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Surface Transportation Board
CN-EJ&E-113 - FD-21087
Log and Distribution
Date Recd. _____
File # _____ ✓

April 21, 2008

Ms. Victoria J. Rutson, Chief
Section of Environmental Analysis
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

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**Re: Canadian National Railway Company and Grand Trunk Corporation –
Control – EJ&E West Company (STB Finance Docket No. 35087)**

Dear Ms. Rutson:

CN appreciates the opportunity to respond to SEA's Information Request #3 dated March 25, 2008. After the Introduction and Summary immediately below, CN responds through (a) comments on the observations contained in the data request, by which CN seeks to help put both SEA's questions and CN's answers in the context of what the National Environmental Policy Act ("NEPA") requires and what is practicable in the context of those requirements; and (b) direct responses to each of SEA's questions. CN's responses are organized in the order of headings contained in SEA's request.

Introduction and Summary

As your information request recognizes, the question of how to gauge traffic flows for purposes of NEPA review in this control case warrants careful examination. This is especially the case because public comments reflect a great deal of confusion surrounding these matters, particularly as to what NEPA requires to be measured, and what it is that CN presented in its Operating Plan for STB review.

Accordingly, CN has made a substantial effort to assess whether there is a better indicator of the reasonably foreseeable incremental traffic flows (and the environmental impacts related to those flows) attributable to the Transaction than those that formed the basis of the Operating Plan submitted for the purposes of STB review of the Transaction.

At the outset, it was important to define the issue to be resolved. As the STB has consistently held, railroads can "increase[] the number of trains on their existing lines to any level they deem[] appropriate to meet demand and/or achieve efficiency without the Board's

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review or regulation.” *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388, Final Environmental Impact Statement at 1-15 (STB served May 29, 1998). For that reason, except for the extended hauls reflected in the Operating Plan that are due to the efficiencies created by the Transaction, any growth in CN’s traffic to, from, and through Chicago is not dependent upon Board approval of the Transaction and therefore that growth, by itself, is not the proper subject of SEA’s inquiry.

Instead, the only growth-related issues here are (a) how much of any future growth in CN’s traffic CN’s is likely to move over EJ&EW, as opposed to some other route, as a result of the Transaction, and (b) over which segments of EJ&EW that traffic is likely to move.

CN was unable to ascertain any reasonable way to forecast an answer to those questions that would be predictive for more than the short term. Instead, attempting to forecast growth with the particularity required here would almost certainly be a futile exercise. As the STB has recognized, reasonably accurate long-term traffic forecasting is inherently difficult, even in a context of very high volumes of relatively predictable traffic between limited origins and destinations.¹ It is even more difficult when the traffic in question is of many different types moving to and from many different points and the forecast is required for multiple intermediate routes. This difficulty is illustrated by the fact that, as shown in Attachment# 1, it now appears that at least two of the trains that CN projected just six months ago would move over EJ&EW following the Transaction are unlikely to do so. Finally, the need to speculate about whether to attribute any forecasted traffic growth to the Transaction, as opposed to other factors, such as the further clogging of routes through Chicago, or a decision by EJ&E, in lieu of the Transaction, to solicit additional traffic, would compound the difficulty.

Unable to determine any means to make a reasonably reliable forecast of the post-Transaction growth in traffic over EJ&EW attributable to the Transaction, CN revisited why it would be reasonable to rely on the traffic data in the Operating Plan as the basis for the environmental review required here.

In the STB’s past environmental analyses of proposed control transactions, it has assessed impacts on the basis of the traffic volumes presented in the applicants’ operating plan, which in turn was developed using traffic that actually moved during a base year, plus potential added traffic that the applicants expected to gain due to the efficiencies of the transaction during the period within which the transaction would be implemented (generally for a period of no more than 3 years). In keeping with this precedent and the STB’s regulations, CN’s Operating Plan

¹ See, e.g., *Major Issues in Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No. 1), slip. op at 64-66 (STB served Oct. 30, 2006) (noting that the logistics industry is dynamic, with changes in market conditions rendering assumptions obsolete after 10 years).

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was designed (a) principally to reflect CN's anticipated post-transaction operations, and (b) secondarily, to assure that the information it contained was in a form that would facilitate any environmental review of the Transaction. Having relied on STB/SEA precedent as the basis for preparing the Operating Plan, CN did not at that time fully explore all of the issues later raised in Information Request #3. In order to properly respond to this new request, CN re-examined STB/SEA rules and precedent and railroad practices in control and other proceedings; reviewed other NEPA law and practices, the extent to which CN uses forecasting in its business practices, and the literature on business forecasting; and obtained the advice of a preeminent economic forecasting consultancy.

On the basis of that review, CN has concluded that (a) there appear to be no demonstrably better indicators of the reasonably foreseeable traffic flows that are pertinent here for NEPA purposes than those reflected in the Operating Plan, which are comparable to those which have been used by the STB in the past; and (b) that any projection of greater flows would be both unreliably speculative and unnecessary for SEA's purposes.

We explain this conclusion at length below. What follows is a summary of why CN believes the STB has been correct in its past approach to environmental reviews and why, in keeping with that precedent and particularly in the circumstances of this proceeding, the traffic used as the basis of the Operating Plan is the best indicator of the reasonably foreseeable incremental flows to be reviewed under NEPA.

The approach used by CN in this proceeding is consistent with well-established and time-tested STB/SEA precedent, which has never been successfully challenged in court. For reasons we explore at more length below, the STB in these prior proceedings deliberately and properly eschewed making or requiring long-term traffic projections in control cases.

The particular circumstances of this Transaction make use of the long-established STB/SEA approach particularly appropriate because the post-Transaction traffic flows that were the basis of the Operating Plan significantly exceed the traffic that could not move over EJ&EW but for the Transaction, and therefore provide a cushion to accommodate an amount of potential future growth in that traffic and related impacts. The Operating Plan traffic therefore provides a reasonable basis for environmental review of the Transaction.

NEPA requires an inquiry by the agency into the environmental impacts that could not occur "but for" the agency action at issue. In prior railroad control cases, additions of new traffic to existing lines of railroad were typically related to the efficiencies to be realized through the acquisition of control, such as the diversion of new traffic from other railroad and non-railroad competitors, and the re-routing of traffic that merging competitors would be unlikely to undertake but for coming under common control. For the purposes of environmental analysis,

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both the applicants and the STB/SEA in those prior cases reasonably assumed that the new traffic would not move over the lines at issue unless the transaction at issue was approved, and this premise was never seriously challenged. Thus, the volume in the operating plan in those transactions approximated the volume of “but for” traffic. Similarly, in construction cases, the applicants and the STB/SEA assumed that the traffic at issue was that which would not move over the railroad unless the line was constructed.

Here, circumstances are somewhat different in two basic respects. First, CN’s Operating Plan is based almost entirely on the flows of traffic that are now (or are expected to be) moving over CN and EJ&E and would continue to do so whether or not the STB approves the Transaction. Only a small amount of new traffic, in the form of extended hauls on movements presently handled by CN or EJ&E, would be gained by CN/EJ&EW as a result of the Transaction.

Second, the principal environmental impacts that have been identified in the public mind with the Transaction – those related to the re-routing of CN traffic from routes through Chicago areas inside the EJ&E arc to routes through the further-removed “collar counties” traversed by the EJ&E now – are only partially dependent on approval of the Transaction. Without such approval, there would be no legal bar to preclude EJ&E from permitting CN to re-route as many trains as practicable over EJ&E in order to bypass Chicago and relieve the congestion on CN’s current Chicago routes. This means that, while the total volume of traffic to be re-routed to EJ&EW under the Operating Plan includes some trains that could not move over EJ&E “but for” the Transactions, it also includes trains that could readily be moved over EJ&E whether or not there were a Transaction. In addition, it now appears that two of the trains reflected in the Operating Plan will not be run over EJ&EW.

The difference between the trains that are likely to run under the Operating Plan and the “but for” trains provides extra “head room” to accommodate a significant amount of speculation about any long term traffic growth attributable to the Transaction. For the majority of EJ&EW segments, the maximum number of “but for” trains would have to grow for more than 10 years at an annual rate in excess of the average annual rate of growth for U.S. rail traffic over the past 20 years to exceed the number of trains in the Operating Plan. *See* Attachment # 4 (“Train Growth Required to Reach Operating Plan Levels”).

Based on precedent, forecasting logic, and sound business practices, CN knows of no reasonable basis for either projecting such a long-term growth rate for the traffic flows in question over the next 10 years, much less over a longer period, or for attributing any such growth solely to the Transaction.

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For these reasons, use of the train volumes presented in the Operating Plan as the basis of the STB's environmental analysis would appear to be highly conservative from the perspective of assuring that the STB fully considers all reasonably foreseeable incremental impacts attributable to the Transaction.

SEA Heading – "Background"

SEA Observation. NEPA law requires Federal agencies to analyze the direct, indirect, and cumulative effects of proposed actions to the extent they are reasonably foreseeable. Under the regulations of the President's Council on Environmental Quality implementing NEPA, the analysis of environmental effects resulting from a proposed action requires the separation of actions and effects that are reasonably foreseeable from those that are remote and speculative. Typically, the STB analyzes potential rail operations for a period of three to five years into the future, depending on an applicant's projections. Projections for rail operations beyond these timeframes may not be reasonably foreseeable because fluctuations in the economy and demand for infrastructure projects beyond three to five years can be unpredictable and speculative.

CN Comment.

CN generally concurs with SEA's perspective. However, public discussion of these issues suggests that a brief review of the law and circumstances of this case might facilitate consideration by all involved of the important issues raised by your data request.

The substantive issue in this proceeding is whether Applicants are entitled to receive a license to conduct a "minor" transaction. The law governing that issue is the ICC Termination Act ("ICCTA"). In essence, ICCTA requires an expeditious, time-limited determination of whether the Transaction poses competitive issues and requires the STB to approve CN's Application unless (1) the transaction would have certain anticompetitive effects, and (2) those effects are likely to outweigh the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d). For a minor transaction, the STB's regulations require the STB to conclude the evidentiary proceeding within 105 days after accepting the application, and the STB must issue a final decision within 45 days of the close of the record. 49 C.F.R. § 1180.4(e)(2). Thus, under the STB's rules, it must issue a final decision within 180 days of the date the Application

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was filed.

