facilities of a third party, such as KCS.
- ♦ At this point, the configuration and location of new and expanded facilities are speculative.
 - Even in those cases where CN and KCS have determined that facilities are to be located in or near a certain city, no sites have been selected.
 - All plans for implementation of such facilities are to be developed by a Management Group consisting of representatives of the three railroads, which will determine funding priorities for the various projects but has not done so.
- ♦ Even after the Management Group has determined the sites and priorities for construction of facilities, CN may not receive construction information about facilities on KCS property of sufficient detail to permit a NEPA analysis.

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APPENDIX N
PUBLIC PARTICIPATION MATERIALS

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APPENDIX N

PUBLIC PARTICIPATION MATERIALS

Under the National Environmental Policy Act (NEPA), agencies undertaking Federal actions must consult with other government agencies and the public in preparing environmental documents. The Surface Transportation Board's (Board's) review and decision regarding the proposed CN/IC Acquisition is a Federal action. The Section of Environmental Analysis (SEA) conducted public participation activities to inform the public and public agencies of the Draft Environmental Assessment (Draft EA). The Draft EA analyzes the potential environmental impacts of the proposed CN/IC Acquisition and presents SEA's preliminary environmental mitigation recommendations. SEA developed its public participation activities to provide the public and public agencies with the opportunity to comment so that SEA can fully assess public concerns and address those concerns in developing the Final Environmental Assessment (Final EA).

Appendix N contains the following examples of public participation materials that SEA developed to inform the public and public agencies of the availability of the Draft EA and the public comment period:

Federal Register Notices:

- Inviting Public Comment on the Procedural Schedule.
- Announcing the Final Procedural Schedule.
- Announcing Environmental Review Schedule.

Board Press Releases:

- Announcing Receipt of Application and discussing environmental review.
- Announcing Acceptance of Application and Final Procedural Review.

Additional Items:

- Cover Letter to Environmental Fact Sheet.
- Environmental Fact Sheet.
- Cover Letter to Updated Environmental Fact Sheet.

- Updated Environmental Fact Sheet that goes to parties who do not receive a copy of the Draft EA.
- Public Service Announcement (Environmental Justice).
- Newspaper Notice (Environmental Justice).
- Cover Letter to Libraries (Environmental Justice).
- Environmental Justice Outreach Plan.

**FEDERAL REGISTER NOTICE INVITING PUBLIC
COMMENT ON PROCEDURAL SCHEDULE**

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**ATTORNEY DECISION NO. 3 IN STB FINANCE
DOCKET NO. 33498; REQUEST FOR
COMMENTS ON PROCEDURAL SCHEDULE**

SUMMARY: The Surface Transportation Board (Board) is inviting comments from interested persons on a proposed procedural schedule for this proceeding. On February 12, 1998, Canadian National Railway Company (CN), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW), and Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, General and Pacific Railroad Company (CGP), and Cedar River Railroad Company (CRR) filed a notice of intent (CN/C-1) to file a joint application seeking Surface Transportation Board (Board) authority under 49 U.S.C. 11321-25 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary, Blackhawk Merger Sub, Inc., of control of IC Corp. and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

DATES: Written comments on the Board's proposed schedule must be filed with the Board no later than July 16, 1998. Applicants' reply is due by July 27, 1998.

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 33498 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1025 K Street, N.W., Washington, DC 20427-0001. In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge David Harrel, Federal Energy Regulatory Commission, Office of Administrative

Law Judges, 880 First Street, N.E., Suite 11F, Washington, DC 20048 (202) 238-2344; FAX: (202) 219-3889 and to each of Applicants' representatives: (1) Paul A. Cunningham, Esq., 17010 Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20048-1600; and (2) William C. Seppel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Dearborn Avenue, Chicago, IL 60601-6730. Comments should contain the name and address of the commenting party, any recommendations for changes to the proposed procedural schedule and support for any such changes.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, the parties shall also submit, on disk or CD, copies of all textual materials, electronic worksheets, data bases and spreadsheets used in deriving quantitative evidence. Data must be submitted on 3.5 inch, IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by, and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by, and into, Lotus 1-2-3 3.7 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.

NON-ATTORNEY COUNSELOR CONTRACTS: Ms. M. Fenn, (202) 685-2813, (TDD) for the hearing impaired; (202) 585-1896.) **SUMMARY:** On May 20, 1998, Applicants filed a position (CN/C-3) to establish a proposed procedural schedule as follows:

Applicants' Proposed Procedural Schedule*

F - Primary Application and any related applications filed.

F + 30 Board notice of acceptance of primary application and any related applications published in the Federal Register.

*In Decision No. 2 issued May 18, 1998, and published on May 22, 1998, in the Federal Register at 63 FR 23443-46, we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disk or CD, and stated that parties may use of floppy disks as a backup copy of the disk CD materials.

Applicants' proposed schedule is similar to the 180-day schedule proposed in the Notice to Commence Proceedings by applicants in Finance Docket No. 33498, Burlington Northern Inc. and Burlington Northern Railroad Company—Grand and Allegan—South Pacific Corporation and The Northern, Toledo and Santa Fe Railway Company (BNSF).

The term "F" designates the date of filing of the application and "F + n" means "n" days following that date.

F + 30 Environmental Report and Safety Investigation Plan due.

F + 45 Notification of intent to participate in proceeding due. Description of anticipated acceptance and responsive applications due; positions for waiver or clarification due with respect to such applications.

F + 60 Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Primary Application due. Comments by U.S. Department of Justice ("DOJ") and U.S. Department of Transportation ("DOT") due.

F + 75 Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.

F + 90 Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due.

F + 100 Rebuttal in support of inconsistent and responsive applications due.

F + 125 Briefs due, all parties (not to exceed 50 pages).

F + 145 Oral argument.

F + 150 Voting conference (at Board's discretion).

F + 180 Date of service of final decision.

The proposed schedule contains substantially shorter time periods than those provided for in the statute at 49 U.S.C. 11325. For instance, pursuant to 49 U.S.C. 11325(b)(1), written comments about an application may be filed with the Board within 45 days after Board notice of acceptance of the primary application (and any related applications) is published in the Federal Register. Applicants propose that comments be filed within 30 days of publication to the Federal Register. The proposed schedule also suggests that inconsistent and responsive applications be filed 30 days following acceptance of the primary application rather than the 90 days noted in the statute.

Comments in opposition to the Applicants' proposed procedural schedule were filed by the Brotherhood of Maintenance of Way Employees (BMW), on June 2, 1998, and the United Transportation Union (UTU), on June 5, 1998. Both BMW and UTU state that the proposed schedule is too short and urge the Board to adopt the statutory procedural schedule set forth at 49 U.S.C. 11325(b). Alternatively, UTU urges the Board to adopt a 250-day schedule modeled upon the procedural

*CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

IC Corp., ICR, GTC, and CGP, and their affiliates, are referred to collectively as GTC. On June 1, 1998, GTC was referred to collectively as Applicants.

1. CN/C-1 reflected Applicants' acceptance that they would file the Primary Application on or before June 12, 1998. In view of the need to give advance notice of independent development, Applicants state that they have agreed to file by July.

2. In Decision No. 2 issued March 12, 1998, and published that day in the Federal Register at 63 FR 12294-95, we found that the opposition concerns raised by Applicants in a notice of intent, on that date, is dispositive of the issue. We assigned the proceeding to Administrative Law Judge David Harrel for handling of all necessary matters and the initial resolution of discovery disputes and we advised the parties that they will be required to submit all pleadings with the required payments and may as appropriate also conduct an discovery (discovery or computer data) dispute.

In Decision No. 4 (June 18, 1998) being served with this decision, applying the address Applicants' position (CN/C-3) for waiver or clarification of certain filing requirements.

schedule issued by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases Agreement—Control Inc., and Chesapeake Rail Corporation*. STB Finance Docket No. 33378. Decision No. 4 (STB) served May 30, 1997.

We do not at this time see any compelling reason to adopt a 6-month procedural schedule for this proceeding. The statute allows 18 months for the processing of major consolidation proceedings. Under 49 U.S.C. 12125(b)(2), the Board may conclude the evidentiary stage of the proceeding within 12 months of the application filing date,⁴ and must issue the final decision by the 30th day after the conclusion of the evidentiary stage. We believe that a 6-month procedural schedule would be sufficiently expeditious to as not to delay unnecessarily any benefits that would flow from the proposed integration of the CN and IC systems, while at the same time allowing sufficient time to develop the record upon which the Board's decision would be based. We propose to modify Applicants' proposed procedural schedule so as to conclude the evidentiary stage of this proceeding approximately 6 months after the application is filed, and to issue the final decision approximately 2 months thereafter.

Given the importance of the safe implementation of major rail consolidations, we propose to require Applicants to file Safety Integration Plans on Day (F + 30) as they have proposed. Also, we propose to require inconsistent and responsive applications to file their Responsive Environmental Reports and Environmental Verified Statements on Day (F + 100), which is 20 days in advance of when inconsistent and responsive applications would be due.

Specifically, as for the schedule of the procedural schedule, we propose to modify Applicants' proposed schedule to allow 30 more days for parties proceeding to file comments, protests, requests for conditions, and any other opposition evidence and argument, so that these filings would not be due until 30 days after the application is filed (Day (F + 30)). Comments from the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) would be due 120 days after the application is filed. Responses to

comments, protests, requested conditions, and other opposition (except DOJ and DOT), and also rebuttal in support of the primary application and related applications would be due on Day (F + 120). We propose to keep inconsistent and responsive applications due 120 days after the application is filed (Day (F + 120)) as provided for under 49 U.S.C. 12125(b)(2). Responses to comments of DOJ and DOT would be due on Day (F + 150). Descriptions of anticipated inconsistent and responsive applications and petitions for waiver or clarification due with respect to such applications would be due on Day (F + 60) (rather than Day (F + 45)).

In addition, we propose adding 5 days for responses to inconsistent and responsive applications (which would be due Day (F + 155)), and adding 15 days for rebuttal for inconsistent and responsive applications (which would be due Day (F + 165)). Briefs would be due on Day (F + 205), and we are proposing page limitations for briefs for all parties to promote useful, focused filings, with Applicants permitted to file somewhat longer briefs, as they would have more points to address at that time than would other parties. We propose, however, adding 10 days to Applicants' proposed period of time for parties to prepare for oral argument, so that oral argument would occur on Day (F + 235). The oral argument would close the record. We propose (as did the Applicants) a 5-day interval between the oral argument and the voting conference, so that a voting conference would occur on Day (F + 240). We also propose allowing 60 days after the voting conference for the service of the Board's final decision on Day (F + 300).

Proposed Procedural Schedule as Modified by The Board

F Primary application and any related applications filed.

F + 20 Board notice of acceptance of primary application (and any related applications) published in the Federal Register.

F + 30 Safety Integration Plan due.

F + 45 Notification of intent to participate in proceeding due.

F + 60 Descriptions of anticipated inconsistent and responsive applications due (petitions for waiver or clarification due with respect to such applications).

F + 90 All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Primary Application due (except filings by U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT)).

F + 90 Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.

F + 120 Inconsistent and responsive applications due. Comments by DOJ and DOT due. Responses to comments, protests, requested conditions, and other opposition (except DOJ and DOT) due. Rebuttal in support of primary application and related applications due.

F + 140 Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.

F + 150 Response to comments of DOJ and DOT due.

F + 155 Response to inconsistent and responsive applications due.

F + 165 Rebuttal in support of inconsistent and responsive applications due.

F + 205 Briefs due, all parties (not to exceed 50 pages for Applicants and not to exceed 25 pages for all other parties).

F + 235 Oral argument before of record.

F + 240 Voting conference for Board's decision.

F + 300 Date of service of final decision.

Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for depositions. Access to documents subject to protective order will be appropriately restricted. Discovery relating to applications and other filings (including responsive and inconsistent applications, where permitted, will begin immediately upon their filing. The Administrative Law Judge (ALJ) assigned to this proceeding will have the authority initially to resolve any discovery disputes.

Environmental Review Process

Based on consultations with Applicants, the Board's Section of Environmental Analysis (SEA) has determined that preparation of an Environmental Assessment (EA) is appropriate in this proceeding. This approach is consistent with the Board's environmental rules at 49 CFR 1103.8 (b)(4), which call for an EA in a merger or acquisition such as this proceeding. Also, in making its determination to prepare an EA, SEA considered the nature of the transaction, including the projected changes in train traffic, the

⁴ Specifically, the statute requires the completion of the evidentiary stage within 12 months after publication of the Federal Register notice accepting the application. That provision is due to be amended 30 days after the application is filed.

⁵ In Decision No. 4 served February 28, 1998, a protective order was issued in this proceeding.

**AUGUST 14, 1998 FEDERAL REGISTER NOTICE
ANNOUNCING FINAL PROCEDURAL SCHEDULE**

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seeks related relief contingent upon approval of the primary application.

Having received public comments on the proposed procedural schedule, as modified by the Board, and applicants' reply to those comments, the Board is issuing a final procedural schedule. This schedule provides for the issuance of a final decision no later than May 11, 1999 (300 days after the primary application's filing date of July 15, 1998).

DATES: The effective date of this decision is August 14, 1998. Any party who wishes to participate in this proceeding as a party of record must file, no later than August 31, 1998, a notice of intent to participate. Descriptions of responsive (including inconsistent) applications, and petitions for waiver or clarification regarding those applications, must be filed by August 31, 1998. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application, including filings by the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT), and responsive (including inconsistent) applications must be filed by October 13, 1998. Response to comments, protests, requested conditions, and other opposition, response to comments of DOJ and DOT, rebuttal in support of the primary application and related application, and response to inconsistent and responsive applications, must be filed by November 27, 1998. For further information respecting dates, see Appendix A (Final Procedural Schedule).

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 33556 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001.⁴ In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge David Harfield, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite

11F, Washington, DC 20426 (202) 219-2514; FAX: (202) 219-3299 and to each of applicants' representatives: (1) Paul A. Cunningham, Esq., Markins Cunningham, 1300 16th Street, NW., Suite 600, Washington, DC 20036-1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 160 North Stetson Avenue, Chicago, IL 60601-5710.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.⁵ Further details are discussed below.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 585-1613. (TDD for the hearing impaired: (202) 585-1695.)

SUPPLEMENTARY INFORMATION: Applicants are seeking approval of a proposed transaction set forth in their primary application (CN/IC-8) filed on July 15, 1998. The proposed transaction involves the acquisition of control by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

The Applicants

CN's rail network consists of approximately 1,150 route miles in the United States, and approximately 14,150 route miles in eight Canadian provinces. CN has principal routes to every major metropolitan area in Canada, and the major U.S. cities of Buffalo, NY; Detroit, MI; Duluth, MN; Superior, WI; and Chicago, IL. The eastern terminus of CN's network is Halifax, Nova Scotia; the western termini are Prince Rupert and Vancouver, British Columbia; and the

southern terminus is Chicago. CN's traffic, between Duluth/Superior and Chicago, is carried under haulage agreements over the lines of The Burlington Northern and Santa Fe Railway Company (BNSF) and Wisconsin Central Ltd. (WC).

IC operates approximately 3,370 route miles of track running north-south between Chicago and the Gulf of Mexico, and east-west between Chicago and Nebraska and Iowa. IC's main north-south route reaches every major metropolitan area on the Mississippi River, including Chicago, IL; St. Louis, MO; Memphis, TN; Jackson, MS; and New Orleans, LA. IC's east-west route extends from Sioux City and Council Bluffs, IA, in the West to Chicago in the East.

The principal routes of the combined CN/IC rail system would be identical to those of the individual railroads. The southern terminus of CN's rail system, Chicago, is the northern terminus of IC's rail system. Applicants state that no track redundancies would be created by the transaction, and no abandonments or substantial rerouting would result from the combination of the two systems.

Tender Offer and Merger

According to applicants, on February 10, 1998, CN, Blackhawk Merger Sub, Inc. (Merger Sub), and IC entered into an Agreement and Plan of Merger (as subsequently amended, the Merger Agreement), in accordance with the Merger Agreement, as of March 14, 1998, the CNR acquired 46,051,761 shares (or approximately 75%) of the outstanding common stock of IC (the IC Common Shares), at a price of \$39.00 per share⁶ through a cash tender offer (the Tender Offer) by Merger Sub. On June 4, 1998, CN consummated a second-step merger (the Merger) between IC and Merger Sub, with IC being the surviving corporation. In the Merger, the remaining 25% of outstanding IC Common Shares were exchanged for approximately 10.1 million common shares of CN, representing 10.3% of the outstanding common shares of CN after the Merger on a fully diluted basis. As a result of the Tender Offer and the Merger, CN became the indirect beneficial owner of all of the stock of IC.

Voting Trust

Applicants state that, in accordance with the Merger Agreement, the shares acquired by CN in the Tender Offer and

⁴ In order for a document to be considered a formal filing, the filer must receive an original and 25 copies of the document, which must show that it has been properly served. In addition, each formal filing must be accompanied by an electronic submission (see our requirements as discussed in detail in this decision). Parties must clearly label each formal filing with an identification acronym and number. See 49 CFR 1180.46(b)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not accompanied because they will result in unnecessarily burdensome duplication of materials.

⁵ In Decision No. 2 (issued May 19, 1998, and published on May 22, 1998, in the Federal Register at 63 FR 26443-44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may (individually seek a waiver from the disk/CD requirement).

⁶ Applicants stated that all monetary amounts listed in the application are stated in U.S. dollars, unless otherwise noted.

in the Merger are held in a voting trust (the Voting Trust) pursuant to an agreement dated as of March 13, 1988, by and among CN, Merger Sub, and The Bank of New York, a voting trustee that is a banking corporation (the Trustee). The Trustee will act by written consent or will vote all IC stock held by the Voting Trust (the Trust Stock) in favor of any proposal necessary to effectuate the Merger pursuant to the Merger Agreement, and, generally so long as the Merger Agreement is in effect, against any other proposed merger, business combination, or similar transaction involving IC. On other matters, including the election or removal of officers, the Trustee generally will vote the Trust Stock in the Trustee's sole discretion unless the holder(s) of trust certificates, with the prior written approval of the Board, directs the Trustee as to any such vote. CTC, a wholly owned subsidiary of CN, currently holds the trust certificate for all IC stock in the Voting Trust.

On February 25, 1998, CN received an informal opinion from the Board's staff in the effect that CN's use of the Voting Trust will be consistent with the Board's policies and will preclude unlawful control of IC by CN.

Related United Transportation Union (UTU) Filing

On July 16, 1998, UTU filed a Motion to Dismiss and Comment on the Procedural Schedule (UTU-3). UTU is the designated representative for various crafts or classes of operating employees on ICR and GTV. The request for dismissal is based upon the ground that these carriers have violated 49 U.S.C. 11323 by effectively merging the properties of these two carriers into one corporation for the management and operation of the previously separately owned properties without the approval or authorization of the Board. UTU further states that IC and CN have violated section 11323 by beginning to coordinate the labor relations functions of these two large carriers without prior approval.

On August 5, 1998, applicants filed a Reply to UTU's Motion to Dismiss (CN/IC-12). Applicants state that: (1) UTU has raised no issue supporting a conclusion that CN may have engaged in unlawful control of IC, and that, even if the particular conduct UTU alleges occurred, it would amount to no more than necessary and proper communication and coordination between merging railroads; (2) UTU has cited no legal authority for its basic premise that the exchange of information it alleges constitutes improper conduct or evidence of

unlawful control, and that publicly held railroads negotiating a potential merger agreement are entitled to engage in appropriate due diligence inquiries about each other, as required by the Board's rules and decisions, and as contemplated by the Board's protective order;⁷ and (3) even if UTU's motion alleged an arguable control violation, it would not warrant dismissal, and that such a violation could not warrant denial of the application unless it were so serious and substantial that it clearly outweighed other public interest factors, which UTU has not alleged or shown. Applicants request that the Board should deny UTU's motion as being substantively without merit, both factually and legally, and procedurally flawed.

The Board shares UTU's concerns that there not be management or operations in common between railroad entities absent our approval of the common management or operations. Here, however, the applicants have satisfactorily addressed the matters raised by UTU and the factors described do not demonstrate unlawful control. Nor does the structure of the proposed arrangement reflect unauthorized common control of two or more carriers. As previously mentioned, by letter dated February 25, 1998, the Board's staff issued an informal opinion concerning a Voting Trust Agreement (VTA) proposed to be entered into by and between CNR, Merger Sub, and a Trustee, and found that the VTA provided for the placement, into an independent and irrevocable voting trust, of all of the common stock of IC Corp. acquired by CN or by any of its affiliates. In the staff opinion, it was found that the voting trust to be established under the VTA will effectively insulate CN and its affiliates from the violation of Subtitle IV of Title 49 of the United States Code and the policy of the Board that would result if CN were to acquire, without authorization, a sufficient interest in the carrier subsidiaries of IC Corp. as otherwise to result in control; and that, under the VTA, control of IC Corp. and its carrier subsidiaries can be exercised by CN and its subsidiaries only subsequent to approval by the Board of the CN/IC control application. We agree

with the staff opinion and find that applicants' VTA conforms to Board regulations as well as long-standing Board and Interstate Commerce Commission precedent recognizing that beneficial ownership can be separated from control by an appropriate voting trust instrument.⁸ Thus, UTU's request for dismissal of the proceeding is denied at this time.⁹ Should UTU or any other person obtain evidence of unauthorized common control, through breach of the VTA or otherwise, that person may submit that evidence for our review.

Labor Impact

Applicants have submitted one Labor Impact Statement which shows the projected effects of the CN/IC merger on all categories of employment, including both agreement and nonagreement personnel of the combined CN/IC system. The Labor Impact Statement is organized by job classification, and for each classification, it reflects the location at which positions will be created, eliminated, or transferred, if applicable; the number of positions affected at each location; and whether positions will be moved to another location, abolished, or added. If a position is to be relocated, the Labor Impact Statement identifies the new location.

As explained in the Joint Verified Statement submitted with the Labor Impact Statement,¹⁰ the number and percentage of adversely affected employees will be small in relation to the number of employees on the combined CN/IC system. The combined system will have approximately 28,000 employees, of which approximately 5,200 will be in the United States. Approximately 311 positions will be abolished, and approximately 138 other positions will be transferred within the United States. In this regard, applicants anticipate the following: (1) impacts of the transaction will be mostly accommodated by normal attrition during the 3-year implementation period; (2) the transaction should have a positive effect on job opportunities; (3) some employees may be offered the option of receiving a severance package;

⁷ See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Terms/Agreements—Consolidated Rail Corporation, STB Finance Docket No. 33346, Decision No. 35 (STB served July 23, 1998) (CSX/NS/COR No. 43), slip op. at 127.

⁸ UTU states that the Board should dismiss the proceeding, or alternatively, impose the statutory procedural schedule set forth in 49 U.S.C. 11323(b) to ensure proper review of the transaction.

⁹ See CN/IC-7 at 283-84, Joint Verified Statement of Richard J. Deane, Joseph T. Twacha, and James M. Harrell.

¹⁰ Applicants note that the Board issued a protective order in Decision No. 1, served February 25, 1998, which provided that exchanges of data or other cooperative efforts between CN and IC for purposes of this proceeding will not be deemed a violation of 49 U.S.C. 11323. UTU alleges that CN and IC filed together a notice of intent to file a joint application for CN control of IC. Applicants state that such joint notices of intent are common in control proceedings, and its use here is of no consequence.

and (4) some adversely affected employees will refuse relocation offers and voluntarily forfeit their right to protective benefits.

Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filing, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. See CN/IC-7 at 283.

Related Filing

In STB Finance Docket No. 33558 (Sub-No. 1), CN, IC, Kansas City Southern Railway Company (KCS) and its affiliate Gateway Western Railway Company (GWWR), have filed an application for an order under 49 U.S.C. 11102 permitting GWWR to use without restriction these short connected segments of terminal trackage in Springfield, IL. These segments are now owned by Union Pacific Railroad Company (UP) as successor to SPCSL Corp. (SPCSL), and Norfolk & Western Railway Company (N&W), an affiliate of Norfolk Southern Corporation (NS).¹¹

Applicants state that, without such relief, GWWR and IC will be unable to establish an efficient interchange necessary to serve effectively the new competitive traffic movements made possible by the CN/IC combination, as augmented by an agreement among CN, IC, and KCS dated April 15, 1998.¹²

Acceptance of Primary Application and Related Filing

We are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations, waivers,¹³ and requirements. See 49 U.S.C. 11321-26; 49 CFR part 1180. We are also accepting for consideration the related filing, which is also in substantial compliance

with the applicable regulations and requirements.¹⁴

Public Inspection

The primary application and related filing, including the various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1225 K Street, N.W., in Washington, DC.

Procedural Schedule

In Decision No. 5, served June 23, 1998, and published June 26, 1998, in the Federal Register at 63 FR 34958-59, we issued a proposed procedural schedule, and invited all interested parties to submit written comments on the proposed procedural schedule by July 16, 1998, with applicants' reply due by July 27, 1998. In response, we received the following comments: (1) UTU-3, UTU's motion to dismiss and comment on procedural schedule; (2) The Fertilizer Institute's (TFI) comments; and (3) CN/IC-10, applicants' comments. Applicants also filed reply comments (CN/IC-11) on July 27, 1998 and Allied Rail Union responded (ARU-2) on August 5, 1998, to that filing, and argued against shortening the proposed schedule. We have carefully reviewed and considered all of these comments.

As we noted previously in our discussion of UTU's motion to dismiss, UTU requests that we dismiss the proceeding, or alternatively, impose the statutory procedural schedule set forth at 49 U.S.C. 11321(b) to ensure proper review of the transaction. The statute allows 18 months for the processing of major consolidation proceedings. Under 49 U.S.C. 11325(b)(3), the Board must conclude the evidentiary stage of the proceeding within 12 months of the application's filing date,¹⁵ and must issue the final decision by the 90th day after the conclusion of the evidentiary stage.

In their comments and reply comments, applicants request that we adopt their original 180-day proposed schedule or, at least, adopt a middle-ground schedule and a single filing date approach. Applicants further state that, while the CN/IC transaction is important, it does not compare in size and complexity to the recent control

transactions in CSX/NS/CR, LP/SP, and BN/SF. TFI also urges that we adopt a schedule similar to the 180-day schedule proposed by applicants.

Specifically, applicants request that we eliminate the proposed bifurcation and trifurcation of filings because it will create needless problems and burdens on all parties. TFI also urges the elimination of staggered filing dates for different parties. Applicants propose that all comments, protests, and requests for conditions, any other evidence or argument in opposition to the application by all parties, and any inconsistent or responsive applications, be due at the same date (F+90 days under the Board's proposed schedule), and that applicants' rebuttal or other responses to those filings be due 30 days later (F+120 days). Applicants note that no major merger in this decade has been considered under a fragmented procedural format, and that there is nothing inherent in the CN/IC transaction to warrant such a departure from consistent prior practice.

We will grant applicants' and TFI's request that we eliminate the staggered filing dates. As suggested by applicants, all comments, protests, and requests for conditions, any other evidence or argument in opposition to the application by all parties, and any inconsistent or responsive applications, will be due on the same date (F+90 days). Applicants' rebuttal and other responses to those filings will be due 45 days later. Other relevant due dates are discussed in detail under our discussion of filing due dates.

Few objections have been raised to the 10-month proposed procedural schedule. In light of UTU's concerns, we are reluctant at this time to reduce the time for processing the application. Earlier comments in opposition to applicants' 5-month proposed procedural schedule were filed by the Brotherhood of Maintenance of Way Employees (BMWE) on June 2, 1998, and the UTU on June 5, 1998. Both BMWE and UTU had stated that applicants' 180-day proposed schedule was too short and urged the Board to adopt the statutory procedural schedule set forth at 49 U.S.C. 11325(b). Alternatively, UTU urged the Board to adopt a 350-day schedule modeled upon the procedural schedule issued by the Board in CSX/NS/CR No. 8 (STB served May 30, 1997). We believe that a 10-month procedural schedule would not delay unnecessarily any benefits that would flow from the proposed integration of the CN and IC systems and is middle-ground schedule that would allow sufficient time to develop the record upon which the Board's

¹¹ Applicants in this sub-numbered docket have advised that they have contacted UP about securing consent for use of the trackage involved in order for GWWR and IC to be able to interchange traffic in Springfield without regard to the limitations of the KCS/UP agreement, and are willing to continue such discussions after the filing of this application. They will advise the Board if these discussions make it unnecessary to act on this application.

¹² Applicants state that this agreement creates a strategic alliance among the parties and provides for their cooperative undertakings to provide joint-line service in specified areas competitive with other rail carriers, and provides that the alliance will use Springfield as one of two main interchanges for designated traffic. The agreement also provides that the railroads will use their best efforts to remove any impediments to the full utilization of an efficient connection between IC and GWWR in the vicinity of Springfield.

¹³ In Decision No. 4, served June 23, 1998, we granted to the extent set forth in the decision, applicants' CN/IC-4 petition for waivers or modifications and related relief.

¹⁴ We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this case.

¹⁵ Specifically, the statute requires the completion of the evidentiary stage within 12 months after publication of the Federal Register notice accepting the application. That publication is due no later than 30 days after an application is filed.

decision would be based. If, at some point in this proceeding (perhaps after Board receipt of filings due on P+90 days), it becomes clear that there are few contested issues to be resolved, we would be open to a reexamination of whether a shorter schedule and a more expeditious resolution can be accommodated.

Notice of Intent To Participate

Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than August 21, 1998, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on Judge Harfield and on applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

We will serve, as soon as practicable after August 31, 1998, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, 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 party of record also will be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus five copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that both Judge Harfield and 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 (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

We will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle

the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for DC News is: (202) 239-4357.¹⁶

Descriptions of, and Filings Respecting, Responsive (Including Inconsistent) Applications¹⁷

Because the transaction proposed by applicants constitutes a major transaction within the meaning of our rail consolidation rules (49 CFR part 1180)¹⁸ parties intending to file responsive (including inconsistent) applications must submit descriptions of those applications by August 31, 1998. The description must state that the commenting party intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction, or abandonment) and must include a general statement of what that application is expected to include. This will be considered a pre-filing notice without which the Board will not entertain applications for this type of relief.

Petitions for waiver or clarification by responsive (including inconsistent) applicants must be filed by August 31, 1998. Each responsive (including inconsistent) application filed and accepted will be consolidated with the primary application in this proceeding.

Any responsive (including inconsistent) applicant must file by September 21, 1998, either: (1) a verified statement that the responsive (including inconsistent) application will have no

significant environmental impact; or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the responsive (including inconsistent) application.

The RER

The RER should comply with all requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. The RER should be based on consultations with the Board's Section of Environmental Analysis (SEA) and the various agencies set forth in 49 CFR 1105.7(b). In addition, the information in the RER should be organized as follows: Executive Summary; Purpose and Need for Agency Action; Description of the Inconsistent or Responsive Application and Related Operations; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed Mitigation; and Appropriate Appendices that include correspondence and consultation responses, bibliography, and a list of preparers.

The purpose of an RER is to provide us the information we need to assess the potential environmental impacts of all inconsistent and responsive applications in the context of the overall merger proposal. After an RER is received, SEA will verify the information contained in the document. If the RER is acceptable, SEA will include the RER with the Draft Environmental Assessment (Draft EA) for the entire merger that will be served and made available for public comment.

In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants must consult with SEA as early as possible. If an RER is insufficient, we may require additional environmental information or reject the inconsistent or responsive application.

A verified statement of no significant impact

If an action proposed under an inconsistent or responsive transaction would typically fall within 49 CFR 1105.6(c)(2), an RER would not be required because such an action is generally exempt from environmental review. In such a case, the inconsistent or responsive applicant would be required to file only a verified statement. The verified statement must demonstrate that the inconsistent or responsive application meets the exemption criteria of 49 CFR 1105.6(c)(2). Again, anyone desiring to file an inconsistent application or responsive application must consult

¹⁶ 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. Our 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 1180.41a(3), as recently amended in Railroad Consolidation Procedures—Modification of Fee Policy, STB Ex Parte No. 356, 62 FR 9714, 9717 (Mar. 4, 1997) (Harris rules), 62 FR 28375 (May 22, 1997) (Rinal rules). Furthermore, DC News 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 heretofore entered in this proceeding.

¹⁷ An original and 25 copies of such descriptions, petitions for waiver or clarification, Responsive Environmental Reports, and Verified Statements must refer to STB Finance Docket No. 33554 (lead docket) and must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1205 K Street, N.W., Washington, DC 20045-0001. In addition, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

¹⁸ See Decision No. 2, issued March 13, 1998, and published that day in the Federal Register at 63 FR 12574-75.

with SEA as early as possible regarding the appropriate environmental documentation.

SEA will review the verified statements. If a verified statement is insufficient, we may require additional environmental information or reject the inconsistent or responsive application. The verified statements, like the RERs, will be included in the Draft EA, which will be available for public review and comment.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT; Responsive (Including Inconsistent) Applications

Any interested persons, including the U.S. Attorney General and the U.S. Secretary of Transportation, may file written comments, protests, requests for conditions, and any other opposition evidence and argument, as well as responsive (including inconsistent) applications no later than October 13, 1998. This deadline applies to comments, etc., addressing the primary application or the related filing submitted with the primary application.

Parties filing comments, protests, requests for conditions, and any other opposition evidence and argument (including filings by DOJ and DOT) must submit an original and 25 copies of such documents, referring to STB Finance Docket No. 33556 (lead docket). Parties filing responsive (including inconsistent) applications must contact the Office of the Secretary, Case Control Unit, at (202) 585-1681 to obtain docket numbers for their respective applications, and must submit an original and 25 copies of each responsive (including inconsistent) application, referring to the assigned sub-docket number for that application and must accompany such application with the appropriate filing fee. All submissions must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, Judge Harfield, applicants' representatives, and all other parties of record.

Written comments, etc., must include: (1) the docket number and title of the proceeding; (2) the name, address, and telephone number of the commenting

party and its representative upon whom service shall be made; (3) the commenting party's position, i.e., whether it supports or opposes the proposed transaction; (4) a list of any specific protective conditions sought; and (5) an analysis of the issues with particular attention to our general policy statement for the merger or control of at least two Class I railroads (49 CFR 1180.1), the statutory criteria (49 U.S.C. 11324), and antitrust policy.

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. See *Lainville Valley R.R. Co. v. ICC*, 711 F.2d 285 (D.C. Cir. 1983).

Response to Comments, Protests, Requested Conditions, and Other Opposition, Including DOJ and DOT; Rebuttal in Support of Primary Application and Related Application

Parties submitting responses to comments, protests, requested conditions, and other opposition, including DOJ and DOT, and rebuttal in support of the primary application and related application, must be filed with the Board by November 27, 1998.

Other Dates

The procedural schedule adopted in this decision further provides: (1) that applicants must file a Safety Integration Plan on August 14, 1998, as they have proposed; (2) that responses to any responsive (including inconsistent) applications must be filed by November 27, 1998; (3) that rebuttal in support of responsive (including inconsistent) applications must be filed by December 28, 1998; (4) that briefs must be filed by February 5, 1999; (5) that oral argument will be heard on March 8, 1999; (6) that, at the discretion of the Board, a voting conference will be held on March 19, 1999; and (7) that the final written decision, addressing the primary application and the related filing, and also addressing any responsive (including inconsistent) applications will be served on May 11, 1999.

Discovery

In Decision No. 2, served March 13, 1998, this proceeding was assigned to Judge Harfield for the handling of all discovery matters and the initial resolution of all discovery disputes. Parties wishing to engage in discovery must consult with Judge Harfield, who is

designated to handle discovery matters and disputes. Judge Harfield has the authority to rule on discovery matters but not to modify the procedural schedule.

Deadlines Applicable to Appeals and Replies

Any appeal to a decision issued by Judge Harfield must be filed within 3 working days of the date of his decision; any response to such appeal must be filed within 3 working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

Environmental Review Process

SEA has determined that preparation of an Environmental Assessment (EA) is appropriate in this proceeding. This approach is consistent with the Board's environmental rules at 49 CFR 1105.6(b)(4), which call for an EA in a merger or acquisition such as this one. In making its determination to prepare an EA, SEA considered the nature and scope of environmental issues that could arise in this proceeding, as well as its consultation with applicants and its evaluation of the information to date, including the operating plan and associated environmental data that CN/IC submitted with their primary application filed on July 15, 1998. We agree with SEA that an EA is warranted in this proceeding.

The procedural schedule that we are adopting will permit us to take a hard look at environmental issues required by the National Environmental Policy Act (NEPA) and related regulations of the Council on Environmental Quality, and will provide the necessary time to enable us to prepare an EA and to include public participation by federal, state, and local agencies, as well as other concerned parties. If SEA determines that this proceeding has the potential for significant environmental impacts, then SEA may prepare an Environmental Impact Statement, as required by NEPA.

The EA will address potential environmental impacts of activities associated with the proposed merger, including rail line traffic density increases and decreases, rail yard and intermodal facility activity changes, and new construction. Specifically, the EA will address potential environmental impacts on safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, historic and cultural resources, environmental justice, and socioeconomic effects directly related to

changes in the environment, and will also include SEA's recommendations for environmental mitigation.

Applicants originally proposed to file an environmental report 30 days after they filed their application. In a letter dated June 18, 1998, however, applicants requested that SEA conduct a modified environmental review process in this proceeding. SEA concurs with this approach. Under this approach, applicants provided, with their application and operating plan, an environmental overview rather than an environmental report. See CN/IC-6, Environmental Data—Exhibit 4, at 22-34. This is consistent with the Board's environmental rules at 49 CFR 1105.10(d), which waive the requirement for an environmental report for applicants that retain an independent third-party contractor to work under SEA's direction to prepare the necessary environmental documentation. For this proceeding, applicants have retained the requisite independent third-party contractor.

With direction and guidance from SEA, applicants will prepare and submit to SEA a Preliminary Draft Environmental Assessment (PDEA). Preparation of a PDEA is consistent with the Council on Environmental Quality regulations at 40 CFR 1506.5(b) that permit preparation of an environmental assessment by an applicant. Upon receipt of applicants' PDEA, SEA will review and verify the environmental information provided by applicants in this document. SEA will then prepare a Draft EA for public review and comment. The Draft EA will include SEA's independent preliminary recommendations for mitigation to address potentially adverse environmental impacts.

As part of the environmental review process, applicants will also submit a Safety Integration Plan, which will fully describe the extensive plans they have for maximizing the safe operation of the combined system.

After reviewing all of the public comments on the Draft EA and conducting additional analyses, SEA will prepare a Final Environmental Assessment (Final EA).

The Final EA will include SEA's final recommendations for environmental mitigation. The Board will consider all public comments, the Draft EA and Final EA, and SEA's environmental recommendations in making its final decision in this proceeding.

For additional information on preparation of the EA, contact SEA's Project Manager for the proposed CN/IC Acquisition, Michael Dalton, at (202) 565-1530.

Electronic Submissions

As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 26, 1998, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.¹⁵

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

It is ordered

1. UTU's motion to dismiss is denied.
2. The primary application in STB Finance Docket No. 33556, and the related filing in the embedded docket, STB Finance Docket No. 33556 (Sub-No. 1), are accepted for consideration.
3. Parties must comply with the Final Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
4. Parties must comply with the procedural requirements described in this decision.
5. Any appeal to a decision issued by Judge Harford must be filed within 3 working days of the date of his decision, and any response to any such appeal

¹⁵ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Applications, Exemption and Revocation Proceedings*, STB Ex Parte No. 537, 61 FR 52719, 52711 (Oct. 9, 1996), 61 FR 50490, 50491 (Nov. 15, 1996).

must be filed within 3 working days of the date of filing of the appeal.

6. Any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

7. This decision is effective on August 14, 1998.

Decided: August 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Varian A. Williams,
Secretary.

Appendix A: Final Procedural Schedule
July 15, 1998

Primary application and related application filed.

August 14, 1998

Board notice of acceptance of primary application and related application published in the Federal Register.

August 14, 1998

Safety Integration Plan due.

August 31, 1998

Notification of intent to participate due.

August 31, 1998

Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.

September 21, 1998

Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.

October 13, 1998

All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application due, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT). Inconsistent and responsive applications due.

November 2, 1998

Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.

November 27, 1998

Response to comments, protests, requested conditions, and other opposition due. Response to comments of DOJ and DOT due. Rebuttal in support of primary application and related applications due. Response to inconsistent and responsive applications due.

December 28, 1998

Rebuttal in support of inconsistent and responsive applications due.

February 8, 1999

Briefs due, all parties (not to exceed 50 pages for applicants and not to exceed 25 pages for all other parties).

March 8, 1999

Oral argument (close of record).

March 15, 1999

Writing conference (at Board's discretion).

May 11, 1999

Date of service of final decision.

Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected

from discovery) in a depository open to all parties, and will make its witnesses available for depositions. Access to documents subject to protective order will be appropriately restricted. Discovery relating to applications and other filings (including responsive and inconsistent applications), where permitted, will begin immediately upon their filing. The Administrative Law Judge (ALJ) assigned to this proceeding will have the authority initially to resolve any discovery disputes. IPR Doc. 98-21934 Filed 4-13-98; 9:45 am; BILLING CODE 4915-00-0

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-33 (Sub-No. 1240)]

Union Pacific Railroad Company— Abandonment Exemption—in Sedgwick County, KS

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 0.36-mile line of railroad on the Midland Valley Industrial Lead extending from the end of the line at milepost 312.09 to milepost 312.65 in Wichita, Sedgwick County, KS. The line traverses United States Postal Service Zip Code 67213.¹

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and

49 CFR 1152.60(d)(3) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.*

Abandonment—Goshen, 380 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 13, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,² formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),³ and trail use/rail banking requests under 49 CFR 1152.28 must be filed by August 24, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 2, 1998, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1225 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 630, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 19, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 965-1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.3d 377 (1998). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1000. See 49 CFR 1005.30(a)(2).

conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.28(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by August 14, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 8, 1998.

By the Board, David M. Kozminsk, Director, Office of Proceedings, Vernon A. Williams,

Secretary.

IPR Doc. 98-21754 Filed 4-13-98; 9:45 am; BILLING CODE 4915-00-0

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72-383; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Monday, September 14, 1998, 10:00 to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, in conference room 6200-04 of the Nassif Building.

The Advisory Council, called for under section 6007 of Public Law 102-240, *Intermodal Surface Transportation Efficiency Act of 1991*, December 18, 1991, and chartered on June 18, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, discussion of TEA-21 and its impact on BTS, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of details for subsequent meetings, and comments from the floor.

**SEPTEMBER 14, 1998 FEDERAL REGISTER NOTICE
ANNOUNCING ENVIRONMENTAL REVIEW SCHEDULE**

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"an estimated total of 200 manhours and \$75,000" on air bag compliance issues. Lacking the resources to independently develop an air bag system, it "has contacted airbag development companies in the US to assist with the project." Laforza concluded that it will take 2 years to develop and certify the system. If immediate compliance were required the cost would be \$1,000,000. An exemption would permit Laforza to generate revenues "to meet the costs mandated by the airbag development program" and spread these costs over period of time. Because the company is less than a year old, it could not submit corporate balance sheets and income statements for the three years immediately preceding the filing of its application, as specified by NHTSA's regulation. Its stockholder equity is \$900,000.

Laforza argued that "production of the Laforza Prima 4X4 is in the best interests of the public and the U.S. economy," pointing to the uniqueness of the vehicle, and the American component that it incorporates, the powertrain from Ford Motor Company and the purchase of "other parts" from approximately five different U.S. companies. "The company currently employs 15 people full-time and three people part time, which will grow as production increases. Further, 'in addition, * * * at least 50 employees from other companies are involved in the Laforza project.' During the exemption period, the Prima will be 'equipped with a conventional restraint type, three-point driver and passenger seatbelt system that meets all requirements of FMVSS No. 208.' The vehicle otherwise complies with all Federal motor vehicle safety standards that apply to it.

No comments were received on the application.

Laforza began its efforts to comply with the automatic restraint requirements upon its agreement with Magnum Industries to purchase chassis from it (the term seems to encompass a body without the engine, transmission, and emission control systems). Since taking this step towards becoming a vehicle manufacturer, Laforza spent the time between then and the filing of its application in beginning its efforts to comply with the standard. It believes that it can comply by the end of 2000. On the other hand, a crash program to comply would cost it \$4,000,000. The company has not generated any income to establish a retained earnings account. Any significant up-front expenses to comply with Standard No. 208 would likely

place it in a negative net worth position. Negative operating cash flows combined with the required debt load and resulting interest charges would probably be unsustainable, and the company would never become a going concern. The enterprise to produce the Laforza involves purchases from several different American companies. The company has requested exemption from only one Federal motor vehicle safety standard for a vehicle which will be equipped with a "conventional restraint type three-point driver and passenger seatbelt system that meets all requirements of FMVSS No. 208." It estimates that only 400 vehicles will be produced while the exemption is in effect.

These facts and arguments are similar to those offered in other instances in which NHTSA has granted temporary exemptions based upon a manufacturer's hardship. In consideration of the foregoing, it is hereby found that compliance with the automatic restraint requirements would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption from these requirements would be in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Laforza Automobiles, Inc., is hereby granted NHTSA Temporary Exemption No. 98-6 from paragraphs S4.2.5.1.1 and S4.2.6.2 of 49 CFR 571.208 Standard No. 208, Occupant Crash Protection, expiring January 1, 2001.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50)

Issued on: September 2, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98-24593 Filed 9-11-98; 9:43 am]

50100 CODE 4910-00-7

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Pension Docket No. 33858]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of environmental review process schedule.

SUMMARY: On July 15, 1998, Canadian National Railway Company (CN) and Illinois Central Corporation (IC), along with their railroad affiliates, collectively referred to as CN/IC or Applicants, filed a joint application with the Surface Transportation Board (Board) seeking authority for CN to acquire control of IC. (This proposed transaction is subsequently referred to as the Acquisition or the CN/IC Acquisition.) The proposed CN/IC system would extend to both coasts of North America and the Gulf of Mexico. The Chicago area would serve as the hub of the combined system. This new system would cover approximately 18,870 miles of rail lines and related facilities, of which, approximately 4,520 miles would be in the United States. The Applicants state that integrating CN and IC operations would allow both rail systems to provide more reliable, efficient, and competitive service.

In Decision No. 8, served August 14, 1998, the Board accepted for consideration the proposed CN/IC Acquisition and issued a 300-day procedural schedule that will provide for the issuance of the Board's final written decision no later than May 11, 1999. The Board also announced that preparation of an Environmental Assessment is appropriate for this proceeding. The purpose of this notice is to advise that the Board's Section of Environmental Analysis (SEA) plans to issue a Draft Environmental Assessment (Draft EA) on the proposed CN/IC Acquisition for public review by November 1998. The public will then have 30 days to review and comment on the Draft EA. After reviewing all public comments on the Draft EA and conducting additional analyses, SEA will complete the Final Environmental Assessment (Final EA). SEA will issue the Final EA prior to the Board's Oral Argument which is currently scheduled for March 8, 1999. The Board will consider all public comments, the Draft EA and Final EA, and SEA's environmental mitigation recommendations in making its final decision on the proposed Acquisition. The Board plans to serve the final written decision on the proposed CN/IC Acquisition on May 11, 1999. Any party may file an administrative appeal within 20 days of the final written decision.

FOR FURTHER INFORMATION CONTACT: A Fact Sheet on the proposed Acquisition, which includes a general discussion on the environmental review process and schedule, is available by calling SEA's toll-free environmental hotline at 1-888-859-1997. For additional

information regarding environmental issues, or the environmental review schedule, contact SEA's Project Manager for the proposed CN/IC Acquisition, Michael Dalton, at (202) 565-1530.

By the Board, Elaine K. Kaiser, Chief of Section of Environmental Analysis.
Vernon A. Williams,
Secretary.

IFR Doc. 98-24572 Filed 9-11-98; 8:45 am
BILLING CODE 4910-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

(STB Docket No. AB-317 (Sub-No. 5X))

Indiana Harbor Belt Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Cook County, IL and Lake County, IN

On August 25, 1998, Indiana Harbor Belt Railroad Company (IHB) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10503 to abandon a line of railroad known as the East Chicago Branch, extending from railroad Valuation Station (-0+17) beginning a point 169 feet west of the Illinois/Indiana State line in Burnham, IL, near Brainerd Avenue, extending generally eastward through Hammond, IN, to and including a point 100 feet east of the east edge of Indianapolis Boulevard in East Chicago, IN, at railroad Valuation Station (140 + 00), a distance of 2.3 miles in Cook County, IL, and Lake County, IN. The line includes approximately 0.4 miles of track in Hammond, in the vicinity of Soli Avenue and Hohman Avenue, owned by the Eglin, Joliet and Eastern Railway Company, over which IHB seeks to discontinue trackage rights. The line traverses U.S. Postal Service Zip Codes 80603, 46320, and 46312. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 1, 1998.

Any offer of financial assistance (QFA) under 49 CFR 1152.27(b)(2) will

be due no later than 10 days after service of a decision granting the petition for exemption. Each QFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 5, 1998. Each trail use request must be accompanied by a \$150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB-317 (Sub-No. 5X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423-0001, and (2) Roger A. Serpe, 175 West Jackson Boulevard, Suite 1400, Chicago, IL 60604-2704. Replies to the IHB petition are due on or before October 5, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1562 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565-1545. (TID for the hearing impaired is available at (202) 565-1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: September 8, 1998.

By the Board, David M. Kenechuk,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

IFR Doc. 98-24571 Filed 9-11-98; 8:45 am
BILLING CODE 4910-00-P

UNITED STATES INFORMATION AGENCY

Notice of Receipt of Cultural Property Request From the Government of the Republic of Cyprus

AGENCY: United States Information Agency.

ACTION: Notice of receipt of cultural property request from the Government of the Republic of Cyprus.

The Government of the Republic of Cyprus made a cultural property request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on September 4, 1998, by the United States Information Agency. It seeks U.S. protection of certain categories of archaeological and/or ethnological material the pillage of which, it is alleged, jeopardizes the national cultural patrimony of Cyprus. In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 et seq.) the request will be reviewed by the Cultural Property Advisory Committee which will develop recommendations before a determination is made.

Dated: September 8, 1998.

Per: Keable,

Deputy Director, United States Information Agency.

IFR Doc. 98-24590 Filed 9-11-98; 8:45 am
BILLING CODE 3010-01-M

UNITED STATES INFORMATION AGENCY

Notice of Meeting of the Cultural Property Advisory Committee

AGENCY: United States Information Agency.

ACTION: Notice of meeting of the Cultural Property Advisory Committee.

The Cultural Property Advisory Committee will meet on Monday, September 28, 1998, from approximately 9:30 a.m. to approximately 5:00 p.m., at the U.S. Information Agency, Room 846, 301 4th St., S.W., Washington, D.C. to review a cultural property request from the Government of the Republic of Cyprus to the Government of the United States seeking protection of certain archaeological and/or ethnological materials. A portion of the meeting, from approximately 9:30 a.m. to approximately 10:30 a.m., will be open to interested parties wishing to provide comment to the Committee that may bear on this request. The Cyprus request, submitted under Article 9 of the

**BOARD PRESS RELEASE ANNOUNCING RECEIPT
OF APPLICATION AND DISCUSSING ENVIRONMENTAL REVIEW**

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Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



News

FOR RELEASE
07/24/98 (Friday)
No. 98-45

Contact: Dennis Watson
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**PUBLIC & MEDIA ADVISORY: SURFACE TRANSPORTATION BOARD ANNOUNCES
RECEIPT OF "CANADIAN NATIONAL-ILLINOIS CENTRAL RAILROAD" RAILROAD
CONTROL APPLICATION; OUTLINES OPTIONS AVAILABLE FOR PUBLIC
EXAMINATION, COPYING OF APPLICATION**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that on Wednesday, July 15, 1998, the Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively referred to as "CN"), and Illinois Central Corporation, Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (collectively referred to as "IC") [FOOTNOTE 1: CN and IC are referred to collectively as "Applicants."] filed an application with the Board seeking authority for the acquisition by CN of control of IC.

Filed with the Board in the case entitled *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated--Control--Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556, the application is the second major railroad consolidation transaction (the "CSX-Norfolk Southern-Conrail" merger proposal was the first) presented to the Board under the Interstate Commerce Commission Termination Act (ICCTA). The application is comprised of 5 paperbound volumes [FOOTNOTE 2: Volume 1 of 4 contains supporting information, summary of benefits, exhibits, statement of the applicants' principal officers, other supporting statements,

and a related application, Finance Docket No. 33556 (Sub-No. 1). Volume 2 of 4 contains traffic studies, an operating plan, a labor-impact statement, density charts, and supporting statements. Volume 3 of 4 contains statements of shippers, public officials, and others in support of the application. Volumes 4A and 4B of 4 contain agreements, Form 40-Fs, Form 10-Ks, Form F-4, Schedule 14D-1, and annual reports.] representing over 3,000 pages of text (also available on computer disks) and supporting information. The Board will review the application and a record will be developed according to a procedural schedule that will be established, assuming that the Board accepts the application as complete and so announces 30 days after the July 15, 1998 filing date, according to Section 1180.4(c)(7) of Title 49, Code of Federal Regulations [49 CFR 1180.4 (c)(7)].

Railroad mergers, such as the CN-IC proposal, require review and approval by the Board to ensure that the public will continue to receive adequate transportation services, that competition will not be harmed unduly, that employees will be afforded appropriate protection, and that environmental issues are fully addressed. The Board's review of major rail mergers extends beyond assessing potential anticompetitive effects to considering potential economies and efficiencies in the national rail system that could result from such transactions. Other, additional factors that the Board is required to address include the effect of the proposal on essential services provided by other railroads in the pertinent region, the financial viability of the consolidated carrier, the effects of the proposal on railroad employees, and whether other railroads should be included in the transaction. The Board's merger review procedures will afford all interested persons the opportunity to participate fully, as required by the Administrative Procedure Act, the ICCTA, and ICCTA implementing regulations.

The following options are available to the public for inspection and copying of the application:

1. **PUBLIC EXAMINATION.** The CN-IC application may be viewed by members of the public Monday-Friday between the hours of 8:30 a.m.-5:00 p.m. in Docket File Room 755, within Suite 700, 7th Floor, at the Board's offices in the Mercury Building at 1925 K Street, N.W. (at the corner of 20th and K Streets) in Washington, DC, telephone (202) 565-1684. NOTE: All visitors must display picture identification cards upon entering Suite 700.

2. **COPYING.**

A. Computer disks. The application will be available in its entirety on approximately two computer disks. The price per disk will be \$25 through the Board's decision-dissemination and copying contractor, DC News & Data, Inc., Suite 210, Mercury Building, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 289-4357 or (202) 463-8112. District of Columbia sales tax may apply, and there are postage and handling charges for mail orders.

B. Paper copies.

a. DC News & Data (address and phone number above) will copy the entire application at the price of 10 cents per page. The price for copying selected portions of the application is 20 cents per page. District of Columbia sales tax may apply, and there are postage and handling charges for mail orders.

b. "Certified" copies (notarized to attest authenticity) of the application will be made by Board personnel at the price of 80 cents per page, plus an \$11 certification fee. Contact the Records Officer, Room 709, within Suite 700 at the Board's offices (address above), telephone (202) 565-1676.

c. Interested persons may also obtain copies of the application directly from the applicants, according to 49 CFR 1180.4 (a)(3), which provides that "[a]ny document filed with the [Board] (including applications, pleadings, etc.) shall be promptly furnished to the interested persons on request, unless subject to protective order."

3. INTERNET. The application will be published on the Board's Internet site, www.stb.dot.gov, on the "Filings" page. The application may be read directly from the Internet site, or may be downloaded in WordPerfect format (some portions of the application will not be published if they cannot be properly formatted.)

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**BOARD PRESS RELEASE ANNOUNCING
ACCEPTANCE OF APPLICATION AND FINAL PROCEDURAL SCHEDULE**

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*Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001*



News

Friday, August 14, 1998 (202) 565-1596

No. 98-51 TDD/TDY 1 (800) 877-8339 www.stb.dot.gov

**SURFACE TRANSPORTATION BOARD
ANNOUNCES ACCEPTANCE OF "CANADIAN NATIONAL-ILLINOIS
CENTRAL"
RAILROAD MERGER APPLICATION,
ISSUES FINAL PROCEDURAL SCHEDULE**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has accepted for consideration the primary railroad control application, and related filings, submitted to the Board (*see footnote 1*) on July 15, 1998, by the Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively referred to as "CN"), and Illinois Central Corporation, Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (collectively referred to as "IC") (*see footnote 2*). Chairman Morgan also announced that, following review and analysis of the public comments it has received, the Board is issuing a final, 300-day procedural schedule that will provide for the issuance of the Board's final decision no later than May 11, 1999, or 18 months after the filing of CN-IC's merger application on July 15.

CN's rail network consists of approximately 1,150 miles in the United States, and approximately 14,150 miles in eight Canadian provinces. IC operates approximately 3,370 miles of track running north-south between Chicago and the Gulf of Mexico, and east-west between Chicago and Nebraska and Iowa. The principal routes of the combined CN-IC rail system would be identical to those of the individual railroads. The southern terminus of CN's rail system, Chicago, is the northern terminus of IC's rail system. The Applicants have stated that no track redundancies would be created by

the proposed merger, and that no rail line abandonments or substantial rerouting would result from the combination of the two systems. The Board accepted the merger application and related filings because they were found to comply substantially with applicable regulations and other requirements.

Though the Applicants requested adoption of their original, 6-month proposed schedule, the Board received few objections to the 10-month schedule it proposed. The Board decided on the 10-month schedule in the belief that it is a middle-ground schedule that will allow sufficient time thoroughly to review the application and develop the public record upon which the Board's decision will be based, and will not unnecessarily delay any benefits that would flow from the proposed integration of the CN-IC systems, should the merger application be approved. A copy of the final schedule is attached.

The Board announced its acceptance of the CN-IC merger application and related filings today in STB Finance Docket No. 33556, Decision No. 6.

footnote 1 In the case entitled *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated--Control--Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556.

footnote 2 CN and IC are referred to collectively as "Applicants"

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**ATTACHMENT
FINAL PROCEDURAL SCHEDULE
STB FINANCE DOCKET NO. 33556
"CANADIAN NATIONAL-ILLINOIS CENTRAL" MERGER**

DATE/MATERIAL DUE OR ACTION TAKEN

July 15, 1998: Applicants' primary merger application and related applications filed with Board.

August 14, 1998: Board's notice of acceptance of primary and related applications is published in the *Federal Register*.

August 14, 1998: Applicants' Safety Integration Plan is due.

August 31, 1998: Notification to Board of persons' or parties' intent to participate in the merger case is due.

August 31, 1998: Parties' description of anticipated inconsistent (i.e., alternative

proposals inconsistent with the primary application) and responsive applications (e.g., seeking to lessen perceived anticompetitive effects by trackage rights etc.) are due; petitions for Board's waiver or clarification relative to such applications are due.

September 21, 1998: Responsive Environmental Report and Environmental Verified Statements from those filing inconsistent and responsive applications are due.

October 13, 1998: All comments, protests, requests for conditions to be applied to the merger, and other opposition evidence and argument due, including filings of the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT). Inconsistent and responsive applications are due.

November 2, 1998: Notice of Board's acceptance (if required) of inconsistent and responsive applications is issued and published in the *Federal Register*.

November 27, 1998: Response to inconsistent applications, responsive applications, DOJ and DOT comments, other comments, protests, requested conditions, and other opposition is due; and rebuttal in support of primary and related applications is due.

