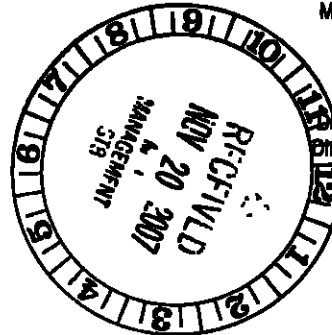


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November 20, 2007

BY HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re Finance Docket No. 35087, Canadian National Railway
Company and Grand Trunk Corporation – Control – EJ&E
West Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Notice of Intent to Participate (BNSF-1) and BNSF Railway Company's Comments on the Suggested Procedural Schedule (BNSF-2).

I would appreciate it if you would date-stamp the enclosed extra copies and return them to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr

Enclosures

cc: All Parties of Record

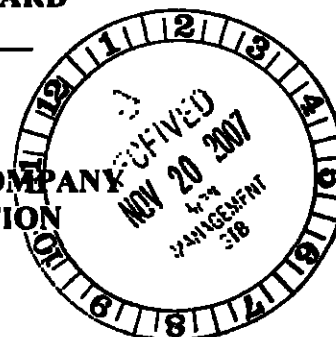
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BNSF-2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35087

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



**BNSF RAILWAY COMPANY'S COMMENTS
ON THE SUGGESTED PROCEDURAL SCHEDULE**

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Dated: November 20, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35087

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

**BNSF RAILWAY COMPANY'S COMMENTS
ON THE SUGGESTED PROCEDURAL SCHEDULE**

BNSF Railway Company ("BNSF") respectfully submits these Comments on the suggested procedural schedule for the proposed acquisition of control of EJ&E West Company ("EJ&EW") by Canadian National Railway Company ("CN") and Grand Trunk Corporation ("GTC") (collectively, CN and GTC are referred to in these Comments as "Applicants").

INTRODUCTION

On October 30, 2007, CN and GTC filed a Railroad Control Application (the "Application") with the Surface Transportation Board ("STB" or the "Board") proposing that they be allowed to control EJ&EW, a newly-formed company that will acquire certain assets of Elgin, Joliet & Eastern Railway Company ("EJ&E").¹ In their accompanying *Petition Suggesting Procedural Schedule* (CN-3), Applicants have proposed a 156-day procedural schedule, which is shorter than the 180-day statutory maximum for "minor" transactions under

¹ EJ&E currently operates approximately 200 miles of track, "consisting primarily of an arc around Chicago" that sweeps from Waukegan, Illinois around to South Chicago on the shores of Lake Michigan. Application at 19. EJ&E's rail assets directly serving the steel making operations of United States Steel Corporation and other customers at the Gary Works site in Gary, Indiana are excluded from the transaction. *See id.*

the Board's regulations. The Application as filed does not address acknowledged, unresolved questions about the potential impact of the proposed transaction on BNSF's operations in the Chicago area, and thus on BNSF's customers, who require competitive, reliable and consistent interchange service and through train operations over routes controlled by CN and EJ&E. Based on its review of the Application and its preliminary inquiries with CN's representatives on these matters, BNSF believes that the proposed expedited schedule does not provide BNSF with an adequate opportunity to seek to achieve a voluntary resolution with CN of its concerns arising from Applicants' proposed acquisition of EJ&E.

COMMENTS

THE APPLICATION PROPOSES POTENTIALLY SIGNIFICANT CHANGES TO CHICAGO OPERATIONS THAT THE APPLICATION DOES NOT ADEQUATELY ADDRESS

The changes proposed in the Application present unresolved concerns with respect to several items that could affect BNSF's ability to provide efficient, competitive service to shippers whose traffic moves to, from or through the critical Chicago rail terminal. It is important that these concerns be resolved before the Board approves the proposed transaction here at issue.