In this context, the application of NEPA may have somewhat different implications than it would in a “major” proceeding.² Assuming, however, that NEPA applies here it requires no more than an examination of the reasonably foreseeable environmental impacts that are caused by the agency action. “[W]here an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.” *Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 770 (2004). Accordingly, under NEPA, the agency’s environmental review need not consider effects the agency approval would not cause. *Id.*

Here the agency actions at issue are the licensing of two related “control” Transactions – the disaggregation of EJ&E into two parts (which was sought by a Notice of Exemption that has become effective) and the acquisition of control of one of those parts (EJ&EW) by CN (which is still pending). NEPA requires an assessment of the significant direct,³ indirect,⁴ and cumulative⁵ environmental impacts of the STB’s authorization of control. The direct impact of any affirmative STB action here would be to grant CN a license to acquire control over EJ&EW, which at the time of the Transaction would hold the principal lines of EJ&E. The principal

² While CN does not currently expect these issues to be joined in this case, all parties should be aware of the possibilities. For example, it is an open question whether NEPA should be applied differently in a “minor” proceeding than in a proceeding not subject to a statutory deadline or one to review a “major” transaction where the STB is required to make an affirmative decision on the merits – a finding that “the transaction is consistent with the public interest.” 49 U.S.C. § 11324(c). In “major” proceedings, there is no statutory limitation on the factors the STB may examine in making its determination regarding the public interest, though it is required to examine at least the five factors listed in § 11324(b). Congress has made it clear that, absent certain anticompetitive effects, which the STB has preliminarily determined are not present in this Transaction, CN’s application to acquire control of EJ&EW must be granted. As a result, it is also not clear whether there is a legal basis in ICCTA or NEPA for qualifying that grant on the basis of environmental factors unrelated to protection of competition, or frustrating Congress’ deadlines for review of a “minor” transaction. Thus, SEA’s environmental review, even if required, might not be dispositive of the merits of the Transaction, and it is possible that it cannot provide the basis for the exercise of the STB’s conditioning power.

³ Defined as effects that are “caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a).

⁴ Defined as effects that are “caused by the action and are later in time or farther removed in distance, but [which] are still reasonably foreseeable.” *Id.* at § 1508.8(b).

⁵ Defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present or reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” *Id.* at § 1508.7.

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indirect impacts that would arise from granting that license would be the result of changes in traffic flows over CN and EJ&EW that would not be reasonably foreseeable but for the granting of the license. Cumulative impacts are those that are not caused by the proposed action, but are close enough geographically and temporally to potentially affect the same resources as the proposed action.⁶

As part of the process of seeking approval for a license to acquire EJ&EW, CN presented an Operating Plan, designed to handle the traffic that CN and EJ&E handled in 2006,⁷ plus the traffic that CN expects to be added to its system as a result of the full implementation of Phase I of the Prince Rupert Container Terminal ("P.R. Development")⁸ and the small number of extended hauls – the roughly 9,000 carloads per year of existing traffic that CN expects to be carried further over the combined CN/EJ&EW system as a result of the efficiencies to be generated by CN control. CN expects that the changes in operations described in this Operating

⁶ See, *S.W. Gulf R.R. Co. – Construction & Operation Exemption – Medina County, TX*, STB Finance Docket No. 34284, Draft Environmental Impact Statement at 1-13 (STB served Nov. 5, 2004).

⁷ CN's use of a single year of recent traffic data for the basis for an Operating Plan was similar to that of CN and other applicants in control proceedings since at least 1993. See, e.g., I Railroad Control Application 102, *Union Pac. Corp. – Control – Chicago & N.W. Transp. Co.*, Finance Docket No. 32133 (filed Jan. 29, 1993) (UP/CNW operating plan based on 1991 traffic levels); II Railroad Control Application 8-9, *Burlington N. Inc. – Control & Merger – Santa Fe Pac. Corp.*, Finance Docket No. 32549 (filed Oct. 1994) (BN/Santa Fe operating plan based on 1993 traffic); 3 Railroad Merger Application 111, *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, Finance Docket No. 32760 (filed Nov. 30, 1995) (UP/SP operating plan based on 1994 traffic levels); 3A Railroad Control Application, Exhibit 13-CSX at 2, *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388 (filed June 23, 1997) (CSX operating plan constructed using 1995 traffic); 3B Railroad Control Application, NS Exhibit 13 at 22, *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388 (filed June 23, 1997) (NS Operating Plan constructed using 1995 traffic); 2 Railroad Control Application 127, *Canadian Nat'l Ry. – Control – Ill. Cent. Corp.*, STB Finance Docket No. 33556 (filed July 1998) (CN/IC operating plan based on 1996 traffic); 1 Railroad Control Application 286-87, 373, *Canadian Nat'l Ry. – Control – Wisc. Cent. Transp. Corp.*, STB Finance Docket No. 34000 (filed Apr. 9, 2001) (CN/WC traffic studies and operating plan based on 1999 traffic levels); Railroad Control Application 119, 221-27, *Kansas City S. – Control – Kansas City S. Ry.*, STB Finance Docket No. 34342 (filed May 13, 2003) (KCS/TM traffic studies and operating plan based on 2001 traffic); Railroad Control Application 162, *Canadian Nat'l Ry. – Control – Bessemer & Lake Erie R.R.*, STB Finance Docket No. 34424 (filed Nov. 5, 2003) (CN/GLT operating plan based on assumption of no increase from existing traffic levels); Environmental Appendix 3-4, *Canadian Nat'l Ry. – Control – Bessemer & Lake Erie R.R.*, STB Finance Docket No. 34424 (filed Nov. 5, 2003) (same); 1 Application by Canadian Pacific Railway Company, et al for Approval of control of Dakota, Minnesota and Eastern Railroad Corporation, et al, Exhibit 13 at 2-3, *Canadian Pac. Ry. – Control – Dakota, M. & E R.R.*, STB Finance Docket No. 35081 (filed Oct. 5, 2007) (CP/DM&E operating plan based on 2006 traffic).

⁸ CN's relevant P.R. Development traffic ranged between two and four trains per week in 2007. The Operating Plan is designed to accommodate all expected growth in that traffic from the full utilization of Phase I of the P.R. Development in two trains per day. See Response to SEA Question No. 4.

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Plan would be realized within three years.

The purpose of the Operating Plan was not to accommodate long-term projections of future traffic. Its purpose was instead to show, as required by the STB's rules, *see* 49 C.F.R. § 1180.8(c), how CN expected to conduct the change in operations that it anticipates would follow the EJ&EW Transaction.

While the Operating Plan is a starting point for understanding the total volume of traffic that would likely move over EJ&EW after full implementation of the Transaction,⁹ it does not necessarily determine what volume must be reviewed by SEA to fulfill its duties under NEPA.

Instead, the basis for any study required under NEPA (as construed by the Supreme Court in *Public Citizen*) is those changes in traffic that would not happen "but for" the license sought here by the Applicants. Here, those changes are a subset of the changes that are anticipated in the Operating Plan.

For this reason, the impacts are unlikely to be as far reaching as many parties to this proceeding seem to be assuming. CN and other railroads (and their respective customers) are presently free to re-route, and EJ&E is free to accept traffic from the urban Chicago routes of CN and other railroads. Indeed, EJ&E is free to accept as much traffic as it finds in its interest to accept and can handle without additions to capacity that require STB approval. And if CN and EJ&E were to make such alternative arrangements for re-routing CN's traffic, in lieu of the proposed Transaction, there would be, absent the need for improvements requiring SEA review, no environmental review and no related voluntary or imposed mitigation.¹⁰

Thus, a critical issue is what proportion of the Operating Plan traffic would not likely move over the EJ&E absent the Transaction. The only traffic that almost certainly would not be re-routed without the Transaction is that which is likely to move as a result of the efficiencies that CN would achieve through total control of EJ&EW – the roughly 9,000 carloads per year that will receive extended hauls, as identified in Applicants' Traffic Study.¹¹

⁹ CN views such a volume as a reasonable basis for assessing the potential requirements of communities seeking mitigation of environmental impacts.

¹⁰ *See, e.g., CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388, Final Environmental Impact Statement at 1-5 (STB served May 29, 1998) (noting that "a railroad may upgrade a portion of its system or add service to shippers without seeking the Board's approval. Thus, if [applicants] had not proposed this Acquisition, they could have increased the number of trains on their existing lines to any level they deemed appropriate to meet demand and/or to achieve efficiency without the Board's review or regulation.").

¹¹ *See* CN-2 at 191-97 (Verified Statement of David A. Stuebner).

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The rest of the traffic that CN anticipates that it would transfer to EJ&EW, as explained in its Operating Plan, includes some that could clearly move over EJ&E without further actions by the STB and some that might or might not require STB action before it was transferred to EJ&E.

The trains that could move over some portion of EJ&E absent STB approval of the Transaction are listed in the segment-by-segment analysis contained in Attachment #1.¹² The remainder of the traffic that formed the basis of the Operating Plan would not require STB action before it could be routed over EJ&E today, but EJ&E could need improvements to its lines that could require STB approval before that traffic could be moved more efficiently over EJ&E than over existing routes. For the purposes of this response, CN has conservatively assumed that some or all of the improvements to connections anticipated by the Operating Plan would be required for such efficient movements and that they would require the STB's sanction (by approval or exemption).¹³

Of course, the Operating Plan did not include the universe of traffic that might flow over EJ&E if the Transaction were not approved. In addition to the trains that CN might move if the Transaction were not approved, there may be a number of additional trains that EJ&E could receive in interchange or via haulage from its other connections should CN not be able to acquire EJ&EW and to utilize or reserve most of the existing capacity of EJ&E for its own trains.

SEA Observation. There have been proceedings filed before the Board (and its predecessor agency, the Interstate Commerce Commission), in which railroad applicants have been able to reasonably foresee future rail operations beyond three to five years. In one case, a railroad seeking to construct and operate a rail line serving coal mines in West Virginia projected rail movements over the

¹² These charts show the likely number of trains CN currently expects to operate once the EJ&E transaction has been fully implemented. While the charts show downward adjustments in the number of trains reflected in the Operating Plan as filed, CN is not proposing that SEA should change the number of trains it is currently studying. But, SEA should be aware that the number of trains currently reflected in the Operating Plan likely overstates the number of trains that would operate over EJ&EW as a result of this Transaction.

¹³ CN is not proposing here that SEA exclude Operating Plan trains that are not "but for" trains from environmental review. See *infra*, page 28. Moreover, while CN continues to maintain its position in response to Decision No. 7 (STB served Feb. 20, 2008), it is anticipating here that any additional trains that might be excluded from the set of "but for" trains if the jurisdictional issue posed by the STB in Decision No. 7 were resolved in CN's favor would not be excluded from environmental review. CN is using the "but for" analysis here solely to illustrate that the reasonableness of SEA's approach to forecasting in prior control cases is even more reasonable here.

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proposed new line for ten years into the future. See Finance Docket No. 31989, The Elk River Railroad, Inc. -- Construction Exemption -- Clay and Kanawha Counties, West Virginia. In another case, a railroad submitted an operating plan as part of its application before the Board projecting movements of coal six years from project implementation. See Finance Docket 33407, Dakota, Minnesota & Eastern Railroad Corporation, Construction into the Powder River Basin.