December 28, 1998: Rebuttal in support of inconsistent and responsive applications is due.

February 5, 1999: Briefs due from all parties.

March 8, 1999: Oral argument before Board (conclusion of which closes the public record).

March 15, 1999: Board holds voting conference open to public.

May 11, 1999: Board issues written decision reflecting March 15 vote.

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Cover Letter to Environmental Fact Sheet

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SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

August 6, 1998

**Re: Finance Docket No. 33556 -- Canadian National Railway Company -- Control --
Illinois Central Corporation: Correspondence to Interested Parties Regarding
Environmental Review Process**

Dear Interested Parties:

On July 15, 1998, Canadian National Railway Company (CN) and Illinois Central Corporation (IC) filed a joint application with the Surface Transportation Board (Board), seeking authority for CN to acquire control of IC. The Board's Section of Environmental Analysis (SEA) has begun its review of the proposed CN/IC Acquisition. In accordance with the National Environmental Policy Act (NEPA), SEA will prepare an Environmental Assessment (EA) to evaluate and consider potential environmental impacts.

As part of the environmental review process, SEA will prepare a Draft EA. The Draft EA considers a variety of environmental issues, including safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, historic and cultural resources, environmental justice, and socioeconomic effects directly related to physical changes in the environment as a result of the Acquisition. SEA will make the Draft EA available for public review and comment, and will also consult with Federal, state, and local agencies throughout the environmental review process. After fully considering all public comments, conducting additional environmental analyses, reviewing all environmental information to date, and consulting with appropriate government agencies, SEA will prepare a Final EA. The Board will consider the entire environmental record, the Draft and the Final EA, all public comments, and SEA's final environmental mitigation recommendations in making its final decision on the proposed Acquisition.

To assist you in understanding the proposed CN/IC Acquisition and the environmental review process, SEA has prepared and enclosed an Environmental Fact Sheet. The Environmental Fact Sheet provides a description of the proposed Acquisition, proposed activities and changes in rail operations, and a brief description of the methodologies that SEA plans to use in the environmental analysis.

If you have any questions, please contact SEA's Project Manager for the proposed CNIC Acquisition, Michael Dalton, through SEA's toll-free telephone hotline at 1-888-869-1997. You may also find information at SEA's Internet website for the proposed CNIC Acquisition at <http://www.CNICAcquisition.com>, or the Board's website at <http://www.stb.dot.gov>.

Sincerely,



Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis

Enclosure

ENVIRONMENTAL FACT SHEET

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Canadian National & Illinois Central Proposed Acquisition

OVERVIEW OF THE PROPOSED TRANSACTION

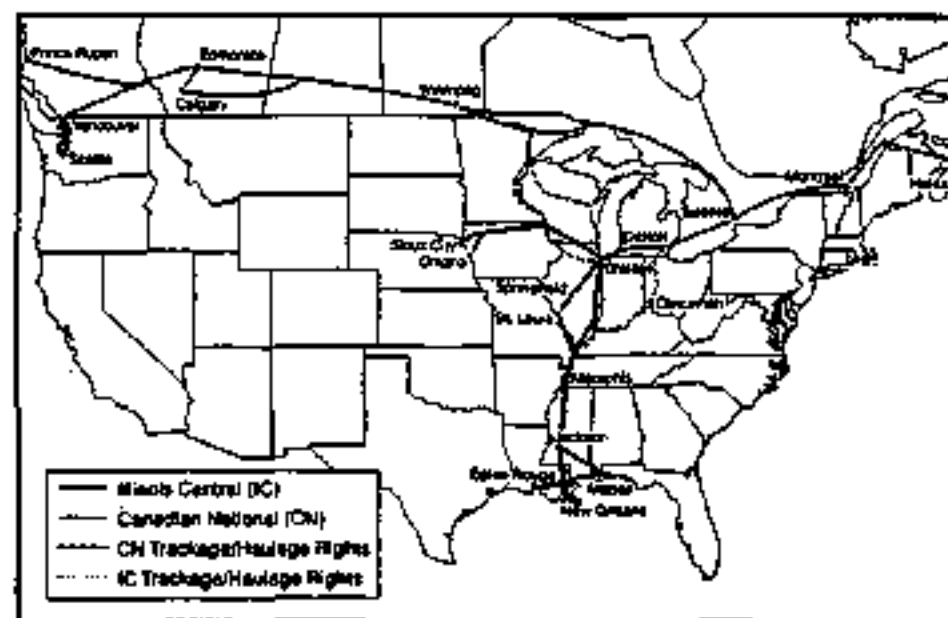
On July 15, 1998, Canadian National Railway Company (CN) and Illinois Central Corporation (IC), collectively referred to as CN/IC or Applicants, filed a joint application with the Surface Transportation Board (Board) seeking authority for CN to acquire control of IC. (This proposed transaction is subsequently referred to as the Acquisition or the CN/IC Acquisition.) The proposed CN/IC system would extend to both coasts of North America and the Gulf of Mexico. The Chicago area would serve as the hub of the combined system. This new system would cover approximately 18,670 miles of rail lines and related facilities, of which approximately 4,520 miles would be in the United States. The Applicants state that integrating CN and IC operations would allow both rail systems to provide more reliable, efficient, and competitive service.

CN currently operates approximately 1,150 miles of rail lines in six U.S. states, and 14,150 miles of rail lines in Canada. CN serves the Canadian ports of Halifax, Montreal, Thunder Bay, Prince Rupert, and Vancouver, and the Chicago,

Detroit, and Buffalo gateways to and from North America. IC operates approximately 3,370 miles in nine states. The IC system runs south from Chicago to the Gulf of Mexico, and west from Chicago to Iowa and Minnesota. CN and IC systems would be joined at a single location at Harvey, Illinois (near Chicago). The maps below and on page 6 show the current CN and IC routes in the U.S., and routes of the proposed CN/IC system.

CN and IC state that the benefits of a combined CN/IC system would result from single-line service. They further maintain that single-line

service would result in improved coordination and greater length-of-haul efficiencies than are possible with two operators. The Applicants state that the proposed transaction responds directly to shippers' needs for improved rail infrastructure to handle the rapidly growing north-south trade flows stimulated by the North American Free Trade Agreement (NAFTA). The Applicants note that increased operating efficiencies would be further enhanced by Alliance and Access agreements that they have signed with Kansas City Southern Railway Company (KCSR). The three railroad companies maintain that these agreements will



Existing CN and IC Systems

provide a coordinated rail network between points in Canada and major midwestern and southern markets in the United States, and provide access to Mexico's largest rail system.

BOARD'S ROLE

The Board is an independent Federal regulatory agency with jurisdiction over transactions such as freight railroad acquisitions and mergers. The Board considers competitive merits, and other economic and environmental issues when deciding on whether to approve a proposed transaction. The Board's decisions in such transactions constitute major Federal actions requiring environmental review under the National Environmental Policy Act of 1969 (NEPA). Under NEPA, the Board must consider the environmental effects of the proposed transaction in making its decision.

ENVIRONMENTAL REVIEW PROCESS

The Board's Section of Environmental Analysis (SEA) conducts the Board's environmental review process and recommends environmental mitigation conditions to the Board. In imposing environmental mitigation conditions, the Board has consistently focused on potential environmental impacts that would result directly from changes in rail activity levels the railroad companies propose in their applications. The Board does not require

mitigation for pre-existing railroad conditions, such as environmental impacts associated with current railroad operations.

As part of its environmental review of the proposed CN/IC Acquisition, SEA will prepare a Draft Environmental Assessment (EA) and a Final EA, describing the potential environmental impacts of Acquisition-related activities for a variety of issue areas. These issues include safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, socioeconomic effects directly related to changes in the environment, historic and cultural

resources, and environmental justice. SEA will make the Draft EA available for public review and comment.

Additionally, the Board is requiring that CN and IC develop and submit a Safety Integration Plan within guidelines set by the Federal Railroad Administration. In the Safety Integration Plan, the Applicants will explain their intended process for safely integrating and combining the infrastructure, equipment, personnel, and operating practices of their two companies. The Safety Integration Plan will also be part of the EA and be available for public review and comment.

PROPOSED ENVIRONMENTAL REVIEW SCHEDULE

At this time, the Board has not issued a final procedural schedule for reviewing the proposed CN/IC Acquisition. Accordingly, SEA anticipates that a Draft EA will be available in the Fall, 1998. SEA plans to have at least a 20-day review and comment period on the Draft EA. After SEA considers all the public comments, SEA will issue a Final EA prior to the Board's Oral Argument, Voting Conference, and Final Written Decision.

- Primary Application filed with the Board: July 15, 1998
- Draft Environmental Assessment issued for public review: Fall, 1998
- Public Comment Period (at least 20 days)
- Final Environmental Assessment
- Oral Arguments before the Board
- Board Voting Conference
- Written Decision by the Board

If you would like a copy of the Board's final procedural schedule, you may call SEA's toll-free environmental hotline at 1-888-869-1997.

during the public comment period on the Draft EA.

After fully considering all public comments received on the Draft EA, conducting any additional environmental analysis, reviewing all environmental information available to date, and consulting with appropriate government agencies, SEA will then prepare and issue a Final EA. The Board will consider the entire environmental record, the Draft and the Final EA, all public comments, and SEA's final environmental mitigation recommendations in making its final decision on the proposed transaction.

SCOPE OF THE ENVIRONMENTAL ANALYSIS

In the CN/IC Operating Plan submitted as part of their application to the Board, the Applicants indicate that some operational changes would result from the proposed CN/IC Acquisition. These changes include increased or decreased train traffic on rail line segments, construction of new rail line connections, and construction or changed activity at rail yards or intermodal facilities. SEA's review of the proposed Acquisition will evaluate the potential environmental impacts that could result from these changes. The Applicants state in the environmental data submitted with the application that all increases in train traffic would be less than eight (8) trains per day on any single rail line segment. Additionally, the

Table 1

THE BOARD'S THRESHOLDS FOR ENVIRONMENTAL ANALYSIS¹

Activity/Site	Noise	Air Quality	
		Attainment and Maintenance Areas	Nonattainment Areas
Rail Line Segments	Increase of 8 trains per day or increase of 100 percent in annual gross ton-miles.		Increase of 3 trains per day or increase of 50 percent in annual gross ton-miles.
Rail Yards	Increase of 100 percent in carload activity per day.		Increase of 20 percent in carload activity per day.
Intermodal Facilities	Increase of 50 trucks per day or increase of 10 percent in average daily traffic volume on any affected road segment.		

¹ 49 CFR 1105.7(e)

Applicants indicate that diversion of highway truck shipments to the combined CN/IC system could result in increased local truck traffic in and around some intermodal facilities, and a corresponding decrease in long-haul truck traffic on the national highway system.

Below is a summary of the thresholds that SEA uses to conduct its environmental review, followed by a brief discussion of SEA's approach to environmental impact analysis by issue area.

In the EA, SEA will analyze the rail line segments, rail yards, and intermodal facilities that would experience increases that exceed the thresholds for environmental review set out in the Board's environmental rules at 49 CFR 1105.7(e). (See Table 1, above.) SEA will also analyze the proposed new

rail line constructions. At this time, the Applicants do not anticipate any rail line abandonments.

Also, in recent environmental reviews of other rail transactions, such as the CSX/Norfolk Southern Acquisition of Conrail, and the Union Pacific/Southern Pacific Merger, SEA developed certain thresholds for environmental issue areas. SEA plans to apply these thresholds in the review of the proposed CN/IC Acquisition, as follows:

- For potential environmental impacts on resources other than noise and air quality (e.g., freight rail safety), SEA will use a 100-percent increase in annual gross ton-miles on a rail segment, or an increase of eight (8) or more trains per day, as the threshold for environmental analysis.

- For passenger rail operations, SEA will analyze all rail line segments that have existing passenger rail traffic where there is a proposed increase of one (1) or more freight trains per day.
- For hazardous materials transport, SEA will analyze all rail line segments that would experience an increase in the annual volume of hazardous materials transported.

The rail activities that would meet or exceed the thresholds for air, noise, or other environmental issue areas (collectively referred to as the Board's thresholds for environmental analysis) are listed on pages 7 and 8.

ENVIRONMENTAL ANALYSIS METHODOLOGIES

Where proposed changes in railroad activities would meet or exceed the Board's thresholds for environmental analysis, SEA plans to evaluate potential environmental impacts for each of the issue areas described below. SEA plans to describe the analysis methodologies, results, and preliminary recommended mitigation in the Draft EA.

SAFETY

- **Accidents and derailments** – SEA plans to evaluate the probability of train accidents and derailments, the increased risk of accidents at highway/rail at-grade crossings, and potential safety effects of freight accidents or derail-

ments on commuter and intercity passenger service operations.

- **Hazardous materials** – SEA plans to evaluate potential increased accident risk based on changes in the types and quantities of hazardous materials transported, including the Applicant's safety practices and contingency plans to address accidental spills and the likelihood of increased spills based on Federal safety statistics. For proposed new construction sites, SEA plans to evaluate the location and type of hazardous substances at existing hazardous waste sites or spills.

TRANSPORTATION SYSTEMS

SEA plans to analyze potential impacts of proposed operational changes on commuter rail and intercity passenger (Amtrak) service by evaluating the capacity of rail lines to accommodate increased freight train traffic. SEA also plans to evaluate the potential effects of proposed diversions of freight traffic from trucks to rail and from rail to trucks, vehicular delays at highway/rail at-grade crossings, potential traffic impacts from increased truck activity at intermodal facilities, and increased train traffic on bridges that cross navigable bodies of water.

AIR QUALITY

SEA plans to evaluate air emissions increases in counties or air districts where the proposed post-Acquisition activity would exceed the

Board's air quality thresholds. Specifically, SEA plans to calculate the net increase in air emissions from changes in railroad operations, determine potential effects of transporting ozone-depleting materials such as freon, calculate increases in air emissions from vehicle delays at highway/rail at-grade crossings, and evaluate potential benefits of system-wide emissions reductions resulting from projected truck-to-rail diversions.

NOISE

SEA plans to evaluate potential noise impacts for those areas that would experience increases in traffic or activity exceeding the Board's noise thresholds. Specifically, SEA plans to determine if any proposed Acquisition-related rail traffic increases would increase noise levels by two or more decibels. If so, SEA would estimate the number of sensitive receptors (e.g., schools, churches, hospitals, and residences) along these rail lines or near these rail yards that would experience average noise levels greater than 65 decibels.

ENVIRONMENTAL JUSTICE

SEA plans to research and report on demographics in the immediate vicinity of areas where Acquisition-related activity meets or exceeds the environmental analysis thresholds. SEA then plans to evaluate whether such activities potentially would have a disproportionately high and adverse environmental impact on minority or low-income communities.

of increased spills based on Federal safety statistics.

SEA researched and reported on demographics in the immediate vicinity of areas where Acquisition-related activity meets or exceeds the environmental analysis thresholds. SEA evaluated whether such activities potentially would have a disproportionately high and adverse environmental impact on minority and low-income populations.

POTENTIAL IMPACT AREAS AND MITIGATION

In conducting environmental analysis for the Draft EA, SEA identified the following potential environmental impacts as a result of the proposed CN/IC Acquisition:

- Potential safety issues related to increased hazardous materials transport on 14 rail segments:
 - Four key routes in Michigan (a key route carries at least 10,000 carloads of hazardous materials per year).
 - Ten major key routes in Illinois and Kentucky (a major key route carries twice the volume of hazardous materials currently transported, and exceeds 20,000 carloads of hazardous materials per year).
- Potential impacts of increased hazardous materials transport on five communities in Illinois with low-income or minority populations.

With the exception of hazardous materials transport, SEA deter-

HOW TO RECEIVE INFORMATION AND COMMENT ON ENVIRONMENTAL ISSUES FOR THE PROPOSED ACQUISITION

During the public review and comment period, SEA welcomes written comments from the public and all interested parties regarding any aspect of the Draft EA, including the environmental analysis and recommended mitigation measures. SEA will consider all public comments in preparing the final EA and in making final environmental mitigation recommendations to the Board. The public can submit comments by sending an original written comment (plus 10 copies) to the Board by December 11, 1998 at:

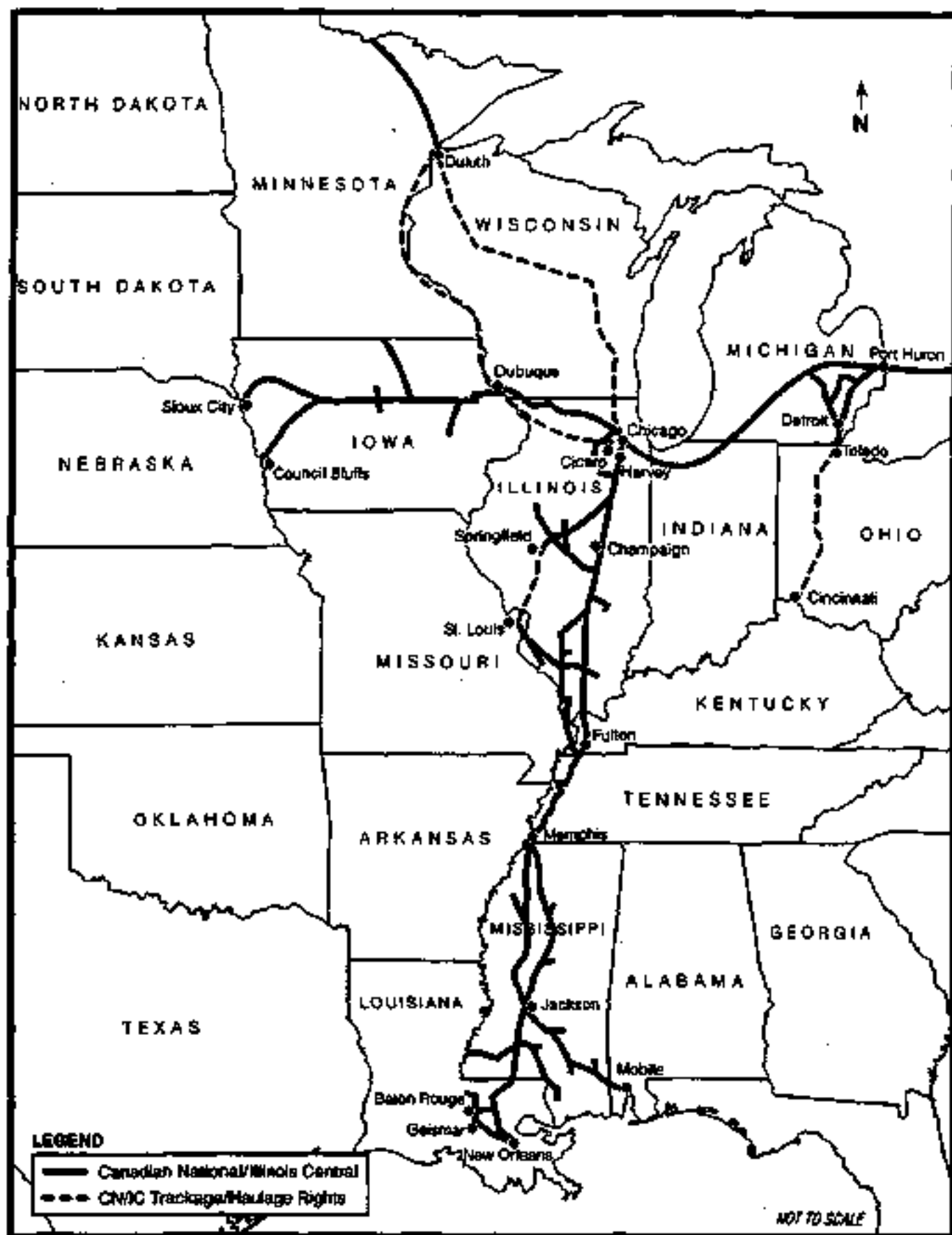
Office of the Secretary
Case Control Unit
Finance Docket No. 33556
Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001
Attn: Elaine K. Kasper
Environmental Project Director
Section of Environmental Analysis
Environmental Planning

The public may call SEA's toll-free telephone hotline at 1-888-869-1997 with questions or inquiries regarding the proposed Acquisition. The public can access additional information on SEA's website for the proposed CN/IC Acquisition at <http://www.cnicalacquisition.com>; of the Board's website at <http://www.stb.dot.gov>.

mined that no issue areas would have the potential for significant effect, and do not warrant mitigation. SEA's preliminary recommended mitigation would address potential effects of increased hazardous materials transport, and the potential impacts this increase might have on environmental justice populations. SEA's mitigation will include complying with safety requirements for key routes and developing emergency response plans and local training for communities along major key routes. SEA has recommended that the Applicants con-

duct additional training and emergency response planning to address potential environmental impacts in the five communities with low-income and minority populations.

The Draft EA contains a complete and detailed discussion of these potential environmental impacts and SEA's recommended mitigation. With SEA's preliminary recommended mitigation, SEA concludes that the proposed CN/IC Acquisition would not result in any significant adverse impacts to the environment.



Proposed CN/IC System - U.S. Portion

RAIL ACTIVITIES SEA WILL ANALYZE

Based on information provided in the CN/IC Application, SEA plans to analyze the following proposed rail activities that would meet or exceed the Board's environmental thresholds:

- Eleven rail line segments totaling approximately 160 miles.
- Five rail yards.
- One intermodal facility.
- Approximately 1,838 miles of rail line (85 rail line segments) where proposed Acquisition-related activity exceeds the environmental analysis threshold for hazardous materials transport.
- Approximately 715 miles of rail line (24 rail line segments) where proposed activity exceeds the environmental analysis threshold for passenger rail traffic.
- Six construction projects (two new connections and four rail yard improvements).

CN and IC plan to construct a new rail line connection at Harvey, Illinois, where the two railroads cross. The Applicants state that this construction had been previously planned and is independent of the proposed CN/IC Acquisition. The Applicants have not proposed abandoning any rail lines as a result of the proposed CN/IC Acquisition.

In their Operating Plan, the Applicants indicate that, for certain rail line segments in Illinois, the gross ton-mile increase would exceed the Board's thresholds for environmental

analysis. Daily main traffic on most of these rail line segments would not exceed the Board's thresholds for train traffic increases, and in some cases, traffic levels would stay the same or decrease.

ILLINOIS

Rail Line Segments

- Bridgeport-to-BRC-CCP Crossing (Cicero)
- BRC-CCP-Crossing (Cicero)-to-Hawthorne Yard (Cicero)
- Hawthorne Yard (Cicero)-to-Broadview
- Harvey-to-Homewood
- Homewood-to-Matteson Cook County
- Gilman-to-Gibson City *Joquios and Ford Counties*
- Gibson City-to-Fullerton *Ford, Champaign, McLean, and DeWitt Counties*
- Fullerton-to-Clinton *DeWitt County*
- Matteson-to-Kankakee *Cook, Will, and Kankakee Counties*
- Clinton-to-Mount Pulaski *DeWitt and Logan Counties*
- Mount Pulaski-to-Springfield *Logan and Sangamon Counties*

Rail Yards

- Hawthorne *Cicero, Cook County*
- Markham *Homewood, Cook County*

Intermodal Facility

- Moyers/Chicago Gateway *Homewood, Cook County*

Construction of Rail Line Connection

- IC-Belt Railway of Chicago (BRC) *Cicero, Cook County*

Hazardous Materials Transport - Rail Corridors

- Harvey, IL-to-Port Huron, MI *Cook County*
- Broadview Yard (Chicago)-to-Edgewood (via Chicago and Markham) *Cook, Will, Kankakee, Joquios, Ford, Champaign, Douglas, Coles, Cumberland, Shelby, and Effingham Counties*
- Edgewood, IL-to-Fulton, KY (via Du Quoin, IL) *Effingham, Fayette, Marion, Washington, Perry, Jackson, Union, Alexander, and Pulaski Counties*
- Edgewood, IL-to-Fulton, KY (via Akin Jct., IL) *Effingham, Fayette, Marion, Clay, Jefferson, Franklin, Williamson, Johnson, and Massac Counties*
- Du Quoin, IL-to-Coolterville, IL (via Church, IL) *Perry and Randolph Counties*
- Mattoon, IL-to-Springfield, IL (via Decatur and Mt. Pulaski) *Coles, Moultrie, Macon, Logan, and Sangamon Counties*

Passenger Rail - Rail Corridor

- Harvey, IL-to-Jackson, MS (via Du Quoin, IL, and Yazoo City, MS) *Cook, Will, Kankakee, Joquios, Ford, Champaign, Douglas, Coles, Cumberland, Shelby, Effingham, Fayette, Marion, Washington, Perry, Jackson, Union, Alexander, and Pulaski Counties*

INDIANA

Hazardous Materials Transport - Rail Corridor

- Harvey, IL-to-Port Huron, MI
*Lake, Porter, La Porte, and St. Joseph
Counties*

IOWA

Hazardous Materials Transport - Rail Corridor

- La Porte, Dubuque, IA-to-
Manchester, IA
Dubuque and Delaware Counties
- Manchester, IA-to-Cedar Rapids, IA
Delaware and Linn Counties

KENTUCKY

Hazardous Materials Transport - Rail Corridor

- Fulton, KY-to-Edgewood, IL (via
Du Quoin, IL)
*Fulton, Hickman, Carlisle, and Ballard
Counties*
- Fulton, KY-to-Edgewood, IL (via
Akin Jct., IL)
*Fulton, Hickman, Graves, and
McCracken Counties*
- Fulton, KY-to-Hammond, LA (via
Memphis, TN and Yazoo City
and Jackson, MS)
Fulton County

Passenger Rail - Rail Corridor

- Harvey, IL-to-Jackson, MS (via
Du Quoin, IL and Yazoo City, MS)
*Fulton, Hickman, Carlisle, and Ballard
Counties*

LOUISIANA

Hazardous Materials Transport - Rail Corridor

- Baton Rouge, LA-to-Hammond, LA
*East Baton Rouge, Livingston, and
Tangipahoa Parishes*
- Baton Rouge, LA-to-Geismar, LA
*East Baton Rouge, Iberville, and Ascen-
sion Parishes*
- Hammond, LA-to-Fulton, KY
Tangipahoa Parish

MICHIGAN

Rail Yards

- Detroit
Wayne County
- Edison
Trenon, Wayne County
- Port Huron
St. Clair County

Hazardous Materials Transport - Rail Corridor

- Port Huron, MI-to-Harvey, IL
*St. Clair, Lapeer, Genesee, Shiawassee,
Ingham, Eaton, Calhoun, Kalamazoo, St.
Joseph, and Cass Counties*

Passenger Rail - Rail Corridor

- Vinewood Tower-to-Milwaukee Jct.
Wayne County

MISSISSIPPI

Construction of Rail Line Connection

- Jackson, MS
Hinds County

Hazardous Materials Transport - Rail Corridor

- Hammond, LA-to-Fulton, KY (via
Memphis, TN and Yazoo City
and Jackson, MS)
*Pike, Lincoln, Copiah, Hinds, Madison,
Yazoo, Holmes, Leflore, Tallahatchie,
Quitman, Panola, Tate, Tunica, and
De Soto Counties*

Passenger Rail - Rail Corridor

- Jackson, MS-to-Harvey, IL (via
Du Quoin, IL and Yazoo City, MS)
*Hinds, Madison, Yazoo, Holmes,
Leflore, Tallahatchie, Quitman, Panola,
Tate, Tunica, and De Soto Counties*

TENNESSEE

Hazardous Materials Transport - Rail Corridor

- Fulton, KY-to-Hammond, LA
*Obion, Dyer, Lauderdale, Tipton, and
Shelby Counties*

Passenger Rail - Rail Corridor

- Jackson, MS-to-Harvey, IL (via
Du Quoin, IL and Yazoo City, MS)
*Shelby, Tipton, Lauderdale, Dyer, and
Obion Counties*

Cover Letter to Updated Environmental Fact Sheet

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SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

November 9, 1998

**Re: Finance Docket No. 33556 — Canadian National Railway Company — Control
— Illinois Central Corporation: Notification of Draft EA and Public Comment
Period**

To: Interested Parties

This is to inform you that the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) has issued its Draft Environmental Assessment (Draft EA) on the proposed Acquisition of Illinois Central Corporation (IC) by Canadian National Railway Company (CN). The Draft EA discusses the potential environmental impacts that could result from the proposed CN/IC Acquisition and includes SEA's preliminary recommendations for mitigating possible environmental effects. The Board welcomes public review and comment on the Draft EA. The Draft EA is currently available for 30 days for public review and comment. Public comments are due by December 11, 1998.

To assist interested parties in understanding the proposed CN/IC Acquisition, SEA is pleased to provide you with the enclosed updated CN/IC Acquisition Fact Sheet. The Fact Sheet provides a summary of SEA's environmental analysis, describes the potential environmental impacts SEA identified as a result of its analysis, includes SEA's environmental review schedule, provides a brief project background, and describes the role of the Board and SEA in reviewing the proposed CN/IC Acquisition. The Fact Sheet also provides information about how to receive further information and comment on the Draft EA.

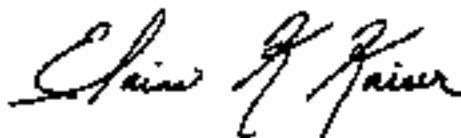
The Draft EA reflects SEA's independent analysis of a number of environmental issue areas and incorporates input from Federal, state, and local agencies. With the exception of hazardous materials transport, SEA determined that there would be no potential significant environmental impacts on any of the issue areas. Included in the Draft EA are SEA's preliminary recommendations for mitigating the potential hazardous materials transport impacts. The Draft EA also includes the Safety Integration Plan prepared by CN and IC which explains how they will safely integrate their separate operations.

After fully considering all public comments, consulting with appropriate public agencies, and conducting additional environmental analysis as appropriate, SEA will prepare a Final EA. SEA will issue the Final EA prior to the Board's Oral Argument and Voting Conference, which

are currently scheduled for March 22, 1999 and March 29, 1999, respectively. In making its final decision on the proposed CN/IC Acquisition, the Board will consider the entire environmental record, including all public comments; the Draft EA; and the Final EA, including SEA's environmental mitigation recommendations. The Board plans to issue its final written decision on the proposed Acquisition on May 25, 1999.

For additional information on the proposed CN/IC Acquisition, please call SEA's toll-free Environmental Hotline at 1-888-869-1997 (TDD for the hearing impaired: (202) 565-1695). Information can also be found at SEA's website for the proposed CN/IC Acquisition at <http://www.cnicacquisition.com> or the Board's website at <http://www.stb.dot.gov>.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elaine K. Kaiser".

Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis

Enclosure

UPDATED ENVIRONMENTAL FACT SHEET

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Summary of Environmental Analysis – Canadian National & Illinois Central Proposed Acquisition

OVERVIEW OF THE PROPOSED TRANSACTION

On July 15, 1998, Canadian National Railway Company (CN) and Illinois Central Corporation (IC), collectively referred to as CN/IC or Applicants, filed a joint application with the Surface Transportation Board (Board) seeking authority for CN to acquire control of IC. The proposed CN/IC Acquisition is an end-to-end coupling of the existing CN and IC systems. The proposed CN/IC system would extend to both the east and west coasts of North America and the Gulf of Mexico. The Chicago area would serve as the hub of the combined system. This new system would cover approximately 18,670 miles of rail lines and related facilities, of which approximately 4,520 miles would be in the United States. The Applicants state that integrating CN and IC operations would allow both rail systems to provide more reliable, efficient, and competitive service. The Applicants anticipate relatively minor changes in rail operations as a result of the proposed Acquisition. The Applicants have proposed no rail line abandonments and only five minor construction projects.

BOARD'S ROLE

The Board is an independent Federal regulatory agency with juris-



diction over transactions such as freight railroad acquisitions and mergers. The Board considers

competitive merits, and other economic and environmental issues when deciding on whether

to approve a proposed transaction. The Board's decisions in such transactions constitute major Federal actions requiring environmental review under the National Environmental Policy Act of 1969 (NEPA). Under NEPA, the Board must consider the environmental effects of the proposed transaction in making its decision.

ENVIRONMENTAL REVIEW PROCESS

The Board's Section of Environmental Analysis (SEA) conducts the Board's environmental review process and recommends environmental mitigation conditions to the Board. In imposing environmental mitigation conditions, the Board has consistently focused on potential environmental impacts that would result directly from changes in rail activity levels the railroad companies propose in their applications. The Board generally does not require mitigation for pre-existing railroad conditions, such as environmental impacts associated with current railroad operations.

As part of its environmental review of the proposed CN/IC Acquisition, SEA prepared a Draft Environmental Assessment (EA), describing the potential environmental impacts of Acquisition-related activities for a variety of issue areas, and SEA's preliminary environmental mitigation. These issues include safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, historic and cultural resources, and environmental justice.

Additionally, the Board required that CN and IC develop and submit a Safety Integration Plan within guidelines set by the Federal Railroad Administration. In the Safety Integration Plan, the Applicants explain how they will safely integrate and combine the infrastructure, equipment, personnel, and operating practices of their two companies. The Safety Integration Plan is contained in the Draft EA, and is available for public review and comment during the public comment period.

After fully considering all public comments received on the Draft EA, conducting any additional environmental analysis, reviewing all available environmental information, and consulting with appropriate government agencies, SEA will then prepare and issue a Final EA. The Board will consider the entire environmental record, the Draft and the Final EA, all public

comments, and SEA's final environmental mitigation recommendations in making its final decision on the proposed transaction.

SUMMARY OF IMPACT ANALYSES

SEA identified potential environmental impacts for the issue areas described here, where proposed changes in railroad activities would meet or exceed the Board's thresholds for environmental analysis. The analysis methodologies, results, and preliminary recommended mitigation are described in the Draft EA.

SEA evaluated potential increased accident risk based on changes in the types and quantities of hazardous materials transported, including the Applicants' safety practices and contingency plans to address accidental spills and the likelihood

ENVIRONMENTAL REVIEW SCHEDULE

SEA issued the Draft EA on November 9, 1998. Comments are due December 11, 1998. After SEA considers all the public comments, SEA will issue a Final EA prior to the Board's Oral Argument, Voting Conference, and Final Written Decision.

- Primary Application filed with the Board: July 15, 1998
- Draft Environmental Assessment issued for public review: November 9, 1998
- Public Comment Period: November 9, 1998 - December 11, 1998
- Final Environmental Assessment: February, 1999
- Oral Arguments before the Board: March 22, 1999
- Board Voting Conference: March 29, 1999
- Written Decision by the Board: May 25, 1999

If you would like a copy of the Draft EA, you may call SEA's toll-free environmental hotline at 1-888-869-1997.

of increased spills based on Federal safety statistics.

SEA researched and reported on demographics in the immediate vicinity of areas where Acquisition-related activity meets or exceeds the environmental analysis thresholds. SEA evaluated whether such activities potentially would have a disproportionately high and adverse environmental impact on minority and low-income populations.

POTENTIAL IMPACT AREAS AND MITIGATION

In conducting environmental analysis for the Draft EA, SEA identified the following potential environmental impacts as a result of the proposed CN/IC Acquisition:

- Potential safety issues related to increased hazardous materials transport on 14 rail segments:
 - Four key routes in Michigan (a key route carries at least 10,000 carloads of hazardous materials per year).
 - Ten major key routes in Illinois and Kentucky (a major key route carries twice the volume of hazardous materials currently transported, and exceeds 20,000 carloads of hazardous materials per year).
- Potential impacts of increased hazardous materials transport on five communities in Illinois with low-income or minority populations.

With the exception of hazardous materials transport, SEA deter-

HOW TO RECEIVE INFORMATION AND COMMENT ON ENVIRONMENTAL ISSUES FOR THE PROPOSED ACQUISITION

During the public review and comment period, SEA welcomes written comments from the public and all interested parties regarding any aspect of the Draft EA, including the environmental analysis and recommended mitigation measures. SEA will consider all public comments in preparing the Final EA and in making final environmental mitigation recommendations to the Board. The public can submit comments by sending an original written comment, plus 10 copies, to the Board by December 11, 1998 at:

Office of the Secretary
Case Control Unit
Finance Docket No. 33556
Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001
Attn: Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Environmental Filing

The public may call SEA's toll-free telephone hotline at 1-888-869-1997 with questions or inquiries regarding the proposed Acquisition. The public can access additional information on SEA's website for the proposed CN/IC Acquisition at <http://www.cnicaacquisition.com>, or the Board's website at <http://www.stb.dot.gov>.

mined that no issue areas would have the potential for significant effect, and do not warrant mitigation. SEA's preliminary recommended mitigation would address potential effects of increased hazardous materials transport, and the potential impacts this increase might have on environmental justice populations. SEA's mitigation will include complying with safety requirements for key routes and developing emergency response plans and local training for communities along major key routes. SEA has recommended that the Applicants con-

duct additional training and emergency response planning to address potential environmental impacts in the five communities with low-income and minority populations.

The Draft EA contains a complete and detailed discussion of these potential environmental impacts and SEA's recommended mitigation. With SEA's preliminary recommended mitigation, SEA concludes that the proposed CN/IC Acquisition would not result in any significant adverse impacts to the environment.

Public Service Announcement

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**Surface Transportation Board
Section of Environmental Analysis**

Proposed Canadian National & Illinois Central Acquisition

**PSA Radio Spot
:30**

Two railroad companies, Canadian National Railway Company and Illinois Central Corporation, have filed a joint application with a Federal agency, the Surface Transportation Board, seeking authority for Canadian National to acquire Illinois Central.

A Draft Environmental Assessment describing the preliminary results of the environmental review of the proposed Acquisition is available at some local libraries.

If you would like to comment on the Draft Environmental Assessment or get further information about the proposed Acquisition, please call the toll-free Environmental Hotline for this project at 1-888-869-1997 (TDD for the hearing impaired: (202) 565-1695).

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Newspaper Notice

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**Surface Transportation Board
Section of Environmental
Analysis
Release of Draft Environmental
Assessment
Proposed Canadian National &
Illinois Central Acquisition**

The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) issued a Draft Environmental Assessment (Draft EA) on the proposed Acquisition of Illinois Central Corporation (IC) by Canadian National Railway Company (CN). The Draft EA discusses potential environmental impacts that could result from the proposed Acquisition, and includes preliminary recommendations for mitigating these potential impacts.

The Draft EA is currently available for public review and comment. Public comments are due by December 11, 1998. SEA will consider all comments received in response to the Draft EA in preparing a Final Environmental Assessment (Final EA). SEA will issue the Final EA prior to the Board's Oral Argument and Voting Conference, which are currently scheduled for March 22, 1999 and March 29, 1999, respectively. The Board will consider the entire environmental record, including all public comments, the Draft EA, and the Final EA in making its final decision on the proposed Acquisition. The Board plans to issue a final written decision on May 25, 1999.

All interested agencies, organizations, and individuals can comment on the Draft EA by submitting written comments (include an original plus 10 copies) to the address listed below by December 11, 1998, the close of the public comment period.

**Office of the Secretary
Case Control Unit
Finance Docket No. 33156
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001**

**Attn:
Elsie K. Kaiser
Environmental Project Director
Environmental Filing**

If you have further questions regarding the Draft EA, or the environmental review process, you may call SEA's toll-free Environmental Hotline at 1-888-669-1997 (TDD for the hearing impaired: (202) 565-1695). Information about the proposed CN/IC Acquisition and the Draft EA can also be found at SEA's website for the proposed CN/IC Acquisition at <http://www.cnicacquisition.com>.

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Cover Letter to Libraries

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SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Section of Environmental Analysis

November 9, 1998

**Re: Railroad Control Application, Finance Docket No. 33556 — Canadian National
— Control — Illinois Central: Availability of Draft Environmental Assessment
for Public Review and Comment**

Dear Reference Librarian:

The enclosed Draft Environmental Assessment (Draft EA), prepared by the Surface Transportation Board's Section of Environmental Analysis (SEA), addresses the potential environmental effects of the proposed Acquisition of Illinois Central Corporation (IC) by Canadian National Railway Company (CN). SEA is asking you to place this information in a reference or other appropriate section of your library to allow for public access and review. Please keep all this material available until July 1, 1999 when the Board's environmental review process should be completed.

This Draft EA discusses potential environmental impacts that could result from the proposed CN/IC Acquisition, and includes SEA's preliminary recommendations for mitigating those potential environmental effects. SEA is encouraging public comment, which it will consider in preparing a Final Environmental Assessment (Final EA). Instructions for submitting comments on the proposed CN/IC Acquisition are contained in Chapter 1 "Introduction and Background" of the Draft EA.

Thank you for your assistance in this matter. Should you have any questions or comments, please call SEA's toll-free Environmental Hotline for this project at 1-888-869-1997.

Sincerely yours,

Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis

Enclosure

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ENVIRONMENTAL JUSTICE OUTREACH PLAN

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Environmental Justice Public Notification Strategy

Following is the Public Outreach Team's general strategy for conducting outreach to communities with minority and low-income populations that could experience environmental impacts as a result of the proposed CN/IC Acquisition, in accordance with draft CEQ guidelines and Executive Order 12898. The goal is to distribute the Draft Environmental Assessment (Draft EA), the Final Environmental Assessment (Final EA), and other notification materials to forums that will effectively reach potentially affected minority and low-income populations, and allow for input.

Step 1. Prepare Informational Materials

Prepare the following materials for distribution:

Fact Sheets—Fact sheets with accompanying cover letters that provide an overview of the proposed CN/IC Acquisition, including information on proposed changes in rail operations, proposed activities, the environmental analysis, general project background, and the environmental review and public comment process. The fact sheets will also include specific instruction on how and when to submit written comments and information about how to contact/access SEA's toll-free environmental hotline and SEA's website for the proposed CN/IC Acquisition.

Newspaper Notices—Prepare written notices for placement in the legal/public notice sections of designated newspapers in communities with minority and low-income

populations that could experience high and adverse environmental impacts. Create notices for Draft EA and Final EA publication. In the Draft EA notice, include a brief description of the project, describe the public comment period, and provide contact information and instructions for submitting comments and requesting information. In the Final EA notice, provide dates of the Board's Oral Arguments and Voting Conference, and provide contact information.

Public Service Announcements—Prepare and issue public service announcements (PSA) to announce the availability of the Draft and Final EA's in communities with minority and low-income populations that could experience high and adverse environmental impacts.

Press Releases—Prepare and issue press releases to major daily newspapers in all counties along the rail line to announce the availability of the Draft and Final EA. This will include counties with communities that have minority and low-income populations that could experience high and adverse environmental impacts.

For all notification pieces, determine if materials need to be translated into a language other than English in order to effectively notify minority and low-income populations potentially affected by the proposed CN/IC Acquisition.

Step 2. Identify Avenues and Disseminate Information

Identify the names and addresses of the following to use in notifying communities with environmental justice populations, and distribute prepared informational materials:

- Local newspapers.
- Local radio stations.
- Community organizations.
- Local government and elected officials.
- Local environmental justice organizations.

Repositories for Draft EA

Libraries—Identify local public libraries in communities with environmental justice populations that could experience high and adverse impacts, and place copies of the Draft EA and Final EA in the reference sections of libraries that are willing to participate.

Step 3. Provide Opportunities for/and Incorporate Public Input

Include contact information about how to submit written comments and request additional information, in informational materials. Log comments received into a central comment tracking database and distribute to appropriate team members for review and to determine follow-up steps. All written public comments submitted during the public comment period will be addressed by topic area in the Final EA.

Include SEA's toll-free environmental hotline number and SEA's CN/IC website address in

informational materials. Log, track and review all inquiries to the hotline or website. Route inquiries to appropriate team members to determine if additional steps are necessary.

APPENDIX O VERIFIED STATEMENTS

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APPENDIX O

VERIFIED STATEMENTS

Canadian National and Illinois Central submitted environmental data as part of their Application to the Surface Transportation Board.¹ To support the results of their analysis, the Applicants included studies by rail authorities, economists, and other experts. Verified Statements from these individuals provided the basis for the conclusions that CN and IC presented in their Application. The following list presents the Verified Statements whose conclusions SEA considered during its independent analysis to reach preliminary determinations regarding the potential environmental effects of the proposed CN/IC Acquisition.

- Verified Statement of George C. Woodward and Michael H. Rogers
- Verified statement of Joseph G.B. Bryan
- Verified Statement of Terry R. McManamen and Thomas F. Utroska
- Verified Statement Richard J. Dixon, James M. Harrell, and Joseph T. Torchia
- Verified Statement Christopher D. Kent and John C. Klick
- Verified Statement of Ami Haasz

¹ "SEA" stands for the Surface Transportation Board's Section of Environmental Analysis. The Surface Transportation Board is hereafter referred to as "the Board." "IC" stands for "Illinois Central Corporation and its subsidiaries" and "CN" stands for "Canadian National Railway Company and its subsidiaries."

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APPENDIX P
VOLUNTARY RAILROAD MITIGATION PLANS

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APPENDIX P VOLUNTARY RAILROAD MITIGATION PLANS

TRANSCAER¹

Canadian National Railway Company (CN) plays a key role in TransCAER, the transportation element of the Community Awareness and Emergency Response program of Responsible Care®.

TransCAER is an information training program for communities through which dangerous goods are transported. As an active supporter of the program, CN participates with the chemical industry in holding information sessions for community leaders on emergency resources and procedures to be taken in the event of an incident involving dangerous goods.

TransCAER works to:

- Encourage partnerships between citizens and industry to develop mutual understanding about the transportation of hazardous materials.
- Help community emergency planning groups identify hazardous materials moving through their communities.
- Provide guidance for local officials to develop/evaluate their community's emergency response program.
- Assist with training and testing for emergency preparedness.

In the past five years, CN has conducted 258 TransCAER workshops in the United States and Canada. These workshops have involved the participation of almost 10,000 attendees.

¹ <http://www.cn.ca/cn/english/about/safety/transcaer/index.html>

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APPENDIX Q
RELEVANT BOARD DECISIONS

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APPENDIX Q RELEVANT BOARD DECISIONS

This appendix includes copies of the Surface Transportation Board's (the Board's) decisions relevant to the proposed CN/IC Acquisition. The following list (presented in chronological order) identifies and briefly describes the Board's decisions. Copies of the Board's decisions follow in the listed order.

- **Decision No. 1. Decided: February 25, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.**

Description: The Board granted the Applicants' request for a Protective Order (CN/IC-2) to protect confidential information the Applicants and their affiliates must exchange to prepare and present their Application for the Board's analysis.

- **Decision No. 2; Notice of prefiling notification. March 13, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.**

Description: In this decision, the Board determined this to be a major transaction.

- **Decision No. 3. May 19, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.**

Description: The Board denied a petition for reconsideration of its requirement that the Applicants submit copies of all textual materials on diskettes (disks) or compact discs (CDs) but will allow the Applicants to seek individual waivers of the disk filing requirement.

- **Decision No. 4. June 22, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.**

Description: In this decision, the Board addressed the Applicants' request for waiver or clarification of certain of the Board's procedural requirements, including the geographic scope of SEA's review, definitions of "Applicant" and their carriers, data and other submissions information, and the schedule for SEA's review of construction projects.

- **Decision No. 5. June 23, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.**

Description: In this decision, the Board invited interested persons to comment on the Applicants' proposed procedural schedule for the proposed CN/IC Acquisition.

- **Decision No. 6. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.**

Description: In this decision, the Board accepted the primary application (and related filing), required the Applicants to submit a Safety Integration Plan, and issued a final procedural schedule.

- **Exemption—Geismar Industrial Area Near Gonzales And Sorrento, La. Decided: August 20, 1998. Surface Transportation Board Decision, STB Finance Docket No. 32530: Kansas City Southern Railway Company—Construction and Operation**

Description: In this decision, the Board orders the Geismar proceeding held in abeyance until issuance of a final written decision in the pending CN/IC merger.

- **Decision No. 7. September 17, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.**

Description: In this decision, the Board granted the petitions for waiver or clarification of anticipated inconsistent or responsive applications by BNSF, CP, CSX, and IORY and accepted the amended petition for waiver or clarification filed by CSX allowing consideration of its anticipated responsive application as a minor transaction.

- **Decision No. 8. September 17, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556:** Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.

Description: In this decision, the Board denied NS' request for waiver or clarification of its description of anticipated relief and response.

- **Decision No. 9. Decided: September 28, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556:** Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.

Description: In this decision, the Board provides a service list compiled from the notices of intent to participate submitted in accordance with the procedural schedule.

- **Decision No. 10. Decided: October 1, 1998 Surface Transportation Board Decision, STB Finance Docket No. 33556:** Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company..

Description: In this decision, the Board addresses Decision No. 7 request for a waiver or clarification with respect to anticipated responsive applications by, among other rail carriers, CSX Corporation and CSX Transportation, Inc. (CSXT) (collectively CSX).

- **Decision No. 11. Decided: October 2, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556:** Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company.

Description: In this decision, the Board addresses the petition for modification of the procedural schedule, filed September 28, 1998.

- **Decision No. 12. Decided: October 15, 1998. Surface Transportation Board Decision, STB Finance Docket No. 33556: Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control —Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, And Cedar River Railroad Company.**

Description: In this decision, the Board considers the CN/IC-27 appeal, filed October 5, 1998; by applicants and KCS; the CPR-10 reply, filed October 8, 1998, by CPR and NSR; the RUB-12 reply, filed October 8, 1998, by Rubicon and Uniroyal; and the UP-7 reply, filed October 9, 1998, by UP.

DECISION NO. 1

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28962
SEC

SERVICE DATE - FEBRUARY 26, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—
ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY,
CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY, AND
CEDAR RIVER RAILROAD COMPANY

Decision No. 1

Decided: February 25, 1998

On February 12, 1998, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),¹ Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC),² filed a notice of intent (CN/IC-1) to file a joint application seeking Surface Transportation Board (Board) authority under 49 U.S.C. 11323-25 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc. (Merger Sub), of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

In a petition filed February 17, 1998, Applicants request that the Board enter a Protective Order (CN/IC-2). Applicants explain that a Protective Order is necessary for two reasons. First, they maintain that, in order to prepare the application, personnel of the Applicants and their affiliates must exchange information, including shipper-specific material such as traffic data and tapes, and the proposed Protective Order is necessary to protect confidential information and to facilitate compliance with 49 U.S.C. 11323 and 11904 and other relevant provisions of the ICC Termination Act of 1995. According to the Applicants, the proposed order will allow Applicants and their affiliates to prepare and present all relevant materials that may be required for the Board's analysis of the application. Second, the Applicants maintain that the proposed Protective Order will facilitate any necessary discovery at subsequent stages of the proceeding by protecting the confidentiality of materials reflecting the terms of contracts, shipper-specific traffic data, and

¹ CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

² IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as Applicants.

other confidential and/or proprietary information in the event that such materials are sought or produced.

The request is similar to those for protective orders in other control cases.³ Good cause exists to grant the petition. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive injury to the parties. Issuance of the requested Protective Order ensures that such information and data produced by any party in response to a discovery request or otherwise will be used solely for purposes of this proceeding and not for any other business or commercial use. The requested Protective Order will facilitate the prompt and efficient resolution of this proceeding.

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

It is ordered:

1. The petition for a protective order is granted and the parties to this proceeding must comply with the Protective Order in the Appendix.⁴
2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

³ See, e.g., 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, Decision No. 1 (STB served Apr. 16, 1997); Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company (UP/SP), Finance Docket No. 32760, Decision No. 2 (ICC served Sept. 1, 1995).

⁴ This decision protects the information, materials, and data set forth in the attached Appendix whether contained on printed material or in computer-derived memory devices (i.e., floppy diskettes).

APPENDIXPROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "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.

(c) "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.

(d) "Proceedings" means those before the Surface Transportation Board ("Board") concerning the application in STB Finance Docket No. 33556, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 33556 or from any related proceedings before the Board.

2. Personnel of Canadian National Railway Company ("CN"), Grand Trunk Western Railroad Incorporated ("GTW"), and their affiliates (collectively, "CN"), and of Illinois Central Corporation ("IC Corp."), Illinois Central Railroad Company ("ICR"), and their affiliates (collectively, "IC"), including outside consultants and attorneys for CN or IC ("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 their control application in the proceedings is approved.

3. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of CN and IC 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 ICCTA Termination Act of 1995 (ICCTA).

4. If the control 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, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents.

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 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 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 challenge(s).

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, discovery request or response, or other document submitted 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. All pleadings and other documents so submitted 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 paragraphs 1, 2, 5, or 6 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 ICCTA.

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. 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.

Exhibit A

UNDERTAKING -- CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served

on February 26, 1998, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 33556, 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. 33556, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 33556 and/or with any related 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.

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 February 26, 1998, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 33556, 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. 33556, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with STB Finance Docket No. 33556 and/or with any related 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 assure 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

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DECISION NO. 2

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28939
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SERVICE DATE - MARCH 13, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

AGENCY: Surface Transportation Board.

ACTION: Decision No. 2; Notice of prefiling notification.

SUMMARY: Pursuant to 49 CFR 1180.4(b), Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),¹ Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC)² have notified the Surface Transportation Board (Board) of their intent to file an application seeking authority under 49 U.S.C. 11323-25 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc. (Merger Sub), of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

The Board finds this to be a major transaction as defined in 49 CFR part 1180.

ADDRESSES: An original and 25 copies of all documents must refer to STB Finance Docket No. 33556 and must be sent to the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN: STB Finance Docket No. 33556, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2514; FAX: (202) 219-3289] and to each of Applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC

¹ CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

² IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as Applicants.

20036-1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: In the notice of intent (CN/IC-1) filed February 12, 1998, Applicants state that, on February 10, 1998, CNR, Merger Sub, and IC Corp. entered into an Agreement and Plan of Merger under which Merger Sub will acquire up to 75% of the common stock of IC Corp. in a cash tender offer, which was to begin on or about February 13, 1998. That stock, and any other IC Corp. stock acquired by CN, will be placed in a voting trust pending review of the merger by the Board. Applicants further state that, after consummation of the tender offer and requisite approval by the shareholders of IC Corp., Merger Sub will merge with and into IC Corp., with IC Corp. as the surviving corporation. As a result of that merger, all independent shareholders of IC Corp. will receive either CNR stock or a combination of CNR stock and cash in exchange for their stock in IC Corp. Upon consummation of the merger, the stock of Merger Sub held by CNR will become the sole issued and outstanding stock of IC Corp., and CNR will place that stock in the independent voting trust pending review and approval of the control transaction by the Board. If and when the Board takes final and favorable action, the voting trust will be dissolved, and CNR will assume control of IC Corp. and, through it, of CCP, CRRC, and their railroad affiliates.

Applicants state that they will use the year 1996 as the base year for purposes of their impact analysis to be filed in the application, and that they anticipate filing their application on or before June 12, 1998.

The Board finds that this is a major transaction, as defined at 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. CNR, through its wholly owned subsidiary GTC, presently controls GTW, a Class I railroad, and, under the proposed transaction, CNR proposes to acquire common control of ICR, also a Class I railroad. The application must conform to the regulations set forth at 49 CFR part 1180 and must contain all information required therein for major transactions, except as modified by any advance waiver.³ The carriers are also required to submit maps with overlays that show their existing routes and those of their competitors.

Electronic Submissions. In addition to submitting an original and 25 copies of all paper documents filed with the Board, the parties shall also submit, on diskettes or compact discs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy diskettes or compact discs. Textual materials must be in, or convertible by and into, WordPerfect

³ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, requires that we consider the effect of the proposed transaction "on competition among rail carriers in the affected region or in the national rail system." 49 U.S.C. 11324(b)(5). Applicants are reminded to include analysis on both elements of this criterion in their competitive analyses.

7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0.

The data contained on the diskettes or compact discs submitted to the Board may be submitted under seal (to the extent that the corresponding paper copies are submitted under seal), and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data is necessary for efficient review of these materials by the Board and its staff.

The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).⁴

Selection of Administrative Law Judge. The Board assigns and authorizes Administrative Law Judge David Harfeld to entertain and rule upon all disputes concerning discovery in this proceeding.

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

It is ordered:

1. The parties shall submit all pleadings both in the required paper form and also as computer data contained on diskettes or compact discs.
2. This proceeding is assigned to Administrative Law Judge David Harfeld for handling of all discovery matters and the initial resolution of all discovery disputes.
3. In addition to filing pleadings with the Board and with Applicants' representatives, parties must send a copy of all filings and documents to Administrative Law Judge David Harfeld.
4. Administrative Law Judge David Harfeld shall be added to the service list in this proceeding and a copy of this decision shall be served on Administrative Law Judge Harfeld.
5. This decision is effective on the service date.

⁴ A copy of each diskette or compact disc submitted to the Board should be provided to any other party upon request.

Decided: March 6, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

DECISION NO. 3

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29086
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SERVICE DATE - MAY 19, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556¹

**CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY**

(Decision No. 3)

STB Finance Docket No. 32760 (Sub-No. 26)

**UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY -- CONTROL AND MERGER --
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILWAY COMPANY**

[HOUSTON/GULF COAST OVERSIGHT]

(Decision No. 3)

AGENCY: Surface Transportation Board.

ACTION: Decision No. 3 in STB Finance Docket No. 32760 (Sub-No. 26) and Decision No. 3 in STB Finance Docket No. 33556; Denial of general waiver.

SUMMARY: The Surface Transportation Board (Board) is denying petitions for reconsideration in these proceedings of the requirement that parties submit copies of all textual materials on diskettes (disks) or compact discs (CDs). Parties may, however, seek individual waivers of the disk filing requirement.

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience only. In addition, this oversight matter was recently assigned the Sub-No. 26 docket number and a new case title.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: On March 26, 1998, Joseph C. Szabo, for and on behalf of the United Transportation Union - Illinois Legislative Board (UTU-IL), filed a petition for reconsideration of Decision No. 2 in the STB Finance Docket No. 33556 proceeding served and published in the Federal Register on March 13, 1998 (63 FR 12574).² On April 20, 1998, UTU Committees³ filed a petition for reconsideration of Decision No. 1 in the STB Finance Docket No. 32760 (Sub-No. 26) proceeding (formerly Decision No. 12 in STB Finance Docket No. 32760 (Sub-No. 21)), which was served on March 31, 1998, and published in the Federal Register on April 3, 1998 (63 FR 15628).⁴ The petitions are nearly identical and will be considered together. UTU Committees seek reconsideration of the requirement in these proceedings that all parties submit copies of their textual materials on 3.5 inch IBM-compatible

² In that decision the Board announced, *inter alia*, that, pursuant to 49 CFR 1180.4(b), Canadian National Railway Company (CNR), Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (GTW), Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company (collectively, applicants) had notified us of their intent to file an application seeking authority under 49 U.S.C. 11323-25 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. The Board found this to be a major transaction as defined in 49 CFR part 1180. —

³ In what is now STB Finance Docket No. 32760 (Sub-No. 26), the petition for reconsideration was filed by UTU-IL, and by United Transportation Union-General Committee of Adjustment (GO-386), United Transportation Union-General Committee of Adjustment (GO-401), and United Transportation Union-General Committee of Adjustment (ALS). We will refer to the petitioners in both proceedings collectively as UTU Committees.

⁴ In that decision, the Board instituted a proceeding as part of the 5-year oversight condition that it imposed in Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (UP/SP Merger), Decision No. 44 (STB served Aug. 12, 1996), to examine additional remedial conditions to the UP/SP merger as they pertain to rail service in the Houston, Texas/Gulf Coast region.

disks or CDs.⁵ Applicants in STB Finance Docket No. 33556 filed a reply opposing the relief sought by UTU Committees.