As the Application points out, the EJ&E line was for nearly all of its history owned and operated by United States Steel Corporation. Application at 18. EJ&E's primary customers even today are customers originating or terminating business along its route, including "steel mills, coal utilities, plastics and chemical producers, steel processors, distribution centers and scrap processors." *Id.* at 19. As a result, many of the Class I rail carriers have not built and retained significant infrastructure to deal with the increased interline interchange volumes flowing to and from EJ&E that CN has planned. Put another way, EJ&E has operated neither as a "bridge" carrier nor as an interchange carrier for significant interline flows between Class I

railroads. CN is now proposing that it serve precisely those additional functions, carrying an average of as many as 45 freight trains per day on some EJ&E route segments currently accommodating far less daily freight train traffic. *Id.* at 247 BNSF is concerned that such a dramatic change in the use of the EJ&E line be given an appropriate and careful review—even if it takes longer than CN suggests in its procedural schedule—such that all potential adverse impacts can be understood and addressed by the affected carriers to ensure customers' competitive local and interline service is enhanced as a result of this transaction.

For instance, Applicants propose moving existing CN interchanges with BNSF and other Class I carriers from locations within Chicago to new interchange locations where the carriers' routes intersect the EJ&E line. The Application states that "[t]o achieve the projected workload levels, CN and its Class I partners *must* negotiate changes to existing Chicago-area interchange arrangements." Application at 217 (emphasis added). But the Application contains little explanation of and few details concerning how the change of interchange locations would affect existing traffic on the connecting railroads, whether such shifts would be beneficial for all railroads and customers, how other train operations and flows (including rail passenger) could be impacted by such shifts to accommodate CN's fully-implemented operating plan for EJ&EW post-acquisition, and whether the existing track and yard infrastructure on both the connecting carriers and CN and EJ&E can support such interchanges. Chicago functions as the hub for much of North America's rail traffic, and changes of the scope and complexity proposed by Applicants affect all Class I carriers' networks of train operations and their abilities to competitively serve customers. Because the Application does not describe how these issues would be resolved, BNSF and other carriers need time to gain a full understanding of Applicants' proposed shift of interchange locations through specific discussions so that they can ensure that

their interests, the interests of their shippers, and the interests of commuters are protected as operations and routing options are changed. Once these issues are understood, BNSF and CN need sufficient time to seek to reach mutually-acceptable agreements, which the Application acknowledges are required, concerning all facets of the relocation of interchanges to ensure that the changes implemented benefit all shippers, not just those of CN and EJ&E

The Application also makes certain guarantees and commitments concerning rates, routings and service which need to be explored and understood. At one point, for example, the Application states that “[t]he new CN/EJ&EW system will maintain and keep open all routes, rates, transit arrangements and channels of trade via junctions and gateways as they existed in 2006.” Application at 193. But the Application does not make clear how these promises of continued routes, rates and transit arrangements fit with Applicants’ apparent requirement that the connecting railroads change existing interchange arrangements, and does not propose how these guarantees and commitments would be carried out. *See id.* at 217

The Application further states that “CN’s Operating Plan contemplates that four Class I railroads (BNSF, CSXT, NS and UP) could significantly benefit from this Transaction by gaining a new direct connection with CN for interline traffic that can move around Chicago, rather than through Chicago as it moves today ” Application at 205 BNSF stands ready to engage in discussions to generate and review specific operating plans with CN which will generate the significant benefits that could accrue to its network and its customers. But Chicago and the surrounding area, the largest rail freight interchange location in North America, already employs the dedicated operating teams of all its railroads, passenger and freight, on a daily basis to ensure that flows are protected through interchanges, including through interchange carriers such as the Indiana Harbor Belt Railroad Company (“IHB”) and the Belt Railway Company of

Chicago ("BRC"), and to ensure that movements occur with a minimum of delay and disruption. Rail traffic interchanges between CN and its Class I connections in the Chicago area, while important, do not represent the largest interchange flows using Chicago area interchanges, and BNSF is not confident that questions arising from the changes CN is proposing for interchange traffic, when addressed with the goal of reaching agreements which benefit all parties and indeed improve Chicago's rail operations as proposed, can be resolved within the amount of time provided in Applicants' suggested procedural schedule.