CN Comment.

To CN's knowledge, since at least the early 1990s no applicant party to a control transaction proceeding involving a Class I railroad has made traffic growth forecasts for the existing traffic subject to the transaction at issue. Thus, applicants in UP/CNW, BN/Santa Fe, UP/SP, CSX/NS/Conrail, CN/IC, CN/WC, KCS/TexMex, DM&E/IC&E and CN/GLT did not project exogenous traffic growth in connection with their traffic studies or operating plans, though they did project what traffic they might divert from other railroads and other modes, and in some cases what new traffic they might be able to generate as a result of transaction-related efficiencies that did not previously move by any mode.¹⁴ The ICC, relying on the applicants' operating plan, conducted no environmental review of the UP/CNW transaction, and SEA conducted only a limited environmental review of the CN/WC and CN/GLT transactions based on the applicants' operating plans, which were based in turn on existing levels of traffic, adjusted to reflect changes attributable to the transaction at issue, and thus did not take into account impacts from exogenous traffic growth.

There has been good reason for this approach. Control cases generally present circumstances that are not analogous to those involved in *Elk River*,¹⁵ *DM&E*,¹⁶ or other "new" line construction cases. In this and similar control cases, one railroad acquires another, both have well-defined traffic flows and only incremental traffic volumes are expected to change as a result of the transaction. By contrast, in construction cases such as *Elk River* and *DM&E*, the sole purpose of the proposed construction and/or rehabilitation of lines is to serve specific new volumes of traffic for the applicant or the railroad upon which the construction or rehabilitation of the line depends. If the applicants in those cases had been unable to forecast volumes of the

¹⁴ The Operating Plan in CP/DM&E took into account a limited amount of exogenous traffic growth, but only from a limited number of shippers, and only during the three-year implementation period of the proposed transaction.

¹⁵ *Elk River R.R. -- Construction Exemption -- Clay & Kanawha Counties, W. Va.*, Finance Docket No. 31989 ("*Elk River*").

¹⁶ *Dakota, M. & E.R.R. Construction into the Powder River Basin*, STB Finance Docket No. 33407 ("*DM&E*").

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traffic for which the construction was proposed, involving very specific commodities to and from a few very specific customers and/or origins, they likely would have been unable to secure financing for the projects and there would have been no need for the license at issue.¹⁷ In other words, whether or not the license was granted would determine whether or not the traffic at issue would move, and the amount of traffic to move had to be assessed before it would have made business sense to undertake the project for which the applicants were seeking the license.¹⁸

CN is here seeking to acquire control of the principal rail lines of EJ&E. But unlike applicants in many previous control proceedings, it is doing so not in order to acquire traffic that it would not serve but for the acquisition, but primarily to serve its existing traffic more efficiently. Thus, CN's pre-Transaction valuation of the Transaction assumed, without any special study, a pro forma two percent annual growth rate for EJ&E's existing traffic and made no forecast of growth in CN's existing traffic. The valuation of the Transaction was driven primarily by the expected cost savings to be realized in the handling of existing traffic. No growth in CN's traffic was required to warrant the cost of the Transaction.

Finally, as discussed further below in response to Question No. 1, part 1, CN does not believe that changes in the volumes of traffic that CN anticipates moving to EJ&EW can be predicted to a "reasonably foreseeable certainty." Nonetheless, as also discussed below in response to Question No. 6, there is a reasonable basis for estimating the environmental impacts from any long term traffic growth over EJ&EW that could be prevented by an STB decision to deny approval of the Transaction. As that discussion shows, there is no basis for expecting the

¹⁷ Another possibility is that the traffic projections were made on the basis of a firm contract.

¹⁸ Moreover, in *Elk River*, no projections of future growth were made for non-coal traffic. Rather, the applicant reported that the only non-coal commodity it expected to carry over the new line was timber-related products, that "there could be 20-50 carloads of timber-related products per month: from three timber-related companies located on the applicant's existing line, based on its discussions with those companies, and that another lumber company was a potential customer that "could ship 10 carloads of wood-related products per month." Final Environmental Impact Statement at III-8, *Elk River R.R. – Construction Exemption – Clay & Kanawha Counties, W. Va.*, Finance Docket No. 31989 (STB served Aug. 9, 1996). The applicant also indicated that two other shippers had "expressed an interest" in making or receiving shipments over the new line, without attempting to quantify the volume of that traffic. *Id.*

In *DM&E*, the applicant did not project any growth in its existing (non-coal) traffic beyond three years after completion of its proposed construction project, and even then it only projected growth directly attributable to service improvements caused by the project itself (*i.e.*, it made no projections of growth in its existing traffic that would have occurred in the absence of the project). Application for Construction and Operation Authority at 20 (filed Feb. 20, 2007), *Dakota, M. & E.R.R. Construction Into the Powder River Basin*, STB. Finance Docket No. 33407.

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environmental impacts would significantly exceed those likely to result from the total volume of traffic CN anticipated in its Operating Plan.

SEA Heading – “This Proceeding”

SEA Observation. In its application, CN predicted train traffic increases on the EJ&E arc and train traffic decreases on the five CN rail lines operating within the arc in and near the City of Chicago based on a three year forecasting horizon (beginning with the year of Board approval of the acquisition of the EJ&E (assuming that the proposed acquisition is granted). According to CN, forecasting train traffic levels beyond this three year horizon would be speculative and, therefore, inaccurate.

CN Comment.

Again, CN’s Operating Plan was based on 2006 EJ&E and CN traffic, plus extended hauls for roughly 9,000 carloads per year, plus CN’s expected movement of the full capacity of Phase I of the P.R. Development. Otherwise, for the reasons discussed below in response to SEA’s questions, except for the purpose of developing answers to this data request, and, as part of its annual target budgeting process,¹⁹ CN has not projected growth of traffic now moving over CN and expected in the Operating Plan to move over EJ&EW for any period.

SEA Heading – “Comments Received During EIS Process”

SEA Observation. SEA has received over 3200 comments thus far as we finalize the scope of the Environmental Impact Statement (EIS) and move forward with preparing the EIS itself. Several comments question CN’s train traffic predictions. Here are some excerpts of from these comments:

1) The proposed acquisition projects 20 trains per day in the

¹⁹ In that budget process, CN sets targets for growth of its business, and thus necessarily makes certain assessments of what growth might realistically be expected for the upcoming year. CN does not, however, intend its targeting process to be an objective assessment of actual future performance; instead, it hopes, by setting targets and providing incentives for its personnel, to affect that performance.

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short term, but I would ask you to give great consideration to the Village of Barrington's and other community groups' request to extend the scope of study from the current three years to ten. These groups have compelling evidence -- including public information from CN itself -- that the traffic on the EJ&E will increase dramatically beyond the 20 trains they project in their application during the next 3 years, and that the decrease in traffic on the Chicago based lines will only be temporary as well. I believe that limiting the scope of the survey to three years will dramatically underestimate the true environmental impact on our communities in the next several years, and would urge the STB to extend the survey to a full 10 year impact study.

- 2) [W]e are also concerned that the proposed acquisition plan only projects freight traffic for the next three years. We understand that CN is in the process of purchasing a container terminal at the Port of Prince Rupert, which will lead to international freight traffic growth on its tracks for many years beyond the three year projection. Much of this increased traffic will be routed through the Chicago area, which will mean either an increase beyond the projections for the EJ&E line, or a return of freight traffic on the CN lines which EJ&E is meant to detour. We would like to reiterate the requests of several municipalities that CN be required to make freight traffic projections beyond three years on all tracks (current CN control and EJ&E) to 2035.*
- 3) CN has provided three-year projections for the number of freight trains per day, gross tons of freight and hazardous materials carloads on the EJ&E and CN lines if the EJ&E acquisition is approved by the STB. This is not an adequate time frame for conducting a detailed analysis and assessment on the future impacts of this acquisition. The EIS shall utilize, at a minimum, a 20-year horizon, as required by the NEPA process. In addition, the 20-year timeframe would be more consistent with the official 2030 Regional Transportation Plan (RTP) for the Northeastern Illinois Region. In the event that*

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CN is unable to provide such projections, STB shall look into other sources. One such source would be CREATE (the Chicago Regional Environmental And Transportation Efficiency program) which projects that by 2020, freight rail service demand in the Chicago area is expected to increase by 80%.

CN Comment.

CN comments briefly here on each of the cited quotes as follows:

1) CN is unaware of the “compelling evidence” referred to in the first quote above and has seen no such evidence provided on the record in this proceeding or in comments to SEA.

2) As further explained below, CN has built its Operating Plan to handle all the trains it expects to carry to, from, or through the Chicago area as a result of the full utilization by shipping companies of the full capacity of Phase I of the P.R. Development. No other phase of that development has received necessary environmental approval or funding. Accordingly, there is no basis for CN or any other party to project additional traffic from that development as reasonably foreseeable or “certain,”²⁰ much less any basis for projecting where that traffic would move if it were to move, and certainly no basis for projecting such traffic as “certain” or “reasonably foreseeable.” As we also explain below, growth for specific traffic that originated other than from a new, major source is extremely difficult, if not impossible to predict accurately, and, as noted above, CN does not make such predictions in the ordinary course of business except in the course of developing annual performance targets as part of its business plan. Therefore, CN did not and does not believe it has a reasonable basis to make a long term traffic growth forecast of even five years for this proceeding.

3) CN is aware of no NEPA requirement for 20-year or any other traffic projections. Indeed, if there were such a requirement, each of SEA’s prior assessments of control transactions involving Class I railroads since the enactment of NEPA in 1970 would have been in violation of NEPA, a contention that no one has seriously made, and which no reader of NEPA and the regulations promulgated there under could take seriously. To the best of CN’s knowledge, no study has been made or commissioned by Chicago area regional planning authorities or by any

²⁰ Construction of Phase II of the P.R. Development would require extensive fill in Prince Rupert Harbour and thus would raise more extensive environmental issues than did Phase I, requiring an environmental assessment under Canadian law. The process for issuing such an assessment is expected to be especially contentious, as First Nations will be seeking compensation in that process for loss of their traditional lands.

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of the railroads involved in the CREATE planning process that would systematically forecast the growth of the specific traffic involved in this proceeding.