We stated in Decision No. 2 and Decision No. 1 that the submission of computer data on disks and CDs was needed for the efficient review of filings by the Board and our staff. We found that the disk/CD requirement superseded for these proceedings the otherwise applicable electronic filing requirements in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527 (STB served Oct. 1, 1996 and Nov. 15, 1996), aff'd sub nom. United Transp. Union - Ill. Legis. Bd. v. STB et al., 132 F.3d 71 (D.C. Cir. 1998) (Ex Parte No. 527) and codified at 49 CFR 1104.3(a). Those rules require parties to submit computer disks for pleadings of 20 or more pages and for spreadsheets.⁶

UTU Committees contend that mandating that all textual material be filed on disks constitutes material error. They argue that, by superseding the applicable disk rule at 49 CFR 1104.3(a), our disk/CD requirement in STB Finance Docket Nos. 32760 (Sub-No. 26) and 33556 precludes meaningful participation in those cases by railroad employees as well as the general public. They allege that many railway employees do not have access to computers, and they would not be able to provide copies of disks to the many parties likely to participate in the

⁵ In Decision No. 2 at 3 and Decision No. 1 at 3, we directed that:

(i) In addition to submitting an original and 25 copies of all paper documents filed with the Board, the parties shall also submit, on diskettes or compact discs, copies of all textual materials, . . . Data must be submitted on 3.5 inch IBM-compatible floppy diskettes or compact discs.

Parties were also directed to submit "electronic workpapers, data bases, and spreadsheets" on disks or CDs. We also stated that a copy of each disk or CD should be given to any other party upon request.

⁶ Section 1104.3 reads in relevant part:

(a) * * * In addition to the paper copies required to be filed with the Board, 3 copies of:

(1) Textual submissions of 20 or more pages; and

(2) All electronic spreadsheets should be submitted on 3.5 inch, IBM compatible formatted diskettes or QIC-80 tapes. Textual materials must be in WordPerfect 5.1 format, and electronic spreadsheets must be in LOTUS 1-2-3 release 5 or earlier format. One copy of each such computer diskette or tape submitted to the Board should, if possible, be provided to any other party requesting a copy.

proceeding.⁷ They argue, moreover, that the burdens on local labor units will prevent them from actively participating, which, they assert, would be a denial of due process.

UTU Committees also claim that the requirements of Decision No. 2 and Decision No. 1 are inconsistent with the Ex Parte No. 527 procedures because disks will contain more rather than less information than the paper filings, and they are required for all filings, not just lengthy ones. They also contend that there is no waiver provision for the Decision No. 2 and Decision No. 1 disk/CD requirement. UTU Committees ask that we reconsider the mandatory disk requirement and restore application of the section 1104.3 rule.⁸

Finally, UTU Committees argue that the Board may have always intended that there be an absolute disk requirement, and "the 20-page rule may have been merely an interim scheme to promote such a result." It also claims that the real reason for the rule is to inhibit participation by employees and "to carry favor with carriers. . . ."

In response to UTU Committee's petition, applicants in STB Finance Docket No. 33556 assert that the effort and expense needed to create a disk is minimal whether the submission is lengthy or less than 20 pages. Further, they assert that where a party does not have access to a word processor, it should file an individual request for a waiver.

DISCUSSION AND CONCLUSIONS

We will deny the petitions for reconsideration, but we will permit individual parties to seek a waiver of the disk/CD requirement. With this safeguard, we believe that the need to efficiently and expeditiously analyze the anticipated large number of filings outweighs the burden on parties of filing disks.

While the disk/CD requirement in these proceedings broadens the regulation issued in Ex Parte No. 527, we believe that its purpose and its procedures are compatible with the 20-page rule. The Board issued the 20-page rule to assist the agency in its "task of reviewing and analyzing voluminous records," October 1 decision at 2-3. In the context of that rule, "voluminous" referred to the length of the filing. Nevertheless, in situations such as merger proceedings where the number of pleadings can also be described as voluminous and where decisions must be issued promptly, we believe that imposing the disk requirement for all paper filings will enable the Board and our staff to efficiently review case filings.⁹ The 20-page rule is

⁷ We note that, under our Decision No. 2 and Decision No. 1 procedures, electronic copies are provided only upon request of another party, and under 49 CFR 1104.3, the requested disks are only provided to other parties "if possible."

⁸ UTU Committees also request that, if the waiver provision is available, that the Board waive the disk/CD requirement and reinstate the 20-page disk rule.

⁹ While STB Finance Docket No. 32760 (Sub-No. 26) is not a merger proceeding but a merger
(continued...)

not an "interim scheme," but the STB Finance Docket No. 33556 merger and the UP/SP Houston/Gulf Coast Oversight by their natures have made us more dependent on electronic media.¹⁰ The use of disk/CDs in STB Finance Docket No. 33556 will help us reach a decision on the merits within the applicable statutory deadlines (see 49 U.S.C. 11325), and, in STB Finance Docket No. 32760 (Sub-No. 26), their use will assist us in issuing a decision as soon as possible after the record closes. Utilizing disks is consistent with the practice we have followed in other recent mergers where we "encouraged" or "requested" the filing of disks.¹¹

We also believe that submitting a disk does not constitute a hardship, unless the party does not have access to a word processor or there is some other reason why filing would be difficult.¹² In those situations, consistent with Ex Parte No. 527, such parties may seek a waiver of the disk filing requirement.¹³ UTU Committees contend that, while under 49 CFR 1110.9, any person may seek a waiver of a rule, the disk/CD requirement in this proceeding is not a "rule" and thus a waiver is not available. We note, however, that, under 49 CFR 1100.3, our rules are to be liberally construed "to secure just, speedy, and inexpensive determination of the issues

⁹ (...continued)

oversight case, we still anticipate a large number of filings, and we must issue a decision in as timely manner as possible.

¹⁰ For these reasons, the assertion that the disk requirement was intended to prevent participation by employees or to win the favor of railroads is baseless.

¹¹ See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (STB served Sept. 1, 1995); 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 30, 1997); and Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (STB served Aug. 5, 1994).

¹² In STB Finance Docket No. 32760 (Sub-No. 26), UTU Committees claim that not only railroad employees, but "other public parties" would be harmed by requiring disks. They contend that a majority of such parties did not file disks in response to the decision in Review of Rail Access and Competition Issues, STB Ex Parte No. 575 (STB served Mar. 20, 1998). We believe that the disk filing requirement is reasonable. No other party has objected to it. Moreover, as discussed *infra*, the ability to file a waiver request should ameliorate any harm.

¹³ The Court in Ex Parte No. 527 stated that "UTU complains that the waiver rule denies due process to the union and to rail employees who do not have the necessary computer equipment or expertise to submit a disk We do not doubt, therefore, that the availability of the waiver provision adequately protects a party for whom compliance with the rule would be burdensome." 132 F.3d at 75.

presented." Accordingly, any person may seek a waiver of the disk/CD requirement in these proceedings. Parties should file the waiver request with the paper version of its filing, and we can rule upon the waiver even after the filing date.¹⁴

Finally, we are not sure how UTU Committees' argument that disks can contain more information than paper filings relates to the issue of the hardship of filing disks. In any event, in Decisions No. 1 and 2, we required that "copies of all textual materials" are to be submitted on disks. These disks are the electronic version or counterpart of the textual paper filing. The paper copy remains the official record. Thus, for the reasons discussed above, we are denying the petitions for reconsideration.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

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

It is ordered:

1. UTU Committees' petitions for reconsideration are denied. Parties may individually seek a waiver from the disk/CD requirement.

¹⁴ As noted, UTU Committees indicate that, if the waiver provision is available, it seeks to have us waive the disk/CD requirement. We are not sure whether this request is being made on behalf of UTU Committees, local units, or individual railroad employees, or some combination of the above. UTU Committees maintain that in many cases railway employees lack access to computers. In those instances where this is true, there would appear to be valid grounds for a waiver, but each situation is best addressed on its own merits.

2. This decision is effective on the service date.

Decided: May 14, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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DECISION NO. 4

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SERVICE DATE - LATE RELEASE JUNE 23, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

Decision No. 4

Decided: June 22, 1998

On February 12, 1998, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),¹ and Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC),² filed a notice of intent (CN/IC-1)³ to file a joint application seeking Surface Transportation Board (Board) authority under 49 U.S.C. 11321-26 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc. (Merger Sub), of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

Prior Decisions. In Decision No. 1 (served February 26, 1998), in order to facilitate the prompt and efficient resolution of this proceeding, the parties to this proceeding were directed to comply with the protective order attached to that decision as an Appendix.

In Decision No. 2 (served March 13, 1998, and published that day in the Federal Register at 63 FR 12574), we found that the transaction contemplated by applicants is a major transaction, as that term is defined at 49 CFR 1180.2(a); we assigned the proceeding to Administrative Law

¹ CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

² IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

³ CN/IC-1 reflected applicants' expectation that they would file the Primary Application on or before June 12, 1998. In view of the need to take account of subsequent developments, applicants state that they now expect to file in early July.

Judge David Harfeld for handling of all discovery matters and the initial resolution of discovery disputes; and we advised the parties that they will be required to submit all pleadings both in the required paper form and also as computer data contained on diskettes (disks) or compact discs (CDs).

In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the Federal Register at 63 FR 28442-444), we denied the petition for reconsideration of Decision No. 2, filed by the United Transportation Union - Illinois Legislative Board, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

This Decision. We address in this decision the CN/IC-4 petition, filed May 20, 1998, by applicants, wherein applicants, pursuant to 49 CFR 1180.4(f), seek waiver or clarification of certain requirements of the Board's Railroad Consolidation Procedures at 49 CFR part 1180, subpart A, and of certain other regulations governing filings related to the Primary Application.

On May 20, 1998, applicants filed a proposed procedural schedule (CN/IC-5), which will be addressed in a separate decision.

DISCUSSION AND CONCLUSIONS

EFFECTS OUTSIDE UNITED STATES. Applicants request that the Board waive or clarify its regulations to allow the application to exclude effects of the transaction that would take place entirely outside the United States. Applicants state that, although CN is primarily a Canadian rail carrier, its proposed acquisition of control of IC is subject to the jurisdiction of the Board under 49 U.S.C. 11321-26 because both CN and IC operate in the United States and are "rail carriers providing transportation subject to the jurisdiction of the Board under [the ICC Termination Act of 1995 (ICTA)]." See 49 U.S.C. 11323(a). Applicants further note that, as set out in 49 U.S.C. 11324(c), under the public interest standard by which the Board must evaluate the proposed CN/IC transaction, the Board may consider certain matters that affect both sides of the international border (for example, the financial strength of the combined system and improved service on traffic movements between the United States and Canada). Applicants state that the regulatory focus of that inquiry will be on how those effects bear on shippers and communities in the United States and on the United States rail transportation system.⁴ Applicants further state that the statute constitutes neither a mandate nor authority for the Board to inquire generally into CN's operations outside the United States, and that requiring them in this case to include detailed information about the effects of the transaction outside the United States could impose significant burdens on them in preparing the application, without materially

⁴ Applicants indicate that the application will include system-wide effects of the transaction and will, to the extent necessary or helpful to explain effects within or on traffic to and from the United States, describe effects of the transaction occurring outside the United States.

assisting the Board in applying the public interest standard.⁵ Applicants therefore request that the Board waive or clarify its regulations to allow the application to exclude effects of the transaction that would take place entirely outside the United States. We find applicants' request reasonable and will therefore grant the request to allow the application to exclude effects of the transaction that would take place entirely outside the United States.

DEFINITION OF "APPLICANT." The Railroad Consolidation Procedures define "applicant" as one of "[t]he parties initiating a transaction." 49 CFR 1180.3(a). Applicants seek waiver or clarification that, with respect to the Primary Application, the term "applicant" includes only CNR, UTC, GTW, IC Corp., ICR, CCP, and CRRC, and does not include Holdings or Merger Sub. Applicants state that Holdings is a wholly owned subsidiary of IC Corp., and that it owns 100% of the stock of CCP and CRRC but does not conduct any operations in its own name. Applicants further state that Merger Sub is an indirect, wholly owned subsidiary of CNR whose sole function is to effectuate the proposed acquisition of IC Corp. stock, and that Merger Sub's separate corporate existence will end when it merges with and into IC Corp. We agree that there is no need for Holdings or Merger Sub to be a formal applicant. These entities currently have no rail activities or rail operations, nor will any of such entities have any such activities or operations prior to such time, if ever, as we approve the primary application; rather, these entities have been, or will be, created simply to effectuate the control transaction. We will therefore grant the waiver or clarification sought by applicants.⁶

⁵ In support of their request, applicants noted that, in this regard, it is not necessary for the Board to have before it descriptions or analyses of the transaction's impact on: Canadian markets (see 49 CFR 1180.6(a)(2)(i), 1180.7); on employees located outside the United States (1180.6(a)(2)(v)); on yard activity in Canada (1180.8(a)(1)); or on passenger and commuter trains operating in Canada (1180.8(a)(2)). Applicants further noted that the Interstate Commerce Commission (ICC), interpreting the predecessor to 49 U.S.C. 11326(a), demonstrated this point in a decision regarding impacts on employees outside the United States. The ICC held that it was neither required nor permitted to impose conditions for the protection or the interests of employees outside the United States who are affected by a transaction submitted for approval under the predecessor to 49 U.S.C. 11323. See Great Northern Pac.--Merger--Great Northern Ry., 6 I.C.C.2d 919, 929-30 (1990).

⁶ Similar relief has been granted in prior cases. See 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, Decision No. 7 (STB served May 30, 1997) (CSX/NS/CR No. 7), slip op. at 5; Norfolk Southern Corporation and Norfolk Southern Railway Company--Control--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33286, Decision No. 5 (STB served Feb. 21, 1997) (NS/CRC No. 5), slip op. at 4; CSX Corporation and CSX Transportation, Inc.--Control and Merger--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33220, Decision No. 7 (STB served Jan. 24, 1997) (CSX/CRC No. 7), slip op. at 3; Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation

(continued...)

DEFINITION OF "APPLICANT CARRIERS." The Railroad Consolidation Procedures define "applicant carriers" as "[a]pplicant, all carriers related to the applicant, and all other carriers involved in the transaction." 49 CFR 1180.3(b) (italics in original). Applicants seek waiver or clarification with respect to the Primary Application, to limit the definition of "applicant carriers" to GTW, ICR, CCP, CRRC, and any other Board-regulated rail carriers in which either CN or IC now hold an interest greater than 50%. CN/IC-4 at 7-8. The requested waiver or clarification would exclude from the definition of "applicant carriers" any rail carrier subsidiaries not subject to the Board's jurisdiction,⁷ and any in which CN or IC have interests of 50% or less. Applicants state that CN and IC have less-than-majority interests in a number of rail carriers, all of which operate independently of CN and IC and maintain their own records (e.g., terminal, switching, or short-line railroads owned jointly with other railroads).⁸ Applicants state that, because these companies are under separate management from CN and IC, applicants do not anticipate any change in the management or operation of these companies as a result of the proposed transaction. Applicants further state that requiring the Primary Application to include information on these entities as "applicant carriers" would impose significant burdens on them without enhancing the Board's ability to evaluate the control transaction proposed in the Primary Application.⁹

We will grant the waiver or clarification sought by applicants, by confirming that, with respect to the Primary Application, the term "applicant carriers" refers to GTW, ICR, CCP,

⁶(...continued)

Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 3 (ICC served Sept. 5, 1995) (UP/SP No. 3), slip op. at 1-2; Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Chicago and North Western Holdings Corp. and Chicago and North Western Transportation Company, Finance Docket No. 32133, Decision No. 3 (ICC served Oct. 26, 1992) (UP/CNW No. 3), slip op. at 1-2.

⁷ Applicants indicate that this exclusion has reference to rail carrier subsidiaries located entirely in foreign countries.

⁸ Applicants indicate that all such carriers will be identified for the Board either in the corporate chart required by section 1180.6(b)(6) (Exhibit 11 to the Primary Application), or in the statement of direct or indirect intercorporate or financial relationships required by section 1180.6(b)(8).

⁹ Applicants state that the requested waiver or clarification would also exclude any motor carrier and water carrier affiliates from the definition of "applicant carrier," consistent with past practice by the Board and the ICC. See CSX/NS/CR No. 7, slip op. at 6 & n.16; NS/CRC No. 5, slip op. at 5-6 & n.13; CSX/CRS No. 7, slip op. at 4-5 & n.11; UP/SP No. 3, slip op. at 3-4; Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decision No. 3 (ICC served Oct. 3, 1994) (BN/SF No. 3), slip op. at 3; UP/CNW No. 3, slip op. at 2-3. There are, however, no such motor carrier or water carrier affiliates subject to the Board's jurisdiction.

CRRC, and any other Board-regulated rail carriers in which either CN or IC now holds, directly or indirectly, a majority interest. We agree with applicants that the burdens of including financial and other data with respect to carriers other than those described in the preceding sentence would be unjustified because these data would not contribute to our evaluation of the Primary Application. We have no need for these data with respect to rail carrier subsidiaries not subject to our jurisdiction.¹⁰ We similarly have no need for these data with respect to rail carrier subsidiaries in which neither CN nor IC has (directly or indirectly) a majority interest.¹¹ Furthermore, we have no need for these data with respect to carrier subsidiaries other than rail carriers because, under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), regulatory approval is no longer required for common control of rail carriers together with motor and water carriers.¹²

We expect, however, that all such excluded carriers will be identified either in the corporate chart required by 49 CFR 1180.6(b)(6) or in the statement of direct or indirect intercorporate or financial relationships required by 49 CFR 1180.6(b)(8). We also expect that applicants will fully describe, in the Primary Application, the effects, if any, of the Primary Application on the operations of the excluded carriers. We further expect that applicants will file, along with the primary application, either an application for approval or a petition for exemption with respect to control by CN or IC of any Board-regulated rail carrier in which CN or IC, respectively, does not now hold, directly or indirectly, a majority interest but will hold such an interest if the Primary Application is approved and the merger is consummated.

SUBMISSION OF CONSOLIDATED DATA. Applicants request clarification that information and data pertaining to applicant carriers that are required by the Board's Railroad Consolidation Procedures may be submitted on a consolidated basis (i.e., consolidated information regarding CNR and IC Corp., as appropriate, with their respective majority-owned subsidiaries). Applicants further state: that information and data pertaining to CNR and IC Corp., and their respective majority-owned subsidiaries, would be submitted on a consolidated basis, and separate information is not necessary for the Board's consideration and disposition of the Primary Application; that it will be necessary to submit evidence on a consolidated basis in

¹⁰ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 6; NS/CRC No. 5, slip op. at 5; CSX/CRC No. 7, slip op. at 4.

¹¹ Similar relief with respect to rail carrier subsidiaries in which no applicant carrier had a majority interest has been granted in prior cases, even with respect to those subsidiaries in which the applicant carriers together held a combined interest greater than 50%. See CSX/NS/CR No. 7, slip op. at 5-6; NS/CRC No. 5, slip op. at 5 & n.12; CSX/CRC No. 7, slip op. at 4 n.10; UP/SP No. 3, slip op. at 2-3; UP/CNW No. 3, slip op. at 2; BN/SF No. 3, slip op. at 2-3.

¹² Similar relief was granted even in cases decided prior to the enactment of the ICCTA, during the time when regulatory approval was required for common control of rail carriers together with motor and water carriers. See CSX/NS/CR No. 7, slip op. at 6 & n.16; UP/SP No. 3, slip op. at 3-4; BN/SF No. 3, slip op. at 3; UP/CNW No. 3, slip op. at 2-3. See also NS/CRC No. 5, slip op. at 6 n.13; CSX/CRC No. 7, slip op. at 5 n.11.

order for the Board to be able to evaluate the benefit of the transaction and the financial position of the combined rail system that will result from the transaction; and that, because they do not maintain required information on a subsidiary-by-subsidiary basis or in a form that aggregates information on applicant carriers separate from information on noncarrier affiliates, requiring them to create such information would impose a significant burden without providing significant assistance to the Board. We agree that separate information regarding majority-owned subsidiaries is not necessary for our consideration and disposition of the Primary Application, and that use of consolidated information and data will avoid the unnecessary burden and redundancy of preparing and providing the information and data on a carrier-by-carrier basis. We will therefore permit the filing of information and data pertaining to each of the applicant carriers (including their majority-owned subsidiaries) on a consolidated basis.¹³

CLASSIFICATION AND FORMAT OF EMPLOYEE IMPACT DATA. Our regulations at 49 CFR 1180.6(a)(2)(v) require a discussion of the "effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached." Because the regulations do not specify the "class or craft" to be used, applicants seek, with respect to the Primary Application, confirmation that they may use the system of classification shown in attached Appendix A. Applicants also seek confirmation that, in presenting the required employee impact data, that they may use the format presented in attached Appendix B. CN/IC-4 at 10. Applicants' proposal is adequate to provide the information we need, and we will therefore approve it.¹⁴

FORM 10-K'S, FORM S-14'S, AND ANNUAL REPORTS. Under our regulations at 49 CFR 1180.6(b)(1), (2), and (4), applicant carriers must submit their most recent Form 10-K and Form S-14 (now S-4) filings with the Securities and Exchange Commission (SEC) as Exhibits 6 and 7, respectively, and they must submit their two most recent annual reports as Exhibit 9. Furthermore, any Form 10-K's, Form S-4's, and annual or quarterly reports to stockholders issued during the pendency of the proceeding must also be submitted to the Board upon their issuance. Applicants request waiver or clarification of these requirements as indicated in the next three paragraphs. CN/IC-4 at 10-12.

1. Applicants request waiver or clarification of 49 CFR 1180.6(b)(1). This section requires the filing of applicant carriers' most recent Form 10-K. This form, however, is not filed by any of the applicant carriers other than ICR. Instead of Form 10-K, CNR files Form 40-F with

¹³ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 7; NS/CRC No. 5, slip op. at 6; CSX/CRC No. 7, slip op. at 5-6; UP/SP No. 3, slip op. at 4; BN/SF No. 3, slip op. at 3-4; UP/CNW No. 3, slip op. at 2.

¹⁴ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 7-8; NS/CRC No. 5, slip op. at 6; CSX/CRC No. 7, slip op. at 6; UP/SP No. 3, slip op. at 4-5; BN/SF No. 3, slip op. at 4; UP/CNW No. 3, slip op. at 3.

the SEC.¹⁵ Applicants therefore seek waiver or clarification to permit them to satisfy this requirement by filing, as part of their application, the most recent Form 40-F for CNR and the most recent 10-K's for IC Corp. and ICR, together with any supplementation required by the regulations. Applicants' request is reasonable, and we will therefore grant it.¹⁶

2. Applicants request waiver of the requirement in 49 CFR 1180.6(b)(2) that applicant carriers file past S-14's. Applicants indicate that neither CNR nor any of its applicant carrier subsidiaries has ever filed a Form S-14 or its replacement, Form S-4. Applicants state that, while ICR filed a Form S-4 in 1996, that filing was not related to any securities related to the transaction to be proposed in the Primary Application, and therefore would be of little or no value to the Board in evaluating the merits of said application. Applicants further add that financial information relevant to this proceeding will be contained in applicants' Schedule 14D-1, including amendments thereto, relating to CN's and Merger Sub's cash tender offer for up to 75% of IC Corp.'s stock and in CNR's Form F-4 (including applicants' joint consent statement/prospectus), which they will file with the SEC in connection with the solicitation of consents by IC Corp. shareholders for the merger of Merger Sub into IC Corp.¹⁷ Applicants state that they propose to file these materials with supplementation as required by the regulations, as part of the Primary Application, rather than any Form S-4's or S-14's that may have been filed in the past. Given the circumstances, we conclude that the requested waiver will not have a significant impact on our review of the proposed transaction. We will therefore grant the requested waiver of 49 CFR 1180.6(b)(2) as respects past Form S-4's and Form S-14's.¹⁸

3. Applicants request waiver of the requirement of 49 CFR 1180.6(b)(4) that the Primary Application include each applicant carrier's two most recent annual reports to stockholders. Applicants note that none of the applicant carriers other than CNR has any public shareholders and none other than CNR prepares an annual report to stockholders. Applicants request that they be allowed to submit the two most recent CNR and IC Corp. annual reports to stockholders, as

¹⁵ Applicants state that, under SEC rules, certain Canadian issuers of securities may use Form 40-F to file reports pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (Exchange Act). 17 CFR 249.240f. Form 10-K is prescribed for reports under those sections of the Exchange Act for which no other form is prescribed. *Id.* 249.310.

¹⁶ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 9-10; NS/CRC No. 5, slip op. at 7; CSX/CRC No. 7, slip op. at 6-7; UP/SP No. 3, slip op. at 5; UP/CNW No. 3, slip op. at 3-4.

¹⁷ Applicants state that CNR is a "foreign private issuer," as defined in SEC rules, and, as such, it is permitted to file Form F-4 in lieu of Form S-4 to register securities issued in connection with certain business transactions. 17 CFR 239.34; cf. *id.* 239.25 (prescribing Form S-4).

¹⁸ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 10; NS/CRC No. 5, slip op. at 7; CSX/CRC No. 7, slip op. at 7; UP/SP No. 3, slip op. at 5; BN/SF No. 3, slip op. at 4-5; UP/CNW No. 3, slip op. at 4.

well as the subsequent annual and quarterly reports to CNR and IC Corp. stockholders required by 49 CFR 1180.6(b)(4). This request is reasonable, and we will therefore grant it.¹⁹

CORPORATE INFORMATION AND REPORTS. The Railroad Consolidation Procedures require applicants to submit information respecting changes in control (Exhibit 8), a corporate chart (Exhibit 11), and certain information respecting intercorporate or financial relationships not disclosed elsewhere in the Primary Application. 49 CFR 1180.6(b)(3), (6), and (8), respectively. Applicants request that we authorize omission or modification of the particular requirements indicated in the next three paragraphs. CN/IC-4 at 12-14.

1. Section 1180.6(b)(3) requires applicants to list, among other things, any change in officers not indicated on the most recent Form R-1. Applicants note that CNR, ICR, CCP, CRRC, and their majority-owned rail carrier subsidiaries operating in the United States, have a large number of officer positions that could arguably come within the scope of this requirement, and applicants contend that compiling this list would be burdensome and that the list itself would be of little or no value in this proceeding. Applicants therefore request that they be required to list only the principal six officers of CNR, ICR, CCP, CRRC, and their majority-owned rail carrier subsidiaries. We believe that the proposed submissions will provide sufficient information, and we will therefore grant the request.²⁰

2. Section 1180.6(b)(6) requires applicants to submit a corporate chart that includes, for each company identified in the chart, a statement indicating any director or officers which that company has in common with any other company on the chart. Applicants seek a partial waiver or clarification of this requirement. In order to present this information on the corporate chart in a concise and intelligible manner, applicants propose to list only those officers and directors who are either: (1) common to both CNR (including majority-owned subsidiaries) and ICR (including majority-owned subsidiaries); or (2) common to CNR, ICR, or any of their majority-owned subsidiaries and any carrier outside the CN or IC corporate families. This request appears reasonable because our primary interests concern the relationship between the transportation activities of the applicant carriers and our immediate informational needs will be met by the information applicants propose to file. We will therefore permit applicants to indicate common officers or directors as they propose.²¹

¹⁹ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 10; NS/CRC No. 5, slip op. at 7 (although we apparently erred in indicating in that decision that no NS majority-owned carrier subsidiary issues annual reports); CSX/CRC No. 7, slip op. at 7; UP/SP No. 3, slip op. at 6; BN/SF No. 3, slip op. at 4-5; UP/CNW No. 3, slip op. at 4.

²⁰ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 10-11; NS/CRC No. 5, slip op. at 8; CSX/CRC No. 7, slip op. at 8; UP/SP No. 3, slip op. at 6; BN/SF No. 3, slip op. at 5; UP/CNW No. 3, slip op. at 4.

²¹ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 11; NS/CRC No. 5, slip op. at 8; CSX/CRC No. 7, slip op. at 8; UP/SP No. 3, slip op. at 6; BN/SF No. 3, slip op. at 5. (continued...)

3. Section 1180.6(b)(8) requires applicants to disclose intercorporate or financial relationships between applicant carriers or affiliated persons and other carriers or any persons affiliated with them. Applicants request waiver or clarification that this requirement pertains only to significant intercorporate or financial relationships. Applicants propose to describe only those relationships involving ownership by applicants or their affiliates of more than 5% of a non-affiliated carrier's stock, including those relationships in which a group affiliated with applicants owns more than 5% of a non-affiliated carrier's stock. This proposal will not impede our review of the financial and competitive impacts of the Primary Application. Accordingly, we will grant it.²²

CONTROL-RELATED CONSTRUCTION PROJECTS. Applicants state that they may have certain modest control-related construction projects, probably involving the construction of connections, for which they will seek approval or exemption in applications submitted together with the Primary Application. According to applicants, they will be identifying these projects as they progress in their preparation of the application. Section 1150.1(b) requires consultation with the Board's Section of Environmental Analysis (SEA) at least 6 months before the filing of a construction application under 49 U.S.C. 10901, and section 1105.10(a) requires submission of a written notice to SEA at least 6 months before the filing of a construction application if the proposed construction might require preparation of an environmental impact statement (EIS). Applicants note that the Board's predecessor agency recognized that such requirements need not be applied to control-related construction projects.²³

Applicants anticipate that any control-related construction projects for which they will seek approval or exemption in this proceeding will have minor, if any, adverse environmental impacts, and that preparation of an EIS will not be required.²⁴ Applicants state that they have begun the process of consulting with SEA with regard to the Primary Application and all related applications, and that they will advise SEA as soon as they identify specific control-related construction projects and will provide SEA with any required information regarding those projects. Applicants assert that they will identify all such projects by no later than 30 days before

²¹(...continued)

op. at 5; UP/CNW No. 3, slip op. at 4.

²² Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 11; NS/CRC No. 5, slip op. at 8; CSX/CRC No. 7, slip op. at 8; UP/SP No. 3, slip op. at 6; BN/SE No. 3, slip op. at 5; UP/CNW No. 3, slip op. at 4-5.

²³ CN/IC-4 at 15, citing Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Missouri-Kansas-Texas Railroad Company, Finance Docket No. 30800, Decision No. 6 (ICC served Oct. 24, 1986) (UP/MKT No. 6, slip op. at 3).

²⁴ Applicants state that such construction projects may qualify for the class exemption in section 1150.36 for construction of connecting track within existing right-of-way or on railroad property, and in that event, they will file a notice of exemption no later than the date of the Primary Application for any projects qualifying for the class exemption.

the filing of the Primary Application, which will provide at least 1 month in advance of that filing for SEA to begin its environmental analysis of these projects. Applicants originally intended to file an environmental report 30 days after the Primary Application, but after recent consultations with SEA, it was determined that applicants will file an environmental overview with the Primary Application and operating plan. See 49 CFR 1180.6(a)(8) (requirement that applicants submit information and data with respect to environmental matters in accordance with 49 CFR part 1105). Applicants therefore request that we waive or clarify the prefiling notice requirements of 49 CFR 1150.1(b) and 49 CFR 1105.10(a), and find that notice to SEA of control-related construction projects will be satisfactory if provided no later than 30 days prior to the filing of the Primary Application.

In view of applicants' previous consultations with SEA and on the condition that the consultations with SEA continue, waiver of the 6-month time periods required in both 49 CFR 1150.1(b) and 49 CFR 1105.10(a) will be granted.²⁵ However, we emphasize that any speculation regarding the appropriate level of environmental review of any merger-related construction projects is premature at this time. When SEA has obtained and analyzed the relevant information on the individual construction projects, and when it has consulted with other Federal, state, and local agencies, it will determine the type of environmental document that should be prepared.

OPERATING TIMETABLES. We request that applicants submit, with the Primary Application, 10 copies of each of their operating timetables for CNR, ICR, GTW, CCP, and CRRC. This information will facilitate our analysis of a number of aspects relating to this proceeding.²⁶

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

It is ordered:

1. The CN/IC-4 petition for waiver or clarification, and related relief, is granted to the extent set forth in this decision.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

²⁵ Similar relief has been granted in prior cases. See CSX/NS/CR No. 7, slip op. at 18-19; NS/CRC No. 5, slip op. at 9-10; CSX/CRC No. 7, slip op. at 9-10; UP/SP No. 3, slip op. at 7; BN/SE No. 3, slip op. at 6-7.

²⁶ Similar requests have been made in prior cases. See CSX/NS/CR No. 7, slip op. at 23; NS/CRC No. 5, slip op. at 14; CSX/CRC No. 7, slip op. at 14.

STB Finance Docket No. 33556

Vernon A. Williams
Secretary

APPENDIX A

CLASSIFICATION OF JOBS SHOWN IN
LABOR IMPACT DATA, 49 CFR 1180.6(a)(2)(v)

Blacksmiths/Boilermakers

Carmen

Clerks/Communication Workers

Electricians

Engineers

Laborers/Firemen and Oilers

Machinists

Maintenance of Way
(including Track Employees,
Bridge and Building Employees, and
Work Equipment Employees)

Nonagreement

Police

Railway Supervisors

Sheet Metal Workers

Signalmen

Train Dispatchers

Trainmen

Yardmasters

APPENDIX B

EFFECTS ON APPLICANT CARRIERS' EMPLOYEES

49 CFR 1180.6(a)(2)(v)

(Applicant Carrier)

Current Location	Classification	Jobs Transferred to	Jobs Abolished	Jobs Created	Year
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DECISION NO. 5

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SERVICE DATE - LATE RELEASE JUNE 23, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

Decision No. 5

AGENCY: Surface Transportation Board.

ACTION: Decision No. 5 in STB Finance Docket No. 33556; Request for Comments on
Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is inviting comments from interested persons on a proposed procedural schedule for this proceeding. On February 12, 1998, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),¹ and Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC),² filed a notice of intent (CN/IC-1)³ to file a joint application seeking Surface Transportation Board (Board) authority under 49 U.S.C. 11321-26 for the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp. and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.⁴

¹ CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

² IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as Applicants.

³ CN/IC-1 reflected Applicants' expectation that they would file the Primary Application on or before June 12, 1998. In view of the need to take account of subsequent developments, Applicants state that they now expect to file in July.

⁴ In Decision No. 2 (served March 13, 1998, and published that day in the Federal Register at 63 (continued...))

DATES: Written comments on the Board's proposed schedule must be filed with the Board no later than July 16, 1998. Applicants' reply is due by July 27, 1998.

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 33556 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2514; FAX: (202) 219-3289] and to each of Applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036-1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710. Comments should contain the name and address of the commenting party, any recommendations for changes to the attached proposed procedural schedule and support for any such changes.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, the parties shall also submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.⁵

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

⁴(...continued)

FR 12574), we found that the transaction contemplated by Applicants is a major transaction, as that term is defined at 49 CFR 1180.2(a); we assigned the proceeding to Administrative Law Judge David Harfeld for handling of all discovery matters and the initial resolution of discovery disputes; and we advised the parties that they will be required to submit all pleadings both in the required paper form and also as computer data contained on diskettes (disks) or compact discs (CDs).

In Decision No. 4 (simultaneously being served with this decision today), we address Applicants' petition (CN/IC-4) for waiver or clarification of certain filing requirements.

⁵ In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the Federal Register at 63 FR 28442-44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

SUPPLEMENTARY INFORMATION: On May 20, 1998, Applicants filed a petition (CN/IC-5) to establish a proposed procedural schedule⁶ as follows:

APPLICANTS' PROPOSED PROCEDURAL SCHEDULE⁷

- | | |
|---------|--|
| F | Primary application and any related applications filed. |
| F + 30 | Board notice of acceptance of primary application (and any related applications) published in the <u>Federal Register</u> . |
| F + 30 | Environmental Report and Safety Integration Plan due. |
| F + 45 | Notification of intent to participate in proceeding due. Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications. |
| F + 60 | Inconsistent and responsive applications due. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Primary Application due. Comments by U.S. Department of Justice ("DOJ") and U.S. Department of Transportation ("DOT") due. |
| F + 75 | Notice of acceptance (if required) of inconsistent and responsive applications published in the <u>Federal Register</u> . |
| F + 90 | Response to inconsistent and responsive applications due. Response to comments, protests, requested conditions, and other opposition due. Rebuttal in support of primary application and related applications due. |
| F + 105 | Rebuttal in support of inconsistent and responsive applications due. |
| F + 125 | Briefs due, all parties (not to exceed 50 pages). |
| F + 145 | Oral argument. |
| F + 150 | Voting conference (at Board's discretion). |
| F + 180 | Date of service of final decision. |

⁶ Applicants' proposed schedule is similar to the 180-day schedule proposed to the Interstate Commerce Commission by applicants in Finance Docket No. 32549, Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company (BN/SF).

⁷ The term "F" designates the date of filing of the application and "F + n" means "n" days following that date.

The proposed schedule contains substantially shorter time periods than those provided for in the statute at 49 U.S.C. 11325. For instance, pursuant to 49 U.S.C. 11325(b)(1), written comments about an application may be filed with the Board within 45 days after Board notice of acceptance of the primary application (and any related applications) is published in the Federal Register. Applicants propose that comments be filed within 30 days of publication in the Federal Register. The proposed schedule also suggests that inconsistent and responsive applications be filed 30 days following acceptance of the primary application rather than the 90 days noted in the statute.

Comments in opposition to the Applicants' proposed procedural schedule were filed by the Brotherhood of Maintenance of Way Employees (BMWE), on June 2, 1998, and the United Transportation Union (UTU), on June 8, 1998. Both BMWE and UTU state that the proposed schedule is too short and urge the Board to adopt the statutory procedural schedule set forth at 49 U.S.C. 11325(b). Alternatively, UTU urges the Board to adopt a 350-day schedule modeled upon the procedural schedule issued by the Board in 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, Decision No. 6 (STB served May 30, 1997).

We do not at this time see any compelling reason to adopt a 6-month procedural schedule for this proceeding. The statute allows 16 months for the processing of major consolidation proceedings. Under 49 U.S.C. 11325(b)(3), the Board must conclude the evidentiary stage of the proceeding within 13 months of the application's filing date,⁸ and must issue the final decision by the 90th day after the conclusion of the evidentiary stage. We believe that a 10-month procedural schedule would be sufficiently expeditious so as not to delay unnecessarily any benefits that would flow from the proposed integration of the CN and IC systems, while at the same time allowing sufficient time to develop the record upon which the Board's decision would be based. We propose to modify Applicants' proposed procedural schedule so as to conclude the evidentiary stage of this proceeding approximately 8 months after the application is filed, and to issue the final decision approximately 2 months thereafter.

Given the importance of the safe implementation of major rail consolidations, we propose to require Applicants to file Safety Integration Plans on Day (F + 30) as they have proposed. Also, we propose to require inconsistent and responsive applicants to file their Responsive Environmental Reports and Environmental Verified Statements on Day (F + 100), which is 20 days in advance of when inconsistent and responsive applications would be due.

Specifically, as for the remainder of the procedural schedule, we propose to modify Applicants' proposed schedule to allow 30 more days for parties intending to file comments, protests, requests for conditions, and any other opposition evidence and argument, so that these filings would not be due until 90 days after the application is filed [Day (F + 90)]. Comments

⁸ Specifically, the statute requires the completion of the evidentiary stage within 12 months after publication of the Federal Register notice accepting the application. That publication is due no later than 30 days after the application is filed.

from the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) would be due 120 days after the application is filed. Responses to comments, protests, requested conditions, and other opposition (except DOJ and DOT), and also rebuttal in support of the primary application and related applications would be due on Day (F + 120). We propose to keep inconsistent and responsive applications due 120 days after the application is filed [Day (F + 120)] as provided for under 49 U.S.C. 11325(b)(2). Response to comments of DOJ and DOT would be due on Day (F + 150). Descriptions of anticipated inconsistent and responsive applications and petitions for waiver or clarification due with respect to such applications would be due on Day (F + 60) (rather than Day (F + 45)).

In addition, we propose adding 5 days for responses to inconsistent and responsive applications (which would be due Day (F + 155)), and adding 15 days for rebuttals for inconsistent and responsive applications (which would be due Day (F + 185)). Briefs would be due on Day (F + 205), and we are proposing page limitations for briefs for all parties to promote useful, focused filings, with Applicants permitted to file somewhat longer briefs, as they would have more points to address at that time than would other parties. We propose, however, adding 10 days to Applicants' proposed period of time for parties to prepare for oral argument, so that oral argument would occur on Day (F + 235). The oral argument would close the record. We propose (as did the Applicants) a 5-day interval between the oral argument and the voting conference, so that a voting conference would occur on Day (F + 240). We also propose allowing 60 days after the voting conference for the service of the Board's final decision on Day (F + 300).

PROPOSED PROCEDURAL SCHEDULE AS MODIFIED BY THE BOARD

F	Primary application and any related applications filed.
F + 30	Board notice of acceptance of primary application (and any related applications) published in the <u>Federal Register</u> .
F + 30	Safety Integration Plan due.
F + 45	Notification of intent to participate in proceeding due.
F + 60	Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
F + 90	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the Primary Application due (except filings by U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT)).
F + 100	Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.
F + 120	Inconsistent and responsive applications due. Comments by DOJ and DOT due. Response to comments, protests, requested conditions, and other opposition

(except DOI and DOT) due. Rebuttal in support of primary application and related applications due.

- F + 140 Notice of acceptance (if required) of inconsistent and responsive applications published in the Federal Register.
- F + 150 Response to comments of DOI and DOT due.
- F + 155 Response to inconsistent and responsive applications due.
- F + 185 Rebuttal in support of inconsistent and responsive applications due.
- F + 205 Briefs due, all parties (not to exceed 50 pages for Applicants and not to exceed 25 pages for all other parties).
- F + 235 Oral argument (close of record).
- F + 240 Voting conference (at Board's discretion).
- F + 300 Date of service of final decision.

Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for depositions. Access to documents subject to protective order will be appropriately restricted.⁹ Discovery relating to applications and other filings (including responsive and inconsistent applications), where permitted, will begin immediately upon their filing. The Administrative Law Judge (ALJ) assigned to this proceeding will have the authority initially to resolve any discovery disputes.

Environmental Review Process

Based on consultations with Applicants, the Board's Section of Environmental Analysis (SEA) has determined that preparation of an Environmental Assessment (EA) is appropriate in this proceeding. This approach is consistent with the Board's environmental rules at 49 CFR 1105.6 (b)(4), which call for an EA in a merger or acquisition such as this proceeding. Also, in making its determination to prepare an EA, SEA considered the nature of the transaction, including the projected changes in train traffic, the anticipated changes at rail yards and intermodal facilities, and the number, type, and location of proposed construction projects. However, if SEA determines that this proceeding has the potential for significant environmental impacts, then SEA may prepare an Environmental Impact Statement, as required by the National Environmental Policy Act (NEPA).

⁹ In Decision No. 1 (served February 26, 1998), a protective order was issued in this proceeding.

Applicants originally proposed to file an environmental report 30 days after they filed their application. In a letter dated June 18, 1998, however, Applicants requested that SEA conduct a modified environmental review process in this proceeding. SEA concurs with this approach. Under this approach, Applicants will provide, with their application and operating plan, an environmental overview rather than an environmental report. This is consistent with the Board's environmental rules at 49 CFR 1105.10 (d), which waive the requirement for an environmental report for applicants that retain an independent third-party contractor to work under SEA's direction to prepare the necessary environmental documentation. For this proceeding, Applicants have retained the requisite independent third-party contractor.

With direction and guidance from SEA, Applicants will prepare and submit to SEA a Preliminary Draft Environmental Assessment (PDEA). Preparation of a PDEA is consistent with the Council on Environmental Quality regulations at 40 CFR 1506.5(b) that permit preparation of an environmental assessment by an applicant. Upon receipt of Applicants' PDEA, SEA will review and verify the environmental information provided by Applicants in this document. SEA will then prepare a Draft Environmental Assessment (Draft EA) for public review and comment. The Draft EA will include SEA's independent preliminary recommendations for mitigation to address potentially adverse environmental impacts.

As part of the environmental review process, Applicants also propose to submit a safety integration plan, which will fully describe the extensive plans they have for maximizing the safe operation of the combined system.

After reviewing all of the public comments on the Draft EA and conducting additional analyses, SEA will prepare a Final Environmental Assessment (Final EA). The Final EA will include SEA's final recommendations for environmental mitigation. The Board will consider all public comments, the Draft EA and Final EA, and SEA's environmental recommendations in making its final decision in this proceeding.

Other Matters.

Applicants recommend that, in addition to noting that new evidence may not be filed with briefs, the Board should further clarify that cross-examination depositions of rebuttal witnesses cannot be used as a vehicle for adding to the evidentiary record any documents not filed with the Board as part of the application or one of the rounds of evidentiary filings specifically provided for by the Board's schedule.

Applicants suggest that the Board include in its procedural schedule language which reminds parties that, in discovery and in submissions to the Board, they focus strictly on relevant issues.

Applicants request that the Board direct that parties wishing to engage in discovery consult with the ALJ designated to handle all discovery matters and to resolve initially all discovery disputes, and that the Board give the ALJ authority to adopt discovery guidelines and rule on discovery matters but not to modify the procedural schedule.

Applicants also suggest that the Board require appeals of ALJ decisions to be filed within 3 working days of the date of a bench ruling, or in its absence the date of a written ruling, with replies to appeals or to any motion filed with the Board to be filed within 3 working days.

We invite all interested persons to submit written comments on the procedural schedule we are proposing here. Comments must be filed by July 16, 1998. Applicants may reply by July 27, 1998.¹⁹

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

Decided: June 22, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

¹⁹ The comments of BMW and UTU will be considered along with any other comments received in response to this notice.

DECISION NO. 6

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SERVICE DATE - AUGUST 14, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33556¹

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED--CONTROL--ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

AGENCY: Surface Transportation Board.

ACTION: Decision No. 6 in STB Finance Docket No. 33556; Notice of Acceptance of Primary Application and Related Filing; Issuance of Final Procedural Schedule.

SUMMARY: The Board is accepting for consideration the primary application and related filing filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),² Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC).³ The primary application seeks Surface Transportation Board (Board) approval and authorization under 49 U.S.C. 11321-26 for: (1) the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub. Inc., of control of IC Corp. and through it of ICR and its railroad affiliates, and (2) for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. The related filing, an application for terminal trackage rights, seeks related relief contingent upon approval of the primary application.

¹ This decision covers: (i) the primary application, which was filed in the STB Finance Docket No. 33556 lead docket; and (ii) one related filing, an application for terminal trackage rights in Springfield, IL, filed in the embraced docket, STB Finance Docket No. 33556 (Sub-No. 1), Canadian National Railway Company, Illinois Central Railroad Company, The Kansas City Southern Railway Company, and Gateway Western Railway Company--Terminal Trackage Rights--Union Pacific Railroad Company and Norfolk & Western Railway Company.

² CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

³ IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

Having received public comments on the proposed procedural schedule, as modified by the Board, and applicants' reply to those comments, the Board is issuing a final procedural schedule. This schedule provides for the issuance of a final decision no later than May 11, 1999 (300 days after the primary application's filing date of July 15, 1998).

DATES: The effective date of this decision is August 14, 1998. Any party who wishes to participate in this proceeding as a party of record must file, no later than August 31, 1998, a notice of intent to participate. Descriptions of responsive (including inconsistent) applications, and petitions for waiver or clarification regarding those applications, must be filed by August 31, 1998. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application, including filings by the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT), and responsive (including inconsistent) applications must be filed by October 13, 1998. Response to comments, protests, requested conditions, and other opposition, response to comments of DOJ and DOT, rebuttal in support of the primary application and related application, and response to inconsistent and responsive applications, must be filed by November 27, 1998. For further information respecting dates, see Appendix A (Final Procedural Schedule).

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 33556 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001.⁴ In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219-2514; FAX: (202) 219-3289] and to each of applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036-1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601-6710.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to

⁴ In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision. Parties must clearly label each formal filing with an identification acronym and number. See 49 CFR 1180.4(a)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing.

the Board should be provided to any other party upon request.³ Further details are discussed below.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Applicants are seeking approval of a proposed transaction set forth in their primary application (CN/IC-6) filed on July 15, 1998. The proposed transaction involves the acquisition of control by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

THE APPLICANTS. CN's rail network consists of approximately 1,150 route miles in the United States, and approximately 14,150 route miles in eight Canadian provinces. CN has principal routes to every major metropolitan area in Canada, and the major U.S. cities of: Buffalo, NY; Detroit, MI; Duluth, MN/Superior, WI; and Chicago, IL. The eastern terminus of CN's network is Halifax, Nova Scotia; the western termini are Prince Rupert and Vancouver, British Columbia; and the southern terminus is Chicago. CN's traffic, between Duluth/Superior and Chicago, is carried under haulage agreements over the lines of The Burlington Northern and Santa Fe Railway Company (BNSF) and Wisconsin Central Ltd. (WC).

IC operates approximately 3,370 route miles of track running north-south between Chicago and the Gulf of Mexico, and east-west between Chicago and Nebraska and Iowa. IC's main north-south route reaches every major metropolitan area on the Mississippi River, including Chicago, IL; St. Louis, MO; Memphis, TN; Jackson, MS; and New Orleans, LA. IC's east-west route extends from Sioux City and Council Bluffs, IA, in the West to Chicago in the East.

The principal routes of the combined CN/IC rail system would be identical to those of the individual railroads. The southern terminus of CN's rail system, Chicago, is the northern terminus of IC's rail system. Applicants state that no track redundancies would be created by the transaction, and no abandonments or substantial rerouting would result from the combination of the two systems.

Tender Offer and Merger. According to applicants, on February 10, 1998, CN, Blackhawk Merger Sub, Inc. (Merger Sub), and IC entered into an Agreement and Plan of Merger (as subsequently amended, the Merger Agreement). In accordance with the Merger Agreement, as of March 14, 1998, the CNR acquired 46,051,761 shares (or approximately 75%)

³ In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the Federal Register at 63 FR 28442-44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

of the outstanding common stock of IC (the IC Common Shares), at a price of \$39.00 per share⁶ through a cash tender offer (the Tender Offer) by Merger Sub. On June 4, 1998, CN consummated a second-step merger (the Merger) between IC and Merger Sub, with IC being the surviving corporation. In the Merger, the remaining 25% of outstanding IC Common Shares were exchanged for approximately 10.1 million common shares of CN, representing 10.3% of the outstanding common shares of CN after the Merger on a fully diluted basis. As a result of the Tender Offer and the Merger, CN became the indirect beneficial owner of all of the stock of IC.

Voting Trust. Applicants state that, in accordance with the Merger Agreement, the shares acquired by CN in the Tender Offer and in the Merger are held in a voting trust (the Voting Trust) pursuant to an agreement dated as of March 13, 1998, by and among CN, Merger Sub, and The Bank of New York, a voting trustee that is a banking corporation (the Trustee). The Trustee will act by written consent or will vote all IC stock held by the Voting Trust (the Trust Stock) in favor of any proposal necessary to effectuate the Merger pursuant to the Merger Agreement, and, generally so long as the Merger Agreement is in effect, against any other proposed merger, business combination, or similar transaction involving IC. On other matters, including the election or removal of officers, the Trustee generally will vote the Trust Stock in the Trustee's sole discretion unless the holder(s) of trust certificates, with the prior written approval of the Board, directs the Trustee as to any such vote. UTC, a wholly owned subsidiary of CN, currently holds the trust certificate for all IC stock in the Voting Trust.

On February 25, 1998, CN received an informal opinion from the Board's staff to the effect that CN's use of the Voting Trust will be consistent with the Board's policies and will preclude unlawful control of IC by CN.

Related United Transportation Union (UTU) Filing. On July 16, 1998, UTU filed a Motion to Dismiss and Comment on the Procedural Schedule (UTU-3). UTU is the designated representative for various crafts or classes of operating employees on ICR and GTW. The request for dismissal is based upon the ground that these carriers have violated 49 U.S.C. 11323 by effectively merging the properties of these two carriers into one corporation for the management and operation of the previously separately owned properties without the approval or authorization of the Board. UTU further states that IC and CN have violated section 11323 by beginning to coordinate the labor relations functions of these two large carriers without prior approval.

On August 5, 1998, applicants filed a Reply to UTU's Motion to Dismiss (CN/IC-12). Applicants state that: (1) UTU has raised no issue supporting a conclusion that CN may have engaged in unlawful control of IC, and that, even if the particular conduct UTU alleges occurred, it would amount to no more than necessary and proper communication and coordination between merging railroads; (2) UTU has cited no legal authority for its basic premise that the exchange of information it alleges constitutes improper conduct or evidence of unlawful control, and that publicly held railroads negotiating a potential merger agreement are entitled to engage in

⁶ Applicants stated that all monetary amounts listed in the application are stated in U.S. dollars, unless otherwise noted.

appropriate due diligence inquiries about each other, as required by the Board's rules and decisions, and as contemplated by the Board's protective order;⁷ and (3) even if UTU's motion alleged an arguable control violation, it would not warrant dismissal, and that such a violation could not warrant denial of the application unless it were so serious and substantial that it clearly outweighed other public interest factors, which UTU has not alleged or shown. Applicants request that the Board should deny UTU's motion as being substantively without merit, both factually and legally, and procedurally flawed.

The Board shares UTU's concerns that there not be management or operations in common between railroad entities absent our approval of the common management or operations. Here, however, the applicants have satisfactorily addressed the matters raised by UTU and the factors described do not demonstrate unlawful control. Nor does the structure of the proposed arrangement reflect unauthorized common control of two or more carriers. As previously mentioned, by letter dated February 25, 1998, the Board's staff issued an informal opinion concerning a Voting Trust Agreement (VTA) proposed to be entered into by and between CNR, Merger Sub, and a Trustee, and found that the VTA provided for the placement, into an independent and irrevocable voting trust, of all of the common stock of IC Corp. acquired by CN or by any of its affiliates. In the staff opinion, it was found that the voting trust to be established under the VTA will effectively insulate CN and its affiliates from the violation of Subtitle IV of Title 49 of the United States Code and the policy of the Board that would result if CN were to acquire, without authorization, a sufficient interest in the carrier subsidiaries of IC Corp. as otherwise to result in control; and that, under the VTA, control of IC Corp. and its carrier subsidiaries can be exercised by CN and its subsidiaries only subsequent to approval by the Board of the CN/IC control application. We agree with the staff opinion and find that applicants' VTA conforms to Board regulations as well as long-standing Board and Interstate Commerce Commission precedent recognizing that beneficial ownership can be separated from control by an appropriate voting trust instrument.⁸ Thus, UTU's request for dismissal of the proceeding is denied at this time.⁹ Should UTU or any other person obtain evidence of unauthorized common control, through breach of the VTA or otherwise, that person may submit that evidence for our review.

⁷ Applicants note that the Board issued a protective order in Decision No. 1, served February 26, 1998, which provided that exchanges of data or other cooperative efforts between CN and IC for purposes of this proceeding will not be deemed a violation of 49 U.S.C. 11323; UTU alleges that CN and IC filed together a notice of intent to file a joint application for CN control of IC. Applicants state that such joint notices of intent are common in control proceedings, and its use here is of no consequence.

⁸ See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Comail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (CSX/NS/CR No. 89), slip op. at 127.

⁹ UTU states that the Board should dismiss the proceeding, or alternatively, impose the statutory procedural schedule set forth at 49 U.S.C. 11323(b) to ensure proper review of the transaction.

LABOR IMPACT. Applicants have submitted one Labor Impact Statement which shows the projected effects of the CN/IC merger on all categories of employment, including both agreement and nonagreement personnel of the combined CN/IC system. The Labor Impact Statement is organized by job classification, and for each classification, it reflects the location at which positions will be created, eliminated, or transferred, if applicable; the number of positions affected at each location; and whether positions will be moved to another location, abolished, or added. If a position is to be relocated, the Labor Impact Statement identifies the new location.

As explained in the Joint Verified Statement submitted with the Labor Impact Statement,¹⁰ the number and percentage of adversely affected employees will be small in relation to the number of employees on the combined CN/IC system. The combined system will have approximately 26,000 employees, of which approximately 5,200 will be in the United States. Approximately 311 positions will be abolished, and approximately 138 other positions will be transferred within the United States. In this regard, applicants anticipate the following: (1) impacts of the transaction will be mostly accommodated by normal attrition during the 3-year implementation period; (2) the transaction should have a positive effect on job opportunities; (3) some employees may be offered the option of receiving a severance package; and (4) some adversely affected employees will refuse relocation offers and voluntarily forfeit their right to protective benefits.

Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filing, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. See CN/IC-7 at 283.

RELATED FILING. In STB Finance Docket No. 33556 (Sub-No. 1), CN, IC, Kansas City Southern Railway Company (KCS) and its affiliate Gateway Western Railway Company (GWWR), have filed an application for an order under 49 U.S.C. 11102 permitting GWWR to use without restriction three short connected segments of terminal trackage in Springfield, IL. These segments are now owned by Union Pacific Railroad Company (UP) as successor to SPCSL Corp. (SPCSL), and Norfolk & Western Railway Company (N&W), an affiliate of Norfolk Southern Corporation (NS).¹¹ Applicants state that, without such relief, GWWR and IC will be unable to establish an efficient interchange necessary to serve effectively the new

¹⁰ See CN/IC-7 at 283-84, Joint Verified Statement of Richard J. Dixon, Joseph T. Torchia, and James M. Harrell.

¹¹ Applicants in this sub-numbered docket have advised that they have contacted UP about securing consent for use of the trackage involved in order for GWWR and IC to be able to interchange traffic in Springfield without regard to the limitations of the Ridgely Yard agreement, and are willing to continue such discussions after the filing of this application. They will advise the Board if those discussions make it unnecessary to act on this application.

competitive traffic movements made possible by the CN/IC combination, as augmented by an agreement among CN, IC, and KCS dated April 15, 1998.¹²

ACCEPTANCE OF PRIMARY APPLICATION AND RELATED FILING. We are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations, waivers,¹³ and requirements. See 49 U.S.C. 11321-26; 49 CFR part 1180. We are also accepting for consideration the related filing, which is also in substantial compliance with the applicable regulations and requirements.¹⁴

PUBLIC INSPECTION. The primary application and related filing, including the various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC.

PROCEDURAL SCHEDULE. In Decision No. 5, served June 23, 1998, and published June 26, 1998, in the Federal Register at 63 FR 34956-59, we issued a proposed procedural schedule, and invited all interested parties to submit written comments on the proposed procedural schedule by July 16, 1998, with applicants' reply due by July 27, 1998. In response, we received the following comments: (1) UTU-3, UTU's motion to dismiss and comment on procedural schedule; (2) The Fertilizer Institute's (TFI) comments; and (3) CN/IC-10, applicants' comments. Applicants also filed reply comments (CN/IC-11) on July 27, 1998 and Allied Rail Unions responded (ARU-2) on August 5, 1998, to that filing, and argued against shortening the proposed schedule. We have carefully reviewed and considered all of these comments.

As we noted previously in our discussion of UTU's motion to dismiss, UTU requests that we dismiss the proceeding, or alternatively, impose the statutory procedural schedule set forth at 49 U.S.C. 11325(b) to ensure proper review of the transaction. The statute allows 16 months for the processing of major consolidation proceedings. Under 49 U.S.C. 11325(b)(3), the Board must conclude the evidentiary stage of the proceeding within 13 months of the application's

¹² Applicants state that this agreement creates a strategic alliance among the parties and provides for their cooperative undertakings to provide joint-line service in specified areas competitive with other rail carriers, and provides that the alliance will use Springfield as one of two main interchanges for designated traffic. The agreement also provides that the railroads will use their best efforts to remove any impediments to the full utilization of an efficient connection between IC and GWWR in the vicinity of Springfield.