Elsewhere, the Application commits to the "[c]ontinuation of trackage rights arrangements with connecting carriers." Application at 210. BNSF has had overhead trackage rights with committed train volumes on a "take or pay" basis on EJ&E between Eola and Joliet, Illinois for several years. These trackage rights—which are not fully utilized at present—are used, *inter alia*, for the movement of competitive, time-sensitive Pacific Northwest international container flows to and from its Logistics Park Chicago ("LPC") container terminal, located on BNSF south of Joliet. CN plans to increase daily train counts on the EJ&E line between Eola and Joliet by adding approximately 27 trains to existing traffic levels. *See id.* at 247. This is well more than double the number of trains currently operating over this line.² *See id.* BNSF is concerned that this increased number of trains traveling on the EJ&E line between Eola and Joliet as a result of the proposed transaction will adversely affect the BNSF traffic traveling on the line segment. While Applicants have proposed to double-track certain portions of the line, it is not clear whether there will be sufficient additional line capacity to efficiently and timely handle all of the additional trains that are projected to operate over the line following the

² The full scope of the change in traffic flows projected by Applicants in the Chicago area can be seen on the attached traffic flow diagram which shows traffic increases and decreases on specific lines (taken from the Application), as well as the new connections and double-track proposed by Applicants to provide additional operating capacity.

proposed transaction, in addition to the existing flows of BNSF and other carriers which currently operate on the line. These potential capacity problems need to be aligned with CN's promise to "ensure that trains now operating on the lines (including trackage rights trains operated by, and haulage trains operated for, other railroads), as well as trains to be re-routed onto EJ&EW, would move efficiently" *Id.* at 212. In addition, BNSF is concerned about its ability to promptly enter and exit the EJ&E line post-transaction at Eola and Joliet, as congestion occurring at those points would potentially impact both freight and passenger operations on adjacent lines. This issue, too, may require more time to flesh out and resolve than is proposed in Applicants' suggested procedural schedule.³

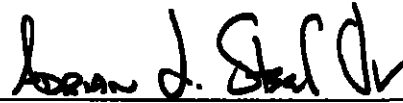
CONCLUSION

For the reasons stated above, BNSF believes that a more adequate procedural schedule is necessary for consideration of the potential impacts of the proposed transaction and negotiations with CN—which the Application acknowledges are required—to ensure that the interests of connecting railroads and their shippers are protected. BNSF has provided a written list of its concerns to CN and requested meetings with CN to evaluate the issues discussed above, as well as other issues that may arise as a result of the proposed transaction. BNSF is hopeful that it can resolve all outstanding issues through such meetings. Nevertheless, BNSF is concerned that the procedural schedule suggested by Applicants would not be sufficient for an adequate review of

³ Applicants' plans for complying with the National Environmental Policy Act and the Board's implementing regulations are also unclear. The Application acknowledges that the EJ&E line "would experience traffic increases that exceed the Board's thresholds for environmental analysis, and the Transaction would therefore require preparation of either an EA or EIS." Application at 33. The Application further explains that Applicants have retained a third party contractor to perform this review. *Id.* But nothing in the Application indicates how the planned environmental review will fit within Applicants' proposed procedural schedule.

the Application and its ramifications, particularly in the absence of a voluntary resolution. Because that result would be inconsistent with the Board's policy favoring settlement of disputes, BNSF requests that the Board set a procedural schedule which provides for sufficient time for the parties or the Board to resolve the issues raised by BNSF in these Comments

Respectfully submitted,



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Dated: November 20, 2007

CN-EJ&E Acquisition



CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November 2007, a true and correct copy of the foregoing Comments on the Suggested Procedural Schedule is being served on the following by First-Class Mail Postage Pre-Paid or by a more expeditious manner.

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