CN's understanding of the CREATE study is as follows. When the CREATE Feasibility Plan stated that "[c]urrently 37,500 rail cars per day travel through the Chicago hub each year, with this number expected to increase to 67,000 per day by 2020,"²¹ that was a projection of demand, not actual growth, and did not purport to be based on a rigorous approach. It grew out of an inquiry from the City of Chicago as to what the railroads' "20-year plan" was for Chicago. CN understand that the railroads' initial response to that inquiry was that railroads typically did not plan that far into the future. When pressed by the City, however, the railroads developed rough pro forma projections, based on recent past performance. CN's pro forma projection was for one percent growth for all but intermodal and four percent growth in intermodal traffic. Data was gathered on actual train traffic within the Chicago terminal during a four-day period in November 1999. The growth rate projections were then applied to the traffic in the various commodity groups of the Class I railroads that had been counted for the four-day base period, compounded annually over 20 years, and the results were added together to yield the 67,000 number reported in the Final Feasibility Plan. No attempt was made to validate the projections or to account for changes in economic activity, including possible geographic shifts in population, production, or consumption, between 1999 and 2020. Nor was this figure adjusted based on the level of rail investment that might be required to accommodate this increased demand for rail services through the already congested City of Chicago.

Any attempt to forecast the demand for rail services, or the growth of specific traffic volumes, 20 years into the future by extrapolating from past short-term growth rates is necessarily an exercise in guesswork.²² As investment literature correctly states with regard to

²¹ Chicago Region Environmental and Transportation Efficiency Program, Final Feasibility Plan at 37 (Aug. 2005), available at http://www.createprogram.org/pdf/final_feasibility_plan.pdf.

²² The STB has recognized that, even in a context of very high volumes of relatively predictable traffic between limited origins and destinations, it is unwise to make forecasts beyond 10 years, and it has recently determined to refrain from making such forecasts. In *Major Issues in Rail Rate Cases*, STB Ex Parte No. 657 (Sub-No. 1) slip op at 61-64 (STB served Oct. 30, 2006), the STB shortened the stand-alone cost ("SAC") analysis period from 20 years to 10 years. While the STB had never prescribed the length of the period for analysis, parties had historically settled some years ago on 20 years. However, the STB found "the benefits of a 20-year analysis" to be "illusory," *id.* at 62, and limited the analysis to 10 years for the following reasons:

- "the logistics industry is dynamic, with changes in market conditions rendering obsolete the underlying assumptions in older SAC analysis well before the 20-year analysis period has ended" such that "the added value (to the shipper or railroad) of a rate prescription scheduled to include from Year 10 to Year 20 is questionable;"
- "a shorter SAC analysis period would reduce both the expense and complexity of the SAC analysis by limiting disputes over forecasted trends for traffic volumes, revenues, and operating expenses;"

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growth and yield of securities, “past performance is no guarantee of future results.” One thing that historical performance of the rail industry does demonstrate, however, is the past performance can vary greatly, depending on which period is chosen.

Between 1980 and 2000, for example, rail traffic for Class I railroads in the United States rose at a rate of 0.77% per year, from 1.492 billion tons of freight originated to 1.738 billion tons originated.²³ Between 1986 and 2006, on the other hand, rail traffic rose at a rate of 2.04% per year, from 1.306 billion to 1.957 billion tons originated.²⁴ And during the 20 years between 1965 and 1985, rail traffic actually fell, from 1.387 billion tons to 1.320 billion tons originated, an average decline of 0.25% per year.²⁵ Looking at an even longer time horizon, rail traffic grew by an annual rate of only 0.49% between 1929 and 2006 (from 1.339 billion tons to 1.957 billion tons originated).²⁶ It is thus evident that extrapolating past performance into the future is almost certain to yield predictions widely at variance from reality, because such calculations inevitably fail to account accurately for such unpredictable factors as technological development, changes in government policy and regulation, and extraordinary events (which become more likely over a longer period of time) such as wars, economic shocks, and political events with global economic repercussions. And, the results can be materially affected by what years are chosen as end points.

Parties other than CREATE have also attempted to project rail traffic demand and resulting potential growth into the distant future. While some of those projections are slightly more sophisticated than CREATE’s, ultimately they all suffer from the necessarily speculative

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- “by shortening the analysis period, the maximum lawful rate would depend less on predictions of distant events and more on known market conditions;” and
 - A shorter analysis term would “conform [the] regulatory process to the trend in the rail industry towards shorter contract terms.” *Id.* at 62-63.

²³ 2007 Policy & Economics Department, Association of American Railroads, Railroad Facts 28 (“2006 Railroad Facts”). Tons originated is a better indicator of train growth than carloads originated because, depending on the year, carloads originated data may not include intermodal traffic. Additionally, depending on the way intermodal units are counted, use of carloads originated data could lead to a significant overstatement of train growth.

²⁴ *Id.*; 1996 Policy, Legislation and Economics Department, Association of American Railroads, Railroad Facts 28 (“1996 Railroad Facts”).

²⁵ 2007 Railroad Facts 28.

²⁶ *Id.* If rail traffic is measured by freight car-miles, it grew at a rate of only 0.34% per year between 1929 and 2006 (from 29.142 million to 38.955 million), and if measured by train-miles, it actually declined 0.11% a year (from 613.444 million to 562.607 million train-miles). *Id.* at 33, 34.

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nature of any long-term predictions of rail traffic. We are aware, for example, of a study produced by Cambridge Systematics, Inc., for the Association of American Railroads (“AAR”), reporting traffic volumes that it projected would be carried on “primary rail corridors” in 2035.²⁷ This study was based on the U.S. Department of Transportation’s Freight Analysis Framework, Version 2.2, which forecasts demand for freight transportation by examining production, consumption, and trade by major industry sector and economic region, and to that extent involved a more sophisticated analysis than the one made by CREATE. On the other hand, the Cambridge Systematics study makes no attempt to assess particular, as opposed to aggregate, traffic characteristics, and did not account for possible shifts in transportation mode resulting from capacity constraints or other causes, but rather assumed that the same percentage of relevant traffic flows moving by rail in 2005 would move by rail in 2035. Nor did it account for possible changes in markets and demand in response to changes in technology, regulation, and politics. As Cambridge Systematics itself noted, its forecasts were only “a starting point for consideration of the effect of future demand on infrastructure capacity and investment requirements,” *Cambridge Systematics* at 1-1, and were “not comprehensive in their estimation of future freight demand.” *Id.* at 5-1.

Similarly, the American Association of State Highway and Transportation Officials (“AASHTO”) conducted a study of the capacity of the nation’s freight rail system to accommodate growth in demand for freight rail transportation over the next 20 years, and to that end provided forecasts for rail traffic growth through 2020.²⁸ This study, like *Cambridge Systematics*, relied on growth projected by the Freight Analysis Framework, and it thus shares with that study all the weaknesses of projections that fail to account for changes in technology, regulation, and politics. The AASHTO study provided forecasts based on four scenarios regarding investment in freight rail infrastructure: (1) a “base case scenario” that assumed investments sufficient for the freight rail industry in 2020 to maintain its current share of traffic in specified rail-served corridors; (2) a scenario assuming the minimum investment necessary to maintain current traffic volumes; (3) a scenario assuming investments that would allow some growth, but not enough to accommodate the 2020 base-case volume; and (4) an “aggressive investment” scenario assuming the freight rail industry would make sufficient investments to meet and exceed the base-case forecast.²⁹ The study provided no reason to assume that one of

²⁷ Cambridge Systematics, Inc., National Rail Freight Infrastructure Capacity and Investment Study (Sept. 2007), available at http://www.aar.org/PubCommon/Documents/natl_freight_capacity_study.pdf (“*Cambridge Systematics*”).

²⁸ American Association of State Highway and Transportation Officials, Transportation: Invest in America, Freight-Rail Bottom Line Report 57-71, Jan. 16, 2003, available at <http://freight.transportation.org/doc/FreightRailReport.pdf>.

²⁹ *Id.* at 57.

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the growth scenarios was any more likely to be accurate than the other three growth scenarios.³⁰

Most important, even if studies such as these may have some value in projecting rail traffic volumes expected on a national level, their predictive ability is considerably reduced when used to anticipate future volumes for a particular region, and almost nonexistent when used to estimate future volume on a particular rail line. The inability to predict traffic growth accurately on specific rail line segments based on long-term overall trends, even in the short run, has been acknowledged by the STB in past proceedings.

For example, in *Conrail Acquisition*, the STB observed that “while railroads do their best to predict the amount of post-transaction traffic likely to move over a given line, . . . the amount of traffic that actually moves over a particular line depends upon shipper demand,” *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, 3 S.T.B. 764, 785 (1998) (“*Conrail Acquisition*”), and it agreed with the statement of one applicant there that “statements by applicants in control applications on such matters as the amount and mix of traffic they expect to move . . . are necessarily imprecise projections based on economic conditions and traffic flows known at the time the statements are made.” *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, STB Finance Docket No. 33388, Decision No. 186, slip op. at 7, (STB served May 21, 2001). The imprecision of those short-term projections grows dramatically as the time horizon is pushed farther into the future.³¹

³⁰ Nor did it consider the possibility that a freight rail industry, faced with an inability to earn its cost of capital (whether because of market forces, re-regulatory legislation, or other causes), might rationally disinvest in its rail infrastructure, deliberately foregoing the opportunity to carry traffic it now carries, and thus “shrink to profitability.” Such a scenario, which the applicants in the *UP/SP* control proceeding indicated would be a rational response by *SP*’s management to a Board decision denying the application in that case, would be one in which railroads (instead of making capital investments that would permit them to handle additional traffic), would actually seek to reduce volume and concentrate only on the traffic and the rail lines likely to yield positive returns on that investment. Applicants’ Rebuttal (*UP/SP-231*), Rebuttal Verified Statement of John T. Gray at 25-36, *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, Finance Docket No. 32760 (filed Apr. 29, 1996).

³¹ Later in the same proceeding, *NS* reported to the Board that “the additional traffic [it had] anticipated [would move over [the Northeast Corridor] ha[d] not yet materialized.” *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc. [Gen. Oversight]*, STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 6, slip op. at 4 (STB served Dec. 13, 2001). This was only four and a half years after *NS* had filed the operating plan projecting that traffic growth.

On the other hand, shortly after approval it was alleged that applicants’ traffic projections on other lines affected by the *Conrail* transaction were lower than the actual traffic that materialized, which only underscores the limited foreseeability of any traffic projections for individual lines, even in the short run, and thus the extremely speculative nature of extrapolating short-term projections regarding those lines into the future. See *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc. [Gen. Oversight]*, STB Finance Docket No. 33388 (Sub-No. 91), Decision No. 5, slip op. at 28 (STB served Feb. 2, 2001).

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Accordingly, for the many reasons elaborated upon here, and below in our response to Question No. 1, CN is not aware of any general studies that can reasonably be applied here to determine reasonably foreseeable movements over EJ&E.

SEA Heading – “Questions” – In light of these and similar comments, I ask that you respond to the best of your ability to the following questions:

SEA Question No 1, Part 1. How far into the future can CN forecast train levels resulting from the acquisition of the EJ&E to a reasonably foreseeable certainty?

CN Response to Question No. 1, Part 1.