¹³ In Decision No. 4, served June 23, 1998, we granted to the extent set forth in the decision, applicants' CN/IC-4 petition for waiver or clarification, and related relief.

¹⁴ We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

filing date,¹⁵ and must issue the final decision by the 90th day after the conclusion of the evidentiary stage.

In their comments and reply comments, applicants request that we adopt their original 180-day proposed schedule or, at least, adopt a middle-ground schedule and a single filing date approach. Applicants further state that, while the CN/IC transaction is important, it does not compare in size and complexity to the recent control transactions in CSX/NS/CR, UP/SP, and BN/SF. TFI also urges that we adopt a schedule similar to the 180-day schedule proposed by applicants.

Specifically, applicants request that we eliminate the proposed bifurcation and trifurcation of filings because it will create needless problems and burdens on all parties. TFI also urges the elimination of staggered filing dates for different parties. Applicants propose that all comments, protests, and requests for conditions, any other evidence or argument in opposition to the application by all parties, and any inconsistent or responsive applications, be due at the same date (F+90 days under the Board's proposed schedule), and that applicants' rebuttal or other responses to those filings be due 30 days later (F+120 days). Applicants note that no major merger in this decade has been considered under a fragmented procedural format, and that there is nothing inherent in the CN/IC transaction to warrant such a departure from consistent prior practice.

We will grant applicants' and TFI's request that we eliminate the staggered filing dates. As suggested by applicants, all comments, protests, and requests for conditions, any other evidence or argument in opposition to the application by all parties, and any inconsistent or responsive applications, will be due on the same date (F+90 days). Applicants' rebuttal and other responses to those filings will be due 45 days later. Other relevant due dates are discussed in detail under our discussion of filing due dates.

Few objections have been raised to the 10-month proposed procedural schedule. In light of UTU's concerns, we are reluctant at this time to reduce the time for processing the application. Earlier comments in opposition to applicants' 6-month proposed procedural schedule were filed by the Brotherhood of Maintenance of Way Employees (BMWE) on June 2, 1998, and the UTU on June 8, 1998. Both BMWE and UTU had stated that applicants' 180-day proposed schedule was too short and urged the Board to adopt the statutory procedural schedule set forth at 49 U.S.C. 11325(b). Alternatively, UTU urged the Board to adopt a 350-day schedule modeled upon the procedural schedule issued by the Board in CSX/NS/CR No. 6 (STB served May 30, 1997). We believe that a 10-month procedural schedule would not delay unnecessarily any benefits that would flow from the proposed integration of the CN and IC systems and is middle-ground schedule that would allow sufficient time to develop the record upon which the Board's decision would be based. If, at some point in this proceeding (perhaps after Board receipt of filings due on F+90 days), it becomes clear that there are few contested issues to be resolved, we

¹⁵ Specifically, the statute requires the completion of the evidentiary stage within 12 months after publication of the Federal Register notice accepting the application. That publication is due no later than 30 days after the application is filed.

would be open to a reexamination of whether a shorter schedule and a more expeditious resolution can be accommodated.

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than August 31, 1998, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on Judge Harfeld and on applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

We will serve, as soon as practicable after August 31, 1998, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, 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 party of record also will be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus five copies of a certificate of service, along with an electronic copy, indicating that the service required by the proceeding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that both Judge Harfeld and 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 (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

We will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for DC News is: (202) 289-4357.¹⁶

¹⁶ 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. Our 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), as recently amended in Railroad Consolidation Procedures—Modification of Fee Policy, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News 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 heretofore entered in this proceeding.

DESCRIPTIONS OF, AND FILINGS RESPECTING, RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS.¹⁷ Because the transaction proposed by applicants constitutes a major transaction within the meaning of our rail consolidation rules (49 CFR part 1180),¹⁸ parties intending to file responsive (including inconsistent) applications must submit descriptions of those applications by August 31, 1998. The description must state that the commenting party intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction, or abandonment) and must include a general statement of what that application is expected to include. This will be considered a prefiling notice without which the Board will not entertain applications for this type of relief.

Petitions for waiver or clarification by responsive (including inconsistent) applicants must be filed by August 31, 1998. Each responsive (including inconsistent) application filed and accepted will be consolidated with the primary application in this proceeding.

Any responsive (including inconsistent) applicant must file by September 21, 1998, either: (1) a verified statement that the responsive (including inconsistent) application will have no significant environmental impact; or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the responsive (including inconsistent) application.

The RER. The RER should comply with all requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. The RER should be based on consultations with the Board's Section of Environmental Analysis (SEA) and the various agencies set forth in 49 CFR 1105.7(b). In addition, the information in the RER should be organized as follows: Executive Summary; Purpose and Need for Agency Action; Description of the Inconsistent or Responsive Application and Related Operations; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed Mitigation; and Appropriate Appendices that include correspondence and consultation responses, bibliography, and a list of preparers.

The purpose of an RER is to provide us the information we need to assess the potential environmental impacts of all inconsistent and responsive applications in the context of the overall merger proposal. After an RER is received, SEA will verify the information contained in the document. If the RER is acceptable, SEA will include the RER with the Draft Environmental

¹⁷ An original and 25 copies of such descriptions, petitions for waiver or clarification, Responsive Environmental Reports, and Verified Statements must refer to STB Finance Docket No. 33556 (lead docket) and must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

¹⁸ See Decision No. 2, served March 13, 1998, and published that day in the Federal Register at 63 FR 12574-75.

Assessment (Draft EA) for the entire merger that will be served and made available for public comment.

In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants must consult with SEA as early as possible. If an RER is insufficient, we may require additional environmental information or reject the inconsistent or responsive application.

A verified statement of no significant impact. If an action proposed under an inconsistent or responsive transaction would typically fall within 49 CFR 1105.6(c)(2), an RER would not be required because such an action is generally exempt from environmental review. In such a case, the inconsistent or responsive applicant would be required to file only a verified statement. The verified statement must demonstrate that the inconsistent or responsive application meets the exemption criteria of 49 CFR 1105.6(c)(2). Again, anyone desiring to file an inconsistent application or responsive application must consult with SEA as early as possible regarding the appropriate environmental documentation.

SEA will review the verified statements. If a verified statement is insufficient, we may require additional environmental information or reject the inconsistent or responsive application. The verified statements, like the RERs, will be included in the Draft EA, which will be available for public review and comment.

COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT; RESPONSIVE (INCLUDING INCONSISTENT) APPLICATIONS. Any interested persons, including the U.S. Attorney General and the U.S. Secretary of Transportation, may file written comments, protests, requests for conditions, and any other opposition evidence and argument, as well as responsive (including inconsistent) applications no later than October 13, 1998. This deadline applies to comments, etc., addressing the primary application or the related filing submitted with the primary application.

Parties filing comments, protests, requests for conditions, and any other opposition evidence and argument (including filings by DOJ and DOT) must submit an original and 25 copies of such documents, referring to STB Finance Docket No. 33556 (lead docket). Parties filing responsive (including inconsistent) applications must contact the Office of the Secretary, Case Control Unit, at (202) 565-1681 to obtain docket numbers for their respective applications, and must submit an original and 25 copies of each responsive (including inconsistent) application, referring to the assigned sub-docket number for that application and must accompany such application with the appropriate filing fee. All submissions must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, Judge Harfeld, applicants' representatives, and all other parties of record.

Written comments, etc., must include: (1) the docket number and title of the proceeding; (2) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made; (3) the commenting party's position, i.e., whether it supports or opposes the proposed transaction; (4) a list of any specific protective conditions sought; and (5) an analysis of the issues with particular attention to our general policy statement for the merger or control of at least two Class I railroads (49 CFR 1180.1), the statutory criteria (49 U.S.C. 11324), and antitrust policy.

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. See Lampville Valley R.R. Co. v. ICC, 711 F.2d 295 (D.C. Cir 1983).

RESPONSE TO COMMENTS, PROTESTS, REQUESTED CONDITIONS, AND OTHER OPPOSITION, INCLUDING DOJ AND DOT; REBUTTAL IN SUPPORT OF PRIMARY APPLICATION AND RELATED APPLICATION. Parties submitting responses to comments, protests, requested conditions, and other opposition, including DOJ and DOT, and rebuttal in support of the primary application and related application, must be filed with the Board by November 27, 1998.

OTHER DATES. The procedural schedule adopted in this decision further provides: (1) that applicants must file a Safety Integration Plan on August 14, 1998, as they have proposed; (2) that responses to any responsive (including inconsistent) applications must be filed by November 27, 1998; (3) that rebuttal in support of responsive (including inconsistent) applications must be filed by December 28, 1998; (4) that briefs must be filed by February 5, 1999; (5) that oral argument will be heard on March 8, 1999; (6) that, at the discretion of the Board, a voting conference will be held on March 15, 1999; and (7) that the final written decision, addressing the primary application and the related filing, and also addressing any responsive (including inconsistent) applications will be served on May 11, 1999.

DISCOVERY. In Decision No. 2, served March 13, 1998, this proceeding was assigned to Judge Harfeld for the handling of all discovery matters and the initial resolution of all discovery disputes. Parties wishing to engage in discovery must consult with Judge Harfeld, who is designated to handle discovery matters and disputes. Judge Harfeld has the authority to rule on discovery matters but not to modify the procedural schedule.

DEADLINES APPLICABLE TO APPEALS AND REPLIES. Any appeal to a decision issued by Judge Harfeld must be filed within 3 working days of the date of his decision; any response to such appeal must be filed within 3 working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

ENVIRONMENTAL REVIEW PROCESS. SEA has determined that preparation of an Environmental Assessment (EA) is appropriate in this proceeding. This approach is consistent with the Board's environmental rules at 49 CFR 1105.6(b)(4), which call for an EA in a merger or acquisition such as this one. In making its determination to prepare an EA, SEA considered the nature and scope of environmental issues that could arise in this proceeding, as well as its consultation with applicants and its evaluation of the information to date, including the operating plan and associated environmental data that CN/IC submitted with their primary application filed on July 15, 1998. We agree with SEA that an EA is warranted in this proceeding.

The procedural schedule that we are adopting will permit us to take a hard look at environmental issues required by the National Environmental Policy Act (NEPA) and related regulations of the Council on Environmental Quality, and will provide the necessary time to enable us to prepare an EA and to include public participation by federal, state, and local agencies, as well as other concerned parties. If SEA determines that this proceeding has the potential for significant environmental impacts, then SEA may prepare an Environmental Impact Statement, as required by NEPA.

The EA will address potential environmental impacts of activities associated with the proposed merger, including rail line traffic density increases and decreases, rail yard and intermodal facility activity changes, and new construction. Specifically, the EA will address potential environmental impacts on safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, historic and cultural resources, environmental justice, and socioeconomic effects directly related to changes in the environment, and will also include SEA's recommendations for environmental mitigation.

Applicants originally proposed to file an environmental report 30 days after they filed their application. In a letter dated June 18, 1998, however, applicants requested that SEA conduct a modified environmental review process in this proceeding. SEA concurs with this approach. Under this approach, applicants provided, with their application and operating plan, an environmental overview rather than an environmental report. See CN/IC-6, Environmental Data - Exhibit 4, at 22-34. This is consistent with the Board's environmental rules at 49 CFR 1105.10(d), which waive the requirement for an environmental report for applicants that retain an independent third-party contractor to work under SEA's direction to prepare the necessary environmental documentation. For this proceeding, applicants have retained the requisite independent third-party contractor.

With direction and guidance from SEA, applicants will prepare and submit to SEA a Preliminary Draft Environmental Assessment (PDEA). Preparation of a PDEA is consistent with the Council on Environmental Quality regulations at 40 CFR 1506.5(b) that permit preparation of an environmental assessment by an applicant. Upon receipt of applicants' PDEA, SEA will review and verify the environmental information provided by applicants in this document. SEA will then prepare a Draft EA for public review and comment. The Draft EA will include SEA's independent preliminary recommendations for mitigation to address potentially adverse environmental impacts.

As part of the environmental review process, applicants will also submit a Safety Integration Plan, which will fully describe the extensive plans they have for maximizing the safe operation of the combined system.

After reviewing all of the public comments on the Draft EA and conducting additional analyses, SEA will prepare a Final Environmental Assessment (Final EA). The Final EA will include SEA's final recommendations for environmental mitigation. The Board will consider all public comments, the Draft EA and Final EA, and SEA's environmental recommendations in making its final decision in this proceeding.

For additional information on preparation of the EA, contact SEA's Project Manager for the proposed CN/IC Acquisition, Michael Dalton, at (202) 565-1530.

ELECTRONIC SUBMISSIONS. As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, see 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 26, 1998, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.¹⁹

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

It is ordered:

1. UTU's motion to dismiss is denied.

2. The primary application in STB Finance Docket No. 33556, and the related filing in the embraced docket, STB Finance Docket No. 33556 (Sub-No. 1), are accepted for consideration.

¹⁹ The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. See 49 CFR 1104.3(a), as amended in Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

3. Parties must comply with the Final Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.

4. Parties must comply with the procedural requirements described in this decision.

5. Any appeal to a decision issued by Judge Harfeld must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days of the date of filing of the appeal.

6. Any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

7. This decision is effective on August 14, 1998.

Decided: August 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

APPENDIX A: FINAL PROCEDURAL SCHEDULE

July 15, 1998	Primary application and related application filed.
August 14, 1998	Board notice of acceptance of primary application and related application published in the <u>Federal Register</u> .
August 14, 1998	Safety Integration Plan due.
August 31, 1998	Notification of intent to participate due.
August 31, 1998	Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.
September 21, 1998	Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.
October 13, 1998	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application due, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT). Inconsistent and responsive applications due.
November 2, 1998	Notice of acceptance (if required) of inconsistent and responsive applications published in the <u>Federal Register</u> .
November 27, 1998	Response to comments, protests, requested conditions, and other opposition due. Response to comments of DOJ and DOT due. Rebuttal in support of primary application and related applications due. Response to inconsistent and responsive applications due.
December 28, 1998	Rebuttal in support of inconsistent and responsive applications due.
February 5, 1999	Briefs due, all parties (not to exceed 50 pages for applicants and not to exceed 25 pages for all other parties).
March 8, 1999	Oral argument (close of record).
March 15, 1999	Voting conference (at Board's discretion).
May 11, 1999	Date of service of final decision.

Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for

depositions. Access to documents subject to protective order will be appropriately restricted. Discovery relating to applications and other filings (including responsive and inconsistent applications), where permitted, will begin immediately upon their filing. The Administrative Law Judge (ALJ) assigned to this proceeding will have the authority initially to resolve any discovery disputes.

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**KANSAS CITY SOUTHERN RAILWAY COMPANY-CONSTRUCTION
AND OPERATION EXEMPTION-GEISMAR INDUSTRIAL AREA
NEAR GONZALES AND SORRENTO, LA**

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SERVICE DATE - AUGUST 27, 1998

SURFACE TRANSPORTATION BOARD¹

DECISION

Finance Docket No. 32530

KANSAS CITY SOUTHERN RAILWAY COMPANY--CONSTRUCTION
AND OPERATION EXEMPTION--GEISMAR INDUSTRIAL AREA
NEAR GONZALES AND SORRENTO, LA

Decided: August 20, 1998

By decision served June 30, 1995 (June 1995 decision), the ICC conditionally exempted from the prior approval requirements of 49 U.S.C. 10901 the Kansas City Southern Railway Company's (KCS's) proposal to construct and operate approximately 9 miles of track beginning at milepost 814 and running in a northwesterly direction to the Geismar industrial area near Gonzales and Sorrento, in Ascension Parish, Louisiana. The June 1995 decision stated that, upon completion of the environmental review process, a further decision would be issued addressing the environmental impacts associated with the project and making the exemption effective at that time, if appropriate. The Section of Environmental Analysis (SEA) subsequently determined that the preparation of a full environmental impact statement (EIS) was warranted in this proceeding. On July 16, 1997, SEA issued, and requested public comment on, a draft EIS (DEIS). Comments to the DEIS have been filed, and SEA is preparing a final EIS. In addition, the Illinois Central Railroad Company (IC) and the Concerned Citizens of Ascension Parish have filed petitions to reopen the proceeding and revoke the conditional construction exemption, which are pending.

We have decided to hold further proceedings in this construction case in abeyance at this time because of several other recent developments that directly affect this case. Specifically, on April 16, 1998, Canadian National Railway Company (CN), IC, and KCS (parties) announced that they have entered into a 15-year marketing alliance, effective immediately, that will offer shippers new competitive options involving north-south continental freight markets. Moreover, in conjunction with the marketing alliance, the parties have entered into a separate access agreement, contingent upon our approval of the CN-IC merger application submitted on July 15,

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) effective on January 1, 1996. Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

1998, that would allow both the merged CN-IC and KCS to extend their rail systems in the Gulf area. As particularly relevant here, the parties indicate that, in the fall of the year 2000, the agreement would allow KCS access to three chemical plants at Geismar, LA, now served by IC. Thus, it appears that the access agreement would allow KCS to provide the same service for which it has filed this construction exemption, using existing track. Finally, in STB Finance Docket No. 33556, Decision No. 6 (STB served Aug. 14, 1998), we accepted for consideration the CN-IC merger application and issued a final 10-month procedural schedule for that case that provides for the issuance of a final written decision no later than May 11, 1999.

In these circumstances, it would be inappropriate to take any further action in this construction proceeding until we have issued our final written decision on the CN-IC merger. If the CN-IC merger is approved, the access agreement will give KCS an alternative way to serve the area and shippers for which it is seeking a construction exemption in this case. That alternative, by using existing track, would avoid the disruptive environmental consequences that would be involved with the physical construction of a new line here (which, as the DEIS shows, would have affects on wetlands, flood plains, and nearby residential areas).³ There would also be no need for KCS to undertake the cost of constructing a new line. Perhaps most importantly, if the CN-IC merger is approved, KCS should be able to offer service to this area at approximately the same time, if not sooner, than it would be able to do if the construction proceeding were to proceed. As noted, the parties' access agreement would allow KCS access to the chemical plants at Geismar now served by IC in the fall of the year 2000. It is highly unlikely that any new line that we might authorize to be constructed could be built and operational by that time.

In short, it would be hard to justify either economically or environmentally undertaking this construction project when it has become apparent that service could be provided over existing track, assuming that the CN-IC merger is approved. Therefore, we will hold this construction proceeding in abeyance until the CN-IC merger has been decided. Should the CN-IC merger be denied, we will revisit the issue.

It is ordered:

1. This proceeding is held in abeyance until the issuance of a final written decision in the pending CN-IC merger.
2. This decision is effective on the date served.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ We, like the ICC, are reluctant to authorize new lines where, as here, the parties can agree to joint use of one line. See Mobil Oil Corp. v. ICC, 685 F.2d 624 (D.C. Cir. 1982).

DECISION NO. 7

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SERVICE DATE - LATE RELEASE SEPTEMBER 18, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

Decision No. 7

Decided: September 17, 1998

In Decision No. 6 in this proceeding, served August 14, 1998, and published that day in the Federal Register at 63 FR 43744-51, we established the procedural schedule for this proceeding.¹ Under that schedule, we imposed an August 31, 1998 due date for the filing of: (1) descriptions of anticipated inconsistent and responsive applications; and (2) petitions for waiver or clarification with respect thereto.

On August 31, 1998, descriptions of anticipated inconsistent or responsive applications, and petitions for waiver or clarification were filed by: The Burlington Northern and Santa Fe Railway Company (BNSF); Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (collectively CP); CSX Corporation and CSX Transportation, Inc. (collectively CSX); and Indiana & Ohio Railway Company (IORY).²

¹ In Decision No. 6, we also accepted for consideration the application filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW) (collectively with their affiliates, CN), and by Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC) (collectively with their affiliates, IC), seeking approval and authorization under 49 U.S.C. 11321-26 for: (1) the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp., and through it of ICR and its railroad affiliates; and (2) for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. CN and IC are referred to collectively as applicants.

² The petitions for waiver or clarification are designated respectively as: BNSF-3, CPR-4, CSX-3, and IORY-2. A description of anticipated relief and request for waiver or clarification
(continued...)

BNSF. BNSF states that it intends to file a responsive application requesting: (1) overhead trackage rights on CN to permit BNSF to interchange with British Columbia Railway at Vancouver, British Columbia, Canada; (2) trackage rights on IC between BNSF's Corwith and Cicero Yards in the Chicago terminal area; (3) access via overhead trackage or haulage rights to the three chemical plants at Geismar, LA, to which Kansas City Southern Railway (KCSR) would gain access under applicants' proposed access agreement; and (4) such other conditions as BNSF deems necessary to permit it to serve shippers and rail corridors where pre-merger rail competition is not preserved, or to otherwise preserve competition which may be diminished or lost as a result of the proposed transaction, including, but not limited to, shippers only served by IC and KCSR between New Orleans and Baton Rouge and shippers located at Jackson, MS, and in the rail corridor between Chicago and New Orleans via Jackson, MS.

BNSF seeks clarification that its responsive application constitutes a minor transaction and that its rail carrier affiliates not involved in the proposed responsive application need not be considered "applicants" as defined at 49 CFR 1180.3(a). BNSF seeks a waiver or clarification to exclude: (a) the primary applicants from the definition of "applicant carriers;" and (b) information concerning other rail carriers in which BNSF or its subsidiaries possess a non-controlling common stock interest of 50% or less. BNSF further seeks waiver or clarification to permit it to submit information pertaining to BNSF and its majority-controlled rail subsidiaries on a consolidated basis and a waiver of the 6-month pre-notification requirement for applications that may require the preparation of an environmental impact statement. Although BNSF does not anticipate any employee impact as a result of its proposed responsive application, it requests permission to use the same breakdown of employee class or craft as that used by the primary applicants.

CP. CP states that, to ameliorate perceived anticompetitive effects of a merged CN/IC system, it may request that CN be required to divest its 50% interest in the Detroit River Tunnel Company (DRTC) to CP, by transferring such interest to CP's subsidiary, St. Lawrence & Hudson Railway Company Limited (SL&H) pursuant to 49 U.S.C. 11323. According to CP, it intends to seek certain other conditions that it believes will not require the filing of a responsive application. CP seeks confirmation that SL&H's acquisition of 100% interest in DRTC would be a minor transaction. CP requests waiver or clarification that the term "applicants," while including its rail carrier subsidiaries with operations in the United States, does not include its noncarrier parent company, Canadian Pacific Limited (CPL), and that the term "applicant carriers" excludes the primary applicants, motor carrier and water carrier affiliates of CP, foreign rail carrier affiliates, and Board-regulated rail carriers in which CP or its affiliates hold a non-controlling interest. CP also requests a waiver or clarification to submit information on a consolidated basis, to use the same class or craft data as used by the primary applicants, and to avoid the necessity of a signature on behalf of CPL. Lastly, CP seeks permission to exclude from its application any analysis of operational effects that might take place entirely outside the United States.

²(...continued)

was also filed by Norfolk Southern Railway Company (NS) on August 31, 1998 (designated as NS-1). NS's waiver/clarification request in NS-1 will be addressed in a separate decision.

CSX. According to CSX, it expects to file a responsive application seeking overhead trackage rights over CN lines between Sarnia, Ontario, and Port Huron, MI; overhead trackage rights over CN's Shore Line Subdivision between Detroit, MI, and Toledo, OH; and trackage rights over the lines of IC to serve customer facilities in Decatur, IL, and Memphis, TN, that CSX currently serves through reciprocal switching provided by IC. CSX requests a waiver or clarification to limit the definition of "applicant carrier" to CSXT and those Board-regulated rail carriers in which CSX now holds an interest greater than 50%. The requested waiver or clarification would exclude any rail carrier subsidiaries not subject to the Board's jurisdiction, those in which CSX has interests of 50% or less, and any modal subsidiaries other than rail carriers.³ CSX also seeks clarification that information and data required by the Board's procedures may be submitted on a consolidated basis and that any employee impact data may be presented using the system of classification approved by the Board for the primary applicants in Decision No. 4.⁴

IORY. As a condition to the CN/IC transaction, IORY indicates that it will seek local trackage rights: (1) between Diann and Dearborn, MI, via Flat Rock and Taylor, MI, over GTW's Flat Rock Subdivision; and (2) between Diann and Short Cut, MI, via Flat Rock and Trenton, MI, over GTW's River Subdivision. IORY states that, because its responsive application will involve only 72 miles of trackage rights over two segments of rail line, it should be considered a minor transaction. IORY also requests waiver or clarification of the term "applicant" to exclude its noncarrier parent, RailTex, Inc., and of the definition of "applicant carrier" to exclude all of IORY's affiliated carriers in the RailTex family.

DISCUSSION AND CONCLUSIONS

MINOR TRANSACTIONS. If a responsive application is not a major transaction, our railroad consolidation regulations provide that it is either a significant or a minor transaction. The regulations further require, for significant transactions, certain evidentiary submissions more extensive than those required for minor transactions. These include 49 CFR 1180.6(a)(8) (environmental consultation); 1180.6(c) (ownership information, other relevant issues, a corporate chart, noncarrier information, and certain other relationships); 1180.7 (market

³ CSX's proposed waiver or clarification would exclude its interest in Consolidated Rail Corporation (Conrail) and The Lakefront Dock and Railroad Terminal Company (Lakefront), a terminal railroad company in which CSX currently has a 50% interest. Upon allocation of the Conrail assets, CSX will control 100% of Lakefront, but CSX states that it does not anticipate any change in the management or operation of Lakefront as a result of the trackage rights that CSX is seeking in its responsive application and that information on Lakefront would not enhance the Board's ability to evaluate the transaction proposed in CSX's responsive application. CSX's requested waiver or clarification would also exclude its motor carrier and water carrier affiliates, CSX Intermodal, Inc., Customized Transportation, Inc., and Sea-Land Service, Inc.

⁴ On September 11, 1998, CSX filed an amended petition for waiver or clarification (designated as CSX-5) requesting that its anticipated responsive application be considered a minor transaction. CSX's amended petition will be accepted into the record.

analyses); and 1180.8(a) (operational data). Petitioners BNSF, CP, CSX, and IORY, seeking to reduce their filing requirements, urge that their respective responsive applications be considered minor transactions.

The responsive applications these petitioners anticipate clearly are not major transactions because they do not involve the merger or control of two or more Class I railroads. Therefore, they are necessarily either significant transactions or minor transactions. See 49 CFR 1180.2(a), (b), and (c). In the case of CP, CSX, and IORY, we agree that their anticipated responsive applications will be minor transactions, rather than significant transactions. See 49 CFR 1180.2(b) (a significant transaction is a transaction that is of regional or national transportation significance). CSX and IORY state that their proposals merely seek limited trackage rights intended to preserve pre-merger competition. CP states that its proposed acquisition of control of DRTC by SL&H will not result in any significant change in the rail operations or service provided by CP, CN, or any other users of the Detroit River Tunnel. After reviewing the descriptions of anticipated responsive applications, we conclude that CP and IORY propose one minor transaction each. We find that CSX proposes three minor transactions: (1) overhead trackage rights over CN between Sarnia, Ontario, and Port Huron, MI; (2) overhead trackage rights over CN between Detroit, MI, and Toledo, OH; and (3) trackage rights over IC to serve current customers at Decatur, IL, and Memphis, TN.

Even though the conditions to be sought by CP, CSX, and IORY will be considered minor transactions, these petitioners will be required to submit sufficient evidence to justify a grant of their respective responsive applications. Our authority to condition the primary application (e.g., by imposing the conditions to be sought by petitioners) is found in 49 U.S.C. 11324(c). The criteria for imposing conditions to remedy anticompetitive effects were set out by our predecessor agency, the Interstate Commerce Commission (ICC), and have been endorsed by us. In Union Pacific--Control--Missouri Pacific, Western Pacific, 366 I.C.C. 462, 562-65 (1982), the ICC stated: (1) that it would not impose conditions on a railroad consolidation unless it found that the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market); (2) that the conditions to be imposed will ameliorate or eliminate the harmful effects; (3) that the conditions will be operationally feasible; and (4) that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger.

As regards BNSF, we find that its requests for: (1) overhead trackage rights to permit an interchange with British Columbia Railway at Vancouver, British Columbia; and (2) trackage rights on IC between BNSF's Corwith and Cicero Yards in the Chicago terminal area constitute separate minor transactions. However, we are unable to conclude that BNSF's remaining request, i.e., its request for access to the three chemical plants at Geismar, LA, and such other conditions as BNSF deems necessary to permit it to serve IC and KCSR shippers and rail corridors between New Orleans and Baton Rouge, LA, and between Chicago and New Orleans via Jackson, MS, will be a minor transaction. The trackage rights potentially to be sought by BNSF, particularly those between Chicago and New Orleans, appear to be, at the very least, regional and substantial in scope. Without additional evidence, BNSF's presentation is insufficient to support a minor transaction classification. Accordingly, BNSF's waiver petition,

to the extent it seeks to designate this portion of its responsive application a minor transaction, will be denied. We find that this part of BNSF's proposed relief constitutes a significant transaction.

BNSF requests that, if we find that its responsive application is not a minor transaction, we waive the following requirements otherwise applicable to significant transactions: 49 CFR 1180.6(b)(3) (change in control); 49 CFR 1180.6(b)(5) (issues); 49 CFR 1180.6(b)(6) (corporate chart); 49 CFR 1180.6(b)(7) (noncarrier information); 49 CFR 1180.6(b)(8) (intercorporate relationships); 49 CFR 1180.7 (market analyses); and 49 CFR 1180.8(a) (operational data for major or significant transactions). BNSF contends that these requirements will impose an onerous and unnecessary burden on it and are irrelevant to the conditions it intends to seek. Considering BNSF's position, it may be that not all of the information required under section 1180.6(b), as applicable to significant transactions, is necessary. We will therefore grant petitioner's waiver request in this regard. However, because market analyses and operating data are important components of a demonstration of the competitive and operational impact of petitioner's proposed conditions, we will not waive these requirements. We rely on such information to assess the potential effect(s) of requested conditions. Accordingly, BNSF's waiver request as to 49 CFR 1180.7 and 1180.8(a) will be denied.

DEFINITION OF "APPLICANT." Under 49 CFR 1180.3(a), "applicant" is defined as "[t]he parties initiating a transaction." BNSF and CP request that we clarify that their rail carrier affiliates not involved in the proposed transaction⁵ need not be considered an "applicant" under 49 CFR 1180.3(a). CP and IORY also request that we permit them to exclude their respective noncarrier parents, CPL and RailTex, Inc., from the responsive applications. Petitioners maintain that requiring information from such entities would impose significant burdens on them, without materially enhancing our ability to evaluate the proposed transactions. Because the relief sought by petitioners is reasonable, it will be granted. Similar waivers and/or clarifications have been granted by the Board or the ICC in previous merger proceedings.

DEFINITION OF "APPLICANT CARRIERS." 49 CFR 1180.3(b) defines "applicant carriers" to include "applicant, all carriers related to the applicant, and all other carriers involved in the transaction." CP and CSX request that we exclude from the definition any rail carrier subsidiary not subject to our jurisdiction, rail carrier subsidiaries in which they have an interest of 50% or less, and motor carrier and water carrier affiliates. IORY requests that its affiliated rail carriers in the RailTex family not be included, while BNSF asks to exclude rail carriers in which it or any of its subsidiaries possess a non-controlling common stock interest. CP and BNSF seek to exclude the primary applicants from the definition of "applicant carriers." Finally, BNSF, CP, and CSX seek a waiver or clarification to enable them to submit corporate railroad information on a consolidated basis.

The requested waivers concerning 49 CFR 1180.3(b) are reasonable and will be granted, as has been done in previous merger proceedings. We believe that provision of such information

⁵ CP would, however, include as "applicants" its rail carrier subsidiaries with operations in the United States.

would be burdensome to petitioners and is not necessary for a proper evaluation of their responsive applications. Sufficient data should be available in the responsive applications without resort to the waived material. In addition, the submission of required data on a consolidated basis is reasonable and will be permitted.

EMPLOYEE IMPACT DATA. 49 CFR 1180.6(a)(2)(v) requires an applicant to address "[t]he effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached." BNSF, CP, and CSX request waiver or clarification to permit them to use the same breakdown of class or craft as that employed by the primary applicants. Petitioners' requests will be granted.⁶

PRE-NOTIFICATION. BNSF requests waiver of the 6-month pre-notification requirement, at 49 CFR 1105.10(a)(1), for applications that may require the preparation of an environmental impact statement. In lieu of pre-notification, BNSF states that it will promptly consult with the Board's Section of Environmental Analysis (SEA) if it determines that environmental documentation is required. A waiver is unnecessary because the pre-notification requirement does not apply to responsive applications. To facilitate the environmental review process, we required that responsive applicants file by September 21, 1998, either: (1) a responsive environmental report (RER) that contains detailed environmental information regarding the inconsistent or responsive application; or (2) a verified statement that the inconsistent or responsive application will have no significant environmental impact. The RER should comply with all requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. Anyone expecting to file a responsive application should consult with SEA as early as possible regarding the appropriate environmental documentation. Decision No. 6, slip op. at 10-11, 63 FR at 43748-49.

SIGNATURE OF CONTROLLING PERSONS. 49 CFR 1180.4(c)(2)(i) provides that "[a]ny person controlling an applicant shall also sign the application." CP is a wholly owned subsidiary of CPL. CP requests a waiver that SL&H's responsive application need not be signed on behalf of CPL, because the signature would serve no useful purpose and obtaining it would pose an unnecessary burden on CP. This request will be granted.

EFFECTS OUTSIDE UNITED STATES. CP requests a waiver or clarification to permit it to exclude effects of its proposed transaction that would take place entirely outside the United States. CP states that its responsive application will fully consider the impact of SL&H's acquisition of DRTC on all cross-border rail traffic using the Detroit River Tunnel. According to CP, requiring it to include information about possible effects of the transaction entirely outside the United States would impose a significant and unnecessary burden on it, without materially assisting the Board. CP's waiver request will be granted. We granted a similar waiver/clarification request by applicants in Decision No. 4.

⁶ The breakdown is set forth in Appendices A and B to Decision No. 4, served June 23, 1998.

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

It is ordered:

1. The petitions for waiver or clarification filed by BNSF, CP, CSX, and IORY are granted to the extent set forth in this decision.
2. The amended petition for waiver or clarification in CSX-5 is accepted.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

DECISION NO. 8

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SERVICE DATE - LATE RELEASE SEPTEMBER 18, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

Decision No. 8

Decided: September 17, 1998

In Decision No. 6 in this proceeding, served August 14, 1998, and published that day in the Federal Register at 63 FR 43744-51, we established the procedural schedule for this proceeding.¹ Under that schedule, we imposed an August 31, 1998 due date for the filing of: (1) descriptions of anticipated inconsistent and responsive applications; and (2) petitions for waiver or clarification with respect thereto.

On August 31, 1998, Norfolk Southern Railway Company (NS) filed a description of anticipated relief and request for waiver or clarification (designated as NS-1). NS states that it intends to seek conditions that would require applicants to amend their settlement agreement with Kansas City Southern Railway (KCSR) so as to provide for equal service levels with respect to KCSR's service on behalf of NS between Meridian, MS, and Dallas and Port Arthur, TX.² In the event that the quality of services provided by KCSR does not meet the service standard, NS states that it will seek to require that KCSR grant overhead haulage or trackage rights to NS between these points. In addition, if KCSR is not permitted access to Geismar, LA, in

¹ In Decision No. 6, we also accepted for consideration the application filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW) (collectively with their affiliates, CN), and by Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC) (collectively with their affiliates, IC), seeking approval and authorization under 49 U.S.C. 11321-26 for: (1) the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp., and through it of ICR and its railroad affiliates; and (2) for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. CN and IC are referred to collectively as applicants.

² Presumably, reference to KCSR's service to NS means service to traffic or equipment of NS or to NS' customers.

accordance with the CN-KCSR settlement agreement by the control date of October 1, 2000, whichever is later, or if we find that competition between CN/IC and KCSR is not likely to be vigorous and effective for traffic moving to and from Geismar, NS intends to seek access to Geismar on substantially the same terms and conditions as KCSR. Lastly, if CN/IC/KCSR do not provide to NS overhead haulage services between Jackson and Meridian equal to the quality of services provided to CN/IC/KCSR's own customers, then NS will seek to require that CN/IC provide overhead trackage rights between Geismar Yard and New Orleans at the rate specified in the CN-KCSR settlement agreement, or at the rate of 29 cents per car-mile, whichever is lower.

Because its proposed conditions seek the imposition of trackage rights only on a contingent basis, NS does not believe that its trackage rights requests need be the subject of a responsive application. NS also states that its contingent trackage rights concept essentially mirrors that used by the applicants and their alliance partners, KCSR, Gateway Western Railway (GWRR), and The Texas Mexican Railway Company (TexMex), to describe grants of similar contingent trackage rights among themselves. NS maintains that it should not be required to submit an application or traffic, operating, environmental or labor impact data when applicants themselves have not been required to provide such information. NS therefore asks us to clarify that its proposed conditions do not require the filing of a formal trackage rights application.

Should we conclude that a responsive application is required, NS requests that we: (1) clarify that its proposed conditions constitute a minor transaction; and (2) grant NS waivers from the regulations at 49 CFR 1180.6(a)(8) (environmental data) and 1180.8(b) (operating plan). NS also asks that it be permitted immediately to conduct third-party discovery of KCSR, including issuance of subpoenas, and that IC be directed to respond immediately to discovery requests that NS would propound with regard to service and operations on IC's Geismar-Baton Rouge-Jackson lines and on IC's Geismar-New Orleans lines. NS also reserves the right to seek an extension of the schedule for filing such applications and supporting testimony.

DISCUSSION AND CONCLUSIONS

RESPONSIVE APPLICATIONS. Under our rules, responsive applications are filed in response to a primary application and seek affirmative relief either as a condition to, or in lieu of, the approval of the primary application. They include inconsistent applications, inclusion applications, and any other affirmative relief that requires an application to be filed with the Board (such as trackage rights, purchases, construction, operation, pooling, terminal operations, abandonment, etc.). See 49 CFR 1180.3(h). We would agree with NS that the relief it is proposing, without a trackage/haulage rights component, would not require the filing of a responsive application. However, even though NS states that it intends to seek overhead haulage and/or trackage rights only on a contingent or alternative basis, the fact remains that the relief NS will be asking us to impose on applicants includes affirmative relief in the form of trackage rights. Because it intends to seek trackage rights as a condition to approval of the CN/IC application, NS is advised to make its request in a responsive application.

NS maintains that it should not be required to file a trackage rights application because applicants have not made a comparable filing with respect to their alliance partners KCSR and TexMex. According to NS, there is no apparent reason why its requested conditions should be in

the form of an application if applicants themselves have not been required to make such a filing. But it is clear that NS seeks us to impose trackage rights on KCSR as an integral component of its requested relief. Applicants, on the other hand, state that CN has entered into an access agreement with KCSR that includes a proposal for CN/IC haulage and trackage rights over KCSR that is contingent upon approval of the primary application and becomes effective upon implementation of the CN/IC transaction. See CN/IC-6, Vol. 1, V.S. Davies and Skelton, at 11-13. IC is not yet a party to this agreement, and will not become a party until the CN/IC transaction is implemented. *Id.* at 11. While it appears that applicants have structured their agreement with KCSR so that a filing for trackage rights authority or exemption may be forestalled, NS does not have this option. If it seeks trackage rights as a condition to the CN/IC transaction, NS will be required to file a responsive application for trackage rights.

MINOR TRANSACTIONS. If a responsive application is not a major transaction, our railroad consolidation regulations provide that it is either a significant or a minor transaction. The regulations further require, for significant transactions, certain evidentiary submissions more extensive than those required for minor transactions. These include 49 CFR 1180.6(a)(8) (environmental consultation); section 1180.6(c) (ownership information, other relevant issues, a corporate chart, noncarrier information, and certain other relationships); section 1180.7 (market analyses); and section 1180.8(a) (operational data). Petitioner NS asks that, if it is required to file a responsive application, its requested relief should be considered a minor transaction.

The trackage rights sought by NS, which, if imposed, would provide NS with new, direct access to Dallas and Port Arthur, TX, as well as Mexican ports of entry via TexMex, appear to be regional and substantial in scope. NS is silent with respect to the impact of its request. Without additional evidence, NS' presentation is insufficient to support a minor transaction classification. Accordingly, NS' waiver petition, to the extent it seeks to designate the responsive application a minor transaction, will be denied.³

ENVIRONMENTAL DATA. NS' requested waiver from the environmental reporting requirements of 49 CFR 1180.6(a)(8) will not be granted. To allow us to fulfill our responsibilities under the National Environmental Policy Act and other environmental laws, responsive applicants must submit certain environmental information before or at the time they submit their applications. To facilitate the environmental review process, we required that responsive applicants file by September 21, 1998, either: (1) a responsive environmental report (RER) that contains detailed environmental information regarding the inconsistent or responsive application; or (2) a verified statement that the inconsistent or responsive application will have no significant environmental impact. The RER should comply with all requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. If an action proposed under an inconsistent or responsive transaction does not involve significant operational changes or would typically fall within the exemption criteria of 49 CFR 1105.6(c)(2), an RER would not be required because such an action is generally exempt from environmental review. The responsive applicant must file a verified statement demonstrating that its proposal meets the

³ Because we are denying NS' request in this regard, the waiver NS seeks from 49 CFR 1180.8(b) (operating plan in minor transactions) is moot and will not be addressed.

exemption criteria of 49 CFR 1105.6(c)(2).⁴ Anyone expecting to file a responsive application should consult with SEA as early as possible regarding the appropriate environmental documentation. Decision No. 6, slip op. at 10-11, 63 FR at 43748-49.

DISCOVERY. In Decision No. 2, served March 13, 1998, this proceeding was assigned to Administrative Law Judge David Harfeld for the handling of all discovery matters and the initial resolution of all discovery disputes. Judge Harfeld has the authority to rule on discovery matters but not to modify the procedural schedule. Accordingly, NS must consult Judge Harfeld as to its discovery requests.

It is ordered:

1. The NS-1 request for waiver or clarification is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁴ Our Section of Environmental Analysis (SEA) will review the verified statements. If a verified statement is insufficient, we may require additional environmental information or reject the inconsistent or responsive application. The verified statements, like the RERs, will be included in the Draft Environmental Assessment, which will be available for public review and comment.

DECISION NO. 9

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SERVICE DATE - LATE RELEASE SEPTEMBER 28, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

**CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY**

Decision No. 9

Decided: September 28, 1998

NOTICE TO THE PARTIES:

The attached service list has been compiled from the notices of intent to participate submitted in accordance with the procedural schedule set forth in this proceeding in Decision No. 6, served August 14, 1998, and published that day in the Federal Register at 63 FR 43744-51.¹

Each person actively participating as a Party of Record in this proceeding must, within 10 days of the service date of this Notice, 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 Secretary of the Board, within 10 days of the service date of this Notice, an original plus 25 copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished.

Every filing made by a Party of Record after the service date of this Notice must have its own certificate of service indicating that Administrative Law Judge David Harfeld and all Parties of Record on the service list have been served with a copy of the filing. As stated in Decision No. 6, 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 or Governor has requested to be, and is designated, as a Party of Record. At the present time, however, there are no "Member of Congress" or "Governor" designations on the service list.

¹ On August 21, 1998, the Brotherhood of Locomotive Engineers (BLE) filed with the Board a Request for Waiver from the Disk-CD Requirement (BLE-2). In light of our receipt on September 21, 1998, of BLE's disk and a letter withdrawing the BLE-2 filing, we will consider the request in BLE-2 as moot.

The Board will continue to follow the practice regarding service of Board actions established in Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railway Company, Finance Docket No. 32760 (UP/SP). See UP/SP, Decision No. 15 (STB served Feb. 16, 1996), at 2-3. Copies of decisions, orders, and notices will be served only on those persons who are designated as Party of Record, Member of Congress, or Governor on the official service list. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding.² DC News will handle the collection of charges and the mailing and/or faxing of decisions to persons who request this service. The telephone number for DC News is: (202) 289-4357.³

All persons named on the attached service list should review the list and determine whether information about their address and status (as a Party of Record or not a Party of Record), is correct. The list reflects our policy of allowing only one official representative per party to be placed on the service list.⁴ 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(a) and (d), as recently amended in Railroad Consolidation Procedures--Modification of Fee Policy, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules), and any other requirements set forth in Decision No. 6 and this decision.

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 October 5, 1998. An original plus 25 copies of such requests, along with an electronic copy, should be directed to:

² In addition to the service provided by DC News, interested persons may obtain copies of Board decisions, orders, and notices from our website at "WWW.STB.DOT.GOV."

³ 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. Our 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), as recently amended in Railroad Consolidation Procedures--Modification of Fee Policy, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News 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 issued in this proceeding.

⁴ See Press Release No. 97-68 dated August 18, 1997, announcing the implementation of the Board's "One Party-One Representative" policy for service lists.

Office of the Secretary
Case Control Branch
Attn: STB Finance Docket No. 33556
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Petition for Leave to Late-file a Notice of Intent to Participate. On September 18, 1998, The City of Chicago (the City) filed a petition for leave to late-file its notice of intent to participate as a party of record or in the alternative to intervene (CHI-1).⁵ The City states that it has been engaged in negotiations for several months with applicants and other railroads concerning the impact of additional traffic resulting from the merger, but that the pace of the negotiations has been slow, and accordingly, it must seek to participate in this proceeding as a party of record in order to seek conditions in the event the on going negotiations are not successful. The City's request is reasonable, and its notice of intent to participate is accepted. The City has been added to the service list as a party of record represented by John Bradley, attorney for the City.

Duplicate Filing of a Notice of Intent to Participate. By letter dated September 23, 1998, Exxon Chemical Americas (ECA) filed a duplicate original and 25 copies of its notice of intent to participate, along with a disk, that was submitted to the Board on behalf of ECA on August 25, 1998. ECA explains that the duplicate filing is being made due to the loss of the original by Airborne Express. It says that the Airborne Express truck containing ECA's filing was robbed in Washington, D.C., and its filing was evidently stolen. ECA just recently discovered that the Board never received its original August 25 filing. ECA advises that the August 25 deliveries to applicants' representatives and Administrative Law Judge Harfeld were

⁵ By reply (designated CN/IC-19) filed September 23, 1998, applicants state that they do not oppose the City's petition because they do not believe that their interests or the Board's procedures will be unduly prejudiced by the relief sought. Applicants further state that they recognize the importance of timely filings and adherence to the schedule in this proceeding, and their nonopposition in this instance is without prejudice to their right to oppose any requests made by parties or potential parties in the future.

not affected by the truck robbery. Because of the unusual circumstances involved, ECA's duplicate filing of its notice of intent to participate is accepted. ECA has been added to the service list as a party of record represented by Stephen M. Coulter.

Vernon A. Williams
Secretary

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GRAND TRUNK CORPORATION
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STB Finance Docket No. 33536

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MANAGER
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INC

DECISION NO. 10

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29642
EB

SERVICE DATE - LATE RELEASE OCTOBER 2, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED—CONTROL—ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

Decision No. 10

Decided: October 1, 1998

In Decision No. 7 in this proceeding,¹ served September 18, 1998, we granted petitions for waiver or clarification with respect to anticipated responsive applications by, among other rail carriers, CSX Corporation and CSX Transportation, Inc. (CSXT) (collectively CSX). By request filed September 21, 1998 (designated as CSX-7), CSX seeks permission to file an amended description of its responsive application. Applicants replied on September 24, 1998 (designated as CN/IC-20).

We noted in Decision No. 7 that CSX anticipated filing a responsive application seeking overhead trackage rights over CN lines between Samia, Ontario, and Port Huron, MI; overhead trackage rights over CN's Shore Line Subdivision between Detroit, MI, and Toledo, OH; and trackage rights over the lines of IC to serve customer facilities in Decatur, IL, and Memphis, TN, that CSX currently serves through reciprocal switching provided by IC. We allowed CSX to amend its petition for waiver or clarification to include a request that its responsive application be considered a minor transaction and we found that CSX was proposing three separate minor

¹ In Decision No. 6, we accepted for consideration the application filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW) (collectively with their affiliates, CN), Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC) (collectively with their affiliates, IC) seeking approval and authorization under 49 U.S.C. 11321-26 for: (1) the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp., and through it of ICR and its railroad affiliates; and (2) for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. CN and IC are referred to collectively as applicants.

transactions.³ In its instant pleading, CSX states that it has decided not to pursue its request for trackage rights between Detroit and Toledo. CSX seeks to further amend its description of its responsive application to include a request for trackage rights over The Kansas City Southern Railway Company (KCSR) between the point of interchange between CSX and KCSR in New Orleans and milepost 814 on KCSR's Baton Rouge-New Orleans line.

CSX states that its amendment is based on further analysis of the competitive implications of the so-called CN-IC-KCSR alliance and the Board's decision in Finance Docket No. 32530 to hold in abeyance KCSR's application for approval to construct a 9-mile build-in from milepost 814 on KCSR's Baton Rouge-New Orleans line to the industries at Geismar, LA, on the ground that KCSR will be able to access Geismar through the new alliance. CSX asserts that KCSR's participation in the alliance may reduce the scope of head-to-head competition between IC and KCSR that industries in the Geismar industrial area anticipated from the KCSR build-in prior to the formation of the alliance. CSX maintains that the trackage rights it intends to seek over KCSR would allow CSX to serve industries in Geismar via a build-in similar to that contemplated by the KCSR construction application in Finance Docket No. 32530, thereby assuring that there is no loss of competitive rail options at Geismar stemming from the alliance and the CN-IC control transaction. CSX also requests that, if it is permitted to amend its description of its responsive application, the Board "continue to treat its proposed responsive application as a minor transaction."

Applicants oppose CSX's request. They contend that, because the information CSX relies on to justify its amendment was available to CSX well before applicants filed their primary application, CSX has failed to show good cause for making such a substantial change in its description of its responsive application. If we grant CSX's amendment request, applicants maintain that CSX's proposed trackage rights over KCSR at Geismar would constitute a significant transaction, rather than the minor transaction designation sought by CSX.

KCSR also filed a reply (designated as KCS-4) in opposition to CSX's request on September 29, 1998, on the grounds that: (i) the petition was filed out of time and in violation of the Board's procedural schedule; (ii) the relief it seeks represents an impermissible request that the Board impose trackage rights over the lines of a nonapplicant carrier; and (iii) the relief it seeks will unduly prejudice KCS. If the pleading is not rejected, KCSR seeks denial of those aspects of CSX-7 that affect KCSR.

While CSX has not, in our view, offered a very persuasive explanation as to why it should be permitted to make a late amendment, it does not appear that applicants or KCSR will be procedurally prejudiced by granting CSX's request to amend its description of its responsive

³ We also granted CSX's requests to: limit the definition of "applicant carrier" to CSXT and Board-regulated rail carriers in which CSX now holds an interest greater than 50%; submit information and data required by the Board's procedures on a consolidated basis; use the same system for classifying employee impact data as used by the primary applicants.

application.³ We will, therefore, grant CSX's request to amend its description of its responsive application. We caution, however, that we will not permit the filing of amendments and errata sheets significantly altering the evidence and conclusions contained in earlier submissions, as such filings may curtail the ability of other parties to respond fully and adequately within the time frames we have established.

We cannot, however, accede to petitioner's request to designate its proposed trackage rights over KCSR a minor transaction. In Decision Nos. 7 and 8 in this proceeding, served September 18, 1998, we concluded that descriptions of responsive applications that included similar trackage rights proposals in connection with service to Geismar, LA, were not minor. Here, as in those instances, petitioner's presentation is insufficient to support a minor transaction designation. Accordingly, CSX's amendment describing trackage rights between New Orleans and milepost 814 will be considered a significant transaction.

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

It is ordered:

1. The CSX-7 request to amend the description of responsive application in CSX-3 and CSX-5 is granted.
2. CSX's amendment describing trackage rights between New Orleans and milepost 814 will be considered a significant transaction.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ We have previously exercised our authority to grant a request to amend a description of a responsive application where the request is reasonable. Union Pacific Corp. - Control and Merger - Southern Pacific Rail Corp., Finance Docket No. 32760 (Decision No. 25, served March 25, 1996) (granting request of Capital Metropolitan Transportation Authority to amend description of responsive application).

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DECISION NO. 11

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29632
EB

SERVICE DATE - LATE RELEASE OCTOBER 2, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
 GRAND TRUNK WESTERN RAILROAD INCORPORATED--CONTROL--ILLINOIS
 CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
 CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
 COMPANY

Decision No. 11

Decided: October 2, 1998

We consider, in this decision: the petition (hereinafter referred to as the CPR-7 petition)¹ for modification of the procedural schedule, filed September 28, 1998, by Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (referred to collectively as CPR), Norfolk Southern Railway Company (NSR), Rubicon Inc. (Rubicon), Uniroyal Chemical Company, Inc. (Uniroyal), and Vulcan Chemicals (Vulcan);² the compendium (hereinafter referred to as the CPR-7 compendium) of discovery requests, responses, and discovery-related pleadings submitted in support of the CPR-7 petition;³ the undesignated letter (hereinafter referred to as the CPR-7 supplement) intended to supplement the CPR-7 petition, filed September 29, 1998, by petitioners;⁴ the petition (hereinafter referred to as the CPR-8 petition)⁵ for waiver of service of the CPR-7 compendium, filed September 29, 1998, by petitioners; the CSX-8 request for an extension of the procedural schedule, filed September 30, 1998, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX); the BNSF-5 response to the CPR-7 petition, filed September 30, 1998, by The Burlington Northern and Santa Fe Railway Company (BNSF); the UP-5 response to the CPR-7 petition, filed September 30, 1998, by Union Pacific Railroad Company (UP); the undesignated letter (hereinafter referred to as the KCS letter) in the nature of a response to the CPR-7 petition and the CPR-7 supplement, filed September 30, 1998, by Kansas City Southern Railway Company (KCS); the undesignated letter, filed October 1, 1998, by Occidental Chemical Company

¹ This petition is designated CPR-7/NS-3/RUB-9/UCC-9/VUL-2.

² CPR, NSR, Rubicon, Uniroyal, and Vulcan are hereinafter referred to as petitioners.

³ The CPR-7 compendium was intended to accompany the CPR-7 petition, but was filed September 29, 1998.

⁴ Although the CPR-7 supplement purports to be filed by all of the five petitioners, it is signed by representatives of only two (CPR and NSR) of the five petitioners.

⁵ This petition is designated CPR-8/NS-4/RUB-10/UCC-10/VUL-3.

(Occidental) in support of a 30-day extension of the procedural schedule; the letter filed October 1, 1998, by the Brotherhood of Maintenance of Way Employees (BMWE), opposing modification of the procedural schedule;⁶ and the CN/IC-25 reply to the CPR-7 petition and the CPR-7 supplement, filed October 1, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), Grand Trunk Western Railroad Incorporated (GTW), Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central & Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC).⁷

The CPR-7 Petition. The CPR-7 petition seeks a 30-day extension (until November 12, 1998) of the due date for evidentiary submissions in response to the primary application, and a corresponding adjustment of the remaining dates contained in the procedural schedule governing this proceeding. Petitioners cite the following circumstances (described in their words) in support of the CPR-7 petition: the decision of CN and IC to construct their application in a manner that obscures the effects of the proposed CN/IC transaction by, among other things, inextricably intermingling in the application's merger-impact studies and public-benefits estimates the combined effects of both the CN/IC transaction (which is subject to Board review) and the recent strategic "Alliance" between applicants and KCS (which applicants are said to claim is not part of the "transaction" before the Board); the intransigent and improper resistance by applicants and KCS to petitioners' legitimate attempts to obtain discovery of needed information about the competitive and other effects of the proposed CN/IC transaction and, importantly, about the relationship of the CN/IC/KCS Alliance and Access agreements to the CN/IC transaction;⁸ and applicants' inexcusable delay in producing relevant workpapers underlying their merger-impact studies; the inability of the parties, due to the unavailability of Administrative Law Judge Harfeld in scheduling an immediate hearing, to obtain a prompt resolution of the dozens of outstanding discovery disputes engendered by the stonewalling tactics of applicants and KCS;⁹ the resulting inability of the parties to arrange a feasible, realistic deposition schedule for applicants' witnesses that will allow petitioners and other interested parties adequate time to obtain and review the relevant documents before the depositions take place; and other procedural delays that are directly attributable to applicants' own strategy or are beyond the control of the parties. Petitioners insist that adherence to the current procedural schedule, particularly in light of applicants' conduct, would reward discovery abuse and prevent the development of a complete evidentiary record necessary to a sound Board decision on the application.

⁶ This letter is designated BMWE-3.

⁷ CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN. IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

⁸ The CN/IC/KCS Alliance is a 15-year marketing alliance that is already under way. See CN/IC-6 at 142 (filed July 15, 1998). The CN/KCS Access agreement, which IC will join if the CN/IC transaction is approved by the Board and implemented by applicants, involves the granting of certain haulage and trackage rights. See CN/IC-6 at 144.

⁹ We understand that, although motions to compel were filed as early as September 14, 1998 (by CPR), and shortly thereafter by other parties, Judge Harfeld's schedule did not allow for a discovery conference until September 28, 1998. See CSX-8 at 2.

The CPR-7 Supplement. The CPR-7 supplement seeks an order temporarily suspending the procedural schedule (including applicants' proposed schedule for depositions of applicants' witnesses) pending the final resolution of all outstanding discovery disputes and a ruling on the CPR-7 petition. Petitioners state that, on the first day (September 28, 1998) of the 2-day hearing held by Judge Harfeld, Judge Harfeld indicated: that he intends to grant the motions filed by various parties to compel applicants and KCS to produce documents and information relating to the negotiation, implementation, and effects of the CN/IC/KCS Alliance; and that he intends to grant petitioners' motion to require applicants to produce, under the "Highly Confidential" designation provided for in the protective order, complete unredacted copies of the Alliance and Access agreements. Petitioners further state that, during the September 28th hearing: applicants also agreed to produce, subject to a limited redaction, additional documents and information to which they previously had objected (this material apparently relates to the consideration and review of the proposed CN/IC transaction and the Alliance by applicants' Boards of Directors); and, in response to NSR's motion to compel production of full and complete computerized workpapers underlying the application's traffic diversion study, applicants agreed to reexamine the issue and to consult with NSR's consultants to determine what additional data should be produced. Petitioners add: that, in response to Judge Harfeld's statement that additional documents and information to be produced under his rulings should be produced by Friday, October 2, 1998, several opposing parties indicated that they needed the relevant documents (particularly Alliance-related materials) in order to take meaningful depositions of applicants' witnesses, who applicants propose to make available on Friday, October 2, 1998; and that, in response to these concerns, Judge Harfeld stated his view that an extension of the current procedural schedule is clearly warranted.

The CPR-8 Petition. The CPR-8 petition seeks a waiver of the service rule¹⁰ for the approximately one-inch thick CPR-7 compendium. Petitioners argue: that the parties of record identified in Decision No. 9 have been, or very soon will be, served with copies of the CPR-7 petition and the accompanying cover letter, both of which make reference to the CPR-7 compendium; that all of the material contained in the compendium has previously been served; and that, in any event, petitioners have pledged to make the CPR-7 compendium available to authorized parties upon request.