CN does not believe that it can forecast the specific formation or the route of future trains designed to accommodate any yet-to-be-secured traffic to a reasonably foreseeable certainty for any period beyond the near term.³²

Except as provided in CN’s traffic study, which outlines traffic gains expected to stem from the efficiencies to be produced by the Transaction, CN does not expect its traffic levels to change as a result of the Transaction. What CN does expect is to re-route certain traffic from current CN routes into Chicago to EJ&EW. CN has detailed those expectations in its Operating Plan and in response to the questions posed by SEA.

CN seeks to forecast possible events for the purposes of business planning, and does not, as part of its business, generally seek to make traffic projections with the particularity required here. The reasons for CN’s lack of reliance on longer-term forecasts of specific traffic volumes include the following, in addition to the points noted above:

- Professional economic forecasting relies to a large extent on the “law of large numbers” (that is, the smoothing of particular variances that results from aggregations of large

Similarly, in the pending *CP/DM&E* control proceeding, the STB has noted that between 1996 and 2001, while the *DM&E* construction case was pending, ethanol plants were built along DM&E’s South Dakota and Minnesota line which had not been accounted for in DM&E’s operating plan in the construction proceeding. *Canadian Pac. Ry. – Control – Dakota, M. & E.R.R.*, STB Finance Docket No. 35081, Decision No. 9, slip op. at 6 n.12 (STB served Apr. 4, 2008) (“*CP/DM&E*”).

³² CN is here using the term “reasonably foreseeable certainty” in the vernacular, and not as a term of art. CN has been unable to identify prior uses of the term “reasonably foreseeable certainty” in the context of NEPA-required environmental review.

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numbers of similar events) to establish some reasonable degree of accuracy. But even forecasts for such large aggregations as all U.S. economic activity are seldom accurate except within a wide range, and are often radically wrong.³³

- The expected degree of business forecasting error is compounded as samples become smaller, often to the point that the marginal utility or value of the forecast is lower than the cost of making it. CN is not in the business of forecasting but runs an ongoing business over a relatively fixed set of facilities that provides an enormous variety of services that vary by a large variety of factors such as those listed below. For such a company, long term forecasting at the micro levels that would be required here is highly unlikely to produce reliable results.³⁴

Some of the factors that must be taken account in (a) estimating changes in traffic volumes, including exogenous growth and (b) determining the routing for that traffic over particular routes include those in the following list. As an illustration of the complexity of any such undertaking, the numbers for these factors at play for CN's traffic to, from, and through Chicago, from which the CN trains that are reflected in the Operating Plan were constructed are

³³ See, e.g., Robert Gavin, *Economic predictions for 2008 are all over the map*, Boston Globe, Dec. 27, 2007, available at <http://www.iht.com/articles/2007/12/25/business/usecon.php>. See also, Flyvbjerg, Holm, and Buhl, *Inaccuracy in Traffic Forecasts*, 26 Transport Reviews 1 (January 2006), available at <http://flyvbjerg.plan.aau.dk/Publications2006/TRAFFIC111PRINTTRANSPREV.pdf>.

³⁴ Of necessity, CN does look into the future, but any such vision is highly qualified, and would pose a legal risk under the securities laws if it were not so qualified. A typical CN disclaimer regarding "forward looking statements" reads as follows:

This [document] contains forward-looking statements. CN cautions that, by their nature, forward-looking statements involve risk, uncertainties and assumptions. The Company cautions that assumptions may not materialize. The Company's results could differ materially from those expressed or implied in such forward-looking statements. Important factors that could cause such differences include, but are not limited to, industry competition, legislative and/or regulatory developments, compliance with environmental laws and regulations, various events which could disrupt operations, including natural events such as severe weather, droughts, floods and earthquakes, the effects of adverse general economic and business conditions, inflation, currency fluctuations, changes in fuel prices, labor disruptions, environmental claims, investigations or proceedings, other types of claims and litigation, and other risks detailed from time to time in reports filed by CN with securities regulators in Canada and the United States.

See, e.g., Press Release, CN, in Partnership with Suncor, OPTI Canada and Nexen, Steps in to Save Critical Rail Link to Alberta Oil Sands Region (Dec. 24, 2007), available at http://www.cn.ca/about/media/news_releases/2007/4th_quarter/en_News20071224.shtml.

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shown in parentheses:³⁵

- CN Origins (2,459/323)
- CN Destinations (3,462/526)
- Connecting carriers receiving (171/5)
- Connecting carriers delivering (124/8)
- Commodity Types (CN Classification = 173/44; STCC 7 = 2,239/90)
- Car types (105/17)
- Rates
- The existence of contracts, their terms, and the contract period
- Alternative routes
- Divisions of interline revenues
- Overall economic growth
- Growth in industries in question
- Competition (including competition from non-rail modes) facing CN and its connecting carriers
- Competition facing customers
- Product Source Competition
- Transloading
- Customer Consolidation.

The cars actually handled by CN within the EJ&E arc in 2006 were the starting point for the CN/EJ&EW Operating Plan. An examination of CN's waybills shows that CN traffic to, from, and through Chicago in 2006 amounted to less than 15% of the total traffic handled by CN that year, yet even this relatively small proportion of CN's traffic amounted to 677,000 carloads, moving between roughly 21,000 origin-destination ("O-D") pairs.³⁶ Making accurate predictions concerning such highly disaggregated traffic, of which less than 25% both originates and terminates on CN, is very difficult even for CN's one year budget horizon. This is especially the case because of the extraordinary volatility within each category of traffic, as shown in Attachment #2 ("Traffic Through Chicago (2005 Q1 vs. 2006 Q1 vs. 2007 Q1 vs. 2008 Q1)") and as discussed further below in response to SEA Question No.1, Part 2. The likelihood that such a projection beyond one year would be "accurate" or reliable for the railroad's purposes is almost nil.

³⁵ The figures shown are for all carloads in the sample and for 80% of those carloads. For example, the origins of all carloads originating on CN number 2,459, the origins of 80% of that traffic number 323.

³⁶ In 2006, CN handled a total of 4,824,000 carloads, of which 677,000 moved through Chicago. While there was a total of 21,000 O-D pairs, 80% of the carloads (about 541,000) moved between about 2,500 O-D pairs.

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For this reason, in making business plans, CN generally does not rely on route-specific traffic targets more than one year in advance. And, while CN's annual budgeting process, which carries an implicit assessment of possible growth of particular traffic, tends to be sufficiently accurate to permit the operation of the entire CN system, those targets frequently prove to vary widely from actual performance for any particular set of services.

SEA Question No 1, Part 2. Can CN accurately forecast train levels five years into the future? What about ten years into the future? If not, please explain in detail why.

CN Response to Question No. 1, Part 2.

While CN regularly attempts to set targets for traffic growth one year in advance as part of its budgeting process, those targets tend to be only modestly accurate predictions of overall performance and not to be very accurate at all on a movement-by-movement basis. Conducting such a forecast for five or ten years into the future would require a very extensive special study, and, in the end, would almost certainly not have sufficient accuracy to warrant the expense or be taken into account in CN's budgeting process, much less provide a sound basis for identifying the reasonably foreseeable traffic flows on a segment-by-segment basis on EJ&EW.

The problems that arise when attempting to make broad, long-term traffic forecasts are compounded for lines of railroad that will principally serve as "intermediate" routes for a very large network arise because each particular set of traffic movements is itself unpredictable and can be large enough to influence the results for the whole line. This is illustrated in Attachment #2, which shows the results of a review CN made for the purpose of this response of the traffic moved to, from, and through the Chicago area in the 1st quarters of the years 2005, 2006, 2007 and 2008. The attachment shows tremendous variability and volatility among the various categories of traffic presented.

For example, between 2007 and 2008 the Q1 volume of Group A, Commodity 1 went up 1.7%, after having been -3.1% between 2005 and 2006 Q1, and -6.7% between 2006 and 2007 Q1. Other commodities listed show similar results. Even when commodities are aggregated into business groups, there is still significant volatility. For example, the total of all commodities in Group B increased 20.2% from 2005 Q1 to 2006 Q1, declined -9.4% between 2006 Q1 and 2007 Q1, and then increased 13.1% between 2007 Q1 and 2008 Q1. *See Attachment #2.* Further, CN knows of no basis for using such a statistically small sample as a basis for a projection of traffic growth (or decline) over a long period of time.

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The unreasonableness of such an effort can be shown by a review of the decline in all of CN's carloads to, from, and through Chicago between Q1 2007 and Q2 2008 of -2.1%. If CN were to attempt a projection based on the four years of Q1 data readily available,³⁷ it would have to "project" a negative average annual rate of Chicago traffic. By contrast, if it were to make such a projection from the annual change in all traffic from 2006 to 2007, it would have to use an annual rate of growth of 3.6%, *see* Attachment #3 (CN Traffic To, From, And Through Chicago (2005-2007): All Carloads), which would absurdly overstate the results for Q1 2008, and the expected annual rate for 2008 (which now appears to be no greater than 0.5% and, based on the Q1 results, could well be significantly negative).

From these examples, it should be obvious why CN does not, for business purposes, make the types of long-term projections of traffic at the micro levels (for system segments or traffic types) as would be required to project "reasonably foreseeable" long-term changes in traffic over EJ&EW and why it has no confidence that use of such an approach here would be any more useful.

SEA Question No. 2. Several commenters have expressed skepticism in the train increases projected by CN and have stated that the train numbers are likely to be much higher, particularly given that CN is investing \$300 million to acquire the EJ&E and \$100 million in infrastructure improvements. Please respond.

CN Response to Question No. 2.

As noted in the introduction (*supra*, p. 11), CN's decision to acquire EJ&EW and to make investments in that property was based principally on the prospect of more efficiently routing existing CN traffic.

SEA Question No. 3. Industry data indicates that rail traffic will continue to increase in response to increasing demand. Several commenters assert that given this trend, SEA should assume for the EIS that additional train traffic decreases on the CN lines inside the EJ&E arc would likely increase to former levels. Do you believe that it is reasonable to assume that the decreases in train traffic forecast on

³⁷ CN does not have data readily available to make such a calculation from before 2005, the year after it had fully implemented its prior acquisitions of British Columbia Railway and Great Lakes Transportation railroads (DMIR, B&LE, and P&C Dock).

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the CN lines inside the arc are likely to be temporary? Please explain.

CN Response to Question No. 3.

For the reasons outlined above in response to Question No. 1, Part 1, it is very difficult to anticipate the implications of any generalized growth in rail traffic for the lines that CN's traffic currently traverse inside the EJ&E arc. What the ultimate capacity of EJ&EW will be, whether any of the CREATE project will ever be completed, the ultimate disposition of the St. Charles Air Line, the level of demand for increased commuter and inter-city rail passenger service, changes to the regulatory structure, and many other factors will all influence the ultimate results. One thing, however, is certain and, as far as CN can determine, is the only relevant fact with respect to this issue in the context of SEA's inquiry: whatever traffic is moved to EJ&EW from CN's interior lines will no longer move over those lines.