The CSX-8 Request. The CSX-8 request seeks a 30-day extension (until November 12, 1998) of the due date for evidentiary submissions in response to the primary application, and a corresponding adjustment of the remaining dates contained in the procedural schedule governing this proceeding. CSX indicates: that Judge Harfeld's rulings in the 2-day discovery conference (held September 28 and 29, 1998) require applicants to produce documents and information in response to numerous requests; that, given that applicants have a right to appeal Judge Harfeld's discovery rulings to the Board, CSX (and other opposition parties) face the very real possibility that they will obtain no meaningful discovery from applicants prior to the current due date (October 13, 1998) for evidentiary submissions in response to the primary application; and that, even if no appeals are filed, the discovery documents clearly will not be produced in time for

¹⁰ See 49 CFR 1104.12.

CSX (and other opposition parties) to prepare for depositions of applicants' witnesses, which are scheduled over this week and next.

The BNSF-5 Response. BNSF urges approval of the CPR-7 petition. The parties to this proceeding, BNSF contends, must be afforded a reasonable opportunity to develop a full evidentiary record through discovery.

The UP-5 Response. UP agrees that the present schedule does not allow sufficient time for the parties to make any meaningful use of the discovery that CN/IC and KCS have been ordered to produce. UP does not join in the CPR-7 petition, however, because, in UP's view, a modification of the procedural schedule will ultimately serve no purpose. The CN/IC application, UP claims, is fundamentally deficient; it fails to describe the effects of the CN/IC transaction as distinct from the effects of the CN/IC/KCS Alliance. The transaction that is actually before us, UP insists, is not the CN/IC transaction presented in the CN/IC application; it is, rather, a three-way CN/IC/KCS common control (or pooling) transaction. UP therefore insists that the CN/IC application must be re-filed (and this, apparently, is what UP intends to argue when it submits its evidence and arguments in opposition to the CN/IC application).

The KCS Letter. KCS urges denial of the CPR-7 petition, which (KCS claims) represents nothing more than an attempt by CPR and NSR (major competitors of CN, IC, and KCS) to stall, delay, and otherwise obstruct the procompetitive benefits of the proposed transaction. KCS adds: that petitioners delayed in propounding their discovery;¹¹ that petitioners chose not to avail themselves of discovery guidelines that would have shortened the time frames available for response; and that petitioners, having waited until the last minute to file discovery, now seek to extricate themselves from their self-inflicted bind by asking the Board to delay the entire transaction.

Occidental Letter. Occidental generally supports other parties' requests to extend the procedural schedule in this proceeding by 30 days.

BMW Letter. BMW generally opposes other parties' requests to modify the procedural schedule.

The CN/IC-25 Reply. Applicants, urging denial of the CPR-7 petition and the CPR-7 supplement, contend: that they have neither improperly resisted discovery nor engaged in dilatory discovery tactics;¹² that blame for the delays that have occurred should be assigned to CPR and NSR, which, for reasons known only to themselves, neglected to initiate their discovery

¹¹ KCS claims that the first discovery served on KCS by any of the petitioners was served on September 4, 1998. KCS suggests that petitioners should have served their discovery requests at a much earlier date (certainly, KCS suggests, soon after the filing of the application on July 15, 1998; and perhaps even, KCS adds, at any time following the filing, on February 12, 1998, of applicants' pre-filing notice of intent).

¹² Applicants note, by way of illustration, that, at the discovery conference held September 28-29, 1998, Judge Harfeld sustained applicants' objections in significant respects.

requests in a timely manner; that CPR and NSR are attempting to use the regulatory process to forestall the new competition promised by the CN/IC transaction and to chill the competition they are already facing from the CN/IC/KCS Alliance; and that even a 1-month delay in approving the CN/IC transaction could mean a loss of more than \$10 million in public benefits. Applicants add: that Judge Harfeld did not state that an extension of the procedural schedule is clearly warranted;¹⁵ that, even if applicants decide to appeal Judge Harfeld's orders,¹⁶ they will produce documents and allow testimony pending appeal, without prejudice to seeking a ruling that such evidence cannot be used if the Board decides the appeal in applicants' favor; that, because all parties have made plans based on the current deposition schedule, it would be enormously disruptive and prejudicial to change that schedule; and that, if CPR and NSR suffer any actual, demonstrable prejudice, they can seek other relief (e.g., they can seek to supplement their October 13th submissions for good cause shown).

DISCUSSION AND CONCLUSIONS

We will grant a 2-week extension (to October 27, 1998) of the due date (previously set as October 13, 1998) for the submission of comments, protests, etc., in opposition to the primary application.¹⁷ We caution and urge applicants and all parties to avoid discovery disputes where possible and to use the discovery process properly for obtaining necessary information and not as a litigation tactic. To the extent Judge Harfeld is called upon to resolve any further discovery disputes, we urge all parties to work cooperatively with the Judge so that he may resolve issues promptly as they arise.

We recognize that some of the discovery controversy relates to the CN/IC/KCS Alliance. Applicants have brought the Alliance into the case in their primary application,¹⁸ and have argued, in essence, that the benefits of the CN/IC transaction include certain benefits flowing from the CN/IC/KCS Alliance, but we are not today resolving the extent of the relevance of the Alliance.¹⁹

We encourage all parties to this proceeding to cooperate in good faith in fulfilling their discovery obligations. We also encourage all parties to this proceeding to cooperate in good faith in serving papers on all other parties. All of the leading parties in this proceeding are represented by attorneys with offices located in a relatively small geographic area; and there is, therefore, no particularly obvious obstacle to delivering pleadings to such attorneys at approximately the same

¹⁵ Applicants claim that Judge Harfeld stated only that he had some sympathy for the positions of both sides.

¹⁶ Applicants indicate that they have not yet decided whether to appeal Judge Harfeld's orders.

¹⁷ We will also grant the CPR-8 petition for waiver of service of the CPR-7 compendium, for the reasons stated in the CPR-8 petition.

¹⁸ See, e.g., CN/IC-6 at 142-49 (statement by applicants' witnesses of the benefits that will flow from the Alliance and the related Access agreement).

¹⁹ Nor are we prejudging our assessment of UP's anticipated argument that the transaction that is actually before us is a three-way CN/IC/KCS transaction and not a two-way CN/IC transaction.

time as such pleadings are filed with the Board. There is no excuse, in this context, for delayed deliveries.¹⁸

We also encourage all parties to bring to our attention, as early as possible, problems similar to those we address in this decision. Clearly, the parties to this proceeding knew, prior to September 28th, that there was a delay in scheduling a discovery conference. We hope that the parties to this proceeding will endeavor to avoid such delays in the future.¹⁹

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

It is ordered:

1. The CPR-8 petition for waiver of service of the CPR-7 compendium is granted.
2. The dates in the procedural schedule are modified as indicated in the Appendix to this decision.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

¹⁸ See, e.g., the KCS letter at 2 n.2. The delays there described, if such delays in fact occurred, are simply unacceptable.

¹⁹ We do not understand why the parties to this proceeding neglected to pursue the kind of discovery guidelines that were adopted in the recently concluded Conrail proceeding in STB Finance Docket No. 33388. That proceeding involved far more parties; and yet, thanks perhaps to the discovery guidelines, discovery in that proceeding seemed to move along more smoothly. Although all parties may bear a portion of the responsibility for the present situation, we will not countenance stalling tactics of any sort.

APPENDIX: REVISED PROCEDURAL SCHEDULE

October 27, 1998	All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application due, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT). Inconsistent and responsive applications due.
November 17, 1998	Notice of acceptance (if required) of inconsistent and responsive applications published in the <u>Federal Register</u> .
December 11, 1998	Response to comments, protests, requested conditions, and other opposition due. Response to comments of DOJ and DOT due. Rebuttal in support of primary application and related application due. Response to inconsistent and responsive applications due.
January 11, 1999	Rebuttal in support of inconsistent and responsive applications due.
February 19, 1999	Briefs due, all parties (not to exceed 50 pages for applicants and not to exceed 25 pages for all other parties).
March 22, 1999	Oral argument (close of record).
March 29, 1999	Voting conference (at Board's discretion).
May 25, 1999	Date of service of final decision.

Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for depositions. Access to documents subject to protective order will be appropriately restricted. Discovery relating to applications and other filings (including responsive and inconsistent applications), where permitted, will begin immediately upon their filing. The Administrative Law Judge (ALJ) assigned to this proceeding will have the authority initially to resolve any discovery disputes.

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DECISION NO. 12

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SERVICE DATE - OCTOBER 16, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED--CONTROL--ILLINOIS
CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO,
CENTRAL AND PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD
COMPANY

Decision No. 12

Decided: October 15, 1998

We consider, in this decision: the CN/IC-27 appeal,¹ filed October 5, 1998,² by applicants³ and KCS;⁴ the CPR-10 reply,⁵ filed October 8, 1998, by CPR⁶ and NSR;⁷ the RUB-12

¹ For ease of reference, this appeal, though designated CN/IC-27 and KCS-7, will be referred to as the CN/IC-27 appeal.

² The CN/IC-27 appeal was submitted for filing on October 2, 1998, but, because a check for the filing fee was not submitted until October 5, 1998, the appeal was not considered "filed" until October 5, 1998.

³ Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW) are referred to collectively as CN. Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central & Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC) are referred to collectively as IC. CN and IC are referred to collectively as applicants.

⁴ Kansas City Southern Railway Company is referred to as KCS.

⁵ For ease of reference, this reply, though designated CPR-10 and NS-6, will be referred to as the CPR-10 reply.

⁶ Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited are referred to collectively as CPR.

⁷ Norfolk Southern Railway Company is referred to as NSR.

reply,⁸ filed October 8, 1998, by Rubicon⁹ and Uniroyal;¹⁰ and the UP-7 reply, filed October 9, 1998, by UP.¹¹

The CN/IC-27 Appeal. By order entered orally at a discovery conference, Administrative Law Judge Harfeld directed applicants and KCS to comply with certain discovery requests relating to the negotiation and implementation of two settlement agreements dated April 15, 1998: a CN/IC/KCS settlement agreement (the so-called Alliance agreement), that established, effective April 15, 1998, a 15-year CN/IC/KCS marketing alliance; and a CN/KCS settlement agreement (the so-called Access agreement), which provides that, if the CN/IC transaction is approved by the Board and implemented by applicants, IC and KCS will grant each other access to certain of each other's facilities (including certain facilities in Geismar, LA, as to which IC and KCS are opponents in a separate proceeding before the Board).¹² Applicants and KCS have accepted Judge Harfeld's order as respects *implementation*, but, in their CN/IC-27 appeal, have asked us to overturn Judge Harfeld's order as respects *negotiation*.¹³

Applicants and KCS contend: that, as an adjunct to our preference for negotiated settlements,¹⁴ there is, in our proceedings, a "settlement privilege" that, absent compelling circumstances, bars discovery of confidential material related to settlement negotiations;¹⁵ that, in

⁸ For ease of reference, this reply, though designated RUB-12 and UCC-12, will be referred to as the RUB-12 reply.

⁹ Rubicon Inc. is referred to as Rubicon.

¹⁰ Uniroyal Chemical Company, Inc., is referred to as Uniroyal.

¹¹ Union Pacific Railroad Company is referred to as UP.

¹² See Kansas City Southern Railway Company--Construction and Operation Exemption--Geismar Industrial Area Near Gonzales and Sorrento, LA, Finance Docket No. 32530 (STB served Aug. 27, 1998) (providing that the Finance Docket No. 32530 proceeding will be held in abeyance until the issuance of a final written decision in the STB Finance Docket No. 33556 proceeding).

¹³ We understand that, in the present context, *implementation* includes, among other things, *effects* (i.e., the part of Judge Harfeld's order that applicants and KCS have accepted directs applicants and KCS to comply with discovery requests respecting both implementation of the two settlement agreements and the effects of such implementation). We further understand that, in the present context, *negotiation* includes *background* and *purposes* (i.e., the part of Judge Harfeld's order that applicants and KCS have appealed directs applicants and KCS to comply with discovery requests respecting the negotiation of the two settlement agreements, the background of such negotiations, and the purposes served by the two settlement agreements).

¹⁴ See, e.g., 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, Decision No. 89, slip op. at 58 (STB served July 23, 1998) (we noted "our direction that, whenever possible, disputes should be resolved by negotiated settlement between affected parties, rather than addressed by a resolution imposed by government decree").

¹⁵ See, e.g., Union Pacific Corporation and Union Pacific Railroad Company -- Control --

(continued...)

order to overcome the privilege, a party seeking discovery of privileged material must make specific, focused requests, and must demonstrate (not merely assert) a particular need for that specific material; that there has been, in this proceeding, no showing by any party of any specific or concrete need for any particular information concerning any particular aspect of the negotiation of either of the two relevant settlement agreements; and that, against this background, Judge Harfeld's order, if permitted to stand, will have a chilling effect as to future settlement agreements. Applicants and KCS further contend: that the two settlement agreements are indeed settlement agreements, i.e., agreements entered into in view of the opposition stance that KCS might otherwise have taken vis-a-vis the CN/IC application;¹⁶ and that applicants, although they have referred in the CN/IC application to the two settlement agreements, have not thereby waived the settlement privilege with respect to such agreements.¹⁷

Applicants and KCS indicate that, in the interest of avoiding the delay that would have been occasioned by a stay of Judge Harfeld's order pending their appeal thereof, they have complied with that order and have not sought a stay pending appeal.¹⁸ Applicants and KCS therefore suggest that, if we overturn Judge Harfeld's order as respects negotiation, we should also rule that documents or information respecting negotiation that have been produced by applicants and KCS in compliance with that order cannot be used by the recipients thereof in this proceeding, in their submissions or otherwise.

The CPR-10 Reply. CPR and NS agree that established precedent recognizes a settlement privilege, which, in appropriate cases, provides an important, but qualified, protection against discovery of genuine settlement negotiations. CPR and NSR insist, however, that applicants and KCS have not satisfied the stringent standards for overturning an administrative law judge's (ALJ's) discovery order, and that the CN/IC-27 appeal should therefore be denied.

¹⁵(...continued)

Missouri Pacific Corporation and Missouri Pacific Railroad Company, Finance Docket No. 30000, slip op. at 10 (ICC served Apr. 27, 1981) ("The determination of whether or not to allow or require discovery of confidential material requires a balancing of interests. While SPT's discovery of the withheld UP documents may have been useful, in either a tactical or commercial sense, it does not appear necessary in light of the materials already made available to SPT.").

¹⁶ Applicants claim that they were well aware that KCS has opposed every major railroad merger since 1980. We think it appropriate to note, however, that, in reality, KCS has not opposed every major railroad merger since 1980. See 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, Decision No. 89, slip op. at 204-06 (STB served July 23, 1998) (KCS was not directly involved in the CSX/NS/CR proceeding; its Gateway affiliates were involved, but their interests were narrowly focused).

¹⁷ Applicants and KCS insist that no aspect of the negotiations that led to the two settlement agreements is revealed or referred to in the CN/IC application.

¹⁸ See 49 CFR 1115.2(f) ("The timely filing of an appeal to an initial decision [of an administrative law judge, individual Board Member, or employee board] will stay the effect of the action pending determination of the appeal.").

CPR and NSR contend: that the Alliance and Access agreements are not "settlement agreements" within the meaning of the privilege;¹⁹ that, even if the Alliance and Access agreements are settlement agreements within the meaning of the privilege, the privilege must yield in view of the relevance of, and the particularized need of CPR and NSR for, the disputed materials;²⁰ and that, in any event, any privilege that may have attached to negotiation materials respecting the Alliance and Access agreements was waived by applicants' decision to "saturate" the CN/IC application with discussion and analysis of the two agreements.²¹

CPR and NSR further contend, in essence, that, even if Judge Harfeld erred in ordering applicants and KCS to comply with discovery requests concerning negotiation of the Alliance and Access agreements, the CN/IC-27 appeal should nevertheless be denied because applicants and KCS, having voluntarily elected to produce the disputed materials respecting negotiation despite their appeal of Judge Harfeld's order, have thereby waived any otherwise applicable settlement privilege.²² And, CPR and NSR add, any objections that applicants and KCS may

¹⁹ The Alliance and Access agreements, CPR and NSR claim, are not settlements of anything; they are, rather, prospective commercial arrangements of mutual benefit to the parties thereto. CPR and NSR note: that the two agreements were negotiated and entered into long before the CN/IC application was filed and long before any party (including KCS) had indicated any position on the proposed CN/IC consolidation; and that the core provisions of the agreements (the Alliance provisions establishing a 15-year strategic marketing alliance on interline traffic) were made effective immediately, without regard to approval by the Board, or consummation by applicants, of the CN/IC consolidation. CPR and NSR concede, of course, that the reciprocal grants of haulage and trackage rights and other provisions of the Access agreement are contingent on Board approval of the CN/IC consolidation. CPR and NSR insist, however, that this does not alter their analysis; the context and terms of the two agreements, CPR and NSR argue, strongly suggest that CN and KCS elected to make the Access agreement contingent on Board approval of the proposed consolidation both to minimize potential concerns about possible unlawful premature CN control of IC and to avoid Board review of the reciprocal trackage rights grants as "related" transactions in this proceeding.

²⁰ CPR and NSR claim that the materials relating to the negotiation of the Alliance and Access agreements are needed: to enable a clear understanding of the purposes the Alliance and Access agreements were intended to accomplish, and what their relationship is to the proposed CN/IC consolidation; to determine whether the "transaction" properly at issue in this proceeding includes, or does not include, the Alliance and Access agreements; and to determine whether the Alliance, in combination with the CN/IC consolidation, is the equivalent of a three-carrier merger requiring Board approval.

²¹ CPR and NSR contend that applicants' entirely voluntary decision to intertwine the Alliance/Access agreements and the CN/IC consolidation (by "permeating" the CN/IC application with references to and analyses of the Alliance and Access agreements) amounted to a waiver of any otherwise applicable settlement privilege.

²² CPR and NSR insist that, if applicants and KCS had wished to preserve their claim of privilege, they should have followed the normal procedures applicable in matters of this sort (i.e., they should have secured the practical equivalent of a stay by withholding production of the

(continued...)

properly assert regarding other parties' use of Alliance/Access negotiation materials in their evidentiary submissions cannot properly be asserted in the form of a motion in limine, but should instead be asserted in the rebuttals that will be filed by applicants and KCS, or in appropriate motions to strike.²³

The RUB-12 Reply. Rubicon and Uniroyal urge the denial of the CN/IC-27 appeal for the reasons stated in the CPR-10 reply.

The UP-7 Reply. UP believes that there is no need to determine whether Judge Harfeld was correct when he ruled that the settlement privilege did not apply to the negotiation of the Alliance and Access agreements and that applicants had in any event waived any such privilege. Those questions, UP insists, have been rendered moot by the production, by applicants and KCS, of the materials at issue. UP argues: that the settlement privilege is a qualified discovery privilege applicable to confidential settlement materials, not an evidentiary rule that prevents such material from becoming part of the evidentiary record before a finder of fact; that, once a party has chosen to produce confidential information related to asserted settlement negotiations, the privilege against discovery is necessarily lost; and that, therefore, whatever tactical objectives applicants and KCS may have had for producing documents and permitting deposition testimony concerning the subjects assertedly covered by settlement privilege, their conduct has destroyed the privilege and has mooted their appeal.

DISCUSSION AND CONCLUSIONS

Interlocutory appeals from discovery decisions issued by Judge Harfeld are governed by the stringent standard of 49 CFR 1115.1(c): "Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." See Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control--Chicago and North Western Transportation Company and

²³(...continued)

disputed materials and filing a timely appeal).

²⁴ CPR and NSR insist that the request for an order barring the use of negotiation materials is in the nature of a motion in limine; and such a motion, CPR and NSR argue, has no place in agency proceedings. See Seaboard Air Line Railroad Company -- Merger -- Atlantic Coast Line Railroad Company (Petition to Remove Traffic Protective Conditions), Finance Docket No. 21215 (Sub-No. 5), slip op. at 1 (ICC served Mar. 22, 1994) ("[S]ubsequently striking any material that might turn out to be unduly broad will be a suitable remedy. The Commission is an administrative agency with expertise in transportation law, not a jury composed of laymen that must be protected from seeing inadmissible material."). 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, Decision No. 51, slip op. at 2-4 (STB served Nov. 3, 1997) (motions in limine are not favored in Board proceedings; the better remedy is a motion to strike, filed subsequent to the submission of the offending material).

Chicago and North Western Railway Company, Finance Docket No. 32133, Decision No. 17, slip op. at 9 (ICC served July 11, 1994) (applying the "stringent standard" of 49 CFR 1115.1(c) to an appeal of an interlocutory decision issued by former Chief Administrative Law Judge Paul S. Cross).²⁴ Because the CN/IC-27 appeal filed by applicants and KCS has not met this standard, it will be denied.

We agree with applicants and KCS that the Alliance and Access agreements are bona fide settlement agreements; these agreements represent the price that applicants had to pay to secure KCS's support for the CN/IC application. And it makes no difference, for this purpose, that the arrangements provided for by the Alliance and Access agreements do not appear to be directed at any anticompetitive consequences that might arguably flow from CN/IC common control. For purposes of the settlement privilege, it is enough that the Alliance and Access agreements were intended to settle any grievances KCS might otherwise have expressed vis-à-vis the CN/IC application.

We also agree with applicants and KCS that, absent compelling circumstances, the settlement privilege that has been recognized in our precedents would bar discovery, by opposing parties, of confidential material related to the negotiation of the Alliance and Access agreements. And we further agree with applicants and KCS that the settlement privilege was not waived by the presence, in the CN/IC application, of numerous references to the Alliance and Access agreements. These references tout the benefits of the two agreements, but do not reveal (and therefore do not waive the settlement privilege with respect to) the negotiations from which these two agreements ultimately emerged.

We agree with the opposing parties, however, that, in the rather unusual context of the present case, Judge Harfeld's override of the settlement privilege was not a clear error of judgment and did not result in manifest injustice. It is clear that opposing parties intend to argue that the "transaction" at issue in this proceeding is a CN/IC/KCS transaction, not the CN/IC transaction presented by applicants. We do not intend to prejudge this argument; it suffices for present purposes merely to observe that, in the present state of the record, the argument is not

²⁴ We have noted, in most recent "major merger" proceedings, that interlocutory appeals from discovery decisions issued by the presiding administrative law judge are governed by the 49 CFR 1115.1(c) standard. See, e.g., 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, Decision No. 6, slip op. at 7 (STB served May 30, 1997). See also Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company--Control and Merger--Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760, Decision No. 6, slip op. at 13 (ICC served Oct. 19, 1995); Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, Decision No. 10, slip op. at 9-10 (ICC served Mar. 7, 1995).

entirely frivolous. In this context, therefore, we cannot brand as either "a clear error of judgment" or a "manifest injustice" Judge Harfeld's determination that the settlement privilege must yield to the need for discovery of the purposes the Alliance and Access agreements were intended to accomplish.

Given our resolution of the issues raised by the CN/IC-27 appeal, we have no occasion to address the argument that applicants and KCS, by producing documents and permitting deposition testimony concerning the subjects assertedly covered by settlement privilege, have destroyed the privilege and mooted their appeal.²⁵ Our denial of the CN/IC-27 appeal will allow opposing parties to use, in their evidentiary submissions, relevant information concerning the negotiation of the Alliance and Access agreements. Much of the information concerning negotiation may be of limited, if any, relevance to the matters at issue in this proceeding. We are prepared to entertain motions to strike if opposing parties present, in their evidentiary submissions, information that is not relevant to these matters. In view of the need for expeditious resolution of discovery disputes, the parties to this proceeding may wish to pursue, even at this late date, the establishment of discovery guidelines similar to those that have been used in prior proceedings.²⁶

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

It is ordered:

1. The CN/IC-27 appeal is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

²⁵ Given our resolution of the issues raised by the CN/IC-27 appeal, we also have no occasion to address: the arguments raised by applicants and KCS in their "reply" (designated CN/IC-29 and KCS-9) filed October 14, 1998; and the request by applicants and KCS for a waiver of the 49 CFR 1104.13(c) "reply to a reply" prohibition with respect to that "reply."

²⁶ See, e.g., 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, Decision No. 10 (STB served June 27, 1997).

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**APPENDIX R
INCONSISTENT AND
RESPONSIVE APPLICATIONS: VERIFIED STATEMENTS**

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APPENDIX R
LIST OF INCONSISTENT AND RESPONSIVE APPLICATIONS:
VERIFIED STATEMENTS

The proposed CN/IC Acquisition constitutes a major transaction within the meaning of Board rules at 49 CFR 1180. Therefore, Parties of Record (POR) may seek conditions to or request that the Board reject the Application by filing Inconsistent or Responsive (IR) Applications. IR Applications cover any requested relief that requires an Application to be filed with the Board, including trackage rights, purchases, constructions, abandonments, and inclusion in the Application. [See 49 CFR 1180.3(b).] Because the proposed CN/IC Acquisition is a major transaction, the Board's deliberations and decision are also subject to environmental review under the National Environmental Policy Act (NEPA). The requirements for review appear in the Council on Environmental Quality regulations at 40 CFR 1500.

In its Decision No. 6, the Board required that PORs intending to file IR Applications submit descriptions of those Applications by August 31, 1998, prior to the September 21, 1998, IR Application due date. Six entities filed IR Application descriptions. Three entities indicated an intention to request some form of trackage rights over one or more rail line segments.

To meet its obligations under NEPA, the Board also required that IR Applicants file, by September 21, 1998, either: (1) a Verified Statement asserting that the IR relief being sought would have no significant environmental effect, or (2) a Responsive Environmental Report (RER) containing detailed environmental information regarding the IR's potential effects. According to 49 CFR 1105.6(c)(2), any IR relief that would not result in significant changes in railroad operations requires only a Verified Statement to that effect. On the other hand, IR Applicants must file an RER if the requested relief, when added to any increase in railroad operations proposed by the Application, would increase rail activities along a rail line segment or at a rail yard by levels that would meet or exceed the Board's thresholds for analysis set forth in 49 CFR 1105.7(e)(4) and (5). An RER must address the environmental issues included in 49 CFR 1105.7(e).

Five railroads filed verified statements. SEA reviewed all of these documents for completeness and confirmed the underlying analyses by determining whether the requested relief would make the affected rail line segment or rail yard exceed the Board's thresholds. Verified Statements supporting these Applications follow. Two entities subsequently decided not to file IRs.

Table 3-5, "Inconsistent and Responsive Applications," in Chapter 3, "Project Description," of this Draft Environmental Assessment identifies the IR Applications the Board received. It also describes whether the requested relief would have environmental effects when combined with the effects of the proposed Acquisition. The verified statements in this Appendix provide additional information regarding the filed IR Applications.

Attachment R-1

Verified Statement of Richard W. Brown

General Director, Business Unit, Burlington Northern and Santa Fe Railway Company

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556



CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION,
AND GRAND TRUNK WESTERN RAILROAD INCORPORATED
-CONTROL-
ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD
COMPANY, CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, AND
CEDAR RIVER RAILROAD COMPANY

BNSF'S VERIFIED STATEMENT OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

Pursuant to the Board's Decision No. 6 in the above-captioned proceeding,
The Burlington Northern and Santa Fe Railway Company ("BNSF") submits the
attached Verified Statement of Richard W. Brown demonstrating that its anticipated
Responsive Application will have no significant environmental impact.

Respectfully submitted,

Erika Z. Jones / K.S.R.

Erika Z. Jones
Adrian L. Steel, Jr.
Kathryn A. Kusske
Kelley E. O'Brien

Jeffrey R. Moreland
Richard E. Welcher
Michael E. Roper
Sidney L. Strickland, Jr.

The Burlington Northern
and Santa Fe Railway Company
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Ft. Worth, Texas 76161-0039
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Washington, DC 20006
(202) 463-2000

and

1700 East Golf Road
Schaumburg, Illinois 60173
(847) 995-8887

Attorneys for The Burlington Northern and Santa Fe Railway Company

September 21, 1999

VERIFIED STATEMENT
OF
RICHARD W. BROWN

My name is Richard W. Brown, and I am General Director, Merchandise Business Unit, for The Burlington Northern and Santa Fe Railway Company ("BNSF"). My business address is 2650 Lou Mark Drive, Fort Worth, TX 76131. In my position, I am responsible for the analysis of strategic franchise development issues, including rail and interline matters.

I have been working for either BNSF or The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") continuously since 1971, when I joined the Pricing Department at Santa Fe. From 1993 until the merger of the Burlington Northern Railroad Company and Santa Fe in 1995, I was Assistant Vice President of the Carload Business Unit of Santa Fe, with responsibility for strategic planning and development for the carload business, including chemicals, plastics, metals, forest products, and consumer goods. In that position, I also had responsibility for Santa Fe's transload program. From 1989 to 1993, I was Assistant Vice President Chemicals for Santa Fe. I received a B.S. degree in economics from Syracuse University in 1967 and an M.B.A. from Northwestern University in 1971.

I am making this Verified Statement pursuant to Decision No. 6 in this proceeding that requires responsive applicants to file either (1) a verified statement that the responsive application will have no significant environmental impact; or (2) a responsive environmental report ("RER") that contains detailed environmental information regarding the responsive application.

Based upon my review of the record assembled thus far in the primary proceeding, and other information currently available to me, it is my view that BNSF's Responsive Application qualifies under the exemption set forth at 49 C.F.R. § 1105.5(c)(2), and that as such, an RER is not required. I also conclude that the anticipated transaction is exempt from the historic impact reporting requirements in accordance with 49 C.F.R. § 1105.8(b)(3).

BNSF's Anticipated Responsive Application

In its Description of Anticipated Responsive Application (BNSF-2) filed on August 31, BNSF stated its intention to file a responsive application requesting that the Board grant BNSF, *inter alia*:

- (i) overhead trackage rights on CN to permit BNSF to directly interchange with British Columbia Railway at Vancouver, British Columbia, Canada;²
- (ii) trackage rights on IC between BNSF's Conuth and Olsen Yards in the Chicago terminal area;
- (iii) access via overhead trackage or haulage rights to the three chemical plants at Galsmar, Louisiana, to which the Kansas City Southern Railway ("KCS") would gain access under the Access Agreement as described in the Railroad Control Application, in the event the Board approves the proposed transaction; and

² BNSF notes that CN's line segment in Vancouver, British Columbia is outside the United States and, therefore, is not subject to U. S. environmental statutes.

(iv) such other conditions, including trackage rights, as may be necessary to permit BNSF to serve shippers and rail corridors where pre-merger rail competition is not preserved, or to otherwise preserve and maintain competition which may be diminished or lost as a result of the proposed transaction, the CN-IC-KCS Alliance Agreement, and the CN-KCS Access Agreement as described in the Application, including, but not limited to, shippers only served by IC and KCS between New Orleans and Baton Rouge and shippers located at Jackson, MS, and in the rail corridor between Chicago and New Orleans, LA via Jackson, MS.

Environmental and Historic Reporting Exemptions

As noted in Decision No. 6 in this proceeding, and pursuant to 49 C.F.R. § 1105.6(c)(2), a FERC need not be prepared in connection with a Responsive Application seeking trackage rights, if the granting of the requested rights will not result in changes in carrier operations over the subject lines that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Similarly, 49 C.F.R. § 1105.8(b)(3) provides that historic impact reports will not be required for trackage rights applications "which will not substantially change the level of maintenance of railroad property."

As described below, I conclude that the trackage rights and other relief anticipated to be requested by BNSF in its Responsive Application will not result in changes in carrier operations that would exceed any of the applicable thresholds. Specifically:

1. It is not expected that exercise of the trackage rights in the Responsive Application will result in any diversion of traffic from rail to motor carriage. The operations that are anticipated as a result of BNSF's Responsive Application will not involve either the diversion from rail to motor carriage of more than (A) 1,000 rail carloads a year (49 C.F.R. § 1105.7(e)(4)(v)(A)), or (B) an average of 50 rail carloads per mile per year for any part of the affected line (49 C.F.R. § 1105.7(e)(4)(v)(B)).

2. It is not expected that exercise of the trackage rights in the Responsive Application will result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains per day on any segment of the affected line, (2) an increase in rail yard activity of at least 100 percent, or (3) an increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment (40 C.F.R. § 1105.7(e)(5)(i)(A)-(C)). To the extent that the trackage rights affect a class I or nonattainment area under the Clean Air Act, they will not result in: (1) an increase in rail traffic of at least 50 percent or an increase of at least three trains a day on any segment of the line; (2) an increase in rail yard activity of at least 20 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day (40 C.F.R. § 1105.7(e)(5)(ii)(A)-(C)).

3. Because there should be little or no related impact on the level of necessary railroad property maintenance as a result of BNSF's anticipated operations on the trackage rights to be sought in its Responsive Application, I also conclude that

the anticipated transaction is exempt from the historic impact reporting requirements in accordance with 49 C.F.R. § 1105.6(b)(3).

Accordingly, on the basis of the foregoing, no environmental or historic documentation is required for BNSF's Responsive Application in this proceeding pursuant to the provisions of 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b)(3).

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VERIFICATION

THE STATE OF TEXAS
COUNTY OF TARRANT

Richard W. Brown, being duly sworn, deposes and says that he has read the foregoing statement, and that the contents thereof are true and correct to the best of his knowledge and belief.


Richard W. Brown

Subscribed and sworn to before me on this 17th day of
September, 1996.


Sharon D. Boschen
Notary Public

My commission expires:



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CERTIFICATE OF SERVICE

I hereby certify that copies of The Burlington Northern and Santa Fe Railway Company's Verified Statement of No Significant Environmental Impact (BNSF-4) are being served by first-class mail, postage prepaid on The Honorable David Harfeld and on all Parties of Record in Finance Docket No. 33556.

Matthew D. Bunker

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Attachment R-2

**Canadian Pacific Railway Company's
Verified Statement of
No Significant Environmental Impact—
Statement of J. Michael Franczak, Director, Service Design and Planning,
St. Lawrence and Hudson Railway Company, Limited**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

CFR-6



Exhibit Docket No. 33666

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK
CORPORATION, AND GRAND TRUNK WESTERN RAILROAD INCORPORATED
- CONTROL - ILLINOIS CENTRAL CORPORATION,
ILLINOIS CENTRAL RAILROAD COMPANY, CHICAGO, CENTRAL AND
PACIFIC RAILROAD COMPANY, AND CEDAR RIVER RAILROAD COMPANY

CANADIAN PACIFIC RAILWAY COMPANY'S
VERIFIED STATEMENT OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

Terence M. Hynes
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(202) 736-8000

Attorneys for Canadian Pacific
Railway Company, et al.

September 21, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK
CORPORATION, AND GRAND TRUNK WESTERN RAILROAD INCORPORATED
- CONTROL - ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL
RAILROAD COMPANY, CHICAGO, CENTRAL AND PACIFIC
RAILROAD COMPANY, AND CEDAR RIVER RAILROAD COMPANY

CANADIAN PACIFIC RAILWAY COMPANY'S
VERIFIED STATEMENT OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

Pursuant to Decision No. 6 (served August 14, 1998) and the Surface
Transportation Board's ("STB's") Environmental Regulations at 49 C.F.R. §§ 1105.6 and 1105.7,
Canadian Pacific Railway Company, Deltona and Hudson Railway Company, Inc., Soo Line
Railroad Company, and St. Lawrence & Hudson Railway Company Limited ("SL&H")
(collectively "CPR") submit the attached Verified Statement of No Significant Environmental
Impact in connection with the anticipated responsive application described in Canadian Pacific
Railway Company's Notice Regarding Anticipated Responsive Application ("CPR-1").

In CPR-1, CPR notified the Board that it may seek a condition upon approval of
the primary application requiring CN to direct its 50 percent interest in the Detroit River Tunnel
Company ("DRTC") to CPR, by causing CNCF Partnership to sell DRTC to CPR's affiliate,
SL&H. In such event, CPR and SL&H will file a responsive application pursuant to 49 U.S.C.

§ 11323 seeking STB authorization to control DRTC. Such a control transaction would involve only a corporate change in the ownership of 50 percent of DRTC's shares (49 C.F.R.

§ 1105.6(c)(2) (ii)), and would result in no significant changes in rail traffic patterns, or in the operations conducted by CPR (or other users) via the Detroit River Tunnel.

Accordingly, CPR's anticipated responsive application falls within the scope of 49 C.F.R. § 1105.6(c)(2), and does not require the filing of a Responsive Environmental Report ("RER").¹

Respectfully submitted,



Terence M. Hynes
Robert M. Fisher
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-4000

Counsel for Canadian Pacific
Railway Company, et al.

September 21, 1998

¹ CPR has consulted with the Board's Section of Environmental Analyses ("SEA") concerning the transaction described in its Notice Regarding Anticipated Responsive Application.

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VERIFIED STATEMENT OF J. MICHAEL FRANZAK

My name is J. Michael Franzak. I am Director-Service Design and Planning for St. Lawrence & Hudson Railway Company Limited ("SL&H"). My business address is Room 235, Windsor Station, P.O. Box 6042, Station Centre-Ville, Montreal, Quebec H3C 3E4. My duties include responsibility for designing and planning the train services provided by SL&H. In addition, I am responsible for supervising the day-to-day functions of SL&H's Network Management Center ("NMC"), which include train dispatching, locomotive management, crew management and interface relationships.

The purpose of this Verified Statement is to advise the Surface Transportation Board ("STB") that the transaction described in Canadian Pacific Railway Company's Notice Regarding Anticipated Responsive Application will have no significant environmental impact (as defined by the STB's regulations at 49 C.F.R. § 1105.6(c)(3)). The subject transaction would involve only a change in corporate control of the Detroit River Tunnel Company ("DRTC"), the entity that owns the double-bore Detroit River Tunnel. Specifically, pursuant to the subject transaction, CN would divest its 50 percent interest in DRTC to CPR, by causing the partnership which currently owns DRTC's shares to sell those shares to SL&H. The transaction would not result in any material change in rail operations through the Detroit River Tunnel by CPR (or by other users of the tunnel). Moreover, CPR does not anticipate that the transaction would result in any material increase in the volume of traffic moving through the tunnel.

Thus, the environmental thresholds set forth at 49 C.F.R. §§ 1105.7(e)(4) and (5) would not be approached as a result of the proposed transfer of CN's interest in DRTC to CPR.

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Verification

PROVINCE OF QUEBEC)

CITY OF MONTREAL)

I, Michael Frenette, being duly sworn, depose and say that he has read the foregoing verified statement, knows the contents thereof, and that the same are true as stated.

Michael Frenette
Michael Frenette

Subscribed and sworn to before me
this 15 day of September, 1991.

Daniel Leblond
Daniel Leblond

My Commission Expires:
Commissionaire for Justice
for the Province of Quebec
Province of Quebec
City of Montreal, N.Y. 10001
Exhibit 1, 1991

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Attachment R-3

Verified Statement of Ontario-Michigan Rail Corporation and Verified Statement of Margaret Byington, President, Ontario-Michigan Rail Corporation

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CN/IC PROJECT OFFICE

REC'D: 9/22/98

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ONE-2

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423



STB Finance Docket No. 33556
CANADIAN NATIONAL RT. CO., et al.,
- CONTROL -
ILLINOIS CENTRAL CORP., et al.

VERIFIED ENVIRONMENTAL STATEMENT
OF
ONTARIO-MICHIGAN RAIL CORPORATION

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SEP 22 1998

Part of
Public Record

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Tel.: (202) 271-8037

Attorneys for

ONTARIO-MICHIGAN RAIL CORP.

Dated: September 18, 1998

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC

STB Finance Docket No. 33556
CANADIAN NATIONAL RY. CO., et al.
- CONTROL -
ILLINOIS CENTRAL CORP., et al.

VERIFIED ENVIRONMENTAL STATEMENT
OF ONTARIO-MICHIGAN RAIL CORPORATION

Ontario-Michigan Rail Corporation of Detroit, Michigan ("OMR"), pursuant to the Board's decision, Decision No. 6, served August 14, 1978, states, as follows:

1. By its Notice of Intent to Participate and to File Inconsistent Application, OMR-1, filed August 31, 1978, OMR advised the Board of its intent to participate in the proceeding and to file its inconsistent application. OMR will seek a Board order allowing it to acquire the interests of the Canadian National Railway Company ("CN") in the CNCF Niagara-Detroit Partnership, owner of the existing railroad tunnel between Detroit, MI, and Windsor, ON, so as to permit OMR to build and operate an immediately adjacent, high-clearance railroad tunnel to be available for the use of the railroads serving the Detroit - Windsor area.

2. As indicated on page 66 of volume 1 of the Railroad

Control Application, CN/IC-6, CN owns fifty percent of the CNCP Niagara Detroit Partnership, a holding company which owns the Detroit River Tunnel Company, The Canada Southern Railway Company and, through it, The Niagara River Bridge Company. Canadian Pacific Railway Company ("CP") owns the other fifty percent of the CNCP Niagara Detroit Partnership.

3. Thus, even if OMR were a railroad or an entity in control of a railroad, its acquisition of CN's one-half interest in the CNCP Niagara Detroit Partnership would not be a transaction requiring Board approval, for it would not permit OMR to control CNCP Niagara Detroit Partnership, within the meaning of 49 U.S.C. 11323-25. STB Finance Docket No. 33388, CSX Corp., et al.,--Control and Operating Issues/Agreements--Conrail, Inc., et al., served July 23, 1998, at page 145; Burlington Northern, Inc.,--Control & Merger, 266 I.C.C. 862, 866 (1983), aff'd sub nom., Broth. of Ry. & Airline Clerks v. Burlington Northern, 722 F.2d 380 (5th Cir. 1983).

4. OMR, however, is not a railroad or an entity in control of a railroad, and, therefore, even if it were to acquire control of CNCP Niagara Detroit Partnership, that would not be a transaction requiring Board approval, pursuant to 49 U.S.C. 11323-25. Box Valley & Western Ltd.,--Exempt Acq. and Oper., 9 I.C.C.2d 209, 217-18 (1992); Southern Pacific Transportation Co.,--Merger--Southern Pacific Co., 334 I.C.C. 866, 878-71 (1969); Louisville and Jeffersonville Bridge and Railroad Co. Merger, 295 I.C.C. 11, 17 (1965), aff'd., Allegheny Corp. v. Brandywine & Co.,

353 U.S. 151 (1957).

5. As recited in its Notice, OMR seeks to acquire CN's one-half interest in CNCP Niagara Detroit Partnership to safeguard its ability to build and operate a high-clearance railroad tunnel immediately adjacent to the existing railroad tunnel between Detroit, MI, and Windsor, ON, to be available for the use of the railroads serving the area. In other words, OMR does not contemplate becoming a railroad, but, rather, intends to provide a needed facility which the existing railroads would utilize in their operations. Thus, no invasion of new territory would be involved, and no Board approval for the replacement tunnel's construction would be required. STB Finance Docket No. 22621, Union Pac. R. Co.--Petition for Declaratory Order--Rehabilitation of Missouri-Kansas-Texas Railroad Between Jude and Oden Junction, TX, served August 21, 1998; City of Detroit v. Canadian National Ry., 9 I.C.C.2d 1208 (1993), aff'd sub nom., Detroit/Wayne County Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995).

6. The Board needs to consider the environmental impact only of those proposals before it requiring agency action, and, as it relates to the inconsistent application of OMR, there is none. See, Docket No. AB-19 (Sub-No. 112), The Baltimore and Ohio R. Co. et al.--Abandonment and Discontinuance of Service--In Montgomery County, MD. and the District of Columbia, served March 28, 1988; CSX Corp.--Control--American Commercial Lines, 2 I.C.C.2d 490, 540 (1984), aff'd sub nom., Crowne Corp. v.

I.C.C., 781 F.2d 1176, 1194 (5th cir. 1986).

7. The relief which OMR seeks would result in no significant changes in carrier operations, that is, changes that would exceed the thresholds of 49 C.F.R. 1105.7(e)(4) or (5), and, accordingly, pursuant 49 C.F.R. 1105.6(c)(2), no environmental documentation is required. The Board, in considering OMR's request, will not be passing on a major Federal action significantly affecting the quality of the human environment. Cf., United States v. SCRAP, 412 U.S. 669, 693 (1973); City of New York v. United States, 337 F. Supp. 150, 158 (E.D. N.Y. 1972).

WHEREFORE, Ontario-Michigan Rail Corporation declares that the relief it seeks will have no significant environmental impact, and no environmental documentation is required.

Respectfully submitted,

ONTARIO-MICHIGAN RAIL
CORPORATION

By its attorneys,

Grant R. Trigger
Honigman Miller Schwartz
and Cohn
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Of counsel:

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Dated: September 18, 1998

F. E. Kahn
Fritz E. Kahn

Fritz E. Kahn, P.C.
Suite 750 West
1100 New York Avenue, NW
Washington, DC 20005-3934
Tel: (202) 371-8037

VERIFICATION

I, Margaret Byington, President of Ontario-Michigan Rail Corporation, verify under penalty of perjury, under the laws of the United States of America, that the factual assertions in the foregoing Verified Environmental Statement are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to make this statement on behalf of Ontario-Michigan Rail Corporation. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Detroit, MI, this 15th day of September 1998.

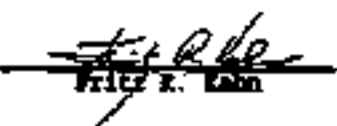

Margaret Byington

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CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Statement upon Hon. David I. Harfield and upon counsel for the Applicants by mailing them copies thereof, with first-class postage prepaid.

Dated at Washington, DC, this 18th day of September 1998.


Fritz E. Kahn

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APPENDIX S
LIST OF SITE VISITS

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APPENDIX S LIST OF SITE VISITS

To prepare the Preliminary Draft Environmental Assessment (PDEA), the Applicants conducted site visits to identify the potential environmental effects of the proposed CN/IC Acquisition on the surrounding areas. SEA reviewed, verified, and concurred with the Applicants' conclusions for each visit and used this site visit information to prepare the Draft Environmental Assessment (Draft EA). The following table lists the dates, locations, and purposes for each of these site visits.

**Table S-1
Site Visits for Proposed CN/IC Acquisition**

Date	Location	Purpose
May 21, 1998	Harvey, IL	Observe Moyens/Gateway Intermodal Facility operations.
June 4, 1998	Harvey, IL	Walking reconnaissance of site with design engineer and IC representative; field survey of vegetation; photographs of site and surrounding area; windshield survey of surrounding area to identify sensitive receptors.
June 17-19, 1998	Harvey, IL to Springfield, IL	Field check highway/rail at-grade crossings on rail line segments that would exceed Board thresholds for environmental analysis.
June 26, 1998	Bridgeport, IL to Harvey, IL	Field check highway/rail at-grade crossings on rail line segments that would exceed Board thresholds for environmental analysis.
July 1, 1998	Harvey, IL	Visit to local planning department to obtain maps and land use plans; visit to fire department to obtain records of emergency responses to site; visit to library to supplement research on area.
July 1, 1998	Cicero, IL	Windshield survey of site along 34 th Street and surrounding area; photographs of site and surrounding area.
July 8, 1998	Cicero, IL	Walking reconnaissance along site boundaries (i.e., IC, BRC, IC rail spur tracks) with design engineer; field survey of vegetation; photographs of site/surrounding area.

Table S-1
Site Visits for Proposed CN/IC Acquisition

Date	Location	Purpose
July 13, 1998	Springfield, IL to Gibson City, IL Gibson City, IL to Fullerton, IL Fullerton, IL to Clinton, IL Clinton, IL to Mt. Pulaski, IL Mt. Pulaski, IL to Springfield, IL	Identification of potential noise-sensitive receptors along rail line segments.
July 14, 1998	Harvey, IL	Identification of potential noise-sensitive receptors near the Moyers/Gateway Intermodal Facility.
July 14, 1998	Hawthorne Yard, IL to Broadview, IL	Identification of potential noise-sensitive receptors along rail line segment.
July 22, 1998	Cicero, IL	Visit to local planning department to obtain maps and land use plans; visit to fire department to obtain records of emergency responses to site; visit to library to supplement research on area.
August 13-14, 1998	Jackson, MS	Walking reconnaissance of proposed bypass construction site; photographs of site and surrounding area; visit to local planning department.
August 14, 1998	Memphis, TN	Photographs of proposed construction site and surrounding area.
August 17, 1998	Centralia, IL	Photographs of proposed construction site and surrounding area.
August 17, 1998	Champaign, IL	Photographs of proposed construction site and surrounding area.
August 27-28, 1998	Jackson, MS	Field survey for vegetation within the proposed bypass construction site; photographs of potential area of alternative bypass; photographs of houses and other structures in area to help determine historic significance.
October 1, 1998	Cicero, IL	Wetland delineation near the proposed connection construction area.
October 20, 1998	Cicero, IL	Site visit to proposed connection construction area to verify site conditions.
October 21, 1998	Homewood, IL and Harvey, IL	Site visits to Markham Yard and Moyers/Gateway Intermodal Facility to verify site and surrounding area conditions.

APPENDIX T
LIST OF AGENCY CONSULTATIONS
AND RELEVANT CORRESPONDENCE

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APPENDIX T

LIST OF AGENCY CONSULTATIONS AND RELEVANT CORRESPONDENCE

Throughout its evaluation of the proposed Canadian National (CN)/Illinois Central (IC) Acquisition, the Board sought consultation with appropriate Federal, state, regional, county, and municipal agencies. To inform agencies of Acquisition-related activities, the Board also published notices in the *Federal Register*. SEA issued an Environmental Fact Sheet describing the proposed Acquisition and SEA's environmental review process to Federal, state, and local elected and public officials, community organizations and groups, individual members of the public, and public agencies, and it established a website (www.cnicacquisition.com) and a toll-free telephone hotline (1-888-869-1997).

Table T-1, "Consultation with Agencies," summarizes the correspondence that SEA conducted with Federal, state/regional, and local agencies during preparation of the Draft. Copies of relevant correspondence SEA received prior to October 28, 1998 have also been included in this Appendix.

TABLE T-1
CONSULTATION WITH AGENCIES

Agency	Dates of Contact	State of Site	Major Topic
Federal			
Bureau of Indian Affairs	6/30/98	IL	Identify Federally recognized Native American tribes in Illinois
EPA - Region IV	4/27/98	AL, KY, TN	Maintenance areas in Alabama, Kentucky, and Tennessee
EPA - Region V	4/27/98, 5/6/98, 5/12/98, 5/17/98, 5/12/98, 5/19/98, 6/30/98, 7/7/98, 7/16/98, 9/23/98, 9/25/98, 9/28/98	IL, IN, MI, MN	Air quality attainment states; maintenance areas; vehicle and engine emissions; redesignation issues; emissions factor models; ozone transport issues
EPA - Region VI	4/27/98	LA	Maintenance areas in Louisiana
EPA - Region VII	4/27/98	IA	Maintenance areas in Iowa
EPA - Headquarters	4/27/98	All	Nonroad emissions factors

**TABLE T-1
CONSULTATION WITH AGENCIES**

Agency	Dates of Contact	State of Site	Major Topic
EPA, Office of Mobile Sources	5/19/98, 6/11/98 6/25/98, 9/9/98	Al	Emissions standards for locomotives
Federal Emergency Management Agency (FEMA)	6/2/98, 6/12/98	IL, TN, MS	Flood Insurance Rate Maps of Cicero, Champaign, and Centralia, IL; Memphis, TN; and Jackson, MS
Federal Railroad Administration	5/11/98, 5/15/98, 6/4/98, 7/24/98	IL	Highway/rail at-grade crossing information
Federal Railroad Administration	6/22/98, 7/28/98	Al	Movable bridges on CN/IC rail system
Natural Resources Conservation Service	6/11/98, 6/12/98, 6/26/98	IL, MS	Soil survey maps and information
U.S. Department of Transportation (DOT)	5/19/98	Al	Database of hazardous materials accidents for CN and IC
United States Geological Survey, Water Quality Division	7/2/98, 7/8/98	IL	Lake Michigan Coastal Zone/Lakeshore Management Programs; existence of Lakeshore Management and/or Protection Programs in the State of Illinois
United States Fish & Wildlife Service	8/31/98, 9/1/98	IL, MS	Threatened and endangered species information for Cicero and Centralia, IL and Jackson, MS
State / Regional			
Hinds County Emergency Management	8/20/98	MS	Hazardous materials incidents at Jackson Yard
Illinois Department of Natural Resources	8/31/98	IL	Information on state-listed threatened and endangered species for Cicero and Centralia sites in Illinois
Illinois Department of Transportation - District 3	7/8/98, 7/27/98, 7/29/98	IL	Identify highway/rail at-grade crossings and verify ADT information.
Illinois Department of Transportation	6/25/98	IL	Aerial photography for Cicero, Harvey, Champaign, and Centralia, IL
Illinois Department of Transportation - District 1	7/8/98, 7/9/98, 7/29/98	IL	Identify highway/rail at-grade crossings and verify ADT information; obtained ADT information for area around Moyers Intermodal facility
Illinois Department of Transportation - District 5	7/8/98, 7/27/98	IL	Identify highway/rail at-grade crossings and verify ADT information

**TABLE T-1
CONSULTATION WITH AGENCIES**

Agency	Dates of Contact	State of Site	Major Topic
Illinois Department of Transportation - District 6	7/9/98, 7/24/98	IL	Identify highway/rail at-grade crossings and verify ADT information
Illinois Department of Transportation - Office of Planning and Programs	7/13/98, 7/17/98, 7/24/98, 7/27/98, 7/28/98	IL	Identify highway/rail at-grade crossings and verify ADT information
Illinois EPA	5/28/98	IL	Fugitive dust emissions regulations
Illinois Historic Preservation Agency	7/2/98	IL	Historic site information for Harvey and Cicero, IL
Illinois State Geological Survey	7/13/98	IL	Federally approved lakeshore management and/or coastal zone protection programs in Illinois
Indiana Department of Environmental Management	5/6/98, 5/4/98	IN	SO ₂ maintenance areas in Indiana
Michigan Department of Environmental Quality	7/22/98	MI	CO nonattainment areas
Mississippi Department of Environmental Quality	6/26/98	MS	Fugitive dust emissions regulations in Mississippi
Mississippi Department of Environmental Quality	8/21/98	MS	Information regarding the status of leaking underground storage tanks near the Jackson Yard
Mississippi Department of Marine Resources	8/19/98	MS	Federally approved lakeshore management and/or coastal zone protection programs in Mississippi
Mississippi Department of Wildlife, Fisheries & Parks	9/2/98	MS	Information on state-listed threatened and endangered species for Jackson, MS site
Tennessee Wildlife Resources Agency	6/12/98	TN	National Wetland Inventory maps for Johnson Yard, Memphis TN
Wisconsin Department of Natural Resources	5/7/98	WI	Attainment status for Kenosha and Winnebago County
Local			
Chicago Department of Planning & Development	6/2/98	IL	Land use plans and/or zoning maps
Chicago Park District	8/20/98	IL	List of parks in Chicago near Cicero and information regarding park facilities and acreage

**TABLE T-1
CONSULTATION WITH AGENCIES**

Agency	Dates of Contact	State of Site	Major Topic
Chicago RTA	6/30/98	IL	Information on city bus routes between 154th & 155th streets in Harvey, IL
Cicero	5/28/98	IL	Location of phone lines/utilities at Cicero site
Cicero Department of Economic Development	6/8/98	IL	Land use plans and zoning maps
Cicero Fire Department	7/16/98	IL	Information on hazardous material spill near the Cicero site
City of Harvey	6/2/98	IL	Location of phone lines/utilities at Harvey site
City of Harvey Police Department Traffic Division	9/23/98	IL	Traffic count data for local streets near Moyers intermodal terminal
City of Jackson	6/26/98, 6/30/98, 8/10/98	MS	Aerial photos, zoning maps, and other materials for Jackson, MS site
City of Jackson Fire Department	8/20/98	MS	Information on hazardous response calls to Jackson Yard
City of North Riverside Police Department	7/29/98	IL	Identify highway/rail at-grade crossings and verify ADT information
Clyde Park District - Cicero	8/4/98	IL	List of parks in Cicero and information regarding park facilities and acreage
Hawthorne Park District - Cicero	8/4/98	IL	List of parks in Cicero and information regarding park facilities and acreage



United States
Department of
Agriculture

Natural Resources
Conservation Service

3737 Government Street
Alexandria, Louisiana
71302

ENVIRONMENTAL DOCUMENT



September 4, 1998

CN/IC PROJECT OFFICE

REC'D: 9/7/98

DOCUMENT # 2/2/98 4:11:07 PM

Mr. Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
Washington, DC 20423

Dear Ms. Kaiser:

Re: Finance Docket No. 33556 -- Canadian National Railway Company -- Control --
Illinois Central Corporation; Correspondence to Interested Parties Regarding
Environmental Review Process

Thank you for providing our agency with the opportunity to respond to your inquiry dated August 6, 1998, wherein you requested our views and comments of the Canadian National Railway Company acquiring control of Illinois Central Corporation. Our office has no objections with this acquisition and will this will have no environmental impact on any of our work.

Sincerely,

ACTING FBO

E. J. Giering III, PE
State Conservation Engineer

The Natural Resources Conservation Service,
formerly the Soil Conservation Service, is an
Agency of the United States Department of Agriculture

AN EQUAL OPPORTUNITY EMPLOYER

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**ENVIRONMENTAL
DOCUMENT**

State of Louisiana
Department of Environmental Quality

OFFICE PROJECT OFFICE

RECD: 7/9/98

DOCUMENT # 2/9/98



ALL "MINE" POSTER, JR.
GOVERNOR

A. DALE GIVENS
SECRETARY

August 28, 1998



Office of the Secretary
Case Control Unit
Finance Docket No. 33556
Surface Transportation Board
1925 K Street NW
Washington DC 20423-0001
Attn: Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Environmental Filing

RE: FINANCE DOCKET NO. 33556—CANADIAN NATIONAL
RAILWAY COMPANY—CONTROL—ILLINOIS CENTRAL
CORPORATION: CORRESPONDENCE TO INTERESTED
PARTIES REGARDING ENVIRONMENTAL REVIEW
PROCESS

Dear Ms. Kaiser:

The Louisiana Department of Environmental Quality's Air Quality Division (LDEQ/AQD) is pleased to have this opportunity to be involved at this early stage of development in the National Environmental Policy Act (NEPA) process required for the referenced acquisition project. It is hoped that the information provided in this correspondence will facilitate accurate application of applicable Air Quality General Conformity regulations and the inclusion of pertinent supporting information in the Draft EA (Environmental Assessment) that you are now preparing.

Louisiana is in attainment of the National Ambient Air Quality Standards (NAAQS) for all criteria pollutants statewide, with the exception of ozone. Louisiana has one nonattainment area (includes East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Ascension parishes), and one maintenance area (includes Orleans, Jefferson, St. Charles, and St. Bernard parishes) for ozone which contain portions of the rail system identified in the referenced project (as indicated on page 6 of the Attachment to your August 6 letter). The Volatile Organic Compound (VOC) emissions from project activity in those areas are subject to Air Quality General Conformity regulations. Louisiana's General Conformity regulations are in Louisiana Administrative Code



OFFICE OF AIR QUALITY P.O. BOX 82125 BATON ROUGE, LOUISIANA 70884-2125
AN EQUAL OPPORTUNITY EMPLOYER



ELAINE KAISER
Page 2

(LAC) 11:III, Chapter 14, Subchapter A. Louisiana's General Conformity regulations are the same, in meaning and stringency, to the corresponding Federal regulations in 40 CFR Part 93 Subpart B.