SEA Question No. 4. Do the increases in rail traffic projected to occur on the EJ&E line as a result of the acquisition include rail traffic from Prince Rupert? Please explain.

CN Response to Question No. 4.

The traffic that was the basis for CN's Operating Plan included all of CN's expected traffic from the full utilization of Phase I of the P.R. Development, even though this traffic is expected to move via CN through Chicago with or without approval of the proposed Transaction. This is the only Prince Rupert traffic that CN can reasonably foresee would be added to EJ&EW.

Before it commenced, the P.R. Development was a longstanding developmental aspiration of the Port for over 10 years. Once approved, Phase I of the P.R. Development was made operational after only two years. But this phase was built on existing Port land and did not require any environmental review. While planning and engineering for Phase II are complete, this phase faces environmental and political hurdles. This phase will require extensive fill in the bay to create new land, and has been challenged by certain Canadian First Nation (*i.e.*, the indigenous peoples of what is now Canada, other than those who are Inuit or Métis) groups. While other aspects of the development project have also been identified, none has been reviewed for environmental impacts, approved or funded. CN, which would expect to be a beneficiary of further P.R. development, and which is constantly seeking ways to take advantage of the opportunities that might be presented by such further development, has no firm idea whether such development will occur, much less when, or to what extent.

There are a number of factors that will likely bear on whether these later phases will ever

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be developed. Most are beyond CN's control, and many are beyond the control of the Port of Prince Rupert, the Government of British Columbia, and the Government of Canada. SEA should note that all these factors also bear on whether, even if additional phases of the P.R. Development were completed, the expected levels of traffic from Phase I will fully materialize and continue over the long term. These factors include:

- The rate of growth of international container trade between the North America and the rest of the world, especially Asia, which is difficult to predict because of the volatility and number of the governing economic and political factors, such as the weakening economy and apparently growing support for protectionism in the United States.
- Competition from other major West Coast Ports, ranging from the Port of Vancouver, though the U.S. ports such as Seattle-Tacoma, San Francisco-Oakland, Los Angeles and San Diego, to the Mexican Ports, both those now in operation and those for which major expansion is being contemplated in the same manner as the next phases of the P.R. Development.
- Competition from other East Coast and Gulf ports in Canada, the U.S. and Mexico.
- Opposition of First Nations to further development.
- The fact that, under the Canada Marine Act, the Prince Rupert Port Authority cannot borrow any more money for further expansion until the first \$25 million previously borrowed is paid back.
- The nature and state of the business cycle.
- Expected changes in growth rates.
- Expected trade policies of each nation in which traffic moves.
- Competitiveness of the national economics of each nation to, from, or through which traffic moves.
- Other expected developments in the logistics universe, such as the expected expansion of the Panama Canal.

SEA Question No. 5. Do the increases in rail traffic projected to occur on the EJ&E as a result of the acquisition include trackage rights

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granted by CN to other railroads? Please explain.

CN Response to Question No. 5.

CN has granted no trackage rights to other railroads over EJ&EW in anticipation of the Transaction and, accordingly, there is no such traffic reflected in the Operating Plan.

SEA Question No. 6. Do you believe that it would be reasonable to perform an environmental analysis based on the maximum number of trains that could be operated on the EJ&E? Some commenters have indicated that this is the only way to accurately examine potential increases in rail traffic should CN acquire the EJ&E.

CN Response to Question No. 6.

It would not be reasonable to “perform an environmental analysis based on the maximum number of trains that could be operated on the EJ&E” for the simple reason that such an analysis is not required by NEPA and, because any such analysis would be highly speculative, it would not, in any event, advance the STB’s understanding of the reasonably foreseeable impacts of the Transaction.

As reviewed at greater length elsewhere in this response, the STB/SEA NEPA review should be exploring only the environmental impacts that would be caused by the STB’s granting the license(s) at issue in this proceeding. As also shown elsewhere in this response, this can most reasonably be determined by a review of the impact of the train additions shown in the Operating Plan. Even if that were not the case, however, SEA could not readily, if at all, derive the incremental trains likely to result from the STB’s approval of the Transaction because that would require a determination of both the total ultimate capacity of the EJ&E absent any action requiring review by the STB and the amount of that capacity that could not be utilized by EJ&E, CN or other railroads absent further STB review.

CN is not aware of a practicable way to assess the ultimate capacity of EJ&E absent further SEA review because of the many variables that would bear on that capacity, including the nature of the expected operations, the room available for double tracking and other actions generally not requiring STB review to add to that capacity, and the constraints that other carriers might face that might not limit their use of the line in the same way (because of different routing requirements) as they might limit CN’s use of EJ&E, the timing and control of traffic moving over and intersecting the line, the opportunity to add and/or improve mainline track and sidings, to add and/or improve signaling, connections, and dispatching controls, and where the traffic is

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going). Intersecting these issues is the scope of STB jurisdiction to review the development of traffic and capacity by EJ&E and its connecting carriers. Thus, the ultimate capacity of EJ&E that can be realized without projects requiring STB approval is likely unknowable except as someone seeks to develop and use such capacity.

As important, CN is not aware of any realistic way to assess what traffic, other than the traffic that might be moved by CN, might use whatever the capacity of EJ&E might be. Any assessment of the capacity utilization attributable to the Transaction would have to exclude any capacity that EJ&E, in the absence of STB approval, could still utilize to add trains that might move over existing trackage rights, through existing and future interchange arrangements, and through existing and future haulage rights by any of the carriers that connect with EJ&E, including BNSF, CN, CP, IHB, and UP. Any assessment of that utilization would require the same kind of long-term projections of route-specific traffic growth (over the various railroads that connect with EJ&E) that the STB has long recognized are not reliable. These projections would require an assessment of all of the relevant factors that will bear on the decisions of the many shippers and carriers that might generate a set of actual and potential traffic for movement over EJ&E. CN knows of no practicable way to make such an assessment.

Thus, while it may conceivable in theory to analyze the traffic that might result from the Transaction by assessing the ultimate capacity of EJ&E in the absence of the Transaction and subtracting the trains likely to use that capacity from all sources in the absence of the Transaction, CN knows of no way practicably to conduct that inquiry, and certainly no way to assure that the results would be reliable.³⁸

CN Recommendation.

The suggested alternatives to the use of the traffic flows set forth in the Operating Plan – long-term projections, application of projections from various studies, application of various long-term historical growth rates, an assessment of the maximum capacity of EJ&EW – are each fatally flawed and not as likely to reasonably indicate the environmental impacts of the

³⁸ In any event, to study the maximum number of trains that could run over EJ&E would be essentially to study the “worst case” scenario. Such a study is not required by NEPA. While CEQ regulations once required agencies to prepare a “worst case analysis,” those regulations have been amended and that is no longer the case. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 354-56 (1989). Indeed, CEQ found that “[e]xperts in the field of risk analysis and perception [believe] that the ‘worst case analysis’ lacks defensible rationale or procedures” such that it is “not surprising that no one knows how to do a worst case analysis.” *Id.* at 356 n.17. Additionally, CEQ found that the “worst case” rule was “counterproductive, because it . . . led to agencies being required to devote substantial time and resources to preparation of analyses which are not considered useful to decision-makers and divert the EIS process from its intended purpose.” *Id.*

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Transaction as a study of the impacts of the traffic presented in the Operating Plan.

Fortunately, there is no need for SEA to adopt any of these flawed approaches to make any assessment required by NEPA. Instead, in the context of this case, there is a fairly straightforward means to reasonably determine that the impacts of the traffic that CN would not move over the EJ&E “but for” approval of the proposed Transaction within the time frame that is reasonably foreseeable will not likely exceed the impacts expected from the traffic that CN used as the basis of its Operating Plan.

The number of “but for” trains are shown in Attachment #4 (“Train Growth Required to Reach Operating Plan Levels”).³⁹ These are the trains contained in the Operating Plan that likely could not be efficiently moved over EJ&EW without one or more of the improvements to the connections identified in the Operating Plan. CN is assuming, solely for the purposes of this analysis and facilitating SEA’s review, that some or all of those improvements would require STB review. If those improvements prove eventually not to require STB review, SEA will have examined more and larger, not fewer and smaller, impacts than NEPA requires.

As shown in Attachment #4, under even the most optimistic scenarios, there is no rate of traffic growth that would cause the number of “but for” trains to exceed the trains anticipated in the Operating Plan in the next ten years (which is the beyond the “foreseeable” future that CN believes is even remotely plausible under the conditions governing this traffic).

For these reasons, and those given above in response to SEA’s observations and questions, CN believes that the maximum volumes of traffic for determining the reasonably foreseeable impacts of the operating change likely to follow the Transaction are the trains count contained in the Operating Plan.

SEA Heading – “Conclusion” SEA is currently conducting a number of technical analyses of CN’s proposed acquisition of the EJ&E. All of these analyses are dependent on accurate train count information. Therefore, I would appreciate your response to my questions at your earliest convenience. I thank you in advance for your careful consideration of each of these questions and appreciate your assistance.

³⁹ A pro forma projection in growth in number of “but for” trains over a ten year period is provided in Attachment #5 solely for the purpose of providing perspective.

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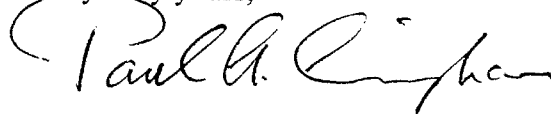
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CN Comment.