It is the federal agency's responsibility to determine general conformity applicability to the project and, if required, conformity with the State's air quality implementation plans. If it is determined, in accordance with LAC 11:III, Section 1405, that direct and indirect emissions resulting from this project activity are below the 180 tons per year (for maintenance areas) and 30 tons per year (for nonattainment areas) de minimis levels for VOC, then there will be no significant effect on air quality from the project. If project emissions are determined to equal or exceed the de minimis levels, then further determinations must be made in consultation with Air Quality Division personnel prior to beginning any project activity.

A review of the project scope and methodologies as presented in the Attachment raises the following concerns:

1. Thresholds for environmental analysis are presented in Table 1, page 3 of the Attachment. To set such thresholds for individual activity appears to be in conflict with requirements of the General Conformity regulations. Emissions from each category of activity listed in the table, as well as from any construction or mitigation activity, must be calculated and considered in total to determine annual emission levels.
2. Emission descriptions must be calculated using EPA approved methods specified in the General Conformity regulations.

It is suggested that these concerns be addressed and clarified in the Draft EA.

If you would like to discuss the concerns presented or need additional information or consultation on General Conformity requirements, please contact Mr. Pat Salvaggio at (225) 765-0915.

Sincerely,

Elaine Kaiser, Deputy Secretary

Gertie Von Bodungen, P.E.
Assistant Secretary

c: Rowin Wiscow, LDEQ/AQ
John Behrens, EPA Region 6

MISSOURI **ENVIRONMENTAL**
GOVERNMENT **DOCUMENT**



CN/IC PROJECT OFFICE

REC'D: 9/9/98

DOCUMENT # 2/2/98 4306:33 PM

Richard A. Hanson
Commissioner

STATE OF MISSOURI
OFFICE OF ADMINISTRATION
Post Office Box 809
Jefferson City
65102

Stan Perovich
Director
Division of General Services

August 31, 1998

Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
Washington, DC 20423



Dear Ms. Kaiser:

Subject: 98080047 - Finance Docket No. 33556--Canadian National Railway Company--
Control--Illinois Central Corporation

The Missouri Federal Assistance Clearinghouse, in cooperation with state and local agencies interested or possibly affected, has completed the review on the above project application.

None of the agencies involved in the review had comments or recommendations to offer at this time. This concludes the Clearinghouse's review.

A copy of this letter is to be attached to the application as evidence of compliance with the State Clearinghouse requirements.

Sincerely,

Lois Fohl, Coordinator
Missouri Clearinghouse

LP:cm

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IN REPLY REFER TO:

ER-98/0535

United States Department of the Interior

NATIONAL PARK SERVICE

MINNEAPOLIS REGION
1100 JACKSON STREET
OMAHA, NEBRASKA 68102-2571

SEP 78 111

Mr. Vernon Williams
Surface Transportation Board
Office of the Secretary
Case Control Unit
STB Finance Docket No. 33556
1925 K Street, NW
Washington, D.C. 20243-0001



ATTENTION: Ms. Elaine M. Kaiser, Chief, Section of Environmental
Analysis, Environmental Filing

Dear Mr. Williams:

The National Park Service has reviewed the Notice of Intent to prepare an environmental assessment for National Railway Company and Illinois Central Corporation proposed acquisition. The range of issues identified in the environmental fact sheet dated August 1998 seems appropriate for a project of this nature. We have no specific comments at this time, but look forward to reviewing the environmental assessment when it is available.

Sincerely,

William W. Schenk
Regional Director

cc:
WASO-2310

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COPY

United States Department of the Interior

FISH AND WILDLIFE SERVICE

1524 South Freeway Road, Suite B
Vicksburg, Mississippi 39180-0248

October 22, 1998

WARRANT
ENVIRONMENTAL
DOCUMENT

GN/IC PROJECT OFFICE

RECD: 10/22/98

DOCUMENT # 10/22/98 1:57 PM

Ms Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20421

Dear Ms Kaiser:

The U.S. Fish and Wildlife Service (Service) has reviewed the information in your letter dated October 9, 1998 requesting information concerning wetlands or federally listed threatened or endangered species which may occur in an area proposed for a rail bypass on the west side of the Jackson Yard, in Hinds County, Mississippi. We have provided the following comments in accordance with the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e) and the Endangered Species Act (87 Stat 884, as amended 16 U.S.C. 1531 et seq.).

No wetlands or federally listed threatened or endangered species occur within the project area. Therefore, the Service concurs with your preliminary determination that the bypass would not affect any threatened or endangered species or wetlands. We understand that the Surface Transportation Board is currently preparing an Environmental Assessment (EA) on the proposed work. We will review the EA when it becomes available and provide additional comments at that time.

If you have any questions please contact Daniel Gregg at (601) 629-6612.

Sincerely,

Curtis B. James
Acting Field Supervisor

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APPENDIX U
RESPONSES FROM STATE
HISTORIC PRESERVATION OFFICES

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APPENDIX U

RESPONSES FROM STATE HISTORIC PRESERVATION OFFICES

Appendix U contains responses from the following State Historic Preservation Offices that the Section of Environmental Analysis has received as of October 28, 1998:

- Alabama Historical Commission.
- Indiana Department of Natural Resources, Division of Historic Preservation.
- Iowa State Historical Society.
- Louisiana Office of Cultural Development, Division of Archaeology.
- Minnesota Historical Society.
- Mississippi Department of Archives and History.
- Tennessee Historical Commission.

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STATE OF ALABAMA
ALABAMA HISTORICAL COMMISSION

400 South Perry Street
MONTGOMERY, ALABAMA 36130-0800



F. LAWRENCE GILES
EXECUTIVE DIRECTOR

TELEPHONE NUMBER
334-282-3164

October 15, 1998



Ms. Elaine K. Kaiser
Surface Transportation Board
Washington, DC 20423

Re: 98-1316
Finance Docket #33556
Acquisition of Illinois Central by Canadian National
Mobile County, AL

Dear Ms. Kaiser:

Upon review of the proposed project, the Alabama Historical Commission has determined that the project activities will have no effect on any known cultural resources listed on or eligible for the National Register of Historic Places. Therefore, our office can concur with the proposed activities.

However, should cultural resources be encountered during project activities, work shall cease and our office shall be consulted immediately. This stipulation shall be placed on the construction plans to insure contractors are aware of it.

We appreciate your efforts on this issue. If we may be of further service or if you have any questions or comments, please contact Stacey Hathers or Greg Rhinehart of our office and be sure to include the project number referenced above.

Sincerely,

for: Elizabeth Ann Brown
Deputy State Historic Preservation Officer

EAB/OCJ/gj

The State Historic Preservation Office

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Indiana Department of Natural Resources

**ENVIRONMENTAL
DOCUMENT**
August 15, 1998

ON/IO PROJECT OFFICE

RECD: 8/26/98

DOCUMENT # 814/98 4772-2171

Frank O. Borman, Governor
Larry D. Macklin, Director

Indiana Wildlife Resources
and Fisheries
200 M. Washington Street, 4th Fl.
Indianapolis, IN 46204-3240
TEL: 317-232-1400
FAX: 317-232-0300
WWW: www.in.gov



Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, Northwest
Washington, DC 20423-0001

Dear Ms. Kaiser:

We have reviewed the proposed acquisition of the Illinois Central Railroad by the Canadian National Railroad in Lake, Porter, LaPorte and St. Joseph counties, Indiana (Finance Docket No. 33556). This review is being conducted pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. Section 470f) and implementing regulations found at 36 C.F.R. Part 800.

No known historical buildings, structures, districts, objects or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by the acquisition. However, if any construction projects (e.g., rail line connections or new rail yards) are proposed for Indiana in the future, we will need to review those on an individual basis. If you have any further questions, please call Michelle M. Daleiden-Fischer or Ralph S. Wilcox at (317) 232-1646. Thank you for your cooperation.

Very truly yours,

for
Larry D. Macklin

State Historic Preservation Officer

LDM:MDF:RSW:trw

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STATE HISTORICAL SOCIETY OF IOWA

CN/IC PROJECT OFFICE

ENVIRONMENTAL DOCUMENT

Where past meets future

REC'D: 10/22/98

October 13, 1998



DOCUMENT # 10/22/98 2:58:11:1

In reply refer to:
R&CN: 98-08-06-449

MR. MICHAEL DALTON
SEA'S PROGRAM MANAGER
1925 K STREET NW
WASHINGTON DC 20423-0001

American Gothic House
Decor

Wood Run MBE
Landmark

Commercial Building
Iowa City

Manly Bld. Blacksmith Shop
Washington

Abbie Gardner Cabin
Avalon Park

Iowa Historical Building
Des Moines

Missouri Governor's House
Under Sunday School
Cherokee Museum
Cherokee

Missouri Governor's House
Iowa City

Trask House Indian House
Trask House

Waters House Trail Center
Council Bluffs

RE: DUBUQUE-DELAWARE-LINN COUNTIES - CANADIAN NATION
RAILWAY CO., - FINANCE DOCKET NO. 33556 - ACQUIRE CONTROL OF
ILLINOIS CENTRAL CORPORATION - CORRESPONDENCE TO
INTERESTED PARTIES REGARDING ENVIRONMENTAL REVIEW
PROCESS.

Dear Mr. Dalton:

Based on the information you provided, we find that there are no historic properties which
might be affected by the proposed undertaking. Therefore, we recommend project approval.

However, if the proposed project work uncovers an item or items which might be of
archaeological, historical or architectural interest, or if important data come to light in the
project area, you should make reasonable efforts to avoid or minimize harm to the property
until the significance of the discovery can be determined.

Should you have any questions please contact me at the number below.

Sincerely,

Ralph J. Christian
Architectural Historian
Community Programs Bureau
515/281-8697

cc: Elaine Kaiser, Environmental Project director
Victoria Rutson, Section of Environmental Analysis
Richard Sturzak, Myers L. Frank & Associates, Inc.
Scott Steinwert, Public Affairs Management

IOWA HISTORICAL BUILDING

400 East Locust - Des Moines, Iowa 50319-3290

Phone: (515) 281-6482 - Fax: (515) 281-6498 or (515) 281-0542

www.iowa.edu/~chsi/index.htm

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**ENVIRONMENTAL
DOCUMENT**



CN/IC PROJECT OFFICE

REC'D: 10/27/98

DOCUMENT # 10/27/98 9:46:00 AM

KATHLEEN BISHOP BLANCO
LIEUTENANT GOVERNOR

State of Louisiana
OFFICE OF THE LIEUTENANT GOVERNOR
DEPARTMENT OF CULTURE, RECREATION & TOURISM
OFFICE OF CULTURAL DEVELOPMENT
DIVISION OF ARCHAEOLOGY

PHILIP J. JONES
SECRETARY

MIKE MAHODY
ASSISTANT SECRETARY

October 23, 1998

Ms. Elaine Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20423



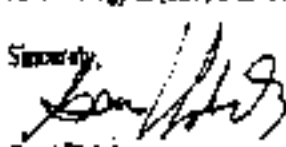
Re: Railroad Control Application, Finance Docket No. 33556
Canadian National/Illinois Central
Multiple Parishes, Louisiana

Dear Ms. Kaiser:

Reference is made to your letter dated October 1, 1998, which was received on October 7, 1998, concerning the above. A review of our files indicates that there are no significant archaeological sites or historic standing structures located in the proposed project area. As such, we concur with your assessment that this project will have no effect on significant cultural resources, and we have no objections.

If we may be of further assistance, please contact Mr. Mike Mahady in the Division of Archaeology at (225) 342-8170.

Sincerely,


Gert Eddy
State Historic Preservation Officer

GHE:MMs

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MINNESOTA HISTORICAL SOCIETY
STATE HISTORIC PRESERVATION OFFICE



October 22, 1980

Ms. Elaine Kaiser
Surface Transportation Board
Section of Environmental Analysis
Washington, D.C. 20423

RE: Railroad Control Application, Finance Docket No. 33556 - Canadian National -
Control - Illinois Central
SHPO Number: 88-4349

Dear Ms. Kaiser:

Thank you for the opportunity to review and comment on the above project. It has been reviewed pursuant to the responsibilities given the State Historic Preservation Officer by the National Historic Preservation Act of 1966 and the Procedures of the Advisory Council on Historic Preservation (36CFR800).

Based on available information, we conclude that no properties eligible for or listed on the National Register of Historic Places are within the project's area of effect.

Please contact Dennis Grimstad at (651)296-5462 if you have any questions regarding our review of this project.

Sincerely,

Britta L. Bloomberg
Deputy State Historic Preservation Officer

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**ENVIRONMENTAL
DOCUMENT**



Division of PCH

CN/IC PROJECT OFFICE

REC'D: 10/14/98

DOCUMENT # 10/14/98 2:46:21 PM

Mississippi Department of Archives and History

Historic Preservation Division • Post Office Box 571 • Jackson, Mississippi 39205-0571
Telephone (601) 359-6340 • Fax (601) 359-6385

October 6, 1998

RECEIVED
OCT 14 1998
MAIL
MANAGEMENT
375

Ms. Elaine K. Kaiser
Environmental Project Director
Section of Environmental Analysis
Surface Transportation Board
Washington, D.C. 20423

Dear Ms. Kaiser:

RE: Railroad Control Application, Finance Docket No. 33556 - Canadian
National - Control - Illinois Central. Compliance with Section 106 of the
NHPA for Mississippi

We have reviewed your October 1, 1998, letter regarding the above referenced application, as well as the September 1998 historic report of Dames & Moore for properties within the area of potential effects for the rail line bypass at Jackson. We concur that no properties listed in or eligible for listing in the National Register of Historic Places are in the areas of potential effect. We, therefore, have no reservations with the proposal.

Should there be additional work in connection with the project, or should there be any changes in the scope of work, please let us know in order that we may provide you with appropriate comments for compliance with 36 CFR 800.

Sincerely,

Elbert R. Hilliard
State Historic Preservation Officer

Roger G. Walker

By: Roger G. Walker
Review and Compliance Officer

cc: Clearinghouse for Federal Programs

Board of Trustees: William F. Walter, president / Earl R. Bernhardt, Jr. / Arch Delanyale II / Lynn Crosby-Garnett
GIBBY R. MASON, Sr. / MARTIN D. Rasmussen, Jr. / Eugene Wiley / Rosemary Taylor Williams / Sherwood W. White
Departmental Director: Elbert R. Hilliard

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ENVIRONMENTAL
DOCUMENT



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

CN/IC PROJECT OFFICE

REC'D: 10/23/98

DOCUMENT # 10/23/98 10:23:21 AM



October 13, 1998

Ms. Elaine R. Kaiser
Surface Transportation Board
1925 K Street, NW
Washington, DC 20433-0001

RE: STB. FINANCE DOCKET NO. 33556. UNINCORPORATED. MULTI COUNTY

Dear Ms. Kaiser:

Pursuant to your request, this office has reviewed documentation relative to the above-referenced undertaking received on Tuesday, October 6, 1998. Considering available information, we find that the project as currently proposed will not affect any cultural resources eligible for listing in the National Register of Historic Places.

Therefore, this office has no objection to the implementation of this project. Should project plans change, please contact this office to determine what additional steps, if any, compliance with Section 106 requires. You may direct questions and comments to Joe Garrison (615) 532-1559. This office appreciates your cooperation.

Sincerely,

Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jyg

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APPENDIX V

SAFETY INTEGRATION PLAN

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APPENDIX V

SAFETY INTEGRATION PLAN

Appendix V contains a copy of the Applicants' Safety Integration Plan, the Federal Railroad Administration's Comments on the Safety Integration Plan, and the Memorandum of Understanding between the Surface Transportation Board and the Federal Railroad Administration.

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**APPLICANTS' SAFETY INTEGRATION PLAN
SUBMITTED IN ACCORDANCE WITH DECISION NO. 5**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33556

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION,
AND GRAND TRUNK WESTERN RAILROAD INCORPORATED

-- CONTROL --

ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD
COMPANY, CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY, AND
CEDAR RIVER RAILROAD COMPANY

APPLICANTS' SAFETY INTEGRATION PLAN

SUBMITTED IN ACCORDANCE WITH DECISION NO. 5

August 14, 1998
(as revised September 18, 1998)

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EXECUTIVE SUMMARY

On July 15, 1998, Canadian National Railway ("CN") and Illinois Central Railroad ("IC") filed an Application with the Surface Transportation Board ("STB") for approval of a proposed transaction ("Transaction") by which CN would acquire control of IC and integrate CN's and IC's operations. This Safety Integration Plan ("SIP") describes how CN and IC intend to ensure that the integration of their operations is conducted safely and in compliance with all applicable regulations.

CN/IC's SIP follows the "Safety Implementation Guidelines" issued by the Office of Safety of the Federal Railroad Administration ("FRA") on November 7, 1997. Those Guidelines identify the areas of possible public safety concern when Class I railroads propose to integrate their operations through a control transaction. FRA issued the Guidelines in response to much larger railroad transactions, which required operational integration of far greater scope and complexity than the CN/IC Transaction will entail. Nevertheless, the CN/IC SIP follows the Guidelines here to ensure that it addresses every area of possible safety concern. Moreover, in preparing this SIP, CN/IC was able to build on the examples of the extensive SIPs in the STB's CSX/Norfolk Southern/Conrail proceeding, which reflected input from, and received the endorsement of, FRA and the STB. In addition, CN/IC consulted with FRA about the CN/IC SIP.¹

Unlike previous Class I rail combinations, the CN/IC Transaction is entirely end-to-end. Both railroad systems meet only in the Chicago terminal area. They have no overlapping lines and only a few redundant facilities. The Transaction will not cause any widespread restructuring of routes or major shifts in traffic. By comparison with other recent railroad transactions, the forecasted changes in yard and line activity on the CN/IC system are small. CN/IC estimates that only five yards and 11 line segments, totaling 156 miles, will experience traffic increases reaching the thresholds for environmental review under the Board's rules. (The comparable figures in the recent Conrail transaction were 15 yards and 123 line segments, totaling 4,238 miles; and in the Union Pacific/Southern Pacific merger, 26 yards and 72 line segments, totaling 7,133 miles.)

Because the forecasted traffic increases are relatively small, most CN/IC facilities will not require significant changes in capacity or operations. CN/IC will make any required changes gradually, with due regard for their safe implementation. In any place where its capacity is in doubt over the three-year implementation period, CN/IC has not hesitated to provide the capital necessary to operate safely and efficiently. CN/IC expects to spend more than \$140 million on infrastructure and equipment, over and above the railroads' ordinary capital budgets, to enhance its operational capacity during the implementation period.

¹This version of the SIP is a revision of the original SIP dated August 14, 1998. It has been revised to incorporate certain additional information suggested by FRA, some of which had been contained in the Application itself.

CN/IC's integration will not result in major changes in operating responsibilities for employees. For the most part, experienced employees will continue to perform the same tasks. The relatively few changes in labor agreements necessary to realize the benefits of the Transaction will not be disruptive or overreaching. CN/IC will handle anticipated job changes carefully, and make specific efforts to ensure that knowledgeable personnel are retained. The Transaction will not affect supervisory and management responsibilities to any significant degree.

Due to the end-to-end nature of the Transaction, most policies and practices will remain largely as they are on the CN and IC rail systems today. CN/IC's SIP therefore focuses on the strengths of both railroads' existing safety programs and the ways CN/IC can use the integration process to build on those strengths. Examples include use of technology and systems training programs and the integration of car fleets and the cascading of locomotive resources. CN has been operating safely in the United States since early in this century, and it knows how to meld Canadian and U.S. operations safely, ensuring that all of its U.S. operations are fully compatible and compliant with U.S. regulatory requirements.

CN/IC plans some noteworthy operating changes and consolidations as a result of the Transaction. They involve the railroads' U.S. operating rules, train and crew dispatching, locomotive maintenance and repair, train and yard operations, and information systems. Each is addressed in this SIP and summarized below. In addition, a number of traffic volume-related safety issues, particularly involving hazardous materials transportation and passenger service, will be addressed separately in the Environmental Assessment that the STB will prepare with input from CN/IC, the STB's third-party consultant, and interested commenters.

U.S. Operating Rules. CN's U.S. divisions, Grand Trunk Western Railroad ("GTW") and Duluth, Winnipeg & Pacific Railroad ("DWP"), have slightly different operating rules from each other, and from IC. CN/IC plans early in the Transaction implementation period to adopt a single set of rules and practices for its U.S. operations. CN/IC will review them with FRA before implementing them. CN/IC firmly believes that consolidated rules will enhance the safety of its operations. All affected operating personnel will be thoroughly trained in the new rules before they are applied.

Train and Crew Dispatching. IC has a modern dispatching and crew calling facility in its Homewood, Illinois operating headquarters. CN/IC plans to consolidate in phases the dispatching and crew calling operations of GTW and DWP with IC's operations at Homewood (i.e., initial relocation, consolidated rules integration, and technology upgrade). At each stage in the consolidation process, CN/IC will ensure that affected employees receive thorough training and familiarization with any new rule, territory, or system for which they will be responsible.

Locomotive Maintenance and Repair. IC also has a modern locomotive maintenance and repair facility at its Woodcrest shops in Homewood. CN/IC plans to close GTW's Battle Creek, Michigan locomotive shop and consolidate high-horsepower locomotive repairs at IC's Woodcrest and Memphis shops, both of

which have sufficient capacity. CN/IC will consolidate most low-horsepower locomotive repairs at GTW's Flint, Michigan shop. CN/IC will carefully manage the consolidations from a safety standpoint, and will thoroughly train affected employees in any local rules or processes with which they are unfamiliar.

Train and Yard Operations. Most of the forecasted increases in train volume on CN/IC's lines will occur on IC's main line between Chicago and Jackson, Mississippi. CN/IC will need additional train and engine service crews to handle the additional trains. Some of the yards on that line (i.e., IC's Markham Yard in Chicago and its yards in Centralia and Champaign, Illinois, and Memphis, Tennessee) will also experience increases in traffic that require additional personnel. CN/IC plans to fill those new jobs both with transfers and with new hires. Overall, the Transaction will result in a net increase in jobs for CN/IC's U.S. operations. CN/IC will thoroughly train, qualify, and familiarize all personnel with the rules and operating practices governing the territory or facility in which they will work.

Information Systems. CN/IC will not rush the consolidation of the railroads' key strategic information systems. For example, traffic systems will be sufficiently integrated initially to permit movement tracking across the entire CN/IC system. However, CN/IC will phase in further integration over a two-and-a-half year period. CN/IC has deliberately chosen to delay full integration until after the year 2000 to avoid any unforeseen "Y2K" complications. CN/IC is not scheduling full switch-over to CN's Service Reliability

³On April 15, 1998, CN, IC and RCS entered into a 15-year marketing alliance to coordinate sales and marketing, operations, car fleets and information systems for most of their interline movements. The railroads expect that this will offer shippers new competitive north-south options and will allow the Alliance to target new markets while increasing rail business in existing markets. Although noted in the Application, the Alliance is already in effect and is not covered by the Application. In any event, traffic increases expected to occur in connection with the Alliance have been factored into all of the line segment and yard volume analyses conducted for the application and subsequently outlined in the Operating Plan and this SIP. Thus, the potential effects of the Alliance on operating safety related to changes in traffic, capacity, facilities or manpower are already included in the plans concerning the Transaction. As with all projected traffic increases, CN/IC will make any required adjustments to its train inspection personnel hiring plans needed to account for 1000 mile inspection locations once service design specifications are developed for new trains. Any associated block swaps will be handled and inspected in full compliance with FRA requirements. CN/IC does not foresee any other safety issues that may arise as a result of the Alliance. It recognizes that the Alliance may lead to an increase in traffic originating from Mexico, but is confident that the personnel on RCS as well as on CN/IC will ensure that all equipment is fully inspected in accordance with FRA and AAR requirements.

System until 2001. It will handle other information systems similarly.

CN and IC have strong safety programs today. CN in 1997 had the best train accident record (2.2 train accidents per million train-miles) of all Class I railroads in North America; the results for the first half of 1998 (1.5) are even better. IC has won an E.H. Harriman Institute Award eight years running, reflecting the consistent improvement of its personal injury record. GTW and DWP too have shown steady progress in achieving even safer levels of operation. The operational changes and consolidations that will result from the Transaction are well within the scope of the changes that these railroads have dealt with safely and successfully in their day-to-day operations.

CN and IC, however, do not take safety for granted, and neither will the combined system. CN/IC intends to use the opportunity presented by the Transaction to integrate the railroads' most effective safety practices and further improve their safety performance. CN/IC will work with FRA and the STB to ensure that any concerns they may have about safe implementation of the Transaction are fully addressed.

INTRODUCTION

The CN/IC Transaction will meld two rail systems with a wealth of operating experience and strong management. IC traces its origins to its incorporation in 1851 as the first land grant railroad in the United States. Today, it operates a 2,730 mile system between Chicago and the Gulf of Mexico, and -- through its subsidiary Chicago, Central & Pacific Railroad ("CCP"), acquired in 1996 -- 640 miles of track between Chicago and Sioux City and Council Bluffs, Iowa. IC is recognized as the most efficient Class I railroad in the United States, and it has consistently been among the most profitable. Its economic success has gone hand in hand with a steady improvement in the safety of its operations.

The Canadian government founded CN in 1919 as a means of consolidating a number of smaller Canadian railroads. DWP was already part of one of those railroads, and CN acquired GTW in 1923. Thus, CN has long experience operating with U.S. railroad subsidiaries. Indeed, cross-border traffic accounts for some 40% of CN's revenues and U.S. citizens own a majority of CN's stock. Today, CN operates approximately 14,550 route miles of track in Canada and 750 in the United States. After privatization in 1995, CN almost immediately began an economic renaissance. Like IC, CN has long recognized that safety is good business. Its success has been attributable in no small part to its strong safety culture.

When CN and IC agreed to merge their operations, they formed a team of safety officers and risk management specialists to work closely with the teams developing the CN/IC Operating Plan, to ensure that they built safe operating parameters into that plan, and to prepare a SIP that would specifically explain how CN/IC would integrate the railroads' operations safely. The regulatory concept of a formal SIP for a control proceeding is new. None had been required before the Conrail proceeding, and it was not obvious that one would be required here. Nevertheless, recognizing that it would need to develop internal safety plans in any event, CN/IC volunteered to provide a SIP to the STB, and to do so early in the proceeding. The STB subsequently endorsed CN/IC's proposal.

A Memorandum of Understanding between the STB and FRA in the Conrail proceeding made FRA responsible for assessing safety implementation, and, as noted, FRA has issued Guidelines for preparing a SIP. This SIP follows those Guidelines. It is divided into the following major sections:

- (A) CORPORATE SAFETY CULTURE
- (B) Training
- (C) Operating Practices
- (D) Motive Power and Equipment
- (E) Engineering (Signals and Track)
- (F) Hazardous Materials
- (G) Dispatching Operations
- (H) Crossings, Trespassing, and Railway Security
- (I) Allocation and Deployment of Personnel
- (J) Employee Quality of Life
- (K) Passenger Service
- (L) Information Systems and Technology.

The CN/IC SIP concludes with a section on implementation.

SAFETY INTEGRATION PLAN

A. CORPORATE SAFETY CULTURE

Safety is central to CN's and IC's corporate cultures today and it will be a significant cornerstone of CN/IC's integrated culture.

1. CN's Safety Culture. CN's commitment to safety starts at the top. CN's management sets high goals for safety performance, and makes compliance with those goals a high corporate and personal priority. CN's President and CEO, Paul M. Tellier, reviews accident reports daily. Safety is the first item taken up in the company's weekly executive committee meetings. Senior management regularly conducts field safety audits, as do joint labor/management system safety audit teams. CN thoroughly reviews and acts upon the results of these audits. CN has a safety ombudsman who reports directly to President Tellier and monitors the safety hotline that CN has set up to encourage rapid, frank reporting of any safety issues.

CN's Vice President-Risk Management heads up a significant organization within the company dedicated entirely to safety. Headquarters personnel manage safety policies and procedures, system programs, statistics and analysis, and regulatory relations. District and Field personnel execute safety programs and procedures, monitor compliance, investigate and report accidents, and solicit proposals for safety improvement. They use CN's "CARES" database, which contains information on every accident and injury across CN's system (in both Canada and the U.S.), and which allows operating personnel to spot trends and develop corrective measures on either a system or local basis. CN also has charged a System Track Train Dynamics committee with responsibility for reviewing accidents and derailments, assessing new equipment and operations, and developing improved operating restrictions, guidelines, or practices.

At the heart of CN's safety organization are over 100 "Safety and Health Committees" (in the U.S., "Local Safety Committees"), made up of both union and management representatives. They are the safety eyes of the organization in the field, and take immediate action to communicate and resolve unsafe situations on behalf of CN's employees. In conjunction with labor, CN has developed core safety training curricula for these Committees, being taught in tandem by both union and management trainers. This will further enhance the effectiveness of the Committees as safety monitors and communicators.

CN also maintains an extensive network of more traditional internal and external safety communications methods, including regular safety training sessions and supervisory briefings; safety videos, manuals, magazines, and brochures; an E-Mail newsletter; and quarterly and annual safety results presentations. In addition to the hotline to CN's system safety ombudsman, several districts (including the GTW District) have local hotlines for employees wishing to register complaints about local safety-related issues. GTW has four full-time Safety Coordinators (three of whom are union members), whose jobs include serving as local ombudsmen for safety complaints or concerns. The company makes a point of investigating and responding quickly to any such complaints.

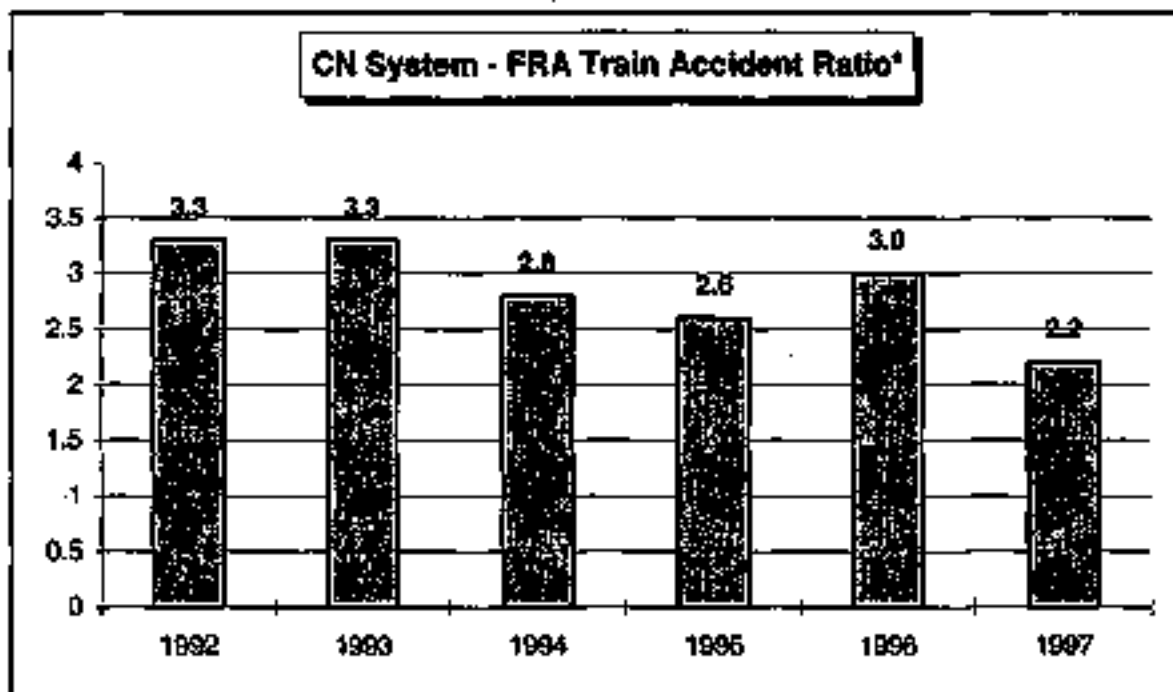
CN further encourages safe operating practices by rewarding officers and employees with exemplary safety records. CN's System Safety Awards and President's Awards of Excellence are significant award programs designed to spotlight the importance of safety. CN's goal is for employees at all levels to feel that they own the safety process and are individually responsible for the company's safety performance.

CN not only has built a strong program of safety education and rewards within the company, but also has heavily promoted safety with the communities and customers it serves. CN contributes to extensive community education programs concerning highway crossing safety and hazardous materials handling, and, in cooperation with shipper groups, makes special contributions to state and local emergency preparedness and accident prevention. CN has special awards programs that single out exemplary public and customer contributions to the safety of rail transportation.

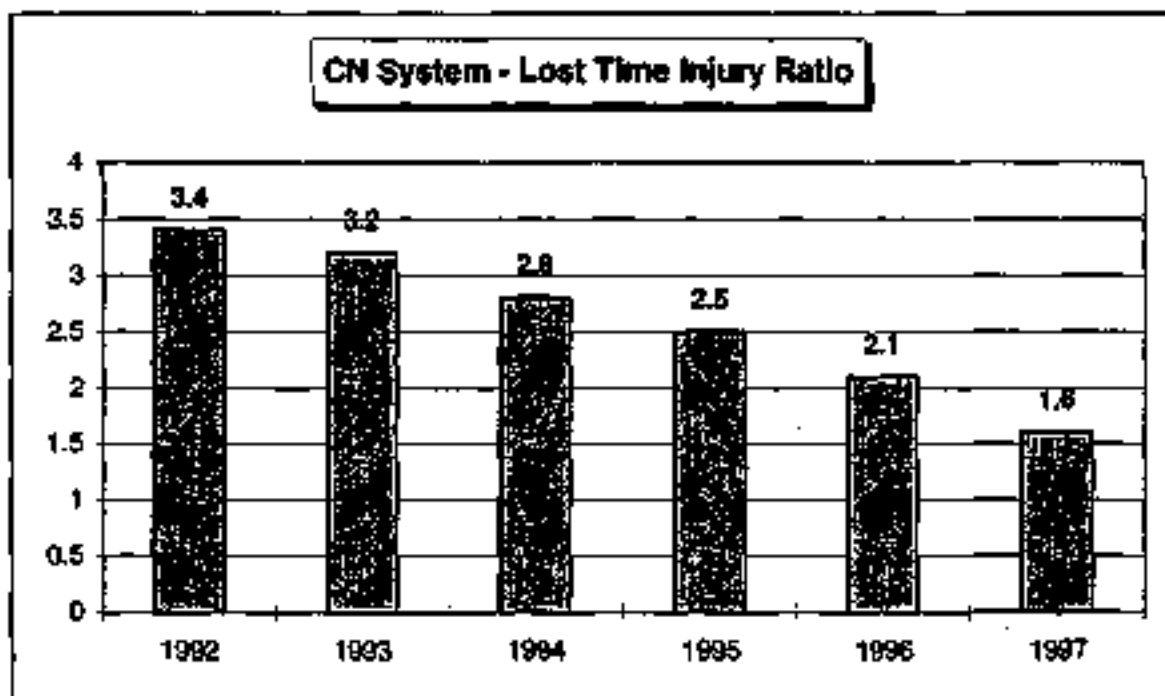
CN also prides itself in working closely with the regulatory authorities responsible for rail safety in both the U.S. and Canada. Throughout the company, officers and employees are committed to cooperating with the safety direction that agencies like FRA and the National Transportation Safety Board ("NTSB") (and their Canadian counterparts) give to the railroad. It actively solicits these agencies' regulatory advice and assistance in improving CN's safety programs.

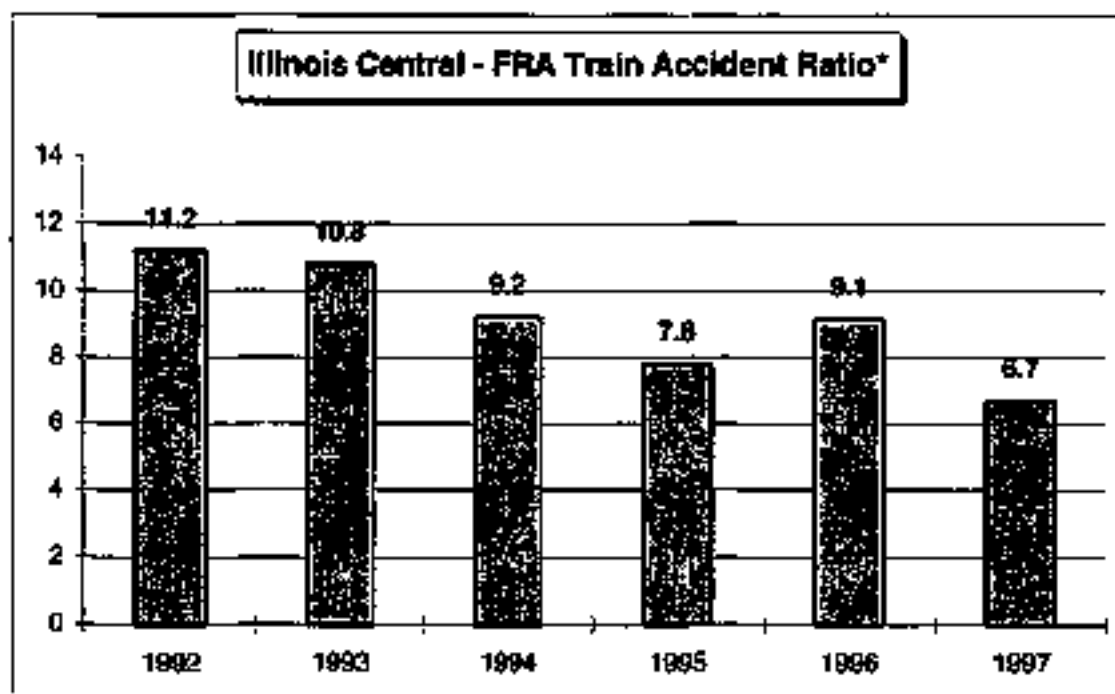
CN regularly uses statistical safety performance data to compare districts and functions and to set targets. CN's E-mail system provides current data company-wide on a daily basis, and CN also regularly provides safety results to customers and regulatory agencies.

The following charts show CN's FRA train accident (non-crossing) ratio, and its lost-time injury ratio, for 1992-1997. They show that CN's strong safety culture has paid gratifying dividends. In virtually every U.S. and Canadian reportable category, CN's overall safety performance in 1997 was the best in the railroad's history. Its FRA train accident ratio (2.2 accidents per million train miles) was the best in North America. GTW and DWP have also individually seen their safety records significantly improve in recent years. CN firmly believes that its safety record can continue to improve, and it looks forward to the opportunity to share its safety programs and experience with IC.

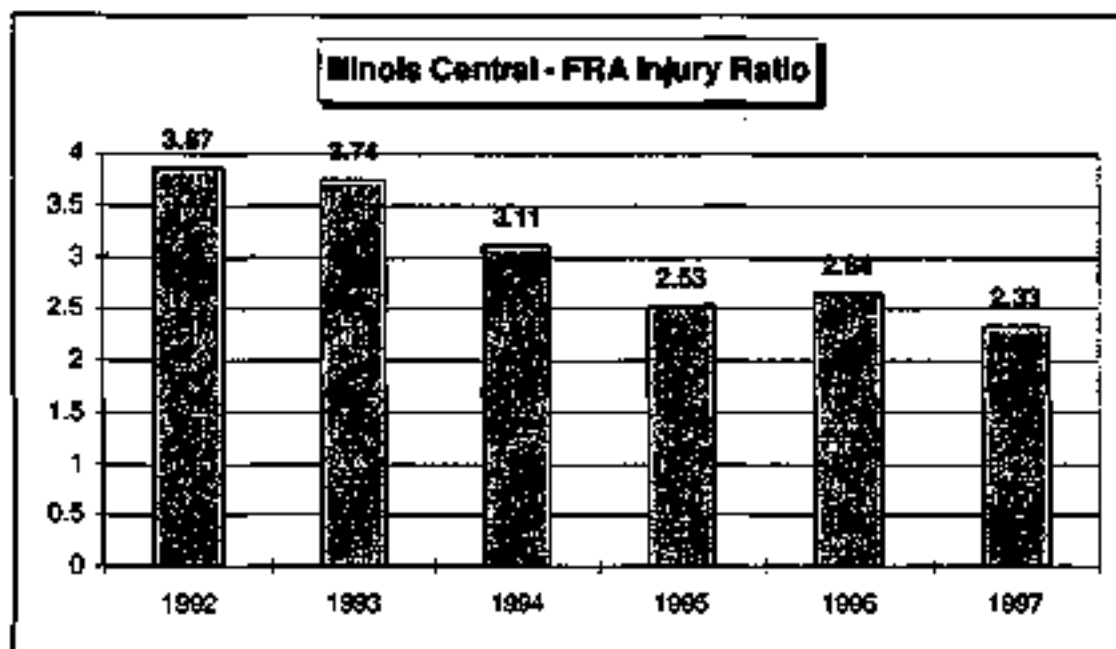


*Excluding HRC.





*Excluding HRC.



2. IC's Safety Culture. IC, like CN, is committed to safety from top to bottom. Every level of management is focused on the ever-present need to promote, monitor, and reward safe operations. IC particularly emphasizes the right and obligation of each employee to work safely; no one can ignore or transfer his or her individual responsibility for safety. IC requires and rewards "safety first."

IC has a substantial organization devoted to the safety of its operations. The General Director - Risk Management & Chief Safety Officer is responsible for safety regulatory compliance. He reports directly to the Vice President - Operations, who chairs IC's Safety Council. The Council meets quarterly to review the railroad's safety performance and set safety programs and policy for the company. In the field, IC has 24 Risk Managers who are specially trained in FRA-OSHA regulations and safety performance, and who are responsible for coordinating and facilitating the safety process. IC also has some 36 Safety Committees at the local and district level with both management and labor members, several chaired by labor representatives. Their job is to make sure that concerns about safety and cooperative solutions are communicated from the field to management effectively, and that IC's safety programs are implemented effectively at the local level. Labor and management regularly participate in field safety audits, and unions are involved in the development of IC's safety rules.

In addition to regular Safety Council and Safety Committee meetings, IC uses a wide variety of communication tools to drive home the priority of safe operations, including extensive employee safety training and follow-up briefings, newsletters and E-Mail reports, and monthly statistical reports. IC makes available and encourages the use of a 24-hour "SAFE" hotline for both internal and external 1-800 reports regarding any safety concern or issue. There are also direct 1-800 numbers to IC's Signal Control and Locomotive Control Centers. Every injury anywhere on the railroad is analyzed by conference call held within 24 hours of the occurrence. IC's data systems not only record all accidents and injuries, they analyze safety trends. IC regularly brings in outside consultants for specialized safety training or reviews.

IC further encourages employee safety through an extensive awards program, including the Wise Owl Award, the Golden Hard Hat Award, the Golden Toe Award, and the Presidential Award for exemplary safety performance. IC has a Community Awareness Program and conducts various outreach training programs in the various communities it operates through and serves. It offers free training for their hazardous materials responders and emergency response teams, along with their police and fire departments. IC gives special recognition to individuals and communities for their commitment and support to the safety process, and it has purchased specialized equipment for communities that cannot purchase such items. IC also works closely with the Association of American Railroads ("AAR") to ensure that IC is current on the latest regulatory and compliance issues and practices.

IC prides itself in working closely and cooperatively with FRA in its safety programs. In fact, IC has recently undergone an extensive safety audit by FRA as part of FRA's

Safety Assurance and Compliance Program ("SACP"). SACP is a non-punitive process under which FRA reviews a railroad's safety processes, procedures, and performance and reports on areas of safety weakness. IC is thoroughly addressing each issue raised by FRA, and believes that the SACP process has been a valuable means of strengthening IC's safety programs. In fact, IC has shared information about SACP as a process with CN.

IC has submitted its final draft of the SACP for review and anticipates FRA approval. Upon approval, IC will finalize its Safety Action Plan ("SAP") for the company. The SAP is a comprehensive and detailed Plan developed to articulate how IC will manage its safety process. The SAP is built from the foundation established by the SACP process. IC's continued commitment to safety has been demonstrated by its proactive and immediate response for corrective measures for all areas of concern identified in the SACP process.

FRA and labor have complimented IC on its swift, complete and comprehensive approach in taking corrective measures on issues identified during the SACP. IC is committed to the SACP partnership process and has dedicated resources to completing and maintaining this SAP and the processes that support it.

IC prides itself in working closely and cooperatively with FRA in its safety programs. CN/IC will continue IC's commitment and partnership in the SACP process following the approval of the Transaction.

The plans and commitments associated with SACP have been made known to the team that developed the SIP and will be communicated to those responsible for implementation of the integration areas. This will allow CN/IC to ensure that none of the changes to be made as a result of the merger will in any way compromise IC's SACP commitments.

The fruit of IC's strong safety culture has been strong safety performance. IC has won an E.H. Harriman Institute award for eight consecutive years (four gold, three silver, one bronze) because of the continuous improvement of its employee injury performance. During this period, IC's personal injury ratio (reportable injuries per 200,000 work hours) has dropped from 7.00 to 2.33. As shown by the charts above, IC's train accident ratio has been cut in half in recent years. Like CN, IC is by no means satisfied with its improvement. IC's goal is to continue driving down its injury and accident rates. CN/IC will share that goal.

3. CN/IC's Safety Culture. CN/IC will build on the strong safety cultures of both railroads. It will take the best of the safety practices, programs, and processes of CN and IC and extend them throughout the combined rail system. CN/IC is already working to identify particularly strong elements of each railroads' safety programs that could rapidly be integrated.

Both CN and IC have taken a number of measures to ensure that their corporate safety message reaches all employees. For example, both CN and IC use their corporate email communications systems as an important part of their respective safety programs. CN has a mainframe email system which is directly accessible by all management employees, supervisors and those scheduled employees working in an office environment. The system also directly connects to Health and Safety committees and

union officers. Those employees not directly connected to the email system (field and shop workers) receive information from their supervisors through bulletin board postings or handouts at safety briefings. The system and coverage is consistent throughout the CN system in both Canada and the U.S.

IC has similar coverage, with its corporate email system also reaching all management employees, supervisors, safety committees and scheduled employees working in office environments. Similar processes are also in place to ensure that all other employees receive copies of any important email communications through bulletin board postings or from supervisors.

Both railroads use the email link as part of their respective safety programs in a number of ways. In addition to regular business correspondence dealing with safety related matters, CN uses the email system to provide daily safety performance statistics, accident reports and automated lists of accidents requiring costs or cause information. These reports are automatically sent to all supervisors as well as other interested parties. The system is also used to store electronic copies of all company safety policies and guidelines, forms used for various safety related activities and copies of minutes from Health and Safety committee meetings.

A particularly important use of the CN email system is to quickly communicate "Safety Flash" bulletins. These communications, which deal with important safety information, such as results of accident investigations or changes in procedures, are communicated to all supervisors and other key officers through the email system. They are immediately posted on bulletin boards, handed out at safety briefings, and discussed at Health and Safety committee meetings for full employee coverage.

IC also uses email to communicate safety related information to all levels of personnel within the organization. In addition to general safety related correspondence, IC uses email for the immediate conveyance of safety bulletins and alerts, safety statistics, accident reports and follow up requests. As with CN, IC ensures full employee coverage for all important safety messages through supervisors and bulletin board postings.

Recognizing the importance of communications in a safety program and the value of email as a communications tool, CN/IC intends to integrate its email systems so as to provide a seamless communications link between the two railroads. To this end, the railroads have already established a basic email communications "gateway." A full-featured link is expected to follow within the first year following approval of the Transaction. As both CN and IC use the same corporate email software system ("EMC2"), this should not be a difficult endeavor to put into place nor require significant employee orientation as a result of system changes.

CN/IC expects to use this communications link in its safety program in much the same manner as today. The railroads will ensure that all important safety messages transmitted by email continue to reach all affected employees through supervisor communications and bulletin board postings.

CN/IC will also produce integrated safety magazines and other written materials to maximize employees' exposure to the full range of safety practices, information, and ideas available from the merger of two strong safety cultures.

CN communicates the importance of safety and other safety related messages through a combination of regular safety articles in the quarterly CN magazine (sent to all employees), safety newsletters attached to the bi-weekly pay checks of all employees, and regular safety posters prominently displayed on bulletin boards, lunch rooms and other employee gathering points. CN has also taken its poster campaign a step further by often using posters designed by field employees. All of these initiatives are in place throughout the entire CN system, including its U.S. operations.

IC has a similar program, which includes regular safety related articles in its monthly "Keeping Track" magazine sent to all employees. IC also prominently displays employee safety messages in company documents such as employee timetables, and produces regular safety posters for display on local bulletin boards.

Both railroads believe in the importance of regular safety communications that reach all employees from top to bottom. CN/IC will therefore work towards ensuring that safety remains a key element of integrated communications projects and that safety communications will continue to reach all of the combined railroad's employees. The two railroads have already put into place the backbone for an integrated communications program with the issuance of a merger process information document which was sent to all CN and IC employees.

CN/IC also intends to place particular emphasis on the importance of labor involvement in ensuring safe operations, building on the joint labor-management committee systems that have been so successful, in different forms, on both railroads. CN/IC will extend CN's unique program of special training for its Health & Safety Committees to the entire CN/IC system, and should be able to do so shortly after the Transaction is approved. From day one, IC will become a full partner in CN's corporate safety awards program and President's Awards of Excellence. CN/IC will use the best forms of print, video, electronic, and other media to make sure that the paramount importance of safety permeates the combined operation.

CN/IC safety and information technology experts will review the railroads' accident/injury tracking systems to determine the best integration strategy.

The expertise of CN's System Track Train Dynamics Committee and other specialized technical support will be available to IC from day one. CN/IC will integrate CN's and IC's system audit teams so that the entire CN/IC system benefits from the learning and ideas of experienced safety officers on both railroads. CN/IC will also evaluate both companies' behavior-based safety programs and CN's ombudsman system for extension throughout the CN/IC system. In every area of safety concern, as discussed in more detail below, CN/IC will seek to build on the most effective elements of each railroads' safety programs.

CN and IC have each seen the benefits of a strong corporate safety culture. CN/IC has every incentive to build on

their experience and to produce an integrated culture that is equally dedicated to safety.

B. MANAGEMENT OF U.S. OPERATIONS

CN/IC expects that its U.S. operations will be managed as a separate entity headed by a U.S.-based executive primarily responsible for U.S. operations reporting directly to CN/IC's upper executive management, and supported by a U.S.-based Risk Management staff.

Under this organization, CN/IC's U.S. operations will continue to be handled and overseen on a day-to-day basis by personnel located in the U.S. under the immediate supervision of management also located in the U.S. Record-keeping will also continue to be accessible in the U.S.

CN/IC expects that its overall Canadian-based headquarters will be responsible for the operation of CN's Canadian railway operations and will provide support for U.S. operations in areas such as training, technical expertise and common areas of general administrative support.

CN/IC does not presently foresee any significant changes in the existing local management and supervision of the railroad's field forces following approval of the Transaction. As a result, important local knowledge and skills will remain in place.

C. TRAINING

Both CN and IC have extensive training programs geared to the particular requirements of its employees, including:

- train and engine service personnel
- roadway and bridge personnel
- motive power and equipment personnel
- dispatching and operating personnel
- signal and train control personnel
- hazardous materials personnel
- management personnel

All of these programs emphasize safety. In addition to these specific training programs, CN and IC offer a variety of courses (e.g., First Aid and CPR) that are available to all employees. CN's course catalogue contains over 400 offerings, a number of which have won training industry awards. The most safety-critical operating positions require periodic refresher training courses. IC's and CN's training programs for U.S. operations must meet U.S. regulatory requirements, and are subject to FRA review. CN's policy is for its training programs to address both U.S. and Canadian regulatory requirements and to meet whichever provides the higher safety standard.

Initially, CN/IC expects that the training organizations and specific functional training of the two railroads will remain largely as they are today. This is because most of the programs are tied directly to the railroads' existing operating rules, dispatching systems, and other railroad-specific protocols and practices. As those protocols and practices are integrated, CN/IC will increasingly integrate its training programs. CN in particular is known for the quality of its training programs, which have helped GTW and DWP advance their safety records, and which could readily be extended to IC as well. CN/IC's initial review identified a number of CN courses could greatly benefit IC and could be extended to IC immediately

(e.g., water management and continuous welded rail ("CWR") training).

CN has had great success in tracking its training needs and expenses through a centralized training budget, and CN will work with IC to develop a similar system. The partnership among CN's safety department, districts, and training groups have helped reshape CN's training program over the past few years. IC will become a full participant in that process, ensuring that its safety and development training needs are an integral part of CN/IC's overall program.

Within this process, CN's corporate training budget is managed by the Performance and Development unit within Human Resources. This group works in partnership with each function and district to

- advise and counsel on performance issues, including training;
- determine training requirements for management development, computer, and technical training;
- ensure that all training is aligned to business goals and meets operational constraints;
- and ensure that all mandatory and strategic training is appropriately funded.

CN centralized its training organization and budget in 1994, in an effort to support strategic workforce development while maximizing the value of the training dollar. The corporate training budget includes all training development and delivery for management development, computer, and technical training, but does not include trainee wages, travel expenses, external training and conferences, or training budgeted for special projects.

Each Fall, CN's Performance and Development group works with functional and district training committees and senior management to identify and prioritize training requirements. These are then budgeted in a training plan that CN finalizes and implements at the start of the year. CN continually monitors and updates the plan throughout the year to meet changing business, regulatory and operational requirements. The plan is a key element in budgeting and managing contracts for training development and delivery.

Training at CN (including its U.S. operations), with some minor exceptions, is contracted with outside agencies:

- technical training is supplied by Canac, a CN subsidiary operation;
- management development training is delivered through selected colleges across the CN system, including the Grand Trunk District;
- and computer training is delivered primarily through computer-based training supplied via CN's Intranet by GP Learning Technologies.

Among the advantages to this system is that CN can maintain a small core of training professionals who work with functions and districts to advise and counsel on training and related performance requirements, and to determine strategic direction and appropriate allocation of training effort and budget. Their focus is to ensure that CN has a qualified and knowledgeable workforce led by effective and knowledgeable management. At the same time, CN has been able to improve its system support for training records and reports and its ability to report on training cost and activity at all levels.

Since 1996, CN has increased efforts to integrate the GTW District into CN's training plan process. As a result, technical and safety specific training has increased significantly at GTW over the last two years. Working with GTW senior management, CN has identified training requirements and funds have been set aside in the corporate training budget. GTW employees receive the same training as CN's other districts or receive a U.S. equivalent. Canadian-developed packages are modified to meet U.S. federal regulations and operational requirements. Significant examples include the modification of Engineering training and the recent adaptation of CN's newly released Joint Health and Safety Committee training.

CN/IC will investigate the best means to extend this established CN training process to the entire U.S. operations after approval. To this end, CN/IC anticipates that training direction could be set by a training professional in consultation with IC corporate and line operation management and supported by the process and tools used at CN. CN/IC will review this potential in the first year following approval.

For the most part, the integration of CN's and IC's operations will not require significant augmentation of the railroads' training personnel. CN/IC expects to hire some additional employees to handle the increase in traffic on its U.S. lines, and will train these employees. Based on a review of projected yard and segment traffic increases, as well as the effects of the planned consolidation of train dispatching, crew calling and locomotive shop activities, CN/IC anticipates the need to fill the following number of new jobs in a number of U.S. locations:

Occupation	Year 1	Year 2	Year 3	Total
Carmen	18	37	22	77
Electricians	3	5	4	12
Loco. Engineers	22	32	14	68
Laborers	5	10	3	18
Machinists	10	13	5	28
Maint. of Way	18	39	21	78
Non-Agreement	2	6	1	9
Trainmen	25	46	23	94
Total	103	188	93	384

These numbers may change somewhat up or down as a result of changes in the projected train volumes or workloads or variances in the anticipated number of employees who accept relocation offers in the train dispatching, crew dispatching and locomotive

shops' consolidations. The number of expected new hires is not large in relation to the number of employees that CN and IC hire and train each year.

CN/IC will provide full training to all new employees or existing employees moving to a new occupation. The content and duration of this training will be identical to that presently provided for new employees entering these occupations.

The railroads' training groups have reviewed the hiring plans associated with the Transaction and are confident that existing training programs and facilities can comfortably handle this training requirement. In any event, insofar as CN/IC requires additional training support, it will not hesitate to hire or contract for that support. The availability of excellent contract training programs, which are widely used by CN, IC, and other Class I railroads, gives CN/IC particular flexibility in meeting its training needs.

The most significant new training that CN/IC will need to undertake will come after CN/IC has begun integrated operations. In all cases, employees will have fully completed their training and be fully qualified before CN/IC will make changes in operations. The sections that follow dealing with operating rules, dispatching, motive power and equipment, train and yards operations, and information systems provide more detail regarding those plans.

D. OPERATING PRACTICES

Under the rubric of "Operating Practices," FRA's Guidelines include the following:

- (1) operating rules, practices, and instruction
- (2) accident/incident reporting
- (3) alcohol and drug programs
- (4) locomotive engineer qualification and certification
- (5) hours of service laws
- (6) yard/terminal operations

Each of these areas is addressed in turn below.

1. Operating Rules, Practices, and Instruction. Both CN and IC have Operating Practices Groups that are responsible not only for developing, implementing, and enforcing the railroads' operating rules, but also for performing efficiency tests to improve and maintain the alertness of employees, to improve the level of rules knowledge and compliance, and to focus attention on problem areas. Where those efficiency tests or other safety audits reveal a continuing problem with compliance in any area, these Operating Practice Groups solicit suggestions and make recommendations for how to improve training, improve the railroads' operating rules, or change the railroads' operating practices to solve the problem.

An example of this approach is the development of CN's "High Incidence Safety Procedures" program. This program is the outgrowth of a study showing that the yard switching process is the most prone to accidents, and that the most common cause (75%) of yard movement accidents is human error. Recognizing this, a CN task force began in 1996 to develop a simple set of "how to" guidelines that integrate common yard operating rules and operational best practices in the following areas: Hand Operated Switches, Derails, Securing Equipment, Coupling to Equipment, and Pushing Equipment. Working with local labor-management Health and Safety Committees, CN began in late 1997 conducting training blitzes of transportation operating employees. This initiative has already had significant success in reducing yard movement accidents on CN's system. Expansion of the program to GTW in early 1998 has seen nearly a 50% reduction in FRA reportable yard accidents. CN/IC plans to extend this same successful program to IC's yard operations. The railroads expect the CN/IC integration to act as a catalyst for further examination and improvement in the railroads' testing programs, as each is introduced to the fresh perspectives and innovative practices of the other.

Regarding operating rules, CN currently operates under CROR in Canada, GTOR in its GTW district, and GCOR in its DWP territory. IC operates under its ICOR. Although the railroads have safely operated under these separate rulebooks for many years, CN/IC recognizes that safety would be enhanced by having a single rulebook for all of its U.S. operations, and that is CN/IC's plan. A joint team of CN/IC operating plan experts is already looking at the requirements of consolidation. CN/IC's aim is to achieve consolidated rule implementation for its U.S. operations by the end of the first year after the Transaction is approved.

The first step is an item-by-item review of each railroad's rules and instructions. CN/IC's initial review of the

three U.S. operating rules indicates that their content is quite similar and that consolidation will not result in major changes to any of the existing rule systems or require significant new learning by employees. The joint operating practices team will conduct in late 1998 a detailed review. It will identify and evaluate differences among the rulebooks, and make decisions about the version to be put in the consolidated rulebook. CN/IC will provide the rulebook in draft to FRA and obtain approvals where they are required, and prepare special instructions for locations where operating restrictions will differ from the requirements of the rulebook. At that time, CN/IC will also review railroad procedures, programs, infrastructure, and forms that support the operating rules, such as Roadway Worker Safety Plans and Wayside Signal operation, so that it can modify them to conform with the new rulebook. CN/IC intends to provide FRA with detailed action plans covering this initiative.