In this response, CN has sought to answer your specific questions directly. It has also sought to outline why the Operating Plan, in contrast to alternatives suggested by commenters, appears to provide the best available basis on which SEA can determine the reasonably foreseeable environmental impacts that could occur only if the Transaction were approved. Please let me know if we can provide any further information relating to these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul A. Cunningham". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paul A. Cunningham
Counsel for Canadian National Railway Company
and Grand Trunk Corporation

Enclosures

cc: Phillis Johnson-Ball
John Morton
Normand Pellerin

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 14
Leithton - Spaulding

Current CN		To	Could Enter EJ&E	Could Exit EJ&E	Daily count
Train # ¹	From				
301	Toronto	Edmonton	Griffith	Leithton	1.0
356	Fon du lac	Sarnia	Leithton	Griffith	1.0
357	Sarnia	Edmonton	Griffith	Leithton	1.0

Trains reflected in the Operating Plan	15.0
Trains likely to operate over EJ&EW post-implementation ²	13.0
Trains that could move today with no additional STB authority	3.0
"But For" trains (difference between likely trains and trains that could move today)	10.0

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 13
Spaulding - Munger

Current CN Train # ¹	From	To	Could Enter EJ&E	Could Exit EJ&E	Daily count
301	Toronto	Edmonton	Griffith	Leithton	1.0
356	Fon du lac	Sarnia	Leithton	Griffith	1.0
357	Sarnia	Edmonton	Griffith	Leithton	1.0

Trains reflected in the Operating Plan	17.0
Trains likely to operate over EJ&EW post-implementation ²	15.0
Trains that could move today with no additional STB authority	3.0
"But For" trains (difference between likely trains and trains that could move today)	12.0

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 12
Munger - West Chicago

Current CN Train # ¹	From	To	Could Enter EJ&E	Could Exit EJ&E	Daily count
301	Toronto	Edmonton	Griffith	Leithton	1.0
356	Fon du lac	Sarnia	Leithton	Griffith	1.0
357	Sarnia	Edmonton	Griffith	Leithton	1.0

Trains reflected in the Operating Plan	19.0
Trains likely to operate over EJ&EW post-implementation ²	17.0
Trains that could move today with no additional STB authority	3.0
"But For" trains (difference between likely trains and trains that could move today)	14.0

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 11
West Chicago - East Siding (Eola)

Current CN Train # ¹	From	To	Could Enter EJ&E	Could Exit EJ&E	Daily count
250	UP	Michigan	West Chicago	Griffith	0.1
260	UP	Michigan	West Chicago	Griffith	0.1
280	UP	Michigan	W Chicago	Griffith	0.2
301	Toronto	Edmonton	Griffith	Leithton	1.0
356	Fon du lac	Sarnia	Leithton	Griffith	1.0
357	Sarnia	Edmonton	Griffith	Leithton	1.0
UP Ety Coal	Michigan	UP	Griffith	W Chicago	0.4

Trains reflected in the Operating Plan	20.9
Trains likely to operate over EJ&EW post-implementation ²	18.9
Trains that could move today with no additional STB authority	3.8
"But For" trains (difference between likely trains and trains that could move today)	15.1

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 10
East Siding (Eola) - Walker

Current CN		From	To	Could Enter	Could Exit	Daily count
Train # ¹				EJ&E	EJ&E	
250		UP	Michigan	West Chicago	Griffith	0.1
260		UP	Michigan	West Chicago	Griffith	0.1
276		BNSF	Michigan	Eola	Griffith	0.0
278		BNSF	Michigan	Eola	Griffith	0.3
280		UP	Michigan	W Chicago	Griffith	0.2
301		Toronto	Edmonton	Griffith	Leithton	1.0
356		Fon du lac	Sarnia	Leithton	Griffith	1.0
357		Sarnia	Edmonton	Griffith	Leithton	1.0
BNSF Coal to MI	BNSF	Michigan		Eola	Griffith	0.4
BNSF Ety Coal	Michigan	BNSF		Griffith	Eola	0.4
UP Ety Coal	Michigan	UP		Griffith	W Chicago	0.4

Trains reflected in the Operating Plan	23.8
Trains likely to operate over EJ&EW post-implementation ²	21.8
Trains that could move today with no additional STB authority	5.1
"But For" trains (difference between likely trains and trains that could move today)	16.7

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 9
Walker - Bridge Junction

Current CN		To	Could Enter	Could Exit	Daily count
Train # ¹	From		EJ&E	EJ&E	
250	UP	Michigan	West Chicago	Griffith	0.1
260	UP	Michigan	West Chicago	Griffith	0.1
276	BNSF	Michigan	Eola	Griffith	0.0
278	BNSF	Michigan	Eola	Griffith	0.3
280	UP	Michigan	W Chicago	Griffith	0.2
301	Toronto	Edmonton	Griffith	Leithton	1.0
356	Fon du lac	Sarnia	Leithton	Griffith	1.0
357	Sarnia	Edmonton	Griffith	Leithton	1.0
BNSF Coal to MI	BNSF	Michigan	Eola	Griffith	0.4
BNSF Ety Coal	Michigan	BNSF	Griffith	Eola	0.4
UP Ety Coal	Michigan	UP	Griffith	W Chicago	0.4

Trains reflected in the Operating Plan	23.8
Trains likely to operate over EJ&EW post-implementation ²	21.8
Trains that could move today with no additional STB authority	5.1
"But For" trains (difference between likely trains and trains that could move today)	16.7

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 8
Bridge Junction - Rock Island Junction

Current CN			Could Enter	Could Exit	
Train # ¹	From	To	EJ&E	EJ&E	Daily count
250	UP	Michigan	West Chicago	Griffith	0.1
260	UP	Michigan	West Chicago	Griffith	0.1
276	BNSF	Michigan	Eola	Griffith	0.0
278	BNSF	Michigan	Eola	Griffith	0.3
280	UP	Michigan	W Chicago	Griffith	0.2
301	Toronto	Edmonton	Griffith	Leithton	1.0
356	Fon du lac	Sarnia	Leithton	Griffith	1.0
357	Sarnia	Edmonton	Griffith	Leithton	1.0
BNSF Coal to MI	BNSF	Michigan	Eola	Griffith	0.4
BNSF Ety Coal	Michigan	BNSF	Griffith	Eola	0.4
UP Ety Coal	Michigan	UP	Griffith	W Chicago	0.4

Trains reflected in the Operating Plan	23.8
Trains likely to operate over EJ&EW post-implementation ²	21.8
Trains that could move today with no additional STB authority	5.1
"But For" trains (difference between likely trains and trains that could move today)	16.7

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 7
Rock Island Junction - Matteson

Current CN		From	To	Could Enter	Could Exit	Daily count
Train # ¹				EJ&E	EJ&E	
250		UP	Michigan	West Chicago	Griffith	0.1
260		UP	Michigan	West Chicago	Griffith	0.1
276		BNSF	Michigan	Eola	Griffith	0.0
278		BNSF	Michigan	Eola	Griffith	0.3
280		UP	Michigan	W Chicago	Griffith	0.2
301		Toronto	Edmonton	Griffith	Leithton	1.0
356		Fon du lac	Sarnia	Leithton	Griffith	1.0
357		Sarnia	Edmonton	Griffith	Leithton	1.0
BNSF Coal to MI	BNSF	Michigan		Eola	Griffith	0.4
BNSF Ety Coal	Michigan	BNSF		Griffith	Eola	0.4
UP Ety Coal	Michigan	UP		Griffith	W Chicago	0.4

Trains reflected in the Operating Plan	21.9
Trains likely to operate over EJ&EW post-implementation ²	19.9
Trains that could move today with no additional STB authority	5.1
"But For" trains (difference between likely trains and trains that could move today)	14.8

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 6
Matteson - Chicago Heights

Current CN Train		From	To	Could Enter	Could Exit	Daily count
# ¹				EJ&E	EJ&E	
250		UP	Michigan	West Chicago	Griffith	0.1
260		UP	Michigan	West Chicago	Griffith	0.1
276		BNSF	Michigan	Eola	Griffith	0.0
278		BNSF	Michigan	Eola	Griffith	0.3
280		UP	Michigan	W Chicago	Griffith	0.2
301		Toronto	Edmonton	Griffith	Leithton	1.0
356		Fon du lac	Sarnia	Leithton	Griffith	1.0
357		Sarnia	Edmonton	Griffith	Leithton	1.0
BNSF Coal to MI		BNSF	Michigan	Eola	Griffith	0.4
BNSF Ety Coal		Michigan	BNSF	Griffith	Eola	0.4
UP Ety Coal		Michigan	UP	Griffith	W Chicago	0.4

Trains reflected in the Operating Plan	22.9
Trains likely to operate over EJ&EW post-implementation ²	20.9
Trains that could move today with no additional STB authority	5.1
"But For" trains (difference between likely trains and trains that could move today)	15.8

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 5
Chicago Heights - Griffith

Current CN				Could Enter	Could Exit	
Train # ¹	From	To		EJ&E	EJ&E	Daily count
250	UP	Michigan		West Chicago	Griffith	0.1
260	UP	Michigan		West Chicago	Griffith	0.1
276	BNSF	Michigan		Eola	Griffith	0.0
278	BNSF	Michigan		Eola	Griffith	0.3
280	UP	Michigan		W Chicago	Griffith	0.2
301	Toronto	Edmonton		Griffith	Leithton	1.0
356	Fon du lac	Sarnia		Leithton	Griffith	1.0
357	Sarnia	Edmonton		Griffith	Leithton	1.0
BNSF Coal to MI	BNSF	Michigan		Eola	Griffith	0.4
BNSF Ety Coal	Michigan	BNSF		Griffith	Eola	0.4
UP Ety Coal	Michigan	UP		Griffith	W Chicago	0.4

Trains reflected in the Operating Plan	23.9
Trains likely to operate over EJ&EW post-implementation ²	21.9
Trains that could move today with no additional STB authority	5.1
"But For" trains (difference between likely trains and trains that could move today)	16.8

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 4
Griffith - Van Loon

Current CN Train # ¹	From	To	Could Enter EJ&E	Could Exit EJ&E	Daily count
Trains reflected in the Operating Plan					21.0
Trains likely to operate over EJ&EW post-implementation ²					19.0
Trains that could move today with no additional STB authority					0.0
"But For" trains (difference between likely trains and trains that could move today)					19.0

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 3
Van Loon - Ivanhoe

Current CN Train # ¹	From	To	Could Enter EJ&E	Could Exit EJ&E	Daily count
Trains reflected in the Operating Plan					20.0
Trains likely to operate over EJ&EW post-implementation ²					18.0
Trains that could move today with no additional STB authority					0.0
"But For" trains (difference between likely trains and trains that could move today)					18.0

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 2
Ivanhoe - Cavanaugh

Current CN Train # ¹	From	To	Could Enter EJ&E	Could Exit EJ&E	Daily count
Trains reflected in the Operating Plan					20.0
Trains likely to operate over EJ&EW post-implementation ²					18.0
Trains that could move today with no additional STB authority					0.0
"But For" trains (difference between likely trains and trains that could move today)					18.0

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment #1

Minimum Number Of CN Trains That Could Be Re-routed Over EJ&E If Transaction Were Not Approved

Segment 1
Cavanaugh - Gary

Current CN Train # ¹	From	To	Could Enter EJ&E	Could Exit EJ&E	Daily count
Trains reflected in the Operating Plan					20.0
Trains likely to operate over EJ&EW post-implementation ²					18.0
Trains that could move today with no additional STB authority					0.0
"But For" trains (difference between likely trains and trains that could move today)					18.0

1. These figures reflect current CN trains. Traffic from these trains was reflected in the Operating Plan. However, because of the efficiencies of the Transaction, the Operating Plan reflects a major reconfiguration of CN's operations and pre-Transaction trains may not have the same train #s as under the Operating Plan.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

Attachment # 2

CN TRAFFIC TO, FROM, AND THROUGH CHICAGO (2005 Q1 vs. 2006 Q1 vs. 2007 Q1 vs. 2008 Q1) ALL CARLOADS

Business Unit	2005 Q1 / 2006 Q1	2006 Q1 / 2007 Q1	2007 Q1 / 2008 Q1
Commodity 1	-3.1%	-6.7%	1.7%
Commodity 2	11.9%	-3.9%	-31.3%
Commodity 3	-4.9%	0.3%	3.5%
Commodity 4	-9.6%	-15.5%	-28.3%
Commodity 5	-8.5%	13.4%	-11.7%
Commodity 6	-7.6%	3.2%	1.0%
Group A Total	-2.4%	-0.1%	-13.9%
Commodity 7	23.3%	-15.5%	3.0%
Commodity 8	8.1%	46.3%	4.6%
Commodity 9	11.8%	-6.2%	27.9%
Commodity 10	88.9%	-33.9%	76.5%
Commodity 11	2.3%	-5.7%	1.2%
Commodity 12	62.9%	-16.8%	14.6%
Commodity 13	9.8%	-14.2%	-3.3%
Group B Total	20.2%	-9.4%	13.1%
Commodity 14	-6.3%	5.8%	-2.5%
Commodity 15	18.2%	2923.1%	30.7%
Commodity 16	-8.7%	10.5%	-8.8%
Commodity 17	-4.3%	9.7%	2.2%
Commodity 18	-6.6%	20.0%	72.1%
Commodity 19	-20.1%	-25.8%	16.1%
Commodity 20	3.5%	-4.9%	2.5%
Commodity 21	14.7%	-0.4%	5.9%
Commodity 22	-2.3%	-15.5%	59.7%
Commodity 23	-15.6%	-23.0%	-3.7%
Group C Total	-4.0%	3.1%	9.1%
Commodity 24	16.5%	-29.3%	-11.4%
Commodity 25	2.2%	-8.0%	-11.3%
Group D Total	15.2%	-27.6%	-11.4%
Commodity 26	52.0%	38.5%	4.7%
Commodity 27	-19.2%	42.1%	-12.9%
Commodity 28	-43.9%	28.4%	14.8%
Commodity 29	27.5%	-3.4%	15.2%
Commodity 30	18.7%	19.5%	17.0%
Group E Total	13.0%	19.2%	9.7%
Commodity 31	-41.4%	24.4%	18.3%
Commodity 32	-8.1%	19.1%	748.1%
Commodity 33	10.3%	-14.6%	-19.2%
Commodity 34	32.7%	-30.8%	-59.9%
Commodity 35	-31.6%	3.8%	61.4%
Group F Total	-9.0%	-6.9%	0.6%
Commodity 36	2.2%	-6.0%	-19.0%
Commodity 37	-100.0%	#DIV/0!	21.2%
Commodity 38	7.5%	0.8%	-2.0%
Group G Total	2.5%	-4.4%	-17.2%
Grand Total	2.7%	-1.3%	-2.1%

Attachment # 3

CN TRAFFIC TO, FROM, AND THROUGH CHICAGO (2005-2007) ALL CARLOADS

Groups	2005/06	2006/07
Commodity 1	-2.7%	-3.5%
Commodity 2	-1.9%	-6.2%
Commodity 3	-2.2%	-3.9%
Commodity 4	-4.5%	-15.6%
Commodity 5	-4.4%	0.9%
Commodity 6	8.1%	0.9%
Group A Total	-2.1%	-4.0%
Commodity 7	3.7%	0.4%
Commodity 8	26.8%	38.1%
Commodity 9	-70.5%	11.0%
Commodity 10	-3.1%	19.2%
Commodity 11	25.1%	0.7%
Commodity 12	11.5%	-4.9%
Commodity 13	39.7%	-22.8%
Commodity 14	7.7%	-13.4%
Group B Total	6.9%	3.7%
Commodity 15	-9.3%	7.0%
Commodity 16	640.2%	297.2%
Commodity 17	-4.1%	12.8%
Commodity 18	2.8%	21.1%
Commodity 19	-9.6%	57.7%
Commodity 20	-15.3%	-35.2%
Commodity 21	4.8%	2.6%
Commodity 22	28.6%	-13.2%
Commodity 23	-10.4%	13.2%
Commodity 24	-26.2%	-6.3%
Group C Total	-2.3%	9.5%
Commodity 25	2.4%	-8.5%
Commodity 26	-3.4%	-13.3%
Group D Total	1.8%	-8.9%
Commodity 27	37.8%	34.2%
Commodity 28	-9.5%	48.1%
Commodity 29	-20.3%	57.3%
Commodity 30	15.7%	0.2%
Commodity 31	20.2%	16.6%
Group E Total	14.8%	21.9%
Commodity 32	-17.6%	31.7%
Commodity 33	10.9%	-20.5%
Group F Total	1.1%	-5.9%
Commodity 34	-5.6%	1.6%
Commodity 35	7.7%	478.6%
Commodity 36	-5.3%	6.0%
Group G Total	-5.6%	2.3%
Grand Total	0.8%	3.6%

Attachment #4

Train Growth Required to Absorb Difference Between Operating Plan and "But For" Trains

Segment No.	Segment Endpoints	Trains reflected in the Operating Plan	Trains likely to operate over EJ&EW post-Transaction ¹	Trains that could operate today over EJ&E without further STB review	"But For" trains (difference between likely EJ&EW trains and trains that could operate today)	Length of time (in years) at specified growth rate it would take "but for" trains to reach the levels reflected in the Operating Plan				
						Years @ 0.50%	Years @ 1.00%	Years @ 1.50%	Years @ 2.00%	Years @ 2.04% ²
14	Leithton - Spaulding	15.0	13.0	3.0	10.0	81.3	40.7	27.2	20.5	20.1
13	Spaulding - Munger	17.0	15.0	3.0	12.0	69.8	35.0	23.4	17.6	17.2
12	Munger - West Chicago	19.0	17.0	3.0	14.0	61.2	30.7	20.5	15.4	15.1
11	West Chicago - East Siding	20.9	18.9	3.8	15.1	65.6	32.9	22.0	16.5	16.2
10	East Siding - Walker	23.8	21.8	5.1	16.7	70.8	35.5	23.7	17.8	17.5
9	Walker - Bridge Jct.	23.8	21.8	5.1	16.7	70.8	35.5	23.7	17.8	17.5
8	Bridge Jct. - Rock Island Jct.	23.8	21.8	5.1	16.7	70.8	35.5	23.7	17.8	17.5
7	Rock Island Jct. - Matteson	21.9	19.9	5.1	14.8	78.3	39.3	26.2	19.7	19.3
6	Matteson - Chicago Heights	22.9	20.9	5.1	15.8	74.2	37.2	24.9	18.7	18.3
5	Chicago Heights - Griffith	23.9	21.9	5.1	16.8	70.5	35.3	23.6	17.8	17.4
4	Griffith - Van Loon	21.0	19.0	0.0	19.0	20.1	10.1	6.7	5.1	5.0
3	Van Loon - Ivanhoe	20.0	18.0	0.0	18.0	21.1	10.6	7.1	5.3	5.2
2	Ivanhoe - Cavanaugh	20.0	18.0	0.0	18.0	21.1	10.6	7.1	5.3	5.2
1	Cavanaugh - Gary	20.0	18.0	0.0	18.0	21.1	10.6	7.1	5.3	5.2

1. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

2. Average annual rate of growth in U.S. railroad tonnage originated for the twenty year period from 1986-2006. See, 1996 & 2007 Policy & Economics Department, Association of American Railroads, Railroad Facts 28. Tons originated is a better indicator of train growth than carloads originated because, depending on the year, carloads originated data may not include intermodal traffic. Additionally, depending on the way intermodal units are counted, use of carloads originated data could lead to a significant overstatement of train growth.

Attachment #5

Pro Forma Train Growth Over 10 Years Calculated Using Hypothetical Growth Rates¹ (For Illustration Only)

Segment No.	Segment Endpoints	Trains reflected in the Operating Plan	Trains likely to operate over EJ&EW post-Transaction ²	Trains that could operate today over EJ&E without further STB review	"But For" trains (difference between likely EJ&EW trains and trains that could operate today)	Additional "but for" trains after 10 years at the stated level of growth			
						0.50%	1.00%	1.50%	2.00%
14	Leithton - Spaulding	15.0	13.0	3.0	10.0	0.5	1.0	1.6	2.2
13	Spaulding - Munger	17.0	15.0	3.0	12.0	0.6	1.3	1.9	2.6
12	Munger - West Chicago	19.0	17.0	3.0	14.0	0.7	1.5	2.2	3.1
11	West Chicago - East Siding	20.9	18.9	3.8	15.1	0.8	1.6	2.4	3.3
10	East Siding - Walker	23.8	21.8	5.1	16.7	0.9	1.7	2.7	3.7
9	Walker - Bridge Jct.	23.8	21.8	5.1	16.7	0.9	1.7	2.7	3.7
8	Bridge Jct. - Rock Island Jct.	23.8	21.8	5.1	16.7	0.9	1.7	2.7	3.7
7	Rock Island Jct. - Matteson	21.9	19.9	5.1	14.8	0.8	1.6	2.4	3.2
6	Matteson - Chicago Heights	22.9	20.9	5.1	15.8	0.8	1.7	2.5	3.5
5	Chicago Heights - Griffith	23.9	21.9	5.1	16.8	0.9	1.8	2.7	3.7
4	Griffith - Van Loon	21.0	19.0	0.0	19.0	1.0	2.0	3.1	4.2
3	Van Loon - Ivanhoe	20.0	18.0	0.0	18.0	0.9	1.9	2.9	3.9
2	Ivanhoe - Cavanaugh	20.0	18.0	0.0	18.0	0.9	1.9	2.9	3.9
1	Cavanaugh - Gary	20.0	18.0	0.0	18.0	0.9	1.9	2.9	3.9

1. CN is aware of no basis for the use of the hypothetical growth rates or for any other reliable basis for forecasting growth in the "but for" trains attributable to the Transaction.

2. The figures reflected in the Operating Plan include two trains that CN interchanges with CSX that CN expected to route over EJ&EW from Leithton to Kirk Yard. However, as a result of conversations with CSX, CN no longer expects those trains to be operated over EJ&EW.

3. Average annual rate of growth in U.S. railroad tonnage originated for the twenty year period from 1986-2006. See, 1996 & 2007 Policy & Economics Department, Association of American Railroads, Railroad Facts 28. Tons originated is a better indicator of train growth than carloads originated because, depending on the year, carloads originated data may not include intermodal traffic. Additionally, depending on the way intermodal units are counted, use of carloads originated data could lead to a significant overstatement of train growth.