An important part of the integration action plan will be employee training. CN/IC will ensure that all employees requiring operating rule certification receive training on the consolidated rules prior to implementation. This training will also be given to operating employees on passenger services operating over CN/IC and contractors working on CN/IC territory.

CN/IC intends to use the information from the detailed review of existing operating rules and practices to develop a specialized set of training programs for each railroad that focus on the differences between that railroad's existing operating rules and the new consolidated rules. These programs will be developed by the railroads' training staffs, which have great experience in modern training techniques and concepts.

The training CN/IC will give individual employees will depend heavily on the extent of change between their railroad's existing operating rules and related procedures and those in the new consolidated rules. CN/IC expects that there will be many employees for whom the extent of change is minimal. Training for these employees will likely be handled through communication bulletins and a short information session just prior to implementation of the new rules. Other employees, for whom the scope of change will be greater, will undergo more extensive classroom instruction, likely to be about one day.

Approximately 2900 employees of the three railroads will require training as part of the rule consolidation initiative. CN/IC intends to concentrate this training in the period of three to four months prior to implementation, so that the changes are familiar and well understood when the implementation takes place. CN/IC also intends to use the trainers in the initial period following implementation by retaining them in the field to ride with train crews and be available to answer questions and assist with compliance monitoring. CN/IC will concentrate additional monitoring and supervision on those territories and rule areas experiencing the greatest change.

CN/IC will determine the exact content and duration of the training sessions and related communications initiatives following the detailed review of existing operating rules and formulation of the proposed consolidated rules. CN/IC will provide these details to the FRA.

Notably, both CN and IC have significant experience with this kind of operating rules training and cutover. Most recently, when IC acquired CCP in 1996, IC trained CCP's employees on IC's operating rules and smoothly cut CCP over to those rules. In 1990, CN adopted a new rulebook in Canada, trained some 14,000 employees in three months, and conducted a very successful transition. That has contributed to the continuous improvement of CN's safety record. Both of these efforts were implemented safely and successfully, and CN/IC will ensure that a similar safe and successful implementation occurs for this consolidation.

As part of its mitigation plan to ensure the safe implementation of consolidated operating rules for its U.S. operations, CN/IC will require an annual rule requalification for the three years following the implementation of the consolidated operating rules. This compares with the existing two year requalification term currently used by IC and GTW and the three year interval in place on DWP. It will result in all affected employees undergoing at least two additional refresher sessions during this period.

CN/IC's Training groups will redesign and consolidate the individual railroad's rules refresher training courses in conjunction with consolidation of the operating rules. They will use their knowledge of modern day training practices and theories to ensure that the training value is maximized. CN/IC will also use the experiences of the post-rules consolidation period to shape some of the emphasis of the sessions.

In the short period when separate rules are still in place (approximately half a year), CN/IC will take measures to ensure the safety of all employees. In general, the nature of the merged operation, with minimal overlapping territory, will limit the occasions for employees to move between territories. To the extent that cross-transfer of employees occurs, they will either be fully trained and qualified in the applicable rules or will work under local "pilot" supervision familiar with track protection and other safety procedures for the territory.

2. Accident/Incident Reporting. Both CN and IC are committed to the complete and accurate reporting of accidents and incidents and will ensure that, following approval, reporting remains in full federal compliance. Both railroads have comprehensive accident/incident reporting and data collection systems and have established the requisite Internal Control Plans that specify the means by which reporting accuracy will be ensured. Both railroads' Plans contain a Reporting Policy that specifically prohibits any harassment or intimidation by company officers of employees attempting to report accidents or injuries. Both Plans have been successfully audited, as required by FRA.

Initially, CN/IC expects that accident/incident reporting to FRA, the NTSB, and others will continue to be handled separately by IC and CN's U.S. operations. That is, IC reports will continue to be filed from Homewood while GTW and DWP reports will be mailed/faxed from the Troy and Pokégama offices, respectively. In each case the reporting process will be as detailed in the railroad's Internal Control Plan.

Although presently CN/IC has no plans to integrate the reporting process, it will explore means to improve the process. For instance, IC has developed a comprehensive and complete

reporting application that allows electronic filing from the field by using portable computers. The application uses various prompts and pull-down menus to ensure accuracy in reporting as it walks the individual through the data collection process. The data are then transmitted to a centralized location, compiled with all other system data, and transmitted to FRA through its electronic filing system. The program is in full compliance with FRA regulations and has been demonstrated to FRA representatives as part of the IC SACP review. CN/IC will explore expanded use of this application on the merged property.

If CN/IC determines in the future to integrate or otherwise change the accident/incident reporting process, any changes will be made in a manner that ensures that reporting remains in compliance with DOT/FRA regulations. CN/IC will provide instructions or training to all employees affected by changes in the reporting process, and will fully reference any changes in revised versions of the Internal Control Plans, which it will provide to FRA.

3. Alcohol and Drugs. Both CN and IC have extensive alcohol and drug testing and compliance programs. CN's U.S. operations and IC's operations are subject to FRA/DOT regulations and guidelines, and they are fully compliant. CN and IC presently file separate reports to FRA for drug and alcohol testing conducted under FRA regulations. IC sends reports through its Homewood office, while GTW and DWP file reports separately through the Troy and Pokegama offices respectively.

IC has an excellent Drug and Alcohol reporting process that has been favorably recognized by FRA program administrators during their annual audit review and during the recently conducted SACP process. IC, unlike many other carriers, maintains an internal monthly statistical report to ensure accurate and complete reporting information. The IC program administrator maintains complete control of the reporting system and will continue to do following the merger.

CN's U.S. operations also have a testing and reporting program in place that fully complies with FRA regulations. The program administrator ensures complete and accurate reporting, as required by FRA regulations. This program is carried out separately from that for CN's Canadian operations, due to the different regulatory environment.

CN/IC will review each railroad's programs in an effort to extend their strengths across the system. CN/IC intends to have the railroad's Drug & Alcohol reporting process remain distinctive and separate, and has no immediate plans to combine the two programs. However, CN/IC does plan to review all aspects of the drug and alcohol programs in late 1999. Should this review result in a recommendation of the consolidation of all or part of the reporting process, CN/IC will do so in a manner that complies with regulatory requirements. CN/IC will also commit to consulting the FRA Drug & Alcohol Administrator's office prior to any blending of the programs to draw upon its expertise and to help ensure compliance.

CN/IC's initial review of all other aspects of the existing drug and alcohol programs clearly shows that each railroad's program includes a number of valuable and successful processes that have been beneficial to the individual railroads. Both programs are not limited to on-the-job employee involvement.

The railroads' extensive Family Assistance programs include off-the-job drug and alcohol counseling and assistance for employees and their families as well. CN/IC will have the railroads' respective Drug & Alcohol Administrators coordinate a full review by identifying differences, and discussing the strengths of each of their programs, while receiving input from labor, FRA and management. The goal of the review will be to build a stronger program, and not simply combine existing programs. A realistic time frame for accomplishing this goal and carrying out a joint Drug & Alcohol Program conference to review the best practices of each railroad would be the end of 1999. CN/IC expects this review will address such issues such as management testing, the extent of the random population, and the handling of random selections. These are policy, legal and procedural decisions that will require input from all concerned parties to reach a sound decision.

In the meantime, CN/IC intends to have each railroad maintain its drug and alcohol program in its current form. The existing programs are in full compliance with all regulations and have been successful in their own right. Combined with the minimal employee relocation, and general retention of systems that will come out of the Transaction, CN/IC does not expect to lead to safety concerns or employee confusion.

4. Locomotive Engineer Qualification and Certification. As required by 49 C.F.R. part 240, IC, GTW and DWP have established locomotive qualification and certification programs for their operations. Each of the programs has been approved by FRA.

CN/IC's initial review of the programs indicates that they are quite similar. All use classroom and extensive on-the-job evaluation sessions and include substantial locomotive simulator sessions. GTW's student engineer training course is representative. It lasts approximately six months and consists, first, of formal classroom instruction covering GTW rail operations manuals (including safety rules, hazardous materials handling, operating rules, power brake laws, equipment restrictions, and timetable interpretation), air brakes and locomotive inspection, and train operation and troubleshooting. This is followed by simulator training by company instructors and on-the-job training by veteran locomotive engineer instructors. During the on-the-job portion of the training course, the student must accumulate from 200 to 500 hours of train operation supervised by a certified instructor. The company keeps progress reports, along with periodic instructor evaluations. Throughout the entire session, candidates must maintain a grade level of 85%.

Before being qualified and allowed to take the final written examination, a student engineer must be familiar with all of the physical characteristics of the territory in which he or she will be required to operate. If later transferring to a new territory, or operating in an expanded territory, the student engineer must be qualified for that territory before operating there without the supervision of a qualified engineer. If different operating rules apply in that territory, qualification in those rules is required. Each engineer is evaluated for performance at least once per year by a Road Foreman of Engines. Moreover, engineers receive ongoing educational classes each

year, with full recertification every three years.

Recertification includes medical and driver's license clearances.

CN/IC intends initially to continue to operate with the three individual programs. With no major changes in crew runs anticipated as a result of the Transaction, and with the existing local supervision remaining in place, this should not result in any safety concerns.

CN/IC will, however, continue to look for opportunities to consolidate portions of the qualification and certification programs. Any changes to the programs will continue to meet all regulatory requirements and will be communicated to FRA for approval as required by law.

At all times, CN/IC will continue to enforce the requirements that engineers operating in new territories or under new rules must first be fully qualified in those territories and rules.

5. Hours of Service Laws. IC, DWP, and GTW are all subject to U.S. federal hours of service laws, and all have approved reporting processes in place to handle the hours of service reporting for the respective railroads. CN/IC's Canadian operations are subject to similar Canadian hours of service rules. CN/IC intends initially to retain the existing separate reporting processes for its U.S. operations after approval of the Transaction. As the Transaction will not result in significant employee relocations or changes to local supervision or procedures, this status quo approach is not expected to create safety concerns or employee confusion.

CN/IC will, however, review the possible consolidation of some or all of the railroads' hours of service reporting. To this end, CN/IC expects to conduct a joint review of the reporting processes towards the end of 1999. This review will highlight efficiencies that can be achieved in the reporting process, while ensuring that any changes made continue to comply fully with FRA requirements. The review will also identify any training requirements that will be required as a result of such changes. CN/IC will complete all training prior to implementation of any change.

CN/IC will carefully implement the integration of its combined U.S. operations so as to ensure that it does not compromise the railroad's compliance with hour-of-service regulations. CN/IC expects that some of its U.S. lines will experience an increase in trains per day as a result of the Transaction. To handle the anticipated changes in line segment and yard traffic volumes, CN/IC anticipates the need to hire over 160 additional train and engine service employees over a three year period. Detailed hiring plans by location and year are as follows:

Location		Classification	Jobs Created	Year
Centralia	IL	Engineers	5	2
Centralia	IL	Engineers	2	3
Champaign	IL	Engineers	3	1
Champaign	IL	Engineers	6	2
Champaign	IL	Engineers	3	3

Location		Classification	Jobs Created	Year
Chicago	IL	Engineers	9	1
Chicago	IL	Engineers	4	1
Chicago	IL	Engineers	1	3
Decatur	IL	Engineers	1	2
Fulton	KY	Engineers	1	1
Fulton	KY	Engineers	1	2
Fulton	KY	Engineers	1	3
Baton Rouge	LA	Engineers	1	2
Detroit	MI	Engineers	3	2
Jackson	MS	Engineers	1	1
Jackson	MS	Engineers	2	2
Jackson	MS	Engineers	1	3
Memphis	TN	Engineers	3	1
Memphis	TN	Engineers	13	2
Memphis	TN	Engineers	6	3
Superior	WI	Engineers	1	1
Centralia	IL	Trainmen	8	2
Centralia	IL	Trainmen	2	3
Champaign	IL	Trainmen	4	1
Champaign	IL	Trainmen	7	2
Champaign	IL	Trainmen	4	3
Chicago	IL	Trainmen	9	1
Chicago	IL	Trainmen	5	2
Chicago	IL	Trainmen	4	3
Decatur	IL	Trainmen	3	2
Fulton	KY	Trainmen	1	1
Fulton	KY	Trainmen	1	2
Fulton	KY	Trainmen	4	3
Baton Rouge	LA	Trainmen	3	2
Detroit	MI	Trainmen	5	1
Jackson	MS	Trainmen	1	1
Jackson	MS	Trainmen	2	2
Jackson	MS	Trainmen	1	3
Memphis	TN	Trainmen	4	1
Memphis	TN	Trainmen	17	2
Memphis	TN	Trainmen	8	3
Superior	WI	Trainmen	1	1
			162	

Locomotive engineers will generally be hired from the existing pool of trainmen conductors, as is now the practice on both CN and IC. All candidates will be required to successfully complete the railroads' existing locomotive engineer training and certification program, and will be qualified for the territory on which they are to operate, in accordance with the railroad's existing qualification program.

On IC, where most of locomotive engineers will be required, this training consists of three weeks of classroom instruction on rules, air brakes, train handling (including extensive locomotive simulator training) and Hazmat, followed by 15 weeks of on-the-job training ("OJT") with qualified locomotive engineers (an additional two days of classroom refresher training and progress evaluation occurs mid-way through the OJT period). An additional two weeks of mechanical training and review follows the OJT, leading up to a final exam, which includes physical characteristics testing on the locomotive simulator. CN's U.S. operations have a similar program, which includes five weeks of classroom instruction, a minimum of 450 hours of OJT/evaluation, as well as extensive locomotive simulator training, which would be used to train and certify those locomotive engineers required for GTW/DWP territory. Should there be the opportunity to hire experienced locomotive engineers from other railroads, training could be reduced in response to their existing knowledge and qualifications.

New trainmen will be selected from the pool of community college railroad program graduates or transfers from within the company, as is presently the railroads' regular practice, and will be required to successfully complete the railroad's existing training program before commencing work. On IC, where again the vast majority of new hires will occur, this consists of six days of classroom orientation and rules (including some field exposure), two days field training with a transportation supervisor, and four weeks of OJT with a qualified training conductor. This is followed by additional classroom instruction and a final examination. CN's U.S. operations would use their own similar program, consisting of two weeks of classroom instruction in operating rules and safety practices, one week of hands-on training with live equipment, and some 30 runs of OJT followed by final examinations for the small number of employees required for GTW/DWP points. Some additional trainmen beyond those identified may be required to make up for existing trainmen promoted to locomotive engineer.

If there is a change in a crew run (for example, CN/IC plans to modify the existing run from Battle Creek to Chicago to allow crews to bypass the Chicago crew-change and run straight to Champaign), CN/IC will ensure that the change does not affect its compliance with hours of service requirements. Under no circumstances will crews be required to work beyond the 12-hour limit.

In addition to compliance with hours of service requirements, CN/IC's train and crew dispatching operations will also be geared to avoiding problems with fatigue in other ways. As discussed below in the Dispatching section, CN/IC will consolidate train dispatching, crew calling, and timekeeping functions in IC's Homewood center. IC has had no hours of service problems at its dispatching center. GTW is completing a significant reorganization of its own train dispatching operations, including the training and qualification of all spareboard employees so that they can work any of the dispatching desks. This gives GTW considerably more flexibility to avoid hours-of-service problems. The consolidation in Homewood, once fully implemented, will permit CN/IC to take further advantage of

efficiencies in the use of spareboard employees to minimize any possibility of hours-of-service violations.

The railroads' efforts to combat fatigue are not limited to hours-of-service compliance. CN/IC's fatigue-avoidance programs are described at greater length below in the Employee Quality of Life section.

6. Yard/Terminal Operations. The Operating Plan identifies four rail yards and one intermodal yard expected to experience significant workload increases: Markham (Chicago), Centralia, Champaign, Johnston (Memphis), and Memphis Intermodal. CN/IC has reviewed workloads and capacity in those yards and made decisions to ensure safe and efficient service through a combination of yard construction, changes in operations, and additional hiring. CN/IC plans to hire the additional employees required to handle this workload before the traffic increases, not after. It will give all new hires full training and familiarization with these yards' operations. Also, as mentioned earlier, CN/IC expects over time to implement CN's High Incidence Safety Procedures program for all yards and terminals in IC territory, including these five.

In addition to hiring new train and engine service employees (as previously detailed), CN/IC anticipates the need to hire about 135 additional mechanical service employees to handle the required locomotive, car and train inspections identified by the forecasted post-Transaction train service. Detailed hiring plans by location are as follows:

Location		Classification	Jobs Created	Year
Waterloo	IA	Carmen	2	3
Centralia	IL	Carmen	4	2
Centralia	IL	Carmen	2	3
Decatur	IL	Carmen	3	2
Decatur	IL	Carmen	2	3
Homewood	IL	Carmen	4	1
Homewood	IL	Carmen	7	2
Homewood	IL	Carmen	2	3
Baton Rouge	LA	Carmen	2	1
Baton Rouge	LA	Carmen	2	2
Baton Rouge	LA	Carmen	2	3
New Orleans	LA	Carmen	3	1
New Orleans	LA	Carmen	5	2
New Orleans	LA	Carmen	2	3
Detroit	MI	Carmen	2	1
Detroit	MI	Carmen	2	2
Detroit	MI	Carmen	2	3
Jackson	MS	Carmen	2	1
Jackson	MS	Carmen	4	2
Jackson	MS	Carmen	2	3
Memphis	TN	Carmen	5	1
Memphis	TN	Carmen	10	2

Location		Classification	Jobs Created	Year
Memphis	TN	Carmen	6	3
Waterloo	IA	Electricians	1	1
Centralia	IL	Electricians	1	3
Homewood	IL	Electricians	1	1
Homewood	IL	Electricians	1	2
Homewood	IL	Electricians	2	3
Jackson	MS	Electricians	2	2
Memphis	TN	Electricians	1	1
Memphis	TN	Electricians	2	2
Memphis	TN	Electricians	1	3
Centralia	IL	Laborers/Firemen/Oilers	2	2
Homewood	IL	Laborers/Firemen/Oilers	2	2
Homewood	IL	Laborers/Firemen/Oilers	1	3
Baton Rouge	LA	Laborers/Firemen/Oilers	1	1
Baton Rouge	LA	Laborers/Firemen/Oilers	1	2
New Orleans	LA	Laborers/Firemen/Oilers	1	1
New Orleans	LA	Laborers/Firemen/Oilers	1	2
New Orleans	LA	Laborers/Firemen/Oilers	1	3
Jackson	MS	Laborers/Firemen/Oilers	1	1
Jackson	MS	Laborers/Firemen/Oilers	1	2
Jackson	MS	Laborers/Firemen/Oilers	1	3
Memphis	TN	Laborers/Firemen/Oilers	2	1
Memphis	TN	Laborers/Firemen/Oilers	3	2
Waterloo	IA	Machinists	1	1
Waterloo	IA	Machinists	1	3
Centralia	IL	Machinists	1	2
Champaign	IL	Machinists	1	1
Decatur	IL	Machinists	1	2
Homewood	IL	Machinists	2	1
Homewood	IL	Machinists	6	2
Homewood	IL	Machinists	1	3
Baton Rouge	LA	Machinists	1	3
New Orleans	LA	Machinists	1	1
Flint	MI	Machinists	1	1
Jackson	MS	Machinists	1	1
Jackson	MS	Machinists	1	2
Memphis	TN	Machinists	3	1
Memphis	TN	Machinists	4	2
Memphis	TN	Machinists	2	3
			135	

This hiring plan was based on forecasted yard traffic volumes and block swap plans. It may be slightly revised to account for 1000-mile inspection workloads which will be determined once detailed service design specifications are developed for new train services.

Prior to commencing duties, all new mechanical hires will be given full training and orientation using the railroads' existing training programs. The length and content of this training will depend on the trade and background knowledge of the new hire.

The merger of CN and IC will result in changes in the manner in which some traffic is handled in the Chicago area. Traffic destined to points south and east of Chicago will be routed directly between CN and IC through the Harvey connection, instead of the current handling involving BRC and Clearing Yard. Traffic destined for Clearing Yard interchange with NS, Conrail, IMRL, WSOR, and BRC, as well as traffic interchanged with BN at Corwith Yard and UP at Cicero Yard will continue to be handled in the existing manner.

These changes will provide safety benefits associated with a reduction in traffic running into downtown Chicago over BRC, and reduced switching at Clearing Yard. As previously discussed, CN/IC expects that the "bypass" traffic will ultimately be handled using a Battle Creek-Champaign crew run. Mitigation plans associated with this new run were previously discussed in the section dealing with Hours of Service issues.

CN/IC foresees no other safety issues related to this change in Chicago train operations. The changes have been incorporated into the line segment and yard workload analyses used to develop capacity and hiring plans. Plans will be reviewed, and adjusted as necessary, once detailed train service specifications identify 1000 mile inspection requirements.

E. MOTIVE POWER AND EQUIPMENT

Both CN and IC have programs combining proven practices, new initiatives, and technology to ensure the safety of their motive power and equipment operations. CN/IC's review of the two programs indicates that it should extend several initiatives to the entire CN/IC system to further enhance safe operations.

CN, for example, has a Mechanical Reliability group that is responsible for performing detailed studies on CN's car and locomotive fleets and making recommendations to improve their reliability and performance. This group's state-of-the art research and development could be of immediate benefit to IC.

Similarly, CN in western Canada has a special group of mechanical personnel, RTCMECH, who monitor CN's hot box detectors, hot bearing detectors, and wheel impact detectors 24 hours per day. They also arrange for expedient set-offs and repairs of defective cars, and maintain a database of information pertaining to train stops, hand brakes released on trains, air hose separations, wheel impacts, suspect bearings, sticking brakes, car modifications, and disruptions. CN has plans in place to expand this program throughout CN's system, including its U.S. operations. This program could also be extended to IC's system.

CN/IC could also extend CN's innovative "Diesel Doctors" locomotive program to IC. This highly trained group provides 24-hour technical support to respond quickly to operating crew concerns about locomotive performance, alarms, or failures through a direct two-way radio communications link with the train crew. They supervise the setting-off of bad order

locomotives and coordinate their repairs. They also maintain a database of all failures, used to improve locomotive reliability.

These innovative programs are but a few of the safety benefits of consolidating CN's and IC's motive power and equipment operations. Other benefits are discussed below in connection with the individual fleets.

1. Car Fleet. As described in the Operating Plan, integration of CN's and IC's car fleets will enable it to reduce the average age of its cars by "cascading" newer units through the fleets. The two railroads currently maintain an equipment fleet totaling some 88,000 cars. This is comprised of:

Type	CN	IC
Box	21,337	5,063
Flat	13,071	1,548
Gondola	9,276	1,735
Hopper	25,299	9,992
Tank	150	34
Total	69,133	18,372

CN/IC intends to take advantage of complementary seasonal usage peaks and additional backhaul opportunities to improve car utilization. CN/IC anticipates that, along with improved car management opportunities identified through a joint review of current practices on the two railroads, this could reduce the combined fleet by as many as 6,000 cars.

CN/IC will carry out any reductions through a combination of reducing the number of cars presently on lease and selling or retiring railroad-owned equipment. As those cars to be sold or retired first will be the oldest of that car type, CN/IC anticipates that the quality of the overall car fleet will improve.

The integration of CN/IC's operations will also permit CN/IC significantly to reduce equipment "dwell" time and cycle times. The improvement in efficiency and reliability of CN/IC's combined car fleet will give the system sufficient car capacity to handle the increased traffic projected as a result of the Transaction.

2. Locomotive Fleet. As with their car fleet consolidation, the consolidation of CN's and IC's locomotive fleets will have significant benefits. CN's locomotive fleet is newer and more fuel-efficient than IC's. Combining the fleets will allow the cascading of older high-horsepower locomotives into less demanding services on the combined system. This process ultimately will allow the retirement and sale of older IC locomotives, reduction of the average age of the IC fleet, and improvement of overall fleet reliability. CN/IC has determined that an additional 74 high-horsepower locomotives will be required to handle the increased traffic over time. No additional yard power will be required.

Before cascading any CN locomotives for use in IC's territory, CN/IC will modify the locomotives to ensure compatibility with IC end-of-train devices and radio operations. In addition, it will provide IC transportation and mechanical officers with software and instructions for downloading electronic event recorders on the locomotives. IC crews will

require no special training for the cascaded power, since the CN locomotives are the same class of power presently in use on IC.

3. Inspection Activities

CN and IC perform freight car inspections under mandated FRA standards at designated terminals. As part of the overall merger planning process, CN/IC made a detailed analysis of anticipated workload changes for each yard on the combined system. This analysis used projected traffic volume information and block swap plans to produce a workload projection. A chart containing this information is attached as Appendix I.

Based on this study, CN/IC does not anticipate any changes in inspection locations (including those to accommodate 1,000 mile requirements). As previously stated, CN/IC plans to hire additional carmen to handle the increased inspection workload associated with the volume increased at certain yards.

Although, as the workload chart shows, CN/IC intends to make increased use of block swaps as part of its operations, it does not anticipate any safety related issues. Both IC and GTW safely use block swaps in their current operations, and will continue to insure that all block swap operations fully comply with FRA requirements.

Although general car inspection points and territories are not expected to change as a result of the Transaction, CN/IC has plans to explore the possible synergies associated with field car repair forces in the Chicago. Presently, when a GTW car is found to be defective in the Chicago area, GTW mechanical personnel are called to inspect and carry out the necessary repairs. Similarly, IC personnel would be called to handle repairs to IC cars in Chicago. The Transaction provides an opportunity to consolidate operations such that employees from either of the railroads could be called upon to handle any car repair in the Chicago area. This arrangement is still under consideration and would require negotiated changes to collective agreements. CN/IC does not anticipate job reductions or safety concerns associated with the initiative.

IC currently performs its heavy car repairs at Centralia and Memphis. The Centralia facility, after recent upgrades, has the capacity to handle extra workload. GTW's Battle Creek car shop handles both light and heavy bad order car repairs. At present, CN/IC does not plan to consolidate these facilities.

If CN/IC later determines any consolidation of facilities to be operationally expedient it will undertake them carefully, with due regard for maximum continuity of personnel and familiarization with new facilities and procedures.

Prior to implementing the Transaction, CN/IC plans to review all of the railroads' maintenance practices with a view to determining the most efficient and safest practices and extending them throughout the CN/IC system. It will use this review to shape the training for employees transferring from one shop to another.

4. Locomotive Shops

CN/IC plans to close GTW's locomotive repair facility at Battle Creek, Michigan, within the first year after approval of the Transaction. CN/IC will move GTW's high-horsepower repairs to IC's modern Woodcrest facility in Chicago and to its Memphis shop. As a result of this initiative CN/IC will offer a

total of 91 positions at CN's Battle Creek facility the opportunity to transfer to the IC facilities. Details are provided in the following chart.

Location	Classification	Jobs Transferred	Transferred To		Year
Battle Creek	Blacksmiths/Boilermakers	3	Homewood	IL	1
Battle Creek	Electricians	12	Homewood	IL	1
Battle Creek	Electricians	3	Memphis	TN	1
Battle Creek	Laborers/Firemen/Oilers	8	Homewood	IL	1
Battle Creek	Machinists	5	Memphis	TN	1
Battle Creek	Machinists	29	Homewood	IL	1
Battle Creek	Nonagreement	1	Homewood	IL	1
Battle Creek	Railway Supervisors	4	Homewood	IL	1
Battle Creek	Railway Supervisors	1	Memphis	TN	1
Battle Creek	Sheet Metal Workers	5	Homewood	IL	1
		71			

Employees moving from Battle Creek to Memphis or Homewood will attend a special one-day orientation session designed to familiarize them with applicable policies and procedures and the new shop and yard. They will not require any technical training, as the locomotives to be maintained in the IC shop are the same type as those with which they are familiar.

Any positions remaining as a result of employees deciding not to transfer will be filled by new hires, from local trade schools or other railroads. They will receive the full training program for new hires, with duration and content being dependent on the trade and previous experience of the new hire.

As is indicated in the chart, a number of supervisory positions will also be transferred from Battle Creek to the new shops. These employees will receive orientation training as previously described, including information on IC supervisory policies. CN/IC expects that the supervisor to workforce ratio at the two shops will remain on the order of 1:9.

CN/IC will also consolidate maintenance of most of GTW's low-horsepower locomotives into GTW's Flint, Michigan shop. As a result of this initiative, CN/IC will offer a total of 13 positions at the CN Battle Creek shop the opportunity to transfer to the Flint facility. CN/IC expects that the majority will accept the transfer. Details are provided in the following chart.

Location	Classification	Jobs Transferred	Transferred To	Year
Battle Creek	Electricians	3	Flint	1
Battle Creek	Laborers/Firemen/Oilers	3	Flint	1
Battle Creek	Machinists	7	Flint	1
		13		

Employees moving from Battle Creek to Flint will attend a short orientation session designed to familiarize them with

the new shop and yard. No technical training will be required, as the locomotives to be maintained will be the same as those which they worked on in Battle Creek. Any remaining positions due to employees deciding not to transfer will be filled by new hires from local trade schools or other railroads. They will receive the full training program for new hires, with duration and content being dependent on the trade and previous experience of the new hire. Once consolidation is complete the Flint shop will have a supervisor/employee ratio of 1:11.

Capacity at the Woodcrest, Flint, and Memphis shops will not be a problem, since the projected workloads are less than those facilities have handled in the past. For instance, the Woodcrest facility has handled as many as 1,600 locomotives in past years. Current levels are down to 400, and the transfer of GTW high-horsepower locomotives will increase the number to approximately 600. The Flint and Memphis facilities similarly have more than adequate capacity. Staffing increases will ensure that the shops maintain the existing employee/locomotive level, and supervisory ratios will remain at about the same level as today.

As with car inspection and maintenance, CN/IC will thoroughly review the railroads' most efficient and safest locomotive practices, and adopt them over time for the entire system.

5. Clearance Activities. CN and IC generally employ similar clearance and marshaling restrictions and policies. CN performs clearance work on a systemwide basis (including GTW and DWP) from CN's bureau in Montreal, using a computerized system to maintain data on obstructions and process clearance requests. CN precisely determines clearance dimensions on its system using its state-of-the-art laser car. IC performs clearance work at its Homewood operating headquarters by clerical personnel using a manual system. CN/IC will integrate its clearance process. During the three-year Transaction implementation period, CN/IC will measure clearances on IC's lines using CN's laser car, and will review the existing clearance processes and select the best practices for implementation across the entire railroad. After full integration, CN/IC will have in place an efficient and uniform system for rapidly and accurately processing clearance requests. The result will be safer train movements across the entire system.

2. ENGINEERING

1. Signals and Communications. CN/IC does not forecast any specific change in the railroads' signal and communications systems or practices as a result of the Transaction. The railroads' existing trained personnel are quite capable of handling the combined operations.

The small overlap of territory in the Chicago area will allow CN/IC to take advantage of possible synergies associated with the local integration of maintenance of way and signal and communications activities in the area.

This consolidation would affect a very small number of employees on the merged entity (expected to be no more than 15, although the number could change as a result of negotiations). CN/IC anticipates no reductions or safety concerns as a result of the consolidation.

As any consolidation would require negotiated changes to the labor agreements and seniority rosters covering these employees, CN/IC does not anticipate the consolidation taking place until after CN/IC has consolidated operating rules and associated procedures, such as Roadway Worker Safety Plans and wayside signal operation. CN/IC also expects that engineering standards and practices will already have been consolidated at this time. As a result, the training requirements directly associated with the consolidation should be minor (full training having already been provided to all employees at the time of implementation of such consolidations). Nevertheless, CN/IC commits to ensuring that all necessary training be carried out prior to implementation. CN/IC will also ensure that all affected employees receive territory familiarization for the expanded territory.

Should CN/IC be in position to implement the consolidations prior to the establishment of consolidated operating rules or engineering standards, it will ensure that all affected employees receive the necessary training to ensure that they can work safely throughout the combined territory.

As discussed below in the Operations Technology section, CN has extensive experience with state-of-the-art electronic detection devices (e.g., to warn of roadbed instability, washouts, flooding, and rock slides) and with more common but important devices like wheel impact load detectors. As part of its review of the railroads' engineering standards and practices, CN/IC will evaluate the ways in which the system's reliability and safety can be improved with wider use of such electronic devices.

2. Track and Structures. CN operates its transcontinental system in some of the world's most difficult climatic conditions and most challenging terrain. CN has specialized track inspection cars and equipment and expertise in the maintenance of bridges and other structures that will be available to the entire CN/IC system. These are discussed in greater detail in the Operations Technology section below. This specialized equipment and expertise is used today on CN's U.S. lines and is fully compatible with U.S. track rules. It is further supported by information systems that help with track maintenance management and capital planning. Both CN and IC expect to share their most efficient track maintenance practices, as well as CN's sophisticated track inspection equipment.

As required, CN and IC both have rail flaw detection programs, including contractual services. CN/IC will review their safety merits and work towards an integrated program as existing contracts expire.

With the exception of capacity expansion requirements at some yards, CN/IC's track infrastructure can readily handle the traffic increases projected as a result of the Transaction.³

³The Operating Plan filed as part of the CN/IC application referred to a possible project to increase clearance on the CCP line between Dubuque and Chicago to permit double stack intermodal traffic. Subsequent developments in the handling of traffic from Western Canada to Chicago have eliminated the need for this project at this time.

The railroads do not expect to require significant additional personnel to handle the additional maintenance caused by the increase in tonnage on the combined system. CN/IC will require that any new hires be fully trained and qualified in compliance with the Track Worker Safety Regulations. CN/IC will also provide any additional training required to operate specialized CN equipment in IC territory or to implement improved track maintenance practices.

As noted earlier in the Training section, CN offers a number of innovative training courses, including several engineering courses that may be of particular value to IC. For example, CN's course on Water Management helps engineering employees understand the technical and scientific effects of water and drainage on the railroad roadbed, helps them recognize signs of potential water-related problems, and gives them options for addressing such problems. Similarly, CN's Continuous Welded Rail course helps engineering employees to understand the phenomenon of thermal expansion in CWR, to accurately identify stressed rail conditions, and to supervise CWR maintenance under the most extreme climactic circumstances. The integration of CN's and IC's training resources will make these kinds of courses immediately available to IC's engineering personnel.

G. HAZARDOUS MATERIALS

Hazardous materials traffic makes up a significant part of both CN's and IC's business, and both have excellent programs in place to ensure safety in this area.

CN handles over 400,000 cars (approximately 10% of its total traffic) of hazardous materials each year. It gives all employees involved in the transportation of such goods specialized training and regular refresher courses. CN's Operations Management Center uses computers and advanced communications systems to quickly identify the location of any incident involving hazardous materials. Special Commodities Officers, trained and equipped to handle emergencies, are strategically located across CN's network in Canada and the U.S.

CN has a comprehensive Transportation of Dangerous Goods/Hazardous Materials compliance audit program, assisted by a third-party consulting firm. The program has been highly successful in identifying areas where CN's hazardous materials operations, including its U.S. operations, can be improved. The results of those audits are used by CN not simply to solve problems at particular locations but also to structure programs that enhance the overall effectiveness of CN's handling of hazardous materials and its preparedness for emergency response.

CN is an active partner in the chemical industry's Responsible Care® program of self-policing for the highest level of care in handling hazardous materials. The Guiding Principles of that program outline each member company's commitment to environmental, health, and safety responsibility in managing chemicals, and the Codes of Management Practices outline practices that cover virtually all aspects of chemical manufacturing, transportation, and handling. CN has committed to the ethics and the guiding principles of Responsible Care® for all CN operations, not just transporting chemicals. The Chemical Manufacturers Association ("CMA") has worked with AAR to develop self-assessment programs for railroads. In Spring 1998, CN

verified its U.S. operations using this Responsible Care® self-assessment program.

Another innovative pilot program in which CN actively participates is called "Operation Respond." This is a program designed to improve the information available to first responders at hazardous material and passenger train incidents. This initiative connects police and fire departments with the databases of railroads and motor carriers, so that in the event of any incident, first responders can obtain quick, accurate information on the cargo contents.

CN also plays an active role in the chemical industry's Transportation Community Awareness and Emergency Response ("TransCAER") program for training communities through which hazardous materials are transported. And CN has its own successful Safe Handling awards program for customers that demonstrate exemplary care and performance in their handling of hazardous materials. This program has helped reduce the number of Non-Accidental Releases ("NARs") by almost one-half since its inception.

IC is also fully committed to the safe transportation of hazardous materials. IC participates in the chemical industry's TransCAER® program. In addition, IC works closely with local Emergency Planning Committees along its system. IC has developed a hazardous materials emergency response plan ("Hazardous Materials Incident in Transportation Emergency Action Plan") that outlines roles and responsibilities in the event of an incident, and its work with communities along its system includes this plan. Further, IC also participates in Operation Respond, allowing emergency responders to access IC's information data base so as to have the most current and accurate information about the consist of a movement.

IC also gives a high priority to hazardous materials training for all affected employees. IC has a system-wide network of managers who have received advanced levels of Hazardous Materials training. Some 65 managers across the IC system have received training on Emergency Response Handling in Railroad Hazardous Materials Operations conducted at the AAR Transportation Technology Center. ("TTC") in Pueblo, CO. The certified 40 hours of training conducted at the TTC is the foundation for emergency response handling on the IC system. These individuals also receive refresher training, as required, to allow them to keep current with the changing environment involving hazardous materials.

IC also has 40 managers system-wide who have received advanced additional hazardous material training, in the form of Hazardous Material Tank Car Specialist Training. This 40-hour training program addresses the technical issues involved in the configuration and construction of tank cars used in the transportation of hazardous materials. It provides these employees with special insight into the functional operations of the tank car, and how to take corrective action to mitigate releases, leaks and other failures.

IC also has 23 managers who have received the next level of training: Hazardous Materials Technician Training. This provides IC's key field personnel advanced training in the handling of hazardous material, bringing all of the various aspects of their training on hazardous material to a higher

level, and providing the skills and knowledge to manage any incident effectively.

All of this training is conducted by certified instructors and contractors so as to ensure FRA and OSHA compliance. It incorporates DOT/FRA/EPA regulatory compliance, and uses a hands-on education process, not merely a classroom environment.

CN/IC will ensure that this level of commitment to hazardous material training will continue. With the approval of the Transaction, CN/IC intends to review and blend existing programs. This will likely occur sometime in the fourth quarter of 1999.

The integration of CN's and IC's operations will strengthen the railroads' hazardous materials programs. CN/IC will extend CN's successful compliance audit and Safe Handling programs to the entire CN/IC system, which will take part in the Responsible Care program as well. CN/IC's well-trained work force can readily handle the relatively small increase in hazardous materials traffic projected as a result of the Transaction. The hazardous material traffic analysis conducted as part of the Environmental Assessment process has identified only 10 traffic segments (totaling 314 miles) for which new mitigation might be appropriate. Environmental and safety issues associated with those segments will be detailed in the Environmental Assessment.

II. DISPATCHING OPERATIONS

As described in the Operating Plan, CN/IC plans to consolidate GTW, DWP, and IC train and crew dispatching functions into IC's main Homewood facility. This modern facility locates train and crew dispatchers side-by-side, providing for ease of communication and the ability to work as a team on train movement issues.

Joint CN/IC teams have already begun work on the implementation and safety mitigation plans associated with these consolidations. Details of each are presented below.

1. Integration of Train Dispatching. Today, GTW, DWP, and IC train dispatchers operate out of three separate locations (Troy, Michigan; Pokegama, Wisconsin; and Homewood, Illinois, respectively), using three sets of dispatching systems and operating rules.

CN/IC is fully aware of the importance of a careful transition to consolidated dispatching operations in Homewood. To that end, it will handle the physical relocation, rules consolidation, and systems consolidation/upgrade aspects of the transition as distinct steps, phased in over time.

Prior to the implementation of consolidated operating rules, CN/IC will ensure that the dispatching consolidation does not compromise safety. The GTW, DWP and IC dispatchers will continue to perform dispatching as though they were separate entities, albeit under the same roof.

This co-location phase will be handled by having the existing train dispatching equipment and the existing full-time dispatchers, as well as a portion of the existing spareboard dispatchers and dispatching center management, move from Troy and Pokegama to Homewood. Their operations will remain completely separate from those controlling movements on IC territory, and dispatchers will continue to dispatch their own territory using

the equipment and processes with which they are familiar. Thus, the train dispatchers will not notice any difference in their day-to-day activities other than the fact that they will be working out of a different location. The changes will also be totally transparent to train operation and field forces.

CN/IC also plans to carry out at this time a previously planned consolidation of the DWP and GTW dispatching activities. This will see the existing DWP workload transferred to one of the GTW desks. The GTW workload will be redistributed among existing desks to provide balance. CN's workload studies support this change. As the DWP workload is light, the change is not anticipated to be a significant undertaking. Prior to this taking place, the affected GTW dispatchers will be trained on GCOR rules, which are very similar to the GTOR rules with which they are familiar.

To allow for full flexibility and to avoid hours-of-service issues with train dispatchers, CN/IC will train all spareboard dispatchers so as to allow them to operate any of the desks on the IC or GTW lines. This will require them to be fully trained and qualified on the equipment and operating rules on which they are not already qualified. CN/IC will provide familiarization trips for the new territories. This training will be based on the railroads' existing training practices for new dispatchers, with emphasis on differences in rules and systems, and will include both classroom and on-the-job training. CN/IC will also use trainers to monitor spareboard employees when required to operate a new desk, and will ensure that management is fully trained on all of the systems and operating rules. CN/IC will not implement the co-location phase until all of this training is complete. This is expected to take place in the second half of 1999.

With the melding of DWP dispatching activities, co-location will result in four GTW desks being manned by 17 full time dispatchers. IC operations will continue to be handled by six full-time desks and one 8-hour desk, staffed by 26 full-time dispatchers. CN/IC expects a combined IC/GTW spareboard to include 10 positions (four existing IC spareboard dispatchers and six existing GTW employees). CN/IC considers this ratio of spareboard to full-time dispatchers sufficient to handle the workload without hours-of-service concerns.

Although CN/IC expects that a sufficient number of existing GTW dispatchers will transfer to Homewood, should additional dispatchers need to be hired, CN/IC will fully train any new hires in the rules and dispatching system, and give them familiarization trips for the road and desk which they will dispatch.

For all stages of integration, including the co-location phase, CN/IC recognizes the importance of establishing a clear organizational structure, while ensuring that the "proper authority" as set out in the railroads' operating rules and procedures is clearly defined and communicated to all train dispatchers and supervisors. CN/IC expects to accomplish this by establishing an organizational structure with two separate and clearly defined Assistant Superintendent positions responsible for the operation and acting as the "proper authority" for the GTW/DWP and the IC portions of the dispatching center, respectively. These positions will be available 24 hours per

day, seven days per week, and will report to a General Manager of the Homewood Center. CN/IC does not, at this time, anticipate the need for a third Assistant Superintendent to handle DWP issues separately from those on GTW. If, however, it later identifies such a need, CN/IC will temporarily institute a third position until operating rules are consolidated.

Acting as direct supervision for the train dispatchers and reporting directly to the Assistant Superintendents will be a level of Managers and Directors of Network Operations. CN/IC anticipates that it will require 12 such positions to oversee the 43 full-time dispatchers. Five or six of these will be transferred from the GTW Troy center. As previously mentioned, CN/IC will ensure that the Managers and Directors are fully trained and knowledgeable in all of the dispatching systems and operating rules of the merged operation.

CN/IC does not expect this organizational structure to undergo significant change when consolidated operating rules allow the railroads to institute a totally integrated train dispatching center. CN/IC will consult closely with FRA throughout the dispatching consolidation planning and implementation process.

The second step in integrating CN/IC's train dispatching functions will be to train all dispatchers on the consolidated U.S. operating rules that CN/IC plans to adopt within the first year after the Transaction is approved (as discussed in Section D.1. above). Once co-location is put into place, CN/IC anticipates that it will be approximately six months until consolidated operating rules allow for a fully integrated operation. CN/IC will ensure that all dispatchers are fully qualified before the cutover date for the new rules. At that time, CN/IC will make changes to the dispatching systems (IC's Digicon and CN's TD Pro CAD) to handle the new rules.

During implementation of the consolidated rulebook, CN/IC will retain those involved in the dispatcher training effort to assist with transition and monitoring.

The consolidation of CN/IC's U.S. operating rules provides CN/IC with the opportunity to move to a fully integrated dispatching center. CN/IC will therefore take advantage of the common rules to implement step three of the consolidation, which is the cross-training of all dispatching employees on the railroads's two systems (Digicon and TD Pro CAD). This training will consist of a combination of formal classroom and "at the desk" instruction, territory familiarization trips, and the effective use of mentors. CN/IC will step up territory familiarization trips for experienced dispatchers required to operate new territory.

CN/IC's long-term plan is to implement a new state-of-the-art dispatching system, the Rail Traffic Management System ("RTMS") on the entire CN/IC system. The safety benefits of RTMS are extensive. As with other Class I railroads, CN's RTMS is in the development stage. CN/IC will begin implementation at those locations with the greatest need for the technology as well as those with the best evaluation opportunity at the time the technology is fully developed. A major program of development, testing, and training will precede implementation.

The CN/IC Transaction will not result in a major restructuring of operations or a substantial increase in the

number of new trains on the combined system. Thus, the workload for the CN/IC dispatching center at Homewood will not be substantially different from that of the individual IC, GTW, and DWP dispatching operations today. In any event, CN/IC will be vigilant to ensure that it has sufficient well-trained dispatchers to conduct their important function without fatigue or other quality of work issues impairing their performance or the safety of CN/IC's operations.

2. Integration of Crew Dispatching. As described in the Operating Plan, CN/IC also plans to consolidate the GTW, DWP, and IC crew calling and timekeeping functions into IC's Homewood center in conjunction with the dispatching center consolidation. As previously mentioned, the IC office structure, in which crew callers are located side-by-side with the train dispatcher for the territory, will be used by the combined operation. This arrangement has significant efficiency and safety benefits. It facilitates communications and teamwork and allows experienced dispatchers to directly assist less-experienced crew callers, and vice versa.

CN/IC has already reviewed the crew calling activities on CN and IC, and decided to adopt CN's Crew Assignment and Timekeeping System ("CATS") for the consolidated operation. As discussed in the Information Systems section below, CN is currently using CATS for both its Canadian and GTW operations. Before the proposed CN/IC Transaction, CN already had plans in place and work under way to bring in DWP operations. The CATS system is therefore fully compatible with U.S. regulatory and recordkeeping requirements and is considered a superior system to that currently being used by IC. CN/IC's review of the system indicates that it will have no difficulty handling the additional crew records for IC operations.

A joint CN/IC team has begun work on the consolidation plan to ensure safe integration of the railroads' crew dispatching functions. Prior to consolidation, CATS will be modified to handle the IC agreements. In addition, prior to cutover, CN/IC will provide all IC crew dispatchers with training on the CATS system. A successful training program is already in place from CN's expansion of CATS to GTW, and CN/IC will modify it for use on IC. This training is expected to take approximately two months. Coinciding with this effort, IC and DWP train crews will be provided with training on all time reporting procedures.

As with the train dispatching consolidation, the move to Homewood will initially be one of "co-location" rather than complete consolidation. While existing crew calling systems are in place, existing GTW/DWP crew callers will continue to call GTW/DWP operations and existing IC crew callers will continue to call IC operations.

Here, too, only spareboard callers will be required to operate in either territory. CN/IC will train them to work all territories prior to commencement of duties. CN/IC expects that the office structure will help spareboard callers, since they will, for the most part, be paired and work side-by-side with experienced dispatchers. In addition, CN/IC will ensure that spareboard employees are closely monitored by office managers, who will also be trained to operate in either territory.

The eventual migration of crew calling under the CATS system will allow for a fully integrated crew dispatching office. Prior to this integration, CN/IC will ensure that all crew callers are trained with respect to any changes that the new system will bring about.

The full integration of CN/IC's train and crew dispatching functions, using the same rules and systems at the same location, will minimize conflicts and maximize safe operations. CN/IC's phased dispatching integration plan will enable the railroads to carefully achieve that goal.

I. CROSSINGS, TRESPASSING, AND RAILWAY SECURITY

1. Crossings and Trespassing Safety. Grade crossing and trespasser safety are major parts of CN's and IC's safety programs. Both railroads seek to minimize crossing and trespasser accidents and injuries through a combination of education, engineering, and enforcement initiatives.

Both CN and IC are leaders in the Operation Lifesaver program, with over 100 CN employees and over 30 IC employees having become certified trainers, putting on hundreds of presentations each year to schools and other community organizations. Both railroads have produced crossing and trespasser safety videos for a wide variety of audiences. Both work closely with local and state governmental authorities to further crossing safety, and both are active supporters of and participants in the AAR's "Highways and Diverging" campaign.

Both CN and IC have developed special training packages for their operating employees regarding crossing and trespasser safety. They have both set up internal "near miss" programs to allow for reporting and follow-up investigation of close calls at crossings. They both participate with local law enforcement and state DOT agencies in crossing safety blitzes, and they conduct highway-rail grade crossing collision investigation training courses for law enforcement personnel. Both IC and CN provide and promote the use of 1-800 emergency location numbers at all public crossings for law enforcement agencies and the public to report emergency situations or signal crossing problems.

IC has implemented a 1-800 number program with the establishment of a Signal Control Center which has been incorporated into the railroad's Network Operations Center (Dispatching Center) in Homewood. The number will be posted at all public grade crossings across the IC system. Motorists or other citizens wishing to notify the railroad of a specific concern relating to train movement or the crossing, can contact the Signal Control Center via the posted 1-800 number. The Center is staffed 24 hours per day, seven days per week. As part of IC's Network Operations Center, the Signal Control Center Manager has immediate access to train movement, and other vital railroad operation activity in the area of the report.

IC intends to have each of its public crossings clearly marked with the assigned DOT number for the crossing and the 1-800 number. It expects that the installation of all 1-800 number signs will be completed by the end of 1998. IC's Signal Control Center is already in full operation and is presently used to assist local law enforcement agencies and other enforcement

personnel when called upon to identify specific concerns regarding matters that may impact the operation of the railroad.

As an expansion of CN's 1-800 program in Canada, which has been in place for three years, CN's GTW district has also established a 1-800 number program for its crossings. The GTW program will be in place by the end of 1998 and will include the posting of stickers with a 1-800 number along with the assigned DOT inventory number at all public grade crossings.

The 1-800 number will connect to the CN Police Communications Center at CN's Headquarters in Montreal. The Center has immediate, direct access to CN's train dispatching operations, and other operating departments on the railroad, for immediate handling of matters brought to its attention.

Upon approval of the Transaction, CN/IC will evaluate the integration of the 1-800 number process. CN/IC anticipates that, in conjunction with the relocation of the GTW dispatching function to Homewood, the 1-800 number program on GTW can be handled by the IC Signal Control Center system. This will help insure consistency and accuracy across the system. CN/IC will also look to expand the program to DWP at this time. Prior to any decision or implementation, CN/IC will evaluate and review the entire process to insure a clean transition. Until such time, the IC and GTW programs will continue to work towards their separate target dates of year-end 1998.

Both CN and IC have been active in installing advanced constant warning time ("CWT") devices to control highway-rail grade crossings, and both are implementing remote monitoring systems at hundreds of warning device locations that will automatically notify the railroads' Communications & Signal Control Center of malfunctions. CN is also presently testing signal installations using LED technology and is developing a second-train warning system for multiple track territory. At less-travelled crossings, CN has pioneered the use of walk-light technology and convex mirrors. Both railroads have also been active in programs to eliminate and consolidate crossings wherever possible.

These efforts have produced significant results. CN has reduced the number of crossing accidents on its lines by over 45% in the last decade. 1997 was a particularly successful year, with accidents down by 17% and fatalities down by 46% versus 1996. CN has also significantly reduced trespasser incidents on its lines. In 1997, CN managed to reduce trespasser accidents by 27% and fatalities by 11%. IC had similar reductions in 1997, with crossing accidents reduced by 8% and trespasser accidents reduced by 41%.

The integration of CN's and IC's operations will enable the railroads to share the best elements of each other's crossing and trespasser safety programs.

Train analysis conducted as part of the CN/IC application shows that traffic increases associated with the Transaction will be generally minimal. On many line segments, as a result of better blocking patterns and longer trains, the number of trains using the lines is forecasted to decrease. Only four segments totaling 56 miles will experience an increase in excess of seven trains per day. None of the segments will increase by eight or more trains per day, the threshold set by the STB for detailed environmental review. (A chart showing

existing and projected post-merger traffic on all CN/IC segments in the U.S. is attached to this SIP as Appendix II.} Although the increases are not large, CN/IC will work with state or local authorities to discuss possible safety concerns about particular crossings. There are no planned increases in train speeds or projected changes in track configuration at or near any crossings.

2. Railway Security. Railway police play an important role in CN's and IC's safety programs. They have full police powers within their jurisdiction and they work closely with local, state, and federal law enforcement departments. On both railroads they are part of the safety organization and report to the heads of Risk Management (at CN, the Vice President - Risk Management; at IC, the General Director - Risk Management). They investigate property damage, and theft; assist with emergency response and investigation of hazardous materials and environmental incidents; secure accident and remediation sites; protect equipment and goods in transit; develop and implement special high security bolt seal programs for intermodal containers and trailers; supervise contracted security services for patrols in intermodal and automotive facilities; develop and implement emergency response plans; and work with local authorities in investigating crossing and trespasser incidents.

CN Police have worked with Provincial and local officials, and railway officers in the development of an innovative Railway Crossing Accident Protocol. This package, a copy of which is kept on each CN locomotive, provides a common protocol and information source for officers investigating crossing or trespasser accident fatalities, thus minimizing the time they must spend obtaining basic information. CN is currently working with officials from the other provinces to extend this initiative across Canada, and will investigate possible expansion to the U.S.

IC has a total of 15 commissioned police officers across its entire system. This includes the General Director Risk Management, a position that also serves as the railroad's Director of Police. The Police Officers (identified as "Risk Managers") have multiple roles. CN has a total of 22 officers for its U.S. operations,--reporting to an Assistant Chief of Police.

Although there will generally be no overlap in territory, CN/IC will explore some potential synergies in the Chicago area. Five of the IC officers (including the General Director) and seven of the CN officers are situated in the Chicago area. Upon approval of the Transaction, CN/IC intends to review these synergies. CN/IC recognizes, however, that there are numerous issues that must be resolved before it can make changes. As an example, all of the Police (Risk Management) positions on IC are management positions, whereas all but one on CN in Chicago are union positions. This will have to be addressed in formulating CN/IC's approach to managing the synergies in Chicago.

CN/IC will also have to address differences in the functions carried out by the respective police forces. The railroads' initial review indicates that, while CN Police personnel handle strictly police related functions, the IC Police (Risk Managers) handle a much wider array of issues.

The Transaction overall is expected to enhance railway security through the sharing of the most advanced security techniques and programs.

J. ALLOCATION AND DEPLOYMENT OF PERSONNEL

Unlike most recent control transactions involving Class I railroads, the CN/IC Transaction is entirely end-to-end, with relatively little overlap of facilities or personnel. For this reason, the necessary reallocation of personnel will be minimal and, for the most part, the organizational structure of the railroads will remain unchanged. This will help ensure safety, as both CN and IC recognize that properly trained and experienced personnel are an important part of safe operations.

Although there will generally be very few job transfers as a result of the Transaction, the consolidation of train dispatching, crew calling and locomotive repair activities has resulted in a small number of U.S. employees being asked to relocate. Details on U.S. relocations are contained in the following table:

Existing Location		Classification	Jobs Transferred	Transferred To		Year
Battle Creek	MI	Blacksmiths/Boilermakers	3	Homewood	IL	1
Troy	MI	Clerks/Communication Workers	26	Homewood	IL	1
Battle Creek	MI	Electricians	3	Flint	MI	1
Battle Creek	MI	Electricians	12	Homewood	IL	1
Battle Creek	MI	Electricians	3	Memphis	TN	1
Battle Creek	MI	Laborers/Firemen/Oilers	3	Flint	MI	1
Battle Creek	MI	Laborers/Firemen/Oilers	8	Homewood	IL	1
Battle Creek	MI	Machinists	5	Memphis	TN	1
Battle Creek	MI	Machinists	7	Flint	MI	1
Battle Creek	MI	Machinists	29	Homewood	IL	1
Battle Creek	MI	Nonagreements	1	Homewood	IL	1
Troy	MI	Nonagreements	6	Homewood	IL	1
Battle Creek	MI	Railway Supervisors	4	Homewood	IL	1
Battle Creek	MI	Railway Supervisors	1	Memphis	TN	1
Battle Creek	MI	Sheet Metal Workers	5	Homewood	IL	1
Troy	MI	Train Dispatchers	19	Homewood	IL	1
Pokagon	WI	Train Dispatchers	3	Homewood	IL	1
			138			

The transfers resulting from the CN/IC transaction will be smaller in number and proportion than those in other recent mergers only 2.8% of the U.S.-based employee count, and only 0.006% of the total 25,000 CN/IC workforce -- for fewer transfers than in other recent railroad mergers. This fact has been communicated to all employees to help relieve anxiety.

CN/IC will ensure that all affected employees are fully advised of their options. Where employees are moving from one railroad to another, they will be provided with the full

orientation training including information on company policies, procedures and safety rules.

For more detail regarding CN/IC's plans, see the Sections above discussing train crews, locomotive repair facilities, and dispatching and crew management centers.

K. EMPLOYEE QUALITY OF LIFE

1. Rest/Time Away From Home. The Canadian rail industry has an innovative program, called CANALERT, dedicated entirely to the analysis of fatigue among rail employees and the development of effective counter-measures. CN, CP, and VIA combined efforts with labor and a private consultant to form the CANALERT task force in 1995. The remedial program the task force developed focuses on Time Pool Scheduling (work schedules in sync with human physiology), Improved Rest Facilities (soundproofing, blackout curtains, white noise generators), Terminal Napping Facilities (comfortable, quiet environment), Locomotive Cab Audio Systems (special headsets to reduce noise, improve communications, and provide stimulation), and Lifestyle Training and Individual Counseling (course for employees and families on "managing a road lifestyle"). After CANALERT issued its recommendations, CN started an Alertness Assurance Program, which is currently underway, to begin implementing as many of the recommended fatigue countermeasures as possible. CN is working in the U.S. with FRA and AAR on similar programs.

IC has been working for some time to ameliorate train crew fatigue problems by reducing time away from home. Perhaps its most innovative program has been its "crew turnaround" train scheduling approach, under which crews running both ways between the same origin and destination switch trains at a convenient meet point and return home. This not only means less time on the road and more family time for train crews, but also more regular shifts and sleep cycles. IC's innovative scheduling approach has received worldwide attention, and CN/IC is actively exploring expansion of that approach to other parts of the CN/IC system.

IC also supports research into the causes and effects of crew fatigue. It recently cooperated with FRA in a locomotive engineer fatigue study, using IC personnel data and a full motion base simulator at the Illinois Institute of Technology Research Institute.

CN/IC expects to review the adaptability of CN's Alertness Assurance program to IC's operations and implement the elements of that program that are appropriate. The lifestyle training portion of the program is a good example. CN/IC will also review IC's innovative programs for possible application on GTW and the rest of the CN system. Implementation of the Transaction will be conducted with due regard for the importance of avoiding changes that may contribute to fatigue problems.

2. Harassment/Intimidation. Both CN and IC have strong rules against harassment and intimidation of employees. All CN employees have the right and responsibility to refuse dangerous work. This is legislated in Canada and has been extended to CN's U.S. operations as a matter of policy.

The Internal Control Plans ("ICPs") established for CN's U.S. operations and IC, as required by the FRA, specifically detail how the respective railroads ensure the accuracy and completeness of accident and injury reports and clearly state the

railroad's policy on employee harassment and intimidation as well as steps to be taken should an employee have a harassment or intimidation complaint. These plans have been audited and approved by FRA, and all employees have been informed of the measures they should take if they are subject to harassment or intimidation.

When CN's and IC's operations are integrated, CN/IC intends to initially retain their respective ICPs. With employees, management, and systems generally remaining as is following the Transaction, this will not cause any safety concerns or employee confusion.

As part of the implementation process, CN/IC intends to have IC, GTW and DWP officers review, discuss and formulate a single ICP for the combined CN/IC U.S. operations. This review will likely be held within 60 days of approval of the Transaction. Once the consolidated ICP is developed CN/IC will submit the plan to FRA for review and approval as required. Upon FRA approval, CN/IC will disseminate the newly developed ICP and communicate it to all employees.

3. Health and Wellness. CN and IC both have comprehensive health and wellness programs that focus on reducing the frequency of illness and injury. They involve, among other things, clinics on back care, work site warm-up exercises, general injury prevention, stress management, physical fitness, smoking cessation, and proper nutrition. Both programs emphasize the diagnosis of physical problems and reducing the duration of illness and injury. They involve regular physicals and check-ups for all employees, special physicals for particular problems, periodic medical exams for certain operating employees, independent medical exams for some on-duty injury cases, and follow-up status reporting from private physicians.

CN and IC each offers Employee and Family assistance programs. These provide independent, professional counseling in personal and family problems such as stress, depression, divorce, bereavement, coping with child and elderly care, drug and alcohol problems, and traumatic events. Both also focus on industrial hygiene by identifying workplace hazards, such as hearing loss and exposure to respiratory injury, and devising programs, often with the help of outside professionals, to combat those hazards. Finally, both CN and IC offer first aid and CPR courses.

Although the programs will remain separate at first, CN/IC's initial review of GTW/DWP and IC health and hygiene programs indicates that there are several areas it should consider integrating. GTW and DWP have a very comprehensive and formalized program that addresses areas such as legislative issues in safety compliance, health and safety committees, occupational injury and disease issues, workplace inspections, principles of control (work place), problem solving process, and accident/incident investigation.

IC has less formalized programs which are effective in addressing the same issues and concerns. For instance, IC conducts safety health fairs across the system. These address issues involving overall health and well being. The participants receive a free health and wellness screening, which includes blood pressure testing, blood sugar testing, hearing screening and cholesterol testing.

CN/IC intends to have its safety experts review these programs after the Transaction is approved, likely during the fourth quarter of 1999. The review will permit a thorough analysis of the various processes to insure that the best practices are implemented to provide a safe and efficient work place for CN/IC employees. Until the review is instituted, the existing programs will continue to operate. CN/IC does not anticipate any safety concerns associated with this plan.

4. Availability/Distribution of Personal Safety Equipment. Both CN and IC have excellent personal protective equipment ("PPE") programs, which meet all FRA and OSHA requirements. These programs consist of policies governing requirements to wear various types of PPE and company subsidy programs for that equipment. CN's program (which is identical for its Canadian and U.S. operations) is overseen by the railroad's Risk Management department through CN's System Safety Steering Committee. IC's program is administered by the Risk Management department.

An initial review indicates that the IC and CN PPE programs are almost identical in what they provide for their respective employees. Both provide hard hats, face shields, welding hoods, ear protection, prescription eye wear, non-prescription eye wear, goggles, hand protection, respirators (half and full face), independent air source respirators, safety toed foot wear, rubberized gloves and footwear, and any other specialized PPE items needed for their respective employees to effectively complete their work assignment. The only significant difference noted in an initial review of the programs is that IC employees must pay 50% of the cost for safety toed boots, whereas CN employees pay one-third of the cost for safety footwear under the CN program.

Supplying PPE has had a positive effect on the entire safety process on both railroads. Although mandated for regulatory compliance in a number of areas, both CN and IC also believe that the program is a necessary component of ensuring a safe and efficient company.

Although CN/IC plans to retain the separate programs initially after the Transaction is approved, it will undertake a review of PPE procedures and policies to work towards consistency across the combined system. This review will also provide an opportunity to evaluate current safety equipment being used on each railroad so as to select the best available products. CN/IC will ensure that any consolidation of programs will continue to ensure that employees have access to quality PPE.

5. Morale. As described in the Safety Culture and Employee Quality of Life sections, both CN and IC give high regard to the importance of employee morale. Both roads have supported this commitment through the establishment of high quality health and hygiene programs, strong and aggressive policies against harassment and intimidation, the active use of joint labor-management safety committees and the development of programs to combat fatigue. None of these initiatives will be compromised, and in fact a number may be strengthened, by virtue of the Transaction.

CN and IC strongly believe that the key to employee morale is effective two-way employee communications. Both have programs to provide regular communications, which include a focus

on safety content, to all employees in their respective organizations. Both have established employee hotlines or ombudsman programs to ensure that employees have the ability to communicate their concerns. CN/IC will also continue these without compromise.

As mentioned in the Application, the proposed CN/IC Transaction is small in comparison to other recent transactions of this type and will result in minimal employee relocation or job reductions. As previously outlined, very few changes in field operations will occur, and CN/IC intends to retain the existing field supervisory organization, such that most employees will notice little or no change in their day-to-day activities and relationships. In the few areas where consolidations will be carried out, employees affected will be fully briefed in advance and, where required, fully trained in any new procedures.

CN/IC also recognizes that any transaction, no matter how small, can result in uncertainty about the future that can adversely affect morale. To this end, CN/IC has acted on its belief in the importance of communications to produce a series of newsletters sent to all employees of CN and IC shortly after the merger announcement and periodically thereafter. These have assured employees that the merger will not result in significant numbers of employee relocations or reductions and that the transaction will, in fact, provide increased opportunity through the sharing of best practices in safety and other areas. Reaction to these newsletters has been very positive.

L. PASSENGER SERVICE

Neither CN nor IC conducts any passenger or commuter operations. On CN's U.S. lines, Amtrak operates one eastbound train and one westbound train that use a 160-mile CN line segment between Port Huron and Battle Creek, Michigan. Amtrak also operates three eastbound trains and three westbound trains that use a 28-mile CN line segment between Pontiac and Detroit, Michigan. Amtrak also operates over short CN line segments between Munster, Indiana, and Thornton Junction, Illinois (six miles) and near Rouses Point, New York (one mile). All of these trains operate with Amtrak crews.

On IC's lines, Amtrak operates one train a day in each direction between Chicago and New Orleans, Louisiana, and one train a day in each direction between Chicago and Carbondale, Illinois. Amtrak operates three trains a day in each direction between Chicago and Joliet, Illinois. And Amtrak operates one train a day over a short (two mile) segment of track in New Orleans.

A Chicago-area commuter authority ("Metra"), under contract with IC, operates two trains daily in each direction on IC's Chicago-Joliet line. As described in the CN/IC Operating Plan, there are a few other very minor respects in which commuter operations touch the IC system in Chicago, and none will be affected by the Transaction.

CN/IC has identified 51 segments totaling 1189 miles on which passenger operations take place over the combined railroad (there are no passenger route changes associated with the Transaction).

A table showing each of these segments and the expected change in traffic following the Transaction follows:

From Station	To Station	Road	Miles	Trains/day Change
HARVEY IL	HOMEWOOD IL	IC	3.5	7.55
MATTESON (EJE) IL	KANKAKEE IL	IC	26.6	7.14
KANKAKEE IL	OTTO IL	IC	5.2	7.14
OTTO IL	GILMAN IL	IC	20.6	7.14
GILMAN IL	CHAMPAIGN IL	IC	46.3	5.72
MATTOON IL	EFFINGHAM IL	IC	26.9	5.44
FULTON KY	DYERSBURG TN	IC	45.8	5.44
DYERSBURG TN	WOODSTOCK TN	IC	66	5.44
CHAMPAIGN IL	MATTOON IL	IC	45.1	5.44
EFFINGHAM IL	EDGEWOOD IL	IC	14.9	5.44
HOMEWOOD IL	MATTESON (EJE) IL	IC	5.2	5.14
EDGEWOOD IL	CENTRALIA IL	IC	37.3	3.72
DUQUOIN IL	CARBONDALE IL	IC	18.9	3.72
CARBONDALE IL	CAIRO IL	IC	54.4	3.72
CAIRO IL	FULTON KY	IC	43.5	3.72
WEST JCT TN	LAKE CORMORANT MS	IC	15.2	3.72
LAKE CORMORANT MS	MARKS MS	IC	45.6	3.72
MARKS MS	SWAN LAKE MS	IC	27.3	3.72
SWAN LAKE MS	GREENWOOD MS	IC	29.4	3.72
GREENWOOD MS	YAZOO CITY MS	IC	52.7	3.72
YAZOO CITY MS	JACKSON MS	IC	44	3.72
CENTRALIA IL	RENLAKE IL	IC	23.5	3.70
RENLAKE IL	DUQUOIN IL	IC	11.7	3.70
MILWAUKEE JCT MI	VINEWOOD MI	CN	3	1.85
FLINT MI	SWARTZ CREEK MI	CN	8.6	0.01
SWARTZ CREEK MI	DURAND MI	CN	8.2	0.01
BRIDGEPORT IL	GLENN YARD IL	IC	6.3	0.00
GLENN YARD IL	JOLIET IL	IC	27	0.00
WOODSTOCK TN	Y & MV JCT TN	IC	12.3	0.00
JACKSON MS	BROOKHAVEN MS	IC	53	0.00
BROOKHAVEN MS	MCCOMB MS	IC	24.6	0.00
MCCOMB MS	HAMMOND LA	IC	52.2	0.00
HAMMOND LA	ORLEANS JCT LA	IC	42.6	0.00
ORLEANS JCT LA	MAYS YARD LA	IC	3.9	0.00
MAYS YARD LA	EAST BRIDGE JCT. LA	IC	1.2	0.00
EAST BRIDGE JCT. LA	SOUTHPORT JCT LA	IC	2.1	0.00
ST LAMBERT PO	ROUSES PT NY	CN	39.6	0.00
BELSAY MI	FLINT MI	CN	3.5	0.00
GRIFFITH IN	THORNTON JCT IL	CN	11.3	-0.14
CHICAGO 94 STR IL	137th (RIVERDALE) IL	IC	5.2	-0.43
CHICAGO 21ST STR IL	BRIDGEPORT IL	IC	1.3	-0.44
CHICAGO IL	CHICAGO 21ST STR IL	IC	1.3	-0.44
CHICAGO IL	CHICAGO 94 STR IL	IC	11.3	-0.44
137TH (RIVERDALE) IL	HARVEY IL	IC	2.7	-0.44
SPARLINGVILLE MI	IMLAY CITY MI	CN	29.8	-0.71
IMLAY CITY MI	BELSAY MI	CN	27.6	-0.71
MILWAUKEE JCT MI	DETROIT INTERMODAL MI	CN	6.4	-1.58
DETROIT INTERMODAL MI	MAL JCT MI	CN	14.6	-1.59
MAL JCT MI	PONTIAC MI	CN	0.9	-1.59
SARNIA ON	SPARLINGVILLE MI	CN	4.9	-2.14
DURAND MI	BATTLE CREEK MI	CN	14.2	-2.30

As can be seen from the information in the table, 40% of this trackage (477 miles) will experience no increase, or in

some cases a reduction in traffic as a result of the Transaction. This includes all of the segments handling commuter train service. Only 11 segments (306 miles) will experience an increase of five trains per day or more. None of the segments show an increase of eight or more trains per day.

Passenger train safety and capacity assessments carried out as part of the Environmental Assessment process for review of the Transaction indicate that Amtrak's operations will not be adversely affected nor are there any passenger related safety concerns that will arise because of the Transaction.

Both CN and IC have extensive experience in coordinating freight, commuter, and intercity passenger train operations, and they understand the demands of each type of service. CN/IC expects that the management structure dealing with passenger operators will initially remain as is following the Transaction. The railroads will continue to work with Passenger Operators on coordinated efforts such as the Passenger Safety Emergency Rules. Both railroads have excellent safety records with respect to passenger operations. CN/IC is confident that the minor traffic changes forecasted as a result of the CN/IC Transaction will have no adverse safety impact on Amtrak's or Metra's operations. Further, CN/IC will communicate any changes in operating rules as a result of the consolidation well in advance to the passenger lines and will assure that affected employees are fully trained.

M. INFORMATION SYSTEMS AND OPERATIONS TECHNOLOGY

1. Information Systems. Both CN and IC make extensive use of computerized information systems to manage train operations, crew calling, and accident/incident monitoring and reporting. CN's Information Technology group oversees the design, development, and maintenance of all of the company's information systems. To manage the information needed for train operations, CN (including GTW and DWP) uses a version of the Service Reliability System ("SRS"), a state-of-the-art system that the railroad modified and improved. SRS's sophisticated capabilities support waybiling, car scheduling and tracking, and train scheduling, and include important safety features -- such as hazardous materials information, marshalling, overload, and dimensional checks, and car-specific speed restriction notification.

CN's Clearance Database provides laser-car measurements for the entire system to expeditiously and accurately evaluate clearances for the routing of dimensional loads.

To manage crews, CN uses its Crew Assignment and Timekeeping System ("CATS"). CATS automatically displays hours of previous duty for all employees on call, calculates and displays mandatory rest requirements (based on either Canadian or U.S. rules), matches employee qualifications with assignments, and records all required FRA information for reporting purposes.

To manage accident/incident reporting and analysis, CN uses its Accident Reporting and Evaluation System ("CARES") to record information on every train accident, crossing accident, and personal injury, whether reportable or not. CN uses CARES to monitor follow-up action plans and analyze trends. CN also uses it at every organizational level to obtain specialized reports and information, and to make the required regulatory reports.

CN is also in the midst of developing its Performance Monitoring and Compliance System ("PMOC"), which is designed to complement the railroad's efficiency testing and performance auditing programs. It provides a streamlined process for reporting employee observations, provides supervisors with compliance performance reports, and allows the railroad to quickly review its audit and efficiency testing results to identify trends requiring action plans.

CN's Police Incident Reporting ("PIRS") system handles the reporting of all incidents requiring CN Police intervention. CN can also use PIRS to produce specialized reports by region, area, or type of incident, thereby allowing CN Police to deploy personnel in the most efficient manner.

Under the direction of IC's Information Technology Systems Department, IC has also put information technology systems to good use in its operations. To manage train operation information requirements, IC uses the Traffic Control System ("TCS"), a system developed and maintained by UP Technologies. For crew calling, IC uses a PS Technology system, which contains all necessary phone information, labor agreements, and time frame information for each train service employee. IC also uses a PC-based system to collect and analyze accident/incident information, in a wide variety of formats.

CN/IC plans to carefully integrate the railroads' information systems in phases over the three-year implementation period. With the exception of E-Mail connections, which will be established at the start, CN and IC initially will continue to rely largely on their existing systems and protocols. During this period, as CN/IC completes its systems integration planning and training, improved EDI exchange protocols adopted by CN and IC as part of the CN-IC-KCS Alliance will permit car tracing and forecasting of interchange and arrival time on a systemwide basis. CN/IC has already begun reviewing the railroads' systems to identify the best areas for consolidation. CN/IC has determined that SRS and CATS are superior train and crew management systems, and during the second and third years of the implementation period CN/IC will carefully extend SRS and CATS to IC.

During the consolidation period, CN/IC will run IC's existing TCS and PST systems in parallel with SRS and CATS to ensure that the operation is safely maintained in the event of a problem. As described earlier, CN/IC will fully train all affected employees in the use of the SRS and CATS systems before any cut-over occurs. CN has recently carried out similar training programs for its own conversion to SRS and to implement CATS on GTW. CN/IC will use the experiences gained from those programs to shape the training initiative following the Transaction. Ultimately, the use of uniform systems will enhance the safety of the integrated CN/IC operations.

As part of a detailed review of all information systems, CN/IC will review each of the other systems that each railroad uses to determine whether consolidating those systems, using either CN's or IC's system, would be advantageous. Unless and until CN/IC decides to do so, it will continue to use the existing separate systems and processes.

2. Y2K Issues

CN is currently in the midst of making a major investment of time and money to minimize the extent to which its information systems could be affected by Y2K problems. Since 1996, CN has been actively working to ensure that all its systems and related equipment are able to handle potential Y2K problems. CN formed a special project group in 1997 under its Chief Information Officer, and has put into action a comprehensive plan that covers all potential Y2K problems that could affect the railroad. Working groups have been handling the Y2K issue as it pertains to PCs, internal systems, external systems, network control systems, and process control systems. They have given priority to the review and modification, where necessary, of all safety sensitive systems, including those that control or support CN's analysis and reporting systems, dispatching operations, wayside signal control, radio communications, crossing warning systems, wayside detectors and on-board locomotive control. This initiative covers all of CN, including its U.S. operations.

CN has set a target date of December 1998 to have all systems reviewed, necessary modifications made or scheduled, and contingency plans developed, where necessary. CN is on target to meet this deadline.

IC has also independently been reviewing and making the necessary modifications to all of its systems and equipment. Under a structure similar to the CN working group, IC has put together working teams to review its systems, infrastructure, personal computers and process control. IC has established the same deadline of December 1998, and is on target.

During the past year, CN and IC's Y2K project team leaders have established a process of regular joint meetings, development of common targets and deadlines, and sharing of expertise. Aided by this partnership, the railroads will continue independently to ensure that all of their systems and equipment are Y2K compliant. Although IC and CN do not expect to have any Y2K problems in their respective systems (safety included), they have agreed to defer implementing any major integration of systems that are to be put into place as a result of the Transaction until after the start of year 2000 so as to ensure that any unexpected Y2K problems are taken care of. Implementation dates referred to in the CN/IC Operating Plan and this SIP are based on this schedule.

3. Operations Technology. CN and IC both make extensive use of technology in the field to enhance the safety of their operations. CN has over 400 wayside inspection units -- consisting of Hot Box, Hot Wheel, and Dragging Equipment detectors -- deployed across its rail network. These detectors convey messages immediately to train crews, through "talker" technology, and to a central data collection facility for review by CN personnel. CN is in the midst of a three-year program to add more of these units (approximately 20 per year) on its core lines. This program is entirely within CN's Canadian operations and will not affect GTW or DWP. The current spacing of detectors on CN's U.S. lines is in the order of 25 to 35 miles.

CN also has 12 Wheel Impact Load Detectors covering core routes and transmitting critical data to mechanical officials, who alert maintenance forces to inspect and change out wheels found to produce excessive impacts. Significantly high impacts are reported directly to CN dispatchers, who take

immediate action to set off the car for maintenance. In addition, CN is involved in research and testing of a number of different technologies for roadbed stability detectors, and it has strategically located fallen rock and washout detection devices at high risk points on its network. These devices are connected directly to CN's signal system, to maximize safety if the devices are tripped.

CN has been using Train Information and Braking System ("TIBS") end-of-train units since 1983. These provide the locomotive with constant tail-end readings and give the crew the ability to initiate emergency braking from the end of the train.

CN is also in the process of installing communication systems that will allow for the digital transmission of data. When completed, these systems will provide the necessary communications backbone for digital communication of track authorizations.

CN has two state-of-the-art Track Evaluation ("T.E.ST.") cars, consisting of a Coach Car and an Instrumented Ballasted Boxcar, which it uses to measure various aspects of track geometry -- including gauge alignment, V-Max for curves, surface profile, corrugation, cross levels, warp, twist, and rail wear. These cars also measure degree of curvature, superelevation, and the length of curves and spirals. The cars measure and record track conditions under dynamic wheel loading while traveling at normal freight speeds. CN uses these cars to perform comprehensive track evaluations at least twice a year on high-density track, and a minimum of once a year on all other track, in Canada and the U.S. The cars are backed up by systems that use the train data for maintenance and capital planning purposes. As discussed earlier, CN also has a state-of-the-art laser car which it uses to measure and maintain documentation of clearances for dimensional traffic.

IC has over 56 wayside inspection units -- with Hot Box, Hot Wheel, and Dragging Equipment detectors -- along its main lines. Detectors are located at the ends of major yards and at 20 to 30 mile intervals on its core network. These units, like CN's, convey messages immediately both to train crews and to a central data collection facility. IC has two Wheel Impact Load Detectors that, like CN's, relay information used to identify cars requiring near-term or immediate maintenance. IC has been using TIBS end-of-train units since 1989.

CN has developed and implemented a highly successful Beltpack Locomotive Control System ("LCS"). This technology, which has been in use on portions of CN's Canadian network since 1990, allows the locomotive operator to be located at the point of coupling at the appropriate location for movements, therefore significantly reducing damage to lading and equipment as well as risk of collision or derailment.

A recent review of accident statistics for the more than 1 million hours of LCS operation since April 1996 showed that the accident ratio for CN's LCS operations is more than 50% better than that for standard locomotive operations. It also showed that no accidents to date have been attributable to the technology. CN currently has 118 locomotives equipped with LCS technology and is operating under the LCS mode in 23 yards and terminals in Canada.

Although CN has no present plans to expand the use of LCS onto its U.S. lines or onto IC following approval of the Transaction, CN is fully convinced that LCS is a proven technology that has significant safety benefits. CN/IC will continue to look for opportunities to take advantage of these benefits. The railroad will ensure that this is not done in the U.S. until the required labor organizations are consulted and appropriate collective agreement issues are resolved. LCS operation in the U.S. will also not be implemented until all operating and safety issues are discussed with FRA.

CN is an industry leader in the use of technology to enhance the safety and efficiency of rail operations, and CN/IC plans to extend the benefits of that technological expertise and experience to IC's system. By and large, IC's existing systems are compatible with CN's, and some elements of CN's technology program (e.g., CN's T.E.ST. and Laser Cars) can be used immediately on IC's system. Other elements will require more preparation, including FRA review, before CN/IC can implement them. CN/IC will take care to ensure, before any new technology is applied, that all responsible personnel are thoroughly trained and that the testing procedures are fully compatible with U.S. regulatory requirements.

IMPLEMENTATION OF SAFETY INTEGRATION PLAN

No plan is self-executing, and CN/IC's safety integration efforts will not stop with the preparation of this SIP. The CN/IC safety team will develop detailed implementation steps in each of the areas addressed above, with timetables and individuals at each railroad assigned responsibility for carrying them forward. CN's Vice President - Risk Management and IC's General Director - Risk Management & Chief Safety Officer will bear the most direct responsibility for seeing that the CN/IC SIP is safely implemented. They will be supported by the senior management at both railroads who are committed to safely integrating the railroads' operations. If in doubt about a particular consolidation, CN/IC will maintain existing systems and redundant capacity until it is sure that the consolidation can be accomplished with no adverse safety consequences. Given the success the railroads have had with their own safety programs, the opportunities for each to build on the other's strengths, the care CN/IC will use when combining operations, and the relatively limited scope of the Transaction, there should be no cause for safety concern.

CN/IC expects to work closely with FRA in implementing its SIP, and CN/IC welcomes any and all constructive comments on the SIP. It is in CN/IC's interest, just as it is in the public's interest, for the integration of CN's and IC's operations to be accomplished as safely and seamlessly as possible. The railroads have committed substantial resources to that effort, and CN/IC is prepared to respond promptly and effectively, at every step in the planning and implementation process, to genuine safety concerns.

**The Federal Railroad Administration's
Comments on the Safety Integration Plan**

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U.S. Department
of Transportation
Federal Railroad
Administration

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 30 1998



Ms. Elaine K. Kaiser
Environmental Project Director
Surface Transportation Board
Section of Environmental Analysis (SEA)
1925 K Street, NW
Washington, D.C. 20423-0001

Dear Ms. Kaiser:

Reference the Canadian National (CN) and Illinois Central (IC) Merger, Finance Docket No. J3556, and the Memorandum of Understanding (MOU) between the Surface Transportation Board (STB) and the Federal Railroad Administration (FRA), September 28, 1998.

Per item 1, page 2 of the MOU, "FRA is to provide written comments on CNIC's Safety Integration Plan (SIP) to the Board prior to the Board's issuance of the draft Environmental Assessment (EA) for public review and comment. After the issuance of the draft EA, FRA will continue to work with the Applicants to correct any inadequacies which FRA may have identified in the SIP, and to address issues that arise subsequently." FRA's CNIC SIP evaluation as described in this letter will constitute FRA's initial submission for compliance with the MOU.

The first draft of CNIC's SIP was received by FRA on August 14, 1998. At a working session with CNIC representatives FRA expressed concern that the document was far too general and needed to be strengthened. On September 18, 1998 CNIC submitted their revised SIP to the STB and furnished a copy to FRA for review. The revised CNIC SIP contains some 110 pages with approximately 69 delineated 'Safety Action Items'. The SIP 'Safety Action Items' identified by CNIC do address in a comprehensive manner the list of 13 essential safety matters as specified in FRA's *Safety Implementation Guidelines - Rev 3 of 11/24/97*.

The revised document also provides:

(i) An itemized list of measures addressing (i) how IC differs from the acquiring railroad and best practices identified from either, (ii) description of how the railroad will operate once the acquisition is completed, (iii) step-by-step description of how elements of acquired property will be integrated with operations of the acquiring railroad; and (iv) efforts to comply with Federal regulations;

2) Allocation of resources (e.g., work effort expressed as person-days per year, capital, facilities, and technology) and;

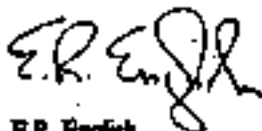
3) Schedules for implementing measures addressed in the plan.

Although the revised SIP is more complete than the original, it is still lacking in some respects and will require FRA's continued follow-up with CNVIC. This shortfall is primarily twofold: (1) the need for FRA's verification of schedule, facility and resource allocations as recently tendered by CNVIC and (2) lack of adequate response to the complete list of safety questions that have recently been posed to CNVIC by FRA as a result of recent Safety Assurance and Compliance (SACP) and other safety reviews conducted by FRA at the applicant's properties (OL, DWP, OTW and ECS). FRA has received partial response to its total list of questions and concerns provided to CNVIC (as of October 27, 1998).

The FRA is continuing to work in partnership with CNVIC representatives to develop a response that will adequately address the remaining outstanding issues. Since the SIP is a living document, this partnership will be an on-going effort that will result in periodic updates to the SIP as the process moves forward. FRA is confident that the CNVIC is committed to develop a comprehensive national document that will address the safety requirements of this merger.

FRA will keep the STB posted upon any significant changes in the status of the ongoing SIP evaluation with CNVIC.

Yours truly,



E.R. English
Director
Office of Safety Assurance and Compliance

**Memorandum of Understanding Between the
Surface Transportation Board and the
Federal Railroad Administration**

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SURFACE TRANSPORTATION BOARD
AND THE FEDERAL RAILROAD ADMINISTRATION**

**CN AND IC MERGER, FINANCE DOCKET NO. 33656
IMPLEMENTATION OF SAFETY INTEGRATION PLANS**

WHEREAS, the Surface Transportation Board (Board), the United States Department of Transportation (DOT), and the Federal Railroad Administration (FRA), the agency within DOT responsible for enforcement of railroad safety regulations, are concerned about the effect that the proposed acquisition (hereafter "Acquisition") of the Illinois Central Corporation by the Canadian National Railway Company (together hereafter "Applicants") might have on rail safety; and

WHEREAS, the Board, in its Decision No. 5 and Decision No. 6, issued on June 23, 1998 and August 14, 1998, respectively, directed Applicants to prepare and submit to the Board a detailed Safety Integration Plan (SIP) explaining the process by which they intended to integrate the operations of the properties involved in a manner that will maintain safety at every step of the process, in the event the Board approves the proposed Acquisition; and

WHEREAS, the Applicants have developed a SIP and submitted it to the Board on August 14, 1998, and the Board's Section of Environmental Analysis (SEA) intends to include the SIP and any revisions or additions to the SIP based on continued discussion with FRA, and FRA's written comments regarding the SIP, in the draft Environmental Assessment (EA) for the proposed Acquisition to be issued by SEA, in order to provide an opportunity for review and comment by all interested persons; and

WHEREAS, the FRA and the Board wish to enter into a memorandum of understanding (MOU) to clarify the actions each will take to assure the successful implementation of the SIP process in the event the Board approves the Acquisition,

NOW, THEREFORE, the DOT, FRA and the Board do hereby agree as follows:

1. FRA will provide written comments on the SIP to the Board prior to the Board's issuance of the draft EA for public review and comment. After the issuance of the draft EA, FRA will continue to work with the Applicants to correct any inadequacies which FRA may have identified in the SIP, and to address issues that arise subsequently.

2. FRA and the Board recognize that safety integration is an ongoing process that involves both agencies. Accordingly, FRA will exercise its authority over all rail safety matters to monitor, evaluate and review the Applicants' progress in implementing the SIP.

3. FRA will keep the Board informed of the Applicants' progress. If deemed necessary by FRA, FRA may request the Board to exercise its oversight authority over the Applicants and take action to correct identified deficiencies and address safety problems arising out of the approved transaction. FRA will be responsive to the requirements of public safety and the safe implementation of post-acquisition rail operations by the Applicants.

4. In those circumstances where FRA informs the Board of a concern which may require Board action, FRA will provide sufficient information to the Board to identify the safety deficiency, describe the implications of the deficiency, and provide recommendations for correcting the deficiency.

5. FRA agrees to report significant safety integration issues to the Board if and when

they occur. FRA also will report to the Board from time to time, as FRA deems appropriate, but not less than biannually, regarding safety integration of the Acquisition. FRA's reporting will continue until safety integration implementation has been completed to the satisfaction of FRA and FRA affirms to the Board in writing that the proposed integration of the Applicants' operations has been completed satisfactorily.

IN WITNESS HEREOF, the parties hereto have executed this MOU on the 28th day of September, 1998.



Henri F. Rush
General Counsel
Surface Transportation Board



S. Mark Lindsey
Chief Counsel
Federal Railroad Administration

The Department of Transportation concurs in this memorandum of understanding.



Nancy S. McFadden
General Counsel
U.S. Department of Transportation

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GLOSSARY OF TERMS

abandonment:	The discontinuance of service on a rail line segment, with no intention of resuming that service.
Acquisition:	The proposal by CN and IC for CN to acquire control of IC's assets and its basic railroad operations.
active warning devices:	Traffic control devices that give positive notice to highway users of the approach or presence of a train. These devices may include a flashing red light signal (a device which, when activated, displays red lights flashing alternately), a bell (a device which, when activated, provides an audible warning, usually used with a flashing red light signal), automatic gates (a mechanism added to flashing red light signals to provide a cantilevered arm that can lower across the lanes of the roadway equipped with flashing red light signals and extending over one or more lanes of traffic).
adverse environmental impact:	A negative effect, resulting from the implementation of a proposed action, that serves to degrade or diminish an aspect of human or natural resources.
Advisory Council on Historic Preservation (ACHP):	An independent Federal agency charged with advising the President and Congress on historic preservation matters and administering the provisions of Section 106 of the National Historic Preservation Act.

Applicants:	Canadian National Railway Company (and subsidiaries Grand Trunk Corporation and Grand Western Railroad Incorporated) and Illinois Central Corporation (and subsidiaries Illinois Central Railroad Company; Chicago, Central & Pacific Railroad Company; and Cedar River Railroad Company).
Application:	A formal filing with the Surface Transportation Board related to certain railroad transactions such as railroad mergers, acquisitions, constructions, or abandonments. For the proposed CN/IC Acquisition, applications may be either Primary Applications or Inconsistent and Responsive (IR) Applications. See <i>Primary Application</i> and <i>Inconsistent and Responsive (IR) Application</i> .
attainment area:	An area that EPA has classified as complying with the National Ambient Air Quality Standards specified under the Clean Air Act.
bad order cars:	Rail cars that fail routine inspections.
bad order support tracks:	Tracks used to store bad order cars until they can be repaired.
ballast:	The portion of the track bed that lies below the railroad ties and consists of crushed stone or other material.
Best Management Practice (BMP):	Technique that various parties (e.g., the construction industry) use to provide protection from adverse impacts to the environment. The Board may designate these techniques as mitigation measures.

block:	(1) A defined length of track, with defined limits, on which operators govern train movements. (2) A group of freight cars handled as one unit for a portion or all of their journey from origin to destination.
block swapping:	The process of moving groups of rail cars with a common destination (called "blocks") from one train to another.
blocking:	The process of aggregating freight cars into blocks.
blocking pattern:	The assignment of a specific freight car to a specific block.
Board:	The Surface Transportation Board, the licensing agency for the proposed CN/IC Acquisition.
bulletins:	Documents addressed to train crews and other operating employees specifying temporary or local operating rules and restrictions.
Census block group:	The smallest geographic unit for which the U.S. Census provides information on racial background, ethnic heritage, and household income.
Class I railroad:	As defined by the Board, any railroad with average annual operating revenue of \$255.9 million or more.

Clean Air Act (Clean Air Act Amendments):	The Clean Air Act of 1970 and the subsequent amendments, including the Clean Air Act Amendments of 1990 (42 U.S.C. 7401-7671g); the primary Federal law that protects the nation's air resources. This act establishes a comprehensive set of standards, planning processes, and requirements to address air pollution problems and reduce emissions from major sources of pollutants.
Clean Water Act:	The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 <i>et seq.</i>) is the primary Federal law that protects the nation's waters, including lakes, rivers, aquifers, and coastal areas. This act provides a comprehensive framework of standards, technical tools, and financial assistance to address the many causes of pollution and poor water quality, including municipal and industrial wastewater discharges, polluted runoff from urban and rural areas, and habitat destruction. Specifically, the Clean Water Act provides for the following: • Requires major industries to meet performance standards to ensure pollution control. • Charges states and tribes with setting specific water quality standards appropriate for their waters and developing pollution control programs to meet them. • Provides funding to states and communities to help them meet their clean water infrastructure needs. • Protects valuable wetlands and other aquatic habitats through a permitting process that conducts land development activities and other activities in an environmentally sound manner.
common corridor:	An area in which passenger and freight rail lines run on adjacent parallel lines.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA):	The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601-9675; P.L. 96-510); the Federal act that provides EPA with the authority to clean up inactive hazardous waste sites and distribute the cleanup costs among the parties who generated and/or handled the hazardous substances at these sites.
Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS):	Federal database containing information on potential hazardous waste sites that states, municipalities, private companies, and private persons have reported to the EPA, pursuant to Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act. This database contains sites that are either currently on, or proposed for inclusion on, the National Priorities List (NPL) and sites that are in the screening and assessment phase for possible inclusion on the NPL.
condition:	A provision that the Board imposes as part of any decision approving the proposed CN/IC Acquisition and that requires action by one or more of the Applicants.
control boxes:	Structures at highway/rail at-grade crossings that house the electronics and apparatus that control the warning devices at the crossing.
Council on Environmental Quality (CEQ):	Federal agency responsible for developing regulations and guidance for agencies implementing the National Environmental Policy Act.
crew caller:	Term applied to a railroad employee who is responsible for notifying train crews when and where to report for duty.
crew calling:	Process of notifying train crew members when and where their next tour-of-duty will start. Labor agreements commonly specify that railroads call train crews a minimum of 2 hours before crew members are required to begin their tour-of-duty.

criteria of significance:	The criteria SEA developed to determine whether a potential adverse environmental effect is significant and may warrant mitigation.
critical habitat:	The specific sites within the geographical area occupied by threatened or endangered species that include the physical or biological features essential to the conservation of the species. These areas may require special management considerations or protection. These areas include specific sites outside the geographical areas occupied by the species at the time of the listing that are essential for the conservation of the species.
cultural resource:	Any prehistoric or historic district, site, building, structure, or object that warrants consideration for inclusion in the National Register of Historic Places. A cultural resource that is listed in or is eligible for listing in the National Register of Historic Places is considered a historic property (or a significant cultural resource). For the purposes of this Draft EA, the term applies to any resource more than 50 years old for which SEA gathered information to evaluate its significance.
cumulative effects:	Effects resulting from the incremental impacts of the proposed CN/IC Acquisition when added to other past, present, and reasonably foreseeable future actions, regardless of which agency (Federal or non-Federal) or person undertakes such actions, as described in 40 CFR 1508.7. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.
Day 1:	In the event that the Board approves the proposed CN/IC Acquisition, the date (as the Applicants determine through mutual agreement) when operating responsibility for the acquired railroad is transferred to the Applicants' organization.

decibel (dB):	A unit of noise measured on a logarithmic scale that compresses the range of sound pressures audible to the human ear over a range from 0 to 140, where 0 decibels represents sound pressure corresponding to the threshold of human hearing, and 140 decibels corresponds to a sound pressure at which pain occurs. Noise analysts measure sound pressure levels that people hear in decibels, much like other analysts measure linear distances in yards or meters. A-weighted decibel (dBA) refers to a weighting that accounts for the various frequency components in a way that corresponds to human hearing.
degradation:	Changes to a habitat, either terrestrial or aquatic, so that it no longer meets the survival needs of a particular species of plant or wildlife. Such change could include reducing the feeding area, modifying the vegetation type, and limiting the available shelter.
dispatcher (train):	The railroad operating employee responsible for issuing on-track movement and/or occupancy authority through the use of remotely controlled switches, signals, visual displays, voice control written mandatory directives, and/or all of the above.
double-stack freight service:	The transport of two intermodal containers stacked on top of each other on one platform of an intermodal rail flat car.
emissions:	Air pollutants that enter the atmosphere.
Environmental Assessment (EA):	A document that the CEQ regulations implementing the National Environmental Policy Act requires Federal agencies to prepare for major projects or legislative proposals having the potential to significantly affect the environment. A tool for decision-making, it describes the positive and negative environmental effects of the undertaking and alternative actions and measures to eliminate potentially significant environmental impacts.

Environmental Justice (EJ): For purposes of this document, SEA defines environmental justice as the mission discussed in Executive Order (EO) 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 11, 1994). This EO directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their programs, policies, and activities on minority and low-income populations in the United States. EO 12898 also calls for public notification for environmental justice populations, as well as meaningful public participation of environmental justice populations. In this document, SEA used the guidance provided in the Department of Transportation Order on Environmental Justice, the Council of Environmental Quality, Environmental Justice Guidance under the National Environmental Policy Act, and the Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA analysis to analyze potential disproportionately high and adverse impacts on environmental justice populations for rail segments, intermodal facilities, rail yards, and new construction.

Environmental Justice (EJ) population: A population within an Area of Potential Effect whose minority and low-income composition meets at least one of the following criteria: (1) the percentage of minority and low-income population in the Area of Potential Effect is greater than 50 percent of the total population in the Area of Potential Effect, or (2) the percentage of minority and low-income population in the Area of Potential Effect is at least ten percentage points greater than the percentage of minority or low-income population in the county of which the Area of Potential Effect is a part.

Environmental Resource Score (ERS): The impact score determined for an environmental resource category within a (block group) area of potential effect. A typical ERS ranges from 0 to 6, reflecting the relative impact on the Area of Potential Effect compared with impacts on other Areas of Potential Effect. For the Environmental Justice analysis, SEA calculated an ERS for noise, hazardous materials transport, and traffic safety and delay.

equipment: For a railroad, a term used to refer to the mobile assets of the railroad, such as locomotives, freight cars, and on-track maintenance machines. Also used more narrowly as a collective term for freight cars operated by this railroad.

Executive Order (EO) 12898: Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," issued in February of 1994, directs Federal agencies to identify and address as appropriate "disproportionately high and adverse human health or environmental effects," including interrelated social and economic effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

floodplain: The lowlands adjoining inland and coastal waters and relatively flat areas and flood-prone areas of offshore islands, including, at a minimum, those areas that have a 1 percent or greater chance of flood in any given year (also known as a 100-year or a Zone A floodplain).

fugitive dust: According to EPA regulations, those particulate matter emissions that could not "reasonably pass" through a stack, chimney, vent, or other functionally equivalent opening. Examples of fugitive dust include windborne particulate matter from earth-moving and material handling during construction activities.

Geographic Information System (GIS): A computer system for storing, retrieving, manipulating, analyzing, and displaying geographic data. GIS combines mapping and databases.

grade crossing: See *highway/rail at-grade crossing*.

grade separation: See *separated grade crossing*.

gross ton-mile:	A measure of railroad production that represents the weight of cars and freight movement in terms of total tons per mile transported system-wide or over a specific rail line segment. Specifically, 1 ton of railroad car and loading carried 1 mile.
haulage right(s):	The limited right (or combination of limited rights) of one railroad to have its freight traffic moved by another railroad over the designated lines of the other railroad.
hazardous materials:	Substances or materials that the Secretary of Transportation has determined are capable of posing an unreasonable risk to human health, safety, and property when transported in commerce, as designated under 49 CFR Parts 172 and 173.
hazardous wastes:	Waste materials that, by their nature, are inherently dangerous to handle or dispose of (e.g., old explosives, radioactive materials, some chemicals, some biological wastes). Usually, industrial operations produce these waste materials.
highway/rail at-grade crossing:	The general area of an intersection of a public or private road and a railroad where the intersecting rail and highway traffic are at the same level.
historic property:	Any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places (NRHP). The term "eligible for inclusion in the NRHP" pertains to both properties that the Secretary of the Interior has formally determined to be eligible and to all other properties that meet NRHP listing criteria.
horn noise (train):	Noise that occurs when locomotives sound warning horns in the vicinity of highway/rail at-grade crossings.

hours-of-service regulations:	Federal Hours of Service Law, which the Federal Railroad Administration enforces, governing maximum shift lengths and minimum rest periods for railroad operating employees. These employees include train crew, train dispatchers, and signal maintainers, as well as mechanical employees who move equipment for the purpose of test and inspection.
Inconsistent and Responsive (IR) Application:	Proposal to the Surface Transportation Board that Parties of Record submitted prior to October 21, 1997, requesting modifications of, or alternatives to, the proposed CN/IC Acquisition.
Indian tribe:	According to Indian Self-Determination and Education Assistance Act (25 U.S.C. 450-458; P.L. 93-638), any Indian tribe, band, nation, or other organized group or community recognized as eligible for the special programs and services that the United States provides to Indians because of their status as Indians.
Interchange point:	Point at which two or more railroads join to exchange freight traffic.
interlocking:	An arrangement of switch, lock, and signal devices that is located where rail tracks cross, join, or separate. The devices are interconnected in such a way that their movements must succeed each other in a predetermined order, thereby preventing opposing or conflicting movements.
intermodal facility:	A site consisting of tracks, lifting equipment, paved and/or unpaved areas, and a control point for the transfer (receiving, loading, unloading, and dispatching) of trailers and containers between rail and highway, or between rail and marine modes of transportation.

Key Route:	For the purposes of this Draft EA, a rail line segment that carries an annual volume of 10,000 or more carloads of hazardous material.
key train:	Any train with five or more tank carloads of chemicals classified as a Poison Inhalation Hazard (PIH) or with a total of 20 rail cars with any combination of PIHs, flammable gases, explosives, or environmentally sensitive chemicals.
L_{dn}:	The day-night average noise sound level, which is the receptor's cumulative noise exposure from all noise events over a full 24 hours. This is adjusted to account for the perception that noise at night is more bothersome than the same noise during the day.
left-hand turnout:	See <i>turnout</i> .
Level of Service (LOS):	A degree of peak congestion experienced by a roadway vehicle traffic stream using procedures that consider factors such as vehicle delay, freedom to maneuver, traffic interruptions, comfort and convenience, and safety. Traffic analysts express LOS as letter grades, ranging from Level of Service A (free flowing) to Level of Service F (severely congested); they measure LOS by the average delay for all vehicles. Specifically, Level of Service A describes operations with very low delay (less than 5.0 seconds per vehicle); Level of Service B describes operations with delay in the range of 5.1 to 15.0 seconds per vehicle; Level of Service C describes operations with delay in the range of 15.1 to 25.0 seconds per vehicle; Level of Service D describes operations with delay in the range of 25.1 to 40.0 seconds per vehicle; Level of Service E describes operations with delay in the range of 40.1 to 60.0 seconds per vehicle; and Level of Service F describes operations with delay in excess of 60.0 seconds per vehicle.

low-income population:	A population composed of persons whose median household income is below the Department of Health and Human Services poverty guidelines.
mainline:	Railroad line that through trains use between terminals.
maintenance area:	An area classified by EPA as meeting National Ambient Air Quality Standards (NAAQS) and which previously (within the last 10 years before reclassification) did not meet NAAQS.
Major Key Route:	For the purposes of this Draft EA, a rail line segment where the annual volume of hazardous material it carries is projected to double and also exceed 20,000 carloads as a result of the proposed CN/IC Acquisition.
minority population:	A population composed of persons who are Black (non-Hispanic), Hispanic, Asian American, American Indian, or Alaskan Native.
mitigation:	An action taken to prevent, reduce, or eliminate adverse environmental effects.
motive power:	Locomotives operated by the railroad.
multi-level rail car:	A two- or three-level freight car, designed for transporting automotive vehicles.
Multiple Resource Score (MRS):	For the Environmental Justice analysis, a measure of aggregate impacts used to identify the geographic areas of greatest concern. This score sums the environmental resource scores for hazardous materials transport, noise, and traffic safety and delay and forms the basis for the tests for disproportionality.

National Ambient Air Quality Standards (NAAQS):	Air pollutant concentration limits established by the EPA for the protection of human health, structures, and the natural environment.
National Environmental Policy Act (NEPA):	The National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347; P.L. 91-190) is the basic national charter for the protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. Its purpose is to provide for the establishment of a Council on Environmental Quality and to instruct Federal agencies on what they must do to comply with the procedures and achieve the goals of NEPA.
National Historic Preservation Act (NHPA):	The National Historic Preservation Act of 1966, as amended (16 U.S.C. 470-470i <i>et seq.</i> ; P.L. 89-665), is the basic legislation of the Nation's historic preservation program that established the Advisory Council on Historic Preservation and the Section 106 review process. Section 106 of the NHPA requires every Federal agency to "take into account" the effects of its undertakings on historic properties.
National Priorities List (NPL):	A subset of CERCLIS; EPA's list of the most serious uncontrolled or abandoned hazardous waste sites identified for possible long-term remedial action under the Superfund Program.
National Register of Historic Places (NRHP):	Administered by the National Park Service, the Nation's master inventory of known historic properties, including buildings, structures, sites, objects, and districts that possess historic, architectural, engineering, archeological, or cultural significance at the Federal, state, and local levels.
Native American:	According to the Native American Graves Protection and Repatriation Act of 1990, as amended (25 U.S.C. 3001 <i>et seq.</i> ; P.L. 101-601), of or relating to a tribe, people, or culture that is indigenous to the United States.

Native American lands:	According to the regulations of the Advisory Council on Historic Preservation in 36 CFR 800.2, as modified by the scope of this Draft EA, all lands under the jurisdiction or control of an Indian tribe, including all lands within the exterior boundaries of any American Indian reservation.
Negotiated Agreement:	An agreement between CN, IC, or both, and one or more communities or other governmental units that addresses potential environmental impacts or other issues.
No-action Alternative:	The proposed acquisition of IC by CN does not take place under this alternative; also, the present setting for the pre-Acquisition conditions.
noise:	A disturbance or annoyance of an intruding or unwanted sound. Noise impacts essentially depend on the amount and nature of the intruding sound, the amount of background sound already present before the intruding or unwanted sound occurred, and the nature of working or living activity of the people occupying the area where the sound occurs.
noise contour:	Line plotted on a map or drawing connecting points of equal sound levels.
noise-sensitive receptor:	Location where noise can interrupt ongoing activities and can result in community annoyance, especially in residential areas. The Board's environmental regulations include schools, libraries, hospitals, residences, retirement communities, and nursing homes as examples of noise-sensitive receptors.
nonattainment area:	An area that EPA has classified as not complying with the National Ambient Air Quality Standards promulgated under the Clean Air Act.

Operating Plan:	The document that CN and IC provided as part of the Application, detailing their planned railroad operations following the proposed CN/IC Acquisition.
operating practices:	Safety and operating rules, practices, and procedures contained in operating rule book, timetable, special instructions, or any other company-issued instructions and the management decisions implementing those rules and instructions that govern the movement of trains and work on or around active tracks.
operating rules:	Written rules of a railroad governing the operation of trains and the conduct of employees responsible for train operations when working on or around active tracks.
particulate matter (PM):	Airborne dust or aerosols.
Party of Record (POR):	Party that notified the Board of their active participation in the proceeding about the proposed CN/IC Acquisition. When submitting a filing to the Board, the POR must also notify the entire POR service list.
passive warning devices:	Traffic control devices that do not give positive notice to highway users of the approach or presence of a train. These devices may include signs and pavement markings, located at, or in advance of, railroad crossings to indicate the presence of a crossing and the presence of a train. These signs are either regulatory or nonregulatory and may include parallel track signs, crossbucks, stop signs, yield signs, and constantly flashing lights.

positive train separation:	Mechanism included in positive train control, an experimental, automated safety system, using Global Positioning System (GPS) technology, onboard computers and wayside information inputs to control train movement. In the event of failure on the primary safety system, positive train control reduces the risk of single-point failure (i.e., human error).
posted speed:	Maximum speed permitted at a specific location on the railroad network irrespective of train type.
Prevention of Significant Deterioration (PSD) Class I Areas:	National parks and wilderness areas designated under the Clean Air Act as areas for which users are to maintain air quality at pristine levels, with very small increases in air pollution levels allowed.
Primary Application:	The formal filing of documents with the Surface Transportation Board by applicants for railroad mergers, acquisitions, constructions, or abandonments. The Primary Application contains the Operating Plan and information describing related construction projects.
prime farmland:	According to Natural Resources Conservation Service, land having the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops.
proposed CN/IC Acquisition:	The proposed acquisition of IC's physical assets and operating systems by CN, for which the Applicants are seeking approval from the Board.

public uses:	According to 49 U.S.C. 10905 and STB Regulations "Surface Transportation Manual," Section 1105.7(3)iv, those identified alternative public purposes for the use of rail properties proposed for abandonment or discontinuance, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation.
queue:	A line of vehicles waiting at a highway/rail at-grade crossing for an obstruction to clear.
rail line segment:	For the purposes of this Draft EA, portions of rail lines that extend between two terminals or junction points.
rail line switch:	<i>See turnout.</i>
rail route:	Line of railroad track between two points on a rail system.
rail yard:	A location or facility with multiple tracks where rail operators switch and store rail cars.
receptor:	<i>See noise-sensitive receptor.</i>
Request for Conditions:	A document filed with the Board by a party to this proceeding on or before [Date] that requests the Board to impose one or more specified requirements on the Applicants as a condition of the Board's approval of the proposed CN/IC Acquisition.
Resource Conservation and Recovery Act (RCRA):	The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 <i>et seq.</i> ; P.L. 94-580) is a Federal act governing the generating, storing, transporting, treating, and disposing of hazardous waste.

Resource Conservation and Recovery Information System (RCRIS):	Federal database containing information on facilities that generate, transport, store, treat, and/or dispose of hazardous waste.
Responsive Environmental Report (RER):	A report, submitted by an Inconsistent or Responsive applicant, that contains detailed environmental information regarding the activities proposed in its IR Application and complies with the requirements for environmental reports in the Board's rules at 49 CFR 1105.7(e).
retarder:	In railroad yards, a braking device, usually power-operated, built into a railroad track to reduce the speed of cars by means of brake-shoes which, when set in braking position, press against the sides of the lower portions of the wheels.
right-hand turnout:	See <i>turnout</i> .
riparian:	Relating to, living or located on, or having access to, the bank of a natural water course, sometimes also a lake or tidewater.
riprap:	A loose pile or layer of broken stones erected in water or on soft ground as a guard against erosion.
route miles:	Length of a railroad line, regardless of the number of tracks.
safety culture:	The manner in which management and employees in an organization view and approach the issue of safety, including both formalized rules and informal practices in the organization.

Safety Integration Plan:	Plan that the Applicants prepared and submitted to the Board to explain how they propose to provide for the safe integration of their separate corporate cultures and operating systems, if the Board approves the proposed CN/IC Acquisition.
seamless corridor:	A railroad route that does not require cars or blocks of cars to interchange.
sensitive receptor:	See noise-sensitive receptor.
separated grade crossing:	The site where a local street or highway crosses railroad tracks at a different level or elevation, either as an overpass or as an underpass.
service:	The official notification and delivery of Board decisions and notices (including environmental documents) by the Secretary of the Board to persons involved in a particular proceeding.
Settlement Agreement:	An agreement negotiated between CN or IC, or both, and one or more parties, including other railroads, that addresses concerns or requests of the party (or parties). Generally, such an agreement addresses competitive customer service or labor issues.
siding:	A track parallel to a main track that is connected to the main track at each end. A siding is used for the passing and/or storage of trains.
single-line service:	Service over one railroad, without having to interchange rail cars between railroads.

Sound Exposure Level (SEL):	For a transient noise event such as a passing train, equivalent to the maximum A-weighted sound level that would occur if all of the noise energy associated with the event were restricted to a time period of 1 second. The SEL accounts for both the magnitude and the duration of the noise event; noise analysts use SEL to calculate the day-night average noise level.
superior train:	For purposes of this Draft EA, a passenger train operating on the same track network with freight trains. Superior trains must have track clear of all trains not less than 15 minutes prior to their arrival.
switch:	The portion of the track structure used to direct cars and locomotives from one track to another.
switching:	The activity of moving cars from one track to another in a yard or where tracks go into a railroad customer's facility.
tank car:	A type of freight car that shippers use to ship liquids and liquefied gases in bulk.
threshold for environmental analysis:	A level of proposed change in railroad activities that determines the need for SEA's environmental review. In conducting its environmental analysis for the proposed CN/IC Acquisition, SEA first applied the Board's thresholds for environmental analysis at 49 CFR Part 1105. The Board thresholds apply specifically to air quality and noise. For issue areas where the Board does not have specific thresholds for environmental analysis, SEA assessed whether it would be appropriate to apply thresholds developed for the recent Conrail Acquisition. SEA concluded that the analysis thresholds developed for the Conrail Acquisition were also appropriate for environmental analysis of the proposed CN/IC Acquisition.

ton-mile:	The movement of one ton of cargo or equipment over a distance of 1 mile.
track class:	Designation between 1 and 6 by the Federal Railroad Administration to characterize the quality and condition of track. The track geometry and type of track structure govern the allowable speed over the track and the level of upkeep to maintain the track. For Class 3 track the maximum allowable operating speed is 40 mph for freight trains and 60 mph for passenger trains. For Class 4 track the maximum allowable operating speed is 60 mph for freight trains and 80 mph for passenger trains.
train-mile:	The movement of one train over a distance of 1 mile.
truck-mile:	The movement of one truck over a distance of 1 mile.
turnout:	The portion of railroad track structure where a single track divides into two tracks.
Verified Statement:	A party's sworn statement that provides information to the Board.
wayside:	Adjacent to the railroad track, as in "wayside signals" or "wayside defect detectors."
wayside noise:	Train noise adjacent to the right-of-way that comes from sources other than the horn, such as engine noise, exhaust noise, and noise from steel train wheels rolling on steel rails.

wetlands:

According to 40 CFR Part 230.41, those "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions," generally including swamps, marshes, bogs, and similar areas.

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LIST OF ACRONYMS AND ABBREVIATIONS

AAR	Association of American Railroads
ACHP	Advisory Council on Historic Preservation
ADT	average daily traffic
AST	aboveground storage tank
BIA	Bureau of Indian Affairs
BNSF	Burlington Northern Santa Fe Railway Company
Board	Surface Transportation Board
BRC	Belt Railway Company of Chicago
CAA	Clean Air Act of 1970
CAAA	Clean Air Act Amendments (1977)
CARES	CN Accident Reporting and Evaluation System
CATS	Crew Assignment and Timekeeping System
CCP	Chicago, Central & Pacific Railroad Company
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CFR	Code of Federal Regulations
CN	Canadian National Railway Company (and subsidiaries)
CO	carbon monoxide
CPR	cardiopulmonary resuscitation
dB	decibel
dBA	A-weighted decibel
DOT	U.S. Department of Transportation
DWP	Duluth, Winnipeg and Pacific Railway Company
EA	Environmental Assessment
EDR	Environmental Data Resources, Inc.
EJ&E	Elgin, Joliet & Eastern Railway Company
EPA	U.S. Environmental Protection Agency
ERNS	Emergency Response Notification System
ERS	Environmental Resource Score
ESA	Environmental Site Assessment
FEMA	Federal Emergency Management Agency
FMEA	Failure Mode and Effects Analysis
FRA	Federal Railroad Administration
FWS	U.S. Fish and Wildlife Service
GIS	Geographic Information System

GTM	gross ton-miles
GTW	Grand Trunk Western Railroad
HC	hydrocarbon
HMIRS	Hazardous Materials Incident Reporting System
IC	Illinois Central Corporation (and subsidiaries)
ICC	Interstate Commerce Commission
ICP	Internal Control Plan
IDNR	Illinois Department of Natural Resources
IEPA	Illinois Environmental Protection Agency
IR	Inconsistent and Responsive [Application]
KCSR	The Kansas City Southern Railway Company
LCS	Locomotive Control System
L_{dn}	day-night equivalent sound level
L_{max}	maximum sound level
L_{maxref}	L _{max} under specific set of reference conditions
LOS	level of service
LUST	leaking underground storage tank
MDEQ	Mississippi Department of Environmental Quality
MDWFP	Mississippi Department of Wildlife, Fisheries, and Parks
MOU	Memorandum of Understanding
MRS	Multiple Resource Score
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act of 1969
NFRAP	No Further Remedial Action Planned
NHPA	National Historic Preservation Act of 1966
NHTSA	National Highway Transportation Safety Administration
NO₂	nitrogen dioxide
NO_x	nitrogen oxides
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
NRCS	Natural Resources Conservation Service
NRHP	National Register of Historic Places
NSR	New Source Review
NTSB	National Transportation Safety Board
NWI	National Wetlands Inventory
OSHA	U.S. Occupational Safety and Health Administration
O₃	ozone
OTR	over-the-road
P&I	Paducah & Illinois Railroad
Pb	lead
PDEA	Preliminary Draft Environmental Assessment
PIRS	Police Incident Reporting System
P.L.	Public Law
PM₁₀	particulate matter less than 10 microns in diameter
PM_{2.5}	particulate matter less than 2.5 microns in diameter

POR	Party of Record
PSA	public service announcement
PSD	Prevention of Significant Deterioration
PTC	Positive Train Control
RCRA	Resource Conservation and Recovery Act
RCRIS	Resource Conservation and Recovery Information System
RER	Responsive Environmental Report
RTMS	Rail Traffic Management System
SACP	Safety Assurance and Compliance Program
SEA	Section of Environmental Analysis
SEL	sound exposure level
SHPO	State Historic Preservation Office
SHWS	State Hazardous Waste Sites
SO₂	sulfur dioxide
SRS	Service Reliability System
STCC	Standard Commodity Classification Code
TCS	Traffic Control System
TIBS	Train Information and Braking System
TransCAER®	Transportation Community Awareness and Emergency Response
U.S.C.	United States Code
USGS	U. S. Geological Survey
UST	underground storage tank
VOC	volatile organic compound
WC	Wisconsin Central Limited
Y2K	Year 2